Department of Justice and Attorney-General

Electoral Reform

Discussion paper

January 2013

Electoral Reform

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Attorney-General's Foreword

The Queensland Government is committed to ensuring Queensland has an electoral system that meets high standards of integrity and accountability, with fair and effective electoral laws that promote participation in our democracy through political representation and voting.

Against these objectives, the Government has prioritised to review the provisions of the *Electoral Act 1992* governing political donations, public funding for elections and election campaign expenditure.

The Government is concerned that the amendments to the *Electoral Act 1992* in the *Electoral Reform and Accountability Amendment Act 2011* of the former Bligh Government were developed and implemented without adequate forethought and consultation and were designed to benefit political parties in Queensland. The Government acted immediately and legislation has already been passed to abolish the additional administrative funding introduced for political parties and independent members under that Act. The remaining 2011 amendments will be reviewed from first principles and alternative approaches will be considered on their merits.

The Government has also raised concerns about the accountability of unions to their members in relation to their political donations.

Other issues that the Government is interested to explore include:

- enhancements to voter enrolment processes;
- the current optional preferential voting system;
- voting options and requirements (including: whether voting should be compulsory; the postal voting system; electronic voting; and opportunities for minimising voter fraud); and
- the laws governing political advertising and how-to-vote cards.

To facilitate public and stakeholder engagement, I am releasing this Discussion Paper on a range of electoral issues and options for change. The results of this consultation will assist the Government in deciding its position on these matters. I encourage Queenslanders to make their views known.

The Honourable Jarrod Bleijie MP
Attorney-General and Minister for Justice
3 January 2013

Introduction

The *Electoral Act 1992* (Qld) (the Act) governs the conduct of elections in Queensland. In addition to establishing the Electoral Commission of Queensland (ECQ) as an independent and impartial body to run free and democratic elections in Queensland, the Act deals with a range of issues including electoral boundaries, electoral rolls, voter enrolment, registration of political parties, voting, electoral advertising and election funding and disclosure.

The purpose of this Discussion Paper is to canvass issues and options for improvement and change to Queensland's electoral laws.

Part A of the paper is focused on options for reform in relation to political donations, public funding for elections and election campaign expenditure.

Part B of the paper identifies a range of other issues including the voting system, voter enrolment, postal voting and political advertising.

The options outlined in this paper and the discussion of possible actions or alternatives do not represent Queensland Government policy.

How to make a submission

Written submissions are invited in response to this Discussion Paper.

Interested persons are invited to respond to some or all of the issues raised in the paper. The options outlined in the paper are not intended to be exhaustive. If you think there are other options for improving Queensland's electoral laws, please include these in your response.

The closing date for submissions is 1 March 2013. Late submissions may not be considered.

Where to send your submission

You may lodge your submission by email or post.

The email address for submissions is: electoralreform@justice.qld.gov.au

Alternatively, you can post your submission to:

Electoral Reform
Strategic Policy
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

Privacy statement

Any personal information you include in your submission will be collected by the Department of Justice and Attorney-General (the Department) for the purpose of undertaking the review of the *Electoral Act 1992* (Qld). The Department may contact you for further consultation regarding the review. Your submission may also be released to other government agencies as part of the consultation process.

Submissions provided to the Department in relation to this paper will be treated as public documents. This means that they may be published on the Department's website, together with the name and suburb of each person or entity making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in the submission. However, please note that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions (or information about their content) may also be provided in due course to a parliamentary committee that considers any legislation resulting from this review.

Next steps in the review process

Submissions received in response to this Discussion Paper will be considered in making recommendations to Government on the review of the Act.

Part A—Political Donations, Public Funding and Election Campaign Expenditure

The *Electoral Reform and Accountability Amendment Act 2011* (Qld) (2011 Act) introduced significant changes to the system that regulates political donations, public funding for elections and election campaign expenditure in Queensland.

In addition to introducing caps on political donations and changing the formula under which political parties receive public funding, the 2011 Act introduced new burdensome administrative requirements for political parties, candidates and others involved in the political process.

It is timely to consider whether these reforms have been effective and whether there are opportunities to strengthen and enhance public confidence in the system.

Many of the issues raised in this paper will be highly contested and involve questions of balance. The challenge for the Queensland Government is to protect against the risk of improper influence while at the same time ensuring that political parties and candidates are able to engage effectively with voters.

1 Political donations

A key element in protecting against the risk of improper influence is the treatment of political donations to political parties, candidates and third parties in the political process.

One suggested method for limiting the potential for improper influence by any one donor or lobby group is to cap the amount of political donations that can be made by a person or class of persons, individually or collectively.

1.1 Treatment of political donations before 2011 Act

Before the 2011 Act, there were few limits on political donations in Queensland. Instead, the Act relied on disclosure to promote transparency and accountability (only donations of $1,000 or more were required to be disclosed by political parties, candidates and third parties).

1.2 Current treatment of political donations

The 2011 Act introduced a new governance regime for political donations intended to be used for State election campaign purposes.

Political donations

The Act defines a '*political donation*' to mean any of the following things made to a registered political party, candidate or third party to be used for campaign purposes:

- a gift, including a gift in kind;
- the disposition of property from particular donors; and
- a gift made to an entity to enable the entity to make a gift.[1]

[1] Section 250 of the Act

The term '*gift'* is defined to mean a disposition of property by a person to someone else, other than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration. It does not include a fundraising contribution of $200 or less (or the first $200 of a fundraising contribution that is more than $200), annual subscription fees, volunteer labour or the incidental or ancillary use of a volunteer's vehicle or equipment.[2]

Use of political donations

To qualify as a political donation, the gift or property given must be intended to be used for campaign purposes during the capped expenditure period for an election.[3]

Section 250(6) of the Act defines '*campaign purposes*' to mean:

- in connection with promoting or opposing, directly or indirectly, a registered political party or the election of a candidate; or
- for the purpose of influencing, directly or indirectly voting at an election.

The '*capped expenditure period'* for an election ends at 6pm on polling day and starts on the earlier of: the day two years after polling day for the last election; or the day the writ is issued for the election.[4]

All political donations (that are an amount of money) must be paid into a State campaign account.[5]

A '*State campaign account'* is a separate account with a financial institution kept by the agent of a registered political party, candidate, registered third party or an unregistered third party that receives a political donation. All political donations received by the political party, candidate or third party must be paid into this account and all electoral expenditure for an election must be paid out of it.

Caps on political donations

The 2011 Act introduced caps on political donations. The caps are indexed annually and were initially set at $5,000 per donor per year to Queensland registered political parties and $2,000 per donor per year to candidates or to third parties. A '*third party*' is defined to mean an entity other than an associated entity, candidate or registered political party.

Table 1 outlines the current caps on political donations in Queensland.

2 Section 201 of the Act
3 Section 250 of the Act
4 Section 197 of the Act
5 Part 11, division 3 of the Act

Table 1	
State/Territory	**Caps on political donations**
Queensland	• $5,300 per donor per year to a registered political party; • $2,200 per donor per year to a candidate; and • $2,200 per donor per year to a third party. The caps apply to donations intended to be used for campaign purposes during the capped expenditure period for an election. Unlimited amounts can be given to registered political parties, candidates and third parties provided they are not intended to be used for campaign purposes during the capped expenditure period.[6]

Disclosure of political donations

The current disclosure requirements in relation to political donations are outlined in **Attachment 2**.

1.3 Interstate comparison

New South Wales and the Australian Capital Territory are the only other jurisdictions in Australia to cap political donations, although there is a review of political donations and spending currently underway in Tasmania. Table 2 outlines the current caps on political donations in New South Wales and the Australian Capital Territory.

Table 2	
State/Territory	**Caps on political donations**
New South Wales	• $5,300 for political donations to or for the benefit of a registered political party; • $5,300 for political donations to or for the benefit of a group; • $2,200 for political donations to or for the benefit of an unregistered party; • $2,200 for political donations to or for the benefit of a candidate; • $2,200 for political donations to or for the benefit of an elected member; and • $2,200 for political donations to or for the benefit of a third-party campaigner. The cap applies to all political donations (regardless of whether they will be used for campaign purposes) subject to the following exceptions: • It is not unlawful for a person to accept a political donation that exceeds the applicable cap if the donation (or that part that exceeds the applicable cap) is to be paid into an account kept exclusively for the purposes of federal or local government election campaigns.

[6] Division 6, part 11 of the Act

	• A third-party campaigner may accept a political donation which exceeds the applicable cap if the donation (or the part of the donation that exceeds the cap) is paid into an account other than the third party campaigner's campaign account for an election.[7]
Australian Capital Territory	A donor may give no more than $10,000 in one financial year to an ACT political entity for use on ACT election expenditure. Unlimited amounts can be given to political entities provided no more than $10,000 is deposited in an ACT election account.[8]

As can be seen by the table above, the caps on political donations in Queensland are similar to the caps in New South Wales. The Australian Capital Territory model, which was only recently introduced, sets a higher donor cap that is the same for all recipients.

1.4 Options – Political donations

A key consideration with any law reform in this area is the effect of the Commonwealth Constitution. Laws that limit the size of political donations or the kind of organisations that can make political donations may impinge the implied freedom of speech and freedom of political communication. Such laws will generally only be valid if they are reasonably appropriate and adapted to serve a legitimate end which is compatible with the maintenance of representative and responsible government.[9]

a. Remove or change the caps on political donations

Arguments in favour of increased regulation in this area generally focus on concerns about the potential for undue influence in the political process. Caps on political donations may also provide a more level playing field for elections.

However, there is a contrary argument that:

- the fairest and most effective way to regulate political donations is through disclosure and that caps on political donations unnecessarily restrict donors from participating in the political process; and
- concerns about providing a level playing field for elections are more appropriately addressed through caps on electoral expenditure and public funding for elections.

Arguments against caps on political donations also focus on concerns that caps impinge the implied freedom of speech and of political association under the Commonwealth Constitution.

b. Apply the cap on political donations to all donations and not just those which are intended to be used for campaign purposes

The caps on political donations in Queensland and the Australian Capital Territory target only those donations intended to be used for campaign purposes during the capped expenditure period for an election.

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7 Division 2A, part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)
8 Division 142C, part 14 of the *Electoral Act 1992* (ACT)
9 *Lange v Australian Broadcasting Corporation* (1977) 189CLR 520

This approach differs to the approach taken in New South Wales. In New South Wales, the caps on political donations to political parties and candidates apply regardless of whether the donation is intended to be used for campaign purposes.[10]

At the time the caps were introduced in Queensland, the stated policy objective was to '*limit any potential for undue influence being exercised by any one donor or lobby group in relation to an election campaign – or any perception of such influence*'.[11]

There is an argument that by targeting only those donations intended to be used for campaign purposes during the capped expenditure period, the cap in Queensland is not effective in meeting its policy objective. Political parties and candidates may accept donations in excess of the cap, provided they are not used for campaign purposes during the capped expenditure period. The extent to which the caps limit the potential for undue influence is, therefore, somewhat reduced.

The constitutional limits outlined above would need to be explored before this option could be pursued.

c. Political donations from corporations and other entities

New South Wales recently introduced a ban on donations by corporations and other entities so that political donations may only be made by individuals on the New South Wales electoral roll.[12] Examples of entities captured by the ban include industrial organisations, peak industry groups, religious institutions and community organisations.

This ban follows an earlier ban on donations from property developers and tobacco, liquor and gambling industry business entities.

Under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW), annual or other subscriptions paid to a political party by an entity (such as an industrial organisation) for affiliation with the party are taken to be a gift (and political donation) to the party and as such are captured by the ban.[13]

According to the New South Wales Government, a complete ban on political donations from corporations and other entities is required to ensure that the public has confidence in the electoral system.[14]

In a similar move, recent amendments in the Australian Capital Territory mean that only Australian Capital Territory enrolled voters can make donations to political parties and candidates for Australian Capital Territory election purposes. As is the case in New South Wales, any donations made by entities other than Australian Capital Territory voters (such as companies and businesses) to political parties and candidates must be deposited in a federal election account and can not be used for Australian Capital Territory electoral expenditure. Unlike New South Wales, entities other than Australian Capital Territory voters may still make donations to third party campaigners.[15]

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10 Section 96D of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

11 Explanatory Notes for the *Electoral Reform and Accountability Amendment Act 2011* (Qld) at page 1

12 Section 96D of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

13 Section 96D(4) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

14 See for example statements by Mr Barry O'Farrell during the debate of the Election Funding, Expenditure and Disclosures Amendment Bill 2011 (NSW), 12 September 2011

15 Section 205I(4) of the *Electoral Act 1992* (ACT)

Third party campaigners are persons and entities (other than political parties, elected members, candidates and groups of candidates) who incur electoral expenditure of more than $1,000 during the disclosure period for an election.[16]

Internationally, a number of other countries ban certain categories of donations. For example, in Canada there is a ban on donations from corporations, unions, associations and groups while some states in the United States ban anonymous and overseas donations, and donations from corporations, banks and unions.

Those in favour of the ban argue that just as voting is confined to individuals, it is appropriate to confine the right to donate to a political party to individuals.

Those against the ban argue that it may offend the implied freedom of political communication under the Commonwealth Constitution.

d. Industrial organisations and corporations wishing to make political donations

An alternative to banning political donations from corporations and other entities would be to introduce new requirements in relation to the receipt of these donations by parties in the political process.

Requiring industrial organisations and corporations to hold ballots/votes would provide members/shareholders with more information about how their funds are being used, thereby leading to greater transparency and accountability.

In the United Kingdom, the *Trade Union and Labour Relations (Consolidation) Act 1992* requires trade unions to conduct regular ballots of trade union members. To establish a political fund and make political donations, trade unions must first conduct a secret ballot of their members to secure consent for the adoption of political objects and rules for a political fund.

Trade unions must secure approval for the political objects in a secret ballot every 10 years and the political fund rules must contain a right for members to contract out of paying into the political fund at any time. Further, payment of the political levy may not be a condition of union membership, and no discrimination may take place as a result of non-payment.

As company funds are ultimately shareholder funds, it would be consistent to implement the same requirement for corporations.

The United Kingdom's *Companies Act 2006* provides that companies incorporated in the United Kingdom must generally obtain shareholder authorisation before incurring political expenditure or before making a political donation to: a political party: another political organisation; or an independent election candidate. The authorisation must be made by resolution that authorises donations or expenditure, up to a specified amount in the period for which the resolution has effect (4 years or a shorter specified period). Prior shareholder authorisation is not required for donations or expenditure under £5,000 (in total) in a given 12 month period.

Given that the regulation of industrial organisations and corporations is primarily the responsibility of the Commonwealth Government, this option would involve amendments to the Act to prohibit political parties and candidates from accepting donations for Queensland campaign purposes from industrial organisations and corporations without also receiving evidence of a ballot/vote by members/shareholders in relation to the donation.

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[16] Section 198 of the *Electoral Act 1992* (ACT)

e. Fees for attendance at functions and fundraising activities

An additional area of contention relates to political donations made through the payment of fees for attendance at fundraising functions.

Under the Act, a fundraising contribution up to the value of $200 paid by a person to a registered political party, candidate or third party can be deposited into the State campaign account of that entity.[17]

Any amount in excess of $200 paid by a person as a fundraising contribution will constitute a gift (and therefore a political donation if it is intended to be used for campaign purposes).[18]

One option for reform would be to prohibit fundraising events due to concerns about 'cash for access'.

There is a contrary view that political party fundraisers are not an area of concern provided the donations are properly declared, as required by the existing disclosure provisions. This is currently the approach taken by other Australian jurisdictions. Alternatively, the disclosure requirements could be strengthened as discussed later in this Discussion Paper.

f. Fees

Under the Act, an annual subscription paid to a political party by a person for membership of the party is not treated as a political donation, although not more than $500 of these amounts can be paid into a State campaign account.[19]

This approach differs to the approach taken in New South Wales. Under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW), an annual or other subscription paid to a party by a member of the party is taken to be a gift (and political donation) to the party but is excluded from the cap except to the extent that it exceeds $2,000.[20]

Like New South Wales, the Australian Capital Territory considers an annual subscription paid to a party by a person for membership of the party a gift (and political donation) but only if the subscription is more than $250. The amount of the subscription that is more than $250 must be included in the cap.

g. Strengthen the existing disclosure requirements to promote transparency and accountability

The current disclosure requirements in Queensland are outlined in **Attachment 2**.

The Commonwealth, New South Wales, Queensland, the Australian Capital Territory and the Northern Territory all require some form of disclosure of political donations by both the donor and the recipient. Western Australia requires disclosure by political parties and associated entities. In Queensland there are special reporting requirements in relation to donations over $100,000.[21]

In implementing disclosure provisions, the need for transparent and accountable process must be balanced against the administrative burden of such a process.

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17 Section 220 of the Act
18 Section 201 of the Act
19 Refer to sections 201 and 220 of the Act
20 Sections 85 and 95D of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)
21 Section 266 of the Act

Extensive reviews of funding and disclosure requirements have recently been carried out in several jurisdictions, including the Commonwealth, New South Wales and the Australian Capital Territory.

Key features implemented across these jurisdictions, include:

- twice-yearly disclosure;
- special disclosure requirement for particular amounts from a particular person (i.e. $100,000 in Queensland);
- inclusion of individual donor information; and
- making disclosure information available to voters within a reasonable timeframe.

Increased disclosure requirements to improve transparency and accountability that could be considered without creating an onerous burden on donors, political parties and candidates, include:

- continuous disclosure (for example a requirement that all donations must be disclosed within 10 business days);
- additional reporting requirements during the capped expenditure period; and
- timely publication of returns on the website of the ECQ.[22]

An example of an effective continuous disclosure system is that used by the New York City Campaign Finance Board which provides candidates with a free software package (C-Smart) to progressively report donations via the internet. Candidate submissions are then displayed on the Board's website, almost in real time, for anyone to view.[23]

h. Streamline existing administrative arrangements

As noted above, registered political parties, candidates, registered third parties and third parties that receive a political donation must establish dedicated State campaign accounts. All political donations must be paid into these accounts.

It could be argued that the requirement to maintain State campaign accounts is too onerous and that those involved in the political process are already accountable for political donations and electoral expenditure through the existing disclosure regime.

The Government is interested in any other opportunities to streamline the existing administrative arrangements in relation to the disclosure and capping of political donations.

Issues for consultation – Political donations

1 Are the existing laws in relation to political donations effective in protecting against the potential for undue influence and corruption?

2 How can the existing laws in relation to political donations be made more effective?

[22] www.ecq.qld.gov.au

[23] See Brian Costar, "Election funding transparency: Australia has a lot to learn", *Inside Story*, 10 August 2010 and www.nyccfb.

Comment is invited, in particular on:

- ➔ **whether political donations should continue to be capped in Queensland (option a);**
- ➔ **if so, whether the cap should apply to all donations and not just those intended to be used for campaign purposes (option b);**
- ➔ **whether political donations should only be able to be made by individuals on the electoral roll (option c);**
- ➔ **if not, whether there should be additional member/shareholder endorsement requirements for receipt of donations from industrial organisations and corporations (option d);**
- ➔ **the treatment of fees for attendance at functions and fundraising activities (option e) and membership fees (option f);**
- ➔ **whether additional disclosure requirements should be introduced (option g); and**
- ➔ **whether there are any opportunities to streamline the existing administrative arrangements (for example by removing the requirement for dedicated campaign accounts (option h)).**

2 Public funding for elections

Public funding of election campaigns, which involves subsidising parties and candidates for the cost of contesting elections, is an important part of the current regulatory scheme for campaign financing.

The extent to which political parties and candidates are funded by the taxpayer is a vexed issue.

Arguments in favour of public funding include that it reduces the potential for undue influence by limiting political parties' reliance on private donations, creates a more level playing field and ensures that political parties/candidates can focus their efforts on issues relevant to the electorate rather than fundraising activities.

There is a contrary argument that political parties/candidates should not be prioritised ahead of other legitimate spending initiatives and that taxpayers should not be forced to subsidise political parties/candidates they may oppose.

2.1 Public funding before 2011 Act

Before the 2011 Act, political parties and candidates in Queensland were directly reimbursed for their electoral expenditure up to a maximum amount. The maximum amount was calculated with reference to the number of first preference votes received once the candidate or group had qualified for reimbursement by obtaining at least 4% of the total formal first preference votes cast. In 2011, the amount of funding per vote was set at $1.6445 per vote. This amount would have increased to $1.70342 by the time of the 2012 State General Election.

2.2 Current public funding arrangements

Electoral funding

Following the 2011 Act, the amount of election funding that a registered political party and candidate are entitled to receive is calculated with reference to their actual electoral expenditure within the capped expenditure amount for the election.

Under the current arrangements, a registered political party that receives at least 4% of first preference votes may be reimbursed for:

- all of the first 10% of their electoral expenditure;
- ¾ of the next 80% of their electoral expenditure; and
- ½ of the remaining 10% of their electoral expenditure.[24]

A candidate that receives at least 4% of first preference votes may be reimbursed for:

- all of the first 10% of their electoral expenditure;
- ½ of the next 80% of their electoral expenditure; and
- ¼ of the remaining 10% of their electoral expenditure.[25]

Table 3 illustrates the funding that political parties would have received had the previous per vote funding model remained in place for the 2012 State General Election.

Changes to the way in which election campaigns are funded in Queensland have clearly benefited political parties. For the 2012 State General Election, the Australian Labor Party received significantly more in public funding than it would have under the previous arrangements. The LNP, Greens and the Australian Party benefited to a lesser extent.

Table 3

Party	Number of formal first preference votes	Maximum Entitlement under current funding arrangements	Actual funding	Maximum Funding Entitlement under previous funding arrangements
Australian Labor Party	652,092	$5,340,000	$5,265,588.18	$1,110,783.40
LNP	1,214,553	$5,340,000	$4,110,887.88[26]	$2,068,888.00
Greens	184,147	$5,340,000	$695,356.75	$313,678.79
Katter's Australian Party	282,098	$4,738,000	$1,037,374.92	$480,530.01

[24] Section 223 of the Act
[25] Section 224 of the Act
[26] Interim payment only

Family First	33,269	$2,458,000	$73,717.95	$56,670.92
One Nation Party	2,525	Not eligible	Not eligible	$0

Administrative funding

In addition to public funding for electoral expenditure, the 2011 Act also included provision for administrative funding for registered political parties and independent members of parliament. For 2011-12, a total of $4,158,915 was paid to eligible parties and independent members of parliament for administrative funding.[27] The Queensland Government recently passed legislation to abolish this funding.[28]

Arguments in favour of public administrative funding include that it reduces the potential for undue influence by limiting political parties' reliance on private donations.

2.3 Interstate comparison

The changes to the way election campaigns are publicly funded in Queensland were modelled on the approach taken in New South Wales.

In New South Wales, political parties, groups, candidates and elected members are entitled to apply to the Election Funding Authority for payments from one of the following funds:

- the Election Campaigns Fund for electoral communication expenditure at state elections;
- the Administration Fund for operation and administration costs of state parties that have members of parliament and for independent members of parliament; and
- the Policy Development Fund for all other state parties that are not entitled to the Administration Fund.[29]

As in Queensland, funding from the Elections Campaign Fund is calculated by reference to a sliding scale based on actual electoral expenditure.

By way of example, an eligible assembly party in New South Wales that receives at least 4% of first preference votes may recover:

- all of the first 0-10% of their electoral expenditure;
- ¾ of the next 10-90% of their electoral expenditure; and
- ½ of the last 90-100% of their electoral expenditure.[30]

Similarly, an eligible assembly candidate who receives at least 4% of first preference votes may recover:

- all of the first 0-10% of their electoral expenditure;
- ½ of the next 10-50% for a party candidate (½ of the next 10-80% for an independent candidate) of their electoral expenditure.[31]

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27 Electoral Commission of Queensland 2011-2012 Annual Report at page 12
28 *Guardianship and Administration and Other Legislation Amendment Act 2012* (Qld)
29 Election Funding Authority Fact Sheet - *Administration Fund and Policy Development Fund*
30 Section 58 of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)
31 Section 60 of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

Unlike Queensland and New South Wales, the Australian Capital Territory has retained funding on a per vote basis. In the Australian Capital Territory, election funding for parties and non-party candidates who receive at least 4% of formal votes is currently set at $2 per vote. Parties and non-party members of the Legislative Assembly are also entitled to administrative expenditure funding of $5,000 per quarter per member.[32]

2.4 Options – Public funding for elections

The primary objective of public funding of political parties' and candidates' election expenses is to support the democratic process and, under current arrangements, to compensate for the capping of political donations.

Given that public funding is often used to offset the effect of caps on political donations and electoral expenditure, the level of public funding can not be considered in isolation from the other issues outlined in part A of this paper.

a. Restore funding based on received votes

Under a funding model based on votes received, the amount of funding that a party or candidate is entitled to receive is directly related to their electoral strength. Parties and candidates must make their spending decisions based on an assessment of their prospects of success.

Under this option, public funding would still be tied to genuine election expenditure. This removes the possibility of 'profiteering', where a party or candidate could be paid more public funding than they actually spent on the election campaign.

Public funding based on votes received is used in most other jurisdictions in Australia which provide public funding for elections.

It alleviates concerns that the current arrangements:

- favour those parties and candidates with access to the most funds; and
- may allow a block of candidates to use considerable electoral expenditure against another individual candidate.

b. Introduce a limit on public funding that is based on the winning party's entitlement

Under this option, the current funding arrangements would be amended so that there is a limit on public funding based on the winning party's or candidate's entitlement.

Each registered political party/candidate in Queensland would be entitled to receive the lesser of:

- the amount of public funding calculated under the current arrangements; and
- the number of votes received by the party/candidate multiplied by the amount of public funding the winning party/candidate received on a per vote basis.

This scheme is in effect a hybrid of the current funding arrangements and option a.

The advantage of the hybrid scheme is that it takes account of each party's/candidate's relative electoral strength.

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[32] Australian Capital Territory Electoral Commission - *New electoral campaign finance laws in the ACT* (5 July 2012)

A possible issue with this option is that the likely public funding of losing parties/candidates will not be known upfront as a basis for decision making given that it will be dependent on the amount spent relative to the votes received by the winning party. This may disadvantage new entrants, particularly if an incumbent member who is successful decides to spend very little or does not claim public funding.

c. Introduce a limit on public funding that is based on the number of votes received

Under this option, the current funding arrangements would be amended so that there is a limit on public funding that is based on the number of votes received.

Each registered political party/candidate in Queensland would be entitled to receive the lesser of:

- the amount of public funding that is calculated under the current arrangements; and
- the number of votes received by the party/candidate multiplied by a set amount per vote.

As with option b, this scheme is in effect a hybrid of the current funding arrangements and option a. It would therefore alleviate concerns that the current arrangements fail to take account of electoral strength. It would also alleviate concerns about the current arrangements favouring parties and candidates with access to funds.

However, unlike option b, the limit on public funding is based on an objective measure rather than the amount spent and the votes received by the winning party.

d. Streamline existing administrative arrangements

The Government is interested in opportunities to streamline the existing administrative arrangements in relation to public funding for elections.

For example, under section 207 of the Act, a candidate may appoint a person to be their agent for the purposes of the election funding and disclosure requirements in the Act. If a candidate does not appoint an agent, the candidate is taken to be their own agent. Under part 11 of the Act, a claim for election funding must be made by the agent of a candidate. One option for streamlining the existing administrative arrangements would be to amend part 11 to allow a candidate to make an application for election funding in place of their agent.

Issues for consultation – Public funding of elections

Are the public funding arrangements in Queensland fair?

Comment is invited, in particular on:

- ➔ **whether public funding of political parties and candidates should be on a per vote basis (option (a));**
- ➔ **whether a limit on public funding should be introduced that is based on the winning party's entitlement (option b);**

- ➔ **whether a limit on public funding should be introduced that is based on the number of votes received (option c); and**
- ➔ **whether there are any opportunities to streamline the existing administrative arrangements (option d).**

3 Election campaign expenditure

3.1 Regulation of election campaign expenditure before 2011 Act

Before the 2011 Act, election campaign expenditure was not regulated.

3.2 Current regulation of election campaign expenditure

The 2011 Act introduced caps on the amount political parties, candidates and third parties can spend on state election campaigns during the capped expenditure period.

In addition to capping electoral expenditure, the amendments also introduced new disclosure requirements for candidates, registered political parties and third parties in relation to electoral expenditure incurred during the capped expenditure period. These requirements are outlined in **Attachment 2**.

The cap and disclosure requirements apply to '*electoral expenditure*' which is defined in section 199 of the Act to include expenditure on or a gift in kind of:

- advertising advocating a vote for or against a candidate or for or against a registered political party, including the cost of producing such an advertisement and particular broadcasting, publishing and display costs;
- the production and distribution of any other material advocating a vote for or against a candidate or for or against a registered political party; and
- carrying out an opinion poll, or other research, related to the election.

The '*capped expenditure period*' for an election ends at 6pm on polling day and starts on the earlier of: the day two years after polling day for the last election; or the day the writ is issued for the election.

The caps on electoral expenditure are currently set at:

Table 4 – Queensland	
Candidates	$52,500 for a candidate endorsed by a political party and $78,800 for an independent candidate.
Registered political parties	$84,000 multiplied by the number of seats contested.
Third parties	Not more than $524,800 across the State or $78,800 for each individual electorate. Unregistered third parties are limited to $10,600 across the State or $2,200 for each individual electorate.[33]

3.3 Interstate comparison

As with political donations, Queensland, New South Wales and the Australian Capital Territory are the only jurisdictions in Australia which cap election electoral expenditure.[34]

In New South Wales, the caps on electoral expenditure are:

Table 5 – New South Wales	
Candidates	$111,200 for a candidate endorsed by a political party and $166,700 for an independent candidate.
Registered political parties	$111,200 multiplied by the number of seats contested (resulting in an upper limit of $10.3 million). $1,166,600 for smaller parties endorsing candidates in no more than 10 electoral districts.
Third parties	$1,166,600 for registered third parties and $583,300 for unregistered third parties.

In the Australian Capital Territory, the caps on electoral expenditure are:

Table 6 – Australian Capital Territory	
Candidates	$100,000 for a candidate endorsed by a political party and $150,000 for an independent candidate.
Registered political parties	$100,000 multiplied by the number of seats contested (resulting in an upper limit of $9.3 million). $1,050,000 for smaller parties endorsing candidates in no more than 10 electoral districts.
Third parties	$1,050,000 for registered third parties and $525,000 for unregistered third parties.[35]

[33] Section 274 of the Act

[34] Expenditure restrictions and disclosure requirements are in place for Tasmanian Legislative Council (Upper House) elections, part 6 of the *Electoral Act 2004* (Tas).

[35] Section 95F of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

Internationally, Canada, New Zealand, the United Kingdom and the Republic of Ireland all place limits on electoral expenditure.

3.4 Options – Election campaign expenditure

a. Retain current caps on electoral expenditure

Those in favour of caps on electoral expenditure argue that they create a level the playing field for electoral competition and avoid excessive or wasteful expenditure. Restrictions on expenditure, if effective, address the inequalities that exist between parties and candidates because of access to funds and incumbency. Caps on electoral expenditure are an important consideration if the amount political parties can collect from political donations and public funding is restricted.

b. Remove the caps on electoral expenditure

Those in favour of removing caps would argue that they are a restriction on political freedom.

c. Aggregate the expenditure of a party with that of its affiliated organisations

Under this option, and consistent with recent amendments in New South Wales,[36] even if a registered political party spends less than or equal to its applicable electoral expenditure cap, its expenditure would be treated as exceeding the cap if the combined expenditure by the party and its affiliated organisations exceeds the cap.

An affiliated organisation is defined in New South Wales to mean a body that, under the rules of the party, can appoint delegates to the party's governing body and/or has a role in the pre-selection of candidates for that party. It may be incorporated or unincorporated.[37]

In contrast, affiliated organisations in Queensland, such as registered industrial organisations, can currently each incur electoral expenditure up to the capped amount of $500,000.

Under the Act, only expenditure by an '*associated entity*' is aggregated with the expenditure of the relevant political party. The term '*associated entity*' is defined quite narrowly in section 197 of the Act to mean an entity that:

a) is controlled by 1 or more registered political parties; or
b) operates wholly or to a significant extent for the benefit of 1 or more registered political parties.

It may be argued that the definition of associated entity creates an unfair loophole which undermines the integrity of the caps on electoral expenditure. The alternative view is that, although affiliated, such organisations have a legitimate separate constituency and interests which they should have the political freedom to represent.

[36] *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW)
[37] Section 95G of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

d. Aggregate the expenditure of affiliated organisations

Along with aggregating the expenditure of a party with that of its affiliated organisations, another option would be to aggregate the expenditure of affiliated organisations.

While section 205 the Act specifically provides that related corporations are to be treated as one entity for the purposes of the caps on political donations and electoral expenditure, other related organisations in Queensland, such as registered industrial organisations, are currently treated as separate entities.

It is arguable that the failure to group related organisations undermines the integrity of the scheme.

As above, the alternative view is that, although affiliated, such organisations have a legitimate separate constituency and interests which they should have the political freedom to represent.

e. Address issues relating to the definition of electoral expenditure

As noted above, the Act includes caps on electoral expenditure.

Central to the operation of the caps on electoral expenditure is the definition of electoral expenditure.

The term '*electoral expenditure*' is defined in section 199 of the Act. In summary, electoral expenditure is that which advocates a vote for or against a candidate or for or against a registered political party. For the most part, it covers expenditure on advertising in the electronic and print media. It also includes expenditure on carrying out opinion polling and other research relating to an election.[38]

The ECQ considers that the following items are not electoral expenditure:

- the cost of a campaign director (unless there is a robust and defendable link to the production and distribution of the items listed in section 199);
- expenditure on goods or services which falls under the definition of administration expenditure for independent members;
- the cost of nominating as a candidate in an election;
- expenditure incurred for the preparation and audit of disclosure returns or claims for funding, as prescribed under the Act;
- expenditure incurred for factual advertising in relation to party or parliamentary administration (e.g. meetings or conferences), or expenditure incurred by a member of parliament for duties directly related to position of office; and
- expenditure on novelty items such as car stickers, t-shirts, lapel badges or buttons, pens, pencils, balloons or items of a similar nature.[39]

Unlike the Act, the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) includes staff and accommodation costs in the definition of electoral expenditure. Under section 87(2) of this Act, the cap applies to:

- expenditure on advertisements in radio, television, the internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material;
- expenditure on the production and distribution of election material;
- expenditure on the internet, telecommunications, stationery and postage;

[38] Electoral Commission of Queensland Factsheet – *What is electoral expenditure?*
[39] Electoral Commission of Queensland Factsheet – *What is electoral expenditure?*

- expenditure incurred in employing staff engaged in election campaigns;
- expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member); and
- such other expenditure as may be prescribed by the regulation.

One option for reform would be to clarify the definition of electoral expenditure in the Act.

A further area of concern relates to the application of the caps to organisations which conduct polling activities and research activities.

As currently drafted, section 199 of the Act would capture opinion polling conducted and research undertaken by people, groups and organisations not actually intending to influence the outcome of an election. By way of example, a newspaper conducting opinion polling would currently be subject to the cap and disclosure requirements. Likewise, the cap and disclosure requirements would apply to market research companies and academics.

One option for addressing this issue would be to insert a provision along the lines of section 87(4) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Under this section, electoral expenditure includes only expenditure that is for the dominant purpose of promoting or opposing a party or candidate or influencing voting at an election.

f. Address a potential loophole in relation to volunteer labour

Another issue relates to the potential for volunteer labour and other in-kind support to be used to circumvent the caps on electoral expenditure.

Under the Act, volunteer labour is not considered an in-kind donation and is not counted in the overall amount of expenditure a person can spend on their campaign. Volunteers perform a range of vital functions such as delivering election material, door knocking, assisting in campaign offices or maintaining campaign accounts, and staffing election booths on polling day.

Currently the work carried out by officials of an affiliated organisation during election campaigns is considered to be volunteer labour for the purposes of the Act.

This option would provide that volunteer labour does not include time spent by an official of an organisation working for a political party with which the organisation is affiliated.

The alternative view is that it is unconstitutional to discriminate against a class of people from working in their own time and a contravention of an individual's rights to freedom of association.

g. Streamline existing administrative arrangements

The Government is interested in any opportunities to streamline the existing administrative arrangements in relation to the disclosure and capping of electoral expenditure.

Issues for consultation – Election campaign expenditure

1 Are the existing laws relating to electoral expenditure effective in creating a more level playing field?

2 How can the existing laws in relation to electoral expenditure be made more effective?

Comment is invited, in particular on:

- ➔ **whether electoral expenditure should continue to be capped in Queensland (options a and b);**
- ➔ **whether the expenditure of a party should be aggregated with the expenditure of its affiliated organisations (option c);**
- ➔ **whether the expenditure of affiliated organisations should be aggregated (option d);**
- ➔ **whether the definition of 'electoral expenditure' should be clarified (option e);**
- ➔ **the treatment of volunteer labour (option f); and**
- ➔ **whether there are any opportunities to streamline the existing administrative arrangements (option g).**

Part B—Other Options for Improvement and Change

1 Truth in political advertising

False and misleading electoral advertisements and other statements have the potential to undermine the conduct of fair elections in Queensland.

1.1 Option – Introduce truth in political advertising legislation

Although truth in political advertising is not specifically regulated in Queensland, the issue is raised from time to time and has been the subject of a number of inquiries.[40]

Truth in political advertising legislation generally involves the introduction of a new offence.

One option that has previously been considered would be to amend the Act to create a new offence along the lines of section 113 of the *Electoral Act 1985* (SA). In order to establish that an offence has been committed under section 113 of that Act, the prosecution must show that the statement was:

- contained in an advertisement that was calculated to affect the result of an election;
- intended to be a statement of fact and not a statement of opinion;
- inaccurate to a material extent; and
- misleading to a material extent.

For example, the Supreme Court of South Australia[41] considered a political advertisement by the Australian Labor Party which contained the following statement: '*The fact is the [Dean] Brown Liberals have stated that any school with less than three hundred students will be subject to closure*'. The court found that this statement was inaccurate and misleading as the Brown Liberals had in fact stated that although they would continue a small program of school closures, they would not look at closing schools with less than 300 students.

Similarly, the Supreme Court of South Australia[42] held that a Liberal Party advertisement containing a statement that '*a vote for an Independent was a vote for the Labor Party*' had breached section 113 of the *Electoral Act 1985* (SA).

South Australia is the only jurisdiction in Australia to enact legislation that attempts to regulate truth in political advertising.

Opinion is divided on whether legislation is the most appropriate mechanism for regulating electoral advertising.

Those in favour of truth in political advertising legislation consider that it would advance political standards, promote fairness, improve accountability and restore trust in politicians.

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[40] See for example Legal, Constitutional and Administrative Review Committee, Queensland Parliament, *Report on Truth in Political Advertising*, December 1996 and *Report on the Electoral Amendment Bill 1999*, April 2000

[41] *Cameron v Becker* (1995) 64 SASR

[42] *King v Electoral Commissioner* SCGRG 97/1670 Judgment No. 6557

Those against truth it generally raise concerns about enforceability. Other potential issues with an offence relating to truth in political advertising include:

- it should be up to voters to judge the veracity of claims made in political advertising, just as they judge the veracity of claims made in commercial advertising;
- regulation may lead to an increase in nuisance claims by voters or candidates seeking to prevent the publication of an opposition advertisement;
- the neutrality and impartiality of the ECQ could be compromised if it is required to rule on what will be a highly vexed and publicised political issue; and
- it would be difficult to provide a prompt response to complaints, particularly on polling day.

For example, in 2002, the Senate Finance and Public Administration Committee (SFPAC) examined the South Australian model in depth and recommended against the introduction of legislation prohibiting misleading statements, citing the '*difficulties in ensuring a prompt response to complaints and preventing misuse of the legislation to score political advantage*'. As part of its deliberations, SFPAC heard evidence from a former South Australian Electoral Commissioner that in his opinion the provision had not changed the political culture of the State to any great extent and instead offered opportunities for political parties to disrupt the process.[43]

Similarly, in February 2010, the Electoral Matters Committee in Victoria released a report in relation to its inquiry into the provisions of the *Electoral Act 2002* (Vic) relating to misleading or deceptive political advertising. As part of its report, the committee expressed concern that measures to regulate misleading or deceptive political advertising would have implementation difficulties, would be potentially unworkable, could increase the risk of a more litigious approach to elections and electoral law and could have unintended consequences, including the potential for '*a chilling effect on robust political discourse*'.[44]

Should truth in political advertising legislation be considered for introduction in Queensland, one issue that would need to be resolved is the extent to which the legislation should extend beyond advertisements to other inaccurate and misleading statements (for example statements made in the media).

While election campaigns in Queensland have traditionally focused on newspaper advertisements and printed leaflets and flyers, media appearances and televised public forums are now widely regarded as an important campaign instrument.

As such, the extent to which a truth in political advertising offence that is restricted to advertisements would prevent deliberately false and misleading electoral material from being distributed to the community is questionable.

The contrary view is that a truth in political advertising offence that applies to statements whenever and wherever made would be unworkable and difficult to detect, prosecute and punish.

There is also an argument that defamation laws provide adequate protection in this area.

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[43] Senate Finance and Public Administration Legislation Committee, Commonwealth Parliament, *Report on the Charter of Political Honesty Bill 2000 [2002]; Electoral Amendment (Political Honesty) Bill 2000 [2002]; Provisions of Government Advertising (Objectivity, Fairness and Accountability) Bill 2000; Auditor of Parliamentary Allowances and Entitlements Bill [No. 2]*, 2002 at page 88

[44] Electoral Matters Committee, Victorian Parliament, *Inquiry into the provisions of the Electoral Act 2002 (Vic) relating to misleading or deceptive political advertising*, February 2010 at page 159

Issue for consultation – Truth in political advertising

1 Should truth in political advertising legislation be introduced in Queensland?

2 If so, should it extend beyond advertisements to other inaccurate and misleading statements?

2 How-to-vote cards

How-to-vote cards are a prominent feature of election days in Queensland.

In the same way that false and misleading electoral advertisements have the potential to undermine the conduct of fair elections in Queensland, so do misleading how-to-vote cards.

Under the Act, how-to-vote cards are a form of electoral advertising and as such must be authorised. The authoriser's name and address and the party's or candidate's name must be included prominently and legibly at the end of each card (section 182 of the Act).

In addition, section 185(1) of the Act makes it an offence for a person to, during the election period for an election, print, publish, distribute or broadcast anything that is intended or likely to mislead a voter in relation to the way of voting at the election. The maximum penalty is 40 penalty units.

Section 185(1) has been afforded a very narrow interpretation by the courts. In 1981 the High Court[45] held that section 185(1) applies only to misleading or incorrect material that is intended or likely to affect a voter when he/she seeks to record and give effect to the judgment which he/she has formed. Notwithstanding the narrow interpretation of section 185(1), it is likely that a misleading how-to-vote card (for example, a how-to-vote card that is authorised by one party but disguised to look like it has been authorised by a different party) would be found to offend the section.

2.1 Options – Increased regulation of how-to-vote cards

a. Introduce a requirement for how-to-vote cards to be published on ECQ website

In 2010, Victoria passed amendments which require the Victorian Electoral Commission to publish a copy of how-to-vote cards on their website.[46] Publishing how-to-vote cards in this way facilitates greater scrutiny of the cards before polling day and also provides postal voters with access to how-to-vote guidance.

This option would also meet the community expectation that information that is available should be available electronically where possible.

[45] *Evans v Crichton-Browne* (1981) 147 CLR 169
[46] *Electoral Amendment (Electoral Participation) Act 2010* (Vic)

b. Introduce a requirement for the ECQ to refuse to register a how-to-vote card if it is satisfied that the card is likely to mislead or deceive a voter in casting their vote

Section 183 of the Act requires all how-to-vote cards to be lodged with the ECQ seven days before an election.

Although the Act permits the ECQ to reject a how-to-vote card that has not been properly authorised, there is no express provision in the Act which allows the ECQ to reject a misleading or deceptive how-to-vote card.

By way of comparison, section 79(2) of the *Electoral Act 2002* (Vic) expressly provides that the Victorian Electoral Commission must refuse to register a how-to-vote card that is likely to mislead or deceive a voter in casting their vote.

Given the subjective nature of the issue, there is an argument that a provision along the lines of section 79(2) of the *Electoral Act 2002* (Vic) may compromise the neutrality and impartiality of the ECQ.

c. Regulate the behaviour of political party workers who hand out how-to-vote cards

There is currently no legislation in Australia which regulates political party workers who hand out how-to-vote cards on polling day.

The Joint Standing Committee on Electoral Matters[47] suggested that the Australian Electoral Commission (the AEC) develop a code of conduct to be signed and agreed by all party workers at polling places on election day.

d. Ban how-to-vote cards

At most polling booths, political party workers hand out how-to-vote cards that have been registered with the ECQ.

In Queensland, there is a prohibition on handing out how-to-vote cards within 6 metres of a polling booth.

The Australian Capital Territory has a prohibition on handing out how-to-vote cards within 100 metres of a polling booth, while in Tasmania there is a blanket prohibition on handing out how-to-vote cards on polling day.

A concern in banning how-to-vote cards in Queensland is that it could increase the number of informal votes cast at an election. Given that a ban on how-to-vote cards would limit the ability of candidates and their supporters to provide material to voters, it is also possible that a ban may breach the implied freedom of political communication.

There is a contrary view that banning how-to-vote cards may reduce voter intimidation, encourage voters to put more thought into the choices they make on polling day and encourage candidates to be more pro-active in their electorate in the run up to polling day. It would also limit the environmental impact of the cards. Given that each voter can be given multiple how-to-vote cards, the amount of paper used in this process is high.

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[47] Joint Standing Committee on Electoral Matters, Commonwealth Parliament, *Report of the inquiry into the 1998 Federal Election and Matters Related Thereto*, 2000

Alternatives to banning the cards on polling day would be to place how-to-vote cards on corflutes at each entry to a polling centre or display the cards in each polling booth.

Issues for consultation – How-to-vote cards

Should how-to-vote cards be subject to increased regulation? If so, how?

Comment is invited, in particular on:

- ➔ **whether how-to-vote cards should be published on the ECQ's website (option a);**
- ➔ **whether the ECQ should have the power to refuse to register a how-to-vote card that is likely to mislead or deceive a voter in casting their vote (option b);**
- ➔ **whether the behaviour of workers who hand out how-to-vote cards should be regulated (option c); and**
- ➔ **whether how-to-vote cards should be banned (option d).**

3 Proof of identity

There is currently no requirement in Queensland or any other jurisdiction in Australia for a voter on the electoral roll to produce proof of their identity at the polling station in order to be allowed to vote.

The introduction of a requirement for proof of identity at polling stations has previously been considered on a number of occasions, including by the Joint Standing Committee on Electoral Matters (in reports published in 2011 on the conduct of the 2010 federal election and in 2009 on the conduct of the 2007 federal election). The issue was also canvassed in a 2009 Green Paper on electoral reform released by the Australian Government (Green Paper).[48]

3.1 Option – Introduce proof of identity requirements

The Green Paper included a comprehensive list of the arguments both for and against a requirement for voters to provide identification at polling booths.

In support of the introduction of proof of identity requirements, the Green Paper noted that the requirements could:

- provide greater protection against voter impersonation, as voters could be visually checked against their photographic identification and against the electoral roll; and
- ensure greater confidence in the electoral process and the integrity of the results.[49]

[48] *Electoral Reform Green Paper – Strengthening Australia's Democracy*, released by the Australian Government on 23 September 2009

[49] *Electoral Reform Green Paper – Strengthening Australia's Democracy*, released by the Australian Government on 23 September 2009 at section 11.62

On the other hand, the 2009 Green Paper noted that:

- it is at the enrolment stage that issues surrounding a person's entitlement to vote should be resolved, which enables the polling process to proceed smoothly as the certified lists can be taken as 'conclusive of a person's right to vote';
- a requirement to produce a photographic identity card or passport might operate in a discriminatory way against persons who do not have any photographic identity;
- an extensive public education campaign would be required to educate voters on the specific documents that would be accepted as proof of identity on election day;
- even with a substantial publicity campaign, it would be possible that a number of voters would be unable to, or would forget to, bring the appropriate documents with them, which would be likely to lead to a further increase in declaration voting; and
- additional polling staff would be required to check voter identities in order to reduce delays at polling places.[50]

Given that Queensland would be the only jurisdiction to require proof of identity on polling day, there is a risk that the requirement would lead to voter confusion. Also, as there is no specific evidence of electoral fraud in this area, introduction of proof of identity requirements could be considered a disproportionate response to the risk.

Experiences in countries where voter identification is required vary. In the United States of America, for example, it has been noted that the requirement for identification has the potential to sway election results in some swing states. On 5 August 2012, the Financial Times reported that in Pennsylvania, for example, more than 750,000 registered voters did not have the required forms of identification and President Obama won Pennsylvania by only 600,000 votes.[51]

Voter identification laws in Canada and various European countries appear to be well established, although many of these countries already have a national identification scheme.

Issue for consultation – Proof of identity

Should voters be required to produce proof of their identity on polling day?

4 Enrolment on polling day

The 2011 Act changed the close of roll process for State general elections.

For the first time in Queensland, eligible voters for the 2012 State General Election were allowed to enrol or update their details after the writs for the election had been issued and up to the day before polling day. According to the ECQ, 18,908 new additions and 45,710 changes were made to the electoral roll during this period.[52]

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50 *Electoral Reform Green Paper – Strengthening Australia's Democracy*, released by the Australian Government on 23 September 2009 at section 11.63

51 *Voter ID laws could sway US elections*, The Financial Times Limited, 2012

52 Electoral Commission of Queensland 2011-2012 Annual Report at page 19

4.1 Option – Allow enrolment on polling day

Enrolment up to and including polling day would allow a person who claims to be entitled to vote but whose name is not on, or can not be found on, the electoral roll, to enrol and cast a provisional vote (in the form of a declaration vote) on polling day.

To protect the security and integrity of the electoral roll, polling day enrolment would be subject to proof of identity and address requirements. A vote cast by a voter enrolled on polling day would be counted only if the identity of the voter was later verified by the ECQ.

The Commonwealth, New South Wales and Victoria permit enrolment on polling day. Other jurisdictions, including Canada and nine states in the United States of America currently have some form of polling day registration. In New Zealand, voters can enrol up to the day before polling day.

Arguments against allowing enrolment on polling day include that it:

- exposes the electoral roll to fraudulent enrolments;
- is impossible to know in advance the number of eligible voters who may be affected;
- has the potential to cause voters significant delays on polling day, particularly during peak voting times;
- could put pressure on election officials at voting centres and on electoral commission staff afterwards; and
- could inadvertently provide an incentive for people to not comply with existing requirements to enrol or update their election details when they move residence.

The ECQ has previously supported enrolment on polling day.

Proof of identity requirements and quarantining the votes until proof of identity is verified should address concerns about voter fraud. The extension of the enrolment to polling day will ensure that persons are able to vote in the correct electorate (as long as they have lived there for the last month as required by section 64 of the Act).

Issue for consultation – Enrolment on polling day

Should voters be permitted to enrol on polling day?

5 Electronic voting

Electronic voting refers to any system by which voters cast their votes using an online system such as the internet or touch-tone phone. It includes both remote voting and electronically assisted voting.

Most Australian jurisdictions offer some type of electronic voting, although for the most part it has been restricted to blind and vision impaired voters and voters who need assistance voting because of a disability, motor impairment or insufficient literacy.

To date, Queensland has not offered electronic voting for state or local government elections

5.1 Options – Electronic voting

a. Introduce electronically assisted voting for blind and vision impaired voters; and voters who require assistance voting because of a disability, motor impairment or insufficient literacy

In Queensland, voters with a disability who require assistance in completing a ballot paper are not able to vote in secret or independently. Instead, the voter must select a person to help them vote. Although Braille ballot papers were available for the 2009 and 2012 Queensland State General Elections, their application was limited (in part because many blind and vision-impaired voters are unable to read Braille).

Limiting electronic voting to blind/disabled voters is consistent with the approach taken in Victoria. In Victoria, legislative amendments were passed in 2006 to facilitate a trial of electronically assisted voting for voters who are blind or have low vision. Further amendments were made in 2010 to widen the availability of electronic voting to voters who cannot vote without assistance because of motor impairment or insufficient literacy skills (whether in the English language or in their primary spoken language). In the 2010 Victorian State General Election, electronically assisted voting by kiosk or telephone was offered at every early voting centre.

b. Introduce electronically assisted voting to voters who will not throughout the hours of polling on polling day be in Queensland and/or who do not reside within 20 kilometres, by the nearest practical route, of a polling place

Extending electronic voting to voters who will not throughout the hours of polling on polling day be in Queensland and/or who do not reside within 20 kilometres by the nearest practical route, of a polling place is consistent with the approach taken in New South Wales. In New South Wales, 'iVote' is available where:

- the voter's vision is so impaired, or the voter is otherwise so physically incapacitated or so illiterate, that he or she is unable to vote without assistance;
- the voter has a disability and because of that disability he or she has difficulty voting at a polling place or is unable to vote without assistance;
- the voter's real place of living is not within 20 kilometres, by the nearest practical route, of a polling place; or
- the voter will not throughout the hours of polling on polling day be within New South Wales.

In the 2011 New South Wales State General Election, 46,864 voters cast their vote using iVote. These voters were predominantly those who were outside the State on polling day.

It is possible that the system currently used in New South Wales could be readily adapted and applied to Queensland.

c. Introduce electronically assisted voting for all voters in Queensland

As noted above, electronically assisted voting in Australia has generally been restricted to particular classes of voters.

Key issues with the introduction of electronic voting for all voters in Queensland include:

- difficulties with providing voters with a unique identifier due to there being no national citizens identification system in Australia;
- the risk of interception of voting information/passwords in bulk mail outs;
- internet stability and security; and
- cost.

Internationally, approximately 20 countries have introduced electronic voting in some form, although Westminster-style political systems such as New Zealand, Canada and the United Kingdom have generally adopted a more conservative approach. Most countries that have introduced electronic voting (such as Brazil and India) have done so via electronic voting machines at polling places rather than taking up remote access internet voting.

Where internet voting has been used, it has often remained at the trial stage or has been used to supplement existing methods of voting. Estonia and Switzerland are examples of countries where the legitimacy of internet voting is widely accepted.[53]

In Australia, the Australian Capital Territory uses standard personal computers as voting terminals, with voters using a barcode to authenticate their votes. Voting terminals are linked to a server in each polling location using a secure local area network. No votes are taken or transmitted over the internet for the reasons outlined above (i.e. internet security concerns and the difficulty of providing electors with unique identifiers).[54] This system may not be readily adaptable to larger jurisdictions such as Queensland.

Issues for consultation – Electronic voting

Should electronic voting be introduced in Queensland?

Comment is invited, in particular on:

- ➔ **whether Queensland should introduce electronically assisted voting for: blind and vision impaired voters; and voters who require assistance voting because of a disability, motor impairment or insufficient literacy (option a);**
- ➔ **whether Queensland should introduce electronically assisted voting to voters who will not throughout the hours of polling on polling day be in Queensland and/or who do not reside within 20 kilometres, by the nearest practical route, of a polling place; or**
- ➔ **whether electronically assisted voting should be introduced for all voters in Queensland.**

6 Postal voting

With continuous economic and social changes and the increasing numbers of Australians becoming frail or aged, voters are increasingly taking advantage of the more convenient voting options, including postal voting.

In the 2012 State General Election, a total of 211,619 voters elected to vote by post, a 17.9% increase from the 2009 State General Election.

Postal voting is one of two ways a voter can cast an early vote, pre-poll voting being the other. Under the Act, any elector can cast a pre-poll vote and pre-poll voting in person is regarded as an ordinary vote if cast within the voter's district.

[53] *International Experiences of Electronic Voting and Their Implications for New South Wales - A report prepared for the New South Wales Electoral Commission*, Associate Professor Rodney Smith, University of Sydney, July 2009

[54] www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting

To be eligible to cast a postal vote, a person must satisfy one of a number of grounds specified in section 114 of the Act. These grounds include where the voter:

- will not, throughout ordinary voting hours on polling day, be within 8 kilometres, by the nearest practicable route, from a polling booth;
- will, throughout ordinary voting hours on polling day, be working or travelling under conditions that prevent voting at a polling booth;
- will, because of illness, disability or advanced pregnancy, be prevented from voting at a polling booth;
- will be prevented from voting at a polling booth for religious reasons; or
- has a written doctor's certificate stating they are so physically incapacitated they are incapable of signing their name.

Postal voting is a two-stage process (application to make a postal vote and voting) and requires a declaration vote. The postal vote application must be in the approved form, be signed by the voter and returned to the ECQ or the returning officer for the electoral district for which the voter is enrolled. The application must be lodged by 6pm on the Thursday before polling day.

6.1 Options – Changes to postal voting requirements

a. Expand the grounds on which a person may apply for a postal vote

The grounds on which a person may apply for a postal vote in Queensland are generally more restrictive than other jurisdictions.

In 2010, amendments were made to Commonwealth legislation to expand the grounds on which a person could apply for a postal vote to include:

- the voter being absent, throughout polling day hours, from their enrolled division; and
- the voter being unable to attend a polling booth on polling day because of a reasonable fear for, or a reasonable apprehension about, his or her personal wellbeing or safety.

In Victoria, the Australian Capital Territory and Tasmania the approach to postal votes is less restrictive again. In Victoria, a person may apply for a postal vote if they 'will be unable to attend an election day voting centre during the hours of voting on election day'[55] while, in Tasmania and the Australian Capital Territory, a person may apply for a postal vote if they merely 'expect to be unable to attend'[56] on polling day.

Those in favour of expanding the grounds on which a postal vote can be obtained argue that it would encourage greater voter participation and make participation as easy as possible. Many proponents go further and argue that the eligibility criteria to apply to cast a postal vote should be removed, so that any eligible voter may exercise their right to vote in this way. This would be consistent with pre-poll voting requirements.

[55] Section 98 of the *Electoral Act 1992* (Vic)
[56] Section 125 of the *Electoral Act 2004* (Tas); section 136A of the *Electoral Act 1992* (ACT)

b. Facilitate online postal vote applications by removing the requirement for postal vote applications to be signed by voter

Section 119 of the Act provides that a voter who is an ordinary postal voter may request a ballot paper and declaration envelope. This request must be in writing, signed by the voter and posted, faxed or delivered by the voter or someone else to the Commissioner or returning officer for the electoral district for which the voter is enrolled. There is no provision for applications for postal votes to be made online (although a scanned application form can be emailed to the ECQ).

Removal of the requirement for postal vote applications to be signed by voters would reduce delays in delivery of postal vote applications. Postal vote applications may be made online at the Commonwealth level. More flexible online arrangements for applications for postal votes also exist in some other states and territories, including New South Wales, Victoria and the Australian Capital Territory. Applications may be made over the telephone in the Australian Capital Territory.

c. Bring forward the deadline for lodging a postal vote application by one day

Section 119(3) of the Act allows voters to lodge an application for a postal vote before 6pm on the Thursday before polling day (the last allowable day). Section 125(2)(b) of the Act requires the ballot paper to be completed and signed by the voter no later than 6pm on polling day.

Bringing the deadline forward was a recommendation of the Supreme Court, sitting as the Court of Disputed Returns.[57]

If the ECQ receives an application for a postal vote on the Thursday before polling day, the ballot paper might not be posted or sent to the voter until Friday morning meaning the earliest the ballot paper could be received by the voter through the ordinary mail is the Monday after polling day. The consequence of this is that the voter will not be able to vote by 6pm on polling day.

The Joint Standing Committee on Electoral Matters[58] recommended that the *Commonwealth Electoral Act 1918* be amended to provide that the deadline for the receipt of postal vote applications be brought forward to the 6pm on the Wednesday, three days before polling day. This is consistent with New South Wales.

The AEC also supports moving the cut-off for domestic issuing purposes to 6pm on the Wednesday before polling day.

Bringing the deadline forward would increase the chances of a voter who applies for a postal vote on the last allowable day receiving their ballot material in time to cast a valid vote.

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[57] *Atkinson J in Caltabiano v Electoral Commissioner of Queensland and Another* [2009] QSC 294

[58] Joint Standing Committee on Electoral Matters, Commonwealth Parliament, *Inquiry into the conduct of the 2010 Federal Election and matters related thereto*, 2011

Issues for consultation – Postal voting

Are there any opportunities to improve the postal voting system?

Comment is invited, in particular on:

- ➔ **whether the grounds upon which a person can apply for a postal vote should be expanded (option a);**
- ➔ **whether online postal vote applications should be permitted (option b);**
- ➔ **whether the deadline for lodging a postal vote application should be brought forward by one day (option c).**

7 Compulsory voting

Compulsory voting for state elections was introduced in Queensland in 1915 and was introduced by the Commonwealth for federal elections in 1924. Victoria introduced compulsory voting in 1926, New South Wales and Tasmania in 1928, Western Australia in 1936 and South Australia in 1942.

One of the main reasons for introducing compulsory voting in Australia was to improve the turnout at elections. Since the introduction of compulsory voting for federal elections, the turnout has never fallen below 90%. At the recent 2012 State General Election, 91% of total eligible voters actually voted.

On its website, the AEC provides a list of the commonly used arguments both for and against compulsory voting.[59]

Arguments in favour of compulsory voting include:

- voting is a civic duty comparable to other duties citizens perform e.g. taxation, compulsory education, jury duty;
- it teaches the benefits of political participation;
- parliament reflects more accurately the "will of the electorate";
- governments must consider the total electorate in policy formulation and management;
- candidates can concentrate their campaigning energies on issues rather than encouraging voters to attend the poll; and
- the voter isn't actually compelled to vote for anyone because voting is by secret ballot.

Arguments against compulsory voting include:

- it is undemocratic to force people to vote – in democracies such as the United States, Britain, Canada and New Zealand, voters have the choice;
- the ill-informed and those with little interest in politics are forced to the polls;
- it may increase both the number of informal votes and "donkey votes";
- it increases the number of safe, single-member electorates – political parties then concentrate on the more marginal electorates; and
- resources must be allocated to determine whether those who failed to vote have "valid and sufficient" reasons.

[59] www.aec.gov.au

The Joint Standing Committee on Electoral Matters in its report on the conduct of the 1996 federal election[60] recommended that 'if Australia is to consider itself a mature democracy' compulsory voting should be abolished'. It argued that voting could not truly be considered a 'right' if people could not exercise a 'right' not to vote. The committee did not make this recommendation in its reports on subsequent federal elections.

Removing the requirement for compulsory voting in state elections has the potential to cause voter confusion as voting in federal and local government elections would still be compulsory.

This option would mean amending section 186 of the Act to remove the offence for failing to vote.

Issue for consultation – Compulsory voting

Should compulsory voting remain for Queensland State elections?

8 Voting system

In Australia, preferential voting systems are majority systems where candidates must receive an absolute majority—50% plus 1 of the total formal votes cast to be elected.

Queensland uses optional preferential voting (OPV), meaning a voter only has to indicate his or her first preference, with all subsequent preferences optional. Federal House of Representatives elections uses full preferential voting (FPV), meaning the voter must show a preference for all candidates listed on the ballot paper by consecutively numbering in order of preference.

The major benefit of OPV is the potential for reduction of error-induced informal voting. It is the simplest form of preferential voting and therefore least likely to lead the voter to invalidate his or her vote through numbering error.

For example, in the 2012 Queensland State Election, only 2.15% of votes were found to be informal. In the 2001, 2004, 2006 and 2009 elections, the informality rate was 2.27%, 1.99%, 2.08% and 1.94% respectively. This can be contrasted to Victoria which has a full preferential voting system for Legislative Assembly elections. At the 2010 Victorian State Election, the informal voting rate for the Legislative Assembly was 4.96%, up from 4.5% at the 2006 state election and 3.42% at the 2002 state election.

Other advantages of OPV include:

- the simplification in preferential voting increases participation in the electoral system by allowing people to express their true intentions;
- it captures only those preferences people actually hold, rather than requiring them to express preferences for candidates about whom they know nothing—in this regard, OPV may empower the voter;
- while it can result in a candidate without majority support being elected, the same is possible under a full preferential system—this is because the party that is ranked third in an electorate is in a position to arrange a preference deal resulting in the candidate with the lower primary vote being elected;

[60] Joint Standing Committee on Electoral Matters, Commonwealth Parliament, *Report of the Inquiry Into All Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto*, 1997, page 20

- removal of the need to decide preference distribution;
- a lesser need for electoral staff to educate voters on how to vote;
- easier scrutineering and counting of votes; and
- it saves voters' time.

A key issue with OPV is that it has the potential to become a de facto 'first past the post' system. Preferences can be quickly exhausted where a large number of voters choose to vote '1' only. This is particularly problematic where a large number of candidates are contesting a seat. In such a circumstance, it would be possible for a candidate to be elected with only a small proportion of the vote, which could leave the majority of the population unrepresented.

As part of its analysis of a survey of ballot papers from the 2009 state election, the ECQ found that approximately 63.03% of ballot papers were marked '1' only. At the 2006 election, 62.15% of surveyed ballot papers fell into this category. Up until the 2001 election, the number of ballot papers marked '1' only had been significantly lower (20.7% in the 1995 election).

8.1 Option – Move to full preferential voting

Advantages of FPV include:

- it elects candidates most preferred by voters, due to the allocation of preferences;
- it is reasonable to expect voters to express a full ordering of preferences, even when they have a philosophical or intellectual inability to differentiate between candidates;
- it allows parties that are allied, or in coalition, to run against each other without necessarily affecting the electoral prospects of either party;
- it allows minor parties to have an influence on the election process through the allocation of preferences; and
- it eliminates the potential OPV has to undermine democracy by voters simply following party instructions to vote for one candidate and not allocating preferences out of ignorance or unfamiliarity.

In the 2010 federal election the highest proportions of ballots with incomplete numbering were in New South Wales (35.1% of all informal ballots) and Queensland (34.7%). Analysis carried out by the AEC for previous House of Representatives elections indicates there may be a relationship between these relatively high proportions of informal ballots with incomplete numbering and the optional preferential voting systems in these states (AEC 2005; AEC 2009).[61]

A move to full preferential voting for Queensland state elections would remove the potential for voter confusion in having to use different voting systems for different levels of government—though this benefit would be somewhat diminished because Queensland local government elections use OPV or first past the post systems, depending on the electorate.

A key issue to be considered if full preferential voting is introduced in Queensland is whether a savings provision should be introduced.

As part of its *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, the Joint Standing Committee on Electoral Matters recently recommended the reintroduction of the savings provisions that existed in the Commonwealth Electoral Act between the 1984 and 1996 elections.

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[61] Australian Electoral Commission, *Analysis of Informal Voting*, House of Representatives, 2010 Federal Election, Research Report Number 12, 29 March 2011

These provisions allow ballot papers with non-consecutive numbering errors to be included in the count up to the point at which the numbering error began.

While the Joint Standing Committee acknowledged concerns that a savings provision may result in 'the re-emergence of campaigns advocating for optional preferential voting', it considered that *'these concerns do not justify the exclusion of up to 90,000 votes where electors have expressed clear preferences for a number of candidates but may have made mistakes in numbering their ballot paper'*.

Issue for consultation – Voting system

Should the voting system used for Queensland State elections be changed?

9 Any other matter

The options outlined in the paper are not intended to be exhaustive. If you think there are other options for improving Queensland's electoral laws, please include these in your submission.

ATTACHMENT 1

Capping of political donations and electoral expenditure

The ***capped expenditure period*** for an election ends at 6pm on polling day and starts on the earlier of the day two years after polling day for the last election ***or*** the day the writ is issued for the current election.

A ***political donation*** is a gift (including a gift in kind) or property given and intended for use for *campaign purposes* during the *capped expenditure period*. A gift does not include a fundraising contribution of $200 or less (or the first $200 of a fundraising contribution that is more than that), annual subscription fees, volunteer labour or the incidental or ancillary use of vehicles, equipment etc.

Caps on *political donations* (to candidates, political parties and third parties) are derived using a formula (s 252) and are currently capped as follows:

- $5,300 per donor per year to a registered political party
- $2,200 per donor per year to a candidate
- $2,200 per donor per year to a third party.

All political donations (that are an amount of money) must be paid into a State campaign account.

Electoral expenditure (technically campaign expenditure) is expenditure incurred on (whether or not incurred during the *capped expenditure period*), or a gift in kind given, consisting of the following during the *capped expenditure period*:

- advertising for or against a candidate or registered political party, including production costs and particular broadcasting, publishing and display costs;
- the production and distribution of any other material advocating a vote for or against a candidate or registered political party;
- carrying out an opinion poll, or other research, related to the election.

The caps on electoral expenditure (s 274) are currently set at:

Candidates	$52,500 for a candidate endorsed by a political party and $78,800 for an independent candidate
Registered political parties	$84,000 multiplied by the number of seats contested
Third parties	Not more than $524,800 across the State or $78,800 for each

	individual electorate. Unregistered third parties are limited to $10,600 across the State or $2,200 for each individual electorate

All electoral expenditure must be paid from the State campaign account.

Note: Under existing arrangements there is no cap on donations not intended for campaign purposes. There are some disclosure requirements for these donations and other gifts (see required disclosure to ECQ).

ATTACHMENT 2

Required disclosure to ECQ

A ***reporting period*** is the first 6 months of the financial year (July–December) and the full financial year (July–June).

The ***disclosure period*** for an election starts 30 days after the last polling day and ends 30 days after the current polling day.

Registered political parties	
Within 15 weeks after polling day, report stating:	details of all *electoral expenditure* for the *capped expenditure period* for the election **[s 283(1)]**
Within 8 weeks of the end of each reporting period, report stating:	the total amount received by or for the party during the reporting period together with particulars of sums of $1,000 or more **[s 290]**
	the total amount of political donations received by the party during the reporting period together with particulars of sums of $1,000 or more **[s 290]**
	the total amount paid by or for the party during the reporting period together with particulars of sums of $1,000 or more **[s 290]**
	the total outstanding amount at the end of the reporting period of all debts incurred by or for the party together with particulars of sums of $1,000 or more **[s 290]**
Within 14 days after each special reporting event occurs, a report stating:	gifts of, or accumulating to, $100,000 or more during the reporting period together with particulars of sums **[s 266]**

Associated entities	
Within 8 weeks of the end of each reporting period, report stating:	the total amount received by or for the entity during the reporting period together with particulars of sums of $1,000 or more **[s 294]**
	the total amount paid by or for the entity during the reporting period together with particulars of sums of $1,000 or more **[s 294]**
	the total outstanding amount at the end of the reporting period of all debts incurred by or for the entity together with particulars of sums of $1,000 or more **[s 294]**
Within 14 days after each special reporting event occurs, a report stating:	gifts of, or accumulating to, $100,000 or more during the reporting period together with particulars of sums **[s 266]**
Donors	
Within 8 weeks of the end of each reporting period, report stating:	political donations or other gifts totalling $1,000 or more to the same registered political party (including associated entities and related political parties) made during the reporting period **[s 265]**
Within 14 days after each special reporting event occurs, a report stating:	gifts of, or accumulating to, $100,000 or more made to a registered political party during the reporting period together with particulars of sums **[s 266]**

Candidates	
Within 15 weeks after polling day, report stating:	details of all *electoral expenditure* for the *capped expenditure period* for the election **[s 283(2)]**
	the total amount of all political donations, the number of persons who made the donations together with particulars of sums of $1,000 or more made during the disclosure period for the election **[s 261]**
	the total amount or value of any other gifts, the number of persons who made the gifts and the relevant details of each gift received by the person during the disclosure period for the election **[s 261(1)]**
	all loans received from a person other than a financial institution during the disclosure period for the election **[s 262]**
Third parties (any entity other than a candidate, registered political party or an associated entity (of a registered political party))	
Within 15 weeks after polling day, a return detailing:	details of all *electoral expenditure* for the *capped expenditure period* for the election (applies only to registered third parties and does not apply to them if the electoral expenditure for the capped expenditure period for the election incurred by or with the authority of the registered third party is $200 or less) **[s 283(3)-(4)]**
	details of all gifts received, the whole or part of which was used to incur expenditure for a political purpose and the value of which is at least $1,000 (if the third party received a political donation during the disclosure period for an election or incurs expenditure for a political purpose) **[s 263]**
	political donations and other gifts made during the disclosure period for an election to a candidate **[s 264]**

Note: 'Political purposes' for third party expenditure is:

- publication of an electoral matter (in any way), including expressing views or opinions
- making a gift to a political party or candidate
- making a gift to someone else on the understanding they will use it for any of the above