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

Explanatory Notes

Short title

The short title of the Bill is the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 (the Bill).

Policy objectives and the reasons for them

The objectives of the Bill are to:

- implement the Government's policy in relation to the recommendations of the Economics and Governance Committee (the Committee) in its Report No. 47, 56th Parliament, *Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections* (the Committee report), tabled on 15 September 2020 [1]
- 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.

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 electoral expenditure caps for State elections.

When the Integrity Act was introduced as a Bill into the Legislative Assembly on 28 November 2019, it was referred to the Committee for inquiry. The Legislative Assembly also requested the Committee to consider recommendation 1 of the Crime and Corruption Commission's (CCC) report *Operation Belcarra - A blueprint for integrity and addressing corruption risk in local government* (the 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.[2]

[1] The Committee report is available at: https://documents.parliament.qld.gov.au/tp/2020/5620T1648.pdf
[2] The Belcarra report is available at: https://documents.parliament.qld.gov.au/tp/2017/5517T1861.pdf

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:
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> (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.[3]

The Committee made seven recommendations in its report:

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.

[3] CCC, Belcarra report, p.47

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.

Prior to the October 2020 State election, the Queensland Government committed to: 'Subject to stakeholder consultation and further policy analysis, impose spending caps for both quadrennial local government elections and by-elections conducted under the *Local Government Electoral Act 2011*'.

Following the October 2020 State 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 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 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* (Statement).[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]

The Statement made a number of corrections to the Committee report.

On 19 April 2022, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) issued a discussion paper, *Local government electoral expenditure caps*, seeking stakeholder feedback by 27 May 2022.[7] In developing the discussion paper, DSDILGP reviewed the following:

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[4] The Government response is available at:
https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5720T266.pdf
[5] The Statement is available at:
https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T569.pdf
[6] State Development and Regional Industries Committee, Statement, p 1
[7] The discussion paper is available at:

- the expenditure caps model previously proposed by the former Department of Local Government, Racing and Multicultural Affairs in March 2019
- the model proposed by the Local Government Association of Queensland (LGAQ) in its submission to the Committee inquiry
- the models operating at the local government level in New South Wales, Tasmania and New Zealand.

The discussion paper proposed an expenditure caps scheme informed by the Committee's recommendations and comments, and by analysis of electoral expenditure incurred by groups, political parties, third parties and successful candidates in the 2020 local government quadrennial elections.

DSDILGP received 22 submissions in response to the discussion paper. A draft of the Bill was provided to key stakeholders in September 2022. Changes made to the scheme in response to stakeholder feedback on the discussion paper are addressed under 'Consultation' below.

Achievement of policy objectives

To achieve its objectives, the Bill amends the 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. 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 in an election
  - third parties (registered and unregistered)
- the Electoral Commission of Queensland (ECQ) to decide and publish enrolment numbers for local government areas and divisions 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 (CPI)
  - 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
  - expenditure of an associated entity treated as that of the relevant election participant
  - registration of third parties, and related disclosure requirements

https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0020/70490/local-government-electoral-expenditure-caps-discussion-paper.pdf

- registration of agents of election participants, and related disclosure requirements
- requirement for dedicated accounts for registered third parties and registered political parties
- 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.

These features are addressed in further detail below.

Recommendation 1 of the Committee report – definition of 'electoral expenditure'

Electoral expenditure

To implement the Government's policy in relation to recommendation 1 of the Committee report, the Bill amends the definition of electoral expenditure (currently in section 123 of the LGEA) to align with section 199 of the EA (refer clause 24, new section 109A).

While the current definition in the LGEA is similar in many respects to the definition in section 199 of the EA, it does not mirror it precisely. The definition in the EA is more specific in defining the methods used in broadcasting and publishing material for an election. It also clarifies the expenditure which is excluded. It includes the concept that expenditure is electoral expenditure if incurred for a 'campaign purpose' (defined in section 199A of the EA). For third parties, expenditure is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose.

The Committee recommended 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 caps 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.[8]

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.[9] 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.

The Bill amends the LGEA's definition of electoral expenditure to align with the EA definition, as described above. The Bill therefore provides uniformity and certainty to candidates, 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 ECQ.

[8] Economics and Governance Committee, Committee report, p17
[9] Economics and Governance Committee, Committee report, p17

However, 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*, it has been replaced with appropriate wording for local government councillors, referring to allowances or entitlements under a council's expenses reimbursement policy.

The Bill also provides for the meaning of an amount of electoral expenditure to be inclusive of GST, consistent with the decision of the Supreme Court of Queensland in Smeltz v Electoral Commission of Queensland on 27 October 2020.

A definition of 'campaign purpose' is also included, consistent with the definition in section 199A of the EA (refer clause 24, new section 109B). The Bill provides that expenditure is incurred for a campaign purpose if the expenditure is incurred to promote or oppose a political party or group of candidates in relation to an election, or to promote or oppose the election of a candidate, or to otherwise influence voting at an election.

Related amendments - Gifted electoral expenditure and definition of 'gift'

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. The Bill provides that 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 accepts material resulting from the expenditure and is not invoiced by the person incurring the expenditure within a certain timeframe (refer clause 24, new section 109C).

To align with section 280A of the EA, the Bill provides that 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 section 109D).

To align with section 281A of the EA, the Bill provides for electoral expenditure incurred by an election participant (the 'first election participant') that benefits another election participant (the 'recipient') (refer clause 41, new section 123U). If the first election participant gifts the expenditure, the expenditure is taken to be incurred by the first election participant. However, if the expenditure is incurred with the recipient's authority or consent, or the recipient accepts relevant material resulting from the expenditure, or another circumstance prescribed by regulation happens in relation to the expenditure, and the first election participant invoices the recipient for payment of the expenditure, the election expenditure is taken to have been incurred by the recipient.

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 Bill amends the definition of gift in section 107 of the LGEA to generally align with section 201 of the EA, including with reference to gifted electoral expenditure (refer clause 20).

The key new inclusions in the definition of gift are:

- an amount of electoral expenditure a person gifted to an election participant
- an amount paid to or for the benefit of, or an amount of electoral expenditure gifted to, a registered political party by:

    - a federal or interstate branch or division of another entity of which the party is a part
    - a related political party (defined in new section 112A)
- an amount forgiven on a loan
- an amount paid or service provided by a person to a registered political party under a sponsorship arrangement (defined in new section 107B).

The definition of 'uncharged interest' is also revised to align with the EA.

The key new exclusions from the definition of gift are:
- an amount paid to a political party that is a compulsory levy imposed by the party under its constitution
- an amount transferred to an individual from funds the individual holds jointly with their spouse.

The current definition of gift under the LGEA excludes certain fundraising contributions. Minor amendments to the definition of 'fundraising contribution' align with the definition in the EA (refer clause 21).

Further, the new provision relocates elements of section 113A of the LGEA (meaning of 'political donation' in relation to prohibited donors - gifts made in a private capacity) to be incorporated in the definition of gift, in alignment with sections 201 and 274 of the EA.

The Bill also expands the definition of 'value' of a gift to align with the EA (refer clause 23, new section 108). It provides for the value of a gift:
- of an amount of electoral expenditure incurred
- provided under a sponsorship arrangement
- of an amount of uncharged interest on a loan
- of an amount forgiven on a loan.

<u>Recommendations 2, 3 and 4 of the Committee report – cap amounts, registration of third parties, and general operation of the scheme</u>

To implement the Government's policy in relation to recommendations 2, 3 and 4, the Bill provides for registration of third parties and for a sliding scale of electoral expenditure caps for Queensland local government elections, with reference to the number of electors in the relevant division or local government area (refer below – *Deciding elector numbers*). As Brisbane City Council's election environment differs from other Queensland local government areas, the sliding scale does not apply to Brisbane City Council, for which the caps are a fixed amount.

Consistent with the Committee's recommendations, the cap amounts have been determined based on further analysis and consultation since the Committee report was released. The caps apply during the 'capped expenditure period' (refer below – *Capped expenditure period*) for local government quadrennial elections, by-elections and fresh elections.

Individual mayoral candidates - cap amounts

The Bill (refer clause 41, new section 123D) provides for caps (rounded to the nearest $10) for individual mayoral candidates in local government areas other than Brisbane City Council as follows:

- $30,000 for areas with not more than 30,000 electors
- a sliding amount of 1 dollar per elector for areas with more than 30,000 and not more than 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 not 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 for areas with more than 200,000 electors.

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

Individual councillor candidates – cap amounts

The Bill (refer clause 41, new section 123E) provides for caps (rounded to the nearest $10) for individual councillor candidates in local government areas/divisions other than Brisbane City Council as follows:

- $15,000 for areas or divisions with 20,000 electors or less
- a sliding amount of 75 cents per elector for areas or divisions with more than 20,000 but less than 40,000 electors
- $30,000 for areas or divisions with 40,000 electors or more.

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

The Bill provides that a candidate 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).

Groups of candidates, registered political parties and endorsed candidates – cap amounts

The Bill also provides for a group or registered political party electoral expenditure cap that will enable a group of candidates for an election, or a registered political party that endorses a candidate in an election and the candidates endorsed by the party, to pool the caps of the members of the group or the candidates endorsed by the party within a local government area (refer clause 41, new sections 123F and 123I). The purpose of the pooling provisions is to enable groups of candidates, 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. The pooling provisions are also consistent with the position expressed in the Committee report that 'caps for groups of candidates and political parties should be established on the basis of some form of aggregation method'.[10]

[10] Economics and Governance Committee, Committee report, p 35

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 group member, 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. This limits the ability of a group or registered political party to access a disproportionately large expenditure cap by fielding more candidates than the number of councillor positions or vacancies in an 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).

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 for the election 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 and members of groups), 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 also includes procedures for adjusting group or political party caps when group membership or party endorsement changes (refer clause 41, new sections 123G, 123H, 123J and 123K).

When an individual candidate joins a group, the Bill provides that the shared group expenditure cap and the expenditure taken to be incurred by the group adjusts according to the individual candidate's cap and expenditure incurred by the candidate to date.

The same adjustment occurs when a registered political party endorses an additional candidate.

When a candidate leaves a group, the Bill provides that the shared group expenditure cap adjusts according to:

- expenditure incurred by the group to date
- the new cap that will apply to the individual candidate once they have left the group
- the proportion of the individual candidate's contribution to the group cap.

The expenditure taken to have been incurred by the individual candidate immediately after the individual candidate leaves the group is to be $0. The expenditure taken to have been incurred by the group will not adjust.

The same adjustment occurs when a registered political party withdraws their endorsement of a candidate.

Further details of the adjustments are provided in the Notes on Provisions.

Groups of candidates, registered political parties and endorsed candidates – who the caps apply to

The group electoral expenditure cap applies to groups of candidates if notice of the membership of the group has been given to the ECQ and is published on the ECQ's website (refer clause 16, new sections 42 and 43). The Bill also introduces amendments to group membership requirements to provide that a group of candidates for an election cannot include candidates for election for more than one local government and to provide that a group of candidates cannot include candidates who are endorsed by a registered political party for the election (refer clause 16, new section 43B).

These provisions 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. For example, if a candidate could be both a member of a group of candidates and an endorsed candidate, it would be difficult to ensure that the candidate (or the group or party) was 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.

The registered political party electoral expenditure cap applies to registered political parties that have endorsed a candidate for the election, as well as to candidates endorsed by the registered political party for the election. The Bill provides a definition of 'endorsed' to clarify when a registered political party has endorsed a candidate for the purposes of applying the expenditure caps scheme (refer clause 24, new section 109G).

The Bill amends the definition of 'third party' in section 106 of the LGEA to exclude registered political parties that have endorsed a candidate for the election (refer clause 17).

Refer below for the definition of 'third party' and for the expenditure cap that applies to third parties (*Third parties – definition, registration and cap amounts*).

Groups of candidates and registered political parties – notification of change of group membership; notification and withdrawal of endorsement

In alignment with sections 306A and 91A of the EA, the Bill 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 (refer clause 52, new section 135A and clause 15, new section 31).

The Bill also amends the LGEA to require a group of candidates to notify the ECQ of changes to the group's membership (i.e. when a candidate enters or leaves the group) (refer clause 16, new section 43). Further, the Bill provides for winding up a group of candidates (refer clause 16, new section 43A) and for application of return provisions where a candidate stops being a member or the group has been wound up (refer clause 16, new sections 43E and 43F). Refer below under Fundamental Legislative Principles to discussion of new section 43C (Application of Act to groups of candidates) which applies part 6 and part 9 division 5 of the LGEA in relation to a group of candidates as if it were a person.

These requirements provide clarity regarding the electoral expenditure caps that apply to participants in an election, for example by clarifying when expenditure caps should adjust due to a change in group membership or party endorsement.

Third parties – definition, registration and cap amounts

Consistent with recommendation 4, the Bill provides for registration of third parties if the electoral expenditure incurred by or with the authority of the third party during the capped expenditure period exceeds $6,000 (refer clause 47, new section 127D).

The system of third party registration is modelled on part 11, division 12 of the EA. Subject to passage and assent of the Bill, amendments to the *Local Government Electoral Regulation 2012* (LGER) will be proposed to prescribe similar details as stated in section 11A of the *Electoral Regulation 2013* (ER) for an application for registration of a third party. Refer to the discussion below under recommendation 6 (*Appointment and registration of agents*) regarding appointment of an agent for a registered and unregistered third party, modelled on sections 208 and 209 of the EA. The Bill also extends disclosure requirements to the agent of a registered third party (and a third party required to be registered) in relation to real time and summary returns of electoral expenditure (refer clause 41, new section 125B and 125C and clause 17 section 106 definition of 'relevant third party'). These are also discussed under recommendation 6 below.

The Bill provides that the electoral expenditure cap of an unregistered third party is $6,000 (refer clause 41, new section 123M). 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.

The electoral expenditure cap for registered third parties is, for a quadrennial election or fresh election, the amount equal to an individual candidate's expenditure cap for the election under new section 123D (Individual candidates for mayor) (refer clause 41, new section 123L). The cap for a registered third party in a by-election is the amount equal to an individual candidate's cap under new part 6, division 4, subdivision 2 (refer clause 41). 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).

The Bill also includes amendments to the definition of 'third party' to provide clarity for applying the new electoral expenditure caps scheme to election participants (refer clause 17). The amended definition of third party for an election excludes a registered political party that endorses a candidate in the election. The amended definition also reflects the expanded definition of 'associated entity' which applies in relation to candidates and groups (refer below under *Recommendation 5 of the Committee report – associated entities*) by excluding these kinds of associated entities from the definition of third party.

The Bill requires the ECQ to keep a register of third parties who are registered for an election (refer clause 47, new section 127E). The register will provide clarity and transparency regarding the entities which are registered third parties for an election.

Electoral expenditure incurred by particular councillors – councillors not contesting election

The Bill provides for certain circumstances where expenditure is incurred by a councillor during the capped expenditure period and the councillor subsequently does not contest the election (refer clause 41, new section 123T).

The Bill is consistent with the EA (section 281K) and provides that if a councillor is a member of a registered political party that endorses a candidate for election and either announces or publicly indicates an intention not to be a candidate before the cut-off day for nominations for an election or does not nominate, electoral expenditure incurred by or for the councillor during the capped expenditure period is taken to have been incurred by or for the registered political party.

However, this only applies to a councillor who was endorsed by the registered political party for the election in which the councillor was elected. The provision also only applies to electoral expenditure incurred while the councillor remains a member of the political party (and while the party endorses a candidate in the election and therefore is subject to an expenditure cap as a registered political party that endorses a candidate in an election).

These provisions are necessary to, for example, prevent registered political parties from allowing elected members not contesting an election to incur expenditure that benefits their party or candidates endorsed by that party which is not appropriately attributed.

Deciding elector numbers

The Bill (refer clause 41, new sections 123R and 123S) reflects the Committee's suggestion at page 30 of the Committee report by providing for the ECQ to decide elector numbers and publish notice of the numbers and the relevant caps for each local government area and ward/division. The caps are established according to the number of electors as at a specified point in time (i.e. as at the 'relevant day').

As the State electoral expenditure caps scheme does not operate on a sliding scale based on the number of electors, there is no provision in the EA for deciding and publishing notice of the number of electors as at a specified point in time and the corresponding caps. However, section 31A of the New South Wales *Electoral Funding Act 2018 No 20* provides for the meaning of 'number of enrolled electors for local government area or ward', and the Bill includes broadly similar provisions for the Queensland local government scheme.

The process of deciding the applicable caps according to the number of electors is not necessary for Brisbane City Council as the caps are fixed amounts.

The Bill provides that, in addition to publishing the elector numbers, the ECQ must publish on its website the following information about the caps in relation to each election:

- the amount of an expenditure cap for an individual candidate for the election
- the amount of an expenditure cap for a registered third party for the election
- a general outline of expenditure caps for other participants in the election.

In addition, the Bill specifies the means of deciding the number of enrolled electors for an election.

For a quadrennial election, the Bill provides that:

- the 'relevant day' for the decision about the number of enrolled electors in relation to a quadrennial election is 1 July in the year preceding the quadrennial election
- however, if the capped expenditure period for a quadrennial election starts on a day prescribed by regulation, due to a regulation fixing a different quadrennial election date under section 23 of the LGEA, the 'relevant day' for the quadrennial election is a day prescribed by regulation
- the number of enrolled electors and information about the caps are to be published 'as soon as practicable' after the relevant day and before the start of the capped expenditure period (refer below – *Capped expenditure period*)
- for an undivided council, the number of electors is the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government's area as at the 'relevant day' for the election
- for divisions of other local government areas, the number of electors is the average number of enrolled electors in the local government area per councillor (as at the 'relevant day') multiplied by the number of councillors in the division. The policy intent for using the average number of enrolled electors is to provide certainty where divisional boundary reviews may be finalised after 1 July for divisions out of quota. In addition, because elector numbers in multi-councillor divisions within the same local government are directly correlated with the number of councillors in the division, it is necessary to multiply the average number of enrolled electors in the local government area per councillor by the number of councillors in the division. This

ensures the caps which apply to councillor candidates in multi-councillor divisions are related to the actual number of electors for these councillor candidates.

For a by-election, the Bill provides that:

- the 'relevant day' for the decision in relation to a by-election is the first day of the month during which the notice of the by-election is published
- the number of enrolled electors and information about the caps are to be published on the day the notice of the by-election is published under section 24(3) of the LGEA (This day is also the start of the capped expenditure period for a by-election)
- for all local governments other than Brisbane City Council, the number of electors is the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government area or division as at the 'relevant day' for the election.

In the event that a fresh election is required, the Bill is consistent with section 280(1)(b) of the EA for an extraordinary general election by providing (refer also to discussion below under *Capped expenditure period*) that:

- if the capped expenditure period for the quadrennial election has started, that day remains the start of the capped expenditure period for the fresh election
- otherwise, the period starts on the day the notice of the fresh election is published under section 25(1) of the LGEA.

In the first scenario, the 'relevant day' for the decision is the day the capped expenditure period started. In the second scenario, the 'relevant day' for the decision is the first day of the month during which the notice of the fresh election is published under section 25(1) of the LGEA. The number of enrolled electors and information about the caps are to be published on the day the notice of the election is published under section 25(1) of the LGEA.

In all cases the ECQ must, as soon as practicable after certification of the nomination of a candidate under section 27 of the LGEA, provide the person with information about the amount of the person's expenditure cap as if the person were an individual candidate for the election; and a general outline of expenditure caps for participants who are not individual candidates.

Section 20 of the LGA currently provides that the Governor in Council may implement a recommendation of the Local Government Change Commission under a regulation, and that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change. A 'local government change', for example a change to a boundary or division of a local government area, may impact on the number of enrolled electors for a local government area or division. The Bill allows for a regulation to address this issue by amending section 20 of the LGA to state further examples of what the regulation may provide for, including matters in relation to expenditure caps and disclosure of gifts, loans and electoral expenditure under part 4, division 2, subdivision 3, part 6 or part 9, division 5 of the LGEA (refer clause 8). (Refer also to discussion under Fundamental Legislative Principles - *Local government changes - number of enrolled electors.*)

Indexation of cap amounts

The Bill (refer clause 41, new section 123Q) reflects the Committee's suggestion at page 30 of the Committee report by providing for a mechanism for the adjustment of caps for inflation following each quadrennial election. Section 281F of the EA provides a mechanism for adjustment of expenditure caps, in line with CPI, 30 days after the polling day for a State general election. (CPI is defined in the EA to mean 'the all groups consumer price index for Brisbane published by the Australian Bureau of Statistics')

The Bill applies a similar mechanism to the local government expenditure caps scheme. However, the State scheme under the EA does not use a sliding scale to determine expenditure caps according to elector numbers, unlike the local government scheme. Under the local government scheme, the expenditure caps which apply to candidates in each local government area (apart from Brisbane) need to be recalculated for each election to account for changes in elector numbers. This means that it is not appropriate to adjust the caps (as finally calculated) from the previous election according to CPI. Rather, the Bill provides that the factors used to determine the caps (e.g. the factor of $1 multiplied by the number of enrolled electors) are adjusted according to CPI.

Because the expenditure caps which apply for Brisbane City Council are fixed (i.e. they are not calculated according to elector numbers), the Bill provides that the expenditure caps which apply for Brisbane City Council are directly adjusted according to CPI, as per the mechanism in the EA.

Capped expenditure period

The LGEA provides (section 23) that a quadrennial election must be held every fourth year after 2012, on the last Saturday in March. It also provides that a regulation may fix a different day for a quadrennial election for a particular year.

The Bill (refer clause 41, new section 123A) provides for the capped expenditure period for the March quadrennial election to start on the first business day after the last Saturday in the preceding August (i.e. approximately seven months). However, if a regulation fixes a day for the quadrennial election under section 23(3) before the capped expenditure period for a quadrennial election starts, the capped expenditure period for the quadrennial election starts on a day prescribed by regulation.

The Bill models the length of the capped expenditure period for local government quadrennial elections on the length of the capped expenditure period for an ordinary general election, set out in section 280(1)(a) of the EA (i.e. approximately seven months).

In the event that a fresh election is required, the Bill is consistent with section 280(1)(b) of the EA for an extraordinary general election by providing that if the capped expenditure period for the quadrennial election has started, that period's start day remains the start day of the capped expenditure period for the fresh election. Otherwise, the period starts when the notice of the fresh election is published under section 25 of the LGEA.

For by-elections, the Bill is consistent with the Committee's suggestion at pages 39 to 40 of the Committee report in relation to starting the period for a by-election on the day fixed for

the by-election by the returning officer under section 24 of the LGEA. This is also consistent with section 280(1)(c) of the EA.

Consistent with section 280(2) of the EA, the Bill provides in all cases for the capped expenditure period to end at 6pm on the polling day or the day an adjourned poll is held.

When electoral expenditure is incurred

The State scheme under the EA addresses the potential for stockpiling electoral material outside the capped expenditure period by defining when electoral expenditure is incurred. New section 109E (When electoral expenditure is incurred generally) (refer clause 24) in the Bill aligns with section 281 of the EA.

It provides that electoral expenditure is incurred when goods or services are supplied or provided, regardless of when the amount of expenditure is invoiced or paid.

Expenditure on advertising is incurred when the advertisement is first broadcast or published. Expenditure on the production and distribution of 'relevant material' (refer clause 17, section 106) is incurred when the material is first distributed.

However, the Bill also provides that if electoral expenditure is incurred to obtain goods for the dominant purpose of being used for a campaign purpose in relation to one or more elections and the goods are supplied before the capped expenditure period starts, the expenditure is taken to be incurred when the goods are first used for a campaign purpose during the capped expenditure period. This applies regardless of when the amount of the expenditure is invoiced or paid.

While section 197A(3) of the EA (Meaning of participant in an election) provides both a definition of 'participant' and for when electoral expenditure is incurred in circumstances when a candidate or third party becomes a 'participant' within the meaning of the definition in that section, new section 106AB of the LGEA (Meaning of participant in an election)(refer clause 18) only defines 'participant'. New section 109F (refer clause 24) provides further clarity for when electoral expenditure is incurred for particular purposes. It applies in relation to incurring electoral expenditure for the purpose of working out when a person becomes a candidate in an election; or a registered political party has endorsed a candidate in an election; or another entity becomes a participant in an election; or a disclosure period under section 106A starts. Despite section 109E (When electoral expenditure is incurred generally), the electoral expenditure is taken to be incurred when a transaction to incur the expenditure is entered into, regardless of when the amount of the expenditure is invoiced or paid; or the obligation to pay for the expenditure arises; or the goods or services for which the expenditure is incurred are supplied or provided. However, section 109F does not affect the operation of section 109E in relation to the electoral expenditure for any other purpose under part 6 of the LGEA.

Returns – disclosure periods

The Bill provides for new disclosure periods for groups, registered political parties, third parties and associated entities to ensure transparency and clarity (refer clause 19).

The amended disclosure periods for groups and registered political parties are to ensure that disclosure periods for groups and registered political parties appropriately capture the necessary periods while not including periods that overlap across elections, to avoid placing unnecessary, duplicative requirements on groups and registered political parties.

The Bill also differentiates disclosure periods for a) all third parties and b) registered third parties and third parties required to be registered. Only registered third parties and third parties required to be registered are required to disclose expenditure during the capped expenditure period and to operate dedicated accounts.

To ensure transparency, the disclosure period for associated entities starts on the earlier of:

- the day the associated entity first incurs electoral expenditure for the election
- the day the capped expenditure period for the elections starts.

Refer to discussion below for the disclosure requirements applying to associated entities.

Recommendation 5 of the Committee report – associated entities

To implement the Government's policy in relation to recommendation 5, the Bill (refer clause 26, new sections 112C, 112D and 112E) provides that electoral expenditure incurred by an associated entity of an election participant is treated as though it were incurred by the election participant.

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'. 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 in relation to parties but also to candidates. The Committee 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 State and local government elections.

The Bill amends the definition in the LGEA (refer clauses 17 and 58) to align with the EA, meaning associated entities of candidates, groups of candidates and political parties will be captured and will be subject to the expenditure cap of the relevant election participant. Consistent with the EA, the Bill also provides for an associated entity to use the campaign account of the election participant with which it is associated (refer below – *Dedicated accounts*).

New section 135 (refer clause 52) requires associated entities to give the ECQ notice of the name of the financial controller of the entity, and any changes to the name.

The Bill introduces disclosure requirements for associated entities of candidates and groups, consistent with those applying under the EA, as outlined below.

The EA (section 294) requires gift and loan returns by associated entities of candidates. Section 10A of the ER (Period for financial controller of associated entity to give return about gift or loan received) is also relevant to the return.

The LGEA currently regulates gift and loan disclosure by candidates and groups of candidates. The Bill aligns the LGEA with relevant provisions of part 11, division 11 of the EA. 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). Subject to passage and assent of the Bill, amendments to the LGER will be proposed to prescribe the 'disclosure deadline' for the return.

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. The Bill updates the requirements for the ECQ to give reminder notices about returns, to include these new returns (refer clause 50, section 130B).

The Bill provides for real time and summary expenditure returns by associated entities of candidates and groups (refer new sections 124 and 125A).

Recommendation 6 of the Committee report – penalties, recovery and disqualifying offences

To implement the Government's policy in relation to recommendation 6, the Bill aligns the new scheme penalties and recovery provisions in the LGEA with those in the EA and prescribes certain offences as integrity and serious integrity offences under the LGA and the COBA.

The penalties, recovery provisions and disqualifying offences are outlined below under Fundamental Legislative Principles (*Proportion and relevance - enforcement*). In addition to penalties for breach of the expenditure caps, the Bill provides for penalties connected with a range of new measures supporting transparency and compliance with the scheme, such as dedicated accounts, record keeping, audits, registration of agents and disclosure by broadcasters and publishers. These measures are summarised as follows.

Dedicated accounts

The Bill introduces new requirements, broadly consistent with the EA, which provide for registered political parties, registered third parties and third parties required to be registered to operate a dedicated account for the election (refer clause 44, new sections 127AA and 127AB). While the requirement to operate an account is consistent with the EA, the provisions are more aligned with existing requirements under the LGEA (sections 126 and 127) for the dedicated accounts of candidates and groups, including the relevant penalty of 100 penalty units.

Record keeping

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 (Records to be kept) of the LGEA and inserts new part 6 division 5B (Records to be kept) (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 LGER (subject to passage and assent of the Bill and approval by Governor in Council) will align where appropriate with part 5AA of the ER (Prescribed information to be included in particular records to be kept).

Audits

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

Further, the Bill amends the LGEA to align with the EA requirements in part 11, division 13 for audit certificates to be provided in certain circumstances. New section 135D of the LGEA (refer clause 52) aligns with section 310 of the EA by requiring an audit certificate for a return:

- under new section 125 about electoral expenditure incurred by a registered political party that endorsed a candidate, or
- under new section 125G for amounts received, paid and outstanding (i.e. returns by associated entities of candidates and groups).

Appointment and registration of agents

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).

The LGEA provides for certain obligations on the agent of a political party (sections 124 and 125 – expenditure returns) but not for registration of the agent. The definition of 'agent of a registered political party' in the LGEA schedule 2 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 inserts new part 6, division 2 in the LGEA (refer clause 28) to align with part 11, division 2 of the EA which provides for the appointment and registration of agents of political parties, candidates and third parties (both registered and unregistered).

New section 114 (Agent of registered political party) provides that a registered political party that endorses a candidate in an election must appoint a person to be the agent of the party for the election.

New section 115 (Agent of candidate) provides that a candidate in an election may appoint a person to be the agent of the candidate for the election. The candidate is taken to be their own agent for the election during any period for which no appointment of an agent is in effect.

New section 116 (Agent of group of candidates) provides that a group of candidates for an election must appoint a person to be the agent of the group for the election.

New section 116A (Agent of registered third party) provides that a registered third party for an election who is not an individual must appoint a person to be the agent of the third party for the election.

A registered third party for an election who is an individual may appoint a person to be the agent of the third party for the election. During any period for which no appointment is in effect under section 116A(2), the third party is taken to be the third party's own agent for the election.

New section 116B (Agent of unregistered third party) provides that a third party that is not registered for an election may appoint a person to be the third party's agent for the election. In addition, if the third party is an individual, the third party is taken to be their own agent for the election, during any period for which no appointment of an agent is in effect.

New section 116D (Register of agents) states the requirements for the ECQ to keep a register.

New section 116E (Registration of agent) provides for when the registration takes effect.

New section 116F (Responsibility for action in absence of agent) provides that the section applies if a provision of part 6 imposes an obligation on the agent of either a registered political party that endorses a candidate in an election; or a group of candidates for an election; or a third party who is not an individual, whether or not the third party is registered for an election; and the entity does not have an agent for the election. For a registered political party or a third party, each member of the executive committee (however described) of the registered political party or third party is responsible for complying with the obligation as if the provision applied to the member of the committee. For a group of candidates, each member of the group is responsible for complying with the obligation as if the provision applied to the member of the group.

New section 116G (Agent's obligation to ensure compliance) provides that an agent of a participant in an election must take all reasonable steps to inform the participant, and each person the participant authorises to act for the participant under division 4 (Caps on electoral expenditure) and division 5 (Operation of accounts), about the obligations that apply to the participant and person under divisions 4 and 5. Further, the agent must take all reasonable steps to establish and maintain appropriate systems to support the participant and person to comply with the obligations.

In addition, 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 under division 4 (Caps on electoral expenditure) and division 5 (Operation of accounts), about the obligations that apply to the associated entity and person under divisions 4 and 5. The agent must also take all reasonable steps to establish and

maintain appropriate systems to support the associated entity and person to comply with the obligations.

For consistency, the Bill also amends a range of disclosure provisions in the LGEA to apply to the relevant agent where similar provisions in the EA apply to agents. Further, the Bill inserts new provisions applying similar offences to agents appointed under the LGEA as apply to agents appointed under the EA (refer to Fundamental Legislative Principles).

Disclosure by broadcasters and publishers

The Bill amends the LGEA to align with sections 284 and 285 of the EA by providing for returns by broadcasters (new section 125D) and publishers (new section 125E) in relation to advertisements during the capped expenditure period for the election (refer clause 41). The Bill updates the requirements for the ECQ to give reminder notices about returns, to include these new returns (refer clause 50, section 130B).

Information available for public inspection

The Bill provides that the ECQ must keep a register of agents and a register of third parties (refer clause 28, new section 116D and clause 47, new section 127E, respectively). For transparency, and similar to the requirements regarding registers in section 388A of the EA, new section 135B (refer clause 52) provides that the ECQ must make information regarding these registers available for public inspection, including by publishing the information on the ECQ's website.

In alignment with section 388A of the EA, the Bill also provides (new section 135A) (refer clause 52) that the ECQ may publish information regarding a registered political party's endorsement of a candidate on the ECQ's website. When a group notifies the ECQ of a proposed change to group membership by giving written notice of the proposed change to the membership, the Bill (new section 43) (refer clause 16) provides that the ECQ must publish a copy of the notice.

Purpose of the LGEA

The Bill ensures consistency between the purposes of the amendments and the purposes of the LGEA by amending section 3 (refer clause 13). The amendments provide that the purposes of the LGEA are also to ensure and reinforce the transparent and 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. This amendment is also discussed under Fundamental Legislative Principles, *Constitutional validity - implied freedom of political communication*, below.

Minor and technical amendments

Definition of 'loan'

Currently, loans from financial institutions are excluded in some, but not all, provisions of the LGEA which relate to loans. For example, sections 120(7) (summary returns for loans), 121B (disclosure of source of loan), 126 (candidate's dedicated account) and 127 (group's dedicated account) do not exclude loans from financial institutions whereas section 120(5)

excludes them from the requirement for candidates to give real time returns. For clarity, the Bill amends the definition of loan in the LGEA (refer clause 17) to exclude loans from financial institutions, consistent with the definition of loan in section 197 of the EA.

Amendments to the COBA, LGA and LGEA

Schedule 1 to the Bill (Other amendments) makes minor and consequential amendments to these Acts, including new definitions for *group of candidates* and *how-to-vote card* in the COBA and the LGA to update cross-references to the LGEA (refer clause 59).

Transitional provisions and commencement

The Bill (refer clauses 5, 10 and 57) provides a range of transitional provisions which are outlined in the 'Notes on provisions' below. The Bill commences on a date to be fixed by proclamation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

The State Government will incur additional costs in the implementation of the measures contained in the Bill. Funding will be considered through standard budgetary processes.

Consistency with fundamental legislative principles

The proposed amendments are generally consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992* (LSA). Potential breaches are addressed below.

Rights and liberties of individuals

The fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the LSA).

Proportion and relevance – enforcement

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. Penalties should be proportionate to the offence.

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 election participants, 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'.[11]

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'.[12]

The Committee noted at page 46 of the Committee report (refer recommendation 6) that:

'penalties concordant with those under the new electoral expenditure cap regime for State government elections should be imposed…in line with ongoing efforts in Queensland to align requirements for State and local government elections. The committee considers that these penalties adequately address stakeholder concerns for the imposition of 'material' consequences for any breach.

The committee also supports the inclusion of recovery provisions that mirror those employed under the State electoral expenditure cap scheme'.

The Committee also noted the views of stakeholders on the potential disqualification of candidates in breach and recommended further consultation on this aspect of the scheme, 'particularly given the potential for exceedances to unduly influence an election result'.[13]

DSDILGP's discussion paper sought feedback from stakeholders about implementation of recommendation 6, alignment of penalties and recovery provisions between State and local government legislation and the proposed disqualification provisions (specific to local government legislation). Stakeholders were broadly supportive of the proposed expenditure caps scheme.

Section 26 of the LGEA provides that 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 the COBA.

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

[11] Economics and Governance Committee, Committee report, pp 40 to 41
[12] Economics and Governance Committee, Committee report, p 43
[13] Economics and Governance Committee, Committee report, p 46

If convicted of an integrity offence, a person is disqualified from being a councillor for a period of 4 years. If convicted of a serious integrity offence, a person is disqualified from being a councillor for a period of 7 years (section 153 and schedule 1 of the LGA and the COBA). A councillor is automatically suspended if charged with a disqualifying offence (LGA section 175K and COBA section 186B).

The Bill provides for new offences, expansion of existing offences and recovery of unlawful electoral expenditure. The integrity and serious integrity offences are listed in clauses 6 and 11 in the Bill and are indicated below.

The offences and recovery provisions are proportionate and relevant to the actions to which they are applied. They implement the Government's response to recommendation 6 of the Committee report which was that scheme penalties and recovery provisions be aligned with those for the State electoral expenditure caps scheme.

The majority of the penalties in the Bill align with corresponding provisions in the EA. The penalties in relation to new requirements for dedicated accounts for registered political parties and registered third parties remain consistent with existing penalties in the LGEA (100 penalty units) rather than the higher penalties (200 penalty units) in the EA.

The disqualification provisions, which are specific to the local government scheme, respond to the views of stakeholders expressed as part of the Committee inquiry.

New offences

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. 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', 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 for the election 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.

New section 123O (Compliance with expenditure cap – unregistered third party) (refer 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.

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

New section 127J (Obligation to notify electoral commission of change to details) (refer clause 47) provides that if a relevant detail about a registered third party changes, the agent of the third party must give the ECQ notice about the change, in the approved form, within 30 days after the change happens. The maximum penalty is 20 penalty units. A person does not commit an offence if the person has a reasonable excuse (refer also to 'reversal of onus of proof – reasonable excuse provisions' below). This provision is consistent with section 303 of the EA.

New section 127N (Records to be kept by relevant entities) (refer clause 47) provides in subsection (1) that a relevant entity (i.e. a participant or an associated entity) for an election must ensure a record about each 'prescribed matter' is made that includes the information necessary to demonstrate, to the greatest extent practicable, the relevant entity's compliance with part 6 and part 9, division 5 in relation to the prescribed matter; and includes the information required by regulation to be included in the record; and complies with section 127R (Requirements for records).The maximum penalty is 20 penalty units. The provision is consistent with section 305AB of the EA.

Section 127N(2) and (3) provide that a relevant entity may transfer a record made by or for the relevant entity under subsection (1) to another person in the ordinary course of the relevant entity's business or administration and in this event the relevant entity must make a record about the transfer. The maximum penalty is 20 penalty units. The penalty is consistent with the other new LGEA penalties imposed in relation to record keeping.

New section 127O (Records to be kept by agents of participants) (refer clause 47) provides that the agent of a participant in an election must make a record about the agent's compliance with section 116G (Agent's obligation to ensure compliance) that includes the information necessary to demonstrate, to the greatest extent practicable, each step taken by the agent to comply with section 116G; and includes the information required by regulation to be included in the record; and complies with section 127R (Requirement for records). Failure to comply with this section attracts a maximum penalty of 20 penalty units. The provision is consistent with section 305AC of the EA.

New section 127P (Records to be kept about advertisements or other relevant material) (refer clause 47) applies if electoral expenditure is incurred to print, publish or broadcast an advertisement or other relevant material; and a person is required to give the ECQ a return about the expenditure under section 125 (Summary expenditure returns—candidates, groups of candidates and registered political parties), section 125A (Summary expenditure returns – associated entities) or section 125C (Summary expenditure returns – relevant third parties) in relation to an election.

The person is required to make a record that complies with section 127P(3) and section 127R (Requirements for records), about the printing, publishing or broadcast of the advertisement or other relevant material. Failure to do so will attract a maximum penalty of 20 penalty units. The section lists the matters to be contained in the record and states that the record must be accompanied by a copy of the advertisement or other relevant material. Section 127P is consistent with section 305A of the EA.

New section 127Q (Records to be kept by broadcasters or publishers) (refer clause 47) applies to a broadcaster who is required to give the ECQ a return under section 125D (Summary expenditure returns – broadcasters); or a publisher who is required to give the ECQ a return under section 125E (Summary expenditure returns – publishers).

This section requires the broadcaster or publisher to make a record, that complies with section 127R (Requirement for records), about the return and the matters required to be stated in the return. Failure to comply with this section will attract a maximum penalty of 20 penalty units. Section 127Q is consistent with section 305B of the EA.

New section 127S (Record must be kept for 5 years) (refer clause 47) applies to a person required to make a record under part 6, division 5B (other than section 127N); and a person required to make a record under section 127N(1) unless the person has transferred the record under section 127N(2); and a person required to make a record under section 127N(3); and a person to whom a record has been transferred under section 127N(2).

Unless the person has a reasonable excuse, the person must keep the record for 5 years after the day the record is made; and in a way that allows the record to be conveniently and properly investigated or examined by an authorised officer under part 6; and for a record made by or for a participant – in a way that allows the record to be readily given, under part 6, to an auditor appointed to conduct an audit under section 127U (Electoral commission may appoint auditor). Failure to comply with this section will attract a maximum penalty of 20 penalty units. Section 127S is consistent with section 305D of the EA.

New section l27V (Participant in election must assist appointed auditor) (refer 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 points. 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. The term *reasonably requires*, for this section, means requires on grounds that are reasonable in the circumstances. The Bill provides that the offence in section 127V is an integrity offence.

New section 135E (Auditor preparing audit certificate to give notice of contravention) (refer 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 7 days after becoming aware of the matter, the auditor must give the ECQ 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 provides that the offence is an integrity offence.

New section 127AA (Requirement for registered political party to operate dedicated account) (refer 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. 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 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).

New section 127AB (Requirement for relevant third party to operate dedicated account) (refer 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.

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 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).

New section 127BA (Notice of dedicated account) (refer clause 46) applies if:

- an entity becomes a participant in an election, including because any of the following events happen:
    - a registered political party endorses a candidate in the election
    - a person becomes a candidate in the election
    - a third party is registered for the election
    - a third party incurs electoral expenditure for the election to the extent the third party is required, under section 127D, to be registered for the election; or
    - 2 or more candidates become a group of candidates under section 42(3).

Subsection (2) provides that the agent of the participant must give the ECQ a notice, in the approved form, about the participant's dedicated account for the election within 5 business days after the event happens, unless the agent has a reasonable excuse. The maximum penalty for failure to comply is 20 penalty units. Section 127BA(2) is consistent with section 221B(2) of the EA.

Subsection (3) provides that if a required detail of a participant's dedicated account changes, the agent of the participant must give the ECQ a notice about the change, in the approved form, within 5 business days after the change happens, unless the agent has a reasonable

excuse. The maximum penalty for failure to comply is 20 penalty units. Section 127BA(3) is consistent with section 221B(3) of the EA.

New section 116G (Agent's obligation to ensure compliance) (refer clause 28) provides in subsection (1) that the agent of a participant in an election 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 in an election 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 135A (Registered political party must notify endorsement of candidate) (refer clause 52) applies if any of the following events happens:

- a registered political party endorses a person to be a candidate in an election
- if a registered political party notifies the ECQ about the endorsement of a person to be a candidate in an election—the party's endorsement of the person changes before the polling day for the election
- a councillor who was endorsed by a registered political party for the election for which the councillor was elected stops being a member of the party.

The registered officer of the registered political party must give the ECQ written notice, in the approved form, about the event (an *event notice*) within 7 days after the event happens. Failure to comply has a maximum penalty of 40 penalty units. This section is consistent with section 306A of the EA.

New section 31 (Withdrawal of endorsement of candidate) (refer clause 15) provides the requirements for notification by a registered political party of the withdrawal of the endorsement of a candidate. The section applies where a registered political party nominates a person as a candidate for an election under section 27(1)(a) and before the election, the party withdraws the party's endorsement of the person as a candidate. Notification of withdrawal of endorsement of a candidate must be provided to the ECQ by the registered officer of the registered political party in the approved form. A maximum penalty of 40 penalty units applies for failure to comply with section 31(2). The new section is consistent with section 91A of the EA.

New section 112B (Application to unincorporated bodies) (refer 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 that would have constituted the offence.

Section 112B is based on section 141 of the *Taxation Administration Act 2001* and section 638 of the Heavy Vehicle National Law (Queensland) in addition to section 307AB of the EA. 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 an offence in section 112B(5) is a serious integrity offence, in the circumstance where the provision contravened is section 123N(2) (Compliance with expenditure cap generally). The Bill also provides that an 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.

New section 43C (Application of Act to groups of candidates) (refer clause 16) is similar to new section 112B. It provides in subsection (1) that part 6 and part 9, division 5 of the LGEA apply in relation to a group of candidates as if it were a person. This is because under the *Acts Interpretation Act 1954* (sections 4 and 36 and schedule 1) a person includes an individual and a corporation unless a contrary intention appears in an Act. The provision has the effect that a group is treated as if it were a legal entity for the purposes of applying certain provisions of the LGEA.

An offence against a provision of part 6 or part 9, division 5 of the LGEA that, apart from subsection (4), would be committed by a group of candidates is taken to have been committed by each member of the group who:

- authorised or permitted the conduct that would have constituted the offence; or
- was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.

The maximum penalty is the penalty for a contravention of the provision by an individual.

The new section provides clarity for compliance by groups with the requirements of part 6 or part 9, division 5 of the LGEA by addressing liability where the group would otherwise lack legal personality. Safeguards include restricting liability to each member of the group who authorised or permitted the conduct that would have constituted the offence; or was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.

Expansion of existing offences

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 section 194B as amended is a serious integrity offence (refer clauses 6 and 11).

Section 121B (Donor must disclose source of gift or loan) (refer clause 38) is amended to extend its application to an entity that makes a gift to an associated entity. A maximum penalty of 20 penalty units applies. New sections 118AA and 120A (refer clauses 31 and 36, respectively) require associated entities of candidates and groups to give gift and loan returns which include the relevant details as defined in section 109, including details of the source of the gift or loan. While section 205B of the EA (Donor must disclose source of gift or loan) does not apply in relation to gifts and loans to associated entities (notwithstanding that associated entities of candidates are required under section 294 of the EA to give returns that include the relevant particulars of the source of a 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 requirements in current section 122 to the financial controller of an associated entity of a candidate in an election or group of candidates for an election. It also applies the requirements to the agent of a candidate, as a consequence of amendments in the Bill introducing agents for candidates. A maximum penalty of 1 penalty unit applies. The EA does not include an equivalent provision.

New section 122A (Requirement to notify third party of obligation to give return under s118B) (refer clause 40) replaces the references to section 125A in current section 122A with references to section 118B, as a consequence of amendments to section 125A and applies the requirements to the agent of a candidate or agent of a group of candidates. A maximum penalty of 20 penalty units applies.

New section 127B (Payment of amount of electoral expenditure by credit card prohibited) (refer clause 46) extends the requirements in current section 127B, as a consequence of the introduction of dedicated accounts for registered political parties endorsing candidates and for relevant third parties. A person to whom new sections 127AA(7) (Requirement for registered political party to operate dedicated account) and 127AB(7) (Requirement for relevant third party to operate dedicated account) apply must not pay certain amounts by credit card. A maximum penalty of 100 penalty units applies.

The following sections of the LGEA apply to a person required to give a return under part 6 of the LGEA:

- section 195(1) (giving a return within the required time)
- section 195(2) (false or misleading particulars) – section 195(2) is an integrity offence
- section 197 (obtaining information for returns)
- section 198 (further information for incomplete returns)
- section 199 (attempts to commit offences).

As a result of the amendments in the Bill outlined below, the reference to 'person' in the above offence provisions potentially captures a broader range of persons than it currently does. In relation to section 195(2), which is an integrity offence, the range of persons potentially subject to suspension and disqualification is increased.

The Bill provides 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 (refer clause 28, new sections 114, 115, 116A and 116B). The Bill relocates requirements (refer current section 42) about the appointment of an agent of a group (refer clause 28, new sections 116 and 116C).

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

Further, the Bill replaces current part 6, division 4 of the LGEA and provides in part 6, division 4A (new sections 124, 125 and 125A) 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 (refer clause 41).

The Bill expands the definition of 'associated entity' (refer clauses 17 and 58) 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, respectively) and particular returns by these associated entities (new part 6, division 4B) (refer clause 41).

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

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

Recovery

New 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 section 123O (Compliance with expenditure cap—unregistered third party) or any other offence; and
- is not a matter to which a court may have regard in sentencing an offender for an offence against section 123N or section 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 section 123O, to the extent the expenditure exceeds the participant's expenditure cap for the election as mentioned in the section.

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

Section 121C (Recovery of prohibited gifts or loans) (refer 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, from 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.

Reversal of onus of proof – reasonable excuse provisions

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification (section 4(3)(d) of the LSA).

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 negativing the excuse or defence beyond reasonable doubt.[14]

A statute can reverse this general principle.

The 'OQPC Guide to FLPs – Reversal of onus of proof' 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

[14] Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC Guide to FLPs – Reversal of onus of proof* (OQPC Guide), p 3

reasonable excuse. On the other hand, … departments have 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'.[15]

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'.[16]

The Bill (refer clauses 46 and 47) includes the following provisions:

- new section 127BA(2) (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 event happens, unless the agent has a reasonable excuse (maximum penalty - 20 penalty units)
- new section 127BA(3) (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 (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 (consistent with section 305D of the EA), requiring a person to keep a record for 5 years and in a certain way, unless the person has a reasonable excuse (maximum penalty - 20 penalty units).

The effect of these provisions may be to reverse the onus of proof to the defendant.

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'.[17]

The proposed 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 proposed 'reasonable excuse' provisions ensure liability would not be unjustly imposed.

[15] OQPC Guide, p 25
[16] OQPC Guide, p 26
[17] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook), p 36

Multiple processes from a single act

Legislation should not subject a person to more than one court or tribunal process arising out of a single act or omission without sufficient justification.[18]

The Bill includes new section 123P (similar to section 281J of the EA), providing for recovery of unlawful electoral expenditure (refer clause 41). 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.

These amendments are potentially inconsistent with the fundamental legislative principle because they have the effect of subjecting a person to the recovery of a debt in addition to a criminal offence, arising out of a single act by that person.

The amendments are necessary for effective deterrence and are commensurate with the EA. DSDILGP's discussion paper sought feedback from stakeholders about alignment with the recovery provisions in the EA, consistent with the Government's response to recommendation 6 of the Committee report. There was broad support from stakeholders for the proposed expenditure caps scheme.

Imposition of presumed responsibility

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. Unilateral imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification. [19] This also raises questions as to the reasonableness and fairness of the treatment of these individuals, which is a relevant factor in determining whether the proposed legislation has sufficient regard to the rights and liberties of individuals.

Associated entities

The Bill implements the Government's response to recommendation 5 of the Committee report by providing 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 subject to the relevant cap). It also provides that an associated entity uses the dedicated account of the election participant with which it is associated (refer clause 26, new sections 112C, 112D and 112E).

[18] OQPC Notebook, p 129
[19] OQPC Notebook, p 117

The amendments also adopt 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 (refer clauses 17 and 58). This means the LGEA will regulate entities associated with registered political parties that endorse a candidate, entities associated with candidates and entities associated with groups of candidates, rather than only entities associated with political parties as is currently the case under the LGEA.

These provisions are potentially inconsistent with the fundamental legislative principle because they make a person responsible for actions of others over which they may have had no control. The treatment of expenditure in this way is necessary to ensure that the expenditure caps cannot be avoided by candidates, groups and political parties using associated entities to incur electoral expenditure which is not subject to the relevant cap. Safeguards are provided in the definitions of 'associated entity' of a political party, candidate or group of candidates which incorporate elements of control of the entity by the election participant such that the election participant is unlikely to be unaware of spending by the associated entity as defined.

Councillors not contesting election

The Bill provides in new section 123T (refer clause 41) for certain circumstances where expenditure is incurred by a councillor during the capped expenditure period and the councillor subsequently does not contest the election.

Section 123T is consistent with section 281K of the EA and provides that if a councillor is a member of a registered political party that endorses a candidate for election and either announces or publicly indicates an intention not to be a candidate before the cut-off day for nominations for an election or does not nominate, electoral expenditure incurred by or for the councillor during the capped expenditure period is taken to have been incurred by or for the registered political party.

However, this applies only to a councillor who was endorsed by the registered political party for the election in which the councillor was elected. The provision also applies only to electoral expenditure incurred while the councillor remains a member of the political party (and while the party endorses a candidate in the election and therefore is subject to an expenditure cap as a registered political party that endorses a candidate in an election).

These provisions are potentially inconsistent with the fundamental legislative principle because they make a person responsible for actions of others over which they may have had no control. The provisions are necessary to prevent registered political parties from allowing elected councillors not contesting an election to incur expenditure that benefits the party but is not appropriately attributed. Further, the section provides a safeguard by providing that the registered political party, a candidate endorsed by the party for the election or a person acting with the authority of the party or candidate does not commit an offence against section 123N if:

- the party, candidate or person incurs electoral expenditure for the election; and
- the expenditure exceeds the party's expenditure cap for the election, including any expenditure cap shared between the party and the candidate for the election, because it is added to aggregated expenditure (i.e. electoral expenditure taken to be incurred by or for the party under section 123T(2)); and

- the party, candidate or person did not know, and could not reasonably have known, about the aggregated expenditure being incurred.

Agents – responsibility for action in absence of agent

The proposed amendments will require the appointment and registration of an agent by a registered political party and a third party who is not an individual and will maintain the existing requirement for appointment of an agent of a group of candidates. In circumstances where the entity does not have an agent, the amendments (new section 116F) (refer clause 28) will continue existing requirements (current section 112B of the LGEA) that each member of the executive committee of the registered political party (or member of the group in the case of a group of candidates) is responsible for the obligations of the agent as if they applied to the member of the executive committee (or member of the group in the case of a group). The Bill extends this to agents of third parties where the third party is not an individual.

These provisions are potentially inconsistent with the fundamental legislative principle because they make a person responsible for actions of others over which they may have had no control. It is anticipated that the circumstances and timeframe in which members of an executive committee or members of a group of candidates will be responsible would be limited. It is a practical necessity to provide for this arrangement to ensure that failure to comply with obligations on an agent can be enforced and remove the incentive to avoid appointing an agent in order to avoid responsibility for complying with an agent's obligations. The amendment is consistent with section 213 of the EA.

Unincorporated bodies – executive committee

As outlined under *Proportion and relevance – enforcement* above, new section 112B (Application to unincorporated bodies) (refer 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 obligation or liability that, apart from subsection (3), would be imposed under part 6 or part 9, division 5 on the unincorporated body, is imposed on each member of the executive committee (however described) of the body, but may be discharged by any of the members of the executive committee. 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 that would have constituted the offence.

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). 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) (refer clauses 6 and 11).

These provisions are potentially inconsistent with the fundamental legislative principle. 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.

Groups of candidates

As outlined above under *Proportion and relevance – enforcement*, new section 43C (Application of Act to groups of candidates) (refer clause 16) provides in subsection (1) that part 6 and part 9, division 5 of the LGEA apply in relation to a group of candidates as if it were a person.

An obligation or liability that, apart from subsection (2), would be imposed under part 6 or part 9, division 5 on a group of candidates, is imposed on each member of the group, but may be discharged by any of the members of the group. An amount that, apart from subsection (3), would be payable under part 6 or part 9, division 5 by a group of candidates is jointly and severally payable by the members of the group.

An offence against a provision of part 6 or part 9, division 5 that, apart from subsection (4), would be committed by a group of candidates is taken to have been committed by each member of the group who:

- authorised or permitted the conduct that would have constituted the offence; or
- was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.

The maximum penalty is the penalty for a contravention of the provision by an individual.

The new section is potentially inconsistent with the fundamental legislative principle, however it provides clarity for compliance by groups with the requirements of part 6 or part 9, division 5 of the LGEA by addressing liability where the group would otherwise lack legal personality. Safeguards include restricting liability to each member of the group who authorised or permitted the conduct that would have constituted the offence; or was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence.

Further, the section is consistent with new section 112B (Application to unincorporated bodies) of the LGEA (clause 26) which takes a similar approach to the members of the executive committee of an unincorporated body. Section 112B is addressed above under *Unincorporated bodies – executive committee* and is modelled on section 141 of the *Taxation Administration Act 2001* and section 638 of the Heavy Vehicle National Law (Queensland).

Human rights

The amendments impact on a range of human rights including freedom of movement, freedom of expression, freedom of association, taking part in public life, property rights, privacy and reputation, right to liberty and rights in criminal proceedings. These impacts are addressed in the Statement of Compatibility.

Institution of Parliament

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the LSA).

Delegation of legislative power

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (section 4(4)(a) of the LSA) and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(b) of the LSA).

Regulation

For consistency with the requirements for State elections, the Bill provides that a regulation may prescribe the following matters:

- meaning of 'electoral expenditure' (section 109A of the LGEA, refer clause 24) – can include expenditure of another kind prescribed by regulation to be a kind of electoral expenditure; does not include expenditure of a kind prescribed by regulation not to be a kind of electoral expenditure (aligns with section 199 of the EA)
- meaning of 'gifted' for electoral expenditure (section 109C of the LGEA, refer clause 24) - an amount of electoral expenditure is gifted to a participant in an election if 'another circumstance prescribed by regulation happens in relation to the expenditure' (aligns with section 200B of the EA)
- meaning of 'value' of a gift (section 108 of the LGEA, refer clause 23) - the value of a gift of property other than money is, if a regulation prescribes principles for deciding the value of property, the value decided under the principles. The value of a gift of the provision of a service is, if a regulation prescribes principles for deciding the amount that would reasonably be charged for the service, the amount decided under the principles (aligns with section 201B of the EA)
- when electoral expenditure is incurred (section 109E of the LGEA, refer clause 24) - expenditure of another kind (i.e. other than on advertising or on the production and distribution of election material) is incurred at the time prescribed by regulation (aligns with section 281 of the EA)
- electoral expenditure incurred for another election participant (section 123U of the LGEA, refer clause 41) - the recipient of gifted electoral expenditure is taken to have incurred electoral expenditure if another circumstance prescribed by regulation happens in relation to the expenditure being incurred (aligns with section 281A of the EA)
- qualification of auditors (new definition of 'auditor' in section 106 of the LGEA (refer clause 17) and proposed amendment of the LGER consistent with section 197 of the EA and section 6 of the ER)
- details for an application for third party registration (section 127F of the LGEA (refer clause 47) and proposed amendments to the LGER) - a third party that intends to incur electoral expenditure for an election may apply to the ECQ for registration. The application must include the details prescribed by regulation for the application (consistent with section 299 of the EA and section 11A of the ER)
- records to be kept:

  - meaning of 'prescribed matter' for record keeping purposes (section 127M of the LGEA (refer clause 47) and proposed new provisions in the LGER) – includes another matter prescribed by regulation to be a prescribed matter in relation to a relevant entity other than a third party (subsection (1)) and to a third party (subsection (2)) (aligns with section 305AA of the EA)
  - records to be kept by relevant entities (section 127N of the LGEA, refer clause 47) – a relevant entity must make a record about each prescribed matter that includes the information required by regulation to be included in the record (aligns with section 305AB of the EA)
  - records to be kept by agents of participants (section 127O of the LGEA, refer clause 47) - includes information required by regulation to be included in the record (aligns with section 305AC of the EA)
  - records to be kept about advertisements or other relevant material (section 127P of the LGEA, refer clause 47) – the record must contain other details about the advertisement or other relevant material, or its distribution, publication or broadcast, required by regulation (aligns with section 305A of the EA)
- disclosure of amounts by associated entities (section 125G(2) of the LGEA, refer clause 41) - the financial controller of an associated entity must, within 8 weeks after the end of the reporting period, give the ECQ a return in the approved form stating a range of matters, including any other information prescribed by regulation (consistent with section 296 of the EA)
- section 106 of the LGEA provides that 'disclosure deadline' for a return means the day or time prescribed by regulation for the giving of the return. The Bill provides (sections 118AA and 120A, refer clauses 31 and 36, respectively) for gift and loan returns by associated entities of candidates and groups on or before the disclosure deadline for the return (consistent with section 294 of the EA and section 10A of the ER). The effect of the amendments is to extend the regulation-making power to apply in relation to these new returns. Amendments to the LGER will be proposed to provide for the disclosure deadline.

Matters for which the State system does not provide include the following:

- Changes to capped expenditure period and 'relevant day' for deciding number of enrolled electors

Section 23(1) and (2) of the LGEA provide that a quadrennial election must be held every fourth year after 2012, on the last Saturday in March. Section 23(3) of the LGEA provides that a regulation may fix a different day, which must be a Saturday, for a quadrennial election for a particular year. The Bill provides (new section 123A, refer clause 41) that where a regulation fixes a day for a quadrennial election under section 23(3), the capped expenditure period for the quadrennial election starts on a day prescribed by regulation. Further, in this event, the 'relevant day' for the purposes of deciding the number of enrolled electors for the election is a day prescribed by regulation (refer new section 123S in clause 41).

- Local government changes - number of enrolled electors

Chapter 2 part 2 of the LGA is about the number of electors that are to be in each division of a local government area, to ensure democratic representation. Under section 15 of the LGA each division of a local government area must have a 'reasonable proportion of electors' for

each councillor elected, or to be elected, for the division. (Section 17 of the COBA is in similar terms for Brisbane wards.) To determine the quota, the ECQ divides the total number of enrolled electors in a local government area by the number of councillors (excluding the mayor). A tolerance of either 10% or 20% is allowed depending on the number of electors.

Under section 16 of the LGA a local government must, no later than 1 March in the year before the year of the quadrennial elections:

(a) review whether each division of its local government area has a reasonable proportion of electors for each councillor elected for the division; and
(b) give the ECQ and the Minister notice of the results of the review.

Chapter 2, part 3 of the LGA provide for the process for assessing and making a local government change. The Local Government Change Commission (Change Commission) established under section 22 of the LGA conducts the assessments.

The types of assessments generally conducted by the Change Commission include:

- divisional boundary reviews - assessing the internal boundaries of a divided council
- external boundary review - assessing the common boundaries between councils
- electoral arrangement review - assessing whether a council is divided, undivided, the number of councillors, council name or classification (city, shire, region, town) and other such changes.

For the purposes of the electoral expenditure caps scheme the Bill (refer clause 41, new sections 123R and 123S) provides for the ECQ to make and publish a decision about the number of enrolled electors and the corresponding expenditure caps per local government area or division, prior to commencement of the capped expenditure period for the quadrennial elections. (Similar provisions will apply for by-elections and fresh elections). This process will not be applicable to Brisbane City Council as the caps are fixed amounts.

As the Bill provides for the 'relevant day' for the determination to be 1 July in the year prior to the quadrennial election, it also provides for the possibility that the number of enrolled electors might subsequently change as part of the divisional boundary review process. For this reason and to provide certainty, for divided councils other than Brisbane, the number is to be determined (refer section 123S) based on an average enrolment, rather than the actual number, to account for subsequent changes to divisions 'out of quota.' (Refer above, *Deciding elector numbers*.)

Further, the Bill allows for a regulation to address issues raised by local government changes. Section 20 of the LGA provides for implementation of the Change Commission's recommendation under a regulation and provides that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change. The Bill amends section 20 of the LGA (refer clause 8) to also provide for matters in relation to expenditure caps and disclosure of gifts, loans and electoral expenditure under part 4, division 2, subdivision 3, part 6, or part 9, division 5 of the LGEA.

- Disclosure periods

Section 106A(4) of the LGEA provides that a regulation may prescribe another day on which a disclosure period mentioned in subsection (1) (disclosure period for a candidate) and (3) (disclosure period for a group of candidates and certain third parties) starts or ends. The Bill

amends section 106A to also provide for a disclosure period for registered political parties that endorse a candidate in the election, registered third parties or third parties required to be registered, and associated entities. The Bill amends section 106A(4) (refer clause 19) with the effect that a regulation may also prescribe another day on which the new disclosure periods start and end. This expands the current regulation-making power.

It is considered appropriate to prescribe the range of matters outlined above by regulation for consistency with the State electoral legislation where appropriate and to provide the necessary flexibility to implement the new scheme. Further, a regulation when made will sufficiently subject the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly.

ECQ waiver of audit certificate

Clause 52 of the Bill inserts new section 135D (Audit certificates to accompany particular returns) which provides for certain returns to be accompanied by a certificate from an auditor. These are summary expenditure returns under section 125 about electoral expenditure incurred by a registered political party that endorsed a candidate in an election; or periodic returns under section 125G by associated entities of candidates and groups about amounts received, paid and outstanding.

Section 135D(3) provides that the ECQ may waive compliance with the requirement to give an audit certificate if it considers the cost of compliance with the requirement would be unreasonable. This potentially breaches the fundamental legislative principle by delegating the legislative power to the ECQ. It is considered the departure is justified as it is consistent with State electoral requirements and allows flexibility for the ECQ to consider requests for waiver on a case-by-case basis, taking all relevant circumstances into account. It should be noted that the ECQ currently publishes on its website *Assessing Requests for Audit Certificate Waiver Policy and Procedure* in relation to the equivalent section of the EA (section 310(3)). The Policy sets out Guiding Principles for granting a waiver under the State electoral system and notes that when individual decisions are made, regard will be given to the relevant human rights (e.g. the right to take part in public life).

Further, the exercise of the delegated legislative power is subject to Parliamentary scrutiny, as the ECQ is required under section 18 of the EA to report annually to the Minister about its operations. Section 18(3) requires that the report be laid before the Legislative Assembly.

<u>Constitutional validity - implied freedom of political communication</u>

The institution of Parliament is enhanced by the enactment of effective laws. Laws purportedly enacted by Parliament that are invalid call into question the authority of Parliament.[20]

In the High Court of Australia case of *LibertyWorks Inc v Commonwealth of Australia* [2021] HCA 18, it was noted that the constitutional basis for the implication in the Constitution of a freedom of communication on matters of politics and government is well settled. The freedom is recognised as necessarily implied because the great underlying principle of the Constitution is that citizens are to share equally in political power, and because it is only by a

[20] OQPC Notebook, p 171

freedom to communicate on these matters that citizens may exercise a free and informed choice as electors. It follows that a free flow of communication is necessary to the maintenance of the system of representative government for which the Constitution provides. It was also noted that the implied freedom of political communication operates as a constitutional restriction on legislative power and should not be understood to be a personal right.[21]

The expenditure caps scheme potentially impermissibly infringes the implied freedom. The State will have the onus of justifying the burden imposed on the implied freedom in any challenge to the constitutional validity of the scheme. It is considered that the burden is justified for the following reasons.

The CCC noted in the Belcarra report that:

> 'Clearly, there are diverse views about whether donation and expenditure caps are appropriate, useful and practical ways of promoting equity in elections. In the context of Queensland local government, the CCC is not persuaded that there is sufficient justification to recommend the introduction of donation caps. However, the CCC believes there would be value in capping expenditure in future local government elections, consistent with the recent calls from the LGAQ…. the CCC remains of the view that the uneven financial competition observed in the 2016 local government elections means further consideration of expenditure caps at this level of government is warranted'.[22]

The Committee reviewed the background to its subsequent inquiry, noting:

> 'Equity in elections is a fundamental principle of Australia's democratic system of government…. It is… recognised that all voters should have a fair opportunity to participate in elections, including a fair and equal chance of nomination and election as a candidate. In this respect there have been growing concerns about the shortcomings of our regulatory system, and particularly the lack of restrictions on electoral campaign funding and spending….
>
> On the one hand, donations or electoral spending are recognised as a form of political participation and can be seen as an expression of 'democratic will'. On the other, however, there are concerns that wealth can purchase a dominant share of the political discourse (and by extension, votes), with implications for equity and for the breadth of options and viewpoints presented and discussed'.[23]

The Committee also reviewed the findings of the CCC in the Belcarra report, noting that the CCC had concluded that:

> 'prospective candidates can be deterred from running for council in the first instance, and even if they do contest, may be unable to properly compete with well-funded candidates, with the effect of limiting the diversity, and potentially also the quality of candidates who contest local government elections'.[24]

[21] *LibertyWorks Inc v Commonwealth of Australia* [2021] HCA 18 at [44]
[22] CCC, Belcarra report, p 47
[23] Economics and Governance Committee, Committee report, p4
[24] Economics and Governance Committee, Committee report, p6

The Committee further noted that since the publication of the Belcarra report, the LGAQ had continued to advocate for the introduction of electoral spending caps for local government elections in Queensland and that there was broad support among submitters to the Committee inquiry for the introduction of expenditure caps.[25]

The purpose of the amendments in the Bill is to address the issue identified in the Belcarra report of uneven funding in local government elections by limiting the expenditure of each candidate, group of candidates, registered political party endorsing a candidate in the election, or third party, to a fixed amount. The purpose is also to prevent the drowning out of voices by the distorting influence of money.

The purposes of the LGEA outlined in section 3 are to:

- ensure the transparent conduct of elections of councillors of Queensland's local governments
- ensure and reinforce integrity in Queensland's local governments including, for example, by minimising the risk of corruption in relation to the election of councillors and the good governance of and by local government.

The Bill ensures consistency between the purposes of the amendments and the purposes of the LGEA by amending section 3 (refer clause 13). The amendments provide that the purposes of the LGEA are also to ensure and reinforce the transparent and 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.

Inequitable conduct of an election includes 'considerably uneven financial competition between candidates' (refer Belcarra report, page 43). The CCC also noted that 'good government requires elections to be contested on a level playing field, where everyone is able to participate equally in the democratic process'.[26]

As outlined above under 'Policy objectives and the reasons for them', the level of the caps was calculated after review of the following:

- the expenditure caps model previously proposed by the former Department of Local Government, Racing and Multicultural Affairs in March 2019
- the model proposed by the LGAQ in its submission to the Committee inquiry
- the models operating at the local government level in New South Wales, Tasmania and New Zealand.

The expenditure cap levels are intended to take into account the significant variability in campaigning practices and spending throughout Queensland and the significant differences in the number of enrolled electors across local government areas. In designing the expenditure cap amounts, the use of a combination of fixed or flag-fall amounts and variable amounts per enrolled elector recognise both the diseconomies of scale faced by candidates in remote and rural areas and the economies of scale that benefit candidates in urban and densely populated areas.

[25] Economics and Governance Committee, Committee report, p 7
[26] CCC, Belcarra report, p 41

As outlined below under 'Consultation', in response to DSDILGP's discussion paper there was mixed feedback on the proposed capped expenditure period and the proposed caps, with some stakeholders wanting lower caps and/or longer capped expenditure periods, and other stakeholders wanting higher caps and/or shorter capped expenditure periods.

In response to stakeholder feedback, the proposal in the discussion paper to allow registered third parties to pool expenditure across local government areas was removed, and Brisbane City Council councillor and mayoral candidates caps were increased.

The Bill introduces 'pooling provisions', i.e. 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 group's or registered political party's expenditure cap is the sum of the amount that would be the expenditure cap for each candidate if each candidate were an individual candidate for 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 in relation to registered political parties).

While it may be argued that there is a potential competitive disadvantage to unaligned candidates, it is important to emphasise that the purpose of the pooling provisions is consistent with the purpose of the expenditure caps scheme generally, which is to 'level the playing field'. More specifically, the provisions form part of the broader structure of the LGEA under which joint campaigns by parties or groups are permitted, with the requirement that parties and groups operate dedicated accounts.

The purpose of the pooling provisions, operating together with the broader provisions concerning group or party campaigning and dedicated accounts, 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. The pooling provisions are also consistent with the position expressed in the Committee report that 'caps for groups of candidates and political parties should be established on the basis of some form of aggregation method'.[27]

An upper limit also 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. These provisions support the validity of the scheme by reducing the potential burden caused by disadvantaging unaligned candidates.

Consultation

In December 2019, the Committee invited written submissions to the inquiry and published an issues paper which included a comparative summary of expenditure cap models in other

[27] Committee report, p 35

jurisdictions and key issues for consideration. Eleven submissions were received from stakeholders including the ECQ, the LGAQ, the Queensland Law Society, the Queensland Human Rights Commission, local governments, and a number of residents groups. The Committee also conducted a public hearing for the Integrity Act in January 2020 (where local government expenditure caps inquiry matters were canvassed) and held a hearing for the inquiry on 23 April 2020. Representatives of the LGAQ and four residents' and community organisations were witnesses at the April 2020 public hearing.

There was broad support amongst submitters to the Committee's inquiry for the introduction of expenditure caps for Queensland local government elections, with the LGAQ noting its historical advocacy for an expenditure caps regulatory scheme.

DSDILGP consulted with the ECQ on the implementation of the expenditure caps scheme. .DSDILGP also released the 'Local government electoral expenditure caps discussion paper' for public consultation between 19 April 2022 and 27 May 2022. The discussion paper was provided directly to all Queensland local government councillors and mayors, the LGAQ and Local Government Managers Australia Queensland. DSDILGP received 22 submissions in response to the discussion paper, with stakeholders also generally supportive of introducing an expenditure caps scheme for local government.

There was general support for the registration of third parties and separate dedicated accounts for registered third parties and registered political parties. There was mixed feedback on the proposed capped expenditure period and the proposed caps, with some stakeholders wanting lower caps and/or longer capped expenditure periods, and other stakeholders wanting higher caps and/or shorter capped expenditure periods.

In response to stakeholder feedback, the proposal to allow registered third parties to pool expenditure across local government areas was removed, and Brisbane City Council councillor and mayoral candidates' caps were increased.

In September 2022, a draft exposure Bill incorporating the proposed amendments to the LGEA, the LGA and the COBA was released for consultation with the LGAQ and ECQ. There was general support for the scheme.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that this Act may be cited as the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022*.

Clause 2 Commencement

Clause 2 provides that this Act commences on a day to be fixed by proclamation.

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 Act amended

Clause 3 states that this part amends the *City of Brisbane Act 2010*.

Clause 4 Amendment of s 174 (Failure to give particular returns under Local Government Electoral Act 2011)

Section 174 of the *City of Brisbane Act 2010* provides that if an elected councillor fails to give a summary return within the required period or a longer period allowed by the Minister, the person ceases to be a councillor. However, where the failure is by the agent of a group of candidates of which the councillor was a member or by the agent of a political party that endorsed the councillor as a candidate, the provisions allow the councillor further time to give the return. As the Bill provides for appointment of an agent of a candidate, *clause 4* amends section 174(2)(a) of the *City of Brisbane Act 2010* to also apply where an agent was required to give the summary return for a person who is elected as a councillor. This clause also updates the section number under the definition *summary return* in section 174(6)(c) as a consequence of amendments in the Bill to the definition of 'loan'.

Clause 5 Insertion of new ch 8, pt 12 (Transitional provision for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022)

Clause 5 inserts a new part 12 (Transitional provision for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022) in chapter 8 of the *City of Brisbane Act 2010*. This incorporates a new section 299 (Application of s 174 - elections held on or after introduction day and before 2024 quadrennial election) which states that section 174 as in force immediately before the commencement applies in relation to an election held on or after introduction day and before the 2024 quadrennial election, as if the amending Act had not been enacted. It also provides definitions of *2024 quadrennial election*, *amending Act*, and *introduction day*.

Clause 6 Amendment of sch 1 (Serious integrity offences and integrity offences)

Clause 6 makes the following amendments to schedule 1, part 1 of the *City of Brisbane Act 2010* which prescribes certain offences as serious integrity offences:

- under the heading 'Electoral Act', the entry for section 307B(1) of the *Electoral Act 1992* is updated by adding 'or electoral expenditure'
- under the heading 'Local Government Electoral Act':
    - new sections are inserted:
      112B(5) – Application to unincorporated bodies – circumstance – the provision contravened is section 123N(2)
      123N(2) – Compliance with expenditure cap generally
    - the entry for section 194B(1) is amended to add 'or electoral expenditure' as a result of amendments to section 194B in the Bill.

Clause 6 also amends schedule 1, part 2 of the *City of Brisbane Act 2010* which prescribes certain offences as integrity offences. The following new sections of the *Local Government Electoral Act 2011* are inserted under the heading 'Local Government Electoral Act':

- 112B(5) – Application to unincorporated bodies – circumstance – the provision contravened is section 123O(2)
- 116G(1) or (2) – Agent's obligation to ensure compliance
- 123O(2) – Compliance with expenditure cap – unregistered third party
- 127AA(7) – Requirement for registered political party to operate dedicated account
- 127AB(7) – Requirement for relevant third party to operate dedicated account
- 127V(2) – Participant in election must assist appointed auditor
- 135E(2) – Auditor preparing audit certificate to give notice of contravention.

Part 3 Amendment of Local Government Act 2009

Clause 7 Act amended

Clause 7 states that this part amends the *Local Government Act 2009*.

Clause 8 Amendment of s 20 (Implementation)

Clause 8 amends section 20 of the *Local Government Act 2009*. A 'local government change', for example a change to a boundary or division of a local government area, may impact on the number of enrolled electors for a local government area or division. Section 20 currently provides that the Governor in Council may implement a recommendation of the Local Government Change Commission under a regulation, and that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change. *Clause 8* amends section 20(3)(a) to state further examples of what the regulation may provide for, including matters in relation to expenditure caps and disclosure of gifts, loans and expenditure under the *Local Government Electoral Act 2011*, part 4, division 2, subdivision 3, part 6, or part 9, division 5.

Clause 9 Amendment of s 172 (Failure to give particular returns under Local Government Electoral Act)

Section 172 of the *Local Government Act 2009* provides that if an elected councillor fails to give a summary return within the required period or a longer period allowed by the Minister, the person ceases to be a councillor. However, where the failure is by the agent of a group of candidates of which the councillor was a member or by the agent of a political party that endorsed the councillor as a candidate, the provision allows the councillor further time to give the return. As the Bill provides for appointment of an agent of a candidate, *clause 9* amends section 172(2)(a) of the *Local Government Act 2009* to also apply where an agent was required to give the summary return for a person who is elected as a councillor. This clause also updates the section number under the definition *summary return* in section 172(6)(c) as a consequence of amendments in the Bill to the definition of 'loan'.

Clause 10 Insertion of new ch 9, pt 17 (Transitional provision for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022)

Clause 10 inserts a new part 17 (Transitional provision for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022) in chapter 9 of the *Local Government Act 2009*. This incorporates a new section 342 (Application of s 172 - elections held on or after introduction day and before 2024 quadrennial election) which states that section 172 as in force immediately before the commencement applies in relation to an election held on or after introduction day and before the 2024 quadrennial election, as if the amending Act had not been enacted. It also provides definitions of *2024 quadrennial election*, *amending Act*, and *introduction day*.

Clause 11 Amendment of sch 1 (Serious integrity offences and integrity offences)

Clause 11 makes the following amendments to schedule 1, part 1, of the *Local Government Act 2009* which prescribes certain offences as serious integrity offences:

- under the heading 'Electoral Act', the entry for section 307B(1) of the *Electoral Act 1992* is updated by adding 'or electoral expenditure'
- under the heading 'Local Government Electoral Act':
    - new sections are inserted:
      112B(5) – Application to unincorporated bodies circumstance – the provision contravened is section 123N(2)
      123N(2) – Compliance with expenditure cap generally
    - the entry for section 194B(1) is amended to add 'or electoral expenditure' as a result of amendments to section 194B in the Bill.

Clause 11 also amends schedule 1, part 2, of the *Local Government Act 2009* which prescribes certain offences as integrity offences. The following new sections of the *Local Government Electoral Act 2011* are inserted under the heading 'Local Government Electoral Act':

- 112B(5) – Application to unincorporated bodies – circumstance – the provision contravened is section 123O(2)
- 116G(1) or (2) – Agent's obligation to ensure compliance
- 123O(2) – Compliance with expenditure cap – unregistered third party

- 127AA(7) – Requirement for registered political party to operate dedicated account
- 127AB(7) – Requirement for relevant third party to operate dedicated account
- 127V(2) – Participant in election must assist appointed auditor
- 135E(2) – Auditor preparing audit certificate to give notice of contravention.

Part 4 Amendment of Local Government Electoral Act 2011

Clause 12 Act amended

Clause 12 states that this part amends the *Local Government Electoral Act 2011*.

Clause 13 Amendment of s 3 (Purposes of Act)

Clause 13 amends section 3(a) of the *Local Government Electoral Act 2011* 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 in the electoral process.

The amendment to section 3 ensures consistency between the purposes of the *Local Government Electoral Act 2011* and the purposes of the amendments to implement the local government electoral expenditure caps scheme.

Clause 14 Amendment of s 27 (Making and certification of nomination)

Clause 14 amends section 27(5) to italicise and indicate that the term *properly nominated* is a defined term.

Section 27(5) is further amended to insert a new sub-section (ba) to state that section 31(3), relating to the notification of withdrawal of endorsement to the electoral commission, does not apply to the nomination. Section 27(5)(ba) to (d) is renumbered section 27(5)(c) to (e).

Clause 15 Insertion of new s 31

Clause 15 inserts a new section 31 (Withdrawal of endorsement of candidate) to provide the requirements for notification by a registered political party of the withdrawal of the endorsement of a candidate. The section applies where a political party nominates a person as a candidate for an election under section 27(1)(a) and before the election, the party withdraws the party's endorsement of the person as a candidate.

Notification of withdrawal of endorsement of a candidate must be provided to the electoral commission by the registered officer of the registered political party in the approved form. A maximum penalty of 40 penalty units applies for failure to comply with section 31(2).

If the notification is given to the electoral commission before noon on the cut off day for nomination of candidates, the nomination of the person is of no effect. If the notification is given to the electoral commission on or after that time, the nomination is not affected and ballot papers will be taken to have complied with section 55 even if the name, or an abbreviation of the name, of the party is printed adjacent to the candidate's name on the

ballot paper. The electoral commission must give the candidate a notice about the contents, time of notification and effect of a notification received under this section.

The new section is consistent with section 91A of the *Electoral Act 1992*.

Clause 16 Replacement of pt 4, div 2, sdiv 3 (Membership and agents for group of candidates)

Clause 16 replaces part 4, division 2, subdivision 3 with new part 4, division 2, subdivision 3 (Creation and membership of group of candidates).

The amendments relocate and amend requirements for agents of groups of candidates from part 4, division 2 subdivision 3 to new part 6 division 2. New section 116 provides that a group of candidates in an election must appoint a person to be the agent of the group, for part 6, for the election. New section 116C provides requirements for registration of an agent. The requirements in current section 43 are replaced by the requirements in new section 116D, which provides that the electoral commission must keep a register of agents and provides requirements for the register.

The amendments create greater certainty around the formation of a group, changes to membership of a group, winding up the group, requirements for membership, application of the *Local Government Electoral Act 2011* to groups, validation of the ballot paper, and application of disclosure provisions on change of membership or winding up the group. This includes treating a group as if it were a person for certain purposes. These provisions are needed to ensure clarity for applying the expenditure caps scheme to current, former and new members of a group.

Section 41 (Purpose of subdivision) is a new provision to specify that the purpose of part 4, division 2, subdivision 3 is to allow candidates to engage in group campaign activities for a particular election by being members of a group of candidates for that election and to treat the group, for certain purposes, as if it were a person.

Section 42 (Creation of group of candidates) provides that if two or more candidates in an election propose to engage in group campaign activities for the election, the candidates may form a group for the purposes of the *Local Government Electoral Act 2011* for the election and give the electoral commission written notice of the membership of the group. As soon as practicable after the electoral commission receives the notice, the electoral commission must publish a copy of the notice, from which certain information has been deleted, on the electoral commission's website; and in other ways the electoral commission considers appropriate. The group becomes a 'group of candidates' for the election when the electoral commission publishes the notice on the electoral commission's website. This is a change from the current definition of a group of candidates (refer schedule 2) which relates to the giving of the record of membership to the electoral commission rather than the publishing of the record of membership. The notice may only be given during the period that starts, if the most recent election in relation to the local government's area was a quadrennial election, 30 days after the polling day for the quadrennial election; or otherwise, the day after the polling day for the most recent election in relation to the local government's area; and ends immediately before the polling day for the election. This is a change from the current requirement in section 41(2)(b) for the period to end at noon on the last day for receipt of

nominations. The requirements for the notice are consistent with current requirements under sections 41 and 42 of the LGEA.

Section 43 (Changing membership of group of candidates) provides that a group of candidates for an election may change the membership of the group at any time before the polling day for the election and, by its agent, give the electoral commission written notice of the proposed change to the membership of the group. Despite section 42(3), when the electoral commission publishes the notice on the electoral commission's website the change to the membership of the group of candidates takes effect and the group is taken to be comprised of the candidates in accordance with the change to the membership of the group as stated in the notice. The section outlines the requirements for the notice and states that the change to the membership of the group must not result in only one candidate being a member of the group.

Section 43A (Winding up group of candidates) provides that the members of a group of candidates for an election may wind up the group at any time before the polling day for the election; and by its agent, give the electoral commission written notice of the proposed winding up. The electoral commission must publish the notice. On publication the group stops being a group. The section provides the requirements for the notice.

Section 43B (Requirements for membership of group of candidates) provides that members of a group can only be members of one group and that only one member may be a candidate for mayor (both current requirements under current section 41). It provides for new requirements that a group cannot include endorsed candidates or candidates across local government areas.

Section 43C (Application of Act to groups of candidates) is similar to new section 112B (Application to unincorporated bodies) (refer clause 26) which treats unincorporated bodies as if they are a 'person'. New section 43C provides that part 6 and part 9, division 5 of the *Local Government Electoral Act 2011* apply in relation to a group of candidates as if it were a person. An obligation or liability that, apart from subsection (2), would be imposed under part 6 or part 9, division 5 on a group of candidates, is imposed on each member of the group, but may be discharged by any of the members of the group. An amount that, apart from subsection (3), would be payable under part 6 or part 9, division 5 by a group of candidates is jointly and severally payable by the members of the group. An offence against a provision of part 6 or part 9, division 5 that, apart from subsection (4), would be committed by a group of candidates is taken to have been committed by each member of the group who authorised or permitted the conduct that would have constituted the offence; or was, directly or indirectly, knowingly concerned in the conduct that would have constituted the offence. The maximum penalty is the penalty for a contravention of the provision by an individual.

Section 43D (Validation of ballot paper) provides that a ballot paper is taken to comply with current section 55 (Ballot papers) if a notice is given to the electoral commission under sections 42, 43 or 43A after noon on the nomination day, whether or not the name of the group is printed adjacent to a candidate's name on the ballot paper (refer section 55(1)(f)).

Section 43E (Application of return provisions – candidate stops being member of group of candidates) applies if a candidate stops being a member of a group of candidates because a change to the membership of the group takes effect; and the group has not been wound up. It

provides that sections 118(4) and (7), 120(6), (8) and (9) and 125 apply in relation to the group of candidates as if

- a reference in section 118(4) to a member of a group of candidates receiving a gift, or not receiving any gifts, included a reference to the candidate mentioned in subsection (1)(a) receiving a gift, or not receiving any gifts, when the candidate was a member of the group; and
- a reference in section 118(7) or 120(8) or (9) to a member of a group of candidates included a reference to the candidate mentioned in subsection (1)(a); and
- a reference in section 120(6) to a group of candidates receiving a loan, or not receiving any loans, included a reference to the candidate mentioned in subsection (1)(a) receiving a loan, or not receiving any loans, when the candidate was a member of the group; and
- a reference in section 125 to electoral expenditure incurred, or not incurred, by a group of candidates included a reference to electoral expenditure incurred, or not incurred, by the candidate mentioned in subsection (1)(a) when the candidate was a member of the group.

Section 43F (Application of return provisions – group of candidates that has been wound up) applies if a group of candidates for an election is wound up under new section 43A (a *former group*). It addresses disclosure requirements under sections 118, 120 and 125 and requirements in relation to the group's dedicated account under section 127.

Clause 17 Amendment of s 106 (Definitions for part)

Clause 17 provides definitions of 'agent', 'associated entity', 'auditor', 'bank statement', 'broadcaster', 'campaign purpose', 'capped expenditure period', 'disclosure period', 'electoral expenditure', 'endorsed', 'financial controller', 'gifted', 'individual candidate', 'participant', 'registered', 'register of agents', 'register of third parties', 'related political party', 'relevant material', 'relevant third party', 'reporting period' and 'sponsorship arrangement'.

For consistency with the *Electoral Act 1992*, the definition of 'loan' is amended to exclude loans from financial institutions.

Amendments to the definition of 'third party' provide clarity for applying the new electoral expenditure caps scheme to election participants (defined in section 106AB). The amended definition also reflects the expanded definition of 'associated entity' which applies in relation to registered political parties that endorse candidates, candidates and groups of candidates.

Clause 18 Insertion of new ss 106AA and 106AB

Clause 18 inserts new sections 106AA and 106AB.

Section 106AA (When candidate is *individual candidate*) provides that 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.

Without limiting section 106AA(1), a candidate in an election may be an individual candidate during 1 or more parts, but not all, of the capped expenditure period for the election.

Section 106AB (Meaning of *participant* in an election) provides a definition of *participant* in an election.

The section is consistent with section 197A of the *Electoral Act 1992*, however is more specific in providing that for local government elections a registered political party that endorses a candidate in the election (as opposed to any registered political party) is a participant. Refer also to new section 109F which provides for when electoral expenditure is incurred for particular purposes.

Clause 19 Amendment of s 106A (Meaning of *disclosure period*)

Clause 19 amends section 106A to omit and replace section 106A(3). It provides the definition of *disclosure period* for registered political parties that endorse candidates in the election, groups of candidates, third parties and associated entities.

For a registered political party that endorses a candidate in the election the disclosure period starts:

- if the party endorsed a candidate in a by-election or fresh election held after the last quadrennial election — 30 days after the polling day for the last by-election or fresh election in which the party endorsed a candidate
- if section 106A(3)(i) does not apply and the party endorsed a candidate in the last quadrennial election—30 days after the polling day for the last quadrennial election
- otherwise—on the day the party first incurs electoral expenditure for the election.

The disclosure period ends 30 days after the polling day for the election.

For a group of candidates, the disclosure period starts 30 days after the polling day for the last quadrennial election and ends 30 days after the polling day for the election. If the most recent election was not a quadrennial election, and the group of candidates was also a group of candidates for the most recent election, the disclosure period starts 30 days after the polling day for the last election and ends 30 days after the polling day for the election.

For a third party the disclosure period for the election:

- for sections 118A and 118B starts 30 days after the polling day for the last quadrennial election and ends 30 days after the polling day for the election
- for sections 125B and 125C starts the day the capped expenditure period for the election starts and ends 30 days after the polling day for the election
- for section 127AB starts on the day the third party is registered, or was first required under section 127D to have been registered, for the election and ends 30 days after the polling day for the election.

For an associated entity of a candidate in the election, of a group of candidates for the election, or of a of a registered political party that endorses a candidate in the election, the disclosure period starts on the earlier of the following days:

- the day the associated entity first incurs electoral expenditure for the election
- the day the capped expenditure period for the election starts.

The disclosure period ends 30 days after the polling day for the election.

Clause 20 Replacement of s 107 (Meaning of *gift*)

Clause 20 replaces the existing section 107 with a new definition of *gift.* The definition of 'gift' in section 201 of the *Electoral Act 1992* includes an amount of electoral expenditure a person gifted to an election participant. The Bill amends the definition of gift in section 107 of the *Local Government Electoral Act 2011* to generally align with section 201 of the *Electoral Act 1992*, including with reference to gifted electoral expenditure.

Clause 21 Amendment of s 107A (Meaning of *fundraising contribution*)

Clause 21 amends the definition of a *fundraising contribution* under section 107A(1) to mean an amount paid by a person as a contribution, entry fee or other payment to entitle the person or another person to participate in, or otherwise obtain a benefit from, a fundraising *or other* venture or function.

The clause further inserts a new section 107A(4) to provide that a *fundraising contribution* does not include an amount relating to the venture or function that is paid under a sponsorship arrangement (refer to new section 107B).

The section aligns with section 200 of the *Electoral Act 1992*.

Clause 22 Insertion of new s 107B (Meaning of *sponsorship arrangement*)

Clause 22 inserts a new section 107B to provide a definition of *sponsorship arrangement* between a person and a registered political party that endorses a candidate in an election.

The section aligns with section 200A of the *Electoral Act 1992.*

Clause 23 Replacement of s 108 (Meaning of *value* of gifts)

Clause 23 replaces section 108 with a new definition of the *value* of a gift with an extended meaning to apply in relation to electoral expenditure incurred, a gift provided by a person to a registered political party under a sponsorship arrangement, uncharged interest, and an amount forgiven on a loan.

The section aligns with section 201B of the *Electoral Act 1992*.

Clause 24 Insertion of new ss 109A-109G

Section 109A (Meaning of *electoral expenditure*) implements the Government's policy in relation to recommendation 1 of the Committee report.

It provides that electoral expenditure is expenditure incurred for a 'campaign purpose':

- for designing, producing, printing, broadcasting or publishing material for an election, including for example:
    - an advertisement for broadcast on radio or television, at a cinema, or using the internet, email or SMS; and
    - material for publication in newspapers or magazines, on billboards, or as brochures, flyers, signs, how-to-vote cards or information sheets; and

    - material for distribution in letters
- for the cost of distributing material for an election, including, for example, the cost of postage, sending SMS messages or couriers
- for carrying out an opinion poll or research
- for contracted services related to an activity mentioned in section 109A(2)(a), (b) or (c), including, for example, fees for consultants or the provision of data
- of another kind prescribed by regulation to be a kind of electoral expenditure.

For subsection 109A(2)(a) and (b), it does not matter whether section 177 (Author of election material must be named) applies to the material.

Electoral expenditure does not include expenditure:
- incurred substantially for or related to the election of:
    - members of Parliament of the State or another State or the Commonwealth
    - councillors (however described) of a local government of another State
- on factual advertising about a matter that relates mainly to the administration of a registered political party that endorses a candidate in an election, including, for example, a meeting of a branch, division or committee of the party:
    - for an organisational purpose
    - to select a candidate to nominate for election
- on employing staff for a campaign purpose
- of a kind prescribed by regulation not to be a kind of electoral expenditure.

Expenditure incurred by a third party for an election is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose. However, expenditure incurred by a third party for an election 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. Section 109A provides as an example of other purposes for incurring expenditure: to educate or raise awareness about an issue of public policy.

Electoral expenditure incurred by or for a councillor of a local government does not include expenditure of a kind for which the councillor is entitled to receive an allowance or entitlement. An amount of electoral expenditure is inclusive of GST.

Allowance or entitlement, for a councillor of a local government, means an allowance or entitlement the councillor is entitled to under the local government's expenses reimbursement policy.

Expenses reimbursement policy, in relation to a local government, means a policy that the local government is required to adopt under the *Local Government Act 2009,* or the *City of Brisbane Act 2010*, and about the payment of expenses incurred by or to be incurred by, and the provision of facilities to, councillors of the local government relating to the discharge of their duties and responsibilities as councillors.

The section aligns with section 199 of the *Electoral Act 1992*.

Section 109B (Meaning of *campaign purpose*) provides the definition of *campaign purpose*.

Expenditure is incurred for a campaign purpose if the expenditure is incurred to:
- promote or oppose a political party or group of candidates in relation to an election
- promote or oppose the election of a candidate
- otherwise influence voting at an election.

Without limiting section 109B (1), expenditure is incurred for a purpose mentioned in section 109B (1)(a), (b) or (c) if material produced as a result of the expenditure does any of the following in relation to an election:
- expressly promotes or opposes:
    - political parties, candidates or groups of candidates who advocate, or do not advocate, a particular policy or issue
    - political parties, candidates or groups of candidates who have, or do not have, a particular position on a policy or issue
    - candidates who express a particular opinion
- expressly or impliedly comments about a political party, a candidate in the election or a group of candidates for the election, or in relation to a local government's area or a division of a local government's area
- expresses a particular position on a policy, issue or opinion, if the position is publicly associated with a political party, candidate or group of candidates and whether or not, in expressing the position, the party, candidate or group is mentioned.

The section aligns with section 199A of the *Electoral Act 1992*.

Section 109C (Meaning of *gifted* for electoral expenditure) provides that an amount of electoral expenditure incurred by a person is gifted to a participant in an election if:
- the expenditure benefits the participant; and
- any of the following applies:
    - the expenditure is incurred with the authority or consent of the participant
    - relevant material resulting from the expenditure is accepted by the participant
    - another circumstance prescribed by regulation happens in relation to the expenditure; and
- the person does not, within 7 days after the circumstances mentioned in paragraphs (a) and (b) happen:
    - receive consideration, or adequate consideration, from the participant incurring the expenditure; or
    - invoice the participant for payment of the amount.

If the amount of electoral expenditure mentioned in subsection (1) (the *total amount*) is incurred under an arrangement between 2 or more participants in the election, the amount gifted to any 1 of the participants is the amount equal to the total amount divided by the number of participants who are parties to the arrangement.

A gift of electoral expenditure is made when subsection (1) applies to the expenditure, regardless of when the expenditure is incurred.

Section 109C includes two notes cross-referencing section 109E for when electoral expenditure is incurred generally and section 123U in relation to electoral expenditure incurred by a participant in an election that benefits another participant in the election.

The section aligns with section 200B of the *Electoral Act 1992*.

Section 109D (Participant taken to have incurred gifted electoral expenditure) provides that if electoral expenditure incurred by a person is gifted to a participant in an election, the participant is taken to have incurred the electoral expenditure. Section 109E applies for determining when gifted electoral expenditure is incurred.

The section aligns with section 280A of the *Electoral Act 1992*.

Section 109E (When electoral expenditure is incurred generally) provides that, for this part, electoral expenditure is incurred when the goods or services for which the expenditure is incurred are supplied or provided, regardless of when the amount of the expenditure is invoiced or paid.

Without limiting section 109E(1):
- expenditure on advertising is incurred when the advertisement is first broadcast or published; and
- expenditure on the production and distribution of relevant material is incurred when the material is first distributed; and
- expenditure of another kind is incurred at the time prescribed by regulation.

Section 109E(4) applies if:
- electoral expenditure is incurred to obtain goods; and
- the goods are obtained for the dominant purpose of being used for a campaign purpose in relation to 1 or more elections; and
- the goods are supplied before the capped expenditure period for an election starts.

Despite section 109E(1), the electoral expenditure is taken to have been incurred when the goods are first used for a campaign purpose during the capped expenditure period for an election regardless of when the amount of the expenditure is invoiced or paid.

For section 109E, the electoral expenditure incurred to obtain goods includes electoral expenditure incurred to design, produce, print or distribute the goods.

The section aligns with section 281 of the *Electoral Act 1992.*

Section 109F (When electoral expenditure is incurred for particular purposes) applies in relation to incurring electoral expenditure for the purpose of working out when:
- a person becomes a candidate in an election
- a registered political party has endorsed a candidate in an election
- another entity becomes a participant in an election
- a disclosure period under section 106A starts.

Despite section 109E, the electoral expenditure is taken to be incurred when a transaction to incur the expenditure is entered into, regardless of when the amount of the expenditure is invoiced or paid, when the obligation to pay for the expenditure arises, or when the goods or services for which the expenditure is incurred are supplied or provided.

Section 109F does not affect the operation of section 109E in relation to the electoral expenditure for any other purpose under part 6 of the *Local Government Electoral Act 2011*.

Section 109G (When candidate is *endorsed* by registered political party) provides that a candidate is endorsed by a registered political party for an election if:

- any of the following has happened:
    - the party has publicly announced the party's intention to endorse the candidate in the election
    - the party has started to incur electoral expenditure for the benefit of the candidate for the election
    - the party has otherwise endorsed the candidate in the election under the party's constitution; and
- the registered officer of the party has not given notice under section 31 or 135A of the withdrawal of the endorsement.

Clause 25 Amendment of s 111 (Agents and campaign committees)

Clause 25 amends the heading of section 111 to *Persons acting on behalf of candidates and groups of candidates*, for clarity as a consequence of amendments to introduce agents for some election participants.

Clause 26 Replacement of ss 112-112B

Clause 26 replaces previous sections 112 to 112B with the following new sections.

Section 112 (Related corporations) provides that for this part, corporations that are related to each other are taken to be the same person; and the question whether a corporation is related to another corporation must be decided in the same way as the question whether a corporation is related to another corporation is decided under the Corporations Act.

This section aligns with section 205 of the *Electoral Act 1992* to provide greater clarity than current section 112.

Section 112A (Related political parties) states that for this part, 2 political parties are related political parties if: 1 is a part of the other; or both are parts of the same political party. 'Related political party' is used in sections 107 (Meaning of gift) and section 112C (Associated entity to be treated as part of registered political party).

This section aligns with section 5 of the *Electoral Act 1992*.

Section 112B (Application to unincorporated bodies) 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, 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 obligation or liability that, apart from subsection (3), would be imposed under part 6 or part 9, division 5 on the unincorporated body, is imposed on each member of the executive committee (however described) of the body, but may be discharged by any of the members of the executive committee. An amount that, apart from subsection (4), would be payable under part 6 or part 9, division 5 by the unincorporated body is jointly and severally payable by the members

of the executive committee (however described) of the body. 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 that would have constituted the offence. The maximum penalty is the penalty for a contravention of the provision by an individual.

Section 112C (Associated entity to be treated as part of registered political party) provides that if a registered political party that endorses a candidate in an election has an associated entity, part 6, divisions 4 (Caps on electoral expenditure) and 5 (Operation of accounts) apply as if:

- the party and the associated entity together constituted the party; and
- a reference to the party included a reference to the associated entity; and
- the dedicated account of the party were the dedicated account of the associated entity; and
- electoral expenditure incurred by or for the associated entity were incurred by or for the party.

This provision implements the Government's policy in relation to recommendation 5 of the Committee report 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.

This section also provides the conditions for when an entity is an *associated entity* of a registered political party that endorses a candidate in an election; and exclusions from the definition of an *associated entity* of a registered political party that endorses a candidate in an election. A definition of *endorsed candidates* is also provided.

This section is consistent with section 204 of the *Electoral Act 1992*.

Section 112D (Associated entity to be treated as part of candidate) provides that if a candidate in an election has an associated entity, part 6, divisions 4 (Caps on electoral expenditure) and 5 (Operation of accounts) apply as if:

- the associated entity and the candidate together constituted the candidate; and
- a reference to the candidate included a reference to the associated entity; and
- a gift or loan made to or for the benefit of, or received by, the associated entity were a gift or loan made to or for the benefit of, or received by, the candidate; and
- the dedicated account of the candidate were the dedicated account of the associated entity; and
- electoral expenditure incurred by or for the associated entity were incurred by or for the candidate.

This provision implements the Government's policy in relation to recommendation 5 of the Committee report 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.

The section provides the conditions for when an entity is an *associated entity* of a candidate in an election, and the exclusions from the definition of *associated entity* of a candidate in an

election. The definition of *endorsed candidates* of a registered political party that endorses a candidate in an election cross references section 112C(4).

This section is consistent with section 204A of the *Electoral Act 1992*.

Section 112E (Associated entity to be treated as part of group of candidates) provides that if a group of candidates for an election has an associated entity, part 6, divisions 4 (Caps on electoral expenditure) and 5 (Operation of accounts) apply as if:

- the associated entity and the group together constituted the group; and
- a reference to the group included a reference to the associated entity; and
- a gift or loan made to or for the benefit of, or received by, the associated entity were a gift or loan made to or for the benefit of, or received by, the group; and
- the dedicated account of the group were the dedicated account of the associated entity; and
- electoral expenditure incurred by or for the associated entity were incurred by or for the group.

This provision implements the Government's policy in relation to recommendation 5 of the Committee report 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.

The section provides the conditions for when an entity is an *associated entity* of a group of candidates for an election, and the exclusions from the definition of *associated entity* of a group of candidates for an election.

This section is consistent with section 204A of the *Electoral Act 1992*.

Clause 27 Amendment of s 113A (Meaning of political donation)

Clause 27 amends the definition of *political donation* in section 113A as a consequence of amendments to the definition of gift in section 107 and for consistency with section 274 of the *Electoral Act 1992.*

Clause 28 Insertion of new pt 6, div 2

Clause 28 inserts a new part 6, division 2 (Agents) with the following new sections. This division is consistent with part 11, division 2 (Agents) of the *Electoral Act 1992*.

Section 114 (Agent of registered political party) provides that (1) a registered political party that endorses a candidate in an election must appoint a person to be the agent of the party, for this part, for the election; and (2) that the registered political party must appoint a person as the party's agent for an election under subsection (1) as soon as practicable after the party becomes a participant in the election by endorsing a candidate in the election.

Section 115 (Agent of candidate) provides that a candidate in an election may appoint a person to be the agent of the candidate, for this part, for the election. In addition, the candidate is taken to be their own agent for this part for the election, during any period for which no appointment of an agent is in effect.

Section 116 (Agent of group candidates) states that a group of candidates for an election must appoint a person to be the agent of the group, for this part, for the election.

Section 116A (Agent of registered third party) provides that a registered third party for an election who is not an individual must appoint a person to be the agent of the third party, for this part, for the election. The section also provides a note referring to section 127F(2)(c) which provides that an application for registration by a third party that is not an individual must be accompanied by a notice of appointment of an agent.

A registered third party for an election who is an individual may appoint a person to be the agent of the third party, for this part, for the election.

During any period for which no appointment is in effect under section 116A (2), the third party is taken to be the third party's own agent for this part for the election.

Section 116B (Agent of unregistered third party) provides that a third party that is not registered for an election may appoint a person to be the third party's agent, for this part, for the election. In addition, if the third party is an individual, the third party is taken to be their own agent for this part for the election, during any period for which no appointment of an agent is in effect.

Section 116C (Requirements for registration) provides that an appointment of a person as an agent has no effect unless certain requirements are met. If a person has been convicted of an offence against section 43C(4), part 6 or part 9, division 5 (Offences relating to electoral funding and financial disclosure) of the *Local Government Electoral Act 2011*, they are not eligible to be appointed, or to hold office, as an agent for part 6.

Section 116D (Register of agents) states the requirements for the electoral commission to keep a register. This includes the details to be recorded, such as name and address of each person appointed as the agent of: a registered political party that endorses a candidate in an election; a candidate in an election; a group of candidates for an election; or a third party for an election. An entry in the register is taken to be evidence that the person listed is the agent of the entity for the election. The section also provides a note referring to section 135B for the requirement to make information from the register available for public inspection.

Section 116E (Registration of agent) provides that the appointment of a person as an agent will take effect when the person's name is entered in the register of agents; and continues until the person's obligations as an agent under this part for the election end, unless the appointment ends sooner under subsection (2). There is a note following this subsection which states that a person's obligations as a candidate's agent under this part may end after the election to which the appointment relates, whether or not the candidate is elected at the election.

The section further provides in subsection (2) that the appointment of a person as an agent, for this part, for an election ends when the person resigns the person's appointment as agent; or the entity that appoint the person revokes the person's appointment; or the person dies; or the person is convicted of an offence against section 43C(4), part 6 or part 9, division 5 (Offences relating to electoral funding and financial disclosure) of the *Local Government Electoral Act 2011*.

The section also states the conditions under which a person's name must not be removed from the register of agents and requires actions to be taken when a person's appointment as agent of an entity ends. Specifically, within 28 days of the appointment ending, the entity must provide information to the electoral commission, including the day and reason the appointment ended, and if the entity is required to have an agent, a written notice under section 116C(1)(c) of the appointment of another person as the entity's agent.

A written notice given to the electoral commission under section 116E(3)(b) by a group of candidates must be signed by each candidate who is a member of the group.

Section 116F (Responsibility for action in absence of agent) provides that the section applies if a provision of part 6 imposes an obligation on the agent of either a registered political party that endorses a candidate in an election; or a group of candidates for an election; or a third party who is not an individual, whether or not the third party is registered for an election; and the entity does not have an agent for this part for the election. For a registered political party or a third party, each member of the executive committee (however described) of the registered political party or third party is responsible for complying with the obligation as if the provision applied to the member of the committee. For a group of candidates, each member of the group is responsible for complying with the obligation as if the provision applied to the member of the group.

Section 116G (Agent's obligation to ensure compliance) provides that an agent of a participant in an election must take all reasonable steps to inform the participant, and each person the participant authorises to act for the participant under part 6, divisions 4 and 5, about the obligations that apply to the participant and person under part 6, divisions 4 and 5. Further, the agent must take all reasonable steps to establish and maintain appropriate systems to support the participant and person to comply with the obligations. There is a maximum penalty of 100 penalty units for non-compliance with these requirements.

In addition, if a participant in an election 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 under part 6, divisions 4 and 5, about the obligations that apply to the associated entity and person under part 6, divisions 4 and 5. The agent must also take all reasonable steps to establish and maintain appropriate systems to support the associated entity and person to comply with the obligations. A maximum penalty of 100 penalty units applies for non-compliance with these requirements.

This section also includes matters for a court to consider in deciding whether steps taken by the agent of a participant in an election to do a thing mentioned in section 116G(1) or (2) are reasonable.

Clause 29 Amendment of s 117 (Gifts to candidates)

Clause 29 amends sections 117(2), 117(4), 117(6) and 117(7).

Section 117(2) is amended to refer to the agent of the candidate.

Section 117(4) is amended to refer to the agent of a candidate.

Section 117(6) is amended to apply to the agent of a candidate.

Section 117(7) is amended to reference the agent of a candidate.

Section 117(8) is amended consequential to the amendments applying the requirement of the section to the agent rather than the candidate.

Clause 30 Amendment of s 118 (Gifts to groups of candidates)

Clause 30 amends sections 118(3), 118(4), 118(6) and 118(7).

Section 118(3) is amended to refer to candidates who are members of the group.

Section 118(4) is amended to refer to the agent of a group of candidates and to include a note cross-referencing section 43E in relation to candidates who have stopped being members of a group and section 43F in relation to groups of candidates that have been wound up.

Section 118(6) is amended to make reference to the agent's obligations under subsection (4) and to include reference to section 169 of the *City of Brisbane Act 2010* in section 118(6)(a).

Section 118(7) is amended to refer to members of the group.

Clause 31 Insertion of new s 118AA

Clause 31 inserts new section 118AA (Gifts to associated entities of candidates or groups of candidates) which provides the conditions under which the financial controller of an associated entity of a candidate or a group of candidates must give the electoral commission a return about a gift, and the requirements for the return.

This section is consistent with section 294 of the *Electoral Act 1992*.

Clause 32 Amendment of s 118A (Gifts to third parties to enable political expenditure)

Clause 32 amends the definition of *political expenditure* in section 118A(6). Currently the definition of political expenditure cross references section 125A. Section 125A (Expenditure returns – political expenditure by third party) is amended in the Bill, with the requirements in relation to gifts made by third parties to political parties, candidates and groups relocated to new section 118B and revised requirements in relation to electoral expenditure incurred by relevant third parties included in new sections 125B (real time return) and 125C (summary return).

The definition is consistent with the definition of expenditure 'incurred for a political purpose' in section 263(4) of the *Electoral Act 1992*.

Clause 33 Insertion of new s 118B

Clause 33 inserts new section 118B (Gifts made by third parties). Current section 125A (Expenditure returns – political expenditure by third party) is amended in the Bill, with the

requirements in relation to gifts made by third parties to political parties, candidates and groups relocated to new section 118B.

Clause 34 Insertion of new ss 119A and 119B

Clause 34 inserts new sections 119A and 119B.

Section 119A (How subdivision applies to gifts that are returned within 6 weeks) provides that part 6, division 3, subdivision 1 does not apply to a gift that is returned in full within 6 weeks after its receipt. Any return that includes the value of the gift, must also include a statement to the effect that the gift was returned.

This section is consistent with section 260 of the *Electoral Act 1992*.

Section 119B (How subdivision applies to particular gifts used for electoral purposes) states that this section applies in relation to a gift, to the extent section 107(5) applies to the gift. A note states that section 107(5) deals with a gift made in a private capacity for the recipient's personal use if the gift, or part of the gift, is later used for an electoral purpose. Section 119B provides that a return must state that when the gift was made it was made in a private capacity for the recipient's private use; and the recipient did not intend to use the gift for an electoral purpose; and the gift was used for the electoral purpose; and the day on which the gift was used for the electoral purpose.

This section is consistent with section 260A of the *Electoral Act 1992*.

Clause 35 Amendment of s 120 (Loans to candidates or groups of candidates)

Clause 35 amends sections 120(2), 120(7) and 120(9) to reference the agent of a candidate or group of candidates, as a consequence of amendments in the Bill providing for the appointment of an agent for a candidate.

The amendments include a note cross-referencing section 43E in relation to candidates who have stopped being members of a group and section 43F in relation to groups of candidates that have been wound up.

Further, for consistency with the *Electoral Act 1992*, section 120(5) is omitted and the definition of 'loan' in section 106 is amended to exclude loans from financial institutions from the definition of 'loan' for part 6.

Minor amendments are made to section 120(4) and (10)(b) for consistency.

Clause 36 Insertion of new s 120A

Clause 36 inserts new section 120A (Loans to associated entities of candidates or groups of candidates) which provides for the conditions under which the financial controller of an associated entity of a candidate or a group of candidates must give the electoral commission a return about a loan, and the requirements for the return.

This section is consistent with section 294 of the *Electoral Act 1992*.

Clause 37 Amendment of s 121 (Particular loans not to be received)

Clause 37 omits reference to *other than a financial institution* from sections 121(1) and (2), and 121(3)(b) as a consequence of amendment of the definition of loan in section 106.

Clause 38 Amendment of s 121B (Donor must disclose source of gift or loan)

Clause 38 amends section 121B(1)(a) to extend its application to an entity that makes a gift or loan to an associated entity and to clarify its application in relation to gifts or loans to a registered political party by providing that the gift or loan is to a registered political party that endorses a candidate in an election.

Clause 39 Amendment of s 121C (Recovery of prohibited gifts or loans)

Clause 39 amends section 121C(2) so that the provision includes 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.

Clause 40 Replacement of ss 122 and 122A

Clause 40 replaces sections 122 and 122A.

Section 122 (Requirement to notify the public about disclosure obligations) 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. It also applies the requirements to the agent of a candidate in an election, as a consequence of amendments in the Bill introducing agents for candidates.

Section 122A (Requirement to notify third party of obligation to give return under s 118B) replaces the references to section 125A with references to section 118B, as a consequence of amendments to section 125A and applies the requirements to the agent of a candidate or agent of a group of candidates.

Clause 41 Replacement of pt 6, div 4

Clause 41 replaces part 6, division 4 (Electoral expenditure) with new part 6, division 4 (Caps on electoral expenditure).

Section 123 (Definitions for division) provides definitions of *expenditure cap*, for an election, in relation to a participant in the election, with reference to section 123B, *number of enrolled electors*, for an election, with reference to section 123S(1) and *relevant day*, for an election, with reference to section 123S(3) and (4).

Section 123 also provides a definition of *maximum amount*, for an election, meaning the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

M = (A × B) + (C × D)
where –
A is the amount of an individual candidate's expenditure cap for the election under section 123D.
B is 1, if the office of mayor is to be filled in the election, otherwise, 0.
C is the amount of an individual candidate's expenditure cap for the election under section 123E.
D is the total number of vacant offices of councillors, other than mayor, to be filled in the election.
M is the maximum amount for the election.

Section 123A (Meaning of capped expenditure period) provides for when a *capped expenditure period* starts for a quadrennial election, by-election, and fresh election.

However, if before the start day for a quadrennial election, a regulation fixes a day for the quadrennial election under section 23(3), the capped expenditure period for the quadrennial election starts on a day prescribed by regulation.

In addition, an end time of 6pm is applied for a capped expenditure period, on the later of either (a) the polling day for the election, or (b) if the poll at a polling booth for an election is adjourned under section 52A(3) or 53(1), the day the adjourned poll is held. It is noted that (b) applies despite section 53(6) of the *Local Government Electoral Act 2011* which states that the adjourned poll is taken to have been held on the polling day.

Section 123B (Expenditure caps for participants) provides that a participant's expenditure cap for an election is the amount mentioned in subdivisions 2,3,4,or 5 for the participant for the election.

Section 123C (How expenditure caps apply in local government areas and divisions) provides for how an expenditure cap for an election applies or is worked out for part 6, division 4 in relation to a participant in the election other than a third party that is not registered for the election.

If the election is a quadrennial election, an expenditure cap for the election applies and is worked out separately for each local government area. An expenditure cap for a fresh election applies separately for each local government area. An expenditure cap for a by-election to fill a vacancy in the office of mayor of a local government applies for the local government's area. For a by-election to fill a vacancy in the office of a councillor (other than mayor), an expenditure cap applies separately for each local government area or, for a local government area that is divided, each division of the area.

An expenditure cap that applies for one local government area or a division of a local government area under section 123C can not be aggregated with an expenditure cap that applies for another local government area or division.

Section 123D (Individual candidates for mayor) provides the electoral expenditure caps for an individual candidate for election as mayor of a local government.

If the local government is the Brisbane City Council, the candidate's expenditure cap for the election is $1.3m.

For a local government other than the Brisbane City Council, the candidate's expenditure cap for the election is as follows:

If the number of enrolled electors for the election is not more than 30,000 - $30,000; or

If the number of enrolled electors for the election is more than 30,000 but not more than 150,000 – the amount worked out by multiplying the number of enrolled electors for the election by $1; and rounding the result to the nearest $10 (rounding one-half upwards); or

If the number of enrolled electors for the election is more than 150,000 but not more than 200,000 electors – the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

E = **A** + (**B** × (**C** – **D**))
where—
A is $150,000.
B is $0.50.
C is the number of enrolled electors for the election.
D is 150,000.
E is the expenditure cap; or

If the number of enrolled electors for the election is more than 200,000 - the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

E = **F** + (**G** × (**H** – **I**))
where—
E is the expenditure cap.
F is $175,000.
G is $0.25.
H is the number of enrolled electors for the election.
I is 200,000.

If a monetary amount stated in section 123D(2) or (3) has been adjusted under section 123Q, the monetary amount is the amount most recently published by the electoral commission under section 123Q(6).

Section 123E (Individual candidates for councillor (other than mayor)) provides the electoral expenditure caps for individual candidates for election as a councillor, other than mayor, of a local government.

If the local government is the Brisbane City Council, the individual candidate's expenditure cap for the election is $55,000.

For a local government other than the Brisbane City Council, the individual candidate's expenditure cap for the election is as follows:

If the number of enrolled electors for the election is 20,000 or less—$15,000; or

If the number of enrolled electors for the election is more than 20,000 but less than 40,000—the amount worked out by multiplying the number of enrolled electors for the election by $0.75; and rounding the result to the nearest $10 (rounding one-half upwards); or

If the number of enrolled electors for the election is 40,000 or more—$30,000.

If a monetary amount stated in section 123D (2) or (3) has been adjusted under section 123Q, the monetary amount is the amount most recently published by the electoral commission under section 123Q(6).

Section 123F (Amount of expenditure cap—general) applies to:
- a registered political party that endorses one or more candidates in an election; and
- each candidate who is, at any time during the capped expenditure period for the election, endorsed by the party for the election (each an endorsed candidate).

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.

The expenditure cap under this section is shared by the registered political party and each endorsed candidate.

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 subdivision 2 if the candidate were an individual candidate.

Section 123G (New endorsement of candidate) applies if, during the capped expenditure period for an election, a person becomes a candidate who is endorsed by a registered political party for the election. For part 6, division 4, electoral expenditure previously incurred by the person during the capped expenditure period is taken to have been incurred by the person as a candidate endorsed by the registered political party for the election. Section 123G applies subject to sections 123H(3) and 123K(3).

Section 123H (Ending of endorsement of candidate) applies if, during the capped expenditure period for an election, a candidate who is endorsed by a registered political party (the *relevant party)* for the election stops being endorsed by the party for the election.

Examples
- *the relevant party withdraws its endorsement of the candidate*
- *the candidate withdraws their agreement to the candidate's nomination under section 30.*

The ending of the endorsement by the relevant party of the previously endorsed candidate for the election is the *relevant event*.

For part 6, division 4, electoral expenditure that was incurred by the previously endorsed candidate during the capped expenditure period before the relevant event occurred is taken to have been incurred by the relevant party.

Despite section 123F, the expenditure cap for the relevant party, and each continuing candidate, for the election is the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

E = **A** – **B**
where—
A is the greater of:
- the amount of the expenditure cap under section 123F for the relevant party, and each candidate who was endorsed by the party, for the election immediately before the relevant event occurred;
- the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

B is the amount of the previously endorsed candidate's expenditure cap as an individual candidate for the election under section 123H(7).
E is the expenditure cap.

However, the expenditure cap for the relevant party, and each continuing candidate for the election, can not be more than the maximum amount for the election.

The expenditure cap under section 123H(4) is shared by the relevant party and each continuing candidate.

Despite subdivision 2, the previously endorsed candidate's expenditure cap as an individual candidate for the election is the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

B = **C** – **C**/**D** × **F**
where:
B is the expenditure cap.
C is the amount that would otherwise be the candidate's expenditure cap for the election under subdivision 2.
D is the greater of:
- the amount of the expenditure cap under section 123F for the relevant party, and each candidate who was endorsed by the party, for the election immediately before the relevant event occurred;
- the amount that would have been the expenditure caps mentioned in paragraph (a) if the maximum amount for the election had not applied.

F is the amount of the electoral expenditure incurred, by the relevant party and each candidate who was endorsed by the party, during the capped expenditure period for the election before the relevant event occurred.

In section 123H *continuing candidate,* in relation to the relevant party, means a candidate who is endorsed by the party for the election immediately after the relevant event occurs.

Section 123I (Amount of expenditure cap—general) applies to a group of candidates for an election and each candidate who is, at any time during the capped expenditure period for the election, a member of the group (each a *group member*).

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 group members, up to the maximum amount for the election.

The expenditure cap under section 123I is shared by the group members.

For section 123I, *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 subdivision 2 if the member were an individual candidate.

Section 123J (Addition of group member) applies if, during the capped expenditure period for an election, a person becomes a candidate who is a member of a group of candidates under section 42 or 43. For part 6, division 4, electoral expenditure previously incurred by the person during the capped expenditure period is taken to have been incurred by the person as a member of the group of candidates for the election. Section 123J applies subject to sections 123H(3) and 123K(3).

Section 123K (Removal of group member) applies if, during the capped expenditure period for an election, a candidate who is a member of a group of candidates for the election stops being a member of the group for the election under section 43 or 43A.

The removal of the candidate (the *previous group member*) from the group of candidates for the election is the *relevant event.* For part 6, division 4, electoral expenditure that was incurred by the previous group member during the capped expenditure period before the relevant event occurred is taken to have been incurred by the group of candidates.

Despite section 123I, the expenditure cap for the group of candidates, and each continuing group member, for the election is the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

E = **A** – **B**
where:
A is the greater of:
- the amount of the expenditure cap under section 123I for the group of candidates, and each candidate who was a member of the group, for the election immediately before the relevant event occurred;
- the amount that would have been the expenditure cap mentioned in paragraph (a) if the maximum amount for the election had not applied.

B is the amount of the previous group member's expenditure cap as an individual candidate for the election under123K(7).
E is the expenditure cap.

However, the expenditure cap for the group of candidates, and each continuing group member, for the election can not be more than the maximum amount for the election.

The expenditure cap under section 123K(4) is shared by the continuing group members.

Despite subdivision 2, the previous group member's expenditure cap as an individual candidate for the election is the amount worked out by using the following formula and rounding the result to the nearest $10 (rounding one-half upwards):

B = **C** – **C**/**D** × **F**
where:
B is the expenditure cap.
C is the amount that would otherwise by the candidate's expenditure cap for the election under subdivision 2.
D is the greater of:

- the amount of the expenditure cap under section 123I for the group of candidates, and each candidate who was a member of the group, for the election immediately before the relevant event occurred;
- the amount that would have been the expenditure cap mentioned in paragraph (a) if section the maximum amount for the election had not applied.

F is the amount of the electoral expenditure incurred, by the group of candidates and each candidate who was a member of the group, during the capped expenditure period for the election before the relevant event occurred.

In section 123K, *continuing group member*, in relation to a group of candidates mentioned in subsection (1), means a candidate who is a member of the group of candidates after the relevant event occurs.

Section 123L (Registered third parties) applies for a registered third party for an election.

The registered third party's expenditure cap for the election is:

- for a quadrennial election or fresh election – the amount equal to an individual candidate's expenditure cap for the election under section 123D; or
- for a by-election – the amount equal to an individual candidate's expenditure cap for the election under subdivision 2.

Section 123M (Unregistered third parties) applies for a third party for an election that is not registered for the election. The third party's expenditure cap for the election is $6,000.

Section 123N (Compliance with expenditure cap generally) applies to the following participants in an election: a candidate in the election; each member of a group of candidates for the election; a registered political party that endorses a candidate in the election; and a registered third party for the election. 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.

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.

This section applies subject to section 123T(4).

In this section, *other relevant electoral expenditure*, in relation to a participant in an election mentioned in subsection (1), 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 for the election is shared under 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.

Section 123O (Compliance with expenditure caps – unregistered third party) applies to a third party for an election that is not registered for the election. The third party, 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
- 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; and the third party 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 that is the greater of: the amount equal to twice the amount by which the electoral expenditure exceeded the third party's expenditure cap for the election or 200 penalty units.

Section 123P (Recovery of unlawful electoral expenditure) applies 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 or 123O or any other offence; and
- 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 section.

Section 123Q (Adjustment of expenditure caps) provides for the adjustment (for CPI) of an election participant's expenditure cap for an election 30 days after the polling day for a quadrennial election (worked out using the formula in section 123Q(4). The electoral commission must publish the adjustment on its website as soon as practicable after it is adjusted.

Section 123R (Electoral commission must give notice of expenditure caps) provides that the electoral commission must publish on its website a notice that states: the amount of an expenditure cap for an individual candidate for the election; and the amount of an expenditure cap for a registered third party for the election; and a general outline of expenditure caps for other participants in the election.

Section 123R also provides for when the electoral commission must publish the notice for quadrennial elections, by-elections and fresh elections.

Also, as soon as practicable after the returning officer has certified the nomination of a person for an election under section 27(3)(a), the electoral commission must give the person a written notices that states: the amount of the person's expenditure cap as if the person were an individual candidate for the election; and a general outline of expenditure caps for participants who are not individual candidates.

Section 123S (Electoral commission to decide number of enrolled electors for election) provides that the *number of enrolled electors*, for an election, is the number of persons decided by the electoral commission under this section to be the number of enrolled electors for the election.

For the election of the mayor of a local government, the number of enrolled electors decided by the electoral commission must be the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government's area as at the relevant day for the election.

For the election of a councillor (other than a mayor), of a local government whose local government area is undivided, the number of enrolled electors decided by the electoral commission must be the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government's area as at the relevant day for the election.

For the election of a councillor (other than a mayor), of a division of a local government's area, if the election is a quadrennial election or fresh election the number of persons worked out using the formula $\mathbf{A = B/C \times D}$
where
A is the number of persons.
B is the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the local government's area as at the relevant day for the election.

C is the total number of councillors to be elected for the election for the local government's area.
D is the number of councillors to be elected for the division of the local government's area.

If the election is a by-election for the election of a councillor (other than a mayor), of a division of a local government's area, the number must be the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the division of the local government's area as at the relevant day for the election.

The provision defines *relevant day* for an election for:
- quadrennial elections—1 July in the year immediately before the year in which the quadrennial election must be held under section 23 (1)
- by-elections—the first day of the month in which notice of the day of the by-election is published on the electoral commission's website under section 24(3)
- fresh elections, if when notice of the election is published under section 25(1), the capped expenditure period has started—the day the capped expenditure period started. Otherwise—the first day of the month in which notice of the election is published on the electoral commission's website under section 25(1).

However, if the capped expenditure period for a quadrennial election is a day prescribed by a regulation under section 123A(2), the relevant day for the quadrennial election is a day prescribed by regulation for this subsection.

The electoral commission must publish notice of the number of enrolled electors for an election on the electoral commission's website. For a quadrennial election the notice must be published as soon as practicable after the relevant day for the election but no later than the day before the capped expenditure period for the election starts. For a by-election the notice must be published the day notice of the day of the election is published on the electoral commission's website under section 24(3). For a fresh election the notice must be published on the day notice of the election is published on the electoral commission's website under section 25(1).

This section does not apply in relation to an election for Brisbane City Council, as the caps are a fixed amount.

Section 123T (Electoral expenditure incurred by particular councillors) applies if a councillor was endorsed by a registered political party for the election for which the councillor was elected, and the councillor:
- announces or otherwise publicly indicates the councillor's intention not to be a candidate in an election before the nomination day for the election; or
- does not become a candidate for an election when the prescribed information for nominations is published on the electoral commission's website.

For section 123N, electoral expenditure incurred by or for the councillor during the capped expenditure period for the election is taken to have been incurred by or for the registered political party. However, section 123T(2) applies only to electoral expenditure incurred by or for the councillor during any part of the capped expenditure period for the election for the local government for which:
- the councillor is a member of the registered political party; and

- the party endorses a candidate in the election for the local government.

The registered political party, a candidate endorsed by the party for the election or a person acting with the authority of the party or candidate does not commit an offence against section 123N if:

- the party, candidate or person incurs electoral expenditure for the election; and
- the expenditure exceeds the party's expenditure cap for the election, including any expenditure cap that is shared under subdivision 3, because it is added to aggregated expenditure for the party; and
- the party, candidate or person did not know, and could not reasonably have known, about the aggregated expenditure being incurred.

In this section, *aggregated expenditure* for a registered political party, means electoral expenditure taken to have been incurred by or for the party under section 123T(2).

Section 123U (Electoral expenditure incurred for another participant) provides for when a participant in an election, the *first election participant,* incurs electoral expenditure that benefits another participant in the election *the recipient*. For the division if the first election participant gifts the expenditure the expenditure is considered to be incurred by that participant. However, if the expenditure is incurred with the recipient's authority or consent, the recipient accepts relevant material resulting from the expenditure, another circumstance prescribed by regulation happens in relation to the expenditure and the first election participant invoices the recipient for payment for the amount of the expenditure, the election expenditure is taken to have been incurred by the recipient. Section 123U applies despite section 109D(1) (Participant taken to have incurred gifted electoral expenditure).

Section 123V (Electoral expenditure incurred by registered political party or third party for quadrennial election) applies in relation to electoral expenditure for a quadrennial election incurred by a registered political party that endorses a candidate in the election; or a registered third party for the election.

If electoral expenditure is for advertising or other relevant material that is communicated to electors in a local government's area and is not mainly communicated outside the local government's area, the electoral expenditure is taken to be incurred by the registered political party or registered third party for the quadrennial election for the local government.

If electoral expenditure is for advertising or other relevant material that is communicated to electors in more than 1 local government area and is not mainly communicated to electors in any 1 local government area, the electoral expenditure is taken to be incurred by:

- the registered political party for the quadrennial election for each local government in whose area the advertising or other relevant material is communicated and for which the party endorsed a candidate;
- the registered third party for the quadrennial election for each local government in whose area the advertising or other relevant material is communicated.

If the electoral expenditure is for carrying out an opinion poll or research mainly in relation to 1 local government's area, the electoral expenditure is taken to be incurred by the registered political party or registered third party for the quadrennial election for the local government.

If the electoral expenditure is for carrying out an opinion poll or research in relation to more than 1 local government area and that is not mainly in relation to any 1 local government area, the electoral expenditure is taken to be incurred by:

- the registered political party for the quadrennial election for each local government in relation to whose area the opinion poll or research is carried out and for which the party endorsed a candidate;
- the registered third party for the quadrennial election for each local government in relation to whose area the opinion poll or research is carried out.

Clause 41 includes a new Division 4A (Disclosure of electoral expenditure)

The Bill replaces current section 124. The new section applies in relation to agents of candidates and associated entities of candidates and groups. Section 124 (Expenditure returns – candidates, groups of candidates, registered political parties and associated entities) applies if any of the following entities incur electoral expenditure in relation to an election, during the entity's disclosure period for the election, that totals $500 or more:

- a candidate in the election
- a group of candidates for the election, a member of the group or another person acting on behalf of the group
- a registered political party that endorses a candidate in the election
- an associated entity of—a registered political party that endorses a candidate in the election; or a candidate in the election; or a group of candidates for the election.

A return for each amount of electoral expenditure incurred by the entity must be given to the electoral commission by:

- for electoral expenditure incurred by a candidate—the agent of the candidate; or
- for electoral expenditure incurred by or on behalf of a group of candidates—the agent of the group; or
- for electoral expenditure incurred by a registered political party that endorses a candidate in the election—the agent of the party; or
- for electoral expenditure incurred by an associated entity—the financial controller of the entity.

The return must:

- be in the approved form; and
- be given to the electoral commission by the disclosure deadline for the return; and
- state the following:
    - the name and business address of the person who supplied the goods or service to which the electoral expenditure relates
    - a description of the goods or service
    - the amount of the expenditure
    - when the expenditure was incurred
    - the purpose for incurring the expenditure.

For section 124, an amount of electoral expenditure incurred by an entity for 2 or more elections is taken to have been incurred by the entity for each of the elections.

For section 124(2)(c), a reference to electoral expenditure incurred by a registered political party that endorses a candidate in the election includes electoral expenditure that is taken to

have been incurred by the party under section 123T (Electoral expenditure incurred by particular councillors).

New section 125 reflects the appointment of agents of candidates and revises the requirements about providing a bank statement. Summary expenditure returns by associated entities are provided for in new section 125A. Section 125 (Summary expenditure returns – candidates, groups of candidates and registered political parties) applies to the agent of: a candidate in the election; group of candidates for the election; and a registered political party that endorses a candidate in the election.

The agent of the participant must give the electoral commission a return about the total amount of electoral expenditure incurred by the participant or a person acting with the participant's authority during the participant's disclosure period for the election.

A note states that a return by a registered political party that endorses a candidate in an election must be accompanied by a certificate from an auditor. See section 135D.

The summary return must be in the approved form and be given to the election commission within the required period for the election.

Section 125 also provides that the summary return must be accompanied by a copy of each bank statement for the participant's dedicated account:

- for the period that starts when the capped expenditure period for the election starts, and ends on the day before the return is given to the electoral commission; and
- for an earlier period that includes a transaction related to electoral expenditure incurred during the participant's disclosure period for the election.

If the participant did not incur electoral expenditure during the participant's disclosure period for the election the return must state that fact.

For section 125(2), a reference to electoral expenditure incurred by a participant, or a person acting with the participant's authority, includes electoral expenditure that is taken to have been incurred by the participant under section 123T.

Section 125(8) applies if the electoral commission receives a return under section 125(2) from:

- the agent of a candidate who is successful in the election; or
- the agent of a group of candidates, any of whose members are successful in the election; or
- the agent of a registered political party that endorsed a candidate who is successful in the election.

The electoral commission mut give a copy of the summary return to:

- the chief executive officer of the local government for which the election was held; and
- if the return was received from the agent of a group of candidates or the agent of a registered political party that endorsed a candidate—each successful candidate who is a member of the group or endorsed by the party.

For section 125 it does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

Section 125A (Summary expenditure returns – associated entities) applies to the financial controller of an associated entity of: a registered political party that endorsed a candidate in an election; a candidate in the election; or a group of candidates for an election.

The financial controller must give the electoral commission a return about the total amount of electoral expenditure incurred by the associated entity, or a person acting with the associated entity's authority, during the associated entity's disclosure period for the election.

The return must be in the approved form and be given to the electoral commission within the required period for the election. Also, the return must be accompanied by a copy of each bank statement for the dedicated account of the registered political party, candidate or group of candidates for which the associated entity is an associated entity:

- for the period that starts when the capped expenditure period for the election starts, and ends on the day before the return is given to the electoral commission; and
- for an earlier period that includes a transaction related to electoral expenditure incurred during the associated entity's disclosure period for the election.

If the associated entity did not incur electoral expenditure during the associated entity's disclosure period for the election, the return must state that fact.

For section 125A, it does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

New section 125B (Expenditure returns – relevant third parties) replaces the requirements in current section 125A which applies in relation to both electoral expenditure incurred by, and gifts made by, third parties and includes requirements for real time and summary returns. Requirements for real time and summary returns about gifts made by third parties are relocated in new section 118B (Gifts made by third parties). Requirements for real time returns about electoral expenditure incurred by relevant third parties (i.e., a registered third party or another third party required to be registered, refer to amended section 106) are included in new section 125B. Requirements for summary returns about electoral expenditure incurred by relevant third parties are included in new section 125C (refer below).

Section 125B (Expenditure returns—relevant third parties) applies if a relevant third party for an election incurs electoral expenditure, during the third party's disclosure period for the election that totals $500 or more.

The agent of the relevant third party must give the electoral commission a return for each amount of electoral expenditure incurred by the third party during the third party's disclosure period for the election.

The return must:

- be in the approved form; and
- be given to the electoral commission by the disclosure deadline for the return; and
- state the following:

- the name and business address of the person who supplied the goods or service to which the electoral expenditure relates
- a description of the goods or services
- the amount of the expenditure
- when the expenditure was incurred
- the purpose for incurring the expenditure
- if the expenditure was incurred to benefit, support or oppose a particular candidate, group of candidates or political party in the election—that fact and the name of the candidate, group or party
- if the expenditure was incurred to support or oppose a particular issue in the election—that fact and a description of the issue.

For section 125B, an amount of electoral expenditure incurred by the relevant third party for 2 or more elections is taken to have been incurred by the third party for each of the elections.

Section 125C (Summary expenditure returns—relevant third parties) applies to the agent of a relevant third party for an election. The agent of the relevant third party must give the electoral commission a return about the total amount of electoral expenditure incurred by the third party during the third party's disclosure period for the election.

The return must be in the approved form and be given to the electoral commission within the required period for the election.

The return must be accompanied by a copy of each bank statement for the relevant third party's dedicated account:

- for the period that starts when the capped expenditure period for the election starts, and ends on the day before the return is given to the electoral commission; and
- for an earlier period that includes a transaction related to electoral expenditure incurred during the third party's disclosure period for the election.

If the relevant third party did not incur electoral expenditure during the third party's disclosure period for the election, the return must state that fact.

For section 125C, an amount of electoral expenditure incurred by the relevant third party for 2 or more elections is taken to have been incurred by the third party for each of the elections. It does not matter whether electoral expenditure for an election is incurred during the capped expenditure period for the election.

Section 125D (Summary expenditure returns—broadcasters), applies to a broadcaster:

- who broadcasts an advertisement relating to an election—with the authority of a participant in the election, and during the capped expenditure period for the election; and
- even if the broadcaster is outside Queensland when the advertisement is broadcast.

The broadcaster must, within 8 weeks after the polling day for the election, give the electoral commission a return, in the approved form, stating particular of the advertisement, being particulars:

- identifying the broadcasting service as part of which the advertisement was broadcast; and
- identifying the person at whose request the advertisement was broadcast; and

- identifying the participant in the election with whose authority the advertisement was broadcast; and
- stating the date on which, and the times between which, the advertisement was broadcast; and
- showing whether or not, on each occasion when the advertisement was broadcast, a charge was made by the broadcaster for the broadcasting of the advertisement and, if a charge was made, stating the amount of the charge.

If, in a return under 125D(2) the amount of a charge is specified by a broadcaster in relation to an advertisement, the broadcaster must, in the return, state whether or not the charge is a charge at less than normal commercial rates having regard to the length of the advertisement and the day on which, and the times between which, the advertisement was broadcast.

Section125E (Summary expenditure returns—publishers) applies to the publisher of a journal who publishes an advertisement relating to an election with the authority of a participant in the election; and during the capped expenditure period for the election; and even if the publisher is outside Queensland when the advertisement is published.

Within 8 weeks after the polling day for the election, the publisher must give the electoral commission a return, in the approved form stating the particulars of the advertisement, as specified.

For a return under subsection (2), if the amount of a charge is specified by a publisher in relation to an advertisement, the publisher must state in the return whether or not the charge was a charge at less than normal commercial rates having regard to the space in the journal occupied by the advertisement and the nature of the journal.

A publisher is not required to give a return under subsection (2) in relation to an election if the total amount of the charges made by the publisher for the publication of the following advertisements does not exceed $1,000: the advertisement mentioned in the subsection; any other advertisement relating to an election that took place on the same day as the election to which the return relates.

A definition of *journal* is provided.

Clause 41 also inserts new part 6, division 4B, providing for particular returns by associated entities of candidates and groups of candidates. These provisions are modelled on sections 291, 292, 294(4) and (5) and 294A of the *Electoral Act 1992*. They provide for returns about amounts additional to gifts and loans (refer clauses 31 and 36, sections 118AA and 120A in part 6, division 3, subdivisions 1 and 2).

Section 125F (How division applies to gifts that are returned within 6 weeks) provides that the division does not apply to a gift that is returned in full within 6 weeks after its receipt, and that if the gift is returned in full within 6 weeks after its receipt, any return under this division that includes the value of the gift, it is to also include a statement to the effect that the gift was returned.

Section 125G (Disclosure of amounts by associated entities) states that this section applies if, at any time during a reporting period, an entity was an associated entity of a candidate in an election; or a group of candidates for an election.

Within 8 weeks after the end of the reporting period, the financial controller must give the electoral commission a return in the approved form stating:

- the total amount received by or for the associated entity from anyone during the reporting period; and
- the total amount paid by or for the associated entity to anyone during the reporting period; and
- if the entity is an associated entity of a candidate or a group of candidates at the end of the reporting period – the total amount outstanding, at the end of the reporting period, of all debts incurred by or for the entity to anyone; and
- any other information prescribed by regulation.

There is a note provided under section 125G(2) which states that a return under this section must be accompanied by a certificate from an auditor. Reference is made to section 135D (Audit certificates to accompany particular returns).

The section provides that if the total of all amounts received from a particular entity during a reporting period is equal to or more than $500, a return under subsection (2) must also state:

- the total amount received; and
- if all or part of the total was a gift – the relevant details for the gift; and
- if all or part of the total was an amount borrowed from a financial institution – the name of the financial institution from which the amount was borrowed; and
- if all or part of the total was a loan from an entity – the relevant details for the loan.

If the total of all amounts paid to a particular entity during a reporting period is equal to or more than $500 a return must also state:

- the total amount paid
- if the total was paid to an unincorporated association
    - the name of the association; and
    - the names and addresses of the members of the executive committee (however described) of the association
- if the total was paid to a trust fund or foundation
    - the names and addresses of the trustees of the fund or the foundation or
    - the title or other description of the trust fund or the name of the foundation
- if the total was paid to another entity—the name and address of the entity.

In calculating the total under sections 125G(3) and (4), an amount paid under a contract of employment or an award stating terms and conditions of employment need not be counted.

There are further conditions provided for in relation to disclosure of amounts paid by the associated entity to or for one or more registered political parties out of funds generated from the capital of the associated entity. This includes providing details on the return about each person who contributed to the capital at any time.

The section also provides that a reference in section 125G(2)(a) or (b) to an amount received or paid does not include an amount received or paid when the entity was not an associated entity of a candidate in an election or group of candidates for an election.

It also states, for section 125G(9) that subsection (7) does not apply to contributions that have been set out in a previous return under subsection (2).

This section further provides a definition of *amount*, which includes the value of a gift, loan or bequest.

Clause 42 Amendment of s 126 (Requirement for candidate to operate dedicated account)

Clause 42 amends sections 126(3) and 126(4) to replace 'on behalf' with 'acting with the authority'.

Section 126(4) is also amended to clarify which amounts may be paid out of the dedicated account of the candidate.

Section 126(9) is amended to clarify that the amounts mentioned in subsections (3) and (4) do not included amounts paid out by a registered political party that endorsed the candidate for the election.

Clause 43 Amendment of s 127 (Requirement for group of candidates to operate dedicated account)

Clause 43 amends sections 127(3) and 127(4) to replace 'on behalf' with 'acting with the authority'.

Section 127(4) is also amended to clarify which amounts may be paid out of the dedicated account of the group.

Clause 44 Insertion of new ss 127AA and 127AB

Clause 44 inserts new sections 127AA and 127AB

Section 127AA (Requirement for registered political party to operate dedicated account) 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. 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.

Section 127AB (Requirement for relevant third party to operate dedicated account) 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 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.

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.

Clause 45 Amendment of s 127A (Permitted ways to pay amounts from dedicated account)

Clause 45 amends section 127A(1) and (2) to reflect that new sections 127AA and 127AB provide for dedicated accounts for registered political parties endorsing candidates and for relevant third parties.

Clause 46 Replacement of s 127B (Payment of campaign expenses by credit card prohibited

Clause 46 replaces section 127B, as a consequence of introduction of dedicated accounts for registered political parties endorsing candidates and for relevant third parties.

The clause also inserts new section 127BA (Notice of dedicated account) which applies if:
- an entity becomes a participant in an election, including because any of the following events happen:
    - a registered political party endorses a candidate in the election
    - a person becomes a candidate in the election
    - a third party is registered for the election
    - a third party incurs electoral expenditure for the election to the extent the third party is required, under section 127D, to be registered for the election; or
- 2 or more candidates become a group of candidates under section 42(3).

The agent of the participant must give the electoral commission a notice, in the approved form, about the participant's dedicated account for the election within 5 business days after the event happens, unless the agent has a reasonable excuse. The maximum penalty for failure to comply is 20 penalty units.

If a required detail of a participant's dedicated account changes, the agent of the participant must give the electoral commission a notice about the change, in the approved form, within 5 business days after the change happens, unless the agent has a reasonable excuse. The maximum penalty for failure to comply is 20 penalty units.

The agent of a candidate need not comply with section 127BA(2) in relation to an election if:
- notice of the candidate's dedicated account for a previous election was given under this section; and
- the same account is the candidate's dedicated account of the election to which 127B(2) applies; and
- none of the required details of the account have changed since the notice was given.

Also, the agent of a candidate or group of candidates need not comply with section 127BA(2) if:
- for the agent of a candidate:
    - the candidate becomes a participant because the candidate's nomination as a candidate for the election was certified by the returning officer under section 27(3)(a); and
    - the candidate's nomination included information about the candidate's dedicated account; or
- for the agent of a group of candidates—the notice of the membership of the group given under section 42 included information about the group's dedicated account.

Required detail of a dedicated account, means a detail about the account required to be stated in the approved form mentioned in section 127BA(2).

Clause 47 Insertion of new pt 6, divs 5A-5C

Clause 47 inserts new part 6, division 5A (Registration of third parties), division 5B (Records to be kept) and division 5C (Audits). These provisions are consistent with part 11, division 12 (Registration of third parties), division 12A (Records to be kept) and division 13A (Audits) of the *Electoral Act 1992*.

Registration of third parties implements the Government's policy in relation to recommendation 4 of the Committee report.

Section 127D (Requirement for registration) states that a third party must be registered under this part for an election 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. A third party does not commit an offence against this Act or another Act only because the third party fails to register for an election under section 127D(1).

This section provides a note to clarify that, under section 123O, a third party that is not registered for an election commits an offence if it incurs electoral expenditure of more than $6,000 during the capped expenditure period for the election.

Section 127E (Register of third parties) provides that a register of the third parties registered under this part for the election must be kept by the electoral commission for each election. The section also provides that this register is called the register of third parties for the election for which the register is kept; and must be kept up to date; and may be kept in the way, and in the form, the electoral commission considers appropriate. A note references section 135B which requires the information on the register to be made public.

Section 127F (Application for registration) provides that where a third party intends to incur electoral expenditure for an election, they may apply to the electoral commission for registration for the election.

The application must be in the approved form; and include the details prescribed by regulation for the application; and if the third party is not an individual – be accompanied by a notice mentioned in section 116C(1)(c) of the appointment of a person as the third party's agent; and be made to the election commission before the polling day for the election.

Section 127G (Deciding application) states that the electoral commission must decide to approve or refuse the application as soon as practicable after receiving it. The electoral commission must refuse the application if it was not made before the day required under section 127F(2)(d), otherwise the electoral commission may refuse the application only if it is incomplete or incorrect.

Section 127H (Registration) applies if the electoral commission decides to approve the application. The electoral commission must, as soon as practicable after making the decision, enter the details about the third party stated in the application in the register of third parties kept for the election, and give written notice to the third party that they have been registered for the election.

Section 127I (Decision to refuse application) provides that if the electoral commission decides to refuse the application, the electoral commission must give the third party written notice of the decision as soon as practicable after making the decision.

This section further includes the information that must be stated in the notice and requires that an application that is amended and resubmitted to the electoral commission as stated in the notice under section 127I(2)(c) is taken to have been made on the day the original application was made.

Section 127J (Obligation to notify electoral commission of change to details) states that if a relevant detail about a registered third party changes, the agent of the third party is required to give the electoral commission notice about the change, in the approved form, within 30 days after the change happens. Failure to do so will attract a maximum penalty of 20 penalty units. If a person has a reasonable excuse, the person does not commit an offence against section 127J(1).

The section also provides a definition of *relevant detail* about a registered third party, stating that it is a detail about a third party stated in the third party's application for registration for

an election; or if a detail mentioned in section 127J(3)(a) has been the subject of a notice under section 127J(1), the changed detail as stated in the notice.

Section 127K (Cancellation of registration) provides that the agent of a registered third party may ask the electoral commission, in writing, to cancel the third party's registration for an election. The electoral commission is required to cancel the registered third party's registration for the election if the electoral commission is satisfied that the obligations that apply to the third party for the election under this part have ended. If registration is cancelled by the electoral commission, it must record the cancellation and the day of the cancellation in the register of third parties for the election; and give the third party notice about the cancellation.

Cancellation of registration takes effect on the day the third party receives the notice; or if a later day is stated in the notice – the stated day. If, however, the electoral commission refuses to cancel the registration, the electoral commission must give the registered third party a notice stating the electoral commission's decision and reasons for the decision.

Section 127L (Definitions for division) provides the definitions for *prescribed matter* and *relevant entity* for division 5B (Records to be kept).

Section 127M (Meaning of *prescribed matter*) provides in subsection (1) for a *prescribed matter* in relation to a relevant entity, other than a third party for the election. Subsection (2) provides for a *prescribed matter* in relation to a relevant entity that is a third party for an election.

Section 127N (Records to be kept by relevant entities) provides that a relevant entity for an election must ensure a record about each prescribed matter is made that includes the information necessary to demonstrate, to the greatest extent practicable, the relevant entity's compliance with this part and part 9, division 5 in relation to the prescribed matter; and without limiting section 127N(1)(a), includes the information required by regulation to be included in the record; and complies with section 127R (Requirements for records). Failure to comply with section 127N(1) attracts a maximum penalty of 20 penalty units.

A relevant entity may transfer a record made by or for the relevant entity under section 127N(1) to another person in the ordinary course of the relevant entity's business or administration. If a relevant entity transfers a record under section 127N(2), the relevant entity must:

- make a record about the transfer that includes:
    - details sufficient to identify the record transferred, including the date it was made; and
    - the name and contact details of the person to whom the record is transferred; and
    - the date the record is transferred; and
- tell the person to whom the record is transferred about the person's obligations under section 127S in relation to the record.

A maximum penalty of 20 penalty units applies.

For section 127N(1), it does not matter whether a return about the prescribed matter is required to be given to the electoral commission under this part.

Section 127O (Records to be kept by agents of participants) provides that the agent of a participant in an election must make a record about the agent's compliance with section 116G (Agent's obligation to ensure compliance) that includes the information necessary to demonstrate, to the greatest extent practicable, each step taken by the agent to comply with section 116G; and without limiting section 127O(a), includes the information required by regulation to be included in the record; and complies with section 127R (Requirement for records). Failure to comply with this section attracts a maximum penalty of 20 penalty units.

Section 127P (Records to be kept about advertisements or other relevant material) applies if electoral expenditure is incurred to print, publish or broadcast an advertisement or other relevant material; and a person is required to give the electoral commission a return about the expenditure under section 125 (Summary expenditure returns—candidates, groups of candidates and registered political parties), 125A (Summary expenditure returns – associated entities) or 125C (Expenditure returns – relevant third parties) in relation to an election.

The person is required to make a record that complies with section 127P(3) and section 127R (Requirements for records), about the printing, publishing or broadcast of the advertisement or other relevant material. Failure to do so will attract a maximum penalty of 20 penalty units.

The section lists the matters to be contained in the record and states that the record must be accompanied by a copy of the advertisement or other relevant material.

Section 127Q (Records to be kept by broadcasters or publishers) applies to a broadcaster who is required to give the electoral commission a return under section 125D (Summary expenditure returns – broadcasters); or a publisher who is required to give the electoral commission a return under section 125E (Summary expenditure returns – publishers).

This section requires the broadcaster or publisher to make a record, that complies with section 127R (Requirement for records), about the return and the matters required to be stated in the return. Failure to comply with this section will attract a maximum penalty of 20 penalty units.

Section 127R (Requirements for records) provides the requirements for a record made under this division. The record must be in English, be accurate, and be made in paper or electronic form; or another form approved by the electoral commission by notice published on the electoral commission's website; and be made in a way that allows the record to be conveniently and properly investigated or examined by an authorised officer under this part; and for a record made by or for a participant – readily given, under this part, to an auditor appointed to conduct an audit under section 127U (Electoral commission may appoint auditor).

Section 127S (Record must be kept for 5 years) applies to a person required to make a record under this division other than section 127N; and a person required to make a record under section 127N(1) unless the person has transferred the record under section 127N(2); and a person to whom a record has been transferred under section 127N(2); and a person required to make a record under section 127N(3).

Unless the person has a reasonable excuse, the person must keep the record for 5 years after the day the record is made; and in a way that allows the record to be conveniently and

properly investigated or examined by an authorised officer under this part; and for a record made by or for a participant – readily given, under this part, to an auditor appointed to conduct an audit under section 127U (Electoral commission may appoint auditor). Failure to comply with this section will attract a maximum penalty of 20 penalty units.

Section 127T (Division does not limit other record-keeping provisions) states that this division does not limit another provision of this Act about making or keeping a record.

Section 127U (Electoral commission may appoint auditor) provides that the electoral commission may, by instrument, appoint an auditor to conduct an audit of a participant in an election under this division.

An auditor may be appointed to audit any of the following matters stated in the instrument of appointment: a return given to the electoral commission under division 3 or 4A by a participant in an election; the dedicated account of a participant in an election; the compliance of a participant in an election with part 6 generally or part 9, division 5.

The section further states that the electoral commission may appoint an auditor to conduct an audit under section 127U(1) whether or not the electoral commission suspects the participant has contravened a provision of part 6 or part 9, division 5.

Section l27V (Participant in election must assist appointed auditor) 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 required to conduct the audit. Failure to comply with this section attracts a maximum penalty of 200 penalty points.

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.

Section 127W (Audit report) provides that an auditor who conducts an audit of a participant in an election under this division must prepare a report about the audit.

The section also provides that the report must state whether, in the auditor’s opinion, the participant has been truthful and accurate in relation to the matters audited; and the participant has, or may have, contravened a provision of this part or part 9, division 5; and may suggest ways the practices or systems used by the participant to manage its financial

affairs may be improved to assist the participant's compliance with this part or part 9, division 5.

Under this section, the auditor is required to give a copy of the report to the electoral commission and the participant.

Clause 48 Amendment of s 128 (Electoral commission must publish returns and other documents)

Clause 48 amends section 128(3)(b) to update section references and make a minor amendment about bank account details.

Clause 49 Amendment of s 130A (Functions and powers of authorised officers etc.)

Clause 49 removes section 130A(4) as a consequence of the definition of 'authorised officer' being relocated to the dictionary in schedule 2.

Clause 50 Replacement of s 130B (Electoral commission must give reminder notice about requirement for return)

Clause 50 replaces section 130B to expand the type of returns to which the section applies, i.e. an advertising return in relation to an election and a periodic return in relation to a reporting period, and to update section references, insert new definitions and provide for a notice to be given to the agent of a candidate.

Clause 51 Amendment of s 130C (Electoral commission must give notice about agent's failure to give return)

Clause 51 amends section 130C(1) as a consequence of the Bill providing for appointment of an agent of a candidate. Section 130C(1)(a) includes reference to an *agent* of a candidate in an election, while section 130C(1)(b) includes reference to *the candidate* (is elected as a councillor).

Clause 52 Insertion of new ss 135-135E

Clause 52 inserts new sections 135 to 135E.

Section 135 (Associated entity to give notice of financial controller) provides that an associated entity is required to give the electoral commission written notice of the name of the financial controller of the entity as soon as practicable after an entity becomes an associated entity of a registered political party that endorses a candidate in an election, or of a candidate in an election or a group of candidates for an election.

In addition, if there is any change to the name of the financial controller of the entity, it must give written notice of the change to the electoral commission as soon as practicable after the change happens.

Section 135A (Registered political party must notify endorsement of candidate) applies if any of the following events happen:

- a registered political party endorses a person to be a candidate in an election;

- if a registered political party notifies the electoral commission under this section about the endorsement of a person to be a candidate in an election—the party's endorsement of the person changes before the polling day for the election;
- a councillor who was endorsed by a registered political party for the election for which the councillor was elected stops being a member of the party.

The registered officer of the registered political party must give the electoral commission written notice, in the approved form, about the event (an *event notice*) within 7 days after the event happens. Failure to comply has a maximum penalty of 40 penalty units.

As soon as practicable after the electoral receives the event notice, the electoral commission must give the candidate or councillor a written notice that states the contents of the event notice and when the electoral commission received the event notice.

If a change mentioned in section 135A(1)(b) is the withdrawal of a registered political party's endorsement of a person as a candidate for an election, a notice given by the party under section 31 about the withdrawal is taken to be an event notice given about the change under this section.

Section 135A notes *section 31 requires a registered political party to notify the electoral commission about the withdrawal of the party's endorsement of a candidate nominated by the party for election*.

The electoral commission may publish an event notice on the electoral commission's website.

Section 135B (Register of agents and register of third parties to be available for public inspection) applies if the electoral commission is required to keep a register of agents or register of third parties for an election under part 6. The electoral commission must make information from the register available for public inspection including by publishing the information on the electoral commission's website. This section also states the information the electoral commission must not make available for public inspection.

Definitions of *information* and *personal information* are provided.

Section 135C (Electoral commission must not publish information about political party membership) states that the electoral commission must not publish, or otherwise make available for public inspection, information about the membership of a political party regardless of how the information came to be in the possession or control of the electoral party.

Section 135D (Audit certificates to accompany particular returns) applies if a person is required to give the electoral commission a return about electoral expenditure incurred by a registered political party that endorsed a candidate in an election under section 125 (Summary expenditure returns – candidates, groups of candidates and registered political parties), or a return about amounts received, paid and outstanding under section 125G (Disclosure of amounts by associated entities). This section provides that the return must be accompanied by a certificate from an auditor.

If the electoral commission considers the cost of compliance with the requirement would be unreasonable, the electoral commission may waive compliance with the requirement to give an audit certificate.

A return required to be accompanied by a certificate is taken not to have been given as required under part 6 if the return is not accompanied by the certificate.

Section 135E (Auditor preparing audit certificate to give notice of contravention) 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 7 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.

Clause 53 Amendment of s 183 (Engaging in group campaign activities)

Clause 53 amends section 183(1) to provide that a person must not engage in a group campaign activity for an election, unless the activity relates to either candidates who are members of the same group of candidates for the election, or candidates who are endorsed by the same registered political party for the election.

The clause also inserts an additional example under section 183(2) of a candidate gifting an amount of electoral expenditure incurred by the candidate to another candidate.

Clause 54 Amendment of s 194B (Schemes to circumvent prohibition on particular political donations)

Clause 54 amends section 194B heading to 'particular political donations *or electoral expenditure'*. It also amends section 194B(1) to include a provision (section194B(1)(b)) that a person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 6 or part 9, division 5 related to incurring electoral expenditure. A maximum penalty of 1,500 penalty units or 10 years imprisonment applies.

Clause 55 Amendment of s 195A (False or misleading information about gift)

Clause 55 amends section:

- 195A(1) to replace the term 'election participants' with the term 'entities'
- 195A(1)(c) to make reference to 'a register political party that endorses a candidate in an election', rather than to 'a registered political party'
- 195A(1)(d) and (e) to update the reference to 'an associated entity' and to update a section reference, respectively.

Clause 56 Omission of s 196 (Records to be kept)

Clause 56 omits section 196.

Clause 57 Insertion of new pt 11, div 6

Clause 57 inserts a new part 11, division 6 (Transitional provisions for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022).

The division includes the following new sections:

Section 221 (Definitions for division) provides definitions for the division.

2024 quadrennial election means the quadrennial election to be held in 2024.

Amending Act means the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022*.

Former, for a provision of the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022*, means the provision as in force from time to time before the commencement.

New, for a provision of the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2022*, means the provision as in force from the commencement.

Post-commencement election means the 2024 quadrennial election and any subsequent election.

Section 222 (Elections held after introduction day and before 2024 quadrennial election) provides that the *Local Government Electoral Act 2011* as in force immediately before the commencement applies in relation to an election held on or after the introduction day and before the 2024 quadrennial election as if the amending Act had not been enacted.

Section 128 (Electoral commission must publish returns and other documents**)** as in force immediately before the commencement applies to the electoral commission in relation to publishing a record about a return for the election. Section 130B (Electoral commission must give reminder notice about requirement for return) as in force immediately before the commencement applies to the electoral commission in relation to giving a notice about a summary return under that section for the election. *Introduction day* means the day the Bill for the amending Act was introduced into the Legislative Assembly.

Section 223 (Continuation of existing groups of candidates for 2024 quadrennial election) applies if, before the commencement, a group of 2 or more candidates gave the electoral commission a record of the membership of the group under former section 41(2) for the 2024 quadrennial election.

The record is taken to be a notice of the membership of the group given to the electoral commission under new section 42 for the 2024 quadrennial election.

Section 223(3) states that if, before the commencement, the electoral commission published the record on the electoral commission's website under former section 41(4), the record is taken to be published on the electoral commission's website under new section 42(2).

If, but for subsection (2), the group would not be eligible under new section 43B to give notice of the membership of the group under new section 42:

- on the relevant day:
    - subsection (2) stops applying to the record; and
    - the group stops being a group of candidates for the 2024 quadrennial election; and
- the electoral commission must remove the record from the electoral commission's website as soon as practicable after the relevant day; and
- new section 43A applies to the group as if the group had been wound up under new section 43A on the relevant day.

In section 223, *relevant day* means the day that is 14 days after the commencement.

Section 224 (Gifts) relates to the new definition of gift provided for in new section 107.

An amount forgiven on a loan mentioned in new section 107(2)(c)(ii) is a gift if the amount is forgiven after the commencement, even if the loan was made before the commencement.

An amount or service mentioned in new section 107(2)(e) is a gift if the amount was paid, or service was provided, under a sponsorship arrangement after the commencement, even if the sponsorship arrangement was entered into before the commencement.

New section 107(5) does not apply to a gift, or part of a gift, mentioned in new section 107(4) that was made before the commencement.

New section 119A (How subdivision applies to gifts that are returned within 6 weeks) applies in relation to a gift returned after the commencement whether the gift was received before or after the commencement.

Section 225 (Electoral expenditure) provides that new section 109E (When electoral expenditure is incurred) applies to electoral expenditure whether the expenditure was incurred before or after the commencement.

Section 225 also provides that new section 123U (Electoral expenditure incurred for another participant) applies to electoral expenditure incurred whether an event mentioned in new section 123U(3) happened before or after the commencement.

Section 226 (Agents and register of group agents) provides that the register of group agents for the 2024 quadrennial election kept under former section 43(1) as in force immediately before commencement is taken to form part of the register of agents kept under new section 116D for the election.

In addition, a person recorded in the register of agents for the 2024 quadrennial election kept under former section 43 as in force immediately before commencement as the agent of a group of candidates is taken to be the agent for the group for new part 6 for the election. However, this does not limit new section 116E(2). Also, if the person has been convicted of an offence against former part 6 or former part 9, division 5, the person is not taken to be the agent for the group for new part 6 for the 2024 quadrennial election.

Section 227 (Existing disclosure obligations for post-commencement elections) applies to an entity who, before the commencement, was required to give a return for the 2024 quadrennial election under former sections 117(2), 118(2), 118A(2), 120(2) or (4), 124(2) or 125A(2) and, immediately before commencement, the entity had not given the return and the disclosure deadline for the return had not passed.

Section 227 provides that part 6 as in force immediately before the commencement continues to apply in relation to the return as if the amending Act had not been enacted.

Section 228 (Summary returns for post-commencement elections under new ss 117 and 120) provides that a return under new section 117(4) or 120(6) in relation to a participant in a post-commencement election must include gifts or loans received during the entire disclosure period for the election, including any part of the period that occurred before the commencement.

For the disclosure period occurring before commencement, a summary return will deal with gifts within the meaning of former section 107. For the disclosure period occurring after commencement, the summary return will deal with gifts within the meaning of new section 107.

Section 229 (Disclosure period for post-commencement elections for particular third parties under new s 118A) relates to amendments to the definition of *third party* which mean that on commencement, the definition of third party will capture new entities, including political parties that are not registered and registered political parties that do not endorse a candidate in an election.

Section 229 applies to an entity if, before the commencement, the entity was not a third party for a post-commencement election under former section 106 and on the commencement, the entity is a third party for the post-commencement election under new section 106.

Section 229 provides that the entity's disclosure period for the post-commencement election for new section 118A starts from the commencement (as opposed to starting 30 days after the polling day for the last quadrennial election). The section applies despite new section 106A.

Section 230 (Disclosure period for post-commencement elections for third parties under new s 118B) provides that for new section 118B, a third party's disclosure period for a post-commencement election starts from the commencement (as opposed to starting 30 days after the polling day for the last quadrennial election). The section applies despite new section 106A.

Section 231 (First reporting period for new ss118AA, 120A and 125G) provides that for new sections 118AA, 120A and 125G the first reporting period is the period starting on the day of the commencement and ending on the following day—if the day mentioned in paragraph (a) is before 30 June in a year, 30 June in the year; otherwise 31 December in the year.

Section 232 (Summary expenditure returns for post-commencement elections under new ss 125 and 125A) provides that a return under new sections 125(2) or 125A(2) in relation to a participant in a post-commencement election must include electoral expenditure incurred during the entire disclosure period for the election, including any part of the period that occurred before the commencement.

For the disclosure period occurring before commencement, a summary return will deal with electoral expenditure within the meaning of former section 123. For the disclosure period occurring after commencement, the summary return will deal with electoral expenditure within the meaning of new section 109.

Section 233 (Summary expenditure returns for particular third parties for post-commencement elections under former s 125A) applies to an entity if, immediately before the commencement, the entity was a third party under former section 106 for a post-commencement election and former section 125A (Expenditure returns—political expenditure by third party) applied to the entity for the election.

Section 233 provides that the entity is required to give a return under former section 125A(4) within 14 days after the commencement. The disclosure period that applies to the return starts when the disclosure period mentioned in former section 125A would have started for the entity for the post-commencement election and ends immediately before the commencement.

For applying former section 125A(4), a reference to a third party is taken to be a reference to the entity, and a reference to the disclosure period is taken to be a reference to the entity's pre-commencement disclosure period for the post-commencement election, and a reference to the required period is taken to be a reference to the period starting on the day of the commencement and ending 14 days after the commencement. New part 9, division 5 applies in relation to the entity as if a reference in the division to part 6 included a reference to this section.

Section 234 (Disclosure period for dedicated accounts under new ss 127AA and 127AB) relates to new requirements in new sections 127AA and 127AB for a registered political party or a relevant third party to operate a dedicated account. Section 234 provides that, for new sections 127AA and 127AB, the disclosure period does not include any part of the period occurring before the commencement. The section applies despite new section 106A.

Section 235 (Notice of dedicated account under new s 127BA) applies if, immediately before commencement:

- a registered political party had endorsed a candidate for the 2024 quadrennial election; or
- a person was a candidate for the 2024 quadrennial election.

New section 127BA applies in relation to the registered political party or candidate as if the party or candidate became a participant in the 2024 quadrennial election on the commencement. However, the registered political party or candidate must give notice of their dedicated account within 14 days after the commencement. For applying new section 127BA(4), a reference in that provision to a notice given under new section 127BA is taken to be a reference to a nomination containing information about a candidate's account for a previous election given to the returning officer under former section 27(2) for the previous election.

Section 236 (Notice of endorsement of candidates under new s 135A) relates to new requirements in new section 135A for registered political parties to provide notice of endorsement of a candidate.

Section 236 applies to a registered political party if, immediately before the commencement, the party had endorsed a candidate in a post-commencement election.

Section 236 provides that new section 135A(2) applies in relation to the registered political party as if the endorsement of the candidate in the post-commencement election happened on the commencement. However, an event notice under section 135A(2) must be given within 14 days after the commencement. In section 236, *endorsed*, in relation to a candidate by a registered political party, has the meaning given by new section 109G.

Section 237 (Existing records under former s 196) provides that former section 196 continues to apply in relation to a record required to be kept under former section 196 immediately before the commencement as if the amending Act had not been enacted.

Clause 58 Amendment of sch 2 (Dictionary)

Clause 58 amends schedule 2 (Dictionary) to provide new or amended definitions for 'agent', 'associated entity', 'auditor', 'authorised officer', 'bank statement', 'broadcaster', 'campaign purpose', 'capped expenditure period', 'dedicated account', 'disclosure period', 'electoral expenditure', 'electoral purpose', 'endorsed', 'expenditure cap', 'financial controller', 'gift', 'gifted', 'group of candidates', 'individual candidate', 'maximum amount', 'number of enrolled electors', 'official cash rate', 'participant', 'person acting on behalf of a candidate', 'person acting on behalf of a group of candidates', 'prescribed matter', 'registered', 'register of agents', 'register of third parties', 'related political party', 'relevant day', 'relevant entity', 'relevant material', 'relevant third party', 'reporting period' and 'sponsorship arrangement'.

Part 5 Other amendments

Clause 59 Legislation amended

Clause 59 provides that schedule 1 to the Bill (Other amendments) amends the legislation it mentions (the *City of Brisbane Act 2010*, the *Local Government Act 2009* and the *Local Government Electoral Act 2011*). The schedule makes minor and consequential amendments to these Acts, including new definitions for *group of candidates* and *how-to-vote card* in the *City of Brisbane Act 2010* and the *Local Government Act 2009* to update cross-references to the *Local Government Electoral Act 2011*.