

APRIL 2022

Local government **electoral expenditure caps**

Discussion paper

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Introduction

Local government reform

In recent years the Queensland Government has been delivering a rolling reform agenda across the local government sector.

These reforms further strengthen the transparency, accountability and integrity measures that apply to the system of local government. Several inquiries including the Crime and Corruption Commission's (CCC) Operation Belcarra have identified a range of opportunities to further enhance the quality of local government in

Queensland through reform, including the way councillors are elected. The Operation Belcarra Report¹, finalised in October 2017, found that good government requires elections to be contested on a level playing field, with equal participation available to all. It also stressed the need for complete transparency in elections.²

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Legislative reform principles

The principles that have guided these reforms are:



Integrity

ensuring current and future councillors are fully informed about their obligations as candidates and councillors, and requiring councillors to uphold the highest levels of honesty and impartiality when making decisions in the public interest



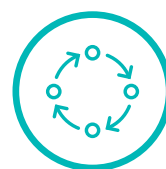
Transparency

clarifying and strengthening requirements before, during and after an election to enable voters to better know who they are voting for and to reduce corruption risks, and ensuring that the community can understand why councils make the decisions they do in the public interest



Diversity

promoting councils being representative of their communities and making it easier for potential candidates to nominate and campaign



Consistency

aligning local government election requirements with state and federal electoral processes and aligning requirements between Brisbane City Council (BCC) and other local governments

¹ Crime and Corruption Commission, Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government, October 2017

² CCC, Operation Belcarra Report, October 2017, p 41.

Following the Belcarra Report, the first stage of reforms, including the prohibition of donations from property developers, commenced in 2018 with the passage of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* and the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*.

Further reforms, such as mandatory training for election candidates and improved disclosure requirements, were made in 2019 under the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*.

On 30 June 2020, the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (the Integrity Act) received assent. It covered a range of integrity reforms for State and local government, including a system of expenditure caps for State elections.

Economics and Governance Committee inquiry

When the Integrity Act was introduced as a Bill into the Legislative Assembly on 28 November 2019 it was referred to the Economics and Governance Committee (the Committee) for inquiry.

The Legislative Assembly also requested the Committee to consider recommendation 1 of the CCC's Operation 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.

The CCC's recommendation 1 was:

That an appropriate Parliamentary Committee review the feasibility of introducing expenditure caps for Queensland local government elections. Without limiting the scope of the review, the review should consider:

- (a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities**
- (b) the merit of having different expenditure caps for incumbent versus new candidates**
- (c) practices in other jurisdictions.**

Committee's recommendations

On 15 September 2020, the Committee tabled its Report No. 47, 56th Parliament, *Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections*.³

The Committee made seven recommendations:

› **Recommendation 1**

That the definition of electoral expenditure in the *Local Government Electoral Act 2011* be aligned with the definition in the *Electoral Act 1992*, subject to further consultation with stakeholders on relevant inclusions and exclusions.

› **Recommendation 2**

That a sliding scale of electoral expenditure caps for Queensland local government elections be established with reference to the number of electors in the relevant ward/division or local government area, and including differentiation for mayoral and councillor candidates and divided and undivided councils where appropriate.

› **Recommendation 3**

That further analysis and consultation with stakeholders be undertaken to determine caps of appropriate magnitude, with particular reference to the models proposed by the Department of Local Government, Racing and Multicultural Affairs and the Local Government Association of Queensland.

› **Recommendation 4**

That further analysis and consultation be undertaken to determine an appropriate cap for third party electoral expenditure, and a system of third party registration be established to support the monitoring and enforcement of third party compliance with the established cap.

› **Recommendation 5**

That electoral expenditure incurred by an associated entity for Queensland local government elections be treated as though it was incurred by the electoral participant with which the entity is associated.

› **Recommendation 6**

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

› **Recommendation 7**

That the Department of Local Government, Racing and Multicultural Affairs coordinate with the Electoral Commission of Queensland to ensure election participants have access to a suite of informational resources and training to support their compliance with the established scheme.

³ A copy of the report is available at: <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2020/5620T1648.pdf>



Queensland Government response

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.⁴

The Government supported the Committee's seven recommendations in principle. The Government noted that consultation with stakeholders and further analysis as recommended by the Committee will inform the final scheme design and will provide the opportunity to align the respective systems regulating electoral expenditure for State and local government elections.

The Government's response proposed that, subject to consultation with stakeholders and further policy analysis, the caps scheme should apply to both quadrennial local government elections and by-elections conducted under the *Local Government Electoral Act 2011* (LGEA).

It should be noted that subsequent to tabling of the Government's response, on 27 April 2021 the State Development and Regional Industries Committee tabled a *Statement regarding predecessor committee report into the feasibility of introducing expenditure caps for Queensland local government elections*.⁵

The statement acknowledged

errors in the reporting of electoral expenditure incurred by election participants in relation to the March 2020 Queensland local government elections. [The] committee understands that this was the result of misinterpretation of data reported in the electronic disclosure system of the Electoral Commission of Queensland.⁶

⁴ A copy of the response is available at: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5720T266.pdf>

⁵ A copy of the statement is available at: <https://documents.parliament.qld.gov.au/tableoffice/taledpapers/2021/5721T569.pdf>

⁶ State Development and Regional Industries Committee, *Statement regarding predecessor committee report into the feasibility of introducing expenditure caps for Queensland local government elections*, April 2021, p 1.

Local government electoral expenditure caps scheme

The purpose of this discussion paper is to seek stakeholder feedback on the proposed local government electoral expenditure caps scheme. It is essential that the proposed scheme appropriately addresses compatibility with human rights, in line with the *Human Rights Act 2019*, and the implied freedom of political communication as considered in case law in the High Court of Australia. Submissions to this discussion paper will contribute to the evidence base supporting the Government's policy development in this regard.

In preparing this discussion paper and developing the proposed local government electoral expenditure caps scheme, the Department has reviewed the following:

- › the model previously proposed by the former Department of Local Government, Racing and Multicultural Affairs (DLGRMA) in March 2019;
- › the model proposed by the Local Government Association of Queensland (LGAQ); and
- › the models operating at the local government level in New South Wales, Tasmania and New Zealand.

In addition, the Department has also reviewed the State elections expenditure caps scheme and identified where differences may be required for a local government scheme.

The proposed scheme will apply to all local government elections in Queensland, which include quadrennial elections, fresh elections and by-elections.

It is intended that the proposed scheme, subject to the Government's and Parliament's approval, will first apply to the 2024 quadrennial local government elections.

Key features are outlined as follows.

Definition of electoral expenditure

State elections are held under the *Electoral Act 1992* (EA) and local government elections are held under the LGEA. The Committee noted that there are differences in the definitions of 'electoral expenditure' and certain other provisions across the two pieces of legislation.

'Electoral expenditure' for local government elections is defined in section 123 of the LGEA. While the LGEA definition does not mirror the definition in section 199 of the EA for State elections, it is similar in many respects.

The EA includes in its definition the concept that expenditure is electoral expenditure if incurred for a 'campaign purpose' (defined in section 199A). For third parties, expenditure is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose. The relevant sections are set out in full in Appendix A.

The Committee recommended (Recommendation 1) that the definition of electoral expenditure in the LGEA should be aligned with that in the EA to support an appropriately defined local government expenditure cap scheme. The Committee noted that this would also support the insertion of additional detail regarding the application of the provisions, to further clarify their scope for electoral participants.⁷

Noting stakeholder suggestions about the potential inclusion of costs for office accommodation and paid campaign staff, as in some other jurisdictions, the Committee also considered that further consultation should be undertaken on relevant inclusions and exclusions prior to the introduction of a proposed legislative scheme.⁸ The EA definition specifically excludes expenditure incurred employing staff for a campaign purpose from the definition of electoral expenditure. Further, the definition does not cover expenditure incurred for office accommodation.

It is proposed in the new scheme to align the definition in the LGEA with that applying under the EA, to provide uniformity and certainty to candidates, parties and third parties who may participate in both local and State government election campaigns and to provide clarity for enforcement of both schemes by the Electoral Commission of Queensland (ECQ).

⁷ Economics and Governance Committee, Report No. 47, 56th Parliament, *Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections* (Expenditure Caps Report), September 2020, p17.

⁸ Economics and Governance Committee, Expenditure Caps Report, September 2020, p17.

Where the wording of section 199 of the EA applies only to elected Members of Parliament, for example excluding expenditure for which the Member is entitled to receive an allowance or entitlement under the *Queensland Independent Remuneration Tribunal Act 2013*, appropriate wording applicable to local government councillors will be drafted, for example referring to a council's expenses reimbursement policy.

A definition of 'campaign purpose' will also be included, mirroring the definition in section 199A of the EA.

In addition to aligning the definition of electoral expenditure in the State and local government systems, it is also proposed to amend the LGEA to incorporate the concept of 'gifted electoral expenditure' which applies under the State system.

Section 200B of the EA provides a definition of 'gifted' in relation to electoral expenditure. An amount of electoral expenditure is 'gifted' to an election participant if the expenditure benefits the participant and a range of other circumstances apply, for example the participant is not invoiced by the person incurring the expenditure.

Under section 280A of the EA, if electoral expenditure incurred by a person is gifted to a participant in an election, the participant is taken to have incurred the expenditure. Further, the definition of 'gift' in section 201 of the EA includes an amount of electoral expenditure a person gifted to an election participant. The inclusion of 'gifted electoral expenditure' in the LGEA is therefore likely to require amendments to the definition of 'gift' and related provisions, in order to align with the EA.

PROPOSAL

- › 'Electoral expenditure' and 'campaign purpose' to be aligned with the State scheme.
- › Concept of 'gifted electoral expenditure' to be incorporated from the State scheme.

ISSUE 1.

Do you support the proposal to align the definition of electoral expenditure with the State scheme?

ISSUE 2.

Do you support the proposal to incorporate the concept of gifted electoral expenditure from the State scheme?

Capped expenditure period

The period when spending caps apply is a key consideration for an electoral expenditure caps scheme. In its report, the Committee considered a number of relevant expenditure caps models⁹:

- › Under the NSW model the capped expenditure period runs from 1 July to polling day, usually being the second Saturday of September¹⁰
- › Tasmania's limits apply for a 'relevant period' commencing on the 30th day before the notice of election and finishing on polling day¹¹
- › New Zealand's expenditure caps apply for a three-month period up to the close of polling day¹²
- › Under the UK model the 'regulated period' begins on the day after the date a person officially becomes a candidate and ends on polling day¹³
- › The initial Queensland models proposed by both DLGRMA and the LGAQ applied caps over the full four-year term.

It is proposed to model the length of the capped expenditure period on the length of the capped expenditure period from the State electoral expenditure caps scheme (see section 280 of the EA at Appendix A).

It is proposed to apply a similar time period as applies for an ordinary general election in the State system (i.e. approximately 7 months) for local government quadrennial elections, with the capped expenditure period to commence on the first business day after the last Saturday in the preceding August and end on the polling day.

In relation to by-elections the Committee considered that:

the same system of local government electoral expenditure caps should apply equally for quadrennial elections and by-elections, with the capped expenditure period for a by-election to commence on the day the writ for the by-election is issued and end on the polling day for the by-election, consistent with provisions under the State electoral expenditure cap scheme and under the system of expenditure caps for local government elections in NSW.¹⁴

It is proposed that for a by-election the capped expenditure period will commence on the day the notice of the by-election is published by the returning officer and end on the polling day for the by-election.

PROPOSAL

- › Length of the 'capped expenditure period' to be modelled on the State electoral caps scheme.
- › Capped expenditure period for local government quadrennial elections to last for approximately seven months – to commence on the first business day after the last Saturday in the preceding August and to end on polling day.
- › Capped expenditure period for a local government by-election to commence on the day when the notice of the by-election is published and to end on polling day.

ISSUE 3.

Do you support the proposed capped expenditure periods, as outlined above?

⁹ Economics and Governance Committee, Expenditure Caps Report, September 2020, pp 22 - 23

¹⁰ *Electoral Funding Act 2018* (NSW), section 28

¹¹ *Local Government Act 1993* (Tas), section 3

¹² *Local Electoral Act 2001* (NZ), section 104

¹³ Electoral Commission (UK) Local elections in England May 2021, Guidance for candidates and agents: Part 3 of 6 – Spending and donations, p 6

¹⁴ Economics and Governance Committee, Expenditure Caps Report, September 2020, pp 39 - 40

Third party registration and dedicated accounts

Another key consideration is determining the appropriate level to cap third party electoral expenditure to ensure third parties can participate in the debate and discuss local government issues. The Committee noted that third parties should not exert a disproportionate influence through their electoral spending where they are able to overpower the voices of direct electoral participants including councillor and mayoral candidates. Recommendation 4 of the Committee report provides for a third-party registration system to support monitoring and enforcement.

Sections 297 to 304 of the EA provide for registration of a third party in the State scheme if the electoral expenditure incurred by or with the authority of the third party during the capped expenditure period for the election exceeds \$6,000.

It is proposed to provide for a system of third-party registration for local government elections, modelled on the system under the EA. The relevant threshold will be \$6,000 to ensure there is consistency between the arrangements that apply at State elections and local government elections.

It should also be noted that the EA provides for registered third parties (and third parties required to be registered) to keep a separate bank account (State campaign account) for the election. This requirement also applies to registered political parties. It is proposed to amend the LGEA to provide for dedicated accounts for registered third parties and political parties, consistent with the requirements of the EA.

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PROPOSAL

- › Third party registration and dedicated accounts for registered third parties and political parties to be modelled on the State scheme.
- › Third party to be registered if expenditure exceeds \$6,000 during capped expenditure period.

ISSUE 4.

Do you support registration of third parties?

ISSUE 5.

Do you support separate dedicated accounts for registered third parties and registered political parties?

¹⁵ Economics and Governance Committee, Expenditure Caps Report, September 2020, pp 37 - 38

Proposed electoral expenditure caps

The Committee reviewed a number of expenditure cap models including those proposed by DLGRMA and the LGAQ. The Committee made three recommendations for expenditure cap models:

- › Recommendation 2 requires a sliding scale of electoral expenditure caps for Queensland local government elections with reference to the number of electors in the relevant ward/division or local government area and including differentiation for mayoral and councillor candidates and divided and undivided councils where appropriate.
- › Recommendations 3 and 4 provide that further analysis and consultation with stakeholders should be undertaken to determine caps for mayoral and councillor candidates as well as third parties.

In its report the Committee highlighted many differences in campaigning practices and spending throughout Queensland.¹⁶ The Committee reviewed the expenditure caps models proposed by DLGRMA and the LGAQ and considered an appropriate system of expenditure caps may fall somewhere within the ranges proposed by the two models.¹⁷ Accordingly, the Department has now proposed a middle ground model (to be known as the DSDILGP model) for mayoral and councillor candidates. The individual expenditure caps proposed apply to all local government elections including by-elections.

Indicative caps for each council using the proposed DSDILGP model are contained in Appendix B.

Mayoral candidate electoral expenditure caps

The proposed caps for mayoral candidates in local government areas are:

- › \$30,000 for areas with fewer than 30,000 electors
- › a sliding amount of 1 dollar per elector for areas with 30,000 to 150,000 electors
- › a sliding amount of \$150,000 plus an additional 50 cents per elector for each additional elector over 150,000 for areas with up to 200,000 electors
- › a sliding amount of \$175,000 plus an additional 25 cents per elector for each additional elector over 200,000 for areas with more than 200,000 electors up to a maximum of \$250,000

Councillor candidate electoral expenditure caps

The proposed caps for councillor candidates in local government areas/divisions are:

- › \$15,000 for areas/divisions with fewer than 20,000 electors
- › a sliding cap of 75 cents per elector for areas/divisions with 20,000 to 40,000 electors
- › \$30,000 for areas/divisions with more than 40,000 electors

The proposed expenditure caps recognise the need for a “flag fall” amount of campaign expenditure particularly in smaller remote and regional communities which suffer significant

¹⁶ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 17

¹⁷ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 29

diseconomies of scale due to factors such as low population density and isolation. The proposed expenditure caps also recognise the significant economies of scale that exist in larger urban communities, particularly in South-East Queensland, which result from higher population densities and greater competition in terms of the suppliers of goods and services for campaign related expenditure (eg printers, media services). The Department considered the Committee's recommendation to examine the use of different caps for divided and undivided councils. A review of councillor and mayoral expenditure from the

2020 local government quadrennial election indicates there is not sufficient evidence that differentiated caps for divided and undivided councils are required. The Department also considered different caps for incumbent and new local government candidates. The Committee commented in its report that it was not convinced of the benefits of establishing different expenditure caps for incumbent versus new local government candidates.¹⁸ The Department agrees with the Committee's assessment and has not differentiated between candidates.

PROPOSAL

- › Mayoral candidate electoral expenditure caps:
 - \$30,000 for areas with fewer than 30,000 electors
 - a sliding amount of 1 dollar per elector for areas with 30,000 to 150,000 electors
 - a sliding amount of \$150,000 plus an additional 50 cents per elector for each additional elector over 150,000 for areas with up to 200,000 electors
 - a sliding amount of \$175,000 plus an additional 25 cents per elector for each additional elector over 200,000 for areas with more than 200,000 electors up to a maximum of \$250,000.
- › Councillor candidate electoral expenditure caps:
 - \$15,000 for areas/divisions with fewer than 20,000 electors
 - a sliding cap of 75 cents per elector for areas/divisions with 20,000 to 40,000 electors
 - \$30,000 for areas/divisions with more than 40,000 electors.

ISSUE 6.

Do you support the proposed electoral expenditure caps for mayors and councillor candidates?

¹⁸ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 21

Groups of candidates and political parties electoral expenditure caps

The LGEA allows for councillor and mayoral candidates to form a group for all types of local government elections. The Committee noted that groups of candidates and political parties are active in some local government elections. The Committee also found that some jurisdictions employ a form of aggregation approach, for example the group or party expenditure cap is the sum of all the caps for the candidate within the group or party.¹⁹ The Committee commented that caps for groups of candidates and political parties should be established on the basis of some form of aggregation method.²⁰

It is proposed to provide for a group or party expenditure cap that will enable political parties or groups of candidates to pool their individual caps. The group expenditure cap would include both councillor and mayoral candidate expenditure. For example, six councillor candidates and one mayoral candidate choose to

form a group to campaign in an undivided council area of 10,000 electors. The expenditure cap for the group would be \$120,000, which is based on 6 x councillor expenditure cap of \$15,000, plus the mayoral expenditure cap of \$30,000.

Electoral expenditure incurred by a member of a group of candidates, or an endorsed candidate is taken to fall within the group or party expenditure cap. This means that the expenditure of a member of a group or an endorsed party candidate when taken with any other electoral expenditure incurred by other members of the group or other endorsed party candidates must be under the group or party expenditure cap.

The Committee also suggested further consideration should be given to an upper limit which recognises potential economies of scale and associated benefits of collective campaigning.²¹ This is not supported as the Department does not wish to discriminate against candidates who choose to operate as a group or in a party.

PROPOSAL

- › Groups or political parties can pool their individual caps for mayoral and councillor candidates.
- › Electoral expenditure incurred by a member of a group or an endorsed mayoral and councillor candidate is taken to fall within the group or party expenditure cap.

ISSUE 7.

Do you support the proposed approach for groups of candidates and political parties?

¹⁹ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 30

²⁰ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 35

²¹ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 35

Third party electoral expenditure caps

In its report, the Committee considered the issue of third parties having a potentially disproportionate influence on elections.²² As per the Committee’s report, to ensure the scheme allows third parties to actively participate in elections while also ensuring other election participants’ voices can be heard, it is proposed to have electoral expenditure caps for registered and unregistered third parties. The proposed cap for unregistered third parties is \$6,000, with expenditure totalled across any local government areas where expenditure is incurred. This is the same expenditure cap that applies

to unregistered third parties in the State system under the EA. As discussed above, once a third party spends over \$6,000 it must register for the local government election.

The cap for registered third parties is proposed to be the total of each mayoral candidate electoral expenditure cap for each local government area. According to the proposed mayoral candidate electoral expenditure caps (see page 12 and Appendix B), a registered third party would have an electoral expenditure cap of \$3,822,941 (based on elector numbers that applied at the 2020 local government elections). This could be applied flexibly across local government areas.

PROPOSAL

- › Cap for unregistered third parties is \$6000, with expenditure totalled across any local government areas where expenditure is incurred.
- › Cap for registered third parties is the total of each mayoral candidate cap for each local government area. This cap can be applied flexibly across local government areas.

ISSUE 8.

Do you support the proposed caps for registered and unregistered third parties?

ISSUE 9.

Please provide information or evidence supporting your view regarding proposed third party caps.

²² Economics and Governance Committee, Expenditure Caps Report, September 2020, pp 37 - 38

Indexation and determination of elector numbers

The Committee commented that the final scheme should provide for the caps to be adjusted for inflation following each election. The Committee also noted that the applicable caps for each local government area and ward or division should be determined by the number of electors at a specified point in time.²³

Section 281F of the EA provides for adjustment of expenditure caps, in line with the Consumer Price Index, 30 days after the polling day for a State general election. It is proposed to apply a similar mechanism to the local government expenditure caps scheme and for the adjusted caps to be published by the ECQ. It is proposed the expenditure caps will be adjusted 30 days after each quadrennial election and the adjusted caps will apply to the next quadrennial election and to any by-elections that occur before the next quadrennial election.

As the State scheme does not operate on a

sliding scale based on the number of electors, there is no provision in the EA for determination and notification of the number of electors and the amount of the caps at a specified point in time. However, the NSW model provides for the Electoral Commissioner to determine the number of electors for a local government area or ward and publication of the number of electors and the corresponding caps.

It is proposed that a similar arrangement to the NSW approach will apply in the Queensland local government scheme. It is proposed the ECQ must before the commencement of the capped expenditure period publish on its website the following information in relation to the election—

- (a) the number of enrolled electors for the local government area or division**
- (b) the corresponding applicable caps that apply to the local government area or division.**

PROPOSAL

- › 'Indexation' of expenditure caps to be modelled on the State scheme.
- › 'Determination' of elector numbers and corresponding expenditure caps to be modelled on NSW local government scheme.
- › ECQ to publish number of enrolled electors for the local government area or division and the corresponding caps that apply before the capped expenditure period commences.

ISSUE 10.

Do you support the proposals for indexation of expenditure caps and determination of elector numbers by the ECQ?

²³ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 30

Associated entities

The LGEA currently defines an associated entity as an incorporated or unincorporated body, or the trustee of a trust, that is controlled by one or more political parties or operates wholly or mainly for the benefit of one or more political parties.

The Committee 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.’²⁴

Further, the Committee highlighted that the definition of associated entity in the EA (refer sections 204 and 204A) is broader than the LGEA definition as it applies not only to parties but also to candidates and groups of candidates.²⁵

The Committee considered that, as per the provisions of the NSW model and Queensland’s State electoral expenditure cap scheme, any expenditure incurred by an associated entity

for Queensland local government elections should be treated as though it was incurred by the electoral participant with which the entity is associated (Recommendation 5).

The Committee also considered there might be merit in aligning the definition of ‘associated entity’ in the LGEA with the EA to support consistent inclusion of their electoral spending in the relevant cap across the State and local government elections.²⁶

It is proposed that the local government electoral expenditure cap system will apply to associated entities and that the definition in the LGEA will be amended to align with the EA, meaning associated entities of candidates, groups of candidates and political parties will be captured. It should be noted that the EA provides for an associated entity to use the campaign account of the election participant with which it is associated.

PROPOSAL

- › Local government electoral expenditure caps to apply to ‘associated entities’.
- › Legislative definition of ‘associated entities’ to be aligned with the State definition.

ISSUE 11.

Do you support applying the expenditure cap system to associated entities?

ISSUE 12.

Do you support expanding the definition of associated entity in the LGEA to align with the EA?

²⁴ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 38

²⁵ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 38

²⁶ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 39

Compliance and record keeping

Recommendation 6 of the Committee's report was to align scheme penalties and recovery provisions with those for the State scheme under the EA. Additionally, noting stakeholder calls for the disqualification of successful candidates who are found to be in breach of the electoral expenditure caps scheme, the Committee considered that there is merit in considering and consulting on the potential prescription of scheme offences as 'integrity offences' under the local government legislation.²⁷

A councillor is automatically suspended if charged with a disqualifying offence. Disqualifying offences include 'integrity offences' and 'serious integrity offences.' If convicted of an integrity offence, a person automatically stops being a councillor and is disqualified for a period of four years. If convicted of a serious integrity offence, a person automatically stops being a councillor and is disqualified for a period of seven years - see section 153 and Schedule 1 of both the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA).

Under the State arrangements a Member's seat in the Legislative Assembly becomes vacant if the Member is convicted of an offence and sentenced to more than one year of imprisonment.

Key provisions for the State scheme include the following:

- › Section 281G of the EA provides for a maximum penalty of 1500 penalty units or 10 years imprisonment where an election participant, or a person acting with the participant's authority, exceeds a relevant cap and knows or ought reasonably to know that the amount of the expenditure would exceed the cap. This offence is a crime.
- › Section 281H of the EA provides that where an unregistered third party exceeds their applicable cap, the maximum penalty is the greater of the amount that is twice the amount of the unlawful expenditure, or 200 penalty units
- › Section 281J of the EA provides for recovery of unlawful electoral expenditure. An amount that is twice the amount of the unlawful expenditure is payable to the State
- › Section 307B of the EA provides that where a person is found to have knowingly participated, directly or indirectly, in a scheme to circumvent the expenditure cap regime, a maximum penalty of 1500 penalty units or 10 years imprisonment applies. Section 307B(1) is currently listed in Schedule 1, part 1 of the LGA and the COBA as a serious integrity offence.
- › Section 307AB of the EA provides for liability for electoral expenditure offences committed by an unincorporated body.

²⁷ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 46

It is proposed to align the penalty and recovery provisions in the LGEA with the relevant EA provisions.

It is also proposed to provide where appropriate that expenditure cap offences are either integrity or serious integrity offences under the LGA and the COBA.

Further, Part 11, Division 12A of the EA and Part 5AA of the Electoral Regulation 2013 include

comprehensive record keeping requirements for State elections, while Part 11, Division 13A of the EA also provides for the ECQ to appoint an auditor to conduct an audit in relation to returns, campaign accounts and compliance generally with Part 11 of the EA. To ensure transparency it is proposed to align where appropriate the record-keeping and auditing requirements for State and local government elections.

PROPOSAL

- › ‘Penalty and recovery provisions’ to be aligned with the State scheme.
- › Expenditure caps offences to be ‘integrity’ or ‘serious integrity offences’, where appropriate.
- › Record-keeping and auditing requirements to be aligned with the State scheme.

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ISSUE 13.

Do you support aligning the penalty and recovery provisions in the LGEA with the EA?

ISSUE 14.

Do you support the proposed amendments to make expenditure cap offences integrity or serious integrity offences?

ISSUE 15.

Do you support aligning the record-keeping and auditing requirements for State and local government elections?

Implementation – training and resources for election participants

The Committee's Recommendation 7 was to ensure election participants have access to informational resources and training. The Committee agreed with stakeholders that the electoral expenditure caps scheme should involve significant engagement to ensure candidates, parties and third parties can comply with the new requirements. The Committee also commented that while it would expect scheme requirements to be addressed in mandatory candidate training, election participants should also have access to additional resources such as guidelines or fact sheets and a help desk or support line.²⁸

The Department will work with the ECQ during policy development to prepare both training and capacity building resources for the range of election participants to be affected by the new scheme. This will be informed by stakeholder feedback to this discussion paper and by submissions made to the relevant Parliamentary Committee in the event proposed legislation is referred for inquiry.

ISSUE 16.

Do you support resources such as training, guidelines, fact sheets and a helpdesk being made available to election participants? Do you think there are other types of resources that would assist election participants?

Review

The Committee noted a submission calling for the effectiveness of the State expenditure caps laws to be reviewed before expenditure caps for local government elections in 2024 are finalised.²⁹ The Committee agreed that it would be appropriate to consider the operation of the new State electoral

expenditure caps at the 2020 Queensland general election.³⁰

In addition, the Committee commented that an appropriate review mechanism could be considered for the local government electoral expenditure caps scheme.³¹

ISSUE 17.


Do you support an ongoing review mechanism and, if so, in what format?

²⁸ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 46

²⁹ Economics and Governance Committee, Expenditure Caps Report, September 2020, pp 46 - 47

³⁰ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 48

³¹ Economics and Governance Committee, Expenditure Caps Report, September 2020, p 48



A list of the issues posed throughout this discussion paper is set out below:

ISSUE 1: Do you support the proposal to align the definition of electoral expenditure with the State scheme?

ISSUE 2: Do you support the proposal to incorporate the concept of gifted electoral expenditure from the State scheme?

ISSUE 3: Do you support the proposed capped expenditure periods, as outlined above?

ISSUE 4: Do you support registration of third parties?

ISSUE 5: Do you support separate dedicated accounts for registered third parties and registered political parties?

ISSUE 6: Do you support the proposed electoral expenditure caps for mayors and councillor candidates?

ISSUE 7: Do you support the proposed approach for groups of candidates and political parties?

ISSUE 8: Do you support the proposed caps for registered and unregistered third parties?

ISSUE 9: Please provide information or evidence supporting your view regarding proposed third party caps.

ISSUE 10: Do you support the proposals for indexation of expenditure caps and determination of elector numbers by the ECQ?

ISSUE 11: Do you support applying the expenditure cap system to associated entities?

ISSUE 12: Do you support expanding the definition of associated entity in the LGEA to align with the EA?

ISSUE 13: Do you support aligning the penalty and recovery provisions in the LGEA with the EA?

ISSUE 14: Do you support the proposed amendments to make expenditure cap offences integrity or serious integrity offences?

ISSUE 15: Do you support aligning the record-keeping and auditing requirements for State and local government elections?

ISSUE 16: Do you support resources such as training, guidelines, fact sheets and a helpdesk being made available to election participants? Do you think there are other types of resources that would assist election participants?

ISSUE 17: Do you support an ongoing review mechanism and, if so, in what format?

How to provide feedback on the proposed local government electoral expenditure caps scheme

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The Department is interested to hear from stakeholders regarding the proposed scheme by 27 May 2022.

Feedback received will help to inform the final scheme that is adopted.

To provide feedback on the proposed scheme please email

localgovernmentpolicy@dsdilgp.qld.gov.au

Appendix A: Key legislative provisions

Section	Provision
Electoral Act 1992	
Section 199	<p>Meaning of electoral expenditure</p> <ol style="list-style-type: none"> 1) Electoral expenditure means expenditure of a kind mentioned in subsection (2) incurred for a campaign purpose. 2) For subsection (1), the kind of expenditure is— <ol style="list-style-type: none"> a) expenditure for designing, producing, printing, broadcasting or publishing material for an election, including, for example— <ol style="list-style-type: none"> i) an advertisement for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and ii) material for publication in newspapers or magazines, on billboards, or as brochures, flyers, signs, how-to-vote cards or information sheets; and iii) material for distribution in letters; or b) expenditure for the cost of distributing material for an election, including, for example, the cost of postage, sending SMS messages or couriers; or c) expenditure for carrying out an opinion poll or research; or d) expenditure for contracted services related to an activity mentioned in paragraph (a), (b) or (c), including, for example, fees for consultants or the provision of data; or e) expenditure of another kind prescribed by regulation to be a kind of electoral expenditure. 3) For subsection (2)(a) and (b), it does not matter whether section 181 applies to the material. 4) However, electoral expenditure does not include— <ol style="list-style-type: none"> a) expenditure incurred substantially for or related to the election of— <ol style="list-style-type: none"> i) members of the Parliament of another State or the Commonwealth; or ii) councillors (however described) of a local government of the State or another State; or b) expenditure on factual advertising about a matter that relates mainly to the administration of a registered political party, including, for example, a meeting of a branch, division or committee of the party— <ol style="list-style-type: none"> i) for an organisational purpose; or ii) to select a candidate to nominate for election; or c) expenditure incurred employing staff for a campaign purpose; or d) expenditure of a kind prescribed by regulation not to be a kind of electoral expenditure. 5) Expenditure incurred by a third party is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose. 6) However, expenditure incurred by a third party is not electoral expenditure if the dominant purpose for which the expenditure is incurred is another purpose, even if the expenditure is also incurred for, or achieves, a campaign purpose. <p>Example of other purposes for incurring expenditure—</p> <p>to educate or raise awareness about an issue of public policy</p> <ol style="list-style-type: none"> 7) Also, electoral expenditure incurred by or for an elected member does not include expenditure of a kind for which the member is entitled to receive an allowance or entitlement. 8) In this section— <p>allowance or entitlement, for an elected member, means—</p> <ol style="list-style-type: none"> a) an allowance or entitlement the member is entitled to under the Queensland Independent Remuneration Tribunal Act 2013, section 54; or b) accommodation, services or other entitlements mentioned in the Queensland Independent Remuneration Tribunal Act 2013 supplied or paid to the member.

Section	Provision
Electoral Act 1992	
Section 199A	<p>Meaning of campaign purpose</p> <ol style="list-style-type: none"> Expenditure is incurred for a campaign purpose if the expenditure is incurred to— <ol style="list-style-type: none"> promote or oppose a political party in relation to an election; or promote or oppose the election of a candidate; or otherwise influence voting at an election. Without limiting subsection (1), expenditure is incurred for a purpose mentioned in subsection (1)(a), (b) or (c) if material produced as a result of the expenditure does any of the following in relation to an election— <ol style="list-style-type: none"> expressly promotes or opposes— <ol style="list-style-type: none"> political parties or candidates who advocate, or do not advocate, a particular policy or issue; or political parties or candidates who have, or do not have, a particular position on a policy or issue; or candidates who express a particular opinion; expressly or impliedly comments— <ol style="list-style-type: none"> about a political party, elected member or candidate in the election; or in relation to an electoral district; expresses a particular position on a policy, issue or opinion— <ol style="list-style-type: none"> if the position is publicly associated with a political party or candidate; and whether or not, in expressing the position, the party or candidate is mentioned.
Section 280	<p>Meaning of capped expenditure period</p> <ol style="list-style-type: none"> The capped expenditure period, for an election, starts— <ol style="list-style-type: none"> for an ordinary general election—on the first business day after the last Saturday in the preceding March; or for an extraordinary general election— <ol style="list-style-type: none"> if the capped expenditure period for an ordinary general election has started under paragraph (a)—the day that capped expenditure period started; or otherwise—the day the writ for the election is issued; or for a by-election—the day the writ for the election is issued. The capped expenditure period, for an election, ends at 6p.m. on the later of— <ol style="list-style-type: none"> the polling day for the election; or if the poll at a polling booth for an election is adjourned under section 99B(3) or 100(1)—the day the adjourned poll is held. Subsection (2)(b) applies despite section 100(6). In this section— <p>preceding March, in relation to an ordinary general election, means the March that occurs in the same calendar year as the normal polling day for the general election.</p>

Section	Provision
Local Government Electoral Act 2011	
Section 123	<p>Meaning of electoral expenditure</p> <ol style="list-style-type: none"> 1) Electoral expenditure, in relation to an election, is expenditure incurred (whether or not during the election period for the election) on, or a gift in kind given that consists of— <ol style="list-style-type: none"> a) broadcasting a political advertisement during the election period; or b) publishing a political advertisement in a journal during the election period; or c) publishing a political advertisement on the internet during the election period, even if the internet site on which the publication is made is located outside Queensland; or d) displaying a political advertisement at a theatre or other place of entertainment during the election period; or e) producing and distributing a political advertisement mentioned in paragraph (a), (b), (c) or (d); or f) producing and distributing other material used during the election period that— <ol style="list-style-type: none"> i) advocates a vote for or against a candidate, group of candidates or registered political party; and ii) is required under section 177 to include the name and address of the author of the material or of the person authorising the material; or g) carrying out an opinion poll or other research relating to the election during the election period if the dominant purpose of the opinion poll or research is to, directly or indirectly— <ol style="list-style-type: none"> i) promote or oppose the election of a candidate or group of candidates; or ii) promote or oppose a registered political party in relation to the election; or iii) otherwise influence voting at the election. 2) In this section— <p>journal means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.</p> <p>political advertisement means an advertisement that advocates a vote for or against a candidate, group of candidates or registered political party.</p>

Appendix B: Indicative electoral expenditure caps

Local government mayoral candidates

Council	No. of enrolled voters (2020 elections)	Indicative expenditure cap (based on 2020 elector numbers)
Band 1 – \$30,000 for areas with fewer than 30,000 electors		
Aurukun Shire Council	810	\$30,000
Balonne Shire Council	2,907	\$30,000
Banana Shire Council	9,298	\$30,000
Barcaldine Regional Council	2,067	\$30,000
Barcoo Shire Council	209	\$30,000
Blackall-Tambo Regional Council	1,420	\$30,000
Boulia Shire Council	250	\$30,000
Bulloo Shire Council	201	\$30,000
Burdekin Shire Council	12,002	\$30,000
Burke Shire Council	184	\$30,000
Carpentaria Shire Council	1,057	\$30,000
Cassowary Coast Regional Council	19,466	\$30,000
Central Highlands Regional Council	16,817	\$30,000
Charters Towers Regional Council	7,480	\$30,000
Cherbourg Aboriginal Shire Council	482	\$30,000
Cloncurry Shire Council	1,730	\$30,000
Cook Shire Council	2,542	\$30,000
Croydon Shire Council	167	\$30,000
Diamantina Shire Council	165	\$30,000
Doomadgee Aboriginal Shire Council	652	\$30,000
Douglas Shire Council	8,304	\$30,000
Etheridge Shire Council	558	\$30,000
Flinders Shire Council	1,158	\$30,000
Goondiwindi Regional Council	7,456	\$30,000
Hinchinbrook Shire Council	8,167	\$30,000
Hope Vale Aboriginal Shire Council	586	\$30,000
Isaac Regional Council	11,549	\$30,000
Kowanyama Regional Council	640	\$30,000
Livingstone Shire Council	26,427	\$30,000
Lockhart River Aboriginal Shire Council	377	\$30,000
Lockyer Valley Regional Council	26,545	\$30,000

Council	No. of enrolled voters (2020 elections)	Indicative expenditure cap (based on 2020 elector numbers)
Band 1 – \$30,000 for areas with fewer than 30,000 electors		
Longreach Regional Council	2,475	\$30,000
Mapoon Aboriginal Shire Council	199	\$30,000
Maranoa Regional Council	8,612	\$30,000
Mareeba Shire Council	14,324	\$30,000
McKinlay Shire Council	522	\$30,000
Mornington Shire Council	615	\$30,000
Mount Isa City Council	11,221	\$30,000
Murweh Shire Council	2,783	\$30,000
Napranum Aboriginal Shire Council	564	\$30,000
North Burnett Regional Council	6,962	\$30,000
Northern Peninsula Area Regional Council	1,448	\$30,000
Palm Island Aboriginal Shire Council	897	\$30,000
Paroo Shire Council	1,105	\$30,000
Pormpuraaw Aboriginal Shire Council	453	\$30,000
Quilpie Shire Council	541	\$30,000
Richmond Shire Council	549	\$30,000
Scenic Rim Regional Council	29,879	\$30,000
Somerset Regional Council	17,076	\$30,000
South Burnett Regional Council	23,008	\$30,000
Southern Downs Regional Council	25,950	\$30,000
Tablelands Regional Council	17,623	\$30,000
Torres Shire Council	1,872	\$30,000
Torres Strait Island Regional Council	2,514	\$30,000
Western Downs Regional Council	22,292	\$30,000
Whitsunday Regional Council	22,219	\$30,000
Winton Shire Council	815	\$30,000
Woorabinda Aboriginal Shire Council	327	\$30,000
Wujal Wujal Aboriginal Shire Council	208	\$30,000
Yarrabah Aboriginal Shire Council	1,189	\$30,000

Council	No. of enrolled voters (2020 elections)	Indicative expenditure cap (based on 2020 elector numbers)
Band 2 – a sliding amount of 1 dollar per elector for areas with 30,000 to 150,000 electors		
Gympie Regional Council	37,385	\$37,385
Noosa Shire Council	40,724	\$40,724
Gladstone Shire Council	41,313	\$41,313
Rockhampton Regional Council	54,858	\$54,858
Bundaberg Regional Council	68,897	\$68,897
Fraser Coast Regional Council	78,161	\$78,161
Mackay Regional Council	80,280	\$80,280
Cairns Regional Council	104,670	\$104,670
Redland City Council	110,412	\$110,412
Toowoomba Regional Council	115,153	\$115,153
Townsville City Council	128,601	\$128,601
Ipswich City Council	133,368	\$133,368

Council	No. of enrolled voters (2020 elections)	Indicative expenditure cap (based on 2020 elector numbers)
Band 3 – a sliding amount of \$150,000 plus an additional 50 cents per elector for each additional elector over 150,000 for areas with up to 200,000 electors		
Logan City Council	196,035	\$173,018
Band 4 – a sliding amount of \$175,000 plus an additional 25 cents per elector for each additional elector over 200,000 for areas with more than 200,000 electors up to a maximum of \$250,000		
Sunshine Coast Regional Council	230,373	\$182,593
Moreton Bay Regional Council	306,121	\$201,530
Gold Coast City Council	387,913	\$221,978
Brisbane City Council	788,689	\$250,000

Local government councillor candidates

Council	No. of enrolled voters (2020 elections) ³²	Indicative councillor expenditure cap (based on 2020 elector numbers)
Band 1 – \$15,000 for areas/divisions with fewer than 20,000 electors		
Aurukun Shire Council	810	\$15,000
Balonne Shire Council	2,907	\$15,000
Banana Shire Council	1,576	\$15,000
Barcaldine Regional Council	2,067	\$15,000
Barcoo Shire Council	209	\$15,000
Blackall-Tambo Regional Council	1,420	\$15,000
Boulia Shire Council	250	\$15,000
Bulloo Shire Council	201	\$15,000
Bundaberg Regional Council	6,890	\$15,000
Burdekin Shire Council	12,002	\$15,000
Burke Shire Council	184	\$15,000
Cairns Regional Council	11,630	\$15,000
Carpentaria Shire Council	1,057	\$15,000
Cassowary Coast Regional Council	3,244	\$15,000
Central Highlands Regional Council	16,817	\$15,000
Charters Towers Regional Council	7,480	\$15,000
Cherbourg Aboriginal Shire Council	482	\$15,000
Cloncurry Shire Council	1,730	\$15,000
Cook Shire Council	2,542	\$15,000
Croydon Shire Council	167	\$15,000
Diamantina Shire Council	165	\$15,000
Doomadgee Aboriginal Shire Council	652	\$15,000
Douglas Shire Council	8,304	\$15,000
Etheridge Shire Council	558	\$15,000
Flinders Shire Council	1,158	\$15,000
Fraser Coast Regional Council	7,816	\$15,000
Goondiwindi Regional Council	7,456	\$15,000
Gympie Regional Council	4,673	\$15,000
Hinchinbrook Shire Council	8,167	\$15,000
Hope Vale Aboriginal Shire Council	586	\$15,000
Isaac Regional Council	1,441	\$15,000
Kowanyama Regional Council	640	\$15,000
Lockhart River Aboriginal Shire Council	377	\$15,000


Council	No. of enrolled voters (2020 elections)	Indicative councillor expenditure cap (based on 2020 elector numbers)
Band 1 – \$15,000 for areas/divisions with fewer than 20,000 electors		
Logan City Council	16,336	\$15,000
Longreach Regional Council	2,475	\$15,000
Mapoon Aboriginal Shire Council	200	\$15,000
Maranoa Regional Council	14,324	\$15,000
Mareeba Shire Council	14,324	\$15,000
McKinlay Shire Council	522	\$15,000
Mornington Shire Council	615	\$15,000
Mount Isa City Council	11,221	\$15,000
Murweh Shire Council	2,783	\$15,000
Napranum Aboriginal Shire Council	564	\$15,000
North Burnett Regional Council	1,160	\$15,000
Northern Peninsula Area Regional Council	290	\$15,000
Palm Island Aboriginal Shire Council	897	\$15,000
Paroo Shire Council	1,105	\$15,000
Porpuraaw Aboriginal Shire Council	453	\$15,000
Quilpie Shire Council	541	\$15,000
Redland City Council	11,041	\$15,000
Richmond Shire Council	549	\$15,000
Rockhampton Regional Council	7,837	\$15,000
Scenic Rim Regional Council	4,980	\$15,000
Somerset Regional Council	17,076	\$15,000
South Burnett Regional Council	3,835	\$15,000
Tablelands Regional Council	2,937	\$15,000
Torres Shire Council	1,872	\$15,000
Torres Strait Island Regional Council	168	\$15,000
Townsville City Council	12,860	\$15,000
Whitsunday Regional Council	3,703	\$15,000
Winton Shire Council	815	\$15,000
Woorabinda Aboriginal Shire Council	327	\$15,000
Wujal Wujal Aboriginal Shire Council	208	\$15,000
Yarrabah Aboriginal Shire Council	1,189	\$15,000

³² For divided councils, this number is an average of the number of electors across all divisions for the 2020 election.

Council	No. of enrolled voters (2020 elections) ³³	Indicative councillor expenditure cap (based on 2020 elector numbers)
Band 2 – a sliding cap of 75 cents per elector for areas/divisions with 20,000 to 40,000 electors		
Western Downs Regional Council	22,292	\$16,719
Sunshine Coast Regional Council	23,037	\$17,278
Moreton Bay Regional Council	25,510	\$19,134
Southern Downs Regional Council	25,950	\$19,463
Livingstone Shire Council	26,427	\$19,820
Lockyer Valley Regional Council	26,545	\$19,909
Gold Coast City Council	27,708	\$20,782
Brisbane City Council	30,334	\$22,751
Ipswich City Council	33,342	\$25,007

Council	No. of enrolled voters (2020 elections)	Indicative councillor expenditure cap (based on 2020 elector numbers)
Band 3 – \$30,000 for areas/divisions with more than 40,000 electors		
Gladstone Regional Council	41,313	\$30,000
Mackay Regional Council	80,280	\$30,000
Noosa Shire Council	40,724	\$30,000
Toowoomba Regional Council	115,153	\$30,000

³³ For divided councils, this number is an average of the number of electors across all divisions for the 2020 election.

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