NSW Electoral Commission

Answers to questions taken on notice

Dr Phillips

The CHAIR: Commissioner, I was wondering if I could ask if you'd take on notice submission No. 7 that we've received. It concerns electronic enrolment issues between the Commonwealth and the State. I wonder if you could have a look at that and then come back with a response.

In Submission No 7, Mr Gregory Briscoe-Hough questioned the validity of electronic nomination of candidates for both State and Local government election in NSW, citing the manner of doing nominations electronically for both State and Local government elections in NSW is not a valid transaction as this has been excluded as one of the seven valid electronic transactions from *NSW Electronic Transactions Regulation 2017*.

In response the Electoral Commission notes the following:

- There are significant practical benefits of the Electoral Commissioner being expressly empowered in election-related legislation to approve the use of electronic communication and services. It is the Electoral Commission's understanding that we are not prevented from delivering election services by electronic means where the election-related legislation allows this, including where it empowers the Electoral Commissioner to determine the way a particular process must be completed, or a transaction may occur. Accordingly, the Commission has done so where that it is the case.
- A specific example is cl 3(5) of Schedule 9A to the *Local Government (General) Regulation 2022*, which provides that an application to participate in a countback election "may be made by electronic means approved by the election manager".
- Mr Briscoe-Hough was a participant in a countback election and questioned the validity of the application of the successful participant because it was lodged by email. In response, the Commission noted that the regulations permitted electronic lodgement of the application.
- Mr Briscoe-Hough commenced proceedings in the NCAT in 2022 about that countback election; however, as he ultimately withdrew before the matter was heard, the Member was not required to determine any issue concerning the way an application may or must be made by a participant in a countback election.
- Further, the Committee will note that the legislation governing State elections provides for electronic lodgement of nomination papers with the Electoral Commissioner by Act of Parliament and regulation [*Electoral Act 2017*, s.84(7) and *Electoral Regulation 2018*, cl. 5B].

Mr Bergeron

Hon. BOB NANVA: Accepting that number is a policy question for government. Is the commission aware of any reason why that number is capped at 25? Is there a policy underpinning that that the commission is aware of? It seems a fairly arbitrary number.

The Administration Fund was established by the *Election Funding and Disclosures Amendment Act 2010*. In her second reading speech for the Election Funding and Disclosures Amendment Bill 2010, the then Premier, the Hon. Kristina Kenneally, said:

"*Payments from the Administration Fund will be calculated at $80,000 per member of the Legislative Assembly and member of the Legislative Council up to a maximum of $2 million.*"

It appears the cap of 25 on the number of elected members ($2 million divided by $80,000) was to limit the overall funding available to a single party.

During questioning from Mr Nanva about payment to members from the Administration Fund, he referred to the heavy burden, especially for Independent MPs and minor parties, to receive public funds from the Administration Fund and asked the Commission how it approaches compliance with these requirements, particularly in relation to independent Members of Parliament. It is noted the Electoral Funding Amendment Bill 2024 was introduced in Parliament on 4 June 2024 "to make further provision regarding administrative expenditure payable from the Administration Fund".

If passed, it appears the proposed amendments will allow independent Members of Parliament to claim both a parliamentary allowance and payment from the Administration Fund with respect to the same item of expenditure, notwithstanding that this will result in the Member of Parliament being reimbursed twice for the same item, in both cases from public funds.

As noted in Mr Bergeron's evidence before the Committee, the NSW Electoral Commission must administer the public fund as legislated.

MR TIM JAMES: But if the donation is made in general terms from, let's say, it's GetUp! Or Climate 200 – there's a range or organisation out there – you're saying they can use those funds as they see fit for a State-based campaign and that would not trigger – pertaining to those donations, because they were made in the more general sense – any particular disclosure requirements or otherwise?

A political donation to a third-party campaigner is defined at section 5(1)(d) of the *Electoral Funding Act 2018* (the Act):

(d) a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person—

(i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure, or

(ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.

In accordance with that definition, if a donation was made to a third-party campaigner for another purpose but it is *ultimately* used by the third-party campaigner to incur electoral expenditure, the donation must be disclosed and is subject to all other requirements under the Act including the donation caps and prohibited donor provisions.