Parliamentary Committees

Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016

Report No. 43, 55th Parliament
Infrastructure, Planning and Natural Resources Committee

March 2017

Infrastructure, Planning and Natural Resources Committee

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Staff	Ms Mary Westcott, Acting Research Director
	Ms Trudy Struber, Inquiry Secretary
	Ms Margaret Telford, Principal Research Officer
	Ms Yasmin Ashburner, Acting Committee Support Officer
Technical Scrutiny of Legislation Secretariat	Ms Renée Easten, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Marissa Ker, Principal Research Officer
	Ms Lorraine Bowden, Senior Committee Support Officer
Contact details	Infrastructure, Planning and Natural Resources Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6621
Fax	+61 7 3553 6699
Email	ipnrc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/ipnrc

Acknowledgements

The committee thanks all those who briefed the committee, provided submissions and participated in its inquiry.

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Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to it, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations who lodged written submissions on the Bill and who appeared at the committee's public hearing.

In addition, I would like to thank the departmental officials who briefed the committee; Hansard staff; Technical Scrutiny of Legislation Secretariat staff; and the committee's secretariat.

I commend the report to the House.

Jim Pearce MP
Chair

March 2017

Abbreviations

AI Act	*Associations Incorporation Act 1981*
Building Act	*Building Act 1975*
CCC	Crime and Corruption Commission
CCC report	*Transparency and accountability in local government, December 2015*
department	Department of Infrastructure, Local Government and Planning
ECQ	Electoral Commission of Queensland
FLP	fundamental legislative principles
LGAQ	Local Government Association of Queensland
LG Act	*Local Government Act 2009*
LGE Act	*Local Government Electoral Act 2011*
LS Act	*Legislative Standards Act 1992*
PCA	Property Council of Australia
Planning Act	*Planning Act 2016*
PEC Act	*Planning and Environment Court Act 2016*
proposed Act	*Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017*
QELA	Queensland Environmental Law Association
SP Act	*Sustainable Planning Act 2009*
TLPI	temporary local planning instrument

Recommendations

Points of clarification

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

At the time the Bill was introduced, the committee's areas of portfolio responsibility were:

- Infrastructure, Local Government and Planning and Trade and Investment
- State Development, Natural Resources and Mines, and
- Housing and Public Works.[1]

On 14 February 2017, the committee's portfolio responsibilities were amended to the following portfolio areas:

- Transport, Infrastructure and Planning
- State Development, Natural Resources and Mines, and
- Local Government and Aboriginal and Torres Strait Islander Partnerships.[2]

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of the fundamental legislative principles (FLPs).[3]

Further information about the work of the committee can be found on its website.

1.2 The referral

On 1 December 2016, Hon Jackie Trad MP, Deputy Premier and Minister for Infrastructure, Local Government and Planning and Minister for Trade, introduced the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 (the Bill) into the Legislative Assembly.

The Bill was referred to the committee for detailed consideration, and the committee was required to report to the Legislative Assembly by 7 March 2017.

1.3 Committee's inquiry process

The committee called for submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 30 January 2017. A list of the 41 submissions accepted and published by the committee is at **Appendix A**.

The committee held a public briefing with officers from the Department of Infrastructure, Local Government and Planning (department), the Department of Public Housing and Works, and the Electoral Commission of Queensland (ECQ) on 15 February 2017. A list of the departmental officers who appeared at the briefing is at **Appendix B**.

The committee held a public hearing in Brisbane on 17 February 2017. A list of the witnesses and departmental officers who appeared at the hearing is at **Appendix C**.

Copies of the material published in relation to this inquiry, including transcripts and submissions, are available on the committee's website.

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1 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).

2 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 14 February 2017).

3 *Parliament of Queensland Act 2001*, s 93.

1.4 Policy objectives of the Bill

The explanatory notes state that the objectives of the Bill are to:

- improve transparency and accountability in local government electoral disclosure requirements
- clarify that the ECQ may continue to recover both direct and indirect costs associated with local government elections
- give early effect to planning reforms contained in the *Planning Act 2016* and the *Planning and Environment Court Act 2016*, and
- address issues arising from court decisions concerning development approval for building work, and make various technical and clarifying amendments.[4]

1.5 Estimated cost for government implementation

The explanatory notes do not provide a dollar figure for the cost of government implementation of the Bill. The notes advise that '[a]ny additional cost associated with the development of real-time electoral donation disclosure will be explored through the established budgetary processes'.[5]

1.6 Consultation on the Bill

The explanatory notes state that in relation to the provisions regarding local government electoral donations and incorporated associations:

> *Consultation with the ECQ was ongoing during the drafting of the Bill. A draft exposure Bill in relation to the proposed LGEA [Local Government Electoral Act 2011] amendments was released for consultation with the LGAQ [Local Government Association of Queensland], Brisbane City Council (BCC) and the ECQ. The Bill is consistent with the views expressed by the ECQ, the LGAQ and BCC.*
>
> *The ECQ advised that consultation was undertaken with the LGAQ, registered political parties and MPs [Members of Parliament] and that the response was positive with general acceptance of the intended outcomes.*[6]

In relation to the planning and building legislation provisions the explanatory notes state:

> *Technical amendments in the planning legislation have generally arisen in the course of consultation and training to prepare for the commencement of the legislation. Significant consultation has occurred with local governments, the LGAQ, and industry and private certifiers during development of the proposals in the Bill to address the issues raised in the Gerhardt court decisions.*[7]

1.7 Should the Bill be passed?

Standing Order 132(1) of the Standing Rules and Orders of the Legislative Assembly requires the committee to recommend whether the Bill should be passed.

The committee considered the Bill, information provided by the department and the information and views expressed in submissions and by witnesses, and recommends that the Bill be passed.

Recommendation 1

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be passed.

4 Explanatory notes, p 1.
5 Explanatory notes, p 8.
6 Explanatory notes, pp 10-11.
7 Explanatory notes, p 11.

2 Examination of the Bill

2.1 Transparency and accountability in local government

Local governments in Queensland are governed primarily by the *Local Government Act 2009* (LG Act) and the *Local Government Electoral Act 2011* (LGE Act). This legislative framework contains various provisions designed to promote transparency and accountability by elected officials and candidates for public office in order to 'maintain public confidence in the system of government'.[8]

The provisions aim to ensure gifts, benefits or donations are appropriately recorded and managed, so it is clear to the public who is funding an election campaign and who is giving elected officials gifts and benefits during their term of office.[9]

The Crime and Corruption Commission (CCC) tabled a report titled *Transparency and accountability in local government*, on 11 December 2015.[10] The report concluded that the legislative framework 'does not clearly prescribe how an elected official or local council must treat campaign funds or donations in a range of circumstances'.

The CCC made the following six recommendations for legislative reform with the objectives of increasing transparency in the local government sector, reducing perceptions of corruption and promoting public confidence in the probity of elected officials.[11]

- *Recommendation 1* - That associations incorporated or unincorporated not be permitted to use any official title (such as Mayor) in the name unless it is a controlled entity and therefore subject to auditing by QAO.
- *Recommendation 2* - That the *Associations Incorporation Act 1981* be amended to make it clear that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a member's benefit, either directly or indirectly.
- *Recommendation 3* - That the Government consider amendment to disclosure timeframes to make the disclosure of donations more contemporaneous with the receipt of the donation by the candidate and others required to make a disclosure.
- *Recommendation 4* - That the Government consider amendment to disclosure requirements in the *Local Government Electoral Act 2011* and *the Local Government Act 200*9 to align the threshold obligations for reporting.
- *Recommendation 5* - That the Government expand the regulation of donations to include the expenditure of donations and a requirement to account for unspent donations by either only using the *funds* for campaign purposes or transferring them to a registered charity.
- *Recommendation 6* - That the Government strengthen the obligation upon councillors, chief executive officers and senior executive employees (relevant persons) to declare funds, gifts or benefits provided to another entity which could be perceived to provide the relevant person with a benefit.

The Government's response to the CCC report was tabled on 20 July 2016, accepting recommendations 1 to 4 and part of recommendation 5 relating to unspent donations. Recommendation 5 relating to the disclosure of the expenditure of donations and recommendation 6 were not supported.[12]

8 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, pp 5, 14.
9 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, p 14.
10 Explanatory notes, p 1.
11 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, pp 1, 16-20.
12 Queensland Government, *Queensland Government response to the Crime and Corruption Commission report on the 'Transparency and accountability in local government'*, July 2016, pp 3-4.

The Bill gives effect to recommendations 2 to 4, and the part of recommendation 5 supported by the Government.[13] The explanatory notes state that recommendation 1 will be progressed separately as an amendment to the *Associations Incorporation Regulation 1999*.[14]

2.1.1 Incorporated associations – recommendation 2 of the CCC report

An incorporated association is a body with the same powers, benefits and responsibilities as a person, but that is legally separate from the people who are its members. Incorporated associations are generally free to conduct business in compliance with the rules of the *Associations Incorporation Act 1981* (the AI Act).[15]

As separate legal entities, incorporated associations are not obliged to comply with the requirements that apply to electoral candidates and elected officials regarding the disclose gifts and benefits. The CCC report raised concerns that the use of incorporated associations by electoral candidates and elected officials may create 'a lack of public transparency and accountability in relation to the receipt of gifts and benefits'.[16]

The CCC report recommended that the AI Act be amended to 'make it clear that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a member's benefit, either directly or indirectly'.

Section 5 of the AI Act, currently makes an association ineligible for incorporation if, among other things, the association is formed or carried on for the purpose of providing financial gain for its members, or has as its *main purpose* the holding of property for use by some or all of its members or among persons claiming through, or nominated by, some or all of its members.[17]

Clause 4 of the Bill proposes to give effect to recommendation 2 of the CCC report by including an example in section 5 of the AI Act to clarify:

> *…that an incorporated association cannot be used to receive or hold electoral campaign funds that are intended to be applied for a member's benefit, either directly or indirectly, or a person nominated by a member.*[18]

The submissions that addressed this aspect of the Bill were generally supportive of the amendment.[19] However, the CCC suggested that an additional paragraph incorporating the text from the proposed example 'would be more instructive' than an example.[20]

Committee comment

The committee notes the department's advice that the Bill does not change the arrangements regarding an association's eligibility for incorporation, and that the addition of an example in the eligibility provisions clarifies the existing requirements.[21]

2.1.2 Contemporaneous disclosure – recommendation 3 of the CCC report

Under the current requirements, all candidates for a local government election must lodge a 'return' with the ECQ about disclosable gifts within 15 weeks after the polling day for the election. The candidate must lodge a return irrespective of whether any donations were received.[22]

13 Explanatory notes, p 4.
14 Explanatory notes, pp 4-5.
15 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, pp 8, 14.
16 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, pp 14-15.
17 *Associations Incorporation Act 1981*, s 5.
18 Explanatory notes, p 12
19 See for example submission 7, 10, 13, 16, 21, 25 and 31.
20 Submission 3, p 2.
21 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 4.
22 *Local Government Electoral Act 2011*, ss 109, 116; Electoral Commission Queensland, *Local government disclosure handbook for local government* elections, pp 3-4.

Similarly third parties that receive gifts or incur relevant expenditure must lodge a return with the ECQ within 15 weeks after polling day. A third party in the context of election disclosure requirements is any entity other than a political party, election committee, or associated entity.[23]

The CCC concluded in its report that the absence of a requirement to disclose gifts and expenditures prior to polling day, 'would hamper voters' ability to make an informed decision about a candidate' and proposed that disclosure be made 'on an ongoing basis throughout a campaign, with a significantly shorter time frame for compliance'.[24]

Clauses 11 and 15 to 24 of the Bill propose to give effect to recommendation 3 of the CCC report to provide for the 'contemporaneous disclosure of gifts, loans and third party expenditure'.[25] The Bill proposes more contemporaneous disclosure by providing that if a gift or loan is received, or expenditure outlaid, during the disclosure period a return must be given to the ECQ 'on or before the disclosure date', with the disclosure date defined as 'the day prescribed by regulation'.[26]

The Government is working with ECQ to develop a real-time online system of disclosure of election donations.[27] However, how contemporaneous the disclosure would be under the proposed amendment, would depend on how the disclosure date is defined in the regulation.[28]

Submitters generally supported the proposed amendment to provide for more contemporaneous disclosure.[29] For example Councillor Wendy Boglary submitted:

> *I support this recommendation as it increases accountability to the voters as to who candidates are aligned to either politically or with private donations...*[30]

The Sunshine Coast Council also supported the amendment and noted that:

> *…sitting councillors must update their registers of interest … within 30 days of receipt. This requirement often results in councillors' electoral donations being made public before an election, while donations to other candidates may not be made public until after the election. It is our view that the amendments … will provide equity in disclosure requirements for all candidates.*[31]

While the CCC supported 'the implementation of a contemporaneous disclosure obligation and a new electronic system to facilitate improved transparency', it raised concerns that it is unclear if:

> *…the disclosure obligation will be a continuous obligation which will required real-time disclosure as opposed to disclosure just prior to the polling day. The CCC is of the view that the current Bill should be amended to make it clear that not only is reporting on gifts prior to polling day required, but that it must be done within a minimum time from when the gift is received.*[32]

Committee comment

The committee supports the intention of the Bill to increase transparency by facilitating more contemporaneous disclosure of donations. However, the committee notes that how contemporaneous the disclosure requirements would be in practice depends on the definition of 'disclosure date' that would

23 *Local Government Electoral Act 2011*, ss 123-125.

24 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, p 18.

25 Explanatory notes, p 5.

26 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 11, 16, 17, 19, 23 and 24; Explanatory notes, pp 6-7.

27 Explanatory notes, p 6. See also, Electoral Commission Queensland, public briefing transcript, 15 February 2017, p 7; Hon Annastacia Palaszczuk MP, Premier and Minister for the Arts, and Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills, 'Palaszczuk Government delivers real-time donation disclosure', media release, 23 February 2017.

28 Explanatory notes, p 6.

29 See for example submissions 9, 12, 15, 20, 24, 28 and 35.

30 Submission 18, p 2.

31 Submission 7, pp 1-2.

32 Submission 3, p 3.

be prescribed by regulation. The committee also notes the CCC's suggestion that seven days from the date of receipt of a gift or expenditure for political purposes would be a reasonable period for disclosure.[33]

The committee seeks to be reassured that the timeframe, to be prescribed by regulation, within which candidates and third parties would be required to disclose gifts or expenditure with a value over the disclosure threshold, will facilitate practicable 'real-time' disclosure.

Point of clarification 1

The committee seeks clarification from the Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning during her second reading speech, regarding the anticipated timeframe within which candidates and third parties would be required to disclose gifts or expenditure with a value over the disclosure threshold.

The committee notes that the drafting of the amendments to sections 117 and 118 of the LGE Act, may create uncertainty regarding disclosure requirements where a candidate receives no gifts or the total value of gifts is less than the disclosure threshold. While the intention appears to be for candidates in these circumstances to provide a return stating either that no gifts were received, or a summary of the total value of all gifts and the number of entities that gave gifts, the drafting of the Bill may be interpreted to mean that candidates would not be required to lodge any return.

The committee is concerned that the potential removal of the requirement for a candidate to lodge a disclosure return where they receive no gifts or where the total value of the gifts is less than the disclosure threshold, would reduce transparency. Similarly transparency would be diminished if the ECQ is not required to provide a copy of the return to the chief executive officer of the local government for all candidates who are successful in an election.

The committee recommends that the Bill be amended to make it clear that candidates who receive no gifts or receive gifts with a total value of less than the disclosure threshold must lodge a return stating either that no gifts were received or the total value of the gifts received and number of entities that gave the gifts.

The committee also recommends that the Bill be amended to specify that the ECQ is required to give the chief executive officer of the relevant local government a copy of the returns for all candidates who are successful in an election in that local government area. The requirement to provide a copy of the return should apply irrespective of whether the return applies to gifts with a value over the disclosure threshold, less than the disclosure threshold, or states that no gifts were received.

Recommendation 2

The committee recommends that clauses 16 and 17 of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to make it clear that candidates are required to lodge a return within the required period irrespective of whether any gifts are received during the disclosure period.

[33] Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 17 February 2016, p 2.

Recommendation 3

The committee recommends that clauses 16 and 17 of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to specify that the Electoral Commission Queensland is required to provide the chief executive officer of the relevant local government a copy of all returns for candidates who are successful in an election in that local government area.

2.1.3 Donation disclosure thresholds – recommendation 4 of the CCC report

Under the current requirements, candidates for a local government election must lodge a 'return' with the ECQ about any gifts they receive during the disclosure period for the election. If the candidate received gifts, the return must outline:

- the total value of the gifts
- how many persons made the gifts, and
- if the total value of all gifts made by one person is $200 or more, the details for each gift made by that person, such as the person's name and address, the gift's value and when it was gifted.[34]

Similarly candidates must lodge a return in relation to any loans received, other than from a financial institution, during the disclosure period. If the candidate received loans, the return must outline:

- the total value of the loans
- how many persons made the loans, and
- for any loan of $200 or more, the details for the loan, such as the name and address of the person who made the loan, the loan's value and when it was made, and the terms of the loan.[35]

Third parties that receive gifts intended to enable or reimburse expenditure for a political purpose during the disclosure period, must lodge a return with the ECQ if the gift has a value of $1000 or more and is used in relation to a political activity for the election.[36] If a third party incurs expenditure during the disclosure period for political activities relating to the election of $200 or more, it must also lodge a return with the ECQ.[37]

The CCC report noted that different disclosure requirements 'make it difficult for those who have to adhere to these requirements to understand and comply with them', and recommended that the threshold obligations be aligned.[38]

Clauses 16 to 24 of the Bill propose to give effect to recommendation 4 of the CCC report to 'align the threshold disclosure requirements for reporting' by aligning the disclosure thresholds for gifts and loans received by candidates, third parties, with the threshold for gifts received by councillors ($500). The disclosure threshold for third parties' expenditure would also be aligned with the threshold for gifts received by councillors.

For candidates the proposed amendments would increase the disclosure threshold for gifts and loans from $200 to $500 – candidates would no longer have to disclose the details of gifts and loans between $200 and $500.[39] For third parties the proposed amendments would:

34 *Local Government Electoral Act 2011*, ss 109, 116.
35 *Local Government Electoral Act 2011*, s 120.
36 *Local Government Electoral Act 2011*, ss 123, 125.
37 *Local Government Electoral Act 2011*, s 124.
38 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, p 18.
39 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 16-20; Explanatory notes, p 6.

- decrease the disclosure threshold for gifts from $1000 to $500 – third parties would need to disclose the details of gifts of $500 to $1000 that they currently are not obliged to disclose,[40] and
- increase the disclosure threshold for expenditure on political activities from $200 to $500 – third parties would no longer have to disclose the details of expenditure between $200 and $500. [41]

While the majority of submitters supported increased transparency,[42] submitters presented conflicting views regarding the nature of the amendment to disclosure thresholds. Some submitters supported the amendment as 'reasonable for candidates and third parties in a local government election',[43] but a large number of submitters expressed the view that the threshold should remain at $200.[44]

For example David and Susan Frampton submitted:

> *..we urge that the donation threshold for individual candidates should remain at $200 and that for third parties the donation threshold for declaration should again be $200. We make this request in the interests of greater transparency and accountability, and because these interests are in line with public expectations.*[45]

Redlands 2030 Inc submitted that if the objective is alignment between the reporting thresholds for candidates under the LGE Act and for councillors under the LG Act, it 'would be more transparent to align the reporting requirements by adopting the $200 donation disclosure threshold'.[46]

Committee comment

The committee acknowledges and supports the intention of the Bill to align disclosure thresholds to facilitate an easier understanding of the requirements and compliance with them. The committee seeks advice regarding the rationale for aligning the disclosure threshold at $500 rather than $200.

Point of clarification 2

The committee seeks clarification from the Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning during her second reading speech regarding the rationale for aligning the disclosure threshold at $500 rather than $200.

2.1.4 Unspent donation requirements – recommendation 5 of the CCC report

Candidates must operate a dedicated account with a financial institution for the purpose of conducting an election campaign – all monetary gifts and loans must be deposited into the account and all expenditures must be paid from the account.[47] This requirement applies only during the disclosure period for the election, the LGE Act 'is silent on how any remaining funds should be accounted for at the end of the disclosure period'.[48]

The CCC report noted that there 'is no legislative requirement for a candidate (or newly elected councillor) to account for any unspent money from the campaign'. To increase transparency, the report recommended that any unspent funds in the account at the end of the disclosure period should be used only for campaign purposes, if the candidate runs in the next election, or donated to a registered charity.[49]

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40 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 24; Explanatory notes, p 6.

41 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 23; Explanatory notes, p 6.

42 See for example submissions 9, 11, 12, 13, 14, 16, 19, 20, 21, 22, 25, 27, 31, 33, 38 and 46.

43 Local Government Association of Queensland, submission 36, p 6.

44 See for example submissions 2, 7, 17, 21 and 30.

45 Submission 2, p 1.

46 Submission 17, p 2.

47 *Local Government Electoral Act 2011*, s 126; Explanatory notes, p 7.

48 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, p 19.

49 Crime and Corruption Commission Queensland, *Transparency and accountability in local government*, 2015, p 18.

Clauses 25 and 26 of the Bill propose to give effect to recommendation 5 of the CCC report relating to unspent campaign funds, by requiring that any amount in the account at the end of the disclosure period may only be:

- kept in the account for the purpose of the candidate conducting a later campaign
- if the candidate was a member of a political party, paid to that political party, or
- paid to a registered charity.[50]

A range of views were expressed by submitters in relation to this proposed amendment. LGAQ supported the amendment, noting that the proposal to allow 'for the dispersal of excess funds … to be paid to a political party' … was not part of the CCC's recommendation'.[51]

The Sunshine Coast Council questioned 'what control mechanisms will be established to oversee the proper acquittal and disbursement of amounts remaining in a candidate's dedicated account at the conclusion of the disclosure period'.[52]

The Southern Downs Regional Council acknowledged that the 'charitable benefits to this proposed amendment is commendable', but also raised concerns regarding the restrictions on how the unspent money could be acquitted if the candidate was self-funded:

> *…it is felt that the payment of unexpended amounts to a charity (should the candidate not contest another election or be a member of a political party) could be onerous to self-funded candidates.*
>
> *It is anticipated that this clause may deter good quality self-funded candidates or at the very least limit their total spend on election campaigns to avoid any onerous donation requirements.*[53]

The department advised:

> *A fully self-funded candidate has the flexibility to manage the dedicated account by depositing only those amounts necessary to enable amounts to be paid out of the dedicated account. Therefore, a fully self-funded candidate may have a nil balance in the dedicated account at the end of the candidate's disclosure period.*[54]

Committee comment

The committee supports the intention of the amendment to increase transparency in how campaign donations are used, by requiring any unspent donations at the end of the disclosure period to be used only for the purposes for which they were donated, for a campaign or political activity, or donated to a registered charity. The committee notes the department's advice regarding the management of the dedicated account by self-funded candidates, however, in circumstances where the candidate is entirely self-funded and all money in the account is the candidate's funds, the committee questions the effect of the Bill in preventing a self-funded candidate from recovering unspent money in the account at the end of the campaign.

The committee recommends that the Bill be amended to allow entirely self-funded candidates to recover any unspent money from their campaign account at the end of the disclosure period.

[50] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 25-26; Explanatory notes, p 8.

[51] Submission 36, p 3.

[52] Submission 7, p 4.

[53] Submission 8, p 2.

[54] Department of Infrastructure, Local Government and Planning, correspondence dated 22 February 2017, p 3.

Recommendation 4

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to allow entirely self-funded candidates to recover any unspent money from their dedicated campaign account at the end of the disclosure period.

2.2 Recovery of election costs by the ECQ

Local governments are currently obligated to pay the costs incurred by the ECQ for conducting an election in a local government area.[55]

Clause 29 of the Bill proposes to clarify that local governments are obligated to pay the costs incurred by the ECQ in performing functions *relating to* conducting elections including 'the cost of making appropriate administrative arrangements for the conduct of elections'.[56] These costs may include 'planning for electoral events, training staff, and developing and testing innovations for future operational use'.[57]

Stakeholders presented a range of views regarding the proposed amendment. For example LGAQ supported the proposed amended to allow the ECQ to recover costs relating to conducting elections provided:

> *… the ECQ is more transparent with councils in relation to the work the ECQ Local Government Electoral Unit undertakes between elections, that they work proactively with councils to ensure that future electoral events run smoothly and that they promote the work that they do during the intervening periods to councils through some form of regular (cost neutral) update.*[58]

Conversely, other submitters raised concerns about potential costs. For example Brisbane City Council raised concerns that the changes would 'expose local governments to unknown and unverifiable additional costs associated with conducting local government elections'.[59] Similarly Sunshine Coast Council raised concerns that 'councils may be burdened with ECQ costs associated with elections outside specific council areas, including those for elections relating to other levels of government'.[60]

Southern Downs Regional Council submitted that if the ECQ is given power to recover costs relating to conducting elections, the ECQ should be required to provide local governments with a 'full disclosure of all costs', and 'a fixed cost estimate' on the cost of the election.[61]

Committee comment

The committee notes the department's advice that the Bill does not extend local governments' obligations to pay both direct and indirect costs incurred by the ECQ but rather clarifies existing practice.[62]

The committee also notes the concerns from some local governments regarding the potential for increased costs, and submissions that greater transparency between the ECQ and local governments is required regarding cost estimates and the disclosure of actual costs. The committee highlights these concerns for consideration by the House, the department and the ECQ going forward.

2.3 Planning reforms

Planning reforms were enacted in 2016 through the *Planning Act 2016* (Planning Act) and the *Planning and Environment Court Act 2016* (PEC Act). The Acts were assented to on 25 May 2016, and will commence

55 *Local Government Electoral Act 2011*, s 202.
56 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 29.
57 Explanatory notes, p 2.
58 Submission 36, p 3.
59 Submission 5, p 2.
60 Submission 7, p 3.
61 Submission 8, pp 1-2.
62 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 6.

on a date to be fixed by proclamation.[63] If the Acts are not proclaimed earlier, they will automatically commence on 25 May 2017 unless a regulation is made extending the commencement.[64]

On commencement, the Planning Act will repeal and replace the *Sustainable Planning Act 2009* (SP Act), with the objective of delivering better planning for Queensland,[65] and the PEC Act will govern the Planning and Environment Court.[66]

Parts 6 and 8 of the Bill give effect to some provisions of the Planning Act and the PEC Act, prior to the commencement of the Acts in their entirety.

The department advised that the three planning reforms proposed to be 'brought forward' by the Bill were subject to 'exhaustive consultation' prior to the enactment of the Planning Act 2016.[67] Further:

> *The intention to introduce them earlier has been discussed but not subject to the same degree of extensive consultation that the intention to introduce them in the first place was conducted. It would be fair to say that no party is unaware of the intention for this to commence relatively soon. I doubt whether anybody would feel themselves particularly disadvantaged by them commencing sooner given that there will be only a matter of months at best between them commencing now and when they would have taken effect under the Planning Act.*
>
> *…*
>
> *In our consultation efforts we have conducted sessions statewide in every region of the state where every council has been invited to attend and all industry groups have been invited to attend. We have held sessions with the community both in what we can call 'talk to a planner' arrangements but also in sessions run by organisations such as the Environmental Defenders Office. The intention to commence those elements early has been drawn to everybody's attention. At none of those sessions has there been any strong view expressed about the undesirability of doing so.*[68]

2.3.1 Awarding court costs

The Bill proposes to give early effect to provisions in the PEC Act regarding changes to the arrangements for the Planning and Environment Court to award costs to the parties in a legal proceeding.

Currently costs are awarded at the discretion of the court.[69] The PEC Act changes this rule so the general position is that each party pays its own costs unless particular circumstances apply.[70]

> *Circumstances where the court will have discretion to make an order for costs include where the court considers a party has brought a frivolous or vexatious proceeding, or where the court considers a party started or conducted a proceeding for an improper purpose. Other exceptions deal with specific situations, such as proceedings for enforcement orders.*[71]

On commencement, the provision of the PEC Act will 'substantially reinstate the arrangements that applied before changes introduced under the Sustainable *Planning and Other Legislation Amendment Act (No. 2) 2012*'.[72] The law will revert to what was originally enacted under the SP Act.[73]

Some submitters reiterated concerns raised during consultation for the Planning Act regarding changes to the principles for courts awarding costs. For example, the Property Council of Australia (PCA) stated:

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63 *Planning Act 2016, Planning and Environment Court Act 2016*.

64 *Acts Interpretation Act 1954*, s 15DA. The automatic commencement of a postponed Act may be extended by one year.

65 Planning Bill 2015, explanatory notes, p 1.

66 Planning and Environment Court Bill 2015, explanatory notes, p 1. The provisions governing the Planning and Environment Courts are currently embodied in *Sustainable Planning Act 2009.*

67 Public hearing transcript, 17 February 2017, p 16.

68 Public hearing transcript, 17 February 2017, pp 16-17.

69 *Sustainable Planning Act 2009*, s 457.

70 Planning and Environment Court Bill 2015, explanatory notes, p 5; *Planning and Environment Court Act 2016*, s 59.

71 Planning and Environment Court Bill 2015, explanatory notes, p 5; *Planning and Environment Court Act 2016*, s 60.

72 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 2.

73 *Sustainable Planning Act 2009*, s 457; *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012*, s 61.

> *The Property Council reiterates our concerns regarding the removal of the court's discretion in determining the most appropriate allocation of cost for appeal proceedings on a case-by-case basis.*
>
> *Removing the discretion of the court to award costs and reintroducing pre-determined criteria for how cost are - or are not - awarded risks the making of unmeritorious appeals.*[74]

The Queensland Environmental Law Association (QELA) expressed support for the reinstatement of the pre-2012 arrangements:

> *It has been a longstanding position of QELA that it considers that the process works fairly and adequately with each party bearing its own costs and that there are adequate provisions in place to protect parties from frivolous and vexatious appeals. ... It is not something that we have seen standing in the way of good developments being approved or developments that are inappropriate not being approved.*[75]

QELA did, however, question the 'utility in fast-tracking reforms that are, practically, likely to commence at a similar time to the Planning Act itself'.[76]

The department gave the following explanation for fast-tracking the amendment of court costs:

> *The observation was made while we have been conducting consultation in the lead-up to the commencement of the Planning Act … that with the persistence of the current arrangements, which are the ones introduced in 2012, there was a strong perception from those people who might have otherwise sought to take a matter to court that, in doing so, they were extremely exposed to the prospect of an adverse cost order. That was effectively deterring people who did have legitimate cases to bring to court from doing so. Therefore, the government felt that it was appropriate to address that matter as soon as possible and to bring that matter forward, so that its policy position could be established as soon as possible, which is what these amendments are intended to achieve.*[77]

Committee comment

The committee notes that the Bill simply gives early effect to provisions in the Planning Act, which will introduce changes to the arrangements for the Planning and Environment Court to award costs to the parties in a legal proceeding. The department advised that the remainder of the Planning Act is intended to commence on 3 July 2017.[78]

2.3.2 Increased penalties for development offences

The Bill proposes to give early effect to provisions in the Planning Act to increase the penalties for development offences, such as carrying out a development without a permit or providing a false or misleading document of declaration – the penalties will be increased from 1665 penalty units ($202,963) to 4500 penalty units ($548,550).[79]

The explanatory notes for the Planning Act provide the following explanation for the increase:

> *This increase brings the maximum penalties for development offences into line with analogous offences under the Regional Planning Interests Act 2014 and the Environmental Protection Act 1994.*
>
> *The development offences are integral for ensuring compliance with the development assessment regulatory system … and will ultimately uphold the integrity of the planning system. Consequently, the maximum penalties must adequately deter potential offenders from causing significant and potentially irreparable damage to the State's economic, social and environmental qualities.*[80]

The department advised that maximum penalty units have not increased since the introduction of the *Integrated Planning Act 1997* and that the proposed increase in the maximum penalty units 'takes into

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74 Submission 34, p 2.

75 Queensland Environmental Law Association, submission 26, p 4.

76 Queensland Environmental Law Association, submission 26, p 4.

77 Public hearing transcript, 17 February 2017, pp 15-16.

78 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 5.

79 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 76-88; Explanatory notes, p 4. The value of a penalty unit is $121.90: *Penalties and Sentences Regulation 2015*, s 3.

80 Planning Bill 2015, explanatory notes, p 128.

account increases in market demands, property values and inflation since that time …'.[81] The department further advised that the actual penalties imposed by the courts are often well below the maximum penalties available.[82]

Stakeholders presented differing views regarding bringing forward the increase in penalties for development offences. While some stakeholders supported the early commencement of the provisions, noting that 'early implementation of these amendments will support a more streamlined transition to working under the new legislation',[83] other submitters questioned the practical benefit of fast-tracking the penalty increases.[84]

Committee comment

The committee notes that the Bill simply gives early effect to provisions in the Planning Act, which introduce changes to the maximum penalties for development offences. The department advised that the remainder of the Planning Act is intended to commence on 3 July 2017.[85]

2.3.3 Temporary local planning instruments

The Bill proposes to give early effect to provisions in the Planning Act that provide for the retrospective effect of temporary local planning instruments (TLPIs).

The arrangement allows a local government to resolve to seek the Minister's agreement to retrospective commencement of the TLPI at the public meeting in which the council resolves to propose a TLPI. If the Minister agrees, the TLPI commences on the day the public meeting was held.[86]

> *This arrangement reflects the fact that some TLPI's may act to restrict particular development rights or opportunities, and the delay between the local government resolving to make the TLPI and the Minister's agreement to it being made may present an opportunity for pre-emptive development that may compromise the intended outcomes of the TLPI.*
>
> *This arrangement contains an element of retrospectivity in the commencement of any TLPI to which it applies. However the requirement for the local government to resolve at the same public meeting at which the TLPI is proposed to seek the Minister's agreement to the early commencement is an important transparency measure, as the fact that early commencement is a possibility will be known to anyone who attended, or has access to, the record of the meeting.*[87]

Generally, the Minister approves a TLPI soon after the local government proposes it so any period of retrospectively is likely to be limited.[88] Nevertheless, some submitters reiterated concerns raised during consultation for the Planning Act regarding changes to allow the retrospective operation of a TLPI. For example, the PCA stated:

> *Unless all stakeholders monitor every local government meeting for relevant resolutions, there is a risk a person may undertake an activity that was legal at the time the activity was undertaken, but subsequently becomes unlawful because the Minister has approved the retrospective operation of a TLPI.*[89]

The department explained the rationale for the retrospective application of certain TLPIs:

> *While we appreciate that there will be what I would regard as a very unusual circumstance where someone who was intending to do something would inadvertently be caught by that matter which would have what is called a retrospective effect, the much more common situation when somebody would come*

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81 Department of Local Government, Infrastructure and Planning, correspondence dated 22 February 2017, p 5.

82 Department of Local Government, Infrastructure and Planning, correspondence dated 22 February 2017, pp 4-5, appendix 3.

83 Gold Coast Council, submission 32, p 1.

84 Queensland Environmental Law Association, submission 26, p 4.

85 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 5.

86 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 69; Planning Bill 2015, explanatory notes, p 21.

87 Planning Bill 2015, explanatory notes, p 21.

88 Explanatory notes, p 10.

89 Submission 34, p 2. See also, Queensland Environmental Law Association, submission 26, pp 3, 4.

under that retrospectively is where parties we know are doing precisely that—where they are checking the resolutions and they are seeing when properties are listed for protection under a TLPI. Knowing that the TLPI does not have effect until the minister has made the decision to approve it, for some there is, in effect, an open invitation. They may not necessarily own that property, but there might be somebody in whose interest it might be to contact the owner to bring their attention to it and say, 'If you had an intention at any stage to do something with this property, particularly to demolish it'—it is not just demolition; it relates to tree removal and a whole range of other matters that are commonly dealt with as a matter of urgency through temporary local planning instruments, bearing in mind that a temporary local planning instrument can only be made where the matter is urgent and the very thing that it is trying to prevent would occur if it were to take longer than need be to address the matter, so it is given that degree of urgency.

It was almost certainly the case when the matter was looked at that it is much more likely that the retrospective effect, as it is being called, would only catch those people who are intending to do something that would be made illegal by the temporary local planning instruments, not inadvertently so but quite deliberately so. Like all of these things, it is a balance. Again, there have been a number of instances in recent times where the inability for the council's decision in relation to a TPLI to have immediate effect and protect that property has been an impediment and properties are at risk in that circumstance. Again, it was felt appropriate that that provision, rather than wait until the commencement of the Planning Act, should commence as soon as possible.[90]

With respect to public access to council resolutions, the department advised:

The TLPI cannot be made by council without a resolution. In our experience, it is common for those resolutions to be easily found as a matter of record.[91]

QELA questioned the 'utility in fast-tracking reforms'.[92] Conversely, the Cairns Regional Council supported 'bringing forward of the effective date for Temporary Local Planning Instruments'.[93]

Committee comment

The committee notes submitters' concern that a person may inadvertently undertake an activity that is prohibited under a TLPI during the period between the council meeting and the date the Minister approves the TLPI. The committee considers, however, that on balance the proposed amendment is warranted and notes that the Bill is simply bringing forward the commencement of the provisions. The department advised that the remainder of the Planning Act is intended to commence on 3 July 2017.[94]

2.4 Assessment and approval of building work

Assessable development is work that must be assessed under a regulation, the *Building Act 1975* (Building Act), a State planning regulatory provision, or a local government planning scheme, temporary local planning instrument, or a preliminary approval where a planning instrument is sought to be varied.[95]

Such development may only take place after it is approved and a development permit authorising the work is issued.[96] Applications for development approval must be made to an assessment manager,[97] which for a development within a local government area or that is assessable against a planning scheme, is the local government.[98] However, if the application relates to a building development application under Building Act, the assessment manager may be a private certifier.[99]

90 Public hearing transcript, 17 February 2017, p 16.
91 Public hearing transcript, 17 February 2017, p 16.
92 Submission 26, p 4.
93 Submission 6, p 2.
94 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 5.
95 *Sustainable Planning Act 2009*, sch 3; *Sustainable Planning Regulation 2009*, sch 3.
96 *Sustainable Planning Act* 2009, ss 238, 243, 244.
97 *Sustainable Planning Act 2009*, s 260, sch 3.
98 *Sustainable Planning Act 2009*, s 246; *Building Act 1975*, s 11; *Sustainable Planning Regulation 2009*, s12, sch 6.
99 *Building Act 1975*, s 11.

Private certifiers have restrictions on when they may grant a building development approval. An approval must not be granted until:

- all necessary development and compliance permits, and preliminary approvals are effective
- the building assessment work has been carried out under the building assessment provisions, and
- if a concurrence agency, such as a local government, has jurisdiction for a part of the work, that part has been assessed by the agency, and any required security has been given.[100]

Where a concurrence agency has jurisdiction for part of the work, the agency must assess the application and, if it wants the assessment manager to include conditions in the development approval or to refuse the application, give a response to the assessment manager before the agency's assessment period ends.[101] If the agency does not give a response, the assessment manager must generally decide the application as if the agency had no requirements or objections. However, if the agency is a local government and the matter is not about assessing the amenity and aesthetic impact of a building, then the response is taken to be a refusal if the local government does not give a response.[102]

In circumstances where work may be an assessable development for more than one reason, such as it is building work assessable under the Building Act and work that must be assessed under a planning scheme, issues have arisen 'concerning the relationship between development approvals given by private certifiers and a local government'.[103] These issues have been the subject of several court decisions.[104] The explanatory notes state that:

> *Taken together, the cases establish a generally sound approach to identifying the relative responsibilities of certifiers and councils in assessing building work in a way that allows each to effectively address their respective interests.*[105]

Clauses 6 to 9 and 63, 65 and 70 to 72 of the Bill propose to reflect in legislation the approach established by the judicial decisions.[106] The intent of the proposed amendments is to clarify the arrangements applying to the assessment of building work by a private certifier, including when the certifier must await a relevant preliminary approval or development permit for other parts of building work that are assessable under the planning scheme.[107]

Consistent with the decisions of the Planning and Environment Court, the proposed amendments clarify that if aspects of building work need to be assessed under both the building assessment provisions and a planning scheme, it is necessary for one of the relevant entities, the private certifier or the local government, to first give a preliminary approval and the other to then give a development permit.[108] The provisions would establish 'that if a development approval is required from a council, it should be obtained before a certifier decides an application for the building work'.[109]

The amendments also propose to clarify that a private certifier 'cannot assess development other than building work assessable against the building assessment provisions' and that the certifier must await

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100 *Building Act 1975*, s 83.

101 *Sustainable Planning Act* 2009, ss 282, 283, 285 and sch 3; *Sustainable Planning Regulation 2009*, sch 15.
The assessment period for a local government as a concurrence agency is 10 or 15 business days, depending on the nature of the work, commencing from the day the applicant has both received the acknowledgment notice and paid the fee.

102 *Sustainable Planning Act 2009*, s 286.

103 Explanatory notes, p 3.

104 *Gerhardt v Brisbane City Council* [2015] QPEC 34; *Brisbane City Council v Gerhardt* [2016] QCA] 76; *Gerhardt v Brisbane City Council* [2016] QPEC 48; *Gerhardt v Brisbane City Council (No. 2)* [2016] QPEC 50.

105 Explanatory notes, p 3.

106 Explanatory notes, pp 3, 12-13.

107 Explanatory notes p 14; Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 30.

108 Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 39.

109 Explanatory notes, pp 3, 12-13.

either the local government's response, or the expiration of the response period before deciding a building development application.[110]

The majority of submitters supported the intended outcomes of the amendments regarding building development approvals;[111] however, some submitters raised concerns regarding the practical operation of some of the proposed amendments.

Brisbane City Council, Moreton Bay Regional Council and LGAQ raised concerns that the offence provisions for carrying out an assessable development without a permit may not allow a local government to prosecute an offender for carrying out an assessable development without a relevant permit.[112]

> *In particular, a person who has obtained a development permit from a private certifier, but not a relevant preliminary approval from a local government for the part requiring assessment against a planning scheme, may not have committed an offence … under the current wording. Those provisions should be amended to make it clear that it is also an offence to carry out assessable development in the absence of a relevant preliminary approval.*[113]

The department acknowledged these concerns and 'agrees that an appropriate amendment would be desirable to create a clearer link' between the new provisions stating that development permits given by private certifiers do not authorise work that also requires a preliminary approval, and the offence provisions for carrying out an assessable development without a permit. This would clarify that starting development under a development permit issued by a private certifier in the absence of an effective preliminary approval would be a development offence.[114]

Brisbane City Council and LGAQ suggested that an example should be reinstated for section 83(1)(b) of the Building Act 'to make it clear how the provision is intended to operate' in relation to building development applications that require a preliminary approval.[115] The LGAQ elaborated on the recommendation in its submission:

> *… The example in the recommendation under 83(1)(b) refers to a proposal comprising building work which requires assessment against both the building assessment provisions in a planning scheme under the Planning Act. The private certifier is engaged to carry out the assessment against the building assessment provisions and decide the building development application. The building development application must not be decided until all relevant preliminary approvals … for the building work assessable against the planning scheme under the Planning Act are effective. It really just maps out that it is a sequential process.*[116]

The department acknowledged the concern and 'considers that providing an example to the Building Act 1975 section 83(1)(b) may be appropriate to clarify the outcome sought'.[117]

Brisbane City Council also suggested that the proposed arrangements may be enhanced by changing the requirements for the timings for the private certifier to give notification to local governments of an approved application. The changes would:

> *… ensure that the council is provided with the approval prior to the approval actually being given and granted to the applicant themselves. That way if there is a step that has not been undertaken—for example, the council's approval insofar as the character elements are concerned—the council may then be able to go down to the court and seek an injunction to stop that particular approval being granted before it is obviously too late.*[118]

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110 Explanatory notes pp 14-15; Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 23.

111 See for example submissions 5, 6, 7, 26, 32, 36 and 39.

112 Submissions 5, 29 and 36.

113 Local Government Association of Queensland, submission 36, p 5.

114 Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, pp 24, 28.

115 Submissions 5 and 36.

116 Public hearing transcript, 17 February 2017, p 9.

117 Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 24.

118 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 17 February 2017, p 7.

The department also acknowledged this concern and 'agrees in principle with the outcome the council is seeking and undertakes to consult the council to determine an appropriate response consistent with maintaining the efficiency of the assessment system'.[119]

Committee comment

The committee acknowledges the complexity of the legislative framework for assessable developments where work may be an assessable development for more than one reason, and the consequent issues that have arisen regarding the relationship between development approvals given by private certifiers and other entities.

The committee supports the intent of the Bill to provide clarity regarding building development approvals, and notes that the majority of submitters welcomed the intended outcomes of these amendments.

The committee notes that some aspects of the Bill could be enhanced to provide greater clarity to ensure the intended outcomes are achieved, including:

- reinstating an example for section 83(1)(b) of the Building Act to assist in clarifying how the provision is intended to operate in relation to building development applications that require a preliminary approvals
- creating a clearer statutory link between the provisions stating that development permits given by private certifiers do not authorise work that also requires a preliminary approval, and the development offence for carrying out an assessable development without a permit.

The committee notes the department's agreement with submitters for an appropriate amendment to the Bill 'to create a clearer link between the provisions under proposed clause 72 and the offence under section 578 of the Sustainable Planning Act 2009.'[120]

The committee is pleased that the department has undertaken to consult with stakeholders on various matters including a proposed requirement on certifiers to give approval documents to local governments a number of days before giving the approval to the applicant.[121] We encourage the department to include all relevant stakeholders in these consultations.

The committee appreciates the role that private certifiers have in the building development approvals process, and the importance of this role being performed with integrity and for appropriate monitoring and auditing frameworks to be in place. The committee is aware that the building certification framework is currently being reviewed with a range of measures proposed to improve the current framework.

Recommendation 5

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to provide an example in section 83(1)(b) of the *Building Act 1975* to clarify the intended operation of the provision.

[119] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 25.

[120] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 28.

[121] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 25.

Recommendation 6

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to create a clearer link between the provision stating that a development permit given by private certifiers does not authorise work unless a relevant preliminary approval is in place, and the provision prohibiting assessable development without a permit.

2.5 Administrative, technical and clarifying amendments

The Bill proposes a range of amendments designed to streamline the administration of local government elections and the planning legislation, clarify existing requirements or address a number of minor, technical drafting issues including:

- allowing the ECQ to make procedures enabling disclosure returns to be lodged electronically[122]
- allowing standard conditions for deemed approvals to be made separately from the development assessment rules, by authorising the Minister to make an instrument for standard conditions[123]
- facilitating negotiated decision notices being sought for an approval of a change application, other than a change application for a minor change[124]
- providing that submissions for development applications are taken to be submissions for any change applications made within one year of the development approval[125]
- allowing a person to give notice of a legal proceeding to seek a declaration, or notice of appeal to the department by email[126]
- providing when a decision notice about a change application, other than for a minor change, must be given to submitters, correcting an omission in the Planning Act[127]
- reinstating an omitted provision enabling the Minister, in determining the appropriate assessment manager for a development application, to split the application into two or more applications[128]
- establishing transitional arrangements for applications that exist at the commencement of the legislation, to convert infrastructure to trunk infrastructure in relation to development approvals
- extending the definition of 'tidal area' to more broadly refer to areas in or next to a local government area, and[129]
- allowing the Planning and Environment Court to establish fees for applications and appeals.[130]

[122] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 27; Explanatory notes p 22.

[123] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 35; Explanatory notes, p 24.

[124] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 38; Explanatory notes, p 26.

[125] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 43; Explanatory notes, p 26.

[126] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 50, 73, 75; Explanatory notes, pp 27 and 31.

[127] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 44; Explanatory notes, p 26.

[128] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 33; Explanatory notes, p 24.

[129] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 32; Explanatory notes, p 23.

[130] Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 58; Explanatory notes, p28.

Moreton Bay Regional Council raised a concern that the proposed amendment under clause 49 of the Bill requiring 'each party to a breakup agreement to publish a copy of the agreement on the party's website' is inconsistent with the draft Planning Regulation which requires only that a local government *may* publish the breakup agreement on its website.[131] In response to the concern the department acknowledged that the requirements need to be aligned and 'undertakes to amend the draft Planning Regulation to remove the inconsistency'.[132]

Brisbane City Council raised a concern that the transitional arrangements for the conversion or trunk infrastructure proposed under clause 56, go 'beyond preservation of existing rights [under the SP Act] as it does not contain the existing limitation that requires an application to be made before construction of the non-trunk infrastructure commences'.[133]

In response to Brisbane City Council's concern, the department clarified that the proposed transitional arrangements are still subject to the requirement applying for the whole subdivision under section 138 that construction of the relevant trunk infrastructure had not started. However, the department agreed that the provision 'could be expressed more clearly' and proposed to amend the provision 'to state that section 139(2) does not apply in relation to an application for conversion of non-trunk infrastructure made after commencement'.[134]

Committee comment

The committee notes the inconsistency between the Bill and the draft Planning Regulation regarding the requirement for parties to a breakup agreement to publish a copy of the agreement. The committee highlights this inconsistency for consideration by the department in progressing the draft Planning Regulation.

The committee recognises the need to express more clearly the transitional arrangements for conversion applications in relation to development approvals and is satisfied with the department's undertaking to 'amend clause 307A(2) to state that section 139(2) does not apply in relation to an application for conversion of non-trunk infrastructure made after the commencement.'[135]

[131] Submission 29, p 2; Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 49.

[132] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 32.

[133] Submission 5, p 7.

[134] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 26.

[135] Department of Infrastructure, Local Government and Planning, correspondence dated 9 February, attachment, p 26.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that the fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the FLPs to the Bill and brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Legislation should not adversely affect rights and liberties, or impose obligations retrospectively.[136] Strong argument is required to justify an adverse effect on individual's rights and liberties, or the imposition of obligations, retrospectively.

Clause 69 of the Bill proposes to amend section 120 of the SP Act to provide for the retrospective effect of TLPIs. Under the arrangement where a local government resolves at the public meeting when the TLPI is proposed to seek the Minister's agreement to its retrospective commencement - if the Minister agrees, the TLPI commences on the day the public meeting was held.[137]

The explanatory notes acknowledge that the retrospective commencement of TLPIs potentially breaches the FLP regarding imposing obligations retrospectively.[138]

The explanatory notes also state that the 'issue of limited retrospective commencement of TLPIs is a feature of the Planning Act' and that the Bill will 'bring forward the commencement of these reforms'.[139]

Committee comment

The committee notes that the Bill gives early effect to provisions in the Planning Act, which introduce changes to allow the retrospective operation of TLPIs. The committee also notes that these provisions will otherwise commence with the remainder of the Planning Act, which is anticipated to occur on 3 July 2017.[140]

As discussed above, the committee notes that the period of retrospective commencement is expected to be quite limited. In light of this, the committee considers that, on balance, the clause has sufficient regard to the rights and liberties of individuals.

3.1.2 Delegation of legislative power and the scrutiny of the Legislative Assembly

Legislation should allow the delegation of legislative power only in appropriate cases and to appropriate persons,[141] and should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[142]

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood the power should be prescribed in an Act and not delegated below Parliament. Where it is proposed to delegate legislative power, it is necessary to also

136 *Legislative Standards Act 1992*, s 4(3)(g).
137 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cl 69; Planning Bill 2015, explanatory notes, p 21.
138 Explanatory notes, p 10.
139 Explanatory notes, p 10.
140 Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 15 February 2017, p 5.
141 *Legislative Standards Act 1992*, s 4(3)(c).
142 *Legislative Standards Act 1992*, s 4(4)(b).

consider whether the delegate may only make rules that are subordinate legislation, and thus subject to the scrutiny of Parliament and disallowance.[143]

Clauses 11-14, 23, 24 and 27 of the Bill allow for three matters to be prescribed by regulation - the prescription of a disclosure date for lodging a return, procedures for how a return may be lodged electronically, and what constitutes a disclosure period for an election.[144]

The explanatory notes acknowledge that providing for a regulation to prescribe these matters potentially breaches the FLP regarding legislation having sufficient regard to the institution of Parliament. In relation to the prescription of disclosure dates and disclosure periods by regulation the explanatory notes state:

> *The delegation of power is considered appropriate as a regulation provides the necessary flexibility for implementation… Further a regulation, when made, will sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.*[145]

In relation to procedures for how a return may be lodged electronically, the explanatory notes cite advice from the Legal Affairs and Community Safety Committee about corresponding amendments to the *Electoral Act 1992*:

> *…there is an express provision to require the tabling of the procedures document at the same time as the subordinate legislation, and the procedures will be published on the Electoral Commission's website, the Committee considers these are adequate safeguards in place such that clause 29 may be considered proportionate and as having sufficient regard to fundamental legislative principles.*[146]

Committee comment

In relation to clauses 11-14, 23, 24 and 27, given the justification provided in the explanatory notes, the limited scope of the regulations, and that the regulations are subject to disallowance, the committee considers that appropriate regard has been given to the institution of Parliament.

3.1.3 Clear and precise legislation

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.[147] Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce law that is both easily understood and legally effective to achieve the desired policy objectives.

The following clauses appear to contain errors - in both of these instances it would appear that the drafting instruction should be 'insert' rather than 'omit, insert'.

- Clause 25(1) states: *Section 126(5), after 'must not'–*
  omit, insert–
  , during the candidate's disclosure period for the election'
- Clause 26(1) states: *Section 127(5), after 'must not'–*
  omit, insert–
  , during the group's disclosure period for the election'

Committee comment

The committee draws these minor drafting errors to the attention of the department.

3.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

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143 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 154.

144 Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, cls 11-14, 23, 24 and 27.

145 Explanatory notes p 9.

146 Explanatory notes p 9.

147 *Legislative Standards Act 1992*, s 4(3)(k).

Explanatory notes are used by the committee, other Members of Parliament, and a variety of stakeholders when considering bills and forming a view about the extent to which they support the proposed legislation. It is important that explanatory notes are clear, precise and sufficiently detailed to be useful in explaining the policy that a bill is to implement, and the intended operation of all aspects of a bill.

Explanatory notes were tabled with the introduction of the Bill. While the notes were fairly detailed, identified some potential FLP issues, and outlined the consultation carried out in relation to the Bill, the committee considers that the explanatory notes could have been improved.

It was evident to the committee that a number of stakeholders who made submissions misunderstood some aspects of the Bill. For example, a range of concerns were raised about clause 34, which amends the definition of a decision notice in section 49 of the Planning Act in relation to a development approval. Mr Tom Stork, representing QELA, noted:

> *There was a divergence of views in the submissions … in terms of what the amendment meant. In our view, we think that means there is a need for some better clarity about that provision, even if that is just in the explanatory notes or preferably in the legislation itself.*[148]

The department explained the nature and purpose of the amendment in the public hearing:

> *The proposed amendment is to reflect another change that has happened later in the bill. It is not really a substantive arrangement. It is to reflect the fact that the Planning Act actually omits to provide a negotiated decision notice process in relation to a change application.*
>
> *We have proposed an amendment, which is in the bill, to address that. This amendment to section 49 is, if you like, a companion piece that recognises that there will now be a negotiated decision notice process for change applications.*[149]

However, the explanatory notes did not assist in understanding the nature or purpose of the amendment to section 49, and did not mention providing for a negotiated decision notice process in relation to a change application as a policy objective for the Bill.

Clear and precise explanatory notes that contain sufficient detail for readers to understand the purpose and intended operation of all aspects of the Bill would greatly assist the committee, Members of Parliament and other stakeholders.

[148] Queensland Environmental Law Association, public briefing transcript, Brisbane, 17 February 2017, p 12.

[149] Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 17 February 2017, p 17.

Appendix A Submitters

Sub No.	Submitter
01	Paul Golle
02	David and Susan Frampton
03	Crime and Corruption Commission
04	Amity Point Progress Association Inc
05	Brisbane City Council
06	Cairns Regional Council
07	Sunshine Coast Council
08	Southern Downs Regional Council
09	Jan Eva
10	Albert Sutton
11	Madeleine Mionnet
12	Gwenda Casey
13	Maria and Martin Sealy
14	Alyson Soul
15	Lesley McEwan
16	Jo-Ann Perry
17	Redlands 2030 Inc
18	Cr Wendy Boglary
19	Doug McCallum
20	John Burt
21	Tom Taranto
22	James and Laura Farrow
23	Confidential
24	Junita Grosvenor
25	Michael Dale
26	Queensland Environmental Law Association
27	T Malcolm and Barbara Armitage
28	Debbie Stone
29	Moreton Bay Regional Council
30	Development Watch Inc
31	Christina Hansson
32	Gold Coast City Council
33	Karl Hansson
34	Property Council of Australia
35	Sue Mazur
36	Local Government Association of Queensland
37	Paul Bishop
38	Ipswich City Council
39	Cr Murray Elliott
40	Logan City Council
41	Sandra McKeown

Appendix B Witnesses at the public briefing

Public briefing 15 February 2017
Department of Infrastructure, Local Government and Planning • James Coutts, Executive Director, Planning • Jesse Chadwick, Technical Specialist, Legislation • Barbara Ryan, Director, Legal and Legislation Services • Josie Hawthorne, Manager, Legal and Legislation Services
Department of Housing and Public Works • Logan Timms, Executive Director, Building Industry and Policy
Electoral Commission of Queensland • Dermot Tiernan, Assistant Electoral Commissioner • Darren Fisher, Project Director

Appendix C Witnesses at the public hearing

Public hearing 17 February 2017
Crime and Corruption Commission • Dianne McFarlane, Executive Director, Corruption • Mark Docwra, Assistant Director, General Legal
Local Government Association of Queensland • Luke Hannan, Manager, Planning Development and Environment
Brisbane City Council • Sharon Nicol, Strategic Planning Manager • James Langham, Solicitor, Planning and Environment
Property Council of Australia • Jennifer Williams, Queensland Deputy Executive Director
Queensland Environmental Law Association • Tim Stork, Co-Chair, Legislative Review Committee
Department of Infrastructure, Local Government and Planning • James Coutts, Executive Director, Planning • Jesse Chadwick, Technical Specialist, Legislation • Barbara Ryan, Director, Legal and Legislation Services • Josie Hawthorne, Manager, Legal and Legislation Services
Department of Justice and Attorney-General • David Ford, Deputy Director-General, Liquor, Gaming and Fair Trading • Peter Reinhold, Director, Office of Fair Trading
Department of Housing and Public Works • Logan Timms, Executive Director, Building Industry and Policy

Statement of Reservation

Ann Leahy MP
Member for Warrego

Mary Westcott
Acting Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE Q 4000

03 March 2017

Dear Ms Westcott
The Liberal National Party Members of the Infrastructure Planning and Natural Resources Committee wish to make the following Statement of Reservations and concerns regarding the Local Government Electoral (Transparency and Accountability in Local Government) and other Legislation Amendment Bill 2016.

Incorporated Associations
The Bill seeks to amend the *Associations Incorporation Act 1981* to clarify that incorporated associations are prohibited from holding or receiving campaign funds which are intended to be applied for a member's benefit, either directly or indirectly.

There are concerns that interstate organisations and unions can seek to influence the outcome of Local Government elections however as they are not incorporated under Queensland legislation they will not be subjected to similar restrictions.

The Minister should address what steps will be taken to ensure that incorporated associations outside Queensland are required to comply with the spirit of these amendments.

Self-Funded Candidates
LNP Members raised concerns on behalf of the self-funded Local Government candidates and asked why a self-funded candidate who is a member of a political party, who may have borrowed funds to fund their campaign, would have to provide any unspent funds to a political party.

The Crime and Corruption Commission made the following statement in the hearings.

Ms Dianne McFARLANE, Executive Director, Corruption, Crime and Corruption Commission advised the Committee, *the CCC is not aware of the genesis of the provision to allow candidates to provide unspent funds to a political party. It may be that the proposal may have unintended consequences which have not yet been considered. The CCC, however, considers that such a proposal may be appropriate where a candidate has been endorsed by a political party to contest the election.*

The legislation seems to over reach in its scope by referring to ordinary members of political parties, instead of candidates endorsed and funded by political parties.

Roma Electorate Office PO Box 945 ROMA Q 4455 P: 07 4570 1100 Toll Free: 1800 814 479 F: 07 4570 1109
St George Electorate Office PO Box 503 ST GEORGE Q 4487 P: 07 4519 0700 Toll Free 1800 625 430 F: 07 4519 0709
E: warrego@parliament.qld.gov.au

The Committee sought clarification from the Department of Infrastructure, Local Government and Planning on this matter at the public hearing and it was made clear that the legislation extends to political party members, not just endorsed candidates.

Ms LEAHY: *Let us go outside of local governments that have endorsed candidates by political parties. Say we have the 'Council of Timbuktu'. A couple of them are members of the Labor Party, a couple of them are members of the conservative party and they are self-funded. Does their membership of a political party impact at all on whether it should go to a charity or whether it should go to a political party given that they are just a member and not endorsed?*
Ms Hawthorne: *The provision in the bill says 'a member of a political party' and it says 'the remaining amounts or part of the remaining amounts'. I understand the provision to work that it could be 'or', 'or', 'or' for those three criteria.*
Ms LEAHY: *Even if they are not endorsed and they are just a member?*
Ms Hawthorne: *That is what the bill says, yes.*

The Minister should clarify the effect of these changes on self-funded candidates and on the distinction between members of political parties and endorsed candidates of political parties.

Electoral Commission of Queensland

Currently the Electoral Commission of Queensland may charge a Local Government for indirect costs associated with the conduct of Local Government Elections. The Committee was advised that the amendment is merely to clarify that continuing arrangement.

Submissions to the Committee raised concerns that the ECQ should provide a fixed cost estimate rather than what recently occurred where local governments had to make a "guesstimate" on the cost of the election, which included a potential refund or subsidy of the inclusion of the question of four year terms.

The Minister should ensure that the ECQ is transparent in the costs it incurs for local government elections and that local governments are not unfairly burdened by cross subsidising other activities undertaken by the ECQ.

Planning Reforms

Concerns were raised at a late stage in the Committee process by the Housing Industry Association Limited (HIA) and the Committee was unable to seek further comment on the matters raised.

HIA is concerned by unintended consequences of the proposed amendments-

1. Modifying the definition of building development application the responsibility for checking compliance with Self Assessable criteria is removed from Private Building Certifiers. If this is the case, what process will replace it and at what additional cost to the consumer?
2. Have the potential to essentially remove one option (concurrence referral) and force all applications down the Preliminary Approval route with consequential increased costs and significant time delays.

As the concerns raised could potentially affect tens of thousands of building development applications every year the LNP Members of the Committee would appreciate if the Minister could address these concerns during the second reading.

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The LNP Members wish to thank the Committee for the opportunity to raise these concerns.

Yours faithfully

Ann Leahy MP
Member for Warrego

Tony Perrett MP
Member for Gympie

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