



SUBMISSION TO THE LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE OF THE PARLIAMENT OF QUEENSLAND

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Electoral And Other Legislation Amendment Bill

- [1] The Liberal National Party seeks to raise the following issues for the Committee's consideration:
- a. whether those parts of the bill which seek to impose different disclosure requirements on registered political parties from those imposed by the Commonwealth Electoral Act are within the legislative power of the Queensland Parliament;
 - b. the inherent unfairness in retrospectively requiring a disclosure of donations; and
 - c. The lack of any justification for removing voter identification requirements.

Constitutional Difficulties

- [2] It is a matter of record that, on 20 November 2013, the Crown Solicitor advised the former Attorney General, the Honourable Jarrod Bleijie, that the imposition of disclosure obligations at state level which are more onerous than corresponding federal obligations is likely to attract the operation of section 109 of the Commonwealth Constitution so as to render the conflicting state legislation invalid. That independent advice provides a powerful rationale for maintaining uniformity between state and federal disclosure obligations.
- [3] Acting contrary to that advice leaves open the possibility that the State may be left without an effective disclosure regime at all. The effect of section 109 of the Constitution would be to render the conflicting state legislation invalid.
- [4] That being so, the proposed amendments risk creating significant uncertainty as to the state of Queensland law.

The proposed legislation would require disclosure of donations for Commonwealth electoral purposes and which have no connection with a State election. The State has no legitimate role in regulating activity connected with Commonwealth elections.

Consistency With Commonwealth Law

- [5] Inconsistency between Queensland and Commonwealth laws creates extra expense for each organisation expected to comply with the two sets of inconsistent regulations. That extra expense will be felt by those parties in a decreased capacity to participate in public forums. There is a public interest in parties being able efficiently to devote as much of their resources as possible to participation in public debate. This is not to discount the importance of a sound donation disclosure regime, but rather to suggest that, in the absence of any convincing suggestion that the Commonwealth regime is defective, there is

sense in maintaining consistency between the Queensland and Commonwealth regimes.

- [6] The statutory rules about disclosure are, of necessity, detailed and complex, and their reach extends beyond political parties and candidates to individual donors. For that reason there is much to be said for maintaining consistency with Commonwealth law covering the same kind of activity. Unnecessary potential for confusion should be avoided.

Retrospectivity of Proposed Amendments to Disclosure Laws

- [7] The bill proposes to apply the new thresholds and disclosure obligations both prospectively and retrospectively. The retrospective aspect is unfair to those who made a decision to donate on the basis of the laws as they were at the time.
- [8] Members of the Committee will be aware of the philosophical argument against retrospective legislation. Citizens are entitled to assume that laws are stable and that decisions that they make in reliance on the law will not later be brought into question by retrospective changes. Except in exceptional circumstances, retrospective changes undermine the rule of law. They lower public confidence in the law and the body politic.
- [9] A donor to a political party may well fear that the donation will bring with it the risk of retribution from the opposing political party. The person making the decision to donate may well have taken into account the disclosure limit in deciding how much to donate. It would be fundamentally unfair to any such donor to undermine the decision they made.
- [10] It must be kept in mind that, whatever the criticisms of private donations to political parties, they are essential to our democratic system. Political parties would simply be unable to communicate their message without them. In that context, it is dangerous to create a situation where people are afraid to donate on the basis that they may subsequently be embarrassed through changes to the law.

Voter Identification Laws

- [11] The principal attack on the laws requiring that voters identify themselves before being issued with ballot papers was that they may serve to disenfranchise people who are unable to produce the necessary documentation at the polling booth. In fact, that attack was without substance because the existing law provides for a provisional vote in circumstances where a voter cannot produce identification.
- [12] There has been no evidence since the election that the concern regarding potential disenfranchisement became a reality. As is notorious, there were several very tight contests amongst the electorates. One would have expected that those tight contests would have provided fertile ground for identifying any real, as opposed to imaginary, problems produced by the voter identification laws.
- [13] The fact that, at this stage, the Committee is only in a position to consider anecdotal evidence ought to indicate that the haste with which the laws are being pursued is counter-productive. It would make sense to wait until the Electoral Commission of Queensland has had time to analyse and report on any concerns that may have arisen with respect to voter identification laws.

- [14] Against that imagined but unrealised problem, there is the obvious benefit of greater integrity in the electoral system that runs with the greater certainty that only those who are entitled to vote have in fact voted.
- [15] In the absence of any evidence of any countervailing issue, it is submitted that the laws are justified and should remain in place.