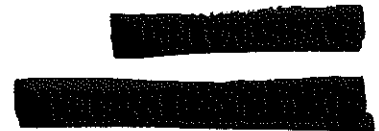


# Reform of Queensland's Electoral Laws

Submission by Elizabeth Gladwin



# Reform of Queensland's Electoral Laws

Submission in response to the Discussion Paper of January 2013

## Political Donations

In examining what, if any, regulations should be enacted relating to political donations, it is important to determine the actual purpose of regulating their receipt and reporting. Is it:

- Attempting to create a level playing field?
- Limiting the possibility of undue influence?
- Restricting the amount parties, candidates and third parties have to spend on election campaigns?
- All three? or
- Something else completely?

Assuming that it is in the public interest for electors to be aware of the sources of funds parties, candidates and third parties receive and are using to influence their voting choice, I make the following suggestions.

- Donations should be allowed to registered political parties, independent members of Parliament, independent candidates and third parties as they are a legitimate means for people to take part in the democratic process.
- Full details of donors must be provided with the donation and must be reported by the recipient – the recipient must advise the donor of the need to provide their details; failure to provide details means the donation must not be accepted.
- Candidates endorsed by registered political parties should not receive/accept donations personally – they must go through the party's books and be reported by the party. Similarly, donations to an associated entity must be treated as if they have been made to the party directly.
- From the announcement of the election, parties and sitting independents who are seeking re-election must report details of donations received (including Nil returns) to ECQ weekly.
- ECQ should publish these reports on the ECQ website when they are received (including Nil returns).
- Outside the election period (from announcement until a month after polling day) weekly reporting of donations should become quarterly reports by registered political parties and sitting independent members.
- There should be no cap on donations, but donors of \$10 000 or more must lodge a return with ECQ detailing the source of the funds donated – these returns to be lodged with ECQ within a month of the donation being made.

- The recipient party/independent candidate must be responsible for advising the donor of this requirement.
- Third parties that accept donations should be subject to the same reporting requirements as those for parties and candidates during the election period.
- There should be realistic penalty provisions for failure to comply with the reporting requirements and these should be enforced.

The current provisions which restrict the use of political donations should be repealed – they only force an indulgence in creative accounting and create an unnecessary complication for administrators.

There should not be a proscription on persons or organisations able to make political donations – this is a matter which should be at the discretion of the recipient.

The more legislators try to restrict political donations the more freedom of speech and freedom of political association is compromised. It can also have the effect of encouraging potential donors to seek other avenues of supporting their favoured party, candidate or group.

One method of answering the perennial issue of donations made by industrial organisations (ie unions) is to require each union which wishes to make political donations to include in its constitution a clause which allows it to do so on a per capita basis and for intending members to be advised of the organisation's donation strategy. New members must be given the option to be excluded from the donation process when they apply for membership.

In a similar manner, political donations to be made by corporations must be proposed and passed at a duly constituted meeting of shareholders prior to the donation being made. The proposal approval must be publicly available, eg on the corporation's website.

Fund raising functions are a legitimate source of funds for parties and candidates. However, they need to be regulated to stop them from being used as a back door method of avoiding disclosure. Therefore, all amounts paid to attend such functions should be classed as gifts and come under the disclosure provisions. This may require an amendment to the definition of donation to counteract the argument that the attendee at a function received 'value' for the amount paid to attend.

Party membership fees should not be disclosable but must be:

- A reasonable amount; and
- Applicable to an individual or set as a per capita amount for organisations

Membership fees must be clearly set out in the party's constitution.

### **Issues for consideration:**

#### *1. Are existing laws effective*

No. They are too complex.

Penalties are not realistic and therefore not applied.

Proving that an offence has been committed, to a degree that will stand up in court is virtually impossible.

Offences against the disclosure provision have, in the past, not been seen as important enough to justify prosecution.

#### *2. How can existing laws be made more effective*

Make provisions simpler.

Make offences and penalties more realistic.

Ensure the body charged with administration of the provisions has the appropriate resources to ensure compliance.

### **Election Funding**

I am suggesting reversion to the election funding provisions first introduced at Commonwealth level in 1984. Specifically:

- The amount payable should reflect the level of voter support at the election to which the payment refers.
- The amount should not be indexed.
- Payment should be a reimbursement of clearly defined campaign expenditure.
- No party or candidate should make a profit from election funding.
- Payment should be made to the agent of a registered political party or to an eligible independent candidate.
- Payment should only be made on receipt of documentary proof of campaign expenditure incurred.
- Retain the minimum support level at the same % as that required to receive a refund of nomination deposit.

There should not be a cap on campaign expenditure. If the foregoing suggestion regarding election funding is enacted it will encourage self-regulation of campaign spending as no party wants to incur a large funding deficit. Capping expenditure by legislative means only encourages participants to explore means of circumventing the regulations.

Campaign expenditure must be strictly defined; the definition should be used to refer to expenditure which can be claimed for election funding reimbursement.

The 'level playing field' is a myth and no amount of fiddling with election funding and disclosure regimes will alter this fact. The best it can do is offer smaller or emerging political parties and well supported independent candidates some assistance in defraying the cost of getting their message out to electors.

### **Truth in Political Advertising**

Given that 'truth' in this case is such a subjective issue and that proving 'intent' in a legal sense is extremely difficult it would seem that the matter is best left to the judgement of the electorate. In addition, any attempt to legislate the contents of advertisements could be seen as limiting freedom of speech. The widespread use of social media would also make administration of any regulations difficult.

### **How-to-Vote cards**

Registration should include flyers and material handed out by or on behalf of third parties. Material which is handed out at pre-poll voting centres should also be registered.

ECQ should definitely not be required to arbitrate on the contents of How-to-Vote cards (and flyers, if they are registered) – this would certainly compromise the neutrality of the Commission.

All registered How-to-Vote cards (and flyers) should be published on the ECQ website, sorted by electorate and ballot paper position.

A code of conduct for party workers at polling booths and pre-poll centres would be nice, but could not be enforced by ECQ staff as their authority does not extend further than the 6 metres from the entrance to the building used as a polling booth. Political parties themselves should take responsibility for the activities of their workers and should take a firm stance on policing their behaviour.

The boundary for party workers handing out material outside polling booths should remain at 6 metres from the entrance; parties employing booth workers should take some responsibility for ensuring a safe working environment. Many voters do expect to be able to access How-to-Vote material on their way in to the polling booth.

### **Proof of Identity**

Australian electors do not take kindly to having to prove their identity in order to cast a vote. Given that many consider it an imposition to have to attend a polling booth, requiring them to carry and show some form of identification before being issued with a ballot paper could be the last straw. There has been no apparent change of perception regarding formal identity cards since the proposed Australia Card was rejected in the 1980s. Rates of multiple voting and personation in Australia have not been proven to be high enough to affect the outcome of an election and therefore requiring a proof of identity to vote would seem to be setting a bear trap (and a potentially expensive one at that) to catch a mouse.

### **Enrolment on Polling Day**

Despite the administrative problems encountered with the 2012 State and Local Government elections, enrolment on polling day should continue to be allowed, in line with the Commonwealth provisions. It does need to be streamlined and the type of enrolment allowed (ie change of address or initial enrolment only or both) clarified.

### **Electronic Voting**

There is no doubt that this is the way of the future, however issues of cost and security must be addressed. Perhaps a stepped approach can be undertaken with, for example, electronic voting introduced initially for voters with a disability, then for those in remote areas etc.

## Postal Voting

This option should be retained for those who choose to use it, for whatever reason. The deadline for receipt of an application for a postal vote must be brought forward to the Wednesday immediately before polling day to give the voter a chance of receiving the ballot material before polling day. Even this additional day is cutting it very fine where postal material is required to be sorted at centralised postal centres before being sent on to local delivery centres.

There should be no restriction on those electors who can apply for a postal vote – the current system is farcical as Electoral Commission staff are not in a position to question the bona fides of applicants. Applications should be able to be made on-line without need for a signature.

## Other Issues

*Electoral Visitor Voting* should be abolished. It is time consuming and expensive. It is not provided for under the Commonwealth Electoral Act. The vast majority of electors seeking an Electoral Visit could have a postal vote or an electronic vote.

I believe *compulsory voting* should be retained for all three levels of Government.

I believe *Optional Preferential Voting* should be retained (despite the fact that it is not used for House of Representatives elections) as a substantial number of electors support one party or candidate only and do not wish to give preferences which could potentially help elect a candidate they do not support.

Two items which have not been canvassed in the discussion paper and which I believe should also be considered in the context of reform of Queensland's electoral laws are:

- Fixed date elections; and
- Reintroduction of an Upper House

## **Fixed date elections**

A fixed date for polling day makes so much sense, much more than the perception that it gives the party in power an edge over its opponents. Fixed polling day dates would:

- Enable political party administrators to plan pre-selection of candidates and advertising campaigns
- Enable electoral administrators to have polling booth venues sorted, Returning Officers set up in appropriate offices, all staff training completed and equipment stocked
- Enable broadcasters and publishers to ensure that advertising times were available for election advertising
- Enable GoPrint to set aside time for printing of ballot papers
- Enable parties and candidates to plan their campaign strategies and timing and
- Stop media speculation about possible polling dates

## **Reinstatement of an Upper House**

The current unicameral system in Queensland is not really democratic as there is no review of actions by the Legislative Assembly. An upper house could be created without adding to the number of politicians at the State government level by reducing the number of Legislative Assembly seats from 89 to 59 and creating an Upper House of 30. Assuming a voter population of 3 million, this would increase the constituents per lower house seat from an average of 33 700 to 50 850 (compared to over 95 000 per House of Representatives seat). This would be offset by each voter having more than one representative in the State Parliament.

Queensland could be divided into 5 regions for the Upper House with each region returning six members whose term would either be the same as that for the lower house or double a lower house term with three elected each election.