



# **Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections**

**Report No. 47, 56th Parliament  
Economics and Governance Committee  
September 2020**

## Economics and Governance Committee

<b>Chair</b>	Mr Linus Power MP, Member for Logan
<b>Deputy Chair</b>	Mr Ray Stevens MP, Member for Mermaid Beach
<b>Members</b>	Ms Nikki Boyd MP, Member for Pine Rivers <sup>1</sup>
	Mr Lance McCallum MP, Member for Bundamba <sup>2</sup>
	Mr Sam O'Connor MP, Member for Bonney
	Mr Dan Purdie MP, Member for Ninderry <sup>3</sup>
	Ms Kim Richards MP, Member for Redlands
	Mr Trevor Watts MP, Member for Toowoomba North <sup>4</sup>

### Committee Secretariat

<b>Telephone</b>	+61 7 3553 6637
<b>Fax</b>	+61 7 3553 6699
<b>Email</b>	<a href="mailto:egc@parliament.qld.gov.au">egc@parliament.qld.gov.au</a>
<b>Technical Scrutiny Secretariat</b>	+61 7 3553 6601
<b>Committee webpage</b>	<a href="http://www.parliament.qld.gov.au/egc">www.parliament.qld.gov.au/egc</a>

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<sup>1</sup> Ms Nikki Boyd MP, Member for Pine Rivers, until 19 May 2020

<sup>2</sup> Mr Lance McCallum MP, Member for Bundamba, from 19 May 2020

<sup>3</sup> Mr Daniel Purdie MP, Member for Ninderry, until 19 May 2020

<sup>4</sup> Mr Trevor Watts MP, Member for Toowoomba North, from 19 May 2020

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## Abbreviations

ACT	Australian Capital Territory
Administration Councillors of BCC	Administration Councillors of Brisbane City Council
ALP	Australian Labor Party (State of Queensland)
BCC	Brisbane City Council
BRU	Brisbane Residents United
CCC	Crime and Corruption Commission
committee	Economics and Governance Committee
CPI	Consumer price index
ECQ	Electoral Commission of Queensland
Electoral Act	<i>Electoral Act 1992</i>
Electoral Amendment Act	<i>Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020</i>
Electoral Amendment Bill	Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019
HRA	<i>Human Rights Act 2019</i>
ICCPR	International Covenant on Civil and Political Rights
JSCEM	Joint Standing Committee on Electoral Matters (Parliament of Australia)
LGAQ	Local Government Association of Queensland
LGEA	<i>Local Government Electoral Act 2011</i>
LNP	Liberal National Party of Queensland
Minister	Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs
NSW	New South Wales
NSW JSCEM	Joint Standing Committee on Electoral Matters (Parliament of New South Wales)
NT	Northern Territory
Operation Belcarra Report	Crime and Corruption Commission, <i>Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government</i> , October 2017

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OSCAR	Organisation of Sunshine Coast Association of Residents
POQA	<i>Parliament of Queensland Act 2001</i>
QHRC	Queensland Human Rights Commission
QLGRA	Queensland Local Government Reform Alliance Inc
QLS	Queensland Law Society
Redlands2030	Redlands2030 Inc
SCRC	Sunshine Coast Regional Council
Standing Orders	Standing Rules and Orders of the Legislative Assembly
UK	United Kingdom

All Acts are Queensland Acts unless otherwise stated.

## Chair's foreword

This report presents a summary of the Economics and Governance Committee's inquiry into the feasibility of introducing expenditure caps for Queensland local government elections.

In undertaking the inquiry, and as per the terms of reference set by the Legislative Assembly, the committee considered each of the matters set out in recommendation 1 of the Crime and Corruption Commission's Operation Belcarra Report regarding the possible capping of local government electoral expenditure in the state.

The committee has made seven recommendations in total, which set out some general principles for the introduction of a local government expenditure cap scheme in Queensland, following on from the establishment of a state electoral expenditure cap scheme earlier this year.

On behalf of the committee, I thank those individuals and organisations who made written submissions and gave evidence to the inquiry. I also thank our Parliamentary Service staff for their assistance.

I commend this report to the House.



Linus Power MP

Chair

## Recommendations

1. That the definition of electoral expenditure in the *Local Government Electoral Act 2011* be aligned with the definition in the *Electoral Act 1992*, subject to further consultation with stakeholders on relevant inclusions and exclusions.
2. That a sliding scale of electoral expenditure caps for Queensland local government elections be established with reference to the number of electors in the relevant ward/division or local government area, and including differentiation for mayoral and councillor candidates and divided and undivided councils where appropriate.
3. That further analysis and consultation with stakeholders be undertaken to determine caps of appropriate magnitude, with particular reference to the models proposed by the Department of Local Government, Racing and Multicultural Affairs and the Local Government Association of Queensland.
4. That further analysis and consultation be undertaken to determine an appropriate cap for third party electoral expenditure, and a system of third party registration be established to support the monitoring and enforcement of third party compliance with the established cap.
5. That electoral expenditure incurred by an associated entity for Queensland local government elections be treated as though it was incurred by the electoral participant with which the entity is associated.
6. 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 consultation be undertaken on the potential prescription of scheme offences as integrity offences.
7. That the Department of Local Government, Racing and Multicultural Affairs coordinate with the Electoral Commission of Queensland to ensure election participants have access to a suite of informational resources and training to support their compliance with the established scheme.

## 1 Introduction

### 1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Queensland Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.<sup>5</sup>

The committee's primary areas of responsibility include:

- Premier and Cabinet, and Trade
- Treasury, and Infrastructure and Planning, and
- Local Government, Racing and Multicultural Affairs.

Section 92 of the POQA provides that, in addition to performing a legislative scrutiny and general oversight role in relation to its primary areas of responsibility, a portfolio committee is also responsible for dealing with any issue referred to it by the Legislative Assembly or under another Act.<sup>6</sup>

### 1.2 Inquiry referral

On 28 November 2019, the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (Electoral Amendment Bill) was introduced into the Legislative Assembly and referred to the committee for consideration and report.<sup>7</sup>

On the introduction of the Electoral Amendment Bill, the Legislative Assembly agreed to a motion that the committee, when examining the Bill, also consider recommendation 1 from the Crime and Corruption Commission's (CCC's) Operation Belcarra Report<sup>8</sup> regarding the feasibility of introducing expenditure caps for Queensland local government elections, with a view to the model commencing after the 2020 local government elections.<sup>9</sup>

The CCC's recommendation 1 was:

*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:*

1. *expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities*
2. *the merit of having different expenditure caps for incumbent versus new candidates*
3. *practices in other jurisdictions.*<sup>10</sup>

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<sup>5</sup> *Parliament of Queensland Act 2001* (POQA), s 88 and Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

<sup>6</sup> POQA, s 92(2).

<sup>7</sup> Hon Yvette D'ath MP, Leader of the House and Attorney-General and Minister for Justice, Motion – Referral to Economics and Governance Committee, *Record of Proceedings*, Queensland Parliament, 28 November 2019, pp 3945-3949, 3950-3951.

<sup>8</sup> Crime and Corruption Commission (CCC), *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Operation Belcarra Report), October 2017.

<sup>9</sup> Hon Yvette D'ath MP, Leader of the House and Attorney-General and Minister for Justice, Motion – Referral to Economics and Governance Committee, *Record of Proceedings*, Queensland Parliament, 28 November 2019, p 3951.

<sup>10</sup> CCC, Operation Belcarra Report, October 2017, p 47.

### 1.3 Inquiry process

On 2 December 2019, the committee invited stakeholders and subscribers<sup>11</sup> to make written submissions to the inquiry.

On 19 December 2019, the committee published an issues paper which set out some background information on the inquiry, including a brief comparative summary of local government expenditure cap models in other jurisdictions, and various key issues for consideration in determining the features and parameters of a local government expenditure cap scheme.

Submissions to the inquiry closed on 20 January 2020, after a period of seven weeks. The committee received and accepted 11 submissions, some of which were made as joint submissions on the Electoral Amendment Bill and on the inquiry (a list of submitters is provided at **Appendix A**).

The committee held a public hearing on the Electoral Amendment Bill on 20 January 2020, during which inquiry matters were briefly canvassed. In addition, the committee held a public hearing for the inquiry via videoconference on 23 April 2020 (a list of the individuals and organisations who appeared at the hearings is provided at **Appendix B**).

The committee also examined two proposed local government electoral expenditure cap models for Queensland, together with established models in operation in other Australian and international jurisdictions (see **Appendix C**).

The inquiry issues paper, submissions, hearing transcripts, and other inquiry documents are available on the committee's inquiry webpage.<sup>12</sup>

### 1.4 Committee recommendations

After consideration of the matters outlined in the terms of reference, including information gathered by the committee and provided by stakeholders, the committee recommends:

1. That the definition of electoral expenditure in the *Local Government Electoral Act 2011* be aligned with the definition in the *Electoral Act 1992*, subject to further consultation with stakeholders on relevant inclusions and exclusions.
2. That a sliding scale of electoral expenditure caps for Queensland local government elections be established with reference to the number of electors in the relevant ward/division or local government area, and including differentiation for mayoral and councillor candidates and divided and undivided councils where appropriate.
3. That further analysis and consultation with stakeholders be undertaken to determine caps of appropriate magnitude, with particular reference to the models proposed by the Department of Local Government, Racing and Multicultural Affairs and the Local Government Association of Queensland.
4. That further analysis and consultation be undertaken to determine an appropriate cap for third party electoral expenditure, and a system of third party registration be established to support the monitoring and enforcement of third party compliance with the established cap.
5. That electoral expenditure incurred by an associated entity for Queensland local government elections be treated as though it was incurred by the electoral participant with which the entity is associated.

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<sup>11</sup> The committee contacted over 1,200 individuals or organisations who had subscribed to receive committee email updates or who had been identified by the committee as possible stakeholders for the inquiry.

<sup>12</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/InquiryExpenditurecaps>. All web references are accurate as at 1 September 2020.

6. 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 consultation be undertaken on the potential prescription of scheme offences as integrity offences.
7. That the Department of Local Government, Racing and Multicultural Affairs coordinate with the Electoral Commission of Queensland to ensure election participants have access to a suite of informational resources and training to support their compliance with the established scheme.

## 2 Background

Equity in elections is a fundamental principle of Australia's democratic system of government. This is reflected in the tenet of 'one vote, one value', which is enshrined in laws governing the distribution of electoral boundaries. It is also recognised that all voters should have a fair opportunity to participate in elections, including a fair and equal chance of nomination and election as a candidate. In this respect, there have been growing concerns about the shortcomings of our regulatory system, and particularly the lack of restrictions on electoral campaign funding and spending.<sup>13</sup>

The trend of increasing campaign expenditure has been a well-recognised characteristic of the Australian electoral landscape in recent decades. In what has been described as a campaign 'arms race', political parties and other election participants have spent progressively larger amounts on broadcast advertising and other campaign messaging across an expanded range of media platforms.<sup>14</sup>

On the one hand, donations or electoral spending are recognised as a form of political participation and can be seen as an expression of 'democratic will'.<sup>15</sup> On the other, however, there are concerns that wealth can purchase a dominant share of the political discourse (and by extension, votes), with implications for equity and for the breadth of options and viewpoints presented and discussed. The growing reliance on private donors to finance campaign spending requirements also creates the potential for real or perceived influence on decision-making, eroding public confidence in the integrity of the political process.<sup>16</sup> In 2019, 56 per cent of respondents to the Australian Electoral Study reported that they believed that government is run primarily for the benefit of the 'big end of town'.<sup>17</sup>

While much of the public attention has been focussed on these issues at the federal and state levels, the effect is also significant at the local government level. This is particularly the case because in contrast to other levels of government in Queensland, there is no public funding for local government elections, meaning candidates, parties and other electoral participants are completely dependent on private funds.

A number of Australian and international jurisdictions have now adopted, or are in the process of adopting, electoral expenditure caps.<sup>18</sup> While some of these spending caps apply only at the state or

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<sup>13</sup> See, for example: Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011; Senate Select Committee into the Political Influence of Donations, *Political influence of Donations*, Commonwealth of Australia, 2018; Danielle Woods and Kate Griffiths, 'Who's in the room? Access and influence in Australian politics', Grattan Institute Report No. 2018-12, September 2018; CCC, Operation Belcarra Report, October 2017, p 45.

<sup>14</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011; Senate Select Committee into the Political Influence of Donations, *Political influence of Donations*, Commonwealth of Australia, 2018.

<sup>15</sup> Professor Anthony Gray, cited in CCC, Operation Belcarra Report, October 2017, p 45.

<sup>16</sup> CCC, Operation Belcarra Report, October 2017, p 45; Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011.

<sup>17</sup> The Australian Election Study is a representative public opinion survey that has been fielded after every election since 1987. In 2019, 59 per cent of survey participants indicated they believed that government is run 'entirely for the few big interests in town' or 'mostly for the few big interests in town'. See: Sarah Cameron and Ian McAllister, *Trends in Australian Political Opinion: Results from the Australian Election Study, 1987-2019*, Australian National University, 2019, p 100.

<sup>18</sup> The United Kingdom, Canada and New Zealand all cap electoral spending, and two-thirds of European countries also limit the amount a candidate can spend on an election campaign. See: International Institute for Democracy and Electoral Assistance, *Political Finance Database – Regulation of Spending*, December 2019, <https://www.idea.int/data-tools/question-view/562>

national level,<sup>19</sup> New South Wales (NSW), Tasmania, New Zealand (NZ) and the United Kingdom (UK) (among other international examples<sup>20</sup>) have also imposed caps on expenditure for local government elections. The Australian Capital Territory (ACT), which does not have a separate system of local government as seen in each of the states and the Northern Territory (NT), has also capped electoral expenditure since 2012.<sup>21</sup>

In Queensland, calls for the introduction of electoral expenditure caps for local government elections have intensified in recent years, with the matter brought to the fore by the CCC in its Operation Belcarra Report on the findings of its investigation of the same name.

## 2.1 Operation Belcarra Report

The CCC commenced Operation Belcarra in September 2016 after receiving complaints about the conduct of candidates for several councils during the 2016 Queensland local government elections. The objectives of Operation Belcarra were to:

- determine whether candidates had committed offences under the *Local Government Electoral Act 2011* (LGEA) that could constitute corrupt conduct, and
- examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.

In its Operation Belcarra Report, the CCC highlighted the findings of various previous inquiries into local government, that ‘even relatively modest amounts of funding can allow candidates to swamp their opponents in terms of media exposure and other promotional activities’.<sup>22</sup> Consistent with these previous findings, the CCC reported:

*... an analysis of 2016 donation disclosure data by the CCC showed that, for candidates in the Gold Coast, Ipswich, Moreton Bay and Logan councils, the total amount of money they received was one statistically significant predictor of whether or not they were successful at the election (the other being incumbency...). In these councils, every extra \$10,000 that a candidate received increased their chance of being elected by 51 to 56 per cent, all else being equal. Given some candidates outspend their rivals by tens and even hundreds of thousands of dollars, money can clearly have considerable effects on local government elections.<sup>23</sup>*

The CCC identified that such ‘considerably uneven financial competition between candidates’<sup>24</sup> can arise as a result of the financial advantages experienced by wealthy, self-funded candidates or, as is more common, the receipt of significant donor funding by some candidates.<sup>25</sup> In this respect, the CCC reported that in 2016, while approximately 80 per cent of candidates did not report receiving

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<sup>19</sup> New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory have all implemented expenditure caps at the state/territory level in recent years, and Queensland’s Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019, on which the committee reported on 7 February 2020, proposes to reintroduce expenditure caps for Queensland state government elections (caps were previously in place from 2011 to 2013).

<sup>20</sup> For example, various Canadian municipalities have distinct expenditure caps schemes in place, which typically involve a base sum (higher for mayors than councillor candidates), plus a set amount per voter.

<sup>21</sup> Limits on electoral expenditure in the ACT were introduced in 2012 by the *Electoral Amendment Act 2012* (ACT), in response to a 2011 review of campaign financing laws in the jurisdiction undertaken by the ACT Assembly’s Standing Committee on Justice and Community Safety.

<sup>22</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>23</sup> CCC, Operation Belcarra Report, October 2017, pp 43-44.

<sup>24</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>25</sup> CCC, Operation Belcarra Report, October 2017, p 44.

donations, the top six candidates (according to total donation value) together received over \$1.2 million, or 25 per cent of donations.<sup>26</sup>

Regardless of the source of the financial inequity, the CCC concluded that prospective candidates can be deterred from running for council in the first instance, and even if they do contest, may be unable to properly compete with well-funded candidates,<sup>27</sup> with the effect of limiting the diversity, and potentially also the quality of candidates who contest local government elections.

The CCC reported that this was a concern raised by a number of people spoken to as part of Operation Belcarra, and particularly in relation to mayoral elections. For example, one interview subject commented:

*I think that the scenario we have at the moment is you can only run for the mayoralty if you've got a bucket of money, because you can't afford to run against someone who's got virtually unlimited funds. That's why we're not getting the candidates that we should get.*<sup>28</sup>

The CCC noted that in response to these inequities and associated concerns about the potential for wealth to buy an unequal share of political influence and voice, a number of jurisdictions have sought to promote more even financial competition in elections through the introduction of donation or expenditure caps;<sup>29</sup> and that the Local Government Association of Queensland (LGAQ), had written to the Queensland Government and Queensland Opposition in September 2017 to propose the establishment of local government expenditure caps in this state.<sup>30</sup>

Consistent with these 'recent calls from the LGAQ', the CCC agreed that there would be value in capping expenditure in future local government elections,<sup>31</sup> but also noted a potential drawback of expenditure cap regimes that it suggested should be considered and addressed in devising any expenditure cap model.<sup>32</sup> That is:

*... although expenditure caps can improve equity, and have advantages over donations caps in this regard, they do not guarantee even financial competition and can embed advantages enjoyed by certain candidates. For example, incumbent candidates typically need to spend less money promoting their election because they are already known to voters ... This is an advantage that new candidates do not have, and expenditure caps may exacerbate their disadvantage by preventing them from spending the money required to raise their public profile and increase their chances of success.*<sup>33</sup>

As outlined in section 1.2 of this report, the CCC therefore recommended (recommendation 1):

*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:*

- 1. expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities*
- 2. the merit of having different expenditure caps for incumbent versus new candidates*
- 3. practices in other jurisdictions.*<sup>34</sup>

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<sup>26</sup> CCC, Operation Belcarra Report, October 2017, p 44.

<sup>27</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>28</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>29</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>30</sup> CCC, Operation Belcarra Report, October 2017, p 46.

<sup>31</sup> CCC, Operation Belcarra Report, October 2017, p 47.

<sup>32</sup> CCC, Operation Belcarra Report, October 2017, p 46.

<sup>33</sup> CCC, Operation Belcarra Report, October 2017, p 46.

<sup>34</sup> CCC, Operation Belcarra Report, October 2017, p 47.

## 2.2 Recent developments in Queensland

Since the publication of the Operation Belcarra Report, the LGAQ has continued to advocate for the introduction of electoral spending caps for local government elections in Queensland, including setting out a proposal and some key scheme parameters in its *Beyond Belcarra* plan released in April 2018.<sup>35</sup>

In March 2019, the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) issued a consultation paper on proposed local government reforms which also included an expenditure cap model with some alternative caps to those proposed by the LGAQ.<sup>36</sup> However, the proposed caps were subsequently excluded from the resulting legislative amendments, with the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs (Minister) advising that the government had determined that the matter required further consultation, such that electoral spending caps ‘will not be implemented to apply to the 2020 Local Government elections’.<sup>37</sup>

In November 2019, the government introduced the Electoral Amendment Bill, which contained amendments to establish expenditure caps for state government elections, among a series of other significant electoral finance and other reforms, and which was accompanied by the referral to the committee of this inquiry. The legislation was subsequently passed and enacted, with the new state government electoral expenditure caps commencing ahead of the upcoming general election in October 2020.<sup>38</sup>

## 2.3 Stakeholder support

There was broad support amongst submitters to the inquiry for the introduction of expenditure caps for Queensland local government elections,<sup>39</sup> with the LGAQ noting its historical advocacy for such a regulatory scheme.<sup>40</sup>

The Organisation of Sunshine Coast Association of Residents (OSCAR) and Brisbane Residents United (BRU) confirmed their belief that such regulation is necessary to address the ‘trend of increasing campaign expenditure by political parties and other election participants’.<sup>41</sup> The two organisations submitted:

*While it may be argued that donations or electoral spending are recognised as a form of political participation and can be seen as an expression of ‘democratic will’ we are very concerned that*

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<sup>35</sup> Local Government Association of Queensland (LGAQ), ‘More transparency needed ‘Beyond Belcarra’’, media release, 28 April 2020, <https://www.lgaq.asn.au/news/article/256/more-transparency-needed-beyond-belcarra>

<sup>36</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 12, <https://www.dlgrma.qld.gov.au/resources/publication/local-government/information-paper-key-amendments-under-consideration.pdf>

<sup>37</sup> Hon Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, ‘Consultation informs Local Government reforms’, media release, 1 April 2019, <https://statements.qld.gov.au/statements/86986>

<sup>38</sup> Enacted as the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*, with the relevant provisions governing the expenditure cap regime commencing on 1 August 2020.

<sup>39</sup> Melva Hobson, President, Organisation of Sunshine Coast Association of Residents (OSCAR), public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 5; Greg Smith, Committee Member, Queensland Local Government Reform Alliance Inc (QLGRA), public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 5; Chris Walker, Secretary, Redlands2030 Inc (Redlands2030), public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 5; Elizabeth Handley, President, BRU, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 6; Redlands2030, submission 2, pp 1-2; OSCAR, submission 3, pp 2-3; BRU, submission 5, p 1; LGAQ, submission 7, p 2; Administration Councillors of Brisbane City Council (Administration Councillors of BCC), submission 9, p 4.

<sup>40</sup> Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 1; submission 7, p 9.

<sup>41</sup> OSCAR, submission 3, p 2; BRU, submission 5, p 2.

*increasingly only the wealthy or those supported by special interest groups are the only ones that benefit from this so called "expression of democratic will".<sup>42</sup>*

Further, the identified benefits of implementing caps, OSCAR and BRU stated:

*... include reducing the costs of elections and waste minimization, enabling candidates with fewer financial resources to stand for election on a more equal footing and reducing the demand for campaign funds and the consequent scope for undue influence by donors to be compelling reasons for expenditure caps.<sup>43</sup>*

Mr Neil Cotter also considered that the introduction of expenditure caps at the state government level should be replicated at the local government level, submitting that:

*... Local politics suffers less from media saturation and the corresponding large expenditure though that is no reason to not have expenditure caps, and may well change with social media.*

*The undue influence of money in politics is still very much an issue, though perhaps more through donations and funding of campaigns. Wealthy candidates have a massive advantage at present.<sup>44</sup>*

Further, OSCAR argued:

*... Local government is the tier of government closest to the community and most impactful on the amenity of citizens. We should be encouraging "grass-roots" campaigning in council elections characterised by attendance at community meetings, door-knocking, letterboxing and building a team of volunteers etc; none of this requires significant financial resources and should not be overwhelmed by extensive media campaigns and direct mail which are costly to fund.<sup>45</sup>*

In most instances, however, stakeholders also emphasised that they provided their support on a conditional or 'in principle' basis, noting that the design and characteristics of any regulatory scheme would determine the extent to which it is effective.<sup>46</sup> The Administration Councillors of Brisbane City Council (Administration Councillors of BCC), for example, submitted that its support was provided 'on the clear proviso that the result is a proper level playing field';<sup>47</sup> while the LGAQ emphasised the need to ensure spending caps 'equally prevent the potential distorting influence of electoral expenditure by third parties with aligned interests and do not restrict freedom of political communication'.<sup>48</sup>

Mr Chris Walker, Secretary, Redlands2030 Inc (Redlands2030), stated that while his organisation supported reform in this area, 'this has to be considered as part of a full understanding of how candidates can influence voters'.<sup>49</sup>

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<sup>42</sup> OSCAR, submission 3, p 2; BRU, submission 5, p 2.

<sup>43</sup> OSCAR, submission 3, p 2; BRU, submission 5, p 2.

<sup>44</sup> Submission 10, p 29.

<sup>45</sup> OSCAR, submission 3, p 3. OSCAR also acknowledged, however, that 'extensive grass-roots campaigns for candidates with existing full-time employment may be difficult to manage from a time perspective'.

<sup>46</sup> OSCAR, submission 3, pp 2-3; BRU, submission 5, p 1; LGAQ, submission 7, p 2; Administration Councillors of BCC, submission 9, p 4.

<sup>47</sup> Submission 9, p 4. The Administration Councillors of BCC also submitted that their calls for a level electoral playing field related particularly to 'expenditure limits for third party organisations that will either support a particular party, oppose a particular party, or both'.

<sup>48</sup> Submission 7, p 2.

<sup>49</sup> Chris Walker, Secretary, Redlands2030, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 6.

Further, the Queensland Law Society (QLS), which expressed concerns about potential ‘chilling effects’ of any spending restrictions, particularly on third parties,<sup>50</sup> called for any established local government expenditure cap scheme to be consistent with the new system of state government expenditure caps where possible, as ‘any variations in the frameworks that apply to different levels of government will only create further unnecessary administrative burden and increase the risk of unintentional non-compliance through a lack of awareness’.<sup>51</sup>

The committee’s consideration of the key principles and features of an expenditure cap scheme for local government elections in Queensland is set out in the chapters to follow.

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<sup>50</sup> Queensland Law Society (QLS), submission 4, p 1.

<sup>51</sup> QLS, submission 4, p 2. The QLS also called for consultation to be undertaken with affected stakeholders before legislation to introduce any local government expenditure cap scheme is introduced into the Legislative Assembly.

### 3 A local government electoral expenditure cap scheme for Queensland

#### 3.1 Human rights considerations

As previously noted, the LGAQ, like a number of other submitters to the inquiry, emphasised the importance of ensuring that any local government electoral expenditure cap scheme introduced in Queensland appropriately supports equality of access to participation in our representative democracy and addresses concerns about the undue influence of political finance without disproportionately restricting electoral participants' freedom of expression and political communication.<sup>52</sup> In addition to being critical to ensuring the fairness and appropriateness of any electoral spending restrictions, the consideration of the interaction of any electoral expenditure cap scheme with human rights is also essential to ensuring the legislation is compatible with the state's *Human Rights Act 2019* (HRA).

The provisions of the HRA recognise that human rights may be limited by legislation, provided that the limitation is justified as the most proportionate way to achieve an important purpose (and provided that the purpose is consistent with a free and democratic society based on human dignity, equality and freedom).<sup>53</sup>

Rights engaged in an expenditure cap model include the freedom of expression (s 21 of the HRA) and the right to take part in public life (s 23 of the HRA), both of which are related to the implied freedom of political communication in the *Commonwealth Constitution*.<sup>54</sup>

In terms of the freedom of expression recognised in s 21, the Queensland Human Rights Commission (QHRC) noted in its submission that political speech enjoys particular protection as a form of expression, serving to encourage public debate that is central to the functioning of Queensland's democratic system of government.<sup>55</sup>

Section 23 of the HRA provides that every person in Queensland has the right, and is to have the opportunity without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The section is based on article 25 of the International Covenant on Civil and Political Rights (ICCPR).<sup>56</sup> In respect of this right, the QHRC advised the committee:

*In considering this article, the United Nations Human Rights Committee has stated that the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election, and to advertise political ideas. In that same General Comment, the Committee also observed that reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined, or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.*<sup>57</sup>

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<sup>52</sup> LGAQ, submission 7, p 10; OSCAR, submission 3, p 3; BRU, submission 5, p 17.

<sup>53</sup> *Human Rights Act* (HRA), s 13.

<sup>54</sup> Queensland Human Rights Commission (QHRC), submission 8, p 3.

<sup>55</sup> Submission 8, p 7.

<sup>56</sup> QHRC, submission 8, p 8.

<sup>57</sup> Submission 8, p 9.

In designing a cap system that is compatible with human rights, the QHRC submitted that in a democratic society, 'such caps must be a proportionate response to evidence of issues based on the test in s 13(2) of the HRA', which includes demonstrating that there are no other less restrictive and reasonably available ways to achieve the purpose.<sup>58</sup>

As an example of the difference in the compatibility with human rights of distinct approaches to addressing the undue influence of political finance on equality of opportunity for participation in a representative democracy, the QHRC advised:

*The European Court of Human Rights has noted that a limitation on election expenditure is compatible with freedom of expression under the European Convention on Human Rights. In considering this jurisprudence, the Victorian Parliamentary Scrutiny of Acts and Regulations Committee noted the difference between donation caps and expenditure caps:*

*...an expenditure cap ensures that candidates that have a monetary advantage (not necessarily because they have voter support but because they are personally well off or have wealthy benefactors) will not have an unfair advantage in regard to other candidates with lesser financial resources. A cap on political donations operates differently in that it does not level the playing field in terms of expenditure per se but rather limits the amount of donations.<sup>59</sup>*

In terms of the design of the parameters of any electoral expenditure cap scheme, further, the QHRC noted that:

*In Unions NSW v New South Wales, the High Court considered provisions of the Electoral Funding Act 2018 (NSW), which reduced the amount of electoral expenditure that could be incurred by third party campaigners from \$1,050,000 to \$500,000. Third-party campaigners were also prohibited from acting with others to exceed the cap. Such third parties were defined as individuals and organisations that incur expenditure for the dominant purpose of promoting or opposing candidates or political parties, but who were not themselves formally associated with a political party or candidate. The Court unanimously found that the provisions impermissibly burdened the implied freedom of political communication.*

*... Chief Justice Kiefel, and Justices Bell and Keane found this was due to the lack of justification for why the cap on third parties needed to be reduced, and whether this was due to what amount would be necessary to allow third-party campaigners to reasonably communicate their message. Other Justices too found there was a lack of justification from the government as to why the cap should be halved.*

*... Nonetheless, Chief Justice Kiefel, and Justices Bell and Keane assumed that the purposes of the capping provisions — which were to ensure that wealthy voices could not drown out the voices of others, and to level the playing field — were legitimate. Justice Gageler similarly found that the purpose of privileging some voices in the political process may be permissible, if it is fair to restrict those that may otherwise dominate the debate and drown out others.*

*... the functional distinction between a political party which aims to form government and a third party campaigner justifies a substantial variation between the amount of the cap imposed on the electoral expenditure of that political party and the amount of the cap imposed on the electoral expenditure of a third party campaigner.<sup>60</sup>*

The QHRC advised that this decision, and other relevant authorities, suggest that having particular restrictions on third parties to elections will not be a disproportionate limitation on rights per se.

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<sup>58</sup> QHRC, submission 8, p 9.

<sup>59</sup> Submission 8, pp 9-10. Footnotes omitted from original.

<sup>60</sup> Submission 8, p 10. Footnotes omitted from original.

However, to avoid breaching the implied freedom of political communication, decisions about how the particular prohibitions or restrictions of any scheme have been determined (such as monetary caps), must be justified.<sup>61</sup>

The committee has kept this in mind during its consideration of inquiry evidence and formulation of its inquiry recommendations.

### 3.2 The definition of electoral expenditure

The definition of ‘electoral expenditure’ can have a significant impact on certain candidates or parties, depending on spending priorities. Some jurisdictions have focussed on applying limits only to advertising or electoral communications, while in others a more expansive approach is engaged. In some cases travel or transport expenses are included, though it has been highlighted that this could disproportionately affect candidates in large local government areas.<sup>62</sup> The relevant New Zealand definition does not include the operation of a vehicle on which electoral advertising appears if the vehicle ‘is used in good faith by the candidate as the candidate’s personal means of transport’.<sup>63</sup> There are also varying approaches in relation to expenditure on research associated with the electoral campaign, among other identified expenses.

Currently, the meaning of electoral expenditure for local government elections is defined in the LGEA for the purpose of setting out the expenses to be recorded in disclosure returns for an election. The definition, as set out in s 123 of the LGEA, is as follows:

- (1) *Electoral expenditure, in relation to an election, is expenditure incurred (whether or not during the election period for the election) on, or a gift in kind given that consists of—*
- (a) *broadcasting a political advertisement during the election period; or*
  - (b) *publishing a political advertisement in a journal during the election period; or*
  - (c) *publishing a political advertisement on the internet during the election period, even if the internet site on which the publication is made is located outside Queensland; or*
  - (d) *displaying a political advertisement at a theatre or other place of entertainment during the election period; or*
  - (e) *producing and distributing a political advertisement mentioned in paragraph (a), (b), (c) or (d); or*
  - (f) *producing and distributing other material used during the election period that—*
    - (i) *advocates a vote for or against a candidate, group of candidates or registered political party; and*
    - (ii) *is required under section 177 [which requires the author to provide the particulars of the person who authorised an advertisement, handbill, pamphlet or notice] to include the name and address of the author of the material or of the person authorising the material; or*
  - (g) *carrying out an opinion poll or other research relating to the election during the election period if the dominant purpose of the opinion poll or research is to, directly or indirectly—*
    - (i) *promote or oppose the election of a candidate or group of candidates; or*
    - (ii) *promote or oppose a registered political party in relation to the election; or*
    - (iii) *otherwise influence voting at the election.*

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<sup>61</sup> Submission 8, p 11.

<sup>62</sup> Government of Tasmania, *Electoral Act Review: Interim Report*, December 2019, p 38.

<sup>63</sup> *Local Electoral Act 2001* (NZ), s 104, ‘electoral expenses’, para (e).

(2) *In this section—*

**journal** means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

**political advertisement** means an advertisement that advocates a vote for or against a candidate, group of candidates or registered political party.

This largely accords with the definition of electoral expenditure in the *Electoral Act 1992* (Electoral Act) which is employed for state government elections, although the latter adopts different phrasing and articulates examples in greater detail, and has also been expanded to some extent to incorporate expenditure on issues-based campaigning to ‘otherwise influence voting at the election’.<sup>64</sup>

That is, for state government elections in Queensland, electoral expenditure:

- includes any expenditure (including the giving of a gift in kind), which is incurred for, or related to a campaign purpose, being the purpose of promoting or opposing a political party in relation to an election, promoting or opposing the election of a candidate; or *otherwise influencing voting at the election*<sup>65</sup> (emphasis added), and
- which constitutes one of the following types of expenditure:
  - (a) expenditure for designing, producing, printing, broadcasting or publishing material for an election, including, for example—
    - (i) an advertisement for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and
    - (ii) material for publication in newspapers or magazines, on billboards, or as brochures, flyers, signs, how-to-vote cards or information sheets; and
    - (iii) material for distribution in letters; or
  - (b) expenditure for the cost of distributing material for an election, including, for example, the cost of postage, sending SMS messages or couriers; or
  - (c) expenditure for carrying out an opinion poll or research; or
  - (d) expenditure for contracted services related to an activity mentioned in paragraph (a), (b) or (c), including, for example, fees for consultants or the provision of data; or
  - (e) expenditure of another kind prescribed by regulation to be a kind of electoral expenditure.<sup>66</sup>

As a distinction from the definition in the LGEA, the Electoral Act definition also clarifies that electoral expenditure for Queensland state government elections does not include:

- expenditure incurred substantially for or related to a local government election of Queensland or another state, or the election of members of parliament of another state or the Commonwealth
- expenditure on factual advertising about a matter that relates mainly to the administration of a registered political party, including, for example, a meeting of a branch, division or committee of the party for an organisational purpose, or to select a candidate to nominate for election
- expenditure incurred employing staff for a campaign purpose

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<sup>64</sup> *Electoral Act 1992* (Electoral Act), s 199 and s 199A (‘Meaning of campaign purpose’).

<sup>65</sup> Electoral Act, s 199(1) and s 199A.

<sup>66</sup> Electoral Act, s 199(2).

- expenditure incurred by or for an elected member for which the member is entitled to receive an allowance or entitlement (including costs associated with any accommodation, services or other entitlements) that the member is entitled to receive as part of their remuneration package, and
- expenditure of a kind prescribed by regulation not to be a kind of electoral expenditure.<sup>67</sup>

Further, where third parties are concerned, the Electoral Act sets out a ‘dominant purpose’ test which is to apply. That is, s 199 provides:

*(5) Expenditure incurred by a third party is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose.*

*(6) However, expenditure incurred by a third party is not electoral expenditure if the dominant purpose for which the expenditure is incurred is another purpose, even if the expenditure is also incurred for, or achieves, a campaign purpose. Example of other purposes for incurring expenditure— to educate or raise awareness about an issue of public policy.*

### 3.2.1 Stakeholder views

Stakeholder commentary indicated that the major campaign costs associated with advertising or electoral communication for local government elections would generally be captured by the existing LGEA definition.

For example, the Queensland Local Government Reform Alliance Inc (QLGRA), OSCAR and BRU submitted that major campaign expenses include, but are not limited to, corflutes, brochures, flyers, social media advertisements, paid advertising in traditional media (TV, radio and print), postage or delivery costs (distributing a political advertisement or other election material), how-to-vote cards, website costs (including domain registration, website hosting and web development), and signage or billboards (including magnetic vehicle signage and car wrapping, signage for market stalls and polling booths, and large billboards in roadside or other public areas).<sup>68</sup>

Redlands2030, which also cited spending on t-shirts for campaign team members, acknowledged expenditure incurred on all of these major campaign costs in the Redland City Council elections, albeit to varying degrees.<sup>69</sup>

Further, BRU submitted:

*Another category of expenditure would include costs of research associated with the electoral campaign, for example surveys of voter intention or satisfaction, focus groups and data mining.<sup>70</sup>*

These submitters agreed that all of these types of expenses should continue to be recognised as electoral expenditure under the LGEA,<sup>71</sup> with the QLGRA and BRU also emphasising that rental costs and donations in kind with respect to any electoral expenses should be costed at the full commercial value of the service/goods supplied.<sup>72</sup>

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<sup>67</sup> Electoral Act, s 199(4), (7) and (8).

<sup>68</sup> Queensland Local Government Reform Alliance, submission 1, p 2; OSCAR, submission 3, p 3; BRU, submission 5, p 17. The QLGRA submitted that polling booth materials and other costs associated with ‘being known’ to the public (eg ‘10 x 6 metre billboards’), ‘should be subject to expenditure cap limits’.

<sup>69</sup> Submission 2, p 1. For example, Redlands2030 submitted that Redland City does not have a television station of its own, and that advertising on Brisbane metropolitan television stations is not a cost-effective approach for candidates in Redland City Council elections, with a similar story for radio ‘except that Redlands has a community radio station which accepts ‘sponsorship’.

<sup>70</sup> Submission 5, p 17.

<sup>71</sup> See, for example: QLGRA, submission 1, p 2; OSCAR, submission 3, p 3; BRU, submission 5, p 17.

<sup>72</sup> QLGRA, submission 1, p 2; BRU submission 5, p 17.

The QLGRA and BRU also considered, however, that the LGEA definition should be extended to include the use of paid personnel for letterboxing and manning pre-poll and polling booths (paid campaign staff),<sup>73</sup> with BRU additionally arguing for the inclusion of ‘rental of office space for campaign purposes’<sup>74</sup> – the latter being a potential campaign cost also acknowledged by Redlands2030.<sup>75</sup> These additional inclusions are both features of the definitions employed in NSW and in the UK, but are contrary to the definition employed under the Electoral Act, and particularly its specific exemption of the costs of engaging paid staff for a campaign purpose with respect to state government elections, as set out under s 199(4).

As a further area for consideration, BRU suggested that perhaps some expansion of the definition, or some form of other related amendment or intervention, may be required to address the advent of increasingly ‘party political advertising’ masquerading as council communications, with disproportionate benefits for those in office:

*Large councils like the Brisbane City Council afford a very large advantage to incumbent councillors and the major parties. The fact that Brisbane City Council marketing material is increasingly adopting colours and branding that make it largely indistinguishable from that of the LNP is a disturbing trend that is ethically if not legally corrupt. This culminated in LNP postal vote forms and electoral material for the Lord Mayor and local councillors that many people took to be from the Brisbane City Council— an impression supported by a seemingly Brisbane City Council post office box return address on the prepaid envelope. The increase in the amount and frequency of this material has been striking in the past few years, as has the use of advertising such as that for the ‘Better Brisbane’ campaign that was seriously ramped up close to the election.<sup>76</sup>*

In terms of exclusions, OSCAR and BRU were in agreement that travel or transport expenses should continue to be omitted from the definition of ‘electoral expenditure’,<sup>77</sup> as the inclusion of this type of spending would be ‘impractical and potentially unfair given the significant number of geographically large LGAs in Queensland’.<sup>78</sup> Whitsunday Regional Council also pointed out the potentially discriminatory effects of including such expenses for a local government with a large geographic area,<sup>79</sup> while the QLGRA also confirmed its view that ‘fuel for personal vehicles’ should continue to be exempted.<sup>80</sup>

In addition, the QLGRA submitted that exclusions should remain in place for:

*... meal costs (cafés etc) during the campaign, food, water and shade etc for booth workers and donations to community groups.<sup>81</sup>*

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<sup>73</sup> QLGRA, submission 1, p 4; BRU, submission 5, p 17. The QLGRA submitted that ‘We are aware of booth workers getting paid by political parties and possibly even genuinely independent candidates and this is currently undeclared election expenditure that should be part of any expenditure cap’.

<sup>74</sup> Submission 5, p 17.

<sup>75</sup> Submission 1, p 2.

<sup>76</sup> Elizabeth Handley, President, BRU, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 7.

<sup>77</sup> OSCAR, submission 3, p 4; BRU, submission 5, p 17.

<sup>78</sup> OSCAR, submission 3, p 4.

<sup>79</sup> Submission 6, p 4. Whitsunday Regional Council submitted that in such instances, ‘the costs of campaigning can naturally be higher due to market characteristics and remoteness’.

<sup>80</sup> Submission 1, p 2.

<sup>81</sup> Submission 1, p 2.

Further, consistent with existing provisions of the LGEA and Electoral Act, OSCAR and BRU also identified as necessary exclusions:

*Services/assistance provided by volunteers - eg where a website might be developed by a volunteer who is not otherwise engaged in such work, volunteers who manage and staff pre and poll attendance, volunteers who establish campaign committees and undertake administrative and communications responsibilities, volunteers who coordinate a candidates programs, diaries and participation in candidate forums.*<sup>82</sup>

With respect to issues-based campaigning by third parties, there was discussion during the committee's inquiry into the Electoral Amendment Bill about the scope for such campaigning to be used as a proxy for a particular party, under the guise of broader public advocacy.<sup>83</sup> In this respect, the Queensland Council for Civil Liberties cited the limitations of American disclosure laws applying only to political communication that expressly advocates the election or defeat of parties or candidates, and which has been 'rightly criticised as permitting so called 'issue' ads which whilst missing any statement expressly advocating the election of a candidate, are functionally equivalent of an ad containing such a statement'.<sup>84</sup> At the same time, however, it was also emphasised that definition of electoral expenditure should not be too wide-ranging as to impose limits on broad public policy education and awareness-raising efforts, with stakeholders critiquing the breadth of the definition as initially drafted in this regard. Prior to the passing of the Electoral Amendment Bill, however, the relevant provisions were amended in order to balance these concerns, through the inclusion of the 'dominant purpose' test that ensures this type of issue-based campaigning by third parties:

- is captured under the definition of electoral expenditure in the Electoral Act if the dominant purpose of the incurred expenditure is a campaign purpose, but
- is not captured if the dominant purpose is another purpose.<sup>85</sup>

This amendment included the insertion in the relevant provision of a note clarifying that 'to educate or raise awareness about an issue of public policy is an example of other purposes for incurring expenditure; if the dominant purpose for which the expenditure is incurred is another purpose, even if the expenditure was also incurred for, or achieved, a campaign purpose'.<sup>86</sup>

While stakeholders made no reference to the inclusion or otherwise of issues-based campaigning activities in the definition of electoral expenditure for a proposed scheme, they did make clear that they considered a balanced approach to the treatment of third party expenditure was required. For example, Redlands2030 noted that regulation must ensure that 'regulatory intent cannot be avoided through support from helpful third parties', but also that community groups are not unduly prevented

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<sup>82</sup> OSCAR, submission 3, p 3; BRU, submission 5, p 18.

<sup>83</sup> See discussion: Economics and Governance Committee, Inquiry into the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2020, public hearing transcript, Brisbane, 20 January 2020, p 24.

<sup>84</sup> Queensland Council for Civil Liberties, submission (42) to the Inquiry into the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2020, p 6.

<sup>85</sup> Electoral And Other Legislation Amendment Bill (Accountability, Integrity and Other Matters) Amendment Bill 2020, amendments to be moved during Consideration in Detail by the Honourable Yvette D'Ath MP, explanatory notes, p 17.

<sup>86</sup> Electoral And Other Legislation Amendment Bill (Accountability, Integrity and Other Matters) Amendment Bill 2020, amendments to be moved during Consideration in Detail by the Honourable Yvette D'Ath MP, explanatory notes, p 17. See also Electoral Act, s 199(6).

from ‘advocating on particular issues’.<sup>87</sup> (See further discussion of the treatment of third parties in report section 3.7).

On a final note, from an overall perspective, the Electoral Commission of Queensland (ECQ) submitted that consistency between definitions in the LGEA and Electoral Act would ensure candidates for state and local government in Queensland are operating under similar systems, as well as creating efficiencies for stakeholder education and awareness activities, and for compliance and enforcement.<sup>88</sup>

#### *Committee comment*

Stakeholder commentary largely suggested that the existing definition of electoral expenditure in the LGEA already appropriately captures many of the major campaign expenses for electoral participants.

However, it is also clear that amendments will be required to appropriately capture the full range of election expenses being incurred, including by third parties engaged in campaigning with the primary purpose of influencing voting at the election.

The committee therefore considers that the definition of electoral expenditure in the LGEA should be aligned with that in the Electoral Act, to support an appropriately defined local government expenditure cap scheme. The committee notes that this would also support the insertion of additional detail regarding the application of the provisions, to further clarify their scope for electoral participants.

However, noting stakeholder suggestions about the potential inclusion of costs for office accommodation and paid campaign staff, as in some other jurisdictions, the committee also considers that further consultation should be undertaken on relevant inclusions and exclusions prior to the introduction of a proposed legislative scheme.

### **3.3 The model approach and determining variables**

The CCC has acknowledged that there is considerable variability in campaigning practices and spending across Queensland’s 77 councils, reflecting variation in the population size and characteristics of their local government areas. In terms of funds contributed for campaign expenditure, the CCC noted that in 2016, there were 29 councils (38 per cent) for which no donations were reported, while around \$2 million of the \$4.3 million in reported donations were received by candidates in the four councils that were the focus of Operation Belcarra,<sup>89</sup> with varying levels of expenditure in the remaining 44 councils.

Recognising this type of variation in the costs and characteristics of campaigning across different local government areas, most jurisdictions have developed some form of scaled system of spending caps, with applicable limits determined by the number of electors and/or other factors. This reflects the premise that expenses associated with communicating with the electoral population increase as the size of the electoral population increases, albeit recognising that there will be economies of scale that can be harnessed by campaigners for larger populations.

As noted in chapter 2.2 of this report, two expenditure cap models have already been proposed for introduction in Queensland – one model put forward by the LGAQ, and one set out by DLGRMA in a March 2019 consultation paper. In addition, NSW, Tasmania, New Zealand and the United Kingdom all offer other potential models for consideration, as per the CCC’s recommendation (that practices in other jurisdictions be examined as part of the committee’s consideration of the feasibility of

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<sup>87</sup> Chris Walker, Secretary, Redlands2030, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 6.

<sup>88</sup> Submission 11, p 5.

<sup>89</sup> CCC, Operation Belcarra Report, October 2017, p 44. The CCC noted that it would have been preferable to also examine the effect of the total amount of money actually spent on a candidate’s campaign, but that the data required to do this was not available at that time.

introducing a local government expenditure cap scheme). These six models, which are set out in greater detail in Appendix C to this report, all involve some form of sliding scale of caps which are set with reference to the number of constituent electors.

Submitters to the inquiry generally confirmed their support for this form of scaled approach to setting caps, and to the use of the number of constituent electors as the key base variable upon which the relevant caps are to be determined.<sup>90</sup> The QLGRA submitted that this should be the 'sole criterion', and that no differentiation should be made on the basis of 'the nature of the council (eg metropolitan or non-metropolitan)'.<sup>91</sup> OSCAR and BRU also agreed that the council's geographic status should not factor in to the determination of caps, 'provided travel associated expenses are excluded ... as we have suggested'.<sup>92</sup>

Both submitters considered that the different categories of council identified by the Local Government Remuneration Commission might also provide suitable groupings upon which to base any scaled system, stating that as remuneration for councillors and mayors is determined based on council category, 'it could be argued that to base the cap on the category would be appropriate as well'.<sup>93</sup> However, they also noted that the same effect would be 'largely achieved by a regime of sliding caps based on the number of electors'.<sup>94</sup>

### 3.4 Candidate and mayoral caps for divided and undivided councils

Some submitters agreed that electoral spending caps for mayoral candidates should be higher than those for councillor candidates, as reflects their typically higher electoral expenses in many local government areas, albeit recognising that this may be achieved by different mechanisms.<sup>95</sup>

The effect of any cost differential, it was emphasised, is particularly pronounced in the state's 23 divided councils,<sup>96</sup> where mayors must contend with reaching constituents across the whole local government area, as opposed to the smaller electoral population of a division or ward within the local government area which councillor candidates must reach.<sup>97</sup>

OSCAR and BRU submitted:

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

*Of course the amount of expenditure would be considerably lower for most other councils in Queensland.*<sup>98</sup>

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<sup>90</sup> QLGRA, submission 1, p 3; Redlands2030, submission 2, p 3 (with particular reference to the scaled cap models in NSW and New Zealand); OSCAR, submission 3, pp 5-6; BRU, submission 5, pp 19-20; LGAQ, submission 7, pp 9-10 (with particular reference to the proposed LGAQ model).

<sup>91</sup> Submission 1, p 3.

<sup>92</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 19.

<sup>93</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 20.

<sup>94</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 20.

<sup>95</sup> QLGRA, submission 1, p 4; OSCAR, submission 3, pp 5-6; BRU, submission 5, pp 18-19, 21; LGAQ, submission 7, pp 9-10.

<sup>96</sup> In Queensland, local government areas are either: a) divided into divisions/wards containing a certain proportion of the area's electors, with the council comprised of the individual councillors elected for each division; or b) undivided, with the council comprised of a set number of councillors elected for the whole local government area. Mayors are elected separately and have the whole local government area as their constituency.

<sup>97</sup> Submission 1, p 2.

<sup>98</sup> OSCAR, submission 3, p 4; BRU, submission 5, pp 18-19.

The QLGRA submitted in this regard that in divided councils:

*... mayors have to have booth workers at 50 – 60 polling booths unlike divisional candidates who may only need to cover a handful of booths; this is made worse by the continuing growth in pre-polling.*<sup>99</sup>

Further, the QLGRA also stated generally that for most councillors:

*... grass roots techniques such as door-knocking, attendance at public forums, involvement with local residents' and community groups do not need to be expensive and local media offers plenty of opportunity for exposure if a candidate engages with the media.*<sup>100</sup>

In contrast, mayoral candidates in 'mid to large councils ... would find it harder to rely on grass roots campaigning alone'.<sup>101</sup>

The QLGRA also noted, however, that the same could be said for councillor candidates in some larger undivided councils, who must contend with the same electoral population as mayors.<sup>102</sup>

OSCAR and BRU acknowledged that for the most part, provision for higher spending for mayoral candidates and for councillor candidates in larger undivided councils, who face vying for the votes of relatively larger electoral populations, may be achieved by the application of a regime of sliding cap amounts per elector 'based on the number of electors'.<sup>103</sup>

Some models further differentiate between spending for mayoral and councillor candidates in undivided councils, despite their representation of the same number of electors. While the difference in electoral expenses between mayoral and councillor candidates in these local government areas is likely to be less pronounced, it is also the case that mayoral candidates must attract a majority of the local government area's vote to be elected (including through the allocation of preferences), whereas councillor candidates may be elected on the basis of a significantly lower proportion number of electorate votes.

NSW's local government electoral cap model provides for some form of differentiation in permitted electoral spending for mayoral and candidate caps in both types of councils, applying a multiplier effect for mayoral electoral spending limits, such that:

- in an undivided council, the spending limit for a mayoral candidate is 25 per cent higher than the spending limit for a councillor, and
- in a divided council, the spending limit for a mayoral candidate is the sum of the applicable cap for a candidate as councillor in a ward of the local government area, plus 25 per cent of the applicable cap for a candidate as councillor in all other wards of the local government area (eg 100 per cent of the cap for the first ward/division, plus the sum of 25 per cent of the caps for each of the other wards/divisions in the local government area).<sup>104</sup>

In New Zealand, in contrast, there is no inbuilt differentiation between mayoral and councillor candidate caps, with any difference in amounts based on the difference in the number of electors for those candidates.

The two models proposed for Queensland by DLGRMA and the LGAQ, provide a form of hybrid offering, where there is differentiation between mayoral and councillor candidates to a certain extent, but where the number of electors continues to be the primary determinant of the relevant candidate cap.

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<sup>99</sup> Submission 1, p 4.

<sup>100</sup> Submission 1, p 2.

<sup>101</sup> Submission 1, p 2.

<sup>102</sup> Submission 1, p 2.

<sup>103</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 21.

<sup>104</sup> *Electoral Funding Act 2018 (NSW)*, s 31(4).

In settling on a model, Redlands2030 submitted that:

*For so long as we have directly elected mayors in Queensland, any consideration of expenditure caps should be focused on ensuring that money can't buy mayoral election victories.*<sup>105</sup>

Expenditure cap principles can then be 'scaled down to cover divisional councillor candidates', with caps set 'to ensure that election campaigns are functional but not extravagant'.<sup>106</sup>

The quantum of the relevant caps is considered further in section 3.7 of this report.

### **3.5 Incumbency**

As previously noted, in considering the feasibility of introducing expenditure caps for Queensland local government elections the committee was required to have regard to the merit of engaging different expenditure caps for incumbent versus new candidates, as per the CCC's recommendation 1.

Much as the CCC observed, some inquiry submitters also identified considerable electoral advantages enjoyed by incumbent candidates, which could serve to reduce the degree of campaign expenditure required for them to secure the attention of constituents.

Redlands2030, for example, submitted that these 'significant advantages' include 'most obviously that they are being paid full time to be a politician':<sup>107</sup>

*In Redland City, their remuneration package includes some form of vehicle entitlement and many councillors put a personal advertising 'wrap' on their car.*

*As well as benefiting from propaganda issued by the local council as 'newsletters', magazines and media releases, incumbents can promote themselves through mechanisms such as allocation of community grants and attendance at community functions.*<sup>108</sup>

In addition:

*Incumbents may also be able to reuse some of their advertising material from previous elections, such as corflutes.*<sup>109</sup>

Neil Cotter also referenced the 'substantial' advantages of incumbency, citing the benefits associated with 'taxpayer funded staff and offices as well budgets for communicating with the electorate and much higher likelihood of free media by virtue of being in office'.<sup>110</sup>

Mr Cotter considered that some differentiation in the electoral expenditure caps for new versus incumbent candidates may therefore be warranted to somewhat offset such advantages,<sup>111</sup> a position echoed by BRU;<sup>112</sup> while Redlands2030 submitted that an 'alternative way' to deal with this imbalance would be for incumbents' electoral expenditure caps 'to be reduced, say by the value of community grants they personally approve during their term of office'.<sup>113</sup>

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<sup>105</sup> Submission 2, p 2.

<sup>106</sup> Submission 2, p 2.

<sup>107</sup> Submission 2, p 2.

<sup>108</sup> Submission 2, p 2.

<sup>109</sup> Submission 2, p 2.

<sup>110</sup> Submission 10, p 16.

<sup>111</sup> Submission 10, p 29.

<sup>112</sup> Submission 5, p 20. BRU submitted '... we do believe expenditure caps for incumbents should be lower than for new candidates'.

<sup>113</sup> Chris Walker, Secretary, Redlands2030, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 6.

Other submitters, in contrast, considered that there should be no differentiation in candidate caps on the basis of incumbency.<sup>114</sup>

In this respect, OSCAR submitted that while incumbent councillors and mayors may have ‘a decided advantage’ in elections, so too do ‘new candidates who already enjoy a high profile in the community (eg sportspeople)’,<sup>115</sup> and ‘...we do not believe expenditure caps for incumbents should be lower than for new candidates’.<sup>116</sup>

LGAQ Chief Executive Officer Greg Hallam stated that while ‘incumbency certainly is a factor in all this’:

*... the fact that we regularly have people beaten at elections tells me that it is not the great security that people might suggest it is. I looked at these numbers just before I joined this teleconference. There are 33 new mayors in Queensland as a consequence of the elections and around 250-odd new councillors. That is about a third and about 40 per cent. Put simply, if you did a good job and the community was happy, either you were not opposed—and there were quite a few of those folks, 15—or you were returned overwhelmingly. We had many mayors who got 70 per cent of the vote. To use the colloquialism, if you were on the nose and had multiple candidates against you, you got beaten. The system works and it consistently gives those sorts of outcomes, so it does argue a little bit against the idea...<sup>117</sup>*

Neither of the LGAQ or DLGRMA models provided for any form of differentiation in the cap applicable for incumbents, nor do the models engaged in the four other jurisdictions examined by the committee.

#### Committee comment

Noting stakeholder commentary, the committee was not convinced of the benefits of establishing expenditure caps of a different quantum for incumbent versus new local government candidates.

### **3.6 The capped expenditure period**

The period of application for electoral spending limits is another key consideration. For any cap to be effective, it needs to cover the duration of time over which electoral expenditure is typically dispensed. However, it has also conversely been argued that the application of a cap over an extended period could present difficulties for election participants in terms of responding to arising and potentially unforeseen issues in their engagement with electors, with implications for the human rights considerations referenced in section 3.1 of this report.

For both of the two models proposed for Queensland local government elections, respectively by DLGRMA and the LGAQ, it was envisaged that caps would apply across the full four-year term.

For the other four models examined, in contrast, the applicable capped period varies from a significantly shorter period of around a month in the UK at the lower end of the range, up to three months in the New Zealand.

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.<sup>118</sup>

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<sup>114</sup> Greg Hallam, Chief Executive Office, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, pp 2-3.

<sup>115</sup> OSCAR, submission 3, p 6.

<sup>116</sup> OSCAR, submission 3, p 6.

<sup>117</sup> Mr Greg Hallam, LGAQ, public hearing transcript, Brisbane, 23 April 2020, pp 2-3.

<sup>118</sup> QLGRA, submission 1, p 2; OSCAR, submission 3, p 4; BRU, submission 5, p 18. The QLGRA’s support for the application of caps across a full council term related specifically to incumbent candidates.

OSCAR and BRU submitted that spending limits should apply for the ‘full term of council including the election period’, concluding at ‘the declaration of each local government at the end of that term’.<sup>119</sup> These submitters argued that this would ensure that the full range of electoral spending patterns and behaviours can fairly be captured.<sup>120</sup>

The QLGRA advised in this regard that in terms of the timeframe for campaigning for local government elections (and therefore, engaging in electoral expenditure):

*For most candidates with limited funds available typically it might be 4-6 weeks maximum with pre-polling for just 1 week. For independent local candidates it is impossible for them to have booth workers at pre-poll for 2 – 3 weeks.*<sup>121</sup>

In contrast, OSCAR and BRU noted that some other candidates ‘will start their election campaign 12 months prior to the election date’, and that:<sup>122</sup>

*A well prepared candidate, particularly one who is NOT an incumbent will have their election campaign mapped out and materials drafted by September/October of the year preceding the election date.*<sup>123</sup>

For incumbents, further, it was identified that spending may commence even earlier, such that only the capping of expenditure across the full year term would help to reduce any early spending advantage these candidates may have.<sup>124</sup> More specifically, OSCAR and BRU argued that the capping of expenditure across a full term as opposed to a shorter period:

*... prevents ‘pre-spending’ before the commencement of the cap and between Election Day and the Declaration of the Poll. Examples would include printing of advertising material, registration of domain name, web hosting costs etc.*<sup>125</sup>

An examination of individual electoral expenditure returns listed in the ECQ’s electronic disclosure system for candidates, groups of candidates, parties, third parties and associated entities for the 2020 local government elections reveals that the first recorded spending was an incumbent councillor’s \$50 spend on meeting expenses incurred on 25 May 2016. From that first expenditure entry, up to the close of polling day on 28 March 2020, a total of 13,115 returns are listed for expenditure incurred within this period, totalling \$9.854 million.

Looking at each of the six expenditure cap models comparatively:

- Under the NSW model, the capped expenditure period runs from 1 July to polling day, being the second Saturday of September. Prior to the postponement of the 2020 local government elections to September 2021,<sup>126</sup> the capped period was to extend from 1 July 2020 to a planned 12 September 2020 polling day – a period of 74 days (or 10 weeks, four days).

Over an equivalent 74 day period for the 2020 local government elections in Queensland (eg from 15 January 2020 to 28 March 2020), a total of \$8.513 million in electoral expenditure was recorded as being incurred (86.4 per cent of the aforementioned \$9.854 million total).

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<sup>119</sup> Submission 3, p 4.

<sup>120</sup> Submission 3, p 4.

<sup>121</sup> Submission 1, p 2.

<sup>122</sup> Submission 3, p 4.

<sup>123</sup> Submission 3, p 4.

<sup>124</sup> Submission 3, p 4.

<sup>125</sup> OSCAR, submission 3, p 4; BRU, submission 5, p 18.

<sup>126</sup> NSW Office of Local Government, *Circular to Councils: Postponement of the September 2020 Local Government elections*, 25 March 2020, <https://www.olg.nsw.gov.au/wp-content/uploads/2020/03/20-10.pdf>

- Tasmania’s advertising expenditure limits for local government elections apply for a ‘relevant period’ commencing on the 30th day before the notice of election (which must be given on the 8th Saturday before the day on which polls close), and finishing on polling day.<sup>127</sup>

In Queensland, the applicable period would extend from 30 January 2020 to 28 March 2020, during which a total of \$7.726 million in electoral expenditure was recorded as being incurred (72.8 per cent of the \$9.854 million total expenditure).

- New Zealand’s local government expenditure caps apply for a three month period up to the close of polling day (eg in 2019 in New Zealand, the regulated expenditure period extended from 12 July 2019 to the 12 October polling day).<sup>128</sup>

In Queensland, equivalently, for the 2020 local government elections this would have involved a capped period from 28 December 2020 to 28 March 2020, during which electoral spending records indicate that \$8.774 million in electoral expenditure was incurred (82.7 per cent).

- At its maximum, the length of the capped expenditure period under the UK model is a period extends from the day that is 25 working days before polling day and concludes on the polling day.<sup>129</sup>

When applied to the 2020 local government elections in Queensland, this would involve a timeframe from 24 February 2020 to 28 March 2020, during which \$6.221 million in electoral expenditure was recorded as being incurred (58.6 per cent).

- Lastly, if caps were to be applied across a full four-year period as proposed by the LGAQ and DLGRMA, all of the \$9.854 million in total expenditure would be captured.

These simple analyses indicate the difference in the quantity of electoral expenditure that may be captured by the application of different capped periods.

With reference to the four-year capped periods proposed in the DLGRMA and LGAQ models and supported by a number of submitters, questions could be raised as to the relative returns for election participants on any early electoral expenditure, as compared with spending incurred in the lead up to the election, noting the typically higher levels of voter engagement at that time.

At the same time, however, the application of these longer caps, while contrary to most models established in other jurisdictions (and also to the seven-month capped expenditure period now applicable for Queensland state government elections),<sup>130</sup> could serve as a means of reducing the incumbent advantages referenced in section 3.5 of this report.

Ultimately, any determination of the appropriate capture of expenditure over time will also depend significantly on the quantum of caps that are to apply across the capped expenditure period.

### **3.7 Levels of permitted electoral expenditure**

In addressing the magnitude of any electoral expenditure limits set under a sliding scale of caps, submitter commentary generally focussed on the caps engaged under four of the six examined models – those set out by DLGRMA and the LGAQ, and those models employed in NSW and New Zealand.

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<sup>127</sup> *Local Government Act 1993* (Tas), s 3.

<sup>128</sup> *Local Electoral Act 2001* (NZ), s 104.

<sup>129</sup> Electoral Commission (UK), *Local elections in England May 2020, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2019, p 5; *Representation of the People Act 1983* (UK), s 37.

<sup>130</sup> As effected by the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*.

Advocating for the introduction of its own proposed model, the LGAQ advised that it did not support DLGRMA's model:

*... because the LGAQ membership felt they were set too low, thus having a negative impact on political communication. Low caps make it difficult for a candidate for Mayor or Councillor in councils with large populations or large geographic areas to reach electors, due to the naturally high campaigning costs in these circumstances.*<sup>131</sup>

OSCAR and BRU advised that they were in agreement with DLGRMA's model proposals at the time the information paper was issued, and considered that the model proposed by the LGAQ contained caps that were too high. However, they submitted that 'based on feedback from candidates who are intending to contest the upcoming 2020 Council elections, we believe the LGAQ's position may be an acceptable one, particularly for candidates for Councillor positions'.<sup>132</sup> They suggested that perhaps:

*... an expenditure cap quantum somewhere between the figures proposed by the DLGRMA and the LGAQ might be the best outcome?*<sup>133</sup>

OSCAR and BRU also noted, however, that the upper limits of the sliding scale of caps under each of the two models likely would not be affordable for most potential candidates, such that it may remain the case for mayoral elections in particular that 'only the wealthy or the very well-funded will be able to contest ... with any prospect of success'.<sup>134</sup>

The QLGRA, similarly, submitted that they 'believe the amounts may fall in the range suggested by DLGRMA and the LGAQ in early 2019'; however, that 'at this stage we are not supporting a particular model of expenditure cap figures'.<sup>135</sup> The QLGRA stated that 'Even a cap set at \$0.50 per registered voter for both councillor and mayoral candidates above a minimum threshold, will result in the potential for large amounts being expended', and may lead to disparate spending outcomes.<sup>136</sup>

*Interestingly, in the Ipswich 2017 Mayoral by-election if there was a cap of \$0.50 per voter, with 11 candidates and approximately 110,000 voters a collective spend during the election of \$605,000 could have been potentially incurred just to entice people to decide on a new Mayor.*

*Another member who has previously stood for election as a mayoral candidate in another, and smaller LGA with approximately 75,000 electors, spent \$13,000 (2018 by-election, 7 candidates) and \$20,000 (2016 Council elections, 6 candidates).*<sup>137</sup>

Redlands2030, in its submission, stated that expenditure caps 'should be set to ensure that election campaigns are functional but not extravagant'.<sup>138</sup> With this in mind, Redlands2030 submitted:

*The expenditure caps which currently apply in NSW and New Zealand... appear to be sensible and should provide a good starting point for setting caps in Queensland.*<sup>139</sup>

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<sup>131</sup> Submission 7, p 10.

<sup>132</sup> OSCAR, submission 3, p 5; BRU, submission 5, p 20.

<sup>133</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 20.

<sup>134</sup> OSCAR, submission 3, p 6; BRU, submission 5, p 20.

<sup>135</sup> Submission 1, p 2.

<sup>136</sup> Submission 1, p 2.

<sup>137</sup> Submission 1, p 3.

<sup>138</sup> Submission 2, p 2.

<sup>139</sup> Redlands2030, submission 2, p 3.

Stakeholders agreed that an analysis of electoral spending patterns at the 2020 local government elections would aid an evaluation of the relative levels of the caps set under these different models.<sup>140</sup>

However, LGAQ Chief Executive Officer, Greg Hallam, also warned of some of the limitations of electoral spending data from the 2020 elections:

*The caution is: this is the first election with a requirement to disclose electoral expenditure. Secondly, we are all aware of the COVID-19 crisis and how that materially affected the election and the fact there was not any how-to-vote material on the day...<sup>141</sup>*

These limitations notwithstanding, during the committee's public hearing on 23 April 2020, stakeholders provided some initial observations on the rates of electoral spending across Queensland for different types of candidates at the March 2020 elections. For example, Greg Smith, Committee Member, QLGRA, advised:

*We have done analysis of how their expenditure would compare under the department model and under the LGAQ's model. Of the councils that we have looked at—and it's far from the 77—as far as mayoral candidates are concerned there were only three mayoral candidates that exceeded either the department's threshold or the LGAQ's. They were Darren Power, Jenny Hill and—what is really amazing and is obviously a council of interest to us—Noosa, where the successful challenger spent \$71½ thousand. That is interesting when compared with the incumbent, who spent \$7,700. That is an almost a tenfold difference. That resulted in the incumbent losing, albeit by 65 votes. That is clearly an example where expenditure caps would have evened that out. In terms of the successful candidate there—and this should not be interpreted as me being critical of her—either under the departmental model or the LGAQ model she was significantly over the top threshold for a council the size of Noosa.*

*We have also done some analysis of the expenditure of councillor candidates but only in Moreton Bay, Noosa and the Sunshine Coast Regional Council. There are not many of those candidates who in fact overspent under the departmental model or the LGAQ's model. Under the LGAQ's rules there were only three candidates who overspent—and these are only the successful candidates, incidentally—and under the department's rules there were seven, I think. All of that suggests to us a number of things.<sup>142</sup>*

LGAQ Chief Executive Officer, Greg Hallam, noted that in some local government areas, levels of recorded spending have been such that any model caps have been far and away exceeded, with this particularly being the case in Townsville. When appearing before the committee on 23 April 2020, Mr Hallam stated:

*The total disclosed expenditure by candidates in the 2020 Townsville City Council election, where 34 candidates contested the election, sits at \$815,000 so far. The campaign spend in Townsville equates to just over eight per cent of the total spend statewide across 1,574 candidates. Clive Palmer's Mineralogy gave the largest single donation in local government history to a registered group, It's Time for Townsville, at \$400,000. Mineralogy made three more donations to the group throughout the campaign, bringing the total donation by that company to It's Time for Townsville to \$536,416. It's Time has registered \$484,000 in campaign expenditure with the ECQ while its mayoral candidate disclosed \$99,000 in campaign expenditure, bringing the total up to the amount in question. By contrast, Team Jenny Hill disclosed \$152,000 in campaign*

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<sup>140</sup> See, for example: Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 3; Greg Smith, Committee Member, QLGRA, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 5.

<sup>141</sup> Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 2.

<sup>142</sup> Greg Smith, Committee Member, QLGRA, public hearing transcript, Brisbane (via videoconference), 23 April 2020, pp 5-6.

*expenditure. The point we make is that they are extraordinary amounts of money and, indeed, I do not believe they meet any of the public interest tests.*<sup>143</sup>

The committee reviewed the summary expenditure returns of electoral spending incurred by individual (unaligned) councillor and mayoral candidates during the campaign disclosure period for the 2020 local government election – that is, a period running from 20 January 2020 to 30 days after the 28 March polling day. A total of 1,029 of these individuals had submitted returns as at 20 August 2020 (returns submitted by the 19 registered groups of candidates, five political parties, and their members or endorsed candidates are discussed in the next section of this report).

While this period represents only a portion of the proposed capped expenditure period, the electoral spending reported in this period represented close to 90 percent of the electoral spending reported for the period 1 May 2019 to 27 April 2020, and offers some broad insights into the variation in expenditure patterns. Notably, a significant number of this sample of 1,029 candidates – 257, or around 25 per cent – declared that they spent nothing on their campaign during this period. Of these 257 candidates, 139 (54.1 per cent) were successfully elected, though a number of the relevant elections were uncontested.

**Table 1: Elected individual candidates who spent nothing during the campaign period, by representation status**

Candidate representation status	No. elected	No. who were incumbents	Uncontested elections
Individual mayoral candidates	23	11	8
Individual councillor candidates	116	56	16
<b>Total</b>	<b>139</b>	<b>67</b>	<b>24</b>

Many of these successful candidates were elected in smaller regional councils and Indigenous councils, as outlined in Table 2 (next page).

<sup>143</sup> Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 2.

**Table 2: Councils where successfully elected individual candidates spent nothing**

Local government area	No. of councillors	Mayor
Aurukun Shire Council	3	Yes
Balonne Shire Council	2	
Banana Shire Council ( <i>divided</i> )	5	Yes
Barcoo Shire Council	3	Yes
Blackall-Tambo Regional Council	2	
Boulia Shire Council	8	
Bundaberg Regional Council ( <i>divided</i> )	1	
Burke Shire Council	3	Yes
Central Highlands Regional Council	1	Yes
Cherbourg Aboriginal Shire Council	4	Yes
Cloncurry Shire Council	1	Yes
Cook Shire Council	2	
Croydon Shire Council	1	
Diamantina Shire Council	4	Yes
Doomadgee Aboriginal Shire Council	4	Yes
Goondiwindi Regional Council	1	
Hinchinbrook Shire Council	3	Yes
Hope Vale Aboriginal Shire Council	4	Yes
Isaac Regional Council	5	Yes
Kowanyama Aboriginal Shire Council	1	
Lockhart River Aboriginal Shire Council	4	Yes
Longreach Regional Council	2	
Mapoon Aboriginal Shire Council	4	Yes
McKinlay Shire Council	4	Yes
Mornington Shire Council	4	Yes
Napranum Aboriginal Shire Council	4	Yes
North Burnett Regional Council ( <i>divided</i> )	1	Yes
Northern Peninsula Area Regional Council	3	Yes
Palm Island Aboriginal Shire Council	1	
Paroo Shire Council	3	Yes
Pormpuraaw Aboriginal Shire Council	4	Yes
Quilpie Shire Council	1	
Richmond Shire Council	4	Yes
Rockhampton Regional Council ( <i>divided</i> )	1	
South Burnett Regional Council ( <i>divided</i> )	1	
Torres Shire Council	1	
Torres Strait Island Regional Council ( <i>divided</i> )	9	
Western Downs Regional Council	1	
Woorabinda Aboriginal Shire Council	1	
Wujal Wujal Aboriginal Shire Council	2	Yes
<b>Total</b>	<b>116</b>	<b>23</b>

At the other end of the electoral spending spectrum, between 4.7 and 10.8 per cent of the sample of 1,029 individual candidates reported expenditure in excess of a relevant cap model during the campaign disclosure period, as outlined in Table 3 (\*note – spending figures were compared to the nominal value of the relevant caps, irrespective of the variation in the intended capped periods under the different models).

**Table 3: Number of individual (unaligned) candidates whose campaign expenditure exceeded the model caps**

	Expenditure cap model options			
	LGAQ	DLGRMA	NSW	NZ*
Number of individual candidates who spent more than the model cap allowance	48	94	45	111
Percentage of individual candidates who spent more than the model cap allowance	4.66%	9.14%	4.37%	10.79%
Number of individual candidates who spent less than the model cap allowance	981	935	984	918
Percentage of individual candidates who spent less than the model cap allowance	95.34%	90.86%	95.63%	89.21%
Combined total amount spent over the cap by all those who overspent	\$736,959.37	\$1,322,312.86	\$745,103.80	\$1,394,516.24
Average amount spent over the cap by those who overspent	\$15,353.32	\$14,067.16	\$16,557.86	\$12,563.21
Combined total amount spent under the cap by all those who underspent	\$24,891,018.48	\$11,909,732.47	\$15,758,972.91	\$7,930,941.20
Average amount spent under the cap by those who underspent	\$25,373.11	\$12,737.68	\$16,015.22	\$8,639.37

\*Based on currency adjusted NZ model cap figure, using the exchange rate as at 20 August 2020 (NZ\$1 = AU\$0.9317).

Among the individual, unaligned mayoral candidates, the top ten biggest spenders were all contestants in south east Queensland council elections.

**Table 4: The 10 highest spending individual (unaligned) mayoral candidates**

Candidate	Local government area	Amount spent	Incumbent?	Elected?	No. of model caps exceeded*
Darren Power	Logan City Council	\$350,105.49	No	Yes	4
Tom Tate	Gold Coast City Council	\$99,838.09	Yes	Yes	2
Peter Flannery	Moreton Bay Regional Council	\$93,068.45	No	Yes	1
Clare Stewart	Noosa Shire Council	\$84,861.68	No	Yes	4
Karen Williams	Redland City Council	\$71,108.21	Yes	Yes	2
Mark Jamieson	Sunshine Coast Regional Council	\$66,300.63	Yes	Yes	1
Mona Hecke	Gold Coast City Council	\$64,436.07	No	No	1
Stewart Fleming	Logan City Council	\$61,882.66	No	No	1
Brett Raguse	Logan City Council	\$59,966.84	No	No	1
Teresa Harding	Ipswich City Council	\$58,591.30	No	Yes	1

\*Based on currency adjusted NZ model cap figure, using the exchange rate as at 20 August 2020 (NZ\$1 = AU\$0.9317).

As highlighted in Table 4, the six highest spending individual mayoral candidates were all elected. Three of these were incumbents and three were not.

Among individual (unaligned) councillor candidates, six of the top 10 electoral spenders contested Gold Coast City Council positions, with varying success.

**Table 5: The 10 highest spending individual (unaligned) councillor candidates**

Candidate	Local government area	Amount spent	Incumbent?	Elected?	No. of model caps exceeded*
Mark Hammel	Gold Coast City Council (division 1)	\$137,926.31	No	Yes	4
Kristyn (KB) Boulton	Gold Coast City Council (division 4)	\$72,250.73	Yes	No	4
Rebecca Vonhoff	Toowoomba Regional Council	\$61,178.59	No	Yes	2
Cameron Caldwell	Gold Coast City Council (division 4)	\$58,143.48	Yes	Yes	4
Darren Taylor	Gold Coast City Council (division 10)	\$57,139.35	No	Yes	4
Frank Gilbert	Mackay Regional Council	\$44,417.47	No	No	1
Shaelee Welchman	Gold Coast City Council (division 6)	\$42,138.77	No	No	4
Jacob Heremaia	Logan City Council	\$40,581.49	No	Yes	4
Mike Winlaw	Gold Coast City Council (division 10)	\$40,424.69	No	No	4
Winston Johnston	Sunshine Coast Regional Council	\$38,605.49	No	Yes	4

\*Based on currency adjusted NZ model cap figure, using the exchange rate as at 20 August 2020 (NZ\$1 = AU\$0.9317).

This limited summary data offers a glimpse into the considerable variation in spending across local government areas. A detailed analysis of expenditure across local government areas of different electoral size and characteristics would help to support an evidence-based approach to the determination of a final model of appropriate caps.

In undertaking such analysis, a key question to be considered is to what extent caps should be adjusted to accommodate existing electoral spending patterns, which have been identified as potentially skewing electoral outcomes with implications for council policies and decision making, as opposed to more aggressively capping expenditure, such that a larger number of electoral participants may need to adjust their approach to electoral spending, but equally a greater proportion of participants may more feasibly compete and contribute to public governance.

The committee considers that this question can only be resolved in consultation with stakeholders, and with reference to the costs of engaging with the constituents they wish to represent.

Committee comment

Based on stakeholder feedback, the committee considers that an appropriate system of expenditure caps for Queensland may fall somewhere within the ranges proposed by DLGRMA and the LGAQ.

The committee is recommending that further analysis and consultation with stakeholders be undertaken to determine caps of appropriate magnitude, with particular reference to the scaled approaches set out in these two models (see report section 1.4). This should include consideration of

whether a greater degree of scaling or level of differentiation may be required to accurately reflect the diverse characteristics of the state's 77 local government areas.

Further, 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.

### **3.8 Groups of candidates and political parties**

Submitters to the inquiry noted that groups of candidates and political parties have typically only participated in elections in certain local government areas. For example, in the Sunshine Coast area, OSCAR submitted that 'there have not been any groups of candidates in recent Sunshine Coast local elections to the best of our knowledge', and further, that any political party activity has also been limited.<sup>144</sup> Redlands2030, similarly, advised that in the Redland City Council area, candidates typically 'are not endorsed by political parties'.<sup>145</sup>

The QLGRA submitted more broadly that this is generally the case for most Queensland councils, which 'do not operate on party lines and nor should they'.<sup>146</sup> However, at the opposite end of the spectrum, in the Brisbane City Council (BCC), 'there is an endorsed party candidate for each ward to the best of our knowledge', and a small number of other candidates in which parties variably participate.<sup>147</sup>

At the 2020 local government elections, of the 1,574 total participating candidates:

- a total of 1,374 candidates (87.3 per cent) were independent or unaligned candidates
- 99 candidates were members of one of 19 registered groups of candidates for the election, operating across 11 local government areas, and
- 101 candidates were endorsed by one of five registered political parties who participated in elections across a total of 10 local government areas (of whom 83 were candidates in the BCC election).

In respect of the latter two scenarios, involving groups of candidates and political parties, while the extent to which such electoral participants are active in local government elections is variable, some jurisdictions employ some form of aggregation approach in relation to groups of candidates and political parties – for example, such that the applicable cap is the sum of the applicable caps for the candidates within the group or party.

While the LGAQ made no reference to the treatment of parties or groups of candidates in setting out its proposed principles for any local government expenditure model, this is the approach proposed by DLGRMA for these participants, and also that employed under the NSW model.

BRU submitted that the capping of electoral expenditure for registered parties, including any associated entities, was among a number of 'crucial and valuable' improvements required to help increase the chances that elections will be won by the best candidates.<sup>148</sup> The QLGRA agreed that caps based on some form of aggregation approach should apply to groups of candidates and political parties, but also stated that 'we are uncertain how this would happen'.<sup>149</sup> OSCAR more specifically articulated its support for 'aggregation based on the individual cap that would apply to each member of the group', but emphasised that:

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<sup>144</sup> Submission 3, p 5.

<sup>145</sup> Submission 2, p 3.

<sup>146</sup> Submission 3, p 2.

<sup>147</sup> Submission 1, p 4.

<sup>148</sup> BRU, submission 5, p 5.

<sup>149</sup> Submission 1, p 4.

*There must also be a mechanism for aggregation for candidates of political parties to avoid “double dipping”.*<sup>150</sup>

Mr Neil Cotter, similarly, warned of the importance of considering such factors, to avoid the situation in which generous caps for political parties have the effect of ‘skewing the election against independents’.<sup>151</sup>

Under Queensland’s state government electoral expenditure cap model and under the NSW model respectively, a mechanism to avoid ‘double dipping’ is provided – that is, electoral expenditure incurred by an endorsed candidate or member of a group of candidates that is equal to or less than, the relevant expenditure cap for the party or group, is to be treated as expenditure that exceeds the applicable cap if, when taken together with any other electoral expenditure incurred by the party or group or one of its endorsed candidates or group members, it exceeds the applicable cap for the party or group.

The committee examined expenditure summary returns for the campaign disclosure period (20 January 2020 to 30 days after the 28 March 2020 election) for the:

- four (out of five) participating, registered political parties who had submitted their summary returns for the period as at 20 August 2020, and
- 17 (out of 19) registered groups of candidates who had submitted their summary returns for the period as at 20 August 2020.

The recorded expenditure figures for each of these electoral participants was compared to the relevant model caps using the aggregation method proposed by DLGRMA and employed in the NSW model (eg combining the individual spending allowances for all endorsed candidates or group members respectively) (see Table 6, next page).

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<sup>150</sup> Submission 3, p 6.

<sup>151</sup> Submission 10, p 29.

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**Table 6: Spending disclosed by registered political parties in expenditure summary returns for the campaign disclosure period, compared to model cap allowances (aggregation of endorsed candidate allowances)**

Political party and expenditure	No. of candidates	Elections contested	Elected candidates	Expenditure cap allowance for all respective party candidates combined, by expenditure model			
				LGAQ	DLGRMA	NSW	NZ*
<b>Animal Justice Party (Queensland)</b> Party campaign expenditure = <b>\$19,222.03</b>  Separate campaign expenditure by endorsed candidates = \$191.85  <b>Total = \$19,413.88</b>	7  (1 mayoral, 6 councillor)	<ul style="list-style-type: none"> <li>• Brisbane City Council</li> <li>• Gold Coast City Council</li> <li>• Noosa Shire Council</li> <li>• Sunshine Coast Regional Council</li> <li>• Townsville City Council</li> </ul>	0	\$951,073	\$183,997	\$435,250	\$177,258
				under cap	under cap	under cap	under cap
<b>Australian Labor Party (State of Queensland)</b> Party campaign expenditure = <b>\$2,065,980.47</b>  Separate campaign expenditure by endorsed candidates = \$61.01  <b>Total = \$2,066,041.48</b>	27  (1 mayoral, 26 councillor)	<ul style="list-style-type: none"> <li>• Brisbane City Council</li> </ul>	5	\$1,577,378	\$494,344.50	\$1,293,750	\$539,083
				over cap	over cap	over cap	over cap
<b>Liberal National Party of Queensland</b> Party campaign expenditure = <b>\$1,474,208.74</b>  Separate campaign expenditure by endorsed candidates = \$13,189.27  <b>Total = \$1,487,398.01</b>	27  (1 mayoral, 26 councillor)	<ul style="list-style-type: none"> <li>• Brisbane City Council</li> </ul>	20	\$1,577,378	\$494,344.50	\$1,293,750	\$539,083
				under cap	over cap	over cap	over cap
<b>Queensland Greens</b> Party campaign expenditure = <b>\$154,559.06</b>  <b>Total = \$154,559.06</b>	36  (2 mayoral, 34 councillor)	<ul style="list-style-type: none"> <li>• Gold Coast City Council</li> <li>• Ipswich City Council</li> <li>• Moreton Bay Regional Council</li> <li>• Scenic Rim Regional Council</li> <li>• Sunshine Coast Regional Council</li> <li>• Toowoomba Regional Council</li> </ul>	1	\$1,985,511	\$665,834.50	\$1,618,500	\$755,630
				under cap	under cap	under cap	under cap

Note: The Motorists Party contested 3 mayoral elections and 1 councillor election in Brisbane City Council, Gold Coast City Council and Logan City Council. However, the party had not submitted a party expenditure summary return for the campaign disclosure period as at 20 August 2020.

\*Based on currency adjusted NZ model cap figure, using the exchange rate as at 20 August 2020 (NZ\$1 = AU\$0.9317).

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As outlined in Table 6, electoral expenditure incurred by the Australian Labor Party (State of Queensland) (ALP) during the campaign disclosure period would have exceeded the applicable caps under all four expenditure cap models, while expenditure by the LNP would have exceeded the applicable caps for all but the LGAQ model.

Notably, using the aggregation approach to determine the relevant party cap under the LGAQ model allows for a significantly larger amount of spending by parties than under the other three models. This is primarily due to the LGAQ model's provision for a mayoral candidate in the BCC election to incur expenditure of up to \$788,689 (\$1 per elector). This is considerably higher than would be allowed for this single candidate position under the other expenditure cap models. There may be merit in considering an upper limit on party caps should this model and aggregation method be employed concurrently.

In terms of the 19 groups of candidates who contested local government elections, the recorded expenditure figures in summary returns for the campaign disclosure period, as compared to the relevant model caps (again, using the aggregation method proposed by DLGRMA and employed in the NSW model), are set out in Table 7 below.

**Table 7: Spending disclosed by registered groups of candidates in expenditure summary returns for the campaign disclosure period, compared to model cap allowances (aggregation of group member candidate allowances)**

			Expenditure cap model allowance for all respective party candidates combined			
Registered Group of Candidates (Local government area)	No. of candidates	Elected candidates	LGAQ	DLGRMA	NSW	NZ*
<b>Cairns N.Q.S.A Team</b> (Cairns Regional Council) Group campaign expenditure = <b>\$13,312.96</b>	8 (1 mayoral, 7 councillor)	0	<b>\$185,503</b> under cap	<b>\$122,335</b> under cap	<b>\$261,500</b> under cap	<b>\$177,258</b> under cap
<b>Cairns Unity Team</b> (Cairns Regional Council) Group campaign expenditure = <b>\$75,750.22</b>	8 (1 mayoral, 7 councillor)	7 (1 mayor, 6 councillors)	<b>\$185,665</b> under cap	<b>\$122,335</b> under cap	<b>\$261,500</b> under cap	<b>\$539,083</b> under cap
<b>CHRISTENSEN &amp; KEIOSKIE</b> (Mackay Regional Council) Group campaign expenditure = <b>\$19,541.59</b>	2 (2 councillor)	0	<b>\$160,560</b> under cap	<b>\$40,000</b> under cap	<b>\$126,000</b> under cap	<b>\$539,083</b> under cap
<b>Future Noosa</b> (Noosa Regional Council) Group campaign expenditure = <b>\$52,094.99</b>	3 (3 councillor)	1	<b>\$122,172</b> under cap	<b>\$60,000</b> under cap	<b>\$108,000</b> under cap	<b>\$90,000</b> under cap
<b>Greg Williamson Alliance</b> (Mackay Regional Council) Group campaign expenditure = <b>\$101,299.25</b>	11 (1 mayoral, 10 councillor)	7 (1 mayor, 6 councillors)	<b>\$883,080</b> under cap	<b>\$240,140</b> under cap	<b>\$873,125</b> under cap	<b>\$550,000</b> under cap
<b>It's Time for Townsville</b> (Townsville City Council) Group campaign expenditure = <b>\$1,074,164.89</b>	6 (1 mayoral, 5 councillor)	0	<b>\$195,082</b> over cap	<b>\$114,300.50</b> over cap	<b>\$229,500</b> over cap	<b>\$125,000</b> over cap

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<b>Liberal Democrats Ipswich</b> (Ipswich City Council) Group campaign expenditure = <b>\$11,454.67</b>	2 (2 councillor)	0	<b>\$70,764</b>	<b>\$35,382</b>	<b>\$72,000</b>	<b>\$36,548</b>
			under cap	under cap	under cap	under cap
<b>Logan Needs Moore</b> (Logan City Council) Group campaign expenditure = <b>\$15,880.83</b>	2 (2 councillor)	0	<b>\$33,492</b>	<b>\$20,000</b>	<b>\$36,000</b>	<b>\$25,583</b>
			under cap	under cap	under cap	under cap
<b>Mount Isa Community Team</b> (Mount Isa Regional Council) Group campaign expenditure = <b>\$36,185.93</b>	7 (1 mayoral, 6 councillor)	1 (1 mayor)	<b>\$110,000</b>	<b>\$90,000</b>	<b>\$157,500</b>	<b>\$89,542</b>
			under cap	under cap	under cap	under cap
<b>Our Team 4 Your Shire</b> (Mareeba Shire Council) Group campaign expenditure = <b>\$14,708.93</b>	5 (1 mayoral, 4 councillor)	3 (3 councillors)	<b>\$80,000</b>	<b>\$70,000</b>	<b>\$112,500</b>	<b>\$63,959</b>
			under cap	under cap	under cap	under cap
<b>Our Voice</b> (Moreton Bay Regional Council) Group campaign expenditure = <b>\$12,633.32</b>	3 (3 councillor)	0	<b>\$77,662</b>	<b>\$38,831</b>	<b>\$75,000</b>	<b>\$54,822</b>
			under cap	under cap	under cap	under cap
<b>PROGRESS Mt Isa</b> (Mount Isa Regional Council) Group campaign expenditure = <b>\$22,858.07</b>	7 (1 mayoral, 6 councillor)	5 (5 councillors)	<b>\$110,000</b>	<b>\$90,000</b>	<b>\$157,500</b>	<b>\$89,543</b>
			under cap	under cap	under cap	under cap
<b>Team Jenny Hill</b> (Townsville City Council) Group campaign expenditure = <b>\$224,319.85</b>	11 (1 mayoral, 10 councillor)	10 (1 mayor, 9 councillors)	<b>\$256,655</b>	<b>\$164,300.50</b>	<b>\$342,000</b>	<b>\$178,171</b>
			under cap	over cap	under cap	over cap
<b>Team Josh Weazel</b> (Woorabinda Aboriginal Shire Council) Group campaign expenditure = <b>\$0.00</b>	4 (1 mayoral, 3 councillor)	3 (1 mayor, 2 councillors)	<b>\$65,000</b>	<b>\$60,000</b>	<b>\$30,000</b>	<b>\$12,782</b>
			under cap	under cap	under cap	under cap
<b>TSV Team NQ State Alliance</b> (Townsville City Council) Group campaign expenditure = <b>\$42,092.89</b>	7 (1 mayoral, 6 councillor)	0	<b>\$205,269</b>	<b>\$124,300.50</b>	<b>\$252,000</b>	<b>\$127,004</b>
			under cap	under cap	under cap	under cap
<b>Unity Maranoa</b> (Maranoa Regional Council) Group campaign expenditure = <b>\$37,721.59</b>	5 (1 mayoral, 4 councillor)	5 (1 mayor, 4 councillors)	<b>\$80,000</b>	<b>\$70,000</b>	<b>\$62,500</b>	<b>\$31,979</b>
			under cap	under cap	under cap	over cap
<b>Your Voice of Experience</b> (Ipswich City Council) Group campaign expenditure = <b>\$61,373.89</b>	2 (2 councillor)	2 (2 councillors)	<b>\$70,082</b>	<b>\$35,041</b>	<b>\$72,000</b>	<b>\$36,548</b>
			under cap	over cap	under cap	over cap

Note: team WORK (Ipswich City Council – 2 councillor candidates) and Locals UNITED – Back to Basics (Mount Isa City Council – 1 mayoral and 3 councillor candidates) had not submitted an expenditure summary return for the campaign disclosure period as at 20 August 2020.

\*Based on currency adjusted NZ model cap figure, using the exchange rate as at 20 August 2020 (NZ\$1 = AU\$0.9317).

As outlined in Table 7, there were four registered groups of candidates that incurred expenditure in excess of at least one of the applicable expenditure model caps. These groups (and the number of model caps they exceeded) were: It's Time for Townsville (4); Team Jenny Hill (2); Your Voice of Experience (2); and Unity Maranoa (1).

Table 7 also highlights the scope for the LGAQ expenditure cap model to allow significantly higher levels of electoral expenditure for registered groups in undivided councils with 20,000 electors or more, as compared to the permitted expenditure for such groups operating in divided councils. For example, Mackay Regional Council, which is an undivided council, had 80,280 electors at the 2020 elections. The individual cap for each member of a group of candidates in this local government area would be \$80,280. A registered group comprising a mayoral candidate and 10 councillor candidates (as was the case for the Greg Williamson Alliance), would be able to spend a total of \$883,080 under this model.

In contrast, the Townsville City Council, which is divided into 10 divisions, had 128,601 electors at the 2020 election (a 60 per cent higher elector population overall than the Mackay Regional Council). In contrast to the applicable expenditure cap of \$883,080 for a registered group comprising a mayor and 10 councillor candidates in the Mackay Regional Council, the same number of candidates running for a registered group in the Townsville City Council election would have a cap allowance of just \$256,655 under the LGAQ model. While candidates in the former council area face the prospect of reaching a large constituent base, it may be appropriate to consider whether some adjustment may be warranted to reflect opportunities for shared promotional materials and cost savings associated with such a pooling of resources.

At the 2020 elections, it can be noted that there were 10 undivided councils with elector populations in excess of the 15,000 elector limit that is used as a threshold in the scaled cap model proposed by the LGAQ for undivided councils. These 10 councils were: Toowoomba Regional Council; Mackay Regional Council; Gladstone Regional Council; Noosa Shire Council; Lockyer Valley Regional Council; Livingstone Shire Council; Southern Downs Regional Council; Western Downs Regional Council; Somerset Regional Council; and Central Highlands Regional Council.

#### Committee comment

Generally speaking, the committee considers that caps for groups of candidates and political parties should be established on the basis of some form of aggregation method. However, further consideration should also be given to the application of an upper limit or other appropriate mechanism which recognises potential economies of scale and associated benefits of collective campaigning for these electoral participants.

### **3.9 Third party groups**

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'.<sup>152</sup> BRU submitted in this regard that:

*We would not like to see a repeat of the recent Clive Palmer debacle played out at the Local or State Government level.*<sup>153</sup>

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<sup>152</sup> Kerry Schott, Andrew Tink and John Watkins (NSW Expert Panel), *Political Donations: Final Report*, December 2014, vol. 1, pp 8, 29.

<sup>153</sup> BRU, submission 5, p 5.

It has also been emphasised, however, that any caps on third party electoral spending ‘should not be set so low as to prevent third parties from having a genuine voice’.<sup>154</sup>

As noted in section 3.1 of this report, recent judgements of the High Court, while recognising the legitimacy of the principle of political equality and preventing voices being drowned out, have made clear that any restrictions on third party campaign spending must be proportional and well justified, and not determined on an arbitrary basis.<sup>155</sup>

In NSW, the applicable expenditure cap for third party campaigners is one third of the applicable cap for a candidate (other than the mayor), rounded up to the nearest \$10 if that amount is not a whole number.<sup>156</sup> In the UK, third party campaigners or ‘local non-party campaigners’ can spend up to £50 plus 5 pence per elector during the regulated period on campaigning for or against a candidate in the ward, compared to the £740, plus 6 pence per elector in spending permitted for candidates.<sup>157</sup> In the model proposed by DLGRMA, caps for third parties would be set at a higher level relative to candidates, being the same level as the cap that applies for mayoral candidates.<sup>158</sup>

The LGAQ confirmed that it supports the establishment of third party electoral spending restrictions, as endorsed by a resolution at the April 2019 LGAQ Special General Meeting, but has not articulated a particular cap approach for these electoral participants in its proposed model.<sup>159</sup> It has, however, raised its objection to the DLGRMA model’s approach to capping third party spending, which it identified as putting these electoral participants on equal footing with those directly contesting the election, spending-wise. Specifically, at the public hearing on 23 April 2020, LGAQ Chief Executive Officer Greg Hallam stated:

*On the question of campaign limits, it is obvious to us—I again refer to the Mineralogy matter in Townsville<sup>160</sup>—that they are extraordinary amounts of money. We could also have a situation where, as I have said a few times now, third parties are able to spend up to the same amount as a candidate and we could have a very unfair playing field. We would not be level in any way, shape or form.<sup>161</sup>*

The Administration Councillors of BCC also considered that a lower level of cap should be applied for third parties.<sup>162</sup> They submitted:

*Noting that unions have previously actively campaigned in BCC elections against the current administration, any legislation imposing electoral expenditure caps must limit the disproportionate advantage such provisions would provide to the current opposition party. We believe that third party organisations must have significantly lower expenditure caps than*

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<sup>154</sup> Kerry Schott, Andrew Tink and John Watkins (NSW Expert Panel), *Political Donations: Final Report*, December 2014, vol. 1, p 8.

<sup>155</sup> *Unions v NSW* [2019] HCA 1; *Spence v State of Queensland* [2019] HCA 15; *McCloy v NSW* [2015] HCA 34.

<sup>156</sup> *Electoral Funding Act 2018* (NSW), s 31(5). If the amount is not a whole number multiple of \$10, the amount is to be rounded up to the nearest whole multiple of \$10.

<sup>157</sup> Electoral Commission (UK), *Local government elections (including combined authority mayors) in England: Non-party campaigners*, factsheet, December 2019, p 2.

<sup>158</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 12.

<sup>159</sup> Submission 7, p 10.

<sup>160</sup> Clive Palmer’s Mineralogy Pty Ltd donated a total of \$642,083 in electoral funding to Townsville mayoral candidate Greg Dowling and the ‘It’s Time for Townsville’ Group of candidates comprised of Mr Dowling and five others.

<sup>161</sup> Greg Hallam, Chief Executive Office, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 2.

<sup>162</sup> Submission 9, p 5.

*candidates to ensure that no third party is able to wield undue influence on the outcome of elections.*<sup>163</sup>

Further, OSCAR also advised:

*We have serious concerns about the role of third-parties and the caps that apply. Do these provisions [in the DLGRMA model] mean that in a large council with over 200,000 electors, you could have a situation where one or more third parties could undertake media campaigns costing up to \$100,000 each to further their cause or to run a negative campaign against a particular candidate or group of candidates?*<sup>164</sup>

The LGAQ noted the risks of third parties being used to circumvent expenditure caps and distort the election process by way of the aggregation of expenditure by a number of third parties against a particular candidate,<sup>165</sup> effectively nullifying the effects of the caps.<sup>166</sup> Redlands2030 also identified similar concerns, emphasising the need for ‘arrangements for caps’ to be designed to ensure:

*... that they can’t be avoided through use of supposedly third party entities which are actually ancillary campaigns for a particular candidate.*<sup>167</sup>

OSCAR and Redlands2030 called for requirements for third party registration to be established, to support the monitoring and enforcement of third parties’ compliance under the scheme,<sup>168</sup> and prevent the ‘compounding’ of these risks.<sup>169</sup> OSCAR submitted that this is also necessary to ensure ‘that electors are aware of the individual/s and/or organisations that constitute any third party undertaking electoral expenditure’ and their ‘political independence, their membership make-up etc’.<sup>170</sup>

Such registration requirements are in place in NSW, where registration is a precondition for incurring payments of electoral expenditure for a local government election during a capped local government expenditure period, with all payments to be made by the official agent of the third party.<sup>171</sup> Similarly, under Queensland’s new state government electoral expenditure cap scheme, registration is required for any third parties who incur expenditure beyond a certain amount, with distinct electoral spending caps set for unregistered and registered third parties.<sup>172</sup>

With reference to third party registration and associated administrative provisions, Redlands2030 Secretary, Chris Walker, emphasised:

*It is ... important to ensure that the regulations will not be administratively burdensome for community groups advocating on particular issues during election campaigns.*<sup>173</sup>

#### Committee comment

Stakeholder commentary highlighted the need for further consideration as to the appropriate level at which to cap third party electoral expenditure to ensure that these electoral participants can participate actively in the debate and discussion of local government issues, but without potentially

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<sup>163</sup> Submission 9, p 5.

<sup>164</sup> OSCAR, submission 3, p 6.

<sup>165</sup> LGAQ, submission 7, p 10.

<sup>166</sup> Parliament of NSW, NSW JSCEM, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011, p 149.

<sup>167</sup> Redlands2030, submission 2, p 3.

<sup>168</sup> OSCAR, submission 3, p 6; Redlands2030, submission 2, p 3.

<sup>169</sup> OSCAR, submission 3, p 6.

<sup>170</sup> OSCAR, submission 3, p 6.

<sup>171</sup> *Electoral Funding Act 2018* (NSW), s 42 (2).

<sup>172</sup> Electoral Act, s 281H, 281E.

<sup>173</sup> Chris Walker, Secretary, Redlands2030, public hearing transcript, Brisbane, 23 April 2020, p 6.

exerting a disproportionate influence by way of their electoral spending, with the effect of overpowering the voices of direct electoral participants (councillor and mayoral candidates), and/or their relevant candidate groups or political parties.

Once an appropriate cap has been determined, the committee considers that a third party registration system should also be established, to support the monitoring and enforcement of third party compliance with the spending cap.

The committee has made a recommendation in this regard in section 1.4 of this report.

### 3.10 Associated entities

In recognition that associated entities have become major conduits for political donations and expenditure in recent decades, and can effectively serve as proxies for electoral participants, many jurisdictions have determined that these entities must share their cap with their affiliated political party or candidate. A shared expenditure cap, it has been argued, provides the strongest option for regulating expenditure of associated entities and eliminates any advantage separate caps could provide for political parties with multiple associated entities (as well as avoiding a potential loophole by restricting political parties, candidates or groups from setting up front organisations to avoid spending caps).<sup>174</sup>

Under the LGEA, associated entities are defined as ‘an incorporated or unincorporated body, or the trustee of a trust, that – (a) is controlled by 1 or more political parties; or (b) operates wholly or mainly for the benefit of 1 or more political parties’.<sup>175</sup> Where there is any confusion as to whether an electoral participant (eg such as a third party) may be an associated entity of a registered political party, the ECQ may request information from political parties or the entity itself, and will make decisions about whether an entity constitutes an associated entity on a case-by-case basis.<sup>176</sup>

The definition employed under the Electoral Act is broader than the LGEA definition, making reference to wider range of associated entity arrangements applicable not only to parties, but also to candidates and groups of candidates (eg potentially capturing any family trusts or other external entities through which candidate and group expenditure may be incurred). That is, the Electoral Act provides that:

- an entity is an associated entity of a registered political party if the entity—
  - (a) is controlled by the party or a group of endorsed candidates of the party; or
  - (b) operates wholly, or to a significant extent, for the benefit of the party or a group of endorsed candidates of the party; or
  - (c) operates for the dominant purpose of—
    - (i) promoting the party in elections; or
    - (ii) promoting a group of endorsed candidates of the party in an election,<sup>177</sup> and
- an entity is an associated entity of a candidate in an election if the entity—
  - (a) is controlled by the candidate in relation to the election; or
  - (b) operates wholly, or to a significant extent, for the benefit of the candidate in relation to the election; or
  - (c) operates for the dominant purpose of promoting the candidate in the election.<sup>178</sup>

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<sup>174</sup> Northern Territory Legislative Assembly, Government Response, Electoral Legislation Bill 2019, p 82.

<sup>175</sup> LGEA, Schedule 2.

<sup>176</sup> ECQ, *Election and Disclosure Obligations: Registered Political Parties and Associated Entities – for Local Government Elections*, Handbook 2, January 2020, p 3.

<sup>177</sup> Electoral Act, s 204(2).

<sup>178</sup> Electoral Act, s 204A(2).

Under the new state government electoral expenditure cap regime, electoral expenditure incurred by an associated entity in respect of one of these two circumstances is to be treated as though the expenditure were incurred by or for the party or group, or by or for the candidate, respectively.<sup>179</sup>

Under the NSW model, similarly, the NSW Electoral Commission advised that:

*Electoral expenditure incurred by a party and by an associated entity of the party for an endorsed candidate or group of candidates must be aggregated with any expenditure incurred by the candidate or group for the purpose of the expenditure caps. The aggregated expenditure must be within the applicable cap for the candidate or group.*<sup>180</sup>

#### Committee comment

As per the provisions of the NSW model and Queensland's state electoral expenditure cap scheme, the committee considers that any expenditure incurred by an associated entity for Queensland local government elections should be treated as though it was incurred by the electoral participant with which the entity is associated. This is necessary to afford fairness to all electoral participants by ensuring that all electoral expenditure is appropriately captured where such external bodies and payment arrangements are engaged in a candidate, group or party's funding model.

The committee has made a recommendation to this effect in section 1.4 of this report.

The committee also considers there may be merit in aligning the definition of associated entity in the LGEA with the definition in the Electoral Act, to support the consistent inclusion of electoral spending by such entities in the relevant cap for the electoral participant with which they are associated.

### **3.11 By-elections**

Neither the LGAQ nor DLGRMA made reference to the treatment of electoral expenditure for local government by-elections under their proposed expenditure cap models in terms of either the length of the capped period, or the quantum of the applicable caps for by-elections.

In terms of the quantum of caps for these elections, the QLGRA, OSCAR and BRU agreed that there should not be different caps set for by-elections than for general elections.<sup>181</sup> This is consistent with the approach taken with respect to by-elections under Queensland's state government electoral expenditure cap regime, and with the approach taken for by-elections under the NSW local government expenditure cap regime.

Under both of these models, the expenditure cap period for the relevant by-election commences on the day the writ for the election is issued/the by-election is publicly notified, and ends on the polling day for the election.<sup>182</sup>

#### Committee Comment

The committee considers that the same system of local government electoral expenditure caps should apply equally for quadrennial elections and by-elections, with the capped expenditure period for a

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<sup>179</sup> Electoral Act, s 204, 204A.

<sup>180</sup> NSW Electoral Commission, *Aggregation of electoral expenditure for local government elections*, last updated 27 August 2020, <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/Aggregation-of-electoral-expenditure-for-local-gov>

<sup>181</sup> Submission 1, p 4; Submission 3, p 7; Submission 5, p 21.

<sup>182</sup> Electoral Commission of Queensland, *Fact Sheet 7 – State Elections – Expenditure caps for registered political parties and endorsed candidates*, fact sheet, [https://www.ecq.qld.gov.au/\\_\\_data/assets/pdf\\_file/0021/12783/Fact-Sheet-7-Expenditure-caps-for-registered-political-parties-and-endorsed-candidates.pdf](https://www.ecq.qld.gov.au/__data/assets/pdf_file/0021/12783/Fact-Sheet-7-Expenditure-caps-for-registered-political-parties-and-endorsed-candidates.pdf); Elections NSW, *What is the capped period for a local government election?*, last updated 23 October 2018, <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-is-the-capped-expenditure-period-for-a-local>

by-election to commence on the day the writ for the by-election is issued and end on the polling day for the by-election, consistent with provisions under the state electoral expenditure cap scheme and under the system of expenditure caps for local government elections in NSW.

The committee has made a recommendation to this effect in section 1.4 of this report.

### 3.12 Disclosure, monitoring and enforcement

In recent years, Queensland has implemented a range of measures to provide transparency about electoral spending, including requirements for real-time disclosure of electoral expenditure, and for transparent candidate bank accounts and transactions (for reconciliation purposes).<sup>183</sup> Candidates, groups of candidates, political parties and third parties are now required to disclose any 'electoral expenditure':<sup>184</sup>

- within seven days of incurring the expenditure, or
- in the last seven days prior to polling day, within 24 hours of incurring the expenditure.<sup>185</sup>

In addition, all of these election participants are required to submit an expenditure summary return within 15 weeks after polling day that states the total amount of electoral expenditure incurred during their disclosure period, even if they did not incur any electoral expenditure (in which case they must still submit a nil return).<sup>186</sup>

The current penalty for failure to give a return within the time required is:

- if the person took all reasonable steps to give the return within the required time, 20 penalty units (\$2,669), or
- otherwise, 100 penalty units (\$13,345).<sup>187</sup>

An offence with a maximum penalty of 100 penalty units (\$13,345) also applies for knowingly giving a return that contains false or misleading particulars.<sup>188</sup>

The ECQ is responsible for monitoring and enforcing these requirements.

The introduction of local government expenditure caps in Queensland would provide an added layer to this monitoring and enforcement picture, for which an effective auditing and policing system would need to be established. After all:

- a lack of active monitoring and auditing will limit the scope for the detection of non-compliant spending, and
- poor enforcement, which may equally result from deficiencies in detection or from a lack of responsive policing or appropriate penalties, could have the effect of amplifying existing inequalities, by suppressing spending amongst compliant election participants, just as those seeking to circumvent the system may be boosting their campaign outlays.

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<sup>183</sup> Including amendments implemented by the *Local Government Electoral (Implementing State 2 of Belcarra) and Other Legislation Amendment Act 2019*.

<sup>184</sup> As per the current definition of electoral expenditure in the LGEA.

<sup>185</sup> Local Government Regulation 2012, ss 5, 6, 7, 8, 9A.

<sup>186</sup> LGEA, ss 125, 125A. Section 125 requires candidates, groups of candidates, political parties give the ECQ a summary expenditure return within the 'required period' for an election, which is defined in s 106 as '15 weeks after the polling day or the election or, if no poll is conducted, the day a poll would have been conducted if it was required'. Section 125A provides that third parties who incur electoral expenditure of \$500 or more are also required to submit an expenditure summary return within this timeframe.

<sup>187</sup> LGEA, s 195.

<sup>188</sup> LGEA, s 194C.

With respect to penalties in particular, any financial or other consequences for those in breach of the statutory limits must be sufficiently large that they will be taken seriously, and not be seen as merely a ‘cost of doing business’.

Notably, in the Operation Belcarra Report, the CCC identified ‘significant deficiencies in the ECQ’s monitoring and enforcement activities’, and concluded that it ‘is essential that these continue to be rectified if the ECQ is to deal effectively and appropriately’ with these matters.<sup>189</sup>

In particular, the CCC reported:

- ‘widespread non-compliance’ of candidates with requirements to give a compliant disclosure return within the required time,<sup>190</sup> and
- ‘systemic’ non-compliance with the requirement to operate a dedicated bank account and an ‘apparent lack of a proactive strategy to audit compliance with this requirement’.<sup>191</sup>

Regarding expenditure summary returns in particular, the CCC noted:

*With respect to candidates, a significant number across the state did not submit a return to the ECQ after the elections. Using information available on the ECQ website, the CCC estimates that 17 per cent of 2016 candidates had not submitted a disclosure return as of 7 July 2017. The percentage of candidates who had failed to comply with their obligations within the required time frame (within 15 weeks after polling day, 4 July 2016) is almost certainly even greater than this. Non-compliance was relatively low in the south-east Queensland councils examined in Operation Belcarra (around 5%), but much higher in smaller councils in regional areas.<sup>192</sup>*

With respect to third parties, the CCC identified that ‘this type of non-compliance appeared to be even more widespread’, but could not easily be estimated.<sup>193</sup>

Further, for those returns that were submitted, the CCC also identified instances of:

- submitting returns that contained omissions
- submitting returns that contained inaccuracies, and
- submitting returns that were otherwise non-compliant with the requirements of the LGEA.<sup>194</sup>

The main reasons for these types of non-compliance, the CCC identified, included:

- a lack of awareness or clarity among election participants as to their disclosure obligations
- ECQ disclosure processes and systems that impeded rather than facilitated compliance, and
- the ECQ’s limited activity to monitor and enforce compliance with the requirements of the LGEA.<sup>195</sup>

In relation to the last of these factors, the CCC identified certain limitations of the legislative framework and also concluded that ‘the ECQ’s approach to compliance monitoring and enforcement is narrow, reactive and ineffective’.<sup>196</sup>

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<sup>189</sup> CCC, Operation Belcarra Report, p 13.

<sup>190</sup> CCC, Operation Belcarra Report, p 14.

<sup>191</sup> CCC, Operation Belcarra Report, p 15.

<sup>192</sup> CCC, Operation Belcarra Report, October 2017, pp 65-66. Footnotes in original removed.

<sup>193</sup> CCC, Operation Belcarra Report, October 2017, p 66.

<sup>194</sup> CCC, Operation Belcarra Report, October 2017, pp 66-67.

<sup>195</sup> CCC, Operation Belcarra Report, October 2017, p 67.

<sup>196</sup> CCC, Operation Belcarra Report, October 2017, p 87.

The CCC made a range of recommendations to address some of the contributing factors to these compliance issues, with a number of legislative changes and other actions subsequently taken in response. For example:

- efforts to educate and engage with election participants with respect to their obligations under the LGEA have been expanded<sup>197</sup>
- candidates are now required to undertake mandatory councillor training about their role and responsibilities as a condition of nominating
- disclosure requirements have been strengthened, including through the introduction of real-time disclosure to support transparency and accountability
- the ECQ's compliance role and responsibilities have been recognised in legislation,<sup>198</sup> and
- the ECQ has developed and implemented a new Compliance and Enforcement Policy.<sup>199</sup>

In terms of compliance activities in particular, the ECQ conducts investigations on referrals from integrity agencies or in response to complaints from members of the public, as well as undertaking retrospective compliance reviews for all candidates who contest local government elections and by-elections. The latter reviews, however, can occur some time after the relevant elections have taken place (for example, during 2018-19, the ECQ reported that it undertook compliance reviews for all candidates contesting local government by-elections in 2017, 2018 and 2019).<sup>200</sup>

While all of these measures have served to support compliance improvements, the committee identified that for the 2020 local government elections in Queensland approximately 28.2 percent (388) of the 1,374 unaligned individual candidates failed to lodge their return within 15 weeks of polling day as required (by 13 July 2020).<sup>201</sup> Forty three of these candidates subsequently submitted returns, but as at 20 August 2020, 345 candidates in total (24.9 per cent) were still yet to do so.

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<sup>197</sup> The ECQ advised the committee in May 2019 that it had 'sought to increase stakeholder awareness of reporting obligations as a first step in promoting compliance'. Activities over the preceding 12 months had included 'conducting information sessions, distributing fact sheets and directly engaging with candidates and elected representatives through compliance audits'. See ECQ, Submission to the Economics and Governance Committee's Inquiry into the Electoral and Other Legislation Amendment Bill 2019 and Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019, pp 4-5. The ECQ's *Annual Report 2018-19* also highlights its development of a new website to improve access to information about the electoral system, as part of a broader communication and engagement strategy for the 2020 elections, as well as an expansion of its use of social media. See: ECQ, *Annual Report 2018-19*, p 16.

<sup>198</sup> As implemented by the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*.

<sup>199</sup> ECQ, *Annual Report, 2018-19*, p 22.

<sup>200</sup> ECQ, *Annual Report, 2018-19*, 2019, p 22. The ECQ advised that the nature of these compliance reviews differed depending on the circumstances of the individual candidates, but that generally:

- where a nil return was lodged (i.e. the candidate claimed no reportable transactions for the period), candidates were provided with additional information and encouraged to review their circumstances to confirm the accuracy of a nil return
- where a return was lodged with gifts disclosed, candidates were requested to provide bank account statements for audit purposes, or
- where an accurate return was not lodged at the time of review, candidates were requested to lodge a return or request an amendment to their lodgement and, in cases of continued non-compliance, issued with Penalty Infringement Notices.

<sup>201</sup> Any endorsed candidate or member of a group of candidates who incurs personal electoral expenditure is required to also submit a candidate expenditure summary return (in addition to any group or party return). A total of 12 such expenditure summary returns were submitted for the campaign disclosure period, all by the specified deadline.

Of these 345 candidates, three were successfully elected as councillors, including one who was an incumbent councillor.

In terms of groups of candidates, of the 19 registered groups for the 2020 local government election (comprised of 99 councillor and mayoral candidates), one submitted their summary expenditure return outside of the required period (eg after the 13 July 2020 deadline), while as at 20 August 2020, two groups were still yet to submit ('team WORK', whose candidates contested the Ipswich City Council election, and 'Locals UNITED – Back to Basics', whose candidates contested the Mount Isa City Council election).

Of the five political parties who endorsed candidates in the 2020 local government election, one submitted their summary expenditure return outside of the required period (eg after the 13 July 2020 deadline), and another party (Motorists Party) was still yet to submit their summary expenditure return as at 20 August 2020.

Real-time disclosure entries are likely to be of significantly greater importance for monitoring and responsively policing electoral expenditure records, and the introduction of these returns may have resulted in declining perceptions of the importance of summary returns. However, the committee also heard during its inquiry:

*For example, without naming anyone, there is a successful incumbent councillor here who at the moment shows no expenditure. That obviously needs to be chased up because it cannot be true because that candidate had how-to-vote and promotional material, which presumably costs something. I think it is still a problem with people understanding what real-time reporting means...*<sup>202</sup>

This highlights some of the ongoing challenges faced by the ECQ in ensuring compliance with electoral funding and disclosure laws, which must be considered in the design of any cap scheme.

### **3.12.1 Stakeholder views on compliance measures**

Stakeholders provided a range of input with respect to the enforcement of proposed caps, with all emphasising the importance of effective disclosure and compliance measures,<sup>203</sup> and the QLGRA and OSCAR in particular submitting that the ECQ must be appropriately empowered and resourced to manage any complaints relating to expenditure cap breaches.<sup>204</sup>

From a proactive compliance perspective, there was agreement that local government election participants must have access to comprehensive informational resources to support their compliance with any new electoral spending cap regime.<sup>205</sup>

OSCAR submitted that it envisaged that this should include some form of 'online training, information papers, factsheets and Q&As on the websites of both the DLGRMA and the ECQ',<sup>206</sup> with OSCAR and the QLGRA stating that both organisations (DLGRMA and ECQ) have shown they are capable of producing and delivering these effectively.<sup>207</sup>

OSCAR submitted that it would also be useful to 'establish a dedicated "hot line" where candidates or third parties can seek advice on matters relating to expenditure caps'.<sup>208</sup>

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<sup>202</sup> Greg Smith, Committee Member, QLGRA, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 6.

<sup>203</sup> Redlands2030, submission 2, p 3.

<sup>204</sup> Submission 1, p 4; submission 3, p 7.

<sup>205</sup> See, for example: QLGRA, submission 1, p 4; OSCAR, submission 7, p 7.

<sup>206</sup> Submission 7, p 7.

<sup>207</sup> LGAQ, submission 7, p 7; QLGRA, submission 1, p 4.

<sup>208</sup> Submission 7, p 7.

Further, both the QLGRA and OSCAR emphasised that the requirements of the expenditure cap regime should be included in the mandatory candidate training that must now be undertaken prior to a person nominating for council elections or by-elections,<sup>209</sup> with the QLGRA also stating that the ‘option of on-line training and face-to-face training should remain’.<sup>210</sup>

From a regulatory perspective, further, OSCAR submitted that:

*The regulations need to be very clear as to what evidence must be produced by the candidate and third parties when audited, eg invoices and receipts, and where, for example, a campaign office has been rented the records should show whether the rent paid by the candidate is commercial rent as applied to other tenants for the period of time or partially subsidised by the property owner.*<sup>211</sup>

In terms of deterrence measures and penalties, OSCAR emphasised that the consequences of any breach of the statutory limits ‘must be material’, including significant fines and potentially, imprisonment.<sup>212</sup>

OSCAR and the QLGRA also agreed that consideration should be given to disqualifying from office any successful candidate who is shown after an election to have exceeded the applicable cap.<sup>213</sup> Further, the QLGRA submitted that:

*Unsuccessful candidates found to be in breach of the expenditure cap should be disqualified for standing at the next local government election at least.*<sup>214</sup>

The QLGRA also recommended that where a third party does not complete a declaration, ‘penalty points should be applied to their executive officers’,<sup>215</sup> while Redlands2030 also emphasised the importance of measures to address potential efforts by election participants to circumvent any spending cap regime.<sup>216</sup>

### **3.12.2 Compliance measures under the state expenditure cap scheme and in other jurisdictions**

Under the recently-established expenditure cap regime for state government elections in Queensland (as implemented by the Electoral Amendment Act), a number of penalties and compliance mechanisms apply. These may be instructive in determining appropriate penalties for any local government regime, particularly given there has been a consistent push in recent years to align requirements and penalties across these two levels of government.

In terms of offences and penalties under the new state expenditure cap regime:

- where an electoral participant, or a person acting with the participant’s authority, exceeds a relevant cap and knows, or ought reasonably to know, that the amount of the expenditure would exceed the cap,<sup>217</sup> a maximum penalty of 1,500 penalty units (\$200,175) or 10 years imprisonment applies<sup>218</sup>

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<sup>209</sup> QLGRA, submission 1, p 4; OSCAR, submission 7, p 7.

<sup>210</sup> Submission 1, p 4.

<sup>211</sup> Submission 3, p 7.

<sup>212</sup> Submission 3, p 7.

<sup>213</sup> OSCAR, submission 3, p 7; QLGRA, submission 1, p 4.

<sup>214</sup> Submission 1, p 4.

<sup>215</sup> Submission 3, p 7.

<sup>216</sup> Redlands2030, submission 2, p 3.

<sup>217</sup> In the case of an exceedance by aggregation, s 281I of the Electoral Act specifies that a person does not commit an offence because they exceed a cap as a result of their expenditure being added to aggregated expenditure of which they were unaware, and could not reasonably have been aware.

<sup>218</sup> Electoral Act, s 281G.

- where an unregistered third party exceeds their applicable cap, the maximum penalty is the greater of the amount that is twice the amount of the unlawful expenditure, or 200 penalty units (\$26,690),<sup>219</sup> and
- where a person is found to have knowingly participated, directly or indirectly, in a scheme to circumvent the expenditure cap regime, a maximum penalty of 1,500 penalty units (\$200,175) or 10 years imprisonment also applies.<sup>220</sup>

In addition, provisions for the recovery of unlawful electoral expenditure specify that the ECQ is also able to recover from the person an amount that is twice the amount of the unlawful expenditure incurred by the person.<sup>221</sup>

In NSW, in comparison, the maximum penalty associated with an offence of knowingly contravening a cap is 400 penalty units (\$44,000),<sup>222</sup> or imprisonment for two years, or both. The legislation also contains:

- an offence for entering a scheme to circumvent electoral expenditure restrictions, for which the maximum penalty in imprisonment for 10 years,<sup>223</sup> and
- like Queensland's state electoral jurisdiction, provision for the NSW Electoral Commission to recover an amount that is double the amount of the unlawful electoral expenditure.<sup>224</sup>

These provisions apply to NSW's state and local government expenditure cap regimes, with the state having similarly aligned the requirements and provisions of government representatives at both levels of government.

In New Zealand, a staggered offence provision applies, such that a candidate or person commits an offence and is liable on conviction:

- to a term of imprisonment not exceeding two years, or a fine not exceeding \$10,000, if he or she knew the payment was in excess of the relevant prescribed maximum amount, or
- to a fine not exceeding \$5,000 in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the electoral expenses did not exceed the relevant prescribed amount.<sup>225</sup>

Further, Tasmania and the UK, in contrast, impose slightly lower levels of penalties, but also provide for the disqualification of any elected candidate in breach of a cap. That is:

- in Tasmania, the relevant penalty for spending on electoral advertising otherwise than in accordance with the regulations is 100 penalty units (\$17,200).<sup>226</sup> Additionally, if a court convicts a successful candidate of such an offence, 'the court must declare that candidate's election void, unless the court is satisfied that there are special circumstances that make it undesirable or inappropriate for it to make such a declaration',<sup>227</sup> and

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<sup>219</sup> Electoral Act, s 281H.

<sup>220</sup> Electoral Act, 307B.

<sup>221</sup> Electoral Act, s 281J.

<sup>222</sup> The value of one penalty unit in NSW is prescribed in the *Crimes (Sentencing Procedure) Act 1999* (NSW), and is currently equal to \$110.

<sup>223</sup> *Electoral Funding Act 2018* (NSW), ss 143, 144.

<sup>224</sup> *Electoral Funding Act 2018* (NSW), s 58 (4)-(5).

<sup>225</sup> *Local Electoral Act 2001* (NZ), s 112AA.

<sup>226</sup> *Local Government Act 1993* (Tas), s 278.

<sup>227</sup> *Local Government Act 1992* (Tas), s 278(2).

- in the UK, the relevant penalty for knowingly exceeding the specified maximum amount of allowable election expenses is a fine of up to level 5 on the standard scale (£5,000).<sup>228</sup> Additionally, if the candidate in question is successful at the election, ‘their election shall be void’ (and in Scotland, they may also be prohibited from holding the office of councillor of any local authority for a specified period, with the duration of the prohibition to depend on the nature of the offence and how it was identified).<sup>229</sup>

#### Committee comment

The committee agrees with stakeholders that the implementation of a local government electoral expenditure cap scheme in Queensland should necessarily involve a significant program of education and engagement, to ensure candidates, parties and third parties are suitably supported to enable their compliance with the scheme requirements.

While the committee would expect scheme requirements to be appropriately addressed in mandatory candidate training, election participants more broadly should also have access to appropriate resources, such as guidelines or fact sheets, and access to a helpdesk or support line, to assist them in navigating the requirements of the scheme.

In terms of reactive compliance measures, the committee considers that existing real-time electoral disclosure requirements and requirements for electoral participants to operate dedicated candidate accounts should assist the ECQ in monitoring and auditing expenditure records to identify any exceedances. In addition, requirements for third party registration should also support the ECQ in monitoring the compliance of third parties with the expenditure cap scheme.

Where intentional exceedances have been identified, penalties concordant with those under the new electoral expenditure cap regime for state government elections should be imposed, much as NSW has similarly established consistent penalties for breaches of caps with respect to both levels of government, and in line with ongoing efforts in Queensland to align requirements for state and local government elections. The committee considers that these penalties adequately address stakeholder concerns for the imposition of ‘material’ consequences for any breach.

The committee also supports the inclusion of recovery provisions that mirror those employed under the state electoral expenditure cap scheme, and in NSW. Additionally, noting stakeholder calls for the disqualification of successful candidates who are found to be in breach, the committee considers that there is merit in considering and consulting on the potential prescription of scheme offences as ‘integrity offences’ under local government legislation.<sup>230</sup>

Further, noting stakeholders’ views on the potential disqualification of candidates who are found to be in breach, the committee considers that such sanctions should be the subject of further consideration, particularly given the potential for exceedances to unduly influence an election result.

The committee has made a recommendation regarding scheme penalties and recovery provisions at section 1.4 of this report.

### **3.13 Review of provisions**

Redlands2030 submitted that if expenditure caps were to be introduced for the 2020 Queensland State Government elections, as was intended by the Electoral Amendment Bill (and subsequently

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<sup>228</sup> *Representation of the People Act 1983* (UK), s 76(1B), 169; *Criminal Justice Act 1982* (UK), s 37.

<sup>229</sup> *Representation of the People Act 1983* (UK), s 159.

<sup>230</sup> A councillor is automatically suspended if charged with an integrity offence. If convicted, the person automatically stops being a councillor and is disqualified for office for a period of four years (for a serious integrity offence, the disqualifying period is seven years. See: *Local Government Act 2009*, s 153, Schedule 1.

implemented by the resulting Electoral Amendment Act), ‘the effectiveness of these laws should be reviewed before expenditure caps for local government elections in 2024 are finalised’.<sup>231</sup>

Other jurisdictions have also identified a need to review their electoral expenditure cap laws following their introduction, to ensure they are operating effectively and in keeping with their objectives.

In NSW, just over a month after the 1 July 2018 introduction of the state’s expenditure cap regime, the NSW Parliament’s Joint Standing Committee on Electoral Matters (NSW JSC EM) was asked to undertake an inquiry into the impact of expenditure caps for local government election campaigns.<sup>232</sup> In that instance, the NSW JSC EM found that:

*... the current model for expenditure caps is not fair for all candidates, does not properly take into account the differences between divided and undivided LGAs, and will hamper candidates in upcoming local government elections.*<sup>233</sup>

The NSW JSC EM therefore recommended that the relevant legislative provisions ‘be substantially amended to introduce a new model which is more closely linked to the number of enrolled voters in an electorate’,<sup>234</sup> with a revised model subsequently introduced for commencement in November 2019.<sup>235</sup>

The Tasmanian local government electoral expenditure limits were also altered following their introduction (and ahead of the October 2018 election), in response to a request from the Local Government Association of Tasmania, following an expansion of the definition of election expenses.<sup>236</sup>

Local government expenditure limits in the UK have also been periodically reviewed and adjusted, albeit primarily to reflect inflation and changes to the definition of election expenses. For example, for local governments and authorities other than the Greater London Authority:

- in 2001, the candidate expenditure limits were increased from £219 plus 4.3 pence per registered elector to £242 plus 4.7 pence per registered elector,<sup>237</sup> as deemed ‘expedient having regard to the changes in the value of money since the last occasion on which the maximum amounts were varied’ (in March 1997)<sup>238</sup>

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<sup>231</sup> Submission 2, p 3.

<sup>232</sup> Parliament of NSW, Joint Standing Committee on Electoral Matters (NSW JSC EM), *Inquiry into the impact of expenditure caps for local government election campaigns*, webpage, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2506>. The inquiry was referred on 15 August 2018.

<sup>233</sup> Parliament of NSW, NSW JSC EM, *Inquiry into the impact of expenditure caps for local government election campaigns*, Report 4/56, October 2018, p 8.

<sup>234</sup> Parliament of NSW, NSW JSC EM, *Inquiry into the impact of expenditure caps for local government election campaigns*, Report 4/56, October 2018, p iii. See also p 8.

<sup>235</sup> As implemented by the *Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019* (NSW).

<sup>236</sup> Peter Gutwein, Premier of Tasmania, *Local Government elections*, media release, 2 August 2018, [http://www.premier.tas.gov.au/releases/local\\_government\\_elections2](http://www.premier.tas.gov.au/releases/local_government_elections2). Amendments as effected by the Local Government (General) Amendment Regulations 2018 (Tas).

<sup>237</sup> The Representation of the People (Variation of Limits of Candidates’ Election Expenses) Order 2001 (SI no. 535 of 2001), article 4.

<sup>238</sup> The Representation of the People (Variation of Limits of Candidates’ Election Expenses) Order 2001 (SI no. 535 of 2001), explanatory note.

- in 2005, the candidate expenditure limits were increased from £242 plus 4.7 pence per registered elector for the ward, to £600 plus 5 pence per registered elector.<sup>239</sup> The increases were recommended by the UK Electoral Commission in their report, *Variation of election expenses at UK Parliamentary and local government elections*, and had regard to ‘the increase in the value of money’ since the previous amendments in 2001, and the impact of amendments to the definition of election expenses,<sup>240</sup> and
- in 2014, the candidate expenditure limits were increased from those set in 2005 (£600 plus 5 pence per registered elector), to the current limits of £740, plus 6 pence per local government elector in the relevant ward,<sup>241</sup> ‘to reflect inflation since the maximum amounts were last varied’.<sup>242</sup>

While in some of these instances the need for such periodic review and legislative amendment could be somewhat mitigated by providing for caps to be indexed to inflation, given the diverse characteristics of the local governments across Queensland, and the necessarily simplified, staged approach to be employed in capping electoral expenditure, it would seem reasonable to evaluate any final cap model to ensure it is appropriately calibrated to meet its objectives. This also provides scope for recognition of changes to other aspects of the regulatory or campaigning landscape, including the use of new approaches and mediums for political communication.

#### Committee comment

The committee agrees with Redlands2030 that it would be appropriate to consider the operation of the new state electoral expenditure caps at the upcoming Queensland general election. In addition, it may be prudent to provide for an appropriate review mechanism to ensure the effective ongoing operation of any local government electoral expenditure cap regime in Queensland, particularly in the early stages of the regime’s operation.

### **3.14 Other matters raised by stakeholders**

Beyond addressing the key principles and parameters of any system of expenditure caps for local government elections in Queensland, stakeholders also had a number of further suggestions to reduce the influence of political finance and promote equity in elections. This included proposing:

- changes to the approach for electing mayors in Queensland
- the introduction of donation caps for local government elections, and
- the introduction of public funding for local government elections.

In addition, in reference to the banning of political developer donations in Queensland, LGAQ Chief Executive Officer, Greg Hallam, identified a further area of concern regarding the influence of political finance or other interests in elections with respect to the waste industry, with Mr Hallam noting ‘the huge amount of money involved in their contracts’, even if approved only ‘every 10 to 15 years’.<sup>243</sup>

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<sup>239</sup> The Representation of the People (Variation of Limits of Candidates’ Election Expenses) Order 2005 (SI no. 269 of 2005), article 4.

<sup>240</sup> The Representation of the People (Variation of Limits of Candidates’ Election Expenses) Order 2005 (SI no. 269 of 2005), explanatory note.

<sup>241</sup> The Representation of the People (Variation of Limits to Candidates’ Election Expenses) Order 2014 (SI no. 1870 of 2014), article 5.

<sup>242</sup> The Representation of the People (Variation of Limits to Candidates’ Election Expenses) Order 2014 (SI no. 1870 of 2014), explanatory note.

<sup>243</sup> Greg Hallam, Chief Executive Officer, LGAQ, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 4.

Redlands2030 also considered that ‘there are other problem donors including companies that benefit from major contracts awarded by local councils.’<sup>244</sup>

In relation to the first of these matters, Redlands2030 suggested that an option for reducing the potentially corrupting influence of political finance at the mayoral level would be to amend the LGEA to provide for mayors to be ‘elected from and by the directly elected councillors’.<sup>245</sup> In calling for this change, Redlands2030 suggested that under the current arrangements, which provide for the direct election of mayors:

*... there is the potential for vested interests to fund the election of a mayor who is considered likely to deliver the decisions which suit those vested interests. If the big end of town decides to pick a winner, then the chances of other candidates become very slim.*<sup>246</sup>

While commending recent legislative changes to ban donations by property developers and limit the powers of mayors to direct local government officers as potentially serving to reduce some undue influence, Redlands2030 considered that this additional reform, which would be ‘in line with Australia’s political tradition which is based on the Westminster system of government’, would offer further corruption-reducing benefits by effectively serving to ‘give the elected divisional councillors more power to oversee the conduct of whoever they elected as mayor because they could un-elect a mayor if they perform unsatisfactorily’.<sup>247</sup>

In terms of caps on political donations, BRU submitted that it would very strongly support the introduction of such a regulatory mechanism in Queensland, as a ‘crucial and valuable improvement to help increase the chances that elections will be won by the best candidates rather than the candidates who spend the most money’.<sup>248</sup>

Finally, with respect to the last of these matters, calls for the establishment of public funding for local government elections were made by each of BRU, OSCAR, and Mr Neil Cotter.<sup>249</sup>

BRU and OSCAR submitted that in addition to aligning with public funding arrangements for state and federal elections, this change would help to address other structural inequities. Specifically, these submitters argued:

*Increasingly and even with the proposed caps on expenditure, contesting a local government election is for the well-off and out of the reach of the majority of residents, particularly for those supporting school-age children and young families.*

*The current system also disadvantages women who are not working or working limited hours owing to family or other responsibilities.*<sup>250</sup>

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<sup>244</sup> Submission 2, p 2.

<sup>245</sup> Submission 2, p 2.

<sup>246</sup> Submission 2, p 2.

<sup>247</sup> Submission 2, p 2.

<sup>248</sup> Submission 5, p 15.

<sup>249</sup> Neil Cotter, submission 10, p 29; OSCAR, submission 3, p 3; BRU, submission 5, pp 3-4; Ms Elizabeth Handley, President, BRU, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 7.

<sup>250</sup> Submission 3, p 3. Submission 5, p 3.

With reference to the BCC in particular, BRU President Ms Elizabeth Handley stated that:

*... the Brisbane City Council ward voter populations of 27,000 to 30,000 are not much less than the state government electorates' voter populations in Brisbane of 30,000 to 36,000.*

*How do we justify taxpayer electoral funding for state government candidates but not for local government candidates when they represent similar populations?*<sup>251</sup>

In such circumstances, Ms Handley continued, it is 'very difficult for good quality, independent councillors to compete in such large wards'.<sup>252</sup>

BRU elaborated on the proposal in their submission as follows:

*Our ideal scenario would be that political donations at all levels of government were replaced by a system where the only election materials allowed are those publicly funded for each candidate. The candidates would be provided with a certain number of flyers, a certain number of TV, social media and radio spots and an article in the local paper explaining their platform and policies. They could door knock and stand on street corners or participate in their local communities as much as they wish.*

*This system would actually prove less expensive for the taxpayer than the current system of electoral funding at all levels of government. Too many political decisions are only explicable by how they favour large donor interests. A case that is easily proved if you consider both the opportunity cost and the true cost of some of the appalling political decisions that have been made and no doubt will be made in the future, as a result of the undue influence of political donors. It is distorting our democracy and so the system must change.*<sup>253</sup>

Potential reforms to introduce public funding for local government elections were included in DLGRMA's March 2019 information paper for consultation, in which the department proposed the establishment of public funding entitlements of \$1.57 per first preference vote, up to the amount of recorded electoral expenditure, for all candidates, groups of candidates and political parties that receive more than four per cent of first preference votes.<sup>254</sup> At that time the department also published estimates of costs for the public funding of local government candidates, calculating the applicable public funding total at \$9.69 million for the 2016 quadrennial election and an estimated \$10.28 million for the 2020 quadrennial election (based on an assumed two percent rate of population increase), with individual costs also estimated for each council.<sup>255</sup>

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<sup>251</sup> Ms Elizabeth Handley, President, BRU, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 7.

<sup>252</sup> Ms Elizabeth Handley, President, BRU, public hearing transcript, Brisbane (via videoconference), 23 April 2020, p 7.

<sup>253</sup> BRU, submission 5, pp 3-4.

<sup>254</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 14.

<sup>255</sup> DLGRMA, *Estimates of costs for public funding of candidates at Local Government elections*, March 2019, <https://www.dlgrma.qld.gov.au/resources/publication/local-government/estimates-of-costs-for-public-funding-of-candidates-at-local-government-elections.pdf>

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Queensland Local Government Reform Alliance Inc
002	Redlands2030 Inc
003	OSCAR (Organisation of Sunshine Coast Association of Residents)
004	Queensland Law Society
005	Brisbane Residents United
006	Whitsunday Regional Council
007	Local Government Association of Queensland
008	Queensland Human Rights Commission
009	Administration Councillors of Brisbane City Council
010	Neil Cotter
011	Electoral Commission of Queensland

## Appendix B – Witnesses at public hearings

### Monday 20 January 2020

#### **Professor Graeme Orr, TC Beirne School of Law, University of Queensland**

#### **The Centre for Public Integrity** (by teleconference)

- Anthony Whealy QC, Chair
- Hannah Aulby, Executive Director

#### **Queensland Human Rights Commission**

- Neroli Holmes, Deputy Commissioner
- Sean Costello, Principal Lawyer Human Rights Law Centre
- Alice Drury, Senior Lawyer

#### **Queensland Council of Social Service Ltd**

- Laura Barnes, Senior Manager – Policy, Advocacy and Capacity Queensland Community Alliance
- Devett Kennedy, Lead Organiser
- Kerrin Benson, CEO, Multicultural Australia (Board Member, Community Alliance)

#### **Krystian Seibert, Industry Fellow, Centre for Social Impact, Swinburne University of Technology** (by teleconference)

Environmental Defenders Office Queensland

- Deborah Brennan, Senior Solicitor

#### **Australian Conservation Foundation**

- Jolene Elbert, Democracy Campaigner
- Tina Pandeloglou, General Counsel (by teleconference)

#### **Queensland Council of Unions**

- Dr John Martin, Research and Policy Officer

#### **GetUp!**

- Andrew Blake, Project Lead – Democracy & Risk
- Daney Faddoul, Political Director

#### **Jennifer Menzies, Principal Research Fellow, Policy Innovation Hub, Griffith Business School, Griffith University**

#### **Electoral Commission of Queensland**

- Pat Vidgen, Electoral Commissioner
- Wade Lewis, Assistant Electoral Commissioner
- Julie Cavanagh, Executive Director, Election Events Management
- Mel Mundy, Director, Funding, Disclosure and Compliance

#### **Local Government Association of Queensland**

- Greg Hallam, Chief Executive Officer
- Georgia Stafford, Lead – Intergovernmental Relations

#### **Logan City Council**

- Tamara O'Shea, Interim Administrator
- Silvio Trinca, Acting Chief Executive Officer

**Fraser Coast Regional Council** (by teleconference)

- Ken Diehm, Chief Executive Officer
- Councillor David Lewis

**Local Government Managers Australia Queensland** (by teleconference)

- Brett de Chastel, President

**Brisbane Residents United Inc**

- Elizabeth Handley, President

**SEQ Alliance**

- Chris Walker, President

**Queensland Local Government Reform Alliance Inc**

- Greg Smith, Committee Member

**Office of the Independent Assessor**

- Kathleen Florian, Independent Assessor
- Charles Kohn, Deputy Independent Assessor
- Nicole Butler, Director, Media and Engagement

**Crime and Corruption Commission, Queensland**

- Alan MacSporran QC, Chairperson

**Queensland Integrity Commissioner**

- Dr Nikola Stepanov, Integrity Commissioner

**Queensland Law Society (QLS)**

- Luke Murphy, President
- Calvin Gnech, Chair, QLS Occupational Discipline Law Committee
- Myles McGregor-Lowndes, Member, QLS Not for Profit Law Committee

**Queensland Council for Civil Liberties**

- Michael Cope, President

**Monday 23 April 2020**

**Local Government Association of Queensland**

- Greg Hallam, Chief Executive Officer
- Stephan Bohnen, Lead Intergovernmental Relations

**Brisbane Residents United**

- Elizabeth Handley, President

**OSCAR (Organisation of Sunshine Coast Association of Residents)**

- Melva Hobson, President

**Queensland Local Government Reform Alliance**

- Greg Smith, Committee Member

**Redlands2030**

- Chris Walker, Secretary

## Appendix C – Overview of selected electoral expenditure cap schemes for local governments in other jurisdictions

### Department of Local Government, Racing and Multicultural Affairs model

In March 2019, DLGRMA released an information paper<sup>256</sup> outlining key reforms under consideration as part of Stage 2 of the government's response to the CCC's Operation Belcarra Report recommendations. The paper included a proposal to establish the following caps on electoral expenditure at local government elections:

- Caps for councillor candidates in local government area/divisions:
  - \$10,000 for areas/divisions with fewer than 20,000 electors
  - a sliding cap of 50 cents per elector for areas/divisions with 20,000 electors or more
  - \$20,000 for areas/divisions with 40,000 electors or more
- Caps for mayoral candidates in local government areas:
  - \$30,000 for areas with fewer than 60,000 electors
  - a sliding cap of 50 cents per elector for areas with 60,000 electors or more
  - \$100,000 for areas with 200,000 electors or more.
- Caps for third parties in local government areas – the same cap that applies for mayoral candidates
- Caps for groups of candidates and political parties that endorse candidates – the sum of individual members' expenditure caps up to the maximum for positions to be filled in lieu of candidate caps.<sup>257</sup>

Under the DLGRMA model, caps were to apply for the length of the four-year local government term. Aggregation and collaboration limits were also to apply to prevent candidates and groups of candidates using third parties to exceed expenditure caps, though the specifics of these limits were not articulated in detail.<sup>258</sup>

The establishment of such caps, DLGRMA stated, was intended to:

- improve transparency and reduce integrity risks associated with reliance on significant donations
- create diversity by supporting more equitable participation by those wishing to run for local government
- increase integrity by reducing candidates' need to seek large donations from external parties, and
- support reconciliation of donation and other income for electoral purposes with actual expenditure.<sup>259</sup>

Following input from stakeholders on these and other reforms outlined in the consultation paper, however, the Minister subsequently announced that the government had determined that local

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<sup>256</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, <https://www.dlgrma.qld.gov.au/resources/publication/local-government/information-paper-key-amendments-under-consideration.pdf>

<sup>257</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 12.

<sup>258</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 12.

<sup>259</sup> DLGRMA, *Local Government Reforms; Key amendments currently under consideration*, Information Paper, March 2019, p 12.

government expenditure caps required further consultation, and therefore ‘will not be implemented to apply to the 2020 Local Government elections’.<sup>260</sup>

### Local Government Association of Queensland model

The LGAQ has publicly expressed support for the introduction of expenditure caps for a number of years, having written to the Queensland Government and Queensland Opposition about such a proposal in September 2017, as well as subsequently including the proposal in its *Beyond Belcarra* plan released in April 2018.<sup>261</sup>

The LGAQ submission to this inquiry proposed that expenditure caps for local government elections for each four-year term be set at \$1 per enrolled voter for mayoral and councillor elections up to a maximum of:

- \$20,000 for mayoral candidates with a council area comprising 20,000 electors or fewer
- \$15,000 for councillor candidates in undivided councils with an area comprising 15,000 electors or fewer, and
- \$10,000 for councillor candidates in divided councils if their division comprises 10,000 electors or fewer.<sup>262</sup>

This proposal reflects the content of resolutions adopted at the LGAQ Special General Meeting in April 2019.<sup>263</sup>

Prior to the 2019 conference, the LGAQ’s proposed model was slightly different. As set out in a submission to this committee’s inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018, the LGAQ’s initial proposal called for differential caps of \$2 per enrolled voter for mayors and \$1 per enrolled voter for councillors, and included upper expenditure limits of \$200,000 for mayoral elections and \$50,000 for councillor elections.<sup>264</sup>

However, ahead of the conference vote to endorse the LGAQ’s proposed expenditure cap model, LNP councillors from the BCC, led by Cr Matthew Bourke (Jamboree), moved an amendment to the resolutions to remove the \$200,000 and \$50,000 upper expenditure limits for mayors and councillors respectively, as well as reducing the proposed spending cap of \$2 per enrolled voter for mayoral candidates to \$1, to apply a consistent per-voter spending cap for all candidates. Cr Bourke was reported as having argued that the change was necessary as otherwise the Brisbane mayor would be forced to campaign for the votes of the then 744,000 electors on the same budget as the mayor of Redlands, who had 103,000 electors at the time. It was also reported that Labor councillors abstained from the vote on Cr Bourke’s amended motion.<sup>265</sup>

In terms of limiting third party expenditure, the LGAQ has advised that it supports the establishment of such spending restrictions, but has not articulated a particular cap approach for these electoral participants. The LGAQ submitted, however, that DLGRMA’s proposal to allow third parties to spend

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<sup>260</sup> Hon Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, ‘Consultation informs Local Government reforms’, media release, 1 April 2019, <https://statements.qld.gov.au/statements/86986>

<sup>261</sup> LGAQ, ‘More transparency needed ‘Beyond Belcarra’’, media release, 28 April 2020, <https://www.lgaq.asn.au/news/article/256/more-transparency-needed-beyond-belcarra>

<sup>262</sup> LGAQ, submission 7, p 9.

<sup>263</sup> LGAQ, submission 7, p 9.

<sup>264</sup> LGAQ, submission 40, Inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018, p 2.

<sup>265</sup> Lucy Stone, ‘\$200,000 isn’t enough to run a mayoral campaign, LNP councillors say’, *The Brisbane Times*, 27 March 2019, <https://www.brisbanetimes.com.au/national/queensland/200-000-isn-t-enough-to-run-a-mayoral-campaign-lnp-councillors-say-20190327-p5188h.html>

the same amount as mayoral candidates, 'would have the potential to distort the election process by way of the aggregation of expenditure by a number of third parties against a particular candidate'.<sup>266</sup>

### **New South Wales model**

Caps on local government electoral expenditure were introduced in NSW by the *Electoral Funding Act 2018* (NSW), which repealed and replaced the former *Election Funding, Expenditure and Disclosures Act 1981* (NSW). The NSW provisions were the subject of a 2018 committee inquiry into the impact of expenditure caps for local government election campaigns, which recommended a number of changes to the current system of caps.<sup>267</sup> The amendments were subsequently implemented by the *Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019* (NSW), which commenced on 21 November 2019.

The NSW legislation uses a broad definition of electoral expenditure which includes expenditure on advertisements across all media; the production and distribution of electoral material; office costs, including expenses for office accommodation, the employment of staff, Internet, telecommunications and stationery; expenditure on travel and travel accommodation for candidates and staff engaged in campaigning; and expenditure on research associated with election campaigns (other than in-house research).<sup>268</sup>

Expenditure is capped from a period commencing 1 July in the year of the election and ending on election day.<sup>269</sup> For a by-election, the expenditure period commences on the latter of the day that is three months before the election day or the day the by-election is publicly notified, and ends on election day.<sup>270</sup>

Caps applicable for a candidate or group of candidates for election as a councillor (other than a candidate for mayor or a group of candidates that includes a candidate for mayor), which apply irrespective of any party endorsement, are:

- \$6,000 – where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or fewer
- \$10,000 – where there are 5,001 to 10,000 enrolled electors
- \$18,000 – where there are 10,001 to 20,000 enrolled electors
- \$25,000 – where there are 20,001 to 30,000 enrolled electors
- \$36,000 – where there are 30,001 to 50,000 enrolled electors
- \$46,000 – where there are 50,001 to 75,000 enrolled electors
- \$63,500 – where there are 75,001 to 125,000 enrolled electors
- \$72,000 – where there are more than 125,000 enrolled electors.<sup>271</sup>

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<sup>266</sup> LGAQ, submission 7, p 10.

<sup>267</sup> Parliament of NSW, NSW JSCEM, *Inquiry into the impact of expenditure caps for local government election campaigns*, Report 4/56, October 2018.

<sup>268</sup> *Electoral Funding Act 2018* (NSW), s 7.

<sup>269</sup> *Electoral Funding Act 2018* (NSW), s 28. Section 87 of the *Local Government Act 1993* (NSW) specifies that ordinary elections are to be held on the second Saturday of September 2008 and every fourth year afterwards.

<sup>270</sup> *Electoral Funding Act 2018* (NSW), s 28.

<sup>271</sup> *Electoral Funding Act 2018* (NSW), s 31(3).

For mayoral candidates, or for a group of candidates that includes a candidate for mayor, the applicable caps are:

- for divided councils, 100 per cent of the applicable cap for a candidate for election as a councillor in a ward, plus 25 per cent of the applicable cap for a candidate in each of the other wards of the local government area, and
- for undivided councils, 125 per cent of the applicable cap for a candidate for election as a councillor of the local government area (other than a candidate for mayor).<sup>272</sup>

For third party campaigners, the expenditure cap is one third of the applicable cap for a candidate (other than the mayor), rounded up to the nearest \$10 if that amount is not a whole number.<sup>273</sup>

Additionally, any electoral expenditure incurred by a party for its endorsed candidate or group must be within the candidate or group's expenditure cap when aggregated with any other electoral expenditure incurred by the candidate or group.<sup>274</sup>

The caps are to be adjusted each year for inflation.<sup>275</sup>

Election participants are required to disclose expenditure incurred during a capped local government expenditure period to the NSW Electoral Commission.<sup>276</sup>

The legislation specifies that it is unlawful for a party, group, candidate, third party campaigner or associated entity to incur electoral expenditure during the capped local government expenditure period if it exceeds the applicable cap on electoral expenditure.<sup>277</sup> The maximum penalty associated with an offence of contravening a cap on expenditure is 400 penalty units (\$44,000)<sup>278</sup> or imprisonment for two years, or both. The legislation also contains an offence for entering a scheme to circumvent expenditure restrictions, for which the maximum penalty is imprisonment for 10 years.<sup>279</sup>

### Tasmanian model

Tasmania's Local Government (General) Regulations 2015 (Tas), made under the *Local Government Act 1993* (Tas), were amended in 2018 to introduce expenditure limits applying specifically to the purchase of advertising time on radio and television and newspaper space.<sup>280</sup> Further amendments later that year increased the relevant spending limits and extended their application to cover costs of all forms of electoral advertising.<sup>281</sup>

Under the legislation, 'electoral advertising' is defined to include any notice, sign or poster; any pamphlet or handbill; any how-to-vote card; any print medium; any broadcast by radio or television; and advertising on the Internet. The definition covers advertising that is either 'directly or indirectly in respect of a campaign for an election by a candidate or intending candidate'.<sup>282</sup>

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<sup>272</sup> *Electoral Funding Act 2018* (NSW), s 31(4).

<sup>273</sup> *Electoral Funding Act 2018* (NSW), s 31(5). If the amount is not a whole number multiple of \$10, the amount is to be rounded up to the nearest whole multiple of \$10.

<sup>274</sup> *Electoral Funding Act 2018* (NSW), s 30.

<sup>275</sup> *Electoral Funding Act 2018* (NSW), s 31. See also s 32 regarding the aggregation of electoral expenditure.

<sup>276</sup> See *Electoral Funding Act 2018* (NSW), Part 3, Division 2.

<sup>277</sup> *Electoral Funding Act 2018* (NSW), s 33(2).

<sup>278</sup> The value of one penalty unit in NSW is prescribed in the *Crimes (Sentencing Procedure) Act 1999* (NSW), and is currently equal to \$110.

<sup>279</sup> *Electoral Funding Act 2018* (NSW), ss 143, 144.

<sup>280</sup> Local Government (General) Amendment Regulations 2018 (Tas).

<sup>281</sup> Local Government (General) Amendment Regulations 2018 (No. 2) (Tas).

<sup>282</sup> *Local Government Act 1993* (Tas), s 3.

The 'relevant period' for which the advertising expenditure limits applies starts on the 30th day before the notice of election (which must be given on the 8th Saturday before the day on which polls close), and finishes on polling day (eg for the 2018 elections, the relevant period was from 9 August to 30 October 2018).<sup>283</sup>

The following advertising expenditure limits (indexed to CPI) apply:

- for candidates in the municipal areas of Clarence, Glenorchy, Hobart, Kingborough or Launceston, \$16,000, or
- for candidates in any other municipal area, \$10,000.<sup>284</sup>

For 'joint advertising', 'a candidate is taken to have incurred the total time and space of, and expenditure involved in, advertising which promotes that candidate, in respect of an election, irrespective of whether or not that electoral advertising also promotes another candidate'.<sup>285</sup>

Candidates are required to declare their costs of electoral advertising in an 'electoral advertising return'. Electoral advertising returns are also required from anyone who prints, publishes or broadcasts electoral advertising (eg media and publishers).<sup>286</sup>

If, during the relevant period, a person incurs expenditure on electoral advertising in excess of a cap with a view to promoting or procuring the election of any candidate in an election, a maximum fine of 100 penalty units (\$168,000) applies. If a court convicts a successful candidate of this offence, the court must declare their election void, unless the court is satisfied there are special circumstances that make it undesirable or inappropriate for it to make such a declaration.<sup>287</sup>

### **New Zealand model**

Expenditure caps are a long-established feature of New Zealand's political system both nationally and at the local government level.<sup>288</sup> Provisions governing the maximum allowable electoral expenses for local government elections were introduced in 2001, under the *Local Electoral Act 2001* (NZ).

'Electoral expenses' are defined to include any expenses for advertising, radio or television broadcasting; electronic communications to the public (including operation of a website or other online communication); the production and distribution (including printing and postage costs) of print materials (notices, posters, pamphlets, handbills, billboards, etc); and the reasonable market value of materials applied in respect of any electoral activity that are provided free of charge or below market value. Voluntary labour is excluded.<sup>289</sup>

The expenditure caps apply to the period 'beginning 3 months before the close of polling day and ending with the close of polling day'.<sup>290</sup>

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<sup>283</sup> *Local Government Act 1993* (Tas), s 3.

<sup>284</sup> Local Government (General) Regulations 2015 (Tas), s 22A.

<sup>285</sup> Local Government (General) Regulations 2015, s 22(6)

<sup>286</sup> *Local Government Act 1993* (Tas), s 279.

<sup>287</sup> *Local Government Act 1993* (Tas), s 278. For the 2019-20 financial year, the value of a penalty unit in Tasmania is \$168. See: Department of Justice, *Value of indexed amounts in legislation: Penalty Units and Other Penalties Act 1987*, webpage, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>288</sup> Andrew Geddis, 'Regulating the Funding of Election Campaigns in New Zealand: A Critical Overview', *Otago Law Review*, vol 10, no. 4, 2004, p 590.

<sup>289</sup> *Local Electoral Act 2001* (NZ), s 104.

<sup>290</sup> *Local Electoral Act 2001* (NZ), s 104.

Section 111 of the *Local Electoral Act 2001* (NZ) specifies that the total electoral expenses (inclusive of goods and services tax) of a candidate must not exceed:

- \$3,500 for a local government area with a population up to 4,999
- \$7,000 for a population from 5,000 to 9,999
- \$14,000 for a population from 10,000 – 19,999
- \$20,000 for a population from 20,000 to 39,999
- \$30,000 for a population from 40,000 to 59,999
- \$40,000 for a population from 60,000 to 79,999
- \$50,000 for a population from 80,000 to 99,999
- \$55,000 for a population from 100,000 to 150,000
- \$60,000 for a population from 150,000 to 250,000
- \$70,000 for a population from 250,000 to 1,000,000.
- \$100,000 plus 50 cents for each elector for a population of 1,000,000 or more.<sup>291</sup>

If a candidate is a candidate for more than one election held at the same time, the total electoral expenses (inclusive of goods and services tax) of the candidate must not exceed the highest amount permitted for any one of the elections for which the person is a candidate.<sup>292</sup> If a candidate is standing for more than one position, such as mayor and councillor, the higher limit (eg the limit applicable to the larger population of electors) applies – not a combination of both.<sup>293</sup>

Where advertising promotes both the party vote and the election of a constituency candidate, apportionment must be calculated in proportion to the coverage provided to the party and the candidate.<sup>294</sup>

All candidates are required to file a return of electoral donations and expenses.<sup>295</sup>

Where the applicable maximum amount of electoral expenses has been exceeded, the *Local Electoral Act 2001* (NZ) provides that a candidate or person commits an offence and is liable on conviction:

- to a term of imprisonment not exceeding two years, or a fine not exceeding \$10,000, if he or she knew the payment was in excess of the relevant prescribed maximum amount, or
- to a fine not exceeding \$5,000 in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the electoral expenses did not exceed the relevant prescribed amount.<sup>296</sup>

### **United Kingdom model**

In the UK, expenditure caps for local government elections are established under the *Representation of the People Act 1983* (UK).

‘Election expenses’ include costs associated with advertising of any kind (whatever the medium used); unsolicited material addressed to electors; the transport of persons (eg hiring transport for a particular

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<sup>291</sup> *Local Electoral Act 2001* (NZ), s 111.

<sup>292</sup> *Local Electoral Act 2001* (NZ), s 111(2).

<sup>293</sup> Local Government New Zealand, *A candidate’s guide to local authority elections*, 2016, <https://www.lgnz.co.nz/assets/140832c350/Candidate-guide-to-local-authority-elections.pdf>

<sup>294</sup> *Local Electoral Act 2001* (NZ), s 112. See also: New Zealand Electoral Commission, *Apportioning elections expenses between party and candidate*, webpage, accessed December 2019, <https://elections.nz/guidance-and-rules/for-parties/apportioning-election-expenses-between-party-and-candidate/>

<sup>295</sup> *Local Electoral Act 2001* (NZ), s 112A.

<sup>296</sup> *Local Electoral Act 2001* (NZ), s 112AA.

period); public meetings (eg hiring premises or the provision of goods; services or facilities at the premises); the services of an election agent; and administrative and accommodation costs (excluding the candidate's sole or main residence).<sup>297</sup>

The 'regulated period' for which caps apply begins on the day after the day on which a person officially becomes a candidate and ends on polling day (the first Thursday in May). The earliest date when a person can officially become a candidate is the last date for publication of the notice of election (no later than 25 working days before polling day). After that point, it begins on the earlier of the date the candidate's intention to stand is announced, or the date when nomination papers are submitted.<sup>298</sup>

The applicable caps for candidates are £740, plus 6 pence per local government elector in the ward registered to vote on the last day for publication of the notice of election in the ward in which the candidate is standing.<sup>299</sup>

For example, if there are 7,500 electors in a ward, the spending limit is: £740 + (7,500 x 0.06) = £1,190.

A different cap may be established for candidates in an election for the Mayor of London through prescription in an order made by statutory instrument by the Secretary of State (following the approval of a draft order by both Houses of Parliament).<sup>300</sup>

Lower spending limits apply for 'joint candidates' – that is, candidates standing in the same ward who have the same election agent or use the same campaign rooms or publish joint material. Joint candidates are required to reduce their applicable spending limit by 25 per cent for two joint candidates, or by 33 per cent for three or more joint candidates.<sup>301</sup>

Third party campaigners, known in the UK as 'local non-party campaigners' under the UK legislation, can spend up to £50 plus 5 pence per elector during the regulated period on campaigning for or against a candidate in the ward.<sup>302</sup>

Candidates are required to provide a return of all incurred election expenses within a certain period after the election.<sup>303</sup> An elected candidate who has not submitted a return is prohibited from sitting or voting in the council, and if they do they are to forfeit £50 for every day on which they sit and vote, as well as being liable for a conviction or fine.<sup>304</sup>

Where any election expenses are incurred in excess of the specified maximum amount, the candidate or agent who incurred or authorised that the expenses be incurred and knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount, 'shall be guilty of an illegal practice' and be liable to a fine of up to level 5 on the standard scale (£5,000).<sup>305</sup>

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<sup>297</sup> *Representation of the People Act 1983* (UK), Schedules 4 (Election Expenses at Certain Local Elections in England and Wales), 4A (Election Expenses), and 4B (Scottish local government elections: election expenses).

<sup>298</sup> Electoral Commission (UK), *Local elections in England May 2020, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2019, p 5; *Representation of the People Act 1983* (UK), s 37.

<sup>299</sup> Electoral Commission (UK), *Local elections in England May 2020, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2019, p 6.

<sup>300</sup> *Representation of the People Act 1983* (UK), s 76(2A)-(2B).

<sup>301</sup> *Representation of the People Act 1983* (UK), s 77.

<sup>302</sup> Electoral Commission (UK), *Local government elections (including combined authority mayors) in England: Non-party campaigners*, factsheet, December 2019, p 2.

<sup>303</sup> *Representation of the People Act 1983* (UK), s 81.

<sup>304</sup> *Representation of the People Act 1983* (UK), Schedule 4, s 4.

<sup>305</sup> *Representation of the People Act 1983* (UK), s 76(1B), 169; *Criminal Justice Act 1982* (UK), s 37.

Additionally, if the candidate in question is successful at the election, their election shall be void and they may also be prohibited from holding the office of councillor of any local authority for a specified period.<sup>306</sup>

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<sup>306</sup> *Representation of the People Act 1983* (UK), s 159.