

## Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022

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**Electoral  
Commission**  
QUEENSLAND

12 January 2023

Committee Secretary  
State Development and Regional Industries Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
Email: [SDRIC@parliament.qld.gov.au](mailto:SDRIC@parliament.qld.gov.au)

Dear Secretary

I refer to the State Development and Regional Industries Committee's (the Committee) call for submissions on the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

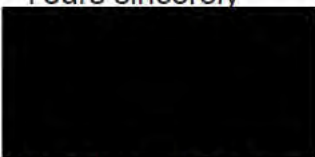
Please find attached a submission from the Electoral Commission of Queensland (ECQ) on the Bill.

The ECQ welcomes this opportunity to provide a submission on the Bill and would be pleased to provide any further information to assist the Committee in its consideration of the Bill.

Should you require further information regarding this matter, please contact Mr Matthew Thurlby, A/ Director, Funding, Disclosure & Compliance, ECQ on [REDACTED] or at [REDACTED]

I trust this information is of assistance.

Yours sincerely



Pat Vidgen PSM  
**Electoral Commissioner**

Electoral Commission of Queensland  
Submission to State Development and Regional Industries Committee  
Local Government Electoral and Other Legislation (Expenditure Caps)  
Amendment Bill 2022

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The Electoral Commission of Queensland (ECQ) welcomes the opportunity to provide a submission to the State Development and Regional Industries Committee (the Committee) on the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 (the Bill).

The Bill proposes to introduce an expenditure cap scheme for all types of local government elections in Queensland, starting with the 2024 local government quadrennial elections. This submission deals with the key operational implications of these proposed changes and does not comment on the policy merits or rationale of expenditure caps.

During development of the Bill, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) undertook regular consultation with the ECQ regarding the proposed amendments and their potential operational impacts. Given the relatively short time before aspects of the Bill are expected to commence operation and the need to extensively educate stakeholders before those provisions commence, this consultation process has been critical to the timely planning for implementation of the proposed amendments. Timely consideration of the Bill would greatly assist the ECQ by facilitating early implementation of the operational changes required to effectively support the policy objectives of the Bill.

### Background

The Bill forms part of an ongoing process of electoral reform implemented in stages over recent years in response to Operation Belcarra and to give effect to other policy initiatives of the Government. Over recent years, the ECQ has been responsible for:

- implementing changes to the disclosure threshold and timeframe for gifts (donations),
- establishing the prohibited donor scheme from October 2018 which bans property developers from making political donations to registered political parties, Members of Parliament, councillors, and candidates, and also establishes an application process to seek a determination about whether an entity is not a prohibited donor,
- implementing caps on State electoral expenditure from August 2020, for the October 2020 State general election,
- implementing caps on State political donations from July 2022, and
- delivering the Electronic Disclosure System (EDS) to allow for real-time disclosure of gifts from February 2017, and enhancing that system to implement the regulatory reforms outlined above.

These measures have significantly strengthened the ECQ's regulatory role and powers within the electoral system and contributed to greater transparency and rigour around political donations in Queensland. In performing this role, the ECQ has engaged proactively with registered political parties and other electoral participants to provide information, advice and training regarding disclosure obligations to promote and ensure compliance.

Concurrently, the ECQ has been implementing a range of administrative and operational improvements to its election management processes in advance of the 2024 election year. These improvements have been informed by a comprehensive election evaluation process which covered all aspects of the ECQ's activities.

#### Expenditure caps for local government elections

As mentioned above, earlier reforms have strengthened ECQ's regulatory role and signify the increasing importance of the ECQ in ensuring transparency in electoral processes. Accordingly, several of the proposed amendments reinforce the ECQ's goal of promoting public awareness of these processes, which the ECQ has been, and will continue to pursue, through active engagement with stakeholders and the publication of educational material.

The ECQ notes the Bill proposes to amend the purpose of the *Local Government Electoral Act 2011* to 'ensure and reinforce the transparent and equitable conduct of elections of councillors of Queensland's local governments, including, for example, by minimising the risk of unequal participation in the electoral process and ensuring a fair opportunity to participate in the electoral process.' The ECQ's existing activities in a local government context such as regulating the disclosure of gifts (donations) and electoral expenditure, administering the prohibited donor laws, and enforcing advertising authorisation requirements, already contribute to this objective. The ECQ understands that the Government's intent in introducing this Bill is to reduce potential financial inequity within the current electoral system, as identified by the Crime and Corruption Commission in the Operation Belcarra report.

The proposed amendments include a range of measures to promote clarity and transparency in electoral processes, including:

- aligning key definitions (such as 'gift' and 'electoral expenditure') between the *Electoral Act 1992* and the *Local Government Electoral Act 2011* (to the greatest extent possible),
- introducing a requirement for third parties to register with the ECQ for an election, if they incur (or intend on incurring) \$6,000 or more in electoral expenditure (in alignment with the *Electoral Act 1992*),
- allowing for candidates and other electoral participants to appoint an agent to manage their disclosure obligations,
- introducing the concept of 'associated entities' for candidates and groups of candidates,

- extending the dedicated bank account requirements to registered political parties and registered third parties,
- expanding record-keeping requirements for all electoral participants, and
- establishing disclosure requirements for publishers and broadcasters for local government elections (in alignment with the *Electoral Act 1992*).

The ECQ currently applies a range of tools to enforce compliance with funding and disclosure related obligations, including warning letters, penalty infringement notices (fines), and prosecutions. The ECQ may also undertake civil debt recovery in particular circumstances, which this Bill will also allow in instances where a person exceeds the applicable expenditure cap.

While these measures have resulted in a high level of compliance, the ECQ has also exercised its power to issue fines where instances of non-compliance have been identified. In relation to the 2020 local government quadrennial elections, the ECQ has so far issued 369 fines to electoral participants for failing to comply with their obligations. The ECQ has also commenced prosecutions when serious non-compliance has been identified.

The ECQ uses its enforcement powers in a reasonable way and strives to ensure that all electoral participants – especially candidates and registered political parties – are aware of their obligations, and how to comply with those obligations. The ECQ has also sought to increase stakeholder awareness of its enforcement powers, so stakeholders are incentivised to voluntarily comply.

In implementing the measures proposed through the Bill, the ECQ will seek to continue its current practice of increasing awareness by electoral participants of the new obligations, as well as those pre-existing obligations which the ECQ has identified as needing improved compliance by stakeholders. These include new third-party registration obligations, bank account requirements, and real-time disclosure. Overall, these measures are expected to strengthen the ECQ's regulatory and education functions while contributing to increased public transparency and accountability in the electoral process.

#### Operational impacts

For the ECQ, the introduction of new registration requirements for third parties, the ability for candidates to appoint an agent, and the introduction of electoral expenditure caps will require changes to the current real-time disclosure system (the EDS), and the Election Management System. While many of the functionalities already exist to allow for administration and monitoring of expenditure caps at State elections, it does not necessarily follow that the same functionality can be adopted without tailoring for local government elections. For example, the differing expenditure caps for different local government areas (compared with the uniform caps across electoral districts for State elections) and the potential for groups of candidates to 'pool' expenditure, requires a more dynamic approach to monitoring compliance and to participant education.

Additionally, participants in a local government election are required to lodge real-time returns about the electoral expenditure they have incurred. Comparatively, participants in State elections are only required to disclose electoral expenditure after election day. This real-time expenditure requirement may create an expectation by electoral participants that the ECQ is able to monitor and enforce compliance with electoral expenditure caps during the election event itself (to ensure the objective of the *Local Government Electoral Act 2011* is being achieved). This will require additional compliance resources and monitoring capability during the majority of the capped expenditure period (and after the election event itself). The ECQ will need to identify the appropriate balance between the cost of additional compliance and monitoring resources and the expected outcomes such expanded compliance activities would achieve.

Additional resourcing will also be required for the ECQ to enable continued promotion of public awareness and education of stakeholders about their rights and responsibilities under the electoral acts. The educational material – particularly those materials relating to expenditure caps and electoral expenditure – is intended to be published in July / August 2023, to align with the timeframe by which electoral expenditure caps must be calculated. The ECQ has already begun initial discussions with DSDILGP about the mandatory candidate training which will be a vital aspect of the candidate education required to support compliance with the regulations.

One of the largest challenges faced by the ECQ in local government elections is that most candidates are not endorsed by registered political parties and therefore lack organisational and administrative support to meet their funding and disclosure obligations. Generally, it is anticipated that candidates who are endorsed by a registered political party will be supported by a party official (who is typically responsible for the party's business-as-usual disclosure obligations) who can act as their agent, allowing the ECQ to leverage its pre-existing relationships to achieve a high level of compliance. Conversely, local government candidates who are not endorsed by a political party (particularly outside of the Brisbane local government area) will generally be responsible for managing their own affairs which increases the support and assistance required to be provided by the ECQ to those using the EDS or seeking to understand their disclosure obligations.

In summary, the ECQ has a good understanding of how the proposed expenditure cap framework is designed, and has a well-advanced strategy to support implementation, subject to passage of the Bill by the Parliament. The ECQ's priority is now to develop and test the system changes necessary to allow stakeholders to comply with their obligations, and to develop educational material targeted to electoral participants which conveys the most important information in an easy-to-understand way.