

GPO Box 3123
Brisbane QLD 4001

Level 2
North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

Tel.: 07 3360 6060
Toll-free: 1800 061 611
(in Queensland outside
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au
www.ccc.qld.gov.au

ABN 32 164 714 360



Crime and Corruption
Commission

QUEENSLAND

Our Reference: AD-18-0444 / 18/134915

12 June 2018

Ms Trudy Struber
Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000

Via email: egc@parliament.qld.gov.au

Dear Ms Struber

Re: Electoral Legislation (Political Donations) Amendment Bill 2018

The Crime and Corruption Commission (CCC) welcomes the opportunity to make this submission to the Economics and Governance Committee (the Committee) on the Electoral Legislation (Political Donations) Amendment Bill 2018 (the Bill).

The Bill

The Bill was introduced to parliament on 16 May 2018 and the Committee is due to table its report by 19 November 2018.

According to the Explanatory Notes, the Bill's policy objectives are the elimination of "the actual and widely perceived risk of corruption within Queensland's democratic (sic) as a consequence of corporate donations to politicians, candidates and political parties".¹ The stated reasons for these policy objectives rely upon certain observations, findings and purported limitations of the Crime and Corruption Commission's (CCC) Operation Belcarra Report and the subsequent legislative reforms which have followed the release of that Report²; namely, the *Local Government Electoral (Implementing Stage 1 of Belcarra) and other Legislation Amendment Act 2018* assented to on 21 May 2018.

In brief summary, the Bill seeks to achieve its policy objectives by prohibiting the making of political donations by for-profit corporations in State or Local Government elections.³ Among other things, the Bill makes unlawful the making and acceptance of political donations made by or on behalf of prohibited corporate donors and for prohibited corporate donors (or others on their behalf) to solicit other persons to make political donations.⁴

The Explanatory Notes assert that the Bill's provisions prohibiting corporate donations are based on the New South Wales legislation in this area and that the High Court has

¹ Explanatory Notes, p. 1.

² Explanatory Notes, p. 1 - 2.

³ Explanatory Notes, p. 2.

⁴ Explanatory Notes, p. 2.

found the New South Wales *Election Funding, Expenditure and Disclosure Act 1981* provisions, upon which the Bill's provisions are based, to be valid.⁵

Submission

The CCC has not previously made recommendations for the prohibition of political donations by for-profit corporations in the context of either State or Local Government elections. Subject to any evidence gathered by the Committee during the course of this inquiry, the CCC does not consider that there is a proper basis for it (the CCC) to make any such recommendation having regard to information currently available to the CCC.

Operation Belcarra Report

The Committee would be aware that the Operation Belcarra Report recommended that candidates, groups of candidates, third parties, political parties, associated entities and councillors be prohibited from receiving political donations from developers in the context of local government elections.⁶ In doing so the CCC acknowledged that there are other types of donors who, like property developers, have interests that may be influenced by local government decision-making but took the view that until these other types of donors demonstrate the same risk of actual or perceived corruption in Queensland local government as property developers, a more encompassing ban is not appropriate.⁷ The CCC considered that at the time the risks associated with these donors were sufficiently addressed by existing transparency mechanisms with the improvements recommended by its report (particularly Recommendations 17 – 19).⁸

I have previously told the Committee my personal view that in an ideal world all donations would be banned, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified.⁹ For this reason the Operation Belcarra Report singled out property developers and not others as the evidence simply did not meet the expectation that other types of donors (for example, trade unions) demonstrated the same risk of actual or perceived corruption in the local government context.

The CCC acknowledges that one of the matters the Committee's current inquiry may consider is whether there is sufficient evidence to conclude that the Bill's provisions prohibiting political donations by for-profit corporations in State or Local Government elections is a proportionate response to any demonstrated threat of actual or perceived corruption in those areas of government. However, at the time of preparing this submission, the CCC is not aware of, and does not consider it holds, sufficient evidence in this regard.

New South Wales provisions

The Committee may wish to seek advice on whether the Bill's provisions prohibiting corporate donations are sufficiently based on provisions of the *Election Funding, Expenditure and Disclosure Act 1981* (NSW) [EFED Act] found to be valid by the High Court of Australia.

In New South Wales, pursuant to sections 96D(1)(b), (2)(a) and (2)(b) of the current EFED Act, political donations may lawfully be accepted from corporations unless the corporation is a prohibited donor¹⁰ as defined by s. 96GAA and 96GB of the EFED Act.¹¹

⁵ Explanatory Notes, p. 3.

⁶ Operation Belcarra Report, Recommendation 20, p. 78.

⁷ Operation Belcarra Report, p. 78 – 79.

⁸ Operation Belcarra Report, p. 79.

⁹ Economics and Governance Committee, Public Hearing — Inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 — Transcript of Proceedings – 28 March 2018, p. 26.

¹⁰ A property developer, tobacco industry business entity or a liquor or gambling industry business entity, including any industry representative organisation if the majority of its members are such prohibited donors).

¹¹ See also NSW Electoral Commission Fact Sheets – Political Donations and Prohibited Donors at: http://www.elections.nsw.gov.au/fd/documents/forms_and_publications.

The Committee may be aware of the 2013 High Court decision in *Unions New South Wales v New South Wales* which held invalid provisions of the then EFED Act with the purpose of preventing political donations by a donor who was not an individual enrolled on an electoral roll for State, Federal or local government elections.¹² The High Court noted that if corporations were in truth the sole target of the invalid provisions, questions might arise as to whether a complete prohibition respecting donations of any amount from any corporation was justified on grounds of possible threats to integrity¹³ similar to those contemplated by the Bill. Following this decision, New South Wales amended the EFED Act to allow political donations to be received from donor corporations within a legislative framework requiring transparent disclosure of donations of \$1000 or more by both the donor corporation and the donor recipient.

Conclusion

I thank the Committee for the opportunity to make this submission concerning the Bill. The CCC has not previously made recommendations for the prohibition of political donations by for-profit corporations in the context of either State or Local Government elections. Subject to any evidence gathered by the Committee during the course of this inquiry, the CCC does not consider that there is a proper basis for it to make any such recommendation having regard to information currently available to the CCC.

If you require further information or assistance please contact in the first instance, [REDACTED] (Deputy Director, Legal Services) on [REDACTED] or via [REDACTED]

Yours sincerely,



A J MacSporran QC
Chairperson

¹² *Unions New South Wales v New South Wales* (2013) 252 CLR 530.

¹³ *Unions New South Wales v New South Wales* (2013) 252 CLR 530; per French CJ, Hayne, Crennan, Kiefel and Bell JJ at [53] - [55].