



Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

**Report No. 37, 56th Parliament
Economics and Governance Committee
February 2020**

Economics and Governance Committee

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Abbreviations

ACF	Australian Conservation Foundation
ACNC	Australian Charities and Not-for-profits Commission
ACT	Australian Capital Territory
AIP	Australian Institute for Progress
AJPCHR	Australian Joint Parliamentary Committee on Human Rights (Parliament of Australia)
ALP	Australian Labor Party
BCC	Brisbane City Council
BCCG	Bayside Creeks Catchment Group
Bill	Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019
BRU	Brisbane Residents United
CAFNEC	Cairns and Far North Environment Centre
CCC	Crime and Corruption Commission
CEO	chief executive officer
CJ	Chief Justice
Clerk	Clerk of the Parliament (Queensland)
COBA	<i>City of Brisbane Act 2010</i>
Committee	Economics and Governance Committee
CPI	Centre for Public Integrity
Criminal Code	<i>Criminal Code Act 1899</i>
D&O insurance	director's and officer's insurance
DJAG	Department of Justice and Attorney-General
DLGRMA	Department of Local Government, Racing and Multicultural Affairs
DPP	Director of Public Prosecutions
ECQ	Electoral Commission of Queensland
EDO	Environmental Defenders Office

Electoral Act	<i>Electoral Act 1992</i>
FLP	Fundamental legislative principle
Gecko	Gecko Environment Council Association Inc
GPAP	Greenpeace Australia Pacific
HRLC	Human Rights Law Centre
Human Rights Act	<i>Human Rights Act 2019</i>
Independent Remuneration Tribunal Act	<i>Queensland Independent Remuneration Tribunal Act 2013</i>
Integrity Act	<i>Integrity Act 2009</i>
Justices Act	<i>Justices Act 1886</i>
LECNA	Logan East Community Neighbourhood Association Inc
LGA	<i>Local Government Act 2009</i>
LGAQ	Local Government Association of Queensland
LGEA	<i>Local Government Electoral Act 2011</i>
LGMA	Local Government Managers Australia Queensland
LNP	Liberal National Party
LSA	<i>Legislative Standards Act 1992</i>
NQCC	North Queensland Conservation Council
NSW	New South Wales
NT	Northern Territory
OIA	Office of the Independent Assessor
Operation Belcarra Report	Crime and Corruption Commission, <i>Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government</i> , October 2017
OQPC	Office of the Queensland Parliamentary Counsel
OSCAR	Organisation Sunshine Coast Association of Residents Inc
PDP	policy development payment
POQA	<i>Parliament of Queensland Act 2001</i>

QCA	Queensland Community Alliance
QCCL	Queensland Council for Civil Liberties
QCOSS	Queensland Council of Social Service Ltd
QCU	Queensland Council of Unions
QHRC	Queensland Human Rights Commission
QIC	Queensland Integrity Commissioner
QLGRA	Queensland Local Government Reform Alliance Inc
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
SMS	Short message service
Standing Orders	Standing Rules and Orders of the Legislative Assembly (Queensland)
Together Queensland	Together Queensland Industrial Union of Employees
UK	United Kingdom

All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.

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

On behalf of the committee, I thank those individuals and organisations who made written submissions to the inquiry and appeared at the committee's hearing on the Bill. I also thank our Parliamentary Service staff, the Department of Justice and Attorney-General, and the Department of Local Government, Racing and Multicultural Affairs for their assistance.

I commend this report to the House.

A handwritten signature in black ink that reads "Linus Power". The signature is written in a cursive, slightly slanted style.

Linus Power MP

Chair

Recommendations

Recommendation 1

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The committee recommends the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 be passed.

Recommendation 2

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The committee recommends the Attorney General and Minister for Justice consider amending the Bill to address the concerns of small, not-for-profit third party organisations regarding the regulatory burden of the political donation and electoral expenditure cap schemes, such as by increasing the threshold for third party registration.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Queensland Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

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

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

1.2 Inquiry process

The Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee for examination on 28 November 2019. The committee was required to report to the Legislative Assembly on the Bill by 7 February 2020.

On the introduction of the Bill, the Legislative Assembly also agreed to a motion that the committee, when considering the Bill, also consider recommendation 1 from the Crime and Corruption Commission's (CCC'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 local government elections. The committee's consideration of this matter will continue beyond the conclusion of its inquiry into the Bill, and therefore will be detailed in a separate report.

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers over a period of five weeks from 2 December 2019 to 9 January 2020, and received 68 submissions
- invited further submissions on an alternative reform proposal from the CCC in relation to one aspect of the Bill (for approximately one week), and received 14 additional submissions⁴ (a list of all submissions on the Bill and on the alternative reform proposal are available at **Appendix A**)⁵
- received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) and the Department of Local Government, Racing and Multicultural Affairs (DLGRMA), prior to a public briefing from departmental officials on 16 December 2019 (a list of officers who appeared at the briefing is provide at **Appendix B**)

¹ *Parliament of Queensland Act 2001* (POQA), s 88; and Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

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

³ POQA, s 93(1).

⁴ The committee received five additional submissions and nine supplementary submissions.

⁵ The committee contacted over 215 identified stakeholder groups and individuals and over 980 email subscribers to invite submissions on the Bill and in relation to the alternative reform proposal from the CCC.

- held a public hearing in Brisbane on 20 January 2020, in which 26 key stakeholder organisations and academic experts participated (a list of the witnesses who appeared at the hearing is at **Appendix C**), and
- requested and received written advice from DJAG and DLGRMA on issues raised in submissions on the Bill.

Copies of the material published in relation to the committee's inquiry, including the submissions, transcripts and written advice, are available on the committee's inquiry webpage.⁶

1.2.1 Inquiry consultation

A number of stakeholders expressed concerns about the length and timing of the committee consultation process, highlighting the challenges of digesting and responding to the significant and complex legislative reforms contained in the Bill during a period that coincided with the traditional Christmas and New Year holiday break, and when parts of the State have been affected by catastrophic fire events. The committee wishes to acknowledge the efforts of all of those individuals and organisations who contributed to the inquiry process in spite of these challenges, to greatly enhance the committee's understanding and scrutiny of the proposed reforms.

1.3 Policy objectives of the Bill

The Bill contains a series of significant amendments relating to:

- funding and expenditure for State elections
- signage at State elections
- dishonest conduct of Ministers, and
- dishonest conduct of councillors and other local government matters.

1.3.1 Amendments relating to funding and expenditure for State elections

The policy objectives of the amendments relating to funding and expenditure for State elections are to:

- secure the actual and perceived integrity of the State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting, or undue influence on political parties, candidates, and third parties involved in electoral campaigning
- 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, and
- increase the public funding available to eligible political parties and candidates to provide for proper public discussion and campaigning.⁷

To achieve these objectives, the Bill proposes to:

- introduce caps on political donations and electoral expenditure
- require election participants to maintain dedicated campaign accounts (to support the integrity of, and compliance with, the donations and expenditure caps)
- increase public election funding for eligible political parties and candidates
- increase and expand access to policy development payments, and

⁶ <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/Electoralexpenditurecaps>. All web references in this report were accurate as at 7 February 2020.

⁷ Explanatory notes, p 1.

- implement related administrative and disclosure requirements and other clarifying provisions.⁸

1.3.2 Amendments relating to signage for State elections

In relation to signage at State elections, the explanatory notes advise that the Bill is intended to:

- reduce the capacity for signage displayed by a particular party, candidate or third party engaged in campaigning in the area surrounding entrances to pre-poll voting offices and ordinary polling booths (or the grounds in which they are located), to 'crowd out' the opportunities for parties and candidates to communicate with voters
- ensure that the areas around pre-poll voting offices and ordinary polling booths are more neutral environments for voters, while still allowing reasonable communication with voters for those candidates seeking election and (as applicable) their endorsing registered political parties
- prevent damage to structures at venues used as polling booths caused by affixing election material, and
- ensure that the ordinary use of premises to be used as polling booths on polling day, and premises nearby, are not interfered with or disturbed by the setting up of electoral material early on polling day or in the days leading up to the election.⁹

To achieve these aims, the Bill proposes to set limits on:

- the number and nature of signs that can be used by election participants during voting hours within 100 metres of a pre-poll voting office or ordinary polling booth, or the grounds in which they are located, and
- the period of time during which the permitted signs may be set up to display in these areas.

This includes establishing associated offences for displaying an unpermitted sign or for setting up election signs outside the permitted time period.¹⁰

1.3.3 Amendments relating to dishonest conduct of Ministers

The objective of the Bill's amendments relating to dishonest conduct of Ministers is to improve the integrity and accountability of Ministers by creating new offences in the *Integrity Act 2009* (Integrity Act) and POQA. More specifically, the Bill proposes to establish two new criminal offences and associated procedural and evidentiary provisions for instances in which a Minister fails to disclose a conflict of interest or to comply with conflict of interest requirements, with some dishonest intent.¹¹

1.3.4 Amendments relating to dishonest conduct of councillors and other local government matters

With respect to the dishonest conduct of councillors and other local government matters, the Bill seeks to 'continue the Government's rolling local government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electoral diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks'.¹²

To achieve these aims and therefore 'improve transparency, integrity and consistency in the local government system, decision making and local government elections', the Bill proposes to:

- introduce a new offence that applies if a councillor contravenes particular obligations in relation to conflicts of interest or registers of interests with a dishonest intent

⁸ Explanatory notes, pp 3-4.

⁹ Explanatory notes, pp 1-2.

¹⁰ Explanatory notes, pp 1-2, 4, 47-49.

¹¹ Explanatory notes, pp 2, 4-5.

¹² Explanatory notes, p 2.

- clarify and further strengthen processes for managing councillors' conflicts of interest
- introduce new requirements relating to councillors' registers of interests, to align with the requirements applying to State Members of Parliament for statements of interests
- provide for greater alignment between the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA) in the process for filling a vacancy in the office of a mayor or councillor in a single-member division, and provide for filling a vacancy in the office of a councillor in a multi-member division or undivided local government by appointment of the runner-up or a subsequent runner-up in the last quadrennial election
- enable councillors of Brisbane City Council (BCC) and other local governments prescribed by regulation to appoint councillor advisors to assist in performing their responsibilities under the COBA or LGA, and provide for councillor advisors' employment conditions and statutory obligations, including appropriate offences and penalties
- provide for the chief executive officer (CEO) of a local government to make guidelines about local government employees providing administrative support to councillors, and allow councillors to direct employees in accordance with the guidelines
- limit the involvement of BCC's councillors in the appointment of BCC employees
- provide further administrative arrangements in relation to the dissolution of a local government, and
- in relation to local government elections:
 - o provide for responsibility for compliance in the absence of an agent for a political party or a group of candidates, and
 - o provide for minor technical and clarifying amendments in relation to voting and the counting of votes, the provision of bank statements to the Electoral Commission Queensland (ECQ), and reminder notices issued by the ECQ.¹³

1.4 Government consultation on the Bill

The explanatory notes advise that 'a wide array of stakeholders were consulted' on the amendments relating to funding and expenditure for State elections, ranging from registered political parties, peak bodies and professional associations, to various groups likely to be classified as 'third parties' in an election.¹⁴

For the proposed amendments relating to election signage at pre-polling and polling locations, community input on possible changes was invited by the Queensland Government through its 'Get Involved' website, though the explanatory notes advise that this public consultation process was later discontinued.¹⁵

In relation to the proposed new offences in the Integrity Act and POQA (dishonest conduct of Ministers), the explanatory notes state that 'the Attorney-General has consulted with the Chairperson of the CCC and the Integrity Commissioner'.¹⁶ The explanatory notes also state that 'no consultation with the community has occurred' in relation to the creation of the new offences in the Bill.¹⁷

¹³ Explanatory notes, pp 2-3.

¹⁴ Explanatory notes, p 23.

¹⁵ Explanatory notes, p 23.

¹⁶ Explanatory notes, p 23.

¹⁷ Explanatory notes, p 23.

Lastly, with respect to the amendments relating to dishonest conduct for councillors and other local government matters, DLGRMA advised:

- DLGRMA consulted with the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia Queensland (LGMA)
- the amendments to conflict of interest provisions were discussed with the Independent Assessor and there was also some consultation with the Integrity Commissioner
- DLGRMA issued an information paper that outlined some of the proposed amendments in March 2019, with some minor changes since incorporated in response to stakeholder feedback (including feedback provided to the committee during its consideration of amendments later omitted from the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019), and
- DLGRMA officer engagement included attending Regional Organisations of Councils meetings and a range of other meetings with stakeholders, including councils and community organisations.¹⁸

Stakeholders also commented on the government's consultation on the Bill, acknowledging various levels of engagement with the Attorney-General and Minister for Justice and with the departments regarding the form or content of the proposed reforms prior to the introduction of the Bill.

With respect to the amendments relating to electoral funding, expenditure and signage, while acknowledging that donation and expenditure caps were formerly in place in Queensland from 2011 to 2013, Professor Graeme Orr suggested that the issuing of a green paper would have supported a more thorough exploration of issues and evidence base for reforms, to better insulate against a potential High Court challenge.¹⁹ The Human Rights Law Centre (HRLC) submitted that the consultation in respect of these amendments had been 'inadequate',²⁰ while some peak bodies indicated that they had engaged in discussions with DJAG officials on the reforms only after the Bill was introduced and the committee's inquiry commenced.²¹

In relation to the proposed dishonest conduct of Minister offences, Mr Alan MacSporran QC, Chairperson of the CCC, advised:

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.²²

The LGAQ commended the excellent cooperation from DLGRMA on the local government reforms, with CEO Greg Hallam stating that 'we have been consulted at every turn'.²³ The LGAQ and other local

¹⁸ Explanatory notes, p 23; Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Department of Local Government, Racing and Multicultural Affairs (DLGRMA), public briefing transcript, Brisbane, 16 December 2019, pp 5-6.

¹⁹ Professor Graeme Orr, Professor of Law, TC Beirne School of Law, University of Queensland, public hearing transcript, Brisbane, 20 January 2020, p 4.

²⁰ HRLC, submission 53, p 1.

²¹ Dr John Martin, Research and Policy Officer, Queensland Council of Unions (QCU), public hearing transcript, Brisbane, 20 January 2020, p 28; Laura Barnes, Senior Manager, Policy, Advocacy and Capacity, Queensland Council of Social Service Ltd (QCROSS), public hearing transcript, Brisbane, 20 January 2020, p 20.

²² Public hearing transcript, Brisbane, 20 January 2020, p 57.

²³ Public hearing transcript, Brisbane, 20 January 2020, p 49.

government stakeholders called for the DLGRMA's continued engagement on the contents of the local government regulation which is to accompany the amendments proposed in the Bill.²⁴

1.5 Should the Bill be passed?

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

After examination of the Bill, including consideration of the policy objectives to be implemented, information provided by stakeholders, and advice from DJAG and DLGRMA, the committee recommends that the Bill be passed.

The committee, while supporting the Bill, also asks the Attorney-General and Minister for Justice to consider the issues raised by stakeholders.

While there is clearly widespread stakeholder support for the aims of these important reforms, stakeholders also suggested that some improvements could be made.

These are matters that require urgent and careful consideration, to ensure these reforms are delivered expediently and in a manner that lives up to their promise of providing fairer and more just elections for Queenslanders, and strengthening integrity and accountability in our system of political representation.

Recommendation 1

The committee recommends the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 be passed.

²⁴ Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane, 20 January 2020, pp 48-49; Isaac Regional Council, submission 11, p 2; LGMA, submission 64, p 3.

2 Amendments relating to funding and expenditure for State elections

2.1 Background

The Bill contains what the Attorney-General and Minister for Justice has described as ‘fundamental reforms to the financing of electoral campaigning in Queensland’,²⁵ proposing to implement a cap on political donations and electoral expenditure, increase public election funding, boost and make policy development payments available to independent members, and implement a range of supporting administrative and disclosure requirements.

The donations and electoral spending caps in particular are in line with an increasing trend for Australian jurisdictions to more closely regulate election financing, to address growing concerns about the escalating campaign ‘arms race’ and the potential undue influence of private funds in the electoral system.²⁶

While some have argued that donations or electoral spending can be recognised as a form of political participation and can therefore be seen as an expression of ‘democratic will’,²⁷ it has also been identified that the lack of regulation in this area may allow wealth to 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.²⁸ The growing reliance on private donors to finance campaign spending requirements also creates the potential for real or perceived influence on decision making, potentially skewing policy outcomes, or at the least, eroding public confidence in the integrity of the political process.²⁹ 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’.³⁰

²⁵ Hon Yvette D’Ath MP, Attorney-General and Minister for Justice, *Record of Proceedings*, Queensland Parliament, 28 November 2019, p 3945.

²⁶ Damon Muller, ‘Political Finance’, *Parliamentary Library Briefing Book: Key issues for the 46th Parliament*, Parliamentary Library, Parliament of Australia, July 2019; Damon Muller, *Election funding and disclosure in Australia: a quick guide to recent reforms and current issues*, Parliamentary Research Paper, Parliamentary Library, Parliament of Australia, July 2017; Senate Select Committee into the Political Influence of Donations, *Political influence of Donations*, Parliament of Australia, June 2018.

²⁷ Professor Anthony Gray, cited in Crime and Corruption Commission (CCC), *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Operation Belcarra Report), October 2017, p 45.

²⁸ Danielle Woods and Kate Griffiths, ‘Who’s in the room? Access and influence in Australian politics’, Grattan Institute Report No. 2018-12, September 2018.

²⁹ 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.

³⁰ The Australian Election Study is a representative public opinion survey that has been fielded after every Commonwealth 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, December 2019, p 100.

Caps on political donations are now in place in New South Wales (NSW)³¹ and Victoria³², while NSW,³³ South Australia,³⁴ the Australian Capital Territory (ACT),³⁵ and the Northern Territory (NT)³⁶ have all implemented caps on electoral expenditure.

Donation and expenditure caps were also formerly in place in Queensland, under legislation enacted by the Bligh Government in May 2011.³⁷ However, those limits were subsequently removed by the Newman Government's *Electoral Reform Amendment Act 2014*, the provisions of which commenced on the introduction of the enabling legislation in November 2013.³⁸

³¹ In 2010, NSW capped donations at \$5,000 to a party or group of candidates and \$2,000 to candidates and third party campaigners per term, indexed to inflation. For the next general election in 2023, caps of \$6,400 and \$2,900 respectively will apply for donations to these individuals and groups. See: NSW Electoral Commission, *Caps on political donations*, last updated 35 June 2019, <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations>

³² The *Electoral Legislation Amendment Act 2018* (Vic) implemented a donations cap of \$4,000 for each four-year election period per donor, and to prevent efforts to circumvent the cap, imposed a limit on the number of third party campaigners to which a donor could contribute (to a maximum of six third parties). See: Victorian Electoral Commission, *Funding and disclosure information for candidates*, factsheet, State of Victoria, 2018, <https://www.vec.vic.gov.au/files/FD%20-%20Information%20for%20Candidates%20-%20V1.0.pdf>

³³ NSW caps electoral expenditure for roughly six months prior to an election (1 October the year before an election to 30 days after the March elections), with caps set at different levels for candidates, groups of candidates and third parties for the Legislative Council and Legislative Assembly respectively (and per-district caps also imposed). See: NSW Electoral Commission, *What are the expenditure caps for State elections?*, <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>

³⁴ South Australia imposes expenditure caps on any registered political party and a candidate or group (as defined) on an opt-in basis, with the 'opt-in' relating to eligibility for public funding benefits. Electoral expenditure is capped for approximately nine months leading to the general election (from 1 July the year before an election to 30 days after the March elections), at \$75,000 per electoral district in which the party endorses a candidate for the House of Assembly and \$100,000 per endorsed candidate for the Legislative Council (up to a maximum of \$500,000). Individual non-endorsed candidates have different caps, as do candidates of political parties who do not opt in to the public funding entitlement. See: Electoral Commission South Australia, *Public Funding Guide: State election 2018*, December 2017, <https://www.ecsa.sa.gov.au/component/edocman/ro-14-public-funding-guide-20171212/download>

³⁵ The *Electoral (Election Finance Reform) Amendment Bill 2011* (ACT) introduced caps on electoral expenditure at \$60,000 per candidate. The caps subsequently dropped from \$60,000 to \$4,000 per candidate as the Assembly increased by 8 seats, to keep total expenditure per party at approximately \$1 million (indexed for inflation). For the 2020 general election, expenditure will be capped from the period commencing 1 January 2020 through to the 17 October 2020 election.

The ACT formerly had a \$7,000 cap on donations to parties, which was also imposed in 2011, but this was removed in 2015, by which time the cap had risen as a result of inflation indexing, to \$10,000. Commissioner John Mansfield, *Inquiry into options for the reform of political funding and donations in the Northern Territory*, June 2018, p 17; Elections ACT, *Fact sheet – Electoral expenditure cap*, updated 12 December 2019, https://www.elections.act.gov.au/publications/act_electoral_commission_fact_sheets/fact_sheets_-_general_html/fact_sheet_-_electoral_expenditure_cap

³⁶ Under the NT's recently-implemented reforms, a cap on electoral expenditure will apply for the upcoming general election, with the capped period extending from 1 January 2020 to 30 days after the election on 22 August 2020. An indexed \$40,000 cap applies for individual candidates, with a pooled cap for political parties based on a \$40,000 per endorsed seat amount (to a maximum of \$1 million for parties standing candidates in all seats). Expenditure incurred by a party's associated entity is included in this cap. See: *Electoral Legislation Further Amendment Act 2019* (NT).

³⁷ See: *Electoral Reform and Accountability Amendment Act 2011*.

³⁸ See: *Electoral Reform Amendment Act 2014*, s 2, regarding the commencement of the legislation.

2.2 Overall stakeholder views

Stakeholders generally supported the intent and overall form of the Bill's proposed amendments to the electoral funding and expenditure regime in Queensland.³⁹

The HRLC stated of the reforms that:

... 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.⁴⁰

The reforms were also welcomed by the Australian Conservation Fund (ACF) and various environmental groups, with the ACF applauding the government's efforts to introduce 'critical' legislation 'to bring greater fairness, integrity, and accountability to Queensland's electoral system';⁴¹ and the Cairns and Far North Environment Centre (CAFNEC) commending the addition of limits on big money in elections as an 'essential element to democracy'.⁴² The Mackay Conservation Group, in enouncing its support of the Bill's objectives, submitted that 'it is our belief that individuals and organisations with large amounts of money available to them have been able to have a disproportionate influence on the political process in Queensland'.⁴³

Neil Cotter also considered the reforms were necessary, to help address a decline in public trust in our democratic system and elected representatives:

A significant element of this decline is the perception that political parties work mostly for their donors rather than the people they are meant to represent, and that parliamentarians are treating their positions as a stepping stone to a career as lobbyists or some other form of remuneration from the companies that will have benefitted from their votes and decisions while in power.

Money is not speech, and certainly by definition not free speech. In a democracy it is important that the influence of the wealthy via their wealth is not able to undermine the influence of every other member of the electorate...⁴⁴

³⁹ See, for example: Professor Graeme Orr, submission 3; Mt Gravatt Community Centre Inc (MGCC), submission 4; Simon Ball, submission 5; Ben Cox, submission 6; Logan East Community Neighbourhood Association Inc (LECNA), submission 10; Cairns and Far North Environment Centre (CAFNEC), submission 16; Queensland Human Rights Commission (QHRC), submission 17; Environmental Defenders Office (EDO), submission 18; Ross Spence, submission 20; North Queensland Conservation Council (NQCC), submission 23; Queensland Nurses and Midwives' Union (QNMU), submission 27; QCU, submission 28; GetUp!, submission 30; Redlands2030, submission 34; Queensland Community Alliance (QCA), submission 35; Gecko Environment Council Association Inc (Gecko), submission 37; Greenpeace Australia Pacific (GPAP), submission 39; Australian Marine Conservation Society (AMCS), submission 40; Birdlife Australia, submission 43; Australian Youth Climate Coalition, submission 44; Queensland Council of Social Service Ltd (QCOSS), submission 45; Mackay Conservation Group, submission 46; Australian Conservation Foundation (ACF), submission 47; The Centre for Public Integrity (CPI), submission 48; Darling Downs Environment Council Inc, submission 52; HRLC, submission 53; Solar Citizens, submission 54; National Parks Association of Qld Inc (NPAQ), submission 56; Wildlife Queensland Gold Coast & Hinterland Branch, submission 58; Anglican Church Southern Queensland (Diocese of Brisbane) Social Responsibilities Committee, submission 63; Together Queensland Industrial Union of Employees (Together Queensland), submission 67.

⁴⁰ Alice Drury, Senior Lawyer, HRLC, public hearing transcript, Brisbane, 20 January 2020, p 8.

⁴¹ Submission 47, p 2.

⁴² Submission 16, p 1.

⁴³ Submission 46, p 1.

⁴⁴ Submission 36, p 3.

Peak social service sector body the Queensland Council for Social Service Ltd (QCOSS) expressed its support for the Bill's aims as follows:

*Electoral transparency, raising the level of political discussion and supporting a variety of voices to be heard are critical steps in restoring faith in democracy and increasing civic participation in elections and in communities. QCOSS believes these are critical steps for achieving our vision of equality, opportunity and wellbeing for all Queenslanders.*⁴⁵

Further, the Queensland Nurses and Midwives' Union (QNMU) stated that it commends 'the intention to strengthen the electoral framework',⁴⁶ and the Queensland Council of Unions (QCU) advised that it also 'generally supports' the proposed reforms:

*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.*⁴⁷

Despite this broad support, however, all of these stakeholder groups and individuals identified a need for further amendments to the Bill if its objectives are to be achieved, arguing that the provisions as drafted may in fact serve to disadvantage certain electoral participants, undermining efforts to level the electoral playing field. In particular, a consistent theme of stakeholders' submissions was that the cumulative effect of the scheme definitions (including inclusions and exclusions), cap values, threshold value for scheme registration, and various administrative and disclosure requirements of the proposed donation and expenditure cap schemes, would be to stifle the advocacy of charities, not-for-profits, and small, less well-resourced groups and community organisations.⁴⁸

The Queensland Human Rights Commission (QHRC) submitted in this regard that charitable organisations and other groups that rely on donations will be disproportionately impacted as they have limited funding sources to finance any electoral expenditure, 'the bulk of which may be captured by changes'.⁴⁹ In contrast, the QHRC noted, organisations that have access to other funding streams not included in the donations caps, such as 'profit-making entities or organisations with membership dues', 'will have greater flexibility in how they organise their finances'.⁵⁰ Adding to this, the HRLC stated that the complexities of the legislation and a lack of certainty regarding the activities that may constitute electoral expenditure, coupled with a 'severe' compliance burden that applies equally to small local groups and much larger third parties, may be a deterrent for smaller organisations to engage in their usual public advocacy activities – and particularly those that are run by volunteers.⁵¹ QCOSS submitted that the effects of this disproportionate impact are exacerbated 'as these groups and individuals will

⁴⁵ Submission 45, p 1.

⁴⁶ Submission 27, p 7.

⁴⁷ Professor Graeme Orr, University of Queensland, public hearing transcript, Brisbane, 20 January 2020, pp 1-2.

⁴⁸ See, for example: Gladstone Conservation Council, submission 2; MGCC, submission 4; LECNA, submission 10; Krystian Seibert, submission 14; CAFNEC, submission 16; QHRC, submission 17; EDO, submission 18; NQCC, submission 23; Queensland Conservation Council (QCC), submission 31; WWF-Australia, submission 32; QCA, submission 35; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; Birdlife Australia, submission 43; Australian Youth Climate Coalition, submission 44; QCOSS, submission 45; Mackay Conservation Group, submission 46; ACF, submission 47; CPI, submission 48; Bayside Creeks Catchment Group (BCCG), submission 49; Darling Downs Environment Council Inc, submission 52; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56; Wildlife Queensland Gold Coast and Hinterland Branch, submission 58; QLS, submission 59; Robert E Rutkowski, submission 62; Anglican Church Southern Queensland (Diocese of Brisbane) Social Responsibilities Committee, submission 63.

⁴⁹ Submission 17, p 12. See also, for example: MGCC, submission 4; NQCC, submission 27; Neil Cotter, submission 36; QLS, submission 39; Mackay Conservation Group, submission 46; Solar Citizens, submission 54.

⁵⁰ Submission 17, p 12. See also, for example: Queensland Law Society (QLS), submission 39; QCOSS, submission 45; CPI, submission 48; HRLC, submission 53.

⁵¹ Alice Drury, HRLC, public hearing transcript, Brisbane, 20 January 2020, pp 8-9.

not have access to the public funding available to political parties and independent members in recompense'.⁵²

The ACF submitted that the overall result:

*... will be to make Queensland elections more inequitable, by silencing community voices, while letting the largest third party actors—corporations and industry groups—off the hook.*⁵³

The Queensland Law Society (QLS) and QCOSS suggested that this may particularly be the case given the not-for-profit sector is a traditionally risk-adverse sector, and may be more likely to withdraw from public activities in response to the schemes' requirements and complexities, which may be 'beyond most non-profits and volunteers', than to attempt compliance.⁵⁴

A review of the operation of third party expenditure rules at the 2015 UK general election, a copy of which was provided with the Queensland Council for Civil Liberties' (QCCL) submission, highlighted similar concerns ahead of new third party expenditure rules introduced in that jurisdiction in 2014. The report found:

The Review team heard various accounts of organisations which had not undertaken a particular activity because of the 2014 Act, but much of the evidence was second-hand or in relation to activities that were not actually regulated by the legislation, such as the holding of hustings at a constituency level. It was therefore far from clear the extent to which it was the reality of the legislation's provisions rather than the perception of what restrictions they imposed, which affected organisations' behaviour...

*... Against this somewhat confused background it was nevertheless clear was that there was an atmosphere of increased nervousness and caution in relation to third party campaigning in the 2015 election. However, it would not be unreasonable to assume that, with the experience of the 2015 General Election, non-party campaigning at the next General Election in 2020 may be conducted in a calmer atmosphere, as those involved will have become more familiar with the regulatory requirements ... as amended by the 2014 Act.*⁵⁵

Beyond any potential legislative amendments to address issues identified by stakeholders, the QLS emphasised that clear guidelines on the operation of the donation and expenditure cap schemes and the responsibilities for participants would be critical to their successful implementation.⁵⁶

Greater clarity and guidance regarding the operation of the schemes were also a priority for unions, a primary concern for which related to uncertainty regarding the activities that might constitute 'electoral expenditure' under the expenditure cap scheme. The QCU submitted that if the parameters

⁵² Laura Barnes, QCOSS, public hearing transcript, Brisbane, 20 January 2020, p 14. See also Krystian Seibert, submission 14, p 2.

⁵³ Submission 47, p 2. Regarding the overall potential 'silencing' or 'chilling effect' on these groups; see also, for example: LECNA, submission 10; CAFNEC, submission 16; EDO, submission 18; NQCC, submission 23; QCC, submission 31; QCA, submission 35; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; HRLC, submission 53.

⁵⁴ Myles McGregor-Lowndes, Member, Not for Profit Law Committee, QLS, public hearing transcript, Brisbane, 20 January 2020, pp 65-66, 68; QCOSS, submission 45, pp 4-5. See also, for example: MGCC, submission 4; LECNA, submission 10; CAFNEC, submission 16; EDO, submission 18; QCC, submission 31; QCA, submission 35; GPAP, submission 39; AMCS, submission 40; BirdLife Australia, submission 43; Australian Youth Climate Coalition, 44; QCOSS, submission 45; ACF, submission 47; BCCG, submission 49; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56; QLS, submission 59; Robert Rutkowski, submission 62.

⁵⁵ The Lord Hodgson of Astley Abbots CBE, *Third Party Election Campaigning – Getting the Balance Right: Review of the operation of the third party campaigning rules at the 2015 General Election*, UK Parliament, March 2016, p 18.

⁵⁶ See, for example: QNMU, submission 27, pp 3-5; CPI, submission 48, p 4; QLS, public hearing transcript, Brisbane, 20 January 2020, p 68.

for the scheme are not drawn in a clear and reasonable manner, the reforms ‘may restrict the ability of unions to represent members; peak councils to represent their affiliates; and community organisations to represent their respective constituencies’.⁵⁷

Among those who expressed overall opposition to the proposed reforms, the extent to which the donation and expenditure cap schemes would achieve their objectives was also a key point of contention. The QCCL, while supportive of the intent of the Bill and of expenditure caps generally, expressed conceptual opposition to the introduction of donation caps. While acknowledging the State may have a legitimate interest in the regulation of political donations, including preventing corruption and the appearance of corruption, the QCCL stated ‘the right to freedom of association is an important right and should not be restricted if the legitimate concerns of the State can be addressed in another way’.⁵⁸ In the context of donations, the QCCL considered that the best way to address those issues is through disclosure:

The former Commonwealth Electoral Commissioner, Colin Hughes, writing in 1979 argued that essential to an election finance system is “continuous comprehensive and total disclosure of both income and outgoings.” We would submit that this remains the case. Like Mr. Hughes we are concerned that attempts to restrict the amounts of political donations will simply lead to the development of more sophisticated concealment techniques. It seems to us the most important thing is that the public knows where the money is coming from and in what amounts...

*Queensland now has a system of continuous disclosure which requires that parties disclose gifts of over \$1000 to the Electoral Commission within 7 days of receipt. Details of those gifts are then posted on the Commission’s website. It is our position, that these disclosure requirements adequately address the legitimate concerns relating to corruption. We therefore oppose the provisions of this Bill which seek to impose caps on political donations.*⁵⁹

Others who expressed broader opposition to the reforms suggested there was a lack of evidence to support the need for a system of donation or expenditure caps, arguing the proposed reforms present unnecessary constraints on rights and freedoms that reflect a politically-charged attempt to reinforce existing electoral inequalities.

The Uniting Church in Australia – Qld Synod, which expressed a philosophical opposition to constraining the funding of public discourse,⁶⁰ described the reforms as ‘profoundly partisan and unfair’, submitting that they effectively privilege ‘the union movement, government, and existing political parties with representation over every other group in society’.⁶¹

The Australian Institute for Progress (AIP) questioned the need for the reforms altogether, suggesting there is insufficient evidence that there is a ‘money problem’ in Queensland politics.⁶² With reference to the CCC’s Operation Belcarra Report, for example, the AIP stated that:

... the prosecutions that have occurred as a result of the operation have all been for corruption where funds have been provided outside the donations framework. These payments were illegal when they were made, and nothing will change under this legislation, meaning that, on what

⁵⁷ Submission 28, p 1. See also QNMU, submission 27, p 2.

⁵⁸ Submission 42, p 4.

⁵⁹ Submission 42, p 4.

⁶⁰ The Uniting Church in Australia – Qld Synod, submission 21, p 1. The submission stated that ‘Poor quality arguments should be countered by quality responses, not the restriction of funding by those who retain the right of access to sources of funding that others are not able to access’.

⁶¹ Submission 21, p 1. See also Michael Harrison, submission 7, p 1.

⁶² Submission 50, p 2. See also David Drake, submission 61, p 2.

*objective evidence we have, this legislation will have no impact on corruption in Queensland politics.*⁶³

The AIP also suggested that the Bill seems to be underpinned by a notion that big business (particularly the mining sector) is influential through their donations to political parties. However, the AIP submitted that donations from these sources are of smaller magnitude on average than the contributions provided by unions.⁶⁴ The AIP further submitted that the Bill ‘arbitrarily’ limits individual and corporate giving and will increase the tendency to third party campaigning, but disadvantage those third parties dependent on donations.⁶⁵

Regardless of stakeholders’ relative positions on the Bill, there was a level of consensus that further information about the rationale for certain elements of the reforms would be beneficial, with some stakeholders citing potential vulnerability to a High Court challenge without additional explanation as to the basis on which scheme parameters are determined.⁶⁶

Professor Graeme Orr stated in this respect:

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...

*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.*⁶⁷

The QHRC also submitted that, to assist in assessing if human rights are appropriately limited by the Bill, the committee may wish to seek further information demonstrating why the differing donation caps placed on various election participants, the proposed limits on third party expenditure, and the proposed increases to election funding for certain participants, are the least restrictive way by which to achieve the state purposes of those reforms.⁶⁸

Concerns about the capacity for the legislation to be enforced were also highlighted by a wide range of stakeholders, who emphasised the importance of the ECQ being appropriately resourced and empowered to ensure organisations and individuals are complying with the obligations established under the Bill.⁶⁹

The committee’s consideration of each of the key elements of the reforms, including the specific issues raised by stakeholders in relation to each of those elements, and the department’s response to those issues raised, is outlined in the ensuing sections of this chapter.

Committee comment

The introduction of caps on electoral expenditure and political donations in Queensland and accompanying requirements for record keeping, disclosure, and the management of electoral finances

⁶³ Submission 50, p 2.

⁶⁴ Submission 50, p 3.

⁶⁵ Submission 50, p 3.

⁶⁶ See, for example: Professor Graeme Orr, submission 3; QHRC, submission 17; Pat Coleman, submission 29.

⁶⁷ Professor Graeme Orr, University of Queensland, public hearing transcript, Brisbane, 20 January 2020, pp 1-2.

⁶⁸ Submission 17, p 4.

⁶⁹ See, for example, GetUp!, submission 30, p 1; CPI, submission 48, p 4; GPAP, submission 39, p 12.

through a dedicated state campaign account, will together affect significant changes to funding and disclosure requirements for electoral participants in Queensland.

The committee considers that the implementation of these measures should necessarily involve a significant program of education and engagement, to ensure candidates, parties and third parties are suitably supported to enable their compliance with the legislation. This should include the publication of appropriate resources, such as guidelines or fact sheets, and access to a helpdesk or support line, to assist these participants in navigating the requirements of the schemes.

The committee encourages DJAG to liaise with the ECQ to ensure this guidance and support is provided in a timely fashion, noting the expenditure cap scheme is due to commence on 30 March 2020.

2.3 Caps on electoral expenditure

The Bill proposes to introduce caps on electoral expenditure, to be in place for the 2020 general State election,⁷⁰ with the aim of:

... levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without 'drowning out' the communication of others.⁷¹

2.3.1 The electoral expenditure cap scheme

Under the proposed amendments, caps on electoral expenditure would apply for the period ('capped expenditure period'):

- for a general election, commencing one year before the next normal polling day and ending at 6pm on the polling day for the election⁷² (with the exception of the 2020 general election, for which the expenditure caps will apply from 30 March 2020 to the end of polling⁷³), and
- for a by-election, from the day the writ for the by-election is issued to 6pm on the polling day for the by-election.⁷⁴

During the capped expenditure period, the following expenditure caps would apply:⁷⁵

- for a registered political party: \$92,000 multiplied by the number of electoral districts in which the party has an endorsed candidate, and a maximum of \$92,000 for any one electoral district for each general election⁷⁶

⁷⁰ Bill, cl 52, s 445. The capped period for the 2020 general election will commenced on 30 March 2020, or, if the election is an extraordinary general election and the writ for the election is issued before 30 March 2020 – the day the writ for the election.

⁷¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 5.

⁷² Bill, cl 31, s 280(1). If an extraordinary general election is called, the capped expenditure period would commence on the day the writ for the election is issued and end at 6pm on the polling day for the election (ss 280(1)(ii) and 280(1)(b)).

⁷³ Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 2.

⁷⁴ Bill, cl 31, s 280. If a poll at a polling booth is adjourned (eg due to severe weather, riots, etc), the capped expenditure period still ends at 6pm on the day the adjourned poll is held (s 280(3)).

⁷⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 6.

⁷⁶ For a by-election, any electoral expenditure incurred by or for the registered political party during the applicable expenditure cap would be taken to be incurred by or for the candidate. See: Bill, cl 31, s 281L.

- for an endorsed candidate:
 - o for a general election: \$58,00 if one candidate is endorsed by the party for the electoral district, or that amount divided by the number of candidates endorsed concurrently by the party for the electoral district if there are two or more endorsed candidates, and
 - o for a by-election: \$87,000 if one candidate is endorsed by the party, or that amount divided by the number of candidates endorsed concurrently by the party for the by-election if there are two or more⁷⁷
- for an independent candidate:
 - o for a general election: \$87,000, and
 - o for a by-election: \$87,000⁷⁸
- for a registered third party:
 - o for a general election: \$1 million total, and a maximum of \$87,000 for any one electoral district, and
 - o for a by-election: \$87,000.⁷⁹

Although not described as an 'expenditure cap', the Bill also stipulates that the maximum amount of election expenditure that may be incurred by a third party that has not registered as a third party for the election (an 'unregistered third party') is \$1,000 (after which point, the third party would be required to register).⁸⁰

As is the case with the donation cap scheme, the expenditure caps would apply in the aggregate, meaning they could not be exceeded regardless of whether the expenditure was incurred as a single expense or as multiple, cumulative items of expenditure. The Bill also specifies that the expenditure cap provisions would apply respectively:

- to an associated entity of a registered political party as if the party and associate entity together constitute the recipient party, and any expenditure incurred by the associate entity would count towards the party's electoral expenditure total, and
- to an electoral committee for a registered political party of an electoral district as if the electoral committee were the candidate endorsed by the party for the electoral district, and any expenditure incurred by the electoral expenditure committee were electoral expenditure for the candidate.⁸¹

The relevant expenditure caps would be adjusted for inflation 30 days after the polling day for each general election.⁸²

Additionally, all electoral expenditure would be required to be paid from the participant's dedicated State campaign account (see report chapter 2.5).⁸³

⁷⁷ Bill, cl 31, s 281C.

⁷⁸ Bill, cl 31, s 281D.

⁷⁹ Bill, cl 31, s 281E.

⁸⁰ Bill, cl 31, s 281H. See also: Bill, cl 43, s 297.

⁸¹ Bill, cl 14, s 203 and cl 15, s 204. See also: DJAG and DLGRMA, correspondence, 12 December 2019, p 14.

⁸² Bill, cl 31, 2 281F.

⁸³ DJAG and DLGRMA, correspondence, 12 December 2019, p 7.

2.3.2 Expenditure cap scheme definitions

The Bill inserts a new definition of ‘electoral expenditure’ for the expenditure cap scheme,⁸⁴ providing that electoral expenditure means any expenditure (including the giving of a gift-in-kind) which is incurred for, or related to, the purposes of:

- promoting or opposing (directly or indirectly) a political party in relation to a State election
- promoting or opposing (directly or indirectly) the election of a candidate, or
- otherwise influencing (directly or indirectly) voting at State election.⁸⁵

Expenditure incurred by a third party will only be electoral expenditure if the dominant purpose of the expenditure is one of these purposes. DJAG advised that this ‘is intended to ensure that activity by third parties without a dominant purpose of influencing voting is not electoral expenditure’.⁸⁶

Additionally, to fall within the Bill’s definition of ‘electoral expenditure’, expenditure must be one of the following kinds of expenditure:

- expenditure for designing, producing, printing, broadcasting or publishing an advertisement or other election material including an advertisement for broadcast on radio or television, at a cinema or using the internet, email or SMS; or for distribution in letters or publication in newspapers, magazines, on billboards or as brochures, flyers, how-to-vote cards or information sheets
- expenditure for the direct cost of distributing an advertisement or other election material, including, for example, the cost of postage, sending SMS messages or couriers
- expenditure for carrying out an opinion poll or research, or
- expenditure of another kind prescribed by regulation.⁸⁷

While this definition (contained in proposed s 199) is largely consistent with the existing definition in s 282A of the *Electoral Act 1992* (Electoral Act), it covers a slightly broader range of communication activities than are currently included. Additionally, while s 181 of the Electoral Act requires that any advertising or election material states the name and address of the person who authorised it,⁸⁸ the Bill provides that expenditure on any of the above activities will be considered ‘election expenditure’ regardless of whether this requirement has been adhered to.⁸⁹

DJAG explained:

... current section 282A will only capture the production and distribution of material that advocates a vote for or against a candidate or registered political party if it is addressed to particular entities and distributed during the election period. This means that unaddressed mail is not currently electoral expenditure under section 282A but would be under new section 199 provided it is for one of the stated purposes (which is a dominant purpose for a third party). Similarly, the costs of the production and distribution of advertising material such as t-shirts that contain election matter would be captured by the new definition of electoral expenditure and will not be excluded from the definition where the author or person authorising the material does not need to be named under section 181 of the Electoral Act.⁹⁰

⁸⁴ *Electoral Act 1992* (Electoral Act), s 282A.

⁸⁵ Bill, cl 9, ss 199(1) and 199(4).

⁸⁶ DJAG and DLGRMA, correspondence, 12 December 2019, p 5.

⁸⁷ Bill, cl 9, s 199.

⁸⁸ Bill, cl 8, s 197A.

⁸⁹ Bill, cl 9, s 199(3).

⁹⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 5.

Under the amendments, electoral expenditure will be taken to have been incurred by an election participant (eg a candidate in the election, a registered political party, a registered third party, or an unregistered third party⁹¹) when the goods and services for which the expenditure is incurred are delivered or provided, regardless of when the amount of the expenditure is invoiced or paid. As examples, the Bill specifies that:

- expenditure on advertising is incurred when the advertisement is broadcast or published
- expenditure on the production and distribution of material containing election matter is incurred when the material is distributed, and
- expenditure of another kind is incurred at the time prescribed by regulation.⁹²

DJAG advised that ‘without this provision, participants could circumvent the caps by purchasing advertising materials early or delaying payment of invoices for advertising until after the election’.⁹³

The Bill also clarifies that where the electoral expenditure is incurred by one election participant (first participant), for the benefit of another election participant (the second participant):

- the electoral expenditure is incurred by the first participant if the first participant gifts the expenditure to the second participant
- the electoral expenditure is incurred by the second participant:
 - o if the expenditure is incurred with the second participant’s authority or consent
 - o if the second participant accepts election material that results from the expenditure
 - o if the first participant invoices the second participant for payment, or
 - o in respect of another circumstance prescribed by regulation in relation to the expenditure being incurred.⁹⁴

In the case of joint campaigning:

*Electoral expenditure incurred by one participant that benefits another participant (the second participant) will not be attributed to the expenditure cap of the second participant, unless the first participant invoices the second for all or part of the expenditure.*⁹⁵

For electoral expenditure incurred by a registered political party or third party, the Bill stipulates that the electoral expenditure will relate to an electoral district if it is for advertising or other election material for the election (excluding an opinion poll or research) and:

- is communicated to electors in that electoral district, and
- is not mainly communicated to electors outside the electoral district.⁹⁶

Lastly, where electoral expenditure is incurred by or for an elected Member during the capped period, and the Member then announces or publicly indicates they do not intend to be a candidate, or does not nominate as a candidate, such expenditure would be taken to be incurred by or for the registered political party of which the Member was a member.⁹⁷

⁹¹ See: Bill, cl 8, s 197A, which provides the ‘Meaning of participant in an election’.

⁹² Bill, cl 31, s 281.

⁹³ DJAG and DLGRMA, correspondence, 12 December 2019, p 6.

⁹⁴ Bill, cl 31, s 281A.

⁹⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 6.

⁹⁶ Bill, cl 31, s 281B.

⁹⁷ Bill, cl 31, s 281K. See also: DJAG and DLGRMA, correspondence, 12 December 2019, p 7.

2.3.3 Offences and recovery of amounts exceeding an expenditure cap

The Bill provides that it is an offence for an election participant (eg registered political party or candidate), or a person acting with the election participant's authority, to incur electoral expenditure in excess of the election participant's expenditure cap during the capped expenditure period. The applicable maximum penalty for the offence is whichever is the greater of the following amounts:

- the amount that is equal to twice the amount by which the electoral expenditure exceeds the expenditure cap, or
- 200 penalty units (\$26,690⁹⁸).⁹⁹

For the offence to apply, the participant or person must know, or ought reasonably to know, that the amount would exceed the cap in that way.¹⁰⁰ DJAG advised:

*The last element of the offence is necessary because the cap can be triggered by an aggregation rule or by someone else incurring electoral expenditure by or on behalf of the election participant. A person cannot be held to be criminally liable for actions by others that they do not know about or cannot reasonably be expected to know about.*¹⁰¹

For unregistered third parties or for a person acting with the authority of the unregistered third party, it would also be an offence to incur expenditure exceeding \$1,000, unless 'the third party or person knows, or ought reasonably to know, the amount would exceed the cap in that way'. The applicable maximum penalty in this instance is the greater of:

- the amount that is equal to twice the amount by which the electoral expenditure exceeded \$1,000, or
- 200 penalty units (\$26,690).¹⁰²

Further, the Bill would also extend the application of the existing offence and maximum penalty relating to knowing participation in a scheme to circumvent the ban on property developer donations (1,500 penalty units (\$200,175) or 10 years' imprisonment), to also cover participation in a scheme to circumvent caps on electoral expenditure.¹⁰³

The Bill also makes provision for unlawful electoral expenditure to be recovered by the ECQ as a debt payable to the State. Under the proposed amendments, the ECQ may recover from the person (eg candidate) or from the agent of the candidate, party or third party, the amount that is twice the amount of the unlawful expenditure (eg twice the amount by which the cap was exceeded), including by way of deductions from any election funding or policy development funding.¹⁰⁴

According to DJAG, this will help deter 'a situation where electoral expenditure is unlawfully incurred, potentially influencing voting in an election and thereby providing an unfair advantage to an election participant'.¹⁰⁵

⁹⁸ The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2019 set the value of a penalty unit at \$133.45 as at 1 July 2019.

⁹⁹ Bill, cl 31, s 281G.

¹⁰⁰ Bill, cl 31, ss 281H(2)(b)(ii) and 281(1)(b).

¹⁰¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 7.

¹⁰² Bill, cl 31, s 281H.

¹⁰³ DJAG and DLGRMA, correspondence, 12 December 2019, p 16. See also: Bill, cl 47, s 307B.

¹⁰⁴ Bill, cl 31, s 281J(2). See also: Melinda Tubolec, Senior Legal Officer, Strategic Policy and Legal Services, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 7.

¹⁰⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 7.

Additionally, the provisions for the ECQ's recovery of amounts exceeding a cap specify that the imposition of any liability in this respect:

- is not a punishment or sentence for any offence for receiving unlawful donations, and
- is not a matter to which a court may have regard in sentencing a person for such an offence.¹⁰⁶

This means that criminal proceedings could still be brought and offenders sentenced, even if the ECQ has recovered amounts under this provision, with DJAG advising that this will 'allow more serious contraventions to be pursued'.¹⁰⁷

The Bill provides that criminal proceedings could still be brought even if the ECQ has recovered such amounts, and the recovery of unlawful electoral expenditure by the ECQ 'is not a matter to which a court may have regard in sentencing an offender for an offence'.¹⁰⁸

2.3.4 Stakeholder views

The QCCL submitted that restrictions on electoral expenditure are 'akin to the rules of debate in a meeting which restrict the length of speeches and provide for rights of reply', and that this makes them 'more acceptable than donation bans or caps'.¹⁰⁹ However, the QCCL also emphasised that 'any restrictions on expenditure must be narrowly tailored so as to minimise their impact on the right to freedom of speech'.¹¹⁰ While submitters generally supported the proposal to introduce expenditure caps in Queensland, it was in this respect – that is, in terms of the tailoring of scheme – that they identified some serious concerns about the amendments as proposed.

Magnitude of expenditure caps

Some submitters questioned the reasoning behind the quantum of the proposed electoral expenditure caps, and the differentiation between caps for different electoral participants. Professor Graeme Orr submitted that a clear rationale and evidence base would be required by the High Court in the case of any challenge to the legislation.¹¹¹ This might include, he suggested, consideration of:

- whether the up to \$14 million allowance for party-controlled spending (\$92,000 in spending by the party for each of the 93 electoral districts, plus up to \$58,000 of spending by each of the party's endorsed party candidate) is 'generous, realistic or niggardly', compared to recent electoral spending patterns, and the costs of mounting a reasonable campaign in Queensland (noting that 'if that overall cap does not take money out of the system, it does not really address the integrity and equality aims')
- if particular caps have been borrowed from interstate, whether there has been any allowance for differences in systems, enrolments and media markets, and
- whether the cap figure of \$1 million for third party expenditure is sufficient to permit a third party to present its case to Queensland voters.¹¹²

¹⁰⁶ Bill, cl 31, s 281J(3).

¹⁰⁷ DJAG and DLGRMA, correspondence, 12 December 2019, p 7. See also: Bill, cl 31, s 281J.

¹⁰⁸ Bill, cl 31, s 28J(3).

¹⁰⁹ Submission 4, pp 4-5.

¹¹⁰ Submission 4, pp 4-5.

¹¹¹ Submission 3, p 2.

¹¹² Submission 3, p 2.

Professor Orr suggested that further information may be required to address these questions,¹¹³ while Neil Cotter also raised a concern about an apparent lack of rationale ‘for how these arbitrary figures were arrived at’.¹¹⁴

In terms of the relativities of the different caps, Professor Orr noted that for registered third parties, the proposed electoral expenditure cap of \$1 million ‘seems to be drawn from pre-existing NSW law’. Professor Orr submitted of the proposed cap that:

*Assuming that figure is reasonable for NSW (a third party cap of \$0.5m was overturned in the Unions NSW (#2) case, but the earlier cap of \$1m was not challenged) it should be ... constitutionally okay for Queensland. Admittedly, the NSW capped period is much shorter – a bit under seven months whereas this Bill proposes one year. On the other hand, Queensland elections are for one house, not two, so \$1m may go further.*¹¹⁵

Krystian Seibert submitted of the proposed \$1 million spending limits for registered third parties that, while higher than in other jurisdictions, ‘they are still low and rather arbitrary’:

*If a third party wants to undertake some relatively standard campaigning activities, such as using direct mail and promotional billboards either in a single electorate or across the state, the amount of the limit will be reached relatively quickly.*¹¹⁶

Accordingly, Mr Seibert recommended ‘considerably increasing’ expenditure limits, ‘at least as they apply to third parties’.¹¹⁷

In relation to unregistered third parties, Professor Orr noted that expenditure is to be capped at just \$1,000, in contrast to the \$2,000 limit imposed in NSW. Professor Orr submitted:

*Is there a justification for such a big difference, especially as the Queensland capped period will be five months longer than in NSW? There may also be a practical problem with the \$1000 figure, because it will apply to the whole of the year before an election. A group could innocently spend over \$1000 before it even twigs that an election is 10 or 11 months away and that registration rules apply.*¹¹⁸

The QCU also considered the proposed \$1,000 limit for unregistered parties to be ‘a fairly low limit’, noting that ‘a thousand dollars would not be difficult to spend’.¹¹⁹ Further, the QCCL submitted that the \$1,000 limitation over a one-year period (for which the expenditure caps apply), is ‘entirely unacceptable’.¹²⁰ The QCCL noted that the registration threshold, and therefore the maximum amount unregistered third parties can spend, ‘in England is £20,000 and in Scotland, Wales and Northern Ireland is £10,000 during the period of 1 year prior to a UK general election’. While acknowledging there are many differences between Queensland and the UK, and that the UK expenditure definition encompasses costs not included under the proposed amendments, the QCCL submitted that ‘this information throws some light on the amount provided for in this Bill.’¹²¹ (For further discussion of the proposed registration threshold, see chapter 2.8).

¹¹³ Submission 3, p 2.

¹¹⁴ Submission 36, p 12.

¹¹⁵ Submission 3, p 3.

¹¹⁶ Submission 14, p 5.

¹¹⁷ Submission 14, p 6.

¹¹⁸ Submission 3, p 3.

¹¹⁹ Dr John Martin, QCU, public hearing transcript, Brisbane, 20 January 2020, p 27.

¹²⁰ Submission 42, pp 5-6.

¹²¹ Submission 42, pp 5-6.

Stakeholders also questioned the differing treatment of endorsed party candidates and independents respectively under the caps, with Ross Spence maintaining that ‘there should be no difference’.¹²² Professor Graeme Orr submitted in this regard that the proposed cap on independents in Queensland is ‘constitutionally vulnerable’, as it ‘unduly privileges political parties, something the majority of the High Court says is not permitted’.¹²³

*Independents ... are only to be allowed \$87 000 in Queensland. Yet a party can effectively spend up to \$150 000 in a seat-targeted campaign against an independent candidate; plus enjoy the wash of the generic promotion of the party and its leaders as a whole. In contrast, in NSW, an independent lower house candidate will have a cap of almost \$200 000. That is nearly two-and-a-half times the cap for an independent in Queensland, and equal to the effective party cap in NSW (which is \$66 400 for the party directly and \$132 600 for the party’s candidate).*¹²⁴

Pam Spence considered the spending limits to be too high on a per-district basis,¹²⁵ while Neil Cotter also argued for a scheme-wide lowering of the caps.¹²⁶ While acknowledging that the proposed caps ‘might somewhat limit anomalies like billionaires leveraging their wealth as a substitute for grassroots support’, Mr Cotter submitted that previous spending records suggest the proposed caps would likely accommodate planned expenditure by Australian Labor Party (ALP) and Liberal National Party (LNP) quite comfortably, and are therefore likely ‘too high to have any impact’ on the campaigns of the ‘duopoly’ of these two parties.¹²⁷ In order to effectively reign in expenditure, Mr Cotter suggested that the system of caps:

*... should probably be tied to some formula involving median income, or better yet, so as to be more inclusive, the minimum wage or the Newstart Allowance for a single adult with no children.*¹²⁸

Further, in relation to the Bill’s provisions for the aggregation of associated entity spending under the caps, Professor Orr stated that the effect of the amendments was unclear. Professor Orr recommended that the Bill more clearly state that associated entity spending is automatically aggregated to the party cap.¹²⁹

In its response to submissions, DJAG noted each of these stakeholders’ comments on the proposed expenditure cap values.¹³⁰ In relation to the rationale for the expenditure caps, DJAG stated:

*... the Explanatory Notes to the Bill indicate that the expenditure caps were been formulated by indexing previous expenditure cap amounts as provided by the Electoral Reform and Accountability Amendment Act 2011, and that regard has also been given to interstate and international jurisdictions’ expenditure cap amounts and the relevant types of expenditure that those caps will capture.*¹³¹

In relation to Professor’s Orr’s comments about the aggregation of associate entity spending within the party caps for the scheme, DJAG advised that it would give the matter further consideration.¹³²

¹²² Submission 20, p 1.

¹²³ Submission 3, p 3.

¹²⁴ Submission 3, p 3.

¹²⁵ Submission 19, p 1.

¹²⁶ Submission 36, p 13.

¹²⁷ Submission 36, p 13.

¹²⁸ Submission 36, p 13.

¹²⁹ Submission, pp 3-4.

¹³⁰ DJAG and DLGRMA, correspondence, 17 January 2020, pp 16-18.

¹³¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 18.

¹³² DJAG and DLGRMA, correspondence, 17 January 2020, p 36.

Length of the capped expenditure period

A number of stakeholders considered the proposed 12-month length of the capped expenditure period to be too long – ‘even by world standards’.¹³³ While acknowledging that a 12-month capped period also applies in the UK, the QCCL noted that in a review of the operation of the expenditure caps and their impact on third parties in the 2015 UK general election, reviewer Lord Hodgson of Astley Abbotts found no evidence of campaigning by third parties 12 months prior to the election, and:

*Having found that most voters were unlikely to be influenced by campaigning 12 months prior to the election, Lord Hodgson recommended the period be reduced to 4 months. We can see no reason for thinking voters in Queensland pay any greater attention to elections than those in the UK and submit that the registration period should be reduced to 4 months prior to the election.*¹³⁴

The QCU also considered the proposed 12-month period to be ‘a fairly lengthy time’ that could be reduced, particularly when considering the less than seven month capped expenditure period under the NSW legislation.¹³⁵ Professor Orr submitted that this is particularly the case given the actual cap on parties is not a single set figure but rather based on amounts per district for which the party has endorsed a candidate (which parties may not know a year out from polling day).¹³⁶ Equally:

*... it could be difficult 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...*¹³⁷

The AIP similarly raised concerns that especially when coupled with the ‘vagueness’ of the definition of electoral expenditure, the lengthy capped period ‘could have the effect of muting the voices of civil society for the 12 months running up to an election’.¹³⁸

The challenges of setting an expenditure cap of an appropriate length were discussed further at the committee’s public hearing:

Ms RICHARDS: ... *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.*¹³⁹

¹³³ Professor Graeme Orr, submission 3, p 2. See also: QCCL, submission 42, p 3; Neil Cotter, submission 36, p 14; AIP, submission 50, p 5.

¹³⁴ Submission 42, p 6.

¹³⁵ Dr John Martin, QCU, public hearing transcript, 20 January 2020, p 27.

¹³⁶ Submission 3, p 2.

¹³⁷ Professor Graeme Orr, University of Queensland, public hearing transcript, Brisbane, 20 January 2020, pp 4-5.

¹³⁸ Submission 50, p 5.

¹³⁹ Public hearing transcript, Brisbane, 20 January 2020, pp 4-5.

In its response to submissions, DJAG advised that it had noted the comments of these stakeholders with respect to the proposed length of the expenditure cap period.¹⁴⁰

Definition of electoral expenditure

Perhaps the primary stakeholder concern regarding the proposed expenditure cap scheme related to the definition of electoral expenditure employed in the Bill.

A wide range of third party organisations who submitted to the inquiry argued the definition is ‘vague’, encompassing as it does not only expenditure to promote a party or candidate, but also spending on public communications for, or related to, the purpose of directly or indirectly influencing voting at an election.¹⁴¹ Many of these stakeholders considered that this broad definition would likely capture a significant amount of non-partisan, issues-based advocacy, participation in public policy debate, and communication on contested policy questions in the lead up to an election, providing a list of examples of regular activities that they considered might be affected under the Bill.¹⁴² Given the Bill’s definition of a political donation includes a gift or loan made to enable ‘electoral expenditure’, it was noted that these organisations would be limited in the amount of donor funding they could receive for these activities in a given parliamentary term (under the proposed donation cap scheme); and would also face a range of administrative and record keeping requirements with respect to their engagement in these activities were they to reach the \$1,000 expenditure threshold for registration.¹⁴³

The Queensland Community Alliance (QCA) submitted of the expenditure cap scheme’s coverage that its organisation understood the following examples of their work would be considered electoral expenditure under the proposed definition:

- *Asking the Transport Minister to commit in a public forum to introduce Transport Concessions for People Seeking Asylum living in our Qld community, if within 12 months of a state election.*
- *Advertising and promoting a petition calling on state government and local council to implement better public transport in the Logan area, if within 12 months of a state election.*
- *Sending text messages to supporters asking them to attend a public forum where the Premier and Opposition Leader are asked to work with us on addressing problems in vocational training, disability care and exploitative employment.*¹⁴⁴

¹⁴⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 16.

¹⁴¹ See, for example: Gladstone Conservation Council, submission 2; MGCC, submission 4; LECNA, submission 10; CAFNEC, submission 16; QHRC, submission 17; EDO, submission 18; NQCC, submission 23; QCC, submission 31; QCA, submission 35; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; BirdLife Australia, submission 43; QCOSS, submission 45; BCCG, submission 49; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56; Anglican Church Southern Queensland (Diocese of Brisbane) Social Responsibilities Committee, submission 63.

¹⁴² See, for example: Gladstone Conservation Council, submission 2; MGCC, submission 4; LECNA, submission 10; Krystian Seibert, submission 14; CAFNEC, submission 16; QHRC, submission 17; EDO, submission 18; NQCC, submission 23; QCC, submission 31; QCA, submission 35; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; BirdLife Australia, submission 43; QCOSS, submission 45; Mackay Conservation Group, submission 46; ACF, submission 47; CPI, submission 48; BCCG, submission 49; AIP, submission 50; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56; Wildlife Queensland Gold Coast & Hinterland Branch, submission 58.

¹⁴³ See, for example: MGCC, submission 4; LECNA, submission 10; Krystian Seibert, submission 14; CAFNEC, submission 16; QHRC, submission 17; EDO, submission 18; QCC, submission 31; QCA, submission 35; ECQ, submission 41; Australian Youth Climate Coalition, submission 44; Mackay Conservation Group, submission 46; CPI, submission 48; HRLC, submission 53; NPAQ, submission 56.

¹⁴⁴ Submission 35, p 1.

Further, for its member organisations, the QCA submitted that electoral expenditure would also include:

- *Notices in church newsletters that ask congregation members to consider their church's values on the importance of an issue (maternity care, social isolation/connection, workplace rights, environmental protection, etc).*
- *Community centres printing flyers on a given issue that are for reading by volunteers/participants.*
- *A charity holding and advertising a forum on an issue such as state run aged care.*¹⁴⁵

QCOSS cited a similarly broad array of activities to be captured, and emphasised that such public advocacy is firmly within the remit of the social justice mission of civil society organisations. QCOSS noted that in a 2015 survey by ProBono Australia, nine out of 10 not-for-profit respondents saw their advocacy role as the most important factor in developing the social sector.¹⁴⁶

Together Queensland also expressed concern that the s 199(c) reference to directly or indirectly influence voting at an election, would 'capture things like industrial campaigns if they happened to coincide with elections or if our industrial campaigns provide any commentary on the government'.¹⁴⁷ Together Queensland submitted that 'any such inadvertent restriction on our industrial campaigns may offend the constitutional implied freedom of political communication'.¹⁴⁸

In respect of the various examples of issues advocacy, the QCA noted that its conversations with the Attorney-General's office, the ECQ and independent legal advice indicate that interpretations of this definition will diverge significantly.¹⁴⁹ This was a concern echoed by a number of other stakeholders who identified that the uncertainty and complexities surrounding the definition means that stakeholders may need to seek 'separate legal advice' before proceeding with some of their core activities, with the result that they may instead opt not to participate in democratic debate.¹⁵⁰ Submitters particularly highlighted the challenges of anticipating which issues may become issues at election time, engagement on which may constitute electoral expenditure.¹⁵¹

From a regulatory perspective, the scope for issues-based campaigning to be used as a proxy for a particular party under the guise of broader public advocacy was also raised during the committee's hearing on the Bill.¹⁵² This highlighted the need to balance stakeholders' concerns about imposing limits on issues-based advocacy, with ensuring that certain political activities are appropriately captured. In this respect, the QCCL cited the limitations of American disclosure laws applying only to political communication that expressly advocates the election or defeat of parties or candidates, and which has been 'rightly criticised as permitting so called 'issue' ads which whilst missing any statement expressly advocating the election of a candidate, are functionally equivalent of

¹⁴⁵ Submission 35, pp 2-3.

¹⁴⁶ Submission 45, p 2.

¹⁴⁷ Submission 67, p 2.

¹⁴⁸ Submission 67, p 2.

¹⁴⁹ Submission 35, p 2.

¹⁵⁰ Alice Drury, HRLC, public hearing transcript, Brisbane, 20 January 2020, p 14; Laura Barnes, QCOSS, public hearing transcript, Brisbane, 20 January 2020, p 14; Devett Kennedy, Lead Organiser, QCA, public hearing transcript, Brisbane, 20 January 2020, p 19; Gecko, submission 37, p 2; BCCG, submission 49, p 5; HRLC, submission 53, p 6.

¹⁵¹ See, for example: CAFNEC, submission 16; QHRC, submission 17; EDO, submission 18; NQCC, submission 23; QCC, submission 31; QCA, submission 35; GPAP, submission 39; HRLC, submission 53; Robert Rutkowski, 62. Laura Barnes, QCOSS, public hearing transcript, Brisbane, 20 January 2020, p 24.

¹⁵² See discussion: Public hearing transcript, Brisbane, 20 January 2020, p 24.

an ad containing such a statement'.¹⁵³ By extending the reach of the Queensland definition to cover political communication that indirectly promotes or opposes the election of a candidate or party, the QCCL considered that 'the proposed legislation deals with this issue'.¹⁵⁴

All of these stakeholders, however, considered that amendments to clarify and narrow the scope of the definition might serve to ensure the proposed scheme better meets its objectives of levelling the electoral playing field, without compromising the overall effectiveness of the proposed spending caps.

Many emphasised that charities registered with the Australian Charities and Not-for-profits Commission (ACNC) are already regulated under the *Charities Act 2013* (Cth), which precludes them from having the purpose of promoting or opposing a political party or candidate for political office (a disqualifying purpose).¹⁵⁵ Greenpeace Australia Pacific (GPAP), for example, submitted:

*... registered charities, including GPAP, by their very nature, have limited engagement with the political process other than issues-based advocacy that furthers their charitable purpose. If a person suspects that a charity is in breach of these requirements, they can file a complaint with the Australian Charities and Not for Profit Commission (ACNC), which has extensive powers to investigate. For registered charities, promoting or opposing a political party or candidate for political office can result in deregistration and the loss of deductible gift recipient status.*¹⁵⁶

GPAP submitted that these existing constraints are already 'sufficient to create transparency within the registered charity sector and ensure the actual and perceived integrity of Queensland State elections'.¹⁵⁷ Additionally, GPAP argued that the risk of small organisations which accrue less than \$50,000 income per annum being used to circumvent the donation cap is exceptionally low:

*The administration costs involved in setting up an organisation of that size in order to incur electoral expenditure would be time intensive, complex and would likely be prevented by the anti-avoidance measures.*¹⁵⁸

There were calls for an amendment to the Bill's s 199 definition of electoral expenditure recommended by the HRLC, to be inserted after proposed subsection (5) as follows:

(6) Expenditure incurred by a third party registered under the Australian Charities and Not-for-profits Commission Act 2012 or with an annual income of less than \$50,000, is only electoral expenditure if material that is published, aired or otherwise disseminated refers to—

(d) a candidate or a political party; and

*(e) how a person should vote at an election.*¹⁵⁹

Some stakeholders considered that this suggested amendment would appropriately exclude organisations in these categories from the 'onerous obligations and risk of penalty under the Bill',

¹⁵³ Submission 42, p 6.

¹⁵⁴ Submission 42, p 6.

¹⁵⁵ See, for example: Krystian Seibert, submission 14, p 6; CAFNEC, submission 16, p 4; EDO, submission 18, pp 4-5; GPAP, submission 39, p 3.

¹⁵⁶ Submission 39, p 3.

¹⁵⁷ GPAP, submission 39, p 3. See also: CAFNEC, submission 16, p 4.

¹⁵⁸ GPAP, submission 39, p 3. See also: QCOSS, submission 45, p 3.

¹⁵⁹ HRLC, submission 53, p 8. See also: Gladstone Conservation Council, submission 2, p 1; MGCC, submission 4, p 2; CAFNEC, submission 16, p 5; LECNA, submission 10, p 4. EDO, submission 18, p 3; NQCC, submission 23, pp 3-4; QCC, submission 31, p 6; QCA, submission 35, p 4; Gecko, submission 37, p 3; GPAP, submission 39, p 4; AMCS, submission 40, p 4; Birdlife Australia, submission 43, p 4; QCOSS, submission 45, p 3; Mackay Conservation Group, submission 46, p 2; ACF, submission 47, p 8; BCCG, submission 49, p 5; Solar Citizens, submission 54, p 4; NPAQ, submission 56, p 4; Anglican Church Southern Queensland (Diocese of Brisbane) Social Responsibilities Committee, submission 63, p 4.

unless they are undertaking specific and clear ‘vote shifting’ work.¹⁶⁰ This follows the approach of the Victorian legislation, which has engaged a narrower definition of ‘political expenditure’ for third parties to protect the rights of third parties to pursue social issues advocacy and the right of donors to fund it.¹⁶¹

While there was also some recognition that increasing threshold for third party registration (and thereby the maximum expenditure that can be incurred by an unregistered third party) may serve to address similar issues, it was submitted that narrowing the definition of electoral expenditure for these two limited categories of third party in this manner is ‘preferable’ to raising the threshold for registration as a third party (discussed in chapter 2.8), or raising the donation cap for third parties (see chapter 2.4) to address identified scheme issues.¹⁶²

The QHRC also agreed that less restrictive options to achieving the purposes of the reforms could include exempting charities from the changes, ‘as they are already prevented from promoting or opposing political parties by federal charity laws’; or applying a narrowed definition of electoral expenditure for small organisations and/or charities, drawing upon the Victorian definition of political expenditure.¹⁶³ The QHRC noted that such amendments to address ‘the disproportionate and potentially unintended consequences for smaller non-government organisations and charities’, were the only amendments the QHRC was proposing to the Bill.¹⁶⁴

Other suggested approaches to address narrowing the definition included:

- a suggestion from the QLS and Krystian Seibert to remove proposed s 199(c), which relates to ‘otherwise influencing’ voting at an election, so that the definition refers only to the direct or indirect promotion of a party or candidate¹⁶⁵ (the QLS suggested alternatively providing greater clarification about the threshold test of ‘influence (directly or indirectly) voting at election’)¹⁶⁶
- a proposal from QCCL to amend the s 199 definition to apply to expenditure incurred *with a view to* promoting or opposing a political party in relation to an election, promoting or opposing the election of a candidate; or otherwise influencing voting at an election (so that

¹⁶⁰ See, for example: MGCC, submissions 4; LECNA, submission 10; CAFNEC, submission 16; QCC, submission 31; WWF-Australia, submission 32; QCA, submission 35; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; BirdLife Australia, submission 43; QCOSS submission 45; Mackay Conservation Group, submission 46; ACF, submission 47; BCCG, submission 49; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56.

¹⁶¹ The explanatory memorandum to the Electoral Legislation Amendment Bill 2018 (Vic) stated of the definition of ‘political expenditure’ employed under the now *Electoral Legislation Amendment Act 2018* (Vic), that it ‘is intended that gifts to associated entities and third party campaigners for the purpose of general issues advertising and awareness raising will not be considered political donations, if the gift is not for the dominant purpose of directing how a person should vote at an election by promoting or opposing a candidate or party. This will ensure the right of donors to be active in social issues, including by giving gifts to organisations that support these issues, without being subject to the limitations provided under the scheme. It will also ensure that third party campaigners are not subject to onerous reporting obligations due to activities that are not for the dominant purpose of directing how a person should vote at an election by promoting or opposing a candidate or registered political party’. Electoral Legislation Amendment Bill 2018 (Vic), explanatory memorandum, p 19 (clause 40).

¹⁶² See, for example, submissions: Gladstone Conservation Council, submission 2, p 1; NQCC, submission 23, p 3; QCC, submission 31, p 6. QCOSS, submission 45, p 3.

¹⁶³ Submission 17, p 13.

¹⁶⁴ Submission 17, p 3.

¹⁶⁵ Krystian Seibert, submission 14, p 6; QLS, submission 59, p 2.

¹⁶⁶ Submission 59, p 2.

the law applies only where there is an intent to exert electoral influence in this manner, and removing the reference to 'direct' or 'indirect' influence in this respect,¹⁶⁷ and

- GetUp! and GPAP's suggestion to insert a note similar to that in s 4AA(1) the *Commonwealth Electoral Act 1918* (Cth) which expressly excludes 'communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue [as they] are not for the dominant purpose of influencing the way electors vote in an election'.¹⁶⁸

The QLS also recommended that exemptions from the 'third party' electoral expenditure framework be extended to:

- organisations already subject to robust disclosure obligations with high levels of transparency, including technical and professional services providers
- legal practitioners engaging in conduct within the scope of legal practice regulated by the *Legal Profession Act 2007* (Qld) and similar legislation in other States, and
- any expenditure that an organisation incurs in responding to government consultation processes on legislation or other reforms, such as the parliamentary committee process or confidential consultation.¹⁶⁹

In response to these stakeholder comments and proposed amendments to the Bill's definition of electoral expenditure, all of which were acknowledged by DJAG, the department advised that it will give further consideration to the issues raised.¹⁷⁰

Definition of electoral expenditure – types of expenditure included

Stakeholders also raised a number of questions or concerns regarding the different types of expenditure acknowledged in the definition of electoral expenditure under the Bill.

In particular it was submitted that:

- Internal communications to members on issues should not be considered electoral expenditure, and that an amendment to the Bill is required to state clearly that funds spent on producing internal communications to members 'such as community centre or church newsletters or organisational journals'¹⁷¹ should not be considered to be electoral expenditure.¹⁷² The QNMU stated that the inclusion of a reference to expenditure on 'other electoral material' in proposed s 199(2)(a) (which states that electoral expenditure includes spending on designing, producing, printing, broadcasting or publishing an advertisement or other electoral material), is a source of confusion in this respect and requires clarification:

The QNMU communicates with members to inform them of 'electoral matters' through various publications, newsletters and online community platforms. Often communication is not intended to influence the way members vote in an election, but rather focuses on progressing the Nursing and Midwifery professions. This provision could install

¹⁶⁷ Submission 42, p 6. The QCCL submitted of this proposal that it has 'two important benefits': 'Firstly, it focuses the legislation on what it is intended to deal with, that is activity which is intended to influence the outcome of an election. Secondly, it is consistent with the principles of criminal responsibility usually advocated by this organisation, that criminal responsibility should usually be limited to the intentional conduct of a person'.

¹⁶⁸ GetUp!, submission 30, p 5; GPAP, submission 39, p 3.

¹⁶⁹ Submission 59, p 2.

¹⁷⁰ DJAG and DLGRMA, correspondence, 17 January 2020, pp 3-8.

¹⁷¹ LECNA, submission 10, p 4; QCC, submission 35, p 5.

¹⁷² See, for example: LECNA, submission 10, p 4; QCA, submission 35, p 5.

*unnecessary restrictions on our freedom to communicate with members in a manner consistent with their profession.*¹⁷³

- Greater clarity is required in relation to the reference in proposed s 199(2)(c) to ‘expenditure for carrying out an opinion poll or research’. Professor Graeme Orr noted that election campaigns are increasingly driven by expenditure on data, and especially data skimmed from people’s online activities, to create a profile of them for social marketing purposes, and that he doubts such activities would be captured by s 199(2)(c): ‘It is not very clear what ‘research’ here means: it would probably be read down to only cover research into electoral opinion (eg focus groups)’.¹⁷⁴ The Environmental Defenders Office (EDO) also considered that s 199(2)(c), while appearing to be limited to research in relation to voter sentiment, though ‘could be made clearer in the drafting’ to ‘avoid capturing activities such as background research and legal advice’.¹⁷⁵
- In reference to proposed s 199(2)(b) which refers to expenditure for the ‘direct cost’ of distributing an advertisement or other election material (including costs for postage and sending SMS messages), the QNMU submitted that it is unclear whether wages and salaries of QNMU employees working on advertisements or other election material would be considered a ‘direct cost’.¹⁷⁶
- The Centre for Public Integrity (CPI), GetUp! and Neil Cotter noted that the s 199 definition does not appear to cover expenditure on campaign staff or consultants, and could be strengthened by including such spending, which the CPI noted are included in the *Electoral Funding Act* (NSW).¹⁷⁷ Mr Cotter stated in this respect: ‘In this age where a ‘groundgame’ is seen as a vital component of successful campaigning, with phone-banking and door-knocking often seen as critical to success, this seems a significant oversight’ and represents ‘an uncapped loophole to be exploited’.¹⁷⁸
- Neil Cotter expressed a concern that the definition of electoral expenditure would not cover expenditure by parliamentarians or government advertising (for inclusion in the party cap),¹⁷⁹ and
- Lastly, the QNMU and Neil Cotter questioned the need for the s 199(2)(d) provision for the types of electoral expenditure to be expanded to include expenditure of another kind prescribed by legislation.¹⁸⁰

Noting the complexities and confusion surrounding these various scheme inclusions, a number of stakeholders emphasised the importance of clear guidelines to accompany the introduction of the expenditure cap scheme (together with the donation cap scheme), in order to adequately inform campaigners of how the provisions will apply.¹⁸¹ The CPI also called for ECQ staff to be available to provide advice to third parties in the application of the definition of electoral expenditure, as well as the definition of ‘political donation and other clauses’.¹⁸²

¹⁷³ Submission 27, p 4.

¹⁷⁴ Submission 3, pp 1-2.

¹⁷⁵ Submission 18, p 3.

¹⁷⁶ Submission 27, p 5.

¹⁷⁷ CPI, submission 48, pp 1-2; Neil Cotter, submission 36, p 14;

¹⁷⁸ Submission 36, p 14.

¹⁷⁹ Submission 36, pp 15-16.

¹⁸⁰ QNMU, submission 27, p 5; Neil Cotter, submission 36, p 17.

¹⁸¹ QNMU, submission 27, pp 3-5; CPI, submission 48, p 4; Myles McGregor-Lowndes, Member, QLS, public hearing transcript, Brisbane, 20 January 2020, p 68.

¹⁸² Submission 48, p 4.

Stakeholders' various concerns about the extent to which various types of expenditure are captured by the proposed s 199 definition were acknowledged by DJAG in its response to submissions.¹⁸³ In relation to stakeholder comments regarding the inclusions or otherwise of spending on internal communications, campaign staff and office costs, and the extent of the activities covered in terms of research or 'direct costs', DJAG committed to giving further consideration to the issues those stakeholders raised.¹⁸⁴

Regarding Mr Cotter's concerns that the definition of electoral expenditure would not capture spending by parliamentarians or the government more broadly, DJAG advised that such expenditure by elected Members would be captured under the proposed s 199:

*While expenditure for which a member is entitled to receive an allowance or entitlement under the Queensland Independent Remuneration Tribunal Act 2013 is excluded from that definition, there are already limitations on using such allowances/entitlements for electioneering and campaigning purposes, and this exclusion is directed at preventing any possibility of both election funding and an allowance/entitlement on the same spending activity.*¹⁸⁵

Further:

*DJAG notes that government advertising is subject to Queensland Government Advertising and Marketing Communication Code of Conduct, which specifies that materials produced or published by the Queensland Government agencies or government entities do not attempt to foster a positive impression of a political party or promote party-political interests.*¹⁸⁶

In response to stakeholder concerns about the provision for additional kinds of electoral expenditure to be prescribed by regulation, DJAG advised:

*... the provision is intended to provide flexibility to ensure that kinds of expenditure that meet the test in section 199(1) can appropriately be captured, for example, emerging types of communication. Section 199(2) already captures broad classes of expenditure, and the regulation would be subject to appropriate parliamentary scrutiny.*¹⁸⁷

Disclosure and compliance measures

Some stakeholders called for enhanced disclosure of electoral expenditure, to accompany the proposed imposition of the caps. In relation to disclosure requirements in particular, the ACF submitted:

Currently, the Bill does not make it a requirement that the ECQ make public on its website returns related to electoral expenditure. Instead, in order to access returns related to electoral expenditure a person must search records at the ECQ office or request and pay for a copy of a specific record. These records are available six weeks after the polling day for the election.

*Electoral expenditure should be made available, published to the ECQ website, as is donations data. In addition to real time disclosure of political donations, it would be preferable for total donations and expenditure data to be submitted in a single annual return, made publicly available on the ECQ website.*¹⁸⁸

¹⁸³ DJAG and DLGRMA, correspondence, 17 January 2020, pp 10-15.

¹⁸⁴ DJAG and DLGRMA, correspondence, 17 January 2020, pp 10-14.

¹⁸⁵ DJAG and DLGRMA, correspondence, 17 January 2020, pp 11-12.

¹⁸⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 12.

¹⁸⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 10.

¹⁸⁸ Submission 47, pp 11-12

The CPI also called for a legislative amendment in this respect, submitting that the Bill's amendments should extend to:

... requiring disclosure of all third party income used for electoral expenditure including membership fees over \$2,000 per year (so that industry peak bodies are covered by disclosure requirements) and revenue from company activities (so that individual companies are covered by disclosure requirements). Currently companies and industry bodies are not covered, meaning that money from property developers' peak bodies and individual developer companies can be spent campaigning against planning laws without proper transparency (for example).¹⁸⁹

In relation to enforcement, Neil Cotter submitted that the enforcement of electoral laws often comes into effect only after an election, and that the consequences are limited and do not affect representation in Parliament. To further address the risk that contraventions of the expenditure cap scheme will be factored in as a cost of doing business, Mr Cotter suggested:

At the very least any transgression should come with a penalty for not just the current or completed election but a penalty that decreases the offending party's expenditure cap for the subsequent election. If the transgression is to do with donations then the penalty should be a reduction in the donation cap for that party at the subsequent election.¹⁹⁰

Additionally, Mr Cotter submitted that it should be possible for a Court of Disputed Returns to determine that a transgression was of significant magnitude to affect the resulting parliamentary representation and: 'If the beneficiary electorate can be identified then overturn that result and if not presume the most marginal seat or seats won by the transgressing party'.¹⁹¹

Professor Orr also contemplated the extent to which overspending might form the basis of a challenge to the election outcome, noting the Bill is 'silent in this respect':

It is something worth considering. In Courts of Disputed Returns, any breach of the Electoral Act that was likely to have affected the outcome in a district, is petitionable. Egregious overspending statewide, or in particular seats, could be seen by a judge as tainting the outcome in very marginal seats. There would be no requirement that the excessive expenditure was by the winning party or candidate: it could be by a supportive third party. (Although a judge is more likely to think it just to unseat a party or candidate if they were been responsible for the overspending).

On the other hand, Queensland law only gives electors seven days from the return of the writ (so only a few weeks from polling day) to lodge a petition to challenge the result in an electoral district. Under this Bill, disclosure of expenditure will not occur for a considerable time after that. So the over-spending would have to be blatantly obvious for someone to risk the costs of pursuing a petition. In addition no group or party can challenge the whole of an election, but merely lodge separate petitions seat by seat.¹⁹²

In response to the suggestions from the ACF and CPI regarding the public disclosure of electoral expenditure, DJAG undertook to give the matter further consideration. DJAG noted that current returns of electoral expenditure by candidates are required to be given to the ECQ within 15 weeks after the election, and are not required to be published. While the Bill similarly has not proposed to require returns be published, DJAG noted that it would require returns to also be submitted by registered political parties, registered third parties and third parties required to be registered.¹⁹³

¹⁸⁹ Submission 48, p 4.

¹⁹⁰ Submission 36, p 28.

¹⁹¹ Submission 36, p 28.

¹⁹² Submission 3, p 4.

¹⁹³ DJAG and DLGRMA, correspondence, 17 January 2020, p 45.

In acknowledging the comments from Mr Cotter and Professor Orr, DJAG advised that existing s 31 of the Electoral Act provides that a failure of a person to comply with a provision in Part 11 (Election funding and financial disclosure) does not invalidate the election.¹⁹⁴

Committee comment

Central to the task of developing an effective electoral expenditure cap scheme is the determination of the extent of the activities to be captured as electoral expenditure.

In the evidence presented to the committee, a point of contention in this respect was the degree to which ‘issues-based’ advocacy, which was generally categorised as ‘non-partisan’, should be captured under the scheme.

As stakeholders have acknowledged, establishing a clear line or threshold in this respect is no easy task, particularly given the fast-moving nature of the political landscape and broader public policy discourse. General issues-based advocacy is by nature ‘political’, seeking as it does, changes to policy or particular outcomes from elected representatives. Further, such activities can rapidly begin to take on a partisan bent in the lead up to election, and as the international example of US ‘issues-based’ advertising has demonstrated, a narrowing of the range of advocacy activities captured in an expenditure cap scheme can provide scope for exploitation, potentially diminishing its effectiveness.

The committee was therefore not convinced that a narrowing of the terms of the proposed definition of electoral expenditure is an appropriate means by which to address the concerns of stakeholders about potentially disproportionate impacts on smaller, not-for-profit third party organisations and their ability to engage in public debate. The committee makes further comment in this regard at the conclusion of chapter 2.8 of this report.

The committee notes, however, that some stakeholders expressed concerns that they would need to seek legal advice to determine the application of the provisions, and agrees that further clarification is required as to types of expenditure captured under the scheme, including in relation to internal communications. While the committee notes that DJAG has acknowledged the various comments and questions of stakeholders in this respect, the department did not provide any advice in response to address these matters or otherwise alleviate stakeholder concerns.

The committee therefore requests that the Attorney-General and Minister for Justice clarify the application of the provisions during the Second Reading Debate on the Bill.

2.4 Caps on political donations

The Bill proposes to introduce caps on political donations made to candidates, registered political parties and third parties for an election, to apply after the 2020 general election.¹⁹⁵

2.4.1 The political donation cap scheme

Under the proposed amendments, donation caps would apply for each parliamentary term – that is, for the period commencing 30 days after the polling day for the last general election and ending 30 days after the polling day for the election (‘donation cap period’).¹⁹⁶ If the relevant candidate was a candidate in a by-election in the intervening period, the donation cap period for the candidate would start 30 days after the polling day for the last by-election in which the candidate was a candidate, and end 30 days after the polling day for the election.¹⁹⁷ DJAG advised:

¹⁹⁴ DJAG and DLGRMA, correspondence, 17 January 2020, p 35.

¹⁹⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 4. See Bill, cl 52, s 44, which inserts a transitional provision specifying that the provisions governing caps for political donations do not apply in relation to a 2020 election.

¹⁹⁶ Bill, cl 22, ss 247-249.

¹⁹⁷ Bill, cl 22, ss 247, 249.

*The effect of this section is to provide a donation cap reset for any candidate who contests a by-election as they will have expended money in contesting the by-election and will be able to accept additional political donations from previous donors to finance their campaign for their next election.*¹⁹⁸

No such 'reset' provision applies for a registered political party or a third party, with any donations made in the intervening period between general elections being taken to have been made in relation to the general election, regardless of whether it was received by them as a participant in the by-election.¹⁹⁹

Under the amendments, the maximum amount that a single donor can contribute during the donation cap period is:

- \$4,000 in political donations to a registered political party
- \$6,000 in political donations to a candidate in an election (noting that if the candidate is endorsed by a registered political party for an election, the \$6,000 cap applies to the sum of all contributions made by the donor to candidates endorsed by the same party), and
- \$4,000 in political donations to a third party, with an additional cap on the number of third parties to which political donations may be provided (a maximum of six third parties).²⁰⁰

The donation cap amounts apply in the aggregate, meaning that they must not be exceeded regardless of whether the political donations are provided as a single contribution or as multiple, cumulative contributions.²⁰¹ Where a registered political party has an associated entity, the relevant cap will apply as if the party and associated entity together constitute the recipient party, and any political donation made to, or received by the party were a gift made to the recipient party.²⁰² Additionally, in the case of an electoral committee for a registered political party for an electoral district, the relevant cap will apply as if the electoral committee were the candidate endorsed by the party for the electoral district.²⁰³

The caps are to be indexed for inflation 30 days after the polling day for each general election.²⁰⁴

To support compliance with the donation cap scheme, the Bill requires the donor to provide the recipient with a 'donor statement' outlining the particulars of the political donation within 14 days of the donation being provided.²⁰⁵ Additionally, the recipient of a political donation would be required to give the donor a receipt for the donation which also informs the donor about the donation cap scheme and applicable offences for exceeding a donation cap.²⁰⁶ A maximum penalty of 20 penalty units (\$2,669) applies where a recipient fails to provide the donor with a receipt, including information about applicable offences, unless the recipient has a reasonable excuse.²⁰⁷

¹⁹⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 3.

¹⁹⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 3. See: Bill, cl 22, ss 247, 249.

²⁰⁰ Bill, cl 22, s 252, 256(b).

²⁰¹ Bill, cl 22, ss 254-256. See also: Mrs Leanne Robertson, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 2.

²⁰² DJAG and DLGRMA, correspondence, 12 December 2019, p 14.

²⁰³ DJAG and DLGRMA, correspondence, 12 December 2019, p 14.

²⁰⁴ Bill, cl 22, s 253.

²⁰⁵ Bill, cl 22, s 251.

²⁰⁶ Bill, cl 22, s 258.

²⁰⁷ Bill, cl 22, s 258.

Further, all political donations would be required to be paid in into the recipient's dedicated State campaign account for the relevant election²⁰⁸ (amendments requiring election participants to have a dedicated State campaign account for all political donations and electoral expenditure are discussed further at chapter 2.5 of this report).

2.4.2 Donation cap scheme definitions

The Bill proposes a definition of a 'political donation' which is generally consistent with the existing definition in the Electoral Act,²⁰⁹ with the additional qualifying requirement that the gift or loan must be accompanied by a donor statement. The Bill provides that the meaning of a 'political donation' for the scheme is a gift²¹⁰ or loan²¹¹ which is accompanied by a donor statement and is made to, or for the benefit of:

- a registered political party or candidate in an election, or
- a third party, to:
 - o enable the third party to make a gift or loan for the benefit of a registered political party or candidate
 - o reimburse the third party for making a gift, or
 - o enable the third party to incur electoral expenditure.²¹²

The Bill also specifies, however, that an amount of electoral expenditure gifted to an election participant is a 'political donation' whether or not it is accompanied by a donor statement.²¹³

DJAG advised that requiring gifts or loans (other than gifted electoral expenditure) to be accompanied by a donor statement in order to be included in the donation cap scheme, ensures that 'gifts to registered political parties for federal campaign purposes or for general party administration purposes will not be capped'; though such expenses would not be permitted to be paid into the dedicated State campaign account (see report chapter 2.5).²¹⁴

The Bill replaces the current definition of a gift in s 201 of the Electoral Act with a new, largely consistent definition which provides that a gift means 'the disposition of property, or provision of a service, by the person to the other person, for no consideration or inadequate consideration'.²¹⁵

This includes:

- any expenditure gifted to or incurred on behalf of a recipient (including by a federal or interstate party branch or related party)

²⁰⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 3.

²⁰⁹ Electoral Act, s 274.

²¹⁰ A gift is defined as the disposition of property or the provision of a service by the person to the other person for no consideration or inadequate consideration. This includes electoral expenditure gifted to a recipient, amounts of unpaid interest of amounts forgiven on a loan, the part of a fundraising contribution that exceeds \$200, and an amount paid to a registered political party under a sponsorship arrangement. A gift does not include: the disposition of property under a will; a fundraising contribution of \$200 or less (including the first \$200 of a fundraising contribution that exceeds \$200); amounts paid for party subscriptions, memberships or levies; the provision of voluntary labour, and the incidental or ancillary use of a volunteer's vehicle or equipment. See: Bill, cl 12, s 201.

²¹¹ For a loan to fall within the definition of a political donation, it must have been provided for 'no consideration or inadequate consideration' – eg a loan provided with no interest or an amount of uncharged interest or for which an amount owing is forgiven. Bill, cl 22, s 250(5).

²¹² Bill, cl 22, s 250.

²¹³ DJAG and DLGRMA, correspondence, 12 December 2019, p 2.

²¹⁴ DJAG and DLGRMA, correspondence, 12 December 2019, p 3.

²¹⁵ Bill, cl 12, s 201(1).

- amounts of uncharged interest or amounts forgiven on a loan
- the parts of a fundraising contribution made by a person that exceeds \$200, and
- an amount paid, or service provided to a registered political party under a sponsorship arrangement.²¹⁶

Excluded from the proposed definition are:

- the disposition of property under a will
- a fundraising contribution of \$200 or less, or the first \$200 of a fundraising contribution
- amounts paid for a person's membership or affiliation with the party (excluding amounts paid under a sponsorship arrangement), or an amount that is a compulsory levy imposed on elected members by the party under its constitution
- the provision of voluntary labour, or
- the incidental or ancillary use of a volunteer's vehicle or equipment, or a vehicle or equipment that is ordinarily available for the personal use of a volunteer.²¹⁷

The Bill also clarifies that if a person makes a gift to a recipient in a private capacity for the recipient's personal use, and the recipient does not intend to use that gift for an electoral purpose, this would not be considered a gift for electoral funding and disclosure purposes.²¹⁸ However, if that personal gift or some part of the gift were later used for an electoral purpose, the recipient would be taken to have accepted that gift or the relevant part of the gift at the time it is used for an electoral purpose.²¹⁹

Additionally, where a person or entity provides a gift or loan through an intermediary with the main purpose of enabling the intermediary to make an ultimate gift or loan to a final recipient, the person or entity would be considered the source of the gift or loan. At the time the intermediary makes the gift or loan to the final recipient, the gift or loan is taken not to have been made to or accepted by the intermediary, but rather to have been made to, and accepted by the final recipient. This is in keeping with provisions contained in the *Electoral and Other Legislation Amendment Act 2019*, which was passed by the Parliament in October 2019, and will require the intermediary to provide the recipient with a notice declaring the true source of the loan and their relevant particulars.²²⁰

The donor statement for the purposes of the donation cap scheme will need to be provided by 'source' donor who first made the gift or loan.²²¹

2.4.3 Offences and recovery of amounts exceeding a donation cap

The Bill creates offences with a maximum penalty of 200 penalty units (\$26,690) for giving or receiving a donation in excess of a donation cap, either in terms of the amount of the relevant cap, or in respect of donations to more than six third parties for the election.²²²

²¹⁶ Bill, cl 12, s 201(2).

²¹⁷ Bill, cl 12, s 201(3).

²¹⁸ Bill, cl 12, s 201(4)

²¹⁹ Bill, cl 12, s 201(5).

²²⁰ *Electoral and Other Legislation Amendment Act 2019*, cl 2 ('Commencement') and cl 59, s60A ('Who is the source of a gift or loan'). The amendments mirror provisions in the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* which were inserted in response to recommendation 6 of the CCC's Operation Belcarra Report.

²²¹ DJAG, correspondence, 12 December 2019, p 13.

²²² DJAG and DLGRMA, correspondence, 12 December 2019, pp 3-4; Bill, cl 22, ss 254-256, 259.

In relation to the offence of receiving a donation in excess of a cap, the Bill stipulates that the offence applies only if ‘the person knows, or ought reasonably to know, the donation would exceed the cap’.²²³ DJAG advised of this provision:

*This element of the offence protects authorised persons who may accept a political donation on behalf of an election participant and who may not know, and cannot reasonably be expected to know, of other donations previously made by the donor that have been accepted by other persons. A person would know of donations they themselves have accepted and would be expected to know, for example, of other donations that have been accepted and recorded in an information system to which the authorised person has access.*²²⁴

To enable donors and recipients ‘to rectify the situation where they may have otherwise inadvertently committed an offence’,²²⁵ the Bill also provides exceptions to the relevant offences. Specifically, the Bill provides that:

- a donor who exceeds a cap does not commit an offence if within, six weeks of making the donation, the person requests in writing or receives a refund or return of a donation or the amount by which the donation exceeds the relevant donation cap,²²⁶ and
- a recipient who accepts a political donation in excess of a cap does not commit an offence if, within six weeks after the donation is made, the donation, or the amount by which the donation exceeds the relevant donation cap, is returned to the donor.²²⁷

DJAG advised in this respect:

*The period of six weeks for refunds and returns is consistent with the arrangements under the Electoral Act in relation to disclosure obligations and for unlawful receipts of foreign property.*²²⁸

In respect of more serious and calculated contraventions of the donation caps, the Bill would extend the application of an existing offence and maximum penalty relating to knowing participation in a scheme to circumvent the ban on property developer donations (1,500 penalty units (\$200,175) or 10 years’ imprisonment), to also cover participation in a scheme to circumvent donation caps.²²⁹

As is the case for the expenditure cap scheme, the Bill also makes provision for the recovery of any amounts received in excess of a donation cap, by deeming such amounts to be a debt payable to the State that can be recovered by the ECQ, including by way of deductions from any election funding or policy development funding.²³⁰ DJAG advised:

*This deters election participants from financially benefiting from unlawfully received political donations and also provides a simpler and quicker option to criminal prosecution, particularly for minor infractions.*²³¹

²²³ Bill, cl 22, s 259(2)(b).

²²⁴ DJAG and DLGRMA, correspondence, 12 December 2019, p 4.

²²⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 4.

²²⁶ Bill, cl 22, s 257.

²²⁷ Bill, cl 22, s 259(4).

²²⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 4.

²²⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 16. See also Bill, cl 47, s 307B.

²³⁰ Ms Melinda Tubolec, Senior Legal Officer, Strategic Policy and Legal Services, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 7.

²³¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 4.

Further, the Bill provides that criminal proceedings could still be brought even if the ECQ has recovered such amounts, and that the recovery of any unlawful political donations by the ECQ 'is not a matter to which a court may have regard in sentencing a person for such an offence'.²³²

2.4.4 Stakeholder views

As previously noted, some stakeholders expressed conceptual opposition to the introduction of caps on political donations in Queensland, as an apparently 'unnecessary' constraint on the funding of public debate.²³³ The QCCL also considered that a comprehensive system of continuous disclosure of political donations would 'adequately address the legitimate concerns relating to corruption'.²³⁴ However, for the most part stakeholders supported moves to limit the influence, perceived or otherwise, of big donor funds, through the introduction of a system of caps.

Pam Spence, for example, submitted that she fully endorses 'placing caps on all political donations to parties and/or individuals',²³⁵ while Ben Cox stated that the strengthening of donation laws is 'incredibly important', and necessary 'so that the influence of wealthy individuals and corporations is reduced to being the same as any other person'.²³⁶ Simon Ball also considered that 'for too long companies and individuals have held sway over the parliamentary debate and direction of our state and federal government'.²³⁷

This general support aside, stakeholders outlined a number of concerns about the particular parameters of the proposed donation cap scheme, including with regards to the magnitude of the caps proposed, the definition of 'political donation' employed, and the accompanying donor statement and disclosure obligations – all of which have implications for the extent to which the scheme may achieve its objectives.

There were also questions about the timing of the commencement of the proposed scheme. Professor Graeme Orr noted that while caps on political donations are not due to come in until after the 2020 State election, enhanced public funding kicks in earlier.²³⁸ Professor Orr submitted that this may arouse public cynicism, and queried:

*What is the rationale for delaying one, but not the other? Is it because the future capped donation period is the whole four-year term and parties have not had enough notice to build up a war-chest for the coming election?*²³⁹

Pat Coleman and Neil Cotter also highlighted the delay in commencement,²⁴⁰ with Mr Cotter submitting that 'there isn't a good reason' not to introduce donation caps for the 2020 election, even if only from when the Bill is passed.²⁴¹

DJAG noted stakeholders' comments regarding the timing of commencement of the scheme provisions.²⁴²

²³² Bill, cl 22, s 259A.

²³³ See, for example, submissions: Uniting Church in Australia – Qld Synod, submission 21; AIP, submission 50; David Drake, submission 61.

²³⁴ Submission 42, p 4.

²³⁵ Submission 19, p 1.

²³⁶ Submission 6, p 1.

²³⁷ Submission 5, p 1.

²³⁸ Submission 3, p 5.

²³⁹ Submission 3, p 5.

²⁴⁰ Pat Coleman, submission 29, p 9; Neil Cotter, submission 36, p 9.

²⁴¹ Submission 36, p 9.

²⁴² DJAG and DLGRMA, correspondence, 17 January 2020, p 27.

Magnitude of donation caps

The QHRC noted that the caps on political donations proposed under the Bill are generally in line with those imposed by the Victorian Government under the *Electoral Legislation Amendment Bill 2008* (Vic), which applied:

- a ‘universal’ cap of \$4,000 on political donations made to a candidate, elected Member, group, registered political party, nominated entity, associated entity or third party campaigner, and
- limitations on the number of third party campaigners to whom a donor can donate.²⁴³

The QHRC noted that in the case of the Victorian legislation, the Parliamentary Scrutiny of Acts and Regulations Committee which considered the legislation sought further information from the Minister as to why the changes were the least restrictive means of achieving the purpose, and how the chosen cap was suitable and adequate in its balance. In the case of the Bill before the committee, the QHRC submitted that the explanatory notes similarly do not provide this detail, beyond advising that regard has been had to donation caps in interstate jurisdictions and comparative international jurisdictions.²⁴⁴

Neil Cotter also questioned the rationale for the chosen donation caps, which he considered to be ‘very high’.²⁴⁵ Mr Cotter submitted that the ideal we should be moving towards is that the donations received for political parties are small donations from a mass of ordinary people. However, a comparison of the proposed donation caps with the expenditure caps reveals the pool of donors required to reach the expenditure caps is still ‘tiny’ compared to the overall electorate:

Firstly to reach the \$92,000 per party per electorate cap takes just 23 donors on average per electorate giving the maximum \$4,000. Secondly to reach the \$58,000 per candidate expenditure cap is less than 10 donors giving the maximum \$6,000. That really isn’t significantly expanding the base that parties and candidates are drawing on to run campaigns...

...The proposed caps should be compared to metrics like the median wage or better yet, so as to be more inclusive, the minimum wage or the Newstart Allowance for a single adult with no children. For someone on the minimum wage of \$19.49 an hour it would take 513 hours to make that much money. For someone on the Newstart Allowance for a single person with no dependents receiving \$489.70 per fortnight it would take about 41 weeks to make that much money.²⁴⁶

A significant number of other stakeholders, in contrast, argued that the Bill’s proposed donation caps, would in fact be overly restrictive, both from a donor perspective, and in terms of their effects on third parties – and especially those largely dependent on donor funds.

The EDO submitted that under proposed political donation caps of \$4,000 for a political party or third party (for up to six third parties) and \$6,000 for a candidate, donors would need to be careful to understand whether any donations they make are ‘political donations’ or donations for other purposes, and to keep track (over a four-year period) of the amounts donated to each organisation and the number of organisations to which political donations have been made.²⁴⁷ The EDO submitted that this burden may have a chilling effect on their willingness to donate to organisations in the community sector, and further, that donors may find the whole of their right to donate has been exhausted with small donations made well in advance of the election, such that they may be unable

²⁴³ Submission 17, p 3.

²⁴⁴ Submission 17, p 11.

²⁴⁵ Submission 36, p 4.

²⁴⁶ Submission 36, pp 4-5.

²⁴⁷ Submission 18, pp 6-7.

to support organisations' actions on issues that emerge closer to the election.²⁴⁸ By way of example, the EDO submitted:

Donor A makes regular monthly donations to two charities. One of those charities provides mental health services to vulnerable sectors of the community and, in order to advance the interests of its clients, is also active in law reform and policy advocacy. The other charity is active in promoting the human rights and occasionally publishes material to raise awareness in the community of human rights issues including during the debate surrounding state elections.

Donor A donates \$25 per month to each organisation total, however, only one donation to each organisation is a 'political donation' (with the balance of the donations being directed to the other work of each charity).

Donor A then makes a political donation of \$400 to a Christmas charity drive by a Christian charity associated with her church. Donor A has also made spontaneous one-off political donations to three other charities through Facebook campaigns, totalling \$300.

As a consequence, Donor A has exhausted her right to donate with donations totalling \$750.

Donor A has become increasingly concerned about the fate of our wildlife, in particular her local koala population, due to the effects of the bushfires over the summer of 2019/20. She would like to make a donation to help to highlight this issue during the 2020 state election but finds herself unable to do so without breaching proposed section 256 because she has already made political donations to six third parties.²⁴⁹

The EDO noted that under the Victorian legislation, small contributions are excluded from the cap on political donations,²⁵⁰ and recommended a similar provision be considered in Queensland, to simplify compliance obligations for donors and avoid them inadvertently exhausting their donation rights with small donations.²⁵¹

From a third party perspective, stakeholders also considered that the proposed \$4,000 cap on political donations to third parties would limit important, non-partisan, issues-based advocacy in the run up to state elections.²⁵² Noting that the proposed definition of a political donation is tied to the definition of electoral expenditure employed in the Bill (eg in that it includes a gift or loan made to enable electoral expenditure), and given the considerable lack of certainty regarding the breadth of the activities captured by that definition (see discussion in report chapter 2.3.4); it was submitted that the cap would likely put a 'chokehold' on donations for charities and not-for-profits, constraining their income 'and therefore their impact', and drowning out important voices from the public discourse.²⁵³

²⁴⁸ Submission 18, p 6.

²⁴⁹ Submission 18, pp 6-7.

²⁵⁰ Under the *Electoral Act 2002* (Vic), contributions of \$50 or under ('small contribution') are excluded from the general cap on donations. However, the exclusion does not apply if the small contribution is made in contravention of the offence provision relating to entering into or carrying out a scheme (whether alone or with any other person), with the intention of circumventing a prohibition under the political donations disclosure and reporting scheme. See *Electoral Act 2002* (Vic), s 217D(9) and (10), s 218B, and s 217Q (table).

²⁵¹ Submission 18, p 7.

²⁵² MGCC, submission 4, pp 1-2; LECNA, submission 10, p 2; CAFNEC, submission 16, pp 4-5; EDO, submission 18, p 7; QCC, submission 31, p 4; GPAP, submission 39, p 5; QCOSS, submission 45, p 5; AIP, submission 50, p 4; NPAQ, submission 5, p 2; Robert Rutkowski, submission 62, p 1.

²⁵³ GPAP, submission 39, p 4.

A number of community and environmental groups declared of the \$4,000 third party political donation cap:

*This aspect of the Bill undermines charities' and community groups' ability to stand up for the interests of everyday Queenslanders and the environment and to that extent undermines the public interest.*²⁵⁴

CAFNEC, for example, submitted that in light of the broad definition of electoral expenditure and associated challenges with distinguishing between political donations and other donations, the proposed \$4,000 donation cap, would 'impact some of the most simple of our fundraising activities', including:

- *Our monthly giving program – we have a number of members who donate \$100 a month [ie \$4,800 over the four-year capped period]*
- *Major donors – As a small organisation we rely on these generous donations*
- *Event fundraising*
- *Project fundraising.*²⁵⁵

CAFNEC further stated:

*We work hard to promote our natural environment and ensure that it is protected and cared for by our communities and government for the sake of everyone. So often environmental protection becomes an election issue because it requires governmental policy and it is our work to ensure that these policies are on the agenda of politicians. The proposed donation cap will prevent vital work to protect our environment and raise the democratic voice of communities.*²⁵⁶

GPAP also considered a \$4,000 cap to be insufficient given the difficulty of anticipating which issues may become issues during election times, such that gifts or loans contributed towards advocacy on those issues might be considered political donations. GPAP submitted that making such assessments up to four years in advance would be 'a near impossible task given the rapidly changing nature of politics and the environment', and that ultimately:

*Given the proposed broad definition of "electoral expenditure", GPAP estimates that it will be forced to refuse millions of dollars of donations annually in order to comply with the Bill - donations that would otherwise have gone towards raising awareness, encouraging debate and educating the public on important public policy issues.*²⁵⁷

The Gladstone Conservation Council also described the \$4,000 cap as impractical, submitting that the decision to use donations for influencing voting in an election often only occurs close to elections, presenting practical difficulties for compliance with the proposed cap.²⁵⁸

Given various other aspects of the Bill's reforms, Krystian Seibert considered that the proposed caps would serve to reinforce existing imbalances in political communication, citing an example of the effects of the similar restrictions implemented in Victoria:²⁵⁹

If the Victorian Government proposed to establish a toxic waste dump in regional Victoria, the local community may seek to oppose this proposal on environmental and other grounds, and may form an organised campaigning group for this purpose. They may decide that the best way

²⁵⁴ MGCC, submission 4, pp 1-2; LECNA, submission 10, pp 3-4; QCC, submission 31, p 4; QCA, submission 35, p 3; AMCS, submission 40, p 3; ACF, submission 47, p 3; NPAQ, submission 56, pp 2-3.

²⁵⁵ Submission 16, p 5.

²⁵⁶ Submission 16, p 5.

²⁵⁷ Submission 39, p 4.

²⁵⁸ Submission 2, p 1.

²⁵⁹ Submission 14, p 3.

to stop the proposal proceeding is to oppose the re-election of the local Member of Parliament, who is a member of the Government, and support candidates who will oppose the proposal.

Running an effective campaign requires resourcing. However, any individual or organisation that would like to donate to the campaigning group will be limited to donating \$4,080 [the current, inflation-indexed cap] over the entire four-year parliamentary term. Some members of the community will likely only be able to donate far less than this amount, and in their case, the limit will not pose a problem. However, there may be other individuals who have a greater capacity to support the campaigning group and/or for whom this is a particularly important cause. But they will be limited by the donation cap.

Compared with third parties, the Government can use taxpayer-funded resources to promote their policy proposal before the election campaign commences and the local Member of Parliament may be able to use their various publicly funded allowances to promote the policy proposal. Political parties also benefit from additional public funding to compensate them for the loss of funding from donations, which they can use to fund their activities, as pointed out above.

No public funding is available for the campaigning group opposing the proposal, and they must rely solely on donations from their supporters.

If the Bill is enacted, this same problematic scenario will also be a prospect in Queensland.²⁶⁰

Mr Seibert submitted that he accordingly has ‘major reservations’ about the imposition of any such limitation on third party donations. If a cap is to be introduced, Mr Seibert suggested that there should be a ‘considerable’ increase in both the donation caps and expenditure limits, ‘at least as they apply to third parties’, so as to not stifle the ability of third parties to undertake campaigns.²⁶¹

The AIP also objected to the proposed donation caps, submitting that while not a problem for political parties with taxpayer election funding, the Bill ‘arbitrarily limits individual and corporate giving to a ludicrously small amount’.²⁶² GPAP, further, considered that registered charities should be exempt from the donation caps, and submitted that in the alternate:

... we request that the donation threshold be raised to a more reasonable level (eg \$10,000 per donor per annum), and that the period over which donations are restricted be shortened so that it begins no later than one year prior to polling day. This is a less desirable outcome for charities and not for profits, but will go some way towards ameliorating the adverse effects of the Bill on these groups.²⁶³

In terms of the calculation of the applicable political donation caps, Professor Orr raised a concern about the proposal for donation caps to be indexed quarterly, stating that this could prove ‘clunky’ in terms of adjustments across the four-year period. Professor Orr submitted:

Why not set a round figure, subject to some modest adjustment (eg a \$500 increase per term)? A round and stable figure for donation caps is desirable, because it is easier for the public – and hence potential donors, as well as smaller parties and candidates – to remember and abide by.²⁶⁴

Further, Pam Spence questioned the application of the proposed cap in relation to associated entities – specifically, the extent to which a donor would be prevented from dividing their contribution between

²⁶⁰ Submission 14, p 3.

²⁶¹ Submission 14, p 6.

²⁶² Submission 50, p 3.

²⁶³ Submission 39, pp 5-6.

²⁶⁴ Submission 3, p 5.

family members or other associates who would then gift the total amount to the same candidate, thereby increasing the total donor funds but not exceeding the cap for each individual donor.²⁶⁵

Stakeholders also called for a range of further amendments to the treatment of political donations, including suggesting:

- political donations from the tobacco industry should be prohibited in Queensland²⁶⁶
- political donations from outside Queensland should be banned (eg limiting donations to ‘natural persons on the electoral roll’),²⁶⁷
- political donations should be restricted for individuals and banned completely for companies and organisations²⁶⁸
- there should be consideration of allowing somewhat larger donation caps for parties registered to compete in their first election (to counter incumbent advantage),²⁶⁹ and
- contributions from candidates should be capped the same way as other contributions or at the most, twice the amount of other individuals, to prevent individually wealthy candidates leveraging their wealth to gain an advantage over other candidates.²⁷⁰

In response to stakeholders’ comments regarding the rationale for the donation cap amounts, DJAG reaffirmed that in formulating the caps, regard was given to donation caps in interstate jurisdictions, as well as comparative international jurisdictions.²⁷¹

DJAG also advised that it would give further consideration to the issues raised by stakeholders regarding the quantum of the proposed cap and its application – including the proposals to exclude small donations from the cap (particularly with reference to limit on the number of third parties to which a person can donate), to exempt registered charities, and/or to otherwise increase the cap and reduce the length of time for which it applies.²⁷²

In response to Pam Spence’s concerns about the potential for associated entities to collude to donate in excess of a cap, DJAG confirmed that such behaviour would be captured under the offence provision in proposed s 307B, which prohibits knowingly participating in a scheme to circumvent a political donation cap.²⁷³

Stakeholders’ suggestions for further prohibitions and restrictions on donations were also noted by the department.²⁷⁴

Definition of a political donation

Beyond the implications of the broad definition of electoral expenditure for the treatment of political donations under the Bill, a number of stakeholders also expressed concerns that the proposed definition of a political donation unfairly discriminates between revenue streams, and as a result, would have a negative and disproportionate effect on community groups, non-for-profits and charities

²⁶⁵ Submission 18, p 1.

²⁶⁶ Cancer Council Queensland, Heart Foundation and Australian Council on Smoking and Health, submission 65, p 1; Lung Foundation Australia, submission 66, p 1.

²⁶⁷ Neil Cotter, submission 36, pp 9-10.

²⁶⁸ Simon Ball, submission 5, p 1.

²⁶⁹ Neil Cotter, submission 36, p 6.

²⁷⁰ Neil Cotter, submission 36, p 7.

²⁷¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 25.

²⁷² DJAG and DLGRMA, correspondence, 17 January 2020, pp 21-25.

²⁷³ DJAG and DLGRMA, correspondence, 17 January 2020, p 21.

²⁷⁴ DJAG and DLGRMA, correspondence, 17 January 2020, pp 22-24.

who rely on donations as their main source of income.²⁷⁵ Specifically, it was noted that the revised definition of ‘gifts’ to which a political donation refers does not include party membership subscriptions or affiliation fees.²⁷⁶ This means, the EDO submitted, that while not-for-profit organisations that rely primarily on donations will be constrained in their ability to finance their electoral participation; in contrast, industry associations and unions will be free to rely on membership fees and will be limited only by the \$1 million expenditure cap (with that constraint applying only within the 12-month capped expenditure period).²⁷⁷ The CPI noted that income received by wealthy individuals or corporations through private business activity, similarly, would not be captured under the donation caps.²⁷⁸ In sum, in contrast to largely donor-funded not-for-profits:

... large third parties potentially attempting to influence elections such as the Resources Council, Property Council, Crown Casino or wealthy individuals such as Clive Palmer will not be restricted in how they raise money for electoral expenditure...²⁷⁹

Gecko also observed that ‘there are no prohibitions on companies coordinating their election campaigns’.²⁸⁰

Beyond this being identified as having the ‘perverse effect’ of providing a relative advantage to the typically better-resourced organisations advocating on behalf of the for-profit sector,²⁸¹ it was noted that this exception may provide a loophole that could be exploited through the establishment of new ‘organisational memberships’ or higher-level annual membership rates.²⁸² Professor Graeme Orr highlighted that the ongoing prohibition on contributions from property developers under the Electoral Act is subject to an exemption of fees for a person’s membership or affiliation with a political party up to a ceiling of \$1,000; but that no such limit has been imposed in respect of such fees for other entities other than political parties. Professor Orr submitted:

I realise that such fees cannot be paid into the State campaign period account. But they can still buy influence or access with a party and its leadership, and can be used to pay for campaigning outside the capped year before a State election. If this avenue – inflated party subscriptions – is exploited, this will increase cynicism, and undermine the integrity aim of the Bill.²⁸³

GetUp!, while complimentary of the inclusion of corporate sponsorship arrangements under the political donation cap to capture such contributions, recommended that the exemption for membership fees to third parties be capped at \$4,000 per individual organisation.²⁸⁴ GetUp! submitted:

If this loophole isn’t closed, corporate donors will simply bypass the donation requirements and pay substantial sums of money to become members of third parties in lieu of donating.²⁸⁵

²⁷⁵ See, for example: Krystian Seibert, submission 14, p 3; QHRC, submission 17, p 13; GPAP, submission 39, p 4; Gecko, submission 37, p 3; ACF, submission 47, p 6; HRLC, submission 53, p 4; Solar Citizens, submission 54, p 1.

²⁷⁶ EDO, submission 18, p 7; GetUp!, submission 30, p 3; QCC, submission 31, p 5.

²⁷⁷ Submission 18, p 7.

²⁷⁸ Submission 48, p 1.

²⁷⁹ CPI, submission 48, p 1.

²⁸⁰ Submission 37, p 3.

²⁸¹ EDO, submission 18, p 8.

²⁸² Professor Graeme Orr, submission 3, p 4; GetUp!, submission 30, p 3.

²⁸³ Submission 3, p 3.

²⁸⁴ Submission 30, p 1.

²⁸⁵ Submission 30, p 3.

DJAG noted stakeholders' comments regarding the exemption of membership fees from the definition of a political donation, including suggestions for the exemption to be capped.²⁸⁶

Disclosure and compliance

Some stakeholders argued that the potentially disproportionate impacts of the proposed scheme and its definitions on not-for-profit entities would be magnified by the disclosure requirements and broader compliance burden associated with caps, which will weigh more heavily on the primarily donor-funded organisations.²⁸⁷ In addition to escaping being captured by the donation caps, other revenue streams, it was emphasised, would not have to be disclosed.²⁸⁸ In relation to the requirements for donor statements particularly, the QCA submitted:

*... it will impact civil society organisations that depend on donations for their general running, making donors less likely to contribute due to having to sign a declaration if any part of their donation may be used for electoral expenditure. This will have the impact of further reducing the ability of civil society to engage and connect community members.*²⁸⁹

Further, if donor funds have been contributed for a general purpose, in order for a third party organisation to then transfer those funds into the State campaign account to be used for electoral expenditure, they would have to retrospectively get a donor statement within 14 days. The QLS raised questions about how this would be managed in practice.²⁹⁰

The Logan East Community Neighbourhood Association Inc (LECNA) further submitted:

We envisage that if implemented these provisions of the Bill will place a significant extra administrative burden upon LECNA and those who donate to us. We fear that in some cases it would discourage organisations and individuals from supporting our work in the community.

*We hold grave concerns that the effect of the proposed donation caps and the onerous nature of the new reporting obligations are such that small organisations working on local issues and charities doing advocacy in Queensland will not be able to comply.*²⁹¹

Gladstone Conservation Council also considered the new requirements for handling donations to be used for electoral expenditure complex and 'a significant barrier to advocacy', particularly for a small group.²⁹²

The ACF also raised an issue regarding potential tax implications for the donor's statement, noting that the current wording in the Bill which requires a statement that the donor intends for the funds to be used for electoral expenditure. The ACF stated that this may mean that the organisation in question would not be able to issue a deductible cash receipt due to a tax ruling that makes it clear that if a donor states an intention as to what their money is to be spend on it is not regarded as a gift.²⁹³ The ACF suggested that the issue 'could be quite easily addressed by a donor statement basically saying

²⁸⁶ DJAG, correspondence, 17 January 2020, pp 21-23.

²⁸⁷ See, for example: QCC, submission 31, pp 4-5; Gecko, submission 37, p 3; ACF, submission 47, pp 6-7; CPI, submission 48, p 1; Solar Citizens, submission 54, p 4.

²⁸⁸ See, for example: QCC, submission 31, pp 4-5; Gecko, submission 47, p 3; ACF, submission 47, p 6; CPI, submission 48, p 1; Solar Citizens, submission 54, p 4.

²⁸⁹ Submission 35, p 3.

²⁹⁰ Submission 59, p 6.

²⁹¹ Submission 10, p 3.

²⁹² Submission 2, p 1.

²⁹³ Tina Padeloglou, General Counsel, ACF, public hearing transcript, Brisbane, 20 January 2020, pp 25-26.

that the individual is happy for the money to be used in that way but it is really at the organisation's discretion'.²⁹⁴

Lastly, Pat Coleman raised a concern that the Bill's provision for a person to return a donation within six weeks without attracting an offence, could effectively serve as a form of loan close to the election, with amounts paid back five weeks later.²⁹⁵

In its response to submissions, DJAG undertook to give further consideration to the issues raised by stakeholders in respect of donor statements and the disclosure requirements for donations.²⁹⁶

In response to Mr Coleman's comments, DJAG noted that in the event that a donation is made to an election participant, used to incur electoral expenditure, and then an equivalent amount is returned to the donor, any shortfall in the State campaign account would need to be made up using one of the permitted types of payments for State campaign accounts.²⁹⁷ In any case, DJAG further noted that loans are permitted to be paid into a State campaign account (unless an unlawful loan), and must be repaid for the person's State campaign account under s 217.²⁹⁸

Committee comment

The committee notes stakeholder suggestions that small donations be excluded from the operation of the donation cap scheme, much along the lines of the exemption provided for such amounts under the donation cap scheme in Victoria.

The committee recognises the low corruption risk associated with such amounts, and the availability of the proposed offence for participating in a scheme to circumvent the donation caps.

There may also be scope to support a more equal treatment of the income streams of different electoral participants under the proposed donation cap scheme, recognising that largely donor-funded organisations may be disproportionately affected, while participants with other revenue sources, including those with profitable enterprises, investment revenue and access to personal funds, and political parties with subscription and affiliation fees or levies, would not see their income similarly constrained in financing any electoral expenditure under the Bill.

2.5 State campaign accounts

The Bill introduces a requirement for political parties, candidates, and third parties who are registered or who are required to be registered, to keep an account with a financial institution that is the participant's dedicated campaign finance account ('State campaign account').²⁹⁹ The Bill specifies that a third party is required to be registered for an election if the election expenditure that is incurred by, or with the authority of the third party during the capped expenditure period for the election, exceeds \$1,000 (see also chapter 2.8.1 regarding third party registration requirements).³⁰⁰

Under the proposed amendments, which mirror similar campaign account requirements in NSW, South Australia and Victoria,³⁰¹ the agent for each of these relevant participants would be required to give

²⁹⁴ Tina Pandeloglou, ACF, public hearing transcript, Brisbane, 20 January 2020, pp 25-26.

²⁹⁵ Submission 29, p 9.

²⁹⁶ DJAG and DLGRMA, correspondence, 17 January 2020, pp 21-27, 33-34.

²⁹⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 22.

²⁹⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 23.

²⁹⁹ Bill, cl 17, s 215. See also cl 17, s 214 for the participants in an election to which the State campaign account provisions apply.

³⁰⁰ Bill, cl 43, s 297.

³⁰¹ Damon Muller, *Election funding and disclosure in Australian states and territories: a quick guide*, Parliamentary Research Paper, Parliamentary Library, Parliament of Australia, 28 November 2018, Appendix A.

the ECQ details about the participant's State campaign account within five days of the participant becoming a participant in the election.³⁰² All political donations would be required to be paid into the State campaign account and all electoral expenditure would be required to be paid out of the account or reimbursed from the account.³⁰³ Other amounts, including general donations or expenditure for administrative or other purposes, or gifts or loans that are not accompanied by a donor statement, are not permitted to be paid into the State campaign account and therefore cannot be used for electoral expenditure on State elections.³⁰⁴

Specifically, under the proposed amendments, the only payments that would be permitted to be paid into the State campaign accounts of a candidate or registered political party are amounts other than those received in contravention of the donation cap scheme or other electoral funding laws,³⁰⁵ and which include:

- public election funding from the ECQ, excluding policy development payments
- a political donation of money made to the participant³⁰⁶
- an amount received for the disposal of a political donation of property
- if the participant is a candidate, an amount contributed by the candidate from the candidate's own funds (ensuring that candidates are able to finance campaigning from their personal funds)
- the amount of a loan to a participant
- an amount that is a return on an investment, or an amount redeemed for an investment made by the participant if the amount invested was paid from the account
- an amount received by the participant as a disposition of money by will, or for the disposal of other property received by the recipient as a disposition by will³⁰⁷
- a fundraising contribution of less than \$200, or the first \$200 of a fundraising contribution³⁰⁸
- if the participant is a registered political party, an amount of
 - an amount of \$500 or less, in total, paid by a person during a calendar year for the person's subscription for membership or affiliation with the party for the year (other than an amount paid under a sponsorship agreement), or
 - an amount paid to the party as a compulsory levy imposed on elected Members under the party's constitution, and
- if the participant kept a State campaign account for another election and the amounts paid into that account were compliant with the provisions, an amount paid from the other State

³⁰² Bill, cl 221B. If a required details of an election participant's State campaign account changes, the agent of the participant would also be required to give the ECQ a notice about the change within five business days after the change happens, unless the agent has a reasonable excuse.

³⁰³ Ms Melinda Tubolec, DJAG, public briefing transcript, Brisbane, 16 December 2019, pp 8-9.

³⁰⁴ DJAG and DLGRMA, correspondence, 12 December 2019, p 9.

³⁰⁵ Eg including prohibitions on unlawful gifts of foreign property and anonymous gifts, unlawful loans and political donations from property developers.

³⁰⁶ Noting a donation must be accompanied by a donor statement to be considered a 'political donation' and compliant with the scheme.

³⁰⁷ Noting that the disposition of property under a will is not considered a gift for electoral funding or disclosure purposes and therefore would not be a political donation. See: Bill, cl 12, s 201.

³⁰⁸ Noting amounts above this, or the amounts of a fundraising contribution exceeding \$200 would be considered 'political donations', which would be permitted to be paid into the State campaign account providing they were accompanied by a donor statement.

campaign account (to allow amounts raised by an election participant to be used for future elections).³⁰⁹

For a registered third party, similarly, a person would not be permitted to pay an amount that is a gift or loan of money into the third party’s State campaign account unless the gift or loan is a political donation with an accompanying donor statement made and received in compliance with the donation cap scheme and other electoral funding laws.³¹⁰

Further, the Bill also specifies that:

- amounts payable under a loan that was paid into a State campaign account by a registered political party or a candidate must be repaid from the State campaign account (ensuring that loans cannot be paid into the State campaign account and used for electoral expenditure, and then be repaid from donations in excess of the donation caps)³¹¹
- repayments of amounts received as a return on an investment that was paid for from the State campaign account must be repaid into the State campaign account (allowing the investment of amounts from the State campaign account), and
- the proceeds of the disposal of a political donation of property, other than money, must be paid into a State campaign account (with accompanying record keeping requirements).

The Bill provides for a reimbursement or reconciliation period of five business day during which an election participant can remove any payments that are not permitted payments from the State account, or reimburse any electoral expenditure (including loans), or otherwise deduct amounts used for election expenditure from the account. DJAG advised that this will cover situations where, for example, the expenditure:

... is paid originally off cash or some other facility—just to centralise it back to one point for compliance and monitoring purposes.

CHAIR: *So any other expenditure can be paid back to the person who incurred that expenditure, but they have to do that within five days?*

Ms Tubolec: *Five business days reimbursement. That is right.*³¹²

The State campaign accounts would be required to be held until the conclusion of any obligation relating to a political donation during a capped period, electoral expenditure incurred by the participant, the repayment of a loan paid into the account, or the disposal of any political donation of property (other than money) made during a capped period for an election.³¹³

The Bill establishes a number of offences for contravening different requirements for State campaign accounts, as outlined in the following table:

Offence provision	Maximum Penalty
Requiring an agent of an election to notify details of, and changes of details for, State campaign accounts (five business days for compliance, offence applies unless the agent has a reasonable excuse) ³¹⁴	20 penalty units (\$2,699)

³⁰⁹ DJAG and DLGRMA, correspondence, 12 December 2019, pp 8-9; Bill, cl 17, s 216(1).

³¹⁰ Bill, cl 17, s 216(2).

³¹¹ Bill, cl 17, s 217.

³¹² Ms Melinda Tubolec, DJAG, public briefing transcript, Brisbane, 16 December 2019, pp 8-9.

³¹³ Bill, cl 17, s 215(2).

³¹⁴ Bill, cl 17, s 221B(2) and (3).

Requiring election participants to keep a separate account that is their dedicated State campaign account ³¹⁵	200 penalty units (\$26,690)
Requiring persons only to pay certain amounts (eg permitted payments) into a State campaign account ³¹⁶ (five business days for compliance)	200 penalty units (\$26,690)
Requiring that for a loan paid into the participant's State campaign account, a person must pay any amount payable under the loan from the participant's State campaign account ³¹⁷ (five business days for compliance, offence applies unless the person has a reasonable excuse ³¹⁸)	200 penalty units (\$26,690)
Requiring an election participant or person acting with their authority to ensure that non-donation loan amounts are withdrawn from the participant's State campaign account ³¹⁹ (offence applies unless the person has a reasonable excuse ³²⁰)	200 penalty units (\$26,690)
Requiring persons to ensure that returns on investments and redeemed investments in certain circumstances are paid into the State campaign account ³²¹ (five business days for compliance, offence applies unless the person reinvests the amount or has a reasonable excuse ³²²)	200 penalty units (\$26,690)
Requiring a person who receives a donor statement to ensure that the donation is paid into a State campaign account ³²³ (five business days for compliance, offence applies unless the person has a reasonable excuse ³²⁴)	200 penalty units (\$26,690)
Requiring a person to ensure that amounts received for the disposal of certain property other than money are paid into the State campaign account ³²⁵ (five business days for compliance, offence applies unless the person has a reasonable excuse ³²⁶)	200 penalty units (\$26,690)
Requiring a person who knows or ought reasonably to know an amount to be paid is for electoral expenditure, to ensure the electoral expenditure is paid from the participant's State campaign account ³²⁷ (offence applies unless the amount is reimbursed from the participant's State campaign account within six months after the amounts was paid ³²⁸)	200 penalty units (\$26,690)

DJAG advised that the State campaign account requirements are 'directed at supporting the integrity of, and compliance with, the donation and expenditure caps'.³²⁹

³¹⁵ Bill, cl 17, s 215(1).

³¹⁶ Bill, cl 17, s 206(1), and for registered third parties, s 206(2).

³¹⁷ Bill, cl 17, s 217(2).

³¹⁸ Bill, cl 17, s 217(4)

³¹⁹ Bill, cl 17, s 217(3).

³²⁰ Bill, cl 17, s 217(4).

³²¹ Bill, cl 17, s 218(2).

³²² Bill, cl 17, s 218(3).

³²³ Bill, cl 17, s 219(2).

³²⁴ Bill, cl 17, s 219(3).

³²⁵ Bill, cl 17, s 221.

³²⁶ Bill, cl 17, s 221(3).

³²⁷ Bill, cl 17, s 221A(1).

³²⁸ Bill, cl 17, s 221A.

³²⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 8.

The proposed provisions would apply on commencement, including to participants in a 2020 election, with the agents of all such participants being required to notify the ECQ of State campaign account details within 14 days after commencement.³³⁰ Various transitional arrangements will apply to enable amounts, property and investment accumulated before commencement which were not subject to the donation caps, to continue to be able to be paid into State campaign accounts until the caps come into operation, and also:

*... allow for flexibility in timing around receiving the proceeds of disposal of property and receiving returns on investments without precluding payment into State campaign accounts.*³³¹

2.5.1 Stakeholder views

A number of stakeholders expressed concerns about the proposal to require political parties, candidates and third parties who are registered, or who are required to be registered, to keep a dedicated State campaign account. Many stakeholder groups identified the proposed State campaign account requirements as being one of a number of additional administrative and disclosure requirements associated with the electoral funding, expenditure and disclosure reforms, which would increase costs and prove burdensome for many smaller organisations and community groups.³³² To some extent, the concerns expressed by these stakeholders appeared to relate largely to the administrative burden of identifying and tracking which donations are made for a political purpose for compliance with the scheme, more so than the requirement to have a dedicated account in itself. However, it was also emphasised that the process of filtering out those relevant amounts and transferring them to the State campaign account could impose a considerable resource burden for organisations that do not have such filtering systems in place. A discussion with representatives from the ACF at the committee's hearing provides an illustrative example in this regard:

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.*

³³⁰ Bill, cl 512, s 440(1) and (2).

³³¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 10.

³³² See, for example: AMCS, submission 40, p 3; BCCG, submission 49, p 4; Birdlife Australia, submission 43, p 3; Gecko, submission 37, p 2.

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.*³³³

Some submitters also considered the requirement for a separate account to be unnecessary from a transparency perspective. Bayside Creeks Catchment Group (BCCG) submitted, for example:

*... we already have our own BCCG bank account, thus making the additional 'State campaign account' entirely unnecessary. Given our donation income each year is less than \$500, the proposed requirement that this account be set up for spends of any account is a heavy burden and virtually unworkable. Our full income and expenditure is already made available to the government and the public via our ACNC annual returns. We have only a core volunteer team of three individuals who undertake all the administration work for the organisation, and thus this Bill will simply add to their volunteer workload for no demonstrable gain in transparency.*³³⁴

GetUp! also considered that 'all the aims of the legislation can be achieved without the requirement for separate bank accounts', arguing the proposed amendments in this respect are 'illogical', and make compliance 'impractical and ridiculously onerous'.³³⁵ At the committee's public hearing, representatives from GetUp! explained their position as follows:

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 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 ... 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.*³³⁶

Neil Cotter suggested an alternative regulatory approach to the financial management of political donations and expenditure, suggesting that instead of requiring election participants to have separate State campaign accounts, it would be preferable for the financial transactions of political parties for elections be conducted via some kind of trust controlled by the ECQ to facilitate accountability.³³⁷ Mr Cotter suggested this should also allow the ECQ to withhold access to funds that have been donated

³³³ Public hearing transcript, Brisbane, 20 January 2020, p 25.

³³⁴ Submission 49, p 4.

³³⁵ Submission 30, p 2.

³³⁶ Public hearing transcript, Brisbane, 20 January 2020, p 31.

³³⁷ Submission 36, p 18.

until they are verified to be in compliance with the legislation, and similarly to block expenditure beyond the expenditure cap.³³⁸

Other submitters commented more broadly on the operation and monitoring of State campaign accounts. Dr John Martin of the QCU cited an observation in the HRLC's submission that the Bill appears to enable a candidate to pay into their own account, but to make no such allowance for third parties. Dr Martin queried whether the express reference to a candidate in the section concerned would exclude other people being able to pay into their own account.³³⁹ The HRLC submitted that the effect of this, taken together with the other limitations on State campaign accounts, could serve to entrench the disadvantage the overall scheme reforms present to donor-funded organisations, noting that:

*In practice, these provisions mean organisations that rely only on donations must only use political donations to incur electoral expenditure. There is no equivalent restriction on the use of other forms of income (other than loans) by third parties.*³⁴⁰

The CPI, in its submission, identified concerns about a possible 'loophole' created by the Bill's provision for an exemption from an offence of paying electoral expenditure other than out of a State campaign account, where the amount is reimbursed from the participant's State campaign account within six weeks after the amount is paid.³⁴¹ The CPI identified that this could lead to a situation in which 'the four-week election campaign could be funded out of a separate account, including a third party account, and not be paid back until after the election'.³⁴²

Additionally, the CPI further suggested the Bill be amended to require the State campaign account to be independently audited:

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.*³⁴³

The QLS queried whether, if a general donation is made that is not specifically identified as a political donation, those funds would be available for a not-for-profit to use in advocacy without enlivening the obligation to set up a dedicated State campaign account and require a donor statement. The QLS considered that in such a scenario it would be unclear how this should be managed by the third party.³⁴⁴

³³⁸ Submission 36, p 18.

³³⁹ Dr John Martin, QCU, Public hearing transcript, Brisbane, 20 January 2020, p 27.

³⁴⁰ Submission 52, p 2.

³⁴¹ Submission 48, p 3.

³⁴² Submission 48, p 3.

³⁴³ Public hearing transcript, Brisbane, 20 January 2020, p 6.

³⁴⁴ Submission 59, p 6.

Ross Spence questioned information provided by DJAG in its departmental briefing paper to the committee on the Bill, which stated:

*Gifts made to election participants without a donor statement will not be subject to the donations cap. Accordingly, gifts to registered political parties for federal campaign purposes or for general party administration purposes will not be capped but cannot be paid into the State campaign account to spend on electoral expenditure.*³⁴⁵

Mr Spence's query, in response to this information, was:

*Won't this simply allow a federal political party to allocate money towards a State campaign, knowing that prearranged donations for general party administration purposes will fill the void? It seems that a generous donor will still be able to bankroll a state campaign.*³⁴⁶

Department's response

DJAG noted submitters' concerns about the burden of complying with the requirements for State campaign accounts,³⁴⁷ and advised that it would give further consideration to these matters within the scope of broader feedback that the overall scheme requirements may place a disproportionate burden on small organisations.³⁴⁸

DJAG also acknowledged Neil Cotter's suggestion that political parties' financial transactions for elections be conducted via a trust,³⁴⁹ and undertook to give further consideration to the CPI's comments in relation to auditing of State campaign accounts.³⁵⁰

In response to the CPI's concerns about a possible 'loophole' associated with enabling campaign expenditure to be paid out of a separate account, provided it is reimbursed by the State campaign account within six weeks, DJAG advised:

*DJAG notes that in the event electoral expenditure is paid from another source and then reimbursed from the State campaign account within 6 weeks, the amount used for reimbursement will need to be met from the State campaign account, and therefore be limited to those types of amounts permitted to be paid into the account under section 216.*³⁵¹

DJAG addressed the QLS' concerns about a lack of clarity as to whether donations made for a general purpose would be able to be used by a not-for-profit for advocacy without enlivening the requirement to establish a State campaign account as follows:

DJAG notes that section 216(2) provides that, for a registered third party, a gift or loan of money cannot be paid into the State campaign account unless it is a 'political donation', which includes a requirement that it is accompanied by donor statement under section 250.

*In addition, under section 221A, if a registered third party's advocacy activity is 'electoral expenditure' under section 199, it will be required to be paid for from the State campaign account in accordance with section 221A. General donations that do not have a donor statement cannot be used for that purpose, and therefore, a donor statement would need to be obtained from the donor within 14 days after the gift is made for it to be used for electoral expenditure.*³⁵²

³⁴⁵ DJAG and DLGRMA, correspondence, 12 December 2019, p 3.

³⁴⁶ Submission 20, p 1.

³⁴⁷ DJAG and DLGRMA, correspondence, 17 January 2020, pp 32-34.

³⁴⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 3.

³⁴⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 32.

³⁵⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 33.

³⁵¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 33.

³⁵² DJAG and DLGRMA, correspondence, 17 January 2020, pp 33-34.

Lastly, in response to concerns about the scope for the transitioning of funds from federal parties or interstate branches to bankroll a State campaign, DJAG noted that under proposed new s 201(2)(b) of the Electoral Act, an amount paid to a registered political party by a federal or interstate branch or division or a related political party (defined in amended s 5 of the Electoral Act) would be a 'gift' and therefore a political donation and subject to the donation cap where it is accompanied by a donor statement. DJAG considered that this limits the amount that can be provided by such branches, divisions or related parties for the purposes of electoral expenditure (but not for other purposes).³⁵³

Committee comment

The committee acknowledges both the concerns of stakeholders regarding the additional administrative burden associated with the proposed State campaign account requirements, and DJAG's explanation that the requirements will support the integrity of and compliance with the donations and expenditure caps, consistent with equivalent requirements established in NSW, South Australia and Victoria.

The committee wishes to reiterate the importance of providing appropriate and timely guidance to support the implementation of these provisions, particularly given the Bill would require all registered parties and candidates to establish a State campaign account and notify the account details to the ECQ within 14 days of commencement.

This guidance should include clear information for electoral participants and their agents regarding the amounts that can be paid into and out of accounts, including information on the management of finances for electoral participants engaging in coordinated or joint campaigning activities.

2.6 Public election funding

Candidates and registered political parties currently qualify to claim election funding from the ECQ when they receive six per cent of the formal first preference vote (or for a registered party, in relation to each endorsed candidate who receives at least six per cent of formal first preference votes).³⁵⁴

The Electoral Act provides for these election participants to claim a maximum amount of election funding that is the total of:

- for registered political parties, \$3.14 for each formal first preference vote received by an eligible endorsed candidate, and
- for candidates, \$1.57 for each formal first preference vote received.³⁵⁵

These election funding entitlements are adjusted at the start of each financial year according to the consumer price index for the March quarter preceding it.³⁵⁶

The Bill proposes to:

- decrease the eligibility threshold for claiming election funding from six per cent to four per cent of formal first preference votes received,³⁵⁷ and

³⁵³ DJAG and DLGRMA, correspondence, 17 January 2020, p 22.

³⁵⁴ Electoral Act, ss 223-224.

³⁵⁵ Section 225 of the Electoral Act provides that the relevant election funding amount for each formal first preference vote received is \$2.90 for eligible registered political parties and \$1.45 for eligible candidates for the year ending 30 June 2014, with these amounts required to be adjusted for inflation on 1 July each year. The current applicable election funding amounts, adjusted for inflation, are \$3.14 and \$1.57 respectively for parties and candidates. See: ECQ, *Funding and Disclosure Handbook*, State of Queensland, September 2018, p 3; ECQ, submission 41, p 1.

³⁵⁶ Electoral Act, s 225.

³⁵⁷ Bill, cl 19, s 223 and cl 20, s 224. The decrease in the eligibility threshold would be affected on a day to be fixed by proclamation. See: Bill, cl 2.

- increase election funding entitlements from \$3.14 to \$6.00 per formal first preference vote for registered political parties, and from \$1.57 to \$3.00 per formal first preference vote for candidates, for the financial year starting 1 July 2020.³⁵⁸

DJAG advised that these measures will serve to complement donation caps by reducing ‘the need for political donations as a funding source for eligible recipients’.³⁵⁹

Accompanying these changes, the Bill will also lower the vote threshold for the ECQ to return a candidate’s nomination deposit – an amount remitted separately from any election funding – from six per cent to four per cent of formal first preference votes polled in the election for the relevant electoral district.³⁶⁰

The increase in election funding entitlements is expected to result in an additional cost:

*... in the order of \$10 million, noting that this figure has been calculated based on the 2017 State general election, does factor in the drop in the eligibility threshold but does not factor in other variables such as voter turnout, rate of informal voting and the actual expenditure of qualifying parties and candidates to which the election funding entitlement is limited.*³⁶¹

2.6.1 Stakeholder views

The submission of Redlands2030 supported the proposed changes to public election funding arrangements.³⁶² Other stakeholders provided qualified support to the provisions, as detailed below.

The QHRC expressed concern regarding the impact of the proposed provisions on third parties, particularly when considered in concert with the other amendments in the Bill.³⁶³ The QHRC submitted:

*While the increase in public funding to reduce reliance on private influence is welcome, this change exacerbates the disproportionate impact on third parties who will not receive such funding, particularly smaller non-government organisations and charities who rely on gifts and donations.*³⁶⁴

The QHRC submitted that this overall effect on smaller organisations and charities should be further considered.³⁶⁵

The AIP submitted that the Bill would shift responsibility from political parties to the public purse for direct funding.³⁶⁶ The AIP suggested that the proposed amendments would ensure that candidates in both safe and unwinnable seats will essentially have their campaigns funded for them, whether the public think they are worth supporting financially or not. The AIP stated: ‘This is bad for the political parties, and also for the taxpayer who is forced to subsidise not only successful politicians, but unsuccessful ones as well’.³⁶⁷

Professor Graeme Orr supported the proposed lowering of the threshold of votes required to receive payment of public funding, and the proposal for independent Members of Parliament to receive policy development payments. However, Professor Orr described the proposal to provide independent

³⁵⁸ Explanatory notes, p 9. See also Bill, cl 19, s 223; cl 20, s 224; and cl 21, s 225.

³⁵⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 10.

³⁶⁰ Bill, cl 5, s 89.

³⁶¹ Explanatory notes, p 9.

³⁶² Submission 34, p 1.

³⁶³ Submission 17, p 14.

³⁶⁴ Submission 17, pp 13-14.

³⁶⁵ Submission 17, p 14.

³⁶⁶ Submission 50, p 3.

³⁶⁷ Submission 50, p 4.

candidates with funding at half the rate as provided to political parties in relation to each registered candidate as ‘perverse’,³⁶⁸ submitting that:

Independents lack economies of scale, party office expertise and the wash of a party’s statewide campaign...

... This is not just a matter of perceived unfairness. The High Court will look at the lower spending caps for independent candidates, together with the lower public funding. It will not conclude ‘well, independents need less money’. But ask ‘what is the rationale for discriminating against independents on two fronts?’³⁶⁹

Neil Cotter supported the increase to public election funding, and suggested that the threshold for public election funding be significantly lower than the proposed four per cent of formal first preference votes. Mr Cotter also recommended the use of a formula with the same threshold as public election funding, based solely on a vote ratio, and that the base amount be included in legislation rather than regulations.³⁷⁰

Simon Ball supported the proposed amendments but emphasised the need to provide funding to individual candidates fairly. He stated:

... we should increase the allowance of public funding for individuals seeking election. By basing this on the number of votes we increase the power of major political parties and a fairer way should be established so that individuals can access funds when registered as a candidate for election.³⁷¹

2.6.2 Department’s response

DJAG noted stakeholders’ comments on the proposed changes to election funding.³⁷²

In reference to the QHRC’s comments on overall impact of election funding and policy development funding on third parties, DJAG advised that it will give further consideration to the issues raised.³⁷³

2.7 Policy development payments

Under the Electoral Act, registered political parties are currently eligible to receive a policy development payment (PDP) if:

- the party was registered at the last general State election (and continues to be registered at the time at which payments are determined)
- its endorsed candidates received at least six per cent of the formal first preference vote, and
- the party has at least one elected Member who is endorsed by the party for the duration of the financial year.³⁷⁴

³⁶⁸ Submission 3, p 5.

³⁶⁹ Submission 3, p 5.

³⁷⁰ Submission 36, pp 20, 21.

³⁷¹ Submission 5, p 1.

³⁷² DJAG and DLGRMA, correspondence, 17 January 2020, pp 26-38.

³⁷³ DJAG and DLGRMA, correspondence, 17 January 2020, p 39.

³⁷⁴ Electoral Commission of Queensland, *Funding and Disclosure Handbook for State Elections and By-Elections*, State of Queensland, September 2018, p 6. See also Electoral Act, s 239.

PDPs were introduced in 2013 with the aim of helping to ‘ensure parties can continue to engage fully in developing and shaping policy while continuing to effectively represent the community’.³⁷⁵

The prescribed PDP amount, which is set by regulation, is currently fixed at \$3 million per financial year.³⁷⁶ This pool of funding is distributed to the eligible registered political parties in proportion to the formal first preference vote received by their relevant candidates at the last general election.³⁷⁷ The eligibility and entitlement of parties to a PDP for the financial year is determined three weeks after the end of the financial year and paid in two equal instalments on or before 31 July and 31 January.³⁷⁸

The Bill proposes to instead provide for provide for PDP entitlements to be calculated on a six-monthly basis, with payments to be distributed within one month after the end of the six-month period (as opposed to being distributed as two instalments of a single, annually-calculated amount).³⁷⁹ DJAG advised that this is intended to ‘ensure that policy development payments are calculated based on the results of the most recent general election occurring before the payment date’.³⁸⁰

The amendments would also have the effect of increasing the PDP funding pool from \$3 million to \$6 million per year from January 2021, since the period of entitlement would be halved, without any proposed change to the size of the pool of funds prescribed in regulation for the entitlement period.³⁸¹

Additionally, the Bill proposes to:

- extend eligibility for PDPs to independent Members who are elected at a general election,³⁸² and
- change the formula for the distribution of PDPs.

While the current formula for the distribution of PDPs is based on the number of formal first preference votes received by a registered party’s endorsed candidates as a proportion of all votes received by candidates endorsed by any political party (vote ratio),³⁸³ the Bill proposes a formula based on a combined vote and seat ratio.³⁸⁴

The proposed new formula is: $A \times \frac{B}{C}$

where:

- **A** means the amount prescribed under a regulation for the definition (\$3 million),
- **B** means, for the relevant six-month period, the sum of the vote ratio for the party or independent Member and the seat ratio for the party or independent Member (the combined vote and seat ratio), and

³⁷⁵ Hon JP Bleijie MP, Attorney-General and Minister for Justice, *Record of Proceedings*, Queensland Parliament, 21 November 2013, p 4221. The relevant amendments, which were introduced by *Electoral Reform Amendment Act 2014*, commenced on 21 November 2013, with the first payments being made in January 2014.

³⁷⁶ Electoral Regulation 2013, s 8.

³⁷⁷ Electoral Act, s 240.

³⁷⁸ Electoral Act, s 241.

³⁷⁹ Bill, cl 22, s 244.

³⁸⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 10.

³⁸¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 11.

³⁸² Bill, cl 22, s 240.

³⁸³ Electoral Act, s 240.

³⁸⁴ Bill, cl 22, ss 241-243.

- **C** means, for the relevant six-month period, the sum of the combined vote and seat ratios for each eligible registered political party and independent Member (or the total sum of all B values for each registered political party and independent Member in the last election).

The vote ratio is defined as:

- for a political party, the total number of relevant first preference votes (votes received by a candidate who received at least four per cent of the total number of first preference votes) that were received by a candidate endorsed by the party in the most recent general election occurring during or prior to the end of the six-month period (the last election), divided by the total number of all relevant first preference votes given to all candidates endorsed by all eligible registered political parties and all independent Members in the last election, and
- for an independent Member, the total number of relevant first preference votes received by the independent Member in the last election, divided by the total number of all relevant first preference votes given to all candidates endorsed by all eligible registered political parties and all independent Members in the last election.³⁸⁵

The seat ratio is defined as:

- for a political party, the number of seats won by the party in the last election divided by the total number of seats in the last election (number of seats won divided by 93 Legislative Assembly seats contested), and
- for an independent Member, one divided by 93 (one seat won by the independent Member, divided by 93 contested seats).³⁸⁶

The Bill provides that the current PDP provisions would still apply in relation to the instalment of a PDP that would have been payable to a registered political party on or before 31 January 2020, with the first six-monthly payments under the proposed new requirements to be payable on or before 31 January 2021 (for the six-month period commencing on 1 July 2020).³⁸⁷

2.7.1 Stakeholder views

Stakeholders generally supported the proposal to make PDP funding available to independent Members and to increase the PDP funding pool,³⁸⁸ although Pam Spence stated that she disagreed with the funding increase.³⁸⁹

Neil Cotter submitted that policy development funding provided a valuable contribution to the workings of Queensland's political system:

*The Policy Development Funding seems to operate as administrative funding for political parties which is important for the functioning of political parties as vital institutions in the functioning of a parliamentary democracy. The internal democracy of political parties is fundamental to the functioning of the wider system, not least as a forum for the incubation of new ideas in the political debate.*³⁹⁰

³⁸⁵ Bill, cl 22, s 242.

³⁸⁶ Bill, cl 22, s 243.

³⁸⁷ Bill, cl 52, s 442 and s 443.

³⁸⁸ See, for example: Professor Graeme Orr, submission 3; QHRC, submission 17; Neil Cotter, submission 36; public hearing transcript, Brisbane, 20 January 2020, pp 8, 22.

³⁸⁹ Submission 19, p 1.

³⁹⁰ Submission 36, p 25.

However, Mr Cotter was critical of the proposed amendments that he contended would favour the major political parties. He stated:

The new formula for the Policy Development Funding outlined in s242-243 has clearly been developed to rig the allocation of funding in favour of the ALP and LNP. This is being sought to be accomplished by the introduction of the seat ratio, that is a variable based on the unrepresentative number of parliamentary seats, to skew the vote ratio that is the variable based on how much actual support a political party got from the electorate.

This disproportionately financially rewards the parties that already unfairly benefit from the lack of proportionality inherent in the electoral system, thereby compounding their unfair advantage going forward, propping up the duopoly, as the electoral system rewards them with government with only about a third of the vote.

While the impact of this move towards skewing funding is somewhat covered up by the suggested move to biannual funding, effectively doubling the total funding, the vast majority of the increase in funding would go to the ALP or LNP under the new formula. This can be seen by comparing the percentage of the funding for each party in the status quo PDP with the percentages in the new PDP model.³⁹¹

Professor Graeme Orr further submitted that the term ‘policy development funding’ requires greater clarity under the legislation:

I note the term ‘policy development funding’ remains an empty label. That is, it is not earmarked for particular party activities that are actually policy related, or for that matter party administration, membership development or parliamentary related costs (compare NSW). It is true that policy development funding cannot be paid into a State election campaign account (see proposed s 216). But nothing will stop it being used for either national or local electioneering, or for that matter state political campaigning outside the 1 year capped electioneering period. Is that really intended?³⁹²

2.7.2 Department’s response

DJAG noted the comments of Mr Cotter with respect to PDPs.³⁹³

In response to Professor Orr’s query concerning the definition of policy development funding, and in particular, its application during an election campaign period, DJAG noted that the Bill includes provisions:

- requiring all electoral expenditure to be paid out of the State campaign account, even if it is incurred outside of the capped expenditure period, and
- prohibiting policy development payments from being paid into the State campaign account.³⁹⁴

As a result, ‘policy development payments cannot be used to directly pay for any electoral expenditure, regardless of when it is incurred’.³⁹⁵

2.8 Supporting amendments

To support the operation of the proposed election funding and disclosure reforms, the Bill includes a range of other related amendments, including provisions:

- establishing requirements for the registration of third parties

³⁹¹ Submission 36, p 24.

³⁹² Submission 3, p 5.

³⁹³ DJAG, correspondence, 15 January 2020, p 37.

³⁹⁴ DJAG, correspondence, 15 January 2020, p 36.

³⁹⁵ DJAG, correspondence, 15 January 2020, p 36.

- clarifying the accountabilities of agents, including in relation to third parties, and
- clarifying disclosure requirements and various other record keeping requirements.

2.8.1 Registration of third parties

As referenced in chapter 2.3 of this report, under the proposed amendments, a third party would be required to be registered for an election if electoral expenditure incurred by, or with the authority of the third party during the capped expenditure period for an election, exceeds \$1,000.³⁹⁶

The Bill clarifies that a third party does not commit an offence if the third party is not registered.³⁹⁷ However, while a failure to register is not in and of itself an offence, if the unregistered third party were to incur electoral expenditure in excess of the \$1,000 threshold for registration, this would amount to an offence under the expenditure cap scheme, noting that the Bill sets the maximum amount an unregistered third party can spend on an election as equal to the threshold for registration.

To cover the circumstances in which a third party plans to, but is yet to incur, electoral expenditure, the amendments provide for voluntary third party registration.³⁹⁸

The ECQ would be required to keep a register of the third parties who are registered for the election, and would be required to publish the register of third parties for the election on the ECQ website.³⁹⁹ DJAG advised in respect of the registers' publication:

*The publication of the register by the commission improves transparency of State elections by allowing electors to obtain information about which third parties are incurring electoral expenditure, and who is responsible for communication with electors resulting from that expenditure. Clause 51 inserts new section 388A which provides safeguards to privacy by requiring the street address of an individual, and the address of an individual who is a silent elector, to be deleted prior to publication of a register, including the register of third parties, by the commission.*⁴⁰⁰

2.8.2 Agents for an election

The Bill omits and replaces existing provisions governing agents, to clarify the provisions as they apply agents for registered political parties, and to extend the requirements to registered third parties.⁴⁰¹

Under the proposed amendments, a third party that registers for an election (either because they have incurred, or plan to incur, electoral expenditure of \$1,000 or more) would be required to appoint an agent⁴⁰² and to nominate the agent in their application for registration.⁴⁰³ For unregistered third parties, no such appointment is required, though the Bill also makes provision for the voluntary appointment of an agent in such instances.⁴⁰⁴

As is the case for the agents of other electoral participants, the agent for a registered third party would be required to give the ECQ notice of any change to the third party's registration details within 30 days of the change having occurred, with a maximum penalty of 20 penalty units (\$2,669) applicable in

³⁹⁶ DJAG and DLGRMA, correspondence, 12 December 2019, p 14.

³⁹⁷ Bill, cl 43, s 297(2).

³⁹⁸ Bill, cl 43, s 299.

³⁹⁹ Bill, cl 43, s 298.

⁴⁰⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 15.

⁴⁰¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 14; Bill, cl 17, ss 206-213.

⁴⁰² Bill, cl 17, s 208.

⁴⁰³ Bill, cl 43, s 299.

⁴⁰⁴ Bill, cl 17, s 209.

instances of non-compliance, unless the person has a reasonable excuse.⁴⁰⁵ An agent of a third party may also apply to the ECQ for a third party's registration for an election to be cancelled.⁴⁰⁶

Compliance obligations will apply to the agents of all electoral participants, who would be required under the proposed amendments to take 'all reasonable steps to ensure the participant, and a person the participant authorises to act for the participant':

- is aware of their obligations under the electoral funding, expenditure and financial disclosure provisions of the Electoral Act, and
- complies with and does not contravene the obligations.

An agent's failure to comply with this 'obligation to ensure compliance' would be an offence with a maximum penalty of 200 penalty units (\$26,690).⁴⁰⁷

DJAG advised of the provision:

*This will assist in limiting those circumstances where it was not reasonable for a person acting for an electoral participant to know when offences may arise, and appropriately limit the application of relevant exceptions to those offences.*⁴⁰⁸

In the absence of the agent, or where an agent has not been appointed, the Bill provides that responsibility for compliance with the obligations of the agent for a registered political party or a third party who is not an individual (whether or not the third party is registered), will fall on each member of the executive committee of the entity as if those obligations applied to the executive committee.⁴⁰⁹

2.8.3 Record keeping requirements

The Bill replaces existing record keeping provisions with new provisions to ensure that participants in an election make and keep the records and documents required by the ECQ for compliance and monitoring purposes, and for prosecutions of any offences, with respect to the new electoral funding and disclosure regime. Generally, participants in an election will be required to make and keep records, including accounting records about:

- gifts made or received (whether received by cash, cheque or electronic form), regardless of whether the gift threshold is reached
- gifts of property other than money, regardless of whether the gift threshold is reached
- political donations made or received, including donor statements, payment details, methods of payment, refunds made (including persons to whom refunds are made), regardless of whether the gift threshold is reached
- electoral expenditure incurred, regardless of whether it is incurred during the capped expenditure period
- gifted electoral expenditure – financial records, invoices between election participants to pass on responsibility for the electoral expenditure, correspondence/documents regarding arrangements/consent between persons who share electoral expenditure
- details required to be included in returns
- returns lodged

⁴⁰⁵ Bill, cl 43, s 303.

⁴⁰⁶ Bill, cl 43, s 304.

⁴⁰⁷ Bill, cl 44, s 306B.

⁴⁰⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 16.

⁴⁰⁹ Bill, cl 17, s 213.

- records of all deposits made into the State campaign account, including a breakdown of the composition of the amounts
- accounting records including ledgers, journals and transaction records to record the allocation of and movement of funds
- bank statements, reconciliation reports, cheque stubs, authorisation records for transactions to occur
- delegated authorities of persons to accept political donations
- authorisations to incur electoral expenditure
- movement of invested amounts out of the State campaign account, especially when intermingled with other money
- monies deposited into the State campaign account that are not required to be stated in a return (eg bequests, fundraising contributions, party membership fees/levies)
- election funding claims made and election funding payments received
- policy development funding amounts received and requests for reconsideration of policy development funding amounts
- loan terms and payment details, and
- party membership fees and levies (the ECQ will be able to request copies of these records to substantiate compliance with party membership list requirements, but these documents will not be disclosed publicly).⁴¹⁰

DJAG advised that such records must be kept for a period of five years, to ensure that they are available for any prosecution which may be brought against the electoral funding, expenditure and disclosure provisions (part 11) of the Electoral Act. Most offences in part 11 can be prosecuted within four years of the offence.⁴¹¹

2.8.4 Disclosure requirements

The Bill also makes a number of changes to disclosure requirements under the Electoral Act, to clarify requirements under the donation and expenditure cap schemes.⁴¹²

Importantly, the Electoral Act currently requires the agent of each person who was a candidate in an election to give the commission an electoral expenditure return outlining the details of all electoral expenditure incurred by or with the authority of the candidate, within 15 weeks after the polling day for the election.⁴¹³ The Bill extend this requirement to also apply to registered political parties, registered third parties, and third parties that are required to be registered for an election. A return must include all electoral expenditure incurred for an election, regardless of whether it was incurred during the capped expenditure period.⁴¹⁴

On a day-to-day basis, under the State's existing real-time disclosure requirements provisions, any gifts or loans (including gifted electoral expenditure) of \$1,000 or more will continue to be required to be reported to the ECQ within seven business days of the transaction, by both the candidate or registered political party receiving them, and by the entity making them. This applies regardless of whether the electoral expenditure constituted all, or only a part of the gift or loan of over \$1,000.⁴¹⁵

⁴¹⁰ DJAG and DLGRMA, correspondence, 12 December 2019, pp 15-16.

⁴¹¹ DJAG and DLGRMA, correspondence, 12 December 2019, p 16.

⁴¹² DJAG and DLGRMA, correspondence, 12 December 2019, pp 13-14.

⁴¹³ Electoral Act, s 283.

⁴¹⁴ DJAG and DLGRMA, correspondence, 12 December 2019, p 13.

⁴¹⁵ Electoral Act, s 263.

2.8.5 Stakeholder views and the department's response

Many stakeholders expressed a view that the proposed \$1,000 threshold for third party registration is too low and should be raised, particularly in light of the significant compliance burden associated with the administrative, record keeping and disclosure requirements for third parties under the Bill.⁴¹⁶

The EDO noted, for example, that third parties that incur electoral expenditure of more than \$1,000 would be subject to the donation caps, the expenditure cap, and to administrative obligations including:

- registration with the ECQ (and updates on any changes to details)
- maintaining and managing state campaign accounts for political donations and electoral expenditure
- managing political donations throughout the four years leading up to the election and managing electoral expenditure (typically in the year leading up to a polling day) in accordance with the scheme caps and, and issuing donor statements to donors in respect of contributions made
- record keeping in relation to all political donations and electoral expenditure
- adhering to real-time disclosure requirements, and
- lodging returns with the ECQ in relation to electoral expenditure following each election.⁴¹⁷

The EDO submitted that these are 'relatively onerous obligations', particularly for smaller organisations'.⁴¹⁸ For some, it was suggested, the costs of compliance might exceed the actual expenditure on advocacy on their issues.⁴¹⁹ The QHRC noted this imbalance may lead to the alternative of not registering, or significantly changing organisational activities in ways apparently not intended by the Bill. The QHRC submitted that this 'emphasises the potentially significant limitation on freedom of expression and right to public participation for these organisations'.⁴²⁰

The QLS advised that the breadth of the impact could be considerable, noting the composition of the not-for-profit sector:

... 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

⁴¹⁶ See, for example: MGCC, submission 4; LECNA, submission 10; CAFNEC, submission 16; NQCC, submission 23; QCC, submission 31; Gecko, submission 37; GPAP, submission 39; AMCS, submission 40; Birdlife Australia, submission 42; QCOSS, submission 45; Mackay Conservation Group, submission 46; ACF, submission 47; CPI, submission 48; HRLC, submission 53; Solar Citizens, submission 54; NPAQ, submission 56; Wildlife Queensland Gold Coast and Hinterland Branch, submission 48.

⁴¹⁷ Submission 18, p 5.

⁴¹⁸ Submission 18, p 5.

⁴¹⁹ MGCC, submission 4, p 3; LECNA, submission 10, p 4; CAFNEC, submission 16, p 6; NQCC, submission 23, p 3; Get Up, submission 30, p 6-7; QCA, submission 35, p 5; Gecko, submission 37, p 3; AMCS, submission 40, p 5; ACF, submission 47, p 9; BCCG, submission 49, p 5; HRLC, submission 53, p 8; Solar Citizens, submission 54, p 5; NPAQ, submission 56, p 5.

⁴²⁰ Submission 17, p 3.

*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.*⁴²¹

Krystian Seibert noted that in Victoria, the threshold for registration as a third party campaigner is, at \$4,000 per financial year, considerably higher than the \$1,000 threshold proposed for these organisations for Queensland State elections.⁴²² Mr Seibert recommended that a third party threshold of at least \$20,000 be considered in Queensland, in order to fairly remove small 'grassroots' organisations from the framework imposed by the Bill.⁴²³ Most other stakeholders nominated alternative thresholds of \$5,000⁴²⁴ or \$6,000,⁴²⁵ as striking an appropriate balance; albeit noting that amendments to other aspects of the Bill could serve the same purpose (see also discussion in report chapter 2.3.4 regarding the definition of electoral expenditure).⁴²⁶

In response to these stakeholder comments, DJAG committed to giving further consideration to the registration threshold for third parties and the issues raised in this regard.⁴²⁷

Disclosure requirements

Beyond the general commentary regarding the administrative burden of complying with disclosure requirements, a number of stakeholders suggested that to minimise impacts in this regard, gifts or loans that are not related to or used for electoral expenditure should not be required to be disclosed to the ECQ by registered charities.⁴²⁸

Queensland has a \$1,000 disclosure threshold for donations, with all donations of this size or greater required to be declared in a return to the ECQ.⁴²⁹ However, an anomaly in s 263 of the Electoral Act means that donors who give \$1,000 over four years must have their details disclosed if just \$1 or less of the total donation is used to incur electoral expenditure, but a donor who gives \$999 for electoral expenditure need not. Stakeholders suggested that s 263 be amended to make clear that only donors who have given over \$1,000 in 'political donations' should have their details published on the ECQ website.⁴³⁰

⁴²¹ Myles McGregor-Lowndes, QLS, public hearing transcript, Brisbane, 20 January 2020, p 65.

⁴²² Submission 14, p 2.

⁴²³ Submission 14, p 6.

⁴²⁴ CPI, submission 48, p 3.

⁴²⁵ MGCC, submission 4, p 3; LECNA, submission 10, p 4; CAFNEC, submission 16, p 6; NQCC, submission 23, p 3; Get Up!, submission 30, p 6-7; QCA, submission 35, p 5; Gecko, submission 37, p 3; AMCS, submission 40, p 5; ACF, submission 47, p 9; BCCG, submission 49, p 5; HRLC, submission 53, p 8; Solar Citizens, submission 54, p 5; NPAQ, submission 56, p 5.

⁴²⁶ See for example, submissions: Gladstone Conservation Council, submission 2, p 1; NQCC, submission 23, p 3; QCC, submission 31, p 6; QCOSS, submission 45, p 3.

⁴²⁷ DJAG and DLGRMA, correspondence, 17 January 2020, pp 19-20.

⁴²⁸ Gecko, submission 37; GPAP, submission 39; Birdlife Australia, submission 43; Australian Youth Climate Coalition, submission 44; QCOSS, submission 45; ACF, submission 47; Wildlife Queensland Gold Coast and Hinterland Branch, submission 58; BCCG, submission 49; CPI, submission 48; HRLC, submission 53; NPAQ, submission 56.

⁴²⁹ This threshold also applies in a cumulative sense, such that disclosures must also be made where an entity makes multiple donations to the same party or candidate that cumulatively add up to \$1,000 or more.

⁴³⁰ Gecko, submission 37; GPAP, submission 39; Birdlife Australia, submission 43; Australian Youth Climate Coalition, submission 44; QCOSS, submission 45; ACF, submission 47; Wildlife Queensland Gold Coast and Hinterland Branch, submission 58; BCCG, submission 49; CPI, submission 48; HRLC, submission 53; NPAQ, submission 56.

In its response to submissions DJAG acknowledged this stakeholder suggestion, albeit noting that ‘this is an existing issue under the Electoral Act and is not substantially changed by the Bill’.⁴³¹ DJAG advised that it would give the matter further consideration.⁴³²

Agents for an election

The QNMU acknowledged the Bill’s provision for the registration of agents to be expanded to include registered third parties, and noted the establishment of a compliance responsibility for each member of the executive committee with respect to the relevant obligations of an agent in the agent’s absence.⁴³³ The QNMU expressed a concern that there appears to be no requirement to appoint an acting replacement agent, or provision for a process for appointing a proxy agent in the absence of the originally appointed third party agent.⁴³⁴ The QNMU recommended that such a provision be established, to enable a proxy agent to undertake the obligations of the agent in their absence or due to an extenuating circumstance, rather than imposing a joint responsibility on an executive committee.⁴³⁵

The QCCL voiced some concern about s 213 provision for the compliance responsibility of executive committee members in an agent’s absence, submitting that this ‘exposes every member of the executive of a third party organisation to liability for breach of the law’, with penalties of up to \$26,000 in the case of some contraventions.⁴³⁶ The QCCL noted that this liability may be a deterrent for smaller organisations, and particularly those that are volunteer-run.⁴³⁷

DJAG advised that it would give further consideration to the QNMU’s comments regarding a potential proxy agent process.⁴³⁸

In response to the QCCL’s comments, DJAG emphasised that the provision for compliance responsibility for executive committee members in the proposed s 213 of the Electoral Act would impose a liability on those persons only in relation to offences applicable to agents when there is no agent appointed by that third party, and does not apply to all offences introduced by the Bill.⁴³⁹

DJAG also noted that for those offences related to the acceptance of a political donation or the incurring of electoral expenditure by an unincorporated body, the liability is limited to those persons who authorised or permitted, or were knowingly concerned in constituting the offence.⁴⁴⁰

Committee comment

The committee notes stakeholder concerns about the compliance burden associated with the administrative, record-keeping and disclosure obligations for electoral participants under the donation and expenditure cap schemes, including the requirement to establish and maintain a State campaign account.

The committee notes that stakeholders considered the proposed \$1,000 electoral expenditure threshold for the registration of third parties, which generally enlivens these requirements, is too low.

⁴³¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 44.

⁴³² DJAG and DLGRMA, correspondence, 17 January 2020, p 44.

⁴³³ Submission 27, p 5.

⁴³⁴ Submission 27, p 5.

⁴³⁵ Submission 27, p 6.

⁴³⁶ Submission 42, p 5.

⁴³⁷ Michael Cope, President, QCCL, public hearing transcript, Brisbane, 20 January 2020, p 14.

⁴³⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 39.

⁴³⁹ DJAG and DLGRMA, correspondence, 12 December 2019, pp 34-35.

⁴⁴⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 35.

While the committee recognises that mechanisms must be put in place to support compliance with the proposed schemes, an appropriate balance must be struck in their application to ensure they do not lead to the disengagement of those smaller third parties with limited resources, and particularly those groups that may be reliant on volunteers for their administration.

The committee recognises that an active civil society is crucial for any democracy, and beyond the anti-corruption aims of the Bill, the reforms also aim to level the playing field for electoral participants to enable a greater range of voices to be heard, not to discourage civic engagement.

To help ensure that this is the case, the committee considers that an appropriate mechanism for exempting or reducing the regulatory burden on smaller, not-for-profit third parties should be explored, to support their ongoing and important engagement in political discourse in Queensland.

While the committee considers that the threshold for third party registration should be raised, the committee also recognises that there may be a number of other ways by which to achieve similar ends.

Recommendation 2

The committee recommends the Attorney General and Minister for Justice consider amending the Bill to address the concerns of small, not-for-profit third party organisations regarding the regulatory burden of the political donation and electoral expenditure cap schemes, such as by increasing the threshold for third party registration.

3 Amendments relating to signage at State elections

The Bill proposes to introduce limitations on the signage that can be displayed around pre-poll and polling locations, to help provide electors with a more neutral voting environment and prevent contesting candidates and parties from being ‘crowded out of communication with voters’, as well as minimising damage and disruptions at the premises on which polling locations are established.⁴⁴¹

On introducing the Bill, the Attorney-General and Minister for Justice explained of the amendments:

*Queenslanders are fed up with the arms race political parties and candidates engage in to set up the most signs and wrap every possible surface with bunting. The Palaszczuk government wants election day to be a more neutral environment and ensure that those seeking election are not crowded out from having voters aware of electoral choices when voting. On that basis, we will be adopting electoral signage laws similar to those currently in place in Victoria. A necessary consequence of this amendment will be the removal of plastic wrap bunting in a restricted zone close to polling booths. Not only does plastic wrap bunting have the capacity to crowd out alternative political voices; it is also incredibly wasteful and environmentally damaging.*⁴⁴²

3.1 Limits on signage around polling locations

The Bill would limit the amount of signage that could be displayed around pre-poll voting offices and ordinary polling booths by establishing a ‘restricted signage area’ that comprises:

- the area within 100m of the building within which the voting compartments for the voting office or polling booth are located, and
- if the building is located in grounds and the commission has designated entrances⁴⁴³ to the grounds:
 - the area within the grounds
 - on a boundary fence or another structure or feature that marks the boundary of the grounds, and
 - the area within 100m of each designated entrance to the grounds.⁴⁴⁴

In such areas, the display of an election sign would only be permitted if the sign is one of a maximum of two signs displayed by or for:

- a candidate in a primary election being conducted at the voting office or polling booth, and/or
- a registered political party that has endorsed a candidate in a primary election being conducted at the voting office or polling booth.⁴⁴⁵

⁴⁴¹ Explanatory notes, pp 1-2; Mrs Leanne Robertson, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 2.

⁴⁴² Hon Yvette D’Ath MP, Attorney-General and Minister for Justice, *Record of Proceedings*, Queensland Parliament, 28 November 2019, p 3947.

⁴⁴³ The Bill provides for the ECQ to specify a ‘designated entrance’, to be indicated by an official sign displayed at the entrance. In deciding whether to designate an entrance to the ground for a pre-poll voting office or ordinary polling booth, the ECQ is required to consider the routes that electors will use to access the voting office or polling booth, including paths, hallways and doorways; and the need to ensure unobstructed access to the voting office or polling booth for electors. See Bill, cl 58, s 185D.

⁴⁴⁴ Bill, cl 58, s 185C

⁴⁴⁵ Bill, cl 58, s 185F.

Where the candidate has been endorsed for election by a registered party, the two-sign maximum would apply as a combined total for the endorsed candidate and the registered party that endorsed the candidate.⁴⁴⁶ Third parties would not be permitted to display a sign within a restricted signage area.

The Bill also imposes a range of limitations on the election signs that would be permitted to be displayed by the contesting candidates and parties, including specifying that any one of the maximum of two displayed election signs:

- must be no larger than 900mm by 600mm in diameter
- must not be attached to a building, fence or permanent structure (for example, by attaching with cable-ties to a fence),⁴⁴⁷ and
- must be accompanied by a person who is responsible for the sign and is at the voting office or polling booth.⁴⁴⁸

In the case of an A-frame election sign, the Bill specifies that the A-frame sign would be taken to be one sign, even though a sign may be displayed on each side of the A-frame sign, and regardless of whether the same election sign, or different election signs, are displayed on the 2 sides of the A-frame sign.⁴⁴⁹

To further clarify the application of the amendments, the Bill contains a definition of an 'election sign' to which the restrictions would apply. An election sign is defined a sign, including any continuous sign comprised of a length of flexible material (such as bunting or streamers),⁴⁵⁰ that:

- contains anything that could influence an elector in relation to voting at an election or otherwise affect the result of an election
- is the colour or colours that are ordinarily associated with a registered political party,⁴⁵¹ or
- is prescribed by regulation to be an election sign.⁴⁵²

The Bill also makes clear, however, that none of the following are an election sign (and therefore would not be subject to the proposed new signage restrictions):

- a sign for an election prepared by, or with the authority of, the ECQ
- an item of clothing being worn by a person
- an umbrella or portable shade structure
- a small thing, such as a lapel pin, a badge, a hat, a pen or pencil, or a sticker, or
- another thing prescribed by regulation.⁴⁵³

At the committee's public briefing, Members asked representatives of DJAG whether signage displayed on a vehicle would be captured by the Bill. DJAG later advised that if a vehicle displays a sign that could influence voting in an election, it would only be permitted if it complied with the requirements for permitted election signs.⁴⁵⁴

⁴⁴⁶ Bill, cl 58, s 185F(3).

⁴⁴⁷ Explanatory notes, p 49.

⁴⁴⁸ Bill, cl 58, s 185F.

⁴⁴⁹ Bill, cl 58, s 185F.

⁴⁵⁰ Bill cl 58, s 185B(3).

⁴⁵¹ An example could be streamers in the colours that are ordinarily associated with a registered political party.

⁴⁵² Bill, cl 58, s 185B.

⁴⁵³ Bill, cl 58, s 185B.

⁴⁵⁴ DJAG, correspondence dated 19 December 2019, p 1.

DJAG acknowledged that if a pre-poll voting office or ordinary polling booth had multiple designated entrances there could be multiple restricted signage areas, but advised that the number and location of the designated entrances would be at the ECQ's discretion:

CHAIR: *In the cases where there are multiple entrances, presumably there will be a 100-metre radius with each of them?*

Ms Tubolec: *Yes, it will be, but ECQ staff will have that discretion to decide which ones they will designate as the entrance. A lot of schools will have multiple entrances. You might come from the back oval or you might come from the street front and so on. ECQ will look at factors, and some of the factors are set out in the bill as to what they would need to look at in deciding whether to make it a designated entrance. If it is not designated as an entrance, then the 100-metre radius will not apply to that entrance. It will just be that it will serve as the boundary—the fence—so you still cannot mount anything on the boundary at that entry point.*⁴⁵⁵

DJAG also confirmed that private residences and properties that are lawfully occupied that are within a restricted signage area would also be exempt from the signage requirements and would be able to place as many signs as they wish on their premises:

*The restricted area does not include private residences or other areas where people have a lawful right to occupy, which is intended to cover leased premises, usually commercially...*⁴⁵⁶

3.2 Limits on the time for displaying or setting up signs at polling location

To prevent disruptions or interference in the ordinary use of premises to be used as polling booths on a polling day (and nearby premises), the Bill also proposes to restrict the time frame during which election material may be set up in the 'area around an ordinary polling booth' that is:

- within 100m of the building in which the voting compartments for an ordinary polling booth are to be located, and
- if the building is located in grounds:
 - the area within the grounds
 - on a boundary fence or another structure or feature that marks the boundary of the grounds, and
 - within 100m of any entrance to the grounds.⁴⁵⁷

The Bill provides that from the start of the election period for an election, up until 6am on the polling day for an election, a person would not be permitted to do any of the following in the area around an ordinary polling booth:

- display an election sign, or
- set up a table, chair, umbrella, portable shade structure or other thing to be used for a purpose related to the election.⁴⁵⁸

⁴⁵⁵ Ms Melinda Tubolec, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 7.

⁴⁵⁶ Ms Melinda Tubolec, DJAG, public briefing transcript, Brisbane, 16 December 2019, p 6.

⁴⁵⁷ DJAG and DLGRMA, correspondence, 12 December 2019, p 18. See also: Bill, cl 58, s 185G.

⁴⁵⁸ Bill, cl 58, s 185G.

3.3 Offences and compliance actions

Under the proposed amendments, a maximum penalty of 10 penalty units (\$1,334.50) would apply in respect of a contravention of either:

- the proposed limitations on signage permitted in a restricted area for a pre-poll or polling location during voting hours,⁴⁵⁹ or
- the proposed restrictions on the timeframe during which election material may be displayed or set up at an ordinary polling booth.⁴⁶⁰

To help ensure compliance with the proposed requirements, if an ECQ staff member considers that a sign is displayed in contravention of the signage limitations, or for the setting up and display restrictions, if a sign or other thing is situated in contravention of the requirements, the staff member would be empowered to remove the sign or other thing.⁴⁶¹

At the committee's public hearing, the ECQ stated that it was considering the operational enforcement implications of the proposed restrictions, which included:

*... 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.*⁴⁶²

When asked whether it was concerned about parties wishing to display signs and being unaware of the proposed rules or not wishing to adhere to them, the ECQ replied:

*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.*⁴⁶³

3.4 Stakeholder views and the department's response

A number of stakeholders welcomed the proposal to tighten restrictions on election signage at polling places.⁴⁶⁴ Brisbane Residents United (BRU) strongly supported the changes, submitting that polling booths 'are becoming increasingly alarming places to visit due to over enthusiastic supporters from all sides'.⁴⁶⁵ Neil Cotter also considered that the 'arms race relating to booth signage has been an issue for some time', and additionally welcomed the move to address:

*... a worrying trend for the previous midnight starting point for setting up booths to be increasingly ignored, with some booths at schools seemingly set up ... even before classes finish at schools the day before the election.*⁴⁶⁶

⁴⁵⁹ Bill, cl 58, s 185F(1).

⁴⁶⁰ Bill, cl 58, s 185G(2).

⁴⁶¹ Bill, cl 58, s 185F(5), s 185G(4).

⁴⁶² Pat Vidgen, Electoral Commissioner, ECQ, public hearing transcript, Brisbane, 20 January 2020, p 37.

⁴⁶³ Julie Cavanagh, Executive Director, Election Events Management, ECQ, public hearing transcript, Brisbane, 20 January 2020, p 39.

⁴⁶⁴ Gecko, submission 37, p 4; Ross Spence, submission 20, p 1; Neil Cotter, submission 36, p 30; ECQ, submission 41, pp 4-5; BRU, submission 55, p 2.

⁴⁶⁵ Submission 55, p 2.

⁴⁶⁶ Submission 36, p 30.

The ECQ stated that the amendments may facilitate a more positive experience for voters in helping to ensure ‘they are not impeded during the voting process’, as well as benefitting ‘suppliers by minimising potential damage to venues’.⁴⁶⁷ Together Queensland advised in this respect:

Our members are the public servants in schools where many polling booths particularly the larger ones, are located. They are the janitors, grounds people, business managers and administration staff who are tasked with coordinating the facility management and clean-up for election day. Also, often political parties will attempt to set up very early sometimes even when school is on, and any damage to property or issues are managed by these staff along with the relevant principal.

*All of this means our members generally support reduction of polling day material, and specifically our members in schools support polling booth limits (such as only being able to set up from 6am on polling day) and the proposed ban on soft plastic bunting.*⁴⁶⁸

BRU and Pam Spence also agreed respectively that ‘rolls of plastic signage’ and ‘bunting’ should be prohibited.⁴⁶⁹

The major point of contention or discussion in respect of the proposed amendments related to concerns about excluding third party signage from the restricted signage areas at polling locations.

3.4.1 Prohibition on third party election signage in restricted signage areas

A number of stakeholders considered that the exclusion of third party signage from these areas may be in breach of the implied freedom of expression and political communication under the Constitution.⁴⁷⁰ Many of these stakeholders accepted the justification for restricting signage generally. For example, the QCCL submitted that:

*... 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.*⁴⁷¹

GetUp! also confirmed that it supports the proposal for a restricted signage area, the limit on the number of signs and the requirement that they be accompanied.⁴⁷²

However, it was argued that the arrangements for displaying signage in a restricted signage area should be the same for all political parties, candidates and third parties.⁴⁷³

Addressing the third party signage prohibition, GetUp! stated that political parties ‘do not and should not have a monopoly on voters’ attention’, and that the exclusion would not enhance democratic participation.⁴⁷⁴ Further:

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

⁴⁶⁷ Pat Vidgen, ECQ, public hearing transcript, Brisbane, 20 January 2020, p 37.

⁴⁶⁸ Submission 67, p 2.

⁴⁶⁹ BRU, submission 55, p 2; Pam Spence; submission 19, p 1.

⁴⁷⁰ See, for example: HRLC, submission 53, p 8; Pat Coleman, submission 29, p 35, GetUp!; submission 30, p 2; Dr John Martin, QCU, public hearing transcript, Brisbane, 20 January 2020, p 29.

⁴⁷¹ QCCL, public hearing transcript, Brisbane, 20 January 2020, p 67.

⁴⁷² Andrew Blake, Project Lead – Democracy & Risk, GetUp!, public hearing transcript, Brisbane, 20 January 2020, p 31.

⁴⁷³ See, for example: Andrew Blake, GetUp!, public hearing transcript, Brisbane, 20 January 2020, p 31; Michael Cope, QCCL, public hearing transcript, Brisbane, 20 January 2020, p 67.

⁴⁷⁴ Andrew Blake, GetUp!, public hearing transcript, Brisbane, 20 January 2020, p 31.

*Unions NSW v New South Wales case as the High Court struck down provisions that limit the voices that voters can hear.*⁴⁷⁵

GetUp! considered that the Bill appeared to ‘ignore these recent rulings’ and was:

*... 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.*⁴⁷⁶

Pat Coleman also expressed concern about this aspect of the proposed amendments, and considered the exclusion of third party signage from restricted areas may be ‘constitutionally invalid’.⁴⁷⁷ Mr Coleman further stated that:

- the motivation for the signage amendments were political and an abuse of power
- previous criticism had been made about proposed limits to the size of election signs
- the proposed signage restrictions would criminalise activists for trying to draw attention to corruption
- the ECQ does not have power to arrest, and persons will still hold signs meaning that the signs cannot be removed, and potentially resulting in police assisting and further charges, and
- because the amendments are ‘constitutionally invalid’, citizens would not have to obey police directions.⁴⁷⁸

The QCU, which also identified ‘a distinct risk that limiting signage to political parties may be held to be unconstitutional’,⁴⁷⁹ explained its position as follows:

*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.*⁴⁸⁰

Professor Graeme Orr conversely considered that the Bill, if enacted in legislation, would likely withstand a High Court challenge from third parties contesting the exclusion. Professor Orr submitted that the Bill could withstand such a challenge because it allows third parties to set up tables, display umbrellas with colours or slogans, to distribute leaflets and engage in political conversations. Professor Orr also noted that the proposed regime is limited to particular material on particular days. He suggested that the alternative of allowing third party signage would risk a loophole, because such an individual or group could be a front for a party, undermining the regime.⁴⁸¹

This potential ‘loophole’ was raised with the QCU during the committee’s public hearing on the Bill. When it was suggested that the government was proposing to exclude third parties from displaying signs within restricted signage areas because a candidate could potentially have many third party

⁴⁷⁵ Andrew Blake, GetUp!, public hearing transcript, Brisbane, 20 January 2020, p 31.

⁴⁷⁶ Andrew Blake, GetUp!, public hearing transcript, Brisbane, 20 January 2020, p 31.

⁴⁷⁷ Submission 29, p 29.

⁴⁷⁸ Submission 29, pp 11-35.

⁴⁷⁹ Dr John Martin, QCU, public hearing transcript, Brisbane, 20 January 2020, p 27.

⁴⁸⁰ Dr John Martin, QCU, public hearing transcript, Brisbane, 20 January 2020, p 29.

⁴⁸¹ Submission 3, p 6.

supporters who wished to display a sign in support of that candidate within the restricted signage area, and that this would undermine the effect of the amendments, the QCU replied:

*... 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.*⁴⁸²

Professor Orr suggested a compromise could be to allow third party groups to display one sign at each polling place and that because signs should be accompanied, the third party would need real supporters – or to pay people, which he considered unlikely – to be able to display a sign.⁴⁸³

BRU also considered that third parties should not be restricted to displaying signage only outside the 100-metre perimeter.⁴⁸⁴

Department's response

DJAG noted the matters raised by the HRLC, GetUp!, the QCCL and Professor Orr.⁴⁸⁵

In response to stakeholder commentary on the proposed amendments' restrictions on the implied freedom of the political communication of third parties, DJAG emphasised that the proposed signage restrictions were limited to the display of election signs within a defined area for a limited timeframe, and suggested the proposed restrictions would not limit other forms of communication and engagement with voters.⁴⁸⁶

In response to Mr Coleman's comments that the amendments in the Bill were generally constitutionally invalid, DJAG noted that the presumption is that laws are valid until such time as they are invalidated, and therefore there would be no basis for persons not to comply with the law as enacted.⁴⁸⁷

3.4.2 Technical aspects of the signage restrictions

Submitters also made a variety of comments on more technical aspects of the signage restrictions and their application.

Professor Graeme Orr submitted that the lack of restrictions on other, non-signage electoral materials within the restricted signage area might limit the extent to which a more neutral voting environment could be provided, noting that the Bill will still allow candidates and parties an unlimited number of umbrellas or portable shade structures that display party slogans or images.⁴⁸⁸

Professor Orr also noted that the Bill would 'not prevent a party paying a resident or building proprietor near a voting booth to display signs on their buildings on polling day', due to the exemption for private premises under the amendments.⁴⁸⁹ BRU suggested in this respect that private premises that fall within a restricted signage area should not be allowed to display political signage 'if they have a very recent short term lease'.⁴⁹⁰

Professor Orr also observed that the exemption from the two-sign limit and associated restrictions for private premises does not appear to have been replicated with respect to the offence against the early

⁴⁸² Dr John Martin, QCU, public hearing transcript, Brisbane, 20 January 2020, p 29.

⁴⁸³ Submission 3, p 6.

⁴⁸⁴ Elizabeth Handley, President, BRU, public hearing transcript, Brisbane, 20 January 2020, p 50.

⁴⁸⁵ DJAG and DLGRMA, correspondence, 17 January 2020, pp 48, 49 & 52.

⁴⁸⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 47.

⁴⁸⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 51.

⁴⁸⁸ Submission 3, p 7

⁴⁸⁹ Submission 3, p 7.

⁴⁹⁰ Submission 55, p 2.

set-up of displays on polling day.⁴⁹¹ Professor Orr queried whether this issue occurs, at least in part, because the Bill includes three terms – restricted signage area, the area around an ordinary polling booth and a designated area – that are all different ways of defining a 100-metre cordon around where polling occurs.⁴⁹²

In relation to the requirement for the up to two permitted signs in a restricted area to be accompanied, Neil Cotter submitted that this may be onerous, especially for smaller parties, noting that volunteers will need to take small breaks during the day.⁴⁹³ Professor Orr, similarly, considered that this requirement could create further barriers between parties able to staff all polling places at all times and those that cannot, and questioned the need for signs to be accompanied given the proposed limit to two signs per party and/or candidate.⁴⁹⁴ Professor Orr also submitted, however, that:

*We can trust the Electoral Commission of Queensland to interpret it rationally. So, for example, an activist popping off to buy lunch nearby or for a toilet break does not 'deaccompany' the sign. But an activist who clocks off without a replacement does 'deaccompany' the sign, which would have to be taken down until that activist is replaced.*⁴⁹⁵

Other stakeholders saw scope for a further expansion of signage restrictions. Pam Spence submitted that handouts should also be limited to prevent paper waste, and that only advertising on clothing and hats should be allowed, with severe penalties for non-compliance.⁴⁹⁶ Mr Ross Spence identified further scope for an expansion of the restricted signage area, submitting that 'street entry to my local polling place is over 100m away from the polling booth, meaning the jostling for best signage position will continue'.⁴⁹⁷ BRU suggested that the number of people handing out how-to-vote cards should also be restricted to those persons accompanying the two permitted signs.⁴⁹⁸

Department's response

DJAG noted the comments of each of these stakeholders on these technical matters.⁴⁹⁹

The department advised that it would give further consideration to Professor Orr's comments regarding the potential for private premises located within a restricted signage area to be exploited to circumvent the signage restrictions, and advised that it would give further consideration Professor Orr's first point.⁵⁰⁰ With respect to Professor Orr's comments regarding the use of three terms to explain a 100-metre cordon, DJAG advised that 'restricted signage area', relating to displaying election signs, covers the area within 100 metres of a building in which voting compartments are located. Additionally, if there are entrances designated by the ECQ to the grounds in which the polling booth or pre-poll voting office is located, the 'restricted signage area' includes the grounds, the boundary fence or structure/feature, and within 100 metres of those entrances.⁵⁰¹

DJAG advised that the term 'designated area' is needed to distinguish the area outside the building in which voting compartments are located from the area around each designated entrance, noting that the limit of two signs per candidate/endorsing parties applies to each of these distinct areas. Further:

⁴⁹¹ Submission 3, p 7.

⁴⁹² Submission 3, p 7.

⁴⁹³ Submission 36, p 30.

⁴⁹⁴ Submission 3, pp 6-7.

⁴⁹⁵ Submission 3, pp 6-7.

⁴⁹⁶ Submission 19, p 1.

⁴⁹⁷ Submission 20, p 1.

⁴⁹⁸ Submission 55, p 2.

⁴⁹⁹ DJAG and DLGRMA, correspondence, 17 January 2020, pp 47-52.

⁵⁰⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 49.

⁵⁰¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 50.

'Area around the polling booth', defined in section 185G(3) is a separate concept which is intended to accommodate the circumstances where the entrance to a polling booth has not yet been designated by the ECQ under section 185D (for example, at an ordinary polling booth where the designation may not occur prior to polling day). It is noted that the offence in section 185G applies for the election period which commences the day after the writ is issued, as distinct from 'restricted signage area' which is only relevant during voting hours.⁵⁰²

In relation to the questions raised by stakeholders about the need for signs to be accompanied, DJAG previously noted that this requirement:

... provides that extra linkage to ECQ to identify who is the owner of the sign. The most helpful tool in the bill to enforce the signage restrictions is to empower ECQ staff to remove the signs. It has a much more immediate effect. The reason for these signage restrictions is to not crowd out the voices of others. By removing them then and there on the day, we are achieving that objective.⁵⁰³

In response to Ross Spence's concern about issues with excessive signage extending beyond the 100 metre distance from the entrance to polling booths, DJAG noted that while the 'restricted signage area' relating to displaying election signs covers the area up to 100 metres from a building within which voting compartments are located, the Bill also provides that:

... if there are entrances designated by the ECQ to the grounds in which the polling booth or pre-poll voting office is located, the 'restricted signage area' includes the grounds, the boundary fence or structure/feature, and within 100 metres of those entrances.⁵⁰⁴

DJAG advised that the ECQ may decide to designate an entrance after considering the routes that electors will use to access the pre-poll office or polling booth, and the need to ensure unobstructed access for electors. DJAG noted that in the event that an entrance is designated, the signage restriction will apply 100 metres from the designated entrance.⁵⁰⁵

Committee comment

The committee notes the Bill's intention of providing voters with an unencumbered voting environment and preventing the 'crowding out' of candidates and parties contesting for election.

Noting the concerns raised by stakeholders regarding the proposed signage limitations, the committee asks the Attorney-General and Minister for Justice to consider the number and nature of signs that could be allowed to be displayed while still achieving this goal.

⁵⁰² For example, at an ordinary polling booth where the designation may not occur prior to polling day.

⁵⁰³ Ms Melinda Tubolec, DJAG, public briefing transcript, 16 December 2019, p 8.

⁵⁰⁴ DJAG and DLGRMA, correspondence, 17 January 2020, pp 50-51.

⁵⁰⁵ DJAG and DLGRMA, correspondence, 17 January 2020, pp 50-51.

4 Amendments relating to dishonest conduct of Ministers

The Bill aims to improve the integrity and accountability of Ministers by amending the Integrity Act and the POQA to create a new offence in each Act. The introduction of these new offences gives effect to the Government's commitment to implementing recommendations three and four (of five recommendations) proposed by the CCC on 6 September 2019,⁵⁰⁶ as set out below.

Recommendation 3:

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.

Creating a criminal offence will strengthen the framework and obligations on Ministers to ensure disclosure and management of actual, potential or perceived conflicts of interest occurs. Failure to do so could, in certain circumstances, be considered corrupt conduct, as defined in the Crime and Corruption Act 2001.

Recommendation 4:

That Parliament create a criminal offence to apply when a member of Cabinet fails to comply with the requirements of the Register of Members' Interests, and the Register of Members' Related Persons Interests by not informing the Clerk of Parliament, in the approved form, of the particulars of an interest or the change to an interest within one month after the interest arises or the change happens. A suitable penalty should apply, including possible removal from office, if it is found that the Member's lack of compliance was intentional.

This would align the obligations of elected officials in state government with the obligations of elected officials in local government. This recommendation is consistent with the recommendations for local government made by the CCC arising out of Operation Belcarra.⁵⁰⁷

4.1 Proposed offence – Integrity Act 2009

The Bill proposes to establish a new criminal offence in the Integrity Act for a Minister who knowingly fails to disclose a conflict of interest with the intent to dishonestly gain a benefit for themselves or another person, or to cause detriment to another person.⁵⁰⁸ The offence provision aims to reflect a Minister's responsibility to bring all conflicts of interest – even those that arise out of an interest already recorded in the Register of Members' Interests – to the attention of:

- for a conflict relating to a matter being considered by Cabinet – Cabinet, or for a Minister other than the Premier, Cabinet or the Premier
- for a conflict relating to a matter being considered by a committee of Cabinet – the committee or Cabinet, or for a Minister other than the Premier, the committee, Cabinet or the Premier, or
- otherwise – Cabinet, or for a Minister other than the Premier, Cabinet or the Premier.⁵⁰⁹

If, on the commencement of the provisions, a Minister has an interest that conflicts, or may conflict, with the discharge of their responsibilities, the offences would apply in relation to the interest and the conflict. However, the Minister would not be considered to have failed to disclose the interest or the conflict within a month of commencement.⁵¹⁰

⁵⁰⁶ Explanatory notes, p 2.

⁵⁰⁷ CCC, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform', media release, 6 September 2019.

⁵⁰⁸ Bill, cl 62, s 40A.

⁵⁰⁹ Bill, cl 62, s 40A.

⁵¹⁰ Bill, cl 67, s 102.

4.2 Proposed offence – *Parliament of Queensland Act 2001*

The Bill would also create a new offence in the POQA that would apply where a Minister fails to comply with the obligations of Members of Parliament to register their interests with the Registrar (the Clerk of Parliament),⁵¹¹ with a dishonest intent to obtain a benefit for themselves or another person, or cause detriment to another person. The explanatory notes advise that the application of the offence only to Ministers reflects the decision-making nature of Cabinet, and the higher obligation on Ministers to uphold standards of integrity and ensure there is public confidence in government.⁵¹²

4.3 Penalties and compliance actions

Both of the proposed offences would attract a maximum penalty of 200 penalty units (\$26,690) or two years' imprisonment.⁵¹³ A Member of Parliament may also face the additional consequence of losing their seat in circumstances where they are convicted of either offence and are sentenced to more than one year's imprisonment, as provided in s 72(1)(i) of the POQA.⁵¹⁴

The Bill provides that a person may be proceeded against for either contempt of Assembly or an offence against an Act (eg for either of the proposed new offences), but that they would not be liable to be punished twice for the same conduct.⁵¹⁵

4.4 Proceedings for the proposed offences

Under the proposed amendments, the procedural requirements for proceedings against a Minister in relation to the new Integrity Act and POQA offences are broadly similar. Both offences would be a misdemeanour and would therefore each be an indictable offence. Additionally, a proceeding for either offence could only be commenced with the written consent of the Director of Public Prosecutions (DPP).

The Bill provides that a proceeding for either offence may be taken, at the election of the prosecution:

- by way of summary proceeding under the *Justices Act 1886* (Justices Act), or
- on indictment.⁵¹⁶

However, a magistrate must not hear an indictable offence against proposed s 40B of the Integrity Act or s 69E of the POQA summarily if the magistrate is satisfied, on an application made by the defence, that because of exceptional circumstances⁵¹⁷ the offence should not be heard and decided summarily. If this is the case:

- the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily
- the proceeding for the charge must be conducted as a committal proceeding

⁵¹¹ Members' obligations regarding the interests they must register with the Clerk of the Parliament are set out in ss 69B(1), (2) and (4) of the POQA. Under s 69B(1), a member is required to give the Registrar (the Clerk), within one month of taking their seat, a statement of the member's interests as at the date of the election, and a statement of interests of each person who is a related person of the member. Section 69B(2) provides that a member must notify the registrar in writing of any change in the particulars contained in the last statement of interests given by the member within one month after becoming aware of the change. Section 69B(4) provides that a member 'must not give to the registrar a statement of interests or information relating to a statement of interests that the member knows is false or misleading in a material particular'.

⁵¹² Explanatory notes, p 4.

⁵¹³ Bill, cl 62, s 40A; cl 73, s 69D.

⁵¹⁴ Explanatory notes, pp 4-5.

⁵¹⁵ Explanatory notes, p 52. See also POQA, s 47 and Bill, cl 71, amending s 47.

⁵¹⁶ Bill, cl 62, s 40B(3); cl 73, s 69E(3).

⁵¹⁷ Section 552D(2) of the *Criminal Code Act 1899* (Criminal Code) provides examples of exceptional circumstances.

- a plea of the defendant at the start of the hearing must be disregarded
- the evidence already heard by the court would be taken to be evidence in the committal proceeding, and
- section 104 of the Justices Act must be complied with for the committal proceeding.⁵¹⁸

A Magistrates Court that summarily deals with a charge of an offence against the proposed s 40A of the Integrity Act or s 69D of the POQA:

- must be constituted by a magistrate, and
- has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.⁵¹⁹

The Bill also makes provision for the use of evidence or information for an investigation or prosecution of an offence against proposed s 40A of the Integrity Act or s 69D of the POQA. Specifically, information given to the QIC about a person under the Integrity Act (for s 40A),⁵²⁰ or evidence of anything said or done during proceedings in the Legislative Assembly or information given to the Registrar under the POQA (for s 69D) may be:

- recorded, used and disclosed for the purpose of the investigation or prosecution of the offence, and
- given in a proceeding against a person for the offence to the extent necessary to prosecute the person for the offence.⁵²¹

The Bill also authorises the use of information that would otherwise have been prohibited from disclosure despite any other law,⁵²² rule or practice to the contrary.⁵²³

4.5 Crime and Corruption Commission position on proposed offences

While initially consulted on the general content of the Bill, the CCC advised the committee that after having the opportunity to review the provisions in greater detail, it had concluded that the proposed amendments ‘do not, as they currently stand... achieve the purposes of the CCC’s recommendations’.⁵²⁴

In particular, CCC Chairperson Mr Alan MacSporran QC advised that committee that the inclusion of a requirement to establish dishonest intent for a Minister to be in breach of either of the proposed offences represented a ‘limited reform’ that:

*... is not, with respect, an effective measure to prevent corruption and is not what was intended by the CCC’s recommendations.*⁵²⁵

⁵¹⁸ Bill, cl 62, s 40B(5); cl 73, s 69E(5).

⁵¹⁹ Bill, cl 62, s 40B(6); cl 73, s 69E(6).

⁵²⁰ For example, information given in a request for advice under the Integrity Act, chapter 3, part 2 (Advice for designated persons on ethics or integrity issues) and information given in a meeting under chapter 3, part 3 (Meeting with and advice for members of Legislative Assembly on interest issues).

⁵²¹ Bill, cl 62, s 40C; cl 73, s 69F.

⁵²² For example, s 8 (Assembly proceedings cannot be impeached or questioned) and s 36 (Inadmissibility of particular event before the Assembly or a Committee) of the POQA and s 24 (Secrecy) of the Integrity Act.

⁵²³ Bill, cl 62, s 40C(3); cl 73, s 69F(3).

⁵²⁴ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵²⁵ Public hearing transcript, Brisbane, 20 January 2020, p 57.

The CCC considered that the offences applicable to a Minister's contravention of conflict of interest or register of interest requirements should be strict liability offences that apply regardless of intent, if the person 'knew or ought to have known of the relevant interest'.⁵²⁶ Mr MacSporran advised:

*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.*⁵²⁷

The CCC also suggested that in respect of a failure to update the register of interests, the proposed strict liability offence 'ought not to be confined to Ministers but should extend to every Member of Parliament who is under an obligation to update their register of interests for good reason'.⁵²⁸

Noting the CCC's concerns, on 28 January 2020, the committee issued a call for submissions on the CCC's proposal to implement strict liability offences in respect of the conflict of interest and register of interest requirements for Ministers and councillors, and to extend these offences to also cover a Member of Parliament's failure to update their register of interests.

4.6 Stakeholder views and the department's response

While there was general support for the Bill's aims of strengthening integrity and accountability for Ministers,⁵²⁹ views on the Bill's proposed offence provisions were mixed. Some stakeholders highlighted the established system of Cabinet conventions or existing offences in the Criminal Code which could be engaged to deal with these matters, raising questions about the interaction of these regulatory mechanisms with the offences proposed in the Bill. Integrity bodies identified a number of technical concerns with the amendments, including in relation to provisions requiring the DPP's consent for a prosecution, the use of information and evidence, and other matters. Much of the stakeholder commentary, however, focussed on the merits of incorporating an intent element in the proposed offences, as compared with the CCC's proposal that a strict liability approach should be employed, and of extending any such offence in respect of registers of interest to also apply to all State Members of Parliament.

Stakeholder commentary on these key areas of contention is outlined below.

4.6.1 Interaction with Cabinet Conventions

Jennifer Menzies, a Principal Research Fellow at Griffith University, expressed a concern that the proposed conflict of interest offence (Integrity Act) may unnecessarily criminalise Cabinet conventions surrounding the handling of such matters. Ms Menzies explained that conventions are:

*... designed to form a restraint on the abuse of power by the government through 'rules of behaviour' in areas where the Constitution is silent. Two main characteristics of conventions is that they are not legally binding and since they are not subject to judicial interpretation are flexible to evolve in response to changing circumstances and political values.*⁵³⁰

Ms Menzies submitted that conventions, including those articulated in a ministerial code of conduct with respect to conflicts of interest, can and often do lead to a Minister disclosing such a potential conflict, with their leader then deciding an appropriate outcome. Ms Menzies noted that if a Minister

⁵²⁶ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵²⁷ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵²⁸ CCC, submission 51A, p 2. See also: Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 61.

⁵²⁹ See, for example, Whitsunday Regional Council, submission 8, p 2; Pam Spence, submission 19, p 1; Redlands2030, submission 34, p 1; Neil Cotter, submission 36, p 1; BRU, submission 55, p 3.

⁵³⁰ Submission 9, p 1.

fails to declare any potential conflict, there are a range of sanctions they may face, and submitted that this process has delivered 'a high level of probity in Cabinet deliberations'.⁵³¹

If the Bill is passed, Ms Menzies considered that claims that Ministers have breached proposed s 40A could be tested in the courts, and that:

*... 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.*⁵³²

Ms Menzies considered that conventions 'allow politicians to self-police their behaviour'⁵³³ and that most 'politicians the majority of times respect the conventions that manage their behaviour'.⁵³⁴ Ms Menzies was also concerned that placing conflict of interest provisions in an Act:

*... 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.*⁵³⁵

In response to Ms Menzies' comments, CCC Chairperson Alan MacSporran QC acknowledged that politicians' behaviour has traditionally been governed by longstanding conventions, but stated that:

*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.*⁵³⁶

Mr MacSporran also considered that the proposed offences would have little effect on conventions provided Ministers complied with their requirements, and rejected the suggestion that including offences for failing to disclose conflicts of interest and failing to update a register of interests in an Act would mean that the enforcement of these items would be unable to move with the times:

*... 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.*⁵³⁷

Further:

*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.*⁵³⁸

⁵³¹ Submission 9, p 2.

⁵³² Jennifer Menzies, Principal Research Fellow, Policy Innovation Hub, Griffith Business School, Griffith University, public hearing transcript, Brisbane, 20 January 2020, p 34.

⁵³³ Public hearing transcript, Brisbane, 20 January 2020, p 34.

⁵³⁴ Public hearing transcript, Brisbane, 20 January 2020, p 34.

⁵³⁵ Public hearing transcript, Brisbane, 20 January 2020, p 35.

⁵³⁶ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 60.

⁵³⁷ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 61.

⁵³⁸ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 61.

The CCC's comments were generally supported by the QIC, who acknowledged the historical application of conventions in Westminster-style democracies, but also submitted that:

*... it is generally accepted that modern politics is an increasingly competitive environment and 'intensely partisan', and correspondingly, there has been a decline in public trust on the reliance on conventions to effectively resolve integrity issues.*⁵³⁹

In its response to submissions, DJAG advised that it had noted Ms Menzies' submission on these matters.⁵⁴⁰

Further commentary on the efficacy or otherwise of existing conventions is provided at chapter 4.6.4.

4.6.2 Interaction with existing offences

The QLS submitted that the Bill's proposed dishonest conduct of Minister offences appear to replicate existing offence provisions contained in the Criminal Code under s 92A (Misconduct in relation to public office) and s 408C (Fraud). The QLS submitted that these two existing offences 'will capture the serious conduct contemplated'.⁵⁴¹

The CCC also considered there to be some duplication between the existing Criminal Code provisions and those offences proposed in the Bill, with Chairperson Mr MacSporran stating that the former offences already 'sufficiently proscribe such conduct'⁵⁴² and similarly require intent to be proved to constitute the offence.⁵⁴³

The CCC further made the comparative observation with respect to the differing penalties applicable to proposed new offences, as compared with the offences of misconduct in relation to public office and fraud in the Criminal Code,⁵⁴⁴ that:

*The new offence as proposed would essentially require proof of the same elements, but with a substantially lower penalty. An unintended consequence of the proposed provision may be to 'water down' the seriousness of conduct which may already amount to serious criminal offending, rather than strengthening the framework and obligations on ministers to avoid conflicts of interest.*⁵⁴⁵

Further, the CCC considered that 'the offence provisions for serious offences by ministers are preferably located in the Criminal Code, where other offences are also housed'.⁵⁴⁶

In response to these stakeholder comments, DJAG advised that it would give the issue further consideration.⁵⁴⁷

4.6.3 Technical aspects

The CCC and QIC identified a number of questions or concerns regarding the procedural and supporting amendments accompanying the proposed dishonest conduct of Minister offences.

⁵³⁹ Submission 57A, p 4.

⁵⁴⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 54.

⁵⁴¹ Luke Murphy, President, QLS, public hearing transcript, Brisbane, 20 January 2020, p 65.

⁵⁴² Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵⁴³ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 60.

⁵⁴⁴ Section 92A of the Criminal Code, 'Misconduct in relation to public office', carries a maximum penalty of seven years' imprisonment. Section 408C of the Criminal Code, 'Fraud', has penalties of between five and 20 years' imprisonment depending upon circumstances of aggravation.

⁵⁴⁵ Submission 51, p 7.

⁵⁴⁶ Submission 51, p 8; Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵⁴⁷ DJAG and DLGRMA, correspondence, 20 January 2020, p 55.

In relation to proceedings generally, the CCC objected to the Bill's provision for a proceeding for either of the proposed offences to be commenced only with the written consent of the DPP. The CCC submitted that it is not apparent why the DPP's consent would be considered necessary 'for what is (by reference to the available penalty) a relatively minor offence'.⁵⁴⁸ While acknowledging that the explanatory notes describe this provision as safeguard against inappropriate prosecution, the CCC stated that it is not clear:

*... why these offences present a greater risk of inappropriate prosecution over and above the majority of criminal offences in Queensland which do not require the consent of the DPP.*⁵⁴⁹

The Bill's provision for information given to the QIC to be used for the investigation and prosecution of a dishonest conduct of Minister offence under the Integrity Act was also a source of concern, with both the CCC and the QIC submitting that proposed new s 40C requires further consideration.⁵⁵⁰

The QIC queried the need for the new 'use of information' provisions, submitting that existing confidentiality provisions in the Integrity Act are not an impediment to the appropriate disclosure or use of information as may be required for these purposes.⁵⁵¹

The QIC also expressed a particular concern that the provisions are not restricted to information provided by the subject Minister, but rather apply also to information provided to the QIC by any designated person (for example, Directors-General, statutory office holders such as other commissioners), and to any Member of the Legislative Assembly, if that information might be deemed to be relevant to the investigation or prosecution of a Minister.⁵⁵²

The QIC submitted that it can be anticipated that these changes may 'strongly dissuade and deter some designated persons from seeking advice in times of concern and uncertainty, due to confidentiality concerns', which would make complex ethics and integrity issues less visible and 'potentially lead to decisions being made that are not in the public interest'.⁵⁵³ The QIC suggested that some possible unintended consequences of the proposed expanded powers could be:

- *highly speculative and intrusive surveillance on the random chance that a particular Minister, who is the subject of a complaint, assessment, investigation, or prosecution, might call or meet with the QIC to discuss the subject of that action, and*
- *unknown access to information provided to the QIC by Members of the Legislative Assembly, or others such as witnesses before parliamentary committees, thereby running the risk of a breach of parliamentary privilege.*⁵⁵⁴

The QIC requested that the committee carefully weigh the potential effects and consequences of new s 40C:

*... noting that it is open to the committee to recommend to Parliament that any changes to the confidentiality provisions of the Integrity Act 2009 be delayed and considered during the next Strategic Review into the Functions of the QIC.*⁵⁵⁵

⁵⁴⁸ Submission 51, pp 8, 9.

⁵⁴⁹ Submission 51, p 8.

⁵⁵⁰ CCC, submission 51, p 9; QIC, submission 57, p 3.

⁵⁵¹ Submission 57, p 3.

⁵⁵² Submission 57, p 3.

⁵⁵³ Submission 57, p 4.

⁵⁵⁴ Submission 57, p 4.

⁵⁵⁵ Submission 57, p 4.

Further, the QIC also suggested that if it is decided that it is in the public interest for the DPP to have access to information held by the QIC:

*... s 24(3) of the Integrity Act could be partially repealed in relation to criminal matters or investigations, such that the QIC would then be subject to the same obligations as a 'public official', 'unit of public administration', or 'public sector agency'. In this way, the effects and intent of the changes might be more easily understood.*⁵⁵⁶

The CCC, in addressing the provisions, also emphasised:

*... that any investigatory or prosecutorial benefits provided by such an abrogation of the otherwise confidential nature of such disclosure should be carefully balanced against the collateral unintended effect of discouraging frank advice-seeking from the Integrity Commissioner.*⁵⁵⁷

With respect to the penalties proposed for the dishonest conduct of Minister offences, the CCC advised that it considered the proposed penalties to be appropriate for the offending conduct (albeit without supporting the inclusion of a requirement for dishonest intent).⁵⁵⁸ However, the CCC submitted that the Bill would not implement the CCC's recommendation that a Member should be removed from office if it is found that the lack of compliance was intentional.⁵⁵⁹

Currently, s 72(1) of the POQA provides that a Member's seat in the Assembly becomes vacant if the Member is convicted of an offence for which the Member is sentenced to more than one year's imprisonment.⁵⁶⁰ Under the proposed offences, a Minister would therefore be removed from parliamentary office on receiving a sentence of a year or more for a dishonest conduct of Minister offence. The CCC recommended the Bill be amended such that if it is found that the lack of compliance is intentional, the Minister should be removed from office regardless of the level of sentence applied. The CCC suggested that this could be achieved by introducing a circumstance of aggravation to a strict liability offence, with the circumstance of aggravation attracting a commensurate consequence of removal from office.⁵⁶¹

DJAG, in responding to the comments of these integrity bodies, acknowledged both the CCC's objection to the requirement to obtain the consent of the DPP to commence proceedings against the proposed offences, and its suggestion to introduce a circumstance of aggravation for the proposed offences that would result in a Minister's removal from office. DJAG advised that it would give these issues further consideration.⁵⁶²

In response to the QIC's query as to the need for proposed s 40C provision for the use of information for investigation or prosecution, DJAG advised:

Section 40C works to complement section 24(2)(b) of the Integrity Act 2009 which states that the prohibition on the record, use or disclosure of information does not apply where the recording, use or disclosure is authorised under this or another Act.

⁵⁵⁶ Submission 57, p 4.

⁵⁵⁷ Submission 51, pp 8-9.

⁵⁵⁸ Submission 51, pp 8, 9.

⁵⁵⁹ Submission 51, p 9.

⁵⁶⁰ See POQA, s 73(1)(i).

⁵⁶¹ Submission 51, p 9.

⁵⁶² DJAG and DLGRMA, correspondence, 17 January 2020, pp 56, 58.

*Use of, or access to information held by the QIC, regardless of who provided the information, enables the seizure of all relevant evidence relating to an offence under section 40A and permits its use for investigation and/or prosecution.*⁵⁶³

DJAG also noted the QIC's comments regarding the DPP's access to information held by the QIC, and the potential for the abrogation of confidential disclosures to have the unintended effect of discouraging persons from seeking frank advice.⁵⁶⁴ While committing to further consider these issues, DJAG advised:

*Section 40C ensures the investigatory body has the lawful ability to obtain evidence from the QIC which would be subject to the secrecy provisions under section 24 of the Integrity Act 2001. There are currently similar provisions within the Criminal Code, for example, which authorise the use of evidence of things said or done during an Assembly which can be given in evidence against a person for an offence to the extent necessary to prosecute the person for the offence (section 53) which would normally be protected by parliamentary privilege provisions under section 8 of the Parliament of Queensland Act 2001.*⁵⁶⁵

4.6.4 Dishonest intent or strict liability offences

As previously noted, that CCC considered that the Bill's proposed dishonest conduct of Minister offences would not achieve the purposes of its recommendations 3 and 4 made on 6 September 2019.⁵⁶⁶

Effective implementation of these recommendations, the CCC advised, would require the establishment of 'strict liability' offences which 'sanction the failure to disclose relevant interests when the person knew or ought to have known of the relevant interest'.⁵⁶⁷

The CCC submitted that in light of the existing indictable offences in s 92A and s 408C of the Criminal Code, which provide for the imposition of serious penalties where proof of dishonest intent can be established in relation to this type of offending conduct, the intention of its recommendations was to support the establishment of criminal sanctions for the lesser offences of merely failing to declare a conflict or update a register of interest (no intent element).⁵⁶⁸ With respect to conflicts of interest, for example, the CCC envisaged:

*This offence would capture conduct where the evidence was insufficient to establish dishonest intent to the onerous criminal standard of beyond reasonable doubt. Making this misdemeanour an offence of 'strict liability' would appropriately recognise the lesser culpability where dishonest intent could not be proven, encourage transparency in the way ministers deal with conflicts of interest, and significantly contribute to reducing corruption risk.*⁵⁶⁹

Further, the CCC stated:

If you introduce the strict liability offence ... 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 [eg do not comply], it might be easier circumstantially to prove that you had a nefarious intent for not doing it as opposed to the current situation where

⁵⁶³ DJAG and DLGRMA, correspondence, 17 January 2020, p 57.

⁵⁶⁴ DJAG and DLGRMA, correspondence, 17 January 2020, p 56.

⁵⁶⁵ DJAG and DLGRMA, correspondence, 17 January 2020, p 56.

⁵⁶⁶ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57. See also submission 51, pp 7, 9.

⁵⁶⁷ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁵⁶⁸ Submission 51, p 7.

⁵⁶⁹ Submission 51, p 7.

*there is no real consequence and there is a bit of a vague obligation set out to declare your conflict and update your interests.*⁵⁷⁰

The CCC also considered that its recommended strict liability offence for Ministers who fail to update their register of interests should be extended to apply to all Members of Parliament.⁵⁷¹ The CCC stated that this would ‘provide a criminal sanction for contravention of the existing obligation imposed on members by s 69B of the POQA, where currently such failures are punishable only by way of contempt proceedings’ (s 69B(4)).⁵⁷² The CCC considered the public interest ‘would be better served, in appropriate cases, by prosecution proceedings’.⁵⁷³ While the CCC opposed the requirement for the DPP to provide written consent to commence proceedings with respect to the offences in the Bill, the CCC noted the public interest protection this provision would provide in relation to such a strict liability offence for Members of Parliament.⁵⁷⁴

The case for strict liability

The QIC generally supported the CCC’s position, acknowledging:

*... the importance of maintaining public confidence in the effectiveness of the integrity system and regulatory framework, and the particular expertise of the Crime and Corruption Commission to make recommendations in that regard.*⁵⁷⁵

Echoing CCC commentary about declining levels of public trust in government, the QIC suggested that a reasonable member of the public might not perceive the Bill to provide an effective deterrent to corrupt conduct, given the proposed offences would be misdemeanour offences, would ‘apply only to Ministers, and attract a substantially lower penalty than the existing Criminal Code offences’.⁵⁷⁶

The Organisation of Sunshine Coast Association of Residents (OSCAR) also considered the CCC proposal would deliver a more favourable regulatory approach, submitting that politicians have an obligation to familiarise themselves with their obligations, and that a ‘meaningful penalty’ should apply, regardless of intent.⁵⁷⁷

The QHRC, in its submission, considered that a case for introducing strict liability offences could be made if, as the CCC concluded, there is a demonstrated and justified need for such provisions to prevent corruption and provide an appropriately high level of probity (particularly in light of the history of corruption in Queensland). The QHRC noted that corruption is a structural obstacle to the enjoyment of human rights, and that disadvantaged groups suffer disproportionately from corruption, as well as it serving to undermine the rule of law.⁵⁷⁸

The QHRC noted that the work of the Australian Joint Parliamentary Committee on Human Rights (AJPCHR) offers some guidance in considering such offence provisions, with the AJPCHR having observed that ‘the right to be presumed innocent is limited when offences allow for the imposition of criminal liability without the need to prove fault’, but that strict liability offences ‘will not necessarily

⁵⁷⁰ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 60.

⁵⁷¹ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 61.

⁵⁷² Submission 51a, p 1.

⁵⁷³ Submission 51a, p 1.

⁵⁷⁴ Submission 51a, p 1.

⁵⁷⁵ Submission 57, p 2.

⁵⁷⁶ Submission 57a, pp 4-5.

⁵⁷⁷ Submission 13a, p 3.

⁵⁷⁸ Submission 17a, pp 1-2.

be inconsistent with the presumption of innocence where they are reasonable, necessary and proportionate in pursuit of a legitimate objective'.⁵⁷⁹

The QHRC noted that the AJPCHR suggested that strict liability offences are more likely to be proportionate if the offence is regulatory in nature and the penalty is at the lower end of the scale. The QHRC noted that the AJPCHR also cited the Commonwealth Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, which suggests that strict liability offences may be appropriate where it is necessary to ensure the integrity of a regulatory regime (including for offences of a regulatory nature such as those dealing with failing to comply with reporting obligations).⁵⁸⁰ However, the QHRC also noted that the guide cautioned against justifying offences as strict liability offences by reference to broad uncertain criteria, such as offences being against community interests or for the public good, or because doing so would minimise costs.⁵⁸¹

The QHRC considered the principles set out in s 13(2) of the Human Rights Act for deciding whether a limit on a right is reasonable and justified, and observed in relation to the CCC's reform proposal for strict liability offences:

- the presumption of innocence, protected under s 32 of the Human Rights Act, is a fundamental protection of the criminal law
- the proposed limitation is important and consistent with a free and democratic society in that it seeks to prevent conflicts of interest and corruption in the democratic process and that based on the assessment and findings of the CCC it would achieve this purpose
- the recommendations of the CCC indicate that reform is necessary because the current legislative regime is not effective, and
- the offence is arguably regulatory in nature.⁵⁸²

However, the QHRC also queried whether strict liability was the least restrictive way of achieving the Bill's objectives and submitted that the penalty imposed of 200 penalty units or two years' imprisonment is significant.⁵⁸³

The QHRC suggested that instead of removing the need for the prosecution to prove fault, as would appear to be the case under the CCC's proposal, the Bill could require recklessness as a fault element that must be proved (eg where a Minister is aware, or ought reasonably be aware of a conflict of interest).⁵⁸⁴ The QHRC considered that if this was what is intended by the term 'strict liability' then, regarding the presumption of innocence, it would:

*... seem a more proportionate and justified limitation than an offence that did not require the prosecution to prove a fault element beyond reasonable doubt.*⁵⁸⁵

The QHRC suggested that another 'less restrictive option' that may still be consistent with the CCC's recommendation would be to apply strict liability but reduce the maximum penalty of the offences.⁵⁸⁶

Other submissions questioned the evidence base for the CCC's reform proposal, or for the underlying CCC recommendations which informed both the Bill's offence provisions and the CCC's proposed strict liability offences.

⁵⁷⁹ Submission 17a, p 2.

⁵⁸⁰ Submission 17a, pp 2-3.

⁵⁸¹ Submission 17a, p 2.

⁵⁸² Submission 17a, pp 3-4.

⁵⁸³ Submission 17a, pp 3-4.

⁵⁸⁴ Corrupt conduct is defined in s 15 of the Criminal Code.

⁵⁸⁵ Submission 17a, p 4.

⁵⁸⁶ Submission 17a, p 5.

The Clerk of the Parliament noted that the recommendations were provided in a CCC media release which provided some details of one matter, the subject of assessment of the CCC, but which did ‘not lay a proper foundation for the recommendations it makes’:⁵⁸⁷

There is no evidence of proper policy formulation prior to the CCC's media release. Proper policy formulation would involve policy analysis such as defining the objective (or mischief), considering alternative mechanisms to achieve the objective, choosing a correct policy instrument, consultation etc. The recommendations do not clearly enunciate the objective, evince a considered response to an issue, are not clear and authoritative, do not provide sufficient detail to allow implementation, do not consider resource implications or set out a policy that is legally sustainable or otherwise appropriately enforceable.

*In my opinion the CCC's recommendations are purely reactive and are a direct result of the CCC's impotence in one particular matter. There was no consultation with stakeholders, including those who have practical experience in the area... [T]he recommendations have no regard for related issues, including the impact on the administration of the registers of interest and important constitutional conventions and structures.*⁵⁸⁸

Further, the Clerk noted that the CCC made its recommendations for the establishment of criminal offences ‘without any reference to elements usually found in the criminal law such as intention, dishonesty, negligence, or materiality’:⁵⁸⁹

*In my opinion, without specific guidance from the CCC in its original recommendations, it was entirely reasonable for the Government to introduce such concept in the offence. Such elements would be normal in the drafting of criminal offences. When I was consulted by the government on the drafting of the legislation I advocated such an element as whilst I did not support the CCC's recommendations, I could not envisage that they intended strict liability. I cannot see why the Government should be criticised for not drafting the provisions in the way envisaged by the CCC, when no particularity was set out in the recommendations.*⁵⁹⁰

The Clerk also submitted that in proposing the extension of the offence provisions to backbenchers, the CCC ‘appears to be further developing its policy on the run’.⁵⁹¹ In light of these issues, the Clerk advised that he would be unable to support any provisions based on the CCC’s recommendations – including those proposed in the Bill.⁵⁹²

The Ethics Committee also expressed concern about a ‘lack of evidence offered by the CCC as to the extent and nature of the corruption by the Executive or by Parliamentarians’, and secondly, a lack of evidence that its proposal ‘would address any such problem’.⁵⁹³ With respect to evidence, or a lack thereof, the Ethics Committee highlighted the findings of an Ethics Committee report of the 54th Parliament:⁵⁹⁴

This report summarised seven references received at that time concerning alleged failures to register an interest. In two of these matters there were no interests that required disclosure. In another two matters, while there was an interest that required disclosure there was no intent to

⁵⁸⁷ Submission 73, p 2.

⁵⁸⁸ Submission 73, pp 2-3.

⁵⁸⁹ Submission 73, p 1.

⁵⁹⁰ Submission 73, p 3.

⁵⁹¹ Submission 73, p 3.

⁵⁹² Submission 93, 12.

⁵⁹³ Submission 71, p 2.

⁵⁹⁴ Ethics Committee, *Matter of privilege referred by the Registrar on 16 June 2014 relating to an alleged failure to register an interest in the Register of Members’ Interests*, Report No. 149, Queensland Parliament, October 2014, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T6291.pdf>

*dishonestly fail to register it. In three matters, covering two former Members of Parliament, it was found these Members acted with intent in failing to act in accordance with the regime. The Legislative Assembly passed a motion imposing a \$90,000 fine and recommendation one Member be expelled from Parliament. Regarding the other Member, the Legislative Assembly passed a motion imposing fines totalling \$82,000. Both Members also served custodial sentences.*⁵⁹⁵

The Ethics Committee submitted that this summary of relevant matters highlights that in each of the matters where there was evidence of wrongdoing, the end result was imprisonment. Accordingly, it queried:

*... the assertion by the CCC as to the need to increase regulation of corruption of the Executive and the Parliament by criminalisation, when neither the quantity of referrals to the ethics committee, or the penalties imposed by the Parliament, appear to suggest shortcomings in the current requirement to establish an intent.*⁵⁹⁶

Rather, the Ethics Committee asserted, the current legislation, guidelines and convention have not been shown to be insufficient in dealing with failure to declare conflicts of interest – ‘in fact, the opposite is true’.⁵⁹⁷ The Ethics Committee submitted:

The fairly recent examples of former Minister Gordon Nuttall and former Member for Redcliffe Mr Scott Driscoll illustrate the effectiveness of the current regime. In both cases, the former Members were found to have acted with intent in failing to act in accordance with that regime. The committee recommended, and the House passed a motion, imposing fines totalling \$90,000 in the matter of Mr Driscoll, and recommended his expulsion from the Parliament (he resigned before that could occur). The committee recommended, and the House passed a motion, imposing fines totalling \$82,000 in the case of Mr Nuttall. Both former members also served custodial sentences relating to fraud (Driscoll) and perjury and corruption (Nuttall).

Mr Nuttall argued to the Parliament that he had ‘never knowingly or wrongfully set out to do wrong’. However the Parliament found otherwise.

In both the Nuttall and Driscoll cases, the committee reported that it had recommended the maximum fines possible in order to reflect the gravity of the offences, and to send strong messages to members and to the public about the level of accountability expected of members of Parliament.

The committee notes the advice of Dr Nikola Stepanov, the Queensland Integrity Commissioner, that she had experienced a 600% increase in integrity advice sought and provided in past few years. The committee submits this is evidence that the current approach, including the ethics committee’s work in setting and promoting the standards expected of Members of Parliament, including as in the Nuttall and Driscoll cases, is working. Members are seeking advice, and prioritising transparency and accountability.

The CCC considers that a strict liability offence, where intent does not have to be established, will make it easier to prove intent: where a Member failed to declare a conflict or register interests, it might be easier to prove there was a nefarious intent for not doing so. That is, it could be inferred that there was a reason for the failure to declare or register, because the Member must have known he or she had to do so. The CCC indicates this would be “as opposed to the current situation where there is no real consequence and there is a bit of a vague obligation set out to

⁵⁹⁵ Submission 70, p 3.

⁵⁹⁶ Submission 71, p 3.

⁵⁹⁷ Submission 71, p 3. See also The Clerk of the Parliament, submission 73, p 5: ‘There is no evidence of non-enforcement by the Ethics Committee or Legislative Assembly of the requirement of the registers of interest in the appropriate case. Indeed there have been substantial fines imposed’.

declare your conflict and update your interests” (Economics and Governance Committee hearing transcript 20 January, p 61). But in both of the cases outlined above, nefarious intent was readily established under current provisions, and importantly, without the risk of criminalising inadvertent non-disclosures.

When contemplating failures to register an interest, the committee makes it clear that there is a positive obligation on members to familiarise themselves with the requirements of the Parliament of Queensland Act and the Standing Orders. Feigning ignorance to disguise corrupt conduct has not prevented significant penalties, including imprisonment, as can be seen in the cases of Mr Nuttall and Mr Driscoll.

Having said that convention is not sufficient anymore with regard to conflicts of interest in executive decision-making, the CCC at the 20 January EGC hearing also proposed extending the strict liability beyond Ministers to all Members of Parliament. Again, it is our submission that there is no evidence to support the claim that convention (articulated in standing orders) is insufficient, or that there is a problem with backbenchers, who are not part of executive decision-making, failing to declare conflicts or register interests, that would require a legislative response beyond the existing Parliament of Queensland Act provisions (s 69B).⁵⁹⁸

The Ethics Committee further submitted that it considered Members of Parliament generally have a high level of awareness of the importance of integrity matters, given such matters:

... attract a high level of scrutiny at a political level. This is evidenced by the committee’s current list of referrals, and the number of Speaker’s Rulings relating to Register of Interest matters. The high potential for referral of any breaches of requirements ensures a high level of awareness among Members.⁵⁹⁹

Additionally, the Ethics Committee advised that it was unable to find evidence of any other Australian jurisdiction criminalising a failure of a Member of Parliament, or Minister, to comply with their conflict of interest requirements as per the CCC’s recommendations.⁶⁰⁰ The Ethics Committee noted that in the two international jurisdictions (Wales and Scotland) in which it is aware that it is a criminal offence for Members of Parliament to fail to register an interest, the relevant offence is a summary offence with a maximum penalty of a fine.⁶⁰¹ The Queensland Parliament, it noted, already has the authority under the POQA to impose fines similar to those that can be imposed in Wales and Scotland.⁶⁰²

Should a Minister engage in corrupt conduct, potentially gaining a personal benefit as a result of their Ministerial position, the Ethics Committee submitted:

The committee believes that the current obligations imposed by the standing orders, and the proposed addition of s 40A in the Bill as it currently stands, are sufficient to ensure the high standards of transparency and accountability that the public is entitled to expect of Members of Parliament.⁶⁰³

Criminalising honest mistakes

Submissions from the Clerk of the Parliament, the Ethics Committee, the QLS and former Attorney-General the Hon Rod Welford all identified serious concerns that the imposition of the CCC’s

⁵⁹⁸ Submission 71, pp 3-4. Paragraph numbering in original omitted.

⁵⁹⁹ Submission 71, p 8.

⁶⁰⁰ Submission 71, p 7. Jennifer Menzies, also advised that she was unaware of any jurisdictions that criminalise such acts or omissions. See: Jennifer Menzies, Griffith University, hearing transcript, Brisbane, 20 January 2020, pp 35-36.

⁶⁰¹ Submission 71, p 8.

⁶⁰² Submission 71, p 8.

⁶⁰³ Submission 71, p 7.

proposed strict liability offences would unfairly criminalise individuals for potentially harmless or accidental omissions, which may not be of a material nature.

The Ethics Committee explained that when determining if a contempt of the Assembly has been committed, it applies the balance of probabilities as the standard of proof. It noted that this is a lower standard than the 'reasonable doubt' standard required for criminal matters, but stated that a very high order of proof on the balance of probabilities is required to find a contempt, consistent with the test applied in relation to misconduct charges at common law. The Ethics Committee noted that in the leading High Court authority in the area, *Briginshaw v Briginshaw* (1938) 60 CLR 336, Latham CJ at 343-344 stated: 'The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness and importance of the issue'.⁶⁰⁴

To impose strict liability on members for failing to comply with register of interest requirements, the Ethics committee submitted, fails to allow for the variance that Latham CJ referenced in *Briginshaw v Briginshaw*, and would instead see a Member who unknowingly failed to register an interest because they were unaware the interest existed, facing the same outcomes as a Member who intentionally failed to disclose an intent for the sole purpose of engaging in corrupt conduct.⁶⁰⁵ The Ethics Committee considered such a scenario, 'may create an absurd result and injustice for a member'.⁶⁰⁶

The QLS, in outlining similar concerns, provided the following example of how this may play out in practice:

*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... Under strict liability, both persons in that situation would be caught.*⁶⁰⁷

The Clerk of the Parliament, more broadly, questioned whether 'we really want to have laws that make members of parliament criminals for innocent omissions or mistakes', citing a range of hypothetical examples in which this may be the case. This included:

- a circumstance in which a Member may be generally unaware of an interest (including where the interest relates to the business of a relative), and declares the interest immediately on becoming aware of the interest
- a circumstance in which a Member relies on a professional third party such as an accountant, who provides incorrect advice as to the status of the Member's interests, and
- a circumstance in which a Member makes a mistake in interpreting the requirements of the register (the cited example hinged on the member's mistaken belief that an exemption from declaration for motor vehicles (because they are registered) would apply also to a registered caravan used by the Member's family for recreational purposes, noting that there is no definition of a motor vehicle in the Standing Orders, but that under Queensland law a caravan is not a motor vehicle except when it is attached to a vehicle).⁶⁰⁸

The Ethics Committee also highlighted advice from the Clerk during this committee's 2019 Estimates hearing that there can be 'anywhere from 250 to 500 declarations per year'.⁶⁰⁹ The Clerk added that

⁶⁰⁴ Submission 71, p 6.

⁶⁰⁵ Submission 71, p 6.

⁶⁰⁶ Submission 70, p 6.

⁶⁰⁷ Public hearing transcript, Brisbane, 20 January 2020, p 68.

⁶⁰⁸ Submission 73, pp 5-8.

⁶⁰⁹ Submission 71, p 4.

when a regular mid-year update is sent to Members of Parliament reminding them to update their registers of interests:

*I know that there are updates that are made then that have probably occurred sometime before, but their memory is only jogged by our correspondence to them.*⁶¹⁰

The Ethics Committee stated that it anticipated that some may interpret the Clerk's evidence as meaning late updates to Members' registers of interests are common, and therefore that a strict liability offence would be appropriate.⁶¹¹ However, the Ethics Committee highlighted the wide range of items that require disclosure in the register, including items with a 'very low risk of creating any actual or perceived conflicts' (eg such that updates to the register are required when a Member of Parliament receives a new debit card, or joins a community association).⁶¹²

While acknowledging that criminal charges do not equate to a conviction under the Bill, and that the discretion of the DPP to prosecute cases would still be employed, the Ethics Committee considered:

*... that the charge alone may be career-ending, and cause significant personal distress to members of Parliament for what is a potentially an honest mistake with no element of corruption.*⁶¹³

Hon Rod Welford, in similarly rejecting the CCC's proposed strict liability offences, submitted that strict liability should apply to offences such as physical assault or child sexual assault, where 'the mere act delivers the gravity of its consequence. The certainty of harm and its gravity provide the exceptional circumstances that justify strict liability'.⁶¹⁴

Hon Rod Welford argued that strict liability does not apply to offences of dishonesty because:

*... the essence of the offence is the dishonest intent of the act rather than the act itself or its consequences which are usually far less certain. When there is no way of knowing that the act will be likely to cause harm which is inherently serious, then as a matter of public policy, the use of strict liability to criminalise a potentially harmless act or accidental omission is inappropriate.*⁶¹⁵

Hon Rod Welford also noted that recommendation three made by the CCC to create a criminal offence when a member of Cabinet does not declare a conflict of interest included reference to a conflict that 'may' conflict with their ability to discharge their responsibilities.⁶¹⁶ Hon Rod Welford stated:

... whether there is a 'conflict of interest' depends on the nature of the private interest that could conflict with one's public duty. That there "may" be a conflict is an acknowledgement that the likelihood of a conflict of interest is itself not always certain, let alone the gravity of the consequences, if any, of omitting to declare it.

*In this case, failing to declare something (a conflict of interest) which itself is not certain, causing consequences that are even less certain, cannot support its being defined by strict liability.*⁶¹⁷

⁶¹⁰ Submission 71, p 4 (citing the Clerk of the Parliament).

⁶¹¹ Submission 71, p 4.

⁶¹² Submission 71, pp 4-5.

⁶¹³ Submission 70, p 7.

⁶¹⁴ Submission 69, p 1.

⁶¹⁵ Submission 69, pp 1-2.

⁶¹⁶ Submission 69, p 2.

⁶¹⁷ Submission 69, p 2.

Hon Welford further emphasised that as with sentencing in criminal matters, if the offence is to be defined as a crime, there must be discretion for the courts to consider the nature of the intention to conceal a real conflict and the consequences of that behaviour.⁶¹⁸

Other perverse outcomes

While acknowledging the important role of the CCC in building and maintaining confidence in the ethics and integrity of government, and its 'understandable' efforts to 'advocate setting the highest possible bar when it comes to the conduct of public officials',⁶¹⁹ the Clerk of the Parliament, Hon Rod Welford, and the QLS identified concerns about a lack of consideration of the broader policy and legislative landscape with respect to the proposed strict liability offences.

Hon Rod Welford submitted that while 'not to criticise the intent underlying [the CCC's submission]', Parliament must consider how any such proposals interact with existing policy and with the drafting and legislating of its laws in order to 'avoid creating unintended and perverse consequences'.⁶²⁰

The Clerk submitted in this respect that 'there are at least five perverse outcomes from putting the registers of interest within a criminal regime' to which the CCC does not appear to have had regard in issuing its recommendations:⁶²¹

- (1) In my 2009 submission to the Integrity White Paper I outlined how much more extensive the Queensland Parliament's disclosure regime was compared to other Parliaments. As outlined above, the disclosure regime will need to be reviewed and narrowed to be suitable for a criminal regime. This will mean that the Queensland Parliament's disclosure regime, which benchmarks highly in terms of disclosure may become less transparent.*
- (2) Currently Members update their register when they realise they have made a mistake or omission. Members who omit to declare a matter through genuine mistake or error are less likely to rectify their disclosure if they know it may highlight a criminal charge.*
- (3) The Registrar would have an obligation to report members who have failed to declare their interests as required to the CCC as they would have committed a criminal offence in the knowledge of the Registrar.*
- (4) Consequent to (2) and (3), if the Registrar (currently the Clerk) is to become an enforcer by default, and members are not willing to disclose errors, then considerable wider harm will befall the Parliament's ethics regime. The contact that members have with the Clerk regarding the registers of interests and other matters of disclosure and procedure enhances, rather than diminishes the ethics of the entire Parliament.*
- (5) The Ethics Committee will be effectively sidelined by the criminal regime as regards the registers of interest. As explained below, the CCC will become the arbitrator of disclosure and whether Members should be charged with criminal offences.⁶²²*

⁶¹⁸ Submission 69, p 2.

⁶¹⁹ Hon Rod Welford, submission 69, p 2.

⁶²⁰ Submission 69, p 2.

⁶²¹ Submission 73, p 2.

⁶²² Submission 73, p 9.

In terms of broader impacts on the administration of the registers of interest, further, the Clerk, as Registrar,⁶²³ submitted:

- if criminal offences are to be introduced, then as a prelude the register of interest requirements will need to be rewritten and narrowed to ensure there is no subjectivity and that there cannot be confusion or mistake about disclosure requirements⁶²⁴
- most communications with members about the requirements of the register of interest involve simple matters and are currently predominantly oral, with written advice provided only for complicated matter where the Registrar insists on this. If the registers are to be within a criminal regime, the Registrar would need to insist upon written requests for advice and to issue written advice in all matters, meaning the administration of the register would increase ‘exponentially’, and
- defences to any offence should include reliance on advice provided by the Registrar.⁶²⁵

Both the QLS and the Clerk also raised broader concerns about the further expansion of the CCC’s criminal jurisdiction over Members of Parliament.⁶²⁶

The Clerk identified a risk that discretionary enforcement of such provisions by the CCC may undermine public confidence in the CCC by ‘increasing its involvement in political matters that should be dealt with by the system of responsible government’.⁶²⁷

The Clerk submitted that there has been an erosion of ministerial responsibility in recent decades, which can be partly attributed to governments’ propensity to refer matters to the CCC (and its predecessors) that are probably not in the CCC’s mandate, as an alternative to committing to the concept of ministerial responsibility.⁶²⁸ The Clerk explained:

The CCC's "assessment" of such matters usually takes many weeks. If it is escalated to an "Investigation" it will generally take longer. Generally Ministers only stand aside if a matter reaches the declared threshold of "investigation". Whilst the matter is under CCC "assessment" the political heat in the matter usually dissipates. The government usually refuses to discuss the matter or answer questions because it is under CCC assessment. When the CCC responds that there is no corrupt conduct in terms of its jurisdiction {as it usually does}, the government proclaims the minister has been "cleared", when in fact what has been resolved is the matter is not within the CCC's jurisdiction. Meanwhile the CCC has taken to not providing reports and, without a report, the complete facts determinable by the evidence provided to the CCC often remains confidential or unknown.⁶²⁹

⁶²³ POQA, s 69C.

⁶²⁴ The Clerk noted, for example, that 7(5)(n) of Schedule 2 of the Standing Orders includes a ‘catch all’ provision with selective elements requiring a member to disclose ‘any other interest (whether or not of a pecuniary nature) of the member or a related person’ of which the member is aware, and which ‘raises, appears to raise, or could foreseeably raise, a conflict between the member’s private interest and their duty as a member’. Submission 73, p 8.

⁶²⁵ Submission 72, p 9.

⁶²⁶ Calvin Gnech, Chair, Occupational Discipline Law Committee, QLS, public hearing transcript, Brisbane, 20 January 2020, p 66; submission 73, p 2.

⁶²⁷ Submission 73, p 2.

⁶²⁸ Submission 73, p 11.

⁶²⁹ Submission 73, p 11.

The Clerk submitted that if the five recommendations of the CCC in its 6 September 2019 media release are implemented, this will:

*... exasperate this routine. The jurisdiction of the CCC over members of parliament will increase significantly. As I have highlighted above, there is a real risk of members breaching disclosure requirements for immaterial matters or without criminal intent. It is inevitable that the ludicrousness of prosecuting members for minor and immaterial matters or even delay will have to occur. There will be in turn be increased discretionary enforcement of penal provisions by the CCC. This increase in discretionary enforcement will undermine public confidence in the CCC itself, as will its overall increasing involvement in political matters that should be dealt with by the system of responsible government.*⁶³⁰

The QLS, in warning of the additional burden on the criminal justice system associated with the proposed strict liability offences, submitted that there is ‘no need to create a new offence every time a new issue arises’, and that the regulatory approach should be one that ‘focuses upon education rather than putting more employment errors and administrative oversights into the criminal jurisdiction’.⁶³¹

Application of offences to all Members of Parliament

Stakeholder views on extending strict liability offences in relation to register of interest requirements to all Members of Parliament largely mirrored views on the proposal to establish strict liability offences generally.

OSCAR, who supported the CCC’s proposal to establish strict liability offences for Ministers’ contraventions of register of interest requirements, also supported the application of such offences to all Members of Parliament.⁶³²

The Ethics Committee and Clerk of the Parliament rejected the proposal for an expansion of any such offence provisions, citing a lack of evidence to justify the extension of the provisions to backbench Members.⁶³³ The CCC stated in this regard:

*... there is no evidence to support the claim that convention (articulated in standing orders) is insufficient, or that there is a problem with backbenchers, who are not part of executive decision-making, failing to declare conflicts or register interests, that would require a legislative response beyond the existing Parliament of Queensland Act provisions (s 69B).*⁶³⁴

The Ethics Committee considered that it is appropriate that Ministers are held to higher standards of conduct than Members of Parliament, as:

*Ministers have significant responsibility as members of the executive government. They are responsible for key policy decisions and expenditure of public funds. The potential for them to engage in corrupt conduct is significantly higher than that of a member of the backbench.*⁶³⁵

The Clerk, further, rejected calls for consistency in the approach to integrity matters between levels of government, submitting that this would fail to take into account the clear distinction between State and local government functions:

Local government, amongst all levels of government, is the level which is most exposed to risks of fraud and corruption. This is because:

⁶³⁰ Submission 73, p 12.

⁶³¹ Calvin Gnech, QLS, public hearing transcript, Brisbane, 20 January 2020, p 66.

⁶³² Submission 13a, p 3.

⁶³³ Submission 71, p 4, submission 73, p 12.

⁶³⁴ Submission 71, p 4.

⁶³⁵ Submission 71, p 7.

- *there is a high level of procurement of goods and services, often from local suppliers;*
- *there is a high degree of devolved decision making vested in local governments;*
- *there is generally lower levels of risk controls; and*
- *the nature of council business provide more lucrative opportunities for fraud and corruption. (For example, the ability of councils to approve multimillion-dollar development applications or land rezoning or waive contributions to infrastructure charges.)⁶³⁶*

A State backbencher, the Clerk concluded, 'is simply not in the same position of risk as a local councillor'.⁶³⁷

The QLS, however, while unconvinced of the necessity of any new offences, considered that if the Bill's proposed dishonest conduct offences are to proceed, 'they should extend to elected representatives, and where appropriate their staff, in each branch of government that the State has jurisdiction to legislate in respect of'.⁶³⁸

This Bill aims to improve integrity of political processes and of government. We consider that conduct that meets the elements of the offence provisions undermines this integrity whether it is the conduct of a minister who performs executive functions or conduct of a councillor or the conduct of a member of parliament who votes on legislation, performing committee and other work and contributes to policy development.⁶³⁹

Committee comment

The committee's role is to examine the legislation as put forward by the Attorney-General and Minister for Justice in the Bill.

The committee supports the dishonest conduct of Minister offence provisions as drafted.

The committee notes the CCC's advice that it considers that the offences should be implemented as strict liability provisions for which intent is not required to be established. The committee also notes that a number of stakeholders had strong reservations about imposing strict liability for offences of this nature.

Any implementation of strict liability provisions should undergo a proper inquiry process.

⁶³⁶ Submission 73, p 10.

⁶³⁷ Submission 73, p 10.

⁶³⁸ Submission 59, p 7.

⁶³⁹ Submission 59, p 7.

5 Amendments relating to dishonest conduct of councillors and other local government matters

5.1 Amendments relating to dishonest conduct of councillors

The Bill proposes to introduce new dishonest conduct of councillor offences in the LGA and COBA, to apply if a councillor fails to comply with particular conflict of interest and register of interest requirements (which are prescribed as ‘relevant integrity provisions’), or provides false or misleading information in this respect, with the intent to dishonestly gain a benefit for the councillor or someone else, or to dishonestly cause a detriment to someone else.⁶⁴⁰

These offences align with the proposed new dishonest conduct offences in the Integrity Act⁶⁴¹ and POQA⁶⁴² which would apply to Members of Cabinet (and which are outlined in chapter 4 of this report). While the CCC recommendations that informed those amendments applied only to members of Cabinet, on the introduction of the Bill, the Attorney-General and Minister for Justice stated:

*As this government has previously made clear, where we can align requirements for state and local governments we will. This includes the introduction of a new offence that applies when a councillor dishonestly contravenes particular conflict of interest or register of interest requirements. If the contravention is done with intent to dishonestly obtain a benefit for the councillor or another person, or to dishonestly cause a detriment to another person, a maximum penalty of 200 penalty units, or two years imprisonment, will apply. This is consistent with the maximum penalties proposed for the similar dishonesty offence applying to cabinet ministers.*⁶⁴³

In addition to attracting a maximum \$26,690 fine (200 penalty units) or two years’ imprisonment, the dishonest conduct of councillor offences would also be classed as serious integrity offences,⁶⁴⁴ meaning that if a councillor were charged with the relevant offence under the COBA or LGA, they would be immediately suspended from office.⁶⁴⁵ Further, if convicted, the councillor would automatically stop being a councillor and would be disqualified from holding that office for seven years.⁶⁴⁶

Contravention of the ‘relevant integrity provisions’, for which the dishonest conduct offences apply, would also amount to misconduct under conduct provisions in the LGA, and could result in disciplinary action being taken against the councillor.⁶⁴⁷ Investigators from the Office of the Independent Assessor (OIA) have responsibility for investigating whether an offence has been committed against a conduct provision, to assist the Independent Assessor in performing the Assessor’s functions under the LGA.⁶⁴⁸ If, at the end of the investigation, the Independent Assessor reasonably suspects misconduct, the OIA

⁶⁴⁰ Explanatory notes, p 5. See also Bill, cl 89, s 198D (COBA); cl 119, s 201D (LGA).

⁶⁴¹ Bill, cl 65, s 40A (Integrity Act).

⁶⁴² Bill, cl 73, s 69D (POQA).

⁶⁴³ Hon Yvette D’Ath MP, Attorney-General and Minister for Justice, *Record of Proceedings*, Queensland Parliament, 28 November 2019, p 3948.

⁶⁴⁴ Bill, cl 92, amending Schedule 1 (COBA); cl 124, amending Schedule 1 (LGA).

⁶⁴⁵ LGA, s 175K; COBA, 182A. See: LGA, s 175L and COBA, s 182B for when a person is charged with a disqualifying offence (which includes any integrity offences and serious integrity offences).

⁶⁴⁶ LGA, s 153(1)(c); COBA, s 153(1)(c).

⁶⁴⁷ Explanatory notes, p 5; LGA, s 105L(c)(iv).

⁶⁴⁸ Explanatory notes, p 5. The functions of the Independent Assessor are set out in s 150CU of the LGA. The OIA assesses, investigates and prosecutes complaints about councillor conduct. Where the conduct is identified as misconduct, the OIA investigates and prosecutes the misconduct. Suspected corrupt conduct is referred to the CCC and inappropriate conduct matters are referred back to local government. The OIA also proactively conducts training on the councillor complaints system and provides resources on misconduct risk factors. The Independent Assessor reports directly to the Minister for Local Government on these activities. See: OIA, *Annual Report 2018-19*, September 2019, p 6.

may apply for the matter to be heard by the Councillor Conduct Tribunal, with the latter having the power to impose a range of disciplinary actions.⁶⁴⁹

The proposed new dishonest conduct offences would also apply to councillor advisors in respect of a failure to register an interest or update an interest with dishonest intent, and to the provision of false or misleading information in respect of a register of interest.⁶⁵⁰ (For further discussion of provisions governing the roles and actions of councillor advisors, see chapter 5.5 of this report).

5.1.1 Crime and Corruption Commission position on proposed offences

As noted at chapter 4.6, the CCC has advised that it does not support the proposal that prosecutions for Ministers' and councillors' noncompliance with conflict of interest and registers of interest requirements be limited only to matters for which a dishonest intent is able to be proved, as is the case for the Bill's proposed offences. Rather, the CCC has advised that it considers that:

- the provisions should be drafted to ensure '... 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', and
- the effective enforcement of these obligations requires the use of 'strict liability' offences which 'sanction the failure to disclose relevant interests when the person knew or ought to have known of the relevant interest'.⁶⁵¹

The current penalty regime for councillor conflicts of interest and registers of interest already contains strict liability offences, with these having been introduced in 2018, as part of the government's response to the Operation Belcarra Report.⁶⁵² Specifically, the LGA and COBA provide for a series of strict liability offences, with a higher-level, aggravated penalty applying for intentional contraventions (see table below).

Existing offence section	Maximum penalty if contravened	Intent element
Section 171B Particulars of councillors' interests, and changes to their interests, to be recorded on their register of interests within 30 days	85 penalty units Not an integrity offence	No intent element
	100 penalty units Integrity offence	Intent element ⁶⁵³
Section 175C(2) Failure to inform of a material personal interest or to leave the place where the meeting is being held	85 penalty units Not an integrity offence	No intent element
	200 penalty units or 2 years' imprisonment Integrity offence	Intent element ⁶⁵⁴

⁶⁴⁹ Office of the Independent Assessor, *Complaints process*, webpage, last updated 6 June 2019, <https://oia.qld.gov.au/office-of-the-independent-assessor/complaints-process.html>

⁶⁵⁰ Bill, cl s 89, 198D (COBA); cl 119, s 201D (LGA).

⁶⁵¹ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 60.

⁶⁵² As implemented by the *Local Government Electoral (Implementing Stage 1) and Other Legislation Amendment Bill 2018*.

⁶⁵³ The higher maximum penalty of 100 penalty units applies if the councillor intentionally fails to comply.

⁶⁵⁴ The higher maximum penalty of 200 penalty units or two years' imprisonment applies if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person or entity.

Section 175E(2) Failure to inform a meeting of a conflict of interest	100 penalty units of 1 year's imprisonment Integrity offence	No intent element
Section 175E(5) Failure to comply with a decision of council that a conflicted councillor must leave the meeting	100 penalty units of 1 year's imprisonment Integrity offence	No intent element
Section 175I(2) Offence for councillor with material personal interest or conflict of interest to influence or attempt to influence another councillor to vote in a particular way	200 penalty units or 2 years' imprisonment Integrity offence	No intent element
Section 175I(3) Offence for councillor with a material personal interest to influence or attempt to influence a local government employee to decide a matter in a particular way	200 penalty units or 2 years' imprisonment Integrity offence	No intent element

The CCC has expressed support for the retention of the existing local government penalty regime, which it cited in its recommendation 4 of 6 September 2019. Specifically, in recommending the establishment of a criminal offence for a Minister's failure to comply with register of interest requirements (with suitable applicable penalties, including possible removal from office for intentional non-compliance), the CCC stated that this:⁶⁵⁵

*... would align the obligations of elected officials in state government with the obligations of elected officials in local government. This recommendation is consistent with the recommendations for local government made by the CCC arising out of Operation Belcarra.*⁶⁵⁶

5.1.2 Stakeholder views

The QHRC noted that under the Bill's proposed offence provisions – and equally, for the existing statutory requirements – a failure to comply with the relevant integrity provisions may not only amount to a dishonest conduct offence, but would also constitute misconduct, and therefore may lead to the matter being dealt with as an internal local government disciplinary matter for which disciplinary action may be taken. The QHRC highlighted that s 34 of the *Human Rights Act 2019* (Human Rights Act) provides a person with the right not to be tried or punished more than once for an offence the person has already been finally convicted or acquitted for, and highlighted that making councillors or councillor advisors subject to penalties as well as disciplinary proceedings could potentially engage that right.⁶⁵⁷ The QHRC also acknowledged, however, that 'disciplinary proceedings are generally not concerned with punishment, but rather protection of the public and the reputation of the profession in question'.⁶⁵⁸

The QLS queried why the Bill's explanatory notes do not indicate how the relevant integrity provisions will interact with s 92A of the Criminal Code (misconduct in relation to public office), which contains a similar offence for 'public officers' where there is proof of dishonest intent. The QLS noted that the definition of 'public officer' in the Criminal Code includes reference to a member of a local government,

⁶⁵⁵ Submission 51, pp 4, 12-13.

⁶⁵⁶ CCC, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform', media release, 6 September 2019.

⁶⁵⁷ Submission 17, p 15.

⁶⁵⁸ Submission 17, p 15. The QHRC cited an example from Victoria where a Psychology Board of Australia finding of unprofessional conduct by a registered psychologist arising from his conviction of fraud offences did not violate the psychologist's right not to be punished more than once (pp 15-16).

such that the explanatory notes should address why a new offence is required (see also chapter 5.6.2 for similar commentary regarding potential overlap with proposed dishonest conduct of Minister offences).⁶⁵⁹ CCC Chairperson Mr MacSporran also noted the potential duplication of the dishonest conduct offence provisions in this respect.⁶⁶⁰

With reference to the 'relevant integrity provisions' for which the dishonest conduct of councillor offences would apply, the OIA submitted that the existing statutory offences that apply in these circumstances offer a responsive and scaled penalty regime:

*Most of these offences do not require a proof of an intent to dishonestly cause a benefit or a detriment. Additionally, the offences that do include an intent element also provide for a lower level offence, which does not require proof of intent.*⁶⁶¹

The OIA submitted that rather than creating offences for State Cabinet Members that align with the existing obligations of elected officials in local government, the proposed dishonest conduct offences effectively create a new approach to offences that is then applied at both a State and local government level.⁶⁶² The OIA submitted that this new approach differs to the current approach under the LGA and COBA in that it would:

- increase the maximum penalty that applies to the contravention of relevant integrity provisions to a uniform maximum of 200 penalty units or two years' imprisonment, in contrast to the present penalties which range from 85 penalty units up to 200 penalty units or two years' imprisonment
- introduce an intent element in all offences for which there are currently strict liability options, with the result that contraventions of the relevant integrity provisions would be more difficult to prosecute than they presently are, and
- result in non-compliance with relevant integrity provisions being dealt with predominantly as misconduct.⁶⁶³

The OIA explained that currently, it can elect to deal with a contravention of an offence provision either as misconduct or by commencing a criminal prosecution in the Magistrates Court. While it has elected to deal with all breaches of these provisions to date as misconduct, the OIA noted that it has informed councillors that matters may be dealt with as criminal offences if:

- the conduct results in the councillor or a close associate receiving a benefit or avoiding a loss, or
- the councillor has been found by the Councillor Conduct Tribunal to have engaged in misconduct in similar circumstances, or otherwise has a significant disciplinary history, and the councillor has not responded to the opportunity provided by the disciplinary approach to modify their conduct.⁶⁶⁴

The OIA considered the Bill would remove its ability to escalate matters that fall into the above categories unless the intent element can be proven, meaning the statutory offences are likely to be less effective in practice as a deterrent for councillor corrupt conduct or misconduct.⁶⁶⁵

⁶⁵⁹ Submission 59, p 9.

⁶⁶⁰ Public hearing transcript, Brisbane, 20 January 2020, p 57.

⁶⁶¹ Submission 60, p 6.

⁶⁶² Submission 60A, p 4.

⁶⁶³ Submission 60, p 7; OIA, submission 60A, p 4.

⁶⁶⁴ Submission 60, p 8.

⁶⁶⁵ Submission 60, pp 6-8.

The CCC expressed a similar view, submitting that if the proposed offence provisions were to be implemented, the accompanying requirement to provide dishonest intent would mean that:

... for most non-compliances, instituting criminal proceedings will not be an option and disciplinary proceedings for councillor misconduct will be the most likely available course. Whilst this situation for first or second-time offenders may well represent an appropriate response to ensure compliance, the unavailability of criminal sanctions for recidivist offenders means that an escalation of enforcement action is not available and an important compliance tool is taken away from the Office of the Independent Assessor.⁶⁶⁶

Further, the OIA and CCC also objected to the need for the DPP's consent for prosecutions (albeit for the CCC, primarily in reference to the proposed dishonest conduct of Minister offences).⁶⁶⁷ The OIA submitted that this requirement, and the introduction of an option for a councillor to elect to have their matter dealt with on indictment, would seem to have the effect of limiting the OIA's prosecution function in so far as it applies to the relevant integrity provisions referred to in the Bill.⁶⁶⁸

Overall, the CCC submitted that the removal and replacement of the two-tier penalty regime and strict liability offences 'constitutes a significant change which introduces a corruption risk by discouraging openness and transparency'.⁶⁶⁹ The CCC warned that this may have a negative impact on public perceptions about democratic decision making process.⁶⁷⁰

In expressing support for the CCC's position, the QIC also cited potential adverse impacts on public perceptions:

... if the Crime and Corruption Commission is correct in that the introduction of dishonest conduct offences at State level will not satisfy public concerns of the effectiveness of interest-related laws, by extension, this perception might flow through to affect public perception of the effectiveness of interest-related laws at local government level as well.

... it is important that laws are, and are perceived to be, effective at preventing corruption to ensure that public perception and trust in government is not diminished.⁶⁷¹

OSCAR submitted that it strongly agreed with the position of the integrity bodies, advising that it considers councillors should be able to familiarise themselves with their obligations if they wish to occupy such a position, and that the question of intent should be irrelevant.⁶⁷²

Local government representatives, in contrast, generally expressed support for the Bill's approach of including a requirement for dishonest intent to be established before penalties can be applied. The LGAQ and Balonne Shire Council supported the retention of the proposed amendments 'as currently drafted',⁶⁷³ with the LGAQ submitting that it believes the Bill:

... strikes an appropriate balance between deterring and punishing serious and intentional wrongdoing while providing for an individual's right to natural justice such that they are enabled to function confidently and fulfil duties of an elected member, operating to the best of their knowledge and ability, with genuine intent to comply with the law.⁶⁷⁴

⁶⁶⁶ Submission 51, p 12.

⁶⁶⁷ OIA, submission 60, p 8; CCC, submission 51, p 13.

⁶⁶⁸ Submission 60, p 8.

⁶⁶⁹ Submission 51, p 12.

⁶⁷⁰ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 57.

⁶⁷¹ Submission 57A, p 5.

⁶⁷² Submission 13A, p 3.

⁶⁷³ LGAQ, submission 15A, p 2; Balonne Shire Council, submission 70, p 2.

⁶⁷⁴ Submission 15A, p 2.

The LGAQ expressed concerns about the application of penalties without any requirement to establish intent, particularly given the complexities of conflict of interest matters.⁶⁷⁵ While the OIA noted that it is yet to engage its powers of criminal prosecution with respect to contraventions of councillor conflict of interest and register of interest provisions, the LGAQ was critical of the capacity for criminal prosecutions without any requirement to demonstrate intent.⁶⁷⁶ The LGAQ cited former QLS President Mr Bill Potts in this respect, as follows:

*Prosecutions with criminal penalties should only occur where intention is clearly established. Where the prosecution seeks to deter and punish behaviour it must be proven that the citizen intended to commit the offence. It is a bed rock principal in criminal law, with very rare exceptions. As a society we recognise that mistakes can occur outside the knowledge or control of the individual.*⁶⁷⁷

The LGAQ further submitted:

*Situations where the elected member could not have known of the interest, such as honorary positions that have never been disclosed or activated, situations where interests have passed without notification, situations where individuals have acted in good faith on incorrect information, situations where family relationships are fractured and detailed knowledge of related party interests is unknown – all provide real examples of situations where conflicts have arisen, which have been absent of dishonest intent, and resulted in no harm or benefit.*⁶⁷⁸

Gold Coast Mayor Cr Tom Tate also noted that penalising councillors for honest mistakes may serve to discourage candidates from entering local government. Cr Tate submitted:

It must be remembered that elected Councils across Queensland are a "broad church" comprising people from widely diverse backgrounds who simply want to serve their community. If they are filled with fear that an innocent action could lead to a jail term they will sensibly run a mile from wanting to be a Councillor and who could blame them? But that would be a tragedy for good governance in this state.

*We want local government to be a vibrant mix of people and views – not a safe haven for lawyers and their like who feel they have the smarts to survive the CCC's rule changes.*⁶⁷⁹

The QLS also stated of the current penalty regime that it was 'not intended to create strict liability provisions for administrative oversight, however, a significant number of investigations and prosecutions that are being pursued have related to these types of matters'.⁶⁸⁰ The QLS submitted of the 2018 reforms (which established new conflict of interest requirements and offence provisions), that:

Councillors do not seem to have been given the proper support in terms of education and administrative support to understand and comply with all of the new obligations placed upon them. The result is that some councillors have been identified by the Office of the Independent Assessor and prosecuted for one-off administrative oversights when, in our view, the goal of these reforms should be to ensure compliance with the requirements relating to registers and disclosures, at first instance, so that councils can operate with integrity.

QLS unequivocally deplors corrupt conduct in our government, at all levels and is supportive of reasonable steps to address and erode such conduct. However, it is important to remember that

⁶⁷⁵ Submission 15A, pp 2-4.

⁶⁷⁶ Submission 15A, p 3.

⁶⁷⁷ Submission 15A, p 3.

⁶⁷⁸ Submission 15A, p 4.

⁶⁷⁹ Submission 72, p 2.

⁶⁸⁰ Submission 59, p 8.

*breaches of the legislation result in penalties, including criminal penalties and regulatory penalties, and also have impacts on the councillors' careers and livelihoods.*⁶⁸¹

Burdekin Shire Council Mayor, Cr Lyn McLaughlin, highlighted her own experience under the existing system, noting that an inadvertent breach of register of interest requirements led to the Councillor Conduct Tribunal making a finding of misconduct against her. Cr McLaughlin noted that the Councillor Conduct Tribunal, in their findings, stated:

*Councillor McLaughlin did not intentionally fail to record the particulars of her interest, the subject of the allegations in her register of interest. The omissions were inadvertent.*⁶⁸²

Cr McLaughlin submitted that she had been advocating to DLGRMA for some differentiation between the way administrative oversights or omissions are treated, as compared to contraventions with an intent to mislead the Council and ratepayers. Cr McLaughlin submitted:

*I am most concerned that someone else may have to endure the hurt and distress I have undergone and the huge financial cost to me for an inadvertent omission. Do you know anyone who hasn't made an administrative error in their working lives?*⁶⁸³

5.1.3 Department's response

DLGRMA acknowledged the QHRC's comments regarding the potential engagement of the proposed dishonest conduct of councillor offence with the Human Rights Act.⁶⁸⁴

In relation to the QLS' comments regarding the interaction of the proposed offence with s 92A of the Criminal Code, DLGRMA advised:

*... while there may be some overlap in the conduct covered by the two offences, the new dishonesty offence applies to non-compliance with specific requirements about registers of interest and conflicts of interest. A decision about which is the relevant offence to prosecute would be made by the prosecuting body after considering the conduct or omission involved, on a case by case basis.*⁶⁸⁵

In response to the submissions of the CCC and the OIC regarding the limitations of the proposed dishonest conduct of councillor offence, DLGRMA noted that the LGA provides for a range of disciplinary actions to be taken against a councillor who has engaged in misconduct, including a recommendation to the Minister that the councillor be suspended or dismissed.⁶⁸⁶ DLGRMA also noted that a 'staged' approach would still be available under the Bill's proposals, with inadvertent breaches able to be dealt with as misconduct, and offences carried out with intent able to be the subject of either an application to the Councillor Conduct Tribunal or a criminal prosecution.⁶⁸⁷

Further, DLGRMA stated:

*The introduction of the offence, and the requirement for the Director of Public Prosecutions to consent to the proceedings were introduced for consistency with the new offences applying to State Ministers.*⁶⁸⁸

⁶⁸¹ Submission 59, p 8.

⁶⁸² Submission 22, p 2.

⁶⁸³ Submission 22, p 2.

⁶⁸⁴ DJAG and DLGRMA, correspondence, 17 January 2020, p 72.

⁶⁸⁵ DJAG and DLGRMA, correspondence, 17 January 2020, p 72.

⁶⁸⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 72.

⁶⁸⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 74.

⁶⁸⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 72.

DLGRMA also acknowledged the QLS' concerns about ongoing uncertainty surrounding previous reforms and associated compliance challenges for councillors, advising in response that:

*DLGRMA will provide training to Councillors on the new provisions including new conflict of interest and registers of interest requirements. DLGRMA will also work with agencies such as the Office of the Independent Assessor and the Integrity Commissioner to ensure sufficient resources are available for Councillors to build their capacity in these areas.*⁶⁸⁹

Finally, DLGRMA noted Cr McLaughlin's suggestion that a fine or other separate penalty be imposed rather than a finding of misconduct for an inadvertent breach. DLGRMA stated in response:

*... changes to the Councillor complaints system to introduce a new category of conduct involving inadvertent breaches is outside the scope of this Bill. However, this Bill does draw a distinction between offences which are carried out with intent versus an inadvertent breach. Where an offence is inadvertent, it will be dealt with as misconduct.*⁶⁹⁰

5.2 Conflicts of interest

Chapter 6, part 2, division 5A of the LGA, and chapter 6, part 2 division 5A of the COBA set out a process for declaring and managing councillor conflicts of interests in matters other than ordinary business matters (to which the conflict of interest provisions do not apply) at a local government meeting. The current provisions distinguish between a 'conflict of interest' and a 'material personal interest', specifying separate processes for dealing with the interest, depending on the type of interest it constitutes.

Where a councillor has a more serious, 'material personal interest' in a matter, the councillor must declare the interest, including the specified particulars of the interest, and must leave and stay away from the meeting while the matter is discussed and voted on.⁶⁹¹ If a councillor has a 'conflict of interest' in a matter, the councillor must declare the interest, including specified particulars, and the other councillors must decide:

- whether the councillor has a conflict of interest, and
- if so, whether the councillor must leave and stay away from the meeting while a matter is discussed and voted on, or whether the councillor may participate in the meeting.⁶⁹²

DLGRMA has advised that stakeholder feedback on the current process is that the conflict of interest provisions are 'confusing for councillors and in some instances, difficult to implement'.⁶⁹³ This has included feedback from councillors that:

*They are confused by the difference between a conflict of interest and what we call a material personal interest. They also currently believe that all personal interests must be disclosed under the Local Government Act, irrespective of whether it is a \$20,000 donation or a \$20 donation.*⁶⁹⁴

To 'strengthen and clarify' the way in which conflicts of interest are to be handled,⁶⁹⁵ and 'attempt to provide some certainty in what is notoriously an uncertain area',⁶⁹⁶ the Bill proposes to omit the

⁶⁸⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 60.

⁶⁹⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 74.

⁶⁹¹ LGA, s 175C; COBA, s 177C.

⁶⁹² DJAG and DLGRMA, correspondence, 12 December 2019, p 20.

⁶⁹³ DJAG and DLGRMA, correspondence, 12 December 2019, p 12.

⁶⁹⁴ Ms Bronwyn Blagoev, DLGRMA, public briefing transcript, inquiry into the Local Government Electoral (Implementing Stage 2 of Belcarra) and other Legislation Amendment Bill 2019, Brisbane, 13 May 2019, p 2.

⁶⁹⁵ Explanatory notes, p 5.

⁶⁹⁶ Ms Bronwyn Blagoev, DLGRMA, public briefing transcript, inquiry into the Local Government Electoral (Implementing Stage 2 of Belcarra) and other Legislation Amendment Bill 2019, Brisbane, 13 May 2019, p 3.

relevant divisions of the LGA and COBA and insert new provisions regarding the personal interest of councillors that would apply when councillors are participating in decisions under an Act, a delegation or other authority, as well as in a local government meeting. The provisions would establish the new concepts of a 'prescribed conflict of interest' and a 'declarable conflict of interest', which are distinguished from other conflicts of interest that would not be required to be declared, and outline what must occur in respect of these interests once identified.

DLGRMA has explained:

*We have basically set a number of prescribed conflicts of interest and said to councillors, 'If you have these conflicts of interest you must leave the room.' This is notoriously a grey area so we have attempted to give a little bit of black and white... It will provide councillors with some certainty so that they can look at the list and say, 'Okay, I received a gift of \$5,000. That is definitely a prescribed conflict of interest so I know I have to get out.' Anything that does not amount to a prescribed conflict of interest may still amount to what the bill is proposing to be called a declarable conflict of interest. Basically, the bill then sets out, if you have a declarable conflict of interest, what you need to do.*⁶⁹⁷

In addition, DLGRMA has advised:

*It really is, I guess, about saying to councillors that not everything must be disclosed. We have had a lot of feedback from councillors that they are disclosing everything to the point where they are losing their quorum. The result of that is that matters are having to be delegated to a CEO. Some of these might be standard matters; some of them might be really important planning matters. What we are trying to do here is strike a really good balance between what has to be disclosed and what does not have to be disclosed ...*⁶⁹⁸

As is currently the case, particular matters which are recognised as 'ordinary business matters' would be excluded from the operation of the provisions;⁶⁹⁹ though the amendments also specify how to deal with personal interests if a councillor decides to voluntarily comply with requirements of the proposed new divisions in respect of ordinary business matters.⁷⁰⁰ The Bill clarifies that this includes, for example, matters which solely involve or relate to the making or levying of rates and charges, the fixing of a cost recovery fee, a resolution required for the adoption of the budget, a planning scheme or amendment of a planning scheme for the whole of the local government area, and the remuneration and provision of superannuation or insurance to councillors.⁷⁰¹

The proposed changes largely replicate amendments introduced in the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (now the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*), and which were considered and reported on by this committee,⁷⁰² but subsequently omitted from that bill prior to its passage in the Legislative Assembly (during consideration-in-detail).

⁶⁹⁷ Ms Bronwyn Blagoev, DLGRMA, public briefing transcript, inquiry into the Local Government Electoral (Implementing Stage 2 of Belcarra) and other Legislation Amendment Bill 2019, Brisbane, 13 May 2019, p 3.

⁶⁹⁸ Ms Bronwyn Blagoev, DLGRMA, public briefing transcript, inquiry into the Local Government Electoral (Implementing Stage 2 of Belcarra) and other Legislation Amendment Bill 2019, Brisbane, 13 May 2019, p 3.

⁶⁹⁹ Explanatory notes, p 20.

⁷⁰⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 20.

⁷⁰¹ Bill, cl 81, s177C (COBA); cl 104, s 150EF (LGA).

⁷⁰² Economics and Governance Committee, *Report No. 26, 56th Parliament – Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019*, June 2019, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T1033.pdf>

5.2.1 Prescribed conflicts of interest

The Bill defines a prescribed conflict of interest with respect to three types of interest – those relating to particular gifts or loans, those relating to sponsored travel or accommodation benefits, and those relating to other matters.⁷⁰³ The latter category encompasses matters such as contracts between the council and the councillor for the supply of goods or services to the council.⁷⁰⁴

In summary, a councillor has a prescribed conflict of interest in a matter if any of the following circumstances apply:

- a donor has an interest in the matter and the donor has given gifts or loans to the councillor or a group of councillors or a political party of which the councillor is a member totalling \$2,000 or more during the relevant term⁷⁰⁵ for the councillor⁷⁰⁶
- a donor has an interest in the matter and the donor has given sponsored travel or accommodation benefits to the councillor or a close associate of the councillor totalling \$2,000 or more during the relevant term for the councillor⁷⁰⁷
- the matter is or relates to contracts between a councillor or a close associate of the councillor and the local government (for the supply of goods or services to the local government or the lease or sale of assets by the local government)
- the matter is or relates to employment conditions of the CEO, if the CEO is a close associate of the councillor, or
- the matter is or relates to an application made to the local government for the grant of a licence, permit, registration or approval of consideration of another matter under a local government law, if:
 - the application was made to the local government by the councillor or a close associate of the councillor, or
 - the councillor or a close associate of the councillor makes or has made a written submission to the local government in relation to the application before it is or was decided.⁷⁰⁸

Where a councillor has a prescribed conflict of interest, the Bill provides that the councillor must not participate in making a decision relating to the matter, unless the Minister has approved the councillor's participation.⁷⁰⁹ Participating in a decision includes considering, discussing or voting on the decisions in a local government meeting, and considering, or making the decision under an Act, delegation or another authority.⁷¹⁰

⁷⁰³ Bill, cl 81, ss177D, 177E and 177F (COBA); cl 104, ss 150EG, 150EH, 150EI (LGA)

⁷⁰⁴ Bill, cl 81, s 177F (COBA); cl 104, s 150EI (LGA).

⁷⁰⁵ The 'relevant term' for a councillor means the councillor's current term of office and the period starting on the day after the conclusion of the last quadrennial election and ending on the day immediately before the councillor's current term started.

⁷⁰⁶ The Bill provides that for working out the total gifts or loans given to a group of candidates or a political party, the amount of each gift or loan must first be divided by the number of candidates in the group or political party. See: Bill, cl 81, s177D(3) (COBA); cl 104, s 150EG (LGA).

⁷⁰⁷ See Bill, cl 81, s 177G and cl 104, s 150EJ for the definition of 'close associate'. See cl 81, 177E(2) (COBA) and cl 104, s 150EH(2) (LGA) for the definition of 'sponsored travel or accommodation benefit'.

⁷⁰⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 20. See also Bill, cl 81, ss 177D-177F (COBA); cl 104, s 150EG-150EI (LGA).

⁷⁰⁹ Bill, cl 81, s 177H (COBA); cl 104, s 150EK (LGA). See also cl 81, s 177S (COBA); cl 104, s 150EV (LGA).

⁷¹⁰ Bill, cl 81, s 177B (COBA); cl 104, s 150EE (LGA).

Additionally, under the proposed amendments:

- if a councillor may participate, or is participating, in a decision about a matter and the councillor becomes aware at a council meeting that the councillor has a prescribed conflict of interest in the matter, the councillor must:
 - inform the meeting of the prescribed conflict of interest (including the specified particulars), or
 - if the meeting has not yet commenced, must give notice of the prescribed conflict of interest, including the specified particulars,⁷¹¹ and
- if a councillor gives a notice at or informs a meeting of the councillor's prescribed conflict of interest in a matter, the councillor must leave the place at which the meeting is being held and stay away while the matter is discussed and voted on, unless the Minister has approved the councillor participating in deciding a matter in a meeting,⁷¹² and
- if a councillor first becomes aware that they have a declarable conflict of interest other than at a council meeting, the councillor must stop participating and must not further participate in a decision relating to the matter, and as soon as practicable, must give notice of the councillor's declarable conflict of interest to the CEO (and at the next meeting), including the specified particulars.⁷¹³

Each of the requirements not to participate in a matter in which the councillor has a prescribed conflict of interest, to inform the meeting of the prescribed conflict of interest (including the stated particulars), or to inform the CEO of the prescribed interest and give notice at the next meeting (including the stated particulars) are prescribed as 'relevant integrity provisions' and would also amount to misconduct under the LGA that could result in disciplinary action being taken against the councillor. As noted in chapter 5.1 of this report, where a councillor is found to have contravened a relevant integrity provision with some dishonest intent to gain a benefit or cause detriment to someone else, proposed new dishonest conduct offences would apply, with applicable maximum penalties of 200 penalty units (\$26,690) or two years' imprisonment (as well as suspension while on charges and immediate loss of office and disqualification from office for seven years if convicted).⁷¹⁴

Additionally, where a councillor declares a prescribed conflict of interest in a matter at a meeting and does not comply with the requirement to leave the place at which the meeting is being held and stay away while the matter is discussed and voted on, a maximum penalty of 200 penalty units (\$26,690) or two years' imprisonment will also apply. No intent is required to be demonstrated for this offence.⁷¹⁵

5.2.2 Declarable conflicts of interest

If a personal interest does not fall within the definition of a prescribed conflict of interest, it may still amount to a declarable conflict of interest under the Bill.

The Bill provides that a councillor has a declarable conflict of interest in a matter if the councillor has, or could reasonably be presumed to have, a conflict between the councillor's personal interests, or the personal interests of a related party of the councillor, and the public interest; and because of the conflict, the councillor's participation in a decision about the matter might lead to a decision that is contrary to the public interest.⁷¹⁶

⁷¹¹ Bill, cl 81, s 177I (COBA); cl 104, s 150EL (LGA).

⁷¹² Bill, cl 81, s 177J (COBA); cl 104, s 150EM (LGA).

⁷¹³ Bill, cl 81, s 177I(3) (COBA); cl 104, s 150EL(3) (LGA).

⁷¹⁴ Bill, cl 65, s 40A (Integrity Act); cl 73, s 69D (POQA).

⁷¹⁵ Bill, cl 81, s 177J (COBA); cl 104, s 150EM (LGA).

⁷¹⁶ Bill, cl 81, s 177K (COBA); Bill, cl 104, s 150EN (LGA). See also: Bill, cl 81, s 177M (COBA) and cl 104, s 150EP (LGA) for who is a 'related party' of a councillor.

A personal interest would not be a declarable conflict of interest, however, if:

- the conflict arises solely because:
 - the councillor undertakes an engagement in the capacity of a councillor for a community group, sporting club or similar organisation and is not appointed as an executive officer of the organisation
 - the councillor, or a related party of the councillor, is a member or patron of a community group, sporting club or similar organisation and is not an executive officer of the organisation
 - the councillor, or a related party of the councillor, is a member of a political party, or
 - the councillor, or a related party of the councillor, has an interest in an educational facility or provider of a child care service as a student or former student, or a parent or a grandparent of a student, of the facility or service
- the councillor, or a related party of the councillor, stands to gain a benefit or suffer a loss because of the conflict of interest is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose
- the conflict of interest arises solely because the councillor, or a related party of the councillor, receives a gift, loan or sponsored travel or accommodation benefit from an entity with a total value of \$500 or less during the councillor's relevant term, or
- the conflict of interest arises solely because the councillor advisor is a related party, other than a close associate, of the councillor and the conflict of interest relates to the employment conditions of a councillor advisor for the councillor (including appointment, discipline, termination or remuneration).⁷¹⁷

If a local government meeting is informed that a councillor has personal interests in a matter by a person other than the councillor, the eligible councillors at the meeting would be required to decide whether the councillor has a declarable conflict of interest in the matter.⁷¹⁸

If a councillor has a declarable conflict of interest in a matter as notified at a meeting or decided by eligible councillors, the eligible councillors at the meeting would be required to decide whether the councillor may participate in the decision, or must not participate in the decision and must leave the place at which the meeting is being held while the eligible councillors discuss and vote on the matter. Where eligible councillors decide to permit the councillor to participate in the decision, they would be able to impose conditions on the councillor's participation.⁷¹⁹

The Bill also provides that eligible councillors may make a decision about whether a councillor has a declarable conflict of interest or whether a councillor with a declarable conflict of interest may participate in a decision even if the number of eligible councillors is less than a majority, or do not form a quorum for the meeting.⁷²⁰ DLGRMA has advised that this provision improves on the present legislation:

Currently the legislation deems that no quorum can be reached where a majority of Councillors declare a personal interest. The [provisions would] amend this by referencing conflicts of interest rather than merely personal interests. This reflects feedback from stakeholders indicating

⁷¹⁷ Bill, cl 81, s 177L (COBA); cl 104, s 150EO (LGA)

⁷¹⁸ Bill, cl 81, s 177O (COBA); cl 104, s 150ER (LGA). 'Eligible councillor', for a matter at a meeting, means a councillor at the meeting who does not have a prescribed conflict of interest or declarable conflict of interest in the matter.

⁷¹⁹ Bill, cl 81, s 177P (COBA); cl 104, s 150ES (LGA).

⁷²⁰ Bill, cl 81, s 177Q (COBA); cl 104, s 150ET (LGA).

*quorum issues are arising when Councillors have merely declared personal interests which may or may not be declarable conflicts of interest.*⁷²¹

Under the amendments, the councillor who is the subject of the decision may remain at the meeting while the decision is being made, but cannot vote or otherwise participate in the making of the decision, other than by answering a question to assist the eligible councillors to make the decision.⁷²²

Further, if the eligible councillors cannot make a decision, the Bill provides that the eligible councillors are taken to have decided that the councillor must leave, and stay away from, the place where the meeting is being held while the eligible councillors discuss and vote on the matter.⁷²³

Councillors with a declarable conflict of interest in a matter are required to comply with the following requirements, the contravention of which would amount to misconduct under the LGA:

- if a councillor may participate, or is participating, in a decision about a matter at a council meeting and the councillor becomes aware that they have a declarable conflict of interest in the matter, the councillor must stop participating and must not further participate in a decision relating to the matter, and must immediately inform the meeting of the declarable conflict of interest,⁷²⁴ and
- if a councillor first becomes aware that they have a declarable conflict of interest other than at a council meeting, the councillor must stop participating and must not further participate in a decision relating to the matter, and as soon as practicable, must give notice of the councillor's declarable conflict of interest to the CEO (and give notice of the conflict at the next meeting), including the specified particulars.⁷²⁵

The provisions containing these requirements are also prescribed as 'relevant integrity provisions' for which dishonest conduct offences would apply to a contravention involving any dishonest intent on the part of the councillor. As noted in chapter 5.1 of this report, the proposed dishonest conduct of councillor offences attract a maximum penalty of 200 penalty units (\$26,690) or two years' imprisonment (as well as suspension while on charges and immediate loss of office and disqualification from office for seven years if convicted).⁷²⁶

Further, the proposed amendments also specify that a councillor with a declared conflict of interest in a matter must comply with a decision about the councillor not participating in a decision and any conditions imposed on the councillor.⁷²⁷ A maximum penalty of 100 penalty units (\$13,345) or one year's imprisonment would also apply in relation to a contravention of this requirement (no intent element).⁷²⁸

5.2.3 Other matters relating to conflicts of interest

The Bill provides that if there is less than a quorum remaining at a local government meeting after one or more councillors have left the meeting because of a prescribed conflict of interest or declarable conflict of interest, the local government must:

- delegate deciding the matter unless the matter cannot be delegated

⁷²¹ DLGRMA, correspondence (response to submissions on the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019), 3 June 2019, p 11.

⁷²² Bill, cl 81, s 177Q (COBA); cl 104, s 150ET (LGA).

⁷²³ Bill, cl 81, s 177Q (COBA); cl 104, s 150ET (LGA)

⁷²⁴ Bill, cl 81, s 177N(2) and (3) – Note (COBA); cl 104, s 150EQ (LGA).

⁷²⁵ Bill, cl 81, s 177N (COBA); cl 104, s 150EQ (LGA).

⁷²⁶ Bill, cl 65, s 40A (Integrity Act); cl 73, s 69D (POQA).

⁷²⁷ Bill, cl 81, s 177P (COBA); cl 104, s 150ES (LGA).

⁷²⁸ Bill, cl 81, s 177P(5) (COBA); cl 104, s 150ES(5) (LGAO).

- decide, by resolution, to defer the matter to a later meeting, or
- decide, by resolution, to take no further action on the matter.⁷²⁹

The Bill provides that the local government must not delegate deciding the matter to an entity if the entity, or a majority of its members, have personal interests that are, or are equivalent in nature to, a prescribed conflict of interest or declarable conflict of interest in the matter.⁷³⁰ The Minister may approve a councillor participating in deciding a matter in a meeting if the matter could not otherwise be decided at the meeting because of a lack of quorum, or the matter cannot be delegated.⁷³¹

The Bill would also:

- require a councillor to inform the person presiding at a meeting or the CEO of the local government if the councillor reasonably believes or reasonably suspects another councillor who has a prescribed or declarable conflict of interest is participating in a decision relating to the matter⁷³²
- set out a process for dealing with a councillor's possible conflict of interest reported by another councillor⁷³³
- make it an offence for a person to take retaliatory action because a councillor complied with the duty to report another councillor's prescribed conflict of interest or declarable conflict of interest (maximum penalty – 167 penalty units (\$22,268.15) or two years' imprisonment)⁷³⁴
- make it an offence for a councillor with a prescribed conflict of interest or declarable conflict of interest to direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter (maximum penalty – 200 penalty units (\$26,690) or two years' imprisonment),⁷³⁵ and
- require specified information to be recorded in the minutes of the meeting if a councillor gives notice to or informs a local government meeting that the councillor, or another councillor, has a prescribed conflict of interest or declarable conflict of interest in a matter.⁷³⁶

5.2.4 Stakeholder views and the department's response

Stakeholders expressed a range of views on the proposed amendments to the provisions on councillors' conflicts of interest. The LGAQ, for example, submitted that it largely supported the proposed changes to the conflict of interest provisions 'to provide greater clarity and certainty'.⁷³⁷ The CCC, however, contended that the current legislation for dealing with conflicts of interest and material personal interests should not be amended. The CCC added:

The current scheme is aligned with the Belcarra recommendations. Quite apart from the CCC's submission that the Bill introduces a significantly inferior scheme which increases the corruption risk, the CCC notes:

⁷²⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 21. See also: Bill, cl 81, s 177R (COBA); cl 104, s 150EU (LGA).

⁷³⁰ Bill, cl 81, s 177R(3); cl 104, s 150EU(3) (LGA).

⁷³¹ Bill, cl 81, s 177S (COBA); cl 104, s 150EV (LGA).

⁷³² Bill, cl 81, s 177T (COBA); cl 104, s 150EW (LGA). Failing to do so could result in disciplinary action being taken against the councillor (see also Bill, cl 81, s 177T(2) – Note; cl 104, s 150EW(2) – Note).

⁷³³ Bill, cl 81, s 177U (COBA); cl 104, s 150EX (LGA).

⁷³⁴ Bill, cl 81, s 177V (COBA); cl 104, s 150EY (LGA).

⁷³⁵ Bill, cl 81, s 177W (COBA); cl 104, s 150EZ (LGA).

⁷³⁶ Bill, cl 81, s 177X (COBA); cl 104, s 150FA (LGA).

⁷³⁷ Submission 15, p 2.

- *The current scheme has not been operating for that long and more time is needed to assess the success or otherwise of the current scheme, including whether the current scheme has reduced the corruption risk. In this regard, it may be that the Office of the Independent Assessor and/or the Integrity Commissioner can provide information about how they perceive the current scheme is working; and*
- *Relatedly, no evidence base to support the amendments proposed in the Bill has been demonstrated.*⁷³⁸

Stakeholder comments in relation to different aspects of the proposed amendments to councillor conflict of interest provisions are examined below, as are the department's responses to these comments.

Participating in a decision

For the purposes of Chapter 5B (councillors' conflicts of interest) of the LGA, proposed new s 150EE sets out when a person participates in a decision. It provides that a reference to a councillor of a local government or other person participating in a decision includes a reference to the councillor or other person:

- considering, discussing or voting on the decision in a local government meeting, and
- considering or making the decision under an Act or a delegation or another authority.⁷³⁹

Logan City Council described proposed new s 150EE as 'extremely troubling' and recommended that the term 'other person' be clarified in the provision.⁷⁴⁰

The LGAQ was very concerned about the term 'other person' in proposed new s 150EE. It held the view that the term should be deleted.⁷⁴¹

In response to these stakeholders' comments, DLGRMA advised:

Section 150EZ provides that a Councillor with a prescribed conflict of interest or declarable conflict of interest must not direct, influence or attempt to influence or discuss the matter with another person who is participating in a decision of the Local Government on the matter. This may include another Councillor, the Chief Executive Officer or another Local Government officer deciding the matter under a delegation.

*Therefore the reference to when other persons participate in a decision is required for the purpose of section 150EZ.*⁷⁴²

Ordinary business matters

The Bill's provisions relating to conflicts of interest do not apply to specified ordinary business matters of a local government.⁷⁴³

There were mixed views on the proposed changes to the matters in the LGA and the COBA that are included as ordinary business matters.

⁷³⁸ Ssubmission 51, p 12. Footnote in original omitted. See also, QIC, submission 57.

⁷³⁹ See also: Bill, cl 81, which inserts equivalent s 177B in the COBA.

⁷⁴⁰ Submission 38, p 3.

⁷⁴¹ Submission 15, p 4.

⁷⁴² DJAG and DLGRMA, correspondence, 17 January 2020, p 63.

⁷⁴³ Bill, cl 81, s 177C (COBA); cl 104, s 150EF (LGA).

The Queensland Local Government Reform Alliance Inc (QLGRA) strongly supported the proposed change to ordinary business matters that would omit amendment of a planning scheme.⁷⁴⁴ In contrast, the LGAQ was concerned this omission may result in unintended consequences including:

- *Council meeting confusion through determination of conflicts;*
- *Inability to maintain a quorum in council meetings;*
- *Delays to plan making processes and less responsive planning schemes;*
- *Decreasing investment and development confidence.*⁷⁴⁵

BRU and OSCAR considered that ‘the proposal to restrict the ordinary business exemption to ... the adoption of new schemes ... as a reasonable compromise’.⁷⁴⁶ Accordingly they welcomed the reform.⁷⁴⁷

Whitsunday Regional Council, Isaac Regional Council and the LGAQ drew the committee’s attention to other elements of the definition of ordinary business matter that have not been included in the Bill, including:

- the terms on which goods, services or facilities are to be offered by the local government for use or enjoyment of the public in the local government area, and
- a matter that is of interest to a person merely as a user of goods, services or facilities supplied, or to be supplied, by the local government as a member of the public in common with other members of the public.⁷⁴⁸

Whitsunday Regional Council and Isaac Regional Council recommended that these elements be restored in the Bill.⁷⁴⁹ The LGAQ submitted that it believed:

*... there should be no changes made to the current definition of “ordinary business matters” other than the proposed new provision prompting councillors to voluntarily declare declarable conflicts of interest in ordinary business.*⁷⁵⁰

Grant Wilson, Manager Governance and Legal Services, Toowoomba Regional Council, requested that consideration be given to including director’s and officer’s (D&O) insurance in the ordinary business matters provision.⁷⁵¹

DLGRMA noted stakeholders’ comments about matters that are not excluded from the conflict of interest provision, ‘including D&O insurance and goods, services and facilities offered or to be supplied by Council, and will consider these matters further prior to debate of the Bill’.⁷⁵² The department further stated:

It should also be noted that, section 177L(1)(d) COBA and section 150EO(1)(d) LGA provide that a Councillor does not have a declarable conflict of interest in a matter if the Councillor, or a related party of the Councillor, stands to gain a benefit or suffer a loss in relation to the matter that is no greater than the benefit or loss that a significant proportion of persons in the Local

⁷⁴⁴ Submission 12, p 2.

⁷⁴⁵ Submission 15, p 3.

⁷⁴⁶ BRU, submission 55, p 4; OSCAR, submission 13, p 2.

⁷⁴⁷ BRU, submission 55, p 4; OSCAR, submission 13, p 2.

⁷⁴⁸ Whitsunday Regional Council, submission 8, p 1; Isaac Regional Council, submission 11, pp 1-2; LGAQ, submission 15, p 4.

⁷⁴⁹ Whitsunday Regional Council, submission 8, p 1; Isaac Regional Council, submission 11, p 1.

⁷⁵⁰ Submission 15, p 4.

⁷⁵¹ Submission 1, p 1.

⁷⁵² DJAG and DLGRMA, correspondence, 17 January 2020, p 63.

Government area stand to gain or lose. This will apply to all matter which are not excluded from the provisions, including planning matters.

In relation to the issue of whether the adoption of an amendment of a budget would also be an ordinary business matter, DLGRMA will consider further clarification in the Bill prior to debate.⁷⁵³

The Logan City Council sought clarification on the exemption that applies to the adoption of a budget for the local government.⁷⁵⁴ In response, DLGRMA advised that it will consider further clarification in the Bill prior to debate.⁷⁵⁵

Prescribed conflicts of interest

Proposed new s 150EI of the LGA defines the circumstances in which a councillor has a prescribed conflict of interest. The provision uses the phrase ‘the matter is or relates to’ in describing the circumstances in which the councillor has a prescribed conflict of interest.

The LGAQ advocated omitting the words ‘or relates to’ in s 150EI to remove ambiguity.⁷⁵⁶ In respect of this, DLGRMA advised:

The words ‘or relates to’ are intended to cover matters which are not directly about a contract, employment of the Chief Executive Officer or application to the Local Government, but are associated with these matters, for example matters that are preliminary to making a contract.⁷⁵⁷

BRU sought clarification in relation to circumstances that may arise if, for example, a mayor or councillor is a paid director of a public fund and that fund has a significant investment and a major contract with a council in relation to an expensive council asset.⁷⁵⁸

In response to BRU, DLGRMA noted:

... that where a Councillor holds a directorship separate from the council, there may be instances where that Councillor must declare a prescribed or a declarable conflict of interest, noting obligations owed to both the Council and the separate entities. Councillors in such a position must be careful to comply with their statutory and fiduciary duties and seek necessary advice.⁷⁵⁹

Conflict of interest – removal of the process for peer determination

The LGAQ had concerns about the Bill’s proposal to omit the current process by which councillors identify their personal interests in a matter at a meeting and either volunteer to leave the meeting or ask the other councillors to make a determination about the personal interest. The LGAQ described the current process as ‘transparent’ and stated that it ‘allows a councillor’s peers to examine and determine whether the interest disclosed is, truly, a declarable conflict of interest’.⁷⁶⁰ The LGAQ submitted:

What is proposed by the amending Bill removes the ability for peer review of a possibly erroneous determination by a councillor of a "declarable conflict of interest" (as defined by the amending Bill). This may result in other councillors (with an identical or similar interest) being falsely accused of failing to declare the same interest which, in turn, will slow down meeting processes

⁷⁵³ DJAG and DLGRMA, correspondence, 17 January 2020, p 64.

⁷⁵⁴ Submission 38, pp 3-4.

⁷⁵⁵ DJAG and DLGRMA, correspondence, 17 January 2020, p 64.

⁷⁵⁶ LGAQ, submission 15, p 4.

⁷⁵⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 65.

⁷⁵⁸ Submission 55, pp 5-6.

⁷⁵⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 65.

⁷⁶⁰ Submission 15, p 5.

and, quite likely, result in more complaints about councillor misconduct being referred to the OIA (as has occurred at Moreton Bay Regional Council, for example).

Accordingly, it is our view that the regime prescribed for declaring "personal interests" prescribed by section 175E of the Act be retained in the amending Bill. If accepted, this would require the term "declarable conflict of interest" being changed. As an alternative, the term "declarable interest" could be used. To be clear, apart from the current process for declaring interests being retained, we are not suggesting wholesale changes to the remaining drafting of these new provisions.⁷⁶¹

The QIC similarly recommended that the existing process in s 175E be retained:

Under the proposed amendments it seems inherently more likely that a councillor who has self-declared the existence of a conflict of interest (as opposed to a personal interest) will then be automatically disqualified from participating in a meeting. However, other management options, such as allowing the conflicted councillor to participate in the meeting but not vote, may be in the public interest. In the Belcarra Report, the CCC made reference to a submission on this issue by the former Queensland Integrity Commissioner, noting that:

'[e]liminating councillor's discretion [to vote on a matter where they have a conflict of interest] would have undesirable consequences ... councillors are elected to represent the interests of their community, and they cannot do this effectively if they are not participating in Council decision-making ... What is required are more checks on councillor's discretion and more guidance for councillors about how they should exercise it.'

Most councillors have diverse backgrounds and discharge their roles on a part-time basis. Significantly in this regard, the Bill removes the current option under the City of Brisbane Act 2010 and the Local Government Act 2009 for councillors to declare a 'personal interest' and to remain in the meeting until non-conflicted councillors decide if their 'personal interest' amounts to a 'conflict of interest' and, if so, how any conflict of interest should be managed.

Removing this option will require councillors to potentially make decisions regarding complex issues: with limited notice, on their own, where they could have a 'conflict of interest', and where the decision may give rise to an offence.

In contrast, the current processes under the City of Brisbane Act 2010 and the Local Government Act 2009 appear to be effective for dealing with marginal issues and uncertainties. It also enables the facts and issues to be dealt with in a transparent manner. This is not to say that the current provisions would not benefit from amendments and I support the recommendations made by the CCC in this regard.⁷⁶²

The CCC also expressed concern that in the absence of the peer review process provided under the existing system, councillors may need to consult other councillors or have a private meeting prior to the local government meeting to help them determine whether to declare their interest at the local government meeting, and that this would remove the transparency around the process for helping them to 'get it right'.⁷⁶³

DLGRMA advised in response:

The Bill proposes a process for eligible Councillors to decide whether a Councillor with a conflict of interest may participate in a decision and to impose any conditions on the Councillor's participation (s150ES).

⁷⁶¹ Submission 15, p 5.

⁷⁶² Submission 57, p 14. Footnote in original omitted.

⁷⁶³ Alan MacSporran QC, CCC, public hearing transcript, Brisbane, 20 January 2020, p 64.

The Bill also proposes that a Councillor may voluntarily comply with the provisions in relation to personal interests in an ordinary business matter (s150EF). In this case the personal interests are taken to be a declarable conflict of interest and the provisions apply as if eligible Councillors had, under section 150ER(2) decided that the Councillor has a declarable conflict of interest.

The Bill proposes removing references to “personal interests” in relevant conflict of interest provisions, with a renewed focus on the declaration of conflicts of interest and material personal interests. This change has resulted from concerns raised by Local Governments that the use of the phrase “personal interests” is seeing Councillors declaring all matters, even very minor matters which do not amount to a conflict of interest. DLGRMA understands that this is giving rise to quorum and other operational concerns for Local Governments.

DLGMRA believes that Councillors have an array of tools available to them to seek advice regarding whether an interest amounts to either a declarable or prescribed conflict of interest. This includes discussions with legal representatives, the CEO and other Councillors. This preparatory work should be done prior to the relevant Local Government meeting. If a Councillor remains of the view that they are unsure if an interest must be declared, they should declare the interest as a declarable conflict of interest, allowing the other Councillors to determine if they should participate in the meeting regarding that particular item.⁷⁶⁴

Conflicts of interest – monetary value

The Bill sets the threshold for gifts, loans and sponsored travel and accommodation that give rise to a prescribed conflict of interest at \$2,000.⁷⁶⁵ DLGRMA advised:

This amount is cumulative over the Councillor’s current term and the previous term, if the Councillor served that term. This would include a number of smaller gifts that total \$2000 or more during that period, which could be up to eight years. Similarly, section 177L COBA and section 150EO LGA provide that gifts totalling \$500 or less during this period do not give rise to a declarable conflict of interest.⁷⁶⁶

The QLGRA, BRU, OSCAR, Redlands 2030 and Wildlife Queensland Gold Coast and Hinterland Branch all advocated for a threshold of \$500 rather than \$2,000. OSCAR and BRU, for example, submitted:

We believe the gift/donation threshold should be \$500 which is consistent with electoral donations reporting threshold; this would remove potential confusion and we believe \$500 is a sufficient amount to give rise to material interest.⁷⁶⁷

The OIA noted that defining prescribed and declarable conflicts of interest only with respect to monetary levels ‘may not take into account other key considerations which could reasonably be said to give rise to a conflict of interest or increase the perceived or actual seriousness of it’.⁷⁶⁸

Declarable conflicts of interest

Stakeholders raised a number of issues relating to declarable conflicts of interest. The LGAQ, for example, made submissions about matters including:

- lack of clarity in proposed new ss 150EO and 150ES
- the definition of related party (proposed new s 150EP), and

⁷⁶⁴ DJAG and DLGRMA, correspondence, 17 January 2020, pp 65-66.

⁷⁶⁵ Bill, cl 81, ss 177D, 177E (COBA); cl 104, ss 150EG, 150EH (LGA); DJAG and DLGRMA, correspondence, 17 January 2020, p 67.

⁷⁶⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 67.

⁷⁶⁷ OSCAR, submission 13, p 2; BRU, submission 55, p 5.

⁷⁶⁸ Submission 60, p 5.

- the purported necessity for proposed new s 150ER.⁷⁶⁹

OSCAR and BRU submitted that the proposed reform relating to declarable conflicts of interest 'is too vague due to the failure of the legislation to define what is meant by "public interest"'.⁷⁷⁰ In response, DLGMRA advised that it was intentional that the term was not be defined:

*... to permit the phrase to evolve over time to reflect community expectations over time and to reflect the wide range of issues that may be relevant to the public interest on different matters. This concept is currently used in the LGA and COB in the local government principles which include transparent and effective processes, and decision-making in the public interest (section 4 LGA and section 4 COBA) and the current definition of conflict of interest in section 175D LGA and section 177D COBA.*⁷⁷¹

In respect of proposed new s 150EO, DLGRMA stated that it would 'consider the issue further and ensure clarity in drafting'.⁷⁷²

Additionally, DLGRMA advised that it will 'further consider other issues raised by submitters'.⁷⁷³

Offences

The CCC submitted that the current scheme for dealing with conflicts of interests does not have a requirement to prove an intent to dishonestly obtain a benefit or cause a detriment but that under the scheme proposed by the Bill a failure to comply with the requirements (apart from one exception) comprises an offence 'only if the contravention is accompanied with an intent to dishonestly obtain a benefit or cause a detriment'. The CCC considered that 'this constitutes a significant change which introduces a corruption risk by discouraging openness and transparency'.⁷⁷⁴ The CCC added:

The proposed changes to the nature of the offence provisions, in practical terms, means that, for most non-compliances, instituting criminal proceedings will not be an option and disciplinary proceedings for councillor misconduct will be the most likely available course. Whilst this situation for first or second-time offenders may well represent an appropriate response to ensure compliance, the unavailability of criminal sanctions for recidivist offenders means that an escalation of enforcement action is not available and an important compliance tool is taken away from the Office of the Independent Assessor...

*... The CCC also submits that the scheme proposed under the Bill is more complicated and whether or not something constitutes a conflict of interest will be less obvious. By way of example, the prescribed and seemingly arbitrary monetary limits in relation to gifts and loans and sponsored travel or accommodation benefits are unnecessarily complicated. Moreover, the CCC is unaware of any evidence base to suggest that, for example, there is no basis for a conflict of interest to arise as a result of a gift of relatively minimal value. The CCC would, in fact, submit the contrary - gifts of relatively small value may still corrupt, especially in the context of "grooming" by the giver of the gift. The overly complex nature of the proposed scheme will reduce openness and transparency.*⁷⁷⁵

BRU and OSCAR considered the penalties for the proposed offences are appropriate.⁷⁷⁶

⁷⁶⁹ Submission 15, p 5. See also, Logan City Council, submission 38, p 4.

⁷⁷⁰ OSCAR, submission 13, p 2; BRU, submission 55, p 5.

⁷⁷¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 69.

⁷⁷² DJAG and DLGRMA, correspondence, 17 January 2020, p 68.

⁷⁷³ DJAG and DLGRMA, correspondence, 17 January 2020, p 69.

⁷⁷⁴ Submission 51, p 12.

⁷⁷⁵ Submission 51, p 12. Footnote in original omitted.

⁷⁷⁶ BRU, submission 55, p 5; OSCAR, submission 13, p 2.

Offence to influence others

Under the proposed amendments it would be an offence for a councillor with a prescribed conflict of interest or declarable conflict of interest to direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter.⁷⁷⁷ DLGRMA advised that 'another person' would include another councillor or a local government employee acting under a delegation.⁷⁷⁸

The LGAQ noted that the current equivalent offence provision does not contain the words 'or discuss the matter with'.⁷⁷⁹ The LGAQ considered that the words 'or discuss the matter with' should be deleted on the following grounds:

- i. A Councillor with a declarable conflict of interest may well be allowed by eligible Councillors to stay and vote on the matter when it reaches a meeting - difficulty arises with these additional words as it would be difficult for the Councillor to attend a briefing session or even ask a question of an officer prior to the meeting (as officers are involved in the decision-making process);*
- ii. The words impinge on basic rights of a Councillor to ask the simplest of questions of officers or the Mayor such as 'where is this matter at and when will it come to Council?'*
- iii. The inclusion of the words heightens the possibility of inadvertent error - it may be that an application is received, Councillors are aware of the basic information but not the details and have discussions they should not have had when the detail becomes known. These discussions need not even stray into influence for this section to be contravened, as drafted.⁷⁸⁰*

In response to stakeholders' concerns, DLGRMA advised that '[c]ouncillors may obtain information such as the status of the matter by asking a person, such as a Local Government employee, if that person is not participating in the decision'.⁷⁸¹

BRU and OSCAR supported the offence provision but sought clarification in relation to its operation.⁷⁸²

Commencement and training

The LGAQ contended that 'the lack of specificity regarding the date for commencement of these provisions is a serious omission in the current drafting'.⁷⁸³ The LGAQ and LGMA recommended that the provisions should commence immediately after the March 2020 local government elections, to enable the new provisions to be incorporated into the induction program for elected councillors.⁷⁸⁴

With respect to training, the LGAQ stated:

... It will ... be important that the Department provide training for all elected councillors early in the new term to ensure proper implementation and compliance with the new regime. Failure to do so will likely result in the number of complaints about councillor conduct unnecessarily escalating in the short term.⁷⁸⁵

⁷⁷⁷ Bill, cl 81, s 177W (COBA); cl 104, s 150EZ (LGA).

⁷⁷⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 71.

⁷⁷⁹ See proposed new s 175I(2) (COBA and s 150EZ(2) (LGA).

⁷⁸⁰ LGAQ, submission 15, p 6. See also: Cairns Regional Council, submission 33, pp 2-3; Logan City Council, submission 38, p 4.

⁷⁸¹ DJAG and DLGRMA, correspondence, 17 January 2020, p 71.

⁷⁸² BRU, submission 55, pp 5-6; OSCAR, submission 13, p 3.

⁷⁸³ Submission 15, p 2.

⁷⁸⁴ LGAQ, submission 15, p 3; LGMAQ, submission 64, p 3.

⁷⁸⁵ Submission 15, p 3.

DLGRMA advised that it will provide training to all councillors on the operation of the new provisions.⁷⁸⁶

5.3 Councillor registers of interests

Under the LGA and COBA, councillors are required to inform the CEO within 30 days if the councillor or a person related to the councillor has an interest that must be recorded in a register of interests, or if there is a change to an interest that is recorded in a register of interests.⁷⁸⁷ The maximum penalty for failing to comply with this requirement is 85 penalty units (\$11,343.25), though a higher maximum penalty applies if the offence is committed with intent. In the latter circumstance, the applicable maximum penalty is 100 penalty units (\$13,345), and the offence is also prescribed as an integrity offence.⁷⁸⁸

The Bill proposes to introduce new obligations on councillors in relation to registers of interest, 'to align with the requirements applying to State Members of Parliament for statements of interest',⁷⁸⁹ including establishing equivalent offences and penalties for non-compliance.⁷⁹⁰

In addition to the existing general requirement for a councillor to report any new interest or change to an interest within 30 days, which would be omitted and replaced in proposed new sections of the LGA and COBA,⁷⁹¹ the Bill also specifies that a councillor must:

- within 30 days from the start of the councillor's term, inform the CEO of the particulars of their interests (and the interests of a person related to the councillor); with a person ceasing to be a councillor if the person does not comply with this requirement,⁷⁹² and
- within 30 days after the end of each financial year, inform the CEO of the local government:
 - o whether a register of interests under a regulation in relation to the councillor or a person who is related to the councillor is correct
 - o if the councillor has an interest that must be, but is not, recorded in a register of interests in relation to the councillor or a person who is related to the councillor – of the particulars of the interest that must be recorded in the register of interests, and
 - o if there is a change to an interest recorded in a register of interests in relation to the councillor or a person related to the councillor – of the change to the interest.⁷⁹³

The contravention of these requirements would amount to misconduct under the LGA, and as the offences are prescribed as 'relevant integrity provisions', would also enliven a dishonest conduct of councillor offence, if the councillor was found to have contravened the provisions with a dishonest intent to gain some benefit or cause a detriment for someone. As noted in chapter 5.1 of this report, the dishonest conduct offences attract maximum penalties of 200 penalty units (\$26,690) or two years'

⁷⁸⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 64.

⁷⁸⁷ LGA, s 171B; COBA, s 173B.

⁷⁸⁸ LGA, s 171B(2); COBA, s 173B(2). A councillor is automatically suspended if charged with an integrity offence. If convicted, the person automatically stops being a councillor and is disqualified for office for a period of four years (for a serious integrity offence, the disqualifying period is seven years).

⁷⁸⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 22.

⁷⁹⁰ Explanatory notes, p 6.

⁷⁹¹ Clauses 80 and 112 will respectively omit current s 171B of the LGA and s 173B of the COBA, and cls 89 and 119 will replace those provisions with proposed new s 201B of the LGA and s 198B of the COBA.

⁷⁹² Bill, cl 89, s 198A (COBA); cl 119, s 201A (LGA)

⁷⁹³ Bill, cl 89, s 201b, 201C (COBA); Cl 119, s 201B, 201C (LGA).

imprisonment (together with requiring the suspension of the councillor while on charges and the councillor's immediate loss of office disqualification from office for seven years if convicted).⁷⁹⁴

The proposed new register of interest requirements (and associated dishonest conduct offences) would also apply to councillor advisors (see further discussion regarding the Bill's provision for councillor advisors in report chapter 5.5).

5.3.1 Stakeholder views

Local government representatives and community groups broadly supported the changes to register of interest requirements and accompanying penalties,⁷⁹⁵ though a number of stakeholders sought further clarification on how the provisions would be administered.

The Logan City Council submitted:

*The Local Government Regulation 2012 (Regulations) currently contains in Schedule 5 a number of provisions which are somewhat unclear in respect of how interests must be recorded in the register of interests on a practical level.*⁷⁹⁶

In particular, the Logan City Council sought further clarification on two matters regarding the operation of Part 5 and Schedule 5 of the Regulations, as follows:

- (a) *Is it intended that local governments must publish a consolidated register of interests at all times, or is it sufficient that local governments publish changes to the register as they occur?; and*
- (b) *How far back does a councillor or councillor advisor have to record old interests they may hold on the register?*⁷⁹⁷

The QLRGA sought further clarification on what measures would be taken to enforce any breaches,⁷⁹⁸ while BRU suggested that a code of conduct for local government elected officials also be implemented.⁷⁹⁹

Cr Lyn McLaughlin objected to the Bill's specification that contraventions of requirements to declare interests at the start of a councillor's term or appointment, and to correct the register within 30 days after a change of interest, would be classed as misconduct, regardless of the councillors' intent. Cr McLaughlin provided an example of an inadvertent breach and suggested a fine be imposed rather than a finding of misconduct for inadvertent breaches.⁸⁰⁰

Further, Balonne Shire Council submitted:

With regard to registers of interest, whilst Council acknowledges the proposed reforms in this area, Council would propose that whenever a Councillor changes their conflict of interest, other Councillors must be notified through an email from the Chief Executive Officer, or their delegate, that a change has occurred. This would allow the other Councillors to become aware of the changed circumstances of the Councillors register of interest and where appropriate question a fellow Councillor about a potential conflict of interest in either a Council meeting or an informal

⁷⁹⁴ Bill, cl 65, s 40A; cl 73, s 69D.

⁷⁹⁵ Whitsunday Regional Council, submission 8, p 2; QLGRA, submission 12, p 2; OSCAR, submission 13, p 3; BRU, submission 55, p 7; Wildlife Queensland Gold Coast and Hinterland Branch, submission 58, p 1.

⁷⁹⁶ Submission 38, p 4.

⁷⁹⁷ Submission 38, p 4.

⁷⁹⁸ Submission 12, p 2.

⁷⁹⁹ Submission 55, p 7.

⁸⁰⁰ Submission 22, p 2.

*meeting. Additionally, this would also allow other Councillors to be aware of where a potential conflict of interest no longer exists with a Councillor.*⁸⁰¹

5.3.2 Department's response

In response to the QLGRA's query over measures taken to enforce breaches, DLGRMA noted that the Independent Assessor investigates misconduct if a complaint is referred or notice given to the Assessor under the LGA. The Assessor may also initiate an investigation without receiving a complaint if the Assessor is aware of information indicating that a councillor may have engaged in misconduct and believes it is in the public interest to investigate the information.⁸⁰²

In response to the BRU's request for a code of conduct, DGLRMA noted that the Minister has made the 'Code of Conduct for Councillors in Queensland' under the LGA, which sets out standards of behaviour for councillors in performing their functions.⁸⁰³

DGLRMA noted Cr McLaughlin's concerns about inadvertent breaches being treated as misconduct. While stating that changing the councillor complaints system to introduce a new category of conduct involving inadvertent breaches is beyond the scope of the Bill, DLGRMA highlighted that the Bill does draw a distinction between offences carried out with intent as opposed to an inadvertent breach, and that where an offence is inadvertent, it would be dealt with as misconduct.⁸⁰⁴

5.4 Filling a mayoral or councillor vacancy

The Bill proposes to amend the LGA to provide for greater alignment with the process for filling vacancies provided in the COBA.

Under the proposed amendments, a local government would be required to fill a vacancy in the office of a councillor other than a mayor if it arises three months or more before the quadrennial elections are required to be held, rather than six months as currently stated.⁸⁰⁵ If the vacancy arises within three months of a quadrennial election, the local government may decide not to fill the vacant office. However, local governments would be required to fill a vacancy in the office of the mayor that arises any time before a quadrennial election.⁸⁰⁶

When a vacancy is to be filled, the local government would be required to fill the vacant office within two months after the office becomes vacant (currently a period of 12 weeks is allowed).⁸⁰⁷

The Bill also sets out the processes to be used for filling a vacancy, differentiating between vacancies occurring in the first three years of a local government term and those occurring in the 12 months before the next quadrennial election, and between approaches for divided and undivided councils.

The Bill specifies that a vacancy in the office of a mayor or councillor of a single-member division that arises in the first 36 months after the last quadrennial election must be filled by a by-election (consistent with provisions under the COBA).⁸⁰⁸ For an undivided local government, or a local government divided into multi-member divisions, the Bill would require that local government to fill a councillor vacancy arising in the first 36 months after the last quadrennial election by appointing a qualified and consenting runner-up, or by a by-election if this is not possible.⁸⁰⁹ In relation to the

⁸⁰¹ Submission 70, p 1.

⁸⁰² DJAG and DLGRMA, correspondence, 17 January 2020, p 73.

⁸⁰³ DJAG and DLGRMA, correspondence, 17 January 2020, p 73.

⁸⁰⁴ DJAG and DLGRMA, correspondence, 17 January 2020, p 74.

⁸⁰⁵ See: LGA, s 163.

⁸⁰⁶ DJAG and DLGRMA, correspondence, 12 December 2019, p 23.

⁸⁰⁷ Bill, cl, s 163(3).

⁸⁰⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 23.

⁸⁰⁹ Explanatory notes, p 6.

process for appointing a runner-up, the ECQ would be required to give a vacancy notice to that individual who was the runner-up and if that person does not consent to the appointment, the ECQ would give a notice to the runner-up that is next in order of priority, continuing the process until a person consents to the appointment, or the process is exhausted (at which point a by-election would be required to be held).⁸¹⁰

For any vacancy that arises more than 36 months after the start of the local government's term, the Bill would require that the local government fill the vacancy by appointing another councillor (for the office of mayor), or a qualified person (for the office of a councillor).⁸¹¹

The amendments set out a process for the ECQ to give notice to runners-up in order of the number of votes advising they may consent to being appointed to the vacant office.⁸¹²

5.4.1 Stakeholder views

The proposed amendments were broadly supported by stakeholders.⁸¹³ OSCAR and BRU accepted the Bill's proposed threshold of 12 months before a quadrennial election at which the alternate vacancy process would apply.⁸¹⁴ QLGRA, OSCAR, LGMA and BRU accepted the Bill's proposal that for councillor vacancies (other than mayoral vacancies) that occur in the last three months before an election, the seat may be left vacant.⁸¹⁵ Some stakeholders provided additional commentary to the committee, as outlined below.

The LGMA described the proposed process for appointing the runner-up for a vacancy in the office of council in an undivided local government as impractical. The LGMA stated:

*Working down the list of people who were not elected to find who should represent a community does not seem the best approach. A lot can happen in 3 years and if the community had wanted that candidate to be their representative, they would have voted for them at the time of the initial election. The best way to determine who should represent a community is to ask the community via a by-election.*⁸¹⁶

The QLGRA called for the threshold period for a by-election following a mayoral or councillor vacancy to be extended, from 36 to 42 months.⁸¹⁷ Commenting on the submission of the LGMA, Mr Greg Smith of the QLGRA stated:

*... 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.*⁸¹⁸

The QLGRA also suggested that in the last six months before an election, councillors should appoint the mayor from their number, without the need to replace the councillor.⁸¹⁹

⁸¹⁰ Bill, cl 109, s 166A.

⁸¹¹ Explanatory notes, p 6.

⁸¹² DJAG and DLGRMA, correspondence, 12 December 2019, p 23.

⁸¹³ Whitsunday Regional Council, submission 8, p 2; QLGRA, submission 12 p 3; OSCAR, submission 13 p 5; Wildlife Queensland Gold Coast & Hinterland Branch, submission 58 p 1.

⁸¹⁴ OSCAR, submission 13, p 5; BRU, submission 55, p 9.

⁸¹⁵ QLGRA, submission 12, p 3; OSCAR, submission 13, p 5; LGMA, submission 64, p 3; BRU, submission 55, p 9.

⁸¹⁶ Submission 64 p 3.

⁸¹⁷ Submission 12, p 3.

⁸¹⁸ Public hearing transcript, Brisbane, 20 January 2020, p 51.

⁸¹⁹ Submission 12, p 3.

In regard to councillor vacancies, BRU and LGMA called for greater clarity as to how appointments in the last 12 months before an election would be made, and what constitutes a 'qualified person'.⁸²⁰ BRU submitted that mayors and councillors should not be allowed to resign in the last 12 months just to allow their party affiliated successors the time to become established in the electorate. BRU also submitted that if a mayor or councillor did resign during this time, it would have to be for a 'very good reason'.⁸²¹

The LGAQ submitted that the runner-up appointment process would be 'problematic'. Their submission stated:

*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 in these instances runners up are in fact elected when by-elections are held.*⁸²²

Mr Greg Hallam of the LGAQ attested that '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'.⁸²³

Mr Brett de Chastel of the QLGMMA expressed a preference for a by-election over appointing a runner-up to fill a vacancy:

*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.*⁸²⁴

5.4.2 Department's response

In response to the comments from the LGAQ, DLGRMA affirmed that the proposed changes are to increase efficiencies and reduce the number of instances in which a by-election would be required. DLGRMA stated that the LGAQ's submission on these matters would be 'further considered'.⁸²⁵

Responding to the comments from the QLGRA and Isaac Regional Council about timeframes for filling vacancies, DLGRMA stated the proposed timetables are consistent with the process that currently applies for the BCC under s 163 of the COBA. The proposed timeframe 'builds on the Bill's policy intent to ensure a greater alignment between all local governments'.⁸²⁶

DLGRMA stated that if required, the department would 'provide procedural advice to a local government about how a local government is to fill a vacancy'.⁸²⁷

In relation to the queries from the QLGRA, OSCAR and BRU regarding the process for filling a vacancy by appointment, DLGRMA stated that proposed s 166B of the LGA (clause 109) provides that the local government must make the appointment by resolution. If the vacating councillor was elected or appointed as a political party's nominee, the vacant office must be filled by the party's nominee.⁸²⁸ Otherwise, the local government must invite nominations by notice published on the local government's website and in other ways the CEO considers appropriate and from candidates in the

⁸²⁰ BRU, submission 55, p 9; LGMAQ, submission 64, p 3.

⁸²¹ Submission 55, p 9.

⁸²² Submission 15, p 2.

⁸²³ Public hearing transcript, Brisbane, 20 January 2020, p 43.

⁸²⁴ Public hearing transcript, Brisbane, 20 January 2020, p 46.

⁸²⁵ DJAG and DLGRMA, correspondence, 17 January 2020, p 81.

⁸²⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 81.

⁸²⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 81

⁸²⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 82.

most recent quadrennial election. In relation to what constitutes a 'qualified person', the LGA chapter 6, part 2, division 1 provides for qualifications of councillors.⁸²⁹

5.5 Councillor advisors

The Bill proposes to introduce new provisions into the COBA and LGA to enable councillors of the BCC and other local governments prescribed by regulation to appoint councillor advisors to assist in performing their statutory responsibilities.⁸³⁰ The new provisions, according to the explanatory notes, are in response to a growing trend among larger local governments to appoint 'political staff' predominantly to assist mayors and to undertake a range of duties, including the management of the mayor's office, media activities and event management.⁸³¹ Arrangements for the appointment of these staff currently differ from local government to local government.

The CCC observed in its submission that the Bill's provisions appear to intend for councillor advisors to perform a similar function to ministerial staff at the State government level appointed under the *Ministerial and Other Office Holders Staff Act 2010*.⁸³² The committee notes this similarity is not specified in the explanatory notes to the Bill.

Under the proposed provisions, the BCC and other local governments prescribed by regulation could, by resolution, allow a councillor to appoint one or more 'appropriately qualified persons' (each a councillor advisor). The engagement of a councillor advisor is not mandatory, and it would be a discretionary matter for the prescribed local government as to whether to appoint an advisor to a councillor, and also how many may be appointed.⁸³³

The Bill would also establish councillor advisors' employment conditions and statutory obligations, including associated offences and penalties.⁸³⁴ The same obligations that apply to councillors in relation to registers of interests would also apply to councillor advisors, including dishonest conduct offences for dishonestly contravening register of interest obligations.⁸³⁵ Additionally, a councillor must not appoint a 'close associate' of the councillor as a councillor advisor, such as a spouse, parent, child or sibling, and the functions and responsibilities of a councillor advisor cannot include carrying out or assisting in an activity relating to a councillor's campaign for re-election or directing a local government employee.⁸³⁶

The Bill would also introduce a requirement that the Minister make a councillor advisor code of conduct, to be published on the department's website, setting out standards of behaviour for advisors in performing their functions under the COBA and the LGA.⁸³⁷ Further, amendments to s 198 of the COBA s 201 of the LGA respectively, would require local governments to state in their annual reports the number of councillor advisors appointed for each councillor for the year and the total remuneration payable to each councillor's advisors.⁸³⁸

Under the proposed amendments a councillor advisor's appointment would automatically end two weeks after the term of the councillor who appointed the advisor ends, or when the councillor who

⁸²⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 82.

⁸³⁰ Bill, cl 85, s 194A; cl 115, s 197A.

⁸³¹ Explanatory notes, p 7.

⁸³² Submission 51, p 13.

⁸³³ DJAG and DLGRMA, correspondence, 17 January 2020, p 74.

⁸³⁴ Explanatory notes, p 3.

⁸³⁵ Explanatory notes, p 7.

⁸³⁶ DJAG and DLGRMA, correspondence, 12 December 2019, p 24.

⁸³⁷ DJAG and DLGRMA, correspondence, 12 December 2019, p 24.

⁸³⁸ DJAG and DLGRMA, correspondence, 12 December 2019, p 25. Bill, cl 88, s198; cl 118, s 201.

appointed the advisor is suspended. A councillor advisor's appointment would also end the same day the advisor is convicted of certain prescribed offences.⁸³⁹

Given councillor advisors may have access to confidential and sensitive information, including commercially sensitive information, while assisting councillors in performing their responsibilities, the Bill extends existing offences about the misuse of information by local government employees to also apply to councillor advisors.⁸⁴⁰ Additionally, the proposed new dishonest conduct of councillor offences (see chapter 5.1) would also apply to a councillor advisor if the advisor fails to comply with register of interest requirements or gives false or misleading information in relation to the register of interest provisions, with dishonest intent to gain some benefit or cause some detriment to someone else. A councillor advisor's contravention of a dishonest conduct offence would constitute misconduct under the COBA and LGA, and is also a serious integrity offence that would attract suspension and disqualification respectively if the person was charged and/or convicted.⁸⁴¹

5.5.1 Stakeholder views

Responses from stakeholders to the Bill's provisions in respect of councillor advisors were mixed.

The QLGRA and BRU expressed a preference for an outright ban on such appointments, though both organisations welcomed moves to codify the practice of appointing councillor advisors should it be permitted to continue.⁸⁴² Ms Elizabeth Handley from BRU explained her organisation's position 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... 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...

*... It is a situation that has arisen ... 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.*⁸⁴³

Gecko also considered the practice of appointing councillor advisors 'potentially allows a councillor to improperly use the services of a paid staff member to advance his own purposes', but welcomed the proposal to introduce a regulatory framework to govern the practice.⁸⁴⁴ Gecko submitted that the model guidelines for the appointment and conduct of advisors must be sufficiently robust in order to curtail inappropriate behaviour, and expressed support for the proposed legislation requiring details about the costs and performance of advisors to be included in budgets and corporate plans.⁸⁴⁵ Redlands2030, who similarly considered that it would be preferable that ratepayers' money not be spent on political staff, also supported the requirement for any such expenditure to be reported in the

⁸³⁹ DJAG and DLGRMA, correspondence, 12 December 2019, p 24.

⁸⁴⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 25.

⁸⁴¹ DJAG and DLGRMA, correspondence, 12 December 2016, p 25.

⁸⁴² QLGRA, submission 12, p 2; BRU, submission 55, p 8; Elizabeth Handley, BRU, public hearing transcript, 20 January 2020, pp 50-51.

⁸⁴³ Public hearing transcript, Brisbane, 20 January 2020, pp 50-52.

⁸⁴⁴ Submission 37, p 4.

⁸⁴⁵ Submission 37, p 5.

council budget and the annual report.⁸⁴⁶ However, the Administration Councillors of the BCC, in contrast, questioned the need for this level of scrutiny of the remuneration of councillor advisors, noting ‘there is no such requirement for annual reporting of the total remuneration for State political advisors to members of Parliament’.⁸⁴⁷

The CCC was generally supportive of the councillor advisor provisions, stating that:

*... 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.*⁸⁴⁸

Further, the CCC also submitted:

... the legislation should ensure that clear protocols be set out to ensure proper and transparent communication between political staff/advisors and local government officers and clarify responsibilities for the management and, if necessary, disciplining of such staff. This could be achieved through specific provisions which require the Code of Conduct made by the Minister and/or the guidelines made by Chief Executive Officers to deal with these issues.

*Further, in relation to the proposed section 194A(5) of the City of Brisbane Act 2010 and section 197A(5) of the Local Government Act 2009, it is submitted that the provisions should prohibit a councillor advisor from carrying out or assisting in activities relating to campaigning or re-election and prohibit a councillor advisor from directing a council employee rather than simply stating those activities are not part of the councillor advisor's functions and responsibilities.*⁸⁴⁹

The LGMA expressed qualified support for the move to ‘legitimise and regulate a practice that has developed over recent years in larger councils but all with slightly different administrative arrangements’. The LGMA called for greater clarity with respect to the provision for managing the performance of the councillor advisor under proposed s 197A(4)(d), noting that these advisors typically report directly to the mayor and take direction from the mayor rather than CEO; but the CEO typically has responsibility for managing the resolution of a staff conflict or for potential disciplinary actions and dismissals.⁸⁵⁰

The LGAQ, while conceding that some regulation may be necessary, considered that the provisions should be deleted in their entirety until proper consideration had been given to empowering councillors to appoint councillor advisors, and the processes for dealing with disciplinary matters for such employees.⁸⁵¹ In this respect Logan City Council expressed concern that, unlike the State regime where specific legislation and industrial frameworks protect ministerial staff, the proposed arrangements for councillor advisors do not.⁸⁵² According to the Fraser Coast Regional Council, local governments would need to rely on the contract of employment to impose employment terms and conditions.⁸⁵³ Logan City Council expressed concern that this arrangement could potentially leave the

⁸⁴⁶ Submission 34, p 3.

⁸⁴⁷ Submission 24, p 3.

⁸⁴⁸ Public hearing transcript, Brisbane, 20 January 2020, p 59.

⁸⁴⁹ Submission 51, p 14.

⁸⁵⁰ Submission 64, p 2.

⁸⁵¹ LGAQ, submission 15, p 7.

⁸⁵² Submission 38, p 2.

⁸⁵³ Submission 25, p 3.

council at risk to liability, for example if an advisor's appointment is revoked by the councillor or the CEO seeks to terminate an advisor's employment.⁸⁵⁴

The LGAQ and the Administration Councillors of BCC were strongly opposed to the Bill's proposal that the Minister, through regulation, could prescribe the number of advisors each councillor may appoint and the functions they can perform. Mr Greg Hallam of the LGAQ stated that councillor advisors should remain the employees of council, and 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'.⁸⁵⁵ Mr Hallam further explained:

*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.*⁸⁵⁶

The Administration Councillors of the BCC also stated in this regard:

*It should be sufficient that the allocation of advisors must now pass through full Council and the remuneration totals published each year. Councillors will then rightly be judged by the electorate on these decisions.*⁸⁵⁷

The LGAQ objected to the Bill's provision for the automatic termination of a council advisor when the councillor who appointed the advisor is suspended. The LGAQ submitted that this seems impractical and unfair, and could 'result in damage to the advisor's reputation and future career prospects, even if they have no knowledge of the offence the councillor is charged with or the councillor is ultimately not convicted'.⁸⁵⁸

The Administration Councillors of BCC also submitted that the provisions for the appointment of political advisors by councillors would present serious complications regarding the period between the formal conclusion of an election and the first opportunity of a special meeting by council to consider such a resolution. As a result, it was argued, ward offices and other political offices would remain unstaffed during this period.⁸⁵⁹

The LGAQ, LGMA, Whitsunday Regional Council and Isaac Regional Council noted that the councils to be affected by this provision will be prescribed in the Regulation and are therefore unknown until the Regulation is enacted. These submitters recommended that 'meaningful consultation' be undertaken with all affected councils before the provisions take effect.⁸⁶⁰

⁸⁵⁴ Submission 38, p 2.

⁸⁵⁵ Public hearing transcript, Brisbane, 20 January 2020, p 48.

⁸⁵⁶ Public hearing transcript, Brisbane, 20 January 2020, p 43.

⁸⁵⁷ Submission 24, p 2.

⁸⁵⁸ Submission 15, p 7.

⁸⁵⁹ Submission 24, p 2.

⁸⁶⁰ LGAQ, submission 15, p 7; LGMAQ, submission 64, p 2; Whitsunday Regional Council, submission 8, p 2; Isaac Regional Council, submission 11, p 2.

The LGAQ also noted that the penalty provisions in the Bill that would apply to council advisors ‘go further for local government than state government without sufficient explanation’.⁸⁶¹ The LGAQ submitted:

*Do the same offences that will apply to councillor advisors apply to Ministerial and Opposition Leader office staff? Will all Ministerial and Opposition Leader office staff be required to have a Register of Interests like councillor advisors?*⁸⁶²

5.5.2 Department’s response

In response to the CCC’s comments about protocols regarding communication between advisors and local government employees, DLGRMA advised that the department will further consider this when preparing framework documents such as the code of conduct.⁸⁶³

In response to submissions expressing concerns over matters of reporting, DLGRMA stated that the Bill applies similar requirements for the reporting of councillor advisor remuneration to that for senior management of local government (as set out in s 201(1)(a) of the LGA). For the purposes of transparency, clauses 88 and 118 of the Bill require BCC and a local government that has resolved to appoint councillor advisors to include in their annual report the number of advisors appointed and the total remuneration payable. Councillor advisor remuneration costs will need to be included in a council’s annual budget, but the Bill does not require this cost to be separately identified.⁸⁶⁴

In relation to stakeholder calls for greater clarity on industrial relations matters, DLGRMA noted that the Bill would ensure that when a councillor appoints a councillor advisor, the advisor must enter into a written contract of employment with the local government.⁸⁶⁵ The process for disciplinary action will be provided for in the contract of employment (proposed s 197(4)(d)). DLGRMA stated that it is intended that the CEO will be responsible for taking disciplinary action against a councillor advisor.⁸⁶⁶

DLGRMA noted concerns of LGAQ in relation to the termination of an advisor’s appointment and stated that ‘the termination of a councillor advisor following a suspension of a councillor will be an automatic operation of the legislation and not an action taken by a local government against a councillor advisor’.⁸⁶⁷ The department also stated that ‘further consultation with stakeholders will occur regarding the framework applying to councillor advisors’.⁸⁶⁸

In response to the BCC Administration Councillors’ concerns regarding staffing immediately after an election, DLGRMA stated that while it is recognised that the need to make a resolution to appoint advisors may result in a delay in appointing advisors following an election, this measure would ensure that there is transparency regarding the appointment of these staff.⁸⁶⁹

5.6 Councillors to direct designated local government employees

It is current practice for many local governments to provide administrative support to mayors and councillors which, in most cases, is provided by employees of the local government. Currently, both

⁸⁶¹ Submission 15, p 7.

⁸⁶² Submission 15, p 8.

⁸⁶³ DJAG and DLGRMA, correspondence, 17 January 2020, p 79.

⁸⁶⁴ DJAG and DLGRMA, correspondence, 17 January 2020, p 77.

⁸⁶⁵ DJAG and DLGRMA, correspondence, 17 January 2020, p 75.

⁸⁶⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 77.

⁸⁶⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 76.

⁸⁶⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 76.

⁸⁶⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 75.

the LGA and COBA include prohibitions on councillors giving direction to employees of the local government.⁸⁷⁰

The Bill proposes to amend the LGA and COBA to provide that a councillor may give a direction to a local government employee who provides administrative support to the councillor in accordance with guidelines made by the CEO.⁸⁷¹ Proposed new s 171A of the COBA and s 170AA of the LGA provide that the CEO may make guidelines about the provision of administrative support to councillors and provide for when councillors may direct local government employees for the provision of administrative support.⁸⁷² The proposed new sections require the guidelines to include:

- when a councillor may be provided with administrative support
- how and when a councillor may give a direction to a local government employee providing administrative support to the councillor, and
- a requirement that a councillor may give a direction only if the direction relates directly to the administrative support to be provided under the guidelines.⁸⁷³

5.6.1 Stakeholder views

The QLGRA and the LGMA expressed their support for the proposed provisions.⁸⁷⁴ The LGAQ stated in its submission that the provisions ‘largely reflect what is already occurring in many councils in relation to the provision of administrative support to councillors’, and that ‘we do not see any great difficulty with the amendments proposed’.⁸⁷⁵

The Southern Downs Regional Council submitted that it would be beneficial to see further detail around the matters that may be covered in the guidelines for the provision of administrative support and councillor directions to administrative assistants,⁸⁷⁶ while the Fraser Coast Regional Council submitted that greater clarity was required as to whether the guidelines would apply only to administrative support staff or to councillor advisors as well.⁸⁷⁷

Logan City Council acknowledged that while it may be covered in the guidelines, the proposed legislation should specify that if a councillor gives a direction to a local government employee that is inconsistent with a direction to the same employee given by another councillor, then both directions are of no effect.⁸⁷⁸

5.6.2 Department’s response

In response to Fraser Coast Regional Council’s comments regarding the application of the provisions DLGRMA advised that the Bill contemplates the issuing of directions only to administrative staff – for example, asking for a meeting to be scheduled. Accordingly, DLGRMA advised, the provision applies only to ‘local government employees’ for the LGA (clause 110) and ‘council employees’ for COBA (clause 78), and ‘council advisors are not local government employees or council employees’.⁸⁷⁹

In response to Logan City Council’s submission relating to consistency of directions, DLGRMA stated that the matter will be further considered by the department. The department further stated that

⁸⁷⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 25. See also: LGA, s 170, COBA, s 170.

⁸⁷¹ Explanatory notes, p 7. Bill, cl 78, cl 110.

⁸⁷² DJAG and DLGRMA, correspondence, 12 December 2019, p 25. Bill, cl 79, s 171A, cl 111, s 170A.

⁸⁷³ DJAG and DLGRMA, correspondence, 12 December 2019, p 26.

⁸⁷⁴ QLGRA, submission 12, p 2; LGMAQ, submission 64, p 2.

⁸⁷⁵ Submission 15, p 6.

⁸⁷⁶ Submission 68, p 1.

⁸⁷⁷ Submission 25, p 3.

⁸⁷⁸ Submission 38, p 3.

⁸⁷⁹ DJAG and DLGRMA, correspondence, 17 January 2020, p 79.

'because of the administrative nature of the directions it is considered that inconsistencies are unlikely and if they do arise can be resolved between the councillors and the employees'.⁸⁸⁰

5.7 Brisbane City Council senior contract employees

Under the LGA, the CEO appoints all local government employees, including employees who report directly to the CEO and whose position ordinarily would be considered to be a senior position in the local government's corporate structure (senior executive employees). However, the COBA provides that BCC appoints employees who are employed on a contractual basis and classified by the council as being at an equivalent senior executive employee level (senior contract employees). This may include managers who do not report directly to the CEO.⁸⁸¹

The Bill proposes to amend the COBA to provide that the council must appoint qualified persons to be the council's senior executive employees as opposed to senior contract employees. The definition 'senior executive employee' (inserted into the Dictionary by clause 93 of the Bill) means an employee of the council who reports directly to the CEO and whose position ordinarily would be considered to be a senior position in the council's corporate structure, equivalent to the definition 'senior executive employee' in the LGA.⁸⁸²

To limit the involvement of BCC councillors in the appointment of BCC employees and to provide for better alignment with the LGA, the Bill amends the COBA to provide that BCC will be responsible only for appointing senior executive employees and that the CEO of BCC will be responsible for appointing all other employees.⁸⁸³

5.7.1 Stakeholder views and the department's response

Submitters to the Bill largely supported the provisions of the Bill concerning the appointment of senior contract employees.⁸⁸⁴ Whitsunday Regional Council, in expressing its support for the amendments, noted that they would 'create greater alignment between the legislative obligations of Brisbane City Council and other Queensland councils'.⁸⁸⁵

DLGRMA noted the comments from submitters on this aspect of the Bill.⁸⁸⁶

5.8 Dissolution of a local government

Chapter 5, Part 1 of the LGA provides the State with certain powers of intervention in relation to a local government or councillor, including the ability to seek to suspend or dismiss a council or dissolve a local government. Recent amendments to the COBA have also made these powers applicable in relation to the BCC.⁸⁸⁷

In particular, in relation to the dissolution of a local government, the LGA provides that the Minister may recommend that the Governor in Council dissolve a local government and appoint an interim administrator to act in place of the councillors 'until the conclusion of a fresh election of councillors'.⁸⁸⁸

⁸⁸⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 79.

⁸⁸¹ Explanatory notes, p 8.

⁸⁸² Explanatory notes, p 65. See also Bill, cl 83, s 192.

⁸⁸³ Explanatory notes, p 8.

⁸⁸⁴ See, for example: Whitsunday Regional Council, submission 8; QLGRA, submission 12; OSCAR, submission 13; BRU, submission 55.

⁸⁸⁵ Submission 8, p 2.

⁸⁸⁶ DJAG and DLGRMA, correspondence, 17 January 2020, p 80.

⁸⁸⁷ Explanatory notes, p 7. As affected by amendments contained in the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, which commenced on 20 January 2020.

⁸⁸⁸ *Local Government Act 2009*, s 123.

The Bill proposes to amend this provision to enable the Minister to recommend to the Governor in Council that the local government be dismissed and an interim administrator appointed to act in place of the councillors until the earlier of:

- (i) *the conclusion of a fresh election of councillors to be held on a stated date; or*
- (ii) *the conclusion of the next quadrennial election.*⁸⁸⁹

The explanatory notes advise that this is considered appropriate ‘so as to avoid the significant additional costs of holding a fresh election if a quadrennial election is to be held within a reasonable period of time after a dissolution’.⁸⁹⁰

The Bill also provides further administrative arrangements in relation to a dissolution of a local government including:

- providing that the Governor in Council may direct a local government for which an interim administrator is appointed to not only pay to the Minister an amount for the costs and expenses of the interim administration,⁸⁹¹ but also an amount for the costs and expenses of an advisory committee and an interim management committee,⁸⁹² and
- inserting a new section to provide that the Minister may appoint an acting interim administrator (for no more than six months in a 12-month period) if, during the interim administrator’s term, there is a vacancy in the office or the interim administrator is absent and cannot perform the duties of the interim administrator.⁸⁹³

5.8.1 Stakeholder views

Wildlife Queensland Gold Coast and Hinterland Branch expressed their support for the proposed amendments,⁸⁹⁴ while the Whitsunday Regional Council, BRU and OSCAR submitted that they support the reforms ‘in principle’.⁸⁹⁵ BRU and OSCAR stated of the proposed changes that they ‘seem appropriate’.⁸⁹⁶

The QLGRA, who also supported the provisions, submitted that they considered that when an interim administrator is appointed, ‘they should be required to remain in the position until the next election or until the expiry date specified in their contract’.⁸⁹⁷

The QHRC highlighted that while the amendments will alter existing provisions rather than establishing new powers of the State to intervene in local government matters, they could serve to limit the scope for individuals to participate in public life – a right enshrined in s 23 of the Human Rights Act:

*That right provides that every person in Queensland has the right, and is to have the opportunity, to participate in the conduct of public affairs, directly or through freely chosen representatives. This includes the opportunity to vote and be elected at periodic state and local government elections that guarantee the free expression of the will of the electors.*⁸⁹⁸

⁸⁸⁹ Bill, cl 97, s 123.

⁸⁹⁰ DJAG and DLGRMA, correspondence, 12 December 2019, p 26.

⁸⁹¹ As is currently provided for in the LGA, s 124.

⁸⁹² Bill, cl 98, s 124(6).

⁸⁹³ Bill, cl 99, s 124A. See also DJAG and DLGRMA, correspondence, 12 December 2019, p 26.

⁸⁹⁴ Wildlife Queensland Gold Coast & Hinterland Branch, submission 58, p 9.

⁸⁹⁵ Whitsunday Regional Council, submission 8, p 2; BRU, submission 55, p 9; OSCAR, submission 13, p 5.

⁸⁹⁶ BRU, submission 55, p 9; OSCAR, submission 13, p 5.

⁸⁹⁷ Submission 12, p 3.

⁸⁹⁸ Submission 17, p 16.

The QHRC acknowledged the expressed intention of the changes to avoid the cost of holding a fresh election if a quadrennial election is to be held within a reasonable period of time after dissolution. However, the QHRC also suggested that the committee 'may nonetheless wish to seek more information on how this is a reasonable limitation on the right to take part in public life'.⁸⁹⁹

5.8.2 Department's response

DLGRMA acknowledged submitters' expressions of support for the proposed amendments. In relation to the QHRC's expressed preference that an interim administrator be required to remain in place until the next election, DLGRMA reaffirmed that the Bill would provide for the Minister to recommend the Governor in Council appoint an interim administrator until a fresh election is held or until the time of the next quadrennial election is held. DLGRMA also clarified that:

*The LGA provides that a person will also stop being an interim administrator if the person resigns or if the Governor in Council cancels the appointment.*⁹⁰⁰

In response to the QHRC's submission, DLGRMA conceded the proposed reforms may impact on a person's right to participate in public life by extending the length of an administrator's term up until the next quadrennial election, rather than after a fresh election, and thereby delaying a person's opportunity to participate in an election.⁹⁰¹ DLGRMA suggested the limited effects on these rights must be balanced against the broader public costs that would be incurred to hold fresh election when a quadrennial election is to follow shortly after a local government is dissolved.⁹⁰²

DLGRMA has also previously highlighted that any regulation made by the Governor in Council, on the Minister's recommendation, to dissolve a local government and appoint an interim administrator, must specify the period for which the interim administrator is appointed and must be ratified by the Parliament.⁹⁰³

5.9 Local government elections – minor amendments

The Bill also proposes to make a number of minor amendments to the *Local Government Electoral Act 2011* (LGEA) to provide for responsibility for compliance in the absence of an agent, as well as clarifying a number of other electoral matters.⁹⁰⁴

At present, in respect of the absence of an agent, s 43(5) of the LGEA provides that if no candidate is currently recorded for a group a candidates in the ECQ's register of group agents, all obligations under the LGEA that apply to the agent, including liability for any offence, apply to each member of the group of candidates as if each candidate was the agent for the group. However, no such provision is made in relation to the absence of an agent of a political party.

The Bill, which seeks to address this discrepancy, would omit the s 43(5) provision and establish proposed new s 112B in the LGEA, which provides that if a political party political party or group of candidates does not have an agent for a period, each member of the executive committee of the party or each member of the group of candidates respectively is responsible for compliance with the obligations of the agent under the LGEA for the period where there is no agent.⁹⁰⁵

⁸⁹⁹ Submission 17, p 16.

⁹⁰⁰ DJAG and DLGRMA, correspondence, 12 December 2019, pp 80-81.

⁹⁰¹ DJAG and DLGRMA, correspondence, 12 December 2019, pp 80-81.

⁹⁰² DJAG and DLGRMA, correspondence, 12 December 2019, pp 80-81.

⁹⁰³ See: *Constitution of Queensland 2001*, chapter 7, part 2.

⁹⁰⁴ Explanatory notes, pp 2-3.

⁹⁰⁵ Bill, cl 131, s 112B.

Other proposed clarifying amendments include:

- clarifying that if a ballot paper is sealed in a declaration envelope, the envelope must be signed and witnessed as required under part 4 of the LGEA
- clarifying that provisions requiring a presiding officer to give certain things to the returning officer (for the preliminary counting of ordinary votes) do not apply if the presiding officer is also the returning officer
- relocating the definition of 'bank statement' (noting a copy of a bank statement for the dedicated account of a candidate or group of candidates must be provided to the ECQ with summary expenditure returns), and
- providing for the ECQ to give reminder notices about summary returns which have not been received within 10 weeks of polling day or the day a poll would have been held, rather than for both real-time returns and summary returns.⁹⁰⁶

5.9.1 Stakeholder views and the department's response

Whitsunday Regional Council advised that it supports the proposed amendments 'in principle',⁹⁰⁷ and OSCAR and BRU submitted that the proposed amendments to the LGEA 'appear appropriate'.⁹⁰⁸ The QLGRA also expressed its support for the changes.⁹⁰⁹

DGLRMA noted these expressions of support.⁹¹⁰

As noted in chapter 2.8.2 of this report, the QCCL has expressed a concern regarding the extension of liability for the obligations of an agent to all members of an executive committee, in event of the agent's absence (though the QCCL's comments related specifically to the executive committee of a third party, as impacted by proposed s 213 in the Electoral Act). This matter is discussed further in chapter 6.1.1 of this report, regarding the rights and liberties of individuals.

⁹⁰⁶ DJAG and DLGRMA, correspondence, 12 December 2019, p 27; explanatory notes, pp 93-94.

⁹⁰⁷ Submission 8, p 3.

⁹⁰⁸ OSCAR, submission 13, pp 5-6; BRU, submission 55, p 10.

⁹⁰⁹ Submission 12, p 3.

⁹¹⁰ DJAG and DLGRMA, correspondence, 17 January 2020, p 82.

6 Compliance with the *Legislative Standards Act 1992*

6.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

It is the committee’s role to consider whether a bill has sufficient regard to the FLPs articulated in the LSA and to advise the Legislative Assembly accordingly. Where the committee identifies a possible breach of those principles, it considers and advises on whether the potential breach may be justified in the context of the objectives of the proposed legislation.

The committee has examined the application of the FLPs to the Bill and identified numerous clauses that raise potential FLP issues. The committee’s consideration of and commentary on these issues is outlined below.

6.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Freedom of expression and political communication

Clauses 22, 31 and 58 respectively amend the Electoral Act to:

- insert new s 252, which imposes caps on the amount of political donations both that donors may make and that defined recipients (political parties and their associated entities, candidates and third parties involved in electoral campaigning) may receive
- insert new Part 11, Division 9, which imposes caps on electoral expenditure for political parties and their associated entities, candidates and third parties involved in electoral campaigning, and
- insert new Part 10, Division 2A, to introduce an offence for
 - o the display of unpermitted signage during voting hours within 100 metres of the entry to a pre-poll voting office or an ordinary polling booth and any designated entry to the grounds where the office or booth is located, with a candidate being permitted to display up to two signs of a specified size within these restricted areas, and
 - o the display of an election sign or setting up other items to be used for a purpose related to an election within 100 metres of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located, or within 100 metres of any entrance to the grounds, before 6am on polling day.

These clauses raise FLP issues regarding the rights and liberties of individuals, particularly with respect to an individual’s right to freedom of expression and right to participate in public affairs and elections.

The explanatory notes argue that the impacts of the provisions on these rights are ‘legitimate and proportionate’. In relation to the donation caps, the explanatory notes state:

They serve a genuine public interest of securing the actual and perceived integrity of the State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties, candidates and third parties involved in electoral campaigning. Those impacted are limited to those who freely choose to be directly involved with the electoral process (as recipients of political donations) or provide resourcing to those who are (as political donors). In addition, those wishing to receive information and ideas from the recipients of political donations will have increased confidence

that those communicating with them, and seeking election, have not been subject to undue influence. The High Court has held the capping of political donations is a measure that preserves and enhances the system of presentative government [McCloy v New South Wales [2015] HCA 34 at [47]]. In formulating the donations caps, regard has been given to donation caps in interstate jurisdictions, as well as comparative international jurisdictions.⁹¹¹

The caps on electoral expenditure are similarly described by the explanatory notes as serving and important ‘public interest purpose’ in:

... levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate influence voting in an election without ‘drowning out’ the communication of others.

Limiting the ability of an individual or entity to ‘drown out’ the communication of others therefore supports the rights to freedom of expression for both those wishing to impart information and ideas, and those wishing to receive information and ideas. Those whose communications are restricted through the expenditure caps are limited to those who are directly involved with the electoral process in the form of seeking election, endorsing candidates for election or communicating with a dominant purpose of influencing voting at an election.⁹¹²

Further, in relation to the display of election signage, the explanatory notes state of the proposed amendments:

They serve a genuine public interest in reducing the ability for signage concentrated in the areas subject to the restriction to ‘crowd out’ the opportunities for registered political parties and candidates to communicate with voters. Limiting the ability of an individual or entity to ‘crowd out’ the communication of others supports freedom of expression for both those wishing to impart information and ideas, and those wishing to receive information and ideas. The restrictions are intended to provide a more neutral environment for voters, while allowing reasonable signage in closest proximity to a pre-poll voting office or ordinary polling booth to be focused on the direct voting choices to be exercised by electors (namely for candidates and, where applicable, the parties that endorse them) rather than a broader class of persons and entities. The need for signs to be accompanied by a person is necessary to ascertain which candidate or party the signs are being displayed for where that may not be clear, including circumstances where an ECQ returning officer may need to take action. The restrictions will also prevent damage to structures at venues used as polling booths on polling day caused by affixing election material to them.⁹¹³

The explanatory notes also acknowledge that the proposed limitations on the period of time during which election signage can be displayed at polling places (and thereby, the time during which materials can be set up), may have the practical effect of ‘potentially requiring more individuals to carry out these activities, which may divert resources from other communication activities on polling day.⁹¹⁴

The explanatory notes argue that the provisions are fair and justified, stating that they will ensure:

... that the ordinary use of premises to be used as polling booths on polling day, and premises nearby, are not interfered with by the setting up of electoral material in the period preceding and early morning of polling day.⁹¹⁵

⁹¹¹ Explanatory notes, p 10.

⁹¹² Explanatory notes, p 11.

⁹¹³ Explanatory notes, p 16.

⁹¹⁴ Explanatory notes, p 16.

⁹¹⁵ Explanatory notes, p 16.

Reasonableness and fairness of treatment of individuals

A number of provisions in the Bill would impose a liability on a person for the actions of others over which they may have had no control. This raises questions as to the reasonableness and fairness of the treatment of these individuals, which is a relevant factor in determining whether the proposed legislation has sufficient regard to the rights and liberties of individuals.

Specifically:

- clause 31 inserts new s 281K and s 281L in the Electoral Act, which provide for the aggregation of electoral expenditure, such that:
 - o electoral expenditure incurred by or for a registered political party is taken to be incurred for its endorsed candidate for a by-election, and
 - o where an elected member is a member of a registered political party and is not contesting as a candidate for the next election, their electoral expenditure (including past expenditure) will be taken to be incurred by the party
- clause 17, which inserts new s 213 into the Electoral Act to require a registered political party and a registered third party who is not an individual to appoint an agent for the election, provides that where the entity does not have an agent, each member of the executive committee of the entity is responsible for the obligations of the agent as if they applied to the member of the executive committee, and
- clause 131, which inserts new s 112B in the LGEA with similar requirements for the appointment of an agent for a political party or group of candidates, provides that:
 - o if the party does not have an agent for a period, each member of the executive committee of the party is responsible for compliance with the obligation during the period, as if the obligation were imposed on the member of the committee, and
 - o if no agent is recorded for a group of candidates in the register of group agents for the period, each member of the group is responsible for compliance with the obligation during the period, as if the obligation were imposed on the member.

The OQPC Notebook advises that vicarious liability for offences should be avoided unless it is a practical necessity and appropriate safeguards are provided.⁹¹⁶

In relation to aggregation of electoral expenditure, the explanatory notes provide the following justification:

*These provisions are reasonably necessary to prevent parties from incurring additional expenditure for a by-election, or allowing elected members not contesting to incur expenditure that benefits their party or candidates endorsed by that party which is not appropriately attributed.*⁹¹⁷

In terms of safeguards on the aggregation provisions, the explanatory notes advise:

*In circumstances where an expenditure cap is exceeded as a result of an aggregation, a person will not be responsible if they did not know, or could not reasonably have known, about the expenditure that is added because of the aggregation. This limits the potential adverse impact on individuals due to the actions of others over which they may have had no control.*⁹¹⁸

⁹¹⁶ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 117.

⁹¹⁷ Explanatory notes, p 11.

⁹¹⁸ Explanatory notes, p 12.

Regarding the responsibilities of an executive committee or member of a group of candidates with respect to the obligations of an agent, the explanatory notes offer this justification:

*A registered political party and a registered third party (that is not an individual) are required to appoint an agent and provide written notice of a new appointment and when the appointment of an agent ends. This arrangement is consistent with the existing arrangement for agents that apply in relation to registered political parties. It is expected that the circumstances and timeframe in which the members of an executive committee will be responsible would be limited. It is a practical necessity to provide this arrangement to ensure that failure to comply with obligations of an agent under part 11 can be enforced and remove the incentive to avoid appointing an agent to in turn avoid anyone being held responsible for these obligations.*⁹¹⁹

Committee comment

Given the explanations provided, the committee is satisfied that the provisions are justified and appropriate in the circumstances.

Reasonable excuse provisions and reversal of the onus of proof

Clause 22 inserts proposed new s 257 in the Electoral Act, which provides a number of exceptions to offences in the proposed ss 254, 255 and 256, in respect of political donations made in excess of donation caps. This includes a stipulation that the offences in these sections would not apply if:

- the excess amount is refunded or the donor asks for the excess amount to be refunded within six weeks of the donation being made, or
- the political donation was made in a personal capacity for a non-electoral purpose, even if it was later used for an electoral purpose.⁹²⁰

A number of other provisions also make it an offence for a person to engage in certain acts unless the person has 'a reasonable excuse', including:

- in relation to requirements for State campaign accounts, clause 17, ss 217(4), 218(3), 219(3), 220(4), 221(3), 221B(2) and (3) of the Electoral Act, and clause 52, ss 440(2) of the Electoral Act
- clause 22, s 258(2) of the Electoral Act, in respect of the requirement to notify a donor about offences for exceeding donation caps, and
- clause 43, ss 303(2) of the Electoral Act, regarding the requirement for the agent of a registered third party to notify the ECQ of a change to a relevant detail about the registered third party.

Section 4(3)(d) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

Generally, in criminal proceedings, consistent with the presumption of innocence:

- the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt, and
- the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negating the excuse or defence beyond reasonable doubt.⁹²¹

In Queensland, it is understood that 'reasonable excuse provisions', such as those included with respect to the aforementioned offences in the Bill, are drafted on the assumption that s 76 of the

⁹¹⁹ Explanatory notes, p 12.

⁹²⁰ Bill, cl 17, s 257.

⁹²¹ OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013, p 3, https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf

Justices Act 1886 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse,⁹²² effectively reversing the onus of proof. The OQPC also acknowledges, however, that:

*... departments have often taken the view in their Explanatory Notes that a provision containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.*⁹²³

Either way, for a reversal to be justified, the OQPC has stated:

... the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.

*For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.*⁹²⁴

The QCCL submitted to the committee that it opposed the reasonable excuse provisions, suggesting that while it may accept such grounds for reversing the burden of proof in relation to a civil matter 'it is in our opinion not a basis for reversing the burden of proof in a criminal matter'.⁹²⁵

In respect of the Bill's 'reasonable excuse provisions', the explanatory notes advise:

*The offences acknowledge that person may have different responsibilities and delegated authorities within organisations and therefore may not be able to directly take action to remedy the offence themselves but may take reasonable steps to ensure others remedy the offence. The offences also acknowledge a person should not be held liable for an offence triggered by the actions of others where the person did not know, or could not reasonably be expected to know, about the other persons' actions. Similarly, the offences acknowledge that there are likely to be a range of matters that are peculiarly within the knowledge of the defendant. It is in these circumstances that the defendant would be better-positioned than the prosecution to meet the evidential burden. The 'reasonable excuse' provisions ensure liability would not be unjustly imposed, given the complexity and unpredictability of the situations likely to arise.*⁹²⁶

Privacy of information

Clause 43 inserts new Part 11, Division 12 in the Electoral Act, providing for the publication of the register of third parties for an election on the ECQ website, and providing that the register may be kept in the way and form the ECQ considers appropriate.

These provisions raise an issue of FLP with respect to the right to privacy of personal or confidential information, which is a relevant factor in considering whether legislation has sufficient regard to the rights and liberties of the individual.

The explanatory notes state that the publication of the register will improve the transparency of State elections, by enabling electors to access information about who is engaging in electoral spending and

⁹²² OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013, p 25.

⁹²³ OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013, p 25.

⁹²⁴ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 36.

⁹²⁵ QCCL, submission 42, p 7.

⁹²⁶ Explanatory notes, p 15.

‘who is responsible for communication with electors resulting from that expenditure’.⁹²⁷ In addition, the explanatory notes highlight that:

*Safeguards to privacy are provided by requiring the street address of an individual, and the address of an individual who is a silent elector, to be deleted prior to publication of a register by the commission.*⁹²⁸

Committee comment

The committee is satisfied that the provisions are appropriate, recognising that the individual’s right to privacy must be balanced against the public need for transparency regarding the entities that are engaging in electoral activities. The committee notes the safeguards to privacy provided for silent electors.

Dishonest conduct of Ministers

Clauses 62 and 73 create new offences in the Integrity Act and POQA which criminalise conduct by a Minister which is dishonest and which is done with an intention to obtain a benefit (either for the Minister or another person), or to cause a detriment.

To the extent that the rights and liberties of a Minister would be affected by the proposed amendments, the explanatory notes argue that they are justified for the following reasons:

*... they ensure Ministers of the Parliament are held accountable for: dishonest conduct with the intention of gain for the Minister or another person; or to cause detriment to another person. Further, the creation of offences of this nature were recommended by the CCC to help ensure that conflicts of interest are declared and in order to reduce the risk of corruption.*⁹²⁹

In addition, the explanatory notes advise:

*The Bill also contains a safeguard against inappropriate prosecution by providing that the consent of the Director of Public Prosecutions is required in order to charge either of the new offences.*⁹³⁰

Administrative Power

The LGA provides for powers of the State to suspend every councillor of a local government for a stated period, or to dissolve a local government and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors.⁹³¹

Clause 97 extends an existing power for the Minister to recommend that the Governor in Council dissolve a local government and appoint an interim administrator to act in the place of the councillors until the conclusion of a fresh election. The proposed amendment would provide for the Minister to recommend the dissolution of the local government and appointment of the administrator ‘until the earlier of the conclusion of a fresh election to be held on a stated date, or the conclusion of the next quadrennial election’.⁹³²

⁹²⁷ Explanatory notes, p 13.

⁹²⁸ Explanatory notes, p 13.

⁹²⁹ Explanatory notes, p 17.

⁹³⁰ Explanatory notes, p 17.

⁹³¹ See: LGA, Chapter 5, part 1.

⁹³² Bill, cl 97, s 123(3)(b).

Clause 99 provides that the Minister may appoint an acting interim administrator for up to six months of a 12-month period where, during an interim administrator's term:

- there is a vacancy in the office of the interim administrator, or
- the interim administrator is absent or cannot perform their duties.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.⁹³³

Decisions made by the Minister under clause 97 and 99 will not be subject to appeal, meaning that individuals will have their rights and liberties affected.⁹³⁴

According to the OQPC Notebook:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*⁹³⁵

Committees typically scrutinise carefully any provisions that do not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.⁹³⁶

The LGA sets out the basis upon which the Minister may recommend the dissolution of a local government and the appointment of an interim administrator – a process that is not amended by the Bill. This includes circumstances in which:

- the Councillor Conduct Tribunal recommends every councillor be suspended or dismissed
- the Minister reasonably believes that a local government has seriously or continuously breached the local government principles
- the Minister reasonably believes that a local government is incapable of performing its responsibilities, or
- the Minister reasonably believes it is otherwise in the public interest that every councillor be suspended or dismissed.

Recognising that the proposed amendments may potentially extend the period for which an interim administrator may be appointed, and delay the election of a new set of councillors, the explanatory notes provide the following justification:

*This is considered appropriate so as to avoid the significant additional costs of holding a fresh election if a quadrennial election is to be held within a reasonable period of time after a dissolution.*⁹³⁷

In relation to the appointment of an acting interim administrator in the case of a vacancy or absence of the interim administrator, the explanatory notes state:

The Minister's power to make this appointment is to be limited to circumstances where there is a vacancy in the office of the interim administrator or where the interim administrator is absent or cannot perform the duties of interim administrator. The appointment cannot be for more than

⁹³³ LSA, s 4(3)(a).

⁹³⁴ Existing s 114 of the LGA states that a decision of the Minister under Chapter 5, part 1 is not subject to appeal.

⁹³⁵ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 18.

⁹³⁶ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2018, p 15; citing Scrutiny Committee, *Annual Report 1 July 1998 to 30 June 1999*, October 1999, p 11, para 3.10.

⁹³⁷ Explanatory notes, p 21.

*6 months in a 12-month period. This will ensure that the duties of the interim administrator can be fulfilled at all times while the interim administrator is acting in place of councillors of a local government.*⁹³⁸

Committee comment

The committee considers that the provisions are appropriate in the circumstances, recognising that any regulation made by the Governor in Council to dissolve the local government and appoint an interim administrator must be ratified by the Parliament. The committee also accepts that the provision for the Minister to appoint an acting interim administrator is a reasonable and practical measure to facilitate a prompt response to a vacancy or absence of the interim administrator and minimise any associated disruptions in council operations.

Proportionality and relevance of penalties

The Bill introduces a number of new penalty provisions, or extends the application of various existing offences. A summary of some of the more significant penalties is outlined below.

Offence	Maximum Penalty
<i>Electoral Act 1992</i>	
Electoral Act s 215 – Contravention of requirement for a participant in an election to keep a State campaign account	200 penalty units
Electoral Act s 216 – Contravention of requirement that a person not pay an amount into the participant’s State campaign account that is not a permitted payment	200 penalty units
Electoral Act ss 217-219 – Contravention of requirements relating to loans paid into State campaign accounts, or requirements for political donations and returns on investment to be paid into a State campaign account	200 penalty units
Electoral Act ss 254-257 – Making a political donation that exceeds a cap on political donations or other limitation on political donations during a donation cap period	200 penalty units
Electoral Act s 259 – Accepting a political donation that exceeds a cap on political donations or other limitation on political donations during a donation cap period	200 penalty units
Electoral Act ss 281G-281H – Incurring electoral expenditure that exceeds an expenditure cap during a capped expenditure period	The greater of 200 penalty units or twice the amount by which the electoral expenditure exceeds the cap (or exceeds \$1,000 for an unregistered party)
Electoral Act s 306B – Contravention of requirement for an agent of a participant to ensure the participant’s compliance with electoral funding and disclosure obligations	200 penalty units
<i>Integrity Act 2009 and Parliament of Queensland Act 2001</i>	
Integrity Act s 40A – Failure by a Minister to disclose the nature of an interest and conflict with dishonest intent	200 penalty units or 2 years’ imprisonment
POQA s 69D – Contravention by a Minister of statement of interests requirement with dishonest intent	200 penalty units or 2 years’ imprisonment

⁹³⁸ Explanatory notes, p 21.

Offence	Maximum Penalty
City of Brisbane Act 2010 and Local Government Act 2009	
COBA s 177J and LGA s 150EM – Requirement for a councillor with a prescribed conflict of interest in a matter who has given notice to a meeting to leave the meeting while the matter is discussed and voted on	200 penalty units (\$26,690) or 2 years' imprisonment
COBA s 177P and LGA s 150ES – Requirement for a councillor to comply with a decision of eligible councillors that the councillor must not participate in a decision on the matter or must leave the place where the meeting is held while the matter is voted on, or with any conditions imposed by other councillors in relation to the councillor's participation in a decision in which the councillor has a declarable conflict of interest	100 penalty units or 1 year's imprisonment
COBA s 177V and LGA s 150EY LGA – Offence to take retaliatory action in relation to a councillor who complied with a duty to report another councillor's prescribed conflict or declarable conflict of interest	167 penalty units or 2 years' imprisonment
COBA s 198D and LGA s 201D – Contravention by a councillor or councillor advisor of a relevant integrity provision with intent to dishonestly obtain a benefit for the councillor, councillor advisor or someone else, or to dishonestly cause a detriment to someone else	200 penalty units (\$26,690) or 2 years' imprisonment
COBA s 198F and LGA s 201F – Use of inside information for councillor advisors	1000 penalty units (\$133,450) or 2 years' imprisonment
COBA s 197 and LGA s 200 – Offence for a person who is, or has been, a local government employee to: <ul style="list-style-type: none"> • use information acquired as a local government employee to gain (directly or indirectly) an advantage for the person or someone else; or case detriment to local government, and • release information that the person knows, or should reasonably know, is information that is confidential to the local government, and the local government wishes to keep confidential. 	100 penalty units (\$13,345) or 2 years' imprisonment

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. The OQPC Notebook states that a penalty should be proportionate to the offence:

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

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.⁹³⁹

In relation to the maximum penalties for the proposed Electoral Act offences, the explanatory notes state:

These offences provided are proportionate and relevant to the actions to which they applied, taking into account comparable existing offences, including those already in place under the Electoral Act.⁹⁴⁰

⁹³⁹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

⁹⁴⁰ Explanatory notes, p 14.

With respect to the maximum penalties for the proposed offences relating to the dishonest conduct of a Minister, the explanatory notes state:

*The maximum penalty of 2 years' imprisonment of 200 penalty units for each offence is reasonable and not disproportionate in order to ensure integrity in State Government decision making. The Bill also contains a safeguard against inappropriate prosecution by providing that the consent of the Director of Public Prosecutions is required in order to charge either of the new offences.*⁹⁴¹

In relation to the maximum penalties proposed for the dishonest conduct of a councillor or council advisors, the following justification is provided:

*These penalties are substantial but appropriate to reflect the serious nature of intentional dishonest conduct by a councillor in relation to conflicts of interest or a register of interests and intentional dishonest conduct by a councillor advisor in relation to a register of interests. They are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making must be in the public interest and supported by transparent and effective processes, and that behaviour of councillors and councillor advisors must be ethical and legal.*⁹⁴²

With respect to the penalties proposed in the offence provisions relating to the management of councillor conflicts of interest, the explanatory notes state:

*The maximum penalties that apply under the new provisions are substantial. However, they are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making is in the public interest and supported by transparent and effective processes.*⁹⁴³

Finally, the following explanation is provided with respect to the maximum penalties for the proposed offences for the prohibited use of information by councillor advisors:

*Councillor advisors will potentially have access to commercially sensitive information while assisting councillors in performing their responsibilities and it is considered appropriate and reasonable that they be held to the same high standard as councillors in relation to the use of inside information. The offences/penalties are considered reasonably justified and proportionate to deter councillor advisors from using inside information to dishonestly gain a financial benefit for themselves or someone else and are equivalent to the prohibited use of inside information offences and penalties that currently apply to councillors under the COBA section 173A and the LGA section 171A.*⁹⁴⁴

The QLS expressed concerns regarding the severity of the maximum penalty for one of the offences under the proposed new conflict of interest regime – specifically, the offence in s 177V of the COBA and s 150EY of the LGA for taking retaliatory action in relation to a councillor who complied with a duty to report another councillor's prescribed conflict or declarable conflict of interest.⁹⁴⁵ The QLS submitted that it does not consider the behaviour and conduct in the offence provisions should attract a criminal penalty, recommending instead that 'such action should simply be prohibited in the sections'.⁹⁴⁶

⁹⁴¹ Explanatory notes, p 17.

⁹⁴² Explanatory notes, p 18.

⁹⁴³ Explanatory notes, p 19.

⁹⁴⁴ Explanatory notes, p 19.

⁹⁴⁵ Submission 59, p 9.

⁹⁴⁶ Submission 59, p 9.

In response to the QLS' concerns, DLGRMA advised that the proposed penalty is the same as that applicable to a similar offence in s 41 of the *Public Interest Disclosure Act 2010*, which:

*... prohibits a person from taking a reprisal which is defined as causing, or attempting or conspiring to cause, detriment to another person because, or in the belief that the other person or someone else has made, or intends to make a public interest disclosure or be involved in a proceeding under that Act against any person.*⁹⁴⁷

DLGRMA highlighted that the same maximum penalty of 167 penalty units or two years' imprisonment applies in relation to that offence and emphasised that while the maximum penalty includes imprisonment, 'the Court will take into account the seriousness of the behaviour when sentencing'.⁹⁴⁸

6.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Scrutiny by the Legislative Assembly (Delegated Power)

Clause 115 inserts new s 197C in the LGA, to provide that the Minister must make a code of conduct that sets out standards of behaviour for councillor advisors in performing their functions under the LGA or the COBA.

The significance of dealing with such matters in a code, as opposed to dealing with such matters in full within the subordinate legislation, is that since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*, such that its contents may not be subject to the same degree of parliamentary scrutiny.

Section 4(4)(b) of the LSA specifies that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The OQPC Notebook further explains:

*For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*⁹⁴⁹

Where there is, incorporated into the legislative framework of the State, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it could be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

The explanatory notes address this potential FLP issue as follows:

The councillor advisor code of conduct will contain detailed information which would become unnecessarily complex to include in legislation and it is considered appropriate to delegate the making of the councillor advisor code of conduct to the Minister responsible for making the code of conduct for councillors under section 150D of the LGA. This will ensure consistency between the standards of behaviour for councillors and their advisors. Further, the Bill requires the councillor advisor code of conduct to be published on the department's website but does not require the code to be approved by regulation and tabled in the Legislative Assembly in the same way the code of conduct for councillors must be. This is considered appropriate given that the

⁹⁴⁷ DJAG and DLGRMA, correspondence, 17 January 2020, p 70.

⁹⁴⁸ DJAG and DLGRMA, correspondence, 17 January 2020, p 70.

⁹⁴⁹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 154.

*code of conduct relates to the contractual obligations of councillor advisors and not to elected representatives.*⁹⁵⁰

Committee comment

Referral to a code of conduct not contained in legislation is a reasonably common feature in various legislative schemes. The committee notes that the LGA already provides for the Minister to make a code of conduct for councillors, and accepts that it is appropriate for such similar matters as they apply to councillor advisors to also be dealt with in a code. This may support a more detailed and technical presentation of advice, including illustrative examples, than would be the case were this information to be incorporated in regulation.

The committee also accepts the explanation provided in the explanatory notes for the distinction made between the treatment of a code for elected representatives and the proposed treatment of any code for councillor advisors as contracted employees.

6.2 Explanatory notes

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

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

However, express references to the specific clauses being considered in the context of the statement of consistency with the FLPs would be useful in aiding a reader's understanding of the matters under discussion.

⁹⁵⁰ Explanatory notes, p 22.

Appendix A – Submitters

Sub #	Submitter
001	Grant Wilson
002	Gladstone Conservation Council
003	Professor Graeme Orr
004	Mt Gravatt Community Centre Inc
005	Simon Ball
006	Ben Cox
007	Michael Harrison
008	Whitsunday Regional Council
009	Jennifer Menzies
010	Logan East Community Neighbourhood Association Inc
011	Isaac Regional Council
012	Queensland Local Government Reform Alliance Inc
013	OSCAR (Organisation of Sunshine Coast Association of Residents)
013a	OSCAR (Organisation of Sunshine Coast Association of Residents) – supplementary (CCC reform proposal for serious conduct offences)
014	Krystian Seibert
015	Local Government Association of Queensland
015a	Local Government Association of Queensland – supplementary (CCC reform proposal for serious conduct offences)
016	Cairns and Far North Environment Centre
017	Queensland Human Rights Commission
017a	Queensland Human Rights Commission – supplementary (CCC reform proposal for serious conduct offences)
018	Environmental Defenders Office
019	Pam Spence
020	Ross Spence
021	Uniting Church in Australia - Queensland Synod

- 022 Mayor Lyn McLaughlin, Burdekin Shire Council
- 023 North Queensland Conservation Council
- 024 Administration Councillors of Brisbane City Council
- 025 Fraser Coast Regional Council
- 026 SEQ Alliance
- 027 Queensland Nurses & Midwives' Union
- 028 Queensland Council of Unions
- 029 Pat Coleman
- 030 GetUp!
- 031 Queensland Conservation Council
- 032 WWF-Australia
- 033 Cairns Regional Council
- 034 Redlands2030 Inc
- 035 Queensland Community Alliance
- 036 Neil Cotter
- 037 Gecko Environment Council Association Inc
- 038 Logan City Council
- 038a Logan City Council – supplementary (CCC reform proposal for serious conduct offences)
- 039 Greenpeace Australia Pacific
- 040 Australian Marine Conservation Society
- 041 Electoral Commission of Queensland
- 042 Queensland Council for Civil Liberties
- 043 BirdLife Australia
- 044 Australian Youth Climate Coalition
- 045 Queensland Council of Social Service Ltd
- 046 Mackay Conservation Group
- 047 Australian Conservation Foundation
- 048 The Centre for Public Integrity

- 049 Bayside Creeks Catchment Group
- 050 Australian Institute for Progress
- 051 Crime and Corruption Commission
- 051a Crime and Corruption Commission – supplementary (CCC reform proposal for serious conduct offences)
- 052 Darling Downs Environment Council Inc
- 053 Human Rights Law Centre
- 054 Solar Citizens
- 055 Brisbane Residents United Inc
- 056 National Parks Association of Qld Inc
- 057 Queensland Integrity Commissioner
- 057a Queensland Integrity Commissioner – supplementary (CCC reform proposal for serious conduct offences)
- 058 Wildlife Queensland Gold Coast & Hinterland Branch
- 059 Queensland Law Society
- 059a Queensland Law Society – supplementary (CCC reform proposal for serious conduct offences)
- 060 Office of the Independent Assessor
- 060a Office of the Independent Assessor – supplementary (CCC reform proposal for serious conduct offences)
- 061 David Drake
- 062 Robert Rutkowski
- 063 Anglican Church Southern Queensland (Diocese of Brisbane) Social Responsibilities Committee
- 064 Local Government Managers Australia Queensland
- 065 Cancer Council Queensland, National Heart Foundation and Australian Council on Smoking and Health
- 066 Lung Foundation Australia
- 067 Together Queensland Industrial Union of Employees
- 068 Southern Downs Regional Council

- 068a Southern Downs Regional Council – supplementary (CCC reform proposal for serious conduct offences)
- 069 Honourable Rod Welford (CCC reform proposal for serious conduct offences)
- 070 Balonne Shire Council (CCC reform proposal for serious conduct offences)
- 071 Ethics Committee, Queensland Parliament (CCC reform proposal for serious conduct offences)
- 072 Mayor Tom Tate, City of Gold Coast (CCC reform proposal for serious conduct offences)
- 073 The Clerk of the Parliament, Queensland (CCC reform proposal for serious conduct offences)

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Imelda Bradley, Director, Strategy Policy and Legal Services
- Sarah Kay, Director, Strategy Policy and Legal Services
- Melinda Tubolec, Senior Legal Officer, Strategy Policy and Legal Services

Department of Local Government, Racing and Multicultural Affairs

- Bronwyn Blagoev, Executive Director, Strategy and Service Delivery

Appendix C – Witnesses at public hearing

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

The Centre for Public Integrity (by teleconference)

- Anthony Whealy QC, Chair
- Hannah Aulby, Executive Director

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Sean Costello, Principal Lawyer

Human Rights Law Centre

- Alice Drury, Senior Lawyer

Queensland Council of Social Service Ltd

- Laura Barnes, Senior Manager – Policy, Advocacy and Capacity

Queensland Community Alliance

- Devett Kennedy, Lead Organiser
- Kerrin Benson, CEO, Multicultural Australia (Board Member, Community Alliance)

Krystian Seibert, Industry Fellow, Centre for Social Impact, Swinburne University of Technology (by teleconference)

Environmental Defenders Office Queensland

- Deborah Brennan, Senior Solicitor

Australian Conservation Foundation

- Jolene Elbert, Democracy Campaigner
- Tina Pandeloglou, General Counsel (by teleconference)

Queensland Council of Unions

- Dr John Martin, Research and Policy Officer

GetUp!

- Andrew Blake, Project Lead – Democracy & Risk
- Daney Faddoul, Political Director

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

Electoral Commission of Queensland

- Pat Vidgen, Electoral Commissioner
- Wade Lewis, Assistant Electoral Commissioner
- Julie Cavanagh, Executive Director, Election Events Management
- Mel Mundy, Director, Funding, Disclosure and Compliance

Local Government Association of Queensland

- Greg Hallam, Chief Executive Officer
- Georgia Stafford, Lead – Intergovernmental Relations

Logan City Council

- Tamara O’Shea, Interim Administrator
- Silvio Trinca, Acting Chief Executive Officer

Fraser Coast Regional Council (by teleconference)

- Ken Diehm, Chief Executive Officer
- Councillor David Lewis

Local Government Managers Australia Queensland (by teleconference)

- Brett de Chastel, President

Brisbane Residents United Inc

- Elizabeth Handley, President

SEQ Alliance

- Chris Walker, President

Queensland Local Government Reform Alliance Inc

- Greg Smith, Management Committee

Office of the Independent Assessor

- Kathleen Florian, Independent Assessor
- Charles Kohn, Deputy Independent Assessor
- Nicole Butler, Director, Media and Engagement

Crime and Corruption Commission, Queensland

- Alan MacSporran QC, Chairperson

Queensland Integrity Commissioner

- Dr Nikola Stepanov, Integrity Commissioner

Queensland Law Society (QLS)

- Luke Murphy, President
- Calvin Gnech, Chair, QLS Occupational Discipline Law Committee
- Myles McGregor-Lowndes, Member, QLS Not for Profit Law Committee

Queensland Council for Civil Liberties

- Michael Cope, President

NON-GOVERNMENT STATEMENT OF RESERVATION

SOR – Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

The LNP members of the Economic and Governance Committee are concerned about the imbalance the caps on donations and electoral expenditure will have on political parties who have strong ties with trade unions.

The members cannot support anti-democratic laws that infringe the values of Queensland's electoral system. It is submitted that the proposed caps on political donations and expenditure will create an unfair advantage for the Labor Party who is strongly affiliated with the 26 trade unions operating in this state. The expenditure cap of \$87,000 that applies to trade unions will see 26 trade unions expending up to \$87,000 in each electorate up to \$1 million. Consequently, this will create an imbalance of power and undermine public confidence in the electoral system. These proposed laws are clearly a mechanism designed to favour the Labor Party.

In relation to proposed integrity offences, it must be noted that the CCC has expressed the view that the Opposition's Bill is more consistent with the CCC's recommendations.



Ray Stevens

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



Sam O'Connor

Member for Bonney



Dan Purdie

Member for Ninderry