Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 7 May 2015

ELECTORAL AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (12.13 pm): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Community Safety Committee for its consideration of and report on the Electoral and Other Legislation Amendment Bill 2015. I also thank the stakeholders who made submissions and appeared at public hearings as part of the committee's examination of the bill.

The government notes the committee was unable to reach a majority decision as to whether the bill should be passed, although it unanimously supported the bill's provision for the Crime and Corruption Commission chair to access a judicial pension. The committee made three recommendations: that the Attorney-General clarifies to which party a penalty applies in respect of new section 264(9), which is clause 15 of the bill; that the Attorney-General advises the House of the consequence of a candidate failing to inform the third party that they must provide a return under section 264, and whether the failure to inform the third party might be a defence for their failure to provide such a return; and should the bill reach the second reading stage in the Legislative Assembly that the Attorney-General amends the bill to ensure clarity in respect of the application of the penalty opposed in new section 264(9), which is clause 15 of the bill. I now table the Queensland government's response to the committee's report.

Tabled paper: Legal Affairs and Community Safety Committee: Report No. 1—Electoral and Other Legislation Amendment Bill 2015, government response [389].

The government is satisfied as to the appropriateness of the return requirements for gifts over the gift threshold amount from third parties to candidates and from entities to registered political parties. It is also satisfied as to the clarity of the application of the associated offence provisions as they apply to third parties and entities, for noncompliance with their return obligations, and candidates and registered political parties, for their obligations to inform third parties and entities of their return obligations.

However, in the context of the committee's recommendations, the government proposes to move amendments during consideration in detail of the bill clarifying the obligations of: candidates to inform third parties of their return obligations in relation to gifts to candidates for the Stafford by-election and the 2015 state general election; and political parties to inform entities of their return obligations in relation to gifts to political parties from the 2013-14 and 2014-15 financial years.

The primary purpose of the bill is to give effect to the government's election commitments: to amend the Electoral Act 1992 to reinstate the $1,000 threshold for the disclosure of gifts to candidates, parties, third parties and associated entities, backdated to 21 November 2013; to remove the voter proof-of-identity requirements; to facilitate real-time disclosure of political donations; and to

ensure that the chair of the Crime and Corruption Commission has access to a judicial pension. I will now address the main issues referred to in the committee's report or during the committee's process.

The vast majority of the submissions made to the committee concerned the removal of the voter proof-of-identity requirements in the Electoral Act 1992 and Local Government Electoral Act 2011. Submissions in support of retaining voter proof-of-identity requirements raised concerns about electoral fraud, such as multiple voting or voter impersonation. Some of these submissions also contended that the requirement to produce proof of identity in order to vote is not unduly onerous and accords with the need to produce identification to undertake many types of transactions. Other submissions supported the removal of the proof-of-identity requirements, primarily on the basis that there is no need for these requirements as voter fraud is not a problem and these requirements have a disproportionate impact on poor and disadvantaged groups—in particular, Aboriginal and Torres Strait Islander peoples.

Those who made submissions to this effect included the Bar Association of Queensland, the Anti-Discrimination Commission of Queensland, the Queensland Aged and Disability Advocacy Inc. and the Aboriginal and Torres Strait Islander Legal Service. Evidence was provided to the committee by Professor Orr from the University of Queensland law school that voter proof-of-identity requirements appear to have had a marginal negative impact on voter turnout 'both proportionately (some groups are more affected than others) and absolutely (electors without ID or electors confused by the laws)'.

The government has also noted a discussion paper released by the former government in January 2013 which canvassed voter proof of identity stated there was no specific evidence of electoral fraud and statements made by the then Acting Queensland Electoral Commissioner to the committee last year confirming that at the previous state election only one person was referred to the Queensland Police Service for multiple voting. The government is also aware of the recent recommendations of the Commonwealth Joint Standing Committee on Electoral Matters for the introduction of voter proof of identity for Commonwealth elections and referendums. Importantly, the report of the dissenting members of the joint standing committee in rejecting this recommendation highlighted the potential negative impact on voter turnout and serious implications for engagement of disadvantaged voters, including itinerant and Indigenous voters, as well as those escaping domestic violence. It also concluded that there is little evidence of any problem with voter fraud and that adoption of the Queensland system would only address the concern of people impersonating others of which there is no evidence.

Having considered the Legal Affairs and Community Safety Committee's report and the relevant submissions, the government remains convinced that the potential negative impacts resulting from the voter proof-of-identity requirements outweigh any potential benefits of the laws. Instead, the government considers that the best way to reduce opportunities for multiple voting is through the use of improved technology such as the electronically certified list trialled in the greater Brisbane districts for the last state election, which electronically mark each elector off the system once they have been issued with a vote.

The other main issue raised in submissions before the committee arose from amendments to the Electoral Act 1992 to restore the $1,000 gift threshold amount for disclosure of donations. While some submissions considered the current threshold of $12,800 appropriate, many submissions, including from the Bar Association of Queensland, the Aboriginal and Torres Strait Islander Legal Service and Professor Orr, strongly support the reduced threshold. Those supporting the reduced threshold acknowledge the greater transparency and accountability which will result in terms of both those who give and those who receive political donations.

The government notes that, before amendments in 2014, the $1,000 threshold had applied in Queensland for many years and that other states have gift disclosure thresholds below that of the Commonwealth. As I have discussed before, a number of other states and territories currently have, or are enacting, stronger disclosure requirements than the Commonwealth. The New South Wales Baird government is at $1,000; ACT, $1,000; the Northern Territory, $1,500 for political parties and $200 for candidates; Western Australia, $2,300; and South Australia has legislation coming into force on 1 July this year setting a threshold of $5,000. The government is confident that restoring the $1,000 threshold is the appropriate course.

The government notes that the backdating of reporting requirements applying the reduced gift threshold amount has received considerable attention in submissions to the committee. In particular, the bill requires the disclosure of donations of $1,000 or over received by candidates and third parties in relation to the Stafford by-election and the state election of 31 January 2015 and donor entities, political parties and associated entities during the 2013-14 and 2014-15 financial years. Concerns

about this application of the bill were raised in submissions to the committee, including by the Bar Association, the Queensland Council for Civil Liberties, Professor Orr, the LNP and Family Voice Australia. Their concerns include that retrospective legislation is a bad precedent against the rule of law; it makes it difficult for people to organise their affairs; potentially breaches the fundamental legislative principles in the Legislative Standards Act 1992; and is not sufficiently justified in this instance. The view of the Bar Association and QCCL were that the committee should satisfy itself as to whether any civil or criminal penalty could result from the proposed retrospective application.

A number of submissions also suggested that the requirement to disclose donations already made could adversely affect people who believed at the time they made the donation that it would not be disclosed and that disclosure could have adverse ramifications for them. The government has listened to and carefully considered the concerns raised regarding this aspect of the bill. While the bill will backdate gift threshold amounts to $1,000 for gifts made with effect from the beginning of the 2013-14 financial year, it is also true that the gift disclosure threshold under the Electoral Act 1992 at the time of the making of any gift made from 1 July 2013 through to 27 May 2014 was $1,000. This obligation was only wiped away on assent to the former government's 2014 bill on 28 May 2014 retrospective to 21 November 2013. Therefore, for gifts made up to that assent date, the bill is only seeking to restore the disclosure threshold as it was when the gifts were made.

On 2 July 2014, shortly after assent to the former government's 2014 bill, our now Premier, Annastacia Palaszczuk, released Labor's policy document titled *Restoring integrity and accountability in Queensland*. This policy gave notice and put clearly on the public record that a Labor government would act to restore the $1,000 disclosure threshold for political donations and that this disclosure would be retrospective to 21 November 2013. This policy document states—

> It is in the public interest to ensure any large donations made in secret after the LNP changed the disclosure laws are revealed to the public. All political parties and donors are on notice to maintain records of their political donations, as a future Labor Government will make its disclosure laws retrospective to 21 November 2013—the date that the LNP's regressive laws took effect.

As detailed in the explanatory notes, the bill includes safeguards to mitigate the effective backdating of these requirements by: applying the obligations prospectively after commencement, providing that a person does not commit an offence if they failed to keep records relating to gifts or loans that did not have to be kept before the commencement of the bill, and recognising that existing section 312 may apply if the person is unable to obtain particulars required for the preparation of the return with the effect that no offence is committed. The government believes that Queenslanders have a right to know both who gave and who received political donations. We believe that disclosure of this information is both desirable and necessary so that Queenslanders can be confident that decisions made by their government have not been influenced by secret political donations.

I now turn to chapter 3 of the bill, which amends the Crime and Corruption Act 2001 and the Judges (Pensions and Long Leave) Act 1957 to implement the government's election commitment to give the chair of the Crime and Corruption Commission access to a judicial pension. As mentioned previously, the committee unanimously supports the bill's provisions for the CCC chair to access a judicial pension. As I said in the explanatory speech for this bill, the CCC chair has significant responsibility for ensuring the CCC performs its critically important role in maintaining accountability and integrity in Queensland's public sector. The government is confident that these amendments, which will apply to a person appointed as CCC chair after 27 March 2015, will make the position attractive to candidates with the high-calibre skills and experience necessary for the role. Equally, giving the CCC chair access to a judicial pension provides the chair with a degree of future financial security that will increase public confidence in the chair's independence. I commend the bill to the House.