

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

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Introduction	3
1. Amendments relating to funding and expenditure for State elections	4
1.1 Capping the giving and acceptance of political donations to registered political parties and their associated entities, candidates and third parties involved in electoral campaigning	4
1.1.1 Integrity, accountability confidence and legitimacy	4
1.1.2 Donation Cap Amounts	4
1.1.3 No rationale for differentiation between candidates and political parties	6
1.1.4 New entrants and incumbent advantage	6
1.1.5 Sponsorship arrangements	6
1.1.6 Candidate contributions	7
1.1.7 Membership Subscriptions	8
1.1.8 Donation Cap Period	8
1.1.9 Donation caps not applying to 2020 election	9
1.1.10 Engaging of former parliamentarians to be counted towards the company's donation caps	9
1.1.11 Legal persons circumventing the donation caps	10
1.1.12 Third parties reliant on donations	10
1.1.13 Limiting donations to Queenslanders	10
1.2 Capping electoral expenditure for registered political parties and their associated entities, candidates and third parties involved in electoral campaigning	12
1.2.1 Expenditure cap amounts	12
1.2.2 Expenditure cap period	13

1.2.3 Kinds of expenditure covered by caps	14
1.2.4 Expenditure on the internet	15
1.2.5 Expenditure by parliamentarians	16
1.2.6 Lower expenditure cap for incumbents	16
1.2.7 Allowing expenditure to be restricted or allowed by regulation	17
1.2.8 Differentiation between parties and candidates	17
1.3 Requiring registered political parties, candidates and registered third parties to maintain dedicated State campaign accounts to support the integrity of, and compliance with, the donations and expenditure caps	18
1.3.1 ECQ Trusts in preference to independent campaign accounts	18
1.3.2 Transitioning funds between campaigns for different levels of government	18
1.4 Increasing public election funding for eligible registered political parties and candidates to decrease reliance on private donations	20
1.4.1 Decreasing threshold for entitlement to election funding	20
1.4.2 Increasing the public election funding	20
1.4.3 Administrative burden	21
1.4.4 Kinds of expenditure reimbursed by public funding	22
1.5 Increasing policy development funding from \$3 million to \$6 million per annum, allowing independent members to receive policy development payments, making modification to the distribution of policy development payments and basing the entitlement on the most recent general election results at the time of making the payment	24
1.5.1 Change in Policy Development Funding formula	24
1.5.2 Inappropriate limitation of Policy Development Funding to parliamentary parties, and disproportionate allocation to over-represented parties	25
1.5.3 Increase of Policy Development Funding	25
1.5.4 Entrenchment of Policy Development Funding	26
1.6 Lowering the percentage of votes required to get the nomination deposit returned	27
1.7 Enforcement	28
2. Crime and Corruption Commission's (CCC's) Operation Belcarra Report Recommendation 1 - Feasibility of introducing expenditure caps for Queensland local government elections	29
3. Amendments relating to signage at State elections	30
3.1 Signs required to be accompanied by a person	30
4. Amendments relating to dishonest conduct of Ministers	31
4.1 Cash for Access	31
Conclusion	32

Introduction

Our political system is broken, with continuous reports that people are losing faith in democracy and do not trust their 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, otherwise it is just a plutocracy with a democratic facade.

I was therefore pleasantly surprised at the announcement of the intent to introduce donation and expenditure caps given these are electoral reforms that have long been advocated for by progressives concerned to limit the undue influence of money in politics. Such mechanisms can be found in other jurisdictions around the world, but inevitably the devil is in the detail.

Our political system should be so designed that the influence of money is limited so that all citizens are effectively equal as possible in terms of their potential influence on the process. Representative democracy is meant to be for representation of citizens, not wealthy corporations and a moneyed elite.

Donation and expenditure caps could be two mechanisms to move significantly towards such an ideal in our practice of politics, though as outlined in this bill those mechanisms will not move us far towards that goal. Unfortunately the caps as outlined in this bill are such as to not significantly impact the status quo so will do little to bring influence in politics back to the general public where it belongs.

While this bill might perhaps significantly work against the emergence of another Clive Palmer-like figure whose own individual wealth alone managed to significantly skew the body politic, the donation caps outlined will have only a limited impact on curbing the influence of money, and the expenditure caps will effectively have no impact at all on how politics is currently practised.

This bill while a small step in the right direction is unfortunately more public relations exercise than substantive, attempting to be seen to be doing the right thing without really doing it. The people will not supplant the overwhelming influence of money in the political process and the cynicism with regard to democracy will continue to deepen.

1. Amendments relating to funding and expenditure for State elections

1.1 Capping the giving and acceptance of political donations to registered political parties and their associated entities, candidates and third parties involved in electoral campaigning

1.1.1 Integrity, accountability confidence and legitimacy

If one party takes large donations that essentially forces other parties to do so to be able to compete, a financial arms race where the electorate is assured of losing, and the integrity of the electoral system compromised.

Every dollar that the poorest members of our community understand is going to politicians from wealthy vested interests undermines our democracy, confirms for them that they do not have the same influence, that they are not equal in our system.

As economic inequality becomes ever greater, more and more people see government receding from them, knowing that even collectively they cannot compete with the wealth arrayed against their interests.

For a democracy to function it must be perceived as legitimate by those it seeks to govern, and while there are many elements to legitimacy, such as votes translating into representation, one obvious way to undermine legitimacy is the perception that regardless of votes it is donor's interests that will always be given precedence.

1.1.2 Donation Cap Amounts

The proposed donation cap amounts are very high. The ideal we should be moving towards is what donations there are for political parties are small donations from a mass of ordinary people. There is no rationale given for the high proposed caps.

252 Amount of donation cap

(1) The donation cap for a participant in an election is—

(a) for a registered political party—\$4,000; or

(b) for a candidate in the election—\$6,000; or

(c) for a third party for the election—\$4,000.

If we compare these caps with the proposed expenditure caps it reveals that the pool of donors required to reach the expenditure caps is still tiny compared to the overall electorate.

Firstly to reach the \$92000 per party per electorate cap takes just 23 donors on average per electorate giving the maximum \$4000. Secondly to reach the \$58000 per candidate expenditure cap is less than 10 donors giving the maximum \$6000. That really isn't significantly expanding the base that parties and candidates are drawing on to run campaigns.

For the election period for the 2017 state election there were 309 transactions reported to the ECQ above \$10000 though this includes transfers from unions to the ALP and from federal parties to respective start parties, but does not include consolidated separate donations from the same source.

As there were 8,253 transactions in total reported to ECQ during this period this strongly suggests that the proposed caps are so high as to prohibit only a very small proportion of donations rather than the paradigm shift to mass support from small donors that is needed.

If we combine the registered party cap of \$4000 and the candidate cap of \$6000 that gives a total of \$10000. 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.

These amounts are clearly well out of reach of people arguably most in need of political representation. The caps should be based on such metrics and seek to ensure that most members of the electorate could reasonably donate the maximum amount allowable under the donation cap so as not to give disproportionate influence to the wealthy.

The caps as outlined are very high relative to the income of most of the electorate. The median weekly income was \$660¹ in 2016 which means it would take more than 15 weeks of the median income to make the \$10000 cap.

Philanthropy Australia found that in 2016 the median donation was \$200², so the proposed donation caps are an order of magnitude beyond what most people who were in a position to give and inclined to do so feel comfortable giving in a year.

So if we take the median donation amount and combine it with a metric like the current minimum wage of \$19.49 an hour we could say that the donation cap should be 10 times the minimum wage, or perhaps 40% of the fortnightly Newstart Allowance for a single person with no dependents of \$489.70, or 30% of the median weekly income.

The ratio between donations and public funding in the income of candidates and political parties must as much as possible favour public funding. Any substantial dependence on donations by political parties skews the interests of those parties towards serving those interests.

¹https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/3?open=document

² <https://www.philanthropy.org.au/tools-resources/fast-facts-and-stats/>

If there is to be any dependence by political parties on donations it should be from many small donations rather than relatively few large ones, a Bernie Sanders model in preference to the traditional Joe Biden approach.

1.1.3 No rationale for differentiation between candidates and political parties

The rationale for the differentiation between candidates and registered political parties is not clear and seems yet another mechanism to privilege partisan candidates over independent candidates. Why do political parties get caps on top of the candidate cap, so inherently a much higher cap than that for an independent candidate?

252 Amount of donation cap

(1) The donation cap for a participant in an election is—

- (a) for a registered political party—\$4,000; or*
- (b) for a candidate in the election—\$6,000; or*
- (c) for a third party for the election—\$4,000.*

1.1.4 New entrants and incumbent advantage

There should be consideration of allowing somewhat larger caps for parties that are registered to compete in their first elections, assuming they are indeed new parties. New parties would be at a disadvantage in seeking to establish their financial positions which would be a barrier to new political entrants that needs to be taken into consideration.

Indeed the ALP and LNP with substantial asset bases would have an entrenched permanent advantage, that while mitigated by the expenditure caps is certainly still going to be a reality.

1.1.5 Sponsorship arrangements

There is no rationale given for introducing the mechanism of sponsorship arrangements or making them exemptions in certain clauses. Why would it be desirable for political parties to be sponsored by companies? Sponsorship is a financial relationship over time which if anything seems less desirable in politics compared to a more standard one off donation.

Certainly there has been a trope that parliamentarians should have to wear their sponsors logos in parliament as is done with sports teams to make the financial relationship explicit, but this is generally construed to be a criticism of the existence of the financial relationships existing at all, rather than a suggestion to be taken up.

There seems to be no rationale for the introduction of sponsorship arrangements into the legislation, and it can only be presumed that this is some kind of loophole being inserted to facilitate subverting the intent of the donation caps to limit financial relationships between companies and political parties, though admittedly explicitly calling them sponsorship arrangements seems an odd way to go about doing this.

Clause 10

Amendment of s 200 (Meaning of fundraising contribution)

Section 200—

Insert—

(4) A fundraising contribution does not include an amount that relates to the venture or function that is paid under a sponsorship arrangement

Clause 11

Insertion of new ss 200A and 200B

After section 200—

Insert—

200A Meaning of sponsorship arrangement

(1) A sponsorship arrangement, between a person (the sponsor) and a registered political party, means an arrangement—

(a) that establishes a relationship of sponsorship, approval or association between the sponsor and the party, whether or not for commercial gain; or

(b) that confers a right on the sponsor to associate the sponsor, or the sponsor's goods or services, with—

(i) the party; or

(ii) a fundraising or other venture or event; or

(iii) a program or event associated with a venture or event mentioned in subparagraph (ii).

(2) It does not matter whether or not the sponsor is entitled, under the arrangement—

(a) to be acknowledged as a sponsor; or

(b) to advertising or marketing rights; or

(c) to supply the sponsor's goods or services; or

(d) to another benefit, including, for example, entry to a particular event or function.

1.1.6 Candidate contributions

It is not acceptable for an individually wealthy candidate to leverage their wealth to gain an advantage over other candidates. All candidates should be operating under the same constraints in raising funds to compete in elections.

Any such contribution from a candidate should be capped the same as other contributions, or if allowed to donate more generously should still be capped at at most twice the amount from other individuals.

216 Payments into State campaign account

(1) If an election participant is a registered political party or candidate, a person must not pay an amount into the participant's State campaign account unless the amount is—

(d) if the participant is a candidate—an amount contributed by the candidate from the candidate's own funds; or

1.1.7 Membership Subscriptions

While s216(1)(i) does close the loophole that has been exploited to bypass bans on donations from developers by parties having very expensive membership subscriptions³, it does still allow membership subscriptions to be treated separately from gifts.

It does so with a relatively high cap of \$500 which for most people would be a substantial sum to pay for membership of a political party. Members of political parties are also generally members of the electorate so arguably a single cap on such donations should apply

216 Payments into State campaign account

(1) If an election participant is a registered political party or candidate, a person must not pay an amount into the participant's State campaign account unless the amount is—

(i) if the participant is a registered political party—

(i) an amount of \$500 or less, in total, paid by a person during a calendar year for—

(A) the person's subscription for membership of the party payable during that year; or

(B) the person's affiliation with the party payable during that year, other than to the extent the amount is paid under a sponsorship arrangement; or

It might be simpler to just do away with this separate category altogether and have such payments included in the standard donation cap.

1.1.8 Donation Cap Period

It isn't at all clear why the donation cap period is proposed to start 30 days after the last election. A donation to a candidate or party immediately after the election is clearly not for the election already completed.

This would allow donations within these 30 days up to the maximum under the cap knowing the outcome of the election, so presumably largely favouring the party or parties forming the new government, and then subsequent donations after this time under the new cap, so essentially double dipping.

247 Meaning of donation cap period

(1) The donation cap period for a candidate in an election is the period that—

(a) starts—

(i) if the candidate was a candidate in a by-election held after the last general election—30 days after the polling day for the last by-election in which the candidate was a candidate; or

(ii) otherwise—30 days after the polling day for the last general election; and

³<https://www.theguardian.com/australia-news/2019/jul/13/lnp-lets-property-developers-be-diamond-members-after-donations-ban>

- (b) ends 30 days after the polling day for the election.*
- (2) The donation cap period for a registered political party, or a third party in the next general election, is the period that—*
- (a) starts 30 days after the polling day for the last general election;*
- and*
- (b) ends 30 days after the polling day for the next general election.*

The donation cap period should at least end and start at 6pm on polling day to avoid any double dipping.

Arguably there should perhaps be a cap of zero at least for the party or parties forming government for some time after election day when any such donation is most likely to be seen to be an attempt to buy influence rather than contribute to an election campaign likely years in the future. A rush of donations to a party just elected to government and not facing imminent election is not a good look.

1.1.9 Donation caps not applying to 2020 election

The 2020 election will presumably still be some months off if and when this legislation is passed, and donations come disproportionately towards the end of a campaign.

There isn't a good reason not to introduce caps for this campaign, even if only from when the bill is passed, though backdated to the last election would not be impossible with those amounts over the cap being refunded.

Not having caps for this election means that those seeking to buy influence will have an added incentive to donate this time around, and the effects of that would permeate the entire next term.

Of course depending on the outcome of the election it is quite possible that any caps would be rescinded before the next election after 2020.

*444 Caps for political donations do not apply to 2020 election
New part 11, division 6 does not apply in relation to a 2020 election.*

1.1.10 Engaging of former parliamentarians to be counted towards the company's donation caps

One way donations to politicians that takes place that is not regulated is to employ them either directly or as lobbyists or appoint them to boards after their political careers. Ideally there should be restrictions on this type of exchange taking place for at least a full term of parliament of a politician having left parliament.

*Closing the revolving door
a. Post-separation employment restrictions extended to include lobbying related activities*

b. Post-separation employment restrictions to apply for 5 years for Ministers, Deputy Ministers and Parliamentary Secretaries. c. Enforcement through a Parliamentary Integrity Commissioner⁴

In the absence of such restrictions any such financial exchange should be counted toward the donation cap for the company engaging the former parliamentarian, as well as any expenditure cap they might have as a participant in the election.

1.1.11 Legal persons circumventing the donation caps

A perusal of the Electoral Commission Queensland's site Electronic Disclosure System public data⁵ reveals that a significant proportion of large transactions of funds to political parties are from companies or trusts and it is impossible to tell if these entities are controlled by individuals who also gave as themselves or who control multiple such entities which also gave.

This presents an obvious ability to circumvent donation caps and can probably only be addressed by limiting donations to natural persons on the electoral roll, who conveniently are the ones that the parliament is in fact meant to be representing.

1.1.12 Third parties reliant on donations

The donation cap and administrative burden may place organisations that rely on donations such as charities at a disadvantage relative to bodies like industry peak bodies.

256 Caps on political donations made to third parties

A person must not, during a donation cap period for an election, make a political donation to, or for the benefit of, a third party in the election if—

(a) the amount or value of the donation exceeds the third party's donation cap—

(i) by itself; or

(ii) when added to the other political donations made by the person to, or for the benefit of, the third party during the donation cap period; or

(b) the person has made 6 or more other political donations to, or for the benefit of, third parties in the election.

Lobby groups or peak bodies for for-profit corporations should be treated as part of the same entity as each of the contributing corporations so that the cap applies collectively.

1.1.13 Limiting donations to Queenslanders

A perusal of the Electoral Commission Queensland's site Electronic Disclosure System public data⁶ reveals that a significant proportion of large transactions of funds to political parties originated from outside Queensland. It is unclear why individuals or companies not based in Queensland should have the ability to influence elections in this state.

⁴ Eliminating the undue influence of money in politics Discussion paper of The Centre for Public Integrity, p.7 <https://publicintegrity.org.au/wp-content/uploads/2019/09/Eliminating-undue-influence.pdf>

⁵ <https://disclosures.ecq.qld.gov.au/>

⁶ <https://disclosures.ecq.qld.gov.au/>

The Queensland Parliament is a representative body for Queenslanders so there should be no influence on the campaign from those outside the state, and as such any such donations should be banned.

1.2 Capping electoral expenditure for registered political parties and their associated entities, candidates and third parties involved in electoral campaigning

The other half of the equation of getting money out of politics, or perhaps more aptly the other side of the coin, is of course limiting the expenditure on campaigns.

Expenditure caps should function to reduce the reliance on money to prosecute campaigns, allowing viable competition from ordinary people, and requiring a shift in focus of campaigns from capital intensive advertising to campaigns based on volunteer labour reflecting real on the ground support.

The most obvious issue facing the democratic system when it comes to the undue influence of money is when a wealthy individual leverages their wealth to directly influence the process as a candidate or leader of a political party. There is obviously recent history of such a process playing out in Queensland and Australia.

However it is the shift in campaigning focus of the traditionally governing parties, the ALP and LNP, away from labour intensive campaigning to capital intensive campaigning that is by far the greater issue.

This has led to a hollowing out of these parties as they become less movement based, relying less and less on their membership and supporter bases, and becoming more brand based, more and more dependent on expensive, centralised advertising campaigns. This process has been underway for decades though it has accelerated due to internet advertising.

Inherent in our current deeply flawed electoral system is the inevitable focus on swinging voters in marginal or target seats. These voters can now be much more effectively targeted using social media, and it should be presumed that any expenditure on social media is concentrated on marginal or target seats.

1.2.1 Expenditure cap amounts

As stated above expenditure caps should function to reduce the reliance on money to prosecute campaigns, allowing viable competition from ordinary people, and requiring a shift in focus of campaigns from capital intensive advertising to campaigns based on volunteer labour. Unfortunately the proposed expenditure caps are entirely too high to accomplish the goal of changing the nature of campaigning.

No rationale is given for how these arbitrary figures were arrived at, and in the absence of any offered explanation it would be presumed that the caps have been determined with at least a prerequisite of not seriously disrupting the planned expenditure of the ALP who have put forth the legislation, and possibly to at least somewhat disrupt the planned expenditure of rival parties.

281C Amount of expenditure cap—registered political party and endorsed candidate

(1) The expenditure cap, for a general election, for a registered political party is—

(a) generally—the amount that is \$92,000 multiplied by the number of electoral districts for which the party has endorsed a candidate in the election; and

(b) for an electoral district—\$92,000.

(2) The expenditure cap, for a general election, for a candidate endorsed by a registered political party for an electoral district in the election is—

(a) if 2 or more candidates are endorsed concurrently by the party for the electoral district—the amount that is \$58,000 divided by the number of candidates concurrently endorsed; or

(b) otherwise—\$58,000.

281D Amount of expenditure cap—independent candidate

(1) The expenditure cap for an independent candidate for a general election or by-election is \$87,000.

Looking at the proposed partisan funding, if we add the \$92,000 per party per electorate to the \$58,000 per candidate that equals \$150,000 per electorate, and with 93 electorates that would be a maximum of \$13,950,000.

At a guess after looking at the reports of periodic expenditure lodged by registered political parties with the ECQ around the last state election this would comfortably incorporate the planned ALP campaign expenditure as well as that of the LNP campaign.

The excellent state and local politics radio show Pineapple Rebellion on Triple J has reported there was an approximate \$9 million spent by each of the ALP and LNP at the last state election.

So while the proposed caps might somewhat limit anomalies like billionaires leveraging their wealth as a substitute for grassroots support, but even then not enough, they will in fact have no impact on campaigns as they are currently undertaken by the duopoly of the ALP and LNP.

This makes this aspect of the legislation seem like an even greater than usual cynical exercise, attempting to be seen to undertake electoral reform on the strict condition of not actually doing so.

So the expenditure caps should be radically lowered to actually have an effect on reigning in expenditure. Again this 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.

1.2.2 Expenditure cap period

While campaign expenditure is obviously heavily skewed towards being close to election day campaigning in this day and age is essentially constant, and allowing unlimited expenditure to attempt to move the political discourse at any time should be unwelcome.

Certainly there are examples of campaigns in Australian politics that were waged with virtually unlimited resources outside the context of an election campaign that succeeded in defeating changes to the entitlements of wealthy corporations.

Democracy is about much more than election day, and is an ongoing discussion, therefore the expenditure cap period should be extended to match that of the donation cap period and leave no gaps to be exploited.

280 Meaning of capped expenditure period

(1) The capped expenditure period, for a general election, is the period that—

(a) starts on the earlier of—

(i) 1 year before the next normal polling day; or

(ii) if the election is an extraordinary general election—the day the writ for the election is issued; and

(b) ends at 6p.m. on the polling day for the election.

1.2.3 Kinds of expenditure covered by caps

The existing Electoral Act 1992 defines what kinds of expenditure are to be reimbursed in section 282A, however this section is to be omitted under this legislation and replaced with s199(2).

Omission of ss 282 and 282A

Sections 282 and 282A—omit

Clause 9

199 Meaning of electoral expenditure

(2) For subsection (1), the kind of expenditure is—

(a) expenditure for designing, producing, printing, broadcasting or publishing an advertisement or other election material, including, for example, an advertisement or material—

(i) for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and

(ii) for publication in newspapers, magazines, on billboards, or as brochures, flyers, how-to-vote cards or information sheets; and

(iii) for distribution in letters; or

(b) 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; or

(c) expenditure for carrying out an opinion poll or research; or

(d) expenditure of another kind prescribed by regulation.

So in this bill the proposed kinds of expenditure to be covered by the cap on expenditure is still defined but the definition is still very narrow, limited to just conventional advertising.

It doesn't cover significant expenses like campaign staff or a campaign office, and the sundry other expenses that are necessary to wage a successful campaign. 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.

This oversight is concerning in the context of reports that some campaigns have resorted to paying people or possibly companies to perform activities historically undertaken by volunteers, such as door-knocking, phone-banking and even handing out how-to-vote cards at prepolling and on election day. In at least one recent case reportedly this kind of expenditure was undertaken on a very large scale. This substitution of money for the appearance of community support would go unchecked by the bill as it stands.

The proposed definition of electoral expenditure to apply to the expenditure cap quite bizarrely doesn't align with the existing definition of electoral expenditure applying to eligibility for reimbursement for public funding outlined in s222(1) which says electoral expenditure "means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election."

222 Interpretation

(1) In this division, electoral expenditure, by a registered political party or a candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.

The public funding definition rightly seeks to cover all campaign expenditure, as should the expenditure caps definition. It should be the goal to cover all expenditure under the expenditure cap so as not leave massive loopholes to be exploited to allow undue influence of money to be perpetuated and give unfair advantages to those political parties representing vested interests.

1.2.4 Expenditure on the internet

The reference in 199(2)(a)(i) to expenditure "using the internet" is inadequate given the ability for a registered political party to target individual electorates, indeed swinging voters in marginal electorates, thus nullifying the separate cap on candidate expenditure.

It also isn't clear if the reference to broadcasting is meant to apply to the reference to the internet though it does read that way, and if so most advertising on the internet is in fact narrowcasting.

Clause 9

199 Meaning of electoral expenditure

(2) For subsection (1), the kind of expenditure is—

(a) expenditure for designing, producing, printing, broadcasting or publishing an advertisement or other election material, including, for example, an advertisement or material—

(i) for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and

- (ii) for publication in newspapers, magazines, on billboards, or as brochures, flyers, how-to-vote cards or information sheets; and*
- (iii) for distribution in letters; or*

1.2.5 Expenditure by parliamentarians

Expenditure by parliamentarians paid for by the taxpayer that could be construed as campaigning should count towards their expenditure cap. Certainly incumbents have an inherent advantage in campaigning given the public resources they are provided.

While the office and staff might be construed as serving the electorate rather than the campaign, though in practice especially during an election this would be a charitable interpretation, publicly funded communications with the electorate that tend to disproportionately occur closer to the election are campaigning and should be included under the cap.

This is of course leaving aside the issue of government advertising that similarly tends to disproportionately occur closer to the election and should in fact be reformed to require either parliamentary and/or independent approval. As it stands most government advertising in the run up to an election should be considered expenditure on behalf of the governing party.

199 Meaning of electoral expenditure

(6) Also, electoral expenditure incurred by or for an elected member does not include expenditure of a kind for which the member is entitled to receive an allowance or entitlement.

(7) In this section—

allowance or entitlement, for an elected member, means—

(a) an allowance or entitlement the member is entitled to under the Queensland

(b) accommodation, services or other entitlements mentioned in the Queensland Independent Remuneration Tribunal Act 2013 supplied or paid to the member.

expenditure includes a gift in kind.

1.2.6 Lower expenditure cap for incumbents

It is noted that one of the ideas recommended by the Crime and Corruption Commission's (CCC's) Operation Belcarra Report for consideration for expenditure caps on local government campaigns is "the merit of having different expenditure caps for incumbent versus new candidates".

This idea does have merit and there is no reason why it shouldn't be applied to the state government level of politics. The advantage enjoyed by incumbents is substantial due to taxpayer funded staff and offices as well as budgets for communicating with the electorate and much higher likelihood of free media by virtue of being in office.

1.2.7 Allowing expenditure to be restricted or allowed by regulation

While the status quo or the Electoral Commission Queensland determining if expenditure is eligible for reimbursement or not can seem arbitrary it at least isn't perceived as partisan as allowing a minister to make the decision for the expenditure cap as per 199(2) & (4).

199 Meaning of electoral expenditure

(2) For subsection (1), the kind of expenditure is—

(d) expenditure of another kind prescribed by regulation.

(4) However, electoral expenditure does not include—

(c) expenditure of a kind prescribed by regulation.

1.2.8 Differentiation between parties and candidates

Again there is the unwarranted distinction between partisan and independent candidates with the former very much advantaged. This is the status quo in the legislation, but there is no reason why the state should give preferential treatment to those candidates who chose to join together with other candidates in a political party.

1.3 Requiring registered political parties, candidates and registered third parties to maintain dedicated State campaign accounts to support the integrity of, and compliance with, the donations and expenditure caps

1.3.1 ECQ Trusts in preference to independent campaign accounts

It would be preferable for the Electoral Commission Queensland (ECQ) to have access to campaign accounts to be able to monitor compliance with the legislation in a timely manner.

So rather than the State campaign accounts outlined in subdivision 2 it is advocated that the financial transactions of political parties for elections be conducted via some kind of trust controlled by the ECQ to facilitate accountability.

This should also allow the ECQ to withhold access to funds that have been donated until they are verified to be in compliance with the legislation, and similarly to block expenditure beyond the expenditure cap.

The transactions into and out of these trusts could also be made publicly available via the ECQ's website in real time to facilitate transparency (with payments for staff deidentified).

Subdivision 2 State campaign accounts

215 Requirement to keep State campaign account

(1) A participant in an election must keep a separate bank account for the election until each obligation mentioned in subsection (2) that applies to the participant or the participant's agent for the election ends.

Maximum penalty—200 penalty units.

(2) For subsection (1), the obligations are each obligation under this part that relates to—

(a) a political donation made during a donation cap period for the election; or

(b) electoral expenditure incurred by the election participant; or

(c) repayment of a loan that is paid into the participant's State campaign account; or

(d) if a political donation of property other than money is made during a donation cap period for the election—the disposal of the property.

(3) The bank account mentioned in subsection (1) is the election participant's State campaign account.

1.3.2 Transitioning funds between campaigns for different levels of government

There is an issue of transitioning funds between campaigns for different levels of government whilst maintaining the caps on donations. There have obviously already been issues of parties laundering donations through other levels of their parties to get around state based constraints. Separate to this however parties generally draw upon the same pool of funds to prosecute campaigns at least at state and federal levels.

199 Meaning of electoral expenditure

(4) However, electoral expenditure does not include—

- (a) expenditure incurred substantially for or related to the election of—
- (i) members of the Parliament of another State or the Commonwealth;
 - or
 - (ii) councillors (however described) of a local government of the State or another State; or

1.4 Increasing public election funding for eligible registered political parties and candidates to decrease reliance on private donations

1.4.1 Decreasing threshold for entitlement to election funding

Any reduction in the threshold for entitlement to election funding is welcome as the cost of campaigning is inherently a disincentive to participating generally, so increasing the likelihood of the public election funding significantly mitigates that constraint.

Whilst some minimum threshold is arguably necessary for practical reasons in a system with public funding this needs to be weighed against the democratic cost in favour of a relatively low threshold, perhaps even as low as 1%. The higher the threshold the higher the barrier to new political parties entering the system.

For smaller parties with limited resources the threshold for public funding can be a factor in the allocation of resources. This has a skewing effect with campaigning in areas where the party has support likely below the threshold being that much less likely due to financial constraints.

This kind of tactical decision based on finances determining which electorate with arbitrary boundaries will be focused on for campaigning lessens our democracy. This in a not insignificant way adds to the tendency for general election campaigns to focus on swing seats, or target seats, rather than the electorate as a whole.

A threshold of 4% for public election funding was in place from at least 1992 until it was increased to 6% by the Newman LNP government in 2014. The 4% threshold proposed is therefore an obvious status quo ante to reestablish, though still somewhat arbitrary it would be consistent with the 4% threshold in place for public election funding at federal elections, and with other jurisdictions like NSW and Victoria.

However it should be stated again that the lower the threshold the better for democracy, and there is therefore a strong argument to lower the threshold significantly below the proposed 4%.

Clause 19

Amendment of s 223 (Entitlement to election funding— registered political parties)

Section 223(1), '6%'— omit, insert— 4%

Clause 20

Amendment of s 224 (Entitlement to election funding— candidates) Section 224(1),

'6%'— omit, insert— 4%

1.4.2 Increasing the public election funding

Ironically though this initiative is perhaps the best democratic reform in the bill in terms of implementation in that it has been kept simple and not undermined with some partisan formula, it will often not be welcomed by voters simply seeing more money going to political parties.

It needs to be appreciated that this funding is allowing viable competition from political parties not dominated by corporate donors. Furthermore when implemented in conjunction with donation caps, preferably much lower ones, this funding is displacing the influence of such donors.

It is important that the ratio between donations and public funding of elections be shifted radically to favour of the latter in order to address the reality and perception of the undue influence of money in politics.

While one way to do this is to decrease the size of donations which might be accomplished with donations caps that are sufficiently low enough to foster a culture of many small donations funding political parties, the other obvious lever to pull towards this policy goal is to increase the amount of public election funding. Both levers should be used.

Therefore this substantial increase in the amount of public election funding should be welcomed by the general public as they become a greater proportion of partisan funding relative to vested interested and a wealthy minority. All parties are equal in terms of such funding in proportion to their level of support, if we leave aside the issue of the threshold dealt with elsewhere in this submission.

Even if we were to accomplish a system of many small donations a significant proportion of the population are not in a position to participate in such a system. Public election funding levels the playing field and if the largest part of candidates' and parties' budgets goes a significant way towards breaking the nexus that gives the wealthy disproportionate influence in our democracy.

Clause 21

*Amendment of s 225 (Election funding amount) Section 225(1)(a)—
omit, insert—*

(a) for the financial year that starts on 1 July 2020—

*(i) if the entity entitled to the funding is a registered political party—
\$6.00; or*

(ii) if the entity entitled to the funding is a candidate—\$3.00; or

1.4.3 Administrative burden

Even for reforms that are welcome such as donations caps and expenditure caps, regardless of whether the proposed caps are sensible or adequate, there should be a consideration of the administrative burden imposed on parties and candidates.

This is also true of public funding via reimbursement which is obviously much more complicated than a system based on a simple dollar amount per vote.

While the ALP and LNP have significant resources for staff and professional services to meet the administrative burden imposed this is not the case for other parties or independents, and that disproportionate burden would contribute to further entrenching the oligarchy.

The cost of compliance, like the cost of preparing a tax return, should be a claimable expense. There should also be a significant allocation for support by the Electoral Commission Queensland for parties and candidates to facilitate the timely and accurate meeting of requirements under the law.

1.4.4 Kinds of expenditure reimbursed by public funding

There is an unusual situation of having parallel definitions of electoral expenditure, a very narrow one that applied to expenditure caps covering basically just traditional advertising, and a second broader definition covering electoral expenditure that is eligible for reimbursement via public funding.

As noted elsewhere in this submission the definition of electoral expenditure as applies to the expenditure cap should be broadened to cover all types of expenditure on campaigns if the intent is actually to limit the influence of money in politics rather than simply shift it around.

The definition of electoral expenditure for reimbursement by public funding is as it should be very broad, being outlined in s222 (1) “expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election”.

It is extremely problematic that the interpretation of this definition is left to the Electoral Commission Queensland only at the end of the process in the context of a claim rather than being clearly articulated at the outset of the process so that expenditure decisions can be made clearly informed by what is and is not reimbursable.

222 Interpretation

- (1) In this division, electoral expenditure, by a registered political party or a candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.*
- (2) For this division, if a registered political party and a candidate endorsed by the registered political party both claim to have incurred the same item of electoral expenditure, the electoral expenditure is taken to be electoral expenditure incurred by the party.*

231 Deciding claim

- (1) The commission must, after receiving a claim—*
 - (a) decide whether to accept or refuse the claim, in whole or in part;*
 - and*
 - (b) to the extent the commission accepts the claim, pay the amount required by section 232.*
- (2) In deciding whether to accept or refuse a claim for election funding for an election in whole or in part, the commission must only consider—*
 - (a) whether expenditure claimed is electoral expenditure; and*
 - (b) if expenditure claimed is electoral expenditure—*

- (i) whether the electoral expenditure was incurred for the election; and*
- (ii) whether the registered political party or candidate is entitled under section 223 or 224 to the amount claimed.*

1.5 Increasing policy development funding from \$3 million to \$6 million per annum, allowing independent members to receive policy development payments, making modification to the distribution of policy development payments and basing the entitlement on the most recent general election results at the time of making the payment

1.5.1 Change in Policy Development Funding formula

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.

Comparison of status quo and new formula using 2017 state election figures

	Primary votes	Vote %	Status quo PDP	Percentage in status quo PDP	New PDP Sum	Increase from status quo to new	Percentage in New PDP
			\$3,000,000		\$6,000,000		
Labor	957,890	35.43	\$1,062,771	35.52%	\$2,614,623	\$1,551,852	43.58%
Liberal National	911,019	33.69	\$1,010,768	33.78%	\$2,271,843	\$1,261,075	37.86%
One Nation	371,193	13.73	\$411,836	13.76%	\$444,683	\$32,847	7.41%
Greens	270,263	10	\$299,855	10.02%	\$332,553	\$32,699	5.54%
Katter's Australian	62,613	2.32	\$69,469	2.32%	\$166,463	\$96,995	2.77%
Independent	123,796	4.58	\$137,351	4.59%	\$169,834	\$32,483	2.83%
Total	2,703,941	99.75%	\$2,992,048	100.00%	\$6,000,000	\$3,007,952	100.00%

1.5.2 Inappropriate limitation of Policy Development Funding to parliamentary parties, and disproportionate allocation to over-represented parties

While other public funding for political parties is available to parties that receive a proportion of the vote, currently 6%, though proposed to be reduced to 4% in this legislation, the public funding labelled Policy Development Funding is limited only to those parties that manage to get over the 50%+1 threshold to get a member of parliament.

This threshold skews towards the established parties though there is no obvious reason why only those parties would have an interest in developing policy, and indeed the parties with substantial parliamentary representation already receive access to significant resources through having control of ministries or other parliamentary resources.

The formula's use of the seat ratio only further skews funding towards those parties that are disproportionately represented in parliament relative to the vote they received at the election.

Therefore it is argued that this funding should be made available based on the same threshold as other public funding for political parties, that is currently 6%, with the passage of this legislation unamended 4%, and hopefully lower again. The subsequent formula should be based solely on a vote ratio with no qualification of a seat in parliament, and most certainly with no distorting seat ratio.

239 Entitlement to policy development payment— registered political party

(1) A registered political party (an eligible registered political party) is entitled to a policy development payment for a 6-month period if—

(a) the political party was a registered political party on—

- (i) the polling day for the most recent general election; and*
- (ii) the last day of the period; and*

(b) the commission is satisfied—

- (i) at least 1 elected member was a candidate endorsed by the political party for the election; and*
- (ii) during the election period for the election, the elected member claimed to be a candidate endorsed by the political party; and*
- (iii) the elected member, or another elected member, is a member of the political party on the last day of the 6-month period.*

1.5.3 Increase of Policy Development Funding

Assuming the allocation of the funding is proportional as discussed above the doubling of the total amount of Policy Development Funding could be supported, but otherwise it seems only to function to direct more taxpayer funding to the ALP-LNP duopoly.

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.

1.5.4 Entrenchment of Policy Development Funding

The base amount of funding for Policy Development Funding should be included in the legislation as it is for the public election funding rather than having this amount outlined in the regulations.

241 Amount of policy development payment

(1) The amount of policy development payment for a 6-month period, for an eligible registered political party or independent member, is the amount worked out using the following formula— where—

A(B/ C)*

A means the amount prescribed under a regulation for this definition.

B, for a 6-month period, means the combined vote and seat ratio for the registered political party or independent member worked out under subsection (2) for the period.

C, for a 6-month period, means the sum of the combined vote and seat ratios for each eligible registered political party and independent member worked out under subsection (2) for the period.

(2) The combined vote and seat ratio for an eligible registered political party or independent member, for a 6-month period, is the sum of—

(a) the vote ratio for the party or independent member for the period under section 242; and

(b) the seat ratio for the party or independent member for the period under section 243.

1.6 Lowering the percentage of votes required to get the nomination deposit returned

Clause 5 Amendment of s 89 (Deposit to accompany nomination)

Section 89(5)(c), '6%'—

omit, insert—

4%

This reference appears to actually be to 89(4)(c):-

(4) The deposit must be returned to the person who paid the deposit, or someone else with the person's written authority, if—

...

(c) at least 6% of the total number of formal first preference votes polled in the election for the electoral district are in favour of the candidate.

Any reduction in the threshold to return on deposits is welcome as the cost of nominating is inherently a disincentive to participating generally, so increasing the likelihood of the deposit being returned somewhat mitigates that constraint.

Whilst some minimum threshold is arguably necessary for practical reasons in a system with public funding this needs to be weighed against the democratic cost in favour of a relatively low threshold, perhaps even as low as 1%.

Of course the cumulative cost of nominating for 93 electorates, that is $93 * \$250$ or \$23250 is not insubstantial for smaller parties attempting to establish themselves. Any barrier to new entrants should be as much as possible avoided.

For smaller parties with limited resources the deposit threshold as well as the threshold for public funding can be a factor in the allocation of resources. This has a skewing effect with campaigning in areas where the party has support likely below the threshold being that much less likely due to financial constraints.

This kind of tactical decision based on finances determining which electorate with arbitrary boundaries will be focused on for campaigning lessens our democracy. This in a small but not insignificant way adds to the tendency for general election campaigns to focus on swing seats, or target seats, rather than the electorate as a whole.

A threshold of 4% for the return of the nomination deposit was in place from at least 1992 until it was increased to 6% by the Newman LNP government in 2014. The LNP initially intended to increase the threshold to 10%, a figure that would have most often excluded all but the ALP and LNP, presumably the intent, and thereby disadvantaging competing parties.

The 4% threshold is therefore an obvious status quo ante to reestablish, though still somewhat arbitrary it would be consistent with the 4% threshold in place for return of deposits at federal elections, and with other jurisdictions like NSW and Victoria. Again in principle the lower the threshold the better for democracy.

1.7 Enforcement

Enforcement is an issue that needs to be given somewhat more consideration. Often enforcement of electoral laws only comes into effect subsequent to the election and the consequences are limited and do not effect the representation in parliament. Transgressions can therefore be factored in as the cost of doing business for some parties.

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.

However it should be possible for a court of disputed returns to determine that a transgression of donation caps and/or expenditure caps was significant enough to effect the parliamentary representation that resulted. 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.

2. Crime and Corruption Commission's (CCC's) Operation Belcarra Report Recommendation 1 - Feasibility of introducing expenditure caps for Queensland local government elections

The CCC's recommendation 1 is:

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

- 1. expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities*
- 2. the merit of having different expenditure caps for incumbent versus new candidates*
- 3. practices in other jurisdictions.*

The same principles that apply at the state level in terms of campaigning should generally apply at other levels of government including local government, so expenditure caps as well as donation caps should be supported. The principle of public funding should also be extended to local elections.

As local government is generally less openly partisan the extra caps proposed for political parties would even more clearly not be required as similarly skewing the election against independents.

Local politics suffers less from media saturation and the corresponding large expenditure though that is no reason to not have expenditure caps, and may well change with social media.

The undue influence of money in politics is still very much an issue, though perhaps more through donations and funding of campaigns. Wealthy candidates have a massive advantage at present.

Again it is noted that the idea of having different expenditure caps for incumbent versus new candidates has merit, thus at least somewhat countering the significant advantage incumbents enjoy.

It is noted it is intended that any expenditure caps would commence after the 2020 local government elections. Given the elections are in March this is understandable, though if it is at all possible it should be in place for these elections as four years is a long time in politics.

3. Amendments relating to signage at State elections

It is proposed that electoral signs within 100 metres of each designated entrance to a booth:-

1. have to be displayed in a designated area - 185F(2)(a).
2. have to be for a candidate or party in the election - 185F(2)(b). Presumably this means that third parties like NGOs cannot put up signs.
3. are limited to 2 per designated area - 185F(2)(c) & 185F(3).
4. have to be no larger than 900mm by 600mm - 185F(2)(d). This would be a welcome ban on bunting, though some slight leeway would be advisable, say 915mm*610mm.
5. can't be attached to anything - 185F(2)(e). It is noted that a-frames only count as one sign even if two sided with different sides, though it isn't clear why this might be - 185F(4).
6. have to be accompanied by a person - 185F(2)(f).

The arms race relating to booth signage has been an issue for some time as parties have felt compelled to attempt to compete for visibility so as not to undermine the campaign at the most critical stage, even if the wasteful nature of the contest was troubling.

While the timing is curious the end of partisan hostilities on this front would be welcome, not least because of the increasingly vicious nature of the campaigning in the context of the emergence of other political parties outside of the ALP-LNP duopoly. Most parties cannot compete with the private security the ALP and LNP have taken to using in some instances to protect their signing from each other.

There has also been 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 by one or other of the ALP or LNP even before classes finish at schools the day before the election. This situation is well beyond getting ridiculous and does need to be addressed.

The limitation on the number of signs should also limit the negative, misleading and simply lying in campaigning that has increasingly become a feature of signage at election booths. Presumably parties will first seek to establish that their candidate is in the race before seeking to attack their opponents, or impersonating the ECQ.

3.1 Signs required to be accompanied by a person

The requirement for signs to be accompanied by a person is onerous, especially for smaller parties who cannot staff every booth, or cannot staff a booth for a full day.

Even for booths with one volunteer from a party the requirement to always have someone accompanying signs means that there might be issues when volunteers themselves vote or have toilet breaks.

4. Amendments relating to dishonest conduct of Ministers

Most people would presume that the kind of conduct by ministers outlined in the legislation was in fact already illegal with significant penalties. Therefore giving effect to the recommendations by the Crime and Corruption Commission (CCC) should be a given.

4.1 Cash for Access

The greater concern with the conduct of ministers that is seemingly unaddressed by this legislation is cash for access, businesses seeking decisions or simply to influence ministers paying to get to speak to them at fundraisers.

While this activity would come under the proposed donation caps the underlying legal corruption of giving preferential access in return for money remains.

Ministers should be meeting with all members of the electorate on an equal basis, not disproportionately with those with the means to fund their re-election.

Conclusion

While the announcement of the proposed introduction of donation and expenditure caps was very welcome, the devil is in the detail and has certainly been left a lot of room to manoeuvre given the extremely over generous size of the caps proposed.

In practice the caps being so large means that they will have little actual effect on the functioning of our democracy and the undue influence of money on the body politic will largely continue.

Therefore while the introduction of the mechanism of caps is supported as a step in the right direction it must be acknowledged that these particular caps are a very small half-step in that direction, barely touching the status quo of the undue influence of money in elections.

The proposed caps are little more than a public relations exercise presumably to address the perception that parliamentarians are not working for the electorate without addressing the substantive underlying causes of this perception.

The increase in public funding for elections is welcome, and a significant step in the right direction, but a sentiment significantly undermined by the partisan increase in the Policy Development Funding that gives greater resources to those parties already over represented in parliament relative to their vote.

The larger ongoing crisis of the legitimacy of our democracy is not being addressed by such lacklustre initiatives. This especially the case when the slight shuffle in the right direction is coupled with loopholes and changes that prop up the ALP-LNP duopoly who still retain government despite an ever shrinking share of the vote.