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Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

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Dear Members

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

We thank the Committee for the opportunity to comment on the above Bill. Gecko Environment Council (Gecko) is a not-for-profit environment association founded in 1989 and has been active for the past 30 years in protecting the environmental values and ecological sustainability of the Gold Coast, Queensland and, when appropriate, nationally. Its Mission Statement is “To actively promote, conserve and restore the natural environment and improve the sustainability of the built environment of the Gold Coast region in partnership with our member groups and the wider community.”

Gecko has strongly supported the suite of legislative reform that the government has enacted since the release of the Belcarra Report in 2017 and find ourselves broadly in agreement with the aims of the above Bill with its stated intention to make elections fairer, and to limit the influence of big money over politicians in Queensland. However we hold some reservation regarding the provisions relating to donations to third parties, the broad definition of what “lobbying” entails and the impact the proposed reforms may have on not-for-profit groups, particularly those registered as charities. The definition of “electoral expenditure” under the Bill is vague and difficult to interpret, and could be broad enough to limit a wide range of issues-based advocacy. We discuss this further below. While we offer our views from our own perspective, we believe that they are relevant to the operation of all charities and not-for-profits.

Chapter 2

We support with the aim of the Bill 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;”

Gecko has spoken up fearlessly on behalf of those who have no voice, that is, our native plants and wildlife, for the past 30 years. We also lobby actively for sustainable use of natural resources, strong action on climate change and for the protection of the amenity and sustainability of our built environment. In doing so our members rightfully expect that our Management Committee can question policies and legislation that fail to provide appropriate protections.

As state elections have approached we have always examined the environmental credentials of those seeking public office and have published score cards on our website and social platforms reflecting our assessments, based on candidates' public statements or responses to surveys. Over the four year cycle, our organisation puts out a variety of media releases, on-line opinion pieces and articles as well as numerous submissions, with the aim of encouraging those policies and actions which will ensure a sustainable future. During the election period these same messages are shared with greater urgency. Due to the vague definition in the Bill we ask this question "Will the cost of delivering this information then fall into the category of "electoral lobbying"? Our supporters expect that we will use their donations to further our aims and objectives (www.gecko.org.au) as indeed we are required to do so by the rules set by the Register of Environmental Organisations (REO). It is Gecko's view that the Bill in its current form will impose too many restrictions on smaller organisations, such as our own, who rely on **unpaid volunteer** Management Committee members to ensure we follow the letter of the new requirements. It is our experience, shared with many other community groups with which we interact, that it is already difficult to source suitable persons to act as treasurers and the requirements of this Bill on volunteer treasurers may discourage recruitment of suitable people. Not for profit volunteer charitable groups, such as Gecko already have a raft of regulations with which they must comply.

Not-for-profit Associations and charities already have to submit annual statistical returns to REO, the A.C.N.C (if a charity) and to the Office of Fair Trading, which require audited financial reports. Under the proposed Bill, there would be the additional cost of seeking legal advice on whether or not a communication and any related expenditure is considered political lobbying, whether or not to open a separate bank account and the circumstances in which a donor must sign a declaration. These requirements will add greatly to the complexity to the work of volunteers and costs to smaller not-for-profits and charities.

A Gecko representative met with representatives from other such groups in December to discuss some of these issues with the Department of the Attorney-General. Since then discussions have been summarised by the Human Rights Law Centre, who have identified the following key issue: that the Bill will stifle advocacy by charities and not-for-profits. We list the following reasons for our agreement with this statement:

- Our organisation has limited resources and would struggle to take on this additional administrative burden;
- While Gecko has to date not spent any money on electoral lobbying, other than incidentals such as hiring a hall for a Meet the Candidates Night and the cost of flyers and Facebook posts, we would have to evaluate all our future public communications and actions in the light of whether or not it could be construed as electoral lobbying. In the event that we were to inadvertently breach the rules on expenditure, our organisation could not bear the risk of the fines being proposed. In addition there could come a time when we felt it was necessary to increase spending as a one-off campaign on a particular issue. It is unclear how this would relate to our regular messages on topics such as land clearing, koala protection, Great Barrier Reef protection, action on climate change and so on.
- Gecko relies on many small donors, some of whom have joined a regular donation program that could exceed \$1000 over 4 years. It is not clear how we could separate the small amount we might spend during the run up to an election from the amounts received over the preceding years that is applied to our usual activities.

- It is unclear how a donation could be received for the purpose of using it expressly in connection with a State election. According to the Charities Act 2013 (Cth), charities must act for the public benefit and are prohibited from having a “disqualifying purpose”, which includes **promoting or opposing a candidate or political party**. Gecko has always strongly identified as being non-party-political, however, it is easy to see that any criticism of a candidate’s policies, or those of the party he/she seeks to represent and likewise offering support could be taken as a prohibited activity and report made to the Electoral Commission or the ACNC by a failed candidate acting in malice. Groups targeted in this way would then have to prove their actions were not “improper, corrupting or having undue influence “, as described in the Explanatory Notes. They could even risk being deregistered as charities, which would cut off the donations on which they rely and this could have an overall gagging effect. This is surely an anti-democratic impact not intended by the drafters of this Bill.
- The Bill is discriminatory in its application because it only caps and requires disclosure of donations. Unlike charities and not-for-profit groups, industry associations and corporations do not rely on donations. Companies and industry associations will be free to rely on revenue and membership fees to spend up to \$1 million each on election campaigns, even campaigning directly for politicians and parties. Further, there are no prohibitions on companies coordinating their election campaigns.

Recommendations:

Our organisation supports inserting the following amendment as identified by the Human Rights Law Centre:

Subsection to proposed section 199 of the Bill, which defines electoral expenditure:

(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—

- (a) a candidate or a political party; and
- (b) how a person should vote at an election.

On account of both categories of organisation posing a very low risk of being used to circumvent the donation cap to candidates and political parties, the amendment excludes small organisations with an annual income of \$50,000 or less and charities from the onerous obligations and risk of penalty under the Bill unless they do very specific, clear “vote-shifting” work.

We believe this amendment, by narrowing the definition of electoral expenditure for these two categories of third party alone, is preferable to merely raising the threshold for registering as a third party or raising the donation cap for third parties.

Threshold for registering as a third party campaigner should be raised

The current threshold at which organisations must register as a third party campaigner (\$1000) is too low. The administrative burdens imposed under this Bill are significant, such that some organisations may need to spend more money in trying to comply with the administrative requirements than in actual electoral expenditure around public interest advocacy on their issues. Such an impact is not only unreasonable, but likely to have a chilling effect whereby organisations decide not to participate in the election debate, rather than face the significant administrative requirements required for a registered third party campaigner.

The threshold for registering as a third party campaigner should be raised to \$6000. so as not to prohibit small community groups from participating in public interest advocacy activities around elections.

Donations that are not related to or used for electoral expenditure should not have to be disclosed to the Queensland Electoral Commission

An amendment to the Bill (section 263) is required to state clearly that donations that are not used for electoral expenditure are not required to be disclosed to the Queensland Electoral Commission.

Chapter 3 – Amendments relating to signage at State elections

Chapter 4 – Amendments relating to dishonest conduct of Ministers

Gecko offers its support for the proposed amendments to these chapters. We add the following comment regarding new section 177D:

Clarification of Conflicts of interest (COI) requirements

Gecko supports the amendments, however we believe that the threshold for gifts and donations should be \$500 rather than \$2000. A gift or donation of \$500 is clearly material and making this threshold \$500 makes it consistent with requirements in relation to Registers of Interest and Electoral Donations.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

Gecko welcomes and supports the provisions introduced under this Chapter to ensure greater accountability and transparency from those elected to serve the community.

We offer additional comment on the following points:

Enabling some 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- new section 197A of the LGA

Gecko welcomes a regulatory framework for this currently unregulated practice which potentially allows a councillor to improperly use the services of a paid staff members to advance his own purposes. We consider it appropriate that a councillor in a large council division would require administrative assistance in order to fulfil their role effectively. We note there is no distinction in the Bill between advisors appointed to councillors and those to Mayors. The role of Chief of Staff is undefined in terms of staff assisting government Ministers (guidelines for local government are presumed to be aligned with these) and also does not appear in the Local Government Act 2009.

As has been the experience at the Gold Coast City Council, the role of Chief of Staff appears to deliver a significant level of power and influence to an unelected official and the extent of this power and the relationship with the role of the Chief Executive Officer is unclear to ratepayers or even to councillors.

From our discussion with community groups in other local government areas, it appears that some councillor support staff are viewed as “political advisors” and may be offered or withheld from councillors at will, particularly as an inducement to support mayoral

agendas. In addition, the efforts of the advisor may be directed at grooming the public profile of a councillor seeking to stand at the next election and also in essence acting as an election campaign staffer, while being paid by ratepayer funds. While the role of advisors is now specifically detailed and specifically referenced at section 194(5) a- *The councillor advisor's functions and responsibilities cannot include - carrying out or assisting in an activity relating to a councillor's campaign for re-election*; there remains the opportunity for support staff to act in this way, The fact that there will only be guidelines for the purposes for which advisors may be used reduces transparency.

In addition, payment of an additional number of salaries in order to provide each councillor with an advisor will pose a significant increase in a council's administrative costs. There could perhaps be some justification for a Chief of Staff for a mayor of a large council as long as the role and responsibilities are clearly defined, however there is very little justification for every councillor to have a political or other advisor. An administrative assistant is should be sufficient to support councillors in their work. Such an increase, if it occurs, must be included in draft budgets, assessed in Corporate Plans and justified to the ratepayers.

Recommendations-

1. That section 171A be amended to reflect the distinction (if one exists) between the role of a Chief of Staff and his or her duties and the role of an appointed advisor to a Councillor.
2. That the roles of a Chief of Staff and the CEO are defined at section 93 of the LGA.
3. That the model guidelines for the appointment and conduct of advisors will be sufficiently robust in order to curtail inappropriate behaviour.

Gecko understands that the regulations that will follow the Bill will require that the costs and performance of advisors are included in budgets and Corporate Plans and we support this.

Further Regulation

While this is not included in the Bill before the Committee Gecko has been engaged with other community groups and with the Dept of Local Government on the need for reform in relation to council meetings, particularly adequate time frames for publishing of agendas and minutes and publishing of reports referred to in agendas. We strongly believe that public participation should be encouraged and so we support the introduction of mandatory live streaming and video recording (for later viewing) of council meetings. Gecko is also concerned with the frequency of closed session meetings, which keep the public in the dark, the content of closed sessions if strictly necessary, over-reliance on commercial in confidence in order to avoid scrutiny of council decision-making, highly redacted reports, un-minuted committee meetings and informal meetings. We look forward to robust regulatory amendments that will increase transparency in these areas and deliver more democratic governance from councils.

We thank the Committee for its consideration of our views.

Yours sincerely



Rose Adams (Secretary)