



ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Ms NA Boyd MP
Mr ST O'Connor MP
Mr DG Purdie MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms M Salisbury (Acting Committee Secretary)
Ms L Pretty (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE ELECTORAL LEGISLATION (POLITICAL DONATIONS) AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 20 AUGUST 2018

Brisbane

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The committee met at 10.17 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Electoral Legislation (Political Donations) Amendment Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet. My name is Linus Power, the member for Logan and chair of the committee. With me here today are Ray Stevens MP, member for Mermaid Beach and deputy chair; Nikki Boyd, member for Pine Rivers; Sam O'Connor, member for Bonney; Kim Richards, member for Redlands; and Dan Purdie, member for Ninderry.

On 16 May 2018 Mr Michael Berkman MP, member for Maiwar, introduced a private member's bill into the Queensland parliament. The parliament referred the bill to the Economics and Governance Committee for examination with a reporting date of 16 November 2018. The purpose of the hearing this morning is to hear evidence from stakeholders to assist the committee in its examination of the bill.

The hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. Any person may be excluded from the hearing at my discretion or by order of the committee. The hearing is being recorded and broadcast live on the parliament's website. Media may be present and will be subject to my direction. The media rules are available from committee staff if required.

All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobile phones off or switch them to silent. Only the committee and invited witnesses may participate in the hearing. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

BRAGG, Ms Jo-Anne, CEO and Solicitor, Environmental Defenders Office (Qld) Inc.

GRUDZINSKAS, Ms Kate, Solicitor, Environmental Defenders Office (Qld) Inc.

CHAIR: I welcome the representatives from the Environmental Defenders Office and invite you to make a short opening statement after which committee members may have some questions for you.

Ms Bragg: First of all, I would like to thank the committee for giving us this opportunity to present our views. As you may be aware, I am the CEO and solicitor at Environmental Defenders Office Queensland, a longstanding community legal centre. Our role is providing environmental resources, planning and other related legal advice to the community, conservation groups, community groups and individuals to provide access to justice, because those members of our community generally cannot afford legal advice whereas developers, mining companies and government have much better access to legal advice. We are from the same family as the Women's Legal Service and the Caxton Legal Centre, which might be better known examples to you of community legal centres.

In terms of who our clients are, they are from a wide variety of walks of life here in Queensland. We have many rural clients—for example, the 60 landholders and locals from the Oakey Coal Action Alliance. We have represented them in relation to stage 3 of Acland in the Land Court and higher courts. We also represent conservation groups, koala protection groups and local neighbourhood groups. Through this work we have come to have views and opinions on law reforms that are important for democracy, community rights and protection of the environment.

To emphasise, our office does not support, promote or oppose any political party. Our views are our own based on our experience, but part of our job is to critique or make suggestions on policies or legislation put forward—whoever is in government. With your permission, I would like to hand up a document from our website that makes it plain that we do not support or oppose any political party. By coincidence, that statement is at the back of an article from our website that was put out prior to the last state election. We sent requests for information relating to political donations and integrity to all political parties asking for a response. We are very strongly interested in this issue. With your permission, I would like to hand up that article, which has at its back the note that we are not politically supporting or opposing any party.

CHAIR: You wish to give it to the committee?

Ms Bragg: For it to be tabled.

CHAIR: You wish it to be tabled by the committee?

Ms Bragg: Yes.

CHAIR: We have a process which we are just checking off. Do you have copies for other members?

Ms Bragg: Unfortunately, of this one, no. The relevant page is at the back.

CHAIR: Would you like to continue?

Ms Bragg: We have put our general policy and an outline of the reforms we want to see on our website and we have actively tried to engage the community over time. We have appeared before other committees of this House—for example, strongly supporting the ban on developer donations through other legislation introduced by the government. We are strongly supportive of those reforms that came through banning developer donations.

This bill amends the Electoral Act and the Local Government Act, and in short form prohibits the making of political donations by for-profit corporations to candidates in state or local government elections, candidates, groups of candidates, third parties and so on. It is essentially making a broad prohibition against political donations by for-profit companies. It is based on New South Wales legislation. We think this is an excellent idea and we strongly support it. This is consistent with what we have argued for through submissions and public advocacy over a period of time.

On 14 August the Crime and Corruption Commission Queensland released a report titled *Culture and corruption risks in local government*. I see that members of the CCC will be presenting before you shortly and I do not want to repeat what they will say, but in summary this is a very important report. It includes relevant sections; for example, chapter 6 about inappropriate relations between council and the private sector. In summary, we consider that the material in that report strongly supports the need for a bill such as the one you are considering today.

In relation to current examples in the media which further support passage of a bill such as we are considering today to ban political donations by for-profit companies, I seek leave to hand up a newspaper article. We have multiple copies for members of the committee. It is titled 'CCC launches corruption probe into Moreton Bay Regional Council'. The relevance of this is that, while there is an investigation on and we make no comment about where the investigation might end up, it is an example of an investigation relating to a political donation that is not a property developer. It is an example of a for-profit company that is of the nature that we say should be covered by legislation such as this bill. With your permission, Chair?

CHAIR: We have to go through a process when considering things to be tabled so if you would like to continue.

Ms Bragg: I do not propose to say any more than that of expressing very strong support for this bill and what it is trying to achieve. I do note that it is based on New South Wales legislation. Any concerns about the Commonwealth Constitution I do not believe are major concerns because New South Wales has done something similar.

CHAIR: Thank you very much, Ms Bragg. Are there any questions from the committee?

Mr STEVENS: Thanks, Mr Chair.

Ms Bragg: Excuse me, Mr Chair, I did have some very brief additional comments on some additional elements that should be added to the bill. Would you like me to hold off on those comments or make them very quickly?

CHAIR: You have already expended the five minutes for the opening statement quite significantly. If you are asked questions about that, you might undertake to do that at that stage. I thought you had concluded. We have given you more than the five minutes that we ask people to speak to in their opening statements.

Mr STEVENS: Ms Bragg, are you a voluntary CEO for the EDOQ?

Ms Bragg: No.

Mr STEVENS: You are a paid CEO. That is fine.

Ms Bragg: For the last 27 years.

Mr STEVENS: Okay. Where does the EDO get its funds from to fund the organisation that you are CEO of?

Ms Bragg: Approximately 20 per cent is from the state government, and we provide services mentioned to a wide range of community groups, conservation groups, individuals both rural and urban—

Mr STEVENS: The question is where you get your funding from. Where is the 80 per cent from?

CHAIR: Member for Mermaid Beach, please let the witness answer.

Ms Bragg: The other 80 per cent is by a number of initiatives. For example, we ran Swim for the Reef in January which raised a fair bit of money. We ran a debate for justice which involves members of the legal community, retired judges and so forth which is also a fundraiser. We do crowdfunding appeals—if you google us you will come across some of them—which support particular cases such as to help the farmers at Acland in relation to their objection to Acland stage 3. Other cases relate to climate change. We seek donations from the public to do law reform work such as here today. There is quite a wide range of funding.

Mr STEVENS: Are there public financials available on your financial organisation?

Ms Bragg: I am not sure if it is on our website, but I am very happy to send you a copy of our annual report including the financials.

Mr STEVENS: That is good. When you say that the state government funds you to the point of 20 per cent, how long has that funding has been in place?

Ms Bragg: The 20 per cent, as you would appreciate, varies depending on how much we fundraise from other sources in any one year.

Mr STEVENS: Yes.

Ms Bragg: Basically, we have been funded by the state government since 1992, apart from a brief period when we were defunded under the Newman LNP government. The incoming Palaszczuk government restored our funding because they saw there was a need for our services to the community.

Mr STEVENS: During the period—

CHAIR: We want to examine the bill before us.

Mr STEVENS: It is very important, in terms of the group that we have appearing before this committee on a bill about public donations, political donations, to know where their funding is coming from. Ms Bragg, you are telling me that, under Labor governments from 1992, with the exception of the LNP government from 2012 to 2015, approximately 20 per cent of your funding has been through Labor government funding of the EDO in Queensland.

Ms Bragg: The 20 per cent has varied over time. I should point out that over most of that period we also received federal funding from both conservative and Labor governments. It is a little bit complex to generalise.

Mr STEVENS: That was not mentioned in your first statement to the committee about your funding. First up, it was 20 per cent from the state government and then it was 80 per cent from other areas such as fundraising et cetera. How much is the federal government funding the EDO?

Ms Bragg: Today?

Mr STEVENS: Over those periods that you were talking about.

Ms Bragg: This can only be approximate.

Mr STEVENS: Yes.

Ms Bragg: Approximately \$100,000, which might have been 50 per cent over about 20 years. In fact, federal funding continued up to and including December—and I would have to check the date—but basically George Brandis cancelled our funding when he was Attorney-General.

Mr STEVENS: Thank you. Federal funds have funded EDO Queensland, not EDO nationally?

Ms Bragg: There are a number of EDOs in each state and territory, and prior to that date they each received some amount of federal funding and varying amounts of state funding. I think the point here is that we are very accountable in very many ways for our funding. We have 10,000 supporters, both rural and urban. We have very broad support because we provide a service that is much needed.

I am very happy to send you our annual report with the funding details, but the last 27 years of our variation of funding I think is not terribly helpful in terms of addressing very important issues in the bill. My opening remarks were cut short because we were going to have questions—not cut short;

you mentioned five minutes. I think this is not very helpful. We think the bill should go further. We think there should be public funding of elections. We are very concerned that the definition of 'lobbyists' is too narrow.

Mr STEVENS: I have no further questions, Mr Chair.

Mr PURDIE: Apart from the fundraising that you do and the government funding that you get, do you receive any larger donations from other lobbyists or interest groups like GetUp! or similar groups?

Ms Bragg: No, we do not receive donations from GetUp!. We apply to different philanthropic organisations from time to time and sometimes we gain grants from those. Basically, we have mixed funding. There is no-one driving our views and opinions; they are our own.

Mr PURDIE: If you get those donations, they would be available in your annual report?

Ms Bragg: Not necessarily by name. We take account of whether particular donors wish their names to be suppressed. Basically, to be quite clear, the views we express are our own and we have very wide support. You can google us and see the breadth of support we get through public donations.

Mr PURDIE: You talked about amendments, but we had run out of time. I have a question about this betterment tax, which I assume is one of your proposed amendments. I read your submission and I thank you for that. If my interpretation is correct, if a property developer were to profit from the rezoning of a parcel of land, some money should be injected back into that community. Is that one of the amendments that you were hoping to talk about—this betterment tax? Can you explain that?

Ms Bragg: I think it is a very positive idea, because it would end windfall gains through developers who are able to push and lobby for changes to planning schemes. There is a lot of pressure from developers to rezone or change property, which then rises in value. The concept of the betterment tax is that if that occurred then a certain amount of the gain in value should be returned to the state in the public interest.

CHAIR: I have concerns about the question of tax and the incidence of tax. You might apply the tax to one entity but the tax falls upon others. In that case, where we put a tax on a change in use and the expansion and the opening up of land, is there not a transfer of wealth? That would increase the cost of new housing and new apartments and therefore restrict supply and be a transfer of wealth effectively from people who are seeking to buy their first house to those who already own that land. The incidence of tax would be a tax on new homebuyers, first-time homebuyers.

Ms Bragg: I think that is a very fair question. I think the reality is that the property development industry makes very large profits. Their shareholders and individual members make very large profits. It is really capturing some of their profits through the betterment tax, which does not need to be passed on to struggling house buyers in the market.

CHAIR: But within a market of constrained supply, that might well fall upon those who are seeking to enter the market for the first time and also increase the value of the homes for those who already own houses. It is effectively a transference from those who do not own land to those who do.

Ms Bragg: There are complexities in the concept. It is not a new concept. Many planners and economists have promoted and discussed this concept. There are complexities, but it would remove a huge incentive to property developers pushing, perhaps through illegitimate means, to get land rezoned to become more valuable land and scooping up the benefit.

Ms RICHARDS: I bring you back to the bill from a donations perspective. You do not think that the legislation that was recently passed addresses concerns about property developers wielding influence in terms of zoning changes?

Ms Bragg: I think it was an excellent initiative, but we really need a broader ban on the for-profit corporations. I gather what has happened in New South Wales is that there have been enterprise foundations, or initiatives thought up to try to thwart these bans. A broader ban would be more effective in trying to control corruption and lead to better quality decision-making.

CHAIR: I notice your submission states, 'EDO Qld supports the intent of the Bill.' There is a difference between supporting the bill and supporting the intent of the bill to restrict donations. Your submission goes on to suggest that, alternatively, there should be a cap on the expenditure of candidates and other parties. It seems that you are very supportive of the intent of the bill but have concerns about the mechanism of its execution. Instead, you are suggesting as an alternative a cap on the expenditure of candidates. Would you like to expand on that cap on the expenditure of candidates?

Ms Bragg: Certainly. We support the bill, but there are other mechanisms that can also potentially achieve a similar object of trying to make our decision-making fairer and less subject to negative influences. Capping expenditure is another way of reducing, if you like, the influence of large inflows of money to particular candidates so that they are better able to promote themselves and have connections with those who have donated. A cap on expenditure is one mechanism. Publicly funded elections is another mechanism. We think these are all valuable mechanisms that could be very successful but they were not included in the bill. We are mainly focused on the bill.

CHAIR: Are there any further questions?

Ms Bragg: There is one further document. With your permission, I would like to hand it up.

CHAIR: Are there any further questions?

Mr O'CONNOR: Does your organisation receive any corporate donations?

Ms Bragg: A couple of our donors might be incorporated, but they are family business type corporations.

Mr O'CONNOR: I note in your annual report you have over \$800,000 from nearly 4,000 donations, with none of them listed. Are any of those corporates?

Ms Bragg: A few would be incorporated. As I have mentioned, we get our funding from a wide variety of sources. With respect, there have been no allegations of impropriety against us. We are dealing with a bill to try to address major issues and concern about democracy and potential corruption in Queensland. I suggest the scrutiny should be on the bill. I have answered your questions reasonably.

CHAIR: I do not think anyone is suggesting that you had not, Ms Bragg. You had another document that you thought was of benefit to the committee?

Ms Bragg: Yes, Chair. I am sorry, we used so much time on the question asked by the member for Mermaid Beach that I forgot to seek your leave to hand this up, but I will do that now.

CHAIR: Is leave granted?

Ms Bragg: This is just an example. This is an ABC news article about former resources minister Ian Macfarlane and what we call the revolving door between government and industry. Part of our proposals is that there should be—

CHAIR: Ms Bragg, you covered some of this in your submission. Is there anything additional that is useful here?

Ms Bragg: Only that it is a current example in Queensland relating to the business and industry revolving door.

CHAIR: Certainly. You know that the committee has rules about redactions of those issues but you still seek to table that again?

Ms Bragg: Sorry, Chair. Could you explain that again, please?

CHAIR: There are very strict rules about information that is able to be tabled. We will take this into account. As we have had to do with your report, we may make redactions in accordance with the rules of parliament.

Ms Bragg: Certainly. That is absolutely fine. Whatever is normal procedure I am happy to follow.

CHAIR: Okay. Thank you very much.

ALSBURY, Mr Paul, Senior Executive Officer, Corruption, Crime and Corruption Commission

DOCWRA, Mr Mark, Deputy Director, Legal, Crime and Corruption Commission

CHAIR: While we have the opportunity, we might table these two documents that have been put before us. My understanding is that the third one has been tabled before, at the inquiry into the Belcarra bill. It is already on the table. I move that the first two documents be tabled. That is carried.

I now welcome Paul Alsbury and Mark Docwra from the Crime and Corruption Commission. I invite you to make a short opening statement after which committee members may have some questions for you. Either or both of you may wish to contribute to the opening statement.

Mr Alsbury: Thank you. Good morning, Chair, Deputy Chair, and other members. I did not intend to make an opening statement. The submission made by the Crime and Corruption Commission speaks for itself. Given the evidence of Mr MacSporran before this committee on 28 March 2018, that would not be a surprise to the committee. I am certainly happy to take whatever questions the committee has, though.

CHAIR: We have the submission of Mr MacSporran, who cannot be here today. Are there any questions for Mr Alsbury or Mr Docwra?

Mr STEVENS: Mr MacSporran at previous inquiries was very clear in his direction in relation to further banning, if you like, following on from the previous legislation we had in terms of further bans on donations et cetera, that any proposed banning, at least at the state level, of particular types of other donations should be the subject of a fair and equitable and reasonable inquiry before such steps were taken. I take it that is still the CCC's view on the matter in terms of your submissions in those sorts of areas and consideration of the High Court ruling which basically said that there had to be a reason to ban political donations rather than just a flat across-the-board 'do not give political parties any money', if you like.

In view of those already published areas and the bill we have before us today which seeks to ban corporate bodies, as opposed to not-for-profits et cetera, as Mr MacSporran said, in the ideal world we would have a ban on all donations. Is that an ideal world? In fact, is it not reasonable that people who, as the High Court said, have nothing in particular to gain out of a donation, other than a philosophical support of one idealistic party as opposed to another idealistic party—and there are several idealistic parties running around in politics at the moment—should be able to put their money where their mouth is, if you like?

CHAIR: That is a very long question. The general principle at the end is the important one

Mr Alsbury: That is really a philosophical question. I think Mr MacSporran would have been speaking from a corruption prevention point of view when he was saying that in an ideal world we would not have any political donations. The High Court has held that there is an implied freedom of political communication. I suppose as a lawyer—Mr MacSporran is a lawyer, I am a lawyer and Mr Docwra is a lawyer too—we can conveniently look to bodies such as the High Court to give us guidance around those things. You do make a fair point, Mr Deputy Chair. I have no doubt that there are people who make political donations because they are sympathetic to philosophical positions adopted by candidates and political parties. I do not reject that notion, but from an anti-corruption point of view the ideal position would be no political donations.

Mr STEVENS: But we will still have to spend \$65 million a year on a CCC for other corruption matters. It is not all about donations. Some matters are about people taking graft et cetera, so we still need the CCC. The legal point I am trying to get to is that the High Court—and it is the ultimate decision-maker in terms of where Australia goes under the rule of law, and this is in relation to political donations that we are talking about banning here—has said that unless there are evidentiary connections between a political donation and an outcome then people should be able to make political donations. Is that not the High Court decision that you, as an enforcement body, have to deal with?

Mr Alsbury: There has to be a sound evidentiary basis for prohibiting political donations across-the-board. That is correct.

CHAIR: Just adding to that, it seems implied in the evidence that Mr MacSporran gave to us that you actually considered whether to make recommendations to go further and felt constrained by that evidentiary basis?

Mr Alsbury: Thank you for the question. I do not think it is correct to say that we considered it. We felt that it was important to clarify the scope of our investigation and that there was not evidence, based on the investigation we did, to extend the prohibition further.

Ms BOYD: I have a question around how the CCC would identify and quantify an identified risk of actual or perceived corruption in the context of local and state government.

Mr Alsbury: In terms of?

Ms BOYD: What is your base? How do you work through that?

Mr Alsbury: Thank you for your question. Are you saying beyond developer donations?

Ms BOYD: Yes.

Mr Alsbury: We would look at a number of things. We would look at the history of complaints that have come into the organisation, trends that we had found based on an examination of those complaints. If we were conducting such an inquiry we would look at what other jurisdictions had found and we would look at what had been going on in the course of history. For example, in the case of the developer donations it had been an issue for decades which had been examined on numerous occasions both in Queensland and elsewhere, so that was one of the things that the CCC could identify.

CHAIR: The High Court decision in *Unions NSW & Ors v New South Wales* dealt with the implied freedom of speech and donations to political parties, but when there is a third-party campaigner making independent third-party campaigns, such as the political action committees that are prevalent in the United States, that might also be an implied freedom of speech allowing a corporate entity to make a third-party campaign separate from a political party that may have the same intent and function. Would that also be constrained by the High Court decision?

Mr Alsbury: I am not a constitutional law expert, I should say. I do not think anyone is proclaiming to be. I would imagine it potentially would be constrained based on the reasoning, if you wanted to prohibit those sorts of donations, yes.

CHAIR: I may have put you on the spot. In this case it would not be a donation but instead a corporate entity making a campaign about a particular issue that they found value in, separate to any donations process. That could possibly be perceived as a third-party donation but making their own decision, such as in the case of the mining tax where miners started their own organisation to campaign directly on a particular issue on TV, in print and with all sorts of advertisements. There is presumably a freedom of speech for those entities that would be similarly identified as in the case that we have had before us.

Mr Alsbury: Thank you for the question. Yes, I would imagine so. It is not simply political parties that get to engage in political communications. Those are political issues that those corporations are talking about and engaging with members of the public about so there would be similar freedoms subject to similar protections.

CHAIR: In the United States we have seen a transference away from political parties to third-party political action community campaigns. If that freedom of speech was upheld we may see the intent of banning corporate donations defeated by that being transferred to third-party campaigns. I may be expanding too much.

Mr Alsbury: I am just thinking through the question. If the prohibition—

CHAIR: Is on donations—

Mr Alsbury: Yes.

CHAIR: And there is an implied freedom of speech to corporations to do campaigns, they may, taking guidance from political parties or not taking guidance from political parties, run third-party campaigns which have an implied freedom of speech protection.

Mr Alsbury: I think that is a fair point, because if corporations cannot get their messages to political parties and get their messages out through political parties then they are going to find another medium to do it and they will be more direct in relation to that. I think what you are saying is correct.

Mr STEVENS: Mr Docwra, if a corporate body gave a substantial financial donation to a body to lobby on their behalf and there was an outcome that benefited that corporate body because of the lobbying by that body on their behalf, as I alluded to earlier in the case in New South Wales, would that be, in the CCC's view, a cause for investigation? If a corporate body gives a donation to a lobby body, if you like, that lobbies to deliver an outcome to suit the corporate body and that is successful, does that in some way constitute grounds for a CCC investigation?

Mr Docwra: My answer is that you have to meet the test of whether there is a reasonable suspicion of corrupt conduct involved in that. In the plain circumstances that you describe, on the face of it I would say no, but you would have to look at all the circumstances.

Mr STEVENS: Is there a level of financial donation, if you like, to a body—in other words, is it 80 per cent or is it 20 per cent—that may influence that body to lobby on their behalf?

Mr Docwra: The High Court in Unions New South Wales certainly spoke about the magnitude of the size of the donation and of the larger the size of the donation the greater the tendency it has to corrupt. That is all I would say in relation to that. It is not a question of ‘is it 20 per cent or is it 80 per cent?’

Mr STEVENS: That was in the High Court decision.

Mr Docwra: Yes. If you look at those paragraphs that the chairperson’s submission spoke to, they specifically point to that issue of the question of the magnitude of the donation relates to the tendency, and that is why New South Wales has caps in its electoral expenditure laws.

CHAIR: I do not think there were any questions taken on notice. My understanding is that the report that the member for Mermaid Beach and deputy chair was seeking is publicly available and can be downloaded. That concludes this hearing. Thank you for the information you have provided today. A transcript of these proceedings will be available on the committee’s parliamentary web page in due course. I declare this public hearing closed.

The committee adjourned at 10.57 am.