

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

Submission No: 14

Submitted by: Local Government Association of Queensland (LGAQ)

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Every Queensland
community deserves
to be a liveable one

20 January 2023

Mr Chris Whiting MP
Chair
State Development and Regional Industries Committee
Member for Bancroft

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

Dear Mr Chair

RE: LGAQ submission to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022

The Local Government Association of Queensland (LGAQ) is a not-for-profit association representing all 77 local governments' across Queensland as the state-wide peak body for our sector.

We thank the State Development and Regional Industries Committee (the Committee) for undertaking this Inquiry.

Please find **enclosed** a copy of the LGAQ's submission, on behalf of our members, for your consideration. Individual councillors and councillors may also lodge their own submissions as well.

We are comfortable with this submission being made public. If required, we would be happy to speak to the Committee at a public hearing.

For further information in relation to this submission, please contact Mr Nathan Ruhle, Lead – Intergovernmental Relations on [REDACTED] or [REDACTED]

Yours Sincerely,



Alison Smith
CHIEF EXECUTIVE OFFICER



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Submission to Queensland Parliamentary State
Development and Regional Industries Committee

20 January 2023

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About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

Partners-in-Government Agreement

In August 2019, the LGAQ on behalf of all 77 Queensland Local Governments signed a three-year partners-in-government agreement¹ with the State of Queensland.

The Agreement details the key principles underlying the relationship between the state and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging Local Government as a genuine partner in the Australian government system.

The intent of the agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for councils, to serve our joint jurisdiction for the people of Queensland.

Rural and Remote Councils Compact

The Rural and Remote Councils Compact² signed on 25 June 2021, complements the existing partners-in-government agreement in place between the LGAQ and the Queensland Government to provide a platform to ensure issues of priority for these communities are properly considered by the Government when developing policies, programs, and legislation.

The Rural and Remote Councils Compact, pledges to amplify the voice of and improve outcomes for the state's 45 rural and remote councils and their local communities by enhancing engagement between both levels of government.

¹ https://www.dlgrma.qld.gov.au/_data/assets/pdf_file/0016/45115/partners-in-government-agreement-2019.pdf

² <https://knowledgebaseassets.blob.core.windows.net/images/9c61cdc2-3cfa-eb11-94ef-002248181740/Rural%20and%20Remote%20Councils%20Compact%20-%20signed%20copy.pdf>

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

Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Queensland Parliamentary State Development and Regional Industries Committee in relation to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment 2022 (the Bill).

In doing so, we would like to thank the State Government for conducting meaningful and substantial consultation with the LGAQ and our member councils in relation to this new policy framework over several years, prior to the introduction of the Bill.

This consultation has included two discussion papers (released in March 2019 and April 2022) and a Parliamentary Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections, which provided a final report on 15 September 2020³. The LGAQ also appreciated the opportunity to be consulted on draft legislation, prior to the introduction of the Bill in the Queensland Parliament.

The LGAQ has had extensive engagement with our members in relation to this issue over recent years. This included the development of our 2017 integrity plan, which was released prior to the Crime and Corruption Commission's Operation Belcarra report, and acknowledged within it, as well as our Beyond Belcarra plan released in April 2018.

Following the release of the Department's March 2019 discussion paper, 'Local Government Reforms: Key amendments currently under consideration' (the 2019 discussion paper), the LGAQ convened a Special Meeting of member councils in Brisbane on 2 April 2019 to discuss issues raised in the discussion paper and to establish a firm policy position based on resolutions passed by members at this meeting. Three resolutions were passed at the Special Meeting on 2 April 2019 relating to local government electoral expenditure caps, namely:

1. a resolution opposing the introduction of local government election campaign expenditure limits as proposed by the March 2019 Department of Local Government, Racing and Multicultural Affairs information paper: "Local Government Reforms - Key amendments currently under consideration";
2. a resolution supporting 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

³ <https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf>

councillor elections in undivided councils, or \$10,000 for councillor elections in divided councils; and

3. a resolution supporting the introduction of legislation to prevent the potential distorting influence of electoral expenditure by third parties with aligned interests.

The LGAQ appreciates that several changes have been made to the policy framework since the original discussion paper was released in 2019, based on feedback provided by our member councils throughout the extensive consultation process.

In developing our responses to the varied forms of consultation, the LGAQ has sought regular feedback from member councils, both with individual councillors and mayors, and provided regular briefings to the LGAQ's Policy Executive. Our Policy Executive consists of 15 district representatives and the LGAQ President and is responsible for the determination of the Association's policy on behalf of member councils.⁴

While the overall policy framework settings adopted in the Bill are generally supported, it is acknowledged that this is a new scheme and mitigating against loopholes can be challenging, which is why safeguards are important.

As previously outlined, the LGAQ acknowledges the extensive consultation undertaken in relation to the development of this Bill and has provided six recommendations to provide some additional safeguards.

⁴ <https://www.lgaq.asn.au/about-us/our-leaders>

Recommendations

The LGAQ has prepared detailed comments in relation to the provisions in the Bill and has made six recommendations, summarised below:

- Recommendation 1: The LGAQ recommends clause 24 be amended to put beyond doubt that council communications such as newsletters or online publications are not deemed to be campaign expenditure, unless they contain content that expressly advocates for a vote.
- Recommendation 2: The LGAQ recommends the capped expenditure period be extended to the full quadrennial term and that it commences from the day after the 2024 local government elections. Alternatively, should the Government wish to proceed with the implementation of the capped period as outlined in the Bill, this timing should be examined as part of the statutory review outlined further in this submission.
- Recommendation 3: The LGAQ recommends that an evaluation of group campaign cap pooling is undertaken as part of the statutory review outlined further in this submission, to ensure a level playing field between all candidates in a local government election.
- Recommendation 4: The LGAQ recommends that consideration should be given to the differentiation between the caps set for divided and undivided councils and the impact of pooling caps for groups or political parties as part of a statutory review of this new scheme, as recommended further in this submission.
- Recommendation 5: The LGAQ recommends that the issue of when an elector number determination is made is considered as part of the statutory review, outlined further in this submission.
- Recommendation 6: Given that this is a new scheme, the LGAQ recommends the State Government include a clause to ensure a statutory review is held within the first 12 months after the 2024 local government elections.

Introduction

Queenslanders rightly expect local government elections to be democratic, fair and free from undue influence. Any changes to the way local government election campaigns are conducted should ensure fairness, transparency and accountability and should not leave the process open to any potential distortion by candidates, third parties or other influences.

The LGAQ supports the introduction of expenditure caps as long as they are workable and enhance the democratic process.

Following the release of the 2022 discussion paper, the LGAQ's Policy Executive met and discussed this issue at their regular, scheduled meeting on 22 April 2022.

There is general support across the local government sector for the introduction of new electoral expenditure policy settings.

However, this is a new scheme and while there has been an attempt to ensure consistency between the existing State scheme and the new scheme proposed for local governments, it should be recognised that there are some differences between the two levels of government and how their respective elections operate.

These differences must be recognised to avoid the creation of potential loopholes or unintended consequences as if left unaddressed, they could have the potential to change the course of an election outcome and the democratic representation of a local government area for that quadrennial term.

The LGAQ would urge the Committee and the State Government to consider any unintended consequences or loopholes within the new framework, and build in safeguards to mitigate against them, where possible.

While not subject to the 2022 discussion paper nor the current Bill, there was previously a proposal to change the voting system for local government elections to introduce compulsory preferential voting and/or proportional representation. This was mooted in the 2019 discussion paper.

Our members are strongly opposed to the introduction of compulsory preferential voting for local government elections, as we firmly outlined in 2019 following the passing of a member resolution and our sector-wide campaign on the issue.

The vast majority of candidates seeking election to a Queensland council do so as individuals wanting to represent their communities rather than a particular political party.

The LGAQ firmly believes the introduction of compulsory preferential voting at local government elections would lead to the politicisation of these elections, which would be to the detriment of the sector and the communities they represent.

Changes to the local government voting system have so far only been raised for reasons of political expediency and have not been recommended nor supported by numerous reviews of council elections conducted in recent times.

For example, the Crime and Corruption Commission's Operation Belcarra report into local government elections did not make any recommendations regarding compulsory preferential voting nor proportional representation among its 31 recommendations to improve the "equity, transparency, integrity and accountability" of the local government system.

This issue was also considered by the State Government-commissioned Soorley Inquiry into the 2016 local government elections, with the panel – chaired by former Brisbane Lord Mayor Jim Soorley – rejecting the need to change the local government electoral system.

The Inquiry's report stated:

"The panel is aware of the argument to change to full preferential voting (FPV), whereby voters must number all boxes in order of their preference on the ballot paper. This change would align local government elections with state and federal election systems, and it is argued FPV would reduce informal votes and voter confusion. However the local government electoral system has a greater diversity of candidates who do not necessarily align with parties. The panel supports the current OPV (optional preferential voting) system for local government elections for all mayors and councillors in divided councils and FPTP for councillors in undivided councils."

In addition to reaffirming their strong views on these issues, the LGAQ Policy Executive also sought re-endorsement of this position from member councils at our Annual Conference, held in Cairns in October 2022.

Queensland councils strongly restated their opposition to any changes, unanimously endorsing a resolution stating:

"The LGAQ calls on the State Government to retain the current voting system for local government elections, respecting the views of Queenslanders, Queensland councils and the recommendations of the State-commissioned report into local government elections."

While a move to change the local government voting system is not contained in the Bill, the LGAQ is aware this policy position has been put to government for consideration, with a policy position supporting the introduction of compulsory preferential voting and proportional representation endorsed by delegates in attendance at Queensland Labor's State Conference in November 2022.

Our members will continue to reinforce their opposition to CPV while others continue to raise the idea. The concept of CPV is rejected outright by the LGAQ and its members.

Submission

As outlined in the explanatory notes, the objectives outlined by the Bill will:

- implement the Government’s policy in relation to the recommendations of the Economics and Governance Committee (the Committee) in its Report No. 47, 56th Parliament, Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections (the Committee report), tabled on 15 September 2020;
- reflect the outcomes of further analysis and consultation in the final design of the local government electoral expenditure caps scheme; and
- ensure and reinforce the equitable conduct of Queensland local government elections, including by minimising the risk of unequal participation in the electoral process (including uneven financial competition between candidates) and ensuring a fair opportunity to participate.

The introduction of a local government electoral expenditure cap scheme follows the introduction of electoral expenditure caps for State elections.

The genesis of these reforms is from the Crime and Corruption Commission’s report – ‘Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government’⁵. In this report, the Crime and Corruption Commission (CCC) made a series of recommendations to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making, across all Queensland councils.

Recommendation 1 from the Operation Belcarra report recommended:

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.*

This Parliamentary Committee review was undertaken by the Economics and Governance Committee – Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections – captured in Report No. 47, 56th Parliament, released in September 2020.⁶

It should be noted that the CCC’s Operation Belcarra report did not recommend any changes to the local government voting system in relation to proportional voting or compulsory preferential voting, as previously referenced in this submission.

Definition of electoral and campaign expenditure

⁵ <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

⁶ <https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf>

The position of the LGAQ regarding the conduct of candidates in local government elections is very clear – transparency is paramount. Councils reflect the values and aspirations of their communities. Elected councillors are leaders in open and transparent government, who value scrutiny and understand the obligation to be accountable to their communities.

The LGAQ supports the general objective of capping electoral and campaign expenditure, and notes that providing uniformity and certainty to candidates, parties and third parties who may participate in both local and state government election campaigns does have benefits for individuals and organisations. This same benefit is also extended to compliance activities undertaken and overseen by the one entity – the Electoral Commission of Queensland.

The LGAQ also recognises the benefits of extending the consistency of regulating election campaign expenditure between the state and local government systems, to that of gifted electoral expenditure as well.

However, the Association is concerned by the current wording in clause 24 of the Bill, insofar as it relates to the definition of campaign purpose (new section 109B). In relation to the terminology of promoting candidates, we would ask that an amendment be made to expressly outline that council communications and marketing activities (which is paid for by ratepayers), such as council or councillor newsletters that often outline important community-related information or details about a project secured in a council budget, among other things, is not deemed as campaign expenditure unless it advocates for a vote.

For example, a council newsletter has been produced that says – “Councillor X has secured a \$1.2 million upgrade to local footpaths in X Street to improve community safety, amenity and disability access for local residents.” This should be an example of what is not campaign expenditure, despite the fact it may promote a particular candidate who is standing for re-election.

In contrast, we would agree that this would be an example of what is campaign expenditure – as it is advocating for a vote – “Vote for Councillor x to upgrade local footpaths in X Street to improve community safety.”

This issue was raised by almost every member of the State Development and Regional Industries Committee at the public briefing with Departmental officials on 14 December 2022⁷. Examples of these exchanges with the Department are included below:

CHAIR: Excellent. Thank you. One of the things the sector would probably be asking about is making sure those councillor newsletters that are issued by the local council are not caught up with this potential cap. My understanding is that they will not be because, firstly, they do not propose a way to vote or advocate any of that and, secondly, that would be caught up by the review processes within the council when those councillor newsletters are published. Can we outline exactly how those regular councillor newsletters that are issued will not be caught up with this cap and that timing?

⁷ <https://documents.parliament.qld.gov.au/com/SDRIC-F506/LGEOLECAB2-1FE0/Proof%20-%20Public%20Briefing%20by%20Department%20of%20State%20Development%20Infrastructure%20Local%20Government%20and%20Planning%20held%20on%2014%20December%202022.pdf>

Ms Blagoev: The bill aligns a definition of 'electoral expenditure' between the bill and the state Electoral Act and refers to what is a campaign purpose. It will be a matter for ECQ. ECQ will be the ones who ensure compliance with the scheme, so they will be responsible for determining what is a campaign purpose. As you have said, the issue of newsletter has been rather contentious from stakeholders, and we will certainly be working with ECQ to make sure there is clarity beforehand around what amounts to a campaign purpose versus just general information sharing.

...

Mr McDONALD: Following on from what the chair was asking with regard to councillors' newsletters and what have you, if there is a natural disaster mid election period, which we have seen happen before, and a current serving councillor wishes to disseminate information about the disaster, how will that be managed with reference to their caps?

Ms Blagoev: You need to determine what is electoral expenditure and what is something prepared for a campaign purpose versus the normal BAU for a council. The scheme is not intending to capture BAU activities. We understand the councillors release newsletters and certainly, as you have indicated, if there is a natural disaster that occurs in the expenditure period, we would expect that council would continue to communicate with their communities. It really comes down to what is campaign purpose. Councils need to be very careful that anything they do release during that period is not with a campaign purpose, because if it is then it will be captured.

Mr McDONALD: That would be a matter for the ECQ to determine quickly?

Ms Blagoev: Correct.

...

Mr MARTIN: Understood. I have one further question going back to this issue of newsletters and whether or not something is election material. I have heard the questions and heard what you said in that the ECQ will have to look and decide whether or not something is election material, but are the rules the same for candidates and for sitting councillors? If a candidate within the seven-month period sends out some material like a calendar that does not say 'Vote for me' but is a calendar, is that election material?

Ms Blagoev: It is the same rule irrespective of whether or not you are a candidate. If there is expenditure incurred in that electoral expenditure period then it is the same irrespective, and the question will always be: if you are in that period and you have incurred electoral expenditure, is it for a campaign purpose? I appreciate that it is probably a little bit more contentious with sitting councillors because they are often in the process of, like you said, sending out a calendar or sending out a newsletter, but to answer your question it is the same.

...

Mr McDONALD: Excellent. Just getting back to the question about newsletters, I gave the example before about a natural disaster. When you have consistent newsletters by councillors occurring as part of their ongoing communication with the electorate, the ECQ in the past have determined those newsletters to be considered campaign material. Has the department thought

about including something in the act to specify that, because there is a large concern that the ECQ will consider those sorts of things campaign material?

Ms Blagoev. To answer your question, no, the bill does not seek to specifically carve anything like that out. Again, we would be relying on the definitions of 'electoral expenditure' and 'campaign purpose'. At the moment, the answer to that is that the bill does not carve it out, but I do take your point. It is contentious and it can be difficult sometimes to determine what is a campaign purpose.

Mr McDONALD. For sure.

Mr Watts. I might add to that, if I may. In the event further clarity is required, the bill does allow for a regulation to be made. In that regulation we can prescribe what is or is not electoral expenditure. There is some flexibility. At a later date, if we are seeing certain issues and we are working with ECQ, government might have an opportunity to tighten up the legislation, so to speak, by prescribing those activities.

While the Department has recognised the importance of clarifying this issue, the LGAQ believes that in the abundance of caution and to provide policy certainty, a statutory definition to explain this provision is preferred. Providing statutory clarity for all candidates, the ECQ and the broader community has significant benefits.

Recommendation 1 – The LGAQ recommends clause 24 be amended to put beyond doubt that council communications such as newsletters or online publications are not deemed to be campaign expenditure, unless they contain content that expressly advocates for a vote.

When asked at the public briefing on 14 December 2022 about the issue, it was noted that the Department advised that a regulation could be made to clarify the issue, if required. While that is good to ensure clarity is provided if needed, it could be too late if the issue happened during an election campaign – which is potentially likely. Preventing confusion would be better than needing to clarify the policy intent of the legislation, after the fact.

It was also noted that the wording in the legislation mirrors the state legislation, except for what is explicitly relevant to local government (i.e., terminology). This issue was asked in the public briefing with the Department on 14 December 2022:

Ms Blagoev. A question was asked earlier around the definition of 'electoral expenditure' and consistency with the state scheme and I indicated that the definitions were the same. Probably the only thing I would say, out of an abundance of caution, is that there are a couple of drafting changes to reflect the fact that it is councillors and not members of parliament. Certainly, the Electoral Act applies only to elected members of parliament. Certain references have been replaced with appropriate wording for local government councillors instead, and we have referred to things such as allowances or entitlements under a councillors expenses reimbursement policy. Our bill also provides for the meaning of an amount of electoral expenditure that is inclusive of GST, and that does differ. That follows a recent 2020 Supreme Court decision around that particular issue. There has probably been a bit of updating to reflect that fact that we are now looking at this and then the obvious replacement of concepts around councillors versus MPs.

Capped expenditure period and third-party registration

As the LGAQ has previously and consistently outlined in public submissions, the LGAQ maintains our position with respect to the capped expenditure period, that any capped expenditure period that is introduced as part of these reforms, should apply for the full local government quadrennial term, as was proposed by the Department in the 2019 discussion paper.

We believe this will enhance council elections being fair and free from undue influence.

This is because it takes time for most candidates to fundraise. Limiting the capped expenditure period (to seven months) potentially favours candidates or their supporters who have deeper pockets. It could create an uneven playing field and a potential corruption risk.

An example of this is at the 2020 local government election, where Mineralogy gave the largest single donation in local government history to a registered group, at \$400,000. During that election campaign, Mineralogy made four more donations to the same group, bringing the total donation by that company to *It's Time for Townsville* to \$539,249.99.

Electoral returns available on the Electoral Commission of Queensland's website indicate the *It's Time for Townsville* group declared \$539,914.90 in electoral expenditure⁸. The group's mayoral candidate declared an additional \$99,000.03 in electoral expenditure⁹. Combined that equates to \$633,914.93 in electoral expenditure for a local government area with a total enrolment of 128,601 voters, about \$4.93 per voter.

This was almost four times the expenditure declared by the group led by the incumbent Townsville Mayor, *Team Jenny Hill*. It registered election expenditure totalling \$166,781.25, or about \$1.30 per eligible voter¹⁰.

Having a full-term capped expenditure period mitigates against significant individual donations and allows a fairer playing field.

It is also worth noting the report from the Queensland Parliament Economic and Governance Committee on this issue and their comments that:

"Submitters who expressed a view on the duration of the capped period generally supported the application of the expenditure caps across a full local government term, as per the two proposed Queensland models."

In comparing local government elections to state government elections in Queensland, it is important to remember that apart from the Brisbane City Council, which is governed by a separate and specific Act of Parliament, there is no party politics in Queensland local governments.

⁸ <https://disclosures.ecq.qld.gov.au/Report/ElectionSummaries/3425>

⁹ <https://disclosures.ecq.qld.gov.au/Report/ElectionSummaries/1577>

¹⁰ <https://disclosures.ecq.qld.gov.au/Report/ElectionSummaries/2754> and <https://disclosures.ecq.qld.gov.au/Report/ElectionSummaries/1866>

Queensland state politics features candidates from a variety of political parties. These parties are, in the whole, sophisticated political operations with an enhanced ability to fundraise and fund election campaigns for candidates, whether that be major parties or even minor parties.

Therefore, the LGAQ does not support the length of the capped expenditure scheme as proposed in the Bill. We continue to support the capped expenditure period for any scheme being the full quadrennial local government term, commencing the day after the previous election is held.

In doing so, we realise that implementing this change would mean that these reforms would not be applicable until the 2028 local government election, given they would commence from the day after the 2024 local government election (currently scheduled for 30 March 2024).

Recommendation 2: The LGAQ recommends the capped expenditure period be extended to the full quadrennial term and that it commences from the day after the 2024 local government elections. Alternatively, should the Government wish to proceed with the implementation of the capped period as outlined in the Bill, this timing should be examined as part of the statutory review outlined further in this submission.

In relation to the registration of third parties, the LGAQ supports the notion outlined in the Queensland Parliament's Economics and Governance Committee's 2020 report that third parties should not exert a disproportionate influence through their electoral spending where they are able to overpower the voices of direct electoral participants, including councillor and mayoral candidates.

As outlined previously in this submission, on 2 April 2019 the LGAQ conducted a Special Meeting to seek endorsement from member councils in relation to the conduct of local government elections.

One of the three resolutions passed by members councils was a resolution supporting the introduction of legislation to prevent the potential distorting influence of electoral expenditure by third parties with aligned interests.

Including registration of third parties and having dedicated separate accounts for registered third parties and registered political parties is an important part of ensuring this happens.

It is also worth noting the feedback to the Queensland Parliament's Economics and Governance Committee in relation to the registration of parties. The report noted:

"Most jurisdictions that impose expenditure caps on candidates, groups of candidates and political parties tend to include an extension of those caps in some form to third parties, such as unions and industry bodies.

*Expenditure caps for third parties have been acknowledged as a way of addressing concerns about the potentially disproportionate influence of these actors on elections, including concerns that they may come to 'drown out the voice of the real players, the candidates and political parties'."*¹¹

¹¹ <https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf>

Proposed electoral expenditure caps

The Bill provides for caps for individual mayoral and councillor candidates in local government areas, in a tiered manner, other than for Brisbane City Council elections. For Brisbane City Council, the cap for a mayoral candidate is \$1.3 million and \$55,000 for a councillor candidate, per division / ward. It is acknowledged that in providing the tiered system in the Bill, the State Government listened to feedback received from the 2022 April discussion paper and made appropriate adjustments. This was publicly communicated by the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning in a media release on 4 July 2022.¹²

The LGAQ appreciates that setting the correct expenditure cap level is a balancing act, as introducing caps that are too high would render them meaningless. Unlike a Queensland Parliament electoral division, local government areas can significantly vary in terms of their population. The *Local Government Act 2009* (the LG Act) stipulates that each division of a local government area must have a reasonable proportion of electors for each councillor elected, or to be elected, for the division. Section 15 of the LG Act further elaborates on how a reasonable proportion of electors is determined and differentiates for local government areas with a population of more or less than a population of 10,000.

The Queensland Parliament's Economics and Governance Committee 2020 report recommended the Department consider whether there was a need for different caps for divided and undivided councils (recommendation 2). We appreciate this was challenging given the lack of sufficient evidence available from the 2020 local government quadrennial election (and the impact of the COVID-19 pandemic on that election). However, the experience of a councillor candidate contesting a divided council election can vary significantly from an undivided council election, particularly in relation to costs incurred.

The Bill deems candidates as either individual, as part of a group campaign, or as being endorsed by a political party. As outlined in the explanatory notes, the Bill also provides for a group or registered political party electoral expenditure cap that will enable a group of candidates for an election, or a registered political party that endorses a candidate in an election and the candidates endorsed by the party, to pool the caps of the members of the group or the candidates endorsed by the party within a local government area.

In relation to the consideration of pooling for group campaigns, the ECQ needs to be mindful of the process being distorted whereby some candidates are given unfair advantage in their division if other candidates who are part of a group 'run dead' and therefore distort the cap by pooling funds, creating the ability to outspend other candidates. One of the challenges for the ECQ will be identifying this political tactic, however the ability for the system to be manipulated needs to be considered.

It is recognised that the concept of pooling is a challenging subject to legislate. On one hand, candidates should not be disadvantaged if they are part of a group campaign or if they are endorsed as a political party representative. On the other hand, groups or parties should not be advantaged by running 'ghost candidates' or running 'dead' in certain divisions, to gain an advantage in other divisions of a local government area election.

¹² <https://statements.qld.gov.au/statements/95619>

It is also recognised that there is constitutional precedent to consider when legislating this issue, balancing a candidates' rights to freedom of political communication and any limitations on that.

In that regard, it is noted in the explanatory notes that:

"The purpose of the pooling provisions is to enable groups of candidates, registered political parties and endorsed party candidates to run coordinated group or political party campaign activities at local government elections involving, for example, common policy positions, joint advertising, or shared how-to-vote cards."¹³

In terms of compliance the explanatory notes also detail new provisions. New section 123N (compliance with expenditure cap generally) in clause 41 applies to a candidate, each member of a group of candidates, a registered political party that endorses a candidate, and a registered third party:

"These provisions ensure that a participant, or a person acting with the participant's authority, must not incur electoral expenditure during the capped expenditure period for the election if the amount of the expenditure, by itself, exceeds the participant's expenditure cap for the election; or both of the following apply: the amount of the expenditure exceeds the participant's expenditure cap when added to 'other relevant electoral expenditure' for the election; the participant or person knows, or ought reasonably to know, the amount would result in the cap being exceeded."¹⁴

Further, section 106AB (Meaning of participant in an election) in clause 18 provides a definition of participant in an election to include – a candidate, a group of candidates, a registered political party that endorses a candidate in the election, a registered third party and an unregistered third party that incurs electoral expenditure for an election.¹⁵

The issue of group campaign pooling and ensuring there is a level playing field between group campaigns and individual campaigns needs to be monitored closely and should be considered as part of the statutory review.

Recommendation 3: The LGAQ recommends that an evaluation of group campaign cap pooling is undertaken as part of the statutory review outlined further in this submission, to ensure a level playing field between all candidates in a local government election.

There is no concern with the proposal to cap unregistered third parties at \$6000, effectively across 77 Queensland local government areas, as an aggregated cap. This is because of the size of the proposed cap, in comparison with proposed caps for candidates or mayoral candidates and also for registered third parties. We understand this to mean that one unregistered group can spend \$100 in 60 local government areas or up to \$6000 in one local government area.

¹³ <https://documents.parliament.qld.gov.au/tp/2022/5722T2030-611B.pdf>

¹⁴ <https://documents.parliament.qld.gov.au/tp/2022/5722T2030-611B.pdf>

¹⁵ <https://documents.parliament.qld.gov.au/tp/2022/5722T2029-F0FA.pdf>

In relation to registered third parties, it is appropriate that a third-party expenditure cap is aligned with each mayoral cap, to which they spend any campaign funds. That provides parity and a level playing field for actual candidates and third-party campaigns.

Recommendation 4: The LGAQ recommends that consideration should be given to differentiation between the caps set for divided and undivided councils and the impact of pooling caps for groups or political parties as part of a statutory review of this new scheme, as recommended further in this submission.

Indexation and determination of elector numbers

The Queensland Parliament's Economics and Governance Committee noted in the final report that:

*"... to provide certainty to electoral participants, the final legislative scheme should include a mechanism for the adjustment of caps for inflation following each election, and for the determination and public notification of applicable caps for each local government area and ward/division on the basis of the number of electors at a specified point in time."*¹⁶

This is obviously important given the cost of campaign expenditure will increase over time, with the consumer price index.

The timing of expenditure indexation and determining elector numbers for each local government area or specific divisions is challenging.

Determining both at the same time seems logical. It is always going to be a 'point in time' determination, referred to in the Bill as 'the relevant day'. This issue was also highlighted in the public briefing with the Department on 14 December 2022¹⁷:

Mr McDONALD: *With regard to areas of population growth, it appears that ECQ are going to set the caps for elections well before the election period, certainly possibly before the closure of rolls. Have there been any concerns raised, or has the department thought about rapidly growing population areas and how they could be managed?*

Ms Blagoev: *It is a good question. The ECQ will set the caps based on elector numbers as at the relevant date, which will be 1 July before an election. Whilst we appreciate that that is a good nine months before an election, I think it is still a good indication of where the caps should sit; that is, they are not setting the elector numbers five years before an election, for example.*

On the other hand, it is important for potential candidates to have clarity over their expenditure cap well ahead of the next election, particularly in the context of planning their campaigns and fundraising necessary funds.

¹⁶ <https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf>

¹⁷ <https://documents.parliament.qld.gov.au/com/SDRIC-F506/LGEOLECAB2-1FE0/Proof%20-%20Public%20Briefing%20by%20Department%20of%20State%20Development%20Infrastructure%20Local%20Government%20and%20Planning%20held%20on%2014%20December%202022.pdf>

Recommendation 5: The LGAQ recommends that the issue of when an elector number determination is made is considered as part of the statutory review, outlined further in this submission.

Compliance implementation and review

In 2020, the Queensland Parliament's Economics and Governance Committee recommended:

*"That scheme penalties and recovery provisions be aligned with those for the state government electoral expenditure cap scheme under the Electoral Act 1992, and further consideration be undertaken on the political prescription of scheme offences as integrity offences."*¹⁸

Given the ECQ will be the compliance agency that monitors expenditure caps for both state elections and local government elections, it makes sense to align the record-keeping and auditing requirements for both – to ensure regulatory and compliance consistency.

In responding to the issue of training and awareness of the new requirements, the LGAQ acknowledges the recommendation from the Queensland Parliament's Economics and Governance Committee that the Department coordinate with the ECQ to ensure election participants have access to a suite of information resources and training to support their compliance with the established scheme.

The LGAQ supports the proposal outlined by the Department in the April 2022 discussion paper, to provide a range of resources and information to assist candidates with their obligations under any capped electoral expenditure scheme.

That is fundamental to the success of any new scheme, given the importance of encouraging Queenslanders to put their hand up and seek local government representation, enhancing our democracy and encouraging political communication and engagement.

The ECQ may also consider the development of a mobile phone app as another tool to assist in compliance and also tracking of an individual's electoral expenditure.

The April 2022 discussion paper also asked whether there was support for an ongoing review mechanism and, if so, in what format?

In response the LGAQ would offer that conducting a statutory review of a reform or legislation is beneficial, particularly for new schemes such as this. In response to the general question of a review, the LGAQ would support a statutory review being put in place and if possible, that the review should be conducted by a Parliamentary Committee.

Recommendation 6: Given that this is a new scheme, the LGAQ recommends the State Government include a clause to ensure a statutory review is held within the first 12 months of the 2024 local government elections.

¹⁸ <https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf>

Conclusion

The LGAQ appreciates the significant consultation and engagement on this new policy framework, which has led to the introduction of this Bill.

As an Association, we have been leaders in the need to promote transparency and integrity of local government elections. That fact was recognised in the Crime and Corruption Commission's Operation Belcarra report:

"Similar arguments have recently been advanced by the LGAQ, which wrote to the Queensland Government and Queensland Opposition in September 2017 to propose expenditure caps for local government elections."¹⁹

Overall, the LGAQ supports the introduction of expenditure caps so long as they are workable and enhance the democratic process.

We would encourage the Committee to consider the need to ensure that safeguards are built into the legislation to protect the integrity of the local government election process and ensures an even playing field for all candidates.

Contact Details

Please do not hesitate to contact Nathan Ruhle, Lead – Intergovernmental Relations via email [REDACTED] or phone [REDACTED] should you wish to discuss any aspect of this submission.

¹⁹ <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

Appendix

LGAQ Policy Statement

The LGAQ Policy Statement²⁰ is a definitive statement of the collective voice of local government in Queensland. The relevant policy positions of local government in the context of governance and the legislative framework are as follows:

2.1 Legislative Framework

1.6 Governance Arrangements

1.6.2 The governance arrangements that apply to local government should, where appropriate, be consistent with those applying to the state government – the obligations placed on local government will generally not be higher or lower than those applying to the state government.

2.1.1 Local Government Enabling Legislation

2.1.1.1 The Local Government Act and City of Brisbane Act should be the major defining legislation for local government's role, powers and functions.

2.1.1.2 The term of office of a local government council as prescribed in the Local Government Act should remain a fixed term of four (4) years.

2.1.1.3 The date for the quadrennial local government elections should remain in March.

LGAQ Advocacy Action Plan/ Annual Conference Resolutions

The LGAQ is committed to member driven advocacy and working with members to build stronger local government and more resilient local communities.

The Local Government Association of Queensland's 2022 Advocacy Action Plan (AAP)²¹ is a roadmap designed to highlight the top policy positions and funding priorities councils believe are critical to ensuring Queensland flourishes and our communities thrive.

Relevant Advocacy Action items to this submission are:

AAP 123 - Implement electronic (scanned) counting practices for the 2024 local government elections.

²⁰ <https://www.lgaq.asn.au/downloads/file/183/2019-lgaq-policy-statement>

²¹ <https://www.lgaq.asn.au/downloads/file/475/lgaq-advocacy-action-plan-2022>

Annual Conference Resolutions

As outlined above, at the 2022 LGAQ Annual Conference, member delegates unanimously endorsed the following resolution:

“The LGAQ calls on the State Government to retain the current voting system for local government elections, respecting the views of Queenslanders, Queensland councils and the recommendations of the State-commissioned report into local government elections.”

This resolution was proposed, moved and seconded by the LGAQ Policy Executive (mover Mayor Jane McNamara – Flinders Shire Council, seconder Mayor Jenny Hill – Townsville City Council).

The LGAQ firmly believes the introduction of compulsory preferential voting at local government elections would lead to the politicisation of these elections, which would be to the detriment of the sector and the communities they represent.

Queensland councils voted at a special general meeting in April 2019 to reject planned changes to the Local Government Electoral Act (LGEA) to introduce Compulsory Preferential Voting and Proportional Representation.

Comprehensive polling by Colmar Brunton found 70 percent of Queensland voters were happy with the current system governing council elections.

The LGAQ ran the “Hands off my council” campaign on behalf of members to oppose these changes.

The State Government subsequently ruled out any such amendments.

This motion is designed to reinforce the views of Queensland councils against any moves to attempt to reintroduce these changes.