

GPO Box 3123
Brisbane Qld 4001

Level 2, North Tower
515 St Pauls Terrace
Fortitude Valley, Qld

Tel: (07) 3360 6060
Fax: (07) 3360 6333

Toll Free:
1800 061 611

Email
mailbox@cmc.qld.gov.au

www.cmc.qld.gov.au

Our Reference: AD-12-0212 / 13/021680
Contact Officer: Dr Rebecca Denning



1 March 2013

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

Dear Sir/Madam

**RE: SUBMISSION IN RESPONSE TO ELECTORAL REFORM
DISCUSSION PAPER**

Thank you for the opportunity to provide a submission in response to the Electoral Reform Discussion Paper ('the Discussion Paper').

The Crime and Misconduct Commission (CMC) has a mandated responsibility to raise standards of integrity and conduct, and promote public confidence, in units of public administration. In relation to electoral reform, our interest lies in the establishment and maintenance of a regulatory framework that reduces corruption risks and has the confidence of the Queensland community.

The CMC has considered the Discussion Paper, specifically in relation to the potential impact of reform on the integrity of the electoral system and the public's confidence in it. We take no position on issues that are administrative or political in nature.

Part A

1. Political donations

An effective regulatory framework provides voters with the information necessary to make an informed decision on election day (transparency), holds all players in the democratic process accountable for their actions and inactions (accountability), and creates a level playing field of competition between the political parties (equity).

In Queensland, the tools which are used to regulate political financing include caps on electoral donations and expenditure, other restrictions on donations, disclosure obligations and compliance and enforcement provisions. The interplay of these tools forms a framework which aims to increase transparency and integrity of the political process and the accountability of, and equity between, the process's key participants. A proposal for change to any one of these components will need to consider the impact on the framework as a whole and the aims of the regulation.

Option a Remove or change the caps on political donations**Option b Apply a cap to all donations to political bodies**

The CMC does not take a position on whether donation caps should be removed or changed or apply to all donations to political bodies.

As noted in the Discussion Paper, donation caps seek to create a level playing field for elections. Their effectiveness in doing so cannot be considered in isolation from caps on electoral expenditure, which seek to achieve the same goal.

Irrespective of the mechanisms used to achieve equity, an effective regulatory regime must ensure that the amount and genuine source of donations is placed on the public record in a timely fashion.

In the event that donation caps continue in some form, it is important that mechanisms are in place to prevent circumvention of those caps. Queensland already has some provisions in this regard. Donors are prohibited from splitting their donations, multiple payments by one person to the same entity are totalled [s.253 *Electoral Act 1992* (Qld) (QEA)], and multiple donations from related corporations are taken to be from one entity (s.205 QEA).

Initiatives taken in other jurisdictions to minimise circumvention of donation regulation (and which Queensland could consider) include:

- prohibitions on donations from minors
- provisions to prevent intermediary donors, for example: in the Australian Capital Territory (ACT) there are prohibitions against indirect gifts (from a third person to the donor) to political parties, associated entities and candidates to avoid statutory limits [s.205J *Electoral Act 1992* (ACT) (EA)(ACT)]; and in the United States of America (USA), a person is prohibited from making a donation in the name of another, or knowingly permitting their name to be used to make such a contribution [s.441f *Federal Election Campaign Act 1971* (USA) (FECA)].

Option c Limit political donations to individuals on electoral roll (exclude corporations and other entities)

The CMC does not take a position on whether donation caps should be limited to individuals on the electoral roll.

The CMC notes that other jurisdictions have prohibited donations from various sources, as noted above.

Option d Industrial organisations and corporations wishing to make political donations

The CMC does not take a position on the establishment of new requirements in relation to the receipt of donations from industrial organisations and corporations.

We reiterate that any new requirements need to be supported by anti-circumvention mechanisms.

Option e Fees for attendance at functions and fundraising activities

There are two misconduct risks associated with this issue. First, these events can be used to disguise political donations. These events often include some tangible benefit (i.e. a meal, a valuable item, a possible prize), in return for the price of admission, which is typically disproportionate to the actual benefit received. In such circumstances it can be difficult to determine the value of the payment for the benefit and the value of the residual; that is, the donation. The CMC supports measures that seek to limit opportunities to conceal or disguise donations. Better and clearer regulation of this type of fundraising is necessary to ensure the real value of the donation can be traced to the donor and appropriately reported.

The second and potentially more serious risk relates to corruption, specifically the ability to purchase influence. Political fundraising functions that grant access to government or Opposition decision-makers provide direct – or perceived – opportunities to purchase influence.

The CMC supports measures that seek to limit opportunities, and perceived opportunities, to purchase influence. We appreciate that other than prohibiting such events, the measures that can be implemented to address these risks are limited. Increased disclosure obligations may assist in reducing at least the perception of influence.

Option f Membership Fees

The CMC supports measures that seek to limit opportunities to conceal, disguise or misrepresent donations.

Concerns arise where membership fees are paid by a third party and not necessarily with the consent or knowledge of the member. In some instances the nominated member may not exist.

Option g Additional disclosure requirements

The CMC supports mechanisms to improve the transparency of general donations and campaign funding. Considerable improvements can be achieved by reducing the time taken for the information to become accessible by the public, particularly during election periods.

The CMC's 2012 report, *The regulation of political donations and gifts in Queensland*, found that Queensland's timeframes for lodgement and public release of disclosure returns under the QEA are moderate compared with other jurisdictions. The total timeframe allowed for lodgement and public release of six-monthly disclosure returns is around 14 weeks. Donations captured by special reporting provisions are made public within about 24 days of the donation occurring. For the large part, Queensland voters do not learn who has funded the campaign until this information can no longer inform their voting decision.

Several jurisdictions have strengthened their existing disclosure requirements to promote transparency and accountability:

- In the UK, political parties are required to submit weekly donation reports during a defined election period.
- In the USA, campaign committees are required to report within 48 hours of receiving any contribution of \$1000 or more in a specified period before the election (less than 20 days, but more than 48 hours, before an election) (s. 434.3(6) FECA).
- In the lead-up to elections in the ACT the frequency of special reporting is increased— special reports must be made within 7 days, rather than the usual 30 days [s. 216A EA (ACT)]. It is also notable that the threshold for special reporting in the ACT is significantly less than in Queensland (\$1000 compared to \$100 000).
- In the USA, legislation requires the Federal Election Commission to make provision for online reporting (s. 434a(11)(12) FECA).
- In 2011, the ACT Standing Committee on Justice and Community Safety recommended that the Electoral Commission establish an online reporting system for parties and candidates to report donations and donors (Legislative Assembly for the ACT 2011, pp.51-2).

Option h Opportunities to streamline existing administrative arrangements

The CMC does not take a position on opportunities to streamline administrative arrangements except to indicate that mechanisms or processes that enable more timely disclosure increase transparency.

2. Public funding for elections

- Option a** Restore funding based on received votes
- Option b** Introduce a limit on public funding that is based upon the winning party's entitlement
- Option c** Introduce a limit on public funding that is based upon the number of votes received
- Option d** Streamline existing administrative arrangements

The CMC does not take a position on the desirability or otherwise of public funding or as to a preferred model.

3. Election campaign expenditure

- Option a** Retain current caps on electoral expenditure
- Option b** Remove the caps on electoral expenditure
- Option c** Aggregate the expenditure of a party with that of its affiliated organisations
- Option d** Aggregate the expenditure of affiliated organisations
- Option e** Address issues relating to the definition of electoral expenditure
- Option f** Address a potential loophole in relation to volunteer labour

The CMC does not take a position on the retention or level of caps on electoral expenditure.

As highlighted in the Discussion Paper, the major challenge in relation to election campaign expenditure lies in determining which expenditure, expended by which entities, to include in the calculation. The CMC supports the development of improved definitions in relation to *Electoral Expenditure* and *Associated Entities*. Better definitions will likely create fewer opportunities to implement arrangements that circumvent expenditure caps, if expenditure caps are retained by government. It is worth noting that arrangements to circumvent caps may, in some circumstances, constitute official misconduct.

In relation to campaign expenditure, it is particularly important that new measures promote improved transparency. It may be appropriate, for instance, not only to indicate who "authorised" a political advertisement, but also the name of the funding entity and in whose interest the advertisement is being displayed.

In addition to the issues raised in the Discussion Paper, the CMC raises an additional issue relating to unspent funds in a campaign fund account that we suggest might usefully be considered in this review process.

Anecdotal accounts have come to the CMC's attention that suggest that there may be thought given in some quarters by politicians contemplating retirement, to underspending on their campaign, because they intend to retire, with a view to accessing the unspent balance for other purposes. One might assume that in most cases campaign funds are spent on electioneering, as bona fide candidates would seek to expend these funds to maximise their prospects of election; but the possibility remains that a candidate might die or withdraw before the election, leaving money unspent. The CMC and Queensland Electoral Commission (ECQ) agree that the Local Government Electoral Act is silent on what to do with a surplus of funds in a candidate's, or as the case may be, a group of candidates' campaign fund account. There is also no clear jurisdiction for ECQ to pursue the matter. It is also questionable whether there is a clear statutory function for ECQ to audit local government (electoral) financial disclosure returns. The Act does set out processes in the event of a candidate's death (see ss. 33, 36 and 37), however, these processes are not inclusive of disclosure and campaign finance obligations.

Part B**1. Truth in political advertising**

The CMC does not take a position on the introduction of political advertising legislation.

In relation to misleading statements to the media generally, in the CMC's 2006 report, *Independence, influence and integrity in local government*, we noted that such statements have the potential to corrupt the electoral process. Although the CMC found that misleading statements had been made by some candidates in the Gold Coast City Council 2004 election, it was concluded that no offence had been committed under s.394 *Local Government Act* 1993 [now s.185 *Local Government Electoral Act* 2011(LGEA)]. This was due to the narrow application of that provision. The CMC made no recommendation in that regard as we were of the view that any legislative provision would be unworkable and had the potential to prohibit conventional political conduct. The CMC considered that '*better disclosure provisions was the best way to deal with candidates who are inclined to lie about their funding source*' (p. 165).

The CMC continues to support measures that decrease the likelihood that misleading or deceiving information is provided to voters.

2. How-to-vote cards

The CMC does not take a position on the retention of how-to-vote cards. In the event that the government retains how-to-vote cards, the CMC supports measures that decrease the likelihood that such cards can contain misleading or deceptive information.

In our abovementioned 2004 report we also recommended the LGA (1993) be amended to make it an offence to publish how-to-vote-cards containing a false representation of support (Rec 12) and that there be a review of the adequacy of the penalties for offences in Chapter 5, Part 6 of the LGA(1993), including the penalty for a breach of s.394 (now s.185 LGEA). It would appear that neither recommendation was ever adopted by government (although the penalty for a breach of s.185 LGEA has been increased from \$3000 to 40 penalty units – \$4400).

3. Proof of identity at polling booths

The CMC does not take a position on requiring proof of identity at polling booths.

4. Enrolment on polling day

The CMC does not take a position on allowing enrolment on polling day.

5. Electronic voting

The CMC does not take a position on electronic voting.

6. Postal voting

The CMC does not take a position on postal voting.

7. Compulsory voting

The CMC does not take a position on the retention of compulsory voting.

The CMC raises two additional issues, relating to the integrity of the electoral roll and increased risk of fraudulent voting, which should be considered alongside the arguments for and against compulsory voting made in the Discussion Paper.

The Discussion Paper refers to amending s.186 of the QEA (Failure to vote, etc.) but does not suggest amending s.175 (Failure to enrol, etc.). This implies that the electoral roll would retain its present form as a register of all persons eligible to vote.

The removal of compulsory voting may over time undermine the accuracy of the electoral roll due to the reduced number of eligible voters registering or updating their details. Under a compulsory voting model, many inaccuracies are identified on election day. However, under a non-compulsory voting model, only inaccuracies relating to the voting public would be identified and addressed. As the electoral roll is a valuable reference for the public and government (refer ss. 60 and 61), it is important that measures be in place to ensure its ongoing integrity.

Under a non-compulsory voting model, there is increased risk that fraudulent votes may be cast in the names of voters who have indicated (for example, on Facebook) that they do not intend to vote. The ability to detect such frauds is unknown, but likely to be minimal. The increase in social media conversation and in the capacity of internet search tools in recent years would suggest that the possibility of large-scale fraud by this method is a significant risk.

8. Voting system

The CMC does not take a position on the voting system.

9. Other matters

In 2012 the CMC published advisory notices to candidates in state and local government elections about the proper conduct of a campaign, including a warning that the making of vexatious complaints to the CMC to gain a political or electoral advantage may attract penalties under the *Crime and Misconduct Act 2001*, and may damage the credibility of their own campaign.

These advisories can be accessed at <http://www.cmc.qld.gov.au/research-and-publications/browse-by-topic-1/elections>

The CMC supports any initiative that will promote awareness of the legal and ethical obligations of candidates.

Should you wish to clarify any of the matters raised in the CMC's submission, please contact Mr Rob Hutchings, General Counsel on ph 3360 6273 or by email (Rob.Hutchings@cmc.qld.gov.au).

Thank you for the opportunity to comment on this Discussion Paper.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ross Martin', with a long, sweeping horizontal stroke extending to the right.

ROSS MARTIN SC
Chairperson