

# Queensland Labor

**Response to Electoral Reform Discussion Paper  
January 2013**



## I INTRODUCTION

Queensland Labor has a strong tradition in reforming Queensland's electoral system to ensure a fairer, more transparent and more robust democracy for Queenslanders.

In 1915, ALP Premier TJ Ryan 'supported equality of opportunity, a franchise based on equal electorates and voting rights for 18-year-olds' and also 'gave women the right to stand for Parliament'.<sup>1</sup>

In 1922, Labor abolished the undemocratic Legislative Council. Labor Premier Ted Theodore had, together with TJ Ryan, argued for years that the upper house was a 'constraint' on the progressive ideas of the new-Labor controlled lower house.<sup>2</sup>

Arguably, Queensland Labor's greatest legacy in the area of electoral reform was the introduction of the *Electoral Act 1992* by the Goss Labor Government. The Act was introduced in line with the recommendations of the Fitzgerald Commission of Enquiry Report which recommended an overhaul of Queensland's electoral laws. After establishing the Electoral and Administrative Review Commission, (EARC) an extensive review of the electoral system was undertaken. In its final report, EARC recommended far-reaching electoral reform which was then implemented by the Goss Labor Government.

The *Electoral Act 1992* resulted in changes in the number and makeup of electorates and member representation adopting the principle of one vote, one value and the establishment of an independent Electoral Commission responsible for redistribution.

Further amendments put forward by the Goss Labor Government in 1994 introduced fundamental accountability provisions including disclosure of political donations and electoral expenditure and public funding for election campaigns.

These accountability reforms were strengthened again by a Labor Government with the introduction of the *Electoral Reform and Accountability Act 2011*. These reforms imposed caps on amounts donors can make to political parties, candidates and third parties, established caps on certain campaign expenditures and required that all political donations be placed

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<sup>1</sup> W R Johnston and D J Murphy, 'Ryan, Thomas Joseph (Tom) (1876-1921),' *Australian Dictionary of Biography*, National Centre for Biography, Australian National University. <http://adb.anu.edu.au/biography/ryan-thomas-joseph-tom-8317> (accessed 18 February 2013).

<sup>2</sup> T Moore, 'The ups and downs of the Legislative Council,' *Brisbanetimes.com.au* (online), 12 October 2011. <http://www.brisbanetimes.com.au/queensland/the-ups-and-downs-of-the-legislative-council-20111010-1lhex.html> (accessed 18 February 2013).

into a state campaign account that all registered political parties, candidates and third parties must maintain allowing greater scrutiny of campaign spending.

It is with great concern that many of the accountability and integrity reforms introduced by Labor Governments over the past few decades now seem to be at risk under the Newman Government. Many of the options canvassed in the Discussion Paper released by the Attorney General would take Queensland backwards.

## **II PART A – POLITICAL DONATIONS, PUBLIC FUNDING AND ELECTION CAMPAIGN EXPENDITURE**

### **1 Political Donations**

#### *a. Caps on Political Donations*

Queensland Labor believes that the current provisions in the *Electoral Act 1992* which cap political donations are the toughest in the country in addressing corruption and undue influence.

There is no doubt that the caps have clearly had a profound impact on the amount of large donations available to political parties. This in turn limits any potential for undue influence to be exercised by any one donor or lobby group in relation to an election campaign – or any perception of such influence.

Queensland Labor believes that those with the means to make large donations should not be permitted to leverage more from the political process than any other Queenslanders. Caps on political donations go hand in hand with limits on electoral expenditure and public funding to ensure an even playing field. These reforms have ensured equitable access for all in the community to participate in Queensland elections and have led to greater democracy and more transparent electioneering.

Queensland Labor submits that the current caps on donations and electoral expenditure as they currently stand do not infringe the implied freedom of political communication under the Commonwealth Constitution. The test, as set down in *Lange v Australian Broadcasting Corporation*<sup>3</sup> and later in *Coleman v Power*<sup>4</sup>, requires that a law may only effectively burden the freedom of political communication about government or political matters, where it is reasonably appropriate and adapted to serve a legitimate end, in a manner which is compatible with the system of Government prescribed by the Constitution.

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<sup>3</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 567-568.

<sup>4</sup> *Coleman v Power* (2004) 220 CLR 1.

Clearly the purpose of caps on political donations are to safeguard the integrity of the political process by reducing pressure on candidates and political parties to raise large sums of money and preventing the wealthy from using their money to secure disproportionate influence on the process, which promotes the fair value of political freedoms.

Caps on donations also encourage political parties to secure the support of a large base of small contributors, which is likely to enhance their participatory function.<sup>5</sup>

Capping donations and expenditure would of course, on its own, limit the ability of political parties and candidates to communicate with the electorate about political matters. It has therefore been necessary to reform public election funding to ensure political parties and candidates are still able to communicate with Queenslanders while removing their dependence on private donors to do this.

*b. Donations capped for "Campaign Purposes"*

Queensland Labor submits that the existing laws that cap political donations for 'campaign purposes' are adequate in ensuring a level playing field. As discussed above, if the aim of capping donations is to reduce undue influence and the potential for political corruption in relation to election campaigns and outcomes, then it is appropriate to cap those donations which will be used for campaign purposes.

Queensland Labor submits that the nexus between big donations, election campaigns and election outcomes represents high risk activity that requires limits, regulations and disclosure laws. If individuals or organisations wish to make a donation to a political party or third party to support the administration of that party, Queensland Labor submits that it is not necessary to curb that political freedom since the potential for corruption that is particularly concerning relates to election outcomes and corruption of government.

*c. Ban on Political Donations from Corporations and other Organisations*

Queensland Labor is opposed to any move to ban donations from corporations or other organisations. In light of the current legislative provisions that cap donations, this additional step would be unreasonable and severely restrict freedom of communication.

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<sup>5</sup> Dr Joo-Cheong Tham, "Establishing a sustainable framework for election funding and spending laws in New South Wales" A report prepared for the New South Wales Electoral Commission, November 2012, 120.

Prior to the inclusion of section 96D of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (“NSW Act”), the only donations that were banned were those donations from property developers, tobacco, liquor and gambling industry. The legislation did not differentiate between individuals on the electoral roll and individuals who are not on the electoral roll, corporations and other organisations.

The NSW Premier stated that these recent amendments to the NSW Act limiting donations to those electors on the roll were necessary to “ensure that the public is going to have confidence about our electoral system”<sup>6</sup>. He went on to say that anyone not on the electoral roll, “does not have a stake in the system.”<sup>7</sup> Queensland Labor submits this is flawed.

The argument that only those who vote have a stake in the outcome of an election presents an unjustified limitation on political freedoms. As Professor Tham points out in his recent report for the NSW Electoral Commission, “Citizens in Australia typically influence the political process through organisations and groups (political parties, companies, trade unions, or non-government organisations)...There is little doubt: Australian politics is heavily collectivised and institutionalized.”<sup>8</sup>

Any move to restrict donations to individuals on the electoral roll neglects this point. Of course, third parties such as business, conservation, residential, agricultural, industrial and any other interest groups have a legitimate right to have their say in our democracy and represent their members and constituents.

Such a move also excludes citizens who are living overseas, permanent residents and those Australians who may not yet be enrolled. Such individuals and groups should not have their political freedoms unreasonably curbed when they are regularly subject to the laws of a country, even if they are not entitled to be electors.

There is also the argument that such a reform would place an administrative burden and increased compliance costs on candidates and political parties in having to put in place mechanisms for ensuring all donors are on the electoral roll. This will have a disproportionate impact on smaller political parties. Such a requirement would also prove unworkable for small party units that conduct grassroots fundraising with movie nights, trivia nights, raffles etc. It is impractical for those units to be expected to ensure that people buying raffle tickets are enrolled to vote.

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<sup>6</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 September 2011, 5432 (Barry O’Farrell, Premier).

<sup>7</sup> *Ibid.*

<sup>8</sup> Tham, above n 6, 133.

*d. Member/Shareholder requirements for Corporations and Industrial Organisations*

Queensland Labor considers companies and industrial organisations to be democratic organisations that are accountable to their shareholders and members through existing legislation and rules. Any move to introduce votes or ballots before political donations should be made at the Commonwealth level. Any move to make political parties in Queensland responsible for ensuring proper conduct of such ballots is unworkable and an administrative burden.

This requirement would unnecessarily and unjustifiably increase costs and the regulatory burden on companies and industrial organisations to comply. Such a move is evidently inconsistent with the Newman Government's oft stated mantra of slashing red tape and reducing the regulatory burden.

*e. Fundraising Activities*

Queensland Labor considers that the existing exemption for small grassroots fundraising contributions of \$200 or less from the definition of political donation is reasonable and should continue.

There is no discernable public perception that people paying under \$200 for a ticket to a fundraising dinner, a trivia night or raffle ticket are in any way problematic or present concerns about 'cash for access'. Such fundraisers are a key way in which local members of a political party fundraise and any move to remove this exemption would see many small grassroots fundraising cease – leading to an undesirable centralization of fundraising activity.

Small grassroots community fundraising should be encouraged as it increases the participatory function within political parties and broadens the base for democratic involvement by others outside political parties.

*f. Membership Fees*

Queensland Labor submits that the current provisions around membership fees are reasonable. Currently, a person's membership fee is not considered a political donation and only \$500 of an individual's membership fee can be used in an electoral campaign as electoral expenditure.

Whilst section 95D of the NSW Act excludes membership fees from the donations cap except where it exceeds \$2000, the effect of the section 96D of the NSW Act is that annual or other subscriptions paid to a party by a person or entity for affiliation with the party are banned. The NSW Act bans affiliation fees, in particular, fees paid by trade unions affiliated with the ALP. Such a ban is an unjustified limitation of freedom of political association.

The current provisions in Queensland, which do not categorise annual subscriptions as political donations, but do restrict the amount of which can be used in electoral campaigns, strikes a good balance between allowing democratic freedom of association and addressing concerns about using membership fees as a way to get around donation caps and expenditure caps for political purposes.

*g. Disclosure and Campaign Accounts*

Queensland Labor supports any level of Disclosure to the general public that promotes the principles of transparency and accountability. We never see this as an administrative burden or increased regulation, but in fact believe that the Disclosures are necessary to maintain a clear distinction between campaign and administration expenditure.

This automatically leads to maintaining separate bank accounts with any financial institutions and strongly supports this as an effective control mechanism. Queensland Labor has a sound history of accurate and timely financial reporting and welcomes any additional disclosure requirements that would enhance the quality of audit and compliance arrangements and strengthen the Commission's independent review process.

## **2. Public Funding**

*a. Current Public Funding Arrangements*

It is unfortunate that the current model of public funding has been so inaccurately described in the Discussion Paper presented by the Attorney General. Table 3 on page 14 of the Discussion Paper is misleading in that it only records the funding received by the LNP on an interim basis, making it appear that the ALP received significantly more public funding than the LNP.

In order for the ideas in this discussion paper to be properly canvassed by stakeholders and the public, final and correct figures must be provided. Queensland Labor understands that the LNP has in fact received well over five million dollars in public funding from the last election, far more than any other political party. It is disappointing that the Attorney-General has not taken the opportunity to update the public about the increase in public funding to the LNP whilst comment is being sought on reforms dealing with these very issues. In the interests of accuracy and 'truth in governing' we anticipate that the Attorney-General and Minister for Justice will correct such inaccuracies in the final position published by the Government in due course.

Public funding for political parties and candidates has two broad objectives. Firstly, in operating together with caps on political donations, public funding for political parties seeks to protect the integrity of the political process by

reducing reliance on private funding and in doing so lessen the risk of undue influence and corruption. Secondly, public funding promotes fairness in politics, particularly elections, by leveling the playing field with dominant parties not enjoying undue advantages.<sup>9</sup>

A key finding of the Fitzgerald Inquiry was that private investors were having undue influence over the Government, and it is disappointing to see the LNP making moves to move away from public funding and other Labor initiatives, designed to limit the influence of private donors.

Queensland Labor has always been a strong advocate of the public funding of election campaigns and made additional provisions to strengthen this policy in the *Electoral Reform and Accountability Amendment Act 2011* (“the 2011 Act”). Increases to public funding were increased to help offset the restrictions imposed by the donations cap. The current provisions provide public funding for candidates and parties determined by reference to a sliding scale based on their expenditure. Candidates must still reach four per cent of the first preference votes, but unlike previous legislation, public funding is not based on the number of votes received.

In addition to public funding for electoral expenditure, the 2011 Act also introduced administrative funding for political parties and independent members of parliament. Such provisions are consistent with the aims and objectives of public funding, reducing the potential for undue influence by limiting the reliance political parties have on private donors. QLD Labor supports the re-introduction of public funding for political parties and independent members. The administrative funding should be calculated as a percentage of primary vote, averaged over a number of elections, and be capped at a certain amount. This would ensure that the funding adequately reflects public support for the party or independent member.

South Australia Premier, Jay Weatherill recently announced that the Labor Government was introducing strict limits on political donations and introducing public funding for elections. The Premier, when making the announcement, stated that the Labor Government wanted to improve the transparency of political fundraising and limit donation amounts because of a real risk that “large powerful interests” would have an “undue say” in policy.”<sup>10</sup> In response, South Australian Liberals have announced they support the principle of publicly funding elections.<sup>11</sup>

A recent 15-month inquiry by the Committee on Standards in Public Life commissioned by the United Kingdom’s Conservative Government concluded

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<sup>9</sup> Tham, above n 6, 178.

<sup>10</sup> Mark Schliebs and Michael Owen “Jay Weatherill to limit party donation” *The Australian*, February 06 2013.

<sup>11</sup> *Ibid.*



there was no credible alternative way to remove the influence of "big money" on politics other than increased public funding for political parties.<sup>12</sup>

*b. Public Funding for Local Government*

Public funding of elections strengthens our democracy by providing strong transparency of electoral funding and reducing the dependence of candidates for political office on donors.

Local Government is a fundamental component of both our system of government and our democratic political institutions. Local Government is that level of government that is closest to the community, making important decisions about the design and development of local communities and the provision of local services.

Local Government in Queensland is quite different to local government in other States of Australia. Local Government Mayors and Councillors in Queensland are more likely to be full-time positions. In other States, Councillors tend to be part-time positions. As well, Local Governments in Queensland generally govern a region rather than the limited areas often governed by Local Government in other states.

Local Government has the primary responsibility for town planning, both in the making of planning schemes and the consideration of development applications. Local Government also makes a range of other local infrastructure decisions that impact on the property development sector. The decisions of Local Government can have significant effect, both beneficial and detrimental, on the value of property and property development. Questions of town planning and development approval are also issues that are strongly felt by the affected communities.

While Local Government candidates in Queensland are subject to similar (and in some instances more stringent) disclosure laws as State and Federal candidates, Local Government candidates do not receive any public funding for their election expenses.

Queensland Labor therefore proposes the introduction of public funding of election expenses for Local Government candidates. Public funding for Local Government elections would promote transparency in Local Government and maintain public confidence in this increasingly important level of government.

### **3. Election Campaign Expenditure**

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<sup>12</sup> See <<http://www.independent.co.uk/news/uk/politics/sleaze-watchdog-recommends-public-funding-of-political-parties-6265958.html>> (accessed 6 February 2013).

*a. Election Expenditure should continue to be capped*

The then Attorney-General, when introducing the 2011 amendments to the Electoral Act 1992 (QLD), including limiting how much candidate and parties can spend in an election campaign, stated, “it is policies that should determine elections, not deep pockets.”

Queensland Labor firmly believes that expenditure caps in relation to election campaigns promote fairness in election campaigns by leveling the playing field and contribute to preventing corruptions and undue influence by lessening the pressure for corporate fundraising.

*b. Aggregation of spending of a Party with that of its Affiliated Organisations and the aggregation of expenditure of Affiliated Organisations*

Queensland Labor submits that the option outlined in the section 3.4(c) of the Discussion Paper is very clearly a political exercise by the LNP designed to limit spending on electoral campaigns by the ALP and trade unions. This is a singular attack on the one political party that includes affiliated organisations as part of its governance structure. The freedom of political parties to choose the organisation of their party structure is a crucial aspect of freedom of association.

The recent amendments to the NSW Act are similarly an attack on the ALP and trade unions, in fact, in his second reading speech on the Bill that included these provisions, Deputy Premier Andrew Stoner said the provisions targeted trade unions running ‘proxy campaigns’ for the Australian Labor Party.<sup>13</sup>

Inherent in this option for reform is a deeply problematic assumption: that the policy views and agenda of the ALP and its affiliated trade unions always coincide.<sup>14</sup>

Moreover, industrial legislation requires that the rules of registered unions provide for the democratic control of those organisations by their members. In exercising that control the members are bound to act in the best interest of the union and in such a way that best furthers the union’s objectives. The ALP has no authority to influence or control those decisions. Consequently, it cannot be assumed that any or all political campaigning undertaken by a registered union will be consistent with the ALP’s interests or objectives.

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<sup>13</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 October 2011, 6045 (Andrew Stoner, Deputy Premier).

<sup>14</sup> Tham, above n 6, 168.

Indeed in recent Queensland history there are a number of examples of affiliated trade unions running quite different agendas to that of the ALP.

From 2009 till 2011, the Electrical Trades Union conducted a very public campaign against the then Labor Premier, Anna Bligh, over the Government's decision to sell assets. They produced material, hired billboards and placed ads, all of which would be considered electoral expenditure for campaign purposes if it occurred within the campaign period.



The ETU billboard on Gladstone Road at Highgate Hill which attacks the Premier over the proposed asset sell off. Source: Brisbane Times, Photo: Scott Casey

It would be an absurd result if the expenditure the ETU incurred during this campaign was aggregated with that of the ALP for the purposes of determining the amount electoral expenditure.

In the 2012 State Election Campaign, Branch Secretary of United Voice, Gary Bullock, sent a letter to households in the electorate of Moggill, supportive of Liberal National Party (LNP) MP Bruce Flegg.<sup>15</sup>

The letter outlined that the union had had positive meetings with Dr Flegg and had received assurances that if there was a change of Government, the LNP would ensure policy outcomes that did not adversely affect teacher aides and school cleaners, many of whom are United Voice members. The letter also stated:

“Our union has campaigned against governments of any party – when required. It is fair to say we more often find ourselves in conflict with Conservative governments than Labor governments.”<sup>16</sup>

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<sup>15</sup> Gary Bullock, Branch Secretary, United Voice, letter to Moggill residents, 20 March 2011 (Appendix 1).

<sup>16</sup> Ibid.

Again, it would be an absurd result if the cost of this letter was added to the expenditure of the ALP for the election campaign.

More fundamentally though, the substantial issue with the proposal is its differential treatment of unions which affiliate to the ALP and all other participants in the political process. The effect of the process would be to reduce the scope for unions, who are affiliated to the ALP, to support or conduct their own third party campaigns to support issues in contention at any election that affect and impact upon their members. The proposal in substance and effect, discriminates between industrial organisations which are affiliated with the ALP and the balance of society that is permitted to participate in political parties and conduct their own political campaigns should they desire.

The proposal will plainly infringe the implied freedom of political communication under the Commonwealth Constitution. Given that:

1. trade unions have a legitimate right to campaign on those issues which affect their membership and should have the political freedom in which to represent those members; and
2. the publically expressed rationale for the purpose relates to unions' previous support for the ALP;

it is difficult to see how legislation giving effect to the proposal could be described as reasonably appropriate and adapted to serve a legitimate end, in a manner which is compatible with the system of Government prescribed by the Constitution.

*c. Definition of Electoral Expenditure*

The current provisions do not try and limit all expenditure by political parties, only what is defined as electoral expenditure. This is a sensible approach.

However, Queensland Labor proposes that the definition of 'electoral expenditure' be amended as currently a number of campaign expenses are excluded from this definition, including distribution of electoral material by unaddressed mail (i.e where the name and address of the recipient is not included).

This form of communication is very common in QLD election campaigns, with leaflets and brochures being distributed directly into mail boxes without being addressed personally to electors.

Clearly this is inconsistent with the aims and purposes of the legislation in that political material advocating for or against a vote for one party or candidate can be widely distributed without coming within the expenditure cap.

*d. Volunteer Labour in Campaigns*

Queensland Labor believes that the current legislation adequately deals with provision of volunteer labour and that there should not be any amendment to the definition of donation or gift-in-kind under the Act as any move to include what individuals do in their spare time would contravene freedom of association rights.

Queensland Labor submits that the Discussion Paper on page 22 is quite misleading as it asserts that any time spent by an official of an affiliated organisation working for a political party is considered to be volunteer labour and therefore not covered by the election expenditure caps.

In fact, if a paid employee of an affiliated organisation spent their working time working for a political party, that would clearly be covered by the definition of a gift-in-kind, because the organisation is providing paid labour, not volunteer labour and it would be for campaign purposes.<sup>17</sup> If that employee was volunteering after work or on weekends in their own time, it would not be covered, and nor should it be.

## **111 PART B – OTHER OPTIONS FOR IMPROVEMENT AND CHANGE**

### **1. Truth in Political Advertising**

The potential impact of misleading or false statements made in the course of electioneering is incontestable. Such campaigning obviously has an adverse effect upon the public interest. It may distort election outcomes, divert electors attention from substantive issues and may even discourage qualified individuals from seeking election.

Queensland Labor is supportive of legislation with the purpose of regulating truth in political advertising. If Queensland was to introduce such legislation along similar lines to the successful model used in South Australia, Queenslanders would not now be subject to the daily backflips and sidesteps the Newman Government is making to the election promises they made to claim office in the 2012 state election.

For example, a prominent campaign slogan from now Premier Newman during the 2012 election campaign was “The public service has nothing to fear from

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<sup>17</sup> See sections 201 and 250 of the *Electoral Act 1992* (QLD).

me.”<sup>18</sup> However, after the election the Premier revealed his plan to sack thousands of Queensland workers when he stated that there are at least “20,000 more public servants than the people of Queensland can currently afford.”<sup>19</sup>

Or there is the instance where the LNP promised to establish “an independent audit of the state’s finances” within two weeks of assuming government but by 21 August 2012 LNP MPs were forced to apologise in Parliament for misleading the House, after they tried to repeat the politicised and inflated figures concocted by the Commission of Audit headed up by former Federal Liberal Treasurer, Peter Costello.

The LNP also campaigned during the 2012 election on a promise to “revitalise frontline services”, but only three months later announced they would be closing 24 health promotion programs worth \$3.4 million delivered by community organisations, immediately as a cost-cutting exercise. Obviously these sort of misleading statements have had a significantly negative impact on Queenslanders and our public interest. Electors in Queensland currently feel betrayed by the Newman Government, that the Government presiding over Queensland is very different from the one presented to Queenslanders in the lead-up to the state election. This has been evidence in successive polls published since the election which show that a significant number of Queenslanders do not believe that Campbell Newman has kept his election promises and further, that they feel worse off under the LNP State Government.

Implementing some regulation of misleading advertising in a political campaign would be in the public interest of Queenslanders and prevent the disappointments of the Newman Government occurring again.

## **2. How-to-vote cards**

Voting should be an experience that the overwhelming majority of electors should look forward to. The ability of Queenslanders to determine their representative in the Parliament and directly influence the future of their state and community should be the subject of widespread anticipation and satisfaction for having acquitted their civic duty.

Instead, many electors express a deep reticence focused on the need to ‘run the gauntlet’ of large numbers of party volunteers insisting How-to-vote cards on them as they approach a polling place. This level of reticence has risen over recent years due to a range of factors. The increased participation of a

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<sup>18</sup> See <http://www.brisbanetimes.com.au/queensland/you-have-nothing-to-fear-newman-tells-public-service-20110404-1cv6x.html> (accessed 12 February 2013)

<sup>19</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 20 June 2012, 802 (Campbell Newman, Premier).

variety of minor parties has increased the numbers of how-to-vote volunteers vying for electors' attention at highly contested polling places. The increased numbers of electors who do not declare (at least in independent, academic research) a firm major party affiliation and therefore feel the competition vying is aimed at them.

The perception of an increased level of animosity between the major political parties and therefore their volunteers resulting in fractious relations and outcomes at flashpoints of interaction such as at polling places - with electors placed between the antagonists. Increased sophistication of the how-to-vote volunteers developing methods to corral electors into delineated channels as they approach the polling place (in order to more efficiently ensure each gets a how-to-vote card) causing more intense distress to those who feel harassed. In Queensland specifically, the adoption and understanding of optional preferential voting (especially as promoted in past elections by the phrase "Just Vote 1") which has increased the confidence of electors who do not take a how-to-vote card and declare that they "know what [they are] doing".

In many communities, Election Day has become one of the few opportunities for the whole population to come together in some form and provides a tremendous opportunity for members of a neighbourhood to congregate and meet. However discomfort and annoyance from understandably enthusiastic how-to-vote volunteers, at least anecdotally, has hampered this opportunity and many community organisations who make election day and their institutions hosting of a polling place an opportunity to fundraise (school parent bodies, church auxiliaries, etc) complain of custom missed.

Of course how-to-vote cards provide a significant service to those who wish to ensure their vote is recorded formally in favour of the party or candidate of their choice. Equally, how-to-vote volunteers also provide other invaluable services to the polling process and to electors.

Queensland Labor therefore proposes a blanket ban of the distribution of political material seeking to influence the casting of votes in all public places for the whole of the election day.

Queensland Labor further proposes that registered how-to-vote cards be reasonably displayed in each voting cubicle/stall provided in polling places as well as be permitted to be displayed on prominent signage in the area of the approach to the designated entrance doorway of each polling place.

However the presence of how-to-vote volunteers serve purposes that should not be removed from those provided by political parties and candidate volunteers on the election day. Political signage, appropriately regulated, at polling places assists electors in identifying the location of polling places for their particular electorate. This signage needs to be erected and managed during the whole day. Traditionally, how-to-vote volunteers also assist many

electors in person with advice about their electorate, non-standard voting and other matters that reduce the work-load of electoral commission staff. Generally, they also double as officially appointed scrutineers who have a multitude of tasks under current electoral law throughout election day (starting with certification of the ballot boxes, through assistance to electors who request it, monitoring of the conduct of the polling place, and observation of the count).

Queensland Labor therefore proposes that a further specific role for scrutineers be acknowledged in order that they become responsible for the oversight of signage displayed on the property where a polling place is open, including the display of the registered how-to-vote signage in the area of the approach to the designated entrance doorway of the polling place. Further these scrutineers be available to assist electors as initiated by electors throughout the day. As they will be formally appointed by candidates and acknowledged by the presiding official at each polling place, such scrutineers will be more easily regulated and might appropriately be subject to a code-of-conduct or even a compulsory pre-appointment briefing.

### **3. Proof of Identity Requirements**

Queensland Labor submits that there should not be any requirement for electors to produce photographic proof of identification at polling booths before voting.

Currently, to enroll to vote, the AEC requires proof of identification. Queensland Labor submits that this is the appropriate stage of the voting process that issues surrounding a person's entitlement to vote be resolved. As noted in the Australian Government's Green Paper on Electoral Reform 2009, proof of identification at the enrolment stage, rather than at a polling booth enables the polling process to proceed smoothly for members of the public as the certified lists can be taken as 'conclusive of a person's right to vote'.<sup>20</sup>

Such a requirement might also be discriminatory against persons who do not have any photographic identity documents including people with poor English proficiency, Indigenous Australians, seniors and young electors.

Most importantly, there has not been one credible case of electoral fraud in relation to elector impersonation. The most recent case alleging voter fraud in Queensland was the legal challenge in the Supreme Court of Queensland by the LNP in 2009 over the state seat of Chatsworth. In that case, contrary to the allegations of voter fraud and widespread multiple voting, Justice Atkinson

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<sup>20</sup> *Electoral Reform Green Paper – Strengthening Australia's democracy*, released by the Australian Government on 23 September 2009, 176.



found that of the thirty cases of apparent double voting, only two were proven, and they involved confused and elderly residents of nursing homes.<sup>21</sup>

Proof of identification requirements for electors would increasingly add to the inconvenience of members of the public going to vote, potentially discriminate against particular groups in the community, and would be a totally disproportionate response to the risk of any voter fraud.

#### **4. Enrolment on Polling Day**

Queensland Labor strongly supports enrolment on polling day and submits it should be introduced consistent with the provisions introduced by the Commonwealth, New South Wales and Victoria.

The idea that the electoral roll should be as comprehensive and accurate as possible in reflecting the population of Queensland is beyond dispute. The evidence from the 2012 state election suggests the 2011 reforms introduced by Labor to allow enrolment up to the day before polling day, increased the comprehensiveness and accuracy of the roll significantly – over 65,000 electors were added or updated to their current address and electorate. Enrolment on polling day would further increase the participation of Queenslanders in our democracy.

The Discussion Paper at page 30 outlines the arguments against enrolment on polling day, with an emphasis on the exposure of the electoral roll to fraudulent enrolments. However, ensuring any votes cast by electors who enroll on the day are provisional (by declaration), and their identity can be later verified by the ECQ, would suggest this concern could be adequately addressed. The ECQ has previously supported enrolment on polling day.

However, this does raise the issue of resourcing for the ECQ if delays on polling day are to be avoided. In order to fully maximize the participation of Queenslanders and allow them to enroll on polling day, the Government must ensure that the ECQ is properly and adequately resourced to support Queenslanders enrolling at polling booths on election day.

#### **5. Electronic Voting**

Queensland Labor supports electronically assisted voting for blind and vision impaired electors and electors who require assistance voting because of a disability, motor impairment or insufficient literacy so these Queenslanders can be fully included in the Australian democratic system.

Queensland Labor believes that the process of casting a ballot in an election should be as easy and as straightforward as possible. Further, Queensland

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<sup>21</sup> *Caltabiano v Electoral Commission of Queensland & Anor (No 4)* [2009] QSC 294.

Labor believes that it is incumbent upon government to ensure that the process of casting a ballot is straightforward and not accompanied by major delays or inconvenience.

Whilst Queensland Labor fully supports any initiatives that improve people's ability to participate in the democratic process, particularly for rural and regional Queenslanders, any attempt to introduce electronic voting on a broad scale must only occur in circumstances where the proposal can guarantee that:

1. the security, integrity and accuracy of the ballot will not be compromised;
2. the secrecy of the ballot will not be compromised; and
3. the introduction of the new voting mechanisms will not lead to delays or other issues associated with either the process of casting a ballot or the counting of ballots.

Further, it is essential that any such proposal enjoy broad support within the community. There is no value in undertaking such an exercise if it was to undermine public confidence in the electoral process.

## **6. Postal Voting**

Queensland Labor is supportive of expanding the grounds on which a person may apply for a postal vote. Queensland Labor is also supportive of the option to facilitate online postal vote applications by removing the requirement for postal vote applications to be signed by the elector.

Queensland Labor is supportive of the option to bring forward the deadline for lodging a postal vote application.

Queensland Labor believes that postal vote applications should be issued by the ECQ in order to take politics and confusion out of postal votes. Currently, postal vote application forms are issued by each political party and candidates during an election campaign. Anecdotal evidence from the campaign field suggests this causes a degree of confusion when multiple postal vote application forms are delivered to each household. If the ECQ was to distribute postal vote applications, with voting information, including postal voting process, returning officer details and enrolment information, this would reduce confusion and better inform elections on voting options.

It would be in the public interest for the postal vote process to be taken over by the ECQ. This would reduce confusion and disruption and make the voting process more simple and easy to navigate than the current model.

## 7. Compulsory Voting

Queensland Labor opposes any move away from compulsory voting. There is some concern that the specter of compulsory voting has been raised in this Discussion Paper in order to create a diversion from the genuine underlying objective of the agenda of the discussion paper. Many of the ideas floated in the discussion paper are thinly veiled ambitions to impose upon unions, and anyone else considered being opponents of the Newman Government, onerous restrictions on the capacity to campaign and participate in elections. The matter of these draconian proposals will be discussed elsewhere, but the calling of attention to the relatively obscure question of compulsory voting smacks of a 'red herring'.

Compulsory voting was introduced into Queensland by the conservative Denham Government in 1915.<sup>22</sup> This introduction of compulsory voting was somewhat of a rarity at the time but the Commonwealth (in 1924)<sup>23</sup> and all State Governments were to follow suit in the decades that followed.<sup>24</sup> There has been little or no argument against compulsory voting since that time.

The arguments in favour of compulsory voting also quite rightly include that it promotes participation amongst the electorate.<sup>25</sup> There is no doubt that compulsory voting in Australia has increased voter turn-out in comparison to nations to which we are usually compared, i.e. nations such as the United Kingdom, United States, New Zealand and Canada where voter turn- out is remarkably lower.<sup>26</sup>

In Australia voter turn-out is universally 90 percent plus whereas the turn out in the United States for example is estimated as being 30 percent lower than if compulsory voting was in place there.<sup>27</sup> This fact alone increases the legitimacy of Australian Governments compared to those where voter turn-out is considerably lower, particularly where in some cases only a fraction of the population elects a Government.<sup>28</sup> The removal of compulsory voting by the Newman Government, particularly without any discussion before the most recent state election would undoubtedly be perceived as being for partisan political advantage. As a corollary to this inevitable perception of the removal

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<sup>22</sup> J Allan (2012) "In Praise of Compulsory Voting" *Quadrant* May 2012, 36; C Hughes (1966) "Compulsory Voting" *Politics* 1966 Vol 1 (2), 86.

<sup>23</sup> Allan, above n 13; H Pringle (2012) "Compulsory Voting in Australia: What is Compulsory?" *Australian Journal of Political Science* 11 September 2012, 427.

<sup>24</sup> C Hughes, above n 18, 81.

<sup>25</sup> See Allan above n 18, 38 and Hughes above n 18, 82.

<sup>26</sup> See Allan above n 18, 37; Hughes above n 18, 88 and W Robson (1923) "Compulsory Voting" *Political Science Quarterly* 1923 Vol 38 No 4, 573.

<sup>27</sup> Pringle above n 19, 430; O'Gorman 674).

<sup>28</sup> Allan above n 18, 36; K O'Gorman, (2008) "Compulsory Voting" *Policy Studies Journal*, Nov 2008, 673.

of compulsory voting is that it would weaken the legitimacy of any Government that was subsequently elected under such a system.

Early arguments in favour of compulsory voting resonate as much today as they did at the time of universal suffrage:

It is not giving our form of government a fair trial when the most competent of our citizens neglect or refuse to do their part in providing for the public welfare.<sup>29</sup>

To include every eligible member of society in a ballot must by definition extend the validity of decisions made by Government. It also follows that compulsory voting ensures that the voice of all members of the community are heard<sup>30</sup> and in particular members of the community from all socio-economic backgrounds.<sup>31</sup> The result of not ensuring the voice of all sectors of the community is that those who are less likely to vote will be ignored.<sup>32</sup>

Much of the issues in the Discussion Paper released by the Attorney-General seem to be concerned with a supposed undue influence over electoral outcomes from organisations rather than individuals. Where voting is voluntary, voter turn-out itself is pursued vigorously by political parties and other groups interested in the result of an election.<sup>33</sup> A considerable amount of effort and expense is exhausted in ensuring voter turn-out and political parties spend considerable resources on getting ‘their’ people out to vote rather than focusing on their political and/or policy message.<sup>34</sup>

The primary argument contrary to compulsory voting is that it is an infringement on liberty.<sup>35</sup> When one considers the imposition of attending a polling place once every three years for each level of Government compared to other civic duties, such as paying taxes or jury duty, the requirement to vote pales into insignificance.<sup>36</sup> Furthermore there is no groundswell of opposition to the existence of compulsory voting.

It has also been suggested (particularly in nations where voting is currently voluntary) that the existence of compulsory voting would result in a high informal vote. The evidence in Australia following the introduction of

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<sup>29</sup> J Broomall (1893) “Compulsory Voting” *Annals of the American Academy of Political and Social Science* Vol 3 March 1893, 621.

<sup>30</sup> Allan, above n 18, 38.

<sup>31</sup> O’Gorman, above n 24, 673.

<sup>32</sup> D Machin, (2011) “Compulsory Turnout: A Compelling (and Contingent) Case” *Politics* 2011 Vol 31(2), 101; O’Gorman, above n 24, 674.

<sup>33</sup> O’Gorman, above n 24, 673.

<sup>34</sup> Allan, above n 18, 39; O’Gorman, above n 24, 673.

<sup>35</sup> Hughes, above n 18, 83; Machin, above n 28, 100.

<sup>36</sup> Hughes, above n 18, 81.

compulsory voting does not support this proposition with most jurisdictions experiencing an increase in informal votes by less than one percent.<sup>37</sup>

There is no justification for the removal of compulsory voting in Queensland and any such suggestion from the Newman Government would be viewed with cynicism by the electorate. The motivation for commencing the discussion is either:

- a) to detract from the other more disturbing suggestions made in the discussion paper: or
- b) the self-serving but misguided inference that voluntary voting would in some way favour political parties of the Right.

## 8. Voting System

Queensland Labor supports harmonization of voting systems across Australia and believes there should be one nationally consistent system for voting, making it easier for electors and decreasing the current high rate of informal voting in Queensland.<sup>38</sup>

The current modern system of optional preferential voting was introduced by the Goss Labor Government in 1992. Whilst the Goss Government opposed optional preferential voting, suggesting instead that instructions direct the allocation of preferences but no vote be invalidated for leaving squares blank, the Government ultimately implemented the EARC recommendations on optional preferential voting, in line with Goss' 1989 election promise.

Full preferential voting does elect candidates most preferred by electors due to the allocation of preferences and allows minor parties to have an influence on the election process.

Optional Preferential Voting has been considered by the Australian Electoral Commission and was identified as one of the four significant influences that correlate strongly with higher than average informality rates.<sup>39</sup>

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<sup>37</sup> Hughes, above n 18, 86.

<sup>38</sup> In the 2012 federal election, Queensland had the fourth highest informality rate. Queensland's informality rate increased from 3.56% in the 2007 federal election to 5.45% with only the Australian Capital Territory and the Northern Territory recording higher swings.

<sup>39</sup> Attorney-General's Report to Cabinet on Optional Preferential Voting in Queensland [http://www.justice.qld.gov.au/\\_data/assets/pdf\\_file/0011/80003/optional-preferential-voting-in-queensland.pdf](http://www.justice.qld.gov.au/_data/assets/pdf_file/0011/80003/optional-preferential-voting-in-queensland.pdf) (accessed 12 February 2013).

## IV OTHER MATTERS

### 9. Pre-Polling

While the Discussion Paper canvasses a number of issues in relation to voting options and requirements, it has not sort consultation on the voting option that has seen the most dramatic growth over recent elections – pre-polling.

In a society where the nature of Saturdays has changed for large sections of the community, electors have understandably been seeking more convenient options in meeting their obligation. While alternative options, including the postal voting (canvassed in the paper), have traditionally involved the declaration that electors have specific reasons to cast their vote in this manner, recently reforms to allow a standard vote for pre-polling electors have been welcomed and valued by the many electors (who for a variety of reasons are very busy on Saturdays).

The administrative burden (therefore cost to taxpayers and annoyance to electors) of accepting votes in this manner is significantly lower than many other forms and therefore is worthy of consideration as to how it may be supported and expanded to improve access for electors without the high overheads of some other alternatives.

Queensland Labor proposes further consultation on the extension of pre-polling opportunities.

In particular, the experience of some regionalised pre-polling facilities during the last state election is acknowledged. While these may not have attracted great numbers, better organisation and promotion of such facilities (and a consequent reduction of the promotion of local returning officer locations and other options) may attract the efficiencies that such centres could deliver for the Electoral Commission and for electors themselves.

To that end, Queensland Labor proposes consideration of the establishment of a number of regional and suburban pre-polling facilities within prominent shopping precincts for at least the whole week before election day. Such centres should be well staffed and be capable of providing standard voting for all electorates state-wide. With a combination of a capacity to print ballot papers on site and electronic voting options canvassed in the discussion paper, this should be straightforward.

This would shift a greater number of postal voters away from that more administratively burdensome mode and reduce the requirement for dedicated returning officer facilities in each and every state electorate (currently established with some significant costs).

## 10. Collection of Voting Data

Section 61 of the Act provides for information on electoral rolls to be provided to particular people and organisations.

The Commonwealth Electoral Act 1918, section 90B(1), provides that in addition to the electoral roll, political parties are entitled to voting information including information about whether the elector voted at a polling place for the division for which the elector was enrolled.

Similarly, under section 138 of the *Parliamentary Electorates And Elections Act 1912* (NSW), political parties upon request, are provided with election information containing the names and the addresses of electors who voted (other than silent electors and itinerant electors), whether they voted personally or by post and, if they voted at a polling place for the district for which the electors were enrolled, the location of that polling place.

Queensland Labor proposes that section 61 of the Act be amended to provide this additional information to political parties and members of parliament. This information would enable political parties, candidates and MPs to properly advise and assist electors on in the lead up to polling day about suitable places to cast a vote in their electorate.

Locations of polling booths change between elections and often when re-distributions to electoral boundaries have occurred, polling places at which electors have previously voted are no longer a polling booth for their new electorate. This can be extremely time-consuming and frustrating for electors. Having this information means that campaigns could properly advise electors about changes to polling places.

## IV CONCLUSION

Due to the reforms of Labor Governments, Queensland has the toughest set of electoral laws in the country. Queensland Labor opposes any move to water down accountability and integrity provisions in the *Electoral Act 1992*, including caps on political donations, caps on electoral expenditure, far-reaching disclosure requirements, maintenance of designated campaign accounts and adequate public funding. These initiatives are critical if we are to level the playing field in election campaigns and reduce undue influence from private donors and the potential for Government corruption.

In fact, Queensland Labor submits that these accountability provisions should go further and proposes that public funding be made available for Local Government candidates. Given that Local Government is the level of government closest to the community with primary responsibility for town planning and infrastructure, introducing public funding for local government

candidates would promote greater transparency and strengthen public confidence in this important level of government.

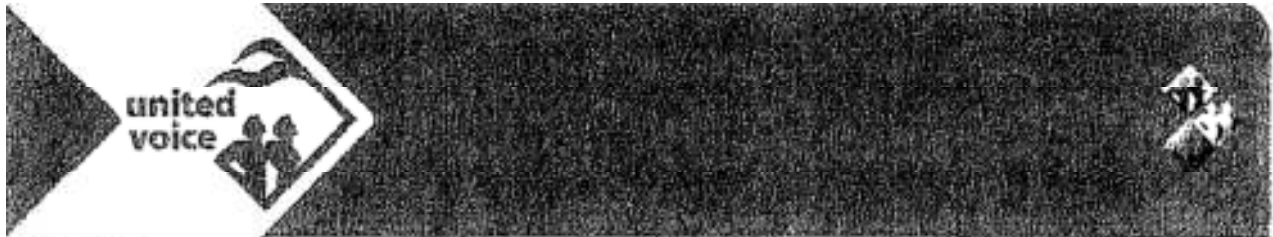
Queensland Labor considers that the proposal to aggregate the expenditure of a political party and that of its affiliated organisations is a blatant attack on trade unions, their members and the ALP. In fact the publically expressed rationale for this proposal relates to unions' previous support for the ALP. As demonstrated in this submission, such a proposal would lead to absurd results. Trade unions have a legitimate right to campaign on issues which affect their membership and should have the political freedom in which to represent those members.

Queensland Labor opposes any initiative that can potentially lead to voter suppression, including voluntary voting and the requirement to produce photographic ID at polling booths. There is no credible evidence to support either reform would strengthen our democracy in Queensland and little to no community support for such initiatives.

Lastly, in order to improve the experience of voting for many Queenslanders, Queensland Labor proposes: a blanket ban on the distribution of How-to-Vote cards on polling day; applications for postal votes to be distributed by the ECQ to take the politics out of postal voting; enrolment on polling day and calls for further community consultation about extending pre-poll opportunities for Queensland electors.



## Appendix 1



Ref: GB;dr  
20 March 2011

[REDACTED]  
[REDACTED]  
KENMORE QLD 4069

Dear [REDACTED]

I'm taking the unusual step of writing to highlight the positive stance of Dr Bruce Flegg, Member for Moggill, with regards to the job security and preservation of conditions of our members. As a union leader, that's not something I'd anticipated.

United Voice (formerly the LHMU) is a large, broad-based union. We cover a multitude of occupations, including Ambulance officers, child care professionals, health workers such as pharmacists, medical radiation professionals, dental technicians and many others. Amongst our members are school cleaners and teacher aides. It is about these workers that we have been dealing with Dr Flegg.

As the Shadow Education Minister, Dr Flegg listened to our concerns that an LNP government would, as they did under Premier Borbidge, contract out the cleaning of state schools. This action effectively sacked 6000 workers. A vigorous public campaign by our members saw that government change its position.

It is understandable then that our members have remained concerned that a change of government would result in their jobs being in jeopardy. Our teacher aide members were similarly concerned that agreements they have campaigned on to secure greater certainty of hours would be at risk.

Their hours are allocated annually according to enrolment figures, and the insecurity of that arrangement gives them financial and personal uncertainty. After a strong campaign and robust negotiations by teacher aides, Deputy Premier Fraser signed off on an agreement that provides greater certainty of hours for thousands of teacher aides. Again, they were concerned a change of government could see that position eroded.

After consultation with Dr Flegg he provided us with important assurances; contracting out of school cleaning will not occur under an LNP government; that the current policy regarding teacher aides' hours would be honoured; and that Enterprise Bargaining Agreements covering school cleaners and teacher aides would be honoured. This is very welcome news.

Our union has campaigned against governments of any party - when required. It is fair to say we more often find ourselves in conflict with Conservative governments than Labor governments.

However the spirit in which Dr Flegg approached our concerns, with attention and respect, means that our union believes that his conduct and stance merits recognition.

Yours Sincerely,

Gary Bullock  
Branch Secretary