

Electoral and Other Legislation Amendment Bill 2015

Report No. 1, 2015

Legal Affairs and Community Safety Committee

May 2015

Legal Affairs and Community Safety Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General and the Electoral Commission of Queensland.

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Abbreviations

Act	Electoral Act 1992
ADCQ	Anti-Discrimination Commission Queensland
ATSILS	Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd
Attorney-General	The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
BAQ	Bar Association of Queensland
Bill	Electoral and Other Legislation Amendment Bill 2015
CC Act	Crime and Corruption Act 2001
CCC	Crime and Corruption Commission
CLC	Caxton Legal Centre
Committee	Legal Affairs and Community Safety Committee
CPI	consumer price index
EARC	Electoral and Administrative Review Commission
ECQ	Electoral Commission of Queensland
FVA	FamilyVoice Australia
HRLC	Human Rights Law Centre
Joint Submission	Joint submission made by QAILS, HRLC, ATSILS and CLC
JSCEM	Senate Joint Standing Committee on Electoral Matters
Judges Pensions Act	Judges (Pensions and Long Leave) Act 1957
LNP	Liberal National Party
Prior Bill	Electoral Reform Amendment Bill 2013
QAILS	Queensland Association of Independent Legal Services Inc
QCCL	Queensland Council for Civil Liberties

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Electoral and Other Legislation Amendment Bill 2015.

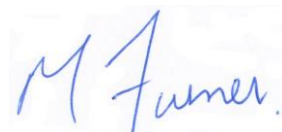
The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Bill's proposals in respect of electoral donation and voter identification laws represent some fundamental policy differences between the two major parties in Queensland, the Labor Party and the Liberal National Party. It is in some ways unfortunate that this should be the case with the first Bill to come before this bipartisan committee, however during our deliberations I believe all members of the Committee have worked hard to identify areas of common ground, and it is a success that we have been able to unanimously make this report to the House.

What the policy differences mean, though, is that the Committee has been unable to reach a majority decision as to whether the Bill be passed. What this report does is to present the content of the evidence considered by the Committee in its deliberations: the evidence provided by some 530 individuals and organisations who made submissions to the Committee.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Department of Justice and Attorney-General and the Electoral Commission of Queensland for the advice they have provided the Committee during its inquiry.

I commend this Report to the House.



Mark Furner MP

Chair

Recommendations

Recommendations

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- The committee recommends that the Attorney-General clarifies to which party a penalty applies in respect of new s 264(9) (clause 15 of the Bill).
- The committee recommends 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 s 264; and whether the failure to inform the third party might be a defence for their failure to provide such a return.
- The committee recommends that should the Bill reach the second reading stage in the Legislative Assembly, the Attorney-General amends the Bill to ensure clarity in respect of the application of the penalty proposed in new s 264(9) (clause 15 of the Bill).

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service;
- Fire and Emergency Services; and
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
 - the application of fundamental legislative principles; and
 - for subordinate legislation – its lawfulness.
- On 27 March 2015, the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP (Attorney-General), introduced the Electoral and Other Legislation Amendment Bill 2015 (Bill) into to the House and referred it to the Committee. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 1 May 2015.

1.2 Inquiry process

On 30 March 2015, the Committee wrote to the Department of Justice and Attorney-General (the Department) seeking advice on the Bill, invited stakeholders and subscribers to lodge written submissions and issued a media release announcing its inquiry.

The Committee received written advice from the Department and invited written submissions from all Queenslanders on the legislative proposal, to be received by 4.00pm on Friday, 10 April 2015. The Committee received 530 submissions (see **Appendix A**). On 15 April 2015, the Committee received written advice from the Department in response to matters raised in submissions.

The Committee held a public hearing on the Bill on Thursday, 16 April 2015. The Committee invited witnesses to give evidence and respond to questions on the Bill. Representatives of the Department and the Electoral Commission of Queensland (ECQ) attended a public briefing held immediately before the hearing. See **Appendix B**.

1.3 Policy objectives of the Electoral and Other Legislation Amendment Bill 2015

Objective of the Bill

The key objectives of the Bill are to give effect to the government's election commitments to amend the *Electoral Act 1992* (Act) to:

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

- reinstate the \$1,000 gift threshold amount, backdated to 21 November 2013;
- remove voter proof of identity requirements; and
- facilitate real time disclosure of political donations.

The reinstatement of the \$1,000 gift threshold amount captures:

- candidates' post poll disclosures of gifts and loans;
- third parties' disclosure of expenditure for political purposes, and gifts to candidates;
- entities' gifts to political parties;
- loans not to be received; and
- returns of political parties and associated entities.

The Bill restores the special reporting of donations of \$100,000 or more; reduces the threshold for the prohibition of anonymous donations from \$12,800 to \$1,000 for parties (retaining the current level of \$200 for candidates); and reinstates the six-monthly reporting (and previous timeframes for reporting) by political parties and associated entities.

Other objectives

Other objectives of the Bill are to:

- remove voter proof of identity requirements for local government elections;
- clarify when a fundraising contribution is a gift; and
- give effect to the government's election commitment that the CCC chair of the Crime and Corruption Commission (CCC) have access to a judicial pension.

Reasons for the Bill

The Bill contains measures relating to accountability, transparency and integrity of the electoral gift disclosure regime, including measures to facilitate the ECQ and other parties developing a real-time online system of disclosure of electoral donations.²

The Bill removes the voter proof of identity requirements introduced by the former government in 2014, from both the Act and the *Local Government Electoral Act 2011*.

The Bill's proposed amendments to the *Crime and Corruption Act 2001* (CC Act) and *Judges (Pensions and Long Leave) Act 1957* (Judges Pensions Act) aims to ensure that the CCC chair will have access to a judicial pension, as part of the remuneration package for that position.

1.4 Background

Subsequent to releasing the 'Electoral Reform Discussion Paper' in January 2013 and the '*Electoral reform Queensland Electoral Review Outcomes*' in July 2013, the prior Liberal National Party (LNP) government introduced the Electoral Reform Amendment Bill 2013 (Prior Bill) into the House on 21 November 2013. The Prior Bill was referred to the previous Legal Affairs and Community Safety Committee that same day.

To achieve its policy objectives, the Prior Bill introduced a number of legislative changes including:

- removing the caps on donations and expenditure;

² Record of Proceedings (Hansard), 27 March 2015, p 226.

- increasing the disclosure threshold to \$12,400 (CPI indexed for each financial year after commencement) to more closely align with the threshold applying at the Commonwealth level;
- returning the basis for electoral public funding to a stated dollar amount per vote and increasing the threshold for entitlement to public funding from 4% to 6%³ of the primary vote to reduce the cost of funding to the community;
- facilitating electronically assisted voting;
- changing postal voting requirements to make it more convenient and accessible for voters;
- providing that how-to-vote cards are to be made available on the ECQ website and granting the ECQ power to refuse to register a card in certain cases; and
- implementing proof of identity requirements.⁴

1.5 Consultation on the Bill

The Explanatory Notes state:

The key electoral amendments are Government election commitments.

The amendments to allow the CCC chairman to have access to a judicial pension are a Government election commitment.

The Government Superannuation Officer has been consulted on the amendments to the CC Act that provide for the CCC chairman's access to a pension. The views of the Government Superannuation Officer were taken into account in finalising the Bill.⁵

1.6 Outcome of Committee deliberations

Standing Order 132(1)(a) requires that the Committee after examining the Bill determine whether to recommend that the Bill be passed. In this instance, government members accepted the Bill should pass in its entirety, whereas non-government members opposed aspects of the Bill.

The committee was not able to reach a majority decision on whether the Bill be passed and, therefore, in accordance with section 91C (7) of the *Parliament of Queensland Act 2001*, the question on the motion failed. The Committee is not able to make a recommendation that the Bill be passed.

Despite varying opinions on whether the Bill be passed or not passed, the Committee reached consensus on the Bill's providing for the CCC chair to access a judicial pension. Committee members agreed unanimously on this aspect of the Bill.

³ Amended during consideration in detail from 10% in the Bill.

⁴ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, pp 1-2.

⁵ *Explanatory Notes*, Electoral and Other Legislation Amendment Bill 2015, p 5.

2. Examination of the Electoral and Other Legislation Amendment Bill 2015

This section discusses issues considered during the Committee's examination of the Bill.

2.1 Amending electoral donation requirements

The Bill proposes to make various amendments to existing electoral donation laws. This section considers the proposed changes and related issues, including by setting out views expressed by submitters and stakeholders.

Reinstating \$1,000 gift threshold amount

Current law

The gift disclosure threshold of \$12,400, indexed against the CPI, for political parties and candidates was introduced by the previous government in 2013.⁶ The threshold has increased with indexation to \$12,800.

Proposed changes

One of the key objectives of the Bill is to give effect to the government's election commitment to amend the Act to reinstate the \$1,000 gift threshold amount, backdated to 21 November 2013. This section deals with the reinstatement of the threshold amount. Specific consideration of the proposed retrospective application of this change is located later.

In her Introductory Speech, the Attorney-General asserted that Queenslanders have the right to know who is donating to their political candidates and parties, and how much they are donating:

We know that disclosure of political donations can never completely eliminate the risk of corruption and secret political influence. However, what disclosure can achieve is transparency and greater accountability of both those who give and those who receive political donations.⁷

The Attorney-General categorised the current \$12,800 disclosure threshold amount as substantial, and '*...more so if applied to multiple, separate but associated entities*'.⁸ She listed reasons typically provided for setting a higher threshold, including: '*...encouraging participation in the public funding of the electoral process; donors' rights to privacy; a low threshold may inhibit political freedom; and costs of compliance*'.⁹

However the Attorney-General identified the government's view that:

*...these considerations are outweighed by the need for accountability and transparency. The 2014 increase in the disclosure threshold from \$1,000 to \$12,400—indexed—was also enacted without due regard to recent Queensland political history or the public mood for increased accountability.*¹⁰

Issues raised by submitters

In his submission, Professor Graeme Orr supported the lowering of the threshold for disclosure of political donations: '*Disclosure offers information to the media and electors about where parties are*

⁶ Record of Proceedings (Hansard), 27 March 2015, p 226.

⁷ Record of Proceedings (Hansard), 27 March 2015, p 226.

⁸ Record of Proceedings (Hansard), 27 March 2015, p 226.

⁹ Record of Proceedings (Hansard), 27 March 2015, p 226.

¹⁰ Record of Proceedings (Hansard), 27 March 2015, p 226.

gathering key (financial) support, and it shines 'sunlight' on contributions that may be designed to influence policy processes or buy support and access to politicians'.¹¹

In contemplating an appropriate gift threshold amount, Professor Orr observed there is no natural right to influence elections with wealth, noting that: *'Disclosure in itself does not limit donations, nor does it affect the ability to use wealth to buy advertising time directly.'*¹² He considered the key to this issue was to determine what amount would be reasonable for the average person (wage earner or pensioner) to donate whilst expecting anonymity:

The group with most reason to be concerned about disclosure is public servants/businesses that work for government. They have the most to fear in terms of retribution or being seen as partisan; of course it is also the group whose large scale donations should be of concern! It seems to me that someone in that position could reasonably expect to donate say \$20-40 per week (ie \$1000-\$2000 pa) as an ideological gesture/form of political participation, without that amount being too large to buy favour. Wherever the line is drawn, parliamentarians should consider:

(a) the appearance or actuality of influence, ie how much money it might take to influence a candidate or party, large or small, remembering the size and cost of state politics and elections.

(b) equality and liberty.¹³

In considering an appropriate gift threshold amount, Queensland Council for Civil Liberties (QCCL) ventured that perhaps there is a reasonable argument for suggesting that \$ 1,000 is too low:

But certainly in our submission the current figure of \$12,000, which would buy you a small car, is far too high and \$ 1000 is in the vicinity of the appropriate number. To come to a final conclusion about whether \$ 1,000 is too low we would need to have access to information about average donation amounts [sic] the like.¹⁴

Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd (ATSILS) provided further support for the proposed amendments, acknowledging they are *'...designed to increase accountability, transparency, and integrity in the political process'*.¹⁵ However it did query whether the amendments go far enough:

One school of thought is that transparency dictates that any gift, irrespective of the amount or value, or indeed the timing of such – should be reportable. A gift not only has the potential to influence decisions, but just as importantly, carries with it the 'perception' of influence (irrespective of whether or not such had any impact at all).¹⁶

The Bar Association of Queensland (BAQ) also agreed with the proposed amendments, further arguing that, for consistency, it would support *'...having the threshold under Commonwealth legislation restored to that lower amount'*.¹⁷

On the other hand, FamilyVoice Australia (FVA) opposed the reinstatement of the gift threshold amount of \$1,000.

¹¹ Professor Graeme Orr, Submission No. 530, p 5.

¹² Professor Graeme Orr, Submission No. 530, p 5.

¹³ Professor Graeme Orr, Submission No. 530, p 5.

¹⁴ Queensland Council for Civil Liberties, Submission No. 508, p 3.

¹⁵ Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd, Submission No. 484, p 1.

¹⁶ Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd, Submission No. 484, p 1-2.

¹⁷ Bar Association of Queensland, Submission No. 212, p 2.

In its submission, FVA referred to democratic principles, such as individual freedom, freedom of association and representative democracy, submitting on the relationship between these principles and electoral funding. It identified the right to stand for election and vote, and the right of a citizen to use financial resources to further political objectives, as fundamental individual freedoms.¹⁸

In its view, any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified: *'Reasonable measures to encourage citizens who wish to fund political candidates or parties should be seen as a means to foster political freedom'*.¹⁹ It categorised political parties among the kinds of association which citizens should have the freedom to form or to join, asserting that *'...political parties should have the freedom to raise funds and use them in political campaigns, subject only to constraints which have strong justification'*.²⁰

Additionally, FVA argued that: *'Election funding arrangements should be designed to facilitate a close working relationship between representatives and their constituents'*.²¹ However it also acknowledged that political donations may be used to purchase political favours, access to decision-makers, or consideration in policy formation:

Such practices could distort the democratic process and undermine faith in government...

*...some constraints on civil society and commercial institutions are necessary for the limitation of corruption and abuse.*²²

FVA supported mandatory public disclosure of financial contributions to political parties and candidates and their campaign expenditures as an important safeguard against inappropriate influence on the political system: *'Disclosure thresholds should be set to achieve an appropriate balance between encouraging participation in the democratic process through financial support to political parties and candidates, and the public interest in knowing the source of political donations, especially larger donations'*.²³

It made the following comments on ascertaining the appropriate gift threshold amount:

Factors supporting a relatively higher threshold for disclosure include:

(a) preserving the privacy of citizens (and their businesses) who choose to make political donations, and

(b) limiting the compliance costs of political parties in reporting the sources of donations over the threshold.

The disclosure threshold should be high enough to allow political parties to attract adequate private donations without an undue administrative burden of disclosure.

*The main factor in limiting the threshold is the public interest, that is, enabling the public to be aware of the major supporters of political parties. A robust democracy requires openness and accountability in contributions to political parties, since those contributing large amounts could have significant influence over candidates who are elected to positions of responsibility and authority. The disclosure threshold should be set at a level that will allow the public knowledge of the source of the larger donations to political parties and candidates.*²⁴

¹⁸ FamilyVoice Australia, Submission No. 526, p 1.

¹⁹ FamilyVoice Australia, Submission No. 526, p 1.

²⁰ FamilyVoice Australia, Submission No. 526, p 2.

²¹ FamilyVoice Australia, Submission No. 526, p 3.

²² FamilyVoice Australia, Submission No. 526, p 3.

²³ FamilyVoice Australia, Submission No. 526, p 3.

²⁴ FamilyVoice Australia, Submission No. 526, pp 3-4.

In stating its opposition to the proposed changes, FVA concluded it is likely that donations greater than the current threshold of \$12,800 account for the bulk of campaign funds raised by political parties – possibly about 90% of the total:

This would satisfy the need for public transparency, without burdening the parties with the administrative overhead of tracking large numbers of small donations. It would also protect the privacy of individuals who want to make modest financial contributions to the party of their choice.²⁵

At the Committee's public hearing, Mr Stephen Keim SC, representing BAQ commented on his organisation's changed position on the appropriate political donation disclosure threshold:

With regard to the disclosure changes, the association has actually changed its position with regard to this. I think it is fair to say that we reluctantly supported the change last year on the basis that it was going to a situation in common with the Commonwealth. We were seduced by convenience. Since then we have come to the view that \$10,000, \$12,000 is just far too high. It is much better to have it at the lower level. So it is important to note that change.²⁶

Mr Geoffrey Bullock, Queensland Acting State Director of FVA adopted a different view:

As a person in this nation who is trying to make sure that the process has integrity, I cannot understand why any figure should be compulsory. Anything under \$12,800 is not going to buy votes, in my understanding. As we pointed out, the bulk of the votes [sic] are big numbers and very few—the other 12 per cent—are small numbers and many. I think what people are saying is, 'We just like to encourage this particular party to do our thing. I do not want to be known, otherwise there might be some repercussions if somebody found out about even my small vote [sic] of perhaps \$5,000'...²⁷

Department's response to submitters

Although noting the views of submitters, the Department recommended no change to the Bill, stating that the reduction of the disclosure gift threshold to \$1,000 '...reflects a Government election commitment'.²⁸

Frequency of reporting

Current law

The Bill retains the present situation, where candidates need to provide the ECQ with a return in relation to gifts received during the disclosure period for an election within 15 weeks after polling day for an election.²⁹

Proposed changes

However, clause 13 of the Bill replaces section 261 of the Act to facilitate a shorter timeframe for the disclosure of the particulars of gifts equal to or more than the gift threshold amount.³⁰ The new

²⁵ FamilyVoice Australia, Submission No. 526, p 4.

²⁶ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 12.

²⁷ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 6.

²⁸ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 6.

²⁹ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³⁰ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

section provides for these particulars to be provided by the day, not more than 15 weeks after polling day, prescribed by regulation.³¹

The Bill makes similar changes in relation to disclosure by: candidates of loans; third parties that incur expenditure for political purposes; and third parties of gifts to candidates.³² Additionally, the Bill provides for disclosure by third parties of gifts to registered political parties by the day, not more than 8 weeks after the end of the reporting period, prescribed by regulation.³³

Clause 22 of the Bill inserts new section 290 which requires registered political parties to make returns more regularly than the existing annual requirement.³⁴ Returns will now be required for each reporting period, being the first six months of a financial year and a full financial year.³⁵ The new section also facilitates a shorter timeframe for the disclosure of the particulars of gifts and loans equal to or more than the gift threshold amount by providing for these particulars to be provided by the day, not more than 8 weeks after the end of the reporting period, prescribed by regulation.³⁶

The Bill also proposes to amend the *Electoral Regulation 2013* in order to prescribe the days on which returns are to be given.³⁷

Proposed changes to facilitate real time reporting

In her Introductory Speech, the Attorney-General stated:

*This government has also committed to the member for Nicklin to work with the Electoral Commission of Queensland and the other parties to develop a real-time online system of disclosure of electoral donations to further enhance the integrity and transparency of the electoral gift disclosure regime. The amendments proposed in this bill will address public concerns about the prospect, under the current act, of substantial donations motivated by gaining political influence being made in secret.*³⁸

The Bill amends the Act's return provisions to facilitate real time (more frequent) reporting.³⁹ Clause 29 of the Bill inserts section 315A which will facilitate the ECQ providing for the electronic lodgement of returns in the context of real time reporting.⁴⁰

Issues raised by submitters

In Professor Orr's view, at least as important as lowering the threshold is implementing a system of continuous disclosure:

*Queensland led the way with biannual disclosure. NSW is moving to continuous disclosure; South Australia from this year will have a system of instant disclosure of large donations (over \$25 000) and continuous disclosure during election campaigns. A model for this has been in place in New York for decades.*⁴¹

QCCL generally supported the reinstatement of the gift threshold amount, but like Professor Orr, went further by arguing in favour of a system of continuous disclosure:

³¹ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³² Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³³ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³⁴ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³⁵ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³⁶ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

³⁷ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, pp 4-5.

³⁸ Record of Proceedings (Hansard), 27 March 2015, p 226.

³⁹ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 4.

⁴⁰ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 5.

⁴¹ Professor Graeme Orr, Submission No. 530, p 5.

The former Commonwealth Electoral Commissioner, Colin Hughes, writing in 1979 argued that essential to an election finance system is “continuous comprehensive and total disclosure of both income and outgoings.”...

Like Mr Hughes we are concerned that attempts to restrict the amounts of political donations will simply lead to the development of more sophisticated concealment techniques. It seems to us the most important thing is that the public knows where the money is coming from and in what amounts.⁴²

In supporting a system of continuous disclosure, QCCL claimed that under the current and proposed laws, disclosure is quite often too old or too late to be of any benefit to anybody: *‘Fortunately modern technology enables us to have regular disclosure posted on the internet as has been demonstrated by the system operated by the New York City Campaign Finance Board’⁴³*

Additional requirements for large gifts

Proposed changes

Clause 18 of the Bill inserts new sections 266-266D into the Act, which seek to impose an obligation on both the maker and recipient of electoral donations over \$100,000 to disclose such gifts within 14 days.⁴⁴

Issues raised by submitters

The BAQ supports the Bill’s proposed changes: *‘Prompt disclosure of such large donations is of more utility in terms of keeping the public informed than disclosure made remotely from the circumstances in which they are made (especially where the donations are made in the build up to an election)’⁴⁵*

Department’s response to submitters

Although noting the views of submitters, the Department recommended no change to the Bill, making the following comments about the Bill’s provisions: *‘The Government has made a policy decision to impose obligations on the disclosure of gifts over \$100,000, for reasons stated in the explanatory speech for the Bill’⁴⁶*

Clarifying when a fundraising contribution is a gift

Clause 8 of the Bill amends section 200 of the Act to clarify that an amount is a fundraising contribution, whether or not the venture or function to which the payment relates raises funds for an entity.⁴⁷ Clause 9 amends section 200 to clarify that any part of a fundraising contribution over \$200 is a gift.⁴⁸ These proposed changes were not contentious during the Committee’s inquiry.

⁴² Queensland Council for Civil Liberties, Submission No. 508, p 1, including quote from: Legislative Council’s select committee on Electoral and Party Funding, Parliament of New South Wales, *Submission To The Inquiry Into Electoral and Political Funding*, February 2008.

⁴³ Queensland Council for Civil Liberties, Submission No. 508, p 2.

⁴⁴ Bar Association of Queensland, Submission No. 212, p 2.

⁴⁵ Bar Association of Queensland, Submission No. 212, p 2.

⁴⁶ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 7.

⁴⁷ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 6.

⁴⁸ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 6.

Retrospectivity of disclosure requirements

Introduction

In her Introductory Speech, the Attorney-General explained that the disclosure requirement provisions in the Bill were backdated to 21 November 2013:

The primary purpose of this bill is to give effect to the government's clear election commitments to amend the Electoral Act 1992 to: reinstate the \$1,000 threshold for the disclosure of gifts to candidates, parties, third parties, associated entities, backdated to 21 November 2013; and remove voter proof of identity requirements. The gift disclosure threshold of \$12,800, as currently indexed, for political parties and candidates was introduced by the previous government in 2014 and backdated to 21 November 2013. ... These requirements are, to the extent practical, backdated to 21 November 2013, when the current gift disclosure regime commenced. They apply to reporting for the Stafford by-election and the recent general election.⁴⁹

The Attorney-General and the Department have argued that the Bill would not apply retrospectively, but prospectively – because the requirement to report for the 2013-14 period would take effect after commencement of the Bill.⁵⁰

Issues raised by submitters

A number of the submissions discussed concerns regarding the proposed retrospective nature of the Bill. The key points raised by the submitters on this issue are set out below.

Professor Graeme Orr highlighted his concerns on the retrospective nature of the legislation in his submission as follows:

Retrospective rule-making threatens the rule of law. Whilst disclosure is not in itself onerous, particularly as the primary burden of any backdating will fall on registered parties, retrospective law-making is not a good precedent. There needs to be a strong moral reason to upset expectations based on the law existing when decisions are made. It is one thing for a government to announce a proposed change subject to parliamentary approval during its current term and back-date the law to the announcement. It is quite another thing to expect citizens to gamble on whether an opposition, which makes a similar announcement (effectively a threat), will (a) be elected and then (b) secure a parliamentary majority for the measure.⁵¹

Similarly, FVA, in its submission, is also critical of the retrospective nature of the Bill:

Retrospective legislation and the problems that it may cause have been discussed in the book by former law professor Geoffrey de Q. Walker titled The Rule of Law: Foundation of Constitutional Democracy. On this subject, Professor Walker states:

A statute cannot be certain if it is retroactive. Such a law can never in any real sense be promulgated. It cannot guide a person's conduct and therefore cannot be obeyed.

Indeed, legal certainty should be a key objective of our legal system, so that people can take current laws into account when making decisions. In the context of this bill, changing the donation threshold from \$12,800 to \$1,000 with a need to report retrospectively is a breach of trust for those who made political donations of amounts in that range. Those donors knew

⁴⁹ Record of Proceedings (Hansard), 27 March 2015, p 226.

⁵⁰ Brisbane Times, *Labor changing donation laws for revenge: Lawrence Springborg*, 10 March 2015.

⁵¹ Professor Graeme Orr, Submission No. 530, p 5.

that the current law enabled their privacy to be respected. Reducing the threshold with retroactive effect is a violation of the privacy of these donors.

Furthermore, reducing the threshold in this way will make little difference to revealing undue voter influence. Since most of the campaign funding raised by parties and candidates comes from large donations, above the \$12,800 threshold, the influence of donors of amounts in the \$12,800 to \$1000 range is minimal. The modicum of increased transparency does not justify retrospective legislation that breaches the vitally important principle of legal certainty.

Consider a scenario in which Tom makes a \$5,000 donation to the Happy Party during the last election, understanding that it would not be disclosed. Under the proposed new retrospective legislation, the Happy Party would have to disclose Tom's donation with potential consequences for Tom. His job or business may be adversely affected if his political preferences became known. Tom may have made a different decision about donating to the Happy Party, had the lower threshold applied.⁵²

BAQ also raised concerns about the retrospective nature of the Bill particularly due to the lack of fairness which can result. In this regard, BAQ commented:

The Association generally opposes legislation which operates retrospectively and it might be thought this amendment operates in that way. Fairness requires that the law be known and certain at the time of the relevant conduct. This means that neither civil nor criminal penalties should be created retrospectively. ... The Committee should satisfy itself that no civil or criminal penalty can result from this "retrospective" application.⁵³

In its submission, the LNP also commented on the unfair nature of the proposed retrospective provisions in the Bill:

The bill proposes to apply the new thresholds and disclosure obligations both prospectively and retrospectively. The retrospective aspect is unfair to those who made a decision to donate on the basis of the laws as they were at the time.

Members of the Committee will be aware of the philosophical argument against retrospective legislation. Citizens are entitled to assume that laws are stable and that decisions that they make in reliance on the law will not later be brought into question by retrospective changes. Except in exceptional circumstances, retrospective changes undermine the rule of law. They lower public confidence in the law and the body politic.

A donor to a political party may well fear that the donation will bring with it the risk of retribution from the opposing political party. The person making the decision to donate may well have taken into account the disclosure limit in deciding how much to donate. It would be fundamentally unfair to any such donor to undermine the decision they made.

It must be kept in mind that, whatever the criticisms of private donations to political parties, they are essential to our democratic system. Political parties would simply be unable to communicate their message without them. In that context, it is dangerous to create a situation where people are afraid to donate on the basis that they may subsequently be embarrassed through changes to the law.⁵⁴

⁵² FamilyVoice Australia, Submission No. 526, pp 4-5.

⁵³ Bar Association of Queensland, Submission No. 212, pp 2-3.

⁵⁴ Liberal National Party, Submission No. 502, p 3.

Department's response

In its written response to the submissions, the Department noted the issues raised in the various submissions in the context of the retrospective nature of the Bill.⁵⁵ However, the Department did not recommend any change to the Bill in this regard. In making this response, the Department relied on the fact that it had been a government election commitment that the \$1,000 gift disclosure threshold be backdated to 21 November 2013.⁵⁶

The issue of retrospectivity was also raised during the Public Briefing by the Department. In this regard, Ms Leanne Robertson, the Acting Assistant Director-General, Department of Justice and Attorney-General, made the following comments in her opening remarks:

As the committee is aware, the Bar Association submitted that the committee should satisfy itself that no civil or criminal penalty can result from the bill's retrospective applications, so I thought it would be worthwhile to speak to that issue. The transitional provisions in the bill clarify that the precommencement gift threshold amount applies for section 271 in relation to anonymous gifts received before the commencement, not retrospectively applying the new lower threshold. The precommencement gift threshold amount also applies in relation to loans received before the commencement for the purposes of section 272 in relation to prohibited loans. Gifts and loans that are equal to or more than the new lower threshold amount received after 20 November 2013 but before commencement will still need to be disclosed in returns under section 290 by registered political parties. Loans equal to or more than the new lower threshold received after 20 November 2013 but before commencement will still need to be disclosed in returns by candidates under section 262.

The requirements apply prospectively. For the Stafford by-election, the recent general election and the 2013-14 financial year, candidates, third parties and donor entities will have eight weeks to comply from the commencement of the act and registered political parties and their associated entities will have four weeks. For the 2014-15 year, the returns will be required within eight weeks of the end of that reporting period. The requirement will be to prospectively disclose gifts and loans that would not have been required to be disclosed at the time they were given or received. To not comply with that obligation—those return requirements—will be an offence. However, it is important to note that clause 31 of the bill provides that no offence is committed for failure to keep records in relation to a matter required to be disclosed under the act as proposed to be amended by the bill that was not previously required to be disclosed in a return.

The transitional provisions also provide that no offence is committed for failure to keep records in relation to anonymous gifts to political parties and prohibited loans to political parties and candidates under the precommencement but exceeding the postcommencement gift threshold amount. In addition, as the committee is aware, existing section 312 of the Electoral Act already provides for the situation where a person who is required to give a return considers that it is impossible to complete a return because the person is unable to obtain the required particulars. It ensures that no offence is committed because a return is incomplete, provided the person has complied with the requirements of that section.⁵⁷

Following these remarks, Committee member Mr Krause put the following question to Ms Robertson:

⁵⁵ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 8.

⁵⁶ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 8.

⁵⁷ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 2.

In relation to the retrospective nature of some of the provisions in the bill, what assurance can be given by the department that donors, candidates or political parties will not suffer any criminal or civil penalties as a result of these retrospective laws? I heard your statement about that. I think probably most of the committee members thought they would have to read it again to see exactly what was said. It was not clear. There is an exemption in section 303 from criminal or civil prosecution. Does that cover all participants in the process—donors, candidates, political parties, third parties, associated entities—from any criminal or civil action if they cannot comply with these requirements retrospectively?⁵⁸

Ms Robertson responded as follows:

The framework of the bill is that the obligations to provide the material are there knowing that, in respect of the returns, that information may not actually—because there was not an obligation at the time to actually keep that record. Although there is an obligation under the bill for the returns to be filed, potentially the returns could not or may not have all the information in them. Section 312 may operate in a particular situation to actually make it clear that as long as you actually, in fact, give in the returns the information that you can and that you have, knowing that you may actually have not had the records at the time. That is the scenario.⁵⁹

The public briefing was also attended by Mr Dermot Tiernan, the Acting Electoral Commissioner from the ECQ. When called upon to comment on the Bill, Mr Tiernan indicated that the proposed retrospective provisions would result in an administrative challenge for the ECQ:

With regard to the retrospective provisions, I would say that the commission anticipates that these provisions represent a considerable administrative challenge both to the stakeholders and to ECQ. The size of that burden is unknown, but I think in previous discussions we have probably covered much of that.⁶⁰

Public hearing

During the public hearing, the issue of the retrospective nature of the Bill was discussed extensively.

Mr Michael Cope, the President of QCCL opened his address with a reference to this issue:

[R]etrospectivity is obviously a serious issue which needs to be addressed. The fundamental point about the rule against retrospectivity is to avoid the imposition of some civil or criminal penalty. We note the existence of section 303, but our submission would be that the committee has to be perfectly sure that there is no possibility that this retrospectivity will result in the imposition of any criminal or civil penalty upon any person.⁶¹

In response to questioning from Committee member, Mr Krause, regarding the effect of the retrospective provisions of the Bill, Mr Cope made the following comments:

With regard to the core of what retrospectivity is about, it is about criminal and civil sanctions or penalties. Then you get beyond that to the sort of thing that you are talking about where you can have a debate about whether that is what retrospectivity is about, but that is why we

⁵⁸ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 4.

⁵⁹ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 4.

⁶⁰ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 7.

⁶¹ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 9.

*drew your attention to the fact that the legislative standards, which I presume the committee has to refer to, do talk about a wider obligation. But it seems to us that when you get out beyond that core area of people being sanctioned into this broader area of whether somebody should be made to fill in a form and send it in to the government, then you perhaps get into more of a balancing question about where is the point that that should be. And, as I was saying, a point might need to be considered as to whether that is the sort of obligation that you ought to retrospectively impose on your mum-and-dad contributors for your \$1,000 or your \$2,000 or whatever it was as opposed to a person who has contributed an amount which could buy you a small car.*⁶²

During his introductory remarks, Mr Stephen Keim SC, from BAQ provided the following detailed scenario of the possible effect of the retrospective provisions:

*I think with regard to the retrospectivity question, again, in the submission the association has made a similar point to the last speaker that criminal and civil liability is the first measure with regard to that. I have probably hardened my personal opinion a little bit more since then. My example is this. You can imagine a person who contributes maybe to one political party or maybe to all political parties but she does not want anybody else to know that she does it. She does not want the other parties to know it; she does not want her neighbours to know it. So in past years she has contributed \$700 a year or \$800 year. The new laws came in and she upped that to \$2,000 or \$3,000 a year. She might be really worried now that people are going to find out. She deliberately regulated her behaviour according to the law and now she is concerned. Now, it is probably a matter for the committee to decide whether that hypothetical is a real problem in the community. That may depend on some of the feedback that you have been getting—whether it is widespread—but that is the hypothetical situation that I think the committee should consider.*⁶³

During the public hearing, Professor Graeme Orr took on notice the question of whether he was aware of any civil or criminal penalty that might apply if the Bill is to apply retrospectively. In this regard, Professor Graeme Orr later responded:

*I am not aware of any penalty provision that would apply to an individual donor. Obviously the bill does not make it an offence to have done anything in the past. But proposed section 302 states that Division 13, which includes the offence provision of section 307, applies to the backdated disclosure provisions. Section 307 offences include failure to disclose on time, and to disclose with material errors. The backdated disclosure obligations fall on parties, candidates, associated entities and ‘entities’, rather than on individual donors. Obviously this Bill has teeth, the effect of which is that persons including political actors are exposed to criminal liability for failure, in a short (8 week time frame) to do something involving past donations where their obligation had been settled by clear law in the past. The committee should make a policy decision on this and if necessary consider specialist drafting advice on the bill as it stands.*⁶⁴

Professor Orr also argued:

What is the point if you pass a law where there are no teeth to enforce the informational request? It is not even clear to me why you would want to backdate a measure like this. If you have concerns about relatively small scale donations, up to four figures, influencing

⁶² *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 11.

⁶³ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 12.

⁶⁴ Email Correspondence from Professor Graeme Orr to the Committee dated 17 April 2014.

*government decisions then I think you need to have a different kind of inquiry. I think the principle [against retrospectivity] is far too fundamental—outside problems of genocide and Nazis and so on. We do not pass retrospective laws without good reason and it could blow back in the future if you start a precedent here.*⁶⁵

He also pointed out in response to a suggestion that the retrospective application had been part of the election commitment, that 'not many people would have expected' the provision to be backdated.⁶⁶

In summary, the key points made by submitters were:

- To backdate a legal provision to which penalties are attached threatens the rule of law and fundamental legislative principles applying to the State of Queensland through its *Legislative Standards Act 1992*
- It is uncertain why the provisions are backdated, given the 'safeguard' effect of new s 303 in any event.
- It is unclear whether the safeguards will operate against any possible criminal or civil action being successful for a failure to return due to failure to keep records.
- It was not part of the election commitment that the mooted changes to electoral donation laws would apply retrospectively to the 2013-14 year.

Potential constitutional issues

The submission from the LNP made reference to advice from the Crown Solicitor to the former Attorney-General which had been sought in the context of developing the Electoral Reform Bill 2013, which brought the current reporting regime into effect.⁶⁷ The Crown Solicitor's advice had been tabled in the Legislative Assembly by the former Attorney-General.⁶⁸

Referring to the Constitution of Australia, the Crown-Solicitor's advice notes that:

Section 109 states that:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

*In this context, 'invalid' means 'suspended, inoperative and ineffective': A direct inconsistency will arise where it is not possible to obey both the Commonwealth and State laws, or where the State law would 'alter, impair or detract from' the operation of the Commonwealth law.*⁶⁹

Applying that principle in respect of (the then existing) monthly reporting regime, the Crown-Solicitor's advice was that:

*In my opinion, if challenged, a Court is more likely than not to hold that the monthly reporting requirements of the proposed ss 261 and 262 of the [Electoral Act 1992 (Qld)] are inconsistent with the Commonwealth Electoral Act 1918 (Cth) and to that extent are invalid.*⁷⁰

⁶⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 18.

⁶⁶ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 19.

⁶⁷ Liberal National Party, Submission No. 502, p 2.

⁶⁸ Tabled by Mr Jarrod Bleijie MP, former Attorney-General, on 21 November 2014.

⁶⁹ *Ibid*, pp 2-3.

⁷⁰ *Ibid*, p 1.

During the Committee's inquiry, the question of a potential constitutional issue of inconsistency between state and Commonwealth electoral law was explored in respect of both the timing of reporting donations, and the threshold amount which triggers a reporting requirement. In particular, advice from the Crown Solicitor to the former Attorney-General dated 31 July 2013 was tabled at the Committee's public hearing, which concluded that the Act (as it then stood - with the State threshold differing from the Commonwealth threshold) was inconsistent with the *Commonwealth Electoral Act 1918*. The Department declined to produce any legal advice it had received or given in respect of this matter.

Professor Graeme Orr⁷¹ in his submission offers a different perspective on the Crown Solicitor's advice about Queensland having a more restrictive donations regime than the Commonwealth, saying that the '*Crown Law advice is tenuous, at best*'. He notes that despite many years of states and territories operating different regimes, there has never been a challenge made, he knows of no academic legal basis for such a challenge; and that:

*It is easy to obey two different obligations to disclose information: a party can file a single disclosure document meeting the lower threshold, or it can produce two spreadsheets. It is common for Commonwealth law to require different disclosure than State law, which business subject to overlapping consumer protection, tax or health and safety regimes meet on a daily basis.*⁷²

Mr Keim SC, citing Professor Orr, said at the public hearing:

*...you just define some different fields in your computer system so that you print out with two separate button presses—maybe the one—two separate printouts based on the different disclosure levels and you can comply with both.*⁷³

Professor Orr and Mr Keim SC both note that a key legal consideration in determining whether there is a constitutional inconsistency under s 109 of the Australian Constitution, is whether the Commonwealth law intends to cover state electoral donation regulation. They both conclude that the Commonwealth legislation clearly does not intend to do so and that therefore there is no basis for a challenge.^{74,75}

Mr Keim SC explained further that:

As has been pointed out by [the Crown Solicitor] himself, the Commonwealth electoral laws seek only to impact upon entities in so far as they are participating in or registered for Commonwealth elections and the State laws, only so far as they are participating in or registered for state elections.

Parties and branches of parties may (and do) choose to register for both regimes.

But there is nothing equivalent to the State electoral laws "charging" an entity with being involved in Federal elections. That is, whether the party is also registered under Federal laws has no causal relationship to the nature of the obligation to disclose under State laws.....

*It follows that I disagree with [the Crown Solicitor's] published opinion.*⁷⁶

⁷¹ Professor Graeme Orr, Submission no. 530, p 5.

⁷² Professor Graeme Orr, Submission no. 530, p 6.

⁷³ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 12.

⁷⁴ Professor Graeme Orr, Submission no. 530, p 6.

⁷⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, pp 12-13.

⁷⁶ Mr Keim SC, response to question taken on notice, 20 April 2015.

Legal opinions notwithstanding, the LNP submission raises some practical considerations about donations being subject to two reporting regimes, focusing on the difficulty of compliance and the impact of that difficulty on capacity to engage in the political process:

Inconsistency between Queensland and Commonwealth laws creates extra expense for each organisation expected to comply with the two sets of inconsistent regulations. That extra expense will be felt by those parties in a decreased capacity to participate in public forums. There is a public interest in parties being able efficiently to devote as much of their resources as possible to participation in public debate. This is not to discount the importance of a sound donation disclosure regime, but rather to suggest that, in the absence of any convincing suggestion that the Commonwealth regime is defective, there is sense in maintaining consistency between the Queensland and Commonwealth regimes.⁷⁷

The LNP also points out that it is not just political parties and candidates that would be required to report under two regimes, but individual donors:

The statutory rules about disclosure are, of necessity, detailed and complex, and their reach extends beyond political parties and candidates to individual donors. For that reason there is much to be said for maintaining consistency with Commonwealth law covering the same kind of activity. Unnecessary potential for confusion should be avoided.⁷⁸

Recent electoral donation disclosure reforms

In addition to Queensland, the four Australian states and territories which have declaration thresholds are New South Wales, the Australian Capital Territory, Victoria and Western Australia. Each of these four jurisdictions has declaration thresholds below the Commonwealth limit of \$12,800.

New South Wales

In 2014, the NSW government established an independent panel of experts to investigate the potential for further reforms to election funding laws (Expert Panel). Under the Terms of Reference, the Expert Panel was charged with the role of “*considering the best way to remove any corrosive influence of donations in New South Wales*”.⁷⁹

The two-volume final report of the Expert Panel was issued on 24 December 2014, together with 50 recommendations. In relation to the issue of the appropriate level of caps on political donations, the Expert Panel concluded that the current New South Wales threshold of \$1,000 was reasonable, although acknowledged there had been some support for a reduction in this threshold.⁸⁰ The Expert Panel stated that ‘*...timely and meaningful disclosure is the cornerstone of any effective campaign funding regime*’.⁸¹

The NSW government indicated ‘in principle support’ for most of the recommendations of the Expert Panel, noting that these issues would be considered further by the Senate Joint Standing Committee on Electoral Matters (JSCEM) when it investigates and reports on the administration of the NSW state election which was held on 28 March 2015.

⁷⁷ Liberal National Party, Submission no. 502 pp 2-3.

⁷⁸ Liberal National Party, Submission no. 502 p 3.

⁷⁹ [Terms of Reference](#) for the Panel of Experts conducting the review of political donations, commissioned by the NSW Government, 2014.

⁸⁰ *Record of Proceedings (Hansard)*, 27 March 2015, p 227. See also: Dr Kerry Schott, Andrew Tink and the Hon John Watkins, [Political Donations, Final Report – Volume 1](#), NSW, December 2014, page 9.

⁸¹ *Record of Proceedings (Hansard)*, 27 March 2015, p 227. See also: Dr Kerry Schott, Andrew Tink and the Hon John Watkins, [Political Donations, Final Report – Volume 1](#), NSW, December 2014, page 9.

Australian Capital Territory

The ACT followed NSW and QLD by introducing caps upon political donations and expenditure in 2012. There is a cap of \$10,000 on the total amount of political donations that may be received in a financial year from the same person (including an unincorporated association and a corporation) and deposited into an ACT election account. In the ACT, there are also restrictions on anonymous gifts such that political entities, other than third party campaigners, must not accept anonymous gifts of \$1000 or more. Small anonymous gifts of less than \$250 must not be accepted where the total of such gifts received would be more than \$25,000 for the financial year.

Commonwealth regulation

The *Commonwealth Electoral Act 1918* (Cth) provides a cap on anonymous donations of more than \$12,800.⁸² The former Queensland government relied on this provision to increase the disclosure threshold to \$12,400 under the *Electoral Reform Amendment Act 2013* (Qld) to more closely align with the threshold applying at the Commonwealth level.

The issues of electoral donations, funding and expenditure have also been canvassed at the Commonwealth level in recent years. Some of the highlights in the Commonwealth arena are set out in the 2008 Commonwealth Green Paper on Electoral Reform, the Electoral Amendment (Political Donations and Other Measures) Bill 2008 and the December 2011 Report by the JSCEM. The 2011 JSCEM report recommended the disclosure threshold be lowered to \$1,000, and CPI indexation be removed.

2.2 Removing voter proof of identity requirements

Current law and proposed changes

Queensland is the only Australian jurisdiction to have adopted voter identification requirements. In 2014, the prior LNP government enacted law which sought to implement '*...a proof of identity requirement to vote in a state election in a non-discriminatory way that reduces the potential for electoral fraud*'.⁸³

The current law provides that to cast a vote at a polling booth on polling day, an elector must provide an issuing officer with a document in proof of the elector's identity. If the elector does not provide the issuing officer with proof of identity or the issuing officer is not satisfied of the elector's identity, the elector will be able to make a declaration vote. The Act's regulation sets out what forms of identity satisfy the proof of identity requirements, including a current driver licence and Australian passport.

According to the Attorney-General, the Bill:

*...removes discriminatory and unnecessary voter proof of identity requirements, introduced by the former government in 2014, from both the Electoral Act 1992 and the Local Government Electoral Act 2011. 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.*⁸⁴

The Attorney-General continued, explaining the procedure followed when instances of multiple voting are detected and commenting on voter identification matters:

⁸² Commonwealth Electoral Act 1918, s 306.

⁸³ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 2.

⁸⁴ Record of Proceedings (Hansard), 27 March 2015, page 228.

When instances of multiple voting arise, they are matters for review by the Electoral Commission. The recording of multiple votes may be due to a range of factors: polling official administrative error, poor literacy or language skills or confusion with persons forgetting they have already voted. The Electoral Commission can refer instances of multiple voting to the police for investigation in appropriate cases.

As was pointed out by the Electoral Commission during the committee hearings on the former government's bill, at the 2012 state election there was one solitary case. Queensland is the only jurisdiction to have adopted the proof of identity requirements. No other state or territory or the Commonwealth have introduced these backward policies.

The requirement for voter proof of identity documents has the potential to discriminate against voters from marginalised groups in society without ready access to proof of identity documents; inconvenience voters without proof of identity documents at the ballot box on election day; and reduce voter participation in the electoral process.⁸⁵

Under the current law, voters who are unable to satisfy voter identification requirements are able to make a declaration vote. The Attorney-General conveyed the government's view that voters required to make declaration votes because they cannot produce the required proof of identity documents are left uncertain as to whether their votes have been counted:

The Electoral Commission of Queensland website shows that over 15,000 voters without proof of identity documents were inconvenienced on election day being required to make declarations votes that were ultimately treated as part of the ballot. The extent to which voters did not participate because they could not produce voter proof of identity is still unknown.⁸⁶

Rather than prescribing voter identification requirements, the government prefers '...to endorse the use of improved technology such as the electronically certified lists trialled in the greater Brisbane districts for the last state election for reducing opportunities for multiple voting'.⁸⁷

In order to remove the existing voter proof of identity requirements for State and local elections, the Bill proposes to:

- remove the definition of proof of identity document;⁸⁸
- remove voter proof of identity requirements from the voting procedures in sections 107 and 112 of the *Electoral Act*;⁸⁹
- omit Part 2A of the *Electoral Regulation 2013* which prescribed proof of identity documents; and⁹⁰
- amend the *Local Government Electoral Act 2011* and the *Local Government Electoral Regulation 2012* to remove the voter proof of identity requirements for local government elections.⁹¹

⁸⁵ Record of Proceedings (Hansard), 27 March 2015, page 228.

⁸⁶ Record of Proceedings (Hansard), 27 March 2015, page 228.

⁸⁷ Record of Proceedings (Hansard), 27 March 2015, page 228.

⁸⁸ Clause 3 of the Electoral and Other Legislation Amendment Bill 2015; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, page 6.

⁸⁹ Clauses 4 and 5 of the Electoral and Other Legislation Amendment Bill 2015; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, page 6.

⁹⁰ Clause 35 of the Electoral and Other Legislation Amendment Bill 2015; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, page 7.

Issues raised by submitters

In Professor Orr's opinion, voter identification requirements are '*...not a necessary or even desirable practice*'.⁹² Although in his submission he acknowledged sporadic evidence of possible multiple voting in Australia, he did not consider it to be at a level to raise systemic concern.⁹³ In any event, if such concern did exist, he did not see voter identification as the solution, but rather the employment of real-time rolls:

*A comprehensive roll with automatic enrolment and compulsory voting is a better prophylactic against any concerns about voter personation. So if we were concerned about the potential for systematic voting in the name of the dead or in the name of those who move interstate shortly before an election, we ought invest more in roll management, not in measures like voter ID which restrict turnout.*⁹⁴

Professor Orr criticised the use of voter identification requirements in an egalitarian system that employs compulsory voting:

*Voter ID can only undermine compulsory voting. Anyone in receipt of a 'show cause' notice for not voting can simply say 'I misplaced my ID late on voting day when I meant to vote, and thought ID was mandatory'.*⁹⁵

He identified the types of people he believed were marginalised by voter identification requirements:

*It is not just those who are politically marginalised who are more likely to be affected by voter ID, such as young people, Indigenous people, new immigrants or the homeless. Older and frail Queenslanders, and those in rural areas, may be less likely to keep suitable ID, or to be unable to abort a trip to a polling booth to return home to fetch it.*⁹⁶

He asserted that voter identification requirements were problematic for electoral authorities:

*Queensland is a huge state; elections are largely administered by part-time and casual staff. The rules around declaration voting and the list of acceptable ID are complex and not self-enforcing. An electoral commission cannot, with all the will in the world, guarantee that a voter in one polling booth will not be permitted to use a form of ID that might be rejected in another.*⁹⁷

Additionally, Professor Orr expressed concern about declaration votes, including the potential for abuse by future governments and parliaments:

The list of acceptable ID was left to Ministerial discretion, and could be tightened unreasonably for political purposes. The precedent of voter ID could be abused by future parliaments requiring limited types of photo ID, or abolishing declaration voting altogether.

The declaration vote option was better than nothing. But it amounts to voting via a 'black box'. Electors should know that their ballot is admitted to the scrutiny. Yet declaration votes go into an envelope, then into a separate ballot box and screening process. Electors never

⁹¹ Parts 3 and 4 of the Electoral and Other Legislation Amendment Bill 2015; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, page 7.

⁹² Professor Graeme Orr, Submission No. 530, p 2.

⁹³ Professor Graeme Orr, Submission No. 530, p 2.

⁹⁴ Professor Graeme Orr, Submission No. 530, p 2.

⁹⁵ Professor Graeme Orr, Submission No. 530, p 2.

⁹⁶ Professor Graeme Orr, Submission No. 530, p 2.

⁹⁷ Professor Graeme Orr, Submission No. 530, pp 2-3.

*find out if their vote was admitted to scrutiny, and if not why not. This is a real problem for trust and the appearance of electoral democracy.*⁹⁸

In his submission, Professor Orr included empirical evidence relating to the 2015 Queensland state election. He identified a significant unknown by posing the following question: how many electors did not turnout because of a lack of identification or misplaced identification?

He confirmed that turnout in the 2015 election was ‘...down by about 1.1% from the previous election, to under 90%’, but noted it was not easy to measure the effect of voter identification requirements on turnout due to confounding variables.⁹⁹

By examining the ECQ’s disclosed data for the actual number of ‘uncertain identity’ declaration votes actually admitted to scrutiny (around 16,450), Professor Orr concluded:

*...the number of ID-less votes represent close to one electorate’s worth of votes. If the drop in turnout was also due to the ID law, then we can estimate that about two electorate’s worth of electors had issues with ID.*¹⁰⁰

In his submission, Professor Orr included a table listing the 89 Queensland electorates, with absolute and relative numbers of ‘uncertain identity’ ballots lodged, giving socio-economic data on each electorate, derived from the census.¹⁰¹ His findings included the following conclusions:

- a stark relationship between higher levels of indigeneity in an electorate, and more ID-less voters; and
- a clear relationship between far-flung especially northern electorates and higher ID-less voters; conversely seats in the greater Brisbane region recorded low ID-less voters.¹⁰²

As BAQ opposed the LNP government’s insertion of the voter identification provisions into the Act, it supported their removal. When the provisions were introduced, BAQ considered 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’.¹⁰³

Further, BAQ reiterated other aspects of its previous submission, including concerns about the likely impacts of the voter identification requirements: ‘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.’¹⁰⁴

Additionally, BAQ supported the clauses in the Bill which amend the *Electoral Regulation 2013*, the *Local Government Electoral Act 2011*; and the *Local Government Electoral Regulation 2012*.¹⁰⁵

QAILS, HRLC, ATSILS and CLC made a joint submission on the Bill (Joint Submission). It contended that the voter identification requirement is not a necessary or proportionate limitation for the following reasons:

- *There is no evidence of significant voter fraud in Queensland.*

⁹⁸ Professor Graeme Orr, Submission No. 530, p 3.

⁹⁹ Professor Graeme Orr, Submission No. 530, p 3.

¹⁰⁰ Professor Graeme Orr, Submission No. 530, p 3.

¹⁰¹ Professor Graeme Orr, Submission No. 530, pp 3-4.

¹⁰² Professor Graeme Orr, Submission No. 530, p 4.

¹⁰³ Bar Association of Queensland, Submission No. 212, p 1.

¹⁰⁴ Bar Association of Queensland, Submission No. 212, p 2.

¹⁰⁵ Bar Association of Queensland, Submission No. 212, p 2.

- *There is a risk that voter identification laws disproportionately and negatively impact already marginalised and disadvantaged groups in society.*
- *Voter identification requirements will impose a further barrier to participation in elections at a time when that participation is declining.*¹⁰⁶

For these reasons, it submitted that identification requirements are an unnecessary infringement on the right to vote and should be removed from the Act: *'There is simply no need for voter identification requirements in Queensland and too great a risk that they will unnecessarily stop people who are eligible to vote from casting their ballot...'*¹⁰⁷

The Joint Submission asserted that not all persons hold identification documents within the classes included in the regulations:

These people would be discriminated against, due to their inability to cast a vote, or the inability to cast a vote in the same way as people who can produce proof of identity.

*It is also likely that a large number of people who did hold such documents at one time, to enable their enrolment as a voter, would no longer have access to such documents.*¹⁰⁸

It claimed: *'Voter identification does not necessarily prevent a person from voting in multiple locations or from producing a document which would enable the person to vote in the name of another registered voter.'*¹⁰⁹

Further, the Joint Submission argued that the requirement for voters to show proof of identity at a polling booth will not enhance voter convenience, noted there was limited communication of the change to the community prior to the January 2015 election and stated that it will cause public confusion, because the Act applies only to Queensland parliamentary elections and does not apply to Commonwealth government elections.¹¹⁰

Additional concerns were that *'...the laws tend to disproportionately affect groups of people who are already marginalised or disadvantaged'*,¹¹¹ and that whilst the regulations allowed a broad range of identification to be eligible and allowed declaration votes to be cast, the voter identification requirement does limit the right to vote:

*Voter identification requirements impose a barrier to participation and, if anything, discourage participation in elections. For example, it is impossible to quantify the extent to which the ID requirement will deter or prevent people from voting. The Queensland Department of Justice was concerned that introducing such a requirement could confuse voters. Confusion about whether ID is required or which ID is accepted could discourage people from attending a polling station. This would mean that they do not have the opportunity to take advantage of the declaration voting provisions.*¹¹²

Given participation in Australian elections is diminishing, the Joint Submission's view was that: *'Reform in this area should aim to make voting easier not introduce more barriers to participation.'*¹¹³

In addition to the Joint Submission, ATSILS made a sole submission in opposition to the existing voter identification requirements, identifying them as an unnecessary obstacle which presently

¹⁰⁶ Joint Submission, Submission No. 437, p 2.

¹⁰⁷ Joint Submission, Submission No. 437, p 2.

¹⁰⁸ Joint Submission, Submission No. 437, p 3.

¹⁰⁹ Joint Submission, Submission No. 437, p 3.

¹¹⁰ Joint Submission, Submission No. 437, p 3.

¹¹¹ Joint Submission, Submission No. 437, p 4.

¹¹² Joint Submission, Submission No. 437, p 4.

¹¹³ Joint Submission, Submission No. 437, p 4.

discourages some from participating in the electoral process: *'Such is especially the case with many of our clients – whom often lack the necessary identification and are susceptible to feeling "shamed" in regard to the current 'declaration vote' protocols'*.¹¹⁴

QCCL provided further support for the Bill, seeing *'...no evidence of public disquiet about the functioning of the electoral system being affected by fraud'*.¹¹⁵ It identified Australia's system of compulsory voting as a fundamental difference between our voting system and other countries:

*Because of the compulsory enrolment requirements of our system it is submitted that it is better to focus efforts on preventing this type of fraud [i.e. in-person voter impersonation fraud] at that stage of the process where restrictions on the right of a person to vote are not likely to prevent a person from actually voting because they will have time to attend to any concerns.*¹¹⁶

Similar to other submitters supporting the Bill's removal of voter identification requirements, the Anti-Discrimination Commission of Queensland (ADCQ) made a human rights argument:

The right to participate in the political process is a fundamental civil liberty and human right that should be enjoyed by all people without discrimination. It is a right protected under the International Covenant on Civil and Political Rights (ICCPR): article 25 of the ICCPR provides that every citizen shall have the right and opportunity, without unreasonable restrictions:

to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The United Nations Human Rights Committee has explained that any restrictions on the rights in article 25 of the ICCPR 'should be based on objective and reasonable criteria'.

*Very little evidence has been put forward of the lack of integrity of the voting system to justify the introduction of the proof of identity requirement.*¹¹⁷

It expressed concerns about the potential for voter identification requirements to disenfranchise particular groups within the community, in particular Indigenous people, people with mental illness, people in rural and remote areas, some young people.¹¹⁸ Queensland Aged and Disability Advocacy makes the same point with respect to older people, and people with a disability, with ADCQ saying:

The provisions have the potential to make it more difficult for people from these groups to exercise, or prevent them from exercising, their fundamental human right to participate in the political process.

*There is also the potential for voter confusion, inconvenience and delay. Any slight benefit in the proof of identity requirement in improving voter integrity may be outweighed by the potential for voter disenfranchisement, extra administrative costs and inconvenience of the new system.*¹¹⁹

Finally, ADCQ suggested a minor amendment to clause 41(3) of the Bill so that section 75(5) of the *Local Government Electoral Act 2011* ends after subsection (b).¹²⁰

¹¹⁴ Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd, Submission No. 484, p 1.

¹¹⁵ Queensland Council for Civil Liberties, Submission No. 508, p 4.

¹¹⁶ Queensland Council for Civil Liberties, Submission No. 508, p 4.

¹¹⁷ Anti-Discrimination Commission Queensland, Submission No. 375, p 5.

¹¹⁸ Anti-Discrimination Commission Queensland, Submission No. 375, pp 5-6.

¹¹⁹ Anti-Discrimination Commission Queensland, Submission No. 375, p 6.

¹²⁰ Anti-Discrimination Commission Queensland, Submission No. 375, p 6.

Contrary to the views conveyed above, FVA supported the retention of the existing voter identification requirements. It listed two conditions requiring satisfaction in order to maintain integrity in the voting process:

Firstly, the identity of each voter should be correct, i.e. the person voting should be the elector whose name is marked as having voted. Secondly, each voter should vote only once.¹²¹

FVA supplied some examples, including a hypothetical scenario where 'Melville' attends the same polling booth as 'Bill' to cast his own vote, and then attends 19 or more other polling booths and votes under Bill's name:

The current ECQ processes will quickly identify that Bill has voted multiple times when the lists of voters at each polling booth are compared after voting closes. However that will only lead the ECQ and the police to Bill, who has done nothing wrong and is completely unaware of Melville's dishonest voting.

Although the number of extra votes could be identified, they could not be removed from the count because there is no way of knowing which candidate gained the invalid votes. If the number of extra votes were sufficient to change the result of the election, the best that the losing party could hope for is an appeal to the Court of Disputed Returns, which may or may not order another election. The process of having another election is time and resource consuming, and a hassle for everyone involved. The hassle may also affect the voting of the electorate, which may prejudice the party that sought another election.¹²²

In FVA's view, the examples presented by it reinforce the need for proof of identity requirements to be kept to the same standard that other institutions (such as banks) require:

The integrity of the voting system requires that a person vote only once, and as themselves. Having some personal identification, such as a driver's licence, rates notice, or electricity or gas account is a reasonable requirement. Banks routinely require some personal identification when making over-the-counter withdrawals. Election officials should be able to apply a similar system.¹²³

If the existing voter identification requirements are not retained, FVA recommended the retention of the current alternative which allows a person to state their name and address on the envelope of the ballot paper: '*This ensures no one is unfairly disenfranchised*'.¹²⁴

Similarly, the LNP supported retention of the existing requirements, asserting a '*...lack of any justification for removing voter identification requirements*'.¹²⁵

In response to concerns the existing voter identification requirements may serve to disenfranchise people, the LNP stated:

...the existing law provides for a provisional vote in circumstances where a voter cannot produce identification.

[12] There has been no evidence since the election that the concern regarding potential disenfranchisement became a reality. As is notorious, there were several very tight contests amongst the electorates. One would have expected that those tight contests would have

¹²¹ FamilyVoice Australia, Submission No. 526, p 5.

¹²² FamilyVoice Australia, Submission No. 526, p 5.

¹²³ FamilyVoice Australia, Submission No. 526, p 6.

¹²⁴ FamilyVoice Australia, Submission No. 526, p 6.

¹²⁵ Liberal National Party, Submission No. 502, p 2.

*provided fertile ground for identifying any real, as opposed to imaginary, problems produced by the voter identification laws.*¹²⁶

In support of the existing requirements, the LNP claimed ‘...there is the obvious benefit of greater integrity in the electoral system that runs with the greater certainty that only those who are entitled to vote have in fact voted’.¹²⁷

Salt Shakers argued that investigations into state and federal elections have revealed that vote fraud occurs when voters are not required to present identification:

*In fact, in February 2015, it was revealed that NEARLY 8,000 cases of voter fraud (such as voting twice) in the 2013 federal election were referred to the Australian Federal Police. The disturbing thing is that so much fraud was detected – even more disturbing is that NO action will be taken against those people...*¹²⁸

It shared concerns with other submitters regarding the potential for a voter to vote in another’s name and at another polling booth, including in the name of a deceased person.¹²⁹ In consideration of these concerns, Salt Shakers supported an electronic system ‘...where once a person has voted their name is registered on an electronic roll as HAVING VOTED so that, if they do try and vote again, then the system will reveal that’.¹³⁰

It supported the declaration vote mechanism, stating: ‘We believe that provides an adequate alternative, where the bona fides of a voter can still be checked’.¹³¹

At the public hearing, the issue of multiple voting by the same person using that person’s identity (and where evidence was heard that real-time electronic roll mark-off might assist in preventing this multiple voting) was contrasted to the situation where an individual might vote multiple times identifying themselves as a different person on each occasion. The Committee received over 500 submissions from individuals supporting the retention of the existing voter identification requirements. These submissions reflect significant concern by those submitting as to the issue of integrity of the ballot against voter fraud.

For example, Mr Alan Webb wished to register his strong opposition to the proposed removal of the voter identification requirements at State and local government elections:

*Voter identification is one of the few ways that electors can have assurance that there is no fraudulent voting being carried out by those who want to influence the electoral outcomes. It does not seem at all sensible to change the law; and there has been extremely little consultation or reference to the electorate on this proposal. It is almost being done as a fait accompli.*¹³²

Wendy Kefford observed that being a part of the democratic process is a privilege and responsibility:

*...and I would not wish to see it become something that is open to manipulation and fraud. ...As a member of the community, I fully accept and appreciate the need to ensure the integrity of the electoral system by showing proof of identity.*¹³³

¹²⁶ Liberal National Party, Submission No. 502, p 3.

¹²⁷ Liberal National Party, Submission No. 502, p 4.

¹²⁸ Salt Shakers, Submission No. 505, p 1.

¹²⁹ Salt Shakers, Submission No. 505, pp 1-2.

¹³⁰ Salt Shakers, Submission No. 505, p 2.

¹³¹ Salt Shakers, Submission No. 505, p 2.

¹³² Alan Webb, Submission 208, p 1.

¹³³ Wendy Kefford, Submission 157, p 1.

In Ian Putt's opinion proof of identity strengthens the system by discouraging voter fraud by multiple voting:

*Surely if we have to produce proof of identity when starting a bank account, boarding an aircraft, setting up an electricity account etc, there is an even stronger reason for proof of identity when casting a vote. If ever there is an opportunity to be fraudulent it is when voting if there is no proof of identity.*¹³⁴

Having the perspective of an election official, Tim Young observed that:

*...having clear evidence of a person's name provided a more efficient and streamlined approach with great clarity as to the name of the voter being marked as voted. The last election was the first where identification was required and the overwhelming majority brought the Electoral Commission letter or some other I.d. For the small number that didn't, they have now learnt to come prepared and to remove this requirement would appear to be an about-face and cast aspersions on the government's integrity and efficiency.*¹³⁵

At the Committee's public hearing, Mr James Farrell, Director of QAILS, commented on concerns of voter fraud:

*Given that at the last Queensland state election in 2012 only one matter was referred by the Electoral Commission to police for further investigation for multiple voting, our view is that implementing the type of restrictive voter identification regime was disproportionate to any potential risk of multiple voting, based on that evidence in Queensland. ...it is not really clear to us how providing identification directly impacts on multiple voting. I made this observation when we provided evidence when the original amendments came through to your predecessor committee. I could just as easily show my telephone bill at two different polling places and have myself ticked off. It would not necessarily be directed to the ill or the threat that is purportedly being addressed by voter identification requirements.*¹³⁶

Mr Michael Cope, President of QCCL, also expressed concerns about the requirements, in the context of only limited evidence of electoral fraud:

*The council opposed the original changes and we support the return. In a situation where you are dealing with a fundamental right, the proponents of some restriction on that right need to justify their case and they need to justify it in strong terms. As I noted in my submission and before the committee when this legislation that is being repealed was introduced, the government's own discussion paper at the time said that there was no evidence of significant identification fraud. We still see no evidence, and I refer in the submission to the report from the Parliamentary Library on references to the DPP. They seem to be falling if nothing else.*¹³⁷

Mr Farrell spoke of concerns relating to the declaration voting process as it functioned in practice on election day:

The protection of the declaration vote I think as it appears in the legislation does provide some protection against that kind of thing. I think part of the difficulty there is reports that were coming through on election day that voters were being turned away from polling places by polling officials without being provided with the option to complete those declaration

¹³⁴ Ian Putt, Submission No. 6, p 1.

¹³⁵ Tim Young, Submission No. 390, p 1.

¹³⁶ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 1.

¹³⁷ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 10.

*votes. So the way in which it was implemented makes it difficult. Given that the protections in the legislation were not being used on the ground, so to speak, on election day makes that difficult.*¹³⁸

Mr Scott McDougall, Director of CLC, supported the inclusion of marginalised people in the democratic process:

*For marginalised people, people in Aboriginal communities, if anything, we should be doing everything we possibly can to try to bring them into the democratic process rather than putting up any obstacles at all that are going to prevent them. It is the one opportunity that they have to participate in a democratic process.*¹³⁹

Professor Graeme Orr commented on disenfranchisement in the context of the recent Queensland state election:

*In terms of disenfranchisement, you would have to look at that known unknown of what per cent of a drop in turnout might have been because of confusion about voter ID. In relation to my data, all I can say is that, perhaps not surprisingly, the seats in which the disparate impact of voter ID was clearest—in other words, the most percentage of people who had to lodge declaration votes and who therefore never found out if their vote was even looked at, admitted to scrutiny—are seats with high levels of Indigenous populations, as shown on the first page of the table, but if you look down the table it is also very clearly regional seats.*¹⁴⁰

Professor Orr conveyed further views on the difficulties with voter identification requirements:

*So I do not think it shows a lot of trust in people or in the system to say to them, 'Where is your ID? If you do not have your ID, Mr Keim, you have to go over there, fill in a lot of forms and you will never find out—it is a black box—whether your vote was admitted to scrutiny,' unless we have very solid and clear evidence that this will do something other than convince people who may think that there is a lot of the fraud that can be dealt with by this measure to feel better about themselves. Apart from personation of voters who do not turn out, it is not clear to me or Antony Green or Professor Costar or others who look at this issue that voter ID has one practical benefit.*¹⁴¹

Mr Stephen Keim SC advised the Committee of BAQ's opposition to the voter identification requirements;

.... there is just no evidence that people go up and vote fraudulently. Occasionally there is a person who has forgotten that they have voted, and that is understandable—it depends on when the hotels open, I suppose—but there is just no evidence of voter fraud. So it is unnecessary.

He spoke of voter discouragement and costs associated with educating people on voter identification requirements:

You make the point that we can have much better education campaigns not to discourage people, but at the end of the day you start to ask, 'Well, why are we spending all that money

¹³⁸ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 2.

¹³⁹ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 2.

¹⁴⁰ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 17.

¹⁴¹ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 17.

on education for something that the evidence suggests is not needed in the first place and whose only real effect is going to be negative?’—that is, to discourage.¹⁴²

During the public hearing, Mr Walker MP and Professor Orr engaged in an informative exchange. This is excerpted below:

Mr WALKER: *In your evidence just now you referred to the system as a ‘costly bureaucratic hurdle’.*

Prof. Orr: *Yes.*

Mr WALKER: *Do you think that if, at worst, I turn up to the polling booth and I have to sign a bit of paper to say, ‘I’m Ian Walker and I’m here to vote,’ that is a ‘costly bureaucratic hurdle’ which impedes a person’s ability to vote in the way that you have said it will in parts of your paper?*

Prof. Orr: *Of course there are costs there. I think we know the ECQ is not as well resourced as, say, the AEC. There was evidence certainly from the GetUp! hotline that there was different information going out, and that is not surprising given the Electoral Commission relies on thousands of part-time and casual staffers to try to interpret these laws. You have significant costs in education through the EC, education of the public, as well as the costs of processing and handling these votes....*

Mr WALKER: *But you stand by those words ‘costly bureaucratic hurdle’?*

Prof. Orr: *Yes. It is a hurdle and it has costs and it is clearly bureaucratic. It changes everything from the ritual of the polling day experience to my 80-year-old dad having to turn up and produce ID—and he cannot even find his wallet some days. It is not surprising that it is not something that was imposed on postal voting. It seems to me there is very clear evidence around the world of rorting of postal voting by the Labour Party in Birmingham, England, and trade unions in Australia in the past. Why aren’t you requiring postal voters to produce photocopies of ID with their postal vote, because it is a much easier system to rort than an in-person system?¹⁴³*

Rather than voter identification requirements, Mr Farrell favoured real-time electoral roll maintenance:

So in terms of real-time electoral roll maintenance, which is something I think Professor Orr’s submission speaks to in terms of strengthening requirements for enrolment on the roll, to my mind they would be more proportionate and appropriate and maintain greater integrity in the roll than necessarily would happen with voter ID requirements on polling day.¹⁴⁴

At the Committee’s public briefing, Mr Dermot Tiernan, the Acting Electoral Commissioner, made some practical observation about recent election experiences:

On proof of identity, the commission was charged by the Queensland government to educate the public as to the electoral proof-of-identity requirements. We believe that statistics from last year’s Stafford by-election and the state general election earlier this year show we were successful in doing so. At both elections, overall less than one per cent of the voting public arrived at polling booths without some form of acceptable proof-of-identity document. The

¹⁴² *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 15.

¹⁴³ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, pp 17-18.

¹⁴⁴ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 16 April 2015, p 3.

final statistical return for the state general election is yet to be finalised. I apologise, but I cannot provide final numbers. However, after each election the commission investigates all instances of alleged multiple voting and if no explanation exists the matters are referred to the Queensland Police Service. Initial inquiries are still being conducted. I am advised, however, that it appears there has been a reduction in reported incidents of multiple voting at this year's election when compared to 2012. The numbers for 2015 are about the same as those for the 2009 poll.

At the 2015 state election, the commission piloted the use of electronic roll mark-off at 29 electorates, as well as in the eight all-district centres across the state. This technology allowed voters to be marked off the electoral roll electronically. The information was then shared in close to real time across all polling booths linked to the system. This system improves the accuracy of roll mark-off compared to paper based rolls, and it is expected that the system will serve as an important fraud prevention safeguard if we continue with it in the future. If fully deployed, it could effectively eliminate the multivoter risk.

Commission staff making inquiries into apparent instances of multiple voting have reported to me that some instances at this year's election can be directly attributed to polling staff error. It appears that in a number of cases electors without ID were erroneously marked off the roll at the electronic mark-off and then directed to complete a declaration vote. That declaration vote was then provided to a returning officer. If it passed scrutiny, they were marked off the roll again. That is a matter for us to address in future training.¹⁴⁵

Department's response to submitters

Although noting the views of submitters, the Department recommended no change to the Bill, stating that the removal of voter identification requirements '*...reflects a Government election commitment*'.¹⁴⁶

Senate Joint Standing Committee on Electoral Matters

The JSCEM published its report on the 2013 federal election in April 2015.¹⁴⁷ The Committee makes a recommendation that the current Queensland approach to requiring identification to vote should be adopted at the federal level. The JSCEM notes that three NSW voters were recorded as having their names marked off 15, 12 and 9 times and expresses the following view:

At the 2013 federal election, three separate voters in NSW were recorded by the AEC as having their names marked off 15, 12 and 9 times. Any system that allows this, whether discovered or not, is flawed. Vulnerability of the system to such manipulation is the greatest threat to a central tenet of Australia's electoral system—one person, one vote.¹⁴⁸

The JSCEM report also considers a voter identification requirement '*...will reduce the incidence of polling official error when marking off certified lists*'.¹⁴⁹

Four members of the nine-member JSCEM lodged a dissenting report to the Committee's adopted report, expressly rejecting that recommendation.¹⁵⁰ The four Labor and Greens Senators expressed the concerns raised by AITSILS, Professor Orr, the Joint Submission, and others in respect of voter identification and its negative impact on particular population groups who are already

¹⁴⁵ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 4.

¹⁴⁶ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 1.

¹⁴⁷ JSCEM report on the 2013 federal election.

¹⁴⁸ *Ibid*, p 112.

¹⁴⁹ *Ibid*, p 120.

¹⁵⁰ *Ibid*, p. 161.

disadvantaged. They also shared the concern expressed by submitters to this Committee's inquiry in respect of the requirement being a disproportionate response to a problem that has not been shown to exist.

2.3 Changing the pension entitlements of the Crime and Corruption Commission chairman

Introduction

In her Introductory Speech, the Attorney-General explained the background to the amendments relating to the pension provisions for the CCC Chairman:

In addition to increasing transparency and fairness to the electoral system, the bill also amends the Crime and Corruption Act 2001, the CC Act, and Judges (Pensions and Long Leave) Act 1957, the Judges Pensions Act. This implements a key aspect of the government's election commitment to restore accountability and integrity in Queensland by legislating to give the chair of the Crime and Corruption Commission, the CCC chair, access to a judicial pension with appropriate variations.

The CCC plays a critically important role in maintaining accountability and integrity in Queensland's public sector through its function of ensuring that complaints, information or matters involving allegations of corrupt conduct within the public sector are properly investigated and dealt with. Under the CC Act, the CCC chair has significant responsibility for ensuring the CCC properly performs this function. For this reason, it is vital that the CCC and its chair are, and are seen to be, independent of the executive government so the public can have confidence that the CCC's corruption investigations are thorough and impartial.

Providing the CCC chair with access to a judicial pension will help to attract people with the highest calibre of experience and qualifications to the chair's role. The government has already moved quickly and advertised to permanently fill the office of the CCC chair. The amendments to the CC Act are designed to ensure that the promised pension entitlements will apply to the next permanent appointee to the chair's office as the bill expressly provides that the pension entitlement provisions will apply to any person appointed after the bill's introduction.¹⁵¹

Outline of relevant provisions

Chapter 3 of the Bill sets out the provisions regarding the changes to the pension allowance for the CCC chairman (see Clauses 45 to 58 of the Bill).

The Bill amends:

- the CC Act;
- the Judges Pensions Act; and
- the Superannuation (State Public Sector) Notice 2010.

Key aspects of the new provisions include the following:

- the CCC chairman's pension entitlements will become similar, though not identical, to pensions paid to Supreme and District Court judges under the Judges Pensions Act;
- the amendments will apply to a person who is permanently appointed as CCC Chairman or appointed as acting chairman after 27 March 2015;

¹⁵¹ Record of Proceedings (Hansard), 27 March 2015, pp 228-9.

- the CCC Chairman must serve in that office for at least five years to become entitled to receive a pension calculated at 6% of the chairman's prescribed salary (indexed annually) for each completed year of service up to a maximum of 60% of the prescribed salary;
- payment of a pension does not commence until the former CCC Chairman reaches 65 years old; and
- the CCC Chairman loses all pension entitlements if he or she is removed from office under the CC Act.¹⁵²

Additional details of these provisions and how they will operate are set out in the Explanatory Notes.¹⁵³ The Department also provided further details about how chapter 3 of the Bill will operate in a letter to the Committee dated 7 April 2015.¹⁵⁴

Issues raised in submissions

Only one submission discussed the proposed changes to the pension entitlements of the CCC chairman. This submission was from BAQ and was in favour of the changes. Relevantly, BAQ made the following comments:

The Association supports the proposed changes.

The independence of the CCC is strengthened if the Chairman's future financial position is not dependent on post service employment either with the government or the private sector.

This, in turn, strengthens accountability and transparency of the government as a whole.¹⁵⁵

BAQ also recommended in its submission that the term "chairman" of the CCC be changed back to the non-gender specific "chair" at an opportune time.¹⁵⁶

Department's response

In its written response to the submissions, the Department noted the submission from BAQ and confirmed that these measures concerning the pension arrangements for CCC chairmen are a government election commitment.¹⁵⁷

The proposed changes to the pension entitlements for the CCC chairman were also discussed during the Public Briefing by the Department to the Committee on the Bill. In this regard, during her opening remarks, Ms Leanne Robertson, the Acting Assistant Director-General, Department of Justice and Attorney-General, summarised the statements made by the Attorney-General in her Introductory Speech. Ms Robertson then went on to provide the following additional information:

No pension payments will be made to a former CCC chair until the former chair reaches 65. This minimum age threshold applies even where a former CCC chair has had to leave office due to a permanent disability or incapacity. It also applies to the pension entitlements of the surviving spouse or eligible child of the deceased former chair, who cannot receive the pension payments until the deceased chair would have turned 65. This age threshold around 65 has been applied as a matter of government policy. A person will qualify for a pension if he or she holds office as CCC chair for five years regardless of the person's age when he or she ceases to be chair. Periods of service as CCC chair or as a Supreme or District Court judge can be aggregated to determine pension entitlements. Finally, the bill provides that a person who

¹⁵² Chapter 3 of the Bill; *Explanatory Notes*, Electoral and Other Legislation Amendment Bill 2015, pp 2 and 3.

¹⁵³ *Explanatory Notes*, Electoral and Other Legislation Amendment Bill 2015, pp 2-3 and 12-13.

¹⁵⁴ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, pp 7-13.

¹⁵⁵ Bar Association of Queensland, Submission No. 212, p 3.

¹⁵⁶ Bar Association of Queensland, Submission No. 212, p 3, footnote 2.

¹⁵⁷ Letter from the Department of Justice and Attorney-General, Attachment, 15 April 2015, p 9.

*separately fulfils the pension eligibility requirements for a judge and a CCC Chair is entitled to only a single pension.*¹⁵⁸

Following this explanation from the Department, the Committee put the following question to Ms Robertson, whose response is also set out below:

Mr MADDEN: *In relation to the CCC amendments in the Bill, which you just spoke about, can the Department please explain some of the peculiarities with the CCC Chair position and how that might be reflected in the legislation? For example, the CCC appointment is for a set period of years rather than that of a judge, which can be in place until retirement age of 70.*

Ms Robertson: *That is right. Thank you for the question. That is one of the reasons the government's position in the bill is that—because judges actually retire. They can hold their office until the requirement age under the Judges (Pensions and Long Leave) Act whereas a CCC Chair can at the most hold that position for a maximum of 10 years. That is the difference. ...*¹⁵⁹

Public hearing

During the Public Hearing, the Bill's proposed amendments to the pension arrangements for a CCC chairman were not discussed.

Approach in other jurisdictions

*The Department has advised the Committee that there are three other Australian jurisdictions which have legislated to apply their relevant judicial pension scheme provisions to the head of the principal integrity agency in their jurisdiction. These jurisdictions are Victoria, South Australia and Western Australia.*¹⁶⁰ *The Department also provided the Committee with a detailed comparison of the legislation in these three other states together with the situation in Queensland under the Judges Pensions Act and the Bill.*¹⁶¹

Committee comment

Committee members unanimously support the Bill's provision for the CCC chair to access a judicial pension.

Additionally, the Committee notes that evidence regarding the use of terminology to identify the CCC chairman/chair was submitted in the course of this inquiry. However that matter is beyond the scope of the Bill.

¹⁵⁸ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, pp 2-3.

¹⁵⁹ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 16 April 2015, p 3.

¹⁶⁰ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 8.

¹⁶¹ Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015, p 8. See also Attachment 2 for a summary of the main features of the judges' pension scheme in Queensland.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Retrospectivity

Clauses 26 and 33 of the Bill contemplate that certain provisions in relation to the proposed disclosure requirements will apply retrospectively.

Clause 26 inserts a new part 11, division 12, which achieves retrospective application of the \$1,000 post-commencement gift threshold amount. This division is divided into three subdivisions:

- Subdivision 1 includes two new sections 297 and 298 which require candidates and third parties to disclose gifts equal to, or more than, the post-commencement gift threshold amount of \$1,000 received during the relevant disclosure periods for the Stafford by-election and the State government election of 31 January 2015.
- Subdivision 2 includes new sections 299 through to 301 which require donor entities, political parties and associated entities to disclose gifts equal to, or more than, the post-commencement gift threshold amount of \$1,000 received in the 2013-2014 financial year. The provisions make it clear that these obligations apply whether or not a return has already been made for the 2013-2014 year.
- Subdivision 3 includes new section 303 which provides that no offence is committed if persons complied with the relevant requirements applicable at the time, despite being unable to comply with the new more onerous record-keeping and disclosure requirements under the amendments.¹⁶²

Clause 33 of the Bill inserts new part 13, division 8 which introduces four new sections:

- New section 423 defines *unamended Act* for the division as the Act as in force before the commencement of the *Electoral and Other Legislation Amendment Act 2015*.
- New section 424 provides that the unamended Act continues to apply in relation to an election held before the commencement and includes a note referencing part 11, division 12, subdivision 1.

¹⁶² Clause 26 of the Bill; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015.

- New section 425 relates to gifts received before the commencement and includes the following provisions:
 - that section 271 of the unamended Act in relation to anonymous gifts applies in relation to gifts received before the commencement (subsection (1));
 - that gifts equal to or more than the post-commencement gift threshold amount of \$1,000 received after 20 November 2013 but before the commencement be disclosed in returns by registered political parties under section 290(4) (subsections (2) and (3)); and
 - that a person does not commit an offence against section 307(2)(b) if, before the commencement, the person failed to keep a record relating to the gift that could be lawfully received under the unamended Act (subsection (5)).
- New section 426 relates to loans received before the commencement and includes the following provisions:
 - that section 272 of the unamended Act in relation to loans that may be received applies to loans received before the commencement (subsection (1));
 - that loans equal to or more than the post-commencement gift threshold amount received by a candidate during the disclosure period for the Stafford byelection and the State government election of 31 January 2015 be disclosed in returns under section 262 (subsections (2) and (3));
 - that loans equal to or more than the post-commencement gift threshold amount received by a registered political party during a relevant period (either starting on 21 November 2013 and ending on 30 June 2014 or starting on 1 July 2014 and ending on the commencement) be disclosed in returns under section 290 (subsection (5)); and
 - that a person does not commit an offence against section 307(2)(b) if, before the commencement, the person failed to keep a record relating to the loan that could be lawfully received under the unamended Act (subsection (7)).¹⁶³

Retrospective nature of provisions

To the extent that the new provisions proposed under Clauses 26 and 33 of the Bill impose obligations in relation to certain gifts, loans and other activities during the 2013-2014 financial year and elections that occurred prior to the commencement of the amendments, it is clear that the Bill proposes to operate retrospectively.

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The Explanatory Notes state that:

There are safeguards to mitigate the effective backdating of these requirements. The obligations apply prospectively after commencement. The Bill provides that a person does not

¹⁶³ Clause 33 of the Bill; Letter from the Department of Justice and Attorney-General, Attachment, 7 April 2015.

*commit an offence if, before the commencement, they failed to keep records relating to gifts or loans that did not have to be disclosed under the amended Act. Section 312 of the Electoral Act may apply if the person is unable to obtain particulars required for the preparation of the return and therefore considered it impossible to complete the return.*¹⁶⁴

Clarity and precision of the Bill

It is a fundamental legislative principle in Queensland that statute law is unambiguous and drafted in a sufficiently clear and precise way.¹⁶⁵

Clause 15 of the Bill replaces section 264 (Gifts to candidates etc.) and provides for returns by third parties that make gifts to candidates during the disclosure period for an election that are equal to or more than the gift threshold amount. The return must be provided within the prescribed period not more than 15 weeks after polling day. This will facilitate the introduction of shortened disclosure periods.

Specifically, subsection (9) of new s264 states:

(9) As soon as practicable after receiving a gift requiring a return to be given under this section, a candidate must inform the third party who gave the gift that the third party is required to give a return under this section.

Maximum penalty for subsection (9) – 20 penalty units.

Potential FLP issues

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.¹⁶⁶ Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.¹⁶⁷

Special care in drafting provisions is particularly important when imposing criminal or civil liability.¹⁶⁸

It is unclear whether the penalty attached to a breach of s 264 relates to the 'third party' or the 'candidate'. The penalty is stated to relate specifically to subsection (9) which is one sentence imposing two obligations, each obligation to a different party.

Further, subsection (9) states that a candidate 'must' inform the third party. If the penalty does not apply to the candidate, what is the consequence if the candidate does not 'inform the third party'? Is the absence of being 'informed' a defence a third party may raise if they do not provide a return under subsection (9)?

¹⁶⁴ *Explanatory Notes*, Electoral and Other Legislation Amendment Bill 2015, p 5.

¹⁶⁵ *Legislative Standards Act 1992* Section 4(3)(k)

¹⁶⁶ *Legislative Standards Act 1992*, section 4(3)(k).

¹⁶⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pages 87-88.

¹⁶⁸ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs, Clear Meaning*, pages 9-14.

Recommendations

- The committee recommends that the Attorney-General clarifies to which party a penalty applies in respect of new s 264(9) (clause 15 of the Bill).
- The committee recommends 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 s 264; and whether the failure to inform the third party might be a defence for their failure to provide such a return.
- The committee recommends that should the Bill reach the second reading stage in the Legislative Assembly, the Attorney-General amends the Bill to ensure clarity in respect of the application of the penalty proposed in new s 264(9) (clause 15 of the Bill).

3.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Scrutiny by the Legislative Assembly of proposed delegated legislative power

It is a fundamental legislative principle in Queensland that a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.¹⁶⁹

Clause 29 inserts new section 315A (Electronic lodgement of returns) which provides that the Queensland Electoral Commission (the commission) may make procedures about how a return under division 7 or 11 may be lodged electronically. The procedures: (a) do not take effect until approved by a regulation; (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and (c) must be published on the commission's website.

Potential FLP issues*Appropriate delegation of legislation*

The Office of the Queensland Parliamentary Counsel (OQPC) informs the drafting of legislation in Queensland in accordance with the *Legislative Standards Act 1992*. The OQPC Notebook states "For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation".¹⁷⁰ The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

"The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny".¹⁷¹ Queensland Parliament's former Scrutiny of Legislation Committee (SLC), whose responsibilities now rest with the Parliament's eight portfolio committees, commented adversely on provisions allowing matters which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not

¹⁶⁹ Legislative Standards Act 1992, section 4(4)(b).

¹⁷⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 154.

¹⁷¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 155.

subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter;
- Whether the provisions were mandatory rules or merely to be had regard to.¹⁷²

The SLC also considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less concern raised.¹⁷³

Committee comment

In this case, the electronic voting procedures will be incorporated into subordinate legislation, there is an express provision to require the tabling of the procedures document at the same time as the subordinate legislation, and the procedures will be published on the Electoral Commission's website, the Committee considers these are adequate safeguards in place such that clause 29 may be considered proportionate and as having sufficient regard to fundamental legislative principles.

Additionally, clauses 13-16, 18 and 22 of the Bill provide for a regulation to prescribe reporting time frames in which certain disclosures must be made by candidates, third parties, registered political parties, associated entities and other entities. The Committee notes that for some of these timeframes the Bill provides for a maximum period of 15 or 8 weeks after a particular event, but that in all cases the specific date must be prescribed by regulation.

¹⁷² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 155.

¹⁷³ Alert Digest 2004/3, pp 5-6, paras 30-40; Alert Digest 2000/9, pp 24-25, paras 47-56.

Appendix A – List of Submissions

- 001 - Mr Nathaniel Chandler
- 002 - Mr Peter Horn
- 003 - Mr Ron Chown
- 004 - Mr Martin Cran
- 005 - Rev. Guido Kettmiss
- 006 - Mr Ian Putt
- 007 - Ms Annette McDonald
- 008 - Mr & Mrs Robert and Lois Ward
- 009 - Mr Ken Choi
- 010 - Ms Pamela Thrupp
- 011 - Mr Mario Romaior
- 012 - Mr Stuart Hall
- 013 - Ms Diana Tester
- 014 - Ms Leanne Curtis
- 015 - Mr John Arnold
- 016 - Mr Robert Broekman
- 017 - Mr David Ridout
- 018 - Mr Bill Bramblet
- 019 - Mr Peter Evans
- 020 - Mr John Orr
- 021 - Mr Robert Whiting
- 022 - Mr & Mrs Charles and Grace Lund
- 023 - Mrs Karen Mitchell
- 024 - Mr Peter Maher
- 025 - Mr & Mrs Stuart and Lyn Parry
- 026 - Ms Janelle Patch
- 027 - Mr Bruce Findlayson
- 028 - Terry Harding
- 029 - Ms Patricia Grieshaber
- 030 - Mrs Alison Finlayson
- 031 - Ms Priscilla Isberg
- 032 - Ms Pamela Condie
- 033 - Ms Patrica Noller
- 034 - Ms Linda Burrridge
- 035 - Ms Kay Johnston
- 036 - Ms Sandra Lewis
- 037 - Ms Patricia Heazlewood
- 038 - Mr David Lupton
- 039 - Mr & Mrs Dean and Tempe Harvey
- 040 - Mr Drew Carter
- 041 - Mr & Mrs Lambert and Elleanor Kil
- 042 - Ms Barbara Bishop
- 043 - Ms Sandra Lyon
- 044 - Mrs Rosalind Bruderlin
- 045 - Mr & Mrs John and Thea Kenna
- 046 - Mr Roger L'Huillier
- 047 - Mr Paul Jayasekera
- 048 - Ms Joan Stomfai
- 049 - Ms Jan Simpson

050 - Mr & Mrs Rod and Beth Oates
051 - Dr Peter Townson
052 - Mr Robert Osmak
054 - Mr Howard Shepherd
055 - Mr & Mrs Alan and Susan Johnson
056 - Ms Jodie Klink
057 - Mr Alan Lilley
058 - Mr & Mrs John & Anneliese Andrews
059 - Jutta Johnson
060 - Mrs Rowan Shann
061 - Ms Annette Delaney
062 - Mr Gordon Jackson
064 - Mr & Mrs Glen and Joy Vonhoff
065 - Ms Beverley Pearce
066 - Ms Deborah White
067 - Mr Arthur Hartwig
068 - Ms Teresa Liu
069 - Mr Ian Moller
071 - Mr & Mrs Don and Shirley Fry
072 - Ms Marina Mathison
073 - Ms Jennifer Conomos
074 - Mr Ian Spence
075 - Mr & Mrs David and Alex Todd
076 - Mr Adrian Carroll
077 - Mr & Mrs Spencer and Desley Gear
078 - Mr Paul Ross
079 - Mr David Klingner
080 - Ms K Boldiston
081 - Ms Gaye Allison
082 - Mr Peter Monson
083 - Mr Adrian Gunton
084 - Ms Belinda Klingner
086 - Ms Kerri-Anne Dooley
088 - Ms Sue Clarke
091 - Mr Ivan Colledge
093 - Mr David Knox
094 - Mr & Mrs Pryce and Morwenna Trevor
095 - Mr Brian Mines
096 - Mr Bruce Wonders
097 - Ms Judith Strachan
098 - Mr James Weeks
099 - Ms Michelle Brooks
100 - Ms Joy Woodfield
103 - Ms Ann Bishop
104 - Mr Peter Cross
106 - Mr Jeffrey Rose
107 - Mr L Nightingale
108 - Mr Joseph Tang
109 - Mr Brad Schealler
110 - Mr Greg Wallace
111 - Ms Anna Cuthel

112 - Mr Gerald Muirhead and Mrs Denise Muirhead
113 - Mr Les Gomes
114 - Mr Robert Gibbins
117 - Ms Roberta Longmire
120 - Ms Raelee Cannon
121 - Ms Wendy Roffey
122 - Mr James Currie
125 - Ms Helen Cameron
126 - Mr Greg Crews
127 - Mr Bill Cochrane
128 - Rev. Dr Jeffrey Camm
129 - Mrs Dorothy M.E. Smyth
130 - Ms Alison Bunney
131 - Mr Herb Bonney
134 - Mr & Mrs Ashley and Katrina Bergh
136 - Mr & Mrs Barry and Janet Ellerington
137 - Mr Mark Grace
139 - Name suppressed
140 - Ms Judy Cochrane
141 - Mr Damien Murphy
142 - Mr Axel Beard
143 - Ms Jill Etheridge
145 - Mr David Cuff
146 - Ms Letitia Dann
147 - Ms Amanda Galligan
148 - Ms Rachael Cameron
149 - Ms Helen Suzuki
150 - Mrs Judith Coral Baker
151 - Mr & Mrs Stan and Carole Adamson
152 - Mr Roger Beall
153 - Mrs Marie Hall
154 - Mrs Alva Connelly
155 - H.C.L. van Houweninge
156 - Mr Phil Mackedie
157 - Ms Wendy Kefford
158 - Mr Victor Bargery
159 - Mr Paul Williams
160 - Ms Sharelene Walsh
161 - Ms Anne Ham
162 - Mr Daniel Hart
163 - Mr Jeffrey Marriott
164 - Mr Greg Litfin
165 - Mr David Duncan
166 - Ms Heather Williams
168 - Mr David Kalman
169 - Ms Sherelle Carman
170 - Mrs Frances McCulloch
171 - Name suppressed
172 - Mr Peter Coulson
173 - Ms Diane Haupt
174 - Chris Andersen

- 175 - Mr & Mrs Ray and Jill Muller
- 177 - Ms Dorothy Lane
- 178 - Ms Emma Taylor
- 179 - Mr Peter Lane
- 180 - Ms Elizabeth Parish
- 181 - Ms Kerry Burns
- 182 - Ms Evelyn Ham
- 183 - Mr Mark Twyford
- 184 - Mr William Hardman
- 185 - Mr Rod Force
- 186 - D.T. Woodland OAM
- 187 - Rev. Dave Powell
- 188 - Mrs & Mr Robina and John Noble
- 190 - Mrs June Laws
- 191 - Ms Leanne Rissman
- 192 - R. Melrose
- 193 - Ms Essie Grubb
- 194 - Ms Grace Dickins
- 195 - Mr Chris Worrall
- 197 - Ms Heather Kraus
- 198 - Mr Simon Joanknecht
- 199 - Mr Geoff Darr
- 200 - Mr Paul Lennet
- 201 - Mr Mervyn Launchbury
- 202 - Ms Barbara Launchbury
- 203 - Mr Winston Broad
- 204 - Dr Ronald Slyderink
- 205 - Mr Anthony W Bray
- 206 - Ms Judith Griese
- 207 - Miss Alexandra Clarke
- 208 - Mr Alan Adrian Webb
- 209 - Mr Andrew Hassall
- 210 - Mr & Mrs Stuart and Deanne Charlton
- 211 - Ms Dawn Harmer
- 212 - Bar Association of Queensland
- 213 - Ms Mary Crowley
- 214 - Ms Linda Magin
- 215 - Ms Jenny Wake
- 216 - B. Parry
- 217 - Mr Ian McGrath
- 218 - Mr Russell Grigg
- 219 - Mr Stuart Millar
- 220 - Mr & Mrs Warwick and Jenny Winfield
- 221 - T.J. Hilton
- 222 - Ms Margaret Kennedy
- 223 - Ms Ruth Dukes
- 224 - Ms Helen Chan
- 225 - Mr Grant Dixon
- 226 - Ms Rosa Pye
- 227 - Mr Brian Allbutt
- 228 - Ms Andrea O'Rourke

229 - Pat O'Gorman
230 - Mr Neal Hillyard
231 - Mr Gary Fletcher
232 - Mr J-L. Shanks
233 - Mr Hubertus Opalka
234 - Mrs Judy Cole
235 - Mr Ken Fraser
236 - Ms Christina Keith
237 - Mrs M. Cottrell
238 - Ms Barbara Bluett
239 - Mr Rod Hooper
240 - Ms Brigitte Reich
241 - Mr Peter McKenna
242 - Mr Paul Miller
243 - Mr Erwin Maklary
244 - Mr Merv Ruge
245 - Mr John Conroy
246 - Ms Maree Hall
247 - Mr & Mrs Ray and Thyra Mallett
248 - Ms Stephanie McClarty
249 - Mr Peter Smith
250 - Ms Sarah Morrison
251 - Mrs Susan Pollock
252 - Mr & Mrs Shane and Wendy Reddell
253 - Mrs & Mr Brenda and Ivan Rudolph
254 - Ms Yvonne Houston
255 - Mr & Mrs Ian and Heather Hartley
256 - Ms Edna Finlay
257 - Mr Kevin Harper
258 - Mr John North
259 - Ms Dee Wickenden
260 - Ms Val Jason
261 - Mr Geoff Laphorne
262 - Ms Valerie Pym
263 - Ms Carol Shacklady
264 - A. and T.D. Ewart
265 - Mr Leonard Wilmington
266 - Mr Wayne McMaster
267 - Mr Gareth Morgan
268 - Ms Dorothy Scurr
269 - Ms Raelene Purtill
270 - Mr Pieter Timmer
271 - Mr & Mrs Herschel and Jan Baker
272 - Ms Di Jeffs
273 - Chris Tree
274 - Ms Jennifer Spring
276 - Chris McCormack
277 - Mr Daniel Purcell
280 - Mr Peter Chinnery
282 - Mr & Mrs Albert and Dianne Holyland
283 - Ms Carol O'Connell

- 284 - Mr Tim Bunch
- 285 - Ms Joye Alit
- 286 - Mr Rodney Gillespie
- 288 - Ms Trisha Clouten
- 289 - Mrs Shirley Jones
- 290 - Mr & Mrs Peter and Hazel Blake
- 291 - Mr Peter Scott
- 292 - Ms Anna Hickson
- 293 - Mr & Mrs Harold and Lorraine Westbrook
- 295 - Mr Tom Sketcher-Baker
- 296 - Mr Ray Proud
- 297 - Ms Dell Sketcher-Baker
- 298 - Mr & Mrs Graham and Margaret Stevenson
- 299 - Mr John Dowling
- 300 - W.S. and M. Webb
- 301 - Mr Roy Funu
- 302 - Mr Simon Heazlewood
- 303 - Mr Cyril Torrington
- 304 - Mr Victor Jackson
- 305 - Mr Shane Stegemann
- 306 - Mr Barry Leembruggen
- 307 - Pat Coleman
- 308 - Ms Alyssa Crawford
- 309 - Ms Gail Petherick
- 310 - Mr Andrew Elliott
- 311 - Ms Annette Hill
- 312 - Mr James McPherson
- 313 - Ms Sandra Kremor
- 314 - Ms Suzanne Pfister
- 315 - Ms Julie Black
- 318 - Ms Lyndell Cavanagh
- 319 - Ms Roma Leembruggen
- 320 - Mr Noel Huxham
- 321 - Mr Stephen Brennan
- 322 - Ms Gail Saez
- 324 - Mr & Mrs Peter and Mary Hart
- 325 - Lesley Parker
- 326 - Mrs Edith Thomas
- 327 - Mr David Fowler
- 328 - Mrs & Mr Margaret and Don Greer
- 329 - Ms Judy Chandler
- 330 - Mr & Mrs Peter and Jenny Hotschilt
- 331 - Ms Sylvia Waddell
- 333 - Ms Sara Ussher
- 334 - Mr Oliver Essebier
- 335 - Ms Sheila Harrison
- 336 - Ms Sue Ellis
- 337 - Mr Ben Hart
- 338 - Ms Uta Lippmann
- 340 - Mr & Mrs Kevin and Shirley Farquhar
- 341 - Mr Rob Shortridge

342 - Miss Gem Jewell
343 - Ms Dawn Pole
344 - Ms Lorraine Hockey
345 - Mr Ted Coonan
346 - Mr Warren Brown
348 - Mrs Lynette Wilson
349 - Mr & Mrs Paul and Jan D'Auria
351 - Ms Marjorie Lucas
352 - Ms Merna Thamm
353 - Ms Sue Hosie
354 - Mr Roger Valmadre
355 - Mrs Deborah Mackay
356 - Mr William McClintock
358 - Mr & Mrs Rod and Jan Darr
359 - Mr Peter Hopkins
360 - Mr & Mrs Phil and Diane Abercrombie
361 - Ms Sue Beilby
362 - Mr & Mrs Colin and Carole Kirton
363 - Ms Marion Harris
365 - Mr John Gates
366 - Ms Sophie Finemore
367 - Ms Monica Darr
368 - Mr Geoffrey Rees-Thomas
369 - Mr Andrew Bates-Brownsword
370 - Mr David Kwan
373 - Mr James Aitken
374 - Mr Errol Wiles
375 - Anti-Discrimination Commission Queensland
376 - Ms Christine McNamara
377 - Ms Nicola Saad
378 - Mr Thomas King
379 - Ms Caroline Gregger
380 - Ms Jenny Brown
386 - Ms Colleen Fuller
387 - Ms Robyn Ward
388 - Ms Annette Stary
389 - Mr Mark Stay
390 - Mr Tim Young
392 - Mr Ron Matthes
393 - Dr David Hunt
394 - Ms Heather Margaret Murphy
395 - Ms Fiona Tiaon
396 - Mr Ian Charlesworth
397 - Ms Margaret Graham
398 - Mr Grant Vandersee
399 - Ms Heather Barnett
400 - Ms Sue Giles
401 - Mr Ross Pitt
402 - Ms Stella Bromilow
403 - Mr Bryan Radford
404 - Chris Sang

- 405 - Ms Christine Dalgliesh
- 406 - Mr Barry Stone
- 408 - Mr Trevor Sullivan
- 409 - Ms Wendy Hill
- 410 - Mr Graham Goodhew
- 411 - Mr David Hood
- 412 - Ms Vean Atcheson
- 413 - Mr Daniel Hancock
- 414 - Ms Tavia Seymour
- 416 - Mr Denis Colbourn
- 417 - R D Sutherland
- 418 - Mr David von Pein
- 419 - Mr & Mrs Peter and Olive Banks
- 421 - Jan Vagg
- 422 - SONDY WARD
- 424 - Mr Robert Colman
- 425 - Mrs B. M. McCullagh
- 426 - Ms Edwina Stewart
- 427 - Queensland Aged and Disability Advocacy Inc.
- 429 - Ms Libi Maxwell
- 430 - Mr Doug Stay
- 431 - Ms Rosemary Stay
- 432 - Mr Michael De Nieuwe
- 433 - Mr Andrew Jackson
- 434 - Ms Samantha McKee
- 436 - Ms Francine Petran
- 437 - Queensland Association of Independent Legal Services Inc, the Human Rights Law Centre, Caxton Legal Centre and the Aboriginal and Torres Strait Islander Legal Service Ltd
- 441 - Mrs & Mr Katy and Bill Robertson
- 442 - Mr Ron Wallace
- 443 - Ms Susan Kirk
- 445 - Ms Anna Barker
- 446 - Mr & Mrs Peter and Barbara Howard
- 447 - Mr Bernard Richards
- 448 - Ms Trish Butler
- 449 - Mrs C. V. Phillips
- 450 - Mr Raymond Tan
- 451 - Mr Geoff Pickering
- 452 - Mr Jon Kirk
- 453 - Ms Sylvia Huxham
- 454 - Mr & Mrs Grant and Suzanne Chandler
- 455 - Dr Nicole Stirling
- 456 - Ms Sandra Tyas
- 457 - Mr David Van Gend
- 458 - Lex Stewart
- 459 - Ms Nina Hirsch
- 461 - Mr Terry Foreman
- 463 - Ms Jennifer Radford
- 464 - Ms Christine Fraser
- 465 - Ms Christine Fitzell
- 466 - Ms Cindy McGarvie

467 - Mr Warren Raddatz
468 - Mr & Mrs David and Chris Fraser
469 - Mr & Mrs Theo and Anne Stiller
472 - Mr Paul Barrett
473 - Ms Sharon Webster
474 - Mr John Coburn
475 - Mr Mark Vegar
477 - Ms Andrea Fagnoli
478 - Mr Ken Knight
479 - Mr Hugh Laird
480 - Mrs & Mr Shirley and Roger James
481 - Ms Bronwyn Baker
482 - Ms Sherry Sawarde
483 - Mr George Lee
484 - Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
485 - Ms Priscilla Chandra
486 - Ms Margaret Shakespeare
487 - Ms Di Cummings
488 - Mr Derrel Mortimer
489 - Mr D Gordon
491 - Mr Trevor Cotterill
492 - Ms Mandy Adams
493 - Ms Carol Shacklady
494 - Mr Rick Mckinnon
495 - Ms Ursula Bennett
496 - Ms Pauline Scott
498 - Mr Joshua Carr
499 - Mr Joseph Simard
501 - Ms Patricia Newton
502 - Liberal National Party
504 - Mr Brendan Gates
505 - Salt Shakers
506 - Ms Kathryn Cooper
507 - Mr Kevin Ramke
508 - Queensland Council for Civil Liberties
509 - Ms Robyn Goodwin
510 - Mr Neil Hatherly
511 - Mr Vince Creagh
512 - Mr & Mrs Eric and Liz Forshaw
513 - Mr Dave Ritson
514 - Ms Heather Rutherford
516 - Mr Ben Little
517 - Mrs Judith Bond
518 - Mr Geoffrey Dean
519 - Mr & Mrs Norman and Diane Ferguson
520 - Mr Ian McIver
521 - Ms Shirley Tree
522 - Mrs Gladys Staines
523 - Mrs & Mr Heather and James West
524 - Ms Margaret James
525 - Mr & Mrs John and Therese Hagan

- 526 - FamilyVoice Australia
- 527 - Mr Ron Tyas
- 528 - Miss Margaret Thornton
- 529 - Ms Glenda McAlister
- 530 - Prof. Graeme Orr

Appendix B – List of Witnesses

Ms Imelda Bradley, Director, Strategic Policy, Department of Justice and Attorney-General
Ms Leanne Robertson, Acting Assistant Director-General, Strategic Policy, Department of Justice and Attorney-General
Ms Margot Clarkson, Senior Legal Officer, Strategic Policy, Department of Justice and Attorney-General
Mr Dermot Tiernan, Acting Electoral Commissioner Queensland
Mr James Farrell AOM, Director, Queensland Association of Independent Legal Services Inc
Mr Scott McDougall, Director, Caxton Legal Centre, Queensland Association of Independent Legal Services Inc
Mr Geoffrey Bullock, Qld Acting State Director, Family Voice Australia
Mr Michael Cope, President, Queensland Council for Civil Liberties
Mr Stephen Keim SC, Barrister, Bar Association of Queensland
Professor Graeme Orr, University of Queensland Law School,