Speech By

# Hon. Jarrod Bleijie

## MEMBER FOR KAWANA

Record of Proceedings, 21 May 2014

## ELECTORAL REFORM AMENDMENT BILL

### Second Reading

**Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (5.39 pm): I move—

That the bill be now read a second time.

Before I start the debate on the Electoral Reform Amendment Bill 2013, I take this opportunity to mention the recent inquiry by the Electoral Commission of Queensland, the ECQ, into the conduct of the Redcliffe by-election on 22 February 2014. The government considered it sensible to await the findings of the report before debating the Electoral Reform Amendment Bill 2013. On 24 April 2014, I tabled the final report of the inquiry. The report identifies three issues in relation to the Redcliffe by-election: first, overt intimidating and obstructive behaviour towards the public and election staff; secondly, excessive displays of political statements and the manner in and time at which those statements were erected and displayed; and, thirdly, the conduct and number of scrutineers at the Saturday-night count. The report makes nine recommendations for legislative amendments to better ensure that people do not feel intimidated or harassed when they are entering a polling place. It also identified business improvement opportunities that the ECQ intends to implement, including the introduction of a voluntary code of practice for participants in Queensland elections.

Before making any decisions on the recommendations made in the report, the government is seeking feedback from stakeholders and the Queensland community. For this purpose, I have written to all registered political parties to seek their views and am seeking public comment through the website of the Department of Justice and Attorney-General. I encourage people to have a say on this important issue that affects all Queensland voters, as well as to comment on the broader issue, which the government supports in principle, concerning the banning of canvassers on polling day. Comments are sought by 13 June 2014 and the government hopes to consider a second phase of amendments in response to public suggestions arising from the Redcliffe report.

Now I move on to the Electoral Reform Amendment Bill 2013. In doing so, I thank the Legal Affairs and Community Safety Committee for its timely consideration of the bill. I thank all the stakeholders that made written submissions as part of the committee's examination of the bill. The purpose of the bill is to ensure the opportunity for full participation in Queensland's electoral process and enhance voter integrity and voting convenience. At this point, I remind honourable members who were not in this chamber in 2011 about what happened when last we had major electoral reforms. I have been referring to the *Hansard* of 2011 and reading the debate on electoral reforms moved by the Hon. Paul Lucas, who was Attorney-General at the time. The electoral bill that he introduced, which reformed and changed the way voting practices and public funding happens in Queensland, was introduced into this House on 7 April 2011. Last night in a particular debate, the member for Redcliffe said that 10 weeks was not enough time to consider particular bills. When the Labor Party moved its substantial reforms to the Electoral Act in 2011, the bill was introduced on 7 April 2011 and four

weeks later on 11 May 2011 we came into this place and debated the most substantial reforms to the electoral laws in Queensland's history. Not only did we debate it over a couple of days in that sitting week, but also we debated it the day after the federal budget was handed down and the day before Gordon Nuttall appeared at the bar of parliament. A smokescreen of other issues was used to get the 2011 electoral amendments through.

The member for Redcliffe might like to hear a bit more of the history of that bill. The bill was introduced on 7 April, so it just happened that it missed the introduction of the parliament's new committee system by a few days. The bill was introduced by Paul Lucas on 7 April. For the benefit of honourable members, I add that there was no consultation with the opposition and no consultation with the Queensland community in terms of the additional funding to political parties. I thought it important to point that out, because last night the member for Redcliffe was talking about a particular bill and said that 10 weeks was not enough time. I thought I should give her a lesson in terms of how the Labor Party used to do this sort of stuff in this place. It introduced a bill on 7 April, a few days before the new committee system was introduced so it did not go off to a committee. It was then debated four weeks later on 11 May, the day after the federal budget and the day before Gordon Nuttall appeared at the bar of parliament. There were smokescreens and distractions, because those 2011 laws were designed to make sure that the Labor Party had its coffers full for the next election, which was to be in less than 12 months time. That is what it was all about and, of course, we opposed it.

Let us compare and contrast that with this strong plan from this strong government for a brighter future for Queenslanders. We issued a green paper on electoral reform, we sought feedback, we advised the community of Queensland as to our answers to the feedback and we then published the report of the government's response to the green paper. That has happened over the past 18 months. We have been fully transparent and upfront with the people of Queensland when we looked at restoring accountability in government and accountability in the electoral processes.

I know that in the next few hours of today and over the course of tomorrow, the opposition Labor Party will forget the events of 2011. Its members will forget the events that led to the debate of the amendment to the Electoral Act. They will forget that the bill did not go to a committee. They will forget all that. They will call me corrupt, they will call the government corrupt and they will call the Premier corrupt. We are expecting to hear all of that over the next few hours, and particularly in the next hour from the opposition leader. However, one thing that cannot be taken away is the history of the Labor Party. In 2011 when the electoral reforms went through, the honourable opposition leader sat in cabinet. In a minute I will come to the figures and statistics that show how that legislation did bolster the Labor Party coffers. It was designed to make sure that they had a war chest to take into the 2012 election campaign and they did that without consultation, while hiding it behind Gordon Nuttall and the federal budget. That is the compare and contrast

This bill is designed to undo those wrongs that the Queensland community did not have a say in. Through this bill, we will remove the caps on donations and expenditure as unnecessarily restricting full participation in the political process in Queensland. We will increase the disclosure threshold to $12,400 to more closely align with the threshold applying at the Commonwealth level. We will return the basis for electoral public funding to a stated dollar amount per vote. We have proposed to increase the threshold for entitlement to public funding from four per cent to 10 per cent of the primary vote, but following consideration by the committee we will be moving an amendment to take that back down to six per cent. We will be facilitating electronically assisted voting, particularly to ensure access to secret and independent voting for blind and vision impaired voters and voters who require assistance because of disability, motor impairment or insufficient literacy. We will be changing particular requirements in relation to postal voting to make it more convenient and more accessible to voters. In recognition of how-to-vote cards as an important resource to voters, we will provide that how-to-vote cards be made available on the Electoral Commission of Queensland website and grant the ECQ the power to refuse to register a card if it is satisfied that it is likely to mislead or deceive a voter in casting their vote. We will be implementing proof-of-identity requirements to vote in a state election in a non-discriminatory way that reduces the potential for electoral fraud.

Let us again compare and contrast that to 2011, when the bill was rushed through without legitimate consultation and without any consultation with the Queensland community. We have been upfront. We have had green papers issued. We have taken on feedback and we have extended the debate of this bill for weeks and weeks, to ensure that we had all the feedback from the Queensland community. As I said earlier, we will have a phase 2 bill that will deal with the outcomes of the Redcliffe by-election and the issue that we have given in-principle support to, to ensure that people do not feel fearful and intimidated when they go to vote, as they did in the Redcliffe by-election. We are proposing that Queensland look at the issue of banning canvassers on polling day, so that people can be free to vote without any hassle or harassment.

As I indicated in my explanatory speech, our proposed amendments in relation to continuous disclosure foundered on the rocks of constitutional invalidity. Equally, our intention to align the level of disclosure under Queensland law with that of the Commonwealth law is based on an acknowledgement of that same principle. That principle was stated by the High Court in the Devondale Cream case of 1968, where the court said—

A State law may 'alter, impair or detract' from a Commonwealth law where there is a 'direct collision' between the two laws—that is, 'where the State law, if allowed to operate, would impose an obligation greater than that for which the federal law has provided'.

Herein lies the inconsistency to which section 109 of the constitution refers. Within these constitutional constraints, this legislation seeks to maximise openness and transparency. It seeks to let the sun shine in on political process, to ensure that Queenslanders will have confidence in that process and its outcomes. As I indicated, I will be moving certain amendments with respect to the disclosure limit where we are increasing it to fall in line and be consistent with the federal disclosure regime. We will be moving an amendment that will change the disclosure threshold to $12,400, CPI indexed each financial year. That amount was decided for consistency with the disclosure threshold applying at the Commonwealth level. To ensure consistency of the Queensland and Commonwealth disclosure levels over time, amendment Nos 1, 6, 11, 20, 22 and 24 replace references to the $12,400 CPI indexed amount with references to 'gift threshold amount' and provide that this is a dollar amount under the Commonwealth Electoral Act 1918, as indexed under that act. Therefore, if the Commonwealth changes the amount, naturally and automatically the Queensland amount will follow.

The issue of expenditure caps has also been addressed by the High Court in Unions New South Wales and Others v State of New South Wales in December last year. The court found that the law relating to expenditure caps in that state was invalid because it impermissibly burdens the implied freedom of communication on government and political matters contrary to the Commonwealth Constitution. To go down the road of favouring such caps would place such Queensland laws on expenditure and donation caps in constitutional peril.

At the same time, I note with interest an article by Anthony Gray, professor of constitutional law at the University of Southern Queensland, in the *Courier-Mail* of 19 May, where he stated—

Australia is and has always been a very robust democracy, and this system has overwhelmingly been free of corruption.

...

For the overwhelming duration of time in which our democracy has operated free of corruption, it has also been free of political donation and expenditure restrictions.

Professor Gray continues—

Even if limits on donations and expenditure might be justified, it has proved to be extremely difficult for legislators to get it right.

A large truck could be driven through existing loopholes in Queensland's recently enacted political expenditure laws.

Of course, he was referring to the 2011 Labor Party amendments. Bearing this in mind, I am drawn towards the holier-than-thou attitudes of those opposite.

I have before me an email from one Eoin MacGiollari seeking donations for the ALP in the seat of Sunnybank. His enthusiasm exposes just what Labor is prepared to do in seeking donations. The candidate for the Labor Party for Sunnybank is Peter Russo. He wrote on 19 May—this is very relevant—

Using this link ensures that your donation goes directly to Peter's election campaign. Contributions up to $1,500 are tax deductible. Contributions over $1,000 must be declared to the electoral commission but if you donate that much—I promise I'll make that process very easy for you!

What are we to make of this offer? Just what is this enthusiastic fundraiser offering to do? Is he seeking to drive his own truck through Labor's disclosure laws? I table a copy of the email for the benefit of members opposite.

*Tabled paper*: Email, dated 19 May 2014, from Mr Eoin MacGiollari regarding fundraising for Mr Peter Russo, ALP candidate for Sunnybank [5151].

It should not be forgotten that the 2011 Labor Party amendments accompanied a significant increase in funds flowing to political parties, including just where the Labor priorities lie. It should not be forgotten that under the Labor Party public support for political parties would have risen from $3.57 million over the 2009-12 election cycle to $24.3 million over the 2012-15 election cycle. Labor believes that it is entitled to these rivers of gold. They believe private activity should be funded at the public expense.

I recall three years ago highlighting the other shortcomings of Labor's 2011 amendments. I mentioned at the time the preferential treatment provided to trade unions and their officers, the loopholes provided through the definition of electoral expenditure, the sheer complexity of the administrative processes required and the arbitrary nature of the caps imposed in relation to both donations and expenditure. Labor was unable to respond to these criticisms at the time. They have

been unable to answer them in the intervening three years. At the same time as getting its hands on the public purse, Labor sought to impose a range of complicated, bureaucratic restrictions on parties and candidates that diverted resources from campaigning to complex record keeping that served little public good.

I now turn to the committee's report. As part of its report the committee made four recommendations in relation to the bill. I now table the government's response to the committee's recommendations.

*Tabled paper*: Legal Affairs and Community Safety Committee: Report No. 56—Electoral Reform Amendment Bill 2013, government response [5152].

The first recommendation made by the committee was that the bill be passed. I thank the committee for its timely consideration of the bill and appreciate the committee's recommendation that the bill be passed. The second recommendation is that the proposed threshold of 10 per cent for entitlement to public funding be reviewed. The committee recommends instead a threshold of six per cent. I have reviewed the level of threshold and agree that the amendment is appropriate to ensure the threshold does not adversely impact on participation by genuine independent members and those minor parties that do have a level of community support. I will be moving an amendment during the consideration in detail stage to change the threshold for entitlement to public funding to six per cent.

The final two recommendations relate to the proof of identity requirement. They recommend that a reasonable range of documents, both photographic and nonphotographic, be included in the electoral regulation. They also recommend that the ECQ provide training to electoral officers in assisting voters with the declaration process.

I acknowledge that there is a concern in the community about the implementation of a proof of identity requirement in order to vote at a polling booth and concerns raised about the ability of particular persons to obtain and present photographic identification. As I have previously stated publicly, the government proposes a wide range of documents will be acceptable as proof of identity. This includes both photographic identification and non-photographic identification. Also as stated previously, a voter who does not provide acceptable proof of their identity will still be allowed to cast a declaration vote. Before the next state election the ECQ will provide the necessary training for electoral officers and will run a public awareness campaign to make the transition as easy as possible for every Queenslander.

I will now briefly address a number of the issues raised by the committee, particularly in relation to the application of fundamental legislative principles. The committee raises the issue of the retrospective commencement of the amendments to part 11 of the Electoral Act 1992 and whether it is necessary as the next state election is yet to be determined and may not be held until 2015. As previously noted, the act currently places requirements on candidates and political parties in relation to political donations and expenditure caps and associated requirements. These requirements commence well in advance of an election. For example, the capped expenditure period for the next election actually started in March this year. For this reason, the government believes it is important to ensure participants in the next state election have clarity and consistency in relation to the rules and requirements that will apply for the next election, including the run-up period to that election.

In relation to the committee's concerns about the removal of the entitlement to advanced payment of election funding, the ECQ has advised that, at the introduction of the bill, no claims for advanced funding had been actually received. The new public funding model proposed by the bill is directly related to the electoral strength rather than how much a candidate or political party spends in an election. As it is not possible or appropriate to predict how people may vote at a future election, it is appropriate to remove the entitlement to advanced payments for public funding. To safeguard public funds, this amendment has effect from the date of the introduction of the bill.

While talking about public funding, I will take the opportunity to address the committee's concerns about the implementation of policy development payments and the dollar per vote amount for registered political parties and their candidates. As I stated in my speech when introducing the bill, policy development payments will be based on a party's relative electoral support. The payments will ensure that parties can continue to engage fully in developing and shaping policy throughout the electoral cycle while continuing to effectively represent the community. Policy development payments are proposed only for registered political parties and are recognition of the costs involved in the important role parties play in setting policy agenda. Independents, who are not members of a political party, do not have these costs.

The bill reforms the expensive public electoral funding model introduced by the former government. Public electoral funding will instead be paid on a dollar per vote basis up to the amount expended. The different amounts for registered political parties and candidates reflect the greater

demands placed on parties in performing the important role of informing debate, as I mentioned earlier.

The committee has also raised a concern about the bill making provision for the ECQ to decide to stop a class of electors making an electronically assisted vote. As noted by the committee, the power can only be used if there is an emergent security concern or technical issues with the information technology to be used for that electronically assisted voting. It is important that the ECQ be able to make a decision in a timely way to ensure the integrity and security of voting.

As the Electoral Commissioner has briefly publicly stated, it is the role of the ECQ to ensure that no voters are disenfranchised. If such a decision had to be made, the ECQ would ensure affected electors were informed and that they were able to cast their vote in another way.

I note the committee's support for the reforms in the bill to improve electoral processes in the areas of proof of identity, electronically assisted voting, postal voting and how-to-vote cards. Important objectives of this bill are to improve voter integrity and voter convenience. In relation to how-to-vote cards, I will quickly address the committee's concerns about the timing for resubmitting a revised card. The bill provides for a person to resubmit a card that has previously been rejected as likely to mislead or deceive an elector in casting their vote. The card may be resubmitted until 5 pm on the Wednesday immediately before polling day. In resubmitting a revised card, the person must comply only with the requirement to provide the required number of how-to-vote cards and accompanying statutory declaration, not with the original time frame for lodging the card.

I will be progressing amendments in the bill during consideration in detail to set the time frame to apply for a postal vote, to provide that the gifts and loans disclosure threshold is the dollar amount applied at the Commonwealth level—so when theirs moves ours will move—to clarify that the amendments made by the bill do not apply in relation to the Redcliffe by-election, and to correct a small number of minor errors in the bill.

So if I can finish with where I started, we started this debate essentially back in 2011 when the Labor Party, under the cover of Gordon Nuttall appearing at the bar the day after and the federal budget being handed down the day before, moved sweeping changes to the Electoral Act of Queensland. The taxpayers of Queensland went from providing political parties with funding of $3.5 million to $24 million. Although we tried at the time to raise this issue and raise the awareness, because it was such a rushed job by the government at the time, Queenslanders did not have an opportunity to fully appreciate why the former government introduced the laws and what benefit the laws would have to the former government.

We have been upfront with the people of Queensland. We issued some 18 months ago a green paper. We went out for public discussion. We took all views on board—those opposed to the laws and those supporting different types of laws. Then the government considered it and then we responded publicly with our intentions. As I said earlier in the debate, it was our intention to have continuous disclosure of political donations, but we had to rely on advice that we received at the time—and the High Court since has held certain things invalid in the New South Wales legislation in relation to the unions in New South Wales. The government had to rely on the advice from crown law, and that is why we are not proceeding with the continuous disclosure.

The second element I raised earlier in my contribution was with respect to increasing the threshold from $1,000 to $12,400. Again, based on advice that we received, as well as the continuous disclosure, we have increased the threshold from $1,000 to $12,400 to remain consistent with the federal legislation. Remaining consistent with the federal legislation will not put our legislation at the peril of constitutional invalidity.

As I indicated earlier too, if the federal government wish, we would certainly support the federal government lowering the federal amount. But ultimately after this bill is passed, the amendment that we will move during consideration in detail will ensure that, if the federal government reform their electoral laws in the future and they put the disclosure limit down, ours too will automatically go down. But that will be a matter for the federal government. It will be a matter that is consistent with the state jurisdiction of Queensland. Our laws will be consistent at the ECQ level and at the AEC level.

As I said, this implements important reforms, fixing a lot of the issues that were created in 2011 that the Labor Party unfortunately got away with. When you increase funding from $3.5 million to $24 million, the public should know. In this debate the opposition leader, as I indicated earlier, will get up in a minute and she will call the government all sorts of things. We will be accused of being corrupt. We will be accused of this and that. But let history not be forgotten that in 2011 amendments were rushed through this House making sure that the gold linings of the Labor Party were there going into the 2012 election campaign. That is why they did it. As I indicated earlier, they did it a few days

before the new committee process was established in this House with bipartisan support. So that bill conveniently did not go to a committee and it was not consulted with the opposition.

Compare and contrast that to a strong plan for a brighter future in Queensland where we have been completely upfront with the government's intentions and our laws, so much so that we issued a green paper. We responded to the green paper. We have now indicated that we intend to have a phase 2 of legislative amendments, and that is responding to the Redcliffe by-election and giving the courtesy to the Electoral Commissioner who conducted that inquiry to sort a lot of those issues out to ensure that does not happen in the 2015 election campaign where people can go and exercise their democratic right but they can do it in a free manner without fear and intimidation. I commend the bill to the House.