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LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr ML Furner MP (Chair)
Mr JM Krause MP
Mr JE Madden MP
Mr AJ Perrett MP
Mrs T Smith MP
Mr RA Williams MP

Member in attendance:

Mr IB Walker MP

Staff present:

Ms B Watson (Research Director)
Ms K Longworth (Principal Research Officer)
Mr G Thomson (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE ELECTORAL AND OTHER LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 16 APRIL 2015

Brisbane

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Committee met at 3.27 pm

CHAIR: I declare open this public briefing for the committee's examination of the Electoral and Other Legislation Amendment Bill 2015. I have given an overview of proceedings already this afternoon, so unless anyone needs me to go through that we will skip the formalities. I will just remind everybody that the committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Mobile phones should be set to silent or turned off. At this hearing the committee will hear evidence on the bill from invited witnesses. Could you please make opening statements, if you wish, of no more than five minutes and the committee will have some questions for you.

FARRELL, Mr James, Director, Queensland Association of Independent Legal Services

McDOUGALL, Mr Scott, Director, Caxton Legal Centre

Mr Farrell: We will keep our opening comments brief. Firstly, can I congratulate the members of the committee on their appointment to this committee. We look forward to working with this committee as we did with its predecessor committee in previous parliaments. It is really terrific that we are able to appear here today, given the changes that allow community legal centres to once again engage with processes around the way that laws work and the way that laws and policy are developed. Our submission is before you, so I do not propose to go through it in any great detail because I think our time would be much better spent in conversation.

CHAIR: I have one quick question with regard to your submission. You do refer to the *2012 State General Election: evaluation report and statistical returns*, but you also refer to other examples that have been published by the Commonwealth government in September 2009, of 10 cases of multiple voting in 2007 as well, and those matters were referred to Federal Police for investigation. One other submitter—I think from memory they are called Salt Shakers—also provided evidence in regard to this particular area and referenced the *Hansard* from the Senate estimates of this year where the Australian Electoral Commission appeared and gave evidence, and that has been reported in the submitter's submission. The *Hansard* from Senate estimates this year indicates that there were multiple marks, not multiple voting. The AEC sent out letters to those people, and 11,000 of those marks were confirmed to be polling official error or a range of other issues. This led to an investigation of 65 cases which were referred to the Australian Federal Police. Of those, 14 were in Queensland. I am referring to the 2013 federal election. Would you like to comment on that as an example of what you are referring to in your submission about the lack of any evidence of voting fraud?

Mr Farrell: Certainly. I think it is appropriate when considering measures such as these that maintain the integrity of the electoral system to pay attention to those proven instances where there are difficulties, whether that is multiple voting or whether there is voter impersonation or any of those other forms of fraud. It is entirely appropriate that we say that the Electoral Act, and the way in which it is administered, acts in a proportionate and appropriate way to respond to that threat of damage to our electoral system.

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

CHAIR: In relation to the one case you referred to that was reported as a result of the 2012 election, what was the outcome of that investigation?

Mr Farrell: That is probably a question for the police or the Electoral Commission. I am relying on the testimony provided by the Acting Electoral Commissioner when the provisions were first being considered by this committee.

Mr WALKER: Mr Farrell, you described the ID provisions as restrictive. As I understand it—and if I have it wrong, please correct me—at worst when I turn up to vote I am asked to sign a bit of paper saying, ‘I’m Ian Walker, the bloke who is voting.’

Mr Farrell: That is exactly what the legislation says at this point.

Mr WALKER: You describe that as an unjustified barrier to electoral participation. You may take a view that you do not need any ID. Let’s put that to one side. If there is a view that ID is acceptable, you would hardly call that a restrictive regime. It is about the next level up that you could expect.

Mr Farrell: If I could unpack a couple of issues that you have alluded to there, Mr Walker. The protection of the declaration vote I think as it appears in the legislation does provide some protection against that kind of thing. I think part of the difficulty there is reports that were coming through on election day that voters were being turned away from polling places by polling officials without being provided with the option to complete those declaration votes. So the way in which it was implemented makes it difficult. Given that the protections in the legislation were not being used on the ground, so to speak, on election day makes that difficult.

So leaving aside the declaration votes and some of the difficulties that were reported there, our experience—and again I would allude to testimony to your predecessor committee by our colleague Greg Shadbolt from the Aboriginal and Torres Strait Islander Legal Service last time this was considered—was that a number of the types of identification that were at that stage proposed or flagged to be included in regulations—and we certainly thought that stronger protections including those in legislation were appropriate—might not necessarily be available to hand for certain vulnerable groups in the community. So for those groups perhaps a more nuanced approach might be appropriate.

Mr McDougall: The Caxton Legal Centre, as you may know, operates a specialist program that targets older people at risk of elder abuse. For 10 years or so we have based our whole model around home visits, and the reason for that is the lack of mobility of older people. The reasons for that are that they face a complex array of issues including disability, physical frailty, cognitive impairment and lack of social connectedness. In terms of getting to a polling station, there is also the issue of public transport and the cost and inefficiency of that. So the last thing we would want to see placed in front of older people is another obstacle between them and the ballot box. We cannot see that there is any sense in it. To say that it is a disproportionate response means that it is disproportionate to the impact that it is having on vulnerable people. For marginalised people, people in Aboriginal communities, if anything, we should be doing everything we possibly can to try to bring them into the democratic process rather than putting up any obstacles at all that are going to prevent them. It is the one opportunity that they have to participate in a democratic process.

Mr MADDEN: I have a question for both of you. You say in your submission that the proof-of-identity requirement will not prevent all types of voter fraud. Would you say that the introduction of voter ID was a complete failure in preventing fraud?

Mr Farrell: That is probably a question for the Electoral Commission, I would have thought, Mr Madden. We did not have people at every polling place or scrutineers at every polling place in the same way that parties would or that the commission would. I do not think we are well placed to answer that.

Mr WALKER: I have a follow-up question, Mr Farrell, on your statement. You spoke of anecdotal situations. For the committee’s benefit, does anybody have an example of a person who said, ‘I was too scared to turn up to vote because of these requirements,’ or, ‘I didn’t turn up to vote,’ or are all the examples anecdotal?

Mr Farrell: They are anecdotal reports through the media. Again, it would be terrific if the Electoral Commission had the capacity to report back on some of the experiences that they had through that process. There were reports in the media—through the *Townsville Bulletin*, through Channel 9, through the ABC and other media—about that kind of thing. There are probably examples in some of those reports from which the committee might garner additional information. I think that would be incredibly useful for your consideration.

CHAIR: Conversely, however, after the previous government enacted the current laws you indicated there was one breach that was referred to the police. Was there any evidence to demonstrate there was voter fraud, then?

Mr Farrell: As I say, Chair, the evidence is the evidence that was provided by the acting commissioner and now the commissioner. I am not sure where that went to. That was not explored fully, as I understand it, in the public hearing when these measures were looked at last time. So again, I am sorry, I do not have all of the information that would assist to answer that question.

Mr KRAUSE: Mr Farrell, I have a question that I think Mr Walker may have asked. Do you have any statistics on how many people were denied a vote due to the voter ID laws? I also want to take you back to an example that I think you alluded to in your opening statement about how you might be able to go and vote 22 times with your telephone bill if you went to different polling booths. I do not think that is the best example. I accept that the issue of multiple voting is not a widespread and huge problem; I accept that. The issue would be if you, as a person who was going to go and vote, voted multiple times with different people's names in different places, not using your own telephone bill. Do you understand there is a difference between those two situations?

Mr Farrell: Absolutely I do. Our response to that would be: if voter identification is a measure that seeks to reduce multiple voting, it does not do that.

Mr KRAUSE: The other point I wanted to touch on was that, if the stats do say that it is not a huge issue and we have a system that works reasonably well, shouldn't we be trying to build on that and don't you see that voter ID could be a part of building on the integrity of a system that is already very well functioning and upholds the democratic process?

Mr Farrell: If I can answer your previous question first in terms of evidence of the number of people who did not vote or could not vote or were turned away, we do not have that information. I think Professor Orr is providing testimony to the committee later on, and I know that he has done some initial analysis and comparative work. I am sure that question might be better directed to him or to the commission.

In terms of maintaining the fidelity or integrity of the electoral roll and the electoral system, absolutely. The question for me is: are voter identification requirements the best way to do it? Certainly in terms of the way that people get on to the voter roll and how that enrolment process works, including identification requirements that might be appropriate there, people have three or four years to get on to the roll and can source appropriate forms of ID. Again, I think in our previous testimony the fact that identification will be required on election day or in the few weeks before in pre-polling places can make it more difficult for people who might be living particularly chaotic lives who are the kinds of individuals that community legal centres and Aboriginal legal services help.

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

Mrs SMITH: You did make comment earlier about the elderly and the frail and other groups. As I see it, the Electoral Commission every year seems to be catering for more and more people with things such as home visits, and I think this year they had the deaf centre phone numbers. So there are all these experiments that are out there to cater for people and their needs. Would you agree with that? Again, coming back to voter ID, isn't it more about the integrity of the vote? Even if it is not about multiple voting, it is about the integrity of the vote and being able to do that. It is a little bit more secure, I am suggesting, than having nothing, no ID.

Mr McDougall: If I can relate a personal experience—and it is a little bit old now—in 2001 I had the privilege of attending every Aboriginal community in Queensland, except for Lockhart River, to talk to claimants of the under award wages settlement scheme. These people were getting paid \$7,000 as compensation for discrimination that occurred in the seventies and eighties. So you had a group of people highly motivated to be in a position to prove their identity in order to make a claim for this payment, yet we experienced a lot of difficulties in finding identification for some people. They just simply do not have it. Where you have a situation where people are highly motivated to receive a payment and they cannot produce it, if you put that into an electoral context where people already feel alienated from the system, there are going to be impacts. I agree the Electoral Commission has done a lot of great work particularly around disability issues in the last few years, but the cost of reaching those Aboriginal communities and getting people out to vote is extremely high to government.

Mrs SMITH: How long ago was that?

Mr McDougall: That was 2001.

Mrs SMITH: Fourteen years ago.

Mr McDougall: I do not imagine a lot has changed in 14 years, to be honest. I doubt that much would have changed in 14 years.

CHAIR: Mr McDougall, you are suggesting the processes in terms of the ECQ getting out to remote Indigenous communities has not changed since 2001?

Mr McDougall: I am not in a position to comment on that, but I would be in a position to say that if it was it would be costing it a lot of money to do so.

CHAIR: I have a question which stems back to when the Commonwealth government introduced a welfare card. While I am not familiar with the family members who would have that welfare card on them, I understand that, subject to the current Electoral Act, that is a form of ID under the current laws. Are you able to provide any evidence on whether having that sort of card was of assistance in providing ID at the time of voting?

Mr McDougall: Sorry, I am unable to assist you on that.

Mr WALKER: Mr Chairman, can I follow up on that issue. Mr McDougall, the situation you were describing with your trip to the Aboriginal communities and the need to produce identification is of course not on all fours with the current electoral situation. You do not have to produce identification; you have to sign a declaration saying, 'I am the bloke claiming the vote.' So it is not quite an accurate comparison, if I could put it to you.

Mr McDougall: Well, they were entering deeds of settlement, and as a lawyer you would know you have to take the issue of identity seriously—

Mr WALKER: I understand that, but it is not the requirement under the legislation—

Mr McDougall: No, it is certainly not.

Mr WALKER:—to produce any identification. At worst you have to say, 'I'm the bloke voting.'

Mr McDougall: Yes. My point being, though, that people were unable to come up with identification to even satisfy that process let alone the identification to satisfy this electoral process.

Mr WALKER: Sorry, there is a misunderstanding. There is no identification required for this process.

Mr McDougall: Well I know that there is the declaration process that is available.

Mr WALKER: That is all that is required.

Mr McDougall: But the point is that a lot of people misunderstand what the requirement is, particularly elderly people, and word gets out that you require identification. People at home are told by their nieces, daughters and children that they require identification: 'Don't forget your identification when you go to vote,' and all of a sudden older people are at home fretting about whether or not they can find their identification. They can't find it and they say, 'Okay, I won't vote.'

CHAIR: It is actually a first step of providing the ID, and the fail-safe is providing the declaration, isn't it?

Mr McDougall: That is right.

CHAIR: So there is a process of ID and then followed up by declaration voting.

Mr Farrell: To the extent that the declaration vote process is properly applied across the state, and we are not aware of any published information on the process once a ballot paper goes into a declaration envelope in terms of how many of those are accepted into the vote. Again, perhaps that is something that Professor Orr or the commission could provide further information on.

CHAIR: I am sorry, we are out of time. Thank you for your evidence here today.

Mr McDougall: Thank you.

BULLOCK, Mr Geoffrey, Queensland Acting State Director, Family Voice Australia

CHAIR: Welcome, Mr Bullock. Thank you for appearing here today. I invite you to make an opening statement and then the committee will ask some questions of you.

Mr Bullock: Thank you, Mr Chair. I will be brief and give an outline of our submission. I want to emphasise that we are making this submission in the context of how a civil society should be run. A civil society needs freedom of association. Freedom of association allows for civil organisations, and these facilitate awareness of social and political trends and events leading to an informed citizenry which, in turn, accustoms the citizens to the democratic processes of the state. It is under that banner that we are looking at the disclosure of funding and gifts, retrospective legislation and the integrity of the voting process. So are there any questions?

CHAIR: Yes, there certainly are. I might go to the member for Ipswich West first.

Mr MADDEN: Mr Bullock, I note in your submission you say that the proposed legislation should not be retrospective.

Mr Bullock: Very much so.

Mr MADDEN: Can you outline any civil or criminal penalties that would apply if the legislation were made retrospective?

Mr Bullock: That is a very good question, Mr Madden. It is more in the area of laws that create mistrust because it is retrospective, and people in good faith make a decision to do something on that basis and then they find that they cannot. We are not looking at a criminal offence; we are looking at something that is a little different. It is more in the social area: creating trust and not breaching it.

Mr MADDEN: So you are not aware of any criminal or civil penalty that would apply if these laws were made retrospective?

Mr KRAUSE: Mr Chairman, I think that is asking for a legal opinion from the witness and I do not think that question is in order.

Mr MADDEN: Well, the witness can say that.

Mr Bullock: Again, I am not aware of anything but we are making our submission on the basis of breach of trust.

CHAIR: That is all you need to answer.

Mr MADDEN: Thank you, Mr Bullock.

Mrs SMITH: Mr Bullock, thank you for attending today and for your submission. In regard to voter ID, I am interested in your thoughts as to the integrity that is maintained in our voting system. I would like to hear your comments on that.

Mr Bullock: It was interesting to hear the gentlemen who preceded me. Fortunately, I have been able to think through that issue. There are a few questions that I have relating to the idea that there was only one event of multiple voting in the last election. I probably have two questions to ask on that. One is whether the fact that ID was instituted prevented people from doing the wrong thing. The other question is that it is surprising that only one thing happened. Nonetheless, I go along with the idea that because the voting process is such an important feature of a democratic society it should be guarded a lot better than it is. I do not think anyone would ever question that, but whether ID is the way ahead: as Graeme Orr's submission points out, wait and have a look because the rest of the nation is having a look at how it went. So I would leave that part there and say that for our purposes any attempt to make sure the voting process is full of integrity is very, very important.

CHAIR: Mr Bullock, your submission on page 5 under item 4 'Proof of identify: integrity of the voting process' states, 'Many electorates have 20 or more polling booths.' Could you outline the electorates that have 20 or more polling booths, please?

Mr Bullock: I am afraid I cannot, but if you would like me to check that out—

CHAIR: This is your submission.

Mr Bullock: I didn't make the submission and I haven't checked with my makers whether they were listed. Can I get back to you on that?

CHAIR: I would like you to take that on notice and list out of the 89 electorates which ones have 20 or more polling booths, please.

Mr KRAUSE: Mr Bullock, you can add Beaudesert to the list.

Mr PERRETT: Mr Bullock, thank you for attending today. I notice that on page 4 under section 3 'Disclosure of contributions and gifts' you give your support to retaining the current threshold of \$12,800. Can you expand your thoughts on that, given that you have indicated here it covers about 90 per cent of contributions to political parties?

Mr Bullock: As a person in this nation who is trying to make sure that the process has integrity, I cannot understand why any figure should be compulsory. Anything under \$12,800 is not going to buy votes, in my understanding. As we pointed out, the bulk of the votes are big numbers and very few—the other 12 per cent—are small numbers and many. I think what people are saying is, 'We just like to encourage this particular party to do our thing. I do not want to be known, otherwise there might be some repercussions if somebody found out about even my small vote of perhaps \$5,000'—as we said in our submission with dear old Tom giving to the 'Happy Party' and a person says, 'I don't like who you vote for and I will not be giving you my custom in future.'

It is very interesting that over in America Brendan Eich, the CEO of Mozilla, gave a donation towards a certain Proposition 8, a thing that said to keep marriage as it was. He was vilified in the media and lost his job because of it. That is the kind of thing that we do not want to have. We should retain that balance between an amount that is going to be good to check so that there is no corruption, no persuasion and no influence and the right of the private individual not to be in that position.

Mr WILLIAMS: Thank you, Mr Bullock, for attending this afternoon. In chapter 3, 'Disclosure of contributions and gifts', I notice you say 'it is an important safeguard against inappropriate influence on the political system'. Would it change your view if, for instance, you have five different directors all contributing \$12,000 and there is absolutely no disclosure required because it is all below the threshold?

Mr Bullock: This is something that has bugged me, so thank you for asking it. I have tried to find out what the rules are for any donations to political parties, particularly to candidates for election. I looked up the new bill and tried to find out what the limits are. I understand that donations to a candidate need to be disclosed only during the period an election is called to the end of an election, apart from those that are already in place. I am wondering what on earth we are worried about when lots of donations can be made to a political party or to a proposed candidate any time during the year that is not in that period. I would be happy to find out what that is, but as to your question it probably does not matter whether it is \$12,000 done five times or \$990 done umpteen times in that period. The same principle applies. There are still people rorting the system. Nonetheless, let's go back to the principles that we should be espousing.

Mr WILLIAMS: So you would probably agree that that could bear undue influence?

Mr Bullock: Not \$12,000, no.

Mr WILLIAMS: Multiple times from one source.

Mr Bullock: Well, the present bill before us does include the idea of the multiples in that time. So in that time space, if there are 12 they will be exposed. I can show you the particular provision, but in the bill if there are multiple donations within that candidate's electoral time then they add them up and they present them. So it does not matter. Again you come back to this idea, whether it is \$12,000 or \$990 each time.

Mr KRAUSE: Thank you, Mr Bullock, for being here today. I just wanted to touch on the retrospective element of the bill. Thank you for your submission about that. It is contrary to principles of the rule of law. You would note also that we have had reservations about that from the Bar Association, the Council of Civil Liberties and Professor Orr, who is going to be addressing us soon, as well as other people. Mr Bullock, I think you mentioned earlier that you considered it to be some sort of breach of trust between the state and members of the public because donors knew the law as it was and now that has been changed in retrospect. So it is sort of a violation of the privacy of donors and the way in which they donated, isn't it? Is that what you are getting at?

Mr Bullock: That as well and, again, the ramifications of that. If a donation is known, it could mean something for their business that is adverse.

Mr KRAUSE: Right. I want to put something to you. Politics, for a lot of people in my community and I am sure in yours and a lot of other members as well, can be a very private matter for people that they do not always discuss with everyone. But it does not mean that they should not participate and have a view in the process as well—and perhaps even support that by donating to a party or to a particular candidate. To have this disclosure limit changed retrospectively really, I think, breaches their privacy and trust with the system.

I do have another question for you, Mr Bullock, having said that. Can you explain Family Voice's alternative if the voter ID requirements are removed, as is proposed in this bill? Do you have another view on that?

Mr Bullock: We have made submissions at other times that have included the ID thing, but the alternatives are found in whatever works to keep the integrity of the roll. Ideas, yes. We are only responding; we are reacting to it in this instance. So I cannot give you any off the cuff. If you like, I will just see if we have in times past and let you know. Would you like that?

Mr KRAUSE: Sure, thank you.

Mr Bullock: We will take that on notice.

CHAIR: Mr Bullock, in your opening statement you made reference to having a civil society. I am wondering what your response would be to the submission of the Anti-Discrimination Commission of Queensland in their submission part 9, where they did reference the International Covenant on Civil and Political Rights, article 25. They referred to it as 'every citizen shall have the right and opportunity ... without unreasonable restrictions'. They then refer to 'to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'. It is not my submission, but I assume that they are alluding to the fact that having voter ID in some way exposes a person's ID by turning up to vote at a ballot. I would like to hear you—

Mr Bullock: I would certainly agree with everything that was said there. The whole thing turns on what we mean by 'reasonable', because what is reasonable to some may not be reasonable to others. I would call ID requirement a reasonable thing because in this society increasingly we are experiencing the need to have those checks and balances. In fact, coming in to parliament today I was asked for ID. Banks—everywhere. What we are saying is that there are people out there who want power over others and we need to make sure there are checks and balances that cut down on that possibility.

CHAIR: So your view of providing voter ID is somehow providing power to people? Is that what you are suggesting?

Mr Bullock: I am saying that if you do not have it there are people out there who may progress their desire to wreck the system, motivated by a desire for power.

CHAIR: Nevertheless, you heard the previous evidence. There has been one case in Queensland, and I referred to a matter before the Australian Senate in reference to a submitter who provided evidence with regard to 16 cases that were put to the Australian Federal Police in the 2013 federal election where not one of those cases proceeded to prosecution. So on what are you basing your position on the need for voter ID all of a sudden?

Mr Bullock: Well, it is not all of a sudden; it is something that we have wanted for quite some time. There is a report on the ABC of yesterday's date referencing Tony Smith. It states—

The presentation of a driver's licence, bank statement or rates notice was compulsory at this year's Queensland election and the JSCEM heard it worked to reduce cases of questionable voting.

I tried to look for the source so I could bring that. Unfortunately, I ran out of time; it was too much to read. But that needs to be pursued to find out, 'Well, we have a conflict here. We have a case of once and now someone is claiming that, no, it did help.' I would like to find out what that was.

CHAIR: The matter to which you just referred was the chair of the Joint Standing Committee on Electoral Matters, and that was consistent with what I was discussing with you earlier about the *Hansard* from that estimates hearing.

Mr WILLIAMS: Mr Bullock, this lends itself back to voter ID. This last election was the lowest voter turnout that we have experienced since 2004, even before that. When we find that voter fraud is of such low numbers and yet with 89.89 per cent voter turnout, that is an indication that 32,000-odd people did not turn out to vote. That is over one per cent. If voter fraud is so low, could it be that this greatly reduced turnout represents people who are concerned about not being able to produce that ID—maybe marginalised people? What would you think?

Mr Bullock: Very good question, Rick. You are going to be good in parliament, I am sure. Well done. You ask the right questions. It was interesting to see Graeme Orr's report, which mentioned 1.1 per cent less than should have. My understanding is that it could be a range of issues. I think we need to find out. I would love to know exactly by a survey of some kind. Whether the ECM can do that or not I do not know, but I would love to see it. We are only speculating just on what that is and what it represents.

CHAIR: Thank you, Mr Bullock. Unfortunately we are out of time. I thank you for your appearance before the committee this afternoon. We will now hear from Mr Michael Cope, representing the Queensland Council for Civil Liberties.

Mrs SMITH: Mr Chair, we would like to, as I said, call a recess for two minutes just to discuss something that is relevant to our line of questioning.

Proceedings suspended from 4.09 pm to 4.16 pm

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COPE, Mr Michael, President, Queensland Council for Civil Liberties

CHAIR: Welcome, Mr Cope. I invite you to make an opening statement no longer than a couple of minutes and the committee will then have some questions for you.

Mr Cope: Sure, thank you. The only issue I want to address in my opening remarks is the issue of retrospectivity, which is not addressed in the submission. That is an oversight on my part, given I had to finish it off urgently. Anyway, retrospectivity is obviously a serious issue which needs to be addressed. The fundamental point about the rule against retrospectivity is to avoid the imposition of some civil or criminal penalty. We note the existence of section 303, but our submission would be that the committee has to be perfectly sure that there is no possibility that this retrospectivity will result in the imposition of any criminal or civil penalty upon any person.

Secondly, outside that core area of retrospectivity, we note that the relevant legislative standards in the Legislative Standards Act 1992 refer to legislation which does not adversely affect rights or liberties or impose obligations retrospectively. This change will of course impose an obligation on people to fill in a form and return a piece of paper. That is an obligation. The question that must be asked is why people who have donated, say, \$1,000 or \$2,000 should be put to that. A different issue might be asked about perhaps \$12,000. But the starting point is that it should not be retrospective unless it is perfectly clear that there is no prospect of somebody being subject to some sanction as a result of not complying with the law as they understood it at the time that they did what they did, and that is fundamental principle. Apart from that, I have nothing else. I am happy to answer questions.

CHAIR: Thank you, Mr Cope.

Mr MADDEN: Mr Cope, just following on from the statement you have just made, are you aware of any criminal or civil penalty that would apply were this legislation to be made retrospective?

Mr Cope: I have not studied the legislation in detail. That is why I said it is a matter for this committee to make sure that there is not any. I notice that the Bar Association has a similar comment to make. I do not know; I just make the point.

Mr MADDEN: I thought as a lawyer you might know.

Mr Cope: Yes, I am.

Mr MADDEN: Is the answer to the question that you are not aware of any civil or criminal penalty?

Mr Cope: The answer to the question is I do not know.

Mr MADDEN: Okay. Thank you.

Mr WALKER: Mr Cope, just in relation to that last issue, as I read the legislation—and I might be wrong—a donor to a campaign does not go to the clink because he donated six months ago and has not filed a return then, but if he does not put in a return in a month and says he donated then he goes to the clink. If that is correct, would that offend the principle you are speaking about?

Mr Cope: Can the retrospective effect of the legislation be that? I would have to think about the answer to that question.

Mr WALKER: Perhaps I could put it to you on notice, then.

Mr Cope: Yes.

Mr WALKER: Thank you.

CHAIR: Correct me if I am wrong, Mr Cope: you are merely indicating that it is an unjust act for having retrospectivity for those people who need to lodge a notification of their donations. Is that what you are saying?

Mr Cope: There are two separate points. The first point is that the objection to retrospectivity is about the imposition of sanctions, be they criminal or civil.

CHAIR: That is correct.

Mr Cope: I do not have time to read the whole of the Electoral Act and I am not an expert on the Electoral Act and I do not come here claiming to be one. I came here to state a simple principle. This committee's job is to understand the Electoral Act and to make sure that it does not result or potentially result in somebody being subject to such a sanction. If the committee is satisfied and the parliament is satisfied that that is correct, well and good.

The other point we simply raise is that the legislative standard does suggest a broader obligation than that. The simple point we say about that is that you might want to have an argument about whether that might be imposed on somebody who has donated \$10,000 or \$12,000, but should it be imposed on somebody who has donated \$1,000—the sort of mum-and-dad donation, for want of a better expression? That is the other point that we raise.

CHAIR: But if there is no sanction—and I am pretty certain that was the indication we were getting from Attorney-General's and the Electoral Commission earlier today—

Mr Cope: I do not come here to claim to be an expert on the act.

CHAIR: No, I am not suggesting that.

Mr Cope: We just simply make the point that the committee has to be satisfied about that.

Mrs SMITH: Mr Cope, thank you for your submission and for coming along today. What is your general view at the end of the day—and this is, I guess, with regard to our voter identification that has been introduced—in terms of the integrity currently of our electoral roll and therefore our electoral system?

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

I also go back to the quote from the Supreme Court of the United States where the justice makes what seems to me the perfectly sensible point that widespread voter impersonation is almost liable to be detected but single individual acts of voter impersonation are going to be largely ineffective. I do not know what the situation in Australia is, but the evidence before the United States Supreme Court was that no federal or state election in that country had ever been determined by a single vote. So we see that no-one has made the case to present a situation where there is a risk that some people may be deprived of their right to vote, and it is particularly so in the context that we have compulsory voting here, unlike just about everywhere else we are talking about.

Mr MADDEN: Mr Cope, is there any evidence to prove that the introduction of voter ID prevented fraud at the recent election?

Mr Cope: Not that I have seen.

Mrs SMITH: As a follow-up question, the Electoral Commission actually explained today that nobody was denied the right to vote provided the vote or the declaration, so it really comes down to the heart of just improving the integrity of the Electoral Commission if no-one actually is denied the right to vote. I am just not too sure of—

Mr Cope: I am not quite sure what that means. They took all of the pieces of paper that were signed and they did not reject any of them? Is that what that means?

Mrs SMITH: No. What I mean is that people could still turn up and vote without their identification, so no-one has been denied the right to vote.

Mr Cope: As Graeme Orr points out in his submission, if you are a voter you do not know that. If you turned up and filled in one of those declaration pieces of paper, you do not know if your vote was, as Graeme puts it, 'admitted to scrutiny' and I think that is a very important point. People are entitled to know by putting their ballot in the ballot box that at least it is being considered, and they do not know.

There is still no evidence that there is a problem. This is a solution in search of a problem. There is no problem. None has been demonstrated, so we should not set up a situation where you expose the risk. In the passage of time perhaps there will be changes of attitudes and interpretations of things like this change, and they change of course from polling station to polling station. People take different views of these things and over the passage of time they may become stricter and result in people losing their right to vote. In the absence of any strong evidence that there is actually a problem, we should not be exposing that risk to what is the most fundamental right that we have.

Mr KRAUSE: Mr Cope, thanks for coming today. Taking you back to the retrospectivity of the bill, various submissions have made comments about it being an affront to the rule of law and a breach of fairness for people and that people need to operate under a situation where the law is

known and certain. I take your point that we need to consider whether there will be any civil or criminal actions resulting from this bill and its retrospectivity. But quite apart from that, in terms of the imposition of an obligation to disclose or to do what the bill says when that was not required at the time that a particular action was taken, don't you think that is some sort of retrospective removal of a freedom of association, because donating to political parties or to any sort of activity is part of our democratic society? It is part of our freedoms we have to do it or not to do it in accordance with the law at the time. So to put that obligation on now, isn't that taking away those rights and those freedoms for individuals, quite apart from the criminal and civil aspect of it?

Mr Cope: First of all, for the purpose of the record we fully support the change to the law on a prospective basis.

Mr KRAUSE: I understand that.

Mr Cope: That is the point that I am making. With regard to the core of what retrospectivity is about, it is about criminal and civil sanctions or penalties. Then you get beyond that to the sort of thing that you are talking about where you can have a debate about whether that is what retrospectivity is about, but that is why we drew your attention to the fact that the legislative standards, which I presume the committee has to refer to, do talk about a wider obligation. But it seems to us that when you get out beyond that core area of people being sanctioned into this broader area of whether somebody should be made to fill in a form and send it in to the government, then you perhaps get into more of a balancing question about where is the point that that should be. And, as I was saying, a point might need to be considered as to whether that is the sort of obligation that you ought to retrospectively impose on your mum-and-dad contributors for your \$1,000 or your \$2,000 or whatever it was as opposed to a person who has contributed an amount which could buy you a small car.

CHAIR: Thank you, Mr Cope. Unfortunately we have run out of time. I thank you for your time and for appearing before the committee.

Mr Cope: Thank you.

KEIM, Mr Stephen SC, Barrister, Bar Association of Queensland

CHAIR: Thank you, Mr Keim, and thank you for coming today. I would like you to provide an opening statement and also identify yourself for the benefit of Hansard.

Mr Keim: Thank you, Chair. I am a member of the council at the moment. This is not all that is relevant to my appearance, but I am a member of the council of the Bar Association of Queensland. I have been delegated the job of coming down by our president to speak to you today. On behalf of the association and myself, thank you very much to you and the committee for this opportunity to speak to you.

There are five points, I think, that I want to touch upon in my opening statement. Firstly, there is the voter ID rules. The Bar Association's position with regard to that is similar to its opposition to the imposition of voter ID in the legislation last year. Our position is unchanged, except now we are supporting the removal of those. I think as the last speaker probably pointed out, there is the discussion paper from this parliament—or perhaps even from this committee—which collected the evidence that suggests that in Australia, and perhaps in the Western world, there is just no evidence that people go up and vote. Occasionally there is a person who has forgotten that they have voted, and that is understandable—it depends on when the hotels open, I suppose—but there is just no evidence of voter ID. So it is unnecessary.

I guess one of the atmospheric things that comes with it for me is its association with the Jim Crow laws of the south of the United States. All kinds of ID laws have been used in the past and they seem to be being reintroduced now to prevent poor and disadvantaged people from voting. I do not make that allegation against the bill last year, but I think what Professor Orr's preliminary analysis in his submission indicates is that there seems to be at least a suggestion in the numbers that people may have been not so much intimidated, I think, but they have been discouraged because they thought they would not get a vote. I really would hope that some resources be allocated to perhaps doing some qualitative interview research with regard to people who did and did not vote to see if we can track down the evidence of that a little bit better. But Professor Orr's preliminary analysis is similar to what you might expect—not a huge level because we are a fairly well educated, not easily intimidated, not easily discouraged community—but particularly in those areas where education levels are lesser, where people are less likely to have drivers licences, there has been some discouragement occurring. That is the first point.

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

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

I have read a submission that suggests that there may be a constitutional problem with regard to having different levels of disclosure threshold to that of the Commonwealth. Again, I think Professor Orr has dealt with that point very well. I am not an expert on section 109. It might just be useful that there is a classic passage from a case called *ex parte McLean* from 1930. The passage says—

The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed.

That is cited with approval by Chief Justice French in *Momcilovic*, which is a case, I think, from 2011. So that is the approach to the law. As Professor Orr says, you just define some different fields in your computer system so that you print out with two separate button presses—maybe the one—two separate printouts based on the different disclosure levels and you can comply with both.

It does not seem to me that there is any intention of the Commonwealth to cover the field, because if you look at the definition of 'election', they talk about a general election, which is an election for the House of Representatives. They talk about an election for the Senate. They talk about by-elections for the House of Representatives. In both legislation, a lot of the regulation relates to donations to the candidate. So in each case they are a candidate in either the state or Commonwealth election, not both. Professor Orr says that state branches have that opportunity to register under Commonwealth legislation, but that does not promote it, I think, to covering the field. So that is the fourth point.

The fifth point—the one that is not very popular today, I imagine—is the changes to the entitlement of the chair of the CCC. They seem very sensible changes. It is about independence. So it is about financial security. It is about the chair serving their five or 10 years and not having to line up and get a job from the government. So I think they are very sensible. In footnote 2 on page 3 of its submission the association says—

The Association urges the Committee and the government to consider changing the term 'chairman' of the CCC back to the non-gender specific 'chair' at an opportune time.

We have a lot of female members of the bar who are great contributors both to the association and to the rule of law in Queensland and we think that is a small but important point. I think they were matters that I wanted to mention, Chair. So thank you.

CHAIR: Thank you for that. I have just one question myself. The association in its submission expressed concerns about voter ID in two aspects: they may be discouraged from voting but also their votes may not be counted resulting from the potential of the returning officer in regard to themselves not being satisfied that the elector was entitled to vote. We have heard evidence today from the ECQ in regard to training. Do you believe that there is adequate training provided by or to the ECQ to remedy the issue that the association is raising in this regard?

Mr Keim: I would not know about the quantum of training. I must say, as someone who has scrutineered and done things like that in the ancient past: even in that period post the election when the electoral returning officer is in charge I think postal votes and non-being-on-the-roll votes are all treated very respectfully. So I do not think there are any attitudinal issues among ECQ staff, as far as I know. I am not really sure of the circumstances. You probably need a concatenation of circumstances. Maybe it is one of those situations where you were staying at your sister's place for three months so the mail stopped coming and you were taken off the roll. Then you have come back and you have not realised that you were taken off the roll. So you would normally be seeking a section vote, anyway. Then you do not have a driver's licence, because you have always had bad eyesight or something like that. So you have to make a declaration and you are not supported by the evidence on the roll that is up to date. Maybe in those circumstances somebody actually misses out.

The thing about voter ID, the feel it has for me, again with those southern United States atmospherics associated with it, is that it has never been about voter ID. Its origins are about discouraging people from voting. To the extent that the parliament passed the legislation last year, I am not attributing any conscious intention to discourage, but I do not think enough weight was given to where voter ID laws have come from and the purposes that some people have used them for in some of those regions not only in the past but in the recent times as well.

CHAIR: Thank you. Member for Mansfield?

Mr WALKER: Thank you. Just before I ask Mr Keim some questions I might ask my colleague the member for Mount Ommaney to do something.

Mrs SMITH: I would just like to table this document, if I could, for you to look at. It is in regard to some crown law advice that we touched on.

Mr Keim: Thank you. I say hello to the member for Mansfield. We are old uni mates.

Mr WALKER: It is great to have an experienced scrutineer before us. So that is helpful to know. It is almost like the old days.

Mr Keim: Yes.

Mr WALKER: Mr Keim, can I take you to the question of the disclosure threshold and the association's submission on page 2.

Mr Keim: Yes.

Mr WALKER: That refers to the issues of consistency but, I would suggest, rather oddly it does not raise the constitutional issues that you mentioned in your verbal testimony. Why is it that the association did not think that was an important issue?

Mr Keim: I was not aware—I mean, we put it together quickly, as we always do, and I was involved in the writing of it and I was not aware that any of those questions had ever been raised. Like Professor Orr, I was aware that there were different thresholds in different states, but I was not aware that it had ever been challenged or raised in any of those states.

Mr WALKER: Mr Keim, one of the reasons the former Attorney-General gave when the legislation was introduced was that it was to resolve that issue. The document that has just been handed to you—and I do not expect you to be able to deal with this on the run, and I apologise that there has not been an opportunity to give it to you in advance—is an opinion from the Crown Solicitor to the former Attorney-General. Just to summarise his short answer—and this is the question on the two thresholds—looking at the bottom of page 1 and to page 2, he precedes this by saying, ‘You can never tell what the High Court is going to do but’—

Subject to that proviso, in my opinion, the Queensland Act is inconsistent with the Commonwealth Act to the extent that it purports to require political parties registered under the Commonwealth Act, State branches of such parties and their donors to disclose to the ... ECQ ... amounts received ... and political donations made ... in circumstances where the total ... is below the threshold—currently more than \$12,400—under the Commonwealth Act—

and the section is there—

for triggering the requirement to disclose.

Section 109 of the Constitution operates to invalidate the Queensland Act to the extent of this inconsistency.

Now, you may agree or disagree with that opinion—and, as I said, you may want to take this on notice—but I suppose—

Mr Keim: Does the author deal with the ability to simultaneously comply with both pieces of legislation?

Mr WALKER: Yes. That is the case. Again, I do not want you to jump in and you may well say, ‘Look, I will take all of that on notice,’ and I do not want you to give a legal opinion but I do want you to express an opinion as to whether, if the parliament had that information before it, it would give the parliament some caution in passing the legislation which returns the situation to that, given that it would effectively mean that Queensland would have no regime if it were, in fact, invalid and that perhaps we should look at another regime.

Mr Keim: No, it would only be invalid to the extent of the inconsistency.

Mr WALKER: Perhaps it is better, if you are happy to, to take it on notice. You might want to respond at a later time.

Mr Keim: I will keep that option open.

Mr WALKER: Thank you.

Mr Keim: I do think Professor Orr, whom you are going to hear from soon, has obviously considered these issues in a lot more detail than I have, but thank you for that.

CHAIR: Mr Keim, this section, however, has not been tested, as I understand—109—with regard to inconsistency between state and federal in terms of voter or electoral matters.

Mr Keim: I suppose Mr Walker’s point is that somebody has to think of the idea before it gets tested. But I would have thought that if you add up the periods during which in some state or territory there has been a different income threshold to that in the Commonwealth regime it would probably amount to decades, including some years in Queensland, because there was a period between when Mr Howard’s government changed the Commonwealth regime and when this change was made last year by the parliament here.

CHAIR: Exactly.

Mr Keim: So there has been a period of time in which it might have been tested; I am not aware of any test. There is also that issue of that McLean test. That is, is there an intention to cover the field in the Commonwealth?

CHAIR: You would have thought, however, though, had that been contested, the Crown Law advice that the previous Attorney-General is relying upon would have referenced that in this submission that has been tabled here today.

Mr Keim: I think that is right. I presume that nothing has been referenced, and I assume that nothing has. Crown Law officers are required to advise on many matters that have not been considered in the court and I certainly have a lot of respect for my colleagues at the Crown Law office as well, so I do not want to pooh-pooh the opinion without having had an opportunity to read it.

CHAIR: Fair enough.

Mr Keim: But all I can say at the moment is that there are a number of factors which indicate me to take a different view from the albeit superficial consideration I have given to it since about this time yesterday.

Mr MADDEN: Mr Keim, I begin by thanking you for coming here today. You have a busy life as a Senior Counsel. It is great to have you here today.

Mr Keim: Thank you.

Mr MADDEN: I note in the Bar Association's submission—and you have pointed this out already—that the committee should satisfy itself that no civil or criminal penalty will apply if the legislation concerning disclosure laws is made retrospective. Are you aware of any civil or criminal penalty that may apply should these laws be made retrospective?

Mr Keim: I am not, and the one thing that I noticed in the bill was that there was a specific exclusion from liability with regard to a failure to disclose the forms, although that seemed to be based on incapacity. It seemed to be based on: if you did not have the records you got the exemption. I assume that you could still have a deliberate disclosure—that is, that a person had records that showed donations above the new retrospective disclosure limit—and I assume that there could be liability if the person refused in those circumstances to disclose those sums.

Mrs SMITH: Thank you again for coming along today. I just wanted to make the comment that you have referred in a couple of your comments to Professor Orr, who has made quite a substantial submission. Maybe this is to do with the education, but I would not mind a quick comment from you. With regard to voter ID, the vast majority of submissions—and we have well over 500 submissions—support maintaining voter ID for integrity purposes and a whole range of other reasons. I would be interested in your comment given that, as I said, the majority of the submissions are very much in support of keeping the voter ID requirements.

Mr Keim: I guess that is why we have committees like this, so that the issues with regard to any change can be probed. I remember in the past when the Australia Card had huge support in the polls and Ian and I and everybody else here went out in the streets and pointed out that there were some difficulties with the Australia Card. In time Bob Hawke dropped it because as the arguments were put forward the public came to understand that there were difficulties with the Australia Card. I am not trying to apply that directly here but—

Mrs SMITH: Because there have not been difficulties in the process—possibly in the education, but people could still vote if they did not turn up. Do you know what I mean?

Mr Keim: Yes, but I come here to provide you what assistance I and the association can and that assistance applies in two areas. One is the need. I hate having to take my driver's licence and having to produce it in a polling booth or anywhere else. I know that sometimes it is essential that I do. I know at LAX if I do not produce something they are going to shoot me straightaway, but it is an imposition I think. So if there is an imposition, the onus is on us to make the case that we need that kind of law. We cannot make the case because the evidence is overwhelmingly—on most subjects where committees like this have to make decisions, the evidence is a lot more iffy; there are studies that show this and studies that show that—against any need to make the imposition and then there is a degree of evidence that people are discouraged, not that if they have turned up with their driver's licence, as you say, ultimately they did not get a vote, because I accept if the ECQ says that every relevant section vote for lack of ID was granted a vote. If that is what they are saying, then I accept that. But it is the people who were discouraged.

You make the point that we can have much better education campaigns not to discourage people, but at the end of the day you start to ask, 'Well, why are we spending all that money on education for something that the evidence suggests is not needed in the first place and whose only real effect is going to be negative?'—that is, to discourage. So it is up to you as to how you see the case balanced at the end of the day, but they are the factors that are important to me, and hopefully I have not departed too much from what the association thinks and has written in its submission.

CHAIR: I thank you for your time in appearing before the committee today, Mr Keim.

Mr Keim: Thank you.

ORR, Professor Graeme, Private capacity

CHAIR: Our final witness is Professor Graeme Orr. Good afternoon, Professor Orr. I welcome you to the committee. I invite you to make an opening statement.

Prof. Orr: Thank you. I thank the committee. It looks like a full bench today. These are important issues you are dealing with and I know you have a short time frame to do them in, both today and also before parliament recommences. I appear here in a private capacity, but I have spent over 15 to 20 years not just at the University of Queensland but also studying, researching and writing about the law of politics. You will see from my summary on page 1 of my submission that I am generally supportive of the electoral reforms in this bill. I am not commenting on the CCC matters, but I would recommend that parliament does not rush this legislation.

I came here expecting a lot of questions about voter ID, but you may also be interested in some of the constitutional issues as well, I note. I think the experiment with voter ID was unnecessary. Voter ID is a bureaucratic hurdle that should be repealed but not without careful consideration of the evidence. I understand now that you may have heard from the ECQ today about how many votes were not accepted into scrutiny and perhaps the reasons for them, because when I spoke to them late last week that information was not available. So I think we should certainly have an evidence based approach to this important question, particularly given what came out of the national parliament joint electoral matters committee yesterday. They seem to be moving in one direction as Queensland might be moving in the other direction.

CHAIR: We always lead in Queensland.

Prof. Orr: That is because we are on the east and the sun comes up first! I do understand it. I think to take the point of Mrs Smith, there is in the community an appearance and a perception that voter ID is a good thing because we have to show ID in some other situations and I do not know if it is quite enough, as Mr Keim says, that we need to educate the community better. But I think we do have to say that in terms of something as fundamental as voting we should not be putting costly bureaucratic hurdles in the way of people, particularly when they may have disparate impacts—and some evidence points to that—just on the matter of assuaging appearances.

I also understand it is often said that people who want tighter campaign finance regulation justify it by talking about the appearance of corruption, but I think it is different because there is also the reality of undue influence and possible corruption. There is also the equality issue when it comes to campaign finance. So in terms of voter ID, we have to look at it on the evidence in relation to the need for it or lack of the need for it in a compulsory voting system.

Secondly, I think improved donation disclosure is commendable but it should be part of a wider reform to ensure Queensland has a comprehensive campaign and party finance system, and in my submission I say that I do not think you should be making retrospective changes.

Finally, I also included in my submission some stuff which, although there is no electoral matters committee in Queensland, relates particularly to issues that came out of Ferny Grove, but I have had trouble raising them with the government in the last few weeks, probably because other electoral matters with Mr Gordon have been taking more attention. But I did want to raise those issues while they were fresh in my mind as well as perhaps in the mind of those who are looking at this area of law relating to disqualified candidates, petitioning and who gets to sit on the Court of Disputed Returns and maybe if there is someone from the Attorney-General's office here today—

CHAIR: Unfortunately, Professor, that is not a matter under the terms of reference for this inquiry.

Prof. Orr: No, I understand. But I did want to put it on the public record and I understand the Attorney-General is coming to have lunch, of all things, at UQ and I might try to get an appointment with one of her staffers to discuss those issues.

CHAIR: Thank you. In your submission you refer to an actual figure of 16,450 uncertain identity declaration votes actually admitted to scrutiny. You furthermore go on to say that that represents 0.7 per cent of total person votes. I do thank you for your submission and also for your summary of each electorate; that is quite helpful. Can you inform the committee of what the summary actually provides in terms of disfranchised voters in terms of what you have provided with regard to the table?

Prof. Orr: The known unknown is that we do not know about disenfranchisement. It may have been caused by people thinking they needed voter ID to turn up. When you say, 'We've got a voter ID law,' it is not surprising that most people think that means what it says. So whilst I applauded the previous parliament for including the declaration vote option, it was very clear to me

that the education campaign, time and resources of the Electoral Commission, especially with the snap poll, were probably not enough. But I was also aware that even colleagues in law and public law and journalists in political reporting thought that you could not vote without ID, so it does not surprise me that the turnout drop of 1.1 per cent occurred. We cannot know why it occurred, but it does seem very odd to have a turnout drop in an election that was so close and so volatile.

In terms of disenfranchisement, you would have to look at that known unknown of what per cent of a drop in turnout might have been because of confusion about voter ID. In relation to my data, all I can say is that, perhaps not surprisingly, the seats in which the disparate impact of voter ID was clearest—in other words, the most percentage of people who had to lodge declaration votes and who therefore never found out if their vote was even looked at, admitted to scrutiny—are seats with high levels of Indigenous populations, as shown on the first page of the table, but if you look down the table it is also very clearly regional seats. We can speculate on possession of ID, levels of education or being tuned into these issues. I have just spent 10 days in Longreach. There are different cultures in the regions than there are in the cities where people are less bureaucratic, they want government off their back and they are less likely to be obsessed about forms and routines.

My problem with voter ID is partly that, at the flick of an executive pen, under the regulations you can always add or rather subtract from the list of ID that could be accepted, and a future parliament anywhere in this country may go down the American track of saying, 'We will do away with the declaration voting option.' But I also have problems simply with the appearance and trust in democracy that people never found out if their votes were admitted to the count. Your declaration vote goes in an envelope in a separate ballot box. I actually asked at my local polling station and the poor returning officer there did not know the difference between a vote being admitted to scrutiny and a vote being counted as formal.

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

Mr WALKER: Professor Orr, firstly, thank you for the great work that has been done. There has been a lot of work gone into your paper. Can I say with respect and as politely as I can that I think sometimes some of your language about the ID can get a little carried away. Can I just give some examples. AAP may have got this wrong, but I have a quote here from May where you say, 'If I'm a rural person and I have to drive half an hour or 50 minutes to a polling booth and I forget my wallet, I'll have to drive back and get it.' If that is a correct statement, I presume you accept that that is not in fact the impact of the ID laws.

Prof. Orr: No. I was talking to a journalist from the AAP—I remember that conversation, like many with journalists—and saying that there is a strong perception that voter ID means what it says. But also if you want to know that your vote is going to be accepted into the count, yes, you would have to turn around and go home and get your wallet, which is obviously more of a problem in regional areas—and maybe that is another reason there were effects in regional areas that did not occur elsewhere. But I do accept entirely that this law that was passed by the previous parliament is not in line with some of the southern American laws where you need voter ID and without that you cannot vote and so on. The list of ID was reasonably good and the declaration voting mechanism was to be welcomed.

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

Prof. Orr: Yes.

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

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

too far unless you give some clear evidence that it is going to do anything about a real problem with the integrity of the voting process. There is no significant evidence—Professor Hughes has examined this for years—of problems with voter personation in Australia. In fact, if we are concerned about that, the best thing we can do is have the most comprehensive roll possible, including automatic enrolment, enforcing compulsory enrolment and so on.

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

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

Mr MADDEN: Professor Orr, thank you for coming here today and thank you for your submission. I would like to talk about your submission with regard to donation disclosure where you say, ‘The lowering of the disclosure threshold should not be backdated,’ and you go on to say, ‘Retrospective rulemaking threatens the rule of law.’ I have a very simple question for you. Are you aware of any civil or criminal penalty that might apply were this law to be made retrospective?

Prof. Orr: I heard you ask that question of Mr Keim and my brain went running. I would have to take that question on notice. No, I am not, but I do not think that is the point. What is the point if you pass a law where there are no teeth to enforce the information or request? It is not even clear to me why you would want to backdate a measure like this. If you have concerns about relatively small scale donations, up to four figures, influencing government decisions then I think you need to have a different kind of inquiry. I think the principle is far too fundamental—outside problems of genocide and Nazis and so on. We do not pass retrospective laws without good reason and it could blow back in the future if you start a precedent here.

It seems to me that it is one thing for a government to say, ‘We are going to change the tax law prospectively and we give warning of this,’ and it is another thing to say in opposition, ‘This is our policy and when we get into government we are going to backdate it to the day we announced that policy,’ because that leads to difficulties of people organising their affairs. I give the example that I think the real problem with too low voter disclosure is public servants or people who may have contracts with the government. If I were a public servant—and I suppose I half am because half my pay is paid for by the Commonwealth at the university—and I donated \$30 a week as a direct debit and then after the event you tell me I have to disclose that, you say there is no criminal penalty if I do not disclose that but there certainly may be a social sanction that is, I think, of concern when it comes to the liberty side of donations disclosure.

Mr KRAUSE: Thanks, Professor Orr, for being here. The University of Queensland Law School has presented some very fine graduates over the years, I am sure. I want to talk about retrospectivity too. At a time when some people would say that trust in the political process is low, I think the imposition of a retrospective obligation would do more damage to the fabric of our democratic society. Politics is a very private matter and people can hold different views over time. Mr Keim gave a good example of where it is not just about criminal and civil matters. It goes further than that, and I think you were touching on that as well. Political views can change over time as well. People do not always give donations to one party.

I just want to ask you a question about the retrospectivity. You mention in your submission that it is one thing for a proposal to be made during a term of government and for that to be legislated upon but quite another for an opposition to make an announcement which you said was effectively a threat which would then be put into place when it is elected. Could you elaborate on the difference there? I know you spoke about it briefly, but could you elaborate on the difference between those two points?

Prof. Orr: Sure. What I am saying is that if you are in government and you are saying, ‘We will proceed with this measure in the life of this parliament,’ then it is relatively predictable and it is not the same issue with the rule of law. Perhaps I will accept Ian’s criticism now about it being effectively a threat. I am using the word ‘threat’ in a less pejorative sense. It is not like someone is holding a gun at your head, but you effectively have to decide how you will plan your affairs on the possibility and presumption that the opposition may win the next election and have a majority in the upper house and so on and so it will go through and then it may be backdated to a certain time.

Mr KRAUSE: Do you think it is possible that people have arranged their affairs differently on the basis of that pronouncement by the opposition leader last year?

Prof. Orr: This is not like retrospectively dealing with criminal law or other laws that have the kind of hard, direct impacts. But I gave the example of a public servant who may have donated a certain amount understanding what the threshold was for disclosure and then it is clearly unfair to be backdating that. I am not quite sure what the rationale for the backdating is, even though I generally agree with the principle of more rather than less disclosure. In fact, if you must pass this disclosure law, you should also be thinking about continuous disclosure because disclosure once or twice a year is inadequate.

CHAIR: I am trying to get my head around this point as well about the retrospectivity issue being of a punitive nature merely by the fact of providing a written form in regard to making a donation. The evidence today is clear that there may be people who have no doubt done that, and there is evidence that has been provided here demonstrating that as well. It also was a government commitment that we were going to do this in terms of should we be elected to government.

Prof. Orr: Not many people expected that. I think they can make the distinction between a government in office and an opposition.

CHAIR: Every party, whether it be a party in opposition or government, makes expectations before the public of what they intend to do should they either regain power or get into power. So that forms the basis of their policy moving forward in regard to their term. It was not something that caught people by surprise as a result of 'this would happen should we obtain government'. Do you believe that that is an area that people were not aware of or that people did not think would transpire should it occur? I am just trying to understand.

Prof. Orr: It was not like there was a blank piece of paper. There was a clear set of rules. We are going to have the higher threshold in line with the Commonwealth level. People who made donations made donations and parties solicited donations on that basis. It seems to me that if you have a situation where every party can go around saying, 'We don't like this law. We are going to backdate changes to it in the future,' you end up in a situation where you need to be a Dr Who with a time machine to plan your affairs. Again, I accept that this is just disclosure information. It is not about paying back donations above a certain threshold and so on. And there may be situations where you would backdate disclosure information—for example, telling priests or psychologists to reveal sex offenders' names. But we are not in this kind of realm. We are talking about disclosure of information about payment of donations where it seems to me there is a high threshold to get over the rule of law concerns creating precedents for retrospectivity.

CHAIR: I guess the difference, however, is that the Queensland Labor Party adopted a policy of disclosing any donations beyond \$1,000. So our principle which became our policy was adopted in the past. It is a standard that we felt is appropriate and a standard that we actually had in place when we were in government prior to the previous government.

Prof. Orr: You talk the talk and walk the walk. That is different from saying what is the law as of today in terms of my ability to effect anonymous donations or a private transaction with a political party or candidate. I am not a great fan of large scale donations. I think you should be considering bigger issues like caps on donations like New South Wales and the ACT. We should be talking about South Australia and those kinds of things. It does seem to me that we are spending a bit of time over something that is just a bad precedent and it also smacks a bit of victor rules.

Mr WALKER: Professor Orr, would it be a fair summation of your view in relation to the threshold part of this legislation that really this has all been rushed, that it is a knee-jerk reaction to a political issue, rather than a proper look at how the system might best operate for Queensland?

Prof. Orr: No. That would not be fair. That is a leading question.

Mr WALKER: How would you put it in your own terms?

Prof. Orr: What I am saying is that it is going to be conventional—not arbitrary, but conventional—whether you have a \$12,700 figure or a \$2,000 figure. I personally think \$1,000 is stretching it. It is as low as you would certainly ever want to go. What I am saying is that I think you need to be thinking about the whole issue of political finance in a holistic way. I think we have had certainly at the Commonwealth level too much cherry-picking of issues.

Mr WALKER: Do you have any view as to whether this legislation would be easily avoided by somebody who did not want to disclose their donation—for example, by giving to a third party or running a third-party campaign quite distant from the political party, still influencing opinion but staying under the radar?

Prof. Orr: I am of the view that if you are going to have a disclosure donation threshold then, as in, say, the Commonwealth, it needs to apply also to third parties who engage in similar campaigning activities. I have no problems with that. On the issue of loopholes around donation disclosure, we only have to look to New South Wales and use of trusts and intermediaries and so on to say that it is going to be a cat-and-mouse game forever. But I have no problem with the principle of lowering the threshold.

Mr WILLIAMS: Welcome, Professor Orr. With respect to the public awareness that the Labor Party had the intention of reinstating the threshold to \$1,000, if I go across now to the proposed treatment of assets, you would say that that was well publicised—what Labor's treatment of assets was going to be? Would you say that the treatment was any less with respect to the \$1,000 threshold?

Prof. Orr: I am, as my students tell me—I have just taught a three-hour class—an avowed nerd when it comes to CEA law. I was not aware that it was Labor's intention to backdate it. I thought Labor's intention was simply to reinstate the threshold for the future. So I was not aware then. You would have had to have been a real political insider, I would have thought, to be aware of that. But I am not a political donor.

Mr KRAUSE: Professor Orr, just following on from what you have just said, we have spoken today about what numerous submitters have said in relation to the voter ID laws—that there is no evidence to support the need for voter ID laws. In line with what you have just said about the retrospectivity of things, I think it is an unfair imposition on participants in democracy to do that retrospectively but also a solution in search of a problem. Do you agree with that in relation to the retrospectivity?

Prof. Orr: Yes. As I said, I think if there are concerns about particular allegations or particular levels of influence, then public servants, whistleblowers, the media and so on can call for that and you could have an inquiry into those issues, using proper mechanisms to extract that kind of information—like they do in ICAC. But it goes beyond that, it seems to me. Why are you meddling with a principle as fundamental as the antiretrospectivity question, regardless of whether this relates to electoral donation information?

Mr KRAUSE: Sure. Thank you.

Prof. Orr: So you do not want me to reflect on the Crown Solicitor?

CHAIR: No, I do not think it would be wise to do that.

Prof. Orr: I probably have in my submission. You can read that.

CHAIR: Professor Orr, thanks so much for attending today's hearing of the committee. I would like to thank all the other witnesses as well for their attendance. The information provided is very helpful to the committee in deliberating on this bill. I also thank Hansard and the secretariat for the excellent work that they always perform at these hearings. A transcript of proceedings will be available on the committee's parliamentary web page as soon as possible. The committee is due to report to the House on this bill by 1 May 2015. I now declare the committee's public hearing for the examination of the Electoral and Other Legislation Amendment Bill 2015 closed.

Committee adjourned at 5.17 pm