

Electoral Reform Amendment Bill 2013

Report No. 56

Legal Affairs and Community Safety Committee

February 2014

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.

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Abbreviations

Act	<i>Electoral Act 1992</i>
ADCQ	Anti-Discrimination Commission Queensland
AHRC	Australian Human Rights Commission
Amendment Act	Electoral Reform and Accountability Amendment Act 2011
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
BAQ	Bar Association of Queensland
Bill	Electoral Reform Amendment Bill 2013
CCHRL	Castan Centre for Human Rights Law
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
Discussion Paper	Electoral Reform Discussion Paper
ECQ	Electoral Commission of Queensland
FLP	fundamental legislative principles
HRLC	Human Rights Legal Centre
IRA	<i>Industrial Relations Act 1999</i>
KAP	Katter's Australia Party
LSA	<i>Legislative Standards Act 1992</i>
Outcomes Paper	Electoral Reform Queensland Electoral Review Outcomes
PUP	Palmer United Party
QAC	Queensland Advocacy Incorporated
QAILS	Queensland Association of Independent Legal Services Inc
QCCL	Queensland Council for Civil Liberties
QCU	Queensland Council of Unions
QNU	Queensland Nurses' Union
SLC	(the former) Scrutiny of the Legislation Committee

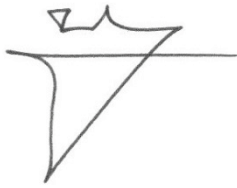
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Electoral Reform Amendment Bill 2013.

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.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Department of Justice and Attorney-General.

I commend this Report to the House.

A handwritten signature in black ink, appearing to read 'Ian Berry', with a stylized flourish above the name.

Ian Berry MP

Chair

Recommendations

Recommendation 1 **3**

The Committee recommends the Electoral Reform Amendment Bill 2013 be passed.

Recommendation 2 **11**

The Committee recommends the Attorney-General and Minister for Justice review the proposed (increased) threshold for entitlement to public funding, in order to determine whether a more appropriate figure could be reached. The Committee recommends a figure of 6%.

Recommendation 3 **27**

The Committee recommends the Attorney-General and Minister for Justice include a reasonable range of documents (both photographic and non-photographic) in the Electoral Reform Regulation to ensure that voters have the best chance of fulfilling the proof of identity requirements and are able to cast their vote without incident.

Recommendation 4 **27**

The Committee recommends the Electoral Commission of Queensland provides reasonable training to electoral officers in relation to both proof of identity requirements and assisting voters with the declaration process.

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 18 May 2012 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:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

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.

The Electoral Reform Amendment Bill 2013 (Bill) was introduced into the House and referred to the Committee on 21 November 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 24 February 2014.

1.2 Inquiry process

On 28 November 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advice from the Department on 9 December 2013 and received 180 submissions (see **Appendix A**).

The Committee held a public briefing on Thursday, 12 December 2013, where it took evidence from representatives from the Department on the initiatives being pursued in the Bill.

On 31 January 2014, the Committee received written advice from the Department, which included a report on the issues raised in the submissions received and published by the Committee.

A public hearing was held on Thursday, 6 February 2014, where the Committee took evidence from a number of invited stakeholders (see **Appendix B**).

Copies of both transcripts are available on the Committee website.

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

1.3 Background and Consultation

The *Electoral Act 1992* (the Act) governs the conduct of elections in Queensland:

*In addition to establishing the Electoral Commission of Queensland (ECQ) as an independent and impartial body to run free and democratic elections in Queensland, the Act deals with a range of issues including electoral boundaries, electoral roles, voter enrolment, registration of political parties, voting, electoral advertising and election funding and disclosure.*²

The former Labor government implemented the *Electoral Reform and Accountability Amendment Act 2011* (Amendment Act), which amended the Act, making substantial changes to the rules governing political donations, the public funding of elections and electoral expenditure.³

The Queensland Government harboured concerns that the Amendment Act was ‘...implemented with too little consideration and consultation’.⁴ Therefore, on 3 January 2013, it released the ‘Electoral Reform Discussion Paper’ (Discussion Paper) announcing its intention to review Queensland’s electoral system: ‘The goal of the review was to ensure Queensland has an electoral system that meets high standards of integrity and accountability, with fair and effective electoral laws that promote participation in our democracy through political representation and voting’.⁵

The Discussion Paper sought community feedback on a range of electoral reform issues and was divided into parts:

- *Part A of the Discussion Paper focused on options for reform in relation to political donations, public funding for elections and election campaign expenditure.*
- *Part B of the Discussion Paper identified a range of other issues including the voting system, voter enrolment, postal voting and political advertising.*⁶

In response to the Discussion Paper, the Government received 250 submissions and, in July 2013, produced a paper entitled, ‘Electoral reform Queensland Electoral Review Outcomes’ (Outcomes Paper), in which it advised that the submissions had been considered and that the Outcomes Paper included responses to each of the issues raised in the Discussion Paper and in public submissions.⁷

The Electoral Commission of Queensland (ECQ) was consulted about the operational aspects of the amendments.⁸

1.4 Policy objectives of the Electoral Reform Amendment Bill 2013

The policy objectives of the Bill are to amend the Act to ensure the opportunity for full participation in Queensland’s electoral process and to enhance voter integrity and voting convenience.⁹

To achieve the policy objectives, the Bill introduces a number of legislative changes including:

² Department of Justice and Attorney-General, *Electoral Reform Queensland Electoral Review Outcomes*, July 2013, page 3.

³ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 1.

⁴ *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

⁵ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 1.

⁶ Department of Justice and Attorney-General, *Electoral Reform Queensland Electoral Review Outcomes*, July 2013, page 3.

⁷ Department of Justice and Attorney-General, *Electoral Reform Queensland Electoral Review Outcomes*, July 2013, page 3.

⁸ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 4.

⁹ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 1.

- removing the caps on donations and expenditure as unnecessarily restricting participation in the political process;
- increasing the disclosure threshold to \$12,400 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 10% of the primary vote to reduce the cost of funding to the community;
- facilitating electronically assisted voting, particularly to ensure access to secret and independent voting for blind and vision impaired voters; and voters who require assistance because of a disability, motor impairment or insufficient literacy;
- changing particular requirements in relation to postal voting to make it more convenient and accessible for voters;
- in recognition of how-to-vote cards as an important resource for voters—providing the cards are to be made available on the Electoral Commission of Queensland (ECQ) website and granting the ECQ power to refuse to register a card if it is satisfied it is likely to mislead or deceive a voter in casting their vote; and
- implementing a proof of identity requirement to vote in a state election in a non-discriminatory way that reduces the potential for electoral fraud.¹⁰

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to recommend whether the Bill should be passed.

The Committee supports the policy objectives of the Bill. Ensuring all citizens are provided the opportunity for full participation in Queensland's electoral process is of great importance. The Committee also places great value on enhancements to voter integrity and voting convenience.

After examination of the Bill, and consideration of submissions and the further information provided from the Department, the Committee is satisfied the Bill should be passed. The Committee has made further specific recommendations in relation to the Bill throughout this Report.

Recommendation 1

The Committee recommends the Electoral Reform Amendment Bill 2013 be passed.

¹⁰ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, pages 1-2.

2. Examination of the Electoral Reform Amendment Bill 2013

This section discusses issues raised during the Committee's examination of the Bill. These issues are grouped under 'Part A – Electoral funding, electoral expenditure and financial disclosure' and 'Part B – Electoral processes'.

2.1 Part A - Electoral funding, electoral expenditure and financial disclosure

2.1.1 Removing donation and expenditure limits

The Bill proposes removing the cap on political donations for use in state electoral campaigns and removing the cap on electoral expenditure.¹¹ In his Introduction Speech, the Attorney-General stated that the limits were to be removed as they unnecessarily restrict participation in the political process.¹² As a consequence of the removal of the caps, the Bill proposes to remove the requirement for political parties and candidates to keep dedicated state campaign accounts for state electoral campaign income and expenditure.¹³

Previous and current legislative limits

Prior to the Amendment Act, there were few limits on political donations in Queensland. At that time, the law relied on disclosure to promote transparency and accountability (only donations of \$1,000 or more were required to be disclosed by political parties, candidates and third parties), and election campaign expenditure was not regulated.¹⁴

In its submission to the Committee, the Bar Association of Queensland (BAQ) summarised the existing legal provisions, as set out in the Act:

The existing legislation imposes limits on expenditure of \$80,000 per party per electorate and \$50,000 per candidate, in each case, per financial year [section 274].

The existing legislation also makes restrictions on the amount of donations that a person may make per financial year to a political party and to a candidate. The amounts are \$5,000 to the party [sections 253 and 254] and \$2,000 in total to candidates endorsed by that party [sections 253 and 255].¹⁵

Issues raised in submissions

In his submission to the Committee, Professor Graeme Orr of University of Queensland, described the removal of the limits as 'retrograde' and '...a backward step for the key goals of political integrity and equality'.¹⁶ He identified Queensland as one of the three pioneering Australian states and territories which implemented limitations in 2011, and observed that the United States of America and other common law democracies, such as the United Kingdom, New Zealand and Canada, possess at least one of these limitations (with Canada possessing both).¹⁷

¹¹ See Clauses 50 and 59, Electoral Reform Amendment Bill 2013.

¹² *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

¹³ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2; Clause 34, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 9.

¹⁴ Department of Justice and Attorney-General, *Electoral Reform Discussion Paper*, January 2013, pages 5 and 18.

¹⁵ Bar Association of Queensland, Submission No. 6, page 6.

¹⁶ Professor Graeme Orr, University of Queensland, Submission No. 1, page 1.

¹⁷ Professor Graeme Orr, University of Queensland, Submission No. 1, page 1.

Whilst acknowledging the libertarian principle behind abolishing the limits, Professor Orr argued that politics is not a free market in consumer goods – it is a public good:

Unlimited donations risk political integrity. They allow wealth to buy an unequal share of political influence and voice. Democracy and the universal franchise are meant to make all citizens equal in political worth. Unlimited donations skew money to the governing party of the day (or, occasionally, to an opposition on the brink of power), because private donations follow power. Power in Queensland has few enough checks/balances, given the lack of an upper house or bill of rights.¹⁸

Professor Orr further argued that the Bill does not create a libertarian or even a formally equal political funding market: *'The bill contains generous taxpayer funding skewed not only towards the major political parties but to the governing party of the day'.¹⁹*

The Queensland Advocacy Incorporated (QAI) endorsed the views of Professor Orr.²⁰

Adopting a different view with respect to political donations, the Queensland Council for Civil Liberties (QCCL) expressed concern that *'...attempts to restrict the amount of political donations will simply lead to the development of more sophisticated concealment techniques'.²¹* Rather than limiting political donations, it favoured the introduction of appropriate disclosure requirements.²²

With respect to political expenditure, the QCCL submitted that, on balance, *'...despite the obvious administrative and other difficulties with expenditure limits the need to take some steps to ensure that there is some level playing field between the political parties requires an attempt to be made to do so'.²³* It considered that the retention of expenditure limits obviates the need for donation caps, but that, in order for expenditure limits to succeed, the Bill's definition of *'electoral expenditure'* must be expanded²⁴ *'...to cover all expenditure by a political party except certain excluded items'.²⁵* In the short term, the QCCL suggested that the definition be extended to include staff and accommodation costs, as is the case currently in New South Wales and the United Kingdom.²⁶

In its response to submissions, the Department responded to QCCL's calls for an expanded definition of *'electoral expenditure'*:

...DJAG notes that the new definition of electoral expenditure proposed for section 222 (Interpretation) provides that, electoral expenditure, by a registered political party or candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.²⁷

Ben Marshall's submission opposed the proposed removal of both donation and expenditure limits:

Removing the cap on donations and expenditure will tend to ratchet up an already expensive electoral exercise, and benefit whichever party has greatest entree with wealthy donors. This would traditionally see the parties to the Right of the political spectrum

¹⁸ Professor Graeme Orr, University of Queensland, Submission No. 1, pages 1-2.

¹⁹ Professor Graeme Orr, University of Queensland, Submission No. 1, page 2.

²⁰ Queensland Advocacy Incorporated, Submission No. 135, page 4.

²¹ Queensland Council for Civil Liberties, Submission No. 2, page 2.

²² See section 2.1.5 of this Report.

²³ Queensland Council for Civil Liberties, Submission No. 2, page 3.

²⁴ That is, expanded in the manner proposed by Sir Hayden Philips in his 2008 review of electoral financing and expenditure in the United Kingdom.

²⁵ Queensland Council for Civil Liberties, Submission No. 2, page 3.

²⁶ Queensland Council for Civil Liberties, Submission No. 2, page 3.

²⁷ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 3.

*advantaged, and it is disingenuous to claim the current cap would 'restrict participation in the political process'. I see no evidence to support this statement, and suggest that the amendment would make the playing field less level than more.*²⁸

The Queensland Nurses' Union (QNU) drew attention to the Government's reasons for removing the existing limits, as outlined in the Outcomes Paper: *'The Government has decided to remove the current caps on donations and expenditure on the basis that they impinge on the implied freedom of political communication and unnecessarily restrict participation in the political process'*.²⁹ The QNU claimed that the Bill, combined with recent amendments to the *Industrial Relations Act 1999* [IRA]³⁰, resulted in trade unions being excluded from the preservation of the aforementioned rights. It argued that the amendments:

*...placed unreasonable and potentially unconstitutional restrictions on trade unions and their ability to take part in the political process. This includes imposing fines for 'political' expenditure in excess of \$10,000 per annum and the requirement that unions may only spend this amount following a ballot of members.*³¹

The Queensland Council of Unions (QCU) opposed the removal of the limits and presented similar arguments to QNU, explicitly referencing the recent amendments to the IRA.

In its submission, the BAQ strongly recommended the retention of upper limits on political donations and expenditure, identifying the important criterion to be applied: *'...that such limits be effective in preventing individuals and entities from obtaining or exerting undue influence on political decision making through the exercise of financial influence'*.³²

Similarly, Katter's Australian Party (KAP) strongly objected to the proposed changes, claiming that the *'...only clear effect the proposed legislation can have to the democracy of Queensland is to ensure corporate interests will be better able to buy influence in our state'*³³:

*It could be reasonably expected corporate interests seeking greater influence over Government would seek to do this through the auspices of the two major parties, as the two-party system with minimum voter choice provides the greatest opportunity for control. This control would of course come at the expense of small business and the consumers of Queensland.*³⁴

Alternatively, Family Voice Australia (FVA) supported the removal of limits, arguing that: *'There is no justification for banning donations from particular sources such as corporations or industrial organisations'*; and that: *'Appropriate disclosure requirements should adequately meet the need for transparency'*.³⁵

²⁸ Ben Marshall, Submission No. 4, page 1.

²⁹ Department of Justice and Attorney-General, *Electoral Reform Queensland Electoral Review Outcomes*, July 2013, page 4.

³⁰ These amendments were made by the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013*.

³¹ Queensland Nurses' Union, Submission No. 5, page 2.

³² Bar Association of Queensland, Submission No. 6, page 7.

³³ Katter's Australian Party, Submission No. 180, page 3.

³⁴ Katter's Australian Party, Submission No. 180, page 4.

³⁵ FamilyVoice Australia, Submission No. 11, page 3.

In its response to submissions on the proposed removal of donation and expenditure limits, the Department advised: *'The Bill reflects the Government's decision to remove the caps on donations and expenditure in order to remove the unnecessary restriction on participation in the political process'*.³⁶

Committee Comment

The Committee views the proposed amendments as a return to the position that existed prior to the Amendment Act. In that context, the Amendment Act has existed only for a very brief period. In the Committee's view, the pre-Amendment Act requirements functioned effectively, relying on the transparency and accountability afforded through appropriate financial disclosure obligations.

The Committee notes and supports arguments that appropriate disclosure requirements are sufficient safeguards to allow the removal of donation and expenditure limits. The changes proposed by the Bill to existing disclosure requirements are addressed in section 2.1.5 of this Report.

2.1.2 Increasing candidate deposit retention threshold

The Act provides that a candidate nominated for election must pay a deposit.³⁷ Amongst other triggers, the deposit must be returned if *'at least 4% of the total number of formal first preference votes polled in the election for the electoral district are in favour of the candidate'*.³⁸ The Bill proposes to amend the Act to increase the candidate deposit retention threshold from 4% to 10%. The Explanatory Notes state that the increase in this threshold is consistent with the proposed increase in the threshold applicable to candidate entitlement to public funding.³⁹

The 10% threshold is implemented by way of amended section 89 (Deposit to accompany notification).⁴⁰

Issues raised in submissions

In his submission, Professor Graeme Orr expressed concern that the increased threshold *'...could prove a significant financial impost, especially (sic) grassroots parties like the Greens and Katter Australia (up to \$22 250⁴¹ extra for a party in the 4-9% range)'*.⁴² He observed that 4% is the *'long-standing'* figure at which candidates forfeit their deposit and recommended that a 4% threshold be retained *'in line with the rest of Australia'*.⁴³

Similarly, the BAQ opposed the proposed changes to the threshold, linking its reasons with the argument it presented with respect to its opposition to the proposed increase in the public funding threshold.⁴⁴

³⁶ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 3.

³⁷ Section 89(1), *Electoral Act 1992*.

³⁸ Section 89(4)(c), *Electoral Act 1992*.

³⁹ Clause 5, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 5. Please see section 2.1.3 of this Report with respect to the proposed increase in the public funding threshold.

⁴⁰ Clause 5, Electoral Reform Amendment Bill 2013.

⁴¹ He calculated the sum of \$22,250 by multiplying 89 electorates by the standard deposit of \$250.

⁴² Professor Graeme Orr, University of Queensland, Submission No. 1, page 2

⁴³ Professor Graeme Orr, University of Queensland, Submission No. 1, pages 2 and 4.

⁴⁴ Bar Association of Queensland, Submission No. 6, page 5. See section 2.1.3 of this Report with respect to the proposed increase in the public funding threshold.

Committee Comment

The Committee observes that the existing provisions of the Act require a person nominated as a candidate (or a person acting on the nominated person's behalf) to deposit, in cash or bank cheque, \$250 (or any greater prescribed amount)⁴⁵. In the Committee's view, \$250 is not an excessive sum of money to be contributed by a person nominated as a candidate. Further, the Committee does not consider that amount of money to be an excessive sum to be forfeited by a person who is nominated as candidate, but who fails to receive the necessary number of primary votes. A person discouraged from engaging in the political process as a result of the proposed increase of the existing threshold and the potential loss of \$250, may be considered as a person potentially lacking the skills necessary to be a successful Member of Parliament. Such skills include the capacity to achieve goals, and to understand and act in the best interests of the constituents of one's electorate.

The Committee acknowledges the mathematical extrapolation of how the cost of the deposit may accrue for a political party over many electorates. When viewed from the perspective of a political party, as opposed to a single candidate, the risk associated with forfeiture of the combined deposits escalates. However, the Committee considers it appropriate to apply similar expectations and standards. A successful political party must be sustainable and possess an ability to finance its operations and plan its use of funds responsibly and sensibly.

In the Committee's view, both a single candidate and a political party should, prior to the nomination of candidacy, realistically consider the feasibility of their success. It is a matter of appropriate planning and risk assessment. Therefore, the Committee supports the proposed increase of the candidate deposit retention threshold.

In addition to the Committee's position as expressed above, the Committee acknowledges the policy justification outlined in the Explanatory Notes that the increase in this threshold is consistent with the proposed increase in the threshold applicable to candidate entitlement to public funding. In that regard, should the threshold applicable to candidate entitlement to public funding be appropriately amended at any time, it seems to the Committee that the candidate deposit retention threshold should be identically and simultaneously amended.

2.1.3 Increasing threshold for entitlement to public funding

Public funding of election campaigns involves subsidising parties and candidates for the cost of contesting elections. The Bill proposes to increase the threshold for entitlement to public funding from 4% to 10% of the primary vote. According to the Explanatory Notes, the policy objective of the increase is to '*reduce the cost of funding to the community*'.⁴⁶ In his Introduction Speech, the Attorney-General stated that the proposed legislative amendment is intended '*...to protect public money being used to fund candidates with no realistic hope of being elected*', but that the '*...threshold is still at a level that enables full participation in the electoral process by candidates who have a degree of community support*'.⁴⁷

The 10% threshold is implemented by way of amended sections 223 (Entitlement to election funding-registered political parties) and 224 (Entitlement to election funding-candidates) of the Act.⁴⁸

⁴⁵ Section 89(1), *Electoral Act 1992*.

⁴⁶ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 1.

⁴⁷ *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

⁴⁸ Clauses 36 and 37, Electoral Reform Amendment Bill 2013.

Issues raised in submissions, by the Media and at the Public Hearing

In his submission, Professor Graeme Orr argued that a 10% public funding threshold is too high and ‘...heavily skews the public funding pot to the two major parties, especially the governing party of the day’.⁴⁹ He continued:

The rationale for funding based on votes received is to treat each elector’s choice as equal. Our preferential, ‘majority rules’ voting system already disproportionately awards seats to major parties. Yet the Bill proposes a funding threshold that discriminates against smaller parties and independents. A 10% threshold could treat as worthless 20-30% of electoral choices in Queensland (eg in seats where the major parties received 40% and 30% respectively, and the prominent minor parties received 10% each)...

If a cut-off is needed, there is a well-established 4% threshold across Australia. That threshold is conventional, but it is rational...

In his opinion piece, published in The Courier-Mail, Dr Paul Williams of Griffith University commented on the anticipated effect of the proposed public funding threshold increase on existing political parties:

*...the Newman Government’s increase of the public funding threshold from four to 10 per cent of the vote will send most minor parties and Independents broke. The Greens and Katter’s Australia Party have probably peaked at below 10 per cent and the LNP is hoping these two political thorns will wither on the vine. Only the LNP, Labor and maybe the Palmer party will be eligible for funding next year.*⁵⁰

The BAQ added further weight to the arguments of Professor Orr and Dr Paul Williams, recognising the contribution that minority parties make to electoral debate and the financial disadvantage they may suffer as a result of the increased threshold:

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

*Against this background, to give an example, legislative changes which mean that parties who regularly achieve 9% of the vote should suffer a financial disadvantage to the majority parties in the polity are, it is submitted, not consistent with the maintenance of a strong and transparent electoral system.*⁵¹

In his participation at the public hearing, John Martin of the QCU was asked by the Committee what threshold the Council would consider appropriate. The question was posed in the context that a threshold of 7% or 8% would incorporate many of the potential funding recipients excluded under a 10% threshold. Mr Martin advocated no change.⁵²

⁴⁹ Professor Graeme Orr, University of Queensland, Submission No. 1, page 2.

⁵⁰ The Courier-Mail, *Opinion: Devilish detail in the Newman Government’s looming changes to election rules*, 28 January 2014.

⁵¹ Bar Association of Queensland Submission No. 6, page 7.

⁵² *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 14.

David and Alex Todd similarly supported the argument that the increased threshold would be financially detrimental to independent and minor party candidates⁵³. Like other submitters, they argued the merits of such candidates and their participation in the electoral process.

In addressing both the increased threshold and the return of the basis for electoral public funding to a stated dollar amount per vote⁵⁴, KAP commented on the anticipated impact of those proposed changes, including on its own candidates:

It is difficult to interpret this change in any other way than as a strategy to sabotage minor parties' attempts to raise candidates.

This change alone is considered the most offensive in terms of creating an uneven political playing field.

In our experience as a party, we have attracted candidates with great passion but who are not wealthy and have families to support.

*The added financial risk this legislation imposes upon them effectively prohibits them from the opportunity to stand for office.*⁵⁵

The BAQ generally supported the allocation of some public funds to the campaign expenses of parties and candidates involved in the electoral process, but warned against the potential of elected governments becoming overly dependent on those donors who made their electoral campaign logistically possible: *'Public campaign funding can assist in reducing the dependence of elected representatives on private donors and thereby enhance the integrity of the electoral process'*.⁵⁶ On the basis of this viewpoint, the BAQ concluded that the proposed changes do not detract from the principle of public funding of campaign expenses: *'However, they appear to achieve a redistribution of the allocation of that funding to the major political parties in the electoral process'*.⁵⁷

Alternatively, the FVA supported the abolition of all public funding: *'...it appears that public funding simply increases the amount available for election campaigning by all parties unless it is accompanied by severe restrictions on private donations...'*⁵⁸ It argued that a public funding system with such restrictions presumes that government, rather than civil society, is responsible for ensuring that parties and candidates are adequately funded: *'This well-intentioned presumption has the potential to undermine the strength of political parties by reducing their dependence on supporters as well as to alienate taxpayers who resent the use of taxes to fund election campaigns by parties whose values they oppose'*.⁵⁹ In circumstances where public funding is not abolished, FVA recommended that *'...it should not be disproportionately allocated to major political parties as this would unfairly disadvantage minor political parties who nonetheless attract significant electoral support'*.⁶⁰

In its response to submissions on the proposed increase of the public funding threshold from 4% to 10%, the Department observed that the proposed amendments accurately reflect the Government's decision to increase the threshold and stated that:

As noted in the explanatory notes, the increase to 10% is intended to strike a balance between individual and community interests, enabling full participation in the process by

⁵³ David and Alex Todd, Submission No. 50, page 1.

⁵⁴ See section 2.1.4 of this Report with respect to the proposed return of the basis for electoral public funding to a stated dollar amount per vote.

⁵⁵ Katter's Australian Party, Submission No. 180, page 4.

⁵⁶ Bar Association of Queensland, Submission No. 6, page 5.

⁵⁷ Bar Association of Queensland, Submission No. 6, page 4.

⁵⁸ FamilyVoice Australia, Submission No. 11, page 5.

⁵⁹ FamilyVoice Australia, Submission No. 11, page 5.

⁶⁰ FamilyVoice Australia, Submission No. 11, page 5.

*candidates who have a level of community support, while ensuring public funds do not go to candidates who have no realistic hope of being elected.*⁶¹

Committee Comment

The Committee recognises the policy intent behind the proposed threshold increase, namely to reduce costs to the community, to ensure public funds are dealt with appropriately and to enable full participation in the electoral process by electoral candidates who attract a degree of community support.

In acknowledging these policy objectives, the Committee is supportive ‘in principle’ of the proposal to increase the threshold however, it notes submissions received about the expected ramifications of increasing the threshold to 10%. Given the anticipated impact on funding entitlements for those genuine independent members, and independent and minor political parties, which do have a level of community support, the Committee is concerned that an increase in the threshold amount to 10% could be too high.

The Committee is of the view that taking into account the arguments of the submitters, though there was a reluctance to nominate a percentage, six percent is a reasonable percentage threshold that could apply.

Recommendation 2

The Committee recommends the Attorney-General and Minister for Justice review the proposed (increased) threshold for entitlement to public funding, in order to determine whether a more appropriate figure could be reached. The Committee recommends a figure of 6%.

2.1.4 Returning basis for electoral public funding to a dollar amount per vote

The Bill proposes a dollar per vote public funding model. Under this model, political parties and candidates are directly reimbursed for each formal first preference vote received or actual eligible expenditure (whichever is the lesser).⁶² The dollar per vote amount is proposed to be set at \$2.90 per vote for registered political parties and \$1.45 per vote for candidates, indexed against CPI each financial year.⁶³

In his Introduction Speech, the Attorney-General referred to the combination of the proposed changes to the rules governing political donations and electoral expenditure⁶⁴, and the return of the basis for electoral public funding to a dollar amount per vote as:

*...the fairest funding model as the amount of funding a registered political party or candidate is entitled to receive is directly related to their electoral strength. Parties and candidates will need to make their spending decisions based on an assessment of their prospects of success.*⁶⁵

⁶¹ Letter from the Department of Justice and Attorney-General, 31 January 2014, pages 5-6.

⁶² Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2.

⁶³ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2; Clause 38, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 9.

⁶⁴ See section 2.1.1 of this Report for the proposed changes to the rules governing political donations and electoral expenditure.

⁶⁵ *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

The dollar per vote public funding model is implemented by replacing the existing section 225 (Advance payment of election funding) of the Act with a new section 225 (Election funding amount).⁶⁶

Current legislative position

In his Introduction Speech, the Attorney-General referred to the Amendment Act, observing that it removed the dollar-per-vote value and introduced recouping based on expenditure:

*Honourable colleagues elected in the 2012 campaign had an expenditure cap of some \$50,000. If you spent the entire cap, you were entitled to approximately \$26,000 back despite the number of votes you received. It was based on your expenditure.*⁶⁷

Issues raised in submissions

Professor Graeme Orr observed that the Bill proposes more generous funding than the national system, and queried why independent candidates are to be treated differently to registered political parties:

*The Bill proposes more generous and hence expensive funding than the national system. Part of this is because 'election funding' for parties is set at \$2.90 per vote: 16% higher than the 2013 national value of \$2.49.⁶⁸ For unexplained reasons, however, independent candidates, even if they hit the 10% threshold, receive just half that election funding (\$1.45 instead of \$2.90).*⁶⁹

Similarly, Alastair Lawrie questioned the distinction, and emphasised the necessity of a clearly defined rationale for the distinction:

*Clause 38 [of the Bill], which introduces a significant discrepancy in the amount provided per vote to a political party (\$2.90 per vote) compared to a candidate (\$1.45) also appears to be lacking a clearly defined rationale. If the payment to parties is additional to the payment to the candidates of political parties, then a vote for a political party candidate would result in the payment of three times the amount of a payment for a vote for an independent candidate. Unless a rationale for such a wide discrepancy can be provided, these rates should be reconsidered/substantively amended.*⁷⁰

In his submission, Ben Marshall expressed concern at the prospect of increased funding, arguing that the proposed change should not be adopted if it results in tax payers contributing increased funding towards political advertising:

*When thousands have been sacked and the economy is weak, giving politicians more to advertise rather than face media and community more directly and honestly, I would suggest is unethical and weakens our democracy.*⁷¹

In addressing both the proposed return of the basis for electoral public funding to a stated dollar amount per vote and the proposed increased threshold for public funding⁷², the KAP identified that

⁶⁶ Clause 38, Electoral Reform Amendment Bill 2013.

⁶⁷ *Record of Proceedings (Hansard)*, 21 November 2013, page 4223.

⁶⁸ Professor Orr adds: 'Admittedly the national scheme operates on two votes – House and Senate. But people often split these, Senate campaigns are not free, and national campaigns are generally more expensive to run than local ones'.

⁶⁹ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

⁷⁰ Alastair Lawrie, Submission No. 130, page 3.

⁷¹ Ben Marshall, Submission No. 4, page 1.

⁷² See section 2.1.3 of this Report with respect to the proposed increased public funding threshold.

the purpose of this legislation ‘...is to turn Queensland into a state where lower income Australians cannot afford to stand for office unless they are prepared to align themselves with one of the two major parties...’⁷³ It considered that implementation of the proposed changes ‘...would be one of the most significant affronts on democracy in recent times...’ claiming that the Bill ‘...is so patently political...’ and ‘...is presented as an integral part of a package of reforms directed squarely at reducing Queenslander’s democratic rights’.⁷⁴

Committee Comment

The Committee supports the dollar per vote public funding model presented in the Bill. It is laudable that parties and candidates will be required to make spending decisions based on an assessment of their prospects of success. In the Committee’s view, the existing model, whereby public funding is based on the extent of expenditure, is flawed. It increases the possibility that ill-directed or poorly conceived use of public funds by candidates or political parties who lack support from the community will need to be partially reimbursed. Of particular concern to the Committee, is that (up to the existing cap) the greater the expenditure, the greater the reimbursement. The Committee supports the Bill’s proposed dollar per vote public funding model which, appropriately, promotes accountability for spending decisions as a by-product of linking funding to electoral strength.

2.1.5 Increasing donation disclosure threshold

The Bill proposes increasing the donation disclosure threshold from \$1,000 to \$12,400, CPI indexed for each financial year after commencement.⁷⁵ According to the Department, timeframes for disclosure and reporting have generally been made consistent with Commonwealth timeframes for similar activity.⁷⁶

Further, the Bill proposes amending the Act to make financial reporting requirements more consistent with the *Commonwealth Electoral Act 1918*:

*Where reporting in relation to registered political parties is required under both the Act and the Commonwealth Act, the requirement in the Act will be taken to have been complied with if a return is lodged as required under the Commonwealth Act and a certified copy of that return furnished to the ECQ.*⁷⁷

In his Introduction Speech, the Attorney-General advised that, as was the case before the changes made by the Amendment Act: ‘...the act will again rely on disclosure and reporting to promote transparency and accountability’.⁷⁸

Current legislative position

In its submission, the QCCL provided a summary of current legislative requirements pertaining to the donation disclosure threshold:

Queensland law currently requires political parties to lodge annual disclosure returns and post election returns documenting receipts and expenditure in excess of \$1000, identifying

⁷³ Katter’s Australian Party, Submission No. 180, page 3.

⁷⁴ Katter’s Australian Party, Submission No. 180, pages 3-4.

⁷⁵ Clauses 52-56, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 11.

⁷⁶ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 3.

⁷⁷ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 3; Clause 65, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 12.

⁷⁸ *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

the source and value of receipts above the threshold and documenting details of loans from sources other than financial institutions. Additionally the legislation requires disclosure by donors of donations of \$1,000 or more to political parties.

There is a special reporting requirement for donations totalling \$100,000 or more from a single donor. These donations must be disclosed by the donor and the recipient within 14 days after a total donation of \$100,000 is made. Those donations are reported on the electoral commission website.⁷⁹

Specifically, the Act contains disclosure requirements, being a disclosure threshold of \$1,000, for political donations (sections 264 and 265), loans to candidates (section 262), donations to candidates for non-political purposes (section 261) and a prohibition on anonymous donations (section 271). The Bill proposes to increase the threshold in all these cases.

Issues raised in submissions and the media

Given its concern that attempts to restrict the amount of political donations will lead to the development of more sophisticated concealment techniques, the QCCL supported the opinion of former Commonwealth Electoral Commissioner, Colin Hughes, who wrote in 1979 that ‘*continuous comprehensive and total disclosure of both income and outgoings*’ is essential to an election finance system.⁸⁰ In commenting on the increased disclosure threshold, the QCCL observed that ‘*...most Queenslanders would consider \$12,000 to be a significant sum of money*’ however the thrust of its submission was to promote a system of continuous disclosure.⁸¹ In advocating this approach, the QCCL dismissed problems often associated with disclosure (that it is often ‘*...too old or too late to be of any benefit...*’) and argued that ‘*...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*’.⁸²

In his submission, Ben Marshall stated that increasing the disclosure threshold would produce greater secrecy concerning political donations at a time when many are calling for greater transparency in the political process:

I would suggest that donations and political parties must be even more open than they are now to ensure our democracy isn't subverted by the flow of money. This amendment weakens democratic oversight, and therefore our democracy. We should know who is donating to whom and in what amounts.⁸³

Similarly, the QCU conveyed opposition to the proposed increase of the threshold. It cited ‘*...the sizeable donation made by the former member for Redcliffe to the LNP prior to the 2012 state election...*’ as a reason for concern: ‘*Given the relatively recent history of corruption within Queensland politics it would be beneficial for public confidence if the current thresholds were to remain*’.⁸⁴

In his newspaper opinion piece, Dr Paul Williams argued that the belief that increasing the disclosure threshold (combined with abolishing the donation cap⁸⁵) would increase public transparency was a ‘*myth*’: ‘*...a higher threshold will only make it harder to detect who's donating what to whom*’.⁸⁶

⁷⁹ Queensland Council for Civil Liberties, Submission No. 2, page 2.

⁸⁰ Queensland Council for Civil Liberties, Submission No. 2, page 2.

⁸¹ Queensland Council for Civil Liberties, Submission No. 2, page 2.

⁸² Queensland Council for Civil Liberties, Submission No. 2, page 2.

⁸³ Ben Marshall, Submission No. 4, page 1.

⁸⁴ Queensland Council of Unions, Submission No. 8, page 2.

⁸⁵ See section 2.1.1 of this Report with respect to the proposed removal of the donation limit.

Alastair Lawrie's submission added further weight to the opposition to an increased disclosure threshold, describing it as *'...a major retrograde development'*:

As well as being a vital anti-corruption measure - disclosing who is funding whom, and by what amounts – the public has a legitimate right to know where political parties and candidates are obtaining their funding. Increasing the threshold for disclosure by more than 1100% deprives the public of this right, and increases the possibility of people and organisations seeking to exercise nefarious influence through political donations.⁸⁷

The KPA strongly opposed the proposed amendments, claiming they offer no positive outcomes and will have no other effect than to reduce scrutiny on donors to the two major parties:

This is again to the benefit of larger corporate-type donors who are not as commonly associated with minor parties.

Our experience in growing a minor party is that we appeal less to the affluent sectors of the population and medium to larger size business.⁸⁸

The BAQ strongly supported the disclosure of significant political donations as a key means of making electoral processes transparent however, it possessed a contrasting view to other submitters in relation to the disclosure threshold:

The Association acknowledges that the transparency benefits can be outweighed by administrative cost and inconvenience if there is no threshold for disclosure requirements or if the threshold is too low...

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

Although the Association would have concerns if thresholds were raised to a level where transparency benefits start to be lost, the Association supports the changes because of the benefits of having consistency across different levels of government. However, the Association would have concerns if further significant increases occurred to these thresholds.⁸⁹

Similarly, the FVA supported disclosure however, did not limit its comments to political donations: *'Mandatory public disclosure of financial contributions to political parties and candidates and their campaign expenditures is an important safeguard against inappropriate influence on the political system'.⁹⁰*

FVA's submission continued, considering appropriate disclosure thresholds and identifying a necessary balance to be struck 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'.⁹¹* It argued that the existing threshold is too low *'...as it is hard to imagine that a donation as low as \$1,000 gives rise to serious concerns*

⁸⁶ The Courier-Mail, *Opinion: Devilish detail in the Newman Government's looming changes to election rules*, 28 January 2014.

⁸⁷ Alastair Lawrie, Submission No. 130, page 3.

⁸⁸ Katter's Australian Party, Submission No. 180, page 3.

⁸⁹ Bar Association of Queensland, Submission No. 6, pages 5-6.

⁹⁰ FamilyVoice Australia, Submission No. 11, page 4.

⁹¹ FamilyVoice Australia, Submission No. 11, page 4.

about the possibility of undue influence'.⁹² The FVA outlined its views on the appropriate matters to be considered in selecting the most suitable disclosure threshold:

Factors supporting a 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 major factor that should limit the threshold is the public interest of enabling the public to be aware of the major supporters of political parties. A robust democracy requires openness and accountability in the 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.*⁹³

The FVA concluded that: *'The three criteria for determining an appropriate threshold are: preserving donor privacy, limiting compliance costs, and safeguarding the public interest'*.⁹⁴

In its response to submissions on the proposed increase in the disclosure threshold, the Department advised: *'The Bill reflects the Government's decision to amend disclosure and reporting requirements in light of the removal of donation and expenditure caps and to align more closely with particular Commonwealth requirements, particularly in relation to disclosure by registered political parties.'*⁹⁵ The Department continued, detailing its investigation into the prospect of increasing the regularity of disclosure from biannually to monthly. This issue is discussed below.

Abandonment of proposed monthly disclosure

The Outcomes Paper proposed a move from a biannual to a monthly disclosure regime for donations. The Government envisaged a continuous disclosure regime, where donations greater than \$12,400 would need to be disclosed on a month-to-month basis however, this avenue was later abandoned:

Unfortunately, during the drafting of the bill, it became apparent that the proposed monthly disclosure of donations was inconsistent with donation disclosure requirements under the Commonwealth Electoral Act 1918.

Crown Solicitor advice confirmed that the proposal... would more likely than not be held to be inconsistent with the Commonwealth Act and to that extent invalid...

*Consequently, the existing requirements in the Queensland act relating to the disclosure of donations have been retained and amended to increase the donation threshold and to align with Commonwealth requirements of the time frames for the disclosure of donations.*⁹⁶

⁹² FamilyVoice Australia, Submission No. 11, page 4.

⁹³ FamilyVoice Australia, Submission No. 11, page 4.

⁹⁴ FamilyVoice Australia, Submission No. 11, page 4.

⁹⁵ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 12.

⁹⁶ *Record of Proceedings (Hansard)*, 21 November 2013, pages 4221-4222.

The Attorney-General provided further explanation:

...during the drafting of the continuous disclosure regime we received advice from crown law that did indicate that if we were to implement a continuous disclosure regime in Queensland we may run into some issues regarding section 109 of the Commonwealth Constitution—issues of inconsistency—because the regime at the federal level is a yearly disclosure regime, not a continuous disclosure regime. Essentially, crown law advice is—this is the simple way to put it—that if the law about disclosure in Queensland is more burdensome than that at the federal level, it would likely be held invalid by the High Court. So we have taken the cautious approach; we have taken that out of our legislation.⁹⁷

In its response to submissions, the Department acknowledged the proposed disclosure regime, the Crown Law advice and the Government's decision to exclude the proposed provisions from the Bill.

Committee Comment

In the Committee's view, the current disclosure threshold is too low. It creates administrative burden for no worthwhile gain. It is to be remembered that the \$1,000 political donation was an aberration of the previous government and the \$1,000 political donations disclosure seemed to fall into line with that limit. The community is not served by the disclosure of political donations as low as \$1,000. The Committee supports the policy objectives behind the proposed amendments. The Bill strikes the 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. It also serves to limit compliance costs. In the Committee's view, the provisions in the Bill provide for consistency in reporting requirements and will ensure fairness, transparency and accountability are maintained.

In his Introduction Speech, the Attorney-General encouraged the Committee to consider the issue of proposed monthly disclosure of political donations and the related Crown law advice. On the basis that a monthly disclosure system was not administratively burdensome to a point where transparency benefits were lost, the Committee is supportive '*in principle*' of a continuous disclosure regime.

However, the Committee has considered the Crown Law advice, including the Crown Solicitor's conclusion that, despite the difficulty in predicting with confidence how a court would apply applicable legal principles, '*...it is more likely than not that a Court would hold that the monthly reporting requirements... are inconsistent with the Commonwealth Act and to that extent are invalid*'.⁹⁸ Although leaving scope for doubt, given its predictive nature the Crown Solicitor's advice appears to reach a sound conclusion and the Committee sees no reason to deviate from it. If the advice had introduced further doubt, then the Committee may have been persuaded to encourage further investigation. However, in the context, the Committee acknowledges the foresight exercised in procuring the advice and supports the decision to err on the side of caution by excluding the proposed monthly disclosure provisions from the Bill. The Committee values the resulting certainty. Potential legal action and costs will also be avoided.

The \$12,400 disclosure amount mirrors the Commonwealth legislation and is a substantial reason for the adoption of that amount.

⁹⁷ *Record of Proceedings (Hansard)*, 21 November 2013, page 4224.

⁹⁸ Letter from the Crown Solicitor to The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice, 20 November 2013, page 9.

2.1.6 Introducing bi-annual policy development funding

The Bill proposes policy development payments, to be paid in instalments each financial year to registered political parties with an elected member.⁹⁹ The Department explained the proposed changes as follows:

*As part of the new public funding model, an annual policy development payment, based on relative electoral strength, will be available to registered political parties with an elected member. A party will receive an amount based on the total number of formal first preference votes received by each of its endorsed candidates who polled at least 10% of the formal first preference votes for their electoral district in the last general election. Policy development payments will be paid in two instalments each financial year and the amount to be made available for the payments will be prescribed under regulation.*¹⁰⁰

The Bill also proposes that an instalment of the policy development payment be made to registered political parties for January 2014.¹⁰¹

In his Introduction Speech, the Attorney-General stated that the policy development payment ‘...will ensure parties can continue to engage fully in developing and shaping policy while continuing to effectively represent the community’.¹⁰²

The proposed policy development payment is not mentioned in the Outcomes Paper.

Issues raised in submissions and the public hearing

Given that the benefit of the proposed payment is limited to registered parties with elected members, Professor Orr queried why independent members are to be excluded. He observed that parliamentary parties already receive extra support for certain purposes, including policy development and legislative oversight (under section 112 of the *Parliament of Queensland Act 2001* and the Members’ Entitlements Handbook), and that ‘...the government has the whole of the policy development arms of the bureaucracy at its fingertips’.¹⁰³

In addition to excluding independent members from receiving a payment, Professor Orr identified that ‘...a party (say the Greens, Katter Australia or Palmer United) could receive significant support – even over 10% of the vote in most of the seats it stood in – without electing an MP due to the disproportionality of the electoral system’.¹⁰⁴ He observed that: ‘Such a strongly supported, ongoing party will receive no ‘policy development funds’.¹⁰⁵

Professor Orr did not consider that the amendments would reduce costs and that, in order to do so, ‘...the amount of any annual funding needs to be set in legislation, not by ministerial regulation...’ and ‘...the reduction in funding needs to be shared proportionately, not through denying the non-major parties and independents’.¹⁰⁶

⁹⁹ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

¹⁰⁰ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 3; Clause 49 (proposed new sections 239-241), Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 10.

¹⁰¹ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 3; Clause 49, Electoral Reform Amendment Bill 2013; *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 3.

¹⁰² *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

¹⁰³ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

¹⁰⁴ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

¹⁰⁵ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

¹⁰⁶ Professor Graeme Orr, University of Queensland, Submission No. 1, page 3.

Despite being a ‘policy development payment’, Professor Orr noted that the Bill does not require the funds to be used on policy development or even administration: *‘They could be used on future electioneering. There is not even a safeguard against using public funding for private benefit or expenses’*.¹⁰⁷

At the Committee’s public hearing, the Committee asked the ECQ whether there exists any accountability or transparency provisions requiring a recipient to disclose how received funds are treated or requiring the ECQ Commissioner to administer the payments in such a fashion as to be aware of the application of received funds. The ECQ response indicated this was likely a matter of policy for future determination.¹⁰⁸

The FVA opposed the proposed payment, arguing that *‘...the new proposal for public funding of political parties for policy development in addition to actual election expenditure is completely inappropriate’*.¹⁰⁹ Similarly, to Professor Orr, the FVA expressed concern at potential increased funding of the major political parties:

Allowing the level of such funding to be set by regulation opens the way for ever increasing allocations of public funding to the two major political parties.

*Political parties should source their own funds for policy development from civil society and not become dependent on the public purse.*¹¹⁰

In its response to submissions on the proposed introduction of policy development funding, the Department advised the Bill’s provisions accurately reflect *‘...the Government’s decision to implement a payment based on a party’s relative electoral support and intended to ensure parties can continue to engage fully in developing and shaping policy throughout the electoral cycle while continuing to effectively represent the community’*.¹¹¹ In response to claims that the amount of funding should be set by Parliament, not prescribed by regulation, the Department commented: *‘Having the amount prescribed by the Minister will provide the flexibility to set amounts taking into account the economic climate, while providing for scrutiny by Parliament’*.¹¹²

Committee Comment

The Committee supports the proposed payment of a policy development payment to registered political parties with an elected member. It is anticipated that the introduction of this funding will benefit the electoral process by aiding political parties in their development of policy, while they simultaneously discharge their other functions.

However, the Committee considers it is in the best interests of political parties to direct the payment to its intended use. A party shall be accountable to itself for the best use of the payment and the Committee does not consider it necessary to legislate further in this regard.

Whilst acknowledging submissions which argue the amount of the payment should be specified in the Bill or otherwise set by Parliament, the Committee doesn’t object to the amount being prescribed by regulation and supports the Department’s explanation that such an approach will provide flexibility.

¹⁰⁷ Professor Graeme Orr, University of Queensland, Submission No. 1, page 4.

¹⁰⁸ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 20.

¹⁰⁹ FamilyVoice Australia, Submission No. 11, page 5.

¹¹⁰ FamilyVoice Australia, Submission No. 11, page 5.

¹¹¹ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 10.

¹¹² Letter from the Department of Justice and Attorney-General, 31 January 2014, page 10.

2.2 Part B - Electoral processes

2.2.1 Recognising the importance of how-to-vote-cards

Proposed changes

The Bill introduces a number of legislative amendments to the provisions relating to how-to-vote cards which recognises their importance as a resource for voters.¹¹³ The Department advises the Bill will ensure greater scrutiny of how-to-vote cards before polling day and also provide postal voters with access to how-to-vote guidance.¹¹⁴

The proposed changes include the following requirements:

- how-to-vote cards must be made available for public inspection at:
 - a. the ECQ's Brisbane office;
 - b. the office of the returning officer for the relevant electoral district; and
 - c. the ECQ's website;¹¹⁵
- the ECQ or the returning officer must reject a how-to-vote card if the card is likely to mislead or deceive electors when they cast their votes;¹¹⁶
- if a how-to-vote card is rejected, then written reasons must be provided for the rejection;¹¹⁷ and
- a revised how-to-vote card may be resubmitted by 5pm on the Wednesday immediately before polling day.¹¹⁸

In his Introduction Speech, the Attorney-General made the following comments concerning the proposed changes to the provisions relating to how-to-vote cards:

*In recognising the important information role how-to-vote cards play, the cards will now be required to be published on the Electoral Commission of Queensland website. This will provide postal voters with access to how-to-vote guidance while allowing greater scrutiny of the cards before polling day. The Electoral Commission of Queensland will also be given power to refuse to register a how-to-vote card that is likely to mislead or deceive a voter in casting their vote. These reforms will ensure Queensland has an electoral system that meets high standards of integrity and accountability, and promotes participation in our democracy through political representation and voting.*¹¹⁹

The Department is aware of the lack of independent review for any decision by the ECQ or returning officer to refuse to register a how-to-vote card if the card is viewed as likely to mislead or deceive a voter in casting their vote. However, the Department submits that timing issues make an independent review of the decision impracticable.¹²⁰

¹¹³ Clause 21, Electoral Reform Amendment Bill 2013.

¹¹⁴ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 1.

¹¹⁵ Clause 21(3), Electoral Reform Amendment Bill 2013.

¹¹⁶ Clause 21(1), Electoral Reform Amendment Bill 2013.

¹¹⁷ Clause 21(2), Electoral Reform Amendment Bill 2013.

¹¹⁸ Clause 21(2), Electoral Reform Amendment Bill 2013.

¹¹⁹ *Record of Proceedings (Hansard)*, 21 November 2013, page 4227.

¹²⁰ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 1.

Issues raised in submissions

Four of the 180 submissions touched on this aspect of the Bill. One submission supported the proposed changes relating to how-to-vote cards. This submission was from Ben Marshall who commented that the proposed changes ‘*seemed reasonable*’.¹²¹ Another submission was supportive of the publication of the how-to-vote cards on the ECQ website but was opposed to giving the ECQ power to ban how-to-vote cards as an unwarranted interference in the right to free speech on political matters.¹²² The remaining two submissions objected to the changes.¹²³

One of the two submissions opposing these changes was from the QCU, which recommended that no amendment be made to the existing legislation. The QCU commented that it:

*...remain[ed] unconvinced that there is any evil to be rectified. We are unaware of any evidence of misleading or deceptive practice with respect to how to vote cards. One concern is that this proposal might be used in such a way as to prevent community groups from participating in the election.*¹²⁴

The Department responded to these concerns as follows:

The Bill reflects the Government's recognition of the important information role how-to-vote cards play. The amendment to section 183 (Lodging how-to-vote cards) to require the publication of cards on the ECQ website will provide postal voters with access to how-to-vote guidance while allowing greater scrutiny of the cards before polling day.

*Given the ECQ the power to refuse to register a how-to-vote card that is likely to mislead or deceive a voter in casting their vote will ensure Queensland will enhance integrity and accountability in the electoral system.*¹²⁵

Committee Comment

The Committee has considered the proposed amendments under Clause 21 of the Bill relating to the how-to-vote cards provisions. In the Committee's view, these changes are not only reasonable but are anticipated to be particularly useful for those people who choose to make a postal vote, pre-poll vote or electronically assisted vote.

2.2.2 Implementing a proof of identity requirement

The Bill proposes to introduce a proof of identity requirement in order to cast a vote when attending a polling booth.¹²⁶ In its written briefing to the Committee, the Department advised that acceptable forms of identification, including non-photographic forms of identity, will be prescribed in the *Electoral Regulation 2013*.¹²⁷ The Department stated that voters who do not provide some form of proof of identity will be permitted to make a declaration vote.¹²⁸

¹²¹ Ben Marshall, Submission No. 4, page 1.

¹²² FamilyVoice Australia, Submission No. 11, pages 7-8.

¹²³ Queensland Council of Unions, Submission No. 8, page 4; Queensland Advocacy Inc., Submission No. 135, page 4.

¹²⁴ Queensland Council of Unions, Submission No. 8, page 4.

¹²⁵ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 28.

¹²⁶ Clause 9, amendment of s. 107, s. 107(3), Electoral Reform Amendment Bill 2013.

¹²⁷ Clause 4, amendment of s. 2 (definitions), Electoral Reform Amendment Bill 2013.

¹²⁸ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2.

In the Department's response to stakeholder's submissions, the Department stated that the range of proof of identity documents will include:

- the voter information letter issued by the ECQ to persons included on the electoral roll;
- a document evidencing electoral enrolment;
- a current driver licence;
- a current Australian passport;
- a recent account or notice issued by a public utility;
- an identification card issued by the Commonwealth or a State as evidence of the person's entitlement to a financial benefit.¹²⁹

Issues raised in submissions

The majority of submissions received by the Committee focussed on the proposed proof of identity provisions.

One submission, by the FVA, supported the proof of identity provisions in the Bill:

*The process of voting can be considered to have integrity if two conditions are satisfied. Firstly, the identity of each voter should be correct....Secondly, each voter should vote only once.*¹³⁰

Over 160 submissions opposed the proof of identity provisions in the Bill. Unfortunately, a large number of these submissions were of no assistance to the Committee as they were without argument or reason. Some of the issues raised in the submissions that could inform the debate are set out as follows:

- 'it is a solution in search of a problem';¹³¹
- the need for the law has not been demonstrated and its implementation is not reasonable or proportionate;¹³²
- comparisons to similar issues with voter identification laws in the USA and expression of general caution through to serious concern in relation to overseas experience;¹³³
- longer waiting times to vote, leading to greater disaffection with electoral process;¹³⁴
- significant responsibility imposed on electoral officials and their potential exposure to conflict;¹³⁵
- concerns for particular voters who may have difficulty supplying proof of identity and who may already be socially or economically disadvantaged, concerns the provisions may impact disproportionately on the poor and oppressed, concerns for migrants, transient workers,

¹²⁹ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 14.

¹³⁰ FamilyVoice Australia, Submission No. 11.

¹³¹ Queensland Council for Civil Liberties, Submission No. 2.

¹³² See Submissions: 2, 4, 6, 8, 12, 13-49, 51-65, 67-85, 87-97, 99-135, 136-142, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹³³ See Submissions: 4, 133, 141.

¹³⁴ See Submissions: 5, 13-49, 51-65, 67-85, 87-97, 99-133, 136-140, 142, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹³⁵ Ben Marshall, Submission No. 4; Queensland Nurses' Union, Submission No. 5.

- homeless, people with a mental illness, people with an intellectual disability, people in rural and remote areas, elderly, young people, itinerants and the Indigenous;¹³⁶
- need to ensure the rights of those citizens and their dignity is not compromised under the proposed arrangements;¹³⁷
 - eligible voters may be discouraged from voting in the first place and some declaration votes may not be counted given the potential for the returning officers to regard themselves as not satisfied the elector was entitled to vote;¹³⁸
 - care needs to be exercised to ensure identification requirements are easily available to people with a disability;¹³⁹
 - change is contradictory to Government objective of red tape reduction;¹⁴⁰
 - voter confusion in first year and differences with federal voting requirements;¹⁴¹
 - need for easily accessible and widely available identity documents;¹⁴²
 - already sufficient checks and balances;¹⁴³
 - undemocratic as it will unfairly discriminate against the disadvantaged;¹⁴⁴
 - waste of resources and resources better diverted elsewhere;¹⁴⁵
 - conflicts with international obligations to which Queensland aspires to comply;¹⁴⁶
 - dent the optimism that people with disability are beginning to experience with their hopes and aspirations of the National Disability Insurance Scheme;¹⁴⁷
 - changes reflect Queensland's 'majoritarian' and unicameral parliament;¹⁴⁸
 - voter identity useful for providing a degree of voter integrity in emerging democracies where fraud is undeniably more prevalent;¹⁴⁹

Many submissions pointed to the lack of evidence of voter fraud in Queensland.¹⁵⁰

¹³⁶ See Submissions: 4-6, 8-10, 12, 13-49, 51-65, 67-142, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹³⁷ Queensland Nurses' Union, Submission No. 5; Australian Human Rights Commission, Submission No. 134.

¹³⁸ See Submissions: 6, 9, 133, 134.

¹³⁹ Endeavour Foundation, Submission No. 7.

¹⁴⁰ See Submissions: 8, 9, 13-49, 51-65, 67-85, 87-97, 99-132, 136-140, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹⁴¹ Queensland Law Society, Submission No. 9; Joint submission from QAILS and ATSILS, Submission No. 142.

¹⁴² See Submissions: 9, 66, 134.

¹⁴³ See Submissions: 13-49, 51-65, 67-85, 87-97, 99-132, 136-140, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹⁴⁴ See Submissions: 13-49, 51-65, 67-85, 87-97, 99-132, 136-140, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹⁴⁵ See Submissions: 13-49, 51-65, 67-85, 87-97, 99-132, 135-140, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

¹⁴⁶ Queensland Advocacy Inc. Submission No. 135.

¹⁴⁷ Queensland Advocacy Inc. Submission No. 135.

¹⁴⁸ Dr Tracey Arklay, Submission No. 141.

¹⁴⁹ Dr Tracey Arklay, Submission No. 141.

¹⁵⁰ See Submissions: 2, 4, 6, 8, 12, 13-49, 51-65, 67-85, 87-97, 99-135, 136-142, 160, 161, 163, 165, 168, 169, 172, 173, 175, 177.

Prior to the Committee's inquiry, the Department released the Discussion Paper, which stated:

*Given that Queensland would be the only jurisdiction to require proof of identity on polling day, there is a risk that the requirement would lead to voter confusion. Also, as there is no specific evidence of electoral fraud in this area, introduction of proof of identity requirements could be considered a disproportionate response to the risk.*¹⁵¹

The Department, in its briefing to the Committee, was unable to provide evidence of voter fraud in Queensland.¹⁵² However, in response to a question by Mr Wellington MP about what evidence of voter fraud has been presented to the Department, the Department responded:

*The department is aware that from time to time after elections the Electoral Commission Queensland produces a report and from time to time indicates in that report that they suspect that there has been voter fraud. It does not appear to be widespread, but there has been some indication of that.*¹⁵³

The Queensland Association of Independent Legal Services Inc (QAILS) and Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) joint submission provided information on the risk of voter fraud:

*There is insufficient empirical evidence of voter fraud to justify a proof of identity requirement for voters. The 2012 State General Election: Evaluation Report and Statistical Returns published by the Electoral Commission of Queensland does not include any evidence of, or reference to, electoral or voter fraud. Further, the Electoral Reform Green Paper: Strengthening Australia's Democracy, published by the Commonwealth Government in September 2009, reported that there were only 10 cases of multiple voting in the 2007 Commonwealth government election referred to the Australian Federal Police for investigation.*¹⁵⁴

The Acting Electoral Commissioner for the ECQ provided evidence at the Committee hearing on 6 February 2014 in relation to voter fraud. The Acting Commissioner stated:

*I am on record as stating at the estimates that at the last state election I referred one person to the Queensland Police Service for multi-voting.*¹⁵⁵

In relation to proportionality, the Australian Human Rights Commission (AHRC) submission stated:

*A basic tenet of human rights is the test of proportionality, that is, any action taken to address an issue must be proportionate to the risk of infringing on rights. Given the lack of evidence of voter fraud and the risk of disenfranchisement of high numbers of Aboriginal and Torres Strait Islander voters, I believe these laws may not satisfy this test and could potentially be considered to be an imposition to the exercise of the rights of Aboriginal and Torres Strait Islander people.*¹⁵⁶

¹⁵¹ Department of Justice and Attorney-General, *Electoral Reform Discussion Paper*, January 2013, page 29.

¹⁵² *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 12 December 2013, page 2.

¹⁵³ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 12 December 2013, page 2.

¹⁵⁴ Joint Submission by QAILS and ATSILS, Submission No. 142, page 3.

¹⁵⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 18.

¹⁵⁶ Australian Human Rights Commission, Submission No. 134, page 2.

The potential for disenfranchisement of certain voters was a concern expressed by many submitters to the inquiry. Potential groups of voters that may be disenfranchised by the proposed provisions include: Indigenous, migrants, transient workers, homeless, people with a mental illness, people with an intellectual disability, people in rural and remote areas, elderly, young people and itinerants.

As will be discussed further below, a declaration vote may not remedy this situation in many cases. For example, individuals with low literacy are likely to struggle with completing a valid declaration vote (requiring more writing and comprehension) than a simple ballot paper.¹⁵⁷

The Human Rights Legal Centre (HRLC) and AHRC expressed concern¹⁵⁸ about the practical effect of proof of identity requirements:

- up to 40,000 Queenslanders could be disenfranchised and be subject to a disproportionately harmful impact;¹⁵⁹
- many Aboriginal and Torres Strait Islander people face difficulties in obtaining formal identification and may be unable to meet the proposed requirements;¹⁶⁰
- lack of a birth certificate prevents people from being granted other forms of identification;¹⁶¹
- as a broad indicator of the potential impact of these laws—it is estimated only 38% of Indigenous people in some Queensland local government areas have a driver licence compared to an average of 90% of the rest of the eligible population;¹⁶²
- Aboriginal and Torres Strait Islander people attempting to vote may feel intimidated by the requirements to fill in extra paperwork (casting a declaration vote) and at being treated differently to other voters;¹⁶³
- may also have the effect of making people without identification feel further marginalised and reluctant to complete the process.¹⁶⁴

Concerns were also expressed in relation to whether certain young people and those who are homeless have access to non-photographic identification, such as a public utility notice, or have retained information, such as the voter identification letter issued by the ECQ.¹⁶⁵

In its response to submissions, the Department stated a person who is homeless may enrol to vote despite having no fixed address, if they could provide:

- an Australian driver's licence;
- Australian Passport; or
- signed declaration by a person on the Commonwealth electoral roll attesting to the person's identity.¹⁶⁶

¹⁵⁷ Australian Human Rights Commission, Submission No. 134, page 2.

¹⁵⁸ See Submissions: 133 and 134.

¹⁵⁹ Human Rights Law Centre, Submission No. 133.

¹⁶⁰ Australian Human Rights Commission, Submission No. 134.

¹⁶¹ Australian Human Rights Commission, Submission No. 134.

¹⁶² Australian Human Rights Commission, Submission No. 134, page 2; Joint submission by QAILS and ATSILS, Submission No. 142, page 4.

¹⁶³ Australian Human Rights Commission, Submission No. 134.

¹⁶⁴ Australian Human Rights Commission, Submission No. 134.

¹⁶⁵ Including Submissions: 4, 5, 6, 8 and 9.

¹⁶⁶ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 15.

It is less likely that a homeless person would gain voter enrolment status through providing one of the first two forms of identification. Accordingly, if the person does not possess their voter identification letter (due, perhaps, to theft, water damage or an absence of mailing address), they will be enrolled, but potentially unable to submit an ordinary vote through a lack of proof of identity.

The Bill provides for a declaration vote in the case where an individual is unable to provide sufficient proof of identity. The process for a declaration vote is set out in the Act and section 125 provides that a declaration vote will be accepted for counting only if the ECQ is satisfied of the person's entitlement to vote.¹⁶⁷

In its letter to the Committee, the Department identified some of the matters the ECQ would consider in deciding whether a declaration vote made at a polling booth is to be counted:

*...that the declaration envelope has been signed in accordance with the Act and that the signature purports to be witnessed by the officer who issued the certificate; that the voter is enrolled for the division; that the voter has not previously voted in the election.*¹⁶⁸

The Bar Association of Queensland raised two main concerns with the way the Bill is drafted:

First, that some eligible voters will be discouraged from voting at all; and

*Second, 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.*¹⁶⁹

The second concern raised by the BAQ casts some doubt on whether the declaration vote is an adequate safety net for those who are not able to provide sufficient proof of identity on election day.

A further issue with the use of declaration voting was raised by AHRC:

*There is greater opportunity for error, particularly for those with less advanced literacy, when required to complete more complex paperwork than just filling in a ballot paper. Those without identification may have an increased likelihood of their votes not being counted, even if they proceed to the alternative declaration vote process.*¹⁷⁰

Submitters such as the QLS stated that consideration must be given to ensuring that any identity documents are as easily accessible and widely available as possible for eligible voters.¹⁷¹

Submitters including the Castan Centre for Human Rights Law (CCHRL) advocated for birth certificates to be available free or at a reduced cost in order for everyone to be able to have access to such an essential identity document.¹⁷²

The CCHRL stated that if the Bill retains a requirement for proof of identity, those documents should include forms of identity the majority of Indigenous Queenslanders possess, such as 'Proof of Aboriginality' documents. This is a signed document bearing the seal of an Aboriginal organisation.¹⁷³

Some stakeholders have raised concerns that implementation of the new electoral provisions, including the proof of identity provisions, may lead to negative outcomes, such as, voter confusion on polling day, longer queues and an escalation in the time it takes to cast a vote. In his opening address at the Committee's public hearing, Mr Walter van der Merwe, Acting Electoral

¹⁶⁷ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 15.

¹⁶⁸ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 15.

¹⁶⁹ Bar Association of Queensland, Submission No. 6, page 2.

¹⁷⁰ Australian Human Rights Commission, Submission No. 134, page 2.

¹⁷¹ Queensland Law Society, Submission No. 9, page 4.

¹⁷² Castan Centre for Human Rights Law, Submission No. 10, Attachment, page 67.

¹⁷³ Castan Centre for Human Rights Law, Submission No. 10, page 3.

Commissioner, advised of progress made on the ECQ's awareness program, including consultation with the Commission's advertising agency:

*Should the parliament pass this legislation, there are going to be some significant changes which the electors are not familiar with—proof of identity, for example. There will be stuff regarding funding and disclosure and all those sorts of issues which we need to get out there and be upfront about. We need to be on the front foot and let people know what is going on.... My first allegiance would be to ensure that none of the voters are disenfranchised.*¹⁷⁴

Committee Comment

The Committee notes the competing interests of the fundamental right to vote and regulating to ensure elections are fair and honest. The Committee also notes the concerns raised by submitters in relation to the provisions on proof of identity but considers the declaratory vote is a real means of ensuring that a person who wants to vote, will vote.

On balance the Committee believes the availability of a declaration vote is an adequate safeguard against the risk of disenfranchisement of certain groups of electors. In order to further safeguard against the risk of disenfranchisement, the Committee makes three recommendations, detailed below.

The Committee also notes and supports the Government's intention to provide education and advertising in relation to the proof of identity requirements prior to the next election. In order to effectively and responsibly implement the proposed proof of identity provisions, the Committee expects that an appropriate communications strategy will be developed and employed. This should exploit available advertising and educational options and be devised with the intention that all voters are aware of their responsibilities prior to their arrival at the polling booth on election day. Implementation of an effective communications strategy will neutralise, or at least, minimise, voter confusion and delay.

As raised by the Member for Toowoomba North at the public hearing, for a voter to be disenfranchised, the voter needs to be registered on the roll of voters. The declaratory vote process will enfranchise that voter should he or she wish to cast a vote.

Recommendation 3

The Committee recommends the Attorney-General and Minister for Justice include a reasonable range of documents (both photographic and non-photographic) in the Electoral Reform Regulation to ensure that voters have the best chance of fulfilling the proof of identity requirements and are able to cast their vote without incident.

Recommendation 4

The Committee recommends the Electoral Commission of Queensland provides reasonable training to electoral officers in relation to both proof of identity requirements and assisting voters with the declaration process.

¹⁷⁴ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 17.

2.2.3 Implementing first stage of electronic assisted voting

Background

The Bill proposes a new subdivision to facilitate electronically assisted voting for those voters who cannot vote without assistance because of impairment or an insufficient level of literacy, or who cannot vote at a polling booth because of impairment.¹⁷⁵ The Department advised that a regulation for the section may prescribe another class of electors who may cast an electronically assisted vote.¹⁷⁶

The proposed new sub-division also provides for:

- procedures to be prescribed for electronically assisted voting;
- auditing and protecting the information technology used for electronically assisted voting; and
- reviewing and reporting on the use of electronically assisted voting at a particular election.¹⁷⁷

Under the proposals, the Commissioner may also decide electronically assisted voting is not to be used at a particular election or by a class of electors at a particular election. In these circumstances, the Commissioner's decision must be in writing and published on the Commission's website.¹⁷⁸

The Explanatory Notes to the Bill provide the following additional background information:

Electronic voting refers to any system by which votes cast their votes using an online system such as the internet or touch-tone phone. It includes both remote voting and electronically assisted voting.

*The priority is to implement electronically assisted voting for an elector who can not vote without assistance because of impairment or because they have insufficient literacy.*¹⁷⁹

In his Introduction Speech, the Attorney-General made the following comments concerning facilitating electronically assisted voting:

*Reforms to maximise voter participation are also proposed in the bill. Provisions to enable electronically assisted voting will be inserted into the act. The government supports offering electronically assisted voting to all Queenslanders, if associated security and integrity arrangements can be assured. In the short term, the priority is to make electronically assisted voting available on a targeted basis for blind and vision impaired voters and voters who require assistance voting because of a disability, motor impairment or insufficient literacy. Electronically assisted voting will, for the first time in Queensland, enable these voters to cast their votes independently and in secret.*¹⁸⁰

Issues raised in submissions

Of the total number of 180 submissions, 15 submissions referred to the Bill's proposal to introduce electronic assisted voting. Thirteen of these 15 submissions were in favour of the introduction of

¹⁷⁵ Clause 15, Electoral Reform Amendment Bill 2013.

¹⁷⁶ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2.

¹⁷⁷ Clause 15 (proposed new sections 121A-D and F), Electoral Reform Amendment Bill 2013.

¹⁷⁸ Clause 15 (proposed new section 121E), Electoral Reform Amendment Bill 2013.

¹⁷⁹ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 6.

¹⁸⁰ *Record of Proceedings (Hansard)*, 21 November 2013, page 4227.

electronically assisted voting, though some of these submissions were qualified.¹⁸¹ For example, the ADCQ submitted:

*The ADCQ is very supportive of the provisions in the Bill which facilitate electronically assisted voting, particularly to ensure access to secret and independent voting for people with an impairment including blind and vision impaired voters; and voters who require assistance because of a disability, motor impairment or insufficient literacy. Many voters with these types of impairments do not presently have a process whereby they can vote without assistance. Being able to cast a vote independently is an important part of an individual's participation in the political process, and the provisions are a positive development in providing equality and protecting human rights.*¹⁸²

In its submission, the ADCQ originally questioned whether greater clarity ought to be given to the definition and meaning of the terms 'impairment', 'electronically assisted vote' and 'cannot' to ensure there is sufficient clarity as to the intent of the amendments.¹⁸³ In this regard, the Department responded as follows:

*DJAG considers the Bill is effective without defining these terms. The intent was to avoid inadvertently or needlessly placing limitations around electronically assisted voting and what it may encompass. Providing for the provisions to be interpreted more broadly, while also providing for the security and integrity of such arrangements, is consistent with the Government's intent to implement [electronically assisted voting] on a targeted and staged basis.*¹⁸⁴

At the public hearing, Kevin Cocks, Commissioner of the ADCQ noted that he was satisfied with the above response from the Department and made the following comments:

*If the interpretation is very open and there is no potential for disputes then this point may not be as important as we first thought.*¹⁸⁵

Vision Australia's submission discussed electronically assisted voting in considerable detail. Overall, Vision Australia is supportive of the proposals concerning electronically assisted voting in the Bill, however Vision Australia did make a number of recommendations including the following:

- that the possible categories of voter to use electronically assisted voting be made as broad as possible. In particular, that the Committee recommends for the 2015 election allowing people living more than 20 kilometres from a polling booth and people who will be outside Queensland on election day to use electronically assisted voting to provide a more cost effective outcome;¹⁸⁶ and
- that the Queensland Government include internet voting as well as automated telephone voting in the 2015 Queensland election.¹⁸⁷

¹⁸¹ See for example: Vision Australia, Submission No. 3, pages 1-12; Queensland Nurses' Association, Submission No. 5, page 3; Bar Association of Queensland, Submission No. 6, pages 1-2; Queensland Council of Unions, Submission No. 8, page 4; FamilyVoice Australia, Submission No. 11, pages 6-7.

¹⁸² Anti-Discrimination Commission Queensland, Submission No.12, pages 7-8.

¹⁸³ Anti-Discrimination Commission Queensland, Submission No. 12, pages 7-8.

¹⁸⁴ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 24.

¹⁸⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 2.

¹⁸⁶ See also: Bar Association of Queensland, Submission No.6, page 2.

¹⁸⁷ See Recommendations 2, 3 and 4, Vision Australia, Submission No. 3, page 12.

In relation to the above points the Department responded as follows:

DJAQ further notes that the ECQ will have administrative responsibility for implementing an electronically assisted voting system that best meets Queensland's need. The Bill:

- *is intended to provide for the expansion of the categories of voters for whom electronically assisted voting may be offered at a particular election;*
- *does not limit the types of electronically assisted voting that may be used; and*
- *does not prescribe the system of electronically assisted voting that must be used for an election.*¹⁸⁸

The Department further explained:

*[Electronically assisted voting] will only be made available to the wider voting community if associated security and integrity arrangements can be assured. In the short term, the priority is to make electronically assisted voting available on a targeted basis for blind and vision impaired voters who require assistance voting because of a disability, impairment or insufficient literacy.*¹⁸⁹

At the public hearing, Ms Knight, the General Manager of Vision Australia Queensland, provided the following additional feedback and suggestions on electronically assisted voting:

It is an important point and I want to make a distinction between some of the current accessible voting systems that may be contemplated. Not all of them are equal. First, in terms of telephone voting, a truly accessible and independent system means that it should be fully automated. There should be no requirement to consult with another person while voting. Speaking to someone at a call centre on election day simply does not cut it. Committee members here will be aware of, and most likely have used, telephone banking—a fully automated process whereby your security, identification and transaction selections are made using the handset and verified by a machine which uses a synthesized voice to let you know your options. Likewise, internet banking is commonplace and occurs without human intervention other than that of the user. Your transactions are your business. You undertake these using your keypad. There is, for all intents and purposes, no third party or human intervention during the process. The telephone and internet options are provided through the New South Wales iVote system, which we view as the benchmark for accessible, independent and secret voting. We urge you to look closely at the features of the iVote system.

*Finally, the type and number of users for a system like that should be as broad as possible to maximise the awareness and uptake of the new system that is being introduced. So we are really heartened by the Attorney-General making specific mention of voters outside of Queensland on polling day being an eligible category of voters who can use electronically assisted voting. This will also support uptake and provide benefits to voters and the system. Vision Australia would be more than happy to assist in further development or promotion of any electronically assisted voting in Queensland. We congratulate the Queensland government on this important initiative.*¹⁹⁰

¹⁸⁸ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 24.

¹⁸⁹ Letter from the Department of Justice and Attorney-General, 31 January 2014, page 24.

¹⁹⁰ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, pages 9-10.

The Endeavour Foundation also supported the proposal for electronically assisted voting, however it recommended that consideration be given to using technology familiar to people with a disability. In its submission, the Endeavour Foundation noted:

*Tablet devices are now being used extensively by people with a disability to facilitate their communication. It is expected that the use of familiar technology will assist in the success of this initiative.*¹⁹¹

QCU's support for this proposal was also qualified due to its concerns about the security issues involved and the issue of the anonymity of the voter.¹⁹²

There were two submissions that did not support the proposal to introduce electronically assisted voting. Ben Marshall wrote:

*Electronic voting has been universally dismissed by experts in IT security as readily hackable and much less secure. I do not see how the massive costs of investing in insecure US electronic voting machines is justified in a time of belt-tightening, or how it truly assists voters with a disability. I see no evidence to support this claim.*¹⁹³

Keith Wilson also opposed the proposal:

*Electronic voting has been proven in courts in the USA to be easily corrupted so I hope you are not going down this path.*¹⁹⁴

Build on experience in other jurisdictions

A number of submissions recommended that the Queensland Government build on the experience of other jurisdictions in this area. For example:

- the Commonwealth Government's trial of electronic voting for people with vision impairment in the 2007 election which is understood by the Endeavour Foundation to have been 'seen as successful'.¹⁹⁵
- Vision Australia also recommended the iVote system used in New South Wales be considered as a benchmark for the implementation of electronically assisted voting for Queensland.¹⁹⁶
- as well as discussing the iVote system used in New South Wales in the 2011 State election, the FamilyVoice Australia submission also summarised and commented on the electronic voting systems used in Victoria in the 2006 and 2010 State elections.¹⁹⁷

In this regard, FamilyVoice Australia concluded:

*The specific system or systems chosen and the procedures for their use need to be carefully audited both before implementation and after each election. New section 121C which would be introduced by this Bill would require such audits.*¹⁹⁸

¹⁹¹ Endeavour Foundation, Submission No. 7, page 4.

¹⁹² Queensland Council of Unions, Submission No. 8, page 4.

¹⁹³ Ben Marshall, Submission No. 4, page 1.

¹⁹⁴ Keith Wilson, Submission No. 104, page 1.

¹⁹⁵ Endeavour Foundation, Submission No. 7, page 4.

¹⁹⁶ See Recommendations 2, 3 and 4, Vision Australia, Submission No. 3, page 12.

¹⁹⁷ FamilyVoice Australia, Submission No. 11, page 6.

¹⁹⁸ FamilyVoice Australia, Submission No. 11, pages 6-7.

Relevantly, the Bar Association of Queensland concluded as follows:

*It is important that the implementation of this innovation be resourced adequately and planned carefully to ensure that electronically assisted voting is free and fair and is confidently perceived as such. Any failures in implementation which resulted in shortfalls in these areas could be very damaging to the electoral system as a whole.*¹⁹⁹

Committee Comment

The Committee commends the proposal to introduce electronically assisted voting in the Bill. The Committee also notes this proposal is relatively uncontroversial given that it received wide support, subject to a couple of exceptions, from those submissions that commented on it. The Committee also notes the Government proposes a staged introduction of electronically assisted voting and that over time it is likely it will be expanded to additional categories of voters. The Committee supports the staggered introduction of electronically assisted voting and the proposed expansion of its operation.

2.2.4 Changing postal voting requirements

Background

In Queensland, the primary method of voting in an election is 'ordinary' voting, where electors attend at a polling booth in the electoral district for which they are enrolled, have their name marked off the list of eligible voters and cast their vote.²⁰⁰

The Act provides alternative methods by which those electors, who may be unable to cast an ordinary vote, for reasons such as being more than eight kilometres from the nearest polling place on polling day, undertaking travel that would prevent attending a polling place in the elector's electoral district, or serious illness, disability or advanced pregnancy or carer responsibilities.²⁰¹

The alternative methods of voting are collectively called 'declaration' voting, because, when using one of these alternatives, the elector must complete a declaration that they are entitled to vote, in place of having their name marked off the electoral roll. Two alternative methods of voting that electors may utilise in Queensland in the pre-election period are postal voting and pre-poll voting.²⁰²

As noted in the submission from the Palmer United Party:

*A variety of economic and social drivers and the increasing number of Australians becoming frail or elderly, has triggered an increasing number of voters taking advantage of more convenient voting options such as early voting.*²⁰³

Proposed changes

Clause 11 of the Bill proposes to amend section 114 of the Act which deals with whom may make a declaration vote.

In his Introduction Speech, the Attorney-General made the following comments concerning the proposed changes to the postal voting requirements:

In acknowledging continuous economic and social changes and an ageing population, the bill proposes removing the restrictions on who can apply for a postal vote. Voters wishing to

¹⁹⁹ Bar Association of Queensland, Submission No. 6, page 2.

²⁰⁰ Section 107, *Electoral Act 1992*.

²⁰¹ Section 114, *Electoral Act 1992*.

²⁰² Sections 110 and 119, *Electoral Act 1992*.

²⁰³ Palmer United Party, Submission No. 179, page 3.

*cast a pre-poll vote can currently do so without restriction and this change will make the requirements consistent. Changes to postal voting requirements will also be made to enable applications to cast a postal vote to be made online and to bring forward the deadline to apply for a postal vote to ensure voters receive their ballot papers in time to cast a valid vote.*²⁰⁴

In summary, in relation to changing the postal voting requirements, the Bill proposes to make three changes:

- aligning postal voting requirements with pre-poll voting requirements by removing the eligibility criteria for postal votes;²⁰⁵
- facilitating online applications for postal votes; and
- bringing forward the deadline for making an application for a postal vote to 7pm on the Wednesday before polling day.²⁰⁶

Issues raised in submissions

Of the 180 submissions, six submissions commented on the proposed amendments to the postal voting requirements. Of these six, all but one submission was in favour of the proposed changes under the Bill. A variety of reasons were provided for supporting the proposed amendments. These included the following:

- a simplification of the postal voting process will assist people with a disability who experience access difficulties in registering their vote;²⁰⁷
- the changes enable maximum participation in the election;²⁰⁸
- given that postal votes are readily available, this proposal would appear to be the existing practice so ‘*it follows that it would be sensible to change the legislation to fit the practice*’;²⁰⁹ and
- the changes will encourage active participation by the younger generation.²¹⁰

The one submission that opposed the proposed changes to the postal voting requirements was made by FamilyVoice Australia:

*Broadening eligibility for postal votes could result in a significant proportion of the electorate voting before the campaigning is finished and without the full benefit of all the information and arguments being put by candidates for election. Some critical fact or policy announcement may come to light only in the last few days of the campaign when it will be too late for early postal voters to be affected by it.*²¹¹

²⁰⁴ Record of Proceedings (Hansard), 21 November 2013, page 4227.

²⁰⁵ Clauses 4 and 11, Electoral Reform Amendment Bill 2013.

²⁰⁶ Clauses 12 and 18, Electoral Reform Amendment Bill 2013.

²⁰⁷ Endeavour Foundation, Submission No. 7, page 4; Jo Barkworth, Submission No. 14, page 1.

²⁰⁸ Queensland Council of Unions, Submission No. 8, page 4.

²⁰⁹ Queensland Council of Unions, Submission No. 8, page 4.

²¹⁰ Jo Barkworth, Submission No. 14, page 1.

²¹¹ FamilyVoice Australia, Submission No. 11, page 7.

The Department responded to FamilyVoice Australia by stating:

*The Bill reflects the Government's decisions to make voting more convenient and accessible for voters. Voters wishing to cast a pre-poll vote can currently do so without restriction and this change will make the requirements consistent.*²¹²

Committee Comment

It is the Committee's view that the proposed amendments to the Bill relating to the changes to the postal vote requirements will make voting more accessible and convenient to a wide range of individuals. In particular, these changes will be useful for the younger generation, the elderly and people for whom access to polling booths is a concern.

²¹² Letter from the Department of Justice and Attorney-General, 31 January 2014, page 28.

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 examination raised a number of potential FLP issues in various provisions. The Committee is satisfied the majority of the potential breaches are minor in nature, and has not detailed them all in this report.

The Committee brings the following significant matters to the attention of the House.

3.1.1 Summary of potential fundamental legislative principles and other issues

The following provisions raise potentially significant fundamental legislative principles (FLP) issues:

- clause 2 – retrospective commencement of Bill provisions;
- clauses 5, 36 and 37 – candidate nomination deposits and allocation of public election funding;
- clause 15 - ECQ decisions about the use of electronically assisted voting;
- clause 38 – removal of advanced payment of electoral funding;
- clause 38 – difference in election funding amount for registered political parties and candidates; and
- clauses 49 and 78 – policy development payment.

3.2 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.

Clause 2 of the Bill provides that the *Electoral Reform Amendment Act 2013*, other than sections 5 to 21,²¹³ is taken to have commenced on the day the Bill was introduced into the Legislative Assembly (i.e. 21 November 2013). The effect of clause 2 would be that the following amendments would have retrospective effect: the removal of the caps on political donations and electoral expenditure; the increase in the disclosure thresholds for gifts; the change in the way public election funding is calculated and distributed, and the introduction of policy development payments.

Section 4(3)(g) of the *Legislative Standards Act 1992* (LSA) 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 the retrospective commencement ‘...is important to ensure clarity of disclosure and reporting requirements in the lead up to the next general

²¹³ Sections 5 to 21 propose to: increase the percentage of the vote a candidate must obtain to recover their deposit; require proof of identity before voting; allow for electronically assisted voting; and make provision about how-to-vote cards.

*election*²¹⁴ and that ‘...the amendments generally will not operate to the disadvantage of any person.’²¹⁵

Arguably, the retrospective commencement of clauses 36 and 37 of the Bill²¹⁶, and clause 38²¹⁷, may adversely affect the rights and liberties of individuals. These clauses remove existing rights in relation to election funding.

Additionally, clause 78 of the Bill may adversely impact on rights and liberties of political parties and candidates. The clause includes proposed section 419 of the Act which pertains to particular claims for advance payment of election funding made by a registered political party or candidate. Specifically, it relates to claims which were lodged with the ECQ before 21 November 2013, but not decided before that date. Under the section, any such claim would be considered and, where appropriate, paid to the political party or candidate. However, it appears that claims lodged after 21 November 2013 will not be paid. Proposed section 420 of the Act²¹⁸ provides that if such a claim results in payment before the Bill receives Royal Assent, it is to be considered an overpayment and recovered by the State.

These provisions may adversely impact political parties and candidates who did not lodge a claim for advance payment of election funding prior to 21 November 2013. The significance of the potential adverse impact depends, in part, on the notice political parties and candidates received of the Bill’s removal of advance payments and the cut-off date for making a claim. It is unclear from the Attorney-General’s Introductory Speech, the Explanatory Notes and the Bill, what notice political parties and candidates were given of the proposed changes and when they would come into force. The House may wish to seek further clarification from the Attorney-General about this matter.

The Committee notes the explanation provided in the Explanatory Notes that retrospective commencement is important to ensure clarity of disclosure and reporting requirements in the lead up to the next general election. The Committee acknowledges this explanation, but also observes that the date for the next State general election is yet to be determined and may not be until 2015. The House may wish to consider whether retrospective commencement is unwarranted given no election date has been set.

Section 89 of the Act provides that a candidate for an election must provide a deposit of \$250 to the ECQ. Clause 5 of the Bill amends the section to increase the percentage of the first preference vote a candidate must receive to recover their deposit, from 4 to 10 per cent. Clauses 36 and 37 propose the same percentage increase with respect to a candidate’s or political party’s entitlement to public election funding.²¹⁹

As mentioned above, the LSA provides that FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. While not specifically listed in the LSA, such a parliamentary democracy involves the right of an adult citizen to participate fully in the democratic process. The Committee considers that an individual who stands as a candidate in an election represents a person participating **fully** in the democratic process.

²¹⁴ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 2.

²¹⁵ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 2.

²¹⁶ Proposed amendments to sections 223 and 224 of the Act, relating to the increase of threshold for receiving public election funding.

²¹⁷ Relating to the removal of advance payment of election funding.

²¹⁸ Clause 78, Electoral Reform Amendment Bill 2013.

²¹⁹ Clauses 36 and 37 of the Bill amend sections 223 and 224 of the Act.

The Explanatory Notes recognise the potential argument that clauses 36 and 37 infringe FLPs ‘...by removing an individual’s existing rights’²²⁰ and that the:

*... increase to 10% will strike a balance between individual and community interests, enabling full participation in the process by candidates who have a level of community support, while ensuring public funds do not go to candidates who have no realistic hope of being elected.*²²¹

The Explanatory Notes state that clause 5 is consistent with the changes made to increase the threshold for a candidate to receive public election funding.²²²

It is not uncommon for electoral legislation to prescribe a percentage of the vote which a candidate must receive to recover their deposit and be eligible for public election funding. The equivalent legislation for federal and state elections in New South Wales, Victoria, South Australia and Western Australia include such provisions, however, they specify a four per cent threshold.²²³ Under clauses 5, 36 and 37, the existing percentage applicable in Queensland is more than doubled. For the sake of comparison, if this threshold increase is applied to the 2012 Queensland state election results, in 29 districts out of 89, the only candidates to recover their deposit and be eligible for public election funding would be those who were achieved first or second place.

Due to financial considerations, these proposed changes to the Act may dissuade individuals from standing as candidates at the next State election. Potentially, participation in democracy may be reduced, which would represent an outcome inconsistent with one of the stated aims of the Bill. There may also be fewer candidates presented on the ballot paper, resulting in less choice for voters. This may further dilute democratic participation.

It is unclear from the Bill and Explanatory Notes why 10 per cent was nominated as the increased threshold. The Committee notes that clauses 5, 36 and 37 of the Bill raise potentially significant FLP issues. With respect to the increased threshold for entitlement to public funding, the Committee has made Recommendation 2, which is outlined earlier in this Report.

Clause 38 removes section 225 of the Act, which provides for a candidate or registered political party to apply to receive partial advance payment of election funding.²²⁴

The former Scrutiny of the Legislation Committee (SLC) considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. The Explanatory Notes acknowledge that, by removing an individual’s existing rights, clause 38 could be seen as an infringement of FLPs. They state that section 225 has ‘been removed as it is incompatible with the new public funding model proposed in the Bill.’²²⁵

Removal of advance payments may favour more established political parties over smaller, less established parties or independent candidates. Established political parties are more likely to possess robust financial arrangements to facilitate campaigning. Smaller, newer political parties or independent candidates, may be more reliant on advance payments to fund their campaigns

²²⁰ Explanatory Notes, Electoral Reform Amendment Bill 2013, page 3.

²²¹ Explanatory Notes, Electoral Reform Amendment Bill 2013, page 3.

²²² Explanatory Notes, Electoral Reform Amendment Bill 2013, page 5.

²²³ Electoral Act 1918 (Cwlth), sections 173 and 297; Parliamentary Electorates and Elections Act 1912 (NSW), section 79; Electoral Act 1907 (WA), sections 84 and 175LF; Electoral Act 1985 (SA), section 57.

²²⁴ See the above commentary on clause 2 of the Bill regarding retrospective commencement and transitional provisions.

²²⁵ Explanatory Notes, Electoral Reform Amendment Bill 2013, page 3.

The Committee observes that removal of advance payments of election funding may lead to unfairness and reduce, rather than promote, participation in democracy. Clause 38 raises potentially significant FLP issues, which the House may wish to consider.

Additionally, clause 38 omits and replaces section 225 of the Act to provide for the calculation of public election funding. For the financial year ending on 30 June 2014, public election funding for:

- a registered political party is \$2.90 for each formal first preference vote given to a candidate whom the party endorses at the election, or
- a candidate is \$1.45 for each formal first preference vote given for the candidate at the election.

As outlined above, the SLC considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

It is unclear from the Bill, Explanatory Notes or the Attorney-General's Introduction Speech why the Bill prescribes different values for registered political parties and candidates. In other jurisdictions and at federal elections, where a stated dollar amount per vote is used, the same value is used to calculate public election funding for both candidates endorsed by registered political parties and independent candidates.²²⁶

Arguably, this approach may be unfair for independent candidates because candidates who have been endorsed by a registered political party may receive more funding for their election campaign. The Explanatory Notes provide no rationale or explanation for the different levels of funding. As a result, the Committee finds it difficult to assess whether these provisions have sufficient regard to FLPs. The House may wish to seek clarity on these matters.

Clause 49 of the Bill inserts proposed sections 239 to 244 into the Act to provide that an eligible registered political party is to receive a policy development payment each financial year. To be eligible to receive a payment, the political party must have:

- been a registered political party on the polling day for the last general election and continue to be a registered political party, and
- at least one elected member who is endorsed by the political party.

The calculation of the policy development payment is to be based on the total number of formal first preference votes given to each candidate endorsed by the political party, who polled at least 10 per cent of formal first preference votes. The amount to be paid is to be prescribed by regulation.²²⁷

The payment is to be paid in two installments, on 31 July and 31 January. Clause 78 of the Bill inserts proposed section 421 to provide that an eligible registered political party is to receive one back dated payment instalment for the 2013 financial year, which must be made to an eligible political party within 60 days of the Bill receiving Royal Assent.

3.2.1 Fairness and reasonableness

As outlined above, the SLC considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. In his Introduction Speech, the Attorney-General stated that the policy development payment '... will

²²⁶ *Electoral Act 1918 (Cth)*, section 294; *Electoral Act 1907 (WA)*, section 175LC.

²²⁷ Proposed section 240.

*ensure parties can continue to engage fully in developing and shaping policy while continuing to effectively represent the community.*²²⁸

The Committee notes that the Bill provides for policy development payments to be made to eligible registered political parties. No provision is made to provide payments to new political parties (i.e. those who were not registered political parties at the last general election) or independent members. Similar to the above comments on clauses 5, 36 and 37 of the Bill, providing for a 10 per cent threshold may result in policy development payments benefitting established political parties. Given the payments may be used for election campaign purposes, the Committee notes that this FLP issue may detrimentally impact on democratic participation. It is questionable whether proposed clause 49 treats all Members of Parliament and candidates at elections fairly and reasonably. The House may wish to consider these matters.

3.2.2 Appropriate delegation of legislation

The Explanatory Notes state that providing for the amount of a policy development payment to be prescribed under a regulation ‘... will provide the flexibility to set amounts taking into account the economic climate, while providing for scrutiny by Parliament.’²²⁹ It is not uncommon for Acts to provide that fees or amounts to be used when calculating payments be prescribed by regulation. The Committee notes that the regulation prescribing the amount will be subject to the procedures for a disallowance motion.

3.2.3 Retrospective effect

According to the Explanatory Notes, the back dated policy development payment²³⁰ ‘...will not operate to the disadvantage of any person.’²³¹ While the Committee acknowledges that this retrospective payment would not directly disadvantage any person, it may indirectly impact on those parties and independent members who are ineligible for a payment. The payments represent additional funding of eligible registered political parties, which may be used for election campaigning. Ineligible political parties and independent members will not receive such funding.

3.3 Institution of Parliament

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

Clause 15 inserts proposed section 121E into the Act to provide that the Commissioner of the ECQ may decide that electronically assisted voting is not to be used at a particular election or by a class of electors at a particular election. The Commissioner’s decision must be in writing and published on the ECQ’s website.

Section 4(4)(a) of the LSA provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the Office of the Queensland Parliamentary Counsel FLP Notebook, this matter is concerned with the level at which delegated legislative power is used. Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

²²⁸ *Record of Proceedings (Hansard)*, 21 November 2013, page 4221.

²²⁹ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 3.

²³⁰ Clause 78, Electoral Reform Amendment Bill 2013.

²³¹ *Explanatory Notes*, Electoral Reform Amendment Bill 2013, page 3.

The Explanatory Notes state that section 121E would allow ‘... the ECQ to make a decision to stop a class of electors making an electronically assisted vote if there are emergent security concerns or technical issues with the information technology to be used for that electronically assisted voting.’²³²

However, these criteria and factors are not reflected in the drafting of the proposed section. Section 121E grants considerably broad powers and no criteria limit the delegation of legislative power. The section does not specify criteria the ECQ Commissioner must consider, or what factors he or she should have regard to, when determining that electronically assisted voting is not to be used at a particular election or by a class of electors at a particular election. It also appears the Commissioner may decide, at very short notice, that electronically assisted voting is not to be used at an election or by a class of electors at a particular election. It appears that the Commissioner may make such decisions on the day before, or even on the day, of the election.

Preventing a person (such as an individual with an impairment) from using electronically assisted voting, perhaps at very short notice, may prevent that person from voting at all, or make it difficult for them to cast a vote. However, the Committee notes that the *Parliamentary Electorates and Elections Act 1912* (NSW) contains a similar provision which enables the Electoral Commissioner to determine that technology assisted voting is not to be used in a specified election.²³³

Given the lack of criteria to guide the Commissioner’s decision and the potential adverse impact preventing someone from using electronically assisted voting may have on that person, the House may wish to consider whether, on balance, proposed section 121E is an appropriate delegation of legislative power.

3.4 Potential Drafting Issue

Whether a bill is unambiguous and drafted in a sufficiently clear and precise way, is identified in section 4(3)(k) of the LSA as a relevant consideration when determining whether legislation has sufficient regard to rights and liberties of individuals. Clause 21 of the Bill amends section 183 of the Act to provide that the ECQ or returning officer must reject a how-to-vote card if satisfied the card is likely to mislead or deceive electors when they cast their votes. In examining the Bill, the Committee has identified a potential drafting error.

Proposed section 183(3B) of the Act (which will be renumbered as 183(5)) provides that a person who receives written reasons for rejecting a how-to-vote card may, no later than 5pm on the Wednesday immediately before the polling day, revise the how-to-vote card and resubmit it in compliance with sections 183(1)(a) and (b) or 183(2)(a) and (b).

However, sections 183(1)(a) and (b) and 183(2)(a) and (b) require how-to-vote cards to be lodged with the ECQ or returning officer no later than 5pm on the Friday that is seven days before the polling day. It does not appear possible to comply with this deadline when resubmitting a how-to-vote card that had been rejected previously.

3.5 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

²³² Explanatory Notes, Electoral Reform Amendment Bill 2013, page 3.

²³³ *Parliamentary Electorates and Elections Act 1912* (NSW), section 120AL

It is noted, however, that the Explanatory Notes do not identify a number of the potential FLPs issues outlined in the above advice. In addition, while the Explanatory Notes provide commentary about the function of individual clauses of the Bill, in a number of instances they do not explain why the proposed approach is being taken.

The examination of the Explanatory Notes also identified a few errors. On page 5 of the Explanatory Notes, the description of the effect of clauses 2 and 3 are incorrect. Clause 2 provides for the retrospective commencement of certain provisions in the Bill and clause 3 provides that the Bill amends the Act.

On page 7, the description of clause 18, which amends section 125 of the Act, also appears to include an error. The reference to amendments to section 119 should be a reference to section 125 of the Act.

Appendix A – List of Submissions

Sub #	Submitter
001	Professor Graeme Orr, University of Queensland
002	Queensland Council for Civil Liberties
003	Vision Australia
004	Mr Ben Marshall
005	Queensland Nurses' Union
006	Bar Association of Queensland
007	Endeavour Foundation
008	Queensland Council of Unions
009	Queensland Law Society
010	Castan Centre for Human Rights Law
011	FamilyVoice Australia
012	Anti-Discrimination Commission Queensland
013	Ms Lillian Windisch
014	Mr Stanley Mark Burgunder
015	Mr Peter Tosi
016	Ms Charmaine Knox
017	Mr Phillip Omalley
018	Mr Jeremy Tager
019	Ms Karen Wolf
020	Mr Alan Gillanders
021	Ms Una Stephenson
022	Mr Jason Steven
023	Ms Janelle Briggs
024	Mr Kevin Seymour
025	Mr Mal Lorimer
026	Ms Pamela Ungerer
027	Ms Nancy Cole
028	Mr Bill Whiten

Sub #	Submitter
029	Ms Elizabeth Johnston
030	Mr Anthony Pettitt
031	Mr John P Hannon
032	Jessie Scott
033	Ms Annette Brownlie
034	Dr MJ Shapter
035	Mr Dean Foote
036	Jade Goodfellow
037	Mr Alastair Robb
038	Mr Ian Brewster
039	Ms Maddie Briggs
040	Mr John Ingram
041	Ms Bronwyn Logan
042	Ms Jean Hay
043	Mr David Everett
044	Ms Leanne Donaldson
045	Ms Lorraine Bollard
046	Mr Michael Williams
047	Mr Phil West
048	Ms Jo Brooks
049	Ms Holly Leonardson
050	Mr David & Mrs Alex Todd
051	Mr Clayton Bonser
052	Mr Daniel Janke
053	Mr Lawrence O'Brien
054	Ms Gabriel Hutchinson
055	Ms Rita Nelson
056	Mr Devon Fletcher
057	Mr Siggy Nowak
058	Ms Angela Gabrielle Wade-Steiner

Sub #	Submitter
059	Robyn McDonald
060	Mr David Harvest
061	Ms Bronwyn Edwards
062	Ms Marlene Lear
063	Mr John Anderson
064	Ms Karen Speirs
065	Mrs Noela Edwards
066	Mr John Bristow
067	Ms Erika Ferguson
068	Mr James Bowling
069	Bim Atkinson
070	Mr Paul Hilder
071	Mr Brett Riley
072	Mr Tim Murphy
073	Mr Brian Wratten
074	Ms Lorna Huston
075	Ms Alice Harris
076	Mr Peter Howes
077	Ms Carolyn Woolley
078	Mr Robert Byrnes
079	Ms Helen Boyd
080	Mr Kevin Skinner-Smith
081	Ms Anne Collins
082	Ms Helen Heathwood
083	Kerry Brady
084	Mr Harry & Mrs Beris Wilkinson
085	Ms Judy Buckley
086	Ms Helen Margaret Taylor
087	Mr Daryl Reinke
088	Ms Jessica Ainsworth

Sub #	Submitter
089	Ms Janette Hull
090	Andy Edwards
091	Ms Sarina Beirman
092	Ms Sharon Broughton
093	Ms Heidi Sutherland
094	Ms Kate Finch
095	Ms Betty Hobbs
096	Lesley Brown
097	Forrest Yates
098	Mr David Lavis
099	Mr Kane Adrian
100	Mr Bob Meredith
101	Lesley Fyfe
102	Ms Ann Stephens
103	Ms Irene Schardijn
104	Mr Keith Wilson
105	Mr Ralph & Mrs Susan Cobcroft
106	Ms Anita Mcardle
107	Ms Wendy Marsh
108	Ms Fiona Bryer
109	Mr Simon Chinner
110	Ms Suzanne Lister
111	Kerry Lawrence
112	Mr Roger Burke
113	Mr Ian Heath
114	Ms Carolyn Willadsen
115	Ms Kellie Muffatti
116	Mr Trevor Simmons
117	Mr Brian McGeown
118	Ms Merle Bowden

Sub #	Submitter
119	Mr Mike Chamberlain
120	Ms Sally Lowe
121	Ms Cheryl Taylor
122	Mr Sven Fea
123	Saskia ten Dam
124	Ms Christine Saunders
125	Mr David Jones
126	Ms Natalia Daley
127	Ms Helen Johnston
128	Mr Ross Brown
129	Mr Norman & Mrs Jeanette Yarr
130	Mr Alastair Lawrie
131	Ms Narell Ladd
132	Ms Diana Cholewska
133	Human Rights Law Centre
134	Australian Human Rights Commission
135	Queensland Advocacy Incorporated
136	Mr William & Mrs Doris Norton
137	Ms Lenore Keough
138	Ms Gillian O'Brien
139	Ms Monica Gabriella Montserrat
140	Ms Jo Barkworth
141	Dr Tracey Arklay
142	Joint Submission by QAILS and ATSILS
143	Mr Michael Penny
144	Mr Ian Tarrant
145	Mr Keith Vass
146	Mr Jim Scott
147	Ms Annette Rodriguez
148	Mr Paul Knight

Sub #	Submitter
149	Mr Bryan Wood
150	Mr Darryl Hartwig
151	Mr Errol Himstedt
152	Mr Trevor Hay
153	Ms Yvonne D'Arcy
154	Mr Stephen Barnes
155	Mr Jim Marshall
156	H Bates
157	Ms Mel Smith
158	Mr Robert Maxwell
159	Mr Andrew Hatch
160	Mr Ralph Bull
161	Ms Jacqueline Brescia
162	Mr Eli Sky
163	Ms Kathy Kassulke
164	Mr Terry Padley
165	Mr Stephen Warburton
166	Andrew
167	Ms Angela Agar
168	Mr John Hanna
169	Mr Ken Loughran
170	Ms Cathleen Meggitt
171	Mr Tony Waters
172	Mr Paul Holland
173	Ms Pauline Sherlock
174	Ms Anna Heriot
175	Mr Bill Chivers
176	Mr Peter Crombie
177	Ms Lucy Mitchell
178	Ms Julianne Bushby

Sub #	Submitter
179	Palmer United Party
180	Katter's Australian Party

Appendix B – Schedule of Witnesses at the Public Hearing

Anti-Discrimination Commission Queensland <ul style="list-style-type: none"> • Mr Kevin Cocks AM, Commissioner • Ms Neroli Holmes, Deputy Commissioner
Queensland Association of Independent Legal Services Inc. <ul style="list-style-type: none"> • Mr James Farrell, Director Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd <ul style="list-style-type: none"> • Mr Greg Shadbolt, Principal Legal Officer
Vision Australia <ul style="list-style-type: none"> • Ms Karen Knight, General Manager Queensland • Ms Liz Jeffrey, Advocacy Advisor
Queensland Council of Unions <ul style="list-style-type: none"> • Mr John Martin, Research and Policy Officer
Electoral Commission of Queensland <ul style="list-style-type: none"> • Mr Walter van der Merwe, Acting Electoral Commissioner • Ms Yvette Zischke, Director Elections Management
Queensland Council for Civil Liberties <ul style="list-style-type: none"> • Mr Michael Cope, President
Queensland Law Society <ul style="list-style-type: none"> • Mr Matthew Raven, Chair, QLS Property and Development Law Committee • Mr Matt Dunn, Principal Policy Solicitor • Ms Raylene D’Cruz, Policy Solicitor

Dissenting Reports



Peter Wellington MP

Member for Nicklin

PO Box 265 Nambour

QLD 4560

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E-mail nicklin@parliament.qld.gov.au



20 February 2014

Mr Brook Hastie,
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Brook

Dissenting Report to the Electoral Reform Amendment Bill 2013.

I agree with the proposed changes to the Electoral Reform Amendment Bill which make it easier for some people with a disability to be able to vote at State elections. However, I believe these improvements are overshadowed by other aspects of the Bill which are not based on evidence and have been condemned by many submissions to our Committee.

The proposed policy development payment to some political parties is a clear abuse of power by this government. No particulars of any substance about this new payment initiative are contained in the Bill which shows the hypocrisy of the Government when it talks about openness and transparency.

I cannot support the Bill.

Yours sincerely

A handwritten signature in black ink that reads "Peter Wellington". The signature is written in a cursive style with a large, stylized 'P' and 'W'.

Peter Wellington MP
Member for Nicklin

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

PO Box 15057, City East QLD 4002

reception@opposition.qld.gov.au (07) 3838 6767



19 February 2014

Mr Ian Berry MP
Member for Ipswich
Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Dissenting report – *Electoral Reform Amendment Bill 2013*

I wish to notify the committee that the Opposition strongly opposes the *Electoral Reform Amendment Bill 2013* and does not support the committee's recommendation that the legislation should be passed.

Many of the proposed changes in this Bill represent a substantial attack on the foundations of our democracy. In particular, the proposed new laws will make it harder for many people to exercise their fundamental right to vote, and will reduce the level of accountability and transparency that applies to political donations.

The Opposition will outline serious community concerns with this legislation during the second-reading debate on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be "B Byrne", with a long horizontal line extending to the right.

Bill Byrne
Member for Rockhampton