Submission

No 11

Administration of the 2011 NSW election and related matters

Organisation: NSW Nationals

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Date Received: 17/02/2012

17 February 2012

Hon Trevor Khan MLC
Chair – Joint Standing Committee on Electoral Matters
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Khan

The Nationals are pleased to have the opportunity to present this submission to the Joint Standing Committee on Electoral Matters' Inquiry into the conduct of the 2011 state election, and related matters.

Our submission is presented in two parts. First, we consider the conduct of the election as it related to the provisions of the *Parliamentary Electorates and Elections Act*. Second, we consider the implications associated with the application of various provisions of the *Election Funding, Expenditure and Disclosures Act*.

Where relevant, we have provided recommendations for the Committee's consideration. For convenience, a summary of those recommendations appears at the front of the submission.

I would like to take this opportunity to thank the Committee for its consideration of the matters raised in this submission, and indicate that I am willing to make myself available to answer questions that the Committee may have in relation to this submission if invited to do so.

Yours sincerely

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4. Eligibility for iVote be extended to electors who will be more than 20km outside their electorate on polling day for a by-election.

5. The Electoral Commission develop communications strategies to increase the number of declared institutions participating in elections.

6. The Electoral Commission provide more detailed explanations to institutions of the procedures for voting and electoral officials be given more training in overseeing the process at each declared institution.

7. The Electoral Commissioner, in consultation with the major political parties, conduct the notional Two Candidate Preferred count in every electorate using the two candidates considered most likely to be the last two candidates in a full distribution of preferences.

8. The Electoral Commission conduct a full distribution of preferences for all electorates where this has not yet been done for the 2011 state election, with priority given to the 17 electorates that do not have accurate Two Candidate Preferred counts, and full preference distributions be done as a matter of course for all electorates in future elections.

9. In addition to a full distribution of preferences in all electorates, the Electoral Commission conduct supplementary Two-Party Preferred counts for those electorates where a third party finishes amongst the top two candidates.

10. That all pre-poll locations, and all polling booths that are the sole booth in a particular town offer disabled access wherever possible. Where this is not possible, polling booth staff should be aware of the need to assist less mobile voters as the need arises.

11. The Electoral Commission review procedures for the selection and training of staff conducting candidate information sessions.

12. A full internal review of the Election Funding Authority's processes be undertaken to ensure better preparedness for future disclosure periods, and especially for the next state election

13. The Election Funding Authority be provided with increased resources as required

14. Improved training be provided to Election Funding Authority staff, with an emphasis on those who are engaged on a temporary basis in connection with major disclosure periods

15. The provisions of section 95F of the Election Funding, Expenditure and Disclosures Act be retained in their current form.

16. The thresholds for eligibility for payments from the Election Campaigns Fund, and the rates of those payments, remain at the levels currently specified in sections 57-60 of the Election Funding, Expenditure and Disclosures Act.

17. The EFED Act be amended to require the Election Funding Authority, within 90 days of the receipt of a claim for payment, to either complete its assessment of a claim, or make an additional preliminary payment equal to 95% of the total amount estimated to be payable (less any previous advance payment under section 67 and the previous preliminary payment under section 69.)

18. Clause 6 of the Regulations be amended to prescribe that vouching for claims for payment from the Election Campaigns Fund be done by attaching copies of the invoices or receipts for expenditure to the claim form.

19. That all provisions relating to preliminary payments of funding claims under section 69 apply equally to parties and candidates.

20. Division 4A of the EFED Act be repealed

21. On-line disclosure forms be designed to streamline the disclosure process

22. The Authority's future donor declaration forms should include an optional field for donors to indicate the purpose for which a donation was made.

23. That both the caps and bans on donations under the EFED Act be explicitly excluded from applying to bank accounts kept by parties exclusively for federal government election campaign purposes.

24. That the EFA disclosure website be improved to ensure the constant availability of disclosures once lodged.

25. A party's entitlement to PAF funding be calculated and accrued on a quarterly basis

26. Payment of PAF entitlements be made to parties quarterly at the lesser of 95% of their accrued entitlement or 95% of their estimated eligible expenditure, subject to repayment provisions in the event that quarterly payments exceed the total of eligible expenditure as determined by the EFA in their assessment of parties' annual PAF returns

Administration of the Parliamentary Electorates and Elections Act

Legislative Council count

Perhaps the most contentious aspect of the 2011 state election was the count of Legislative Council votes, which resulted in the outcome of the election being challenged in the Court of Disputed Returns. Ultimately, the Court quite rightly upheld the outcome of the Electoral Commission's count.

At various times throughout the count for the Legislative Council election, Nationals staff and Members of Parliament were in attendance to observe and scrutineer the process. The party was extremely impressed by the efficiency and professionalism with which the Electoral Commission conducted the count, and by the transparency afforded to all interested parties.

The Nationals endorse the procedures employed to carry out such an enormous operation and congratulate the Electoral Commission on their outstanding implementation of these procedures, and were particularly reassured knowing that the Legislative Council Count Centre was being overseen by Greg Copson (who had shown himself to be highly competent in the party's dealings with him during the nomination process) and his staff.

Postal Voting

Remote areas in the west of NSW once again experienced problems with postal voting. Numerous complaints were forwarded to our offices about ballot papers that did not arrive on time or at all. Mail services in remote areas can be as infrequent as once per week, which leaves little room for delay or error in the submission of or processing of Postal Vote Applications. This has been an ongoing problem at successive elections.

Extending the period between the close of nominations and the day of the election to three weeks would better serve postal voters in remote areas, who are currently disenfranchised by the very slim window available for submission of postal votes. However, we do not consider it necessary to increase the pre-poll period beyond two weeks.

Recommendation

1. Nominations for the Legislative Assembly and Legislative Council be closed no less than three weeks prior to polling day.

The Commission's standard Postal Vote Application form contained a pre-filled "02" at the beginning of the field for an elector's home phone number. The inclusion of "02" on this form was inappropriate, as there are tens of thousands of electors near the state's borders in the electorates of Albury, Barwon, Lismore, Murray-Darling,

Northern Tablelands, and Tweed with home phone numbers in the 03, 07 and 08 area codes.

Recommendation

2. Electoral Commission forms not include any pre-filled area code information in phone number fields.

iVote

On the whole, the expansion of the iVote system looks to be successful, and as it is refined will be of immense value to those electors who are unable to attend polling booths. A few complaints were received at our offices in relation to the unfamiliarity of operators with rural property addresses, with operators insisting on street numbers and names. Many rural residents do not use their Rural Property Address as a matter of course, and simply give their property name and locality when asked to provide an address.

Many electors from rural areas were required to register for iVote by phone due their inability to provide a description of their address matching that which appears on the electoral roll, which effectively prevented them from registering online. We accept that for security reasons the online registration system likely cannot be amended to better facilitate such electors completing their registration online, however education regarding rural addresses for staff taking iVote registrations by phone would greatly facilitate the process.

Recommendation

3. The Electoral Commission ensure that all staff dealing with iVote applications are well versed in the conventions of rural property addressing.

The other issue worth consideration in relation to iVote is its use in by-elections. Currently, an elector is only eligible to use iVote if they will be outside NSW on polling day for an election. This is an appropriate requirement for general elections due to the availability of absentee voting throughout the state. However, at a by-election, this requirement is problematic for people who are travelling outside their home electorate but within the state. For by-elections only, iVote eligibility should be extended to electors who will be more than 20km outside their electorate on polling day.

Recommendation

4. Eligibility for iVote be extended to electors who will be more than 20km outside their electorate on polling day for a by-election.

Declared Institutions

The Nationals strongly support the practice of sending mobile polling booths to those declared institutions within an electorate that request them.

As a significant participant in Australian democracy, The Nationals believe that the process of voting should be as easy as possible for all voters.

We believe that the presence of polling booths in declared institutions provides an important service of allowing the elderly and infirm to cast their vote with the minimum of stress and disruption.

However, there were a number of electorates where the number of declared institutions visited appeared to be quite low.

We understand that the Electoral Commission can only provide the service to institutions with their permission, but we believe that a substantial education campaign could be conducted to increase the number of declared institutions that participate.

Recommendation

5. The Electoral Commission develop communications strategies to increase the number of declared institutions participating in elections.

During the period of voting at each declared institution, The Nationals were given reports of significantly varied protocols and procedures around the state.

Although in many situations both the electoral officials and the staff at the institutions were professional and appropriate, in other situations this was not always the case.

In some cases, polling officials were not well briefed on the procedure surrounding voting. For example, in some declared institutions, scrutineers were allowed to wear t-shirts indicating their support for a candidate and in others they were not. In some they were able to assist voters (at the voter's request) but in others they were not.

Also, in some institutions only eligible voters were brought into the polling area. However in others, all residents were involved, leading to long delays (and consternation for some residents) in determining who was eligible to vote and who was not.

Of more concern were allegations that members of staff from some institutions were involving themselves with the marking of residents' ballot papers – potentially to an inappropriate degree.

Whilst we understand that many of these voters require assistance, and do not allege any broad irregularities in voting at declared institutions, we believe that there would be benefit in providing further and more centralised training for electoral officials overseeing these polling booths.

Recommendation

6. The Electoral Commission provide more detailed explanations to institutions of the procedures for voting and electoral officials be given more training in overseeing the process at each declared institution.

Preferential vote counts

In many electorates the two candidates chosen by the Electoral Commissioner for inclusion in the TCP count were not the final two candidates. The Electoral Commission on their website explains the irregularity thus:

> "The TCP candidates selected are normally those candidates which the Electoral Commissioner determines the most likely to be the last two candidates in a full distribution of preference count. However, an exception to this approach occurs where districts have been won by an absolute majority on first preference. In these cases the Electoral Commissioner has selected ALP and Coalition candidates as the TCP candidates. This selection facilitates election commentators determining state-wide electoral swings."

The Nationals view this policy with concern. Whilst it may generally work in metropolitan areas, where elections are more often traditional Liberal/Labor contests (although this is increasingly less true in the north shore and northern beaches, and the electorate of Hornsby at the 2011 state election is a prime example) there is far more volatility in election results in regional areas due to the relative prominence of independent candidates and the weakness of the Labor Party. In an electorate where an independent candidate has won an absolute majority of the vote at one election, their retirement or some other factor can cause the following election to be a Nationals/Labor contest. The reverse is also true – where a Nationals candidate has won an absolute majority at one election against a Labor opponent, the emergence of an independent challenger can cause the following election to be a close Nationals/independent contest.

For example, in 2007 the Electoral Commissioner selected Nationals candidate Kevin Humphries and Independent candidate Tim Horan for the notional distribution of preferences in the seat of Barwon. Whilst the final count was not determined for a number of days, the notional distribution of preferences on the night of the election gave all parties concerned a firm understanding of the state of play. Had the 2007 election been conducted with the same policy on notional distribution of preferences as applied at the 2011 election, Humphries would have been counted against the Labor candidate, which would have created considerable uncertainty and cause a delay of several days before the result was known. This is what happened in the electorate of Hornsby at this election, with the election night TCP count being conducted with the Liberal candidate against the Labor candidate, when it should have been conducted between the Liberal candidate and the independent. It was widely recognised by most observers that the independent would likely be the Liberal Party's main opponent in the electorate.

Whilst the Electoral Commissioner may not always be aware from public information who the most likely final two candidates are, most parties conduct research programs that provide them with a significant insight into the likelihood of particular election outcomes. This information could be shared with the Commissioner on an informal and confidential basis to inform his decision as to the conduct of the election night TCP count.

It is imperative that the results of elections be made as apparent as possible on the night - for the stability of the government and for the peace of mind of all concerned. Catering to the whims of election commentators should be a distant secondary consideration.

Recommendation

7. The Electoral Commissioner, in consultation with the major political parties, conduct the notional Two CandidatePreferred count in every electorate using the two candidates considered most likely to be the last two candidates in a full distribution of preferences.

It is also important that final two candidate preferred results be calculated for all seats for the 2011 state election. Most seats do have an accurate two candidate preferred result because either preferences were formally distributed or the notional distribution of preferences was correctly done between the two candidates who came first and second.

However, in 17 seats where the winning candidate received over 50% of the primary vote and the incorrect candidate was probably selected for the notional distribution of preferences, there is no two candidate preferred figure.

These seats are:

- Ballina
- Clarence
- Davidson
- Ku-ring-gai
- Lane Cove
- Lismore
- Manly
- Myall Lakes
- North Shore
- Orange
- Oxley
- Pittwater
- Upper Hunter
- Vaucluse
- Wagga Wagga
- Wakehurst
- Willoughby

There are also other seats (including Albury for example) in which, after a full distribution of preferences, it may become clear that a candidate was selected for the notional distribution of preferences who did not come second.

The Nationals believe it is essential that a full distribution of preferences be conducted for every electorate, in order to determine a final two-candidate preferred count.

This is important for a number of reasons.

First, it will provide commentators with accurate figures for their discussion of political events. Currently there is substantial misrepresentation of the margins in certain electorates and this inaccuracy permeates public commentary (as it did through the Clarence by-election due to the absence of an accurate two-candidate preferred figure). We believe that it is important for the Electoral Commission to provide an accurate historical record for posterity.

Second, it will allow political parties and candidates a true indication of their relative strengths and weaknesses and allow them to act in an informed manner.

Third, a full TCP count is important for smaller parties such as The Greens to be able to accurately gauge their position for those seats in which they appear to have finished second.

Recommendation

8. The Electoral Commission conduct a full distribution of preferences for all electorates where this has not yet been done for the 2011 state election, with priority given to the 17 electorates that do not have accurate Two Candidate Preferred counts, and full preference distributions be done as a matter of course for all electorates in future elections.

On a less critical note, we also consider it important that Two-Party Preferred counts are conducted in electorates where the top two candidates are not from the ALP and the Coalition. This enables a clearer picture of the electoral landscape at a state-wide level, and facilitates the calculation of Two-Party Preferred swings, the most commonly used statistic in electoral commentary and analysis.

Recommendation

9. In addition to a full distribution of preferences in all electorates, the Electoral Commission conduct supplementary Two-Party Preferred counts for those electorates where a third party finishes amongst the top two candidates.

The three recommendations above follow current practice of the Australian Electoral Commission, and The Nationals suggest that they be made standard practice for the NSW Electoral Commission as well.

Access to polling places for persons with mobility impairment

A number of complaints were received of pre-poll and election day polling places with inadequate access for persons with mobility impairment. Whilst The Nationals realise that it is not feasible to provide easy access at all polling places, we believe that where an elector has no reasonable option available to travel to an alternative polling place every effort should be made to cater for those electors with disability or other mobility impairment. This is especially important at pre-poll locations, and in regional towns with only one polling place.

Recommendation

10. That all pre-poll locations, and all polling booths that are the sole booth in a particular town offer disabled access wherever possible. Where this is not possible, polling booth staff should be aware of the need to assist less mobile voters as the need arises.

Candidate information sessions

Reports received by the party about the quality of candidate information sessions varied dramatically, from praise for the knowledgeable and helpful Electoral Commission staff at some locations to the criticism of the inability of those presenting to answer simple questions at others. While to some extent this may be able to be explained by differences in the expectations of those in attendance at the sessions, of concern is a report from one party member who attended two such sessions, who commended the staff at one and was highly critical of staff at the other. While these reports are purely anecdotal, they do suggest the need for the selection and training of staff making such presentations to be reviewed.

Recommendation

11. The Electoral Commission review procedures for the selection and training of staff conducting candidate information sessions.

Implications of the Election Funding, Expenditure and Disclosures Act

General

It would appear that the Election Funding Authority (EFA) has been inadequately resourced to attend to the volume of work required of it in assessing the disclosures and funding claims of parties and candidates following the 2011 state election.

At the time of writing, The Nationals are yet to have confirmed the completion of the compliance audit process for the party or any of its candidates by the EFA. Compliance audits for the candidates were received from the Authority between mid-November and mid-January, with follow up queries still being dealt with at the time of writing. The party's compliance audit was received from the Authority late on 10 February. At the time of writing, there remains outstanding in excess of $500,000 in funding due to The Nationals pending the finalisation of these compliance audits, which places a significant financial burden upon the party. After ten and a half months, we still have outstanding bank loans from the state election.

As well as the significant delay in receipt of audit requests and the processing of the party's returns, there have been numerous other factors that seem to indicate inadequate resourcing, inadequate staff training or a failure of internal systems within the Authority:

- In the compliance audit relating to the party disclosure, the Authority has requested a number of reportable donors' residential addresses, which are required "to confirm that the following donors are on the roll of electors…" In doing so, the Authority has provided a list of donors for whom address details are required, along with the address details provided in the party's initial disclosure. Some of those addresses were immediately recognised by party staff to be the actual residential addresses of the persons concerned, and following a check of the electoral roll were confirmed to be their enrolled addresses as well.

- In the compliance audit relating to the party's disclosure, some revenue items from the party's General Ledger which appear to the Authority to be reportable donations have been queried as not having been identified by the Authority in the party's disclosure. In several cases, these items are in fact included in the party's disclosure. In some cases, they are donations for which clarification of the donor's residential / enrolled address has been requested by the Authority as noted in the previous point.

- In the compliance audit relating to the disclosure lodged on behalf of John Williams, Member for Murray-Darling, the Authority queried the claim for telephone expenses, on the basis that "the line number area code used is '03' (Melbourne code) rather than '02' (Sydney code)." This is not the first time that the party has been queried about the use of phone services with area codes other than 02. While 02 is the predominant area code for NSW (not just Sydney), there are significant areas of the state that do not use that code, but use the 03, 07 or 08 area codes. A wash of electoral roll data against phone

directory records shows more than 40,000 electors with home phone numbers that have an area code other than 02 in the border electorates of Albury, Barwon, Lismore, Murray-Darling, Northern Tablelands and Tweed. Indeed, in Murray-Darling, which was the subject of this query, fewer than 10% of electors with directory listed phone numbers have numbers within the 02 area code.

- Some official correspondence has been sent to Agent's home address rather than the Agent's postal address as registered with the Authority. To make matters worse, the postcode that letter was addressed to was neither the postcode of the Agent's home address, nor the postcode of the Agent's postal address.

- Following the Party Agent's response to some candidate compliance audits, the Authority claimed that certain items they had requested had not been provided, however the items in question had not been requested in the initial compliance audit.

- An officer of the Authority contacted the Party Agent to request responses to EFA compliance audit queries more than two weeks after those responses had been forwarded to the Authority. When informed of the date and time the Agents had sent responses, the officer of the Authority acknowledged that they had in fact been received.

It may be that these issues, taken in isolation, are not considered to be overly serious. However, when taken together, they appear to be indicative of an organisation that is unable to adequately manage the responsibilities and workload with which it is charged.

It may be that in the course of this Inquiry the JSCEM is able to determine the reasons for these issues continuing to arise within the Authority, and make recommendations accordingly. For our part, we can only recommend that a comprehensive internal evaluation be commenced to assess the cause of these issues, and ensure that any additional resourcing or training necessary be provided to the Authority and its staff to prevent the recurrence of similar issues in future years.

We should emphasise at this point that we have no complaint with any of the officers of the Authority with whom the party has had dealings. Many have been especially knowledgeable and have been forthcoming with information that has been required by the party in the preparation of its disclosures and other documentation for the Authority. In particular, we have appreciated the professional and diligent assistance provided by the Authority's Compliance Manager, Felicity Wright.

Recommendations

12. A full internal review of the Election Funding Authority's processes be undertaken to ensure better preparedness for future disclosure periods, and especially for the next state election

13. The Election Funding Authority be provided with increased resources as required

14. Improved training be provided to Election Funding Authority staff, with an emphasis on those who are engaged on a temporary basis in connection with major disclosure periods

Campaign expenditure and public funding

This was the first election in NSW to be conducted with restrictions on party and candidate expenditure. The limits imposed on expenditure are considered to be reasonable, and the legislative framework is sufficiently flexible as not to impede the practice of parties using a variety of promotional tools in support of multiple candidates at the same time. They should be retained in their current form.

Recommendation

15. The provisions of section 95F of the Election Funding, Expenditure and Disclosures Act be retained in their current form.

The change from public funding payments being based on a fixed amount per vote to a proportion of actual expenditure (subject to meeting a modest qualification threshold) is strongly supported. It provides more certainty to all participants in election campaigns, and due to the imposition of caps on expenditure, does not expose the state's finances to excessive liabilities. The overall increase in the level of funding available, both to parties and candidates, has been important in compensating for the restrictions that have been placed on the source and quantum of donations that are able to be received.

Recommendation

16. The thresholds for eligibility for payments from the Election Campaigns Fund, and the rates of those payments, remain at the levels currently specified in sections 57-60 of the Election Funding, Expenditure and Disclosures Act.

Although the increased level of funding available to compensate parties and candidates for restrictions on donations is welcome, and indeed necessary, the delays that have been experienced in having claims for funding assessed following the state election are a cause of significant concern. The Nationals (and we suspect all other parties and candidates) are now more reliant on the availability of public funding because of donation restrictions, however just as we have become reliant on the funding made available by recent legislative changes, the time taken to make such payments has increased significantly. As noted above, at the time of writing, almost a year after the state election, the party is still awaiting receipt of more than $500,000 in funding (between the party and its candidates) and still has an

outstanding bank loan that was organised for the purpose of funding the election campaign.

There appear to be two primary causes for this delay. The first is the length of time taken to assess the claim by the EFA. The party submitted its claim for funding to the Authority, along with its general disclosure for the 2010/11 financial year, in September 2011. While the indications received from the Authority recently suggest that the assessment process is near to its end, it remains at this time incomplete. It may well be that an increase in the resources available to the Authority as recommended above is able to address this matter. However, we also consider that the Authority should either be required to complete its assessment of claims within 90 days, or to make an additional preliminary payment to bring the total amount of preliminary payments received by a party up to 95% of the amount that is estimated to be payable within 90 days of receipt of a claim for funding. The provision of section 69(4) of the Act requiring a party to repay any preliminary payment in excess of their ultimate entitlement is considered to be adequate to prevent overpayment.

Following Commonwealth elections, parties and candidates receive 95% of their estimated funding entitlement within 21 days, which provides significant financial certainty. While the differences between the state (reimbursement) and federal (rate per vote) systems mean that it is not realistic to have claims paid as quickly at the state level, providing a guarantee of 95% of the estimated funding entitlement after 90 days will make a significant contribution to parties' ability to manage their finances.

<u>Recommendation</u>

17. The EFED Act be amended to require the Election Funding Authority, within 90 days of the receipt of a claim for payment, to either complete its assessment of a claim, or make an additional preliminary payment equal to 95% of the total amount estimated to be payable (less any previous advance payment under section 67 and the previous preliminary payment under section 69.)

The second cause of the delay in the party's receipt of funding to which it is entitled is the constraint placed on the party by the vouching requirement associated with funding claims. Despite the EFED Act requiring claims for campaign funding to be lodged within 120 days of the return of writs for the election (section 64(1)), the vouching requirements at clause 6 of the Regulations prevent the lodgement of a claim prior to the lodgement of the party or candidate's annual financial disclosure. This has the effect of delaying the submission of claims for funding until after the end of the financial year in which the election giving rise to the claim occurs, and in a practical sense results in a delay of at least four months (and generally longer).

This can readily be addressed by requiring that vouching for the purpose of a Part 5 claim be by enclosing copies of invoices or receipts for the expenditure claimed, rather than by enclosing the party or candidate's annual financial disclosure. As well as ensuring claims for funding could be lodged in a more timely manner, it stands to reason that disconnecting the lodgement of funding claims and annual financial

disclosures, the EFA's workload at the time both claims and disclosures are lodged will be reduced.

As well as ensuring more timely payments to parties and candidates, such a change would have three further benefits:

- It will provide information to the Authority that could allow them to become aware of expenditure in excess of the spending caps sooner than is presently the case;
- It will provide greater certainty as to the items included in the claim for funding, which are currently only a subset of the total expenditure included in an annual financial disclosure, and not required to be distinguished in any way; and
- It will prevent the realisation of the potential that currently exists for a future by-election claim to be lodged more than 12 months after the conduct of the by-election.

Recommendation

18. Clause 6 of the Regulations be amended to prescribe that vouching for claims for payment from the Election Campaigns Fund be done by attaching copies of the invoices or receipts for expenditure to the claim form.

In the context of the restrictions that presently exist in relation to donations, public funding is not only more important for parties, it is similarly more important for candidates, especially those who commit significant personal funds to their campaigns. Under the legislation as it presently stands, parties are eligible to receive some preliminary payments (although there is a compelling case for these to be increased as noted above), however there is no provision for candidates to receive any payments at all until such time as the assessment of their claims has been completed. Such a circumstance appears to be inequitable, and should be addressed by providing to candidates the same rights to preliminary payments as are extended to parties.

Recommendation

19. That all provisions relating to preliminary payments of funding claims under section 69 apply equally to parties and candidates.

Campaign donations

The other matter relevant to campaign finances is the income of parties and candidates. While the general scheme of caps on donations and restricting donors to those on the electoral roll is supported, there are some changes that are considered necessary.

It is appropriate in this context to consider the provisions of Division 4A of the EFED Act. There are two issues to consider here: the apparent conflict between different

provisions of the Act; and the appropriateness of these provisions continuing in force following the passage of the *Election Funding, Expenditure and Disclosures Amendment Bill 2011* (EFED Amendment Bill).

In referring to an apparent conflict between provisions, we refer to Divisions 2A and 4A. Both Divisions have been introduced with a view to reducing the perception and/or occurrence of corruption in the NSW political system. This is a worthy intention, and one that has driven the significant change to these laws since 2008. However, the continuation of Division 4A should only be supported if Division 2A is unable to adequately serve this intent.

Division 2A caps donations variously at $2,000 and $5,000. In our submission, those caps are at a sufficiently low level to effectively reduce the potential for perceived and/or actual occurrence of corruption within the NSW political system. That being the case, Division 4A becomes redundant. Should Division 2A fail to effectively achieve its intended purpose, serious consideration would need to be given to its repeal, for there is no point in having a restriction that serves no legitimate purpose. We believe that Division 2A provides an effective mechanism to address public concern about perceived and/or actual corruption, and that Division 4A, which now serves no useful purpose, should therefore be repealed.

The repeal of Division 4A is also appropriate following the passage of EFED Amendment Bill, which limits donations to individuals on the electoral roll. The Nationals support this measure, and believe that restricting the ability to donate to those on the electoral roll is an appropriate means by which to address public concern about the perception of corruption. However, such a restriction is only appropriate if *all* individuals on the electoral roll are entitled to make political donations. The repeal of Division 4A would achieve that result. Prohibiting individuals from participation in the political process (by way of donations) for no reason other than the nature of their lawful employment or business interests (or those of their spouse) is no more legitimate than prohibiting individuals from voting on similarly arbitrary grounds.

<u>Recommendation</u>

20. Division 4A of the EFED Act be repealed

Many donors, in particular those who made donations that were only just above the threshold for reportable donations, found the donor disclosure forms to be confusing, and many also expressed frustration at not being able to complete their disclosures other than in hard copy. If an on-line disclosure form could be developed, it would greatly simplify the disclosure process, both for the fact of allowing on-line completion, and also by allowing those parts of the form that are not relevant to the donor to remain hidden. For example, the form that appears on screen could simply ask the donor the ‘yes’ or ‘no’ questions at the beginning of parts A-D of the existing disclosure form, and only show the tables that require completion in the event of the donor answering ‘yes’ to each particular question. This would make the disclosure process more convenient, and also make it appear less burdensome.

Recommendation

21. On-line disclosure forms be designed to streamline the disclosure process

In discussions with the party's donors, some have suggested that, due to the cap on donations not applying to donations to accounts of a party that are kept exclusively for federal election campaign purposes, they would like to be able to show in their annual disclosure to the EFA whether their donations have been made for state, federal or local government campaign purposes. This is considered to be important for donors whose total contribution to a party is more than the amount of the donation cap, as it would provide a means of demonstrating that they have not made any donations in breach of the cap.

While in many cases donors will not necessarily know the purpose for which their donations have been used, donors making reportable donations are much more likely to be aware of the purpose for which their donation has been sought. In particular, those making donations in excess of the cap on donations are likely to have sought assurances from the donee party that their donation is being used for federal campaign purposes. It is nonetheless important that in providing an opportunity for donors to indicate the purpose of their donation, any field on the form inviting such an indication is clearly optional.

Recommendation

22. The Authority's future donor declaration forms should include an optional field for donors to indicate the purpose for which a donation was made.

The imposition of restrictions on the allowable quantum and source of donations has caused considerable confusion among donors. For the most part this is an inevitable consequence of the repeated changes that have been made to the legislation governing donations in NSW over the past few years. However, there is one change that can readily be made to ensure greater clarity.

There is considerable confusion among donors and potential donors concerning the effect of the EFED Act on donations made to NSW branches of parties for the purpose of their federal election campaigns. While section 95B(2) provides an explicit exemption from the operation of the Division 2A caps for donations paid into an account kept exclusively for the purposes of federal (or local) government election campaigns, the Act is silent in respect of the various restrictions that are applied on the source of donations. Although the EFED Act is arguably unenforceable insofar as it purports to impose restrictions upon the donations that can be received by a party for the purpose of conducting a federal government election campaign, it would be preferable if the Act were amended so as to make clear that both the caps *and* bans on donations do not apply in respect of donations paid into an account kept exclusively for federal government election campaign purposes.

Recommendation

23. That both the caps and bans on donations under the EFED Act be explicitly excluded from applying to bank accounts kept by parties exclusively for federal government election campaign purposes.

Other issues

The EFA's disclosure website is of some concern with regard to the availability of documents. The site says that "*Should a disclosure not be available as a link as a result of your search then it has not been received by the Election Funding Authority.*" However, disclosures that have been received seem often to be unavailable as a link. At the time of writing, the Liberal Party's disclosure for the period 1/7/2010 – 30/6/2011 is not available as a link, nor is the National Party's disclosure for the period 1/7/2009 – 31/12/2009. This gives the false impression to members of the public searching disclosure information that these two disclosures were not submitted, which has obvious negative implications. Once lodged, disclosures should always be available on the EFA's disclosure website. In the event that some aspect of a lodged disclosure needs to be amended for whatever reason, the existing version of the disclosure should remain available until such time as any necessary amendments to the disclosure are made by the Authority.

Recommendation

24. That the EFA disclosure website be improved to ensure the constant availability of disclosures once lodged.

Implications for the Party Administration Fund

In connection with the restrictions placed on the quantum and source of donations able to be received by parties, the Party Administration Fund (PAF) was established, with a view to providing greater financial certainty to political parties while compensating them for their reduced ability to obtain donations. The Policy Development Fund (PDF), for independent Members of Parliament and parties without Parliamentary representation, was established at the same time and for much the same reasons. While the below comments and recommendations relate to the PAF, it may be that they are equally applicable to the PDF. The Nationals support the PAF, however there are certain improvements that could be made to ensure it better achieves its aim of providing financial certainty.

A party's entitlement under the PAF depends on the number of MPs representing that party within the NSW Parliament, and the number of MPs is determined as at 31 December in the year to which the funding entitlement relates. That means that if an MP were to resign from Parliament, die, or cease to be a member of the party they had previously represented late in the year, the party would not be entitled to funding in respect of that MP for the whole year. Such an eventuality would be especially

detrimental for smaller parties, who could find that they are only entitled to half the PAF payment they would have otherwise expected (for a party with two Members in the NSW Parliament.) Because entitlement to funding is calculated with reference to the number of MPs representing a party, the severity of the impact of such an event on a party's finances diminishes as the number of MPs representing that party increases. This effect can be significantly mitigated by calculating a party's entitlement to funding under the PAF as at the last day of each quarter, and accruing that amount towards the party's ultimate entitlement for the year. Special provisions would need to be established for the March quarter in the year of a state general election, and for that purpose we would suggest the number of MPs be determined as at the day prior to the dissolution of the Parliament.

Recommendation

25. A party's entitlement to PAF funding be calculated and accrued on a quarterly basis

Payments under the PAF are currently made annually in arrears, following assessment by the EFA of a party's claim for funding, which must be accompanied by copies of invoices or receipts to vouch for all expenditure claimed, as funding is only paid to reimburse actual expenditure of certain allowable types. This has the effect of creating potentially significant cash-flow problems for parties, who are required to spend money they may not have (as a consequence of donation restrictions) in order to become entitled to public funding that is intended to compensate them for the consequences of those donation restrictions. Although there is provision for payments under the PAF to be claimed for interest on loans, the cost of obtaining a commercial loan for the purpose of incurring administrative expenditure partly defeats the purpose of the PAF having been established, by requiring a party to incur expenditure (interest payments) it would not have otherwise incurred in order to be reimbursed for its administrative expenditure.

A better system would be to make preliminary payments available to parties on a quarterly basis in arrears. Such an approach would strike a more appropriate balance between the current PAF system of annual payments in arrears, and the former Political Education Fund system of annual payments in advance. However, such payments should take account of the purpose and nature of the PAF (being to reimburse parties for actual administrative expenditure, up to the limit of their entitlement.) For this reason, it would be appropriate for Party Agents to be required to make a declaration in which they estimate the amount of their party's reimbursable administrative expenditure up to the end of each quarter. Preliminary payments could then be made at either 95% of the party's accrued entitlement or 95% of the Agent's estimate of actual expenditure, whichever is lesser.

We say the Party Agent should submit a declaration of the estimated administrative expenditure "up to the end of each quarter" rather than "for each quarter" quite deliberately. Parties may have single items or events that incur a considerable one-off administrative expense (Annual Conferences for example) that cannot be spread throughout the year. By taking account of a party's administrative expenditure up to the end of each quarter, it is less likely that a party will be faced with a significant

deficit pending the finalisation of their annual PAF claim. For the same reason, we support the PAF being retained on the basis of an overall annual entitlement, albeit one with the flexibility to provide preliminary payments on a quarterly basis.

The requirement for parties to submit an annual PAF return to the EFA, including appropriate vouching for all expenditure claimed, would need to be retained. Provisions would also need to be established allowing the EFA to make a final payment of any additional funds due following their assessment of the claim, or to recover funds from a party in the event that their assessment reveals an overpayment. By continuing to require an annual PAF return be submitted, and ensuring that overpayments are able to be recovered, an appropriate level of accountability for parties will be maintained.

Recommendation

26. Payment of PAF entitlements be made to parties quarterly at the lesser of 95% of their accrued entitlement or 95% of their estimated eligible expenditure, subject to repayment provisions in the event that quarterly payments exceed the total of eligible expenditure as determined by the EFA in their assessment of parties' annual PAF returns