

Additional questions – Joint Standing Committee on Electoral Matters – Inquiry into the administration of the 2019 NSW State Election

Question One

At the 22 June 2020 hearing the Electoral Commission was asked about submission 27 to the inquiry.

In that submission, Mr Wes Hindmarsh argues that claims from the New Parties Fund for Policy Development Expenditure should be processed based on financial information drawn from the relevant financial year, not the relevant calendar year.

In response, Ms Rachel McCallum stated:

That was my understanding of the submission, that it was suggesting that things be calculated on a financial year. The Act provides for it to be done on a calendar year. Probably there would be policy reasons about money being available to parties close to when they have spent it, as close as possible in relation to that decision, but if the decision was made to change it to a financial year I just think it would be useful to consider what impact that would actually have on the money being available to the very small number of parties that are entitled and/or claim from the fund (Transcript, p11).

- Could you please expand on whether there would be policy reasons for continuing to process these claims based on financial information from the relevant calendar year?
- In particular, why would processing such claims based on financial information from the relevant calendar year necessarily mean that parties received funding closer to the time that they spent the funds?

Response

Mr Hindmarsh's submission (Submission No. 27) proposes the Parliament consider two distinct amendments to the legislative framework applying to the administration of the New Parties Fund:

1. to change the claim period for the New Parties Fund from a calendar year to a financial year in order to use the financial accounts prepared at the end of the financial year as a basis to populate the claim; and
2. to adopt the annual financial statements of the party as a source of information for the claim in addition to other relevant vouching.

In relation to the first proposed change, the NSW Electoral Commission is not aware of any policy reasons relating to its administration of public funding for maintaining the claim period for the New Parties Fund as a calendar year. The NSW Electoral Commission does not anticipate that significant administrative issues would be associated with changing the claim period to a financial year, provided that suitable transitional provisions are made.

The NSW Electoral Commission notes, however, that Mr Hindmarsh's second proposed amendment may affect the timing of the availability of public funding to parties. Requiring the provision of annual financial statements with the claim may cause a party to delay its

claim for public funding and, accordingly, delay the payment of the claim by the NSW Electoral Commission. Currently, a party can lodge a claim the day after the claim period ends. Any new requirement for the party's annual financial statements to be provided would mean that it may be months until a claim can be lodged, as the party's annual financial statements would first need to be prepared and approved.

Question Two

- How does the data on fines for not voting in the 2019 NSW State Election compare with the data on fines for not voting in the 2015 NSW State election?
- Has there been an increase in the number of people who have successfully challenged the fine?

Response

The number of fines issued to electors for apparent failure to vote at the 2015 and 2019 NSW State elections, as well as the number of fines that were excused, are set out below.

	Electors on Roll	Electors issued with apparent failure to vote penalties	Excused
SGE15	5,040,622	368,740	155,901
SGE19	5,271,755	384,879	150,065
	Increase of 4.58%	Increase of 4.37%	Decrease of 3.74%

Question Three

For the 2019 NSW State election 384,879 apparent failure to vote notices were issued and of those 150,058 were excused.

- Of those excused, how many had in fact voted?

Response

The NSW Electoral Commission notes that as at 13 July 2020 the number of electors who have been excused has increased from 150,058 to 150,065. Since November 2019, when the previous figures were provided to the JSCEM, seven additional electors have provided a valid excuse and been excused.

A total of 34,585 electors who received apparent failure to vote notices for the 2019 NSW State election were excused on the basis that they had voted or tried to vote (23% of the total excused voters). That figures is comprised as follows.

- 28, 879 electors were excused based on information provided that they had voted. This included electors who had voted at early voting centres, on election day and out of district.
- A further 5, 706 electors were excused based on information that they tried to vote via iVote and postal voting.

Question Four

The Committee has heard concerns that the nomination process can be time consuming and confusing, with multiple forms required to nominate.

- Could this process be streamlined?
- Could a change take place so that there is no separate process for nominated candidates to also register with the NSW Electoral Commission and whereby registration could happen automatically on nomination?

Response

Nominations process for the 2019 NSW State election

For the 2019 NSW State election the NSW Electoral Commission developed a nominations online management system (NOMS) which was designed to assist candidates to complete their nomination form(s) correctly.

NOMS was available to all candidates/ Registered Political Parties to commence completing their nomination forms from Monday, 21 January 2019, with nominations opening on Monday, 25 February 2019.

The following table shows the breakdown of the use of NOMS by candidates at the 2019 NSW State election.

House of Parliament	Number of candidates	Number who lodged online	Percentage online
Legislative Assembly	575	398	69%
Legislative Council	352	258	73%

The *Electoral Act 2017* provides that apart from each candidate completing a nomination form, each candidate must also complete a child protection declaration and lodge a nomination deposit.

Feedback and training provided to parties before the election

Representatives from all Registered Political Parties were invited to provide feedback to the NSW Electoral Commission during the development stages of the system.

The following parties sent representatives to the NSW Electoral Commission to provide feedback on the system at a session held in November 2018:

- Shooters, Fishers and Farmers
- The Greens
- The Nationals
- Labor
- Pauline Hanson's One Nation

Representatives from each Registered Political Party were invited to face to face training sessions conducted by the NSW Electoral Commission in January 2019 in how to use NOMS.

Nomination and registration

Registration with the NSW Electoral Commission for electoral funding regulation purposes is distinguishable from the process of nominating to the NSW Electoral Commissioner as a candidate in a specific election.

Under the current legislative framework, candidates and groups nominated for an election for the NSW Parliament or a council of a local government area are taken to be registered for the election

under the *Electoral Funding Act 2018* on nomination day. A candidate or group is only required to apply to register separately for an election in order to lawfully accept political donations or make payments for electoral expenditure before that date. If a candidate or group registers for electoral funding regulation purposes prior to the nomination date they are also still required to go through the nomination process.

For the 2019 election, approximately half of all candidates were registered with the NSW Electoral Commission prior to being nominated to the Electoral Commissioner. Those candidates undertook two separate processes for nominating and registering.

Opportunities for streamlining the nomination process

Further steps to streamline the nomination process could include the following, subject to the any legislative amendment and funding from government for system changes:

- Electoral funding registration information to be integrated with the online nominations system to pre-populate information on the nomination form that was captured as part of the registration process (while this does not require legislative amendment, it would require capital funding).
- Allow electronic submission of nomination forms where written signatures are not required.
- Allow a registered party to provide one set of contact details for its endorsed candidates to be published on the Electoral Commission's website with the list of nominated candidates instead of each candidate to provide contact details on their nomination form.

The NSW Electoral Commission notes that while these steps could streamline the nomination process, they will not automate the process entirely for candidates.

Question Five

The Committee has heard a call for the NSW Electoral Commission to affect a candidate dis-endorsement immediately upon being notified of the dis-endorsement by the relevant political party, so that the party's disclosure obligations cease.

- What is your response?

Response

Under the *Electoral Funding Act 2018*, if a candidate for a NSW State election is a member of a registered party the party agent is responsible for submitting disclosures on behalf of the candidate. The current statutory rules for determining who is responsible for lodging disclosures are based on a candidate's party membership. This means that the party agent will continue to be responsible for the candidate's disclosures while the candidate remains a member of the party, even if the party has dis-endorsed the candidate.

When a candidate applies to be registered for the election, the application form asks the candidate to indicate if they are a member of a registered party. This information enables the NSW Electoral Commission to determine who is responsible lodging for the candidate's disclosures. As the NSW Electoral Commission does not have access to the full list of party members, we rely on the candidate to confirm their party membership status so that we can advise the correct person of the disclosure obligation.

If a candidate indicates that he or she is a member of a registered party when applying to be registered, the party agent is advised of the candidate's registration. In a small number of cases in the lead up to the 2019 State election, party agents contacted the NSW Electoral Commission to advise that the candidate was not endorsed by the party. Party agents were advised by the NSW Electoral Commission that it is a matter for the party to determine any action to be taken in relation to the candidate's membership of the party and that the party agent will remain responsible for the candidate's disclosures while the candidate remains a member of the party.

There are complexities determining who is responsible for a candidate or group's disclosures when the candidate or group does not apply to be registered. In these cases, the NSW Electoral Commission assumes a candidate is a member of the party that nominated the candidate.

Following the close of nominations for the 2019 NSW State election the NSW Electoral Commission wrote to those candidates and asked them to confirm whether they were a member of the party by which they were nominated. The NSW Electoral Commission confirmed through this process that one candidate in an endorsed group for the Legislative Council election was not a member of a registered party. In cases where not all members of a group are members of a registered party, the party agent is not obliged to submit disclosures on behalf of the group. In those cases, the lead candidate is responsible for disclosing for the group and the candidate who is not a member of a party is responsible for lodging their own disclosures.

As a practical matter, the NSW Electoral Commission notes that the timing of a party's dis-endorsement of a candidate can raise a range of operational matters, including where ballot papers have already been printed and may already be in the public domain through iVote, postal or pre-poll voting.

Question Six

The Committee has heard that there should be more regulation about the time at which parties and candidates can start setting up signage at voting centres, including early voting centres, and about the amount of signage that can be erected.

- Do you have any comment?

Response

The NSW Electoral Commission notes that increased regulation around signage at voting centres and early voting centres would impose significant additional operational burdens on the NSW Electoral Commission and may be difficult to administer.

Currently, Voting Centre Managers ensure that the 6 metre exclusion rule is applied at voting centres and that electors are able to freely access the voting centres. Adding additional regulation may significantly expand the scope of the role of Voting Centre Managers. The NSW Electoral Commission does not have the resources within its compliance team to manage this across the state.

There are also practical barriers to administering increased regulation of signage at voting centres and early voting centres. Many of the early voting centres used for state elections are commercial properties, which the NSW Electoral Commission may not take control of until the morning of the day on which early voting opens. Those sites may also operate subject to additional restrictions imposed by the landlord that would interfere with regulating the signage beyond the current provisions.

Additionally, many voting centres are rooms or buildings within schools. At those voting locations, the NSW Electoral Commission does not necessarily control the fence or entrance where party or candidate workers erect signage.

The NSW Electoral Commission notes that the further regulation of signage outside voting centres may impact upon the resources of local councils and local police.

Question Seven

The Committee has heard it is important that polling booth staff are adequately trained to assist voters with disability.

- What training is provided to polling booth staff in this area?

Response

Prior to the 2019 NSW State election, attendance staff at voting centres were provided with a guide to providing services to electors, including people with disability. The information guide focused on skills development and best practice service delivery and also raised awareness about sensitivities and respectful language.

Elections staff were also required to undertake an online module that focused on customer service. Embedded into this module is information about working within an inclusive framework, use of respectful language and awareness about stereotypes and biases. This module is compulsory and available for every job category.

Call centre staff for the 2019 election who assisted electors using iVote via the call centre did not receive additional training on providing assistance to people with a disability prior to the election. The NSW Electoral Commission is currently reviewing the training program for iVote call centre staff and exploring options to ensure that staff assisting iVote electors receive specific training relating to servicing electors with additional needs and focusing on sensitivity as part of good customer service. The NSW Electoral Commission is working to have an additional training session provided to call centre staff, particularly the iVote voting call centre staff, for the next election.

Question Eight

The Committee has heard that polling booths should be labelled in different languages to assist CALD voters.

- Do you have any comment?

Response

Currently, in districts where there is a significant CALD community the NSW Electoral Commission recruits election officials with the language skills necessary to support electors in that community. Those election officials are identified with ID cards stating which language they speak. Posters in the polling place display information in up to twenty of the most common languages about how electors can receive assistance. All Voting Centre Managers are provided with the contact number and account details of the translating and interpreting service to use if an elector requires translating services when an election official is not available to assist.

The NSW Electoral Commission would be happy to consider trialling the proposal for polling booths to be labelled in different languages in areas of the Sydney metropolitan where census data

provides that a large proportion of the population speak a particular language other than English. This is a matter that the NSW Electoral Commission could raise for discussion and input at future meetings of the Culturally and Linguistically Diverse Reference Group.