



Recognising and upholding excellence in local government

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Department of State Development, Infrastructure, Local Government and Planning  
Brisbane Qld 4000

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**Subject: *Response to Local government electoral expenditure caps Discussion paper***

OSCAR Inc (Organisation of Sunshine Coast Association of Residents) is the peak body representing resident and community organisations on the Sunshine Coast. We are a non-partisan and not-for-profit incorporated association.

Please find our response to the recently released *Discussion paper* from the Department.

Yours sincerely

A handwritten signature in black ink that reads "Melva E Hobson". The signature is written in a cursive, flowing style.

Melva Hobson PSM  
President

Email [mail@oscar.org.au](mailto:mail@oscar.org.au) (NB our preferred form of communication)

## General comments

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OSCAR supports the introduction of expenditure caps in principle.

We recognise, however, that this is a complex issue, and we welcome the opportunity to be further involved in this reform. As a peak group representing many electors through our member organisations, we are keen to engage in this consultative process in the hope that the recommendations that come from this process, are ones that are in accord with the interests of the broader community.

We also believe the growing reliance on private donors to finance campaign spending requirements has and will continue to create the potential for real or perceived influence on decision making in local government which is eroding public confidence in the integrity of the political process at the local level.

While the State Government's reform banning developer donations was very welcome and has had an impact on funds available to candidates; in future Council elections, its effectiveness on its own, should not be overstated. We have no doubt that mechanisms will be found by certain groups to circumvent the spirit of these laws if not the letter of the law.

We hope that any legislation on this issue occurs in a non-partisan environment, one that reflects the fact (a positive in OSCAR's view) that most Queensland councils do not operate on party lines and nor should they. Legislation related to expenditure caps and associated issues should not be influenced by the self-interest of political parties or their representatives in local government.

We believe the original Issues Paper released by the Economics and Governance Committee (EGC) articulated well some of the key points which we continue to strongly endorse. These include:

- Equity in elections is a fundamental principle of Australia's democratic system of government.
- All voters should have a fair opportunity to participate in elections, including a fair and equal chance of nomination and election as a candidate.
- The view that there is growing concerns about the lack of restrictions on electoral campaign funding and spending. We are also concerned about the trend of increasing campaign expenditure by political parties and other election participants.

While it may be argued that donations or electoral spending are recognised as a form of political participation and can be seen as an expression of 'democratic will' we are very concerned that increasingly only the wealthy or those supported by special interest groups will benefit from this so called "expression of democratic will".

We note that the EGC's Issues Paper pointed out that:

*"The CCC, in its Operation Belcarra Report, highlighted the findings of various previous inquiries into local government, that 'even relatively modest amounts of funding can allow candidates to swamp their opponents in terms of media exposure and other promotional activities' "*

*"... the CCC concluded that prospective candidates can be deterred from running for council in the first instance, and even if they do contest, may be unable to properly compete with well-funded candidates. This can limit the diversity and quality of candidates who contest local government elections."*

These 2 statements are integral to the whole discussion relating to expenditure caps in Local Government elections and OSCAR is not convinced that they have been addressed adequately in the State Government's response and proposals to date.

We also find including the City of Brisbane within the general Local Government discussion is disingenuous at least and misleading at most. By not respecting the differences between a city with 788,689 (as at March 2020) voters, a budget the size of some smaller Australian states/territories and a party-based council is not what the community wants to see for Local Government across the State.

One would assume that following the recent Federal Government election and the loss of party-based primary votes across the major parties, any move to increase political party and/or party trust involvement, should send a clear message to governments of all political persuasions that the community increasingly supports independent candidates, which is broadly the current pattern in Queensland Local Government. .

OSCAR finds the benefits of implementing caps on electoral expenditure caps which include reducing the costs of elections and waste minimization, enabling candidates with fewer financial resources to stand for election on a more equal footing and reducing the demand for campaign funds and the consequent scope for undue influence by donors to be compelling reasons for expenditure caps.

OSCAR also supports public funding of local government elections to be consistent with funding arrangements for State and Federal elections. Increasingly and even with the proposed caps on expenditure, contesting a local government election is for the well-off and out of the reach of most residents, particularly for those supporting school-age children and young families.

The current system also disadvantages women who are not working or working limited hours owing to family or other responsibilities.

We reject the argument that expenditure caps limit the freedom of political communication. On the contrary, the growing costs associated with standing for election, which excludes many in the community “putting up their hand for election”, is a far greater cause of concern.

Local government is the tier of government closest to the community and most impactful on the lives of citizens. We should be encouraging “grass-roots” campaigning in council elections characterised by attendance at community meetings, door-knocking, letterboxing and building a team of volunteers etc; none of this requires significant financial resources and should not be overwhelmed by extensive media campaigns and direct mail which are costly to fund.

We also reject the argument that because it may be difficult to set realistic caps due to the changing costs of electioneering techniques, inflation, and potential exploitation of administrative loopholes and that caps can be hard to enforce that expenditure caps should not be introduced. OSCAR has consistently argued against the opinion that reform cannot occur because it would be “too difficult to enforce”. If this view prevailed, we would never achieve reform and we would need to question why we have legislation and regulation in relation to anything!

We agree that the success of any system of expenditure caps for Queensland local government elections will depend on the design and features of the model implemented, and the extent to which they effectively balance freedom of political communication with the need to ensure a fair process that is free from perceptions of undue influence, and which ensures standing for office is not restricted to those with personal wealth of access to funding from interest groups.

## **OSCAR’s responses to the specific issues are as follows:**

### **Proposal**

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

### **ISSUE 1**

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

OSCAR generally supports the proposal to align the definition of electoral expenditure with the State scheme, except for the proposed exclusion of office accommodation and staff costs. There have been incidences where for example, a landowner/landlord supplies commercial office space to a candidate

but does not charge commercial rent. This should be declared. Similarly, if candidates have campaign staff in said offices, they should also declare any payment to them.

## ISSUE 2

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

OSCAR supports the proposal to incorporate the concept of gifted electoral expenditure from the State scheme. This must include any “gifting” or “subsidising” of office accommodation or campaign staff. We remind the Government that Local Government is not State Government and does not have office accommodation and dedicated staff external to the relevant council. Brisbane City has ward offices, and some local governments may use Council owned assets spread across the LGA for staff accommodation. However, these assets should not be used for electioneering

### **Proposal**

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

## ISSUE 3

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

OSCAR does **not** support the proposed expenditure periods as outlined above. OSCAR supports the proposition that:

Capped expenditure periods should include the full term of the Local Government, that is, from the day after the previous polling day to the day after the next polling day and from one term to the next.

This prevents ‘pre-spending’ before the commencement of the cap and between Election Day and the Declaration of the Poll. Examples would include printing of advertising material, registration of domain name, web hosting costs etc.

Our reason for this response is that there is the opportunity for candidates to prepare and pay for election assets well before the time proposed by the SG proposal. There are instances in some jurisdictions where there are only one or two businesses available to prepare corflutes and candidates must place their order often many months in advance. Further under the government proposal where a candidate has an account with a supplier, they may be able to pay that account after polling day. Under the government proposal these expenditures, as has been alleged in the past in a federal jurisdiction a candidate prepaid a supplier, thus avoiding the expenditure time period.

OSCAR cannot see that the application of a cap over an extended period would present difficulties for candidates in terms of responding to emerging issues and engaging with electors.

### **Proposal**

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

## ISSUE 4

### **Do you support registration of third parties?**

OSCAR supports third party registration.

## ISSUE 5

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

OSCAR does support separate dedicated accounts for registered third parties and registered political parties. However, we support a sliding scale for registration from \$3000 for smaller Local Governments increasing to the \$6000 as proposed in the Government's discussion paper.

## **Proposal**

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

## ISSUE 6

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

OSCAR appreciates that the Government is seeking as part of its Local Government reform programme to align the Local Government Electoral Act 2011 (LGEA) with the Electoral Act 1992 (EA).

OSCAR supports the proposed expenditure caps for Local Government as suggested above for Councillor Candidates

However, we are very concerned in regard to the expenditure caps being proposed for Mayoral candidates in this document.

We note that the March 2019 Discussion Paper on Local Government Reforms the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) proposed a maximum figure of \$100,000 for Mayoral candidates, while the Local Government Association of Queensland proposed a maximum figure of \$200,000 for Mayoral candidates.

OSCAR supports a maximum figure of \$150,000 for Mayoral Candidates scaled from \$30,000.

Given the size of Brisbane City we suggest a figure of \$200,000 is appropriate for this LGA.

Given our analysis of the 2020 LG Election expenditures it would appear that election spending for the majority of candidates in the 2020 Local Government elections was significantly below the caps proposed by the State Government in this current consultation.

OSCAR appreciates that the 2020 elections were held post the banning of developer donations. However, it would also appear that the decrease in spending did not impact the effectiveness of the election.

Sadly, neither the DLGRMA's maximum figure of \$100,000 for mayoral elections or the \$200,000 figure proposed by the LGAQ (or something between the two) are affordable for most potential candidates and therefore increasingly this mean only the wealthy or the very well-funded will be able to contest mayoral elections with any prospect of success.

One unintended consequence of this might be more party aligned candidates standing for mayoral positions to take advantage of financial support from their political party and this is something OSCAR is very opposed to as we believe local government should be free of party endorsed/funded candidates in the majority of councils in Queensland where this is not already the case.

## Proposal

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

## ISSUE 7

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

We support aggregation based on the individual cap that would apply to each member of the group. There must also be a mechanism for aggregation for candidates of political parties to avoid "double-dipping".

However, it must be very clear to electors as to which candidates are members of "groups" of candidates or parties. There is history of some candidates being part of a group but not reporting that as they do not pool their resources.

## Proposal

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

## ISSUE 8

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

OSCAR suggests a figure on a sliding scale based on the number of electors in a LGA, rather than the \$6000 threshold proposed by the state proposal. In some smaller electorates across the state, an amount of \$6000 could have a disproportionate influence through their spending. We would suggest that the scale should start from \$3000.

The same caps as would apply to the aggregated caps for each of the individual candidates making up the group.

Note: We have serious concerns about the role of third-parties and the caps that apply. Do these provisions mean that in a large council with over 200,000 electors, you could have a situation where one or more third parties could undertake media campaigns costing up to \$100,000 each to further their cause or to run a negative campaign against a particular candidate or group of candidates?

This problem is compounded if third parties do not need to be registered under expenditure cap proposals – how do electors judge their political independence, their membership make-up etc?

For this reason, we believe that third parties should be registered so that electors are aware of the individual/s and/or organisations that constitute any third party undertaking electoral expenditure.

## ISSUE 9

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

The figures one can download from the electronic disclosure system (EDS) make it very difficult to analyse donations or expenditure figures based on the candidate who was the recipient of the donation or source of the expenditure.

If the government is serious about expenditure reform it is not just a question of caps, it is a question of being able to see easily how much is spent at the individual candidate level. We suggest this would require enhancement of the EDS.

It could be a brilliant application - it has a way to go! Enhancing the system requires adequate funding to the ECQ.

### **Proposal**

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

## ISSUE 10

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

OSCAR supports the proposals for indexation of expenditure caps and determination of elector numbers by the ECQ.

### **Proposal**

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- > Local government electoral expenditure caps to apply to 'associated entities'.
- > Legislative definition of 'associated entities' to be aligned with the State definition.

## ISSUE 11

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

OSCAR supports the recommendation for the expenditure caps system to apply to "associated entities". Our comments on Issue 8 would also apply in this situation.

## ISSUE 12

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

OSCAR supports the recommendation the legislative definition of “associated entities” be aligned with the State definition.

#### **Proposal**

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

## ISSUE 13

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

OSCAR supports aligning the penalty and recovery provisions on the LGEA with the EA.

## ISSUE 14

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

We agree that expenditure caps are only effective in so far as they are enforced, and appropriate systems must be in place so that expenditure can be properly monitored and audited against statutory caps. Therefore, OSCAR considers they should be serious integrity offences. Additionally, any penalties for those in breach of the statutory limits must be material. Where a third party does not complete a declaration, penalty points should be applied to their executive officers.

Penalties should include significant fines and potential imprisonment. Consideration should also be given to disqualification from office of successful candidates who are proved to have breached expenditure cap limits and a ban for standing in the following election for unsuccessful candidates.

## ISSUE 15

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

OSCAR supports aligning the record-keeping and auditing requirements for State and Local Government elections.

## ISSUE 16

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

We believe it would be necessary to provide some or all online training, information papers, factsheets and Q & As on the websites of both the DSDILGP (previously the DLGRMA) and the ECQ; both organisations have shown they can do these things well.

It would also be useful to establish a dedicated “hot line” where candidates or third parties can seek advice on matters relating to expenditure caps.

The requirements around expenditure caps should also form part of the content of future mandatory candidate training that is now required before council elections and by-elections.



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

There must be appropriate powers and financial support for the ECQ to manage complaints relating to expenditure cap breaches.

The regulations need to be very clear as to what evidence must be produced by the candidate and third parties when audited, eg invoices and receipts, and where, for example, a campaign office has been rented the records should show whether the rent paid by the candidate is commercial rent as applied to other tenants for the period of time or partially subsidised by the property owner.

Where a third party is reluctant or has to be hounded by the ECQ to submit their statements that penalty points should apply to their executive officers and members.

We believe that third parties should be registered so that electors are aware of the individual/s and/or organisations that constitute any third party undertaking electoral expenditure.

There must be appropriate powers and financial support for the ECQ to manage complaints relating to expenditure cap breaches.