



8 April 2015

Mr Mark Furner MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

*By Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)*

Dear Mr Furner

**Re: Electoral and Other Legislation Amendment Bill 2015**

I thank you for your letter dated 30 March 2015 inviting the Bar Association of Queensland (the Association) to make submissions in respect of this Bill.

**Approach of the Association**

The Association regards the maintenance of a strong and transparent electoral system as of critical importance and supports reforms which are likely to promote the strength and transparency of that process.

**Policy Objectives of the Bill**

The Association notes that two of three policy objectives are to reinstate certain aspects of the legislative position that existed prior to the passage of the Bill that was introduced as Electoral Reform Amendment Bill 2013. For that reason, some of these submissions will reference the Association's submission dated 15 January 2014 made to the Committee's inquiry concerning the 2013 Bill.

**Clauses 1-6: Removal of Identity Provisions**

Clauses 1-6 of the Bill removes the voter ID provisions in the Electoral Act 1992 which were inserted by the 2013 Bill. The Association opposed the insertion of those provisions at the time and supports their removal.

The Association expressed the concern which it still holds that: "... in practice, the proposed change may impact disproportionately upon the poor and oppressed in our society, especially, upon some Indigenous members of our community".

The Association was concerned about the likely impacts of the ID requirements: “First that some eligible voters will be discouraged from voting at all; but secondly that for some their votes will not be counted given the potential for the returning officers to regard themselves as not satisfied that the elector was entitled to vote.”

The Association’s views drew upon experts in the area which were outlined in our submission in January 2014 (and to which we would refer you without repeating them here).

The Association supports the reinstatement of the previous situation by the present Bill’s proposal to remove voter ID provisions from the legislation.

The Association also supports clause 36 which makes a corresponding change to the *Electoral Regulation 2013*; clauses 38-42 which remove voter ID requirements from the *Local Government Electoral Act 2011*; and clauses 43-44 which make the corresponding change to the *Local Government Electoral Regulation 2012*.

### **Clauses 6-33: Election Donation Changes**

#### **Disclosure Threshold**

The Association supports the restoration of the \$1,000 threshold for disclosure and, for consistency, would support consistency having the threshold under Commonwealth legislation restored to that lower amount.

The change is principally effected by the amendment to the definition of “gift threshold amount” in s. 201A which is achieved by clause 10 of the Bill.

#### **Disclosure of Gifts above \$100,000**

Clause 18 inserts new ss. 266-266D into the existing legislation.

The change seeks to impose an obligation on both the maker and recipient of electoral donations over \$100,000 to disclose such gifts within 14 days.

The Association supports the change. Prompt disclosure of such large donations is of more utility in terms of keeping the public informed than disclosure made remotely from the circumstances in which they are made (especially where the donations are made in the build up to an election).

#### **Retrospective Application**

The Association notes that clause 26 inserts a new part 11, division 12 into the legislation which requires that parties and third party entities (donors) complete returns according to the Act (as it applies after commencement of the amending Bill) for the 2014 Stafford by-election and the 2015 general election and, more generally, for the 2013-4 financial year.

The Association generally opposes legislation which operates retrospectively and it might be thought this amendment operates in that way. Fairness requires that the

law be known and certain at the time of the relevant conduct. This means that neither civil nor criminal penalties should be created retrospectively.<sup>1</sup>

The Association also notes that proposed new s.303 provides an exemption for a retrospective failure to keep records in accord with the new disclosure requirements.

The Association recommends that one matter to which the Committee gives particular attention is the effect of the retrospective application of requirements in the Bill. The Committee should satisfy itself that no civil or criminal penalty can result from this 'retrospective' application.

#### **Clauses 47-58: Changes to Entitlement of CCC Chair**

These amendments to the *Crime and Corruption Act 2001* and the *Judges (Pensions and Long Leave) Act 1957* make provisions for Chairmen<sup>2</sup> of the Crime and Corruption Commission to receive pension entitlements similar to that of District and Supreme Court judges up to 60% of the Chair's salary during their term of office.

Proposed s. 238D has the effect that, except in certain circumstances of ill health or incapacity, a minimum of five years service is necessary to be entitled to the pension benefits.

The Association supports the proposed changes.

The independence of the CCC is strengthened if the Chairman's future financial position is not dependent on post service employment either with the government or the private sector.

This, in turn, strengthens accountability and transparency of the government as a whole.

Yours faithfully



**Shane Doyle QC**  
President

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<sup>1</sup> See, for clearer explication, the Law Council of Australia policy paper on the rule of law at <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/PolicyStatementRuleofLaw.pdf> (accessed 7 April 2015)

<sup>2</sup> The Association urges the Committee and the government to consider changing the term "chairman" of the CCC back to the non-gender specific "chair" at an opportune time.