

ADMINISTRATION OF THE 2019 NSW STATE ELECTION

Organisation: Liberal Party of Australia - NSW Division

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LIBERAL PARTY OF AUSTRALIA

NEW SOUTH WALES DIVISION

State Director

9 October 2019

Mr Lee Evans MP
Chair
Joint Standing Committee on Electoral Matters
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Evans,

Thank you for the opportunity to make a submission to the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the administration of the 2019 NSW State Election.

Broadly speaking, the Party believes the election was conducted in a satisfactory manner, and we acknowledge the effort, experience and professionalism of the NSW Electoral Commission (NSWEC) in preparing for and conducting the election.

The Party maintains a constructive and effective relationship with the NSWEC, not only during election campaigns, but throughout the electoral cycle, and we view this relationship as critical to the conduct of elections.

Fair, democratic elections are the cornerstone of the Australian and NSW political systems and as such the Party is naturally concerned with ensuring that elections, including preparations, are undertaken to the highest standard, both to ensure ongoing community confidence in NSW electoral processes and in enabling and assisting political organisations and candidates to contest elections in a fair and easy manner.

With this in mind, the Party believes there are some elements of the administration of the election that could be improved, and comments, suggestions and observations made in this submission are made as a constructive contribution to improving electoral processes.

Electoral Act 2017

Nomination and Registration of Candidates

Under NSW legislation, political parties and candidates must register and then candidates must also be nominated. The Party has some concerns in relation to both processes.

In relation to the registration of parties and candidates, the Party questions the need for candidates of registered political parties to separately and individually register. While we understand the requirements for registration, it seems to us unnecessary for a candidate to register individually

when contesting as a candidate of a registered party. This simply creates an additional layer of red tape with no clear purpose.

When a candidate is registered with the NSWEC, the Commission publishes every candidate's contact details on their website. Where a candidate is not a silent elector, as many are not, their home address is published on the NSWEC website, which poses a threat to the personal safety of political candidates. The Party submits that the residential addresses of candidates should not be made public, or if they are, they should only be available to view at the Commission's offices, and not online, in order to protect the privacy of people who put their hand up seeking public office.

With respect to nominations, the Party believes there is scope to further simplify and streamline the process. As a general rule, we believe there should be as few regulatory barriers to standing as a candidate as possible. The nomination process can be time consuming and confusing, with multiple forms required to nominate. In contrast, the federal nomination process requires a single two-page form. At the 2019 federal election, a qualification checklist was added for candidates to demonstrate they satisfy the eligibility requirements under section 44 of the Constitution.

Early Voting

The Committee should carefully consider the way in which NSW is moving to a 'voting period', as opposed to an 'election day', and the extent to which this is the Parliament's intent.

The number of electors in NSW voting prior to election day has dramatically increased at recent elections, as demonstrated in the table below:

	2011 Election		2015 Election		2019 Election	
	Total	%	Total	%	Total	%
Formal Votes	4,153,335	100.0%	4,404,334	100.0%	4,551,886	100.0%
Pre-poll	345,100	8.3%	624,995	14.2%	990,946	21.8%
iVote	46,021	1.1%	275,594	6.3%	232,961	5.1%
Postal	242,918	5.8%	200,861	4.6%	135,332	3.0%
Total Early Votes	634,039	15.3%	1,101,450	25.0%	1,359,239	29.9%

Section 6 of the *Electoral Act 2017* details the circumstances for which a voter is deemed to be "unable to attend at a voting centre on election day", i.e. they:

- are not within New South Wales
- are not within 8 kilometres by the nearest practicable route of any voting centre open for the purposes of an election
- are travelling under conditions that will preclude the person from voting at any voting centre
- are seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any voting centre to vote
- in the case of a woman, will, by approaching maternity, be precluded from attending at any voting centre to vote

- are, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any voting centre to vote
- are, by reason of the person's membership of a religious order or his or her religious beliefs:
 - precluded from attending at a voting centre
 - precluded from voting throughout the hours of voting on election day or throughout the greater part of those hours
- are, by reason of his or her being kept in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), precluded from attending at any voting centre to vote
- are, by reason of being engaged for fee, gain or reward in any work throughout the hours of voting on election day, be precluded from attending at any voting centre to vote, or
- are a silent elector
- are a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*)
- believes that attending a voting centre on election day will place the personal safety of the person or of members of the person's family at risk.

Clearly, a nearly three-fold increase since 2011 in the number of people voting at pre-poll can't be explained by a nearly three-fold increase in the number of people who are unable to vote for one of these reasons.

The use of the term 'early voting', which is enshrined in the *Electoral Act 2017*, contributes to the problem. Notwithstanding the eligibility criteria set out in the Act, the term infers that voters can vote early for convenience, not just because they are genuinely unable to vote on election day.

We acknowledge that in its communications, the NSWEC does make clear that voters who are unable to vote on election day for a number of reasons may be eligible to vote early. However, the widespread use of the term 'early voting', from media releases issued by the Commission, to the signage outside 'early voting centres', which of themselves are defined in section 4 of the Act, is normalising the change in voting patterns. Moreover, it means that many more people are casting their vote at a point when many aspects of an election campaign – such as the release of key policies, campaign launches and 'free-time' election broadcasts – may not yet have taken place.

While we believe the two week period for 'early voting' allows a reasonable opportunity for early voting to support voters with legitimate reasons for not being able to attend a polling place on election day, the number and extended opening hours of early voting centres, making early voting ever more accessible and convenient, is indirectly encouraging voters to vote early.

Broadly speaking, we believe there should be a single early voting centre for each metropolitan electorate, while acknowledging the need for multiple locations in rural and regional electorates, as well as the usual state-wide early voting centre at the Sydney Town Hall. This would ensure early voting remains accessible without becoming the option of convenience.

We also believe that further education about, and enforcement of, early voting eligibility requirements is needed.

The problems with voting at early voting centres identified above do not apply to postal voting and therefore the Liberal Party doesn't see any need for these arrangements to change.

iVote

As outlined in the Party's previous submission to the Committee as part of the inquiry into the conduct of the 2015 NSW State Election, the Party has concerns regarding the ability of political parties and candidates to engage with eligible electors who choose to iVote. While this submission does not seek to restate those concerns, the Party does wish to reaffirm its position.

Additionally, the Party has concerns regarding the accessibility of iVote during the 2019 election. During the final week of the election campaign, when the period for postal voting had closed, voters were advised that if they could not vote attend a polling place on election day, or vote at an early voting centre, they should register to iVote. This advice was broadly communicated across NSW, including through the media, by the NSWEC.

Unfortunately, during the final 10 days of the campaign, the iVote system crashed and was unavailable for extended periods of time, potentially disenfranchising voters. The Party submits that the iVote system should be reviewed and upgraded to prevent similar occurrences at future elections, both to ensure voters are able to cast their votes, and to ensure the integrity of the iVote system, especially given the heightened concern regarding hacking and attempts at electoral fraud.

Election Day

The Party acknowledges the significant effort by the NSWEC to run election day, and recognises the responsibilities it has for the health, safety and wellbeing of NSWEC staff.

With that said, we were concerned that at the close of polls, our scrutineers reported that at a number of locations, Voting Centre Managers delayed the counting of votes for a dinner break, in some cases leaving scrutineers outside and unable to undertake their duties.

The timely counting and reporting of the vote count at every booth is critical on election night, and the Party is concerned this was delayed at numerous booths across NSW.

While we recognise the health, safety and wellbeing of NSWEC staff, we believe a better system of breaks throughout the day should be implemented to ensure there is no unnecessary delay in the counting of votes immediately after the close of polls.

Electoral Funding Act 2018

Interaction with Parliamentary Entitlements

Under the *Electoral Funding Act 2018* expenditure incurred by a Member of Parliament from their parliamentary entitlements is not deemed to be electoral expenditure for the purposes of expenditure caps. The Liberal Party believes the approach set out in the Act is entirely appropriate.

However, during the 2019 election, there were several instances where the Liberal Party believes Members of Parliament may have spent their entitlements in a manner which would breach the NSW Parliament's rules regarding the use of Members' Entitlements.

Usually, where a Member is found to have breached entitlements rules, they are required to repay such expenditure to the parliament. In this instance, the Party believes such expenditure should then be considered electoral expenditure under the *Electoral Funding Act 2018*.

Unfortunately, in the instances where Members of the Liberal Party lodged complaints to the NSW Parliament in relation to potential misuse of entitlements, its Parliamentary Services branch investigated internally and only advised the outcome to the member whose entitlements the complaint related. Thus the Party is unaware as to whether entitlements were breached and thus as to whether the expenditure should be considered electoral expenditure. Additionally, we are not aware of any process of advising the NSWEC that entitlements may have been breached and that if so, this expenditure be reported as electoral expenditure.

This creates the potential for electoral expenditure to be incurred in breach of the *Electoral Funding Act 2018* with no way of either the NSWEC or the complainant being aware.

The Party submits that a process should be developed between the NSWEC and the NSW Parliament to ensure transparency of the system.

Federal Campaign Expenditure

Given the proximity of the Federal Election to the NSW State Election, many political parties and federal candidates were producing and distributing material in relation to the federal election.

Understandably, the NSWEC would be monitoring such expenditure to ensure federal campaign funds were not being used surreptitiously to influence the outcome of the NSW State Election.

However, the advice provided by the NSWEC in Bulletin 13 to Registered Political Parties on 1 March 2019 - just 22 days before polling day - was neither timely nor adequate.

At a press conference on 27 November 2018, the Prime Minister and the Treasurer announced that the Federal Budget would be handed down on 2 April 2019 and media speculation of a May federal election began in earnest. The prospect of overlapping campaigns should have been evident much earlier.

In relation to the Bulletin, it stated in part:

In assessing any future claims that expenditure was incurred substantially in respect of an election of members to the Commonwealth Parliament, a range of relevant factors would be considered by the NSW Electoral Commission. Some of these factors are listed below to assist participants in the NSW State election on 23 March 2019 understand how the Commission may approach an assessment of such a claim.

It is important to note, however, that the Commission has not decided that the existence of one or more of these factors will mean that expenditure is not substantially in respect of the Federal election. Any claim that expenditure was incurred substantially in respect of the Federal election will be assessed on its particular circumstances at the relevant time.

Further, the Bulletin stated:

The Electoral Commission will not be providing advice to NSW electoral participants on whether specific examples of expenditure on electoral material may be claimed as being substantially incurred in respect of the Federal election. All electoral participants should carefully consider their own circumstances and how the relevant NSW rules for campaign accounts, the electoral expenditure caps, their disclosure obligations and any offences linked to non-compliance, including the offence under s144 of the Electoral Funding Act, apply to those circumstances.

Electoral participants should consider seeking independent legal advice to guide them in conducting their State and Federal campaigns in accordance with their statutory obligations.

We do acknowledge that for general guidance purposes, the Bulletin did list a number of potential factors indicating expenditure is not substantially for Federal campaign purposes, including:

- *The timing of the distribution or broadcast of the material is aimed at influencing, or is more likely to influence, the vote for the State election*
- *Issues raised in the material fall exclusively or mainly within NSW jurisdiction*
- *The material mentions State candidates or State electoral districts*
- *The material focuses on promoting or opposing a NSW-registered party rather than specific issues*
- *Candidates at the State election are incurring or paying for the expenditure, or organising the distribution of the material*
- *The material forms part of a planned Federal campaign impacting more than one Australian state or territory, but that campaign is only taking place in NSW before 23 March 2019*
- *The amount of expenditure on Federal campaign material distributed before the State election is high compared with the total expenditure on that same material after the State election*

However, it is important that participants in the electoral process can clearly understand the rules, and how they will be interpreted, so as to fully comply with their obligations under the relevant legislation. We believe that in this case, more detailed advice should have been provided by the NSWEC, particular in relation to its interpretation, and much earlier than it was.

Public Funding Claims

Under the *Electoral Funding Act 2018*, political parties may be eligible to receive public funding from the Electoral Campaigns Fund in relation to an election campaign. However, the process for claiming public funding is overly drawn out.

To receive a payment for an election, a claim for payment must be lodged with the NSWEC within 120 days of the day for the return of the writ for the election. It means the Party incurs significant costs. Lending facilities are put in place to fund election campaigns with the expectation of using public funding to pay down the loan (as we understand a large number of parties and candidates do) and while the public funding is outstanding, the Party continues to incur interest on those facilities.

In contrast, despite the federal election being held almost two months after the NSW election, the Australian Election Commission had already completed its public funding process and public funding claims paid well before the deadline for lodging a claim from the Electoral Campaigns Fund for the state campaign.

The Party submits that the NSWEC process for claiming public funding should be streamlined to reflect the speed at which federal public funding claims are assessed and paid.

Expenditure

The requirement to provide vouching documentation at the time of disclosure submission is surely a relic of times past. For the 2019 period, the NSW Division of the Liberal Party was required to deliver 27 folders of materials to the NSWEC in relation to our claim for public funding and a further 20 folders in support of our annual expenditure return.

The NSW Liberal Party submits that a better approach would be the requirement to submit documents on the basis of random sampling by the NSWEC for review. Another approach may be to submit vouching for expenditure of \$100.00 or more, with random sampling by the NSWEC for expenditure of less than \$100.00.

The increasing role of social media in campaigns demonstrates the challenges associated with the vouching requirements. For example, the NSWEC requires vouching for social media posts, for which funds of \$20.00 or more are expended. The result is that the Liberal Party has had to collate and produce hundreds of pages of screenshots of social media posts, matched to invoices or receipts. A requirement to maintain vouching records above a \$100.00 threshold would still achieve the material substantiation objectives of the Act.

The collision of State and Federal elections in 2019 posed particular challenges for registered political parties. Following the two elections, the compliance task has been enormous. However, the task was made more difficult by the onerous NSW legislative requirements.

From a public policy perspective, it is not clear as to why registered political parties are required to prepare and submit separate public funding and expenditure disclosure returns, which contain substantially the same information. Moreover, these two substantial returns need to be submitted within a fortnight of each other, which is a considerable challenge in an election year.

We would submit that combining these returns would be more efficient for both the NSWEC and stakeholders.

Moreover, the four week timeframe for disclosure of reportable political donations is a real issue for both half-year periods. For the period ending 31 December, which coincides with the Christmas and New Year holiday period, it is a challenge to arrange workflows to achieve the four week deadline given the number of public holidays that fall in this period. It also impacts on the ability of staff to take annual leave during the period.

Likewise, for the period ending 30 June, finance and compliance staff also have to prepare the annual accounts of the organisation, which also need to be lodged alongside our return. A six week

timeframe would better reflect the disclosure demands on registered political parties and also allow staff to navigate public holidays and enjoy some time with their families over the festive period.

Donations

In 2019, the transition to 'real-time' disclosure of reportable political donations was manageable because it was limited to single donations of \$1,000 or more. With the move to 'real-time' disclosure for all political donations during the regulated period ahead of the 2023 general election, we acknowledge that registered political parties and candidates will need to make substantial changes to their systems in order to remain compliant.

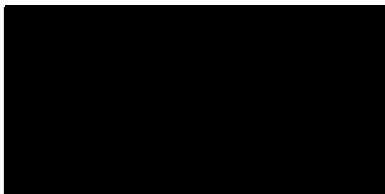
Identification of prohibited donors, especially property developers, continues to be difficult and problematic for registered political parties. While the definition set out in Division 7 of the *Electoral Funding Act 2018* is clearer than that in its predecessor, it is still fraught. Ascertaining the bona fides of prospective or actual donors requires substantial resources and even then, it is not possible to entirely mitigate risk, given the disparate information available in the public domain relating to development applications made to the 129 Councils across NSW. This places a significant compliance burden on registered political parties. We would submit that a searchable database of pending development applications, including details of applicants, is required in order for registered political parties to be able to fully comply with this requirement.

Constitution Act 1902

We make no submission regarding those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, the Legislative Assembly and the Legislative Council and which fall within the terms of reference of this Inquiry.

I trust this information assists the Committee.

Yours sincerely



Chris Stone
State Director