



Full Day Hansard Transcript (Legislative Council, 15 October 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday, 15 October 2014 (Proof).

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [3.36 p.m.]: I move:

That this bill be now read a second time.

The Premier has made it clear time and again that he is determined to restore the public's trust in New South Wales politics and will take whatever action is necessary to increase the transparency and accountability of the election funding system in this State. The New South Wales Government already has taken a number of steps this year to address concerns that political donations unfairly influence decision-making in this State. In particular, this Government has addressed a "gap" in election funding regulation that arose following the High Court's decision to strike down the Government's 2012 corporate donation bans.

The Government has introduced new institutional arrangements for the oversight of elections and election funding matters and has established an expert panel on political donations to consider and report on options for the reform of election funding laws. The expert panel is due to deliver its final report at the end of the year. Following recent stakeholder consultations, the panel has released an interim report indicating its in-principle support for some important reforms.

The panel has signalled that it "favours a number of measures to improve transparency, accountability and integrity of the election funding regime", including: tougher penalties for breaching election funding laws; a new general anti-circumvention offence provision directed at those who seek to evade election funding laws; a pre-election donations disclosure in early 2015 by recipients of political donations; and an extension of the limitation period for prosecuting offences against election funding laws from three years to 10 years. Armed with this report, and in light of ongoing community concern, I believe that the time for further action is now. The election funding system that underpins the 2015 State election should benefit from the interim recommendations of the expert panel that we entrusted with this important task.

< 21 >

To this end, the Election Funding, Expenditure and Disclosures Amendment Bill contains a package of reforms to the regulation of election funding in New South Wales in advance of the upcoming election. These reforms are closely aligned with the expert panel's interim recommendations and also include some additional measures. Reflecting the expert panel's suggestion, one key aspect of the bill is that it will require the recipients of political donations before the 2015 election to make an additional one-off disclosure of political donations received during the period from 1 July 2014 to 1 February 2015. These disclosures should be made to the Election Funding Authority [EFA] within seven days after the end of this period and the EFA will be required to publish these disclosures within seven days after they are made.

To help ensure compliance with this important transparency measure, the offences that apply under section 96H of the Election Funding, Expenditure and Disclosures Act 1981 in relation to ordinary disclosures will also apply to political donations received during the additional relevant disclosure period and to the additional disclosure requirements. The bill also contains a number of ongoing reforms that are directed at deterring contravention of the Act.

The expert panel has made clear its view that there should be more serious offences and penalties for flouting election funding laws, including penalties sufficient to trigger disqualification of members of Parliament. The Government strongly agrees with this proposal. Ensuring that the election funding regime is complied with fully and truthfully is vital to ensuring the effectiveness of election funding regulation in New South Wales. It is important that those who are subject to obligations under the election funding laws approach these obligations faithfully and with an awareness of the gravity of these requirements. Accordingly, this bill will increase the penalties for numerous offences relating to dishonesty or attempts to avoid the election funding laws, including by adding a penalty of imprisonment to various offences with the requisite mental element. These amendments will help ensure that the penalties for contravening election funding laws are commensurate with the nature of the offence and will enhance the deterrent effect of these offence provisions.

Likewise—again reflecting the expert panel's interim report—the bill includes a new anti-avoidance provision. This provision will make it a separate indictable offence to enter into or carry out a scheme for the purpose of avoiding political donation or electoral expenditure prohibitions or requirements. This new offence will carry a maximum penalty of 10 years imprisonment. It is possible that the seat of a member of Parliament would be vacated under the New South Wales Constitution Act if the member was convicted of this offence. Given the significance of the penalty, I believe these reforms will go a long way to ensuring that the punishment matches the crime. However, as the expert panel has recognised, if an offence is committed against the Act it is also important that the Act allows sufficient time for prosecutions to be undertaken. Retaining a short limitation period runs the risk of the authority timing out on otherwise legitimate prosecution. Presently, section 111 (4) of the Act provides that proceedings in respect of an offence against the Act or the regulations may be commenced within three years after the offence was committed. The bill will extend the limitation period to 10 years after the offence was committed, with this extended limitation period to apply prospectively.

In addition to the amendments I have just outlined that are intended to help deter contravention of the Act, the bill also includes a number of reforms to the public funding scheme that applies in New South Wales. Some of these reforms will apply on an ongoing basis. In particular, the bill will increase the value of funding that may be claimed by a party from the Administration Fund—from which registered parties and independent elected members can seek annual payments for administrative expenditure—where there are more than three elected members endorsed by the party. The bill will raise the value of payments from the current amount of \$86,800 per member in excess of three to \$100,000 per member in excess of three, with this amount to be adjusted for inflation in future years. This amendment is designed to better reflect the administrative and operational costs of political parties.

Paired with this reform, the bill will also double the current value of policy development funding that may be claimed by parties not entitled to administrative funding. A related reform contained in the bill is an amendment to the definition of "electoral communication expenditure" to include expenses associated with third party market research and the campaign travel costs of candidates and their staff. This will more accurately capture the true expenses associated with running an election campaign. Many of the public funding amendments made by the bill will apply for the 2015 State election only. This recognises that the expert panel is yet to give a firm indication of its position on this issue while acknowledging that there is an urgent need for reform before the 2015 election. There will be a further opportunity to introduce additional reforms for subsequent elections once the expert panel's final report is released at the end of the year.

One important component of these reforms is the reduction in political donation and expenditure caps. The bill will rein in expenditure on electoral communication and tighten the existing limits on political donations by returning the electoral communication expenditure caps and the political donations caps for the 2015 State election to those which applied in 2011. These caps have been adjusted for inflation since 2011 and thus exceed their original value. The bill will further reduce the electoral communication expenditure caps that currently apply to third party campaigners to \$250,000 if the third party campaigner is registered and \$125,000 if they are not. At present the monetary value of the expenditure caps applying to third party campaigners is \$1,166,600 if the third party campaigner is registered before the capped expenditure period and \$583,300 in any other case. The cap for registered third party campaigners is the same limit on electoral communication expenditure that applies to political parties that endorse Legislative Council candidates only where the Legislative Council candidates are less than 10 candidates for the Legislative Assembly. To alleviate the impact of the reduced third party campaigner caps, third parties will have additional time to become registered for the 2015 election, until 1 January 2015.

The bill will also overhaul the system for determining the amount of funding that can be claimed by parties and candidates from the Election Campaigns Fund for the 2015 State election. The Election Funding, Expenditure and Disclosures Act allows parties and candidates to claim back a proportion of their expenditure on electoral communication during the campaign period. The proportion of expenditure that can be claimed reduces as the spending of a candidate or party approaches the applicable expenditure cap. The bill will replace this sliding scale with a funding model based on a dollar per vote system which reflects models used in other Australian jurisdictions whereby the amount an eligible party or candidate can claim will depend on the first preference votes they received in the election.

< 22 >

Under this interim scheme, parties that meet the eligibility criteria for receiving funding would be able to claim \$4 per first preference vote in the Legislative Assembly and \$3 per first preference vote in the Legislative Council. Eligible parties that do not have any candidates elected in the Legislative Assembly election would receive \$4.50 per first preference vote in the Legislative Council only, with no funding for first preference votes in the Legislative Assembly. Eligible independent candidates would be able to claim \$4 per first preference vote in the Legislative Assembly or \$4.50 in the Legislative Council. Payments under the new scheme would be up to the value of the applicable expenditure cap and dependent on actual expenditure. This is considered a fairer funding model as the amount of funding the candidates or parties are entitled to receive is more directly related to their electoral strength. Candidates and parties will be required to make more responsible expenditure decisions based on an assessment of their prospects at the election.

In response to concerns about election funding in New South Wales, the bill contains a package of reform measures which are to be implemented in advance of the 2015 State election. These amendments build on a number of election funding reforms already enacted by the Government this year and are guarded by the interim recommendations of the Expert Panel on Political Donations. I recognise that further reforms may yet be required once the expert panel has released its final report. We look forward to the panel's final recommendations for reforms that will ensure the suitability and effectiveness of the New South Wales election funding laws in the long term. However, the Government has been moved to action now so that the 2015 State election is conducted under a fairer and stronger election funding regime. I commend the bill to the House.