



24th January 2020

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

By email to: egc@parliament.qld.gov.au

Dear Chair and Committee Members

We welcome the opportunity to make submissions on the Inquiry into the feasibility of introducing expenditure caps for Queensland State and Local government elections.

This submission is made on behalf of Brisbane Residents United (BRU), Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice Governments on matters pertaining to urban planning and development.
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

General comments

BRU supports the introduction of expenditure caps in principle and we note that they are already in place at local and State government level in New South Wales and the Australian Capital Territory.

This is a complex issue and we welcome the opportunity to be able to make a submission to this inquiry. As a peak group representing many electors through our member organisations we are keen

to engage in this consultative process in the hope that specific recommendations can come out of this process, ones that are in accord with the interests of the broader community.

We believe the growing reliance on private donors to finance campaign spending requirements has created the potential for real or perceived influence on decision making in government which is eroding public confidence in the integrity of the political process at all levels.

We hope this inquiry can occur in a non-partisan environment, one that reflects the fact (a positive in BRU view) that most Queensland councils do not operate on party lines and nor should they. Recommendations that come out of this inquiry and the resulting legislation should not be influenced by the self-interest of political parties or their representatives in State or local government.

We will be discussing the effects of expenditure caps at both the State and Local government level as we understood that the issue of expenditure caps at both levels was part of this inquiry.

We believe the Issues Paper released by the Economics and Governance Committee (EGC) articulates well some of the key points which we strongly endorse. These include:

- Equity in elections is a fundamental principle of Australia's democratic system of government.
- It is also recognised that all voters should have a fair opportunity to participate in elections, including a fair and equal chance of nomination and election as a candidate.

We share the view that there is growing concerns about the lack of restrictions on electoral campaign funding and spending. We are also concerned about the trend of increasing campaign expenditure by political parties and other election participants.

While it may be argued that donations or electoral spending are recognised as a form of political participation and can be seen as an expression of 'democratic will' we are very concerned that increasingly only the wealthy or those supported by special interest groups are the only ones that benefit from this so called "expression of democratic will".

We note that the Issues Paper points out that

"The CCC, in its Operation Belcarra Report, highlighted the findings of various previous inquiries into local government, that 'even relatively modest amounts of funding can allow candidates to swamp their opponents in terms of media exposure and other promotional activities' "

"... the CCC concluded that prospective candidates can be deterred from running for council in the first instance, and even if they do contest, may be unable to properly compete with well-funded candidates. This can limit the diversity and quality of candidates who contest local government elections."

BRU finds the benefits of implementing caps on electoral expenditure which include reducing the costs of elections, waste minimisation, enabling candidates with fewer financial resources to stand for election on a more equal footing, reducing the demand for campaign funds and the consequent scope for undue influence by donors to be compelling reasons for expenditure caps.

However, we have serious concerns with the way in which this Bill regulates third parties. We believe the Bill will stifle advocacy by small not-for-profit community groups and charities; and simultaneously will do little to govern enormous election spends by industry associations and corporations. As a result, the Bill risks causing greater political inequality between the State's wealthiest people and ordinary Queenslanders.

BRU supports public funding of local government elections in order to be consistent with funding arrangements for State and Federal elections. Increasingly and even with the proposed caps on expenditure, contesting a local government election is for the well-off and out of the reach of the majority of residents, particularly for those supporting school-age children and young families.

The current system also disadvantages women who are not working or working limited hours owing to family or other responsibilities.

We reject the argument that expenditure caps limit the freedom of political communication. On the contrary, the growing costs associated with standing for election, which excludes many in the community "putting up their hand for election", is a far greater cause of concern.

State Government

The policy objectives of chapter 2 of the Bill (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.

To achievement those policy objectives it is proposed to make the chapter 2 – amendments relating to funding and expenditure for State elections.

Chapter 2 of the Bill will achieve its objectives of improving the actual and perceived integrity and public accountability of State elections by:

- **capping the giving and acceptance of political donations to registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;**

Our Response

Our ideal scenario would be that political donations at all levels of government were replaced by a system where the only election materials allowed are those publicly funded for

each candidate. The candidates would be provided with a certain number of flyers, a certain number of TV, social media and radio spots and an article in the local paper explaining their platform and policies. They could door knock and stand on street corners or participate in their local communities as much as they wish.

This system would actually prove less expensive for the taxpayer than the current system of electoral funding at all levels of government. Too many political decisions are only explicable by how they favour large donor interests. A case that is easily proved if you consider both the opportunity cost and the true cost of some of the appalling political decisions that have been made and no doubt will be made in the future, as a result of the undue influence of political donors. It is distorting our democracy and so the system must change.

In our opinion politicians have proved repeatedly that political donations have a profound and obviously distorting effect on their moral compass. This does not lead to good outcomes for the people of Australia who are actually paying them to act in the populations best interests. Big political donations are intended to have political influence and access to decision makers. They don't make business sense otherwise.

Further, the ever-increasing cost of election campaigns puts pressure on politicians to keep big donors happy. Nationally as well as in Queensland, the current political system ensures the needs of the very rich are given priority. Donations to politicians should not only be transparent, but limited, so that wealth cannot translate into political influence. Caps on election campaign spending are also crucial, in order to relieve the pressure on politicians to appeal to big donors, and to ensure the rich cannot drown out the voices of everyone else by making big election spends. Effective reforms should help to restore people's trust in our democracy.

There are many examples of our politicians, from all parties, and at all levels of government, being rewarded with positions on company boards and favourable government and diplomatic posts on retirement or tactically timed resignation. We have seen this scenario play out repeatedly where, for example, a politician will leave parliament to be hired by a major beneficiary of a decision in under a year. This is in direct contravention of the politically self-imposed code of conduct where politicians are not supposed to take up this type of position in under eighteen months

Removing the influence of big money in politics is an important goal in Queensland and across Australia. However, this Bill is problematic insofar as it will severely limit donations to some community groups, not-for-profits and charities that rely on donations for their advocacy, and that pose no corruption risk.

1. This Bill would have a chilling effect on advocacy by community groups, not-for-profits and charities. The chilling effect of the Bill arises because:

- a. it places an enormous compliance burden on organisations that receive donations to do certain types of election-related advocacy, as well as their donors; and
 - b. it extends the donation cap applicable to candidates and political parties - \$4,000 over the four year parliamentary terms – to third party organisations doing election-related advocacy (see below for details of the types of advocacy caught). Whereas candidates and political parties will receive public funding to make up the shortfall, third parties that rely on philanthropic grants will not, meaning they may no longer be able to do this advocacy.
2. There is no principled rationale for imposing these burdens on charities. Unlike politicians, third party organisations cannot introduce or vote on proposed legislation. Unlike MPs, they cannot give approval for development proposals, or pass regulations. The primary reason for limiting donations to third parties, then, is to ensure that would-be donors to political parties do not attempt to circumvent the donation cap on political parties by setting up third parties that will campaign on their behalf.
- This risk does not arise with respect to charities. 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. That is, Federal law already prevents the establishment of charities for the purposes of funnelling political donations.
3. These onerous restrictions are discriminatory as they only apply to organisations that rely on donations. So while charities and other not-for-profits will have their income severely restricted for election-related advocacy, industry associations and companies won't be affected because they have income streams that are not donations (ie membership fees for industry associations and commercial revenue for companies).
- 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. By contrast, only a handful of charities and not-for-profits may be able to raise enough small donations to participate in the election debate.

- **capping electoral expenditure for registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;**

Our Response

BRU wish to voice our very strong support for this proposal. This is a crucial and valuable improvement to help increase the chances that elections will be won by the best candidates rather than by the candidates who spend the most money. We would not like to see a repeat of the recent Clive Palmer debacle played out at the Local or State Government level.

This important and essential reform would make a great deal of difference in providing a more level playing field for candidates in 2020 and encourage a greater diversity of candidates. The cost of elections to candidates is a substantial disincentive to potential candidates supports

This will effectively stop the constant hunt for donations to support election promotional work and for donors to find ways around the rules. This would lead to a fairer electoral process that would not be restricted to the financially well off. This is in place in NSW and the ACT currently;

What is Capped

Section 199 provides that only certain types of expenditure are capped. And then only if related to an electoral purpose such as influencing voting or promoting or opposing a party or candidate.

Election campaigns are increasingly driven by expenditure on data, especially data skimmed from people's online activities, creating profile of them for social-marketing purposes. As currently drafted, we doubt that s 199(2)(a) captures such expenditure. It should be clarified to cover it.

Level of the Caps

The party cap is to be \$92 000 times the number of seats contested (s 281C). According to the Attorney-General's introductory speech on the bill, this is also subject to an internal cap of \$92 000 per electoral district. Associated entity spending is automatically aggregated to the party cap and this should be explicitly clarified in the legislation.

However the true limit on parties is higher. It is \$92 000 x 93 seats, that is \$8.56m for the party cap, plus up to \$58 000 of spending by each endorsed candidate. This totals almost \$14m in effectively party-controlled expenditure. This committee needs to consider three things in relation to the levels of the caps:

- Are the relativities between the caps—especially for independents and third parties—fair and justifiable? If not, they are liable to be struck down by the High Court under the constitutional principles: reasonable freedom of political communication and a relative equality of political opportunity, without undue privileging of parties for their own sake. 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 early two-and-a-half times the cap for an independent in Queensland, and equal to the effective party cap in

NSW. The proposed cap on independents in Queensland is therefore constitutionally vulnerable. It unduly privileges political parties

- Unregistered third parties. They are to be capped at just \$1000. In NSW, an unregistered third party can spend much more. 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.
- Coverage of staff, membership fees, industry peak bodies and corporations. BRU is concerned that the definitions of electoral expenditure, political donation and third party disclosures in the bill are too narrow. As it currently stands, the bill will not cover expenditure on campaign staff or consultants, income from large party membership fees or fundraising events. Income received by industry peak bodies, wealthy individuals or corporations through membership/affiliation fees, private wealth, and private business activity is not currently covered by the bill. This means that 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, and the source of this electoral expenditure will not be disclosed to the public. The bill should also be widened to apply to local government elections. Recent QLD CCC investigations, including Operation Belcarra, have shown that corruption risk at a local government level is high.

Impact on charities and not-for-profits

BRU is concerned that the bill will unfairly impact on third party not-for-profits and charities that rely entirely on donations. The bill creates a disparity between not-for-profits and other third parties such as industry peak bodies and corporations, by requiring caps and disclosure on donations but not on other income streams such as membership fees and private business activities.

The threshold of electoral expenditure to define a third party should be raised to not affect small community groups, and the definition of electoral expenditure should be clarified to allow charities to continue to advocate on their issues. The current bill will allow companies or industry groups to self-fund \$1 million election campaigns without any disclosure or cap on where that income is from, providing opportunity for vested private interests to have an undue and opaque influence on elections. Limiting the electoral expenditure cap to \$500,000 will assist in levelling the playing field in this respect.

Smaller organisations will also be required to meet the same requirements as larger third parties. This includes creating a new bank account, and additional obligations if they choose to register to access the higher expenditure thresholds. The alternative is to not register, or significantly change their activities in ways not apparently intended by the Bill, which emphasises the potentially significant limitation on freedom of expression and right to public participation for these organisations.

Charitable organisations and others that rely on gifts will also be disproportionately impacted as they have limited funding sources, the bulk of which may be captured by the changes (eg gifts and donations). In contrast, organisations that rely on other funding streams (eg profit-making entities or organisations with membership dues) will have greater flexibility in how they organise their finances.

While some form of donation and expenditure caps on third parties are necessary to achieve the purpose of these changes, the Explanatory Note does not discuss less restrictive options. These could include exempting charities from the changes, as they are already prevented from promoting or opposing political parties by federal charity laws.¹⁷ A related option may be to apply a narrower definition of electoral expenditure for small organisations and/or charities, drawing upon the Victorian definition of political expenditure. The Committee may wish to seek more information on how threshold caps were chosen, and how they reflect the least restrictive limitation on rights.

In summary, reforms are vital to:

1. Improve democracy: Without limits on political donations and election spends, election debates can be dominated by those with the biggest bank balance who can afford large advertising spends, not those with the best ideas.
2. Restore equality: Limits on political donations and election spends will create a more level playing field and help to realise a foundational principle of the Australian Constitution: that Australians should have equality of opportunity to participate in the political process.
3. Focus politicians on serving the public interest: Limits on political donations will help to focus politicians on serving the interests of the communities they represent, not the interests of large corporate and private donors. Increased public election funding and limits on election spending will reduce the need for politicians to seek donations to build ever larger war-chests and will consequently reduce the risk of those politicians being influenced to serve the needs of those donors instead of the public interest.

However, regulation of this space is deceptively complex. Well-intentioned reforms developed without deep consultation are likely to have unintended consequences. In this case, the consequences will be felt hardest by community groups and charities, as a result of poorly thought through regulation of third parties.

Groups may incur expenditure in the lead up to an election on issues-based advocacy that may not explicitly refer to a candidate, political party or how a person should vote in an election, but the proximity to an election and the strategy behind the communication could make it electoral expenditure.

These same principles would apply to issues-based advocacy across the board. For instance, depending on the timing of and strategy behind the communication, the following could be electoral expenditure:

- a billboard campaign run in the months prior to an election stating “Ratios save lives: Queensland needs more nurses;
- a newspaper advertisement that said “Protect Queensland’s farmland, stop the Acland mine expansion”.

Additionally, issues-based ads may have a number of purposes. One may be to raise the profile of the issue; another may be to put public pressure on an MP or party to change their position; and a third could be to inform voters of a political party’s position on an issue before they cast their vote. Only the last reason (“purpose”) would be likely to be regarded as directly or indirectly influencing votes in an election.

In other areas of law, when determining whether a purpose is the “dominant purpose”, courts ask two questions:¹

- (a) What was the subjective purpose or purposes of the people who made or authorised the expenditure?
- (b) If there was more than one purpose, including a purpose of directly or indirectly influencing votes in an election, was that the clearly paramount² or most influential³ purpose?

The answer to the second question is ultimately one of fact, and the intention of the person who authorised or made the expenditure is not necessarily conclusive.⁴ Courts have also

¹ *Carter Holt Harvey Wood Products Australia Pty Ltd v Auspine Ltd* [2008] VSCA 59 at [3].

² *Perry v Powercor Australia Ltd* [2011] VSC 308, [55]

³ *Federal Commission of Taxation v Spotless Services Ltd* (1996) 186 CLR 404 at [15].

⁴ *AWB Ltd v Cole* (No 5) (2006) 155 FCR 30, 45.

examined the objectives of people higher in authority at the organisation, or the strategy and purpose of the organisation over the election period as a whole.⁵

- **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;**

Our Response

Currently under the *Electoral Act 1992* (Qld) (**Electoral Act**), third parties have disclosure obligations with respect to donations over the gift threshold amount (\$1,000) where that donation has, in whole or in part, been used to incur expenditure for a political purpose (note that this expenditure is currently defined more broadly than the definition proposed in the Bill – see s. 263 of the Electoral Act). These relevant donations must be disclosed within seven business days of their having been used (reg. 8B *Electoral Regulation 2013* (Qld)).

As well as maintaining a similar disclosure requirement, the Bill will impose further obligations on third parties regardless of how much money they spend on electoral expenditure.

If the third party spends less than \$1,000 on electoral expenditure, they will not be required to register (**unregistered third party**) (proposed s. 297). They will, however, still be required to keep a separate State campaign account (proposed s. 215). All electoral expenditure must be taken from this account (proposed s. 221A).

If a third party spends more than \$1,000 on electoral expenditure, they will be required to register (**registered third party**). There are more onerous requirements of registered third parties than unregistered third parties, including:

- i. Registering with the Electoral Commission of Queensland (**ECQ**) (proposed s. 297) before polling day (proposed s. 299), with details that will be made available on the ECQ website (proposed s. 298);
- ii. Appointing an agent (proposed s. 208);
- iii. Ascertaining at the point of receiving donations – irrespective of whether this happens years out from the next election – what donations will be used to incur electoral expenditure (“political donations”), and arranging for donors to complete a “donor statement” to accompany each donation (proposed ss. 250 and 251). Note that this applies to donations of any amount;
- iv. Keeping political donations in the State campaign account. No other gifts may be deposited in the State campaign account and all electoral expenditure must be drawn from the State campaign account (proposed s. 215);

⁵ *Esso Australia Resources Ltd v FCT* (1999) 201 CLR 49, 66 [39]

- v. Notifying any donor who has made a political donation of the circumstances in which it is an offence to give a political donation. This notice applies to donations of any amount and must be provided within 14 days of receipt (proposed s. 258);
- vi. Providing a return with the details of the third party's electoral expenditure 15 weeks after polling day (proposed s. 283). This includes the following details of each item of electoral expenditure: the name and business address of the person who supplied to good or service; a description of the good or service; the amount of expenditure; when the expenditure was incurred. Note that the disclosure captures electoral expenditure incurred outside the election year.

Proposed solution

Very small community groups and charities should be protected from the onerous administrative burden and donation cap for issues-based advocacy.

For this reason, we believe the level of electoral expenditure at which a third party should be required to register should be raised. Feedback on the appropriate level of spending would be greatly appreciated.

In addition, the definition of electoral expenditure could be limited for third parties that are registered charities or have an annual income of \$50,000 or less. Electoral expenditure for those groups should be confined to spending on communications that refer to a candidate or political party and how a person should vote in an election. This could be done by introducing a new subsection in proposed section 199.

- **increasing public election funding for eligible registered political parties and candidates to decrease reliance on private donations;**

Our Response

The Bill will increase election funding entitlements effective for the 2020 State general election 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 votes for candidates. In addition, the eligibility threshold for both registered political parties and candidates will decrease from 6 per cent to 4 per cent of formal first preference votes.

It is good that the Bill ameliorates existing discrimination against smaller parties and independent candidates. One way it does this is by lowering the threshold of votes needed to receive payment of public funding after elections, so it fits the Australian norm of 4% of the formal vote (the figure long needed to recover nomination deposits).

However the Bill does not fully eliminate discrimination against independents in election funding. The constitutionally suspect difference between an independent candidate's spending cap and the cap for a party and its candidate. When it comes to public funding, the Bill

provides that candidates who are not with a registered party will only receive funding at half rate (\$3 per vote versus \$6 per vote for parties). This is perverse. Independents lack economies of scale, party office expertise and the wash of a party's statewide campaign. In complete contrast, in South Australia, candidates who are independent or endorsed by micro-parties without MPs receive public funding at a higher rate per vote than party candidates.

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?' It cannot be an integrity measure: independents have the same donation caps as party candidates. And it looks like the opposite of a level-playing field measure.

- **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; and**

Our Response

Independent MPs will also now receive 'policy development' payments. 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?

- **introducing arrangements to support the election funding and disclosure reforms, including registration requirements for third parties and clarification of accountabilities of agents and electoral participants.**

Our Response

Real time financial disclosures - while we strongly support the stronger donation and spending disclosure requirements for parties and party-like group tickets, we have some concerns about what kinds of 'third parties' these disclosure rules would apply to, and what kind of administrative burden this might place on smaller community groups who are seeking to engage with the political process."

The broad definition of what kinds of spending are covered by the expenditure disclosure requirements, and the apparently broad understanding of what kinds of groups might meet the definition of a ‘third party’ is quite concerning, and needs further detail and close consideration. In particular, to require disclosure of expenditure which is “used to benefit or support... a particular issue” is unhelpfully broad.

It is quite common in council elections for local community groups (who may or may not be formally incorporated) to pay for flyers, yard signs or online content expressing a view about a particular council issue, or to release a candidate report card which does not specifically advocate that residents vote for any particular candidate/party, but which provides neutral comparative information about the policy platforms of different candidates. It’s also common for community groups to invite a council candidate to speak at a meeting of residents, which could potentially be defined as election expenditure.

If the third party expenditure disclosure requirements were to apply to these smaller community groups, this would create an additional administrative burden which could be difficult for small groups to comply with. Simply going through the process of accounting for and disclosing all expenses which might constitute ‘election expenditure’ could be difficult for smaller community groups, let alone doing so in ‘real time’.

The \$500 minimum threshold addresses this to some extent, however \$500 is only the cost of printing 50 yard signs, or of promoting and hosting a candidate forum at a local town hall, which is something that many local community groups or resident associations might do in the lead-up to a council election. It may be appropriate for the expenditure disclosure threshold to be set at \$1000 for third parties, or to more clearly define ‘third parties’. It would seem to me that the hosting of candidate forums or Q&A sessions with individual council candidates ought not to be treated as election expenditure, as this could have a chilling effect on public discourse and limit opportunities for under-resourced community groups to engage with council candidates.

Much greater consideration and clarity is required regarding the definition of a ‘third party’ and the definition of ‘election expenditure’ to ensure that local residents are not discouraged from engaging in the political process, while still guarding against the likely possibility that political parties will funnel money through fake community organisations in order to circumvent the proposed spending caps.

As touched on in our comments above regarding the Real Time Financial Disclosures proposal, regulating the conduct of smaller third party community groups is a very different proposition to regulating the conduct of peak bodies, chambers of commerce, trade unions etc.

For example, if a community group is organising a pre-election protest or event against the current mayor's support for a particular development project, and someone loans that group a PA system, and a local business owner makes their venue available to host the event, and some local musicians donate their time to perform, would these in-kind donations/gifts need to be disclosed through the ECQ? If so, the organisers of such community groups may be discouraged from putting on such events due to the additional administrative responsibilities, and our democracy would be poorer for it.

If these proposed changes are introduced, it may be necessary for the state government to provide additional resources and support to smaller community groups so they can easily comply with gift disclosure requirements.

Recommendations

1: Have a more limited definition of “electoral expenditure” for small community groups and charities

The compliance burden and inequity of this Bill are so severe, that raising the threshold for registration and the donation cap alone will not be sufficient to protect civil society from its worst effects. What is required, is a narrower and clearer definition of electoral expenditure that will be workable for small community groups and charities.

The purpose of applying disclosure requirements and donation caps on third parties is to prevent political parties and candidates from circumventing donation caps by funnelling political donations through them. The risk of this occurring with very small organisations and charities, is extremely low.

Groups with a small income – say, \$50,000 per annum – are very unlikely to have a decisive impact on a State election, even at electorate-level. We note that there would also be little incentive for wealthy individuals and corporations to set up multiple small third parties to avoid the compliance obligations under the Bill, as they can already do so using their personal wealth, up to \$1 million. In any case, an anti-avoidance provision could be drafted to prevent people from circumventing the laws.

Charities are, according to the Charities Act 2013 (Cth), required to work in the public interest and prevented from having a purpose of promoting or opposing candidates and political parties. That is, charities are both legally required to ensure that all their activities serve their charitable purpose, and legally prevented from engaging in partisan work or acting as a conduit for political donations.

The Bill should be amended to protect these groups. An example of language that such an amendment could adopt is provided below, borrowing from the Victorian definition of “political expenditure”.

Insert in proposed s. 199, after subsection (5):

(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 is published, aired or otherwise disseminated and refers to—

(d) a candidate or a political party; and

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

2: Rethink how to regulate industry associations and corporations

The current Bill does little to regulate the biggest players in Queensland's elections. More research would inform a more nuanced policy solution, perhaps looking into ways in which corporate income to be used on electoral expenditure could be restricted or, at the very least, disclosed transparently. In addition, differential spending caps could be designed to take account of the inequality that arises because those with vast personal wealth may spend the same amount as those who pool small contributions.

3: Amend the existing donation disclosure provisions to remove the anomaly

The existing anomaly by which 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, should be changed through this Bill. Proposed amending section 263 of the Bill should make clear that only donors who have given over \$1,000 in political donations should have their details published on the ECQ website.

4: Exclude communications with third parties' members from the definition of "electoral expenditure"

All third parties should be permitted to communicate with their members on issues without being concerned that the communication may be captured as "electoral expenditure". The definition should exclude communications with third parties' members.

5: The threshold for registering as a third-party campaigner should be raised.

BRU supports increasing the threshold of electoral expenditure for registering as a third-party campaigner to \$6000 so as not to prohibit small community groups from participating in public interest advocacy activities around elections.

Local Government

BRU wish to voice our very strong support for the original proposal to cap donations. This is a crucial and valuable improvement to help increase the chances that elections will be won by the best candidates rather than by the candidates who spend the most money. We would not like to see a repeat of the recent Clive Palmer debacle played out at the Local or State Government level.

We note that this proposal was strongly opposed by the Local Government Association of Queensland. We do not support their view.

This important and essential reform would have made a great deal of difference in providing a more level playing field for candidates in 2020 and encourage a greater diversity of candidates. The cost of elections to candidates is a substantial disincentive to potential candidates. The April paper Key Changes to proposed reforms states that you have decided not to proceed with this reform as a result of further stakeholder consultation. We are unaware of any further stakeholder consultation and can only assume that the stakeholder mentioned is the Local Government Association, an organisation which in itself is lacking in accountability and transparency.

According to media reports the LGAQ has stated that Councils will not accept caps on donations. We suggest there is a great deal of self-interest at work here in that Councils are made up of Councillors who are likely to stand in the next election and accordingly want to ensure that their chances of winning election should be bolstered by the maximum amount of donation funding possible. A sitting candidate has opportunities to leverage support from backers that is unavailable to less wealthy and influential candidates. The purpose of the cap was to open the field to worthy candidates, not simply those who can amass the largest campaign funds and to prevent vested interests from unduly influencing the make-up of Councils.

CCC Recommendation 1 (p. 47)

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:

- (a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities
- (b) the merit of having different expenditure caps for incumbent versus new candidates
- (c) practices in other jurisdictions.

Local government is the tier of government closest to the community and most impactful on the amenity of citizens. We should be encouraging “grass-roots” campaigning in council elections characterised by attendance at community meetings, door-knocking, letterboxing and building a team of volunteers etc; none of this requires significant financial resources and should not be overwhelmed by extensive media campaigns and direct mail which are costly to fund. However, we recognise that extensive grass-roots campaigns for candidates with existing full-time employment may be difficult to manage from a time perspective.

We also reject the argument that because it may be difficult to set realistic caps due to the changing costs of electioneering techniques, inflation, and potential exploitation of administrative loopholes

and that caps can be hard to enforce that expenditure caps should not be introduced. BRU has consistently argued against the opinion that reform cannot occur because it would be “too difficult to enforce”. If this view prevailed we would never achieve reform and we would need to question why we have legislation and regulation in relation to anything!

We agree that the success of any system of expenditure caps for Queensland local government elections will depend on the design and features of the model implemented, and the extent to which they effectively balance freedom of political communication with the need to ensure a fair process that is free from perceptions of undue influence, and which ensures standing for office is not restricted to those with personal wealth of access to funding from interest groups.

We believe this inquiry is a good starting point but there should be adequate opportunity for further consultation, particularly from the broader community as well as sectional interest groups.

Issues for consideration

1. What are the primary campaign expenses for candidates, groups of candidates, political parties and third party groups for local government elections?

The main costs are associated with advertising or electoral communications - eg corflutes, tear-drop brochures/flyers, postage and/or delivery costs, how to vote cards, magnetic vehicle signage and car wrapping, paid advertising in the traditional media (TV, radio and print), paid advertising on platforms such as Facebook, campaign websites (domain registration, website hosting and web development).

Another category of expenditure would include costs of research associated with the electoral campaign, for example surveys of voter intention or satisfaction, focus groups and data mining.

2. What types of expenses should be included in any expenditure cap, and what should be excluded?

Include:

Advertising or electoral communications – eg corflutes, tear-drop signs, brochures/flyers, how to vote cards, vehicle wrapping, magnetic vehicle signage, paid advertising in the traditional media (TV, radio and print), direct mail campaigns, paid advertising on platforms like Facebook, campaign websites (domain registration, website hosting and development) and donations of services/goods in kind (again valued at a true commercial rate).

Use of paid personnel for letterboxing, pre and poll attendance etc.

Rental of office space for campaign purposes.

Exclude:

Travel or transport expenses; impractical and potentially unfair given the significant number of geographically large LGAs in Queensland.

Services/assistance provided by volunteers - eg where a website might be developed by a volunteer who is not otherwise engaged in such work, volunteers who manage and staff pre and poll attendance, volunteers who establish campaign committees and undertake administrative and communications responsibilities, volunteers who coordinate a candidates programs, diaries and participation in candidate forums.

3. For how long do candidates, parties and third parties campaign for local government elections?

Some candidates will start their election campaign 12 months prior to the election date. A well prepared candidate, particularly one who is NOT an incumbent will have their election campaign mapped out and materials drafted by September/October of the year preceding the election date.

4. From what period should expenditure caps apply?

The period of application for spending limits should extend from the day the nominations open, on an annual basis until the declaration of each local government poll until the following election day – ie full term of council including the election period.

This prevents ‘pre-spending’ before the commencement of the cap and between election day and the Declaration of the Poll. Examples would include printing of advertising material, registration of domain name, web hosting costs etc.

BRU cannot see that the application of a cap over an extended period would present difficulties for candidates in terms of responding to emerging issues and engaging with electors.

5. How much are local government candidates spending on their campaigns, and how does spending vary across local government areas, and for new or incumbent candidates?

We do not know how much has been expended in the past. We do not have knowledge of how this spending varies across other LGAs or whether there is significant variation in expenditure between new and incumbent candidates.

It is true that too low a level for caps may favour incumbents and other well-known candidates, as challengers may be limited in their ability to raise their profile and overcome this advantage.

Given the variation in the size and nature of Queensland’s local government areas and divisions, some form of scaling will inevitably be required under any expenditure cap scheme to reflect the different size and possibly characteristics of LGAs and divisions.

6. How much are mayoral candidates spending on their campaigns, and how does this vary across different local government areas?

We agree that mayoral candidates typically spend much more than other candidates in local government elections. We believe in the case of the SCRC the successful mayoral candidate spent in the order of \$200,000 and believe this may have been true in other large SEQ councils - ie Moreton Bay, Ipswich, and Logan. We assume Brisbane and Gold Coast would be considerably higher again.

Of course the amount of expenditure would be considerably lower for most other councils in Queensland.

7. How much are groups of candidates, parties, and third parties spending on campaigns, and how does this vary across different local government areas?

BRU is not aware of this information. We are also unaware of third party spending.

8. What factors should be used to determine variation in the applicable expenditure cap? For example, should caps vary according to:

- a. the number of electors within the local government area

Yes.

In a March 2019 Discussion Paper on Local Government Reforms the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) proposed the following basis for determining the quantum of electoral expenditure caps in local government elections:

- Councillor candidates in local government areas/divisions:
 - with fewer than 20,000 electors - \$10,000;
 - with 20,000 electors or more – sliding cap of 50¢ per elector;
 - with 40,000 electors or more - \$20,000.
- Mayoral candidate in Local Government areas:
 - with fewer than 60,000 electors - \$30,000;
 - with more than 60,000 electors – a sliding cap of 50¢ per elector;
 - with 200,000 electors or more - \$100,000.
- Third parties: same cap that applies for Mayoral candidates.
- Groups of candidates and political parties that endorse candidates: sum of individual members expenditure caps up to the maximum for positions to be filled in lieu of candidate caps.
- Caps are per four-year term.
- Aggregation and collaboration limits on candidates and groups of candidates using third parties to exceed expenditure caps.

At the time BRU was in general agreement with what was being proposed by the Department and felt that their cap formula was worthy of discussion for council and mayoral candidates – ie a lower threshold of \$10,000 for councillor candidates and \$30,000 for mayoral candidates irrespective of the number of electors under 20,000 and then a sliding scale of \$0.50 per elector up to \$20,000 for councillors and \$100,000 for mayors.

We note that in its submission to the EGC on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (page 9) the Local Government Association of Queensland (LGAQ) has indicated that “For several years now, the LGAQ has supported the introduction of expenditure caps for Queensland local government elections”. Further, at a Special Meet-

ing in April 2019 the LGAQ membership resolved to support “the introduction of expenditure caps for local government elections set at \$1 per enrolled voter for mayoral and councillor elections, with lower expenditure limits (“floors”) of \$20,000 for mayoral elections, \$15,000 for councillor elections in undivided councils, or \$10,000 for councillor elections in divided councils”. They did make the point, with which we concur, that this “floor” was not intended as a must spend amount. Again, at the time BRU felt this level of cap was too high but in retrospect, and based on feedback from candidates who are intending to contest the upcoming 2020 Council elections, we believe the LGAQ’s position may be acceptable one, particularly for candidates for Councillor positions. Perhaps an expenditure cap quantum somewhere between the figures proposed by the DLGRMA and the LGAQ might be the best outcome?

Sadly, neither the DLGRMA’s maximum figure of \$100,000 for mayoral elections or the \$200,000 figure proposed by the LGAQ (or something between the two) are affordable for most potential candidates and therefore increasingly this mean only the wealthy or the very well-funded will be able to contest mayoral elections with any prospect of success.

One unintended consequence of this might be more party aligned candidates standing for mayoral positions to take advantage of financial support from their political party and this is something OSCAR is very opposed to as we believe local government should be free of party endorsed/funded candidates in the majority of councils in Queensland where this is not already the case.

b. whether the council is a metropolitan or non-metropolitan council

No - provided travel associated expenses are excluded for expenditure caps as we have suggested above.

c. the different categories of council identified by the Local Government Remuneration Commission, or

Yes, but this will be largely achieved by a regime of sliding caps based on the number of electors. However, as remuneration for Councillors and Mayors is determined based on the category, it could be argued that to base the cap on category would be appropriate as well.

d. some other variable?

Not in addition to the suggestions we have made above.

Note: We acknowledge that incumbent councillors and mayors have a decided advantage in elections as do new candidates who already enjoy a high profile in the community (eg sportspeople) so we do believe expenditure caps for incumbents should be lower than for new candidates.

9. Should there be any difference in the applicable cap depending on whether the candidate is independent or endorsed by a party?

Yes. Candidates from a party enjoy party as well as individual support in many ways. Caps on independent candidates need to be higher.

10. Should higher caps be set for mayoral candidates, and if so, how should they be calculated?

Yes, but this will be achieved by a regime of sliding cap amounts per elector based on the number of electors, or by the category of Council should this method be used..

11. What caps should apply for groups of candidates and political parties? Should some form of aggregation be employed to calculate these spending caps?

We support aggregation based on the individual cap that would apply to each member of the group. There must also be a mechanism for aggregation for candidates of political parties to avoid “double-dipping”.

12. What caps should apply for third party groups?

The same caps as would apply to the aggregated caps for each of the individual candidates making up the group.

Note: We have serious concerns about the role of third-parties and the caps that apply. Do these provisions mean that in a large council with over 200,000 electors, you could have a situation where one or more third parties could undertake media campaigns costing up to \$100,000 each to further their cause or to run a negative campaign against a particular candidate or group of candidates?

This problem is compounded if third parties do not need to be registered under expenditure cap proposals – how do electors judge their political independence, their membership make-up etc?

For this reason we believe that third parties should be registered so that electors are aware of the individual/s and/or organisations that constitute any third party undertaking electoral expenditure.

13. Should different caps be set for by-elections than for general elections?

No.

14. What penalties should apply in relation to expenditure in excess of a cap and/or efforts to circumvent an applicable expenditure cap?

We agree that expenditure caps are only effective in so far as they are enforced and appropriate systems must be in place so that expenditure can be properly monitored and audited against statutory caps. Additionally, any penalties for those in breach of the statutory limits must be material. Where a third party does not complete a declaration, penalty points should be applied to their executive officers.

Penalties should include significant fines and potential imprisonment. Consideration should also be given to disqualification from office of successful candidates who are proved to have breached expenditure cap limits and a ban for standing in the following election for unsuccessful candidates.

15. Are any additional powers or supporting provisions required to aid the Electoral Commission of Queensland in monitoring and investigating the accuracy of reported expenditure?

There must be appropriate powers and financial support for the ECQ to manage complaints relating to expenditure cap breaches.

The regulations need to be very clear as to what evidence must be produced by the candidate and third parties when audited, eg invoices and receipts, and where, for example, a campaign office has been rented the records should show whether the rent paid by the candidate is commercial rent as applied to other tenants for the period of time or partially subsidised by the property owner.

Where a third party is reluctant or has to be hounded by the ECQ to submit their statements that penalty points should apply to their executive officers and members.

We believe that third parties should be registered so that electors are aware of the individual/s and/or organisations that constitute any third party undertaking electoral expenditure.

There must be appropriate powers and financial support for the ECQ to manage complaints relating to expenditure cap breaches.

16. What resources or training may need to be provided to candidates and other election participants to ensure they understand their requirements with respect to any expenditure caps?

We believe it would be necessary to provide some or all of online training, information papers, fact-sheets and Q & As on the websites of both the DLGRMA and the ECQ; both organisations have shown they are capable of doing these things well.

It would also be useful to establish a dedicated “hot line” where candidates or third parties can seek advice on matters relating to expenditure caps.

The requirements around expenditure caps should also form part of the content of future mandatory candidate training that is now required before council elections and by-elections.

We note there is still no legislation to address the revolving door between industry and government, which can lead to inside relationships being used to the benefit of the private sector without due regard being given to the public interest. While Queensland has comparatively strong restrictions around when a senior public servant/Minister can work as a lobbyist, our framework could be further strengthened by:

- improving the definition of ‘lobbyist’, for example to include acting for even non-profit entities that represent private industry, such as the Queensland Resource Council; and
- better enforcing existing limitations on lobbyists moving between government and the private sector. So my organisation may spend money in an election year to influence votes. Under this Bill, what would we then have to do?

We welcome the Government's response to Operation Belcarra Report and its timely response to the most important issues raised by that report. We look forward to further legislation to deal with the remaining outstanding recommendations. We would like to see this legislation expanded so that it would apply at both the State and local Government level. All legislation is only as good as its compliance procedures and the funding provided to ensure that these procedures are followed. We are heartened by the progress towards good governance that this legislation indicates.

Should you require any further information I can be contacted on 0404 833 057.

We would appreciate the opportunity to appear before the Committee at any Public Hearings to be held on this Inquiry. To expedite the Committee's procedures we are happy to be included in a combined community presentation to the Committee that we are aware the SEQ Alliance (SEQA) is requesting on behalf of the broader community as represented by organisations such as BRU.

Yours sincerely

Elizabeth Handley

President

The Brisbane Residents United Inc steering group