

Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

Statement of Compatibility

FOR

Amendments during consideration in detail moved by the Honourable Yvette D'Ath MP

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

In accordance with section 38 of the *Human Rights Act 2019* (the HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice, Leader of the House, make this statement of compatibility with respect to the amendments moved during consideration in detail of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (the Bill) (the ACiDs)

In my opinion, the ACiDs for the Bill are compatible with the human rights protected by the HR Act. I accept that there may be an alternative view as to the compatibility of the ACiDs in the Bill that relate to the registration of third parties and restrictions on election signage, however, it is my view that those amendments are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Amendments to Chapter 2 of the Bill –Funding and expenditure for State elections

Chapter 2 of the Bill aims to improve the actual and perceived integrity of State elections and ensure public confidence in State electoral and political processes. The Bill achieves these objectives by:

- capping the giving and acceptance of political donations to registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;
- capping electoral expenditure for registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;
- requiring registered political parties, candidates and registered third parties to maintain dedicated State campaign accounts to support the integrity of, and compliance with, the donations and expenditure caps;

- increasing public election funding for eligible registered political parties and candidates to decrease reliance on private donations;
- increasing policy development funding from \$3 million to \$6 million per annum, allowing independent members to receive policy development payments, making modification to the distribution of policy development payments and basing the entitlement on the most recent general election results at the time of making the payment; and
- introducing arrangements to support the election funding and disclosure reforms, including registration requirements for third parties and clarification of accountabilities of agents and election participants.

Amendments to Chapter 3 of the Bill

Signage at State elections

Chapter 3 of the Bill aims to reduce the ability for signage concentrated around the entrances to pre-poll voting offices and ordinary polling booths, or the grounds in which they are located, by a particular registered political party, candidate (or third party engaged in campaigning) to ‘crowd out’ the opportunities for parties and candidates to communicate with voters. It also aims to ensure that the areas around pre-poll voting offices and ordinary polling booths are more neutral environments for voters, while still allowing reasonable communication with voters, and that the ordinary use of premises to be used as polling booths on polling day, and premises nearby, are not interfered with by the setup of electoral material early on polling day or the preceding period. The Bill achieves these objectives by:

- creating an offence of 10 penalty units for the display of unpermitted signage during voting hours within 100 metres of the entry to a pre-poll voting office or an ordinary polling booth, or a designated entry to the ground, with a candidate (or endorsing registered political party) being permitted to display up to two signs of a specified size; and
- creating an offence of 10 penalty units for displaying an election sign or setting up other items to be used for a purpose related to an election in the days preceding and before early morning on polling day within 100m of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located or within 100m of any entrance to the grounds.

Amendments relating to 2020 general election

The 2020 State general election is due to be held on 31 October 2020. Many existing arrangements under the *Electoral Act 1992* (the Electoral Act) are incongruent with social distancing measures implemented, or which may be required in the future, due to the COVID-19 public health emergency.

The policy rationale for the ACiDs in relation to the 2020 general election is to provide flexibility, if required, to facilitate the holding of the election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. The amendments will allow measures that are temporary and that will only apply in relation to the 2020 general election.

The ACiDs will insert new provisions which allow:

- the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be a day earlier than the day stated in section 84 of the Electoral Act;
- a regulation to be made which requires electors or certain electors to vote by postal vote;
- the time and day by which an elector may request a postal vote to be fixed to an earlier or later time and day by the Electoral Commission of Queensland (ECQ), rather than by 12 days before the polling day;
- requests for electoral visitor voting to be refused and met by the making of alternative arrangements, to the extent practicable, for voting;
- the ECQ to declare additional classes of electors who may make an electronically assisted vote;
- the ECQ to make procedures about how an elector may make an electronically assisted vote, without the need for the procedures to be approved by a regulation and tabled in the Legislative Assembly;
- the ECQ to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth, with an offence applying to persons who contravene such a direction;
- the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention;
- a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention;
- a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a stated place or to arrange for the counting of votes to be filmed by a member of their staff;
- for a regulation to be made which varies or modifies any provision of the Act including in part 7 of the Electoral Act; and
- for a regulation to be made which limits any direction that may be given by the ECQ under the new sections.

Part 7 of the Electoral Act contains provisions about the calling of elections, nomination of candidates for elections, arrangements for elections, how voting takes place, counting of votes and the notification of election results. Accordingly, the proposed amendments could allow a regulation to be made in relation to a broad range of matters, including a regulation to facilitate the increased use of postal voting, should it be required.

The new regulation-making power will also empower the ECQ to issue procedures relating to the provisions of part 12A or regulations made under it.

Amendments to Chapter 5 of the Bill - Dishonest conduct of councillors and other local government matters

Chapter 5 of the Bill continues the Government's rolling local government reform agenda to improve transparency, integrity and consistency in the local government system, decision-making and local government elections. The Bill achieves these objectives by amending the

City of Brisbane Act 2010 (COBA) and/or the *Local Government Act 2009* (LGA) about the local government system and decision-making, including by:

- introducing a new offence that applies if a councillor dishonestly contravenes particular obligations in regard to conflicts of interest or registers of interests;
- clarifying and further strengthening how councillors' conflicts of interest are managed; and
- providing for greater alignment between COBA and the LGA in the process for filling a vacancy in the office of a mayor or councillor in a single-member division and providing for filling a vacancy in the office of a councillor in a multi-member division or undivided local government by appointment of the runner-up or a subsequent runner-up in the last quadrennial election.

Human Rights Issues

Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)

In my opinion, the human rights relevant to the ACiDs amendments are:

- right to recognition and equality before the law (section 15 of the HR Act);
- right to freedom of movement (section 19 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- peaceful assembly and freedom of association (section 22 of the HR Act);
- taking part in public life (section 23 of the HR Act);
- property rights (section 24 of the HR Act);
- privacy and reputation (section 25 of the HR Act);
- right to liberty and security of the person (section 29 of the HR Act);
- right to a fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

The **right to recognition and equality before the law** encompasses the right to recognition as a person before the law and right to enjoy human rights without discrimination. It reflects the essence of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group.

The **right to freedom of movement** protects a person's right to move freely within Queensland and to enter and leave it and choice of residence, if they are lawfully within Queensland. The right is based upon Article 12 of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health. However, the United Nations Human Rights Committee (UNHRC) considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

The right to **freedom of expression** protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

The right to **freedom of association** protects the rights of individuals to join together with others to formally pursue a common interest, for example, through political groups.

The **right to take part in public life** affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The UNHRC considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

The **right to property** protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests recognised under general law and may include some statutory rights. Prescribing the offences as infringement notice offences under the *State Penalties Enforcement Regulation 2014* (SPE Regulation) will mean that they will be subject to the enforcement powers under the *State Penalties Enforcement Act 1999* (SPE Act) if, for example, if an individual fails to pay the infringement notice fine. Enforcement action under the SPE Act in relation to an unpaid fine may include, among other things, the suspension of an individual's driver licence, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual). Such enforcement action limits the right to property.

The **right to privacy and reputation** protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity. The United Nations Human Rights Committee has said that it refers to those aspects of life in which a person can freely express his or her identity, either alone or in relationships with others.¹ It protects privacy in the personal sense (and in the sense of personal information, data collection and correspondence) but also extends to an individual's private life more generally.

The **right to privacy** under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the International Covenant on Civil and Political Rights (ICCPR).² The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.³ These are concepts that are consistent with the rule of law principles. The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.⁴

Reputation in the context of the right refers to one's appraisal by others. The HR Act protects against unlawful attacks on reputation.

¹ Coeriel and Aurik v The Netherlands (Communication No 45/1991) [10.2].

² United Nations Human Rights Committee, *General Comment No. 16*.

³ *Sunday Times v United Kingdom* [1979] ECHR 1, [49].

⁴ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

The **right to liberty and security of the person** protects the personal physical liberty of all persons, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including, but not limited to, criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

The **right to a fair hearing** provides individuals with the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice. Similarly, the rights in criminal proceedings provide the right to be presumed innocent until proven guilty according to law as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. Prescribing the offences under the SPE Regulation enables a fine of a fixed amount to be issued to an individual by the ECQ without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in criminal proceedings.

The underlying value of the **rights in criminal proceedings** protected by the HR Act is the right of all persons to be presumed innocent until proven guilty according to law. The right protects a number of minimum guarantees for an accused person in criminal proceedings, including, for example, the right to be tried without unreasonable delay, the right to examine witnesses, and the right of an individual not to be compelled to testify against themselves or to confess guilt (which protects individuals from any direct or indirect undue pressure to answer questions or produce information that might tend to incriminate them for an offence).

Amendments promoting human rights

Amendments relating to appointments to the Local Government Remuneration Commission

Taking part in public life (section 23 of the HR Act)

Section 181 of the LGA provides that a person is qualified to be a commissioner of the Local Government Remuneration Commission only if they have extensive knowledge of, and experience in, particular matters or have other knowledge or experience the Governor in Council considers appropriate. The section also provides that a person is not qualified to be a commissioner if the person falls within one of the categories of persons listed, including being a member of a political party.

The ACiD for the Bill amends section 181(2)(i) of the LGA to remove the prohibition on a person who is a member of a political party from being qualified to be a commissioner of the Local Government Remuneration Commission.

This engages the right to take part in public life by promoting the right as it removes a limitation on the range of persons who are qualified to be a commissioner and therefore provides the opportunity to take part in public life to more people, including those who are members of a political party.

Amendments relating to filling vacancies in the office of a councillor

Taking part in public life (section 23 of the HR Act)

The Bill amends the LGA to provide new requirements for how a vacancy in the office of a councillor must be filled. The amendments provide that a vacancy that arises in the first 36 months after the last quadrennial election must be filled by:

- for a mayor or councillor in a single-member division – a by-election; and
- for a councillor in a multi-member division or undivided local government – appointing a runner-up, or a by-election if this is not possible.

The ACiDs for the Bill vary the proposed system for filling a vacancy that arises in the first 36 months after the last quadrennial election by providing that a vacancy in any office of a councillor (including the mayor) that arises in the first 12 months after the quadrennial election must be filled by appointing the runner-up, and if this is not possible, by a by-election. Vacancies in the following 24 months are to be filled by a by-election.

This engages and promotes the right to take part in public life as it promotes the free expression of the will of the electors by allowing votes cast in the quadrennial election to be considered in the first 12 months after the quadrennial election. It also gives persons who had indicated their wish to participate in public affairs by nominating as candidates at the election a further opportunity to participate in public affairs as councillors.

The requirement to hold a by-election in the period of 24 months starting 12 months after the quadrennial election also enhances the right to take part in public life by giving individuals an additional opportunity to participate in public affairs as councillors by nominating as a candidate for the by-election. It also allows electors a further opportunity to participate in public affairs by choosing their elected representative freely.

If human rights may be subject to limitation if the amendments to the Bill are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, HR Act)

Amendments relating to donation caps

Peaceful assembly and freedom of association (section 22 of the HR Act); Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act)

(a) the nature of the right

The Bill introduces new part 11, division 6 of the *Electoral Act 1992* (Electoral Act) which imposes donation caps on political donations that can be made to, and accepted by, registered political parties, candidates (including elected members) and third parties that engage in electoral campaigning. The donation caps restrict the amount that can be made by, or received from a single donor during the donation cap period.

The ACiDs for the Bill amend part 11, division 6 so that donation caps as outlined above will only apply to political donations made to, and accepted by, registered political parties and candidates (including elected members). This means that third parties that engage in electoral campaigning will not be subject to donation caps, and can use any amounts for electoral campaigning without being restricted as to the amounts sourced from any single donor that can be applied to such purposes.

New part 11, division 6, as amended by the ACiDs, limits the rights to freedom of association, freedom of expression and to take part in public life.

A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’.

Freedom of association is limited by donation caps as the caps limit the financial support that an individual donor (including individuals forming an unincorporated body) can provide to a registered political party or candidate for State electoral purposes.

Freedom of expression is arguably limited by the donation caps as the caps restrict the amounts that can be received from any individual donor for electoral expenditure on campaigning in a State election by a registered political party or candidate. This may impact on the information that can be conveyed by those election participants, and the information that a person can receive from those participants, concerning the State election.

The right to take part in public life is also limited as restricting the financial support that can be provided to a registered political party or candidate, and restricting the amount from any individual donor that can be used for electoral expenditure on campaigning for a State election by a registered political party or candidate, may impact on persons contributing to and exercising their voices in relation to the public life of the State.

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

The purpose of the limitation to be imposed by the donation caps is to secure the actual and perceived integrity of State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties and candidates through donations.

This purpose is consistent with a free and democratic society because a reduced risk of improper, corrupting or undue influence on registered political parties, candidates and elected representatives is an important feature of a properly functioning democracy and the integrity of representative government, and supports election participants to act in the public interest rather than being subject to such influence.

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

By imposing donation caps, as proposed by the Bill, which excludes third party recipients due to the ACiDs, the purpose of reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties and candidates through donations will be achieved.

The limitations on freedom of association, freedom of expression and taking part in public life, through restricting financial support that can be provided to a registered political party or candidate, and restricting the amount individual donors can use for electoral expenditure on campaigning for a State election by a registered political party or candidate, fits the purpose it is designed to achieve. In the event that these limitations were not imposed, a single person or entity could donate unrestricted amounts to registered political parties and candidates, which could be applied to electoral expenditure, and the scope for actual or perceived undue influence through the provision of such amounts would not be reduced.

The Bill does not prohibit political donations to registered political parties and candidates, but rather caps donations to such amounts to still allow reasonable financial support to be provided which can be applied to electoral expenditure on State electoral campaigning. In this way the limitations on freedom of association, freedom of expression and taking part in public life fit the purpose of reducing the risk of undue influence.

Making clear who is liable for donation cap offences committed by an unincorporated body or a person acting on behalf of an unincorporated body, is necessary to ensure that the liability for these offences is clear and supports the purpose of ensuring compliance with the donation caps.

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

The Bill, as amended by the ACiDs, will only apply donation caps to registered political parties and candidates. By not applying to third parties engaged in electoral campaigning, the limitation on rights is limited to a restricted class of recipients of donations that are most closely linked to the purpose of reducing the risk of improper, corrupting and undue influence. This allows donors to donate to third parties without being subject to a donation cap, and for third parties to apply any amounts to their campaigning activity. Applying higher donation caps to registered political parties and candidates would be less restrictive but in my view would not provide sufficient assurance that the risk of improper, corrupting or undue influence would be reduced. Moreover, the donation caps that apply to political parties and candidates are sufficiently offset by an increase in the quantum of public funding available to political parties, and candidates. In addition, the increase in the quantum of policy development payments will assist political parties and elected independents offset their reliance on sources of private donations. Therefore, I consider that the amendments are the most effective and reasonably adapted way of achieving this purpose.

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

On balance, taking into account the nature and extent of the limitation on the freedom of association, freedom of expression and the right to take part in public life and having regard to the information and analysis detailed above, I consider that the importance of reducing the risk of improper, corrupting or undue influence outweighs the negative impact on the freedom of association, freedom of expression and the right to take part in public life.

(f) any other relevant factors

Donation caps have been employed across Australian jurisdictions. At present, both Victoria and New South Wales employ donation caps. Regard has been given to the levels of the caps in those jurisdictions to ensure that the caps proposed in this Bill are not unduly restrictive.

In *McCloy v New South Wales* [2015] HCA 34, the High Court upheld the validity of a cap on donations. It noted that the imposition of a donation cap was a measure that had been employed “by many countries with systems of representative government”.⁵ The High Court held that a donation cap does not impede the system of representative government, but in fact preserves and enhances it.

⁵ *McCloy v New South Wales* [2015] HCA 34 at [46]

Amendments relating to electoral expenditure caps

Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act); Right to liberty and security of the person (section 29 of the HR Act)

(a) the nature of the right

The Bill introduces new part 11, division 9 of the Electoral Act which imposes caps on electoral expenditure for election participants.

The ACiDs for the Bill amend part 11, division 9 to:

- clarify what constitutes electoral expenditure;
- clarify that staffing costs are not electoral expenditure;
- address the stockpiling of election material before the capped expenditure period for goods delivered and provided dominantly for the purpose of use during the capped expenditure period;
- shorten the duration of the capped expenditure period; and
- increase the maximum penalty for the offence for exceeding an expenditure cap to 1,500 penalty units or 10 years imprisonment.

New part 11, division 6, as amended by the ACiDs, limits the rights to freedom of expression and to take part in public life. A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’.

Freedom of expression may be limited by the expenditure caps as the caps limit the amount that may be expended by a registered political party, candidate (including an elected member) and third party on campaigning in respect of a State election, and therefore may impact on the information that can be conveyed by those election participants, and the information that a person can receive from those participants, concerning the State election.

The right to take part in public life is also limited as the expenditure caps may impact on persons contributing to and exercising their voices in relation to the public life of the State.

The right to liberty of an individual is limited to the extent that there is the potential for an election participant (including a liable officer, agent or financial controller), or a person acting with the participant’s authority, to be imprisoned for contravention of the offence for exceeding an expenditure cap.

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

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

⁶ *Unions NSW v New South Wales* [2019] HCA 1

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

The limitations on electoral expenditure imposed by the electoral expenditure caps will level the playing field for electoral campaigning and ensure that an individual or entity has a reasonable opportunity to communicate to influence voting in an election during the capped expenditure period (as shortened by the ACiDs) without ‘drowning out’ the communication of others.

The ACiDs clarifying the exclusion of staffing (but not consultancy) costs will ensure that those registered political parties, candidates and third parties that are subject to the expenditure caps have consistent rules applying to them as to what amounts to electoral expenditure, and therefore supports the objective of the expenditure caps to level the playing field.

The ACiDs providing that goods delivered or provided before the capped expenditure period with a dominant purpose of use during the capped expenditure period, will ensure that the expenditure caps cannot be avoided through stockpiling in advance of the capped expenditure period, and also supports the objective of the expenditure caps to level the playing field.

The ACiDs increasing the maximum penalty for the offence for exceeding an expenditure cap is necessary to ensure that there is sufficient deterrent to doing so, particularly given that electoral unfairness may result if the caps are not complied with, and in turn support the purposes of the expenditure caps.

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

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

The expenditure caps have been formulated by indexing previous expenditure cap amounts as provided by the *Electoral Reform and Accountability Amendment Act 2011*. That expenditure cap applied for approximately 10 months, in its first application and was drafted to commence every two years after a general election, notionally creating a capped expenditure period of approximately 12 months. The ACiD shortening the capped expenditure period from 12 months to a shorter period (of typically seven months) ensures that the least restrictive approach is taken in the Bill whilst providing a framework to level the electoral playing field, limit the political arms race and ensure no one has their voice drowned out in an electoral contest. Given that the quantum of the capped expenditure available to electoral participants has remained the same, while the capped expenditure period has been significantly reduced, relative to both the Bill and the *Electoral Reform and Accountability Amendment Act 2011*, electoral participants will be afforded a reasonable opportunity to present their views to electors.

Applying the expenditure caps for a shorter period would be less restrictive on the rights to freedom of expression and taking part in public life. However, this would also be significantly less likely to achieve the purpose of levelling the playing field for electoral campaigning because it could incentivise earlier campaigning to avoid the caps.

Similarly, applying the expenditure caps to a narrower class of expenditure by limiting what is considered electoral expenditure, such as not applying the expenditure caps to expenditure to influence voting in an election but rather requiring limited expenditure to expressly promote or

oppose a political party in relation to an election, would be less restrictive on the rights to freedom of expression and taking part in public life. However, this would also be significantly less likely to achieve the purpose of levelling the playing field for electoral campaigning. This is because it would allow expenditure, even where the dominant purpose of the expenditure is to influence voting in an election, to not be included in electoral expenditure caps, which could incentivise such expenditure and undermine the purpose of the caps.

Applying an offence with a maximum penalty less than 1,500 penalty units or 10 years imprisonment, while reducing the limitation on the right to liberty, would be significantly less likely to act as a sufficient deterrent, which may in turn reduce electoral fairness and integrity in the event that expenditure caps are not complied with.

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

On balance, taking into account the nature and extent of the limitation on rights to freedom of expression and right to take part in public life and having regard to the information and analysis detailed above, I consider that the importance of the limitation outweighs the negative impact of the electoral expenditure caps have on these rights.

(f) any other relevant factors

In formulating the relevant expenditure caps, regard has been given to interstate and international jurisdictions' expenditure cap amounts, the length of capped expenditure period and the relevant types of expenditure those caps capture. While the expenditure caps proposed in the Bill and ACiDs are lower in quantum than those set out in the New South Wales *Electoral Funding Act 2018*, the scope of what constitutes 'electoral expenditure' is narrower in the Bill, as amended by the ACiDs, than that contained in the New South Wales Act.

Notably, this Bill and the relevant ACiDs do not include staffing costs (excluding consultants), accommodation or travel in the definition of 'electoral expenditure' whereas the New South Wales Act does. This differentiation has been taken into account in setting the caps at a comparatively lower level.

Amendments relating to the payments of amounts into State campaign accounts

Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act)

(a) the nature of the right

The Bill introduces new section 216 which restricts the amounts that a registered political party or candidate can pay into a State campaign account. A State campaign account is a dedicated bank account that all donations received for State electoral purposes must be paid into, and all electoral expenditure for a State election must be paid out of. There are specific restrictions on the types of amounts that can be paid into a State campaign account which are directed at ensuring the integrity of donation caps.

The ACiDs for the Bill amend section 216 to broaden the types of amounts that can be paid into a State campaign account, including transfers by candidates of amounts from a joint bank account held with their spouse and amounts of property held or invested by a registered political party before the time that the donation caps first apply, or by an associated entity of a registered political party before the commencement.

New section 216, as amended by the ACiDs, limits the rights to freedom of expression and to take part in public life. A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’.

Freedom of expression is limited because the amounts that can be applied to campaigning in a State election are limited to those that can be paid into the State campaign account, including the limitations as to their quantum. This limits the funding sources and amounts for electoral campaigning, and therefore may impact on the information that can be conveyed by those election participants, and the information that a person can receive from those participants, concerning the State election.

The right to take part in public life is also limited by limiting the amounts that can be paid into the State campaign account of a registered political party or candidate. This is because it may impact on persons contributing to and exercising their voices in relation to the public life of the State.

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

The purpose of the limitation through restricting the amounts that a registered political party or candidate can pay into a State campaign account is to support compliance and integrity of the donation caps applying to registered political parties and candidates, which supports the purpose of the donation caps to secure the actual and perceived integrity of State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on registered political parties and candidates through donations.

This purpose is consistent with a free and democratic society because compliance and improved integrity of the donation caps will allow the donation caps to operate as intended and minimise opportunities for circumvention. This will in turn reduce the risk of improper, corrupting or undue influence on registered political parties and candidates (including elected members), which is an important feature of a properly functioning democracy and the integrity of representative government, and supports election participants to act in the public interest rather than being subject to such influence.

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

Limiting the amounts that can be paid into a registered political party’s or candidate’s State campaign account to those provided for by new section 216 helps to achieve the purpose by limiting any scope for amounts that are not complying with the donation caps being paid into State campaign accounts (and potentially being applied to electoral expenditure) and minimise opportunities for circumvention of the donation caps. State campaign accounts are subject to specific record keeping requirements and may also be audited by the ECQ or an independent auditor to detect instances of non-compliance. Ensuring the compliance with the donation caps will reduce the risk of improper, corrupting or undue influence on registered political parties and candidates.

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

There are no less restrictive reasonably available ways to achieve the purpose of restricting the amounts to be paid into State campaign accounts of registered political parties and candidates.

While it may be possible to limit the restrictions applied to amounts that registered political parties and candidates can pay into State campaign accounts so that they only relate to political donations, and allow other amounts to be paid in, provided that they are not political donations, this would significantly increase the opportunities for circumvention of the donation caps making it difficult to ascertain whether amounts paid into a State campaign account were in fact sourced from unlawful political donations. Therefore, while less restrictive, this option would be significantly less likely to achieve the purpose of the amendments to ensure compliance with the donation caps and reduce the risk of improper, corrupting or undue influence.

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

On balance, taking into account the nature and extent of the limitation on the freedom of expression and right to take part in public life and having regard to the information and analysis detailed above, I consider that the importance of ensuring compliance with donation caps (and, in turn, reducing the risk of improper, corrupting or undue influence) outweighs the negative impact that the offences at new section 216 of the Bill have on the freedom of expression and right to take part in public life.

(f) any other relevant factors

Not applicable.

Amendments relating to public disclosure of certain amounts given to, and received by, election participants

Peaceful assembly and freedom of association (section 22 of the HR Act); Taking part in public life (section 23 of the HR Act); Privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

The Electoral Act currently requires certain election participants to submit a return to the ECQ disclosing details of certain amounts received or given, which are then published on the ECQ website.

The ACiDs for the Bill provide for:

- timing for the disclosure of loans received by an associated entity;
- when a gift received by a third party that has been used to enable the third party to incur, or be reimbursed for, expenditure for a political purpose must be disclosed; and
- a transfer by a candidate of amounts from joint bank accounts held by the candidate and their spouse not to be a gift.

The effect of the ACiDs together is to reduce the disclosure required by third parties, candidates and spouses of candidates in the circumstances described, and increase the disclosure required by associated entities to include loans received. This limits the rights to freedom of association, right to take part in public life and right to privacy and reputation. A discussion around the nature of these rights is set out under the heading 'Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)'.

By expanding disclosure to cover those that provide both gifts and loans to associated entities, the right to freedom of association is limited by making publicly available a person's

association, through the provision of a gift or loan, with an associated entity of a registered political party. By limiting disclosure to only cover those gifts to third parties where \$1,000 or more is used for expenditure for a political purpose, the right to freedom of association is promoted by no longer making publicly available a person's association, through the provision of gifts that are not applied to that expenditure.

By expanding disclosure to cover loans to associated entities, the right to take part in public life is promoted because the transparency to voters concerning those providing such loans to associated entities is improved.

By limiting disclosure to no longer cover those that provide gifts to third parties where less than \$1,000 is applied to expenditure for a political purpose, the right to take part in public life may be limited because the transparency to voters concerning those providing such gifts to relevant third parties is reduced.

By expanding disclosure to include loans to associated entities, the right to privacy and reputation is limited because it makes publicly available personal information about a person that makes such a loan to an associated entity (which may reveal a political association). By limiting disclosure to no longer cover those that provide gifts to third parties where less than \$1,000 is applied to expenditure for a political purpose, or the spouse of a candidate that pays funds from a joint bank account to the candidate, the right to privacy and reputation is promoted because it no longer makes publicly available personal information about a person that makes such a gift or holds such a joint bank account.

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

The purpose of the limitation is to provide transparency and inform the public, including voters, about the financial dealings of election participants and assists them to form judgements about such participants and other actors that seek to influence them, and allow them to be better informed in exercising their right to vote. The proposed limitations are directed at providing transparency for those financial dealings where there is potential for improper, corrupting or undue influence, while excluding those where the scope for such influence is more limited. This purpose is consistent with a free and democratic society as providing transparency for voters provides them with information in order to form their political judgements prior to casting their votes, without overwhelming voters by providing information about financial dealings with limited scope for influence on the relevant election participants.

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

The limitations on the rights help achieve the purpose. The disclosure arrangements will allow voters to be informed about who is providing such amounts including the scope for influence, including both gifts and loans to associated entities and gifts applied to electoral expenditure, but excluding those amounts where the scope for influence is limited. In particular, I consider loans to associated entities do have the potential to involve improper, corrupting or undue influence. Gifts to third parties where less than \$1,000 is applied to an electoral purpose, have significantly less scope for improper, corrupting or undue influence in an election to be present, with that scope being limited by the quantum applied to electoral purposes. The ACiDs also recognise that money that is transferred by the candidate from a bank account jointly held with their spouse is essentially a self-contribution and does not pose a corruption risk.

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

There are no less restrictive reasonably available ways to achieve the purpose. The ACiDs make the measures less restrictive by appropriately requiring disclosure in instances where there is scope for improper, corrupting or undue influence.

The impact on the right to privacy and reputation is narrowed due to safeguards in the Electoral Act, inserted by the *Electoral and Other Legislation Amendment Act 2019* (and to commence immediately before commencement of Chapter 2 of the Bill), which require the ECQ to delete the street address of any individual identified in the return, and the full address of a silent elector where the person giving the return informs the ECQ of the silent elector status. The deletion of street addresses will limit the publicly available address information to the suburb, town, city or other locality and State.

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

On balance, taking into account the nature and extent of the limitation on the right to freedom of association, taking part in public life and the right to privacy and reputation, I consider that the purpose of providing transparency and informing the public in exercising their voting choices outweighs the negative impact that the disclosure required has on freedom of association, the right to take part in public life and the right to privacy and reputation.

(a) any other relevant factors

Not applicable.

Amendments relating to the registration threshold for third parties and related matters

Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act); Privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

The ACiDs for the Bill amend section 297 so that a third party is required to be registered if electoral expenditure incurred by or with the authority of the third party during the capped expenditure period for the election exceeds \$6,000. This limits the rights to freedom of expression, to take part in public life and privacy and reputation. A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’.

Third parties will be required to engage in additional activities (as to the keeping of State campaign accounts and disclosure) where they incur electoral expenditure of more than \$6,000 or more during the capped expenditure period (increased by the ACiDs from \$1,000). This limits freedom of expression as third parties (and more indirectly, individuals forming an unincorporated body or other entity), will be limited as to the amount they can expend on campaigning in respect of a State election without being subject to additional obligations. This potentially impacts on the information that can be conveyed by third parties that do not wish to be subject to the additional requirements, and information that a person can receive from such third parties.

The right to take part in public life is also limited as the expenditure caps may impact on persons contributing to and exercising their voices in relation to the public life of the State.

The right to privacy and reputation is limited as the ECQ may receive information about third parties applying for registration, with the register of third parties being published on the ECQ's website. Returns of electoral expenditure by registered third parties are also required to be published on the ECQ's website.

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

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

These purposes are consistent with a free and democratic society as they are intended to provide transparency and inform the public, including voters, about those third parties that incur more significant amounts of electoral expenditure, allowing voters to be better informed in exercising their right to vote, and to prevent electoral unfairness arising from electoral communication being dominated by particular election participants and preventing others from having a reasonable opportunity to communicate with voters about a State election.

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

The limitations imposed by requiring third parties to register will help achieve the purpose.

Keeping and publishing a register of third parties on the ECQ's website will allow voters to access information about third parties that expend more significant amounts on electoral campaigning and, if desired, conduct further inquiries about those engaging in electoral communication with them prior to exercising their right to vote, and for future elections.

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

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

There is arguably a less restrictive and reasonably available way to achieve the purpose of providing transparency to voters and supporting compliance with the expenditure caps. In particular, the registration threshold for third parties could be increased from \$6,000 (as amended by the ACiDs) to a higher amount, to further reduce the restriction on the rights. There

is therefore a risk that these amendments in the Bill are incompatible with the freedom of expression, the right to take part in public life and the right to privacy and reputation.

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

The impact on the right to privacy and reputation is narrowed due to safeguards in new section 388A in the Bill which requires the ECQ to not make publicly available restricted information from a register that it is required to keep under the Electoral Act. The restricted information is the street address of any individual, and the full address of a silent elector where the ECQ is informed that the individual is a silent elector, an individual's date of birth, an individual's contact details, and the details of a bank account of an entity. This ensures that the impact on right to privacy is limited to that information which is needed to achieve an appropriate level of transparency for voters, but does not go beyond this.

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

On balance, taking into account the nature and extent of the rights as described and the information and analysis detailed above, I consider that the importance of providing transparency of third party campaigners for voters and ensuring compliance with expenditure caps (and, in turn, levelling the playing field for electoral campaigning) outweighs the negative impact that the third party registration requirements have on the rights to freedom of expression, the right to take part in public life and the right to privacy and reputation.

(f) any other relevant factors

While I acknowledge that the amendments in the Bill limit the freedom of expression, the right to take part in public life and the right to privacy and reputation and in doing so it may be open to conclude that the amendments are incompatible with human rights, it is my view that the limitation is reasonable and justified. The registration threshold of \$6,000 of electoral expenditure is less prohibitive than the approach adopted in Victoria (for a 'third party campaigner' expending more than \$4,000 in a financial year to promote or oppose a candidate, elected member or political party) and New South Wales (where the similar registration threshold is \$2,000 of electoral expenditure). The figure of \$6,000 was also supported by the preponderance of third-party submitters to the Economics and Governance Committee's inquiry into the Bill. However, if it is found the figure of \$6,000 is not compatible with human rights then the incompatibility is nevertheless necessary for the reasons outlined above.

Amendments related to associated entities

Peaceful assembly and freedom of association (section 22 of the HR Act); Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act)

(a) the nature of the right

The Bill inserts a new provision that would, for donation caps, election funding, and electoral expenditure purposes, treat an associated entity of a registered political party as if it were part of the party.

An 'associated entity' is an entity that:

- is controlled by one or more registered political parties; or
- operates wholly, or to a significant extent, for the benefit of one or more registered political parties.

The ACiDs for the Bill:

- expand the definition of 'associated entity' so that it includes:
 - entities that are controlled by, or operate wholly, or to a significant extent, for the benefit of a candidate, or two or more candidates endorsed by the same registered political party;
 - entities that operate for the dominant purpose of promoting a registered political party, a candidate or two or more candidates endorsed by the same registered political party; and
- clarify the application of part 11 to associated entities.

The practical effect of the Bill, as amended by the ACiDs, is that associated entities that meet the expanded test will be taken together with the relevant candidate or registered political party they are 'associated with' for both donation caps and expenditure caps, will be required to use the State campaign account and be subject to the same restrictions on amounts that can be paid into that account as the relevant entity that they are 'associated with'.

Freedom of association is limited by the donation caps applicable to associated entities, as the donation caps limit the financial support that an individual donor (including individuals forming an unincorporated body) can provide to an associated entity and a party or candidate it is 'associated with' for State electoral purposes.

This limits the rights to freedom of expression, to take part in public life and association. A discussion around the nature of these rights is set out under the heading 'Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)'.

Freedom of expression is limited by the donation caps as they limit the amounts that can be received from any individual donor for electoral expenditure on campaigning in respect of a State election by an associated entity and a party or candidate it is 'associated with'. The expenditure caps also limit the amount that can be expended by an associated entity, and a party or candidate it is 'associated with' on campaigning in respect of a State election. The restrictions on amounts that can be paid into State campaign accounts (as described above) limit the funding sources and amounts that can be applied to electoral campaigning. These measures impact on the information that can be conveyed by those election participants, and the information that a person can receive from those participants, concerning the State election.

The right to take part in public life is limited by the donation caps as they limit the financial support that can be provided to an associated entity and a party or candidate it is 'associated with', and limit the amount from any individual donor that can be used on for electoral expenditure on campaigning for a State election. This right is also limited by the expenditure caps and restrictions on amounts that can be paid into State campaign accounts as they impact on persons contributing to and exercising their voices in relation to the public life of the State.

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

The purpose of the limitation to be imposed by the proposed treatment of associated entities is to ensure that entities cannot be established or used by registered political parties or candidates to circumvent donation and electoral expenditure caps, and that necessary arrangements to support compliance with the donation and expenditure caps are in place. This purpose in turn supports the purposes of the donation caps and expenditure caps (as described above), which are consistent with a free and democratic society.

The amendments seek to regulate instances where political parties or candidates artificially amplify their capacity for incurring electoral expenditure or receiving gifts and loans. The amendments will not infringe upon the rights of autonomous legal entities that do not meet the definition of an associated entity pursuing their own political agendas, such as registered industrial organisations (both employer and employee representatives) or industry peak bodies, who may incur electoral expenditure or make political donations to support or oppose particular political parties or candidates.

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

The limitation will achieve the purpose by ensuring that ‘associated entities’ are taken together with the entity that they are ‘associated with’ for the purpose of the donation and expenditure caps, and not providing opportunities for circumvention through the use of such entities. Requiring an associated entity to use the State campaign account of the entity it is ‘associated with’ will assist in ensuring that the activities of associated entities and the entity it is ‘associated with’ are appropriately centralised.

State campaign accounts are subject to specific record keeping requirements and may also be audited by the ECQ or an independent auditor to detect instances of non-compliance. Improved compliance will support the objectives of the donations and expenditure caps.

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

There are no less restrictive reasonably available ways to achieve the purpose of the treatment of associated entities in the Bill, as amended by the ACiDs.

The expanded treatment of associated entities is necessary to ensure that the donation and expenditure caps cannot be avoided. In particular, the expanded definition of associated entities is necessary to ensure that such entities cannot be created to avoid the application of donation caps, which will not apply to third parties due to changes recommended by the ACiDs.

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

On balance, taking into account the nature and extent of the limitations on the rights to freedom of association, freedom of expression and taking part in public life, I consider that the importance of ensuring that the donation and expenditure caps cannot be circumvented, and ensuring compliance with the caps, outweighs the negative impact of the treatment of associated entities will have on the rights.

(f) any other relevant factors

Not applicable.

Amendments related to auditing and recordkeeping (including requirements concerning party membership lists)

Peaceful assembly and freedom of association (section 22 of the HR Act); Privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

The Bill introduces new section 305 which requires particular records to be kept by election participants which are related to compliance with donation caps, electoral expenditure caps, disclosure requirements, and compliance with part 11 generally.

The proposed ACiDs for the Bill:

- clarify the record keeping requirements for all election participants by allowing those specific matters about which records must be kept for each type of electoral participant to be prescribed, and reduce the record keeping requirement for third parties to reflect the removal of the donation caps for third parties;
- change auditing requirements so that only registered political parties and associated entities will be required to provide audited returns, with the ECQ being empowered to conduct audits, including of candidates and third parties; and
- prohibit the ECQ from making party membership lists available for public inspection, including, for example, by publishing them on its website.

This limits the rights to freedom of association and privacy and reputation. A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’.

The keeping of these records, which may be subject to auditing, limits the right to privacy. In particular, election participants may be required to disclose personal information about an individual’s membership with the political party and political donations made to the ECQ and auditors. This limits the right to privacy.

Freedom of association may also be limited by the requirement to the extent that the records will disclose the political affiliations and opinions/persuasions of the individuals who are fee-paying members of the party.

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

The purpose of requiring records to be maintained is to ensure compliance with the requirements of part 11. This in turn supports the purposes of the donation caps, expenditure caps and disclosure requirements (as described above), which are consistent with a free and democratic society.

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

The purpose of the record keeping requirement will help ensure compliance with the donation and expenditure caps. In particular, they will allow the ECQ and auditors to verify financial

dealings of election participants, detect instances of non-compliance and pursue action, which may include prosecution, where instances of non-compliance is identified. This supports the integrity of the donations and expenditure caps.

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

There are no less restrictive (on human rights) and reasonably available ways to achieve the purpose. The record keeping requirements are limited to those records that are necessary to determine compliance or otherwise by election participants. Relying on the provision of information through other means, such as declarations from agents concerning compliance, while less restrictive, would not provide the requisite level of assurance about compliance, and would not be effective in achieving the purpose.

Safeguards in the ACiDs prohibit the ECQ from making party membership lists available for public inspection, including, for example, by publishing them on its website. This ensures that the personal and political information of individuals who are members of registered political parties is protected by expressly ensuring that the information is not made public by the ECQ under any circumstances.

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

On balance, taking into account the nature and extent of the limitation on the right to privacy and reputation and freedom of association and having regard to the information and analysis detailed above, I consider that the importance of allowing verification of compliance with donation and expenditure caps, and ensuring their integrity, outweighs the negative impact that the requirements for auditing and recordkeeping have on the rights.

(f) any other relevant factors

Not applicable.

Amendments relating election signage

Freedom of expression (section 21 of the HR Act); Taking part in public life (section 23 of the HR Act); Privacy and reputation (section 25 of the HR Act).

(a) the nature of the right

The Bill introduces new part 10, division 2A into the Electoral Act to provide for offences relating to signage at polling booths for State government elections. Relevantly:

- new section 185F provides restrictions on the display of election signage such that display within 100 metres of the building where voting compartments at a polling booth or pre-poll voting office are located, or within 100 metres of each designated entrance, is limited to permitted signage (of limited quantities and up to a certain size);
- new section 185G provides restriction on the setup of election signage before 6am on polling day within 100 metres of the building in which the voting compartments for an election are to be located, the grounds, a boundary fence or structure or within 100 metres of any entrance to the grounds.

The ACiDs for the Bill:

- amend the offence at new section 185F so that:
 - candidates/parties may display up to six signs in each designated area of a polling booth on polling day, consisting of a combination of small signs (up to 900mm x 600mm) and large signs (up to 1830mm x 1220mm). However, a candidate/party may only display up to a maximum of four large signs combined in each designated area;
 - a third party may display up to four signs in each designated area of a polling booth on polling day, allowing for a combination of small signs and large signs, with a third party to display up to a maximum of two large signs in each designated area;
 - a third party may display up to two small signs in each designated area of a pre-poll voting office (as permitted by the Bill for candidates/parties);
 - an associated entity will be considered to be part of the party or candidate it is associated with for the purposes of the signage restrictions; and
 - requirements for permitted signs to be accompanied by a person and not attached to a building, fence or other permanent structure are removed.
- amend the offence at new section 185G regarding set up so that:
 - the offence applies until 5am on polling day;
 - where a location for an ordinary polling booth is also to be used for pre-poll voting, the offence applies from the end of voting hours on the last day of voting at the pre-poll voting office, rather than from the start of the election period; and
 - the display of signs in premises used as a residence, another lawfully occupied premises that are not those to be used as an ordinary polling booth, or used by a candidate in the election or a registered political party as an office, are excluded from the offence.

The offences at new sections 185F and 185G, as proposed to be amended by the ACiDs, limit the rights to freedom of expression and to take part in public life. A discussion around the nature of these rights is set out under the heading ‘Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)’. Two classes of individuals are affected by the offences: the rights of those wishing to impart the information and ideas through signage; and the rights of those wishing to receive them.

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

The purpose for the offences at new sections 185F, as proposed to be amended by the ACiDs, is to improve the fairness and equality of opportunities for candidates and parties (and their associated entities) and third parties to communicate with voters in proximity to polling booths and pre-poll voting offices through signage, while accommodating more signage to be displayed on polling day by those that are most directly affected by the voting choices to be made by electors (in particular, candidates and the registered political parties that endorse them).

The purpose of the offence at new section 185G, as proposed to be amended by the ACiDs, is to ensure that the ordinary use of premises that are also to be used as polling booths, and premises nearby, are not interfered with.

The United Nations Human Rights Committee considers that the right to vote imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely. It is considered that the creation of fair and equal opportunities for communication with voters through signage, and the protection of the ordinary use of polling booths and neighbouring properties, are both proper purposes consistent with a free and democratic society. Further, improving the equality of opportunities to communicate will reduce the risk of political advertising by a particular entity unduly influencing, manipulating or oppressing a voter or leading to electoral unfairness.

I consider that these purposes are consistent with promoting the right to take part in public life, which protects the rights of persons to vote and participate in the political process (section 24 of the HR Act) and the right to take part in public life (section 23 of the HR Act).

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

By amending new sections 185F and 185G in the way proposed by the ACiDs, the purpose of providing fairer and more equal opportunities for communication with voters through signage, and the protection of the ordinary use of polling booths and neighbouring properties, is achieved.

The limitation to six signs for candidates, parties or associated entities of the specified sizes in each designated area of polling booth on polling day will ensure that reasonable signage is available focused on direct voting choices to be exercised by electors.

The inclusion of associated entities (that are controlled by a registered political party, or operate wholly, or to a significant extent, for the benefit of a registered political party, or operate for the dominant purpose of promoting a candidate or a registered political party, as amended by the ACiDs) within the same class as registered political parties and candidates will ensure the signage restrictions cannot be circumvented by candidates or parties. The allowance of four signs for third parties at polling booths on polling day, and two signs at pre-poll voting offices, will ensure that third parties will still have a reasonable opportunity to communicate with voters, with the allowance on polling day taking into account the fact that such third parties are not directly seeking election. In my view, the limitations will improve the fairness and equality of opportunities for communication with voters through signage in proximity to polling booths and pre-poll voting offices.

By amending the new section 185G in the way proposed by the ACiD, the purpose of ensuring that the ordinary use of premises that are also to be used as polling booths, and neighbouring properties, are not interfered with is achieved. Properties that neighbour premises used as polling booths will most likely include residential homes and properties lawfully occupied, such as businesses. The restrictions under sections 185F and 185G will not apply to those properties, thereby ensuring those residential homes are not interfered with. This preserves the rights to freedom of expression and to take part in public life of those persons who lawfully occupy those premises to the extent that they are able to freely and lawfully display signage (irrespective of the fact that they are located within the restricted zone outside the polling booth). However, the broader freedom of expression and right to take part in public life of individuals will still be limited to the extent that they are prohibited under new sections 185F and 185G from displaying election signage in other areas which fall within the restricted zone.

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

There are arguably less restrictive reasonably available ways to achieve the purposes of improving the fairness and equality of opportunities to display electoral signage, and to ensure that the ordinary use of premises that are also to be used as polling booths, and neighbouring properties, are not interfered with, other than through the amendments proposed by the Bill. There is therefore a risk that these amendments in the Bill are incompatible with the freedom of expression and the right to take part in public life.

However, I consider that the measures proposed by the Bill as amended by the ACiDs are the most effective way of achieving these purposes. The proposed restrictions still allow for reasonable signage to be displayed in closest proximity to polling booth or pre-poll voting office, with more provision for signs that are focused on the direct voting choices to be exercised by electors on polling day (namely for candidates and, where applicable, the parties that endorse them), and still allowing signage to be displayed by a broader class of persons.

The increased number of signs for candidates, parties and associated entities at polling booths on polling day is necessary in view of an unlimited number of third parties being able to display four signs each, and is necessary to support the purpose as a whole. The need for signage to be accompanied is removed by the proposed ACiDs, which ensures that this does not act as a barrier to the display of signage by a person or entity that wishes to display permitted signage. I consider that these measures, as amended by the ACiDs, are the most effective and reasonably adapted way of ensuring that voters are able to participate in an election process that is neutral and fair.

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

I have considered the balance between the importance of preserving the freedom of expression and right to take part in public life and the importance of improving the equality and fairness of opportunities to communicate with voters through signage (and the other identified purposes above) which the amendments in the Bill give effect to.

Relevant to this balance is the extent of the limitations imposed by the amendments on the freedom of expression and the right to take part in public life. The signage restrictions apply only within a confined restricted zone. Importantly, the restrictions will still allow political parties, candidates and third parties to inform voters (and the electorate more broadly) of their information and ideas in a manner that will facilitate more equality and fairness. The ACiDs also ensure that premises used as private residences or other lawfully occupied premises for purposes unrelated to the election within the area are excluded from the restrictions and the signs do not need to be accompanied, ameliorating to some extent the limitation on the freedom of expression and the right to take in public life.

While I recognise the fundamental importance of the right to freedom of expression and information in a democratic society, and the right to take part in public life, I consider that the proposals in the Bill strike the right balance between those rights and the importance of the purposes that the amendments seek to achieve.

(f) any other relevant factors

While I acknowledge that the amendments in the Bill limit the freedom of expression and the right to take part in public life and in doing so it may be open to conclude that the amendments are incompatible with human rights, it is my view that the limitation is reasonable and justified. However, if it is not then the incompatibility is nevertheless necessary for the reasons outlined above.

Amendments relating to cut-off days for electoral roll and nomination of candidates

(a) the nature of the right

The proposed amendments will allow the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be a day earlier than the day stated in section 84 of the Electoral Act.

These amendments, which may operate to shorten the period during which a person may update the electoral roll or nominate as a candidate for the 2020 State general election, may limit the right to take part in public life and freedom of expression.

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The UNHRC considers that the right to participate in the direct conduct of public affairs and public governance embraces both the opportunity to participate in the formulation and implementation of policy and in the exercise of public and political power, in particular, the exercise of legislative, executive and administrative power. Public affairs is a broad concept that encompasses the activities of all forms of government, including local government.⁷

There is an intrinsic connection between the right to participate in public affairs and the right to freedom of expression. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society. The UNHRC has noted that ‘citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association’.⁸

The UNHRC also considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely. Section 23(2) of the HR Act clearly expresses that every eligible person has the right to vote at periodic State government elections that guarantee the free expression of the will of the electors. The right to vote lies at the very heart of the system of representative government in Australia.⁹

By allowing the cut-off day for the electoral rolls and the nomination of candidates to be brought forward, the amendments may limit the rights of individuals to participate in public life through the exercise of their vote or in the election as a candidate.

⁷ United Nations Human Rights Committee, General Comment No. 25

⁸ United Nations Human Rights Committee, General Comment No. 25

⁹ Roach v Electoral Commissioner (2007) 233 CLR 162

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

The purpose of proposed amendments is to support possible alternative arrangements for the conduct of the election which may be required as a result of COVID-19. For example, should it be necessary to facilitate the increased use of postal voting at the election to reduce the risk of the spread of COVID-19, changes to the cut-off days are likely to be required in order to ensure that the ECQ has sufficient time to print and distribute a large number of postal votes. Without these changes, the ECQ may be unable to operationalise postal voting on the scale required, and electors could consequently lose their right to exercise their vote. By ensuring that any alternative arrangements for the conduct of the election can be delivered effectively, the proposed amendments are consistent with a free and democratic society.

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

The conduct of the 2020 State general election could give rise to certain challenges if social distancing requirements are in place and there are limits on gatherings of large numbers of persons at a single place (such as a polling booth). While Queensland is currently in a strong position in respect of limited active cases of COVID-19 and low rates of community transmission, should an outbreak occur (either State-wide or in a particular electorate or area) it would be incongruent with public health advice to facilitate an election which required large groups of individuals to gather in person. As noted above, the amendments are required to support possible alternative arrangements for the conduct of the election to reduce the risk of COVID-19 transmission, including the increased use of postal voting.

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

The proposed amendments are confined to the 2020 general election, with the purpose of minimising the risks to health and safety. There are no less restrictive options which would achieve the purpose of the amendments and have a less restrictive impact on human rights. Without a change to the cut-off dates, there is a possibility that ECQ would not be able to print and distribute the requisite number of postal votes.

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

The balance between the importance of protecting the health and safety Queensland individuals by mitigating against any potential spread of COVID-19 and the importance of the right to take part in public life has been considered. The Queensland Government considers that, should a situation arise where it is necessary to shorten the relevant cut-off dates, the changes will be necessary in order to ensure that the alternative arrangements for the election are workable and do not disenfranchise any electors. Practically, any disadvantage that may befall a prospective candidate due to the shortened nomination period is largely mitigated by virtue of the date the issuing of writs and polling day being fixed. Any individual considering nominating as a candidate will have sufficient notice of the relevant timeframes prior to the writ being issued. As such, it is anticipated that any change to the cut-off dates would be compatible with human rights.

Amendments relating to voting

(a) the nature of the right

The proposed amendments will allow a regulation to be made which requires all electors, electors in a stated electoral district, electors of a stated class or electors in a stated electoral district of a stated class to vote by postal vote.

It is difficult to assess the human rights implications that may arise as a result of the regulation making power because the human rights implications will not crystallise until a specific proposal (that is, a regulation) has been developed and enacted under the empowering provisions. It is also difficult to conduct an analysis without information as to health conditions that are prevailing at the time of the regulation.

Should it be required to utilise the regulation-making power to allow the ECQ to automatically specify electors in a particular electorate, or across the whole State, as postal voters, should the Public Health advice suggest there is no prospect of safely holding an in-person ballot, the rights to recognition and equality before the law, the right to take part in public life and the freedom of expression will be limited.

The right to equality reflects the universal principle of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The bedrock value which underpins the right is that everybody without exception has a unique human dignity which is their birthright.¹⁰ The right protects individuals from discrimination and provides that every person has the right to equal and effective protection against discrimination.

Discrimination under the HR Act includes (but is not limited to) direct and indirect discrimination as defined in the *Anti-Discrimination Act 1991 (ADA)* (for example on the basis of age, impairment, political belief or activity, race, religious belief or religious activity, sex and sexuality). Discrimination under the HR Act is broader than the ADA, however, and may include other grounds of discrimination such as language; property; nationality; citizenship; colour; ethnicity; residence; physical features; employment status; and others.

The nature and scope of the rights to take part in public life and freedom of expression is discussed above. Relevantly, though, while the right does not impose any particular electoral system, any system must guarantee and give effect to the free expression of the will of the electors. The UNHRC has stated, in relation to the right to take part in public life, that where a mode of direct participation by citizens is established no distinction should be made between citizens as regards their participation on discriminatory grounds.

It is acknowledged that an increased reliance on postal voting for the 2020 State general election may disenfranchise certain electors and impact on their ability to participate and express their political views and exercise their right to vote. Postal voting will disproportionately impact on vulnerable and marginalised electors, in particular persons with impairments, illiterate persons, elderly persons, persons whose first language is not English, Aboriginal persons and Torres Strait Islander persons, and homeless persons, if there is no alternative accessible means through which they can exercise their right to vote. The right to equality, the right to take part in public life, and freedom of expression of these grounds of individuals will be limited on a discriminatory basis if the regulation-making power were to be

¹⁰ *Lifestyle Communities Ltd (No 3) (Anti-Discrimination) [2009] VCAT 1869*

used to determine that a postal vote is the primary method for an election (either State-wide or discrete to a particular electorate or area).

The UNHRC has also said that the State has a positive obligation to take measures to ensure that all persons entitled to vote are able to exercise that right without discrimination. Such positive measures “should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages, as the ECQ has provided for in previous elections. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice”.¹¹

It is anticipated that any increased use of postal voting arrangements provided for under a potential future regulation will be operationalised by the State and the ECQ in a manner that implements appropriate safeguards to ensure that the State’s obligation in relation to enabling all persons the opportunity to vote in the upcoming election without discrimination is met.

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

The purpose of potentially utilising the regulation-making power to facilitate the increased use of postal voting for the 2020 State general election should the need arise is to ensure that the election is able to proceed in a manner that minimises person-to-person contact, thereby reducing the risk of spread of COVID-19 in the community.

COVID-19 is a global health pandemic threatening the Queensland community. The primary purpose of the amendments is to protect public health, which is a legitimate objective.¹² Moreover, protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread also promotes the right to life (protected under section 16 of the HR Act) in the context of the positive obligations that right place on the State in relation to protecting the health and safety of its citizens. Protecting and promoting human rights is necessarily consistent with a free and democratic society based on human dignity, equality and freedom.¹³

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

The limitations will achieve the purpose. Facilitating the increased use of postal voting will reduce the need for persons to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. This will in turn reduce person-to-person contact and protect the health and safety of individuals and the public more generally.

¹¹ United Nations Human Rights Committee, General Comment No. 25

¹² *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 34

¹³ Aharon Barak, *Proportionality: Constitutional Limits and Their Limitations* (Cambridge University Press, 2012) 255-6

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

The amendments are confined to the 2020 general election, with the purpose of minimising the risks to health and safety to be considered.

The amendments do not displace the existing safeguards in the Electoral Act to protect the privacy of electors for postal voting, which will be unaffected by the amendments, as supplemented by existing criminal law. In particular, it is a statutory requirement that the prescribed procedures for processing postal votes ensure that the secrecy of postal votes is maintained.

Whether or not the amendments represent the least restrictive (on human rights) and reasonably available way to achieve the purpose – that is, of facilitating the 2020 State general election in a way which protects the health and safety of electors in the context of the COVID-19 emergency – will depend significantly on the prevailing health circumstances and how any changes made through the proposed regulation are implemented and operationalised.

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

Considering the potential for the regulation-making power to be used to facilitate increased use of postal voting for the 2020 State general election (should it be required), and having regard to the clear impact this will have on the right to equality, right to take part in public life and freedom of expression of many electors, the compatibility of the proposed amendments will turn on how the State is able to meet its positive obligations in relation to the conduct of the election for affected individuals. The State has a positive obligation to fulfil the right to take part in public life by enacting practical measures to overcome the many and diverse barriers that prevent individuals from freely and effectively exercising their right to vote. It must be able to be ensured that the State, through the ECQ, will implement these appropriate measures in the event that a postal vote is held State- or electorate-wide for the 2020 State general election. This will include taking active steps in communities to ensure vulnerable electors are supported to exercise their right to vote – such as supporting persons experiencing homelessness who may not have a fixed address to receive a postal vote are provided with other means of exercising their right to vote, supporting persons who are illiterate or whose first language is not English to understand the postal vote process (including provision of material in different languages, or providing in-person support or interpreter services), and other measures. These measures will need to cohere with the State's responsibility to protect the right to life of its citizens during the Public Health Emergency.

It is accepted that the compatibility of the proposed amendments – when particular regard is had to the fact that the regulation may facilitate increased reliance on postal voting – may turn on the operationalisation and what measures and safeguards are put in place to ensure the State is able to fulfil its obligations, insofar as those matters go to the necessity of the amendments represent a less restrictive impact on human rights.

It is noted that the power to make a regulation and the exercise of that power must be compatible with human rights under section 58 of the HR Act. If the regulation is not compatible with human rights, then it will be beyond power and be invalid. Any regulation must also be accompanied by a human rights certificate under section 41 of the HR Act which

details how, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights. As such, it is anticipated that any regulation about voting would be compatible with human rights.

Amendments relating to allowing requests for elector visitor to be refused and met by the making of alternative arrangements, to the extent practicable, for voting

(a) the nature of the right

Eligible voters can apply for electoral visitor voting, where election staff visit the voter's address to allow them to cast a ballot.

The proposed amendments in relation to elector visitor voting will allow the ECQ or a returning officer to direct an issuing officer not to visit an elector who has requested to vote as an electoral visitor voter, a class of elector or any elector if the ECQ is satisfied that a risk to the health and safety of an issuing officer is posed. The ECQ or returning officer must, to the extent practicable, have the issuing officer make alternative arrangements, if practicable, to enable the elector affected by the direction to vote in the election.

These amendments, which may make it more challenging for certain voters to exercise their right to vote, will primarily limit the right to take part in public life and freedom of expression.

As noted above, the right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. By denying certain voters their preferred method of voting, the amendments may limit the rights of these individuals to participate in public life through the exercise of their vote.

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

The purpose of limiting access to electoral visitor voting, should it be required, is to protect issuing officers and voters from risks to health and safety caused by the COVID-19 emergency by limiting person-to-person contact.

Elector visitor voting involves both close person-to-person contact and issuing officers travelling between different residences.

COVID-19 is a global health pandemic threatening the Queensland community. The primary purpose of the amendments is to protect public health, which is a legitimate objective.¹⁴ Moreover, protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread also promotes the right to life (protected under section 16 of the HR Act) in the context of the positive obligations that right place on the State in relation to protecting the health and safety of its citizens. Protecting and promoting human rights is necessarily consistent with a free and democratic society based on human dignity, equality and freedom.¹⁵

¹⁴ Boffa v San Marino (1998) 92 Eur Comm HR 27, 34

¹⁵ Aharon Barak, Proportionality: Constitutional Limits and Their Limitations (Cambridge University Press, 2012) 255-6

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

While Queensland is currently in a strong position in respect of limited active cases of COVID-19 and low rates of community transmission, should an outbreak occur (either State-wide or in a particular electorate or area) it would be incongruent with public health advice to facilitate electoral visitor voting. As noted above, electoral visitor voting involves close person-to-person contact and issuing officers travelling between different residences

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

The proposed amendments are confined to the 2020 general election, with the purpose of minimising the risks to health and safety of issuing officers who would otherwise be required to facilitate electoral visitor voting.

Given that the amendments specifically require the Commission or returning officer to have the issuing officer make alternative arrangements, if practicable, to enable the elector affected by the direction to vote in the election, there are arguably no other less restrictive alternatives that would achieve the purpose of the amendments and have a less restrictive impact on human rights.

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

The balance between the importance of protecting the health and safety Queensland individuals by mitigating against any potential spread of COVID-19 and the importance of the right to take part in public life has been considered. The Queensland Government considers that should a situation arise where there is an outbreak of COVID-19 in the community (either State-wide or particular to a discrete election) the risk to the health and safety Queensland individuals, in particular individuals with certain health vulnerabilities, associated with the electoral visitor voting is too great. The Queensland Government's paramount priority is the protection of the health and safety of Queensland citizens and therefore, should the need arise, the Government will take appropriate action based on public health advice. As noted above, given that the amendments specifically require the Commission or returning officer to have the issuing officer make alternative arrangements to enable the elector affected by the direction to vote in the election, the proposed amendments explicitly preserve human rights to the extent possible and as such are compatible with human rights. .

Amendments relating to the conduct of scrutineers and returning officers in respect of the 2020 State general election

(a) the nature of the right

The proposed amendments will allow:

- the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention;

- a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention;
- a returning officer to arrange for the counting of votes to be filmed by a member of the ECQ's staff;
- a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at an election at a stated place.

These amendments will limit the right to take part in public life, freedom of movement, and right to privacy.

As discussed above, the right to take part in public life imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely. Integral to this is a fair, transparent, publicly accountable State electoral process open to scrutiny.

The right to freedom of movement protects a person's right to move freely within Queensland and to enter and leave it and choice of residence. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers. The UNHRC considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

The proposed amendments will limit the right to take part in public life and freedom of movement in a number of ways, including: by allowing the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present; prohibiting a scrutineer from being present at a polling booth; or by allowing the returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth.

In particular, a direction may prevent scrutineers from doing things otherwise permitted by the Electoral Act (in particular, if scrutineers were prohibited from being present altogether) or may restrict their capacity to undertake scrutineering activities (in particular, if their movement were restricted in such a way as to not be able to perform certain actions effectively). The proposed amendments limit the right to take part in public affairs by limiting the involvement of scrutineers, which is important for the integrity of elections and ensuring that an election is perceived as free and fair. A direction may also restrict the free movement of scrutineers by imposing legal barriers on their movement in certain locations.

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. The proposed amendments will limit the right to privacy by allowing a returning officer to arrange for the counting of votes to be filmed, which may include the filming of people present at the counting.

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

The purpose of limiting these human rights is to protect the Queensland public from risks to health and safety caused by the public health emergency involving COVID-19, including

limiting situations and attendance at public events which may result in contagion through person-to-person contact. Unlike voting itself which is a relatively quick process, scrutineering involves close person-to-person contact for an extended period of time.

The purpose of allowing a returning officer to arrange for the counting of votes to be filmed is to ensure that there is an additional mechanism available to support the integrity of the election in the event that the involvement of scrutineers is limited.

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

The role of scrutineer involves close person-to-person contact for extended periods. Scrutineers are entitled to be present in each polling booth at times when electors vote. Scrutineers are also entitled to inspect ballot boxes, observe the examination of declaration envelopes and the counting of votes.

Allowing the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present, or by allowing the returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth, where these are considered necessary to minimise serious risks to the health and safety, will limit person-to-person contact and thereby reduce health and safety risks for individuals and the public more generally.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. The Bill is confined to the 2020 State general election, with the purpose of minimising the risks to health and safety being considered in the exercise of discretions by the ECQ or by the returning officer or member of staff in charge of the polling booth.

In the context of minimising risks to health and safety, it is acknowledged that there may be a specific need to prohibit the presence of scrutineers entirely or restrict their movement in such a way as to not be able to perform certain actions as effectively as they otherwise could. However, in exercising the power to give directions, the purpose of minimising the risks to health and safety is required to be considered, which will effectively limit any arbitrary exercise of this discretion. Allowing returning officers to arrange for the counting of votes to be filmed provides an additional safeguard to support the integrity of the election in the event that the involvement of scrutineers is limited to protect the health and safety of the public. The ability for a returning officer to arrange for filming is limited to the counting process, and not any other processes undertaken as part of the holding of the 2020 State general election.

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

The balance between the importance of protecting the health and safety Queensland individuals by mitigating against any potential spread of COVID-19 and the importance of the right to take part in public life, freedom of movement, and right to privacy has been considered. The Queensland Government considers that circumstances could arise where social distancing requirements cannot be met without changes to the arrangements for scrutineers and the

movement of candidates. The Queensland Government's paramount priority is the protection of the health and safety of Queensland citizens. Should the need arise, the proposed amendments preserve the rights of scrutineers and candidates to participate in the election to the greatest extent possible, whilst at the same time ensuring that any relevant public health advice is complied with. As such, it is anticipated that any direction made under the proposed amendments would be compatible with human rights.

Amendments relating to the distribution and display of how-to-vote-cards and other election material

(a) the nature of the right

The proposed amendments will provide the ECQ with the ability to issue directions in relation to the display or distribution of how-to-vote cards in or near polling booths for the 2020 State general election, with an offence applying to persons who contravene such a direction.

These amendments will limit the right to take part in public life and freedom of expression.

The right to take part in public life has been outlined above. Freedom of expression protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). There is an intrinsic connection between the right to participate in public affairs and the right to freedom of expression. The UNHRC has noted that 'citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association'.¹⁶ The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

The restriction limits freedom of expression and the right to take part in public life (as described above). Two classes of individuals are affected by the offences: the rights of those wishing to impart the information and ideas through the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth; and the rights of those wishing to receive them.

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

The extent of any impact will depend on any specific direction given by the ECQ. Freedom of expression and the right to take part in public life may be promoted if increased display of how-to-vote cards was permitted, including inside a polling booth or within six metres of its entrance, under the direction (and currently prohibited). However, freedom of expression may be limited in the event that continued distribution by persons of how-to-vote cards or canvassing for votes was prohibited or restricted, because this would impact on information on how-to-vote cards being conveyed to, and received by, electors who are exercising their voting choices.

¹⁶ United Nations Human Rights Committee, General Comment No. 25

The purpose of a direction, should it be required, is to protect the Queensland public from risks to health and safety caused by the COVID-19 emergency by limiting both person-to-person contact and contact with objects. Limiting person-to-person contact at and around locations used as an ordinary polling booth is particularly important given that such locations are generally in use for another purpose (for example, a school or community facility).

COVID-19 is a global health pandemic threatening the Queensland community. The primary purpose of the amendments is to protect public health, which is a legitimate objective.¹⁷ Moreover, protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread also promotes the right to life (protected under section 16 of the HR Act) in the context of the positive obligations that right place on the State in relation to protecting the health and safety of its citizens. Protecting and promoting human rights is necessarily consistent with a free and democratic society based on human dignity, equality and freedom.¹⁸

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

There are a number of challenges in respect of compliance with social distancing requirements and limiting the gatherings of large numbers of persons at a single place (such as a polling booth) that will arise in respect of the 2020 State general election. While Queensland is currently in a strong position in respect of limited active cases of COVID-19 and low rates of community transmission, should an outbreak occur (either State-wide or in a particular electorate or area) it would be incongruent with public health advice to facilitate an election which involves large groups of individuals gathering and distributing how-to-vote cards. Limiting person-to-person contact and reducing contact with objects that may spread contagion reduces the risk of COVID-19 transmission.

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

The proposed amendments are confined to the 2020 general election, with the purpose of minimising the risks to health and safety to be considered in the exercise of discretion by the ECQ.

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. The amendments clearly contemplate alternative arrangements being put in place such as the display of how-to-vote cards in polling booths.

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

The balance between the importance of protecting the health and safety Queensland individuals by mitigating against any potential spread of COVID-19 and the importance of the right to take part in public life and freedom of expression have been considered.

¹⁷ Boffa v San Marino (1998) 92 Eur Comm HR 27, 34

¹⁸ Aharon Barak, Proportionality: Constitutional Limits and Their Limitations (Cambridge University Press, 2012) 255-6

Nevertheless, the Queensland Government considers that should a situation arise where there is an outbreak of COVID-19 in the community (either State-wide or particular to a discrete election) the risk to the health and safety of Queensland individuals, in particular individuals with certain health vulnerabilities, associated with the distribution by persons of how-to-vote cards for the 2020 State general election is too great. The Queensland Government's paramount priority is the protection of the health and safety of Queensland citizens and therefore, should the need arise, the Government will take appropriate action based on public health advice to adjourn the 2020 State general election until such time as it is safe to resume. The amendments will provide a reasonable opportunity for how-to-vote cards to be displayed, and for voters to consider them in or in proximity to a polling booth. The ECQ is an appropriate body for managing these temporary measures and any direction would be the subject of scrutiny by political parties and candidates.

Amendments relating to 2020 general election – Regulation in relation to conduct of election

(a) the nature of the right

The proposed amendments will create a general regulation-making power for a regulation to facilitate the holding of the 2020 general election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 emergency. This includes a regulation which modifies or varies the application of part 7 in relation to the 2020 general election.

It is difficult to assess the human rights implications that may arise as a result of the regulation making power. The difficulty arises because the human rights implications will not crystallise until a specific proposal (that is, a regulation) has been developed and enacted under the empowering provisions. It is also difficult to conduct an analysis without information as to health conditions that are prevailing at the time of the regulation.

However, having regard to the regulation making power and the types of things that are provided for under it, one area where a regulation may be made is in relation to postal voting. An analysis of the nature of the rights affected by postal voting is outlined above. A further area where a regulation may be made is in relation to the issue of procedures by ECQ. Before taking effect, the procedures must be provided for by regulation. Depending on the nature of the procedures, which are likely to be operational, the procedures may similarly affect the rights to recognition and equality before the law, the right to take part in public life and the freedom of expression will be limited.

The analysis of a possible regulation in relation to postal voting (refer above) and to the issue of procedures addresses the need to identify and consider impacts on human rights which might only arise in the future if a certain action is taken or decision is made (that is, if the regulation-making power is in fact used) and the need to consider and identify limitations on human rights which may be foreseeable or proximate. A parallel may be drawn to 'proper consideration' of human rights required under section 58(1)(b) of the HR Act, which 'need not involve formally identifying the "correct" rights'.

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

The purpose of the limitations on human rights to be imposed if a regulation is made is to protect the Queensland public from risks to health and safety caused by the public health emergency involving COVID-19, including limiting situations and attendance at public events which may result in contagion through person-to-person contact.

It is noted that the power to make a regulation and the exercise of that power must be compatible with human rights under section 58 of the HR Act. If the regulation is not compatible with human rights, then it will be beyond power and be invalid.

Any regulation must also be accompanied by a human rights certificate under section 41 of the HR Act which details how, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights.

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

There are a number of challenges in respect of compliance with social distancing requirements and limiting the gatherings of large numbers of persons at a single place (such as a polling booth) that will arise in respect of the 2020 State general election. While Queensland is currently in a strong position in respect of limited active cases of COVID-19 and low rates of community transmission, should an outbreak occur (either State-wide or in a particular electorate or area) it would be incongruent with public health advice to facilitate an election which involves large groups of individuals. Limiting person-to-person contact at all stages of the voting process through postal voting and operational procedures reduces the risk of COVID-19 transmission.

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

The proposed amendments are confined to the 2020 general election, with the purpose of minimising the risks to health and safety.

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

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

In the absence of any information about the nature of the regulation and the prevailing health conditions at the time the regulation is made, it is difficult to balance any potential limitation on human rights with the purpose of the amendments. As noted above, the human rights certificate that accompanies any regulation made under this power will provide detailed consideration as to how the regulation is compatible with human rights.

However, in relation to both a regulation about postal voting and a regulation about the issuing of procedures by ECQ, operational safeguards could ensure that voters are able to effectively exercise their right to vote and that the State is able to meet its obligations under the right to

take part in public life. Such safeguards, and also the fact that the regulation is required to be compatible with human rights (otherwise it will be beyond power and be invalid), are relevant to the balance of the limitation on human rights and the purpose of providing the regulation-making power. As such, it is anticipated that any regulation would be compatible with human rights.

Amendments relating to councillor conflicts of interest

Taking part in public life (section 23 of the HR Act); privacy and reputation (section 25 of the HR Act); right to liberty and security of the person (section 29 of the HR Act)

(a) the nature of the right

The Bill introduces new chapter 6, part 2, division 5A of the COBA and chapter 5B of the LGA to establish a new framework for dealing with councillors' conflicts of interest.

The ACiDs for the Bill amend the new provisions to:

- clarify that a councillor or other person participates in a decision by considering and discussing a matter before making a decision about the matter;
- exempt additional matters from the conflict of interest provisions;
- clarify that a councillor has a prescribed conflict of interest in a matter if the total of all gifts, loans and sponsored travel or accommodation benefits given in the relevant circumstances by a donor with an interest in the matter is \$2,000 or more;
- clarify that gifts and loans given to groups of candidates or political parties are to be divided between the number of members of the group on the record of membership of the group given to the ECQ or the number of candidates endorsed by the party for determining whether a councillor has a prescribed conflict of interest or declarable conflict of interest;
- clarify that a prescribed conflict of interest includes matters relating to the appointment of the chief executive officer if a close associate of a councillor is being considered for appointment;
- clarify that a councillor does not commit particular offences if the councillor participates in, or is present for, a decision to not decide a matter and take no further action in relation to the matter; and
- make other minor drafting amendments to clarify the operation of the provisions.

The new conflict of interest framework, as amended by the ACiDs, limits the right to take part in public life and the right to privacy and reputation. A discussion around the nature of these rights is set out under the heading 'Human rights relevant to the amendments (part 2, divisions 2 and 3, HR Act)'.

The Bill, as amended by the ACiDs, limits the right to take part in public life as the new framework for dealing with councillors' conflicts of interest restricts, in certain circumstances, a councillor's ability to participate in decisions of the local government for which they are elected. A councillor is prohibited from participating in a decision on a matter where they have a prescribed conflict of interest. If a councillor has a declarable conflict of interest, the councillors at a meeting who do not have a conflict of interest in a matter may decide to allow a councillor with a declarable conflict of interest to participate in a decision on the matter and attach conditions to the councillor's participation.

The right to take part in public life is also limited by the introduction of offences into the LGA and COBA that apply if a councillor fails to comply with particular conflict of interest requirements ('relevant integrity provisions') with the intent to dishonestly gain a benefit for

the councillor or someone else, or to dishonestly cause a detriment to someone else. A maximum penalty of 200 penalty units or two years' imprisonment will apply and the offences will be prescribed as serious integrity offences. A councillor is automatically suspended if the councillor is charged with a serious integrity offence and, if convicted, will be disqualified from being a councillor for seven years.

The limitation is lessened by the exemption of particular matters from the operation of the conflict of interest provisions to ensure that the ordinary business of councils, such as levying rates and making an annual budget, can continue. The purpose of the exemption is to provide an appropriate balance between transparency and accountability and the need for a local government to make decisions efficiently for the community it represents.

The limitation is also lessened by allowing other councillors to decide whether a councillor who has a declarable conflict of interest in a matter may participate in a decision and to impose conditions on their participation where necessary. This will allow councillors to continue to represent the community where their conflict of interest is relatively minor or appropriate conditions can be put in place to manage the risk to local government decision-making.

The right to privacy and reputation is limited to the extent that the Bill requires a councillor with a prescribed conflict of interest or declarable conflict of interest to inform a local government meeting of prescribed information about their interests. The minutes of the meeting must record these particulars as well as other information about how the matter was decided. This may require the disclosure of personal information about the councillor, or persons who are 'close associates' or 'related parties' of the councillor as defined in the Bill.

In defining the circumstances which give rise to a conflict of interest in a matter for a councillor, the Bill recognises that this includes circumstances involving others who have close relationships with the councillor. For example, if a local government is considering entering into a contract with a councillor's sibling this would give rise to a prescribed conflict of interest in that matter for the councillor. Also, if a related party (which includes the councillor's close associates as well as parents, children and siblings of the councillor's spouse and others in close personal relationships with the councillor), has a personal interest in a matter which may conflict with the public interest, the councillor's participation in the decision may give rise to a declarable conflict of interest in the matter for the councillor.

The information required to be disclosed by the councillor may include the name of a close associate or related party of the councillor, the nature of the councillor's relationship with the person and the details of that person's interest in the matter. If the conflict of interest arises because a donor has given a gift or loan to the councillor or a close associate of the councillor, the councillor must also disclose the value of the gift or loan, the name of the donor, the nature of the councillor's relationship with the donor and the details of the donor's interest in the matter.

The extent of the limitation on the right to privacy is mitigated by the fact that councillors have a diminished expectation of privacy due to their role as elected representatives and public officials. This is not, however, the same for the councillor's spouse, child or other close associates and related parties whose right to privacy is diminished. In the context of reputation, it could be said that disclosure of particulars of a conflict of interest may impact on the perception of the councillor and their close associates or related parties by others.

The right to liberty of councillors is limited to the extent that there is the potential for councillors to be imprisoned for contravention of the requirements in the offence discussed above.

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

A conflict of interest may lead to a decision that is contrary to the public interest and the purpose of the limitations to be imposed on councillors' participation in local government decision-making is to promote accountability and transparency and ensure that local government decision-making is in the public interest.

The requirement for councillors to inform the local government of the particulars of their conflicts of interest and for these to be recorded in minutes promotes transparency in decision-making by informing the community about local government decision-making. This fosters public confidence that local government decisions are made in the public interest and that any conflicts of interests on the part of councillors are properly dealt with.

The offences reinforce the seriousness of the requirements in promoting transparent and accountable local government decision-making and that it is the responsibility of all councillors to deal with their conflicts of interest in an accountable and transparent way that meets community expectations.

These purposes are consistent with a free and democratic society where the community expects local governments to act with integrity and in the public interest and that processes will be in place to minimise corruption risks in local government decision-making.

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

The limitations imposed on the right to take part in public life will help achieve the purpose of promoting accountability and transparency and ensuring that local government decision-making is in the public interest.

The Bill, as amended by the ACIDs, provides for clear guidance to councillors that they must not participate in a decision on a matter in specified circumstances. In other circumstances, the Bill allows other councillors to decide whether a councillor may participate in a decision or if conditions may be imposed which would appropriately allow for the councillor's participation. The provisions also clearly set out the obligations of councillors with prescribed conflicts of interest or declarable conflicts of interest to promote compliance and provide for offences to reinforce the importance of complying with their conflict of interest obligations.

The limitations imposed on the rights to privacy and reputation promote transparency in local government decision-making by requiring councillors to give notice of their interests and provide for recording of conflicts of interest in a way that will promote public confidence in the system of local government and ensure good governance of, and by, local government. Although the rights of a councillor's close associates and related parties may be similarly limited, requiring the disclosure of information about them is necessary to achieve the purpose as their personal interests in a matter may also give rise to a conflict of interest on the part of the councillor in that matter.

The limitations promote transparency in local government decision-making in a way that will promote public confidence in the system of local government and ensure good governance of, and by, local government.

By imposing a criminal liability and penalty for failing to comply with the relevant integrity provisions, there can be little to no doubt that there is any expectation other than that councillors will always be open, transparent and accountable about the interests that they and others in close relationships with them hold. The offence makes it abundantly clear that the requirement for councillors to appropriately disclose and manage their conflicts of interest is one to be taken seriously, which helps to achieve the purpose of maintaining public confidence in the proper operation of democratic government.

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

There are no less restrictive means reasonably available to achieve the purpose of promoting accountability and transparency and ensuring that local government decision-making is in the public interest.

The Bill, as amended by the ACiDs, minimises the impact of the limitations by excluding certain matters from the conflict of interest provisions to allow the ordinary business of local governments to continue. The limitations on the right to take part in public life could have been lessened by not providing for any circumstances which automatically require the councillor to not participate in a decision on the matter. However, prescribing these circumstances the Bill, as amended by the ACiDs, provides guidance to councillors and enhances integrity in local government decision-making.

Similarly, the limitation on the rights may have been less restrictive if a councillor did not face suspension, loss of office or imprisonment for non-compliance with conflict of interest requirements. However, the offence applies only if the councillor acts dishonestly and with intent to gain a benefit for themselves or someone else or to cause a detriment to someone else and, in these circumstances, it is appropriate for a councillor to be disqualified from being a councillor.

The limitation relating to the right to privacy and reputation could have been less restrictive if the Bill did not prescribe the details to be disclosed or did not require disclosure of information about persons other than the councillor. However, this may result in councillors making rudimentary declarations which do not provide a sufficient level of detail to enable the community to understand the nature of a councillor's conflicts of interest in a matter.

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

On balance, taking into account the nature and extent of the limitation on the right to take part in public life and the right to privacy and reputation, and having regard to the information and analysis detailed above, I consider that the purpose of promoting accountability and transparency and ensuring that local government decision-making is in the public interest outweighs the negative impact the conflict of interest provisions have on these rights.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the ACiDs for the Bill are compatible with the human rights protected by the HR Act because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

While I acknowledge that the amendments in the Bill relating to the registration threshold for third parties and restrictions on election signage limit the freedom of expression and the right to take part in public life and in doing so it may be open to conclude that the amendments are incompatible with human rights, it is my view that the limitation is reasonable and justified. However, if it is not then the incompatibility is nevertheless necessary for the reasons outlined above.

YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
LEADER OF THE HOUSE

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