

Queensland Greens

Operation Belcarra Inquiry - Submission

Prepared - 11 April 2017

Foreword

The positions stated in this submission represent the current thinking of the Queensland Greens on the technical issues raised by the Crime and Corruption Commission in the Operation Belcarra inquiry.

As a party we believe there are many aspects of local elections that do leave opportunities for corrupt behaviour, and would like to bring a range of options to the commission's attention. Overall we believe that the realities of politics could make it extremely difficult to apply a consistent ruleset on candidate association that would be reasonable to both candidates and the public, but regardless of how that definition is made, the transparency of such relationships must be paramount as those connections could easily be considered formative in the thoughts of voters. In terms of campaign financing we are supportive of restrictions on donations and spending and are supportive of a heavier reliance on public funding of elections, however we are aware of the burdens of disclosure and have in this submission outlined a potential method for minimising that burden.

Finally, while the commission did not explicitly outline interest in electoral systems, we would like the commission to consider the potential for improving accountability in elections by increasing competition and diversity in electoral outcomes through voting system changes. We have briefly outlined a few potential systems to that effect for the interest of the committee.

We would like to thank the Crime and Corruption Commission chair Alan MacSporran QC for the opportunity to provide some feedback on the issues raised in the inquiry.

Key Questions

Groups of candidates

As a political party we see the inherent benefits of grouping candidates into blocks to meet specific legislative and decision making outcomes, we don't see that practice as inherently corrupt and it is often a good thing both for politicians and voters if there is some logical link between candidates. Obfuscating the links between candidates on the other hand represents a deliberate misleading of the voting public, denying them necessary information about how a candidate would act in office.

It is obvious after looking at the reporting of the accusations outlined by the CCC that the current rules around candidate association, groupings and cost sharing are not doing the intended job, however it is also the feeling of the party that this is always going to be an issue simply due to the realities of politics. We simply don't believe that further regulation of candidates will stamp out candidates working together, but it will succeed in driving practices further out of sight of both regulators and the public.

If we were to make a bold suggestion on this, maybe a full declaration of links between council candidate and between parties and campaigns would be more preferable to the current situation, including a group name being printed onto ballots and declarations on materials and made part of the candidate's declaration of interests. We would argue that groups of candidates should be subject to essentially the same regulation as that of parties, such as having to do group declarations as well as candidate ones, and be subject to the continuous disclosure rules through the period of election. Preferably, we would like the ECQ to publish that as part of their voting letter package, but we understand that there are costs involved in doing that

The independence of candidates

In general terms, independent candidate has meant a candidate not endorsed by a political party, when you hand in your nomination forms you add the names of people supporting your nomination rather than a political party that endorses your candidacy. That conventional understanding has been undermined by candidates running explicitly as party-affiliated independents (eg 'Independent Liberal', 'Independent Labor' despite the seeming contradiction in terms) or with their partisan affiliation clearly known and included in their campaign or the media, but not formally acknowledged in their nomination.

If we were to identify a list of things that would indicate you weren't an independent candidate they would look something like this:-

- Receiving material or logistical support or an endorsement from a parliamentarian affiliated with a political party or receiving similar support from political parties directly
- Forming a ticket or team or co-ordinating amongst candidates running in different districts and pooling resources and support
- Being affiliated with a third-party campaign active in the same election or are receiving material, logistical or endorsement support from a third-party campaign
- A candidate endorsing candidates in other districts or for Mayor

While this list appears sensible, the enforcement of certain aspects of it may prove difficult. Take the topic of the use of specific colours on How To Vote materials raised by the commission. While certainly we can see the 'branding' reasoning behind independents using particular colours to invoke certain affiliations, that is hardly a practice confined to independent candidates. Short of forcing independents into printing their materials solely in black and white, we would see no practical solution to the issue that would not impinge on a reasonable right to free expression.

There are however some cases where independence from a political party may be considered completely differently from the perspective of the public and a political party, for example when a candidate is a member of a political party but receives no material support or endorsement, or when a political staffer who worked for a member in a political party runs as an independent at another level without the support of the office or party that they were working for. Arguably those examples would count as independent by the outline above but to potentially quite a few people that might represent a clear partisan choice.

As a political party we support partisan identification in local government elections, and as things stand today, undeclared relationships between political parties, campaigns and within council itself make it hard for voters to work out exactly what a candidate will do when in office, especially if they are not involved or informed in local politics. While we don't expect that voters should be spoon-fed information, the sheer level of difficulty to ascertain that information should make a compelling case for more prominent disclosure of these links. One possible approach to addressing this issue is that candidates be required to disclose any history of membership of political parties and that this be publicly disclosed.

Should the term "independent" be defined and its use regulated in relation to local government elections?

We would prefer if there were a clear definition for the purposes of the act, as it would provide clarity to the public when voting, and also to the party when on occasion we are asked about our members running for positions while unendorsed. We do expect that there will be some disagreement over what constitutes a candidate with support from a political party and what doesn't, but in all cases we suggest that a candidate should be required to disclose any recent support given by political parties. It would also represent some challenge in the production of ballot papers as the distinction between "endorsed candidate" and "financially supported" candidate may be difficult to differentiate on a ballot.

Election funding

What are the pros and cons of a local government election funding model that involves only private funding?

The Greens support public funding for elections, as your wealth or access to it, should not determine your ability to represent the public, and ensuring that candidates are not perceived to be dependent on and beholden to wealthy donors is necessary for the health of democracy. In systems where significant proportions or even all money is derived from private sources, even if it were the case that there were no explicit quid pro quo corruption it would still be the perception that influence on the elected official has been bought.

Do any types of donations or election funding mechanisms present high corruption risks, or significantly undermine transparency, integrity and public confidence? We are particularly interested in your views about donations from companies (as opposed to individuals), trusts set-up

The Queensland Greens are against significant private donations from corporate entities but we do believe that donations from certain sources represent a higher material risk than others, specifically ones where decisions made by a government or council could be the difference between a wildly profitable venture and a non-starter. For local government this risk is overwhelmingly associated with property developers, followed by other businesses generally that would benefit from local government decisions.

The reasoning behind all of these is the tendency for development and industries to be regulated in the protection of public interest and the interests of individual citizens against the commercial interests of developers and other companies. The regulatory framework such as zoning inherently provides opportunity for changes and concessions that would be profitable for developers and other businesses.

We are also very wary of the use of trusts to circumvent transparency requirements by funneling money through a third party. It would be sound practice for trusts to reveal their benefactors if they donate to a political party at a very minimum, but we would prefer that donations made from all donation sources be held in accounts managed by the ECQ until such time as the donations are disclosed and the source or sources of the funding are known to the public.

Funding System Choices

We would make the recommendation to publicly fund elections, and that the system be either closed to donations or that a universal spending cap be introduced to keep election spending under control. A model similar to that of the Tasmanian upper house where all spending is capped to a certain level would be ideal. It also has the advantage of explicitly banning direct spending by political parties, which could remove the complication of keeping a firewall between completely legal state and federal donations being used illegally in council ones¹. The Greens therefore recommend expenditure funding less donations with funds returned to candidates based on reaching the current election funding threshold (6%), but instead of introducing a hard limit it should be a pro rata percentage if a candidate falls short (for example, if a candidate receives 3% of the vote, they would get $6\% / 3\% = 50\%$ of their expenses less donations returned).

Bans on donations

Overall we would support a ban on donations from non-voter entities, even though due to the outcome of case s70/2013 of the high court the constitutionality of such a ban would likely come under challenge². Failing the implementation of such a ban, the Greens would recommend bans from donors that represent a significant corruption risk, such as property developers and trusts.

Donation caps

A cap on donations should be set at a level such that it would not represent an amount beyond the ability of the average wage earner to comfortably fit within their personal budget.

- *What would be an appropriate level for a cap?*
A cap level similar to NSW individual donations level would not be inappropriate, \$2,000 for individuals³. We also recommend a global cap on donations to a declared candidate equal to the spending cap.
- *Should there be different donation caps for different types of candidates (for example, lower caps for incumbent candidates)?*
While incumbent candidates do get significant advantages, we don't think that decreasing caps for incumbents will level that playing field, especially in the context of an expenditure cap (see below).
- *What measures should be put in place to prevent caps being circumvented?*
We are quite aware of practices where tickets to events are not considered donations, we believe that at the very least the profits from such events should be considered as donations. It would also be good to see an overall annual cap applied to donors as well to stop large donors from having significant sway over elections

¹

https://www.tec.tas.gov.au/Legislative_Council_Elections/assets/2017-LC-Candidate-Manual.pdf, pg 13

² http://www.hcourt.gov.au/cases/case_s70-2013

³ http://www.elections.nsw.gov.au/fd/political_donations/caps_on_political_donations

One method that the Greens advocate for is a party/group/candidate trust held with the Electoral Commission Queensland, where donations are deposited, and on receiving a disclosure form the funds are released. While this would represent a considerable increase in administration for the ECQ it would make all other sources of funding a technical breach and in turn a lot easier to monitor.

Donation disclosure

On this point the Greens see no reason to exempt local government candidates from the newly introduced system of continuous disclosure. We also draw your attention to the proposed trusts held with the ECQ outlined above.

Public funding for elections

If a system of public funding for local government elections was to be introduced, what should this look like?

- *How much public funding should there be?*

The Greens advocate that council electoral funding be set to the same level as funding for candidates for state government elections, that is \$1.54 currently per vote once the threshold has been reached⁴. There are currently around 3 million voters currently, so approximately \$9 million over 4 years incorporating both councillor and mayoral elections.

- *Who should public funding be given to?*

If endorsed by a political party, then to the political party, otherwise directly to individual candidates. Again we note our proposed ECQ managed account system above; in which case that funding could be placed in the relevant trust.

- *How should funding entitlements be calculated?*

As outlined above it should be based on expenses less donations received. We also recommend that people who miss the 6% threshold should have their payments made on a pro-rata basis with the percentage of the 6% reached being the basis for the payment

- *How should recipients be held accountable for their use of public money?*

Expenditures should be receipted and reported back to the ECQ

Expenditure caps

Studies have shown that elections tend to be won by the candidate or party that spends the most⁵. Expenditure caps are an excellent way of balancing out the influence of money in the system by making the collection of more money of no particular use and limiting the imposition of junkmail and other advertising on the electorate. Expenditure by candidates or parties is entirely under the control and the responsibility of the candidate or party, with much of the expenditure being public, thereby making the administration of an expenditure cap relatively straightforward and accountable. Caps on third-party campaigns are admittedly inherently more complicated given that the activities of third parties are not all inherently partisan, but such activities can still reasonably be defined.

- *How should expenditure be defined?*

In the Tasmanian model may be used as a guide in what expenditure should be excluded, we suggest the following items

- personal and reasonable living and travelling expenses of the candidate and his/her employed agent;
- appointment of scrutineers; and
- conveying electors to and from a polling place on polling day.

⁴ https://www.ecq.qld.gov.au/__data/assets/pdf_file/0020/66530/Handbook-Funding-and-Disclosure-Manual-v3-3.pdf

⁵ Holbrook, T. M., Holbrook, T. M., & Weinschenk, A. C. (2014). *Electoral studies: Money, candidates, and mayoral elections* Elsevier

It also specifically prohibits spending by anyone other than the candidate on their campaign, this could make for a good accountability measure. A candidate could specify a bank account from which payments are to be made and give authorisation to the ECQ to monitor that account.

Should an expenditure cap apply to third parties as well as candidates?

A spending cap for third party campaigns overall would be desirable. The level should be dependent on how widespread the campaign is, with the cap lifted for each district that the campaign is active in.

- *What would be an appropriate level for a cap?*

Setting a hard limit on the amount might create a problem for different campaigns around the state with slightly different electorate sizes. What we would suggest there is that a set amount per voter be used as the cap. A number around 1.3 times the funding rate per voter would provide a Brisbane City council candidate with a cap around \$60,000

- *Should there be different expenditure caps for different types of candidates (for example, lower caps for incumbent candidates)?*

While the benefits of incumbency can never be entirely countered, it is to some extent earned, so presuming that no unreasonable use is made of public resources to campaign by incumbents, an expenditure cap in conjunction with the donations caps outlined above are considered sufficient to level the playing field.

- *What measures should be put in place to prevent caps being circumvented?*

Having a single account where candidates and groups can deposit and spend money from that the ECQ can monitor could be quite desirable in the sense that will allow oversight to be maintained when required but also make other sources clearly in breach when discovered.

Expenditure disclosure

When it comes to disclosure of expenses, the overhead associated with both collecting and auditing the data is probably the biggest hurdle to effective implementation. However there is a genuine public good in the disclosure of these expenses especially if, as we have suggested, there is public funding on offer.

To minimise that burden, the use of managed accounts for electoral expenses is ideal, in that a paper trail of expenses will always be provided by the candidate without increasing the overhead to candidates. It also gives the ECQ a way of publishing expenses in a meaningful fashion, showing who was paid and the purpose of the payment.

Electoral Systems

While the commission is not specifically asking about electoral systems, we would like to raise it as an area of interest moving forward. We make this case on the grounds that if you want the electoral system to be accountable and transparent and relatively free of corruption then making the link between voter intention and electoral outcome is important. There is also a case to be made for improving the diversity of elected officials, while there are no specific studies that indicate a correlation between corruption and diversity, there is at least some anecdotal evidence that increased diversity does have some relations to accountability and responsiveness to collective community values.

When it comes to the reform of the electoral system, the Greens tend to favour proportional systems. One of the most common observations about electoral systems that use proportional representation is their ability to attract a higher level of diversity than those of single-member electorate systems. You need only compare the results of the 2016 Australian elections (under single-member Alternate Vote) and the 2014 New Zealand elections (Under MMP), where the latter is much more in line with the voting intentions of voters as measured by the Gallagher index⁶ (3.7

⁶ Gallagher, Michael (1991). "Proportionality, Disproportionality and Electoral Systems". *Electoral Studies*. 10: 33–51

for NZ⁷ and 17.3 for Australia⁸). It also has more female representatives (26% in Australia⁹ vs 31% in NZ¹⁰) and better outcomes on ethnic minority representation in proportional terms¹¹. Proportional representation based parliaments also tend to have more accountability measures, including more power sharing arrangements (often by necessity) leading to diverse memberships of parliamentary committees and wider use of their oversight powers as explained by McLeavy in his analysis of the New Zealand system¹².

As a suggestion to reform in this regard, the Greens present these possible system changes as a way forward.

Multi-list system (MMP)

Mixed member proportional systems are a combination electoral system where some members are chosen by geographical areas and some by a party list. To give an example of a council that uses a similar system, we could consider the London Council's election method.

By way of example, if it were to be implemented in Brisbane, we would suggest a 30 member council with 10 list and 20 electorate councillors (paid for by proportionally decreasing the pay of existing councillors), with the list being decided by the primary vote outcomes of the combined totals of all parties (rather than by a separate ballot) to decrease voter complexity and to encourage parties to campaign on a local level.

Undivided & Divided councils - Hare-Clarke STV

The current First Past the Post Multi-member system used by councils with no internal divisions represents one of the worst possible ways to elect multiple members from the same electorate. It creates a system where the votes of the most popular elected person are worth exactly the same amount as the person who is elected in the final spot regardless of the gap in the primary vote figures between those candidates.

We suggest the use of a more modern multi-member selection system like the Hare-Clark Single Transferable vote system (an explanation of which can be found in the article in the footnotes¹³), which does a better job of treating votes cast for very popular and unpopular candidates in a more equitable fashion. Hare-Clark could also be easily extended to divided council areas by joining together existing divisions into equally sized districts electing multiple members, which would be considerably more consistent amongst council areas.

⁷ Calculated from <http://www.elections.org.nz/news-media/new-zealand-2014-general-election-official-results>

⁸ Calculated from <http://results.aec.gov.au/20499/Website/HouseDefault-20499.htm>

⁹ Calculated from http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief03

¹⁰ http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Trust%20and%20participation%20in%20government/female-rep-parl-local-govt.aspx

¹¹ http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Trust%20and%20participation%20in%20government/rep-ethnic-grps-govt.aspx

¹² McLeavy, E. (2001). Parliamentary Committees in New Zealand: A House Continuously Reforming Itself?.

¹³ <http://www.abc.net.au/elections/tas/2006/guide/hareclark.htm>