

[REDACTED]

1 March 2013

Dear Sir/Madam

**Re: Electoral Reform discussion paper, January 2013**

Firstly, thank you for the opportunity to make a submission on the points raised by this discussion paper.

---

### **1 – Political donations**

The fairest option would seem to be a cap on expenditure and timely disclosure of eligible donations, rather than a cap on donations.

At an election, candidates of a range of sizes and strengths compete for seats. These candidates fall broadly into two categories – those raising an issue or representing a group, and those attempting to win seats. There is, of course, significant crossover between the two. It goes without saying that in an unregulated system, those with less money and who are less known are at a considerable disadvantage to those who can exploit existing networks, name recognition and financial reserves. Community expectations would militate that, as far as possible, everyone be given the same opportunity, so that the choice be genuinely that of the voters of a given area. This serves the interests of representative and responsible government.

The size of an *individual* donation has *no particular bearing* on the result of the election. Two campaigns, one with a single \$20,000 donation and another with a \$5,000 donation and fifteen \$1,000 donations are, ultimately, in exactly the same place financially. Thus, neither the source of the donation nor its size seems particularly relevant.

However, it is strongly in the public interest for donations over a relatively small threshold (such as \$1,000, which was suggested by the federal review, or \$2,100 as in the WA Electoral Act<sup>1</sup>) to be reported on in a sufficiently timely fashion that the public can make up their minds on the suitability or otherwise of the donation. If a large donation comes from a politically unpalatable source, it will work to transparency's advantage and to the candidate's disadvantage, and likely encourage the entire system towards more mainstream sources of funding such as running community fundraisers.

These concerns should be balanced against the bureaucracy and costs (both for ECQ and the parties/candidates) created by increased reporting frequency and requirements, and the reporting standard should be as simple as possible so that a person without accounting training or access to an accountant can simply keep a record and maintain a bank statement as proof.

---

<sup>1</sup> *Electoral Act 1907, as amended by the Electoral Reform (Electoral Funding) Act 2006*

## 2 – Electoral funding

Under the WA Electoral Act, candidates are able to claim \$1.73302 (as at 1 July 2012) per vote if they achieve more than 4% of the vote, and can apply for it within 20 weeks of polling day.<sup>2</sup> This seems to correspond with option 2.4(a).

While it, as the discussion paper states, aligns public funding with the outcome and forces parties to make spending decisions based on prospects of success, it puts *new entrants* at a *substantial disadvantage* as against established players who already have a substantial bank of past funds as well as the ability to solicit funds from private donations. A community independent, for example, may have to advertise and undertake other activities at considerable personal cost, and then have to wait up to 5 months for reimbursement. Some candidates or campaigns are hamstrung by the lack of funds at their disposal – indeed, their very reason for running may be to bring attention or action to the disadvantage they suffer in everyday life.

## 3 – Election campaign expenditure

Reading post-election disclosures for seat races and comparing them with the final vote in both Western Australia and Queensland suggest that at the bottom level – i.e. candidates getting less than 15% of the vote – the declared expenditure and the vote are roughly proportional, while for candidates or parties achieving higher percentages, the relationship is not as clear. It is not unusual for a candidate from a major party to vastly outspend their rival yet come second in the race – after all, electoral expenditure does not buy votes. Indeed, a highly public candidacy which hits the wrong tone with voters may have the opposite effect, examples of which are many. However, expenditure raises awareness of the candidate and their platform through advertising, printing and running events.

Focusing on donations rather than expenditure ignores what resources the party or candidate already has at their disposal prior to running for election. It puts a wealthy independent in a substantially better position than an impoverished one, and it allows parties or candidates to “collect” donations well before the actual election for another purpose and then spend them on an election – under present laws, this is entirely legal so long as the expenditure is declared. It also does not account for the fact that major parties reasonably target significant funds at winnable seats and leave candidates in less winnable seats to run their own campaigns.

The WA Electoral Act defines a disclosure period which begins one year before the election for new candidates, and 30 days after the previous election for previous candidates. If a cap was imposed, it would seem reasonable to use this or a similarly constructed formulation on which to base that.

I am opposed to options c and d with regard to aggregating caps for affiliated organisations, although I agree that a cap should apply to affiliated organisations. It is up to organisations (be they corporations, industrial organisations, community organisations etc) what to spend their own money on and they are accountable to their own members and/or shareholders for it.

---

<sup>2</sup> <http://www.elections.wa.gov.au/candidates-and-parties-funding-and-disclosure/electoral-funding>

I am also opposed to option f, on defining volunteer labour as an in-kind donation, as this is often the only way of addressing cost and outcome imbalances for small parties, independents and unfunded party campaigns, and has a long history going back to the introduction of responsible government. If someone wants to spend their own time in the interests of a party or candidate furthering their interests, then that is entirely up to them. Additionally, monetising such work (such as issuing press releases, letterboxing, doorknocking, attending public meetings, helping out on election day) may be difficult or even impossible.

### **Truth in political advertising**

There is a lack of public trust in politics and government, and this is further eroded by false advertising. It surprised me during a recent call to the WA Electoral Commission that blatantly false claims by one of the parties in the 2013 state election that there is no law against false advertising, so long as it does not relate to how the voter casts their vote.

Advertising occurs in several ways. Television, radio, newspaper (both community and state) and letterbox are the major methods, although increasingly paid-for advertising on the Internet is becoming more common.

Some of the other matters brought up under this heading would be much harder to regulate, such as public forums and doorstep interviews where candidates may say things they believe to be true but subsequently turn out to be otherwise. The emphasis should be on wilful and deliberate misleading rather than errors of fact or of interpretation.

Thus, I believe that truth in political advertising laws should be enacted, but should be limited to a fairly narrow definition of advertisement, and to wilful misleading of voters rather than mistakes. One way of doing this would be for members of the public to make a complaint to ECQ, which is dealt with by either the Electoral Commissioner or their delegate, or the returning officer if it concerns a particular candidate. A decision is made by that person whether it contravenes the provision of the Act. If it does, then the candidate is given the opportunity to withdraw and publish a retraction, and if they do not within a prescribed time (say, 7 days), then either the EC has the power to issue a ruling, or it is referred to a court or tribunal which can. This system would require relatively minimal bureaucracy unless there is a flood of complaints.

### **How to vote cards (and other election-day advertising)**

In the 2010 state election in South Australia, there were claims that one party had dressed volunteers up pretending to be from a minor party and handing out how to vote cards which favoured themselves, and very similar claims have occasionally been made. Not all of these efforts are by candidates or parties – the case of the Exclusive Brethren in Tasmania is a cautionary tale. Defamation laws do not apply if they do not defame a person but simply mislead voters, and some of the attempts seen to date have been extremely well-planned and would genuinely confuse a reasonable person.

My view is that option b and c are too bureaucratic, and d is draconian, but that c is heading in the right direction. All three options assume that such conduct is

widespread and that only prevention can fix it – whereas most do operate ethically and it is an unethical minority that any solution should seek to weed out. Additionally, parties often put hyped-up over-the-top claims about the other party and its alleged policies or performance on election material which are probably factually false (or at best weak) but not misleading, and fall more into the realm of party propaganda. People expect this and it should not be regulated.

A new section in the Act outlining an offence and penalties, and a regulation under the Act empowering returning officers or their authorised delegates (presiding officers) to act on these on the day by issuing a notice under the regulation would be the easiest way to deal with the problem.

#### **Proof of identity**

I am not sufficiently convinced by any of the literature I have seen, including numerous ECQ, WAEC and AEC post-election reports, that identity fraud is a sufficient problem to introduce a barrier to voting.

In WA, the WAEC has issued an “Easy Voter Card” to every voter at the start of the 2013 election period (after three successful trials at by-elections), with a QR code on it, which can be taken to a booth by the person listed on it. It contains their name, their state electorate and in WA’s case, legislative council region. As it is posted to the person’s home address, simply having it gives some confidence that the person lives at the address concerned. However, as an identity measure it would fail on several grounds: it excludes people who cannot get mail at their home address or live in remote regions, is subject to the vagaries of the postal system, excludes people who are interstate or overseas during the entire election period but are still eligible to vote, and excludes people who don’t have a home address such as itinerant voters.

#### **Enrolment on polling day**

As long as the votes are collected and retained separately from other votes in an envelope specific to the vote until identity can be confirmed – which appears to be the case given the appearance of “Unenrolled Voters” as a row on ECQ statistical returns, I agree with ECQ’s position on this matter.

#### **Electronic voting**

As someone who has actually deployed electronic voting systems, I strongly support a and b as enabling mechanisms for small numbers of voters with specific needs. However, I do not support c because of issues with trackability of the vote. With a paper vote, one has a paper trail and if something goes wrong, one can usually find out where, albeit in a laborious manner. If something goes wrong on an electronic system, it may not be possible to do this.

### **Compulsory voting**

Compulsory voting is the fairest system of voter representation. While it has its downsides in that unengaged or uninformed voters are still expected to vote, its upsides significantly outweigh this:

1. As a civic duty and a duty of citizenship. In other countries, young people are expected to give up as much as two years of their lives for national service, which is significantly more intrusive than voting every three years. All of us are governed.
2. To prevent elections from becoming hostage to minority groups. In the US, where elections are voluntary and as few as 45% of the people turn up to vote, militant organisations such as those representing gun owners, evangelical Christians, etc can distort the vote by getting a disproportionate number of their members and supporters to show up vis-à-vis the wider population.
3. Compulsory voting fundamentally changes the job of the electoral commission. There is a duty on it to make voting as easy and straightforward as possible, and to ensure access to all members of the community regardless of the circumstances – especially the case in a state like Queensland where a significant number of people live in very remote places. This duty can be somewhat foregone if voting is voluntary.
4. As far as possible keeps the systems between state and federal the same so as to reduce confusion – voters only need to learn one set of rules.

Research on informal and donkey votes in the Australian system do not suggest that these represent a massive proportion of votes. The benefit of being first on the ballot only gives candidates a 0.5% - 2% advantage, and informal votes happen even in voluntary voting systems.

### **Voting system**

While OPV has definite benefits, the 2001 and 2012 elections in Queensland show that it can lead to massive distortion in favour of a winning party in seat terms. In both cases, the winning party got around half the votes, but such a crushing majority of seats that their rivals were almost unable to form an effective, working Opposition. Modelling both based on federal data for distributions under FPV using ECQ primary vote data, in each case the government would still have easily won, but with a seat total in the mid-50s. This raises questions as to whether some of the candidates who won (especially those who won narrowly) were actually preferred by the majority of electors.

A functioning opposition is a central feature of the Westminster system and while it is up to the voters to occasionally deliver such an outcome, it is far more likely with a far smaller percentage of the vote under OPV (working somewhat like first-past-the-post, which had the effect of reducing a Government in Canada to just 2 seats at an election in 1993 despite the successful party achieving just 41%)<sup>3</sup>

Having seen MMP in action in New Zealand I think that a wider discussion about the electoral system and apportionment of seats and votes should be had, and that

---

<sup>3</sup> [http://en.wikipedia.org/wiki/Canadian\\_federal\\_election,\\_1993](http://en.wikipedia.org/wiki/Canadian_federal_election,_1993)

MMP is possibly a more equitable system. However, acknowledging the financial reality of changes of that magnitude to the electoral system and the need to gain public support for such a significant change, moving to Full Preferential Voting ensures the closest that a single-seat system can come to a result which ensures a working democracy and respect for the democratic will of the people.

---

Once again, thank you for the opportunity to respond to this discussion paper, and I wish the Queensland Government well in its deliberations. I hope that the information and ideas that I have provided are of use to you.

Yours faithfully

Andrew Owens