



PARLIAMENT OF NEW SOUTH WALES

## Joint Standing Committee on Electoral Matters

REPORT 2/56 – 17 NOVEMBER 2016

ADMINISTRATION OF THE 2015 NSW ELECTION AND RELATED MATTERS



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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# Terms of Reference

## ADMINISTRATION OF THE 2015 NSW ELECTION AND RELATED MATTERS

That:

(2) The Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:

(a) The following electoral laws:

- Parliamentary Electorates and Elections Act 1912 (other than Part 2);
- Election Funding, Expenditure and Disclosures Act 1981; and
- Those provisions of the Constitution Act 1902 that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);

(b) The administration of and practices associated with the electoral laws described at (a).

(3) All matters that relate to (2) (a) and (b) above in respect of the 28 March 2015 State Election, shall stand referred to the Committee for any inquiry the Committee may wish to make.

# Chair's Foreword

I am pleased to present the Joint Standing Committee on Electoral Matters' second report of the 56<sup>th</sup> Parliament. This report contains the Committee's comments and recommendations in relation to the *Inquiry into the Administration of the 2015 NSW Election and Related Matters*. This inquiry follows on from the Committee's Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response. While many of the themes and issues addressed in this report are new, the Committee has drawn on some of the material considered in the previous Inquiry in reaching its conclusions and recommendations in this report.

Firstly, I would like to commend the former Commissioner of the NSW Electoral Commission Mr Colin Barry. Mr Barry diligently and skilfully led the Commission for the last eleven years - a time that saw substantial administrative and legislative change to the NSW electoral system. I would like to thank Mr Barry for his years of service to the voters and campaigners of New South Wales and wish him well in his retirement.

I would also like to thank the newly appointed Commissioner, Mr John Schmidt who dutifully attended the public hearing as a witness on his fifth day in the job. I wish him all the best as he continues the great work of the Commission.

Every major election presents challenges and the 2015 State General Election was no exception. The redistribution of electoral boundaries, the expansion of new technologies and the implementation of enhanced security for ballot papers were particular challenges for the Commission. However, the skilled and dedicated staff of the Commission rose to these challenges and delivered a well-run and successful election.

The ongoing work of this Committee is of vital importance as we strive to enhance the integrity of our electoral system and strengthen our democracy. Voters must have confidence that the election process upholds their democratic rights. Likewise, candidates must be confident that no aspect of the system gives an unfair advantage to any other candidate or party.

The increased use of technology in the election process has introduced new possibilities in enrolment and voting. The Committee has made a series of recommendations that seek to balance the desire and benefits of these innovations with the need for security, transparency and integrity within the election process.

To maximise the time period for candidates to prepare their election material, the Committee has also recommended changes to key dates and administrative requirements in the campaign period. The Committee also recommends regulatory changes regarding funding and expenditure to ensure a less burdensome and more equitable campaign process for all candidates and parties.

Further recommendations address the issues associated with the large Legislative Council ballot including provisions with respect to nominating for election to the Council. The conduct of candidates, parties and third party campaigners was also considered, with recommendations made to ensure all participants are acting fairly and appropriately. The Committee also examined certain issues with respect to accessibility that may prevent some citizens from exercising their right to vote. Lastly, the Committee has also recommended

expanding certain powers of the Commission and improving the training of its staff to ensure a more immediate and appropriate response to issues that can arise on polling day.

It is the Committee's view that the recommendations within this report will uphold and enhance the high standard of electoral administration that exists in NSW.

On behalf of the Committee, I would like to thank each of the individuals and organisations that made submissions to this inquiry and gave evidence at the Committee's public hearings. Their input has been invaluable in helping the Committee formulate its comments and final recommendations.

I would also like to thank my Committee colleagues, The Hon. Robert Borsak MLC, Mr Adam Crouch MP, The Hon. Ben Franklin MLC, The Hon. Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon. Dr Peter Phelps MLC, The Hon. Peter Primrose MLC, Mr Mark Taylor MP and Ms Anna Watson MP, for their diligence and insight throughout this inquiry.

Lastly, I would like to thank the staff, Jason Ardit, Jessica Falvey, Derya Sekmen, Chris Herbert and Vedrana Trisic, for their assistance and organisation throughout the Inquiry and in the preparation of this report

**Mr Jai Rowell MP**  
Chair

# List of Findings and Recommendations

## Recommendation 1 \_\_\_\_\_ 3

The Committee recommends that the NSW Government expands the trial of the electronic roll mark-off of electors at pre-polling and Election Day polling booths, with a view to a full rollout over the next few elections.

## Recommendation 2 \_\_\_\_\_ 4

The Committee recommends that the Electoral Commission be authorised to deem suspected multiple voters as silent electors.

## Recommendation 3 \_\_\_\_\_ 6

The Committee recommends that the NSW Government introduces legislation to require that voters provide proof of identity at the time of casting their vote.

The Committee also recommends that the Government considers appropriate safeguards to ensure voters are not disenfranchised by new photo identification requirements. This could include the option to provide a statutory declaration to attest for one's identity or a system of vouching for another's identity.

## Recommendation 4 \_\_\_\_\_ 8

The Committee recommends that the regulations be amended to require that, once balloting has commenced, the Electoral Commission must lodge ballot papers with Australia Post no later than the next business day after receipt of a valid postal vote application form.

## Recommendation 5 \_\_\_\_\_ 12

The Committee recommends that the NSW Government does not expand iVote beyond its existing role.

## Recommendation 6 \_\_\_\_\_ 12

The Committee recommends that:

- a) the NSW Government establishes an independent panel of experts to conduct a full inquiry into the iVote internet and telephone voting system to consider security, auditing and scrutineering issues well before the 2019 State Election;
- b) the panel contains members with expertise in at least the following areas of information technology: online voting; privacy; security; and cybercrime;
- c) iVote is only used for the 2019 State Election if the security concerns highlighted by the Committee in this report have been addressed.

## Recommendation 7 \_\_\_\_\_ 14

The Committee recommends that the NSW Government makes the iVote source code publicly available.

## Recommendation 8 \_\_\_\_\_ 16

The Committee recommends that the Electoral Commission provides additional and targeted advertising about iVote to:

- a) people with disability to ensure they are aware of this voting option; and
- b) members from culturally and linguistically diverse communities in the same 24 languages that the Commission currently provides information in for other forms of voting.

**Recommendation 9** \_\_\_\_\_ 17

The Committee recommends that political parties' How-to-Vote cards be made available for iVote voters.

**Recommendation 10** \_\_\_\_\_ 20

The Committee recommends that the NSW Government commences a trial of electronic voting in polling centres.

**Recommendation 11** \_\_\_\_\_ 22

The Committee recommends that the NSW Government amends section 68 of the *Parliamentary Electorates and Elections Act 1912* to provide that the writs for general elections be issued on the same day that the Parliament is dissolved.

**Recommendation 12** \_\_\_\_\_ 25

The Committee recommends that the NSW Government extends the period between the close of nominations and subsequent ballot draw, and the opening of the pre-poll period.

The Committee recommends that the NSW Government considers amending section 79(3) of the *Parliamentary Electorates and Elections Act 1912* to allow for the opening of nominations before the issue of the writs and on a date considered appropriate and administratively convenient for the Electoral Commission.

**Recommendation 13** \_\_\_\_\_ 26

The Committee recommends that the NSW Government develops an online nomination system to allow candidates and parties to submit their nomination forms.

**Recommendation 14** \_\_\_\_\_ 27

The Committee recommends that:

- a) political parties and candidates be required to register their electoral material online at least seven days before polling day; and
- b) this online registration applies only to electoral material required to be registered under the existing legislation.

**Recommendation 15** \_\_\_\_\_ 31

The Committee recommends that the NSW Government expands the powers of the Electoral Commission to act immediately with respect to illegal signage and unregistered third party campaigners. In particular, the Electoral Commission should be required to:

- a) remove unlawful posters;

- b) issue penalty notices; and
- c) seek injunctions to stop unlawful conduct.

**Recommendation 16** \_\_\_\_\_ **32**

The Committee recommends that the NSW Government introduces a Bill to amend electoral laws to:

- a) require parties, candidates and third party campaigners to include (as appropriate) the party name, candidate name and/or third party campaigner name in at least 12 point font on any registered material to be distributed on polling day;
- b) make it an offence for parties, candidates and third party campaigners to distribute registered material on polling day that could reasonably assumed to be official advice from the Electoral Commission.

This does not preclude political parties or other registered third party campaigners from providing information to voters about how to vote correctly.

**Recommendation 17** \_\_\_\_\_ **33**

The Committee recommends that the NSW Government reviews the current role of a Returning Officer in NSW State Elections to determine whether there is a more effective and efficient way to carry out the functions associated with this position.

**Recommendation 18** \_\_\_\_\_ **37**

The Committee recommends that the Electoral Commission informs the public of the remaining ballots to be counted in each electorate on election night and for each of the days following that ballots are being counted.

Further, the Committee recommends that the Electoral Commission allows complete electronic preference data to be publicly available at the declaration of the poll in each electorate.

**Recommendation 19** \_\_\_\_\_ **40**

The Committee recommends that the NSW Government increases the number of required nominators for independent Legislative Council candidates from 15 to 100.

**Recommendation 20** \_\_\_\_\_ **41**

The Committee recommends that the NSW Government limits the number of candidates per group on the Legislative Council ballot paper to 21.

**Recommendation 21** \_\_\_\_\_ **42**

The Committee recommends that the NSW Government considers introducing measures to improve the readability of the Legislative Council ballot paper, including:

- a) increasing the size of the font on the ballot paper where possible; and
- b) introducing the display of party logos in addition to the written names of the parties.

The Committee recommends that the NSW Government consults with the Australian Electoral Commission about the experience from the 2016 Federal Election of introducing party logos on the Australian Senate ballot paper.

**Recommendation 22** \_\_\_\_\_ 43

The Committee recommends that the NSW Government reviews the provisions in Part 6 of the *Parliamentary Electorates and Elections Act 1912* with a view to determining the grounds in which an election result can be challenged and voided by the Court of Disputed Returns.

**Recommendation 23** \_\_\_\_\_ 45

The Committee recommends that the Electoral Commission works to increase the number of fully accessible and assisted access polling places, including for wheelchair accessibility.

**Recommendation 24** \_\_\_\_\_ 46

The Committee recommends that the Electoral Commission provides appropriate training to Returning Officers and senior polling day staff about:

- a) the correct information to provide to voters on how to cast a ballot; and
- b) enforcement action that can be taken on polling day in response to unlawful conduct.

**Recommendation 25** \_\_\_\_\_ 47

The Committee recommends that the Electoral Commission uses the materiality principle in all of its audit processes.

**Recommendation 26** \_\_\_\_\_ 48

The Committee recommends that each year the Electoral Commission:

- a) undertakes a random audit of 25% of party members of the members submitted for registration to confirm their bona fides and that they are genuine current members of their party;
- b) conducts a full audit of party members submitted for registration if 20 or more members are found to be ineligible through the audit process;
- c) requires parties with 51 or more ineligible members to provide a new list of eligible members within three months, or be deregistered;
- d) allows each party to provide details of 800 members to the Commission each year to ensure parties do not lose registration because of a small number of members being deemed ineligible.

**Recommendation 27** \_\_\_\_\_ 49

The Committee recommends that the period for the lodgement of the disclosure form, including the audited financial statements, by registered political parties be extended to 20 October each year.

**Recommendation 28** \_\_\_\_\_ 51

The Committee recommends that section 97E of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to increase the allocation of monies from the Administration

Fund. The Committee recommends that the sums be increased in accordance with the following table:

<b>Members elected</b>	<b>Relevant sections to be amended</b>	<b>Current allocation</b>	<b>Proposed allocation</b>
1	97E(3)(a)	\$250,000	\$350,000
2	97E(3)(b)	\$450,000	\$600,000
3	97E(3)(c) – (d)	\$600,000	\$750,000
Each additional Member after the first three elected	97E(3)(d)	\$100,000	\$120,000

**Recommendation 29** \_\_\_\_\_ 54

The Committee recommends that the Electoral Commission develops an online portal for the disclosure of reportable political donations and that these disclosures be made freely available to members of the public.

The Committee recommends that the Electoral Commission publishes reportable political donations as soon as possible after they have been received and not later than 48 hours following receipt.

**Recommendation 30** \_\_\_\_\_ 54

The Committee recommends that once the online portal for the disclosure of reportable political donations is available for use, individual donations at or above the amount defined as being a *reportable political donation* under section 86 of the *Election Funding, Expenditure and Disclosures Act 1981* be disclosed to the Electoral Commission in accordance with the following times:

<b>Amount donated</b>	<b>Deadline for reporting</b>
<b>Single donations exceeding the reportable political donation:</b>	<b>5:00pm on the next business day following receipt</b>
<b>Single donations below the reportable political donation, but in aggregate with other donations from the same donor, exceed the reportable political donation:</b>	<b>5:00pm on the seventh calendar day following receipt</b>

**Recommendation 31** \_\_\_\_\_ 56

The Committee recommends that section 96(6) of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to remove the restriction on political parties using subscription fees for campaign purposes. This would allow, but not require subscription fees to be used for campaign purposes.

**Recommendation 32** \_\_\_\_\_ 57

The Committee recommends that section 95A of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to provide an exemption on the transfer of funds from political parties to endorsed candidates of the same party.

**Recommendation 33** \_\_\_\_\_ **58**

The Committee recommends that the NSW Government reviews and investigates the development of expenditure caps that take into account the increased cost of campaigning in rural and regional electorates given the increases in their geographic area after each redistribution.

**Recommendation 34** \_\_\_\_\_ **60**

The Committee recommends that the NSW Government removes the requirement for parties and candidates to vouch for advertising material by providing a copy of the advertisement where the cost is less than \$20. The \$20 threshold should apply to each individual advertisement, and not be aggregated with other expenses in respect of the same advertising provider.

# Chapter One – Introduction

## THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

- 1.1 The Joint Standing Committee on Electoral Matters (the Committee) was initially established in 2004, and re-established for the 56<sup>th</sup> Parliament on 28 May 2015 and 2 June 2016 by resolution of both Houses of Parliament. The resolution appointing the Committee also included terms of reference for the Committee's Inquiry into the administration of the 2015 election and related matters.
- 1.2 The Terms of Reference provide that the Committee is to inquire into and report on matters referred to it by either House of Parliament or a Minister that relate to electoral laws. Further, the Committee is able to consider any matter in respect of the 28 March 2015 election as it wishes to make.
- 1.3 Following receipt of a referral from both Houses of Parliament on 2 June 2015, the Committee is charged with undertaking an inquiry on the administration of the 2015 NSW Election and related matters, with a report to be furnished to Parliament by 2 December 2016.

## SUBMISSIONS & HEARINGS

- 1.4 On 29 June 2015, the Committee announced the start of its Inquiry, writing to various media to alert the wider public of the Inquiry process. The Committee also wrote to select stakeholders and invited them to make formal submissions.
- 1.5 In total, the Committee received 22 submissions from a wide range of organisations and individuals. This included from every registered party with representation in the NSW Parliament, advocacy groups, academics and online voting specialists. A full list of organisations and individuals that made a submission is available at Appendix One.
- 1.6 The Committee held two public hearings on the 5 August and 12 August 2016, and received evidence from 14 separate organisations and individuals, the vast majority of which had also provided a submission.
- 1.7 The public hearings gave the Committee an opportunity to examine in further detail some of the issues raised in the submissions. The hearings also gave stakeholders an opportunity to raise concerns and canvass possible responses, where warranted.
- 1.8 The complete list of witnesses who appeared before the Committee can be found at Appendix Two. Transcripts of the evidence provided are also available on the Committee's webpage.

## OTHER INQUIRIES

- 1.9 While this Inquiry was on foot, the Committee received a referral from the Premier in 2015 to undertake another Inquiry. This Inquiry was in relation to the Final Report of the Expert Panel – Political Donations and the Government's Response. In particular, the Premier requested that the Committee consider the

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recommendations of the expert panel with respect to political donations, as well as the Government's response to them.

1.10 While the Committee considered this subsequent referral, it placed its Inquiry on the 2015 State Election on hold.

1.11 The report on the Expert Panel dealt largely with possible reforms of political donation and expenditure laws, including an examination of public funding and regulation of third-party campaigners. The Committee tabled its report in June 2016.

**THIS REPORT**

1.12 Following the tabling of the Committee's first report, the Committee's attention again turned to the Inquiry into the 2015 NSW State Election.

1.13 This report forms part of a series of reviews conducted by the Joint Standing Committee on Electoral Matters following each election, with this current report being the fourth iteration. Inquiries of this nature form the mainstay of the work program of the Committee.

1.14 As appropriate, this report draws on the submissions and evidence received throughout the course of this Inquiry. Where relevant, the Committee has made recommendations for both the Electoral Commission and the NSW Government's consideration.

1.15 The Committee notes that the NSW Government is required to respond to the recommendations contained in this report within six months of tabling. The Committee will also have an opportunity to review any response as part of future inquiries, particularly any inquiry into the conduct and administration of the 2019 NSW State Election.

# Chapter Two – Mark-off and Voter Identification

## ELECTRONIC MARK-OFF

- 2.1 Electronic mark off was first used at the Sydney Town Hall during the 2012 Local Government Elections. Its introduction was driven by the need to provide a more efficient roll mark off service and to enable all voters regardless of where they were enrolled the ability to vote.<sup>1</sup>
- 2.2 In the 2015 NSW General Election, Sydney Town Hall conducted both pre-poll and Election Day electronic mark off. As the largest polling place in NSW, Sydney Town Hall had been severely criticised in previous elections about long queues. However, the Electoral Commission submitted that since the introduction of electronic mark off the waiting times at Sydney Town Hall are shorter than other surveyed polling places.<sup>2</sup>
- 2.3 The Committee also heard evidence that the use of an electronic roll at all polling places could reduce the occurrence of accidental multiple voting. An electronic roll would enable polling staff to inform the voter that they have already voted. If the voter disagrees they would still have the option of casting a declaration vote.<sup>3</sup>
- 2.4 Mr Simon Kwok, Electoral Commission said that tablet technologies were introduced in the 2015 General Election to confirm the enrolment details of absentee voters. He said the expansion of this technology could facilitate electronic elector mark-off in all polling places.<sup>4</sup>

### Committee comment

- 2.5 The Committee notes the Electoral Commission's successful introduction of electronic mark-off at the Sydney Town Hall during the 2015 Election. The Committee supports an expansion of the electronic mark-off trial.

## Recommendation 1

**The Committee recommends that the NSW Government expands the trial of the electronic roll mark-off of electors at pre-polling and Election Day polling booths, with a view to a full rollout over the next few elections.**

## VOTER IDENTIFICATION

### *Multiple voting*

- 2.6 Multiple voting is where an individual has cast more than one ballot in any given election. Multiple voting is distinct from other forms of voter fraud as it does not include casting fake ballots or tampering with the election count. Under section

<sup>1</sup> NSW Electoral Commission, *Submission 20*, p 84.

<sup>2</sup> NSW Electoral Commission, *Submission 20*, p 84.

<sup>3</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 17.

<sup>4</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 49.

112(1)(d) of the *Parliamentary Electorates and Elections Act 1912*, any person who votes more than once in an election is guilty of an offence for which the maximum penalty is three years imprisonment.

2.7 There are occasions where a voter has voted multiple times out of either mischief or with the intent to affect the outcome of a contest.

2.8 With respect to this particular class of voters, Mr Antony Green provided the Committee with a possible solution:

... change the law so that someone who appears to have voted more than once, while you cannot prove it but it happens time and time again with this person, is made a special voter, a silent voter. Then when they vote they have to cast a declaration vote.<sup>5</sup>

2.9 The effect of deeming a suspected multiple voter a silent elector is that their details will not be made available on the public roll. This means that they would not be able to vote multiple times at multiple booths. The only means by which they could vote would be through a declaration vote administered by the Electoral Commission, greatly limiting for an elector to attempt multiple voting.

#### **Committee comment**

2.10 The Committee supports the proposal to deem suspected multiple voters as silent electors, thus removing them from the public roll. This would be a reasonable and proportionate step to counter possible voter fraud. Further, it would afford the electoral process with added integrity, while still enabling suspected multiple voters their democratic right to cast a ballot, and only one ballot.

### **Recommendation 2**

**The Committee recommends that the Electoral Commission be authorised to deem suspected multiple voters as silent electors.**

#### ***Impersonation***

2.11 Impersonation is the act of identifying and passing off as another individual when attending a polling place to cast a ballot. Under section 112(1)(c) of the *Parliamentary Electorates and Elections Act 1912*, any person who impersonates any elector for the purposes of voting is guilty of an offence for which the maximum penalty is three years imprisonment.

2.12 The absence of any requirement to produce photo identification in getting one's name marked off has presented the possibility that individuals could be impersonating others for the purposes of voting.

2.13 The incidence of impersonation is unknown given there is scant evidence available and limited means by which it could be proved anyway. Without any requirement to prove one's identity when attending to vote, it is difficult to determine the rate of impersonation for the purposes of voting.

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<sup>5</sup> A. Green, *Transcript of Evidence*, 5 August 2016 p 16.

- 2.14 The Electoral Commission noted some public misgivings about trusting the electoral process, but was confident that there is ‘no large scale impersonation of other electors’ which could threaten an election.<sup>6</sup>
- 2.15 This measure of confidence was not universally supported. In response to a question asked at the hearing, the Liberal Party expressed its concern at the risk of voter fraud, including through fraud by impersonation.<sup>7</sup>

*Voter identification*

- 2.16 As a means of mitigating the risk of multiple voting and impersonation, the idea of mandatory voter identification on polling day was discussed as a possibility.
- 2.17 There was mixed reaction with the political parties represented at the hearing. The Christian Democratic Party expressed its support, noting a range of photo identification would need to be deemed suitable.<sup>8</sup> This was a similar view expressed by the Liberal Party:

In this day and age people generally have a form of government-issued ID—be it a driver’s licence, a proof of age card—that could be produced when they attend a polling place.<sup>9</sup>

- 2.18 Labor expressed its concern that introducing some form of mandatory identification production risks disenfranchising a large number of voters. In evidence provided to the Committee at its hearings, Labor warned:

We must keep in mind that in this State there are people—a large proportion of people—who do not have a driver licence, for example, such as people in nursing homes. There are people, particularly elderly voters, who are not able to find their birth certificates.<sup>10</sup>

- 2.19 Most European countries and the United States either require voter identification as a precondition to voting, or it remains within the discretion of the polling official to request voter identification.

- 2.20 In a report prepared to the Electoral Commission on this issue, Prof Rodney Smith noted:

Acknowledging these limited exceptions, the vast majority of voters across the world present some identification before they are able to vote.<sup>11</sup>

**Committee comment**

- 2.21 The Committee notes existing concerns about multiple voting and voter impersonation, and the potential risks they pose to electoral integrity in NSW.

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<sup>6</sup> C. Barry, (Fmr) Electoral Commissioner, *Report on the Conduct of the 2015 State Election*, NSW Electoral Commission, p 3.

<sup>7</sup> C. Stone, State Director, Liberal Party of Australia, NSW Division, Responses to questions on notice taken at the public hearing on 5 August 2016, p4.

<sup>8</sup> G. Bondar, Director, Christian Democratic Party, *Transcript of Evidence*, 5 August 2016, p 34.

<sup>9</sup> C. Stone, State Director, Liberal Party of Australia NSW Division, *Transcript of Evidence*, 5 August 2016, p 43.

<sup>10</sup> K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 5 August 2016, p 6.

<sup>11</sup> Prof R. Smith, *Multiple Voting and Voter Identification*, NSW Electoral Commission, February 2014, p 48.

These risks could be mitigated by the simple task of requiring voters to produce photo identification at the time of voting. This small integrity measure would be of little encumbrance to most citizens.

- 2.22 The Committee also notes that many routine transactions that take place in NSW require the production of photo identification. This is required for a variable number of reasons, including reasons of security, safeguards against fraud and other crimes, even for banking and postal services. To require the production of photo identification for the purposes of something as major as electoral integrity is the simple and logical extension of a routine act.
- 2.23 The Committee recognises that in the absence of a universal photo identification, the challenge remains of ensuring a system in which every voter has access to photo identification. However, through a well-resourced voter education campaign and carefully framed legislation, the Committee does not see why this small barrier cannot be overcome.
- 2.24 Further, to ensure that voters are not disenfranchised by new provisions requiring photo identification, the Committee also considers it important that appropriate alternatives to proving one's identity are considered. One option could be to allow voters to sign a statutory declaration attesting to their identity. Another could be having one voter vouch for the identity of another, an option that may have particular appeal among Indigenous communities. Either way, the Committee is mindful that appropriate safeguards need to be put in place to ensure voters are not disenfranchised by the absence of photo identification.

### Recommendation 3

**The Committee recommends that the NSW Government introduces legislation to require that voters provide proof of identity at the time of casting their vote.**

**The Committee also recommends that the Government considers appropriate safeguards to ensure voters are not disenfranchised by new photo identification requirements. This could include the option to provide a statutory declaration to attest for one's identity or a system of vouching for another's identity.**

# Chapter Three – Early Voting Options

## POSTAL VOTING

- 3.1 Postal voting is made available to voters who are unable to attend a polling booth for any of the reasons outlined in Division 9 of the *Parliamentary Electorates and Elections Act 1912*. Around one-fifth of early voters voted by postal voting.<sup>12</sup>
- 3.2 Postal voting was down 17.03% when compared with the 2011 election.<sup>13</sup> The Electoral Commission considered that the most likely reason for this large decrease is the increase in the usage of iVote.<sup>14</sup> Postal voting is the only voting type that markedly decreased in use between the 2011 and 2015 State General Elections.<sup>15</sup> 203,625 votes were made by post representing 4.46% of all votes.<sup>16</sup>
- 3.3 The Electoral Commission noted its concern about the long term reliability of postal voting due to changes in Australia Post’s service model especially in regional and rural NSW.<sup>17</sup> In its submission, the NSW Nationals noted that due to problems with internet connectivity in the regions, postal voting would continue to be an important voting option in NSW for some years to come. It also noted that the turnaround time for some applications for postal voting was slow during the 2015 State General Election.<sup>18</sup>

### Committee comment

- 3.4 The Committee notes the downturn in the use of postal voting and the apparently related increase in the number of people utilising iVote. While the Committee notes the delays associated with utilising the postal service particularly in regional NSW, the Committee is persuaded of the importance of postal voting.
- 3.5 Access to a reliable internet connection in regional and rural NSW cannot be guaranteed, limiting the utility of iVote. In the same way that geography presents barriers to the iVote system, it also presents limitations in the ability of individuals to access pre-poll locations and polling day locations. The availability of postal voting will continue to be of importance to many citizens in regional NSW.
- 3.6 Of particular concern to the Committee was the delay experienced by postal voting applicants in having their applications processed by the Electoral Commission which led to a subsequent delay in those applicants receiving their postal ballot packs.<sup>19</sup> Notwithstanding evidence from the Electoral Commission

<sup>12</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 60.

<sup>13</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 12.

<sup>14</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 17.

<sup>15</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 40.

<sup>16</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 130.

<sup>17</sup> NSW Electoral Commission, *Report on the Conduct of the 2015 State General Election*, p. 17.

<sup>18</sup> NSW Nationals, *Submission 16*, pp 19 and 21.

<sup>19</sup> NSW Nationals, *Submission 16*, p 2.

that it processed applications on a daily basis from Friday 20 March, it appears that there may have been a backlog of postal vote applications between the printing of ballot papers and their availability on 17 March.<sup>20</sup>

#### Recommendation 4

**The Committee recommends that the regulations be amended to require that, once balloting has commenced, the Electoral Commission must lodge ballot papers with Australia Post no later than the next business day after receipt of a valid postal vote application form.**

#### PRE-POLL VOTING

3.7 Division 10 of the *Parliamentary Electorates and Election Act 1912* provides for pre-poll voting in certain circumstances. These circumstances include where the elector is unable to vote for religious reasons, work commitments, illness or carer commitments, long-distance absences from a polling booth on polling day, or any other number of reasons. The Electoral Commission reports that pre-poll voting increased by 81.98% when compared with the 2011 State General Election,<sup>21</sup> and accounted for 14.1% of all votes in the 2015 State General Election.<sup>22</sup>

3.8 The Electoral Commission does not check compliance and relies on a declaration made by the elector. An increase in the number of voters utilising pre-poll voting may indicate that not all voters meet the requirements outlined in Division 10.

##### Committee comment

3.9 The Committee acknowledges the increasing popularity of pre-poll voting and notes that the reasons for an individual to conduct a pre-poll vote may not align with stipulated reasons under the Act. Nonetheless, the Committee is satisfied with steps taken to make voting easier and more accessible. This is especially important given the nature of compulsory participation in NSW elections.

#### IVOTE

3.10 iVote is the Electoral Commission's remote voting system which was introduced in 2011 to give certain groups access to internet and telephone voting. An individual will be eligible to use iVote if they:

- are blind or have low vision;
- have another disability including a reading disability;
- live 20 km or more from a polling place; or
- will be outside of NSW on Election Day.<sup>23</sup>

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<sup>20</sup> NSW Nationals, *Submission 16*, p 2.

<sup>21</sup> NSW Electoral Commission, *Submission 20*, p 12.

<sup>22</sup> NSW Electoral Commission, *Submission 20*, p 41

<sup>23</sup> NSW Electoral Commission, *Submission 20*, p 43.

- 3.11 iVote operated from 16 to 28 March 2015, during the early voting period as well as for part of Election Day.<sup>24</sup> 283,669 votes were cast during this time which is a 505 per cent increase in iVote users since the 2011 election.<sup>25</sup>

#### Demographics of iVote users at the 2015 NSW State Election

iVote category	Percentage of users
Individuals who are blind, vision impaired or illiterate	2 per cent
Individuals with other disabilities	4 per cent
Individuals who were 20 km or more from a polling place	3 per cent
Individuals who were outside the State on polling day	91 per cent <sup>26</sup>

## CONCERNS WITH IVOTE

### Security

- 3.12 Dr Vanessa Teague and Prof Rajeev Gore recommended that the NSW Electoral Commission discontinue iVote altogether. In their view, the risks outweigh the benefits. They argued that at present, there is no suitable internet voting system that allows for a degree of security and verifiability on par with postal voting.<sup>27</sup>
- 3.13 Dr Teague and another colleague, Prof Halderman, raised concerns about an apparent vulnerability that they found which could allow someone to intercept votes online. Once intercepted, these votes could be read or manipulated before they arrive at the Commission's server.<sup>28</sup> Dr Teague explained how these attacks might work:
- Both of them allowed an internet-based, man-in-the-middle attacker to subvert the voting session entirely, expose how the person intended to vote and send in a different vote back to the Electoral Commission. None of this would have looked at all untoward at the Electoral Commission end; it would have looked exactly like a valid vote from an eligible voter. In fact, it would have been a valid vote from an eligible voter; it just would not have been the one that that voter intended to cast.<sup>29</sup>
- 3.14 Dr Teague and Prof Halderman disclosed the vulnerability to the Australian Computer Emergency Response Team, which then advised the Electoral Commission.<sup>30</sup>
- 3.15 Dr Teague explained to the Committee the differences between a possible attack on postal votes compared with an attack on electronic votes:

<sup>24</sup> ScytI Australia Pty Ltd, *Submission 4*, p 5.

<sup>25</sup> NSW Electoral Commission, *Submission 20*, pp 3; 17.

<sup>26</sup> NSW Electoral Commission, *Submission 20*, p 43.

<sup>27</sup> Dr V. Teague and Prof R. Gore, *Submission 2*, pp 2; 5.

<sup>28</sup> Dr V. Teague, the University of Melbourne, *Transcript of Evidence*, 5 August 2016, p 56; see for example, W. Ockenden, "NSW Election 2015: iVote flaw 'allowed vote to be changed'; Electoral Commission fixes vulnerability," *ABC News*, 24 March 2015, viewed 8 January 2016, <http://www.abc.net.au/news/2015-03-23/ivote-security-hack-allowed-change-of-vote-security-expert-says/6340168>.

<sup>29</sup> Dr V. Teague, the University of Melbourne, *Transcript of Evidence*, 5 August 2016, p 56.

<sup>30</sup> Dr V. Teague and Prof R. Gore, *Submission 2*, p 4.

There is a big difference in scale between what one person can achieve by exposing or manipulating postal ballots, which is possible, versus what one person could achieve by automating a process in an electronic setting. In some ways the attack is the same, but on the other hand the scale of what one person could manage possibly without detection is completely different in an electronic system.<sup>31</sup>

- 3.16 BigPulse, an Australian information technology company, expressed similar concerns to Dr Teague and Professor Gore. It argued iVote has flaws which compromised vote security and that the system is vulnerable to undetectable vote tampering.<sup>32</sup>

The integrity of votes harvested by iVote relied heavily on the assumption that no one, from foreign states to lone rogue hackers, with access to appropriate technical resources was motivated to interfere illegally with the NSW March state election.<sup>33</sup>

- 3.17 In response, the Commission believed the likelihood of someone intercepting votes online as suggested by Dr Teague and Professor Halderman is low. It argued that, to be successful, such an attack would require a high level of technical expertise and certain pre-conditions.

- 3.18 Various political parties that participated in the inquiry were also concerned about security issues even though many of them are generally supportive of the iVote concept.<sup>34</sup> In particular, the Liberal Party argued that iVote should be 'unimpeachable'.<sup>35</sup> Labor also supported the implementation of further security measures to ensure iVote is maintained with integrity and is, as much as possible, beyond manipulation.<sup>36</sup>

### *Verifiability*

- 3.19 Once an individual completes their vote, they receive a receipt number. The voter can then call the verification phone service to confirm that their vote has been correctly recorded. If the vote was not correct, the person can call the iVote call centre to re-register and re-vote.<sup>37</sup>

- 3.20 Mr Mark Radcliffe from the Electoral Commission highlighted that the uptake of the verification option was not particularly high:

The usage of the verification system was about 1.7 per cent in total, which was lower than we had expected. We would prefer it to be higher.<sup>38</sup>

- 3.21 The Electoral Commission advised that 627 callers out of the total of 5,300 calls to the verification service entered their credentials incorrectly in some way. For

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<sup>31</sup> Dr V. Teague, The University of Melbourne, *Transcript of Evidence*, 12 August 2016, p 70.

<sup>32</sup> BigPulse, *Submission 10*, pp 2; 5.

<sup>33</sup> BigPulse, *Submission 10*, p 2.

<sup>34</sup> See for example, The Greens, *Submission 8*, p 5; NSW Labor, *Submission 11*, p 3; The Shooters, Fishers and Farmers Party, *Submission 17*, p 2.

<sup>35</sup> Liberal Party of Australia, NSW Division, *Submission 22*, p 4.

<sup>36</sup> NSW Labor, *Submission 11*, p 3.

<sup>37</sup> NSW Electoral Commission, *Verification*, viewed 14 October 2016, <<http://www.elections.nsw.gov.au/voting/ivote/overview>>.

<sup>38</sup> M. Radcliffe, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 61.

example, this could have been their PIN, iVote number or receipt number. There are 26 digits that need to be entered without making a mistake. The Commissioner advised that it is difficult to determine how many of those individuals called a second time and the system subsequently worked:

I think a more likely explanation for most is that it is just human error in entering the numbers and, as we experienced the survey questions, the persistence of someone and the difficulty of putting in correctly all these numbers, given the high level of trust generally in the commission, I think a large number of people just abandoned rather than kept retrying.<sup>39</sup>

3.22 Dr Teague noted that based on the Commission's figures, the verification failure rate is in the ballpark of about 10 per cent.<sup>40</sup>

3.23 She raised a concern that scrutineers may not have been aware at the time of the election of the verification failure rate. She also questioned whether there was an opportunity for candidates to dispute it, including in the Court of Disputed Returns. This suggested to her that iVote was not verifiable.<sup>41</sup>

3.24 In response, the Electoral Commission argued that there are risks in any system and said with appropriate checks and balances, iVote is no more vulnerable to coercion than any other form of voting. It argued the benefits of iVote outweigh the small risk of interception.<sup>42</sup> The Commission conceded that more work will be undertaken to develop appropriate safeguards to ensure the integrity of iVote and to enhance the existing security of the system and processes.<sup>43</sup>

3.25 ScytI Australia was contracted to produce the iVote Core Voting System.<sup>44</sup> Its Director, Mr Lachlan Campbell, even suggested the risks associated with internet voting are actually lower than traditional voting:

The paper system is not perfect. However, the iVote system has an audit and record behind it, which differentiates it. It is ScytI's view that the risks associated with internet voting, when it is correctly and appropriately implemented, are lower than those associated with paper-based voting.<sup>45</sup>

3.26 ScytI highlighted that iVote was designed to deal with an attacker taking over the system. It said the voter verification mechanism allows an individual to check their vote is stored in the ballot box and contains the same selections they made:<sup>46</sup>

In the event that the exploit of the code made by an attacker changes the vote that is stored in the verification server from that stored in the iVote CVS electronic ballot box, this would be detected both during the verification ceremony at the end of the

<sup>39</sup> M. Radcliffe, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 64.

<sup>40</sup> Dr V. Teague, University of Melbourne, *Transcript of Evidence*, 12 August 2016, p 68.

<sup>41</sup> Dr V. Teague, University of Melbourne, *Transcript of Evidence*, 12 August 2016, p 69.

<sup>42</sup> NSW Electoral Commission, *Submission 20*, p 83.

<sup>43</sup> NSW Electoral Commission, *Submission 20*, p 5.

<sup>44</sup> ScytI Australia Pty Ltd, *Submission 4*, p 4.

<sup>45</sup> L. Campbell, Director, ScytI Australia Pty Ltd, *Transcript of Evidence*, 12 August 2016, p 28.

<sup>46</sup> ScytI Australia Pty Ltd, *Submission 4*, p 6.

election, showing an inconsistency in the contents of the two systems, as well as at the time of vote submission.<sup>47</sup>

- 3.27 ScytI advised that the system also allowed voters to validate the contents of their cast vote and election managers to cancel voter credentials that allow voters to re-cast their vote. This mechanism allowed a voter to detect any manipulation of his or her vote, notify this information to election officials, cancel their credentials and cast a new vote.<sup>48</sup>

#### **Committee comment**

- 3.28 The Committee acknowledges there is certainly demand for iVote within the community and users of this system have generally been satisfied with their experience. The Committee would like to highlight the excellent work of the Electoral Commission in administering iVote.
- 3.29 In the Committee's view, demand for iVote also needs to be balanced with concerns about possible security, verifiability and transparency issues.
- 3.30 The Committee acknowledges that if there was an unacceptable security risk in the system, this could potentially affect the result of a State election, which would be a very serious and significant issue.
- 3.31 At this stage and in light of the existing security concerns, the Committee does not believe iVote should be expanded beyond its existing role as a tool for certain categories of voters.
- 3.32 This Committee does not have the specialist expertise in information technology to assess whether or not an unacceptable level of risk exists in iVote. It nonetheless remains highly interested in further exploring security issues concerning iVote.

### **Recommendation 5**

**The Committee recommends that the NSW Government does not expand iVote beyond its existing role.**

### **Recommendation 6**

**The Committee recommends that:**

- a) the NSW Government establishes an independent panel of experts to conduct a full inquiry into the iVote internet and telephone voting system to consider security, auditing and scrutineering issues well before the 2019 State Election;**
- b) the panel contains members with expertise in at least the following areas of information technology: online voting; privacy; security; and cybercrime;**
- c) iVote is only used for the 2019 State Election if the security concerns highlighted by the Committee in this report have been addressed.**

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<sup>47</sup> ScytI Australia Pty Ltd, Responses to questions taken on notice at the public hearing on 12 August 2016, p 5.

<sup>48</sup> ScytI Australia Pty Ltd, *Submission 4*, pp 6-7.

*Open source code*

- 3.33 Dr Teague, Professor Gore and The Greens all called for more information to be publicly released about iVote, in particular the source code. This would allow for more effective scrutiny of the system.<sup>49</sup>
- 3.34 This was not supported by either the Electoral Commission and or Scytl Australia. In particular, the Electoral Commission advised that any potential benefits could still be obtained without the additional risks and costs of publicly releasing the source code.<sup>50</sup>
- 3.35 The Commission explained that it employs independent specialists, including academic experts in the area of internet voting, to review the source code and other important iVote documentation. The Commission highlighted that it would consider adopting a process where people with a private or academic interest in the source code or other features of iVote may request access to this information based on criteria currently used for the selection of external experts.<sup>51</sup>
- 3.36 Mr Campbell of Scytl Australia, argued that based on international experience, not many people took the opportunity to test for flaws anyway:
- We have found that when someone is paid by a customer or by others to examine the application they go through it with a level of care and interest and report back what they find for the improvement of the product. When it is put up on a public website as open source then we do not know that the information found that there might be a weakness will make it back to the government or to Scytl.<sup>52</sup>
- 3.37 Mr Campbell informed the Committee that Scytl reviews the source code at its end through various processes including via the team that produces the software, a quality assurance team and a research and development team. The source code is also subject to independent review.<sup>53</sup>

**Committee comment**

- 3.38 The Committee strongly supports the Commission's current efforts to allow for appropriately qualified experts to review iVote's source code and other associated protocols on a case by case basis. In the Committee's view, the more specialists who assess the system, the more likely it is that possible issues are discovered and improvements made.
- 3.39 The mere fact that there may be low public interest in reviewing the source code, or that there are other security measures in place, are not sufficient reasons to justify withholding the source code from public view. In the absence of demonstrable security risks associated with its release, the Committee supports making the source code publicly available. An open source code would aid

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<sup>49</sup> Dr V. Teague and Prof R. Gore, *Submission 2*, pp 3-4; The Greens, *Submission 8*, p 5.

<sup>50</sup> NSW Electoral Commission, Responses to questions taken on notice at the public hearing on 12 August 2016, p 11.

<sup>51</sup> NSW Electoral Commission, Responses to questions taken on notice at the public hearing on 12 August 2016, p 12.

<sup>52</sup> L. Campbell, Director, Scytl Australia Pty Ltd, *Transcript of Evidence*, 12 August 2016, p 35.

<sup>53</sup> L. Campbell, Director, Scytl Australia Pty Ltd, *Transcript of Evidence*, 12 August 2016, p 36.

transparency and potentially assist with finding further problems with the iVote system.

### Recommendation 7

**The Committee recommends that the NSW Government makes the iVote source code publicly available.**

#### *External scrutiny*

3.40 Labor, The Greens and the Shooters, Fishers and Farmers Party suggested there should be more opportunities to scrutinise the iVote system generally.<sup>54</sup> In particular, Labor advocated for political parties to be invited to appoint scrutineers to review iVote before the commencement of online voting to view the online ballot and to ensure votes can be properly submitted.<sup>55</sup>

3.41 Similarly, BigPulse expressed concerns that the Electoral Commission did not invite the public to test and attempt to hack into the iVote system prior to the commencement of online voting.<sup>56</sup>

3.42 However, the Electoral Commission stressed that some iVote-related documentation is publicly available.<sup>57</sup> It also advised that it does provide opportunities for appropriately skilled people to scrutinise the iVote system. It highlighted the following examples:

- 1 A Technical Advisory Group including international and Australian experts reviewing technical design, tender documentation, technical attachments to the contract and certain software source code.
- 2 An ongoing four member academic advisory group with computer scientists from the University of NSW and Macquarie University. The University of NSW has run a cyber security course focused around attempting to hack iVote, which did not find anything of significance.
- 3 A research project funded by the Electoral Regulation Research Network will examine paper and electronic voting from the perspectives of stakeholders and comparative risks.<sup>58</sup>

#### **Committee comment**

3.43 The Committee is satisfied that there are sufficient opportunities for the scrutiny of iVote. As such, it does not recommend that any further external scrutiny is required, beyond what has been recommended in this report.

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<sup>54</sup> The Greens, *Submission 8*, p 5; NSW Labor, *Submission 11*, p 3; Shooters, Fishers and Farmers Party, *Submission 17*, p 2.

<sup>55</sup> NSW Labor, *Submission 11*, p 4; NSW Labor, Responses to questions taken on notice at the public hearing on 12 August 2016, p 1.

<sup>56</sup> BigPulse, *Submission 10*, p 5.

<sup>57</sup> NSW Electoral Commission, Responses to questions taken on notice at the public hearing on 12 August 2016, p 12.

<sup>58</sup> NSW Electoral Commission, Responses to questions taken on notice at the public hearing on 12 August 2016, pp 11-12.

*Missing ballot squares*

- 3.44 The digital ballot paper for the Legislative Council was missing the group voting squares for the Animal Justice Party and the Outdoor Recreation Party between 8 am on Monday 16 March 2015 and 11 am on Tuesday 17 March 2015. The relevant candidates' names still appeared below the line during this time. The iVote registration system and verification service also continued to operate normally.<sup>59</sup>
- 3.45 The Electoral Commission said it paused iVote between 11 am and 3:45 pm on the Tuesday to correct the problem.<sup>60</sup> However, approximately 19,000 people had cast their vote through iVote prior to the suspension, without the full suite of group voting squares.<sup>61</sup>
- 3.46 The Commission was satisfied that human error with the ballot drafting and review process caused this issue, rather than a problem within iVote itself.<sup>62</sup>

**Committee comment**

- 3.47 The Committee is deeply concerned that the missing ballot squares could have resulted in a challenge. This could have potentially voided the Legislative Council election result, and undermined the integrity of the election. While the Committee does not make any recommendation in response to this error, it stresses that it is incumbent upon the Electoral Commission to ensure that it is not repeated.

**FUTURE ENHANCEMENTS TO IVOTE***Random presentation of the landing page*

- 3.48 After the election, Mr Antony Green wrote a column explaining that the iVote system appeared to advantage groups on the left-hand side of the ballot paper.<sup>63</sup> This was because the landing page defaulted to the beginning of the ballot, on the left-hand side. This had the unintended effect of promoting the parties and candidates shown to the left of the ballot at the expense of other parties and candidates for which the voters had to scroll across or down to select.
- 3.49 Mr Green recommended the landing position of the iVote ballot papers be randomised to remove some of the 'donkey vote' advantage shown in the 2015 election results.<sup>64</sup> Several political parties also supported a change of this kind.<sup>65</sup>
- 3.50 Mr Mark Radcliffe from the Electoral Commission confirmed the iVote ballot paper will be randomised for the next election:

We have already signed the change request last year with ScytI, the provider, to randomise the ballot as it appears on the screen, so that every column has an equal

<sup>59</sup> NSW Electoral Commission, *Submission 20*, p 78.

<sup>60</sup> NSW Electoral Commission, *Submission 20*, p 78.

<sup>61</sup> NSW Electoral Commission, *Submission 20*, p 78.

<sup>62</sup> NSW Electoral Commission, *Submission 20*, p 78.

<sup>63</sup> A. Green, *Submission 13*, p 7.

<sup>64</sup> A. Green, *Submission 13*, p 7.

<sup>65</sup> See for example, The Greens, *Submission 8*, pp 5-6; NSW Labor, *Submission 11*, p 3.

and even chance of being the column in the centre of the screen. Obviously, that is something we cannot do with the paper ballot, but we think it is the fairest approach.<sup>66</sup>

**Committee comment**

- 3.51 The Committee notes that the Electoral Commission is already progressing with the random presentation of the landing page for the next election. The Committee supports this move.

*People with disability*

- 3.52 Ms Serena Ovens, the Chief Executive Officer of the Physical Disability Council of NSW, suggested there should be greater promotion of iVote to people with disability:

In our survey we found that 60 per cent of people who responded said they were aware of the iVote system and 40 per cent were still not aware that it was available to them.<sup>67</sup>

- 3.53 A survey by the Electoral Commission, found that of respondents with a disability, 34 per cent said they were unlikely to use iVote. On the other hand, only 23 per cent of respondents without a disability said they were unlikely to use the system.<sup>68</sup>

*Culturally and linguistically diverse communities*

- 3.54 The Electoral Commission also suggested that in the future, iVote brochures and instructions should be provided in the 24 languages in which the Commission currently provides voting information. The Commission said it would also like the system to be enhanced so it can allow for registration, voting and voting verification to be communicated in some or all of these languages.<sup>69</sup>

**Committee comment**

- 3.55 It is imperative that people with disability are made aware of their voting options to ensure the iVote scheme is successful. The relative low levels of awareness suggest that more needs to be done to promote awareness.
- 3.56 Similarly, individuals from culturally and linguistically diverse communities who would prefer instructions in a language other than English should be provided with assistance to ensure they can cast a valid vote for a candidate or party of their choice.

**Recommendation 8**

**The Committee recommends that the Electoral Commission provides additional and targeted advertising about iVote to:**

- a) people with disability to ensure they are aware of this voting option; and**

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<sup>66</sup> M. Radcliffe, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 66.

<sup>67</sup> S. Ovens, Chief Executive Officer, Physical Disability Council of NSW, *Transcript of Evidence*, 12 August 2016, p 24.

<sup>68</sup> NSW Electoral Commission, *Submission 20*, p 82.

<sup>69</sup> NSW Electoral Commission, *Submission 20*, p 83.

- b) **members from culturally and linguistically diverse communities in the same 24 languages that the Commission currently provides information in for other forms of voting.**

### *How-to-Vote cards on iVote*

- 3.57 The Greens and Labor suggested iVote should be upgraded to make the registered How-to-Vote cards of parties and candidates available through the system.<sup>70</sup>
- 3.58 However, the NSW Electoral Commissioner, Mr John Schmidt, explained some of the complications that would be associated with publishing How-to-Vote cards on iVote:

[M]embers would appreciate that parties often submit a range of how-to-vote options to the commission in the course of an election campaign before deciding on the one to be made available on Election Day. Given that the majority of people voting by iVote do so prior to Election Day, there is the potential for confusion because voters may be directed to different versions depending on when they vote. The only practical way to overcome this would be to limit parties to providing only one how-to-vote card, which I would suggest may not be feasible.<sup>71</sup>

#### **Committee comment**

- 3.59 The Committee acknowledges the potential challenges raised by the NSW Electoral Commissioner associated with including political parties' How-to-Vote cards on iVote. Nevertheless, the Committee supports the inclusion of this information on the iVote internet platform. This will allow political parties to provide relevant information to individuals using iVote to assist them in voting for their preferred candidates or parties.

## **Recommendation 9**

**The Committee recommends that political parties' How-to-Vote cards be made available for iVote voters.**

## **ELECTRONIC VOTING IN PERSON**

- 3.60 The Committee received evidence in support of an electronic voting system that requires attendance at a polling booth and leaves a readable, paper trail.
- 3.61 Mr Green cited the ability to audit electronic votes as an advantage of this method of voting:
- If something went wrong with the computer there would still be a ballot box full of votes to be counted. I think that is a perfectly good method of providing safety.<sup>72</sup>
- 3.62 Mr Green also suggested that electronic voting would ease congestion at polling places like Sydney Town Hall and would be a significant saving in terms of paperwork, counting and reporting.<sup>73</sup>

<sup>70</sup> Submission 8, The Greens, p 5; Submission 11, NSW Labor, p 4.

<sup>71</sup> Mr John Schmidt, Commissioner, NSW Electoral Commission, transcript of evidence, 12 August 2016, p 48.

<sup>72</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 15.

- 3.63 Dr Teague proposed that electronic voting on Election Day would provide an alternative for people who find pen and paper difficult to use.<sup>74</sup>
- 3.64 In addition, some stakeholders believe electronic voting would reduce the occurrence of informal voting.<sup>75</sup> The system could inform the voter that they are about to cast an informal vote and allow the voter to correct their ballot if they choose to. As advised by Prof Smith:
- I think there would be some advantages to that. One of them would be that you could indicate to people whether or not you want to do this, that they are casting an informal vote and do they want to continue with that.<sup>76</sup>
- 3.65 However, Mr Green told the Committee that any electronic voting system should allow a voter to cast a deliberate informal vote if that is their intention.<sup>77</sup>
- 3.66 The Electoral Commission also indicated its support for a system of electronic voting in polling booths.<sup>78</sup>
- 3.67 Although stakeholders were generally supportive of electronic voting on Election Day, this was on the basis that the security and integrity of the system could be guaranteed. The cost of such a system was another key issue highlighted.

### *Security concerns*

- 3.68 Support for electronic voting was contingent on ensuring the robustness of its security. Mr Christopher Stone, State Director, Liberal Party of Australia, NSW Division, stated:
- There would have to be appropriate checks and balances in place to be satisfied that there was security of the system and to ensure the integrity of the balloting process.<sup>79</sup>
- 3.69 Ms Kaila Murnain, General Secretary of the NSW Labor Party expressed a similar view:
- Any method that we introduce to try to decrease the levels of informal voting the Labor Party would fully support. However, that being said, with new technology there are always bugs to the system, as we saw in the census, and we have to put the appropriate safeguards in place.<sup>80</sup>
- 3.70 The Shooters, Fishers and Farmers Party told the Committee it will only support the expansion of electronic voting when:

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<sup>73</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 9.

<sup>74</sup> Dr V. Teague, Senior Lecturer, Department of Computing and Information Systems, University of Melbourne, *Transcript of Evidence*, 5 August 2016, p 63

<sup>75</sup> Prof R. Smith, Senior Lecturer, Government and International Relations, the University of Sydney, *Transcript of Evidence*, 12 August 2016, p 44.

<sup>76</sup> Prof R. Smith, Senior Lecturer, Government and International Relations, the University of Sydney, *Transcript of Evidence*, 12 August 2016, p 44.

<sup>77</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 16

<sup>78</sup> See for example S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 49.

<sup>79</sup> C. Stone, State Director, Liberal Party of Australia, NSW Division, *Transcript of Evidence*, 12 August 2016, p 39.

<sup>80</sup> K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 3.

... such methods can be accurately recorded and submitted securely without any delays or interruptions, and full audit trails available to approved party officers for scrutineering in real time.<sup>81</sup>

- 3.71 With these concerns in mind, Mr Green supported an attendance form of electronic voting, rather than an expansion of iVote, as it would not share the same risks as internet based voting:

That is an audit trail approach to electronic voting. Someone votes, they get a slip and on their way out they put it in the ballot box. This provides an ability to audit the electronic vote.<sup>82</sup>

- 3.72 The process by which this would occur was outlined by Dr Vanessa Teague:

The voter interacts with a computer, which then prints out their vote for inspection into an ordinary ballot box alongside all the other (paper) votes. This allows each voter to verify that the printout matches their intentions, then scrutineers observe the counting process just as they observe all the other paper ballots being counted.<sup>83</sup>

### *Cost concerns*

- 3.73 Mr Mark Radcliffe of the Electoral Commission cautioned that the installation of electronic voting equipment in all polling booths across NSW would incur additional cost to the NSW Government:

I will just flag the cost structure of doing something where you have technology widespread in polling places compared to the current iVote where the infrastructure is merely central. Obviously it is quite a high cost proposition. But if Government were supporting that then technically it is feasible.<sup>84</sup>

- 3.74 Given both the security and costs concerns, there was support for conducting a number of trials to test the system before a wider implementation. The Greens noted that it 'needs small-scale trials, certainty and full confidence in electronic voting.'<sup>85</sup> Similarly, The Nationals supported a trial, given community expectation to move towards automated forms of voting.<sup>86</sup>

### **Committee comment**

- 3.75 The Committee agrees that the integrity and security of a system of electronic voting in polling booths must be ensured before its widespread implementation. The Committee is of the view that the best way to ensure the integrity and security of electronic voting would be a limited trial in electorates where there is confidence in an expected result.

- 3.76 Given the additional cost of the infrastructure required and the infrequency of its use, the Committee is of the view that the NSW Electoral Commission consult

<sup>81</sup> Shooters, Fishers and Farmers Party, Response to questions taken on notice at the public hearing on 5 August 2016, p 1.

<sup>82</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 15.

<sup>83</sup> Dr V. Teague and Prof R. Gore, *Submission 2*, p 5.

<sup>84</sup> M. Radcliffe, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, pp 56-57.

<sup>85</sup> G. Ash, Registered Officer, The Greens, *Transcript of Evidence*, 5 August 2016, p 4.

<sup>86</sup> N. Quigley, State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 24.

with electoral authorities from other jurisdictions regarding electronic voting and the possible pooling and sharing of resources.

### **Recommendation 10**

**The Committee recommends that the NSW Government commences a trial of electronic voting in polling centres.**

# Chapter Four – The Campaign Period

## ELECTION TIMEFRAMES

### *Issue of the writs*

- 4.1 In the lead-up to the election, the issue of writs occurred on 7 March 2015. The Governor is responsible for issuing the writs which is a formal direction to the Electoral Commissioner to conduct the election in accordance with its obligations under the *Parliamentary Electorates and Elections Act 1912*.
- 4.2 The writs are the trigger which set the election process in motion. They include the date for the close of nominations, the date of the election, and the date in which the writs must be returned. The return of the writs includes the successfully declared candidates.
- 4.3 Writs for a general election for the Legislative Assembly must be issued within four days after the expiration of the Assembly – which is the completion of the four year term.
- 4.4 The expiry of the last Parliament was on 6 March 2015. While the writs may be issued within four clear days of the expiry of Parliament, for the last election they were issued on 7 March 2015.
- 4.5 In evidence given to the Committee, Mr Antony Green noted that since the introduction of fixed-term parliaments in 1995, NSW had fixed dates for the dissolution of the parliament and polling day, but had retained a variable date within a four day range for the issue of the writs. Given both the fixed start and end points for the formal election period, he saw little point in retaining the variable date for the issue of the writs. He advised the Committee as follows:
- If the date of the issuing of the writs were on the same day as the dissolution, we would have an extra three days in the campaign. At the moment, before the election the [Electoral Commission] cannot advertise the date for the close of enrolments or nominations because that is determined by the writ. We know when the Parliament is dissolved, but we do not know when the writ will be issued.<sup>87</sup>
- 4.6 Mr Green proposed a legislative solution by amending the *Parliamentary Electorates and Elections Act 1912* to require the issue of the writs on the day the Parliament is dissolved.
- 4.7 Such an amendment would have a twofold effect. First, it would enable the Electoral Commission to undertake its administrative function in advertising for the close of nominations sooner. Second, it could potentially make available three additional days of campaigning.

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<sup>87</sup> A. Green, *Transcript of Evidence*, 5 August 2016, pp 8 – 9.

- 4.8 In response to whether the Electoral Commission would support a ‘front-loading’ of the campaign period by issuing the writs three days earlier, Mr Simon Kwok from the Electoral Commission, supported the proposition.<sup>88</sup>

#### *Constitutional considerations*

- 4.9 Under section 24A of the *Constitution Act 1902*, the Legislative Assembly shall in ordinary circumstances expire on the Friday before the first Saturday in March every four years. Special provisions exist under section 24B for a dissolution of the Legislative Assembly in circumstances where there has been a successful motion of no confidence, an Assembly rejection of an appropriations Bill, or where the election is due to fall at an inconvenient time.
- 4.10 Any change to the date for the issue of the writs could be achieved through one of two methods. The first would be to fix the date by stipulating it must be on the first Saturday in March to align with the timeframes established under section 24A of the *Constitution Act 1902* for an ordinary election.
- 4.11 Or, it could be achieved through an amendment to section 68 of the Act to replace the requirement that the writs be issued within four clear days, with a requirement that the writs be issued on the day the Parliament has been dissolved.
- 4.12 Given the possibility that a future election may be held outside of the normal quadrennial cycle, it is not advisable that the issue of the writs should be fixed on a certain date. It is more appropriate that it be fixed with reference to a certain event, which in this case would be the dissolution of the Parliament.

#### **Committee comment**

- 4.13 The Committee recognises the administrative constraints placed upon the Electoral Commission by having the issue of writs possibly delayed by up to four clear days following the dissolution of the Parliament. In the absence of any clear and compelling reason why the issue of the writs would need to be delayed, the Committee is of the view that tying the date of the issue of the writs with the dissolution of the Parliament is both appropriate and sensible.
- 4.14 The Committee stresses that given it remains possible that section 24B of the *Constitution Act 1902* is invoked to provide for an election outside of the fixed-term period, the issue of the writs should not be fixed at a particular date. Instead, reference should be made to the occurrence of a particular event, being the dissolution of Parliament.

### **Recommendation 11**

**The Committee recommends that the NSW Government amends section 68 of the *Parliamentary Electorates and Elections Act 1912* to provide that the writs for general elections be issued on the same day that the Parliament is dissolved.**

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<sup>88</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 50.

*Close of nominations*

- 4.15 One of the recurring themes of the Inquiry was the tight timeframe between the close of nominations and subsequent ballot draw, and the commencement of the pre-poll period.
- 4.16 For the last general election, the close of nominations was midday on Thursday, 12 March 2015. The ballot draw for each of the Legislative Assembly electorates as well as for the statewide Legislative Council took place on the same afternoon.
- 4.17 Meanwhile the pre-poll period commenced on Monday, 16 March 2015. This enabled voters nearly two weeks to conduct a pre-poll if required. However, this also means that there are only three clear calendar days – including the weekend – between the ballot draw and the commencement of the pre-poll period.
- 4.18 Most of the political parties that provided evidence to the Committee expressed frustration at this tight timeframe as it would adversely impact on their ability to prepare campaign material in a timely manner.
- 4.19 The Greens advised the Committee that:
- Candidates and parties cannot ignore such a significant voter segment but are faced with many logistical challenges, particularly with the writs for NSW elections being issued less than three weeks before election date resulting in an interval of three days between the close of nominations and commencement of pre-poll voting.<sup>89</sup>
- 4.20 This sentiment was echoed by the Shooters, Fishers and Farmers Party who advised the Committee that they failed to understand reasons for why the ballot draw was held so late, noting that it:
- ... [caused] parties to rush to have their how-to-vote material designed, printed and distributed around the State.<sup>90</sup>
- 4.21 The Shooters, Fishers and Farmers Party also stressed the impact on minor parties was exacerbated. This is because they are more likely to coordinate their campaign efforts from one printer ‘and then distribute material from a central location’.<sup>91</sup>
- 4.22 Similarly, the Christian Democratic Party noted that it was a:
- ... major task for all parties to finalise preferences and complete the artwork to cover all electorates and get material printed for the commencement of pre-polling, let alone distributed in time through the State for Election Day.<sup>92</sup>
- 4.23 Almost all stakeholders took the view that a longer period between the ballot draw and the commencement of the pre-poll period was required. This could be achieved by one of two ways.

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<sup>89</sup> The Greens, *Submission 8*, p 6.

<sup>90</sup> The Shooters Fishers and Farmers Party, *Submission 17*, p 1.

<sup>91</sup> The Shooters, Fishers and Farmers Party, *Submission 17*, p 1.

<sup>92</sup> The Christian Democratic Party, *Submission 21*, p 5.

- 4.24 First, the commencement of the pre-poll period could be delayed by a few days. This would have the direct effect of reducing the pre-poll period. Alternatively, the closure of nominations and subsequent ballot draw could be brought forward while keeping the pre-poll period fixed at 12 days out from the election.
- 4.25 Given the start and end dates for the formal campaign period are fixed by the *Constitution Act 1902*, there is limited ability to manoeuvre other dates. However, assuming that the Committee's recommendation that the date of the issue of the writs for a general election be fixed in legislation, there is some scope to shift the dates for the opening and closing of nominations.
- 4.26 The expiry of Parliament will always be 22 days before the election.<sup>93</sup> One possibility is to allow the Electoral Commission to open the nomination for election before the issue of the writs. This could be achieved by the Commission being able to receive completed nomination forms but not accept or process them until after the issue of the writs. As ordinary elections in NSW are known well in advance, there should not be any barriers to facilitating what is essentially an administrative task.
- 4.27 In bringing forward the opening of nominations, there is then scope to close the nominations and conduct the ballot draw earlier.

**Committee comment**

- 4.28 The Committee supports fixing the date for the close of nominations to enable the Electoral Commission to publicise key information about the election ahead of the issue of the writs. Where possible, nominations should be open as early as possible to allow candidates and parties the maximum time to assemble and file the paperwork required for nomination. Given that the opening of nominations is a largely administrative task, the NSW Government should consider the option of opening nominations *before* the issue of the writs.
- 4.29 The Committee appreciates that it may appear sequentially illogical to provide for the opening of nominations before the issue of the writs. While not ideal, the election timeframes set by the Constitution are remarkably tight when compared with comparable Australian and international jurisdictions, and there is no scope to bring forward the date of the expiry of Parliament without a constitutional amendment.
- 4.30 There is no appetite to go down this road for a simple extension of time in the nomination of candidate process. Similarly, the other remedy available to shorten the pre-poll period was not supported by most stakeholders to the Inquiry. Likewise, the Committee does not support this approach.
- 4.31 The issue of writs, while a constitutional function, is a mere formality in an era of fixed-term elections. It is unlikely during an ordinary quadrennial election that nominations would open without the writs being issued very shortly after.

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<sup>93</sup> *Constitution Act 1902*, s24(1).

## Recommendation 12

**The Committee recommends that the NSW Government extends the period between the close of nominations and subsequent ballot draw, and the opening of the pre-poll period.**

**The Committee recommends that the NSW Government considers amending section 79(3) of the *Parliamentary Electorates and Elections Act 1912* to allow for the opening of nominations before the issue of the writs and on a date considered appropriate and administratively convenient for the Electoral Commission.**

### ONLINE SERVICES FOR NOMINATION OF CANDIDATES

4.32 Several inquiry participants recommended that the Electoral Commission introduce an online system for the nomination of candidates to replace the paper-based system.<sup>94</sup>

4.33 In particular, the Shooters, Fishers and Farmers Party said the requirement for candidates in a group to personally sign the same Legislative Council nomination form is time consuming and diverts resources away from other work.<sup>95</sup>

4.34 The Shooters, Fishers and Farmers Party had staff members personally visit each candidate to sign the nomination documents for the last election. They advised the Committee:

As a party with strong regional representation, this involved driving from Finley on the Victorian border, to Parkes in the Central West, throughout Sydney, the Central Coast and Hunter Valley, up to Port Macquarie and into Grafton in far Northern NSW.<sup>96</sup>

4.35 The Christian Democratic Party also described the current process as ‘very difficult and time-consuming’.<sup>97</sup>

4.36 The Christian Democratic Party called for a system which allows all forms to be completed and submitted online with appropriate security and verification features.<sup>98</sup>

4.37 Mr Simon Kwok from the Electoral Commission noted that the Commission has previously requested an online nomination system of this kind:

That would certainly improve efficiency and facilitate the participation of potential candidates. If there were an online system, certainly there would be a better opportunity to support an increase in the number of nominators.<sup>99</sup>

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<sup>94</sup> See for example, The Shooters, Fishers and Farmers Party, *Submission 17*, p 2; The Christian Democratic Party, *Submission 21*, p 7.

<sup>95</sup> The Shooters, Fishers and Farmers Party, *Submission 17*, p 2.

<sup>96</sup> The Shooters, Fishers and Farmers Party, *Submission 17*, p 2.

<sup>97</sup> The Christian Democratic Party, *Submission 21*, p 7.

<sup>98</sup> The Christian Democratic Party, *Submission 21*, p 7.

<sup>99</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 50.

**Committee comment**

- 4.38 The Committee recognises the onerous requirement of a paper-based system of nomination, and its particular impact on minor parties as they are less likely to have centralised offices with support staff. Ahead of the 2019 election, there is little reason why a simple process such as the nomination of candidates cannot take place online.
- 4.39 The Committee supports the introduction of an online system which makes it easier for candidates and parties to submit their nomination forms, and to streamline the processing of this information.

**Recommendation 13**

**The Committee recommends that the NSW Government develops an online nomination system to allow candidates and parties to submit their nomination forms.**

**REGISTRATION OF ELECTORAL MATERIAL**

- 4.40 Political parties are required to register their intended electoral material for the purposes of campaigning with the Electoral Commission in advance of polling day. The requirements concerning the registration of electoral material are set out under section 151G of the *Parliamentary Electorates and Elections Act 1912*.
- 4.41 Electoral material cannot be registered unless its authorisation is properly disclosed and it clearly identifies the party or candidate for whose benefit it is being distributed. Further, election material cannot be distributed if it encourages or misleads voters into casting an informal vote, or misleads voters about what constitutes an informal vote. In effect, these provisions exist to protect against false or incorrect election material that may improperly interfere with the correct casting of a ballot.
- 4.42 Election material can be viewed – in person – at the appropriate Returning Officer’s office by any elector enrolled in the electorate or any scrutineer.
- 4.43 A couple of issues were raised about the registration of election material. First, viewing the election material is limited to electors enrolled for the electorate or any scrutineer. Second, that the election material is only able to be viewed in person and in hard copy, without the option of viewing it online.
- 4.44 On this point, Mr Antony Green noted the lack of public availability in viewing How-to-Vote cards:
- I think the restriction should be lifted and the registered material should be put on the website as it is done with things like the Child Declaration Statement and various other pieces of material for the election.<sup>100</sup>
- 4.45 In response to questions asked at the Committee’s hearing, the question of making election material publicly and freely available online was supported by a number of stakeholders.

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<sup>100</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 9.

4.46 The Nationals noted such a step would be an improvement to the current system.<sup>101</sup> Similarly, the Christian Democratic Party agreed with this proposition, noting that they publish their campaign material on their website for the benefit of the wider public anyway.<sup>102</sup>

4.47 Likewise, the Liberal Party supported the proposition and, on the beneficial impacts on the electoral process, noted:

... the process of registration eight days out from an election obviously allows a transparent approach to viewing material to be distributed on polling day. Arguably it should be available earlier so that everyone is able to view that material before polling day as well.<sup>103</sup>

**Committee comment**

4.48 The Committee supports the online registration of election material as an additional measure of party accountability to the wider electorate. This would enable parties, candidates and members of the wider public an opportunity to view the material in a convenient way.

**Recommendation 14**

**The Committee recommends that:**

- a) political parties and candidates be required to register their electoral material online at least seven days before polling day; and**
- b) this online registration applies only to electoral material required to be registered under the existing legislation.**

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<sup>101</sup> N. Quigley, State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 20.

<sup>102</sup> G. Bondar, State Director, Christian Democratic Party, *Transcript of Evidence*, 5 August 2016, p 35.

<sup>103</sup> C. Stone, State Director, Liberal Party NSW, *Transcript of Evidence*, 5 August 2016, p 40.

## Chapter Five – Polling Day

### ILLEGAL SIGNAGE

- 5.1 The *Parliamentary Electorates and Elections Act 1912* contains a number of rules with respect to posters. In particular, posters cannot be displayed within a polling place, within six metres of the entrance to a polling place, or on the exterior of a building used as a polling place.
- 5.2 Posters are permitted within the grounds of an enclosure of a polling place and on the outer wall, fence or other boundary of a polling place enclosure, however, they cannot exceed 8,000 square centimetres in size. The maximum penalty for these offences is \$330.<sup>104</sup>
- 5.3 The NSW Nationals and the Christian Democratic Party alleged that some parties and candidates did not comply with the poster and signage rules on Election Day. In particular, the NSW Nationals expressed dissatisfaction about signage in the Lismore and Ballina electorates and said it far exceeded permitted limits.<sup>105</sup>
- 5.4 The displaying of oversized signage at polling places in two marginal seats raised concerns for the NSW Nationals regarding the inability or unwillingness of Electoral Commission staff to enforce compliance with the *Parliamentary Electorates and Elections Act 1912*.<sup>106</sup>
- 5.5 The NSW Nationals gave evidence that the incident highlighted inadequacies in the training and education given to polling staff on how to recognise and appropriately address breaches of electoral legislation at polling places.<sup>107</sup>
- 5.6 The Nationals expressed their concern that such inaction demonstrated an inability of the Commission to understand the significance of unlawful signage and its impact on electoral outcomes:
- In two very marginal electorates, the presence of this substantially larger than allowed signage at polling booths throughout the electorate created an unfair playing field, with the NSW Nationals and other parties and candidates adhering to what are both well-known and straight forward election day signage rules.<sup>108</sup>
- 5.7 The Christian Democratic Party conveyed similar concerns about the number of posters at some booths on polling day. The Christian Democratic Party alleged that certain booths were ‘blanketed with posters’, with posters joined in a

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<sup>104</sup> *Parliamentary Electorates and Elections Act 1912*, s 151B (1), (2) and (2AA).

<sup>105</sup> NSW Nationals, *Submission 16*, p 3.

<sup>106</sup> N. Quigley, State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 17.

<sup>107</sup> T. Aubert, Deputy State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 19.

<sup>108</sup> NSW Nationals, *Submission 16*, p 4.

continuous stream.<sup>109</sup> They also observed reluctance on the part of booth managers to correct these issues.<sup>110</sup>

- 5.8 The Committee also received a submission that an election officer incorrectly ordered the removal of a candidate's signage. The posters were removed for a number of hours until the Returning Officer could be contacted and the posters reinstalled.<sup>111</sup>
- 5.9 In response to these concerns, the Commissioner, Mr John Schmidt, noted the Commission's limited powers to respond to these issues.<sup>112</sup>
- 5.10 When a minor breach of the electoral legislation occurs it is the practice of the Commission to give the offender an opportunity to address the breach before enforcement action is taken.<sup>113</sup>
- 5.11 Returning Officers, Polling Place Managers or other relevant election officials are empowered to remove, or require the removal of, posters in contravention of the legislation. The police can also remove, or require the removal of, any such posters and may use reasonable force for this purpose.<sup>114</sup> The Electoral Commission does not want polling staff to manhandle people or become involved in altercations. The Electoral Commission stated that if a matter required physical intervention it would be more appropriately dealt with by police.<sup>115</sup>
- 5.12 However, the Commissioner suggested it would be helpful for the Commission to be empowered to issue penalty notices to:
- require people or entities to remove unlawful material from public places, where the failure to comply is a penalty notice offence;
  - require people or entities to stop distributing unlawful electoral material; and
  - deal generally with electoral material and advertising offences.<sup>116</sup>
- 5.13 The Commission also agreed to look into the logistics of having staff review signs before polling opens.<sup>117</sup>

## UNREGISTERED THIRD-PARTY CAMPAIGNERS

- 5.14 A third-party campaigner is an entity or person that incurs electoral communication expenditure exceeding \$2,000 during a capped expenditure

<sup>109</sup> Christian Democratic Party, *Submission 21*, p 5.

<sup>110</sup> Christian Democratic Party, *Submission 21*, p 5.

<sup>111</sup> R. Hoenig MP, *Submission 9*, p 3.

<sup>112</sup> J. Schmidt, Commissioner, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 53.

<sup>113</sup> L. Franklin, Director Elections, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 5.

<sup>114</sup> *Parliamentary Electorates and Elections Act 1912*, s 151D.

<sup>115</sup> J. Schmidt, Commissioner, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 53.

<sup>116</sup> J. Schmidt, Commissioner, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 53; NSW Electoral Commission, Response to questions taken on notice at the public hearing on 12 August 2016, pp 7-8.

<sup>117</sup> L. Franklin, Director Elections, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 55.

period. Registered parties, elected members, groups and candidates are excluded from this definition.<sup>118</sup>

5.15 Third-party campaigners must be registered with the Electoral Commission and are subject to a number of requirements, such as observing a \$1,050,000 cap on their campaign expenditure and disclosing their electoral communication expenditure and any political donations received.<sup>119</sup> It is unlawful for an unregistered third-party campaigner to make payments for electoral communication expenditure during a capped period or receive political donations for the purposes of incurring that expenditure. Offenders can be subject to a maximum penalty of \$44,000, imprisonment for two years, or both.<sup>120</sup>

5.16 The NSW Nationals drew this matter to the attention of the Electoral Commission on 21 March 2015. Two days later, the Commission asked the relevant organisation to stop their campaign and advised that the Commission would investigate whether they were a third-party campaigner.

5.17 In response to this incident, the NSW Nationals recommended the Commission be provided with appropriate resources to ensure effective enforcement of the *Election Funding, Expenditure and Disclosures Act 1981* and that its investigations be subject to appropriate oversight:<sup>121</sup>

This response to an unlawful campaign that had expended a six figure sum in marginal electorates was manifestly inadequate. The Commissioner and the Commission failed to quickly address the campaign, restrain the campaign from continuing and offered only a preliminary investigation into the activities, which would have occurred after the campaign had served its purpose.<sup>122</sup>

5.18 In particular, Mr Nathan Quigley, State Director, NSW Nationals, suggested that the Commission's request for the organisation to stop running the advertisements should have been immediate and supported by an injunction.<sup>123</sup>

5.19 In its review of these matters raised, the Electoral Commission found insufficient evidence to establish that the relevant organisation was a third-party campaigner. The evidence would not meet the burden of proof for a prosecution. The Commission also stressed the difficulty in identifying third-party campaigners as the Commission relies heavily on self-reporting.

5.20 In any case, the only available punishment under the *Election Funding, Expenditure and Disclosures Act 1981* for such an offence involves prosecution. The Commission could also issue a warning and provide educational information.

5.21 Notably, the Commission is not afforded with a specific order and enforcement power to take immediate action. The Commission advised that it has not prosecuted any entity or person under these legislative provisions.<sup>124</sup>

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<sup>118</sup> *Election Funding, Expenditure and Disclosures Act 1981*, s 4.

<sup>119</sup> *Election Funding, Expenditure and Disclosures Act 1981*, Part 4, Division 2A; ss 88, 95F and 96AA.

<sup>120</sup> *Election Funding, Expenditure and Disclosures Act 1981*, s 96I.

<sup>121</sup> NSW Nationals, *Submission 16*, p 15.

<sup>122</sup> NSW Nationals, *Submission 16*, p 14.

<sup>123</sup> N. Quigley, State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 21.

**Committee comment**

- 5.22 The Committee recognises concerns raised by some political parties about both the delay and difficulties in enforcing existing rules relating to posters and unregistered third-party campaigners.
- 5.23 In the Committee's view, the Electoral Commission's powers to enforce the requirements relating to posters and unregistered third-party campaigners on polling day, or in the lead up to that day, should be expanded. In particular, the Commission should be in a position to take immediate and authoritative action.

**Recommendation 15**

**The Committee recommends that the NSW Government expands the powers of the Electoral Commission to act immediately with respect to illegal signage and unregistered third party campaigners. In particular, the Electoral Commission should be required to:**

- a) **remove unlawful posters;**
- b) **issue penalty notices; and**
- c) **seek injunctions to stop unlawful conduct.**

**DISTRIBUTION OF ALLEGEDLY FALSE AND MISLEADING INFORMATION**

- 5.24 The Committee heard concerns from inquiry participants about the potential for individuals to spread false or misleading information as part of an election campaign. This is designed to damage an opponent's chances of winning or to mislead and confuse electors in casting their vote.
- 5.25 Several stakeholders raised whether campaign material that directed voters to 'Remember to number every square' misled voters.<sup>125</sup>
- 5.26 The Liberal Party stressed that this material raised 'the very real likelihood that voters could be misled into thinking that there was no option other than to number every square.'<sup>126</sup>
- 5.27 Several stakeholders argued that parties and candidates providing guidance to voters on Election Day should clearly brand their material so voters know who is providing it, rather than just including an authorisation in small print.<sup>127</sup> Labor and the Christian Democratic Party agreed that adding a political party's logo may also assist with easily identifying the author.<sup>128</sup>

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<sup>124</sup> NSW Electoral Commission, Response to questions taken on notice at the public hearing on 12 August 2016, pp 5-6.

<sup>125</sup> Christian Democratic Party, *Submission 21*, pp 4-5; Liberal Party of Australia, NSW Division, *Submission 22*, p 5.

<sup>126</sup> Liberal Party of Australia, NSW Division, *Submission 22*, p 5.

<sup>127</sup> Liberal Party of Australia, NSW Division, *Submission 22*, p 5; Christian Democratic Party, *Submission 21*, p 4; K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 11.

<sup>128</sup> K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 11; I. Smith, Assistant Treasurer, Christian Democratic Party, *Transcript of Evidence*, 5 August 2016, p 33.

5.28 The Electoral Commission supported suggestions requiring election material to be clearly branded. Further, this change would align with equivalent provisions in the Commonwealth *Electoral Act 1918*.<sup>129</sup>

5.29 The Electoral Commission also suggested the creation of an offence for passing off as the Commission or otherwise distributing material made to resemble an official message. For example, including material containing the State Arms or posters stating, 'Just vote 1'.<sup>130</sup>

**Committee comment**

5.30 The Committee agrees with stakeholders that material which may mislead electors to vote in a way other than what they intended should be prohibited. In such cases, electors may not have voted in accordance with what they proposed. As such, candidates and political parties distributing misleading material may receive an unfair advantage over other candidates and parties. Similarly, third party campaigners may unfairly advantage the candidates and parties that they support to the detriment of others.

5.31 In the Committee's view, parties, candidates and third party campaigners should include, as appropriate, their name in at least 12 point font on any registered material to be distributed on polling day. Further, any material resembling an official message from the Electoral Commission should be prohibited.

**Recommendation 16**

**The Committee recommends that the NSW Government introduces a Bill to amend electoral laws to:**

- a) **require parties, candidates and third party campaigners to include (as appropriate) the party name, candidate name and/or third party campaigner name in at least 12 point font on any registered material to be distributed on polling day;**
- b) **make it an offence for parties, candidates and third party campaigners to distribute registered material on polling day that could reasonably assumed to be official advice from the Electoral Commission.**

**This does not preclude political parties or other registered third party campaigners from providing information to voters about how to vote correctly.**

**THE ROLE OF RETURNING OFFICERS**

5.32 The Electoral Commission has suggested consideration of whether there needs to be a Returning Officer for every metropolitan district in the Sydney basin.<sup>131</sup>

5.33 The position is afforded a number of functions and activities under the *Parliamentary Electorates and Elections Act 1912*. In particular, the Returning

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<sup>129</sup> NSW Electoral Commission, *Submission 20*, p 32.

<sup>130</sup> NSW Electoral Commission, *Submission 20*, p 32.

<sup>131</sup> NSW Electoral Commission, *Submission 20*, p 5.

Officer for a district is responsible to the Commission for the administration of an election for that district.<sup>132</sup>

- 5.34 Mr Simon Kwok from the Commission described the diverse functions of the Returning Officer role:

Currently, the returning officer carries out a number of functions, including staff management, logistics, the issuing of votes, and managing health and safety. They also have to acquire a fair knowledge of technology and systems. The returning officer has to deal with increasing complexity and retain a greater amount of knowledge. The role has become multidisciplinary.<sup>133</sup>

- 5.35 The Commission argued there is a reduced need for the Returning Officer position due to the establishment of centralised processes for approving electoral material, recruitment, application and distribution of postal votes, counting results and distributing ballot papers.<sup>134</sup>

- 5.36 In addition, Mr Kwok spoke of the difficulties in finding the appropriate person for that role, particularly in light of the position only being recruited on a temporary basis and the broad range of skills required.<sup>135</sup>

#### **Committee comment**

- 5.37 The Committee supports the Electoral Commission's suggestion that the Returning Officer role should be reconsidered to determine whether there is a more effective way of dealing with those functions.

### **Recommendation 17**

**The Committee recommends that the NSW Government reviews the current role of a Returning Officer in NSW State Elections to determine whether there is a more effective and efficient way to carry out the functions associated with this position.**

## **ALLEGATIONS ABOUT NON-PAYMENT OF ELECTION DAY WORKERS**

- 5.38 During the 2015 NSW State Election, the No Land Tax Party, led by Mr Peter Jones, ran candidates in all 93 lower house seats and 16 in the upper house.<sup>136</sup> The party failed to win any seats.
- 5.39 Following the election, it was reported in the media that workers recruited to distribute how-to-vote cards for the No Land Tax Party on Election Day had not been paid for their work.<sup>137</sup>

<sup>132</sup> See the *Parliamentary Electorates and Elections Act 1912*, ss 75 and 76.

<sup>133</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 54.

<sup>134</sup> NSW Electoral Commission, *Submission 20*, p 5.

<sup>135</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 54.

<sup>136</sup> J Chancellor, 'No Land Tax Party puts the \$2.4 billion issue atop the NSW election agenda', *Property Observer*, 13 March 2015, viewed 15 April 2016, <<http://www.propertyobserver.com.au/financing/tax-and-legal/41044-no-land-tax-party-puts-the-2-4-billion-issue-atop-the-nsw-election-agenda.html>>.

- 5.40 In August 2015, the Fair Work Ombudsman commenced legal action against the No Land Tax Party and Mr Jones. The Ombudsman received almost 1,000 requests for assistance from workers claiming they had not been paid wages for handing out how-to-vote cards for the Party at the NSW Election.<sup>138</sup>
- 5.41 The Fair Work Ombudsman alleged that the party advertised a base pay of \$30 per hour and stated 'you will get paid this regardless of what vote your local candidate obtains.' It also alleged additional bonuses of up to \$500 were offered if candidates polled well.<sup>139</sup>
- 5.42 The Ombudsman unsuccessfully tried to resolve the matter informally but ultimately took legal action. As at the date of this report, the matter is being heard in the Federal Circuit Court in Sydney. The Fair Work Ombudsman is seeking penalties against Mr Jones and his party in relation to four alleged contraventions of the *Fair Work Act 2009* (Cth).<sup>140</sup>
- 5.43 The Fair Work Ombudsman has also requested court orders requiring the party to back-pay 21 named workers and report on the names and hours worked by all other individuals on Election Day.<sup>141</sup>
- 5.44 The Electoral Commission reported that a number of people sought its assistance in relation to the conduct of the No Land Tax Party. However, the Commission advised that:
- The Commission was powerless to assist as this is a responsibility, and appropriately so, of the political party concerned.<sup>142</sup>
- 5.45 Consequently, the Commission questioned whether there should be a common code of behaviour that parties and candidates sign at the time of nomination to prevent these situations:<sup>143</sup>
- In order for this to be effective, appropriate penalties would need to be made applicable under the relevant electoral legislation. Even if a code were put in place, the NSWEC questions the effectiveness of a body such as itself being responsible for

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<sup>137</sup> See for example, S Medhora, 'No Land Tax Party bankrolled by Liberal side of politics, convenor says,' *The Guardian*, 2 April 2015, viewed 11 May 2016, <<http://www.theguardian.com/australia-news/2015/apr/02/no-land-tax-party-bankrolled-by-liberal-side-of-politics-convenor-says>>.

<sup>138</sup> Fair Work Ombudsman, *No Land Tax Party faces legal action*, media release, 11 August 2015, viewed 15 April 2016, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/august-2015/20150811-no-land-tax-party-litigation?print=1>>.

<sup>139</sup> Fair Work Ombudsman, *No Land Tax Party faces legal action*, media release, 11 August 2015, viewed 15 April 2016, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/august-2015/20150811-no-land-tax-party-litigation?print=1>>.

<sup>140</sup> Fair Work Ombudsman, *No Land Tax Party faces legal action*, media release, 11 August 2015, viewed 15 April 2016, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/august-2015/20150811-no-land-tax-party-litigation?print=1>>.

<sup>141</sup> Fair Work Ombudsman, *No Land Tax Party faces legal action*, media release, 11 August 2015, viewed 15 April 2016, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/august-2015/20150811-no-land-tax-party-litigation?print=1>>.

<sup>142</sup> NSW Electoral Commission, *Submission 20*, p 4.

<sup>143</sup> NSW Electoral Commission, *Submission 20*, p 4.

enforcing what would, in regard to unpaid wages, appear to be issues best dealt with under employment law.<sup>144</sup>

5.46 Unions NSW and Labor supported further consideration of whether a code of conduct of this kind would be useful, including whether any code of conduct should extend to third-party campaigners.<sup>145</sup>

5.47 On this issue, Unions NSW does not believe that third-party campaigners should be subject to the same penalties as candidates and parties under a code of conduct:

Unions NSW believes if a party or candidate is elected on the basis of deceitful practices and the exploitation of workers, then they are not fit and proper to hold a position in the NSW Parliament. The same risk is not posed by third party campaigners as they are not seeking to be elected to Parliament.<sup>146</sup>

5.48 Unions NSW called for the Commission to be empowered to de-register political parties engaging in deceptive behaviour and non-payment of workers. Labor expressed similar sentiments.<sup>147</sup> In addition, Unions NSW suggested the Commission should be able to restrict elected officials from forming and registering new political parties.<sup>148</sup>

#### **Committee comment**

5.49 The Committee understands that some stakeholders suggest it may be appropriate to further regulate behaviour of this kind through the electoral framework. However, on balance, the Committee believes that this is an extension of electoral law into an area in which it has no business being. Industrial Relations law, contract law and potentially the criminal law are better vehicles to deal with these issues.

## **THE ELECTION COUNT**

### *Timeliness of the count*

5.50 Of probable near-universal interest to all candidates is the election count and finding out the result of the contests to which they have nominated. Under sections 121 and 129B of the *Parliamentary Electorates and Elections Act 1912*, the Electoral Commissioner is charged with the responsibility to undertake a count of the ballots cast. Once completed, under sections 126 and 129G of that Act, the Electoral Commissioner must publish the results of the election online.

5.51 Ensuring that correct results are ascertained is of paramount importance to ensuring the integrity of the electoral process. Accuracy takes place at the expense of speed.

<sup>144</sup> NSW Electoral Commission, Response to questions taken on notice at the public hearing on 12 August 2016, p 10.

<sup>145</sup> M. Morey, Unions NSW, *Transcript of Evidence*, 5 August 2016, p 50; K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 10.

<sup>146</sup> Unions NSW, Response to questions taken on notice at the public hearing on 5 August 2016, p 2.

<sup>147</sup> Unions NSW, *Submission 12*, pp 9-10; K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 4.

<sup>148</sup> Unions NSW, *Submission 12*, pp 9-10.

5.52 As Mr Antony Green explained to the Committee, the Electoral Commission is charged with two main tasks concerning the count in Assembly electorates. The first is to count first preferences in a process that is both correct and can be audited if challenged. The second is to conduct a distribution of preferences.<sup>149</sup> Caution is particularly pertinent in electorates with close contests or electorates where the preference flows are complex.

5.53 At the 2015 election, there were delays with the election count in the seats of Ballina and Lismore. The Commission had commenced an indicative count between the Nationals and Labor. However, the Greens were the final placegetters with the Nationals in a two-candidate preferred count, including a successful contest in Ballina. The Electoral Commission had not anticipated this in the early count and so had initially starting counting ballots as two-party contests between the Nationals and Labor. In evidence provided to the Committee, Mr Green explained that upon noticing this error:

The Commission chose not to recount all the paper ballots to get a new preference count. Given they were about to scan all the ballots, I thought it was a reasonable thing to do. If you waited one week you would get all the counts you wanted. This is a real challenge for them.<sup>150</sup>

5.54 Mr Green explained in further detail the dilemma faced by the Electoral Commission:

Sometimes you would be moving these ballot papers backwards and forwards and in a really close contest, in counting and recounting votes to keep everybody completely up to date, you end up taking ballots out of their original bundles and put at risk the process being challenged in the court if it is a really close contest.<sup>151</sup>

5.55 As the indicative count is for information only, it is less important than ensuring a correct primary vote count and subsequent distribution of preferences. Despite this, the ensuing confusion and candidate uncertainty can be a source of frustration.

5.56 The absence of up-to-date information and the miscommunication between the parties and the Electoral Commission may have compounded this issue. This is especially pronounced with respect to the counting of pre-polls.

5.57 The National Party noted that:

The NSW Electoral Commissioner ... had indicated that at a minimum, initial results from pre-poll were not going to be published on election night. The situation then became increasingly blurred as individual District Returning Officers informed campaigns that they would indeed be undertaking a preliminary count of pre-poll ballots, however that count would not be published.<sup>152</sup>

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<sup>149</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 12.

<sup>150</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 12.

<sup>151</sup> A. Green, *Transcript of Evidence*, 5 August 2016, p 12.

<sup>152</sup> NSW Nationals, *Submission 16*, p 5.

- 5.58 The Liberal Party echoed these sentiments, stressing that 'further work is required for election night counting and the provision of results to the public on election night and subsequently'.<sup>153</sup>

**Committee comment**

- 5.59 The limited availability of data in key seats on and immediately following election night in 2015 was a source of frustration for some parties and their candidates. This led to confusion concerning how many ballots were left to be counted in any given electorate.
- 5.60 Further, the Committee notes that candidates are particularly interested in the distribution of preference for scrutiny and statistical purposes. Such information may also be of interest to a wider audience. This interest is obviously more pronounced immediately following an election, and is likely to recede over time.

**Recommendation 18**

**The Committee recommends that the Electoral Commission informs the public of the remaining ballots to be counted in each electorate on election night and for each of the days following that ballots are being counted.**

**Further, the Committee recommends that the Electoral Commission allows complete electronic preference data to be publicly available at the declaration of the poll in each electorate.**

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<sup>153</sup> C. Stone, State Director, Liberal Party of Australia NSW Division, *Transcript of Evidence*, 5 August 2016, p38.

# Chapter Six – Election to the Legislative Council

## THE LEGISLATIVE COUNCIL BALLOT PAPER

### *Size*

6.1 Some stakeholders raised concerns that the Legislative Council ballot paper is becoming too large.<sup>154</sup> The recent election saw an increase in the number of nominations for the Legislative Council of 26.7 per cent, from 311 in 2011 to 394 in 2015.<sup>155</sup> There was also an increase in the number of unnamed groups contesting the election, with nine of the 25 columns on the Legislative Council ballot paper showing no party affiliation and four of these columns with no group voting square.<sup>156</sup> These groups made up more than a third of the columns on the ballot paper and over a quarter of the candidates but only attracted one in 200 of the votes.<sup>157</sup>

6.2 Mr Antony Green called for a balance between a citizen's right to nominate for Parliament and testing the support and seriousness of a candidate before affording them a place on the ballot paper:

It has to be asked whether it was too easy in 2015 for candidates with no hope of election to get their names on to the ballot paper, unnecessarily increasing the size of the ballot paper.<sup>158</sup>

6.3 The Committee considered a number of options for making access requirements to the Legislative Council ballot more stringent.

### *Increasing the required number of nominators*

6.4 At present, to be a Legislative Council candidate, an individual must be nominated by:

- the registered officer of a registered political party; or
- at least 15 nominators, if the individual is a non-party candidate.<sup>159</sup>

6.5 Mr Green recommended that the number of nominators for a non-party Legislative Council candidate should be increased from 15 to 50. He highlighted that this would require an independent or non-party group to have 750

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<sup>154</sup> See for example, G. Bondar, NSW Director, Christian Democratic Party, *Transcript of Evidence*, 5 August 2016, p 36; K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 3.

<sup>155</sup> NSW Electoral Commission, *Submission 20*, p 41.

<sup>156</sup> A. Green, *Submission 13*, pp 2-3.

<sup>157</sup> A. Green, *Submission 13*, pp 2-3.

<sup>158</sup> A. Green, *Submission 13*, pp 2-3.

<sup>159</sup> See the *Parliamentary Electorates and Elections Act 1912*, s 81B.

nominators in total, which is also the number of members required to register a political party.<sup>160</sup>

- 6.6 A group of 15 candidates can currently request a group voting square above the line on the ballot paper. Given that each non-party candidate must have 15 nominators, an independent group requires 225 nominators in total to access a group voting square. Under Mr Green's proposal, an independent group would instead require 750 nominators in total.<sup>161</sup>
- 6.7 Mr Geoff Ash, Registered Officer, The Greens, supported this concept and said it is not particularly difficult to obtain more than 15 nominators if you have genuine support from the community.<sup>162</sup>
- 6.8 Ms Kaila Murnain, General Secretary, NSW Labor, confirmed that her party would be open to discussions about increasing the number of nominators required for a Legislative Council candidate.<sup>163</sup>
- 6.9 Prof Rodney Smith suggested the problem should be addressed through a more onerous nomination process generally:

I think the way to address that would be to require candidates and groups of candidates to prove that they represent serious sections of the community.<sup>164</sup>

*Increasing the nomination deposit*

- 6.10 The deposit for nominating as a candidate for the Legislative Council is \$500 per candidate. However, the deposit is capped at \$5,000 for groups which nominate between 11 and 21 candidates.<sup>165</sup>
- 6.11 Electoral Reform Australia argued the deposit should be raised to \$5,000 per candidate on the basis that only candidates who are serious about being elected should run.<sup>166</sup>
- 6.12 The Liberal Party proposed increasing the nomination deposit to \$1,000 while still capping the deposit for groups of candidates. The Liberal Party advocated that this 'would better serve as a test of a candidate's seriousness, particularly given the substantial increase in the number of candidates and unnamed groups that contested the election.'<sup>167</sup>
- 6.13 However, several stakeholders were opposed to increasing the nomination deposit for Legislative Council candidates. A particular concern from Prof Rodney

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<sup>160</sup> A. Green, *Submission 13*, p 6.

<sup>161</sup> A. Green, *Submission 13*, p 4.

<sup>162</sup> G. Ash, Registered Officer, The Greens, *Transcript of Evidence*, 5 August 2016, p 5.

<sup>163</sup> K. Murnain, General Secretary, NSW Labor, *Transcript of Evidence*, 12 August 2016, p 9.

<sup>164</sup> Prof R. Smith, Senior Lecturer, Government and International Relations, University of Sydney, *Transcript of Evidence*, 12 August 2016, pp 38-39.

<sup>165</sup> See the *Parliamentary Electorates and Elections Act 1912*, s 81F.

<sup>166</sup> Electoral Reform Australia, *Submission 5*, p 4.

<sup>167</sup> Liberal Party of Australia, NSW Division, Responses to questions taken on notice at the public hearing on 5 August 2016, p 2.

Smith, Labor and The Greens was that a higher nomination deposit could favour wealthier individuals and groups.<sup>168</sup>

- 6.14 Mr Green also highlighted that while the nomination fee for the Legislative Council is low when compared to other States, it is not low once ballot paper grouping is accounted for.<sup>169</sup>

**Committee comment**

- 6.15 The Committee agrees with concerns from Inquiry participants that a large Legislative Council ballot paper can increase the cost and complexity of an election. This makes it more difficult for electors to vote for their chosen party or candidates. As a result, steps need to be taken to make the Legislative Council ballot paper more manageable for upcoming elections.

- 6.16 However, the Committee believes that increasing the nomination fee could discourage some members of the community from running for financial reasons and therefore it should not be supported.

**Recommendation 19**

**The Committee recommends that the NSW Government increases the number of required nominators for independent Legislative Council candidates from 15 to 100.**

*Limiting the number of candidates*

- 6.17 The Legislative Council consists of 42 members who represent the whole State in the NSW Parliament. At each State Election, 21 members are elected to serve two terms of Parliament, a total of eight years.<sup>170</sup> That is, a maximum of 21 candidates can be elected during a periodic election to the Council.

- 6.18 The Electoral Commission highlighted a potential issue at the 2015 election where one group indicated that they intended to nominate more than 21 candidates. While this group ultimately decided not to nominate that many candidates, it presented the Commission with a logistical dilemma.<sup>171</sup>

- 6.19 Mr Simon Kwok from the Commission explained the contingencies the Commission had to put in place for this possibility:

As you can appreciate, the printing of the ballot paper is a large-scale logistical exercise. It requires paper to be procured. The size of the papers is constrained by our suppliers' printing presses, if you like. We had to make some contingency in

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<sup>168</sup> See for example, Prof R. Smith, Senior Lecturer, Government and International Relations, University of Sydney, *Transcript of Evidence*, 12 August 2016, pp 38-39; K. Murnain, General Secretary, NSW Labor, *Transcript of evidence*, 12 August 2016, p 9; G. Ash, Registered Officer, The Greens, *Transcript of Evidence*, 5 August 2016, p 5.

<sup>169</sup> A. Green, *Submission 13*, p 4.

<sup>170</sup> NSW Electoral Commission, *Legislative Council: The method of voting*, viewed 19 October 2016, <[http://www.elections.nsw.gov.au/voting/casting\\_a\\_vote/legislative\\_council](http://www.elections.nsw.gov.au/voting/casting_a_vote/legislative_council)>.

<sup>171</sup> NSW Electoral Commission, Responses to questions taken on notice at the public hearing on 12 August 2016, p 1.

procuring different sized ballot paper on the chance that we have to cater for a larger group beyond 21.<sup>172</sup>

6.20 Mr Kwok also noted that as elections for the Legislative Council only have 21 positions being contested at the one time, 22 candidates cannot actually be elected.<sup>173</sup>

6.21 The Commission has therefore recommended that the membership of a Legislative Council Group should be limited to 21.<sup>174</sup> The Commission drew the Committee's attention to a model provision of this kind in South Australian legislation:

The number of candidates in a group must not exceed the number of candidates required to be elected at the particular election.<sup>175</sup>

**Committee comment**

6.22 In the Committee's view, the Electoral Commission's proposal to limit the membership of a Legislative Council group to 21 is a sensible suggestion. The Committee agrees with the Commission that it is not necessary to provide for groups of more than 21 candidates in circumstances where only 21 candidates can actually be elected. If groups wish to nominate more candidates than can be lawfully elected, this could potentially further increase the size of the ballot paper and reduce its readability and accessibility.

**Recommendation 20**

**The Committee recommends that the NSW Government limits the number of candidates per group on the Legislative Council ballot paper to 21.**

*Readability*

6.23 At the Committee's public hearing on 12 August 2016, Ms Serena Ovens, Chief Executive Officer, Physical Disability Council NSW spoke about the size of the font on ballot papers and its readability.<sup>176</sup>

6.24 Ms Ovens also agreed with the Committee Chair that the ballot paper for the Federal election, which included logos in addition to the names of parties and candidates, may be a helpful tool. In her view, it would be particularly useful for people with an intellectual disability where it may be easier for them to recognise the symbol of a party rather than their name.<sup>177</sup>

**Committee comment**

6.25 In light of concerns about the increasing size of the Legislative Council ballot paper, the Committee believes there is scope to improve its readability. This is particularly important for members of the community with disability.

<sup>172</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 50.

<sup>173</sup> S. Kwok, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 50.

<sup>174</sup> NSW Electoral Commission, *Submission 20*, p 32.

<sup>175</sup> NSW Electoral Commission, *Submission 20*, p 32; the *Electoral Act 1985 (SA)*, s 58(4).

<sup>176</sup> S. Ovens, Chief Executive Officer, Physical Disability Council NSW, *Transcript of Evidence*, 12 August 2016, p 26.

<sup>177</sup> S. Ovens, Chief Executive Officer, Physical Disability Council NSW, *Transcript of Evidence*, 12 August 2016, p 26.

- 6.26 Including logos on the ballot paper would have the added benefit of clearly distinguishing parties from each other, which would be of assistance to voters generally. This could also align with the process for the 2016 Federal Election, where parties with a logo registered with the Australian Electoral Commission could request to have that logo printed on the Senate and House of Representatives ballot papers.<sup>178</sup>

### Recommendation 21

**The Committee recommends that the NSW Government considers introducing measures to improve the readability of the Legislative Council ballot paper, including:**

- a) **increasing the size of the font on the ballot paper where possible; and**
- b) **introducing the display of party logos in addition to the written names of the parties.**

**The Committee recommends that the NSW Government consults with the Australian Electoral Commission about the experience from the 2016 Federal Election of introducing party logos on the Australian Senate ballot paper.**

## CHALLENGES TO THE LEGISLATIVE COUNCIL ELECTION RESULT

- 6.27 After the election, the leader of the No Land Tax Party challenged the Legislative Council election result in the Court of Disputed Returns.
- 6.28 The No Land Tax Party's challenge was based on:
- (a) claims of interference with the party's employees by the Liberal Party, Macquarie Radio Network and the Labor Party; and
  - (b) a defamatory smear campaign by Macquarie Radio Network.<sup>179</sup>
- 6.29 The orders requested by Mr Jones included that he be declared elected and that public funding be paid to his party for its campaign, or that the Legislative Council result be declared void and a new election held.<sup>180</sup> The Commission sought to have the matter dismissed and Mr Jones subsequently discontinued the proceedings.<sup>181</sup>
- 6.30 The Commission noted that Mr Jones did not allege any irregularity in the conduct of the election or any breach of the *Parliamentary Electorates and Elections Act 1912*. The allegations concerned defamatory statements made by political parties and the media which had affected the election result.<sup>182</sup>

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<sup>178</sup> Australian Electoral Commission, viewed 21 October 2016, < <http://www.aec.gov.au/election/files/e2016-official-guide.pdf>>.

<sup>179</sup> NSW Electoral Commission, *Submission 20*, pp 29-30.

<sup>180</sup> NSW Electoral Commission, *Submission 20*, p 30.

<sup>181</sup> NSW Electoral Commission, *Submission 20*, p 30.

<sup>182</sup> NSW Electoral Commission, *Submission 20*, p 32.

6.31 The Court of Disputed Returns has a range of powers including the power to declare someone as not duly elected or to declare an election void if there were 'illegal practices' associated with the election. However, the term 'illegal practices' is not fully defined in the current provisions of the *Parliamentary Electorates and Elections Act 1912*.<sup>183</sup> The Commission suggested amending the Court of Disputed Returns provisions to clarify that 'illegal practices' means only those that are breaches of the *Parliamentary Electorates and Elections Act 1912*, in order to prevent misguided petitions of this nature.<sup>184</sup>

6.32 Some of the key provisions of the Act which deal with the Court of Disputed Returns do not appear to have been amended for a considerable period. In some cases, the last amendment was in the 1920s.<sup>185</sup>

**Committee comment**

6.33 The Committee agrees with the Electoral Commission that disputing an election should be about irregularity in the conduct of the election or a breach of the *Parliamentary Electorates and Elections Act 1912*. The grounds for which an election can be challenged, either under that Act or any other Act, should be expressly specified.

**Recommendation 22**

**The Committee recommends that the NSW Government reviews the provisions in Part 6 of the *Parliamentary Electorates and Elections Act 1912* with a view to determining the grounds in which an election result can be challenged and voided by the Court of Disputed Returns.**

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<sup>183</sup> *Parliamentary Electorates and Elections Act 1912*, Part 6.

<sup>184</sup> NSW Electoral Commission, *Submission 20*, p 32.

<sup>185</sup> *Parliamentary Electorates and Elections Act 1912*, see Historical Notes in relation to the Court of Disputed Returns provisions - ss 154A to 175AA.

## Chapter Seven – Services for Voters

### ACCESSIBILITY OF POLLING PLACES

- 7.1 The Electoral Commission outlined that it had 2,806 polling places in NSW with 48.3% of these outside the Sydney metropolitan area.<sup>186</sup> It provided evidence that it had established 1,000 multi-district polling places to prevent delays and address inconvenience arising from the changes to electoral districts.<sup>187</sup>
- 7.2 The Committee received evidence about the difficulties some electors faced in relation to access to polling places. The Nationals noted that people with limited mobility are keen to vote pre-poll because of the complications of voting on polling day.<sup>188</sup>
- 7.3 The Electoral Commission provided evidence that where possible it used polling places that were fully accessible.<sup>189</sup> 19% of polling places were fully accessible, and 67% were assisted access.<sup>190</sup> Where possible, it tries to use the same places used by the Australian Electoral Commission for consistency.<sup>191</sup>
- 7.4 In relation to mobility impairment, the Committee heard evidence that a number of regional voters encountered polling places that were not suitable for use by people of limited mobility.<sup>192</sup> The Committee received evidence that there were issues to consider beyond accessing the polling place, with having access to shade or seats whilst queuing to vote also important considerations.<sup>193</sup> Further, proximity to accessible public transport and toilet facilities as well as appropriately located parking are also important considerations.<sup>194</sup>
- 7.5 The Electoral Commission confirmed that common complaints were issues related to accessibility for disabled or elderly voters, wait times or queues, the adequacy size and location of polling places, or voters being unable to locate a polling place.<sup>195</sup>

#### **Committee comment**

- 7.6 The Committee believes accessible polling places are imperative to ensure that citizens are able to exercise their right – and acquit their responsibility – to vote.
- 7.7 The Committee acknowledges that securing polling booths that are all accessible on Election Day may be problematic. However, given the substantially fewer

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<sup>186</sup> NSW Electoral Commission, *Submission 20*, p 69.

<sup>187</sup> NSW Electoral Commission, *Submission 20*, p 69.

<sup>188</sup> N. Quigley, State Director, NSW Nationals, *Transcript of Evidence*, 5 August 2016, p 22.

<sup>189</sup> NSW Electoral Commission, *Submission 20*, p 69.

<sup>190</sup> NSW Electoral Commission, *Submission 20*, p 69.

<sup>191</sup> NSW Electoral Commission, *Submission 20*, p 69.

<sup>192</sup> NSW Nationals, *Submission 16*, p 6.

<sup>193</sup> S. Ovens, Chief Executive Officer, Physical Disability Council NSW, *Transcript of Evidence*, 12 August 2016 p 23.

<sup>194</sup> Physical Disability Council NSW, *Submission 19*, p 11.

<sup>195</sup> J. Schmidt, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 12 August 2016, p 47.

booths required for pre-poll voting, the Committee considers that it is reasonable to expect that close to all, if not all, pre-poll voting booths should be accessible.

### Recommendation 23

**The Committee recommends that the Electoral Commission works to increase the number of fully accessible and assisted access polling places, including for wheelchair accessibility.**

## EDUCATION OF AND INFORMATION FOR VOTERS

7.8 The *Parliamentary Electorates and Elections Act 1912* requires the Electoral Commission to advertise important electoral activities. As such, the Commission provided a broader communication campaign to promote awareness of, and participation in, the 2015 NSW General Election.<sup>196</sup>

### *Informing a diverse community*

7.9 The Commission engaged with the Aboriginal and Torres Strait Islander Reference Group, the Culturally and Linguistically Diverse Reference Group and the Disability Reference Group to identify ways to ensure equal participation in the election process for all members of the community.<sup>197</sup>

7.10 To address the needs of these groups educational material was produced in a variety of forms including paper, audio, video, digital, and Auslan. The *How-to-Vote* brochure was also available in 23 different languages.<sup>198</sup>

### *Media campaign*

7.11 The media used to inform and educate voters for this election went beyond the traditional forms of television, radio and print, and included digital advertising and social media. In line with changing media consumption habits digital advertising was used to reach a more fractured audience and in this campaign, digital spend was second only to television.<sup>199</sup>

7.12 Digital advertising used multiple formats including banner displays on major news portals for computer and mobile devices. Each advertisement invited viewers to click through to the Electoral Commission's website for further action or information.<sup>200</sup> The Electoral Commission also used social media to communicate information about the election and found it a highly effective way to engage with electors and answer their questions in real time.<sup>201</sup>

<sup>196</sup> NSW Electoral Commission, *Submission 20*, p 44.

<sup>197</sup> NSW Electoral Commission, *Submission 20*, p 51.

<sup>198</sup> NSW Electoral Commission, *Submission 20*, p 51.

<sup>199</sup> NSW Electoral Commission, *Submission 20*, p 46.

<sup>200</sup> NSW Electoral Commission, *Submission 20*, p 45.

<sup>201</sup> NSW Electoral Commission, *Submission 20*, p 52.

## RECRUITMENT AND TRAINING OF POLLING STAFF

### *Recruitment and training*

- 7.13 In the 2015 NSW General Election there were 22,270 election officials employed across 2,806 polling places.<sup>202</sup>
- 7.14 Labor provided evidence that some polling booths required additional bilingual staff to assist voters.<sup>203</sup> Labor proposed that a mechanism be introduced to facilitate the exchange of information between political parties and the Electoral Commission about bilingual staff working at polling places with an identified need for such staff. Parties are currently consulted on the location of polling booths and so this would be an extension of the consultation process between the Electoral Commission and political parties.<sup>204</sup>
- 7.15 The Committee received evidence of isolated incidents of polling staff providing incorrect information to voters in relation to numbering the boxes above the line when voting for the Legislative Council.<sup>205</sup> The Committee also received submissions that incorrect advice was given to voters by polling staff in relation to the number of boxes to be completed on the Legislative Assembly ballot.<sup>206</sup>

### **Committee comment**

- 7.16 The Committee stresses the importance of polling staff providing correct information to voters, especially with respect to advising how to complete a ballot. The correct training of staff will be particularly important if the NSW Government adopts the Committee's recommendation concerning additional enforcement action that Returning Officers could take with respect to illegal signage and third-party campaigners.

## **Recommendation 24**

**The Committee recommends that the Electoral Commission provides appropriate training to Returning Officers and senior polling day staff about:**

- a) the correct information to provide to voters on how to cast a ballot; and**
- b) enforcement action that can be taken on polling day in response to unlawful conduct.**

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<sup>202</sup> J. Schmidt, Commissioner, NSW Electoral Commission, *Transcript of Evidence*, 12 August 2016, p 46.

<sup>203</sup> K. Murnain, General Secretary, Labor NSW, *Transcript of Evidence*, 12 August 2016 p 5.

<sup>204</sup> K. Murnain, General Secretary, Labor NSW, *Transcript of Evidence*, 12 August 2016 p 5.

<sup>205</sup> I. Smith, Assistant Treasurer, Christian Democratic Party, *Transcript of Evidence*, 5 August 2016, p 30; Christian Democratic Party, *Submission 21*, p 3.

<sup>206</sup> The Greens, *Submission 8*, p 5.

# Chapter Eight – Regulatory Compliance and Reform

## AUDITING OF POLITICAL PARTIES

### *Materiality*

- 8.1 In its submission to the Inquiry, the Shooters, Fishers and Farmers Party highlighted that the Electoral Commission’s approach to auditing involves a cross referencing of expenses to the nearest cent.<sup>207</sup> The Shooters, Fishers and Farmers Party submitted that this was not an efficient use of the Electoral Commission’s time and proposed instead that they apply the principle of materiality to achieve better use of resources.
- 8.2 The materiality principle provides that an accounting standard will not be applied if the net impact of doing so has such a small impact on the financial statements that a reader of the financial statements would not be misled. In its *Financial Reporting Code for NSW General Government Sector Entities*, the NSW Department of Treasury outlines that materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor when determining whether to apply the principle of materiality.<sup>208</sup>
- 8.3 In the Panel of Experts’ *Political Donations Final Report*, the concept of materiality is reflected in a number of recommendations.<sup>209</sup> These recommendations either relate to rounding up the payments of caps to the nearest \$100 or rounding up the adjustment of payments to the nearest \$100.

### **Committee comment**

- 8.4 The Committee considers that utilising the principle of materiality as outlined in the NSW Department of Treasury’s *Financial Reporting Code for NSW General Government Sector Entities* would provide an appropriate mechanism to the Electoral Commission to assist in the efficient deployment of resources when exercising its audit functions.

## Recommendation 25

**The Committee recommends that the Electoral Commission uses the materiality principle in all of its audit processes.**

### *Audit of parties*

- 8.5 Registration of political parties is not compulsory in NSW. However, parties that meet the requirements of registration are entitled to have the party name

<sup>207</sup> Shooters, Fishers and Farmers Party, *Submission 17*, p 3.

<sup>208</sup> NSW Treasury, [Accounting Policy: Financial Reporting Code for NSW General Government Sector Entities: Policy & Guidelines Paper](#), tpp15-04; December 2015, p. 15

<sup>209</sup> K. Schott, A. Tink AM, The Hon. J. Watkins, *Panel of Experts, Political Donations, Final Report, Volume 1*, NSW Department of Premier and Cabinet, December 2014 pp 11-14.

printed next to the names of endorsed candidates on ballot papers, may have access to copies of the NSW Electoral Roll and may be eligible for public funding from either the election campaigns fund, the administration fund or the policy development fund.

- 8.6 To be eligible for registration for elections, a party must have 750 members who are enrolled on the NSW Electoral Roll who are not also relied upon by another party for registration purposes.<sup>210</sup>
- 8.7 For the purposes of declaring membership of a party, the *Parliamentary Electorates and Elections Regulation 2008* prescribes a form to be completed and signed by a member of the party on whom the party relies for the purposes of qualifying as an eligible party.<sup>211</sup> For the purposes of declaring on an annual basis that the party continues to meet the membership requirements of a registered party, the Regulation also prescribes a form to be completed each year.<sup>212</sup>
- 8.8 Section 66I of the *Parliamentary Electorates and Elections Act 1912* provides for the cancellation of registration of a party. The section outlines that the Electoral Commissioner may carry out tests and inquiries. Sub-section 66G(2A) provides that the Electoral Commissioner may require a written response from at least a specified percentage of, or any specified number of, the members relied on for registration of the party confirming that they are in fact members of the party.

**Committee comment**

- 8.9 The Committee notes that there is a legislative provision providing for the Electoral Commissioner to require written responses from a specified percentage or a specified number of the members relied on for registration of a political party.<sup>213</sup>
- 8.10 It is important for public confidence and transparency that registered parties maintain their eligibility for registration. The Committee considers that there ought to be appropriate measures to ensure that registered political parties continue to meet the eligibility criteria.

## Recommendation 26

**The Committee recommends that each year the Electoral Commission:**

- a) undertakes a random audit of 25% of party members of the members submitted for registration to confirm their bona fides and that they are genuine current members of their party;**
- b) conducts a full audit of party members submitted for registration if 20 or more members are found to be ineligible through the audit process;**
- c) requires parties with 51 or more ineligible members to provide a new list of eligible members within three months, or be deregistered;**

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<sup>210</sup> *Parliamentary Electorates and Elections Act 1912*, Pt 4A.

<sup>211</sup> *Parliamentary Electorates and Elections Regulation 2008*, cl 33 and form 19 of Schedule 1.

<sup>212</sup> *Parliamentary Electorates and Elections Regulation 2008*, cl 34 and form 20 of Schedule 1.

<sup>213</sup> *Parliamentary Electorates and Elections Act 1912*, ss 66I(2A) and 66G(2A).

- d) allows each party to provide details of 800 members to the Commission each year to ensure parties do not lose registration because of a small number of members being deemed ineligible.

### *Lodgement of disclosure form*

- 8.11 The Electoral Commission currently requires the lodgement of a disclosure form by registered political parties on or before 22 September each year. Meanwhile, major political donors have until 20 October to lodge a declaration of disclosure. This is some four weeks later than the requirement for registered political parties.

#### **Committee comment**

- 8.12 To provide political parties with sufficient time, the Committee considers that it is appropriate that the political parties be provided with additional time to lodge disclosure forms. As such, the due date for lodgement should be the same for both political parties and major donors. This would provide a consistent timeframe between political parties and major donors.

### **Recommendation 27**

**The Committee recommends that the period for the lodgement of the disclosure form, including the audited financial statements, by registered political parties be extended to 20 October each year.**

## **ADMINISTRATIVE FUNDING**

- 8.13 Under section 97(E) of the *Election Funding, Expenditure and Disclosures Act 1981*, independent Members of Parliament and parties with elected Members of Parliament are entitled to reimbursement for specified administration and operation expenses. These reimbursements are paid from the Administration Fund, which is managed by the Election Funding Authority.
- 8.14 The Administration Fund exists to support parties in the management of their activities, for assistance in regulatory compliance, seminars, equipment, staff remuneration and other incidental expenses.
- 8.15 The allocation of monies to be paid from the Administration Fund is specified under section 97E(3) of the *Election Funding, Expenditure and Disclosures Act 1981*. The sums vary according to a sliding scale from \$100,000 to \$250,000 per member. These sums represented an increase that was fixed in legislation through an amendment to the principal Act in 2014, coming into effect in October that year.
- 8.16 In its review of political donations, the Panel of Experts expressed its view that the policy reasons for the increase were not adequately explained. As a result, the Panel recommended a reversion back to the model for calculating entitlements from the Administration Fund as had been operative prior to 2014.<sup>214</sup>

<sup>214</sup> K. Schott, A. Tink AM, The Hon. J. Watkins, *Panel of Experts, Political Donations, Final Report, Volume 1*, NSW Department of Premier and Cabinet, December 2014 p90.

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- 8.17 In response, the NSW Government accepted the Panel's recommendation in principle, with the added caveat that it awaits the report of this Committee's review of the Panel of Expert's report on political donations.
- 8.18 In its June report, this Committee departed from the Panel of Expert's recommendation. In particular, the Committee recommended that the current model for calculating the distribution of funds for administrative purposes be retained, in direct contrast to the Panel of Expert's recommendation.
- 8.19 In evidence given to the Committee in its *Review of the Expert Panel's Report – Political Donations and the Government Response*, the majority of political parties with elected representatives in NSW were opposed to a reversion to the pre-2014 method of allocation of administrative funding. Much of the opposition was predicated on an expectation that additional compliance costs were likely to be incurred should other reforms recommended by the Panel of Experts be implemented.
- 8.20 At the time, the Liberal Party advised the Committee that these reforms would result in a substantial increase in obligations for candidates, political parties and other stakeholders.<sup>215</sup>
- 8.21 The Christian Democratic Party similarly noted that if the recommendations were adopted, the associated financial and administrative burden would result in the Party searching for additional funds to meet the costs of compliance.<sup>216</sup>
- 8.22 The Nationals concurred with the view that administration funding allows them to supplement the activities and resources of Members of Parliament and participate in community engagement. In the absence of persuasive reasons provided by the Panel of Experts, the Nationals emphasised that any decrease in funding would unfairly and disproportionately affect minor parties.
- 8.23 Labor also endorsed the current model of administrative funding for political parties, and similarly cited the Administration Fund as an 'important resource' central to covering the cost of compliance measures.<sup>217</sup>
- 8.24 The Shooters, Fishers and Farmers Party echoed calls for an increase in administrative funding, also citing the added complexity foreshadowed by the proposed reforms.
- 8.25 Lastly, the Greens recommended an alternative method of calculation for administrative funding. They suggested shifting away from the current model of funding based on the total number of elected Members of Parliament, to a model based on the primary vote share each party received at the election for either House of Parliament, regardless of eventual Members elected.<sup>218</sup>

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<sup>215</sup> T. Nutt, State Director Liberal Party of Australia, *Transcript of Evidence*, 30 October 2015 p 33.

<sup>216</sup> Christian Democratic Party, *Submission 4 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 6.

<sup>217</sup> NSW Labor, *Submission 5 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 2.

<sup>218</sup> G. Ash, Registered Officer, NSW Greens, *Transcript of Evidence*, 30 October 2015, p 14.

**Committee comment**

- 8.26 The 2014 reforms were an important and welcome start in addressing deficiencies in administrative funding. However, anticipated changes in the regulatory landscape may soon render the funding guaranteed by these reforms as insufficient.
- 8.27 In recognition of the increased administrative burden placed on registered political parties, the Committee is of the view that far from decreasing the amount to be paid from the Administration Fund, it should in fact be increased.
- 8.28 Appropriate and sufficient increases payable from the Administration Fund will help in the ongoing professionalisation of registered political parties. This in turn will lead to a better administration of parties and ensure ongoing regulatory compliance.

**Recommendation 28**

The Committee recommends that section 97E of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to increase the allocation of monies from the Administration Fund. The Committee recommends that the sums be increased in accordance with the following table:

Members elected	Relevant sections to be amended	Current allocation	Proposed allocation
1	97E(3)(a)	\$250,000	\$350,000
2	97E(3)(b)	\$450,000	\$600,000
3	97E(3)(c) – (d)	\$600,000	\$750,000
Each additional Member after the first three elected	97E(3)(d)	\$100,000	\$120,000

**DISCLOSURE OF POLITICAL DONATIONS**

- 8.29 Under sections 86 and 88-91 the *Election Funding, Expenditure and Disclosures Act 1981*, political parties, candidates, elected members, and third party campaigners are required to disclose political donations received during the relevant disclosure period to the Electoral Commission. The relevant disclosure period is defined under section 89 of that Act as any 12 month period ending 30 June.
- 8.30 A reportable political donation is captured by section 86 of the Act and includes any donation of or exceeding \$1,000 for the benefit of the party, candidate, elected member or third party campaigner. This includes reporting separate donations that, when aggregated in a 12 month period, meet or exceed the \$1,000 threshold.

- 8.31 In its review of political donations, the Panel of Experts made two recommendations with respect to the disclosure of political donations. The first was the Electoral Commission replaces its current paper-based disclosure form with an online disclosure system as soon as possible.<sup>219</sup> Its second was that real-time disclosure of political donations of \$1,000 or more be introduced for the six-month period before the election.<sup>220</sup>
- 8.32 The NSW Government supported both these recommendations in principle, noting that such changes were contingent on required administrative and operational changes by the Electoral Commission. In its June report, this Committee supported both the Panel of Experts' recommendation and the Government's response.

### *Online disclosure*

- 8.33 In evidence given to the Committee in its *Review of the Expert Panel's Report – Political Donations and the Government Response*, the overwhelming majority of stakeholders who provided a submission agreed with a proposed move to the online disclosure of political donations. The Panel of Experts itself noted that the paper-based method of reporting is archaic, stating:

...timely and meaningful disclosure is the cornerstone of any effective campaign funding regime.<sup>221</sup>

- 8.34 Labor deemed it an 'urgent priority', noting that it would improve transparency as well as increasing compliance with the legislation.<sup>222</sup> The Nationals similarly supported online disclosure, labelling the paper-based forms as complicated and burdensome.<sup>223</sup>
- 8.35 Two minor parties supported this recommendation in principle, but noted that changes to the regulatory landscape often mean an increase in compliance costs that disproportionately impact minor parties. The Shooters, Fishers and Farmers Party noted that continual change of requirements creates resource and administrative challenges.<sup>224</sup> The Christian Democratic Party similarly supported this principle but noted that there should be funding for parties to offset any increased costs with implementing an online disclosure system.<sup>225</sup>
- 8.36 For its part, the Electoral Commission supported a comprehensive online system for the reporting of political donations and expenditure. It also noted that it requires funding for the development of the software.

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<sup>219</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 100.

<sup>220</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 101.

<sup>221</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 9.

<sup>222</sup> NSW Labor, *Submission 5 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 7.

<sup>223</sup> NSW Nationals, *Submission 7 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 10.

<sup>224</sup> Shooters, Fishers and Farmers Party, *Submission 2 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 5.

<sup>225</sup> Christian Democratic Party, *Submission 4 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 7.

*Real-time disclosure*

8.37 In evidence given to the Committee in its *Review of the Expert Panel's Report – Political Donations and the Government's Response*, the Committee received broad support from a cross-section of stakeholders on the real-time reporting of political donations. Both the Christian Democratic Party and the Shooters, Fishers and Farmers Party supported the recommendation in principle.<sup>226</sup> Labor supported real-time reporting throughout the four year term of Parliament, and not just the immediate six months preceding an election as had been recommended by the Panel of Experts.<sup>227</sup>

8.38 Unions NSW was of the view that the:

... objective of transparency in the current disclosure requirements are undermined by the fact that disclosures are not known until after the electorate has voted. That is why we support real-time disclosure.<sup>228</sup>

8.39 The Panel of Experts agreed that reporting was 'so delayed as to be of little interest to voters'.<sup>229</sup>

**Committee comment**

8.40 The online reporting of political donations could be achieved through the development of an online portal, hosted on the Electoral Commission's website. Such a system would align NSW with the many other jurisdictions that have moved away from an outdated and cumbersome paper-based disclosure.

8.41 The advent of an online system of reporting would then assist in the real-time disclosure of political donations. The Committee believes that transparency will be improved by such a continuous disclosure requirement in which a contemporaneous disclosure contains information that is up-to-date.

8.42 By lodging a declaration up to 12 months following the receipt of a political donation, its value and the interest to the public is diminished by the passage of time. This is particularly pertinent when donations are made prior to an election, but its disclosure only takes place afterward.

8.43 In further reflection on these matters, the Committee is of the view that it is appropriate to implement real-time disclosure of political donations as a matter of priority. To facilitate this, the software for an online portal would first have to be developed through which disclosures are made freely available to the general public.

<sup>226</sup> Shooters, Fishers and Farmers Party, *Submission 2 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 7; Christian Democratic Party, *Submission 4*, p 7.

<sup>227</sup> NSW Labor, *Submission 5 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 7.

<sup>228</sup> M. Lennon, Assistant Secretary Unions NSW, *Transcript of Evidence*, 30 October 2015, p 53.

<sup>229</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 9.

### Recommendation 29

The Committee recommends that the Electoral Commission develops an online portal for the disclosure of reportable political donations and that these disclosures be made freely available to members of the public.

The Committee recommends that the Electoral Commission publishes reportable political donations as soon as possible after they have been received and not later than 48 hours following receipt.

### Recommendation 30

The Committee recommends that once the online portal for the disclosure of reportable political donations is available for use, individual donations at or above the amount defined as being a *reportable political donation* under section 86 of the *Election Funding, Expenditure and Disclosures Act 1981* be disclosed to the Electoral Commission in accordance with the following times:

Amount donated	Deadline for reporting
Single donations exceeding the reportable political donation:	5:00pm on the next business day following receipt
Single donations below the reportable political donation, but in aggregate with other donations from the same donor, exceed the reportable political donation:	5:00pm on the seventh calendar day following receipt

## RESTRICTIONS ON POLITICAL DONATIONS

### *Party subscription fees*

- 8.44 Section 95A of the *Election Funding, Expenditure and Disclosures Act 1981* places general caps on donations to political parties and candidates. However, membership and affiliation fees (or 'subscription fees') are partially exempt from the caps on political donations. In particular, section 95D of the Act provides that subscription fees can be paid up to a maximum annual fee of \$2,000 in addition to a separate political donation being made, which itself is subject to a cap of \$5,000. When a subscription fee exceeds \$2,000, the surplus is treated as a political donation and the relevant caps on political donations then apply.<sup>230</sup>
- 8.45 Under section 96(6) of the Act, parties are not permitted to use subscription fees for campaign purposes. However, at the time of its enactment in 2010, it was the legislative intent that such fees be reserved to meet party administration costs.<sup>231</sup>
- 8.46 The reason for this restriction was to prevent a circumvention of the political donation caps and allow for the raising of funds through alternative means.

<sup>230</sup> *Election Funding, Expenditure and Disclosures Act 1981*, s95D

<sup>231</sup> K. Keneally, *NSW Public Digest, Legislative Assembly*, 28 October 2010, p 27169.

Arguably, political parties could raise supplementary campaign funds through donors becoming nominal party members, thus increasing the total amount that donors can contribute.

8.47 According to most minor political parties in NSW, the parties themselves should not be prohibited from using subscription fees for campaign purposes. This was evident from submissions made before this Committee and before the Panel of Experts in its review of Political Donations in 2014.

8.48 Specifically, the Shooters, Fishers and Farmers Party has argued that:

... [it] does not support the quarantining of membership fees for purely administration purposes as it acts to create an ingrained bias against smaller and minor parties. Simply put, members of the SFP... do not expect their membership monies to be applied only to paying for increased compliance costs. They would rightfully expect that their monies be applied where it is best used, i.e. in funding elections.<sup>232</sup>

8.49 The Christian Democratic Party concurred on this point, noting that the restriction or quarantining of membership subscriptions for purely administrative purposes would:

... by definition and operation severely discriminate against the minor political parties and hence limit our funding of elections.<sup>233</sup>

8.50 The Greens similarly argued that types of income that can be used for campaign purposes were subject to 'some overly strict limitations'. In its submission to this Committee, the Greens also noted that in not being a direct political donation, the risk of corruption is diminished:

Membership fees for example are prohibited to be deposited in such an account even though they are subject to a cap per member and are a non-corrupting source of income for a party.<sup>234</sup>

8.51 Labor concurred with this view insofar that 'allowing the use of membership fees will help reduce the level of private donations needed for campaign funding'.<sup>235</sup>

#### **Committee comment**

8.52 The Committee notes the concerns raised by the minor parties with respect to the current restriction on the use of subscription fees. In particular, the Committee recognises that the membership base of these parties would ordinarily expect their fees to be used for campaign purposes.

8.53 The Committee also recognises that the current restriction disproportionately impacts minor parties. This is underscored by the fact that a relatively higher

<sup>232</sup> Shooters, Fishers and Farmers Party, *Submission 2 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 3.

<sup>233</sup> Christian Democratic Party, *Submission 4 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*, p 5.

<sup>234</sup> The Greens, *Submission 8 – Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response* at p 9. The Greens also argued that the cap of \$2,000 per annum was too generous, and recommended a significantly lower cap at \$250.

<sup>235</sup> Labor, *Submission 18, Political Donations Volume 1*, Panel of Experts, December 2014, p 8.

proportion of funding for minor political parties is sourced through subscription fees rather than political donations per se. It is the Committee's views that it should be at the discretion of the party as to how they spend revenue collected from subscription fees. This could be either for campaign or administrative purposes.

### Recommendation 31

**The Committee recommends that section 96(6) of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to remove the restriction on political parties using subscription fees for campaign purposes. This would allow, but not require subscription fees to be used for campaign purposes.**

#### *Transfer of campaign funds*

- 8.54 Section 95A(1)(b)(iii) of the *Election Funding, Expenditure and Disclosures Act 1981* places a cap of \$2,000 annually on political donations to candidates. This donation cap applies even when the head offices of political parties are transferring funds internally to any of its endorsed candidates.
- 8.55 In order for political parties to support their candidates beyond the initial \$2,000 donation, section 84(7) of the Act provides that political parties can incur electoral expenditure and then invoice their candidates for the expense. Importantly, section 84(7) recognises that candidates may not be under any legal liability to pay the invoice. Indeed, in many cases, candidates will reimburse their parties the monies that they are able to receive from their public funding entitlement.
- 8.56 The Committee received evidence in which it was recommended that the \$2,000 donation cap from political parties to their endorsed candidates be removed.
- 8.57 The Nationals argued that the current rules require the creation of 'elaborate and unnecessary financial arrangements' that are essentially designed to circumvent the caps. They further argued these requirements 'fail to recognise the common interests of parties and candidates' in pursuing the same goal.<sup>236</sup>
- 8.58 Meanwhile, The Greens argued that transfers from political parties do not present a corruption risk. They have argued that it would:
- [Be] more transparent than the current obscure method of parties funding their candidates...<sup>237</sup>
- 8.59 As the legislation allows parties to fund their candidates through the mechanism provided at section 84(7) anyway, the question arises as to the purpose of maintaining the prohibition of transferring funds directly. The Greens further deemed this pathway 'cumbersome and questionable'.<sup>238</sup>

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<sup>236</sup> The National Party, Submission No. 44, *Panel of Experts – Political Donations*, September 2014, p 4.

<sup>237</sup> The Greens, *Submission 40, Political Donations Volume 1*, Panel of Experts, December 2014, p 8.

<sup>238</sup> The Greens, Submission No. 40, *Panel of Experts – Political Donations*, September 2014, p 8.

- 8.60 The Panel of Experts recognised the realities of this method of funding, but also stressed that it did ‘not consider there is anything inherently wrong with such arrangements ...’<sup>239</sup>

**Committee comment**

- 8.61 The purpose of caps on political donations is to reduce the risk or perception of corrupting influences. However, political parties and their candidates generally work toward a common goal and the Committee does not regard the flow of money between parties and their candidates as an issue that should warrant concern.
- 8.62 To this end, the Committee argues that removing the cap will better reflect the realities of how political parties manage and fund their candidates’ campaigns. In doing so, it would remove the fiction of an invoicing trail that is both cumbersome and – despite being expressly provided for in the Act – does not align with the purpose of transparency that underpins the very reasons for these provisions.

**Recommendation 32**

**The Committee recommends that section 95A of the *Election Funding, Expenditure and Disclosures Act 1981* be amended to provide an exemption on the transfer of funds from political parties to endorsed candidates of the same party.**

**CAMPAIGN EXPENDITURE CAPS**

*Geographical considerations*

- 8.63 Under section 95F of the *Election Funding, Expenditure and Disclosure Act 1981*, there are two separate caps for expenditure by parties on election campaigning for Legislative Assembly seats. As it stands, the caps are set at \$100,000 for each candidate plus an additional \$50,000 party cap in respect of each electorate. Combined, this means there is a potential \$150,000 expenditure allowed per party and its endorsed candidate for each electorate it contests.
- 8.64 The Act, as currently drafted, does not make a distinction between electorates, and the \$150,000 combined cap applies regardless of geographic size or distribution of population centres within the electorate.
- 8.65 The Committee has received evidence from The Nationals in which they have set out their case in favour of the development of expenditure caps that take into account the cost of campaigning in regional electorates.
- 8.66 In explaining its reasons, The Nationals have identified three key concerns. The first is that in rural and regional electorates, there is an added expense for television and radio advertising. A key reason for this is that the party requires access to different media markets that service different corners of larger electorates.

<sup>239</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 55.

- 8.67 A second reason identified is the cost incurred with the distribution of posted material. Given the lack of reliable distributors, The Nationals advised the Committee that they rely on volunteers or Australia Post, 'the latter of which is the most expensive ... means of distribution'.<sup>240</sup>
- 8.68 Lastly, The Nationals noted that the increased costs associated with travelling across larger electorates are 'a consequence of regional campaigning'.<sup>241</sup> The cost incurred includes fuel for long distance car travel, as well as plane travel to cover the lengthier distances.
- 8.69 In its review of political donations, the Panel of Experts expressly stated that it did not recommend that the expenditure of caps be altered for rural and regional electorates.<sup>242</sup> In its discussion of the reasons against making a recommendation, the Panel of Experts conceded that it was 'unable to form a definite view' and reflected on the paucity of sufficient data to properly analyse the issue.<sup>243</sup> However, its inclination was to keep the rules simple and considered that differential expenditure caps based on electorate size would be 'unnecessarily complicated'.<sup>244</sup>

#### **Committee comment**

- 8.70 The Committee supports a differentiated expenditure cap, where the costs involved in running an election campaign in larger electorates is a considered factor.
- 8.71 The Committee also notes that larger electorates are serviced by more than one electorate office, with additional support staff. This is a reflection of the difficulty in servicing larger electorates with more than one major population centre. It is therefore a logical extension to apply this differentiated standard to larger electorates for the purposes of campaign expenditure.
- 8.72 As this increased expenditure cap would be available to all parties and candidates running in larger geographical electorates, an even playing field is maintained as all would have access to the higher cap.
- 8.73 The Committee is also mindful that each redistribution of electorates results in already large regional and rural electorates getting even larger. With ongoing demographic shifts where the rate of growth in metropolitan areas is higher than in rural and regional electorates, this increase in geographic size is only going to continue.

### **Recommendation 33**

**The Committee recommends that the NSW Government reviews and investigates the development of expenditure caps that take into account the**

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<sup>240</sup> NSW Nationals, *Submission 16*, p 11.

<sup>241</sup> NSW Nationals, *Submission 16*, p 11.

<sup>242</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 66.

<sup>243</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 66.

<sup>244</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#) December 2014, p 66.

**increased cost of campaigning in rural and regional electorates given the increases in their geographic area after each redistribution.**

### *Reimbursement of expenses*

- 8.74 Under section 57 of the *Election Funding, Expenditure and Disclosures Act 1981*, eligible parties or candidates that receive four percent of the primary vote in an Assembly or Council election are eligible to public funding. In particular, they are entitled to a partial reimbursement of their campaign expenditure. The same applies for any party that has a candidate elected, regardless of popular vote. The Electoral Commission reimburses campaign expenditure in accordance with a diminishing sliding scale.
- 8.75 To have their campaign expenditure reimbursed, clause 10 of that the *Election Funding, Expenditure and Disclosures Regulation 2009* requires that candidates or parties must lodge copies of the invoices and/or receipts of each item of expenditure. This must be accompanied with copies of the advertising material itself, which includes radio, television, internet, newspapers, brochures and how-to-vote cards.
- 8.76 In its review of political donations, the Panel of Experts supported retaining the reimbursement scheme, but noted that there were elements which made it relatively ‘administratively demanding’.<sup>245</sup>
- 8.77 One of the administrative burdens affecting parties is that regardless how small the cost of the advertisement, and no matter how many times payment is made on the same advertisement, parties and candidates must submit that advertisement with each claim for reimbursement.
- 8.78 Social media advertising – particularly Facebook and Twitter – works in a different way to traditional advertising which does not appear to be reflected in the Regulation. Social media advertising is relatively inexpensive and parties are likely to only spend small sums – but repeatedly – to advertise online.
- 8.79 Both Facebook and Twitter advertising works by allowing clients to promote customised content to a unique user who is likely to engage with the advertisement. Clients can establish a small budget from which payments are steadily deducted, depending how many times someone clicks on or engages with the advertisement. Once the budget allocation is depleted, a small booster payment can be made to ensure the advertisement remains active.
- 8.80 Despite being a considerably small amount, the Regulation requires all parties to provide copies of that same Facebook or Twitter advertisement with individual invoices to be eligible for reimbursement.<sup>246</sup> This requirement applies notwithstanding the small sums to be reimbursed.

### **Committee comment**

- 8.81 The Committee notes the administrative burden on parties and candidates in vouching for advertisements on social media. The Committee considers this to

<sup>245</sup> K. Schott, J. Watkins & A. Tink, [Political Donations, Final Report, Volume 1](#), December 2014, p 74.

<sup>246</sup> *Election Funding, Expenditure and Disclosures Regulation 2009*, Cl. 9

be an essentially redundant process that offers little-to-no value to the Electoral Commission, but for candidates and parties can be both labour-intensive and a nuisance.

#### **Recommendation 34**

**The Committee recommends that the NSW Government removes the requirement for parties and candidates to vouch for advertising material by providing a copy of the advertisement where the cost is less than \$20. The \$20 threshold should apply to each individual advertisement, and not be aggregated with other expenses in respect of the same advertising provider.**

# Appendix One – List of Submissions

1	Confidential
2	Dr Vanessa Teague and Prof Rajeev Gore
3	Funding & Disclosure (Inc.)
4	Scytl Australia Pty Ltd
5	Electoral Reform Australia
6	Public Service Association of NSW
7	Miss Casey Peters
8	The Greens
9	Mr Ron Hoenig MP
10	BigPulse
11	NSW Labor
12	Unions NSW
13	Mr Antony Green
14	Name Suppressed
15	Fire Brigade Employees' Union
16	NSW Nationals
17	Shooters, Fishers and Farmers Party
18	Mr Greg Briscoe-Hough
19	Physical Disability Council of NSW Inc.
20	NSW Electoral Commission
21	Christian Democratic Party (Fred Nile Group)
22	Liberal Party of Australia (NSW Division)

## Appendix Two – List of Witnesses

FRIDAY, 5 AUGUST 2016 – MACQUARIE ROOM, NSW PARLIAMENT

<b>Witness</b>	<b>Organisation</b>
Mr Geoff Ash <i>Registered Officer</i>	The Greens
Mr Antony Green	
Mr Thomas Aubert <i>Deputy State Director</i>	NSW Nationals
Mr Nathan Quigley <i>State Director</i>	NSW Nationals
Mr Grant Layland <i>State Treasurer</i>	The Shooters, Fishers and Farmers Party NSW
Mr Ian Smith <i>Assistant Treasurer</i>	Christian Democratic Party (Fred Nile Group)
Mr Greg Bondar <i>NSW State Director</i>	Christian Democratic Party (Fred Nile Group)
Mr Chris Stone <i>State Director</i>	Liberal Party of Australia, NSW Division
Mr Mark Morey <i>Secretary</i>	Unions NSW
Ms Kate Minter	Unions NSW
Dr Vanessa Teague <i>Senior Lecturer</i> <i>Department of Computing &amp; Information Systems</i>	The University of Melbourne
Professor Rajeev Gore <i>Professor</i> <i>Research School of Computer Science</i>	The Australian National University

## FRIDAY, 12 AUGUST 2016 – MACQUARIE ROOM, NSW PARLIAMENT

<b>Witness</b>	<b>Organisation</b>
Ms Kaila Murnain <i>General Secretary</i>	NSW Labor
Mr Stephen Lesslie <i>President</i>	Electoral Reform Australia
Ms Susan Gregory <i>Vice President</i>	Electoral Reform Australia
Ms Serena Ovens <i>Chief Executive Officer</i>	Physical Disability Council of NSW Inc.
Mr Lachlan Campbell <i>Director of Operations</i>	ScytI Australia Pty Limited
Professor Rodney Smith <i>Department of Government &amp; International Relations</i>	University of Sydney
Mr John Schmidt <i>NSW Electoral Commissioner</i>	NSW Electoral Commission
Ms Linda Franklin <i>Director, Elections</i>	NSW Electoral Commission
Mr Simon Kwok <i>A/Director, Elections</i>	NSW Electoral Commission
Mr Paul Beeren <i>Director, Enrolments</i>	NSW Electoral Commission
Mr Mark Radcliffe <i>iVote Manager</i>	NSW Electoral Commission
Dr Vanessa Teague <i>Senior Lecturer</i> <i>Department of Computing &amp; Information Systems</i>	The University of Melbourne
Professor Rajeev Gore <i>Professor</i> <i>Research School of Computer Science</i>	The Australian National University

## Appendix Three – Extracts from Minutes

### MINUTES OF MEETING No 2

1:02 pm

Thursday, 25 June 2015

Room 814/815

#### Members Present

Mr Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, Mrs Melinda Pavey MP, Mr Jai Rowell

MP (Chair), Mr Mark Taylor MP, Ms Anna Watson MP.

#### Officers in Attendance

Carly Maxwell, Vedrana Trisic and Stephanie Kimisi

#### 1. Minutes of meeting No.1

Resolved, on the motion of Mr Crouch, seconded by Mr Taylor, that the minutes of meeting No.1, held on 4 June 2015, be confirmed.

#### 2. \*\*\*

#### 3. Committee's Inquiry into the 2015 NSW State election

Resolved, on the motion of Mr Taylor, seconded by Mr Borsak:

- That the Committee call for submissions and advertise the inquiry on the Committee's website by 29 June 2015,
- That the closing date for submissions be 24 August 2015, and
- That the Chair issue a press release promoting the inquiry.

#### 4. Proposed list of stakeholders to be invited to make a submission

Resolved, on the motion of Ms Watson, that the stakeholders, as per the list circulated, be informed of the inquiry and invited to make a submission.

The Committee also agreed that members should advise Committee staff of any additional stakeholders, to be invited to make a submission.

#### 5. \*\*\*

#### 6. Next meeting

The Committee adjourned at 1:05 pm until a time and date to be determined.

### MINUTES OF MEETING No 3

8:30AM

Thursday, 27 August 2015

Waratah Room

#### Members Present

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Ms Anna Watson MP.

**Officers in Attendance**

Jason Arditi, Vedrana Trisic and Jessica Falvey.

**Apologies**

Mr Mark Taylor, MP

**1. \*\*\***

**2. Committee's Inquiry into the 2015 NSW State Election**

Resolved, on the motion of Ms Watson, that the Committee extend the deadline for receiving submissions to the Inquiry into the 2015 NSW State Election until Thursday, 3 September 2015.

**3. Next meeting**

The Committee adjourned at 9:05AM until Thursday, 17 September 2015 at 8:30AM.

**MINUTES OF MEETING No 4**

8:32am, Thursday, 17 September 2015

Waratah Room

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Ms Anna Watson MP.

**Officers in Attendance:** Jason Arditi, Vedrana Trisic, Jessica Falvey and Derya Sekmen

**1. Apologies**

Mr. Mark Taylor, MP

**2. Minutes of Meeting No. 2 and No.3**

Resolved, on the motion of Mr. Phelps seconded by Mr. Crouch, that the minutes of meeting No.2, held on 25 June 2015, and the minutes of meeting No.3, held on 27 August 2015, be confirmed.

**3. Inquiry into the 2015 NSW State Election:**

**3.1. Considerations of submissions**

Resolved, on the motion of Mr. Primrose seconded by Ms. Watson, that

- the Committee receives and authorises the publication-in-full of the submissions 2-13 and 15-22, partial publication of submission 14;
- submission 1 remains confidential to Committee members and is not to be published; and
- in preparing submissions for publication, material in any published submission be redacted which identifies or tends to identify any third party either by name; address; business name, type or location; includes any photographs; defames or potentially

defames any individual third party through a description of their business or activity; or may expose any submission maker to unwanted attention.

### **3.2. Public hearings- Confirmation of public hearing dates and witnesses**

Resolved, on the motion of Mr. Crouch seconded by Ms. Pavey, that the:

- Committee conducts a public hearing on the 30th October 2015;
- Committee staff canvass members' availability for a second day of hearings; and
- Committee invites the following witnesses to its hearings:
  1. NSW Electoral Commission- Submission 20
  2. The Greens- Submission 8
  3. NSW Nationals- Submission 16
  4. Liberal Party of Australia, NSW Division- Submission 22
  5. NSW Labor- Submission 11
  6. The Christian Democratic Party- Submission 21
  7. Shooters and Fishers Party- Submission 17
  8. Dr Vanessa Teague- Submission 2
  9. ScytI Australia Pty Ltd- Submission 4
  10. Unions NSW- Submission 12
  11. Physical Disability Council of NSW- Submission 19
  12. Mr Antony Green- Submission 13
  13. Electoral Reform Australia- Submission 5

### **3.3. Request from Mr Thomas George MP to appear in a public hearing**

Discussion ensued and the Chair advised that this matter will be dealt with at a later stage.

4. \*\*\*

5. \*\*\*

6. \*\*\*

7. \*\*\*

### **8. Next Meeting**

The Committee adjourned at 8:46am sine die.

### **MINUTES OF MEETING No 5**

8:29am, Wednesday, 21 October 2015

Room 1254

#### **Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Ms Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Mr Mark Taylor MP.

**Officers in Attendance:** Jason Arditi, Vedrana Trisic, Jessica Falvey and Derya Sekmen

#### **1. Apologies**

Ms Anna Watson, MP

**2. Minutes of Meeting No.4**

Resolved, on the motion of Mr. Franklin, seconded by Mr. Borsak, that the minutes of meeting No.4, held on 17 September 2015, be confirmed.

3. \*\*\*

**4. Inquiry into the 2015 NSW State Election**

**4.1. Research on electors' satisfaction with the administration of the 2015 NSW State General Election prepared for the NSW Electoral Commission by the Ipsos Social Research Institute**

Resolved, on the motion of Mr. Phelps seconded by Mr. Crouch, that the Committee receives and authorises the publication-in-full of the attachment to Submission 20, 2015 NSW State General Election Research, prepared for the NSW Electoral Commission by the IPSOS Social Research Institute.

5. \*\*\*

6. \*\*\*

**7. Next Meeting**

The Committee adjourned at 8:36am until 8:45am on 30 October 2015.

**MINUTES OF MEETING No 7**

1:11pm, Wednesday, 1 June 2016

Parkes Room

**Members present**

Mr. Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr. Adam Crouch MP, Mrs. Melinda Pavey MP, The Hon Dr. Peter Phelps MLC, The Hon Peter Primrose MLC.

**Officers in attendance:** Ms. Vedrana Trisic, Ms. Jessica Falvey and Ms. Derya Sekmen.

**1. Apologies**

The Hon Ben Franklin MLC, The Hon. Courtney Houssos MLC, Mr. Mark Taylor MP and Ms. Anna Watson MP.

**2. Minutes of Meeting No.6**

Resolved, on the motion of Mr. Crouch and seconded by Mrs. Pavey that the minutes of meeting no. 6, held on 30 October 2015 be confirmed.

3. \*\*\*

**4. Inquiry into the 2015 NSW State Election**

**4.1. Additional witnesses for public hearings**

Resolved, on the motion of Mr. Crouch and seconded by Mr. Primrose that the Committee invites the following individuals and organisations as witnesses to the Committee's public hearings for the Inquiry into the 2015 NSW State Election:

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1. Mr. Colin Barry, former NSW Electoral Commissioner
2. Mr. Ian Brightwell, former Director of Information Technology and CIO, NSW Electoral Commission
3. Professor Rodney Smith, University of Sydney
4. One of the following organisations: Follow My Vote or V-Initiative or Blockchain Technologies
5. Professor Mark Ryan, University of Birmingham

Resolved, on the motion of Mr. Crouch and seconded by Mr. Borsak that the Committee invite those individuals and organisations based overseas, or otherwise unavailable to attend a public hearing, to answer any questions the Committee may have via Skype or teleconference.

**4.2. Confirmation of dates for the public hearings**

Resolved, on the motion of Mr. Borsak and seconded by Mr. Crouch that the Committee conducts its public hearings on 5<sup>th</sup> and 12<sup>th</sup> August 2016.

The Hon Dr Peter Phelps MLC joined the meeting at 1:12pm.

5. \*\*\*

6. \*\*\*

7. \*\*\*

**8. Next meeting**

The Committee adjourned at 1:14pm until 8:45am on Wednesday, 22 June 2016, Room 1043.

**MINUTES OF MEETING No 8**

8:55 am, Wednesday 22 June 2016

Room 1043, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Peter Primrose MLC and Ms Anna Watson MP

**Officers in Attendance:** Mr Jason Arditi, Ms Jessica Falvey and Ms Derya Sekmen

**1. Apologies**

Mr Mark Taylor MP, The Hon Dr Peter Phelps MLC

**2. Minutes of Meeting No. 7**

Resolved, on the motion of Mr Crouch, seconded by Mr Franklin, that the minutes of meeting No.7, held on 1 June 2016, be confirmed.

3. \*\*\*

4 \*\*\*

5 \*\*\*

**6. Next Meeting**

The Committee adjourned at 9:09am until Friday, 5 August 2016.

**MINUTES OF MEETING No. 9**

8:50 am, Friday, 5 August 2016

Macquarie Room, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Ms Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC, Mr Mark Taylor MP and Ms Anna Watson MP.

**Officers in Attendance:** Mr Jason Arditi, Ms Jessica Falvey and Ms Derya Sekmen.

**2. Minutes of Meeting No. 8**

Resolved, on the motion of Mr Crouch, that the minutes of meeting No.8, held on 22 June 2016, be confirmed.

3. \*\*\*\*

**4. Public hearing for the Inquiry into the 2015 NSW State Election – Pre-hearing resolutions**

**Media**

Resolved, on the motion of Ms Pavey, that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 5 August 2016 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

**Witnesses**

Resolved, on the motion of Ms Pavey, that the Committee agrees to receive evidence from the witnesses as set out in the notice of hearing.

The Committee adjourned at 8:51 am.

Mr Borsak arrived at 8:54 am.

**Public hearing**

At 9:00 am, the Chair declared the public hearing open and witnesses and the public were admitted.

*The Greens*

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Mr Geoff Ash, Registered Officer, The Greens, was affirmed and examined.

Dr Phelps joined the hearing at 9:17 am.

*Elections expert*

Mr Antony Green, private citizen, was affirmed and examined.

*NSW Nationals*

Mr Nathan Quigley, State Director, NSW Nationals, was affirmed and examined.

Mr Thomas Aubert, Deputy State Director, NSW Nationals, was affirmed and examined.

*The Shooters, Fishers and Farmers Party NSW*

Mr Grant Layland, Treasurer, The Shooters, Fishers and Farmers Party NSW, was sworn and examined.

Ms Watson left the hearing at 11:55 am.

*The Christian Democratic Party*

Mr Greg Bondar, NSW State Director, Christian Democratic Party, was sworn and examined.

Mr Ian Smith, Treasurer, Christian Democratic Party, was sworn and examined.

*Liberal Party of Australia, NSW Division*

Mr Chris Stone, State Director, Liberal Party of Australia, NSW Division, was sworn and examined.

*Unions NSW*

Mr Mark Morey, Secretary, Unions NSW, was affirmed and examined.

Ms Kate Minter, Research Officer, Unions NSW, was affirmed and examined.

*Academics*

Dr Vanessa Teague, Department of Computing and Information Systems, The University of Melbourne, was affirmed and examined.

Professor Rajeev Gore, Professor in Computer Science, The Australian National University, was affirmed and examined.

Ms Pavey left the hearing at 3:58 pm.

Evidence concluded at 4:40 pm and the witnesses and public withdrew.

**5. Public hearing for the Inquiry into the 2015 NSW State Election – Post hearing resolutions**

**Transcript of evidence**

Resolved, on the motion of Mr Crouch, that the corrected transcript of evidence given on 5 August 2016 be authorised for publication and uploaded on the Committee's webpage.

**Answers to questions on notice**

Resolved, on the motion of Dr Phelps, that witnesses be requested to return answers to questions taken on notice within two weeks of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.

**6. Next Meeting**

The Committee adjourned at 4:43 pm until 8:45 am on Friday, 12 August 2016.

**MINUTES OF MEETING No. 10**

8:49am, Friday, 12 August 2016

Macquarie Room, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Mr Mark Taylor MP.

**Officers in Attendance:** Mr Jason Arditi and Ms Derya Sekmen.

**1. Apologies**

Ms Anna Watson MP and Mrs Melinda Pavey MP

**2. Minutes of Meeting No.9**

Resolved, on the motion of Mr Crouch, that the minutes of meeting No.9, held on 5 August 2016, be confirmed.

**3. Correspondence**

Resolved, on the motion of Mr Taylor that the Committee notes the correspondence received from Mr Ralph McKay on 3 August 2016 and Mr Ian Brightwell on 7 August 2016.

**4. General Business**

The Chair advised that Mr Ian Brightwell would not be called to appear as a witness at the public hearing today.

**5. Public hearing for the Inquiry into the 2015 NSW State Election- Pre-hearing resolutions**

**Media**

Resolved, on the motion of Ms Houssos and seconded by Mr Primrose, that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 August 2016 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

**Witnesses**

Resolved, on the motion of Ms Houssos and seconded by Mr Primrose that the Committee agrees to receive evidence from the witnesses as set out in the notice of hearing.

The Committee adjourned at 8:51am.

**Public hearing**

At 8:58 am, the Chair declared the public hearing open and witnesses and the public were admitted.

*Labor NSW*

Ms Kaila Murnain, General Secretary, Labor NSW, was affirmed and examined.

*Electoral Reform Australia*

Mr Stephen Lesslie, President, Electoral Reform Australia, was affirmed and examined.

Ms Susan Gregory, Vice President, Electoral Reform Australia, was affirmed and examined.

*Physical Disability Council of NSW*

Ms Serena Ovens, Chief Executive Officer, Physical Disability Council of NSW, was sworn and examined.

*ScytI Australia Pty Limited*

Mr Sam Campbell, Director of Operations, ScytI Australia Pty Limited, was sworn and examined.

*Academic*

Professor Rodney Smith private citizen was affirmed and examined.

*NSW Electoral Commission*

Mr John Schmidt, NSW Electoral Commissioner, NSW Electoral Commission was affirmed and examined.

Ms Linda Franklin, Director, Elections, NSW Electoral Commission was affirmed and examined.

Mr Simon Kwok, A/Director, Elections, NSW Electoral Commission was affirmed and examined.

Mr Paul Beeren, Director, Enrolments, NSW Electoral Commission was affirmed and examined.

Mr Mark Radcliffe, iVote Manager, Elections, NSW Electoral Commission was affirmed and examined.

*Academics*

Dr Vanessa Teague, Department of Computing and Information Systems, The University of Melbourne, was affirmed and examined.

Professor Rajeev Gore, Professor in Computer Science, The Australian National University, was affirmed and examined.

Mr Mark Taylor left the hearing at 4:36pm.

Mr Peter Primrose left the hearing at 4:52pm.

Evidence concluded at 5:07pm and the witnesses and public withdrew.

**6. Public hearing for the Inquiry into the 2015 NSW State Election- Post hearing resolutions**

**Transcript of evidence**

Resolved, on the motion of Ms Houssos, that the corrected transcript of evidence given on 12

August 2016 be authorised for publication and uploaded on the Committee's webpage.

**Answers to questions on notice**

Resolved, on the motion of Dr Phelps, that witnesses be requested to return answers to questions taken on notice within two weeks of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.

**Resolution in relation to documents tendered during the public hearing**

Resolved, on the motion of Dr Phelps, that the documents tendered during the public hearing be accepted by the Committee and published on the Committee's website.

**7. Next Meeting**

The Committee adjourned at 5:07pm until 10:00 am on Thursday, 22 September 2016.

**MINUTES OF MEETING No. 11**

10:00am Thursday 22 September 2016

Room 1043, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Ben Franklin MLC, The Hon Peter Primrose MLC, Ms Anna Watson MP, Mrs Melinda Pavey MP, The Hon Courtney Houssos MLC

**Officers in Attendance:** Mr Jason Arditi, Ms Jessica Falvey and Ms Derya Sekmen

**1. Apologies**

The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Dr Peter Phelps MLC and Mr Mark Taylor MP

**2. Minutes of Meeting No. 10**

Resolved, on the motion of Mrs Pavey, that the minutes of meeting No. 10, held on 12 August 2016, be confirmed.

**3. Inquiry into the 2015 NSW State Election**

**Publish Questions on Notice Responses received**

Resolved, on the motion of Mr Primrose, that the Committee publishes the following responses from witnesses to Questions on Notice taken at the public hearings for the *Inquiry into the 2015 NSW State Election* on Friday 5 August 2016 and Friday 12 August 2016:

- Mr Grant Layland - Shooters, Fishers and Farmers Party
- Professor Rodney Smith – Academic, University of Sydney
- Mr Sam Campbell – ScytI Australia Pty Ltd
- Mr Chris Stone – Liberal Party of Australia, NSW Division
- Ms Kate Minter – Unions NSW
- NSW Electoral Commission

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- Mr Thomas Aubert - NSW Nationals
- Ms Kaila Murnain – NSW Labor.

4. \*\*\*\*

5. \*\*\*\*

**6. Next meeting**

The Committee adjourned at 10:02am until a date to be determined.

**MINUTES OF MEETING No. 12**

9:06am, Wednesday 16 November 2016

Room 1043, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC, Mr Mark Taylor MP, Ms Anna Watson MP

Officers in Attendance: Mr Jason Arditi, Ms Jessica Falvey, Mr Christopher Herbert and Ms Derya Sekmen.

**1. Apologies**

None

**2. Minutes of Meeting No. 11**

Resolved on the motion of Mr Crouch, seconded by Ms Houssos, that the minutes of meeting No. 11, held on 22 September 2016, be confirmed.

**3. Inquiry into the 2015 NSW State Election**

Resolved on the motion of Mr Borsak that the Committee considers the Chair's draft report chapter by chapter.

Chapter one proposed

Resolved, on the motion of Mr Taylor, that chapter one be adopted.

Chapter two proposed

Ms Houssos moved that paragraphs 2.1 – 2.8 (as circulated) and recommendation 1 be omitted.

Discussion deferred until next meeting.

Ms Houssos moved that paragraphs 2.14 – 2.31 and recommendation 4 (as circulated) be omitted.

Discussion deferred until next meeting.

Mr Franklin moved that paragraphs 2.19 – 2.31 and recommended 4 (as circulated) be omitted.

Discussion deferred until next meeting.

Chapter three proposed

Mr Franklin moved that a new recommendation be inserted regarding iVote:

**Recommendation:** The Committee recommends that political parties' How-to-Vote cards be made available for iVote voters.

Discussion ensued. Question put and passed.

Resolved on the motion of Mr Borsak, seconded by Dr Phelps, that chapter three, as amended, be adopted.

Chapter four proposed

Mr Franklin moved, seconded by Dr Phelps, that recommendation 14 be amended by omitting the words 'within seven days of' and replacing them with 'at least seven days before'.

Discussion ensued. Question put and passed.

Mr Franklin moved, seconded by Dr Phelps, that recommendation 14 be amended by omitting the words 'The Committee further recommends that the Electoral Commission publish the material on its website as soon as practical following registration'.

Discussion ensued. Question put and passed.

Ms Houssos moved, seconded by Dr Phelps, that recommendation 14 be amended by inserting at the conclusion of the recommendation the words 'That this online registration applies only to electoral material required to be registered under the existing legislation'.

Discussion ensued. Question put and passed.

Mr Franklin moved that recommendation 15 be omitted.

Discussion deferred until next meeting.

Chapter five proposed

Mr Franklin moved, seconded by Mr Crouch, that recommendation 15 be amended by omitting the word 'authorised' and replacing it with 'required'.

Discussion ensued. Question put and passed.

Mr Franklin moved, seconded by Ms Pavey, that recommendation 16 a) be omitted and replaced with:

require parties, candidates and third party campaigners to include (as appropriate) the party name, candidate name and/or third party campaigner name in at least 12 point font on any registered material to be distributed on polling day.

Discussion ensued. Question put and passed.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
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Mr Franklin moved, seconded by Ms Houssos, that recommendation 16 b) be omitted and replaced with:

make it an offence for parties, candidates and third party campaigners to distribute registered material on polling day that could be reasonably assumed to be official advice from the Electoral Commission.

Discussion ensued. Question put and passed.

Ms Houssos moved, seconded by Mr Franklin, that recommendation 16 b) be amended by inserting at the conclusion of the recommendation the words:

This does not preclude political parties or other registered third party campaigners from providing information to voters about how to vote correctly.

Discussion ensued. Question put and passed.

Mr Franklin moved, seconded by Dr Phelps, that paragraph 5.49 and recommendation 19 (as circulated) be omitted and replaced with:

The Committee understands that some stakeholders suggest it may be appropriate to further regulate behaviour of this kind through the electoral framework. However, on balance, the Committee believes that this is an extension of electoral law into an area in which it has no business being. Industrial Relations law, contract law and potentially the criminal law are better vehicles to deal with these issues.

Discussion ensued. Question put and passed.

Resolved on the motion of Dr Phelps, that chapter five, as amended, be adopted. Motion agreed to.

Chapter six proposed

Ms Houssos moved that recommendation 22 (as circulated) be omitted.

Discussion deferred until next meeting.

Mr Franklin moved, seconded by Ms Houssos, that a new paragraph be inserted after paragraph 6.16 with the words:

However, the Committee believes that increasing the nomination fee could discourage some members of the community from running for financial reasons and therefore it should not be supported.

Discussion deferred until next meeting.

Mr Franklin moved, seconded by Ms Houssos, that recommendation 22 (as circulated) be omitted.

Discussion deferred until next meeting.

Mr Franklin moved, seconded by Ms Houssos, that recommendation 21 a) be amended by inserting the words 'where possible' after the words 'on the ballot paper'.

Discussion ensued. Question put and passed.

Ms Houssos moved that recommendation 21 be amended by inserting the words:

That the NSW Government consult with the Australian Electoral Commission about the experience from the 2016 Federal Election of introducing party logos on the Australian Senate ballot paper.

Discussion ensued. Question put and passed.

Chapter seven proposed

Resolved on the motion of Dr Phelps, that chapter seven be adopted.

Chapter eight proposed

Mr Franklin moved, seconded by Dr Phelps, that paragraph 8.5 be amended to include the word 'However' at the start of the second sentence.

Discussion ensued. Question put and passed.

Ms Houssos moved, seconded by Dr Phelps, that recommendation 26 a) be amended by omitting the words 'on each party membership roll' and inserting instead the words 'of the members submitted for registration'.

Discussion ensued. Question put and passed.

Mr Franklin moved, seconded by Dr Phelps, that recommendation 29 be amended by inserting the words 'that these disclosures' before the words 'be made freely available'.

Discussion ensued. Question put and passed.

Ms Houssos moved that recommendation 30 be amended by inserting at the beginning of the recommendation the words:

That once the online portal for the disclosure of reportable political donations is available for use,

Discussion ensued. Question put and passed.

Ms Houssos moved that recommendation 31 be amended by inserting at the conclusion of the recommendation the words:

This would allow, but not require subscription fees to be used for campaign purposes.

Discussion ensued. Question put and passed.

Ms Houssos moved that paragraphs 8.54 – 8.62 and recommendation 35 (as circulated) be omitted.

Discussion deferred until next meeting.

Ms Houssos moved that paragraphs 8.72 – 8.82 and recommendation 37 (as circulated) be omitted.

Discussion deferred until next meeting.

**4. General correspondence to the Committee**

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**5. General business**

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**6. Next Meeting**

The Committee adjourned at 9:45am until 4:00 pm on Wednesday, 16 November 2016.

**MINUTES OF MEETING No. 12**

4:08pm, Wednesday 16 November 2016

Waratah Room, Parliament House

**Members Present**

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC, Mr Mark Taylor MP, Ms Anna Watson MP

Officers in Attendance: Mr Jason Arditi, Ms Jessica Falvey, Mr Christopher Herbert and Ms Derya Sekmen.

**2. Apologies**

None

**2. Minutes of Meeting No. 11**

Resolved on the motion of Mr Franklin, seconded by Mr Phelps, that the minutes of meeting No. 12, held on 16 November 2016, be confirmed.

**3. Inquiry into the 2015 NSW State Election**

Resolved on the motion of Mr Borsak that the Committee considers the Chair's draft report chapter by chapter.

Chapter two proposed

Ms Houssos moved, seconded by Mr Franklin, that paragraphs 2.1 – 2.8 and recommendation 1 (as they then stood) be omitted.

Discussion ensued. Question put and passed.

Mr Crouch moved, seconded Mr Phelps that the following words be inserted following paragraph 2.24

‘Further, to ensure that voters are not disenfranchised by new provisions requiring photo identification, the Committee also considers it important that appropriate alternatives to proving one’s identity are considered. One option could be to allow voters to sign a statutory declaration attesting to their identity. Another could be having one voter vouch for the identity of another, an option that may have particular appeal in Indigenous communities. Either way, the Committee is mindful that appropriate safeguards need to be put in place to ensure voters are not disenfranchised by the absence of photo identification.’

And that the following be inserted at recommendation 3

‘The Committee also recommends that the Government considers appropriate safeguards to ensure voters are not disenfranchised by new photo identification requirements. This could include the option to provide a statutory declaration to attest for one’s own identity, or a protocol in which one can vouch for another’s identity’.

Discussed ensued. Question put.

The Committee divided:

Ayes: Mr Crouch, Mr Franklin, Mr Pavey, Dr Phelps, Mr Rowell, Mr Taylor

Noes: Mr Borsak, Ms Houssos, Mr Primrose, Ms Watson.

Motion carried.

Ms Houssos moved, seconded Ms Watson that paragraphs 2.11 to 2.23 and recommendation 3 be omitted.

Discussion ensued. Question put.

The Committee divided:

Ayes: Mr Borsak, Ms Houssos, Mr Primrose, Ms Watson.

Noes: Mr Crouch, Mr Franklin, Mr Pavey, Dr Phelps, Mr Rowell, Mr Taylor

Motion defeated.

Resolved on the motion of Dr Phelps, seconded by Dr Franklin, that chapter two, as amended, be adopted.

#### Chapter four proposed

Mr Franklin moved, second Dr Phelps, that that recommendation 15 (as circulated) be omitted.

Discussion ensued. Question put and passed.

Resolved on the motion of Dr Phelps that chapter 4, as amended, be adopted.

#### Chapter six proposed

Dr Phelps moved, seconded Mr Franklin, that recommendation 19 be amended by deleting the word ‘50’ and inserting instead ‘100’.

Discussed ensued. Question put and passed.

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Mr Franklin moved, seconded Ms Houssos that the following recommendation 22 (as circulated) be omitted.

Discussion ensued. Question put and passed.

Resolved on the motion of Dr Phelps that chapter six be adopted.

Chapter eight proposed

Ms Houssos moved, seconded Dr Phelps that paragraphs 8.54 – 8.62 and recommendation 35 (as circulated) be omitted.

Discussion ensued. The Committee divided:

Ayes: Mr Crouch, Ms Houssos, Dr Phelps, Mr Primrose, Mr Rowell, Mr Taylor, Ms Watson

Noes: Mr Borsak, Mr Franklin, Ms Pavey

Motion carried.

Ms Houssos moved, seconded Mr Primrose that paragraphs 8.63 – 8.73 and recommendation 33 be omitted.

Discussion ensued. The Committee divided:

Ayes: Ms Houssos, Mr Primrose, Ms Watson

Noes: Mr Borsak, Mr Crouch, Mr Franklin, Ms Pavey Dr Phelps, Mr Rowell, Mr Taylor

Motion defeated.

Resolved on the motion of Dr Phelps that chapter 8, as amended, be adopted.

The final report:

Resolved on the motion of Dr Phelps, seconded Mr Franklin that:

- ‘The Committee adopt the Chair’s draft report as amended and that it be signed by the Chair for presentation to both Houses,
- the Committee authorise the Secretariat to make appropriate final editing and stylistic changes as required, and
- once tabled, the report be published on the Committee’s webpage.’

**4. General correspondence to the Committee**

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**5. General business**

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**6. Next Meeting**

The Committee adjourned at 4:38pm *sine die*