Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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ELECTORAL AND OTHER LEGISLATION (ACCOUNTABILITY, INTEGRITY AND OTHER MATTERS) AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (2.42 pm): I move—

That the bill be now read a second time.

The Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 was introduced on 28 November 2019 and was referred to the Economics and Governance Committee. I seek to electronically table the government response to the Economics and Governance Committee report.

Tabled paper: Economics and Governance Committee: Report No. 37, 56th Parliament—Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019, government response [916].

The bill contains amendments relating to funding and expenditure for state elections—chapter 2; signage at state elections—chapter 3; new offences in relation to certain dishonest conduct of ministers—chapter 4; and new offences for certain dishonest conduct for councillors and other local government matters—chapter 5.

The Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs will speak separately on chapter 5, including foreshadowing amendments relevant to that chapter which are intended to be moved during consideration in detail of the bill. I would like to thank the minister for his ongoing hard work and cooperation in delivering this important legislation and I thank his department and his office for their assistance. I am pleased to inform the House that on 7 February 2020 the committee tabled its report and recommended that the bill be passed.

In relation to the chapter 2 amendments, the committee also recommended that I consider amending the bill to address the concerns of small not-for-profit third-party organisations regarding the regulatory burden of the political donation and electoral expenditure cap schemes such as by increasing the threshold for third-party registration. I will address these issues in my contribution to today's debate.

I thank the committee for its careful consideration of the bill and commend the member for Logan, as chair of the committee, for ensuring the proposed legislation was properly scrutinised and considered. I would also like to thank those who contributed to the committee process through their submissions and at public hearings. I also thank my hardworking department for the fantastic work they have done on this extremely complex piece of legislation. I also thank the Electoral Commission of Queensland for working with us closely on this legislation. I notice that the Minister for Local Government has joined us and I thank the Minister for Local Government, as I mentioned before he appeared in the chamber.

I have always said that I had hoped the committee process would be a genuine exchange of ideas that would allow the government to further refine our proposed legislation to ensure the integrity of our democratic institutions and our electoral processes. I was heartened by the level of engagement

that this bill received from our community, with over 70 submissions being made to the Economics and Governance Committee. The Palaszczuk government is a government that listens, and that is reflected by the amendments I will be moving to this bill.

Before turning to the amendments I will briefly outline the substantive elements of the bill. The main purpose of the amendments in chapter 2 of the bill is to fundamentally reform the financing of electoral campaigning in Queensland to enhance integrity and public accountability for state elections and support public confidence in state electoral processes and public institutions. The proposed election funding and disclosure regime in the bill is intended to ensure that no single person or entity is able to improperly influence those involved in electoral campaigning for state elections, whether they be political parties, members of parliament, candidates or others engaged in campaigning to influence voting and ensure that those who do campaign in an election have a reasonable opportunity to communicate with voters but are precluded from drowning out the communication of others.

To this end, chapter 2 of the bill provides for caps on political donations and on the electoral expenditure by registered political parties and their associated entities, candidates and third parties that campaign. To assist in compliance with the donation and expenditure caps, dedicated state campaign accounts will be required to be kept with a financial institution for registered political parties, candidates and those third parties registered with the Electoral Commission of Queensland. Political donations to registered political parties and candidates for state electoral purposes must be paid into these accounts. Electoral expenditure must be paid out of them. There are also amendments to clarify and strengthen key terms such as 'electoral expenditure' and 'gift'.

Chapter 3 of the bill relates to election signage. It limits a candidate or registered political party to no more than two signs up to a specified size within 100 metres of a polling centre entry and restricting times for setting up signage on election day until after 6 am.

Chapter 4 of the bill creates two new offences in the Integrity Act 2009 and the Parliament of Queensland Act 2001 applicable to cabinet ministers who behave dishonestly and with an intention to obtain a benefit for themselves or others or cause a detriment to others. The new offences seek to ensure conflicts of interest are declared and to reduce the risks of intentional misconduct. The purpose of the two new offences is to ensure conflicts of interest are declared when they arise with respect to ministerial responsibilities and to ensure there are consequences for ministers who dishonestly and intentionally fail to comply with their current obligations with respect to the register of interests.

The offences only apply to ministers, which reflects the higher obligation on ministers to uphold the standards of integrity, recognises the more immediate role of ministers in government decision making and ensures there is public confidence in government. Each of the new offences has a maximum penalty of two years imprisonment or 200 penalty units. I note a member of parliament may also face the additional consequence of losing their seat in circumstances where they are convicted of either offence and are sentenced to more than one year's imprisonment as provided in section 72(1)(i) of the Parliament of Queensland Act 2001.

Charges for the new criminal offences will not be able to be laid without the consent of the Director of Public Prosecutions. The majority of committee members supported these offences in the form that they are drafted. I note that mixed views were expressed about these two proposed offences, both in written submissions and oral evidence to the committee. The position of the government in accepting the recommendations of the CCC and the subsequent drafting of the offences was predicated on the substance of the CCC's 6 September public statement.

As the committee process progressed, so too did the CCC's position in relation to how the proposed offences ought to be structured. The evolution in the CCC's position is legitimate and I make no criticism of the gradual clarification provided by the CCC, both to the Economics and Governance Committee and to the Parliamentary Crime and Corruption Committee. However, after coming to more fully understand the nuance of the CCC's position, the government has determined that it will not legislate for strict liability offences for ministerial conflicts, nor will it legislate for a strict liability register of interest offence to apply to all members in this place. Instead, we will be retaining the offences as originally drafted in accordance with the government's understanding of the original CCC recommendations.

Let us be clear: the offences as they appear in the bill will lead the nation. These are nation-leading ministerial integrity laws in a nation-leading integrity bill. While some will say that the offences should go further, it should be recognised that some submitters to the committee rejected the need for any new offences to be created to cover this type of conduct by ministers. Such submitters included Jennifer Menzies, Principal Research Fellow at Griffith University's Policy Innovation Hub, the Parliamentary Ethics Committee and the Clerk of the Parliament.

In particular, I would direct any individual seeking to gain a greater understanding of the complexity associated with the proposed offences to read through the submission of the Clerk of the Parliament. His submission identifies the following detrimental outcomes that would arise from the implementation of the strict liability register of interest offence: the implementation of a strict liability offence would require a review and narrowing of Queensland's nation-leading disclosure regime, potentially leading to less transparency; the implementation of a strict liability register of interest offence would lead to a reticence of members to admit honest mistakes or errors, leading to less disclosure; it would lead to the registrar, currently the Clerk of the Parliament, becoming an enforcer of criminal law rather than a source of ethical advice; and, finally, the implementation of a strict liability register of interest offence would sideline the universally respected and impartial Ethics Committee.

The parliamentary Ethics Committee articulates the view that the existing legislation, guidelines and conventions are sufficient to achieve the ends sought by the CCC. These observations are important. They are not made to denigrate those with an opposite view but simply to highlight the complex nature of the recommendations of the CCC. Ultimately, the government has decided that the approach in the bill strikes the right balance in creating a new criminal offence that targets conduct by ministers that falls short of community expectations but also ensures that ministers are not unfairly punished criminally for an honest mistake or inadvertence. When implemented, these laws will mean that when it comes to ministerial accountability and integrity Queensland will have the toughest laws in the nation—a proud day for us all.

I will now turn to the amendments that I intend moving during consideration in detail of chapters 1 to 4 of the bill. Amendments will be made to chapter 2 of the bill so that the expenditure caps apply for the 2020 general election from 1 August 2020, the donation caps and election funding apply no earlier than 1 July 2022, and changes to policy development payments apply from 1 January 2022, allowing the first payment under the new rules in July 2022.

The COVID-19 pandemic has impacted every facet of our lives. Its implications for our economy have been significant. However, thanks to the strong leadership of the Premier, the Deputy Premier and the hard work of the Treasurer, Queensland is well placed to unite and recover. As we do that, it is unreasonable to expect that we will be able to immediately commence the amended political finance model that is set out in the bill. Deferring the commencement of the donations caps and the accompanying change to public financing will allow the Palaszczuk government to prioritise resources as we focus on getting Queensland back on its feet. The new funding framework is tied to the operation of the donations cap so we can ensure that, while we significantly reduce the power of special interests money, we can be assured that political parties and candidates are able to exercise their freedom of political communication. Ensuring the actual and perceived integrity of our democratic process requires the introduction of a donations cap, and the Palaszczuk government will deliver on this issue.

There was considerable attention in submissions to the committee on the implications of chapter 2 of the bill for small third parties, including charities and not-for-profit organisations. As introduced, the bill: caps political donations to third parties at $4,000 per term; caps third-party electoral expenditure at $1 million generally and $87,000 for an electoral district for a general election and at $87,000 for a by-election; requires the registration of third parties that spend over the registration threshold of $1,000 electoral expenditure during an electoral term, with voluntary registration also being available; requires donations used for electoral expenditure to be accompanied by a donor statement; and requires registered third parties to appoint agents and maintain state campaign accounts.

Many submitters raised concerns that the reforms impact on small not-for-profit organisations that rely on donations and are not resourced to comply with the administrative requirements of the bill. In particular, it was submitted that the bill would have a disproportionate impact on smaller organisations, particularly regional organisations that rely on a smaller donor base. There were concerns that the bill would muzzle the voices of charities and ordinary Queenslanders while leaving big businesses such as industry associations, peak bodies, trade unions and corporations, which earn revenue from business or membership fees, to run large-scale election campaigns. Concerns were raised that, rather than ensuring that the quieter voices are not drowned out by the communications of others, the reforms proposed by the bill would instead persuade small organisations to avoid public advocacy.

Some submitters suggested an exemption for small charities and charities registered with the Australian Charities and Not-for-profits Commission from some or all of the requirements imposed by the bill. The government is not persuaded that exemption for a class of third party on the basis of charitable status would be appropriate. The issues raised by third parties will instead be alleviated by: removing the donation caps from third parties engaged in electoral campaigning; increasing the registration threshold for third parties from $1,000 to $6,000 of electoral expenditure incurred during the

capped expenditure period for an election; removing the need for third parties to disclose gifts used to incur expenditure for political purposes, which includes electoral expenditure, where less than $1,000 of the gift is applied to expenditure for political purposes; and creating an exception to the offence for not keeping a state campaign account, to be modified to apply to agents, so that it does not apply where the agent of a third party did not know, or it was not reasonable for them to know, that the third party was required to be registered for the election.

Additional amendments will also be moved to the bill to ensure it operates in the fairest, most effective manner, including: shortening the capped expenditure period applying to ordinary general elections; and clarifying the definition of 'electoral expenditure'. It is proposed to amend the definition of 'electoral expenditure' as provided for in the bill to: provide a specific, non-exhaustive list of particular purposes of expenditure that would be for the 'purpose of promoting or opposing a political party or candidate in relation to an election or influencing the voting at an election'; clarify that expenditure with the dominant purpose to educate the audience on, or to raise awareness of, a public policy issue is excluded; clarify that electoral expenditure excludes staffing costs, but not the costs of consultants; and clarify, by way of example, that electoral expenditure includes the costs of data used to produce, identify a target audience for, or communicate an advertisement or other election material.

For an ordinary general election, the bill provides for the capped expenditure period to start 12 months before polling day. In response to stakeholder submissions, it is proposed to reduce the capped expenditure period so that it applies for an ordinary general election, which is on the last Saturday in October—being the ordinary general day—from the business day after the last Saturday in March, which is the usual date for local government elections.

I am satisfied that, with these changes having been made, all participants will have an opportunity to have their voices heard throughout the electoral process. Given the reduction in the time of the capped expenditure period but the retention of the initial quantum of expenditure caps, I do not think it could be reasonably argued that the expenditure caps pose an unreasonable burden on anyone's right to political communication.

One concern in relation to the operation of the expenditure caps was the impact that it would have on independent candidates contesting the election. It is true that, taken together, political parties and their endorsed candidates will have a higher expenditure cap in an individual electoral district than independent candidates. However, the suggestion that this would create an unfair advantage to party endorsed candidates in individual seats is a misplaced concern. The reality is that, unlike independent candidates, political parties have to run statewide campaigns spanning different media markets. This means that even where expenditure is targeted to a particular seat it will not always be done to explicitly praise or endorse the candidate contesting that electoral district. Instead, it may be done to raise awareness of the party's leader or a general issue that has arisen in the campaign.

By way of contrast, an independent candidate will have significantly more expenditure power than a party endorsed candidate, which will be solely directed to gaining electoral advantage for themselves. Moreover, ECQ data establishes that an $87,000 cap for independent candidates is more than sufficient, given the most money expended by an independent candidate during the 2017 state election was less than $30,000. The Palaszczuk government believes that the levels of the expenditure caps provide all electoral participants a reasonable opportunity to have their voices heard and the evidence bears this out.

The potential for the stockpiling of material such as campaign T-shirts and corflutes prior to the capped expenditure to avoid the expenditure caps will also be addressed. Electoral expenditure will be taken to be incurred at the first time goods are used in the capped expenditure period for an election if obtained before the capped expenditure period for the dominant purpose of use during the capped expenditure period. This means any goods such as corflutes or T-shirts that are purchased after the commencement of the bill but delivered prior to the commencement of the expenditure cap would count towards the expenditure cap.

I note that this amendment does not change the time of publication provision as it relates to radio and television advertisements, direct mail-outs or billboard advertisements. As per the provision of section 281 that is contained in the bill as it was introduced, it does not matter when these things were contracted for. If they are published during the capped expenditure period, they will count to the electoral participant's cap. This will be the case even if the publication has been contracted for prior to the commencement of this legislation.

We will also be ensuring that electoral participants who wilfully flout the expenditure caps in an attempt to pervert our democratic process are held to account. This will be done by amending section 281G of the bill to ensure that a person who knowingly exceeds the expenditure cap will face

up to 10 years in jail. This reflects the objective seriousness of ensuring the integrity of our electoral process. Where there is sufficient evidence to suggest that section 281G is being contravened during the capped expenditure period, section 196 of the current Electoral Act already allows the ECQ or a candidate in an election to make an application to the Supreme Court for an injunction in relation to a breach of the Electoral Act. This provision could be utilised to seek an order from the court to restrain further expenditure being undertaken by the offending electoral participant.

As a further deterrent, the bill already provides that a person who exceeds the electoral expenditure cap is liable for civil recovery by the state of an amount equal to twice the amount of the unlawful expenditure. To avoid third parties being used for the circumvention of donation and electoral expenditure caps, amendments are proposed to modify the definition of 'associated entity' so that it includes entities that operate for the dominant purpose of promoting or opposing one or more candidates of a registered political party and is extended to entities controlled by or operating wholly, or to a significant extent, for the benefit of candidates as well as parties. The amendments will also clarify the application of part 11 to associated entities, including those captured by the expanded definition.

The amendments seek to regulate instances where political parties or candidates seek to artificially amplify their capacity for incurring electoral expenditure or receiving improper gifts and loans. The amendments will not infringe upon the rights of autonomous legal entities pursuing their own political agendas, such as registered industrial organisations—both employer and employee representatives—or industry peak bodies who may engage in electoral expenditure from time to time. Autonomous legal entities will not become associated entities of a party or candidate merely by virtue of consistent or vocal support, as has been previously settled in the High Court.

It should be noted that neither the expanded associated entity provisions nor the imposition of the donations cap are intended to prevent the flow of money from local party units, like local branches, to the electoral committees of local candidates. This practice will be unaffected by this bill, given that electoral committees are an extension of the branch structure.

The record keeping requirements for all election participants will be clarified with the record keeping requirements for third parties adjusted to reflect the removal of the donation cap. The government has listened to the submissions to the committee regarding the proposed signage changes, particularly the concerns that third parties were not permitted signs in the restricted area and that signs were required to be accompanied, having implications for those such as Independents and smaller parties. In response, amendments are proposed to relax the signage restrictions so that candidates and registered political parties can display up to six signs in each designated area, consisting of a combination of small signs—up to 900 millimetres by 600 millimetres—and large signs—up to 1,830 millimetres by 1,220 millimetres—at an ordinary polling booth. However, a candidate and party may only display up to a maximum of four large signs in each designated area. The quotas will be combined for registered political parties and their endorsed candidates, meaning that the signage restrictions apply to them taken together. An associated entity will be considered to be part of the party or candidate it is associated with for the purposes of the signage restrictions.

In addition, third parties may display up to two signs up to a particular size in each designated area of a pre-poll voting office and four signs in each designated area of a polling booth on polling day. Within the permitted four signs, a combination of small signs and large signs will be allowed, with a third party being permitted to display up to a maximum of two large signs in each designated area. Requirements for permitted signs to be accompanied by a person and not attached to a building, fence or other permanent structure will be removed.

In relation to the offence for setting up to display election signs, amendments are proposed so that the provision applies prior to 5 am rather than 6 am. A correcting amendment is also proposed to ensure that the offence relating to setting up does not apply to signage at residences and other lawfully occupied premises and does not apply in relation to a pre-poll voting office that is also to be used as an ordinary polling booth. Amendments will also provide that the signage restrictions will commence on 1 August, including for any by-elections for which the writs are issued after this date. To be clear, this means an end to plastic bunting that ends up in our tips. This will be a welcome change for everyone.

Additionally, I intend to introduce amendments to the Electoral Act 1992 to provide flexibility, if required, to facilitate the holding of the 2020 general election in a way that helps minimise serious risks to the health and safety of the community caused by the COVID-19 public health emergency.

Queensland has smashed the COVID-19 curve, however we cannot be complacent. We need to be able to adapt our election plans quickly should the need arise. This bill means that Queenslanders can rest assured that, no matter what the situation is come October, we will be able to proceed with an

election in the safest manner possible. The proposed amendments include provisions that are similar to those measures contained in the Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020 and the Electoral (By-elections Before Next General Election) Regulation 2020 and include modifying the electoral visitor voting and pre-poll voting arrangements, arrangements for the distribution or display of election material, and the scrutineering process.

The proposed amendments contain a broad regulation-making power to allow regulations to be made which make provision for any matter that will allow or facilitate the election to be held in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. This would include regulations modifying or varying any provisions in part 7 of the Electoral Act which would be needed to facilitate the increased use of postal voting for all electors, a specific class of electors, or for a particular electoral district. These measures are temporary and only apply in relation to the 2020 general election. The amendments will commence on assent. The amendments will ensure the government and the Electoral Commission of Queensland can quickly respond to public health advice regarding any risks to the health and safety of the community in the lead up to and during the 2020 general election period.

This framework builds on the Palaszczuk government's Statement of Principles that I tabled in Parliament earlier today and reflects the broadly successful strategy implemented by our government that saw zero COVID cases arising from the conduct of the local government election. Our metric for success will be ensuring as many people as possible can vote in the safest manner possible. I know that, with Queenslanders united, we will be able to repeat this success.

This bill is historic and nation leading. Our ministerial integrity laws reflect the Palaszczuk government's commitment to leading by example. It will be interesting to see whether other Australian jurisdictions choose to adopt our reforms. Let's say I hope they do, and I certainly hope that the Commonwealth take note of what we are doing here today and this week. They seem determined to wind back electoral laws consistently and to undermine the integrity and transparency around elections to the point that provisions were deemed wholly invalid in the Spence case in the High Court. Last week the Morrison government introduced amendments to section 302CA to try it on again. Not only have they done that but also they are seeking to pass them this week. They do not have an election due for another two years, approximately, but they introduced it last week and they want to pass it next week. Why would that be? Would it be because there is a Queensland election coming up and they are hoping to avoid transparency through changes? I suspect so.

Our operational reforms to facilitate a COVID-safe election ensures that the democratic franchise is extended to all voters. When we talk about the democratic franchise, we should celebrate the introduction of expenditure and donations caps.

When I introduced this bill I discussed the declining levels of trust that members of the public have for our political institutions. Without the trust of community members, those of us in this place will never be able to effect the meaningful change we seek to make here. This bill is about restoring trust to our politics. Recent data from Essential Media suggests that the trust members of the public have for parliament and political parties has increased during the COVID-19 pandemic. We cannot fool ourselves into thinking that trust will be retained unless there is a change in behaviour in the way we finance our politics and the way we conduct ourselves during our election campaigns. Declining levels of trust for politics and politicians is not an issue of partisan politics. It is not an ALP issue and it is not a LNP issue; it is an existential issue that affects every person in this place and every person who comes after us. Trust is eroded where the perception exists that parties or members are in the pockets of big donors. It is eroded when stories of 'cash for access' are published in the media. That trust is eroded when electoral participants engage in the expenditure arms race, trying to crowd out the conversation so that it is only the loudest, most financially equipped voices that are heard.

This bill is not a silver bullet. It will not cure the issues that plague trust in our politics, but it is a significant step in the right direction. My hope is that it will lead to politics being a battle of ideas rather than a battle of bank balances. A former United States senator once said, 'The currency of politics should be ideas, not dollars. It is time for us to start putting that currency back into circulation.' I could not agree more.

I thank all of the stakeholders who have engaged with the government in the development of these important electoral reforms. There are many, many stakeholders out there who have been calling for these sorts of integrity reforms, with proper caps on expenditure and donations and an increase in public funding to ensure that voices are still heard, that political expression is still allowed, but it is done in a way that is balanced, that it provides—

Mr Watts interjected.

Mr SPEAKER: The member for Toowoomba North will cease his interjections.

Mrs D'ATH:—and ensures that people are not drowned out by those who have the most money. It is time that we removed the perception of the fact that doors are only opened to candidates and politicians on all sides when you have money. I welcome these reforms. I welcome listening to the views on the other side. We know they have already removed these laws once from this parliament when they were last in government. I am interested to see if they will go to the election saying they will reverse them once again, but I hope that these become long-term reforms and are adopted by jurisdictions across this country, because that is what we need to do to restore trust, deal with the issue of the perception of money and deal with the political arms race of those with the most money having the biggest voice. I commend the bill to the House.