

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

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure make this statement of compatibility with respect to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

In my opinion, the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

When the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* was introduced as a Bill into the Legislative Assembly in 2019, it was referred to the Economics and Governance Committee (the Committee) for inquiry. The Legislative Assembly also requested that the Committee consider recommendation 1 of the Crime and Corruption Commission's report, '*Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*' (Belcarra report) 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.

On 15 September 2020, the Committee tabled its Report No.47, 56<sup>th</sup> Parliament, *Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections*. (Committee report). The Committee report recommended that an electoral expenditure caps scheme be established for Queensland's local government elections.

Following the October 2020 State general election, on 27 November 2020 the Queensland Government tabled its response to the Committee's recommendations in the Legislative Assembly. The Government's response supported the Committee's seven recommendations in principle, noting that consultation with stakeholders and further analysis as recommended by the Committee would inform the final scheme design and would provide the opportunity to align the respective systems regulating electoral expenditure for State and local government elections.

The objectives of the Bill are to:

- implement the Government’s policy in relation to the recommendations of the Committee in the Committee report <sup>1</sup>
- reflect the outcomes of further analysis and consultation in the final design of the local government electoral expenditure caps scheme
- ensure and reinforce the equitable conduct of Queensland local government elections, including by minimising the risk of unequal participation in the electoral process (including uneven financial competition between candidates) and ensuring a fair opportunity to participate.

To achieve its objectives the Bill amends the *Local Government Electoral Act 2011* (LGEA), the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA) to establish an electoral expenditure caps scheme for local government elections. By aligning where appropriate with the State scheme, the Bill provides uniformity and certainty to candidates, registered political parties and third parties who may participate in both local and State Government election campaigns and provides clarity for enforcement of both schemes by the Electoral Commission of Queensland (the ECQ).

Key features of the scheme include the following:

- local government electoral expenditure caps for:
  - councillor and mayoral candidates
  - groups of candidates
  - registered political parties that endorse a candidate
  - third parties (registered and unregistered)
- the ECQ to decide on enrolment numbers for local government areas and divisions and publish the numbers and the corresponding caps
- amendments to the purpose of the LGEA for consistency with the purpose of the scheme
- prescription of certain offences as integrity or serious integrity offences under the LGA and the COBA
- general alignment with State electoral requirements under the *Electoral Act 1992* (EA) related to the following:
  - capped expenditure period
  - indexation of expenditure caps in line with the consumer price index
  - definition of ‘electoral expenditure’
  - definition of ‘gift’ to reflect ‘gifted electoral expenditure’
  - expansion of the definition of ‘associated entity’ to apply to entities associated with candidates and groups, and related disclosure requirements

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<sup>1</sup> The report is available at:

<https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2020/5620T1648.pdf>

A Statement correcting inaccuracies contained in the report is available at:

<https://www.parliament.qld.gov.au/docs/find.aspx?id=5721T569>

- expenditure of an associated entity treated as that of the relevant election participant
- registration of third parties, and related disclosure requirements
- registration of agents of participants in an election, and related disclosure requirements
- dedicated accounts for registered third parties and registered political parties endorsing a candidate
- expanded record keeping and audit requirements
- disclosure by broadcasters and publishers in relation to advertisements broadcast or published during the capped expenditure period
- scheme penalties and recovery provisions.

## Human Rights Issues

### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the Bill limits the following human rights:

- freedom of movement (section 19 of the *Human Rights Act 2019* (the HR Act))
- freedom of expression (section 21 of the HR Act)
- freedom of association (section 22 of the HR Act)
- right to take part in public life (section 23 of the HR Act)
- property rights (section 24 of the HR Act)
- privacy and reputation (section 25 of the HR Act)
- right to liberty (section 29 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act).

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

#### Measure 1: Caps on electoral expenditure for election candidates, groups of candidates, registered political parties, unregistered third parties and registered third parties

The Bill (clause 41, new part 6 division 4) introduces caps on the amount of electoral expenditure participants in an election can incur for local government elections in Queensland. Participants in an election include candidates, groups of candidates, registered political parties that endorse a candidate for an election, registered and unregistered third parties (refer clause 18, new section 106AB). Expenditure caps are determined according to the number of electors in the relevant local government area or division (other than for Brisbane City Council, which will have fixed amounts).

The Bill aligns the definition of ‘electoral expenditure’ in the LGEA with the definition in the EA (refer clause 24, new section 109A) meaning that expenditure incurred for a ‘campaign purpose’ (i.e. to promote or oppose a political party, group of candidates, or election of a candidate, or to otherwise influence voting at an election) (refer clause 24, new section 109B) will be capped.

In addition to aligning the definition of electoral expenditure in the State and local government systems, the Bill amends the LGEA to incorporate the concept of ‘gifted electoral expenditure’ which applies under the State system, i.e. if electoral expenditure incurred by a person is gifted to a participant in an election, the participant is taken to have incurred the expenditure (refer clause 24, new sections 109C and 109D).

The capped expenditure period (refer clause 41 new section 123A) will apply for approximately seven months for quadrennial elections. For local government by-elections, the capped expenditure period is to commence on the day when the notice of the by-election is published and to end on polling day.

A candidate in an election is an ‘individual candidate’ for any part of the capped expenditure period for the election during which the candidate is not a member of a group of candidates for the election; and is not endorsed by a registered political party for the election (refer clause 18, new section 106AA).

The caps (rounded to the nearest \$10) for mayoral candidates (refer new section 123D) in local government areas other than Brisbane City Council are:

- for areas with not more than 30,000 electors – \$30,000
- for areas with more than 30,000, but not more than 150,000 electors – a sliding amount of \$1 per elector
- for areas with more than 150,000, but not more than 200,000 electors – a sliding amount of \$150,000 plus an additional 50 cents per elector for each additional elector over 150,000
- for areas with more than 200,000 electors – a sliding amount of \$175,000 plus an additional 25 cents per elector for each additional elector over 200,000.

The cap for mayoral candidates in Brisbane City Council is \$1.3 million.

The caps (rounded to the nearest \$10) for councillor candidates (refer new section 123E) in a local government area/division other than Brisbane City Council are:

- for areas/divisions where the number of enrolled electors is 20,000 or less – \$15,000
- for areas/divisions with more than 20,000, but less than 40,000 electors – a sliding amount of 75 cents per elector
- for areas/divisions with 40,000 or more electors – \$30,000.

The cap for councillor candidates in Brisbane City Council is \$55,000 per division.

The Bill also introduces a group or registered political party electoral expenditure cap that will enable a group of candidates or a registered political party that endorses a candidate in an election to pool the caps of the members of the group or the candidates endorsed by the political party within a local government area (refer clause 41, new sections 123F and 123I).

The expenditure cap for the registered political party, and each endorsed candidate, for the election is the sum of the individual capped amounts for each of the endorsed candidates, up to the maximum amount for the election. ‘Individual capped amount’, for a candidate endorsed by a registered political party for an election, means the amount that would be the candidate’s

expenditure cap (under part 6 division 4 subdivision 2) if the candidate were an individual candidate.

The expenditure cap for the group of candidates, and each group member, for the election is the sum of the individual capped amounts for each of the members of the group, up to the maximum amount for the election. ‘Individual capped amount’, for a member of a group of candidates for an election, means the amount that would be the member’s expenditure cap (under part 6 division 4 subdivision 2) if the member were an individual candidate.

As referred to above, an upper limit (refer clause 41, definition of ‘maximum amount’ in new section 123) applies to a group or registered political party cap based on the number of vacancies to be filled in an election. This means a group or registered political party cap does not increase if the number of candidates who are members of the group or endorsed by the party exceeds the number of vacancies to be filled in the election.

The expenditure cap is shared by the members of the group of candidates or by the political party and each candidate endorsed by the party. The cap cannot be applied across local government areas (refer clause 41 new section 123C) and applies to spending in relation to the local government area (refer clause 41 new section 123V for registered political parties).

The Bill also provides for how to adjust caps when the number of candidates in a group, or the number of candidates endorsed by a registered political party, changes (refer clause 41, new sections 123G, 123H, 123J and 123K).

The Bill introduces caps on the amount of electoral expenditure that registered and unregistered third parties can incur. Unregistered third parties will have a cap of \$6,000 (refer clause 41, new section 123M). Once a third party incurs expenditure over \$6,000, it will be required to register with the ECQ (refer clause 47, new section 127D).

For registered third parties, new section 123L (refer clause 41) provides that the expenditure cap for the election is, for a quadrennial election or fresh election, the amount equal to the expenditure cap under section 123D for an individual candidate for election as mayor; or for a by-election, the amount equal to the expenditure cap under new part 6, division 4, subdivision 2 (refer clause 41) for an individual candidate for the election.

The cap for registered third parties cannot be applied across local government areas (refer clause 41, new section 123C) and applies to spending in relation to the local government area (refer clause 41, new section 123V).

New section 123N (Compliance with expenditure cap generally) (refer clause 41) applies to a candidate, each member of a group of candidates, a registered political party that endorses a candidate, and a registered third party. It provides that the participant, or a person acting with the participant’s authority, must not incur electoral expenditure during the capped expenditure period for the election if the amount of the expenditure, by itself, exceeds the participant’s expenditure cap for the election; or both of the following apply: the amount of the expenditure exceeds the participant’s expenditure cap when added to ‘other relevant electoral expenditure’ for the election; the participant or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

‘Other relevant electoral expenditure’, in relation to a participant in an election, means: other electoral expenditure incurred for the election by the participant, or with the participant’s authority, during the capped expenditure period for the election; or if the participant’s expenditure cap is shared under new part 6, division 4, subdivision 3 (Amount of expenditure cap—registered political parties and endorsed candidates) or subdivision 4 (Amount of expenditure cap—groups of candidates)—other electoral expenditure incurred for the election by another participant with whom the expenditure cap is shared, or with the other participant’s authority, during the capped expenditure period for the election.

New section 123O (Compliance with expenditure cap – unregistered third party)(refer clause 41) provides that a third party that is not registered, or a person acting with the third party’s authority, must not incur electoral expenditure during the capped expenditure period for the election if the amount of the expenditure, by itself, exceeds the third party’s expenditure cap for the election; or both of the following apply: the amount of the expenditure exceeds the third party’s expenditure cap when added to other electoral expenditure incurred for the election by the third party, or with the third party’s authority, during the capped expenditure period for the election; the third party or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

Caps on electoral expenditure for participants in an election limit the following human rights:

- the right to freedom of expression
- the right to take part in public life
- the right to freedom of association.

(a) the nature of the right

The *right to freedom of expression* protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and impart information and ideas of all kinds (including verbal and non-verbal communication). The forms of protected expression are broad, and include almost all forms of expression, including verbal (oral, writing and print), or through art or conduct. The right to freedom of expression and the free flow of information and ideas between people and through the media, particularly about public and political issues, is considered to be a foundation stone of a free and democratic society.<sup>2</sup>

The underlying values and interests represented by a right to the freedom of expression have been described as ‘freedom, self-actualisation and democratic participation for individuals personally; and freedom, democracy under the rule of law and ensuring governmental transparency and accountability for society generally’.<sup>3</sup> The right includes a concept of freedom of expression as a political right, aimed at integrating the individual in society with the focus on the political, collectivising function.<sup>4</sup>

The ability for an individual (including candidates themselves, and third parties who are individuals) to make public statements during an election period promoting or opposing a

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<sup>2</sup> United Nations Human Rights Committee, *General Comment No 34*

<sup>3</sup> *McDonald v Legal Services Commissioner (No 2)* [2017] VSC 89 at [22], per Bell J.

<sup>4</sup> William A Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak’s CCPR Commentary* (N. P. Engel, Publisher, 3<sup>rd</sup> rev ed, 2019) 542.

political party or candidate, or to otherwise influence voting at an election is an important part of the democratic participation process and ensuring government accountability.

Freedom of expression is limited by the electoral expenditure caps because the caps limit the amount that may be spent by a candidate, including a candidate who is a member of a group of candidates or endorsed by a registered political party, and by groups, registered political parties that endorse a candidate in an election, and unregistered and registered third parties on campaigning in respect of a local government election. This limits the level of information that can be conveyed by participants in an election and the level of information that citizens can receive from participants in an election concerning the election, thereby limiting the freedom of expression for participants in an election who are individuals and citizens wishing to receive information concerning the election.

The ability for groups of candidates or political parties to pool the caps of the members of the group or the candidates endorsed by the political party also limits the right to freedom of expression for individual candidates. This is because a group or political party can direct expenditure from one of their candidates to direct additional expenditure towards another of their candidates so as to spend more in support of the election of one of their candidates than that candidate would be able to spend if they were an individual candidate who was subject to the cap of an individual candidate. This means that individual candidates competing against that candidate would not be able to spend as much in support of their own election while keeping within their expenditure cap, limiting the free flow of political information from such individual candidates when compared to the candidate supported by the group or political party.

The Bill's provision for gifted electoral expenditure to be taken to be incurred by the participant in an election who receives the gifted expenditure (refer clause 24 new section 109D) also limits the freedom of expression for any individual who might wish to gift electoral expenditure to a participant in an election. The expenditure cap for a participant in an election might mean the participant is required to reject an offer of gifted electoral expenditure, or an individual might otherwise be disincentivised from gifting electoral expenditure. The individual wishing to gift electoral expenditure would therefore be limited in their ability to make a public statement during an election period, thereby limiting their right to freedom of expression.

The *right to take part in public life* protects the right and opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Every eligible person has the right, and is to have the opportunity, without discrimination, to vote and be elected at State and local government elections that guarantee the free expression of the will of the electors, and to have access, on general terms of equality, to public office.

The United Nations Human Rights Committee (UNHRC) considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

In addition, there is an intrinsic connection between the right to participate in public affairs and the right to freedom of expression. The UNHRC has noted that 'citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their

representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association'.<sup>5</sup>

The right of participants in an election who are individuals to take part in public life is limited by the electoral expenditure caps because the expenditure caps limit their ability to contribute to and exercise their voices in relation to the public life of the State.

The Bill's provision for gifted electoral expenditure to be taken to be incurred by the participant in an election who receives the gifted expenditure (refer clause 24 new section 109D) also limits the right to take part in public life for any individual who might wish to gift electoral expenditure to the relevant election participant. The individual wishing to gift electoral expenditure would therefore be limited in their ability to contribute to and exercise their voice in relation to the public life of the State in the same way their right to freedom of expression would be limited.

Noting there is an intrinsic connection between the right to participate in public affairs and the right to freedom of expression and that the UNHRC has noted that citizens' participation in the conduct of public affairs 'is supported by ensuring freedom of expression, assembly and association', the expenditure caps also limit the ability of citizens to participate in public affairs to the extent that the information regarding an election conveyed to them by participants in an election is limited by the expenditure caps.

The *right to freedom of association* protects the rights of individuals to freely associate with others. This includes the right to join together with others to formally pursue a common interest, such as political groups, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

By protecting the right for individuals to join together as a political group, the right to freedom of association is fundamental to a free and democratic society. In addition, the right to freedom of association is closely linked to the right to freedom of expression and the right to take part in public life.

Freedom of association is limited by the expenditure caps applicable to members of groups of candidates and candidates endorsed by registered political parties because, by associating with a group of candidates or a registered political party, these candidates' ability to incur electoral expenditure is limited by the level of expenditure incurred by the group or political party and the level of expenditure incurred by other members of the group or other candidates endorsed by the same political party. This could disincentivise individuals from joining groups of candidates or accepting a registered political party's endorsement, which is a burden on the right to freedom of association.

The upper limit on the caps based on the number of vacancies in an election also limits the right to freedom of association for candidates. If a group or political party cap has reached the upper limit, the group or party may be less likely to add a candidate to their group or endorse a candidate if that candidate has already incurred a substantial amount of electoral expenditure, which is a burden on the right to freedom of association.

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<sup>5</sup> UNHRC, General Comment No. 25



(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is to ensure and reinforce the equitable conduct of elections of councillors of Queensland's local governments, including by minimising the risk of unequal participation in the electoral process and ensuring a fair opportunity to participate. Inequitable conduct of an election includes 'considerably uneven financial competition between candidates', as highlighted on page 43 of the Belcarra report. The Crime and Corruption Commission (CCC) also noted at page 41 of its report that 'good government requires elections to be contested on a level playing field, where everyone is able to participate equally in the democratic process'.

The electoral expenditure caps are intended to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without 'drowning out' the communication of others. The High Court has accepted that it is legitimate to impose expenditure caps, for the purpose of producing a more level electoral playing field, limiting the political arms race and preventing the drowning out of other voices in an electoral contest.<sup>6</sup>

The expenditure caps provide a more equitable opportunity for individuals to participate in elections, meaning participants have a more equitable chance of election as a candidate. It also means that citizens have access to a broader array of perspectives as they consider election issues and how to exercise their vote.

In addition, providing a more level playing field for electoral campaigning and limiting the ability of an individual's voice to be 'drowned out' by the communication of others promotes the right to freedom of expression and the right to participate in public life both for those individuals whose voices are thereby protected, and for those wishing to receive information and ideas in relation to the public life of the State. This promotes the ability for all persons to have an equal opportunity to contribute to the political process.

In terms of promoting the right to participate in public life, the link between addressing the uncontrolled use of wealth and protecting the citizenry's participation in representative democracy has been noted by French CJ, Kiefel, Bell and Keane JJ in *McCloy v New South Wales*: 'The risk to equal participation posed by the uncontrolled use of wealth may warrant legislative action to ensure, or even enhance, the practical enjoyment of popular sovereignty'.<sup>7</sup>

The purpose of the pooling provisions is to enable groups of candidates, members of the group, registered political parties and endorsed party candidates to run coordinated group or political party campaign activities at local government elections involving, for example, common policy positions, joint advertising, or shared how-to-vote cards. This in turn promotes the right to freedom of association for individuals wishing to campaign as a group of candidates or as part of a political party. The pooling provisions are also consistent with the position expressed in

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<sup>6</sup> *Unions NSW v New South Wales* [2019] HCA 1

<sup>7</sup> *McCloy v State of New South Wales* [2015] HCA 34

the Committee report that ‘caps for groups of candidates and political parties should be established on the basis of some form of aggregation method’.<sup>8</sup>

The purpose of the upper limit on a group or party cap is to balance the pooling provisions by curbing the ability of a group or registered political party to gain access to a disproportionately large expenditure cap by fielding more candidates than the number of councillor vacancies in an election.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The caps on electoral expenditure will restrict the ability of participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others.

In effect, this will promote the right to freedom of expression and the right to participate in public life for participants in an election who are individuals who would otherwise be significantly financially disadvantaged. This in turn will promote the right to freedom of expression and the right to participate in public life for members of the community because they will be able to receive a more equal level of information in relation to public life (in this case, local government elections) from all participants in an election.

The pooling provisions ensure groups of candidates, members of the group, registered political parties and endorsed party candidates are subject to electoral expenditure caps while also allowing them to run coordinated group or political party campaign activities at local government elections.

The upper limit on a group or party cap balances the pooling provisions by ensuring a group or registered political party cap does not increase if the number of candidates who are members of the group or endorsed by the party exceeds the number of vacancies to be filled in the election.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

Applying the expenditure caps for a shorter period would be less restrictive on the rights to freedom of expression and taking part in public life. However, this would also make the caps less effective in terms of levelling the playing field for electoral campaigning. This is because a shorter capped expenditure period could incentivise earlier campaigning to accommodate

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<sup>8</sup> Economics and Governance Committee, Committee report, p 35.

greater overall expenditure during the election period, or participants in an election with greater access to financial resources could significantly outspend other participants in an election by carrying out significant election campaign activity before the capped expenditure period starts. This would give certain participants in an election an unfair head start once the capped expenditure period begins and would allow them to have an unfair advantage in setting the terms of the political discussion or defining the key election issues and how they are viewed.

On the other hand, the capped expenditure period provided for in the Bill does allow a period of uncapped electoral expenditure for quadrennial elections so that participants in an election are able to respond to emerging issues and engage with electors on any issue without being concerned about the expenditure caps, which will only apply for a relatively short period (approximately seven months within four-year terms). This means the expenditure caps regime is not overly restrictive and reduces the limitation on the human rights in question. Further, the Bill's capped expenditure period is commensurate with that applying under the State Government electoral system, meaning the system is easier to operate, understand and comply with.

Similarly, applying the expenditure caps to a narrower class of expenditure by limiting what is considered electoral expenditure (e.g. not applying the expenditure caps to expenditure to influence voting in an election but rather applying the caps to expenditure to expressly promote or oppose a political party in relation to an election) would be less restrictive on the rights to freedom of expression and taking part in public life for participants in an election. However, this would mean the scheme would be significantly less likely to achieve the purpose of levelling the playing field for electoral campaigning because it would allow expenditure, even where the dominant purpose of the expenditure is to influence voting in an election, to not be included in electoral expenditure caps, thereby undermining the purpose of the caps.

Allowing participants in an election to incur more electoral expenditure by capping expenditure at a higher quantum would also be less restrictive on the rights to freedom of expression and taking part in public life for participants in an election. Again, however, this would also mean the scheme would be significantly less likely to achieve its purpose of levelling the playing field for electoral campaigning. The expenditure cap levels are intended to take into account the significant variability in campaigning practices and spending throughout Queensland.

Not implementing an expenditure caps regime, and instead only implementing caps on donations to participants in an election for the purposes of conducting an election campaign, could also address uneven financial competition in elections by indirectly limiting election expenditure for some participants in an election. However, in the Belcarra report, the CCC noted it was not persuaded there was a sufficient justification to recommend the introduction of donation caps (as opposed to expenditure caps), noting expenditure caps are easier to enforce and also more effectively level the playing field by limiting the financial advantages of wealthy self-funded candidates.<sup>9</sup>

Only applying the expenditure caps to a certain class of participants in an election (e.g. political parties) would significantly disadvantage these participants in an election. This would not have

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<sup>9</sup> CCC, Belcarra report, pp 46 to 47

the effect of levelling the playing field and ensuring certain participants' voices are not drowned out.

With regards to the pooling provisions, not addressing expenditure related to group or party campaign activities in the expenditure caps scheme could potentially inhibit or complicate their campaign activities and thus possibly infringe their right to freedom of association by limiting their ability to campaign as a group or party.

Only providing individual candidate caps to each member of the group or to endorsed party candidates, with no explicit group or party cap, would be less restrictive on the right to freedom of expression for individual candidates. However, this would impose an additional burden on coordinated group or party campaign activity, as individual members of the group or individual party candidates would be effectively required to run individual campaigns with their own individual expenditure caps. Any expenditure incurred by the group or party as part of a joint or coordinated campaign activity would need to be allocated or apportioned to the individual candidates. These arrangements do not necessarily align with the reality of group and party campaign activities and would impose additional administrative burden and costs on groups and parties which would limit their right to freedom of association by adding obstacles to group and party campaign activities. It is therefore considered there is no reasonably available alternative to the pooling provisions which is equally practicable and available (in terms of enabling groups and parties to conduct coordinated campaign activities).

Not applying an upper limit to a group or party cap could allow a group or political party to take advantage of a disproportionately large expenditure cap by fielding more candidates than the number of vacancies in an election. This would negatively impact the balance between the purpose the pooling limits achieve and the pooling provisions' limit on the right to freedom of expression for individual candidates.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The expenditure caps regime implemented by the Bill ensures a fairer opportunity for participants in an election to participate in local government elections. By providing a more equal footing for all participants in an election, the risk of democratic processes being distorted by uneven levels of electoral expenditure is decreased.

Where electoral expenditure is curbed, thereby limiting the right to freedom of expression and the right to participate in public life for a participant in an election, this expenditure is only decreased to a level which is equal to what all other participants in an election can incur. This means the ability for participants in an election to express themselves or to participate in elections is equal in terms of electoral expenditure and makes the competition for participants in an election to be heard and to participate in public life (by having the opportunity to take public office) more equitable.

In addition, those whose communications are restricted through the expenditure caps are limited to: those who are directly involved with the electoral process in the form of seeking election; those who endorse candidates for election; or third parties who communicate with a dominant purpose of influencing voting at an election. Individual members of the community

who are not captured by the legislation will not be subject to the caps scheme and will also have a better opportunity to clearly hear each participant's voice.

The scheme is also designed to achieve an appropriate balance between the purpose of the Bill and the identified limitations on human rights. The expenditure cap only applies for a limited time period, and the caps applicable to local government areas are designed to take into account the different local government contexts across Queensland. In addition, analysis of previous electoral expenditure at local government elections showed only a small proportion of successful candidates would have exceeded the proposed expenditure caps, which indicates the caps are not too restrictive. Stakeholder feedback on the expenditure caps has also indicated the caps are not overly burdensome.

In these ways, a more democratic local government electoral process is achieved while also promoting the right to freedom of expression and the right to take part in public life for those whose voices would otherwise be heard less clearly and for those in the community who would otherwise be unable to hear these voices so clearly.

The UNHRC has stated '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>10</sup>

The pooling provisions ensure groups and political parties are subject to the expenditure caps scheme while also promoting the right to freedom of association by enabling groups and parties to conduct coordinated campaign activities. Importantly, all individual candidates in a local government election are able to form or join groups or access political party endorsement meaning all individual candidates can benefit from campaigning with a group or political party and pool their caps with other candidates, and provisions for the adjustment of caps are provided in the Bill to facilitate changes to group membership or candidate endorsement.

The upper limit on a group or party expenditure cap based on the maximum number of vacancies in an election also reduces the impact on the right to freedom of expression for individual candidates by curbing the ability of a group or registered political party to gain access to a disproportionately large expenditure cap by fielding more candidates than the number of vacancies in an election.

(f) any other relevant factors

Not applicable.

Measure 2: Group membership requirements

Section 183(1) of the LGEA currently prohibits a person from engaging in a group campaign activity for an election, unless the activity relates to:

- candidates who are members of a group of candidates for the election, as stated in the record for the group published under LGEA section 41(4); or

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<sup>10</sup> UNHCR, General Comment No 25.

- candidates who are endorsed by the same political party for the election.

The Bill makes minor amendments to section 183 (refer clause 53) and also introduces amendments to group membership requirements (refer clause 16, new section 43B) to provide that a candidate may be a member of a group of candidates only if each other candidate who is a member of the group is a candidate in the election for the same local government (for a quadrennial election), and the candidate is not endorsed by a registered political party for the election.

These amendments limit the right to freedom of association for candidates in a local government election.

(a) the nature of the right

The nature of the *right to freedom of association* is discussed above, under measure 1, section (a) ‘the nature of the right’.

The amendments limit the right to freedom of association for candidates by prohibiting candidates from forming groups of candidates across local government areas and engaging in group campaign activities across local government areas as a group of candidates.

The amendments also limit the right to freedom of association for candidates by prohibiting candidates who are endorsed by a registered political party from also being a member of a group of candidates. This means that an individual cannot engage in a group campaign activity which relates both to candidates who are members of a group of candidates for an election and to candidates who are endorsed by a political party for the election.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the provisions for groups of candidates outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

The amendments regarding groups of candidates are designed to ensure the expenditure caps apply consistently, equitably and in a way which is straightforward for participants in an election and citizens to understand and apply.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The group membership requirements will help achieve the purpose of the limitation by ensuring an equitable, consistent and comprehensible expenditure caps scheme can be implemented for all participants in an election.

If a candidate could be both a member of a group of candidates and an endorsed candidate, it would not be possible to appropriately determine and apply the expenditure caps and associated provisions for the group and for the registered political party in a way which is equitable and straightforward for participants in an election and citizens to understand and apply. In

particular, it would be difficult to ensure that such a candidate (or the group or political party with which they are associated) is not unfairly advantaged or disadvantaged in the way the expenditure caps apply, for example, by allowing a candidate to benefit from both a group's expenditure cap and a political party's expenditure cap.

Similarly, if a group of candidates could include candidates across more than one local government area, it would not be possible to appropriately and equitably determine the expenditure cap for the group in a way which is straightforward for participants in an election and citizens to understand and apply. In particular, noting the expenditure caps that apply to candidates can vary across local governments, allowing a group of candidates to include candidates across more than one local government area could lead to uneven caps being applied to groups of candidates as compared to other participants, leading to a risk of unequal participation in the electoral process, which is contrary to the purpose of the electoral expenditure caps scheme.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of ensuring the expenditure caps apply consistently and equitably and in a way which is straightforward for participants in an election and citizens to understand and apply.

Allowing groups of candidates to include candidates from more than one local government area, but applying separate caps for each local government area based on the group members in each local government area would avoid the risk of participants in an election campaign with unequal expenditure caps due to groups of candidates including candidates from local government areas with differing expenditure caps. However, doing so would significantly complicate the scheme, leading to a lack of clarity and transparency for participants and citizens and an increased compliance burden in terms of disclosure requirements and keeping aware of how close expenditure levels are to the separate expenditure caps applying to the group.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments support the expenditure caps scheme by ensuring that the electoral expenditure caps which apply to groups of candidates are equitable and straightforward for participants in an election and citizens to understand and apply. The amendments ensure participants in an election are not unfairly advantaged or disadvantaged in the way the expenditure caps apply, by allowing a candidate to benefit from both a group's expenditure cap and a political party's expenditure cap, or by allowing candidates to pool their caps with candidates from other local government areas which have different cap levels.

Historically, groups of candidates have only included candidates in elections within the one local government area and candidates not endorsed by political parties, meaning the proposed amendments are not restrictive when taking into account current practice.

On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring that the scheme is equitable and straightforward outweighs the negative impact the amendments will have on the relevant rights.

(f) any other relevant factors

Not applicable.

Measure 3: Notification requirements for registered political parties and groups

The Bill (refer clause 52, new section 135A and clause 15, new section 31) amends the LGEA to require a registered political party to notify the ECQ of their endorsement of a candidate, or of changes to their endorsement of a candidate, and for a registered political party to notify the ECQ of their withdrawal of endorsement of a candidate in alignment with sections 306A and 91A of the EA.

When the ECQ is notified of such a change, the ECQ may publish notice of the change on the ECQ's website.

The Bill also amends the LGEA (refer clause 16, new sections 42, 43 and 43A) to require groups of candidates to notify the ECQ of the creation of the group, proposed changes to their membership (i.e. when a candidate enters or leaves the group) and the winding up of the group, consistent with sections 306A and 91A of the EA for registered political parties. When the ECQ is notified of the membership, change of membership or winding up of the group, the ECQ must publish the information on the ECQ's website.

These notification requirements limit the following human rights:

- the right to privacy and reputation
- the right to freedom of association.

(a) the nature of the right

The *right to privacy and reputation* protects the individual from unlawful or arbitrary interferences with their privacy, family, home, correspondence (written and verbal) and reputation. It also protects a person from having their reputation unlawfully attacked.

The right protects privacy in the sense of personal information, data collection and correspondence but also extends to an individual's private life more generally.

Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.<sup>11</sup>

The amendments limit candidates' right to privacy and reputation because information about an individual (i.e. a candidate's political affiliation, in terms of their association with a group of candidates or a registered political party) is required to be provided to the ECQ, and the ECQ may publish this information on the ECQ's website.

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<sup>11</sup> *Sunday Times v United Kingdom* [1979] ECHR 1, [49]



The nature of *the right to freedom of association* is discussed above, under measure 1, section (a) ‘the nature of the right’.

The amendments limit candidates’ right to freedom of association because candidates may be disincentivised from changing their political affiliation (i.e. entering or leaving a group of candidates or becoming endorsed or dis-endorsed by a registered political party) if they do not want the ECQ to be notified of these changes or for this information to be made public by being published on the ECQ’s website.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the notification provisions outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others. The notification requirements are important elements of the scheme because they enable the ECQ to determine the number of candidates who are members of a group of candidates or who are endorsed by a registered political party and therefore to determine and monitor the caps which apply to the group of candidates or registered political party.

The purpose of the publication provisions is to provide transparency and allow voters to be better informed in exercising their right to vote. They allow citizens and other participants in an election to know who candidates, groups of candidates and registered political parties are associated with as they consider election issues and how participants in an election are directing their electoral expenditure. Knowing who candidates, groups of candidates and registered political parties are associated with also assists citizens as they consider how to exercise their vote.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others.

Requiring groups of candidates and registered political parties to notify the ECQ of changes to the number of candidates in the group or who are endorsed by the registered political party will enable the cap which applies to the group or registered political party to be promptly determined and monitored. It will also provide clarity to the group or registered political party regarding the cap which applies to them.

The publication provisions add an element of transparency to this. Citizens and other participants in an election will be able to understand the expenditure cap which applies to each group and registered political party because they will be able to access information regarding the number of candidates in the group or endorsed by the registered political party. They will

also be able to understand how electoral expenditure relating to a candidate relates to a group's or registered political party's expenditure cap.

The publication provisions also allow citizens to have easy access to information regarding who candidates, groups of candidates and registered political parties are associated with as they consider election issues and how to exercise their vote.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose.

Requiring groups of candidates and registered political parties to notify the ECQ of changes to the number of candidates in the group or who are endorsed by the registered political party, but not allowing the ECQ to publish notice of a change of membership of a group of candidates or a change to a candidate's endorsement would be less restrictive on candidates' right to privacy and reputation and right to freedom of association. However, this would not achieve the purpose of transparency for citizens and other participants in an election.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The purposes of the limitations are consistent with a free and democratic society as they are intended to provide transparency and allow voters to be better informed as they exercise their right to vote, and to support the electoral expenditure caps scheme which has the purpose of providing a fairer opportunity for participants to participate in local government elections.

Requiring groups of candidates and political parties to notify the ECQ of changes to the number of candidates in the group or who are endorsed by the registered political party is necessary to appropriately implement the expenditure caps scheme as it applies to groups of candidates and registered political parties and the candidates who are members of groups of candidates or endorsed by political parties.

In addition, noting that under the LGEA, groups of candidates are formed to enable the group to carry out group campaign activities which are publicly oriented activities (for example, participating in the same fundraising activities or using the same advertisements or campaign slogans), the notification and publication provisions are not significant limitations on the right to privacy for groups of candidates since participating in group campaign activities makes clear a candidate's association with other candidates.

Similarly, political parties are likely to support the candidates who they endorse in the public sphere, meaning the notification and publication provisions are not significant limitations on the right to privacy for candidates who are endorsed by a political party.

For these reasons, a fair balance is achieved between the benefits gained through the notification and publication provisions and the limitations on the rights to privacy and freedom of association.

(f) any other relevant factors

Not applicable.

#### Measure 4: Registration of third parties

The EA provides in part 11, division 12 for registration of a third party if the electoral expenditure incurred by or with the authority of the third party during the capped expenditure period for a State election exceeds \$6,000. The Bill (refer clause 47, new part 6 division 5A) introduces requirements for registration of third parties for local government elections, modelled on the system under the EA. The relevant threshold is \$6,000 to ensure there is consistency between the arrangements that apply at State elections and local government elections.

When applying to be registered (refer clause 47 new section 127F), a third party who is an individual will be required to provide information as prescribed by regulation, which could include personal information such as their name, date of birth and address. This information will be stored by the ECQ. The ECQ will also be required to publish a register of third parties on its website (refer clause 52, new section 135B), subject to certain restrictions (for example, an individual's date of birth or street address must not be published).

Registration of third parties limits the following human rights:

- the right to privacy and reputation
- the right to freedom of expression
- the right to take part in public life.

Dedicated campaign account requirements that apply to registered third parties are detailed under measure 5, below.

(a) the nature of the right

*Right to privacy and reputation*

The nature of the *right to privacy and reputation* is discussed above, under measure 3, section (a) 'the nature of the right'.

For third parties who are individuals wishing to be registered, the right to privacy is limited because they will be required to release personal information as part of their application. This information will then be stored by the ECQ, and some of this information is required to be published by the ECQ on the ECQ's website.

*Right to freedom of expression and the right to take part in public life*

The nature of these rights is discussed above, under measure 1, section (a) 'the nature of the right'.

The right to freedom of expression and the right to take part in public life are limited by the requirement for third parties to register because third parties who are individuals will be required to engage in additional activities regarding the keeping of dedicated campaign accounts and disclosure (see measure 5, below) where they incur electoral expenditure of more than \$6,000 during the capped expenditure period. This limits freedom of expression and the right to take part in public life because third parties who are individuals will be limited as to the amount of expenditure they can incur to campaign in respect of a local government election without being subject to additional obligations. This potentially impacts on the information that

can be conveyed by third parties that do not wish to be subject to the additional requirements, and information that a person can receive from such third parties.

This consequently limits the ability of third parties who are individuals to contribute to and exercise their voices in relation to the public life of the State and also limits the ability of citizens to participate in public affairs to the extent that the information regarding an election conveyed to them by participants in an election is limited by the proposal.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to provide transparency and inform the public, including voters, about those third parties that incur electoral expenditure with a view to influencing voting in an election, and to support compliance with the expenditure caps applicable to registered third parties by imposing requirements concerning dedicated campaign accounts. Compliance with the expenditure caps in turn supports the purpose of the expenditure caps of levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

In addition, applying a registration threshold of \$6,000 ensures there is consistency between the arrangements that apply at State elections and local government elections, meaning the system is easier to operate, understand and comply with.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The third party registration requirements will help achieve the purpose of the limitation. Keeping and publishing a register of third parties on the ECQ’s website will allow voters to access information about third parties that spend more significant amounts on electoral campaigning and, if desired, conduct further inquiries about those engaging in electoral communication with them prior to exercising their right to vote.

Registration will allow the ECQ to appropriately focus its education activities on third parties incurring more significant amounts of electoral expenditure. The use of dedicated campaign accounts supports the ECQ’s compliance and audit activities for expenditure caps applicable to registered third parties, which in turn supports the purpose of the expenditure caps of levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of providing transparency to voters and supporting compliance with the expenditure caps.

Not requiring registration of third parties, or not requiring a register of third parties to be published, would fail to achieve the purpose of the proposal. It would mean the public would have less access to information about those third parties that incur electoral expenditure with a

view to influencing voting in an election. It would also hamper the ECQ's ability to support compliance with the expenditure caps applicable to registered third parties.

Increasing the registration threshold for third parties from \$6,000 to a higher amount would impact on achieving the purpose of the proposal in a similar way. The public would have less access to information about a larger class of third parties that incur electoral expenditure with a view to influencing voting in an election. In addition, increasing the threshold above \$6,000 would lead to inconsistency between the arrangements that apply at State elections and local government elections.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The purposes of the limitation are consistent with a free and democratic society as they are intended to provide transparency and allow voters to be better informed in exercising their right to vote, and to prevent electoral unfairness arising from electoral communication being dominated by certain participants in an election and preventing others from having a reasonable opportunity to communicate with voters about a local government election.

The importance of providing transparency regarding third party campaigners for voters and ensuring compliance with expenditure caps (and, in turn, levelling the playing field for electoral campaigning) outweighs the negative impact that the third party registration requirements have on the right to privacy, the right to freedom of expression and the right to take part in public life.

The registration threshold for third parties of \$6,000 is appropriate as it allows for a reasonable quantum of expenditure to occur by a third party without being subject to the additional transparency for voters and compliance requirements. The registration threshold ensures that more significant amounts of expenditure are subject to those requirements.

(f) any other relevant factors

Not applicable.

Measure 5: Registered political parties and registered third parties to keep dedicated accounts

The Bill introduces amendments (refer clause 44, new sections 127AA and 127AB) to require registered political parties that endorse candidates in an election, registered third parties and third parties required to be registered to operate a dedicated account for an election. All amounts of electoral expenditure paid by these entities, or a person acting with their authority, during the disclosure period for the election must be paid out of the account.

Participants in an election will be required to provide the ECQ with a copy of the bank statement for their dedicated accounts with their election summary returns after the election (refer clause 41, new sections 125, 125A and 125C).

If an amount remains in the account at the end of an entity's disclosure period, the amount or part of the amount may be used in the following ways and not otherwise:

1. be kept in the account for the purposes of incurring electoral expenditure for another election

2. be paid to the political party, if the entity is a political party
3. be paid to a charity nominated by the entity.

The dedicated account requirements limit the following human rights:

- the right to privacy and reputation
- the right to property
- the right to freedom of expression
- the right to take part in public life.

(a) the nature of the right

*Right to privacy and reputation*

The nature of this right is discussed above, under measure 3, section (a) ‘the nature of the right’. Requiring participants in an election who are individuals to provide bank statements of their dedicated accounts to the ECQ limits their right to privacy because the bank statements will include their personal details and because the requirement allows collection of data regarding their financial activity.

*Right to property*

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Property is likely to include all real and personal property interests recognised under general law and may include some statutory rights.

The term ‘deprived’ is not defined by the HR Act. However, deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).<sup>12</sup>

The scope of the right is affected by an internal limitation, that the person has the right not to be arbitrarily deprived of their property. Case authority suggests that ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.<sup>13</sup>

For individuals who are registered third parties, the right to property is limited by requirements for how to deal with any money that remains in a dedicated account at the end of the required disclosure period. A third party might wish to deal with a remaining amount in a way not allowed under the requirements, e.g. to invest the remaining money or return a donation to a donor. In this way, the requirements are a restriction on the third party’s ability to dispose of, transfer or derive profit from their property.

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<sup>12</sup> Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2<sup>nd</sup> ed, 2019) 184

<sup>13</sup> *WBM v Chief Commission of Police* (2012) 43 VR 446, 472 [114].

*Right to freedom of expression and the right to take part in public life*

The nature of these rights is discussed above, under measure 1, section (a) ‘the nature of the right’. The right to freedom of expression and the right to take part in public life are limited by these dedicated account requirements. Registered third parties who are individuals are required to undertake additional activities (i.e. opening and operating a dedicated bank account, providing a copy of the bank statement to the ECQ, and following requirements regarding unspent monies) in order to incur expenditure of the prescribed kinds. This limits the right to freedom of expression for third parties who are individuals insofar as it is a disincentive or obstacle for these third parties to incur expenditure.

This consequently limits the ability of third parties who are individuals to contribute to and exercise their voices in relation to the public life of the State and also limits the ability of citizens to participate in public affairs to the extent that the information regarding an election conveyed to them by such third parties is limited by the proposal.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the provisions for dedicated accounts outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others. The dedicated account requirements, including the requirement to provide the ECQ with dedicated account bank statements and requirements for how to deal with funds remaining in an account at the end of the disclosure period, are an important element of this scheme: the requirements ensure ease of audit and enforcement activities.

In addition, requiring dedicated accounts ensures there is consistency between the current requirements for local government candidates and groups and also between the arrangements that apply at State elections and local government elections, meaning the system is easier to operate, understand and comply with.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others.

Requiring registered political parties that endorse a candidate in an election and registered third parties to keep dedicated accounts and provide the ECQ with a copy of their dedicated account bank statements will allow the ECQ to reconcile reported expenditure with the transactions shown in the bank statement. This provides the ECQ with a tool to further ensure participants in an election have provided correct and complete expenditure returns and have complied with the expenditure caps scheme.

Limiting the way money remaining in a dedicated account at the end of a disclosure period is expended will ensure no additional expenditure can be incurred without the knowledge of the ECQ, to ensure compliance with the expenditure caps regime. The requirement for dedicated bank accounts for registered political parties that endorse a candidate in an election and registered third parties also ensures consistency with the EA.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of tracing electoral expenditure and ensure compliance with the expenditure caps regime.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The requirements will operate in a predictable and reasonable way, ensuring the requirements are not imposed on individuals who are registered third parties in an arbitrary way. An individual who is a third party can monitor and control the funds which enter their account in awareness of the expenditure cap they are subject to and in the knowledge that any unspent funds will need to be dealt with as per the requirements. This means a third party can delay placing the funds in the dedicated account until they are more certain that the funds will be expended. This will limit any restrictions on the way their funds are used.

The requirements also allow funds which a third party has dedicated to electoral expenditure to be used for electoral expenditure in future elections.

(f) any other relevant factors

Not applicable.

#### Measure 6: Associated entities – electoral expenditure, definition and disclosure

The Bill implements the Government's response to recommendation 5 of the Committee report by providing (refer clause 26, new sections 112C, 112D and 112E) for electoral expenditure incurred by an associated entity to be treated as though it were incurred by the electoral participants with which the entity is associated (and therefore, the electoral expenditure is subject to the relevant cap). The Bill also provides that an associated entity must use the dedicated account of the election participant with which it is associated.

The Bill also adopts the Committee's suggestion at page 39 of the Committee report to align the definition of 'associated entity' in the LGEA with the definition in the EA. The Bill therefore amends the LGEA to regulate associated entities of registered political parties that endorse a candidate in an election, candidates and groups of candidates, rather than only regulating associated entities of political parties, as is currently the case under the LGEA (refer current sections 124 and 125 and definition of 'associated entity' in schedule 2 Dictionary). The definitions of associated entity in new sections 112C, 112D and 112E (clause 26) are consistent with the definitions in sections 204 and 204A of the EA.

The Bill amends the current expenditure return requirements applicable to associated entities of political parties (refer sections 124 and 125 of the LGEA) to apply to associated entities of



registered political parties that endorse a candidate in an election and extends the requirements to also apply to associated entities of candidates and groups (refer clause 41 new sections 124 and 125A).

Further, the Bill aligns the LGEA with relevant provisions of part 11, division 11 (Returns by registered political parties and associated entities) of the EA in relation to associated entities of candidates. To align with section 294(1) (2) and (3) of the EA, the Bill amends the LGEA to require real time gift and loan returns from associated entities of candidates and groups of candidates (refer clauses 31 and 36, new sections 118AA and 120A). To align with section 291, section 292 section 294(4) and (5) section 294A and section 295 of the EA, the Bill also includes in new part 6, division 4B (refer clause 41) requirements for particular returns for amounts received, amounts paid and outstanding debts incurred by associated entities of candidates and groups of candidates.

It should be noted that in the Belcarra report, the CCC stated (refer to the Glossary) that an associated entity 'can be an individual'. Therefore, human rights are engaged in relation to the impacts of the amendments on associated entities.

The amendments related to associated entities engage the following human rights:

- freedom of expression
- freedom of association
- right to take part in public life
- right to property
- privacy and reputation.

(a) the nature of the right

The nature of the *right to freedom of expression* is discussed above, under measure 1, section (a) 'the nature of the right'.

As discussed under measure 1, above, freedom of expression is limited by the electoral expenditure caps scheme generally because the caps limit the amount that may be spent by a candidate, including a candidate who is a member of a group of candidates or endorsed by a registered political party, and by groups and political parties on campaigning in respect of a local government election. This impacts on the level of information that can be conveyed by individual participants in an election and the level of information that citizens can receive from those participants concerning the election.

The requirement for electoral expenditure incurred by an associated entity (whether of a registered political party, candidate or group of candidates) to be treated as though it were incurred by the relevant participant in the election results in the expenditure cap scheme being applied to spending by associated entities, raising the same human rights issues as discussed above.

The nature of the *right to freedom of association* is discussed above, under measure 1, section (a) 'the nature of the right'.

As discussed above under measure 1, freedom of association is limited by the expenditure caps applicable to members of groups of candidates and candidates endorsed by political parties because, by having a connection with a group of candidates or a political party, these

candidates' ability to incur electoral expenditure is limited by the level of the group or political party's expenditure. This could disincentivise individuals from joining groups of candidates or accepting a political party's endorsement, which is a burden on their right to freedom of association. An entity associated with the group of candidates or political party will by extension also be affected, as their spending will count towards the relevant cap.

Further, the regulation of entities associated with a political party, candidate or group of candidates, rather than only those associated with a political party (as is currently the case under the LGEA) engages the right to freedom of association by imposing additional restrictions on the choice by participants in an election and by the relevant entities to associate with one another.

The nature of the *right to take part in public life* is discussed above, under measure 1, section (a) 'the nature of the right'.

The right to take part in public life is limited by the electoral expenditure caps generally because the expenditure caps limit the ability of individual participants in an election to contribute to and exercise their voices in relation to the public life of the State. Accordingly, the requirement for electoral expenditure incurred by an associated entity (whether of a political party, candidate or group of candidates) to be treated as though it were incurred by the relevant electoral participant results in the expenditure cap scheme being applied to spending by associated entities, raising the same human rights issues discussed above in relation to the scheme generally.

Further, the amendments to provide for entities to be associated with a political party, candidate or group of candidates, rather than only with a political party (as is currently the case under the LGEA) engages the right to take part in public life by imposing additional regulation on candidates and groups of candidates (for example, it affects compliance with the expenditure caps scheme and use of the relevant dedicated account).

The nature of the *right to property* is discussed above, under measure 5, section (a) 'the nature of the right'.

The right to property is limited by the application of the dedicated account provisions to associated entities of candidates, groups and political parties. This includes requirements for how to deal with any money that remains in a dedicated account at the end of the disclosure period. An associated entity might wish to deal with a remaining amount in a way not allowed under the Bill's requirements, e.g. to invest the remaining money or return a donation to a donor using funds remaining in the account at the end of an election period. In this way, the requirements are a restriction on the associated entity's ability to dispose of, transfer or derive profit from their property.

The nature of the *right to privacy and reputation* is discussed above, under measure 3, section (a) 'the nature of the right'.

As noted above, the Bill amends the current expenditure return requirements applicable to associated entities of political parties to apply to associated entities of registered political parties that endorse a candidate in an election and extends the requirements to also apply to associated entities of candidates and groups. The Bill amends the LGEA to require real time gift and loan returns from associated entities of candidates and groups of candidates and also

includes in new part 6, division 4B requirements for particular returns by associated entities of candidates and groups of candidates.

For example, under section 118AA, the financial controller of the entity will be required to give a return stating the value of the gift, relevant details of the entity making the gift and relevant details of the entity that is the source of the gift.

Section 121B (Donor must disclose source of gift or loan) is amended (refer clause 38) to extend its application to an entity that makes a gift to an associated entity. New sections 118AA and 120A require associated entities of candidates and groups to give gift and loan returns which include the relevant details as defined in section 109 of the LGEA, including details of the source of the gift or loan. The amendment to the LGEA is necessary in order for the gift and loan return requirements for associated entities to operate effectively.

New section 122 (Requirement to notify the public about disclosure obligations) (refer clause 40) extends the current requirements of section 122 to the financial controller of an associated entity of a candidate in an election or group of candidates for an election.

These amendments limit the right to privacy of an associated entity who is an individual, the candidate, members of groups of candidates, donors who are individuals and recipients of the expenditure who are individuals, as information about gifts, loans and expenditure is both disclosed to the ECQ and subject to certain notification and publication requirements.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps generally are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others.

In relation to associated entities, the Committee at section 3.10 of the Committee report noted that ‘associated entities have become major conduits for political donations and expenditure in recent decades and can effectively serve as proxies for electoral participants.... A shared expenditure cap, it has been argued, provides the strongest option for regulating expenditure of associated entities....’<sup>14</sup>

Further, the Committee commented that treating expenditure incurred by an associated entity as though it was incurred by the participant in an election was ‘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’.<sup>15</sup>

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<sup>14</sup> Economics and Governance Committee, Committee report, p 38

<sup>15</sup> Economics and Governance Committee, Committee report, p 39

In relation to expansion of the definition of ‘associated entity’ in the LGEA, the Committee considered this would ‘support the consistent inclusion of electoral spending by such entities in the relevant cap for the electoral participant with which they are associated’.<sup>16</sup>

The supporting requirements about use of dedicated accounts, expenditure returns by associated entities of candidates and groups, gift and loan returns and particular returns (under new part 6, division 4B) by associated entities of candidates and groups are an essential element of the expenditure caps scheme, making it easier to trace and reconcile campaign expenditure. Their purpose is to allow for effective monitoring to ensure compliance with the scheme.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others.

The limitations on human rights imposed by the amendments affecting associated entities will achieve their purpose and the purpose of the scheme generally by providing for an appropriate level of monitoring and compliance. They implement the Government’s response to recommendation 5 of the Committee report, as outlined above.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose. Reducing the requirements would ultimately reduce the deterrent effect of the enforcement measures and may result in electoral unfairness, as the caps will not be effectively enforced. Safeguards include the tailoring of the provisions to align as closely as possible with existing provisions of the EA, in addition to consultation with stakeholders.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that there are strong links between the amendments about associated entities and the overall purpose of the expenditure caps scheme. On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring that the scheme cannot be circumvented outweighs the negative impact the amendments will have on the relevant rights.

(f) any other relevant factors

Not applicable.

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<sup>16</sup> Economics and Governance Committee, Committee report, p 39

### Measure 7: Agents of participants in an election – appointment and registration

Currently the LGEA provides for the appointment of an agent for a group of candidates and for a register of group agents (sections 42 and 43 of the LGEA).

The LGEA provides for certain obligations on the agent of a political party but not for registration of the agent. The definition of ‘agent of a registered political party’ in schedule 2 of the LGEA refers to the party’s agent under the EA.

The LGEA does not provide for an agent of a candidate or of a third party.

The Bill amends the LGEA (refer clause 28, new part 6 division 2) to align with part 11, division 2 of the EA, by providing for appointment and registration of agents of political parties, candidates and third parties (both registered and unregistered). Existing requirements in the LGEA for a register of agents of groups of candidates are retained and relocated.

For consistency, the Bill also amends a range of provisions in the LGEA to apply to the relevant agent where similar provisions in the EA apply to agents. For example, the amendments about agents result in amendments (refer clauses 29 and 35) to the gift and loan return provisions in sections 117 and 120 of the LGEA to apply to the agent of the candidate. Further, the Bill replaces current part 6, division 4 and provides in new part 6, division 4A (sections 124 and 125) (refer clause 41) of the LGEA for expenditure returns by the agent of a candidate. New sections 125B and 125C (refer clause 41) provide for expenditure returns by the agent of a relevant third party.

Further, the Bill inserts new provisions applying similar offences to agents appointed under the LGEA as apply to agents appointed under the EA, for example, new section 116G (Agent’s obligation to ensure compliance) (clause 28), and new section 127O (Records to be kept by agents of participants) (clause 47) Some of these offences are also referred to under measure 8, below, in relation to reversal of the onus of proof.

The amendments engage the following human rights:

- freedom of expression
- freedom of association
- right to take part in public life
- privacy and reputation.

#### (a) the nature of the right

The nature of the *right to freedom of expression* is discussed above, under measure 1, section (a) ‘the nature of the right’.

The opportunity for a candidate, political party or third party to appoint an agent promotes their freedom of expression by allowing them to delegate a range of obligations under the LGEA, for example financial disclosure, thus incentivising them to participate in the election and express their views. However, their freedom and the freedom of the agent is limited by the requirement for the agent to be registered with the ECQ. The freedom of the agent is further limited by the obligation to comply with disclosure requirements and other responsibilities covered by a range of offences applying to agents provided for in the Bill.

The nature of the *right to freedom of association* is discussed above, under measure 1, section (a) ‘the nature of the right’.

The opportunity for a candidate, political party or third party to appoint an agent promotes their freedom of association by allowing them to delegate to their chosen agent a range of obligations under the LGEA, for example financial disclosure. However, their freedom and the freedom of the agent is limited by the requirement for the agent to be registered with the ECQ.

The nature of the *right to take part in public life* is discussed above, under measure 1, section (a) ‘the nature of the right’.

The opportunity for a candidate, political party or third party to appoint an agent promotes their right to take part in public life by allowing them to delegate a range of obligations under the LGEA, for example financial disclosure, thus incentivising them to participate in the election. However, their right and the right of the agent is limited by the requirement for the agent to be registered with the ECQ. The right of the agent is further limited by the obligation to comply with disclosure requirements and other responsibilities covered by a range of offences applying to agents provided for in the Bill.

The nature of the *right to privacy and reputation* is discussed above, under measure 3, section (a) ‘the nature of the right’.

The right to privacy is limited by the registration requirement because agents are required to provide personal information which is then stored by the ECQ and may be made available for public inspection, subject to provisions in the Bill about restrictions on information which can be published (refer new section 135B).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the LGEA as outlined in section 3 are ‘to ensure the transparent conduct of elections of councillors in Queensland’s local governments and ensure and reinforce integrity... including, for example, by minimising the risk of corruption in relation to the election of councillors’. The purpose of the requirements for appointment and registration of agents, and the associated obligations on agents, aligns with the general purpose of the LGEA to ensure transparency and integrity in elections. Further, the role of the agent in disclosing expenditure and the responsibility of agents to ensure compliance by the participant in an election and others with the requirements for dedicated accounts and capped expenditure are directed to ensuring the expenditure cap scheme is effective. This is consistent with amendments in the Bill expanding section 3 of the LGEA to provide that the purposes of the Act are also to ensure and reinforce the equitable conduct of elections of councillors of Queensland’s local governments including, for example, by minimising the risk of unequal participation in the electoral process and ensuring a fair opportunity to participate.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The requirements for appointment and registration of agents and the associated obligations on agents are clearly connected to the purposes of ensuring the transparent conduct of the election

of councillors and ensuring and reinforcing the equitable conduct of elections of councillors through implementation of the expenditure caps scheme.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose. Safeguards include the tailoring of the provisions to align as closely as possible with existing provisions of the EA, in addition to extensive consultation with stakeholders about the expenditure caps scheme generally.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that there are strong links between the amendments about agents, the general purposes of the LGEA and the specific purpose of the expenditure caps scheme. On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring transparency, integrity and compliance with the scheme outweighs the negative impact the amendments will have on the relevant rights.

(f) any other relevant factors

Not applicable.

#### Measure 8: Enforcement

The Bill includes a range of enforcement measures aligning, where appropriate, with relevant provisions in the EA. A number of the amendments raise human rights considerations. The Bill provides for new offences, expansion of existing offences and recovery of unlawful electoral expenditure. The provisions are discussed below under the following sub-headings:

- Disqualifying offences – integrity offences
- Imprisonment and disqualifying offences – serious integrity offences
- Reasonable excuse – reversal of onus of proof
- Recovery provisions.

#### *Disqualifying offences – integrity offences*

Under section 26 of the LGEA, a person may only be nominated as a candidate, or for appointment, as a councillor if the person is qualified to be a councillor under the LGA or COBA.

The LGA and COBA provide that some offences, including certain offences under the LGEA, are disqualifying offences. Disqualifying offences include ‘integrity offences’ and ‘serious integrity offences’.

If convicted of an integrity offence, a person is disqualified from being a councillor for a period of four years. If convicted of a serious integrity offence, a person is disqualified from being a councillor for a period of seven years (section 153 and schedule 1 of both the LGA and the COBA).

A councillor is automatically suspended if charged with an integrity or serious integrity offence (section 175K of the LGA and section 186B of the COBA).

The integrity and serious integrity offences are listed in clauses 6 and 11 of the Bill and are indicated in the following paragraphs.

New section 123O (Compliance with expenditure cap - unregistered third party) (clause 41) provides that a third party not registered for an election (or a person acting with the third party's authority) must not incur electoral expenditure during the capped expenditure period for the election if the amount of the expenditure, by itself, exceeds the third party's expenditure cap for the election; or both of the following apply:

- the amount of the expenditure exceeds the third party's expenditure cap when added to other electoral expenditure incurred by the third party, or with the third party's authority, during the capped expenditure period
- the third party or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

The maximum penalty is the greater of:

- the amount that is equal to twice the amount by which the electoral expenditure exceeded the third party's expenditure cap for the election
- 200 penalty units.

This section is consistent with section 281H of the EA. The Bill provides that this offence is also an integrity offence.

New section 127V (Participant in election must assist appointed auditor) (clause 47) applies if an auditor is appointed under section 127U (Electoral commission may appoint auditor) to conduct an audit of a participant in an election. The participant must give the auditor the assistance the auditor reasonably requires to conduct the audit. Failure to comply with this section attracts a maximum penalty of 200 penalty units. This section is consistent with section 319B of the EA.

Without limiting the requirement for the participant to give the auditor the assistance the auditor reasonably requires to conduct the audit, the section also states the things that the participant must give the auditor, including full and free access, at all reasonable times, to all accounts, records and documents reasonably required by the auditor that are in the possession, or under the control, of the participant; and relate, directly or indirectly, to a matter being audited; and other information, or an explanation, the auditor reasonably requires about a matter being audited. For section 127V(3), a matter being audited includes, for an audit about a return given under division 3 or 4A, a matter required to be stated in the return; or for an audit of a dedicated account, a transaction carried out, or required to be carried out, under part 6. The term *reasonably requires*, for this section, means requires on grounds that are reasonable in the circumstances.

The Bill also provides that the offence in section 127V is an integrity offence.



New section 135E (Auditor preparing audit certificate to give notice of contravention) (clause 52) applies if, in carrying out an audit to prepare an audit certificate mentioned in section 135D(2), an auditor becomes aware of a matter that the auditor considers is reasonably likely to constitute a contravention of part 6 or part 9, division 5. Within seven days after becoming aware of the matter, the auditor must give the electoral commission written notice of the matter. Failure to do so will attract a maximum penalty of 100 penalty units. This section is consistent with section 311 of the EA. The Bill also provides that the offence in section 135E is an integrity offence.

New section 127AA (Requirement for registered political party to operate dedicated account) (clause 44) applies to a registered political party that endorses a candidate in an election. The registered political party must operate an account with a financial institution if the party pays an amount mentioned in section 127AA(3). All amounts paid by the registered political party, or a person acting with the authority of the party, during the party's disclosure period for the election for electoral expenditure incurred by the party must be paid out of the account and in a way permitted under section 127A. The account must not, during the registered political party's disclosure period for the election, be used for paying an amount other than an amount under section 127AA(3).

If an amount remains in the account at the end of the registered political party's disclosure period for the election, the amount or part of the amount may:

- be kept in the account for incurring electoral expenditure for another election
- be paid to the party
- be paid to a charity nominated by the party.

An amount mentioned in section 127AA(5) must not be dealt with other than under that subsection. Under section 127AA(7), the registered political party must take all reasonable steps to ensure the requirements of section 127AA(2) to (6) are complied with.

The maximum penalty for section 127AA(7) is 100 penalty units. The requirement for a registered political party to operate a dedicated account is consistent with the requirement under part 11, division 3 of the EA that a registered political party keeps a State campaign account. However, the penalty of 100 penalty units remains consistent with the penalty of 100 penalty units which applies under sections 126 and 127 of the LGEA in relation to dedicated accounts of candidates and groups, rather than aligning with the penalty of 200 penalty units that applies in relation to the range of requirements under part 11, division 3 of the EA.

The offence in section 127AA(7) is also an integrity offence, consistent with current sections 126(8) (Requirement for candidate to operate dedicated account) and 127(8) (Requirement for group of candidates to operate dedicated account) and with new section 127AB(7) of the LGEA.

New section 127AB (Requirement for relevant third party to operate dedicated account) (clause 44) applies to a relevant third party. The relevant third party must operate an account with a financial institution if the third party pays an amount mentioned in section 127AB(3).

All amounts paid by the relevant third party, or a person acting with the authority of the third party, during the third party's disclosure period for the election for electoral expenditure

incurred by the third party must be paid out of the account and in a way permitted under section 127A. The account must not, during the relevant third party's disclosure period for the election, be used for paying an amount other than an amount under section 127AB(3).

If an amount remains in the account at the end of the relevant third party's disclosure period for the election, the amount or part of the amount may:

- be kept in the account for incurring electoral expenditure for another election
- be paid to a charity nominated by the third party.

An amount mentioned in section 127AB(5) must not be dealt with other than under that subsection.

Under section 127AB(7), the relevant third party must take all reasonable steps to ensure the requirements of section 127AB(2) to (6) are complied with. The maximum penalty for section 127AB(7) is 100 penalty units. The requirement for a relevant third party to operate a dedicated account is consistent with the requirement under part 11, division 3 of the EA that a registered third party or third party required to be registered keeps a State campaign account. However, the penalty of 100 penalty units remains consistent with the penalty of 100 penalty units which applies under sections 126 and 127 of the LGEA in relation to dedicated accounts of candidates and groups, rather than aligning with the penalty of 200 penalty units that applies in relation to the range of requirements under part 11, division 3 of the EA.

The offence in section 127AB(7) is also an integrity offence, consistent with current sections 126(8) (Requirement for candidate to operate dedicated account) and 127(8) (Requirement for group of candidates to operate dedicated account) and with new section 127AA(7) of the LGEA.

New section 116G (Agent's obligation to ensure compliance) (clause 28) provides in subsection (1) that the agent of an election participant must take all reasonable steps to inform the participant and each person the participant authorises to act for the participant about the applicable obligations under part 6, division 4 (Caps on electoral expenditure) and part 6, division 5 (Operation of accounts); and to establish and maintain systems supporting compliance. The maximum penalty is 100 penalty units, consistent with section 306B(1) of the EA. The Bill provides that the offence in section 116G(1) is an integrity offence.

Section 116G(2) provides that if a participant has an associated entity, the agent of the participant must take all reasonable steps to inform the associated entity, and each person the associated entity authorises to act for it about the obligations that apply to the associated entity and person under part 6, division 4 (Caps on electoral expenditure) and part 6, division 5 (Operation of accounts); and to establish and maintain appropriate systems to support the associated entity and person to comply with the obligations. The maximum penalty is 100 penalty units, consistent with section 306B(2) of the EA. The Bill provides that the offence in section 116G(2) is an integrity offence.

New section 112B (Application to unincorporated bodies) (clause 26) applies to the following entities that are unincorporated bodies: a registered political party; a third party; an associated entity of a registered political party that endorses a candidate in an election, or a candidate in an election or a group of candidates for an election. It provides that part 6 and part 9, division

5 apply in relation to the unincorporated body as if it were a person. An offence against a provision of part 6 or part 9, division 5 that, apart from subsection (5), would be committed by the unincorporated body is taken to have been committed by each member of the executive committee (however described) of the body who authorised or permitted the conduct that would have constituted the offence; or was, directly or indirectly, knowingly concerned in the conduct.

While this provision is broadly consistent with section 307AB of the EA, it should be noted that section 307AB of the EA applies in relation to offences against certain ‘deemed liability provisions’ whereas section 112B captures obligations, liability and offences under part 6 and part 9, division 5 of the LGEA, in addition to an amount payable under part 6 or part 9, division 5.

The maximum penalty in relation to an offence is the penalty for a contravention of the provision by an individual.

The Bill provides that the offence in section 112B(5) is a serious integrity offence, in the circumstance where the provision contravened is section 123N(2) (refer below under *Imprisonment and disqualifying offences - serious integrity offences*).

The Bill also provides that the offence in section 112B(5) is an integrity offence, in the circumstance where the provision contravened is section 123O(2) (Compliance with expenditure cap – unregistered third party).

It is appropriate to impose the liability on members of the executive committee responsible for management of the body but to limit this liability to only those members who were personally involved in the relevant conduct, in the sense of having authorised or permitted the conduct or having been knowingly concerned in the conduct.

Section 195(2) of the LGEA applies to a person required to give a return under part 6 of the LGEA. The person must not give a return containing particulars that are, to the knowledge of the person, false or misleading in a material particular. Section 195(2) is an integrity offence.

As a result of the amendments in the Bill outlined below, the reference to ‘person’ in section 195(2) potentially captures a broader range of persons than it currently does. The range of persons potentially subject to suspension and disqualification is increased.

The Bill provides in clause 28 for the appointment of an agent for a registered political party that endorses a candidate in an election, the appointment of an agent of a candidate and the appointment of an agent of a third party. The Bill relocates existing provisions about the appointment of an agent of a group.

The amendments about agents result in amendments to the gift and loan return provisions in section 117 and 120 of the LGEA to apply to the agent of the candidate (refer clauses 29 and 35 of the Bill).

Further, the Bill (clause 41) replaces current part 6 division 4 and provides in new part 6 division 4A (sections 124 and 125) of the LGEA for expenditure returns by the agent of a candidate, in addition to expenditure returns by the financial controller of an associated entity of a registered political party.

The Bill expands the definition of associated entity to incorporate associated entities of candidates and groups, to align with the EA. The Bill therefore also provides for returns for expenditure incurred by these associated entities (new sections 124 and 125A – refer clause 41), gifts and loan returns by these associated entities (new sections 118AA and 120A – refer clauses 31 and 36) and particular returns (new part 6 division 4B, clause 41) by these associated entities.

New sections 125B and 125C (refer clause 41) provide for expenditure returns by the agent of a relevant third party.

New sections 125D and 125E (refer clause 41) provide for returns by broadcasters and publishers.

Serious integrity offences are listed in clauses 6 and 11 of the Bill and are discussed below.

*Imprisonment and disqualifying offences - serious integrity offences*

Section 123N (Compliance with expenditure cap generally) (clause 41) applies to a candidate, each member of a group of candidates, a registered political party that endorses a candidate, and a registered third party. It provides that a participant in an election, or a person acting with the participant's authority, must not incur electoral expenditure during the capped expenditure period for the election if the amount of the expenditure, by itself, exceeds the participant's expenditure cap for the election. Also, electoral expenditure must not be incurred if the amount of the expenditure exceeds the participant's expenditure cap when added to other relevant electoral expenditure for the election; and the participant or person knows, or ought reasonably to know, the amount would result in the cap being exceeded.

Contravention of this provision has a maximum penalty of 1,500 penalty units or 10 years imprisonment. An offence against subsection (2) is a crime. The penalty is consistent with the penalty in section 281G of the EA.

'Other relevant electoral expenditure' means:

- other electoral expenditure incurred for the election by the participant, or with the participant's authority, during the capped expenditure period for the election; or
- if the participant's expenditure cap is shared under part 6, division 4, subdivision 3 or 4—other electoral expenditure incurred for the election by another participant with whom the expenditure cap is shared, or with the other participant's authority, during the capped expenditure period for the election.

The Bill provides that this offence is a serious integrity offence.

As outlined above under *Disqualifying offences – integrity offences* the Bill provides that the offence in section 112B(5) (Application to unincorporated bodies) is a serious integrity offence, in the circumstance where the provision contravened is section 123N(2).

The Bill amends section 194B of the LGEA (Schemes to circumvent prohibition on particular political donations) (refer clause 54) to also apply in connection with a prohibition under part 6 or part 9, division 5 related to incurring electoral expenditure. The maximum penalty is 1500 penalty units or 10 years imprisonment. The amendment is consistent with section 307B of the EA. The Bill provides that the offence in section 194B as amended is a serious integrity offence.

*Reasonable excuse – reversal of onus of proof*

The Bill includes the following provisions:

- new section 127BA(2) (clause 46) (alignment with section 221B(2) of the EA) , requiring the agent of the election participant to give the ECQ a notice about the participant’s dedicated account within 5 business days after the entity becomes a participant, unless the agent has a reasonable excuse (maximum penalty - 20 penalty units)
- new section 127BA(3) (clause 46) (alignment with section 221B(3) of the EA), requiring the agent of the election participant to give the ECQ a notice about a change in a required detail of an election participant’s dedicated account within 5 business days after the change happens, unless the agent has a reasonable excuse (maximum penalty - 20 penalty units)
- new section 127J (clause 47) (alignment with section 303 of the EA), requiring the agent of a registered third party to give the ECQ notice about the change to a relevant detail about the registered third party, unless the agent has a reasonable excuse (maximum penalty - 20 penalty units)
- new section 127S (clause 47) (consistent with section 305D of the EA), requiring a person to keep a record for five years and in a certain way, unless the person has a reasonable excuse (maximum penalty - 20 penalty units).

The effect of these provisions is to reverse the onus of proof.

Generally, in criminal proceedings:

- the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt
- the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negating the excuse or defence beyond reasonable doubt.<sup>17</sup>

A statute can reverse this general principle.

The OQPC Guide further states:

‘If legislation prohibits a person from doing something ‘without reasonable excuse’ it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse. .... [It] is understood that in Queensland, ‘reasonable excuse provisions’ are drafted on the assumption that the *Justices Act 1886*, section 76 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse. On the other hand, ... departments have

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<sup>17</sup> Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC Guide to FLPs – Reversal of onus of proof*, (OQPC Guide) p 3

often taken the view in their Explanatory Notes that a provision containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.’<sup>18</sup>

OQPC’s review of the issue concludes:

‘It seems likely that in most cases a reasonable excuse will constitute a statutory exception to be proved by the defendant. However, in the absence of an express statement as to the allocation of the onus, the question will ultimately need to be determined by a court having regard to the established rules of statutory interpretation.’<sup>19</sup>

The OQPC Notebook states:

‘Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt. For example, if legislation prohibits a person from doing something ‘without reasonable excuse’, it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.’<sup>20</sup>

### *Recovery provisions*

Section 123P (Recovery of unlawful electoral expenditure) (refer clause 41) provides that if a participant in an election, or a person acting with the participant’s authority, incurs unlawful electoral expenditure for the election, the amount that is twice the amount of the unlawful electoral expenditure is payable to the State.

The amount may be recovered by the State as a debt due to the State from:

- if the unlawful electoral expenditure was incurred by or with the authority of a registered political party that endorsed a candidate in the election and is not a corporation—the party’s agent; or
- if the unlawful electoral expenditure was incurred by or with the authority of a candidate—the candidate or the candidate’s agent; or
- if the unlawful electoral expenditure was incurred by or with the authority of a group of candidates—the group’s agent; or
- if the unlawful electoral expenditure was incurred by or with the authority of a third party that is not a corporation—the third party’s agent or
- if the unlawful electoral expenditure was incurred by or with the authority of another participant – the participant.

The imposition of liability to pay an amount to the State under section 123P:

- is not a punishment or sentence for an offence against section 123N (Compliance with expenditure cap generally) or 123O (Compliance with expenditure cap—unregistered third party) or any other offence; and

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<sup>18</sup> OQPC Guide p 25

<sup>19</sup> OQPC Guide p 26

<sup>20</sup> OQPC Notebook p 36

- is not a matter to which a court may have regard in sentencing an offender for an offence against section 123N or 123O or any other offence.

For section 123P *unlawful electoral expenditure*, for an election, in relation to a participant in the election, means electoral expenditure incurred for the election in contravention of section 123N or 123O, to the extent the expenditure exceeds the participant's expenditure cap for the election as mentioned in the sections.

Section 123P is consistent with section 281J of the EA.

Section 121C (Recovery of prohibited gifts or loans) (clause 39) is amended to include reference to the State being able to recover an amount as a debt due to the State 'if the recipient is a candidate – the candidate or the candidate's agent'. This is a consequence of amendments in the Bill introducing agents of candidates. This amendment is consistent with section 271(5) of the EA.

The enforcement measures outlined above engage the following human rights:

- freedom of movement
- freedom of association
- taking part in public life
- right to property
- right to liberty
- rights in criminal proceedings.

(a) the nature of the right

The *right to freedom of movement* protects the right of people to move freely within Queensland and to enter and leave Queensland. The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in a particular place.

The scope of the right:

- extends only to those who are 'lawfully within Queensland,' and
- means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The amendments limit the right to freedom of movement by providing for a term of imprisonment as outlined above.

The nature of the *right to freedom of association* is discussed above, under measure 1, section (a) 'the nature of the right'.

The amendments resulting in the suspension of charged councillors and disqualifying persons from being councillors, either for four or seven years, limit the right to freedom of association by also precluding an offender from being a member of a group of candidates under the LGEA, from being endorsed by a political party as a candidate in a local government election and from being a councillor for a particular local government area.

The nature of the *right to take part in public life* is discussed above, under measure 1, section (a) 'the nature of the right'.

The amendments disqualifying persons from being councillors, either for four or seven years, and suspending them automatically when charged, limit the right to take part in public life by limiting the rights of offenders to be elected or to stay in public office and the rights of community members to vote for them.

The nature of the *right to property* is discussed above, under measure 4, section (a) ‘the nature of the right’.

The amendments provide for the recovery of unlawful expenditure as a debt due to the State. This engages the right to property both in respect of recovery of the money owing and in respect of potential enforcement by way of seizure and sale of other types of property.

The *right to liberty* entitles all persons to liberty of the person, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty, including, but not limited to, imprisonment.

The amendments providing for terms of imprisonment engage the right to liberty.

*Rights in criminal proceedings* explicitly protect the right to be presumed innocent until proven guilty. This imposes on the prosecution the onus of proving the offence, guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt, gives the accused the benefit of the doubt, and requires that accused persons be treated in accordance with this principle.

The amendments outlined above, incorporating the ‘reasonable excuse’ elements of certain offences, limit rights in criminal proceedings by reversing the onus of proof in relation to the offences.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the enforcement provisions outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others. The Bill’s enforcement provisions are essential elements of the scheme, as they will support compliance by providing an effective deterrent.

The Committee considered disclosure, monitoring and enforcement in section 3.12 of the Committee report. It noted that:

The introduction of local government expenditure caps in Queensland would provide an added layer to [the] 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 participants in an election, just as those seeking to circumvent the system may be boosting their campaign outlays.

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’.<sup>21</sup>

The Committee also canvassed the ongoing challenges faced by the ECQ in ensuring compliance with electoral disclosure laws, ‘which must be considered in the design of any cap scheme’.<sup>22</sup>

The Committee’s recommendation 6 was that scheme penalties and recovery provisions be aligned with those for the State Government electoral expenditure cap scheme under the EA and further consultation be undertaken on the potential prescription of scheme offences as integrity offences.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others. The limitations on human rights imposed by the Bill’s enforcement provisions will achieve their purpose and the purpose of the scheme generally by providing for an appropriate level of deterrence, in line with the Government’s response to recommendation 6 of the Committee’s report.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose. The Department’s discussion paper sought input from stakeholders about alignment with the EA offences and prescription of certain offences as integrity or serious integrity offences.

Lowering the penalties or removing the imprisonment, recovery, disqualification or onus of proof elements of the amendments will reduce the deterrent effect and may result in electoral unfairness as the caps will not be effectively enforced.

Specifically in relation to the reversal of the onus of proof, the offences acknowledge that there are likely to be a range of matters that are peculiarly within the knowledge of the defendant. It is in these circumstances that the defendant would be better positioned than the prosecution to meet the evidential burden. The ‘reasonable excuse’ provisions ensure liability would not be unjustly imposed.

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<sup>21</sup> Economics and Governance Committee, Committee report, pp 40 to 41

<sup>22</sup> Economics and Governance Committee, Committee report, p 43

Measures achieving the purpose but to a lesser extent do not qualify as a true alternative. Safeguards include the tailoring of the provisions to align as closely as possible with existing provisions of the EA, in addition to consultation with stakeholders about implementation of recommendation 6 of the Committee's report, particularly regarding the disqualification aspects specific to local government.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that the enforcement provisions are closely linked with the overall purpose of the expenditure caps scheme. On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring that the scheme cannot be circumvented outweighs the negative impact the amendments will have on the relevant rights.

(f) any other relevant factors

Not applicable.

#### Measure 9: Record keeping and auditing

Part 11, division 12A (Records to be kept) of the EA requires a participant in an election to make, or ensure an authorised person makes, a record about 'prescribed matters.' Further record keeping obligations are imposed on agents of participants in an election, on broadcasters and publishers and on persons required to give expenditure returns in relation to advertisements or other election material.

The Bill repeals section 196 of the LGEA and inserts new part 6 division 5B (refer clause 47) to align where appropriate with part 11 division 12A of the EA. As the Bill does not introduce donation caps for local government elections, some of the EA record keeping requirements are not applicable to local government.

Proposed amendments to the *Local Government Electoral Regulation 2012* (subject to passage and assent of the Bill and approval by Governor in Council) will align where appropriate with part 5AA of the *Electoral Regulation 2013* (Prescribed information to be included in particular records to be kept).

Further, the Bill includes amendments to the LGEA (new part 6 division 5C, refer clause 47) to align with part 11, division 13A (Audits) of the EA by providing for appointment of an auditor to conduct an audit of a participant in an election, in relation to a range of matters including compliance with part 6 generally or part 9, division 5, disclosure returns and dedicated campaign accounts.

Additionally, an audit certificate will be required for certain returns about electoral expenditure and amounts received and paid by associated entities (refer clause 52 new section 135D).

The amendments engage the following human rights:

- freedom of association
- right to privacy and reputation.

(a) the nature of the right

The nature of the *right to freedom of association* is discussed above, under measure 1, section (a) ‘the nature of the right’.

Specifying information to be kept as records and providing for the appointment of an auditor limits freedom of association because information contained in those records can reveal a political or other association which may be made available to an authorised officer or auditor and included in the auditor’s report provided to the ECQ.

The nature of the *right to privacy and reputation* is discussed above, under measure 3, section (a) ‘the nature of the right’.

Specifying information to be kept as records and providing for the appointment of an auditor limits the right to privacy as it may make personal information available to an authorised officer or auditor and potentially subject to inclusion in the auditor’s report to the ECQ.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the record keeping and auditing provisions outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others. The record keeping and auditing provisions are essential elements of the scheme, as they will support compliance and enforcement by the ECQ.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others. The limitations on human rights imposed by the record keeping and auditing provisions will achieve their purpose and the purpose of the scheme generally by providing for an appropriate level of compliance.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose. The Department’s discussion paper sought input from stakeholders about alignment with the EA requirements for record keeping and auditing.

Reducing the requirements would ultimately reduce the deterrent effect of the enforcement measures and may result in electoral unfairness, as the caps will not be effectively enforced. Safeguards include the tailoring of the provisions to align as closely as possible with existing provisions of the EA, in addition to consultation with stakeholders.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that there are strong links between the record keeping and auditing provisions and the overall purpose of the expenditure caps scheme. On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring that the scheme cannot be circumvented outweighs the negative impact the amendments will have on the relevant rights.

- (f) any other relevant factors

Not applicable.

#### Measure 10: Requirements for broadcasters and publishers to provide returns

The Bill (refer clause 41, new sections 125D and 125E) aligns the LGEA with sections 284 and 285 of the EA by providing for returns by broadcasters and publishers in relation to election campaign advertisements during the capped expenditure period for the election. Broadcasters and publishers will therefore be required to provide the ECQ with a summary after the election of all election campaign advertising that was broadcast or published within the capped expenditure period. Details of each advertisement will be required to be provided, including:

- the type of publication or broadcasting service
- the person at whose request the advertisement was broadcast/published
- the participant in the election who authorised the advertisement
- dates, time and duration of broadcasts, or the journal page and space in the journal occupied by the advertisement
- whether a charge was made for broadcasting/publishing the advertisement, including the amount charged; and whether the amount charged was less than the normal commercial rate.

The ECQ will be required to publish the return on its website (current section 128 LGEA).

A copy of the advertisement must be kept on record for a period of 5 years after the record is made and made available to the ECQ on request.

The proposal limits the following human rights:

- the right to privacy and reputation
- the right to freedom of expression
- the right to take part in public life.

- (a) the nature of the right

The nature of the *right to privacy and reputation* is discussed above, under measure 3, section (a) ‘the nature of the right’.

The requirement for details regarding a publication or broadcasting service to be provided to the ECQ, including information such as the participant in an election who authorised an advertisement and the individual who requested the advertisement be broadcast/published,

limits the right to privacy. This is because information regarding these individuals' activity in relation to an election is required to be disclosed to the ECQ.

For publishers who are individuals, their right to privacy is also limited because information regarding a service they have provided in relation to an election and aspects of their business relationships are required to be disclosed to the ECQ.

The nature of the *right to freedom of expression* and the *right to take part in public life* is discussed above, under measure 1, section (a) 'the nature of the right'.

The right to freedom of expression and the right to take part in public life are limited by these amendments. Publishers who are individuals will be required to engage in additional activities (providing returns) if they publish election campaign advertisements. This limits freedom of expression and the right to take part in public life as these individuals may consider these additional activities obstacles in the way of publishing an election campaign advertisement. This potentially impacts on the information that can be conveyed by publishers that do not wish to be subject to the additional requirements. Information that a citizen can receive from publishers is also potentially impacted.

This consequently limits the ability of publishers who are individuals to contribute to and exercise their voices in relation to the public life of the State, and also limits the ability of citizens to participate in public affairs to the extent that the information regarding an election conveyed to them by publishers is limited by the proposal.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitation to be imposed by the electoral expenditure caps scheme, including the provisions for publishers and broadcasters to provide returns as outlined above, are to level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without 'drowning out' the communication of others. The requirements for publishers and broadcasters are an important element of this scheme: the requirements make it easier to trace campaign expenditure and ensure compliance with legislative requirements by allowing expenditure returns provided by participants in an election to be reconciled with publisher and broadcaster returns.

In addition, the requirements align with the arrangements that apply at State elections, ensuring there is consistency between the requirements that apply at State elections and local government elections, meaning the system is easier to operate, understand and comply with.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on electoral expenditure imposed by the electoral expenditure caps will limit the ability for participants in an election to significantly outspend other participants in an election. This will level the playing field for electoral campaigning by preventing uneven financial competition between candidates. The caps will ensure that an individual or entity has

a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period without ‘drowning out’ the communication of others.

By requiring publishers and broadcasters to provide the ECQ with information regarding election campaign advertising they have provided, the ECQ will be able to reconcile expenditure returns provided by participants in an election with publisher and broadcaster returns. This will enable the ECQ to further ensure participants in an election have provided correct and complete expenditure returns.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the limitations.

Not requiring publisher and broadcaster returns would mean the ECQ has no easily accessible independent source of information against which to reconcile election participants’ expenditure returns against actual advertising services provided.

Noting the large volume of publishing and broadcasting media across the State, for all advertising provided by publishers and broadcasters to be monitored without these disclosure requirements would be prohibitively resource intensive. In addition, some election campaign advertising may be conducted on channels which are not directed at or provided to the general public and therefore not readily accessible for monitoring (for example, advertising provided in subscription services).

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The expenditure caps regime ensures a fairer opportunity for participants in an election to participate in local government elections. By providing a more equal footing for all participants in an election, the risk of democratic processes being distorted by uneven levels of electoral expenditure is decreased.

The importance of ensuring compliance with the expenditure caps system (and, in turn, levelling the playing field for electoral campaigning) outweighs the negative impact that the publisher and broadcaster return requirements have on the rights to privacy, freedom of expression and the right to take part in public life.

Noting only a small amount of information will be required in a return, the requirements are only a minor burden on publishers and broadcasters and constitute a small amount of information regarding individuals who request or authorise advertisements which will be required to be provided to the ECQ.

For these reasons, a fair balance is achieved between the benefits gained through the publisher and broadcast return requirements and the limitations on the rights to privacy, freedom of expression and the right to take part in public life.

(f) any other relevant factors

Not applicable.

## Conclusion

In my opinion, the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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