



15 January 2014

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

Dear Mr Berry

**Re: Electoral Reform Amendment Bill 2013**

I thank you for your letter dated 28 November 2013 inviting the Association to make submissions in respect of the abovenamed Bill.

On behalf of the Queensland Bar Association, I make the following submissions in respect of the Bill.

Approach of the Association

The Association regards the maintenance of a strong and transparent electoral system as an important part of maintaining the rule of law in Queensland.

The Association, therefore, supports reforms which are likely to promote the strength and transparency of the electoral process.

Electronically Assisted Voting

The Association supports the introduction of electronically assisted voting for voters whose disabilities make it difficult for them to vote without assistance.<sup>1</sup> Electronic assistance is also intended to be available for persons who would otherwise use an electoral visitor vote or postal vote.<sup>2</sup>

The Association supports use of advanced technology to strengthen the electoral processes. It seems to be a sensible approach to introduce the use of such technology on a graduated basis, to begin with.

<sup>1</sup> The changes are inserted by clause 15 of the Bill which inserts a new subdivision 3A of division 5 of part 7. There are associated changes elsewhere in the Act.

<sup>2</sup> See the new paragraphs 121A (b) and (c) including the note to s. 121A

There are particular reasons to use the technology to grant privacy to those persons who would otherwise require assistance, because of disability, to vote.

It also makes sense to use the technology to introduce convenience to electoral visitor and postal voting. This form of voting increases accessibility to persons whose disability would make it difficult to vote, albeit, that voting privacy is not impossible. It also provides convenience to persons who live in very remote areas or need to travel on election day.

The Association notes the strictures in proposed s. 121B (2) (b) and following sections which require and make provision for safeguards to ensure secrecy.

It is important that the implementation of this innovation be resourced adequately and planned carefully to ensure that electronically assisted voting is free and fair and is confidently perceived as such. Any failures in implementation which resulted in shortfalls in these areas could be very damaging to the electoral system as a whole.

### Proof of Identity Provisions

The Bill proposes changes described as a proof of identity requirement to vote in a state election in a non-discriminatory way that reduces potential for electoral fraud.<sup>3</sup>

In principle such a change seems consistent with the maintenance of a strong and transparent electoral system. However, the Association has a real concern 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 change is principally achieved by clause 9 which adds to the procedure by which voting is to take place a requirement that the elector give the issuing officer the elector's proof of identity document.<sup>4</sup> If a proof of identity document is not produced, the elector is refused a vote in the normal course and is offered a "section vote" pursuant to s. 121. The effect of a s. 121 vote is that the elector must declare that they are the person enrolled and that the vote will only be counted if the returning officer is subsequently satisfied that the person concerned was entitled to vote at the election.<sup>5</sup>

This gives rise to two concerns. 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.<sup>6</sup>

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<sup>3</sup> Explanatory Notes, page 2

<sup>4</sup> The existing s. 107 (to which the change is made) requires that the elector be enrolled and that the issuing officer be satisfied that the person is entitled to vote and allows the officer to ask questions of the prospective voter. If the issuing officer suspects that the person is not entitled to vote the alternative is to grant a section 121 vote.

<sup>5</sup> Section 125

<sup>6</sup> Satisfaction is required by paragraph 125(2)(a)

Experts have expressed the opinion that voter identity laws will have disproportionate impact on poor, homeless and Indigenous Queenslanders.<sup>7</sup> As Ms Arklay states in the cited article, no matter many forms of ID are prescribed as sufficient, otherwise eligible voters, especially, from among the ranks of the dispossessed will not have a required proof of ID.

Such an outcome is unacceptable. Moreover, there does not appear to be a compelling case for making the changes in this respect.

As noted by Ms. Arklay, the Commonwealth Electoral Commission has concluded that there has been no evidence of widespread subversion of electoral laws, and that serious offences (as opposed to inadvertent breaches) have been isolated events.<sup>8</sup>

Similarly, the Discussion Paper issued by the Queensland Government and released by the Queensland Attorney-General in January 2013 expressed no qualification in stating that there is no evidence of electoral fraud of the kind requiring proof of voter identity on polling day. The paper also quoted the Commonwealth Green Paper as indicating that issues of identity are properly resolved at the enrolment stage of the process. The Attorney's paper also warned of the dangers of confusion resulting for voters on polling day. The paper warned against introducing the measure as being a disproportionate response, a view shared by the Association.<sup>9</sup>

The Association recommends against the suggested change in clause 9 and associated amendments. Contrary to the intended effect, the change is likely to result in discriminatory loss of the right to vote for poor and dispossessed Queenslanders. The strength of the democratic process in Australian jurisdictions has very much resulted from the universality of the franchise as it is actually exercised.

### Changes to Distribution of Public Funding

The Association supports the allocation of some public funds to the campaign expenses of parties and candidates involved in the electoral process. The Association is keenly aware of the potential conflicts that can arise in an effective and robust electoral process. On the one hand, candidates for public office need to be able to communicate with their potential voters for the electoral process to be meaningful. On the other hand, the expenses of modern communications has the potential to make elected governments overly dependent on those donors who made their electoral campaign logistically possible.<sup>10</sup>

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<sup>7</sup> Tracey Arklay, Adjunct Research Fellow, Griffith University and Research Fellow, University of Queensland, in *The Conversation* at <https://theconversation.com/voter-id-laws-will-fail-poor-indigenous-and-homeless-queenslanders-20647> (accessed 27 December 2013)

<sup>8</sup> Department of the Prime Minister and Cabinet, *Electoral Reform Green paper – Strengthening Australia's Democracy*, September, 2009, <https://theconversation.com/voter-id-laws-will-fail-poor-indigenous-and-homeless-queenslanders-20647> (accessed 27 December 2013)

<sup>9</sup> Justice Department, *Electoral Reform Discussion Paper*, January 2013, [http://www.justice.qld.gov.au/data/assets/pdf\\_file/0007/171529/disc-ppr-electoral-reform.pdf](http://www.justice.qld.gov.au/data/assets/pdf_file/0007/171529/disc-ppr-electoral-reform.pdf) (accessed 27 December 2013)

<sup>10</sup> This conflict is also discussed below in respect of another proposed set of changes in the Bill.

Public campaign funding can assist in reducing the dependence of elected representatives on private donors and thereby enhance the integrity of the electoral process.

The changes proposed by this Bill do not detract from the principle of public funding of campaign expenses. However, they appear to achieve a redistribution of the allocation of that funding to the major political parties in the electoral process. This is done by changing the threshold qualification for receipt of moneys from 4% of the vote at the last election to 10 % of the vote.<sup>11</sup>

An associated change (but one about which the Association makes no comment) also is to increase the threshold vote required for a candidate to retain their deposit (paid to take part in the election) also from 4% to 10%.<sup>12</sup>

However, clause 49 of the Bill inserts a new division 5 of part 11 of the Act. This provides for policy development payments to parties with elected members in the parliament from the past election.<sup>13</sup> The spending formula also weights the receipt of these payments towards the established and dominant parties. This is achieved by calculating the entitlement to a share of the prescribed amount by reference to the total amount of votes achieved by party's candidates (who achieved 10% or more of the vote in their electorate) over the total amount of votes (achieved by candidates who achieved 10% or more of the vote in their electorate).<sup>14</sup>

It is impossible to calculate how significant the policy development payments will be until the regulation is made prescribing the total amount to be so distributed.<sup>15</sup> The amounts are to be paid on a six monthly basis.<sup>16</sup>

The change from 4% to 10% of the vote as a threshold is said to be directed towards reducing the cost to the public of public funding of campaigns.<sup>17</sup> However, any such reduction is not guaranteed. The amounts payable pursuant to the new s. 225 will be substantial. And the amounts payable pursuant to the proposed s. 240 are, as stated, subject to the content of the regulation.

What is clear is that the changes redistribute moneys from those parties and candidates who achieve between 4 and 10 % of the vote in any election to the small number of parties and candidates who acquire more than 10% of the vote.

The Association regards such an approach as likely to lessen the strength of the democratic processes in Queensland.

The Association recognises the advantages of the stability that results from an optional preferential voting system (in effect, an exhaustive ballot) with its resultant two party Parliamentary system. Stable governments are elected; are able to govern;

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<sup>11</sup> See clauses 36 and 37, amending ss. 223 and 224.

<sup>12</sup> See clause 5 amending s. 89.

<sup>13</sup> Proposed s. 239

<sup>14</sup> Proposed s. 240

<sup>15</sup> Proposed s. 240

<sup>16</sup> Proposed s. 241

<sup>17</sup> Explanatory memorandum, page 1

and, provided the Parliament does not subvert the electoral system between elections, they are able to be rejected by the electorate at the next poll. The Association also acknowledges that the public may have no real interest in funding every candidate who chooses to place their name on the ballot paper at an election even if they receive as little as 1% of the vote.

However, the Association also recognises the contribution that minority parties make to the electoral debate. Smaller parties can develop and promulgate new ideas and policies with which the major parties may have failed to concern themselves. Smaller parties may bring to the fore public concerns that have been ignored. Sometimes, ideas that do not command a majority remain important and provide a constraint on government action that might, otherwise, not be called to account.

Against this background, to give an example, legislative changes which mean that parties who regularly achieve 9% of the vote should suffer a financial disadvantage to the majority parties in the polity are, it is submitted, not consistent with the maintenance of a strong and transparent electoral system.

For that reason the Association would submit that the changes to the deposit and public funding provisions contained in the Bill not be implemented.

#### Disclosure Threshold Changes

The Act contains the disclosure requirements for political donations,<sup>18</sup> loans to candidates,<sup>19</sup> donations to candidates for non-political purposes,<sup>20</sup> and a prohibition on anonymous donations.<sup>21</sup> The threshold amount in all these cases is currently \$1,000.

The amending Bill proposes to change these threshold amounts to \$12,400.<sup>22</sup>

The justification for these changes is to make Queensland legislation consistent with the requirements of Commonwealth legislation.<sup>23</sup>

The Association strongly supports the disclosure of significant political donations as a key means of making electoral processes transparent. The Association acknowledges that the transparency benefits can be outweighed by administrative cost and inconvenience if there is no threshold for disclosure requirements or if the threshold is too low.

The Bill also seeks to draw further administrative advantages from the alignment with Commonwealth thresholds by making accepted Commonwealth returns acceptable compliance with Queensland requirements.<sup>24</sup>

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<sup>18</sup> Sections 264 and 265

<sup>19</sup> Section 262

<sup>20</sup> Section 261

<sup>21</sup> Section 271

<sup>22</sup> Clauses 51-58

<sup>23</sup> Explanatory Memorandum, page 1

<sup>24</sup> Clause 65 and the proposed s. 290

Although the Association would have concerns if thresholds were raised to a level where transparency benefits start to be lost, the Association supports the changes because of the benefits of having consistency across different levels of government. However, the Association would have concerns if further significant increases occurred to these thresholds.<sup>25</sup>

### Repeal of Spending and Donation Limits

The existing legislation imposes limits on expenditure of \$80,000 per party per electorate and \$50,000 per candidate, in each case, per financial year.<sup>26</sup>

The existing legislation also makes restrictions on the amount of donations that a person may make per financial year to a political party and to a candidate. The amounts are \$5,000 to the party<sup>27</sup> and \$2,000 in total to candidates endorsed by that party.<sup>28</sup>

The Bill proposes to repeal these restrictions.<sup>29</sup>

The combination of a need by political parties to fund large campaign expenditures and the desire of wealthy entities to exert political influence provides potent dangers to the integrity of democratic processes that are broadly recognised. Those who have warned of such dangers include former senior Commonwealth public servant and head of Qantas, John Menadue;<sup>30</sup> present New South Wales Premier, Barry O'Farrell;<sup>31</sup> former Victorian Premier, John Cain;<sup>32</sup> and former Victorian auditor-general, Ches Baragwanath.<sup>33</sup>

Advocates of restrictions on donations include present federal cabinet ministers, Christopher Pyne and Malcolm Turnbull.<sup>34</sup>

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<sup>25</sup> Note that, in 2006, the changes to Commonwealth laws (to which the present proposed changes seek to align) were criticised for being too generous and allowing influential donations to remain undisclosed. See Age article *Are Our Politicians for Sale?* 23 May 2006, <http://www.theage.com.au/news/in-depth/are-our-politicians-for-sale/2006/05/23/1148150251862.html> (accessed 27 December 2013)

<sup>26</sup> Section 274

<sup>27</sup> Sections 253 and 254

<sup>28</sup> Sections 253 and 255

<sup>29</sup> Clause 59

<sup>30</sup> See Gettler, Leon, *Can Power be Bought*, *The Age*, 8 February 2004, <http://www.theage.com.au/articles/2004/02/07/1075854110070.html> (accessed 27 December 2013)

<sup>31</sup> Clennell, Andrew, *Anger over Iemma's lopsided election campaign war chest*, *The Sydney Morning Herald*, 28 January 2008, <http://www.smh.com.au/news/national/anger-over-iemmas-lopsided-war-chest/2008/01/27/1201368945679.html> (accessed 27 December 2013)

<sup>32</sup> Cain, John, *The Politics of Greed*, *The Age*, 18 October 2006, <http://www.theage.com.au/news/opinion/the-politics-of-greed/2006/10/17/1160850927192.html> (accessed 27 December 2013)

<sup>33</sup> *Are our Politicians for Sale*, *The Age*, 23 May 2006, <http://www.theage.com.au/news/in-depth/are-our-politicians-for-sale/2006/05/23/1148150251862.html> (accessed 27 December 2013)

<sup>34</sup> *Ibid*

The Association strongly recommends the retention of upper limits on political donations and political expenditure. The precise form of such limits is a matter for the processes of Parliament. The important criterion to be applied is that such limits be effective in preventing individuals and entities from obtaining or exerting undue influence on political decision making through the exercise of financial influence.

### Conclusion

The Association thanks the Committee and the Parliament for the opportunity to make this submission.

The Association would be happy to provide further input and assistance if the Committee so wished.

Yours faithfully

A handwritten signature in black ink, appearing to be 'PJD', with a long horizontal line extending to the right.

Peter J Davis QC  
**President**