

Electoral Reform Amendment Bill 2013

Queensland Parliament Legal Affairs and Community Safety Committee

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General

1. My qualifications to make this submission: I am the author of *The Law of Politics* (2010), five other edited collections and over 40 other academic pieces in the field. My PhD was also in election law. I have done consultancy and pro bono work for parties and groups across the political spectrum, and had invited input to parliamentary committees across Australia and in international courts. Much of that work has been on campaign funding law.

2. This submission will focus on the funding and disclosure aspects of this bill. I have concerns about voter ID law (its unproven rationale; the likelihood of disenfranchisement; and the potential for confusion and innocent maladministration in its first implementations). However I will leave such concerns to other submissions.

Removing Donation and Expenditure Limits

3. Removing donation and expenditure limits is retrograde. It is a backward step for the key goals of political integrity and equality. The common law democracies we benchmark with have such limits: the UK and New Zealand limit campaign expenditure; Canada limits both expenditure and donations.¹ Even the US limits donations to parties and candidates. Queensland in 2011, along with NSW and the ACT, pioneered such limits in Australia. We can acknowledge that some of the elements of the current Queensland law are imperfect (like the generous reimbursements) without discarding the baby.

4. I acknowledge there is a libertarian principle behind abolishing such limits. But:

(a) *Politics is not a free market in consumer goods.* It is a public good. Unlimited donations risk political integrity. They allow wealth to buy an unequal share of political influence and voice. Democracy and the universal franchise are meant to make all citizens equal in political worth. Unlimited donations skew money to the governing party of the day (or, occasionally, to an opposition on the brink of power), because private donations follow power.² Power in Queensland has few enough checks/balances, given the lack of an upper house or bill of rights.

¹ International comparisons can be found via International IDEA (a key NGO): <http://www.idea.int/political-finance/index.cfm> (database for international comparisons)

² For empirical proof in Australia, see Iain McMennamin, 'Business, Politics and Money in Australia: Testing Economic, Political and Ideological Explanations' (2008) 43(3) *Australian Journal of Political Science* 377-393. http://doras.dcu.ie/608/1/aus_jour_43_3_2008.pdf

The LNP spent an unduly long period in opposition in the 1990s-2000s: it must know better than any party how that creates a vicious circle in a fundraising system based on large-scale donations. The same equation played out in NSW when donations and expenditure were open-slasher: a long-term Labor government, now tainted with corruption, raked in donations while the Coalition and other opponents lacked anything near a fair field of campaign resources.

(b) *this bill does not actually create a libertarian or even a formally equal political funding market.* The bill contains generous taxpayer funding skewed not only towards the major political parties but to the governing party of the day.

Public Funding

5. Assuming the government is determined to remove expenditure and donation limits, I will focus on constructive criticism of the proposed public funding regime. But note the purpose of public funding is ‘clean money’: it is meant to lessen reliance on big donors. Removing donation limits and returning to unlimited campaign spending goes contrary to the purpose of public funding.

6. There is no magic in whether funding is based on reimbursement or vote share. The Bligh government’s reimbursement model was criticisable as byzantine, unduly generous and protecting Labor at a time when its vote share plunging. It is reasonable for this parliament to return to a model based on vote share— *but only if the model is fair as between electoral participants, and does not enrich or entrench the position of the major parties.* What is proposed needs reworking to avoid breaching those basic aims.

7. A 10% threshold is too high. It heavily skews the public funding pot to the two major parties, especially the governing party of the day. (Why? As noted, governments *already* enjoy a bias in terms of raising private donations).

8. The rationale for funding based on votes received is to treat each elector’s choice as equal. Our preferential, ‘majority rules’ voting system already disproportionately awards seats to major parties. Yet the Bill proposes a funding threshold that discriminates against smaller parties and independents. A 10% threshold could treat as worthless 20-30% of electoral choices in Queensland (eg in seats where the major parties received 40% and 30% respectively, and the prominent minor parties received 10% each).

9. If a cut-off is needed, there is a well-established 4% threshold across Australia. That threshold is conventional, but it is rational: 4% is the long-standing figure at which candidates forfeit their deposit. The Explanatory Memorandum at various points (especially in reducing donation disclosure) makes a virtue out of harmonising Queensland with national law. Why not harmonise our public funding regime with the national system?

10. To patch over this, the Bill then ramps up candidate deposits to 10%. This could prove a significant financial impost, especially grassroots parties like the Greens and Katter Australia (up to \$22 250 extra for a party in the 4-9% range).³ This implicates fundamental political rights to

³ 89 electorates x \$250 deposit.

nominate for parliament and of electoral choice. Yet the Explanatory Memorandum fails to notice this implication.

11. The Bill proposes more generous and hence expensive funding than the national system. Part of this is because ‘election funding’ for parties is set at \$2.90 per vote: 16% higher than the 2013 national value of \$2.49.⁴ For unexplained reasons, however, independent candidates, even if they hit the 10% threshold, receive just *half* that election funding (\$1.45 instead of \$2.90).

12. The Bill is also very generous in adding a second layer of public funding. It calls this bi-annual ‘Policy Development Funding’. This is even more skewed to the major and governing parties than the election funding regime.

13. This is additional public funding of the major parties. What is its rationale? What quid pro quo is there for this gift? No such additional or annual funding stream was mentioned in the government’s July 2013 policy paper “Electoral Reform: Queensland Electoral Review Outcomes”.

14. This proposed fund will look, to ordinary Queenslanders, like the work of a cartel of the two major parties. It effectively resurrects the Bligh government’s recently repealed ‘Administrative Expenditure Funding’ of 2011-12.⁵ But it does so in a less fair and legislatively uncapped way. It also provides no accountability for the use of the funds.

15. This contradicts the Attorney-General’s media release accompanying the repeal of administrative funding. Then he said annual funding of parties was ‘outrageous’.⁶

16. The proposed ‘Policy Development Fund’ ignores independent MPs. (The short-lived administrative funding at least included them). Only registered parties with MPs will benefit from the new annual payment. Why are independent MPs excluded? Parliamentary parties *already* receive extra support, explicitly for policy development, legislative oversight etc.⁷ And the government has the whole of the policy development arms of the bureaucracy at its fingertips.

17. By the same token, a party (say the Greens, Katter Australia or Palmer United) could receive significant support – even over 10% of the vote in most of the seats it stood in - without electing an MP due to the disproportionality of the electoral system. Yet such a strongly supported, ongoing party will receive no ‘policy development funds’. Why?

18. The Explanatory Memorandum asserts that the system will ‘reduce costs’. Compared to what? Not compared to the national model. I understand the pledge is to save money on the Bligh government’s model. If so, the amount of any annual funding needs to be set in legislation, not by ministerial regulation. And the reduction in funding needs to be shared proportionately, not through denying the non-major parties and independents.

⁴ Admittedly the national scheme operates on two votes – House and Senate. But people often split these, Senate campaigns are not free, and national campaigns are generally more expensive to run than local ones.

⁵ *Guardianship and Administration and Other Legislation Amendment Act 2012* s 15.

⁶ <http://jarrodbleijie.com.au/news/electoral-reforms-save-queenslanders-millions>

⁷ *Parliament of Queensland Act 2001* s 112 and *Members’ Entitlements Handbook*.

19. Why is a matter as sensitive as the level of public funding of parties left to ministerial dictate? It should be set by parliament. Ideally then only after a public inquiry about the costs of campaigning and party administration, and the desirable balance of public versus private funding.

20. The title ‘Policy Development Fund’ is a misnomer. Nothing requires these funds to be used on policy development or even administration. They could be used on future electioneering. There is not even a safeguard against using public funding for private benefit or expenses.⁸ (Given upset at MPs using taxpayer allowances on largely private purposes, this should ring warning bells).

21. Compare the UK. There, only *non*-government parties receive extra funding, called ‘Short funding’, recognising that the government already has the whole of the bureaucracy to develop policy.⁹ There is a separate ‘Policy Development Grant’ scheme, which political parties may access, which is tied to actual policy development.¹⁰

22. Compare NSW. There, a fairer range of parties and independent MPs participate in either an ‘Administrative Fund’, or a ‘Policy Development Fund’. The latter is a small fund for non-parliamentary parties. Unlike the Queensland proposal, each fund is capped by legislation. Unlike the Queensland proposal, each fund is for reimbursement of a limited class of expenditures – ie actual expenditure on administrative or policy activities.¹¹ The NSW funds are not perfect. But they are at least: (a) tailored to legitimate purposes, and (b) capped by legislation rather than left to administrative discretion. And unlike Queensland, such funds in NSW are justifiable as to compensate for caps on private donations to parties or MPs.

Recommendations

- **Campaign expenditure and donation limits be retained.**
- **A 4% threshold be retained for election funding and for refunding candidate deposits, in line with the rest of Australia. Election funding per vote be the same for independents as for party-endorsed candidates.**
- **The ‘Policy Development Fund’ be re-considered. What is its rationale?**
It must at least:
 - (a) Be costed.**
 - (b) Be based on a sum, per vote, to be legislated at a modest level, not left to a minister.**

⁸ An oversight in Australian political funding law generally. Compare the US, where even offence provisions exist to ensure that political funding (including donations) are spent for proper political purposes.

⁹ *The Funding of Political Parties*, House of Commons Library Research Paper 07/34.

¹⁰ *Political Parties, Elections and Referendums Act 2000* (UK) s 12 plus *The Elections (Policy Development Grants Scheme) Order 2006*.

¹¹ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) Part 6A. See further the Election Financing Authority’s policies at: http://www.efa.nsw.gov.au/_data/assets/pdf_file/0018/120618/Administration_Fund_Policy.pdf (Administration Fund) and http://www.efa.nsw.gov.au/_data/assets/pdf_file/0012/120621/Policy_Development_Fund_Policy.pdf (Policy Development Fund).

- (c)** Be made less discriminatory, by including independent MPs and all registered parties that achieve a 4% threshold.
- (d)** Be actually targeted to policy development or democratic activities that engage party members and outsiders in consultation and debate.
- The use of public funding be audited and limited to legitimate expenses (eg defraying campaign expenditure or financing party conferences). An offence be created for misusing political donations or public funding for private gain.

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