

**Submission
No 22**

ADMINISTRATION OF THE 2019 NSW STATE ELECTION

Organisation: Australian Labor Party (NSW Branch)

Date Received: 16 October 2019

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Joint Standing Committee on Electoral Matters

Inquiry into the 2019 State Election

Submissions by NSW Labor

16 October 2019

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

**NSW Labor Submission to the Joint Standing Committee on Electoral Matters
Inquiry into the 2019 NSW State Election**

Dear Mr Evans,

Thank you for your invitation to contribute to the inquiry into the administration of the 2019 NSW State Election.

NSW Labor makes these recommendations to improve the conduct of elections in the future.

These recommendations are identified through the experiences of the Party Office, Members of Parliament, candidates, staff, and volunteers at the 2019 state election.

These recommendations relate to the following:

1. Complaint process and resolutions
2. Nominations
3. Early voting via early voting centres and i-vote
4. Procedures of election day
5. Expenditure, donations and disclosure
6. Election data
7. Voter enfranchisement

Lastly, we would like to again thank the NSW Electoral Commission for their ongoing work.

Yours sincerely,

NSW Labor

1. ELECTION CAMPAIGN

1.1 Complaint Processes and Resolutions

The process of resolving complaints on a range of electoral material and directives of NSW Electoral Commission staff require a simple lodgement of complaints to the NSW Electoral Commission.

The nature of the complaints and the time sensitivity meant that while a number of complaints received were acknowledged, many were not resolved by the conclusion of the election.

Labor lodged a total of forty (40) complaints on a range of issues, with seventeen (17) receiving a resolution.

Complaints included (but were not limited to) unauthorised material distributed that disparaged the Labor candidate in Baulkham Hills. This complaint was lodged on 22 March 2019 and an acknowledgement was received after the state election had concluded.

It is clear that the NSW Electoral Commission cannot investigate nor enforce the Electoral Act 2017 (NSW) to have a meaningful impact on electoral outcomes.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission be properly resourced to investigate and remedy breaches of the Electoral Act 2017 (NSW). Urgent matters should be dealt with prior to the election date and through staff on the ground in electoral districts.*

1.2 Nominations

In 2019 the NSW Electoral Commission implemented an online nomination process for all State Candidates.

The online system provided a streamlined approach to nominations and enabled NSW Labor to provide accurate information to assure that all nominations were valid.

While in its initial stages, the current online system required that nomination forms be signed and lodged with the NSW Electoral Commission. This led to unnecessary duplication.

Recommendation: *NSW Labor supports the development of a more efficient way to nominate for public office. NSW Labor recommends that the NSW Electoral Commission invest in further improvements to the online nomination system to assist in future state and local government elections.*

1.3 Non-Compliant Electoral Material

At the 2019 state election there were a large number of complaints relating to the proper authorisation of electoral material. While proper instruction was provided by the NSW Electoral Commission in relation to the *Electoral Act 2017*, the NSW Electoral Commission was much less clear in communicating to Candidates and Political Parties the means for remedying false, misleading or absent authorisation.

SE.245 “Preparing your electoral material” provided by the NSW Electoral Commission outlines three principles for adjudicating complaints made in relation to electoral material. The three principles are proportionality, prioritisation, and use of resources in relation to complaints. The purpose of these three principles is well understood. Nonetheless candidates and their campaigns often found the communication of where a particular complaint falls within these principles opaque.

██████████, the ██████████ for ██████████, displayed a number of advertisements that failed to meet guidelines provided by the NSW Labor Electoral Commission. Complaints were made by NSW Labor on 7 March 2019, twice on 9 March 2019, 11 March 2019 and 13 March 2019. While these complaints were acknowledged by the NSW Electoral Commission, local campaigners felt that there was a lack of explanation as to how to remedy the situation and what priority it was being given.

While NSW Labor recognises that this material may not have met the requirements for action to be taken, failure to communicate why action was or was not taken leaves candidates and campaigns confused and is detrimental to a campaigns trust in the NSW Electoral Commission.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission prevent breaches of the Electoral Act 2017, be given sufficient resources to prevent breaches, clearly communicate with political parties and campaigns the progress of investigations into breaches, and provide explanation as to why action was or was not taken in relation to breaches.*

2. EARLY VOTING

2.1 Early Voting

At the 2019 state election the proportion of early voting exceeded historic precedent. The increase exposed a number of deficiencies of early voting centres that made it more onerous for electors.

The two main concerns of NSW Labor relate to the electronic mark off used by NSW Electoral Commission staff and the administering of ballot papers.

Early voting centres experienced significant breakdowns in the computer system. When this occurred NSW Electoral Commission staff were unable to administer ballot papers resulting in either delays, confusion or people being turned away from early voting centres.

This was experienced (but not limited to) voters in Riverstone where an early voting centre was temporarily closed. These computer failures continued throughout the period of early voting.

In some electoral districts, particularly in regional areas, early voting centres were provided insufficient ballot papers to keep up with turnout. This resulted in people being turned away from early voting centres. The Braxton voting centre ran out of ballots to provide voters potentially leading to the disenfranchisement of voters.

***Recommendation:** NSW Labor recommends that the NSW Electoral Commission invest in an alternative system such as a backup paper list and the printing of ballot papers at early voting centres, to assure that voting is made accessible where and when voters choose to cast their vote.*

2.2 Early Voting Centre Hours

Previously, early voting centre hours were determined and made available to registered political parties prior to the commencement of the early voting period. These hours were consistent, i.e. 9am - 5pm Friday through Wednesday or 9am - 8pm on the Thursday before the election date.

This convention was amended at the last state election with varied times dependent on specific early voting centres. NSW Electoral Commission staff were also given the discretion to amend the times of voting centres with notice.

NSW Labor experienced the discretionary nature of early voting centre trading hours in the electoral district of [REDACTED]. The hours of the early voting centre moved and fluctuated on the preferences of the divisional returning officer.

This ad hoc approach made it difficult to accurately direct voters to early voting centre locations and created further confusion with people seeking to vote early.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission fix the hours of early voting centres prior to its commencement and this be communicated to voters, that hours be uniform across seats, and that provisions that give discretion for voting centres to amend times with twenty-four hours notice be removed.*

2.3 Restrictions on early voting

NSW Labor recognises that early voting constitutes a rising proportion of the voting at an election. Early voting is critical to enabling all people access to vote.

As the number of early votes increase some electors may be casting their ballot early when they are not strictly entitled to. These voters may be doing so out of the convenience of early voting.

The current restrictions for early voting at a state election require that an elector

- will be outside New South Wales on election day
- will be more than 8km from a voting centre in your electorate, ward or council area on election day
- will be travelling and unable to attend a voting centre on election day
- are seriously ill or infirm, and due to such illness or infirmity will be unable to attend a voting centre
- are approaching maternity
- have religious membership or beliefs that prevent you from attending a voting centre on election day
- are in a correctional centre and prevented from attending a voting centre on election day

- are caring for a person outside of a hospital setting, which prevents you from attending a voting centre on election day
- will be working on election day
- are a silent elector
- are a person with a disability
- believe that attending a voting centre on election day will place your personal safety or the safety of your family at risk.

Removing the restrictions on early voting would recognise this reality. Currently the reporting of the elector's reasons for requesting an early vote leads to delays at early voting centres. Removing the restrictions would allow early voting centres to run more efficiently and reduce lines. This approach was undertaken in Victoria at the 2018 state election.

Recommendation: *NSW Labor recommends a consistent approach be applied to early voting with the aim of removing restrictions of people to vote early. NSW Labor recommends that the limitations on voters casting an early vote be removed.*

2.4 iVote

NSW Labor supports the use of modern technology to conduct elections. NSW Labor also acknowledges the importance of providing varying mediums to enable voters to cast their vote.

At the 2019 state election, iVote created unnecessary barriers to people seeking to vote online.

As similarly experienced at early voting centres, it was reported that the iVote had outages throughout its operation.

Voters reported not receiving the relevant information such as a login code to access the online system to vote. This created confusion on how electors could vote online.

These deficiencies meant that NSW Labor did not actively direct eligible electors to iVote.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission invest in further procedures and processes to enhance the confidentiality, availability and reliability of the iVote platform.*

2.5 Early Voting Centre locations

NSW Labor acknowledges that early voting centres reflect the changing needs and voting habits of electors.

At the preliminary announcement of early voting centres, a number of regions which historically contained early voting centres no longer did, including Woy Woy in the Gosford electoral district. The Early Voting Centre had been moved to Kincumber. While this was rectified by the NSW Electoral Commission, if it had proceeded it would have been detrimental to a large portion of the electoral district who are elderly.

Early Voting Centres were also moved to locations that despite being geographically close, represented large changes in travel time. In the electoral district of East Hills there was initially only one early voting location, East Hills Election Manager's Office. This location was a 35-minute walk from Revesby Station. The closest public transportation hub to the voting centre was a 22-minute walk away.

A number of early voting centre locations presented dangers for booth workers, volunteers and candidates. Early voting centres need to be easily accessible for people with disability and access issues. In the electoral district of Lane Cove the early voting venue was in a very inaccessible location with steep steps, on a site with a steep decline and no adequate parking.

At the Sydney Town Hall early voting centre there were issues with accessibility. The early voting centre was on the upper section on the Drutt Street side of Town Hall. It required a large set of stairs to access. There were numerous occasions where the lifts were not functioning and signage for disabled access was scant. On one occasion when the lift was not operating, an elector with limited mobility fell trying to traverse the steps in the rain. This incident resulted in an ambulance being called.

***Recommendation:** NSW Labor recommends that early voting centres reflect previous voting habits with a view to being easy to access. Additionally, NSW Labor recommends that the safety of electors, campaigners, candidates and NSW Electoral Commission staff be a key consideration when selecting Early Voting Centres.*

2.6 Notice of Early Voters

An electronic roll mark off should be provided, from time to time, upon request, to political parties of electors who have cast their ballot early. This will assist parties in effectively campaigning to increase turn out for those electors who do not vote early.

Recommendation: *NSW Labor recommends that an electronic mark off of early voters who have cast their vote be provided to political parties upon request.*

3. PROCEDURES AT POLLING LOCATIONS

3.1 Restrictions on voting

Labor opposes any requirement for electors to provide proof of identity in order to cast their vote.

The stated rationales for ID requirements are unfounded. The introduction places unfair barriers to voters.

Many people do not have a drivers license or other forms of identification. A change to such a provision would have a disproportionate effect on those who may already find it difficult to cast a formal vote.

In NSW voting is compulsory. The implementation of provisions for a person to show photo identification to cast a vote could disenfranchise people from voting at all.

Recommendation: *NSW Labor rejects any arbitrary restrictions that would impede upon voters ability to exercise their right to vote. NSW Labor opposes the introduction of producing identification to cast a vote.*

3.2 Staffing of voting centres

NSW Labor acknowledges that substantial resources, time and people are required to undertake the 2019 state election.

However, political parties, Members of Parliament, candidates and voters should have confidence in paid staff of the NSW Electoral Commission. They should believe that staff understand the importance of their role and responsibilities. NSW Labor is not confident that this was realised at all times throughout the 2019 state election.

Outlined below and in section 3.3 of this submission NSW Labor will provide examples of where incidents had occurred.

Concerns were raised regarding an incident reported at the St James polling centre in the electoral district of Strathfield. A volunteer engaged by the Liberal Party of Australia (NSW Division) was able to administer ballot papers on behalf of the NSW Electoral Commission for approximately five hours without scrutiny.

The Voting Centre Manager did not verify the volunteer's employment and as such, the volunteer did not have the necessary training required to fulfil the role of an NSW Electoral Commission staff member.

Following this incident, ballot boxes were quarantined causing unnecessary delays to voting. While this incident placed no bearing on the result, it raised considerable concern of the security of the ballot and probity of staff.

Recommendation: *NSW Labor acknowledges the hard work of the NSW Electoral Commission staff in administering the 2019 state election.*

NSW Labor recommends that more rigorous training is provided to all NSW Electoral Commission staff who work in polling centres to give confidence that they are able to complete their role in a fair and open manner.

NSW Labor also recommends that more scrutiny is placed on election day and early voting procedures and those who conduct the ballot.

3.3 Instructions on how to vote

During the 2019 state election there was wide and varying instructions given by NSW Electoral Commission staff to voters. This included a number of electoral districts reporting that NSW Electoral Commission staff were telling voters they could "just vote one".

While this is factually accurate it may confuse voters and limit enfranchisement in circumstances where the voter intended to preference. This is especially the case in linguistically and ethnically diverse communities.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission train staff when providing instruction on how to cast a formal vote inform electors of their right to preference.*

4. ELECTION COUNT

4.1 Early voting count

As noted, the number of early votes cast is growing. As a consequence, the time needed to count and scrutineer the count has increased.

Understanding this, in the 2018 Victorian election, initial scrutiny of early votes was permitted from 4pm on election day. Scrutineers were able to observe the count however all communication devices were quarantined. This allows for more timely results.

***Recommendation:** NSW Labor recommends that the early voting count commence from 4pm on election day, adopting similar provisions and conditions, as seen in Victoria, on scrutineers observing in the count.*

5. ELECTION FUNDING, EXPENDITURE AND DISCLOSURES

5.1 Disclosure System

New South Wales has the most complex disclosures system in the country. The laws can be prohibitive for new political parties. The NSW Electoral Commission should establish a centralised electronic disclosure system that allows for real time monitoring of donations and expenditure and that ensures all disclosure is done in compliance with the Electoral Funding Act 2018.

As of 18 July 2018, the Act reduced the period for disclosure of donations to 28 days twice annually and 21 days during an election period. The development of an electronic disclosures system would assist parties, candidates, and campaigns to meet their disclosure obligations more easily.

***Recommendation:** NSW Labor recommends the introduction of a NSW Electoral Commission developed electronic disclosure system.*

5.2 Major Donors and Donations

A major donor in NSW is defined as an individual who, or an entity that, makes a reportable political donation to:

- A New South Wales political party

- An associated entity of a political party that is registered for NSW State elections, an elected member of the NSW Parliament or an elected member of a local council in NSW
- An elected member, candidate, group of candidates or third-party campaigner for a State or local government election in NSW.

A reportable political donation is defined as a political donation of \$1,000 or more and includes political donations of less than \$1,000 where the donor has made multiple political donations to the same recipient in the financial year that, in aggregate, total \$1,000 or more.

All donations from a major donor to a particular political party or reportable donations should be disclosed to the NSW Electoral Commission within 21 days. These donations should then be publicly viewable online within 7 days of being lodged with the NSW Electoral Commission. This will increase the transparency of donations in New South Wales.

***Recommendation:** NSW Labor recommends that reportable donations and donations from a major donor known to a political party be disclosed to the NSW Electoral Commission within 21 days and that these declarations be made publicly available within 7 days of receipt.*

5.3 Banning of Donations from Real Estate Agents and Lobbyists

On 14 December 2009 amendments to the Electoral Funding, Expenditure and Disclosures Act 1981 prohibited property developers making political donations. This prohibition helped to return integrity and trust to the funding of political parties and remove the perception of undue influence.

It is now time that New South Wales prohibit real estate agents and professional lobbyists from making political donations.

Real Estate Agents as defined by Property, Stock and Business Agents Act 2002 and Lobbyists, who appear on the Register of third-party lobbyists as well as their close associates or corporations or organisations that are regularly involved in these practices should be banned from donating. This would effect third party lobbyists as defined by the Lobbying Of Government Officials Act 2011.

It is Labor policy not to accept donations from professional lobbyists.

***Recommendation:** NSW Labor supports the prohibition of donations from professional third-party lobbyists and real estate agents.*

5.4 Cash Donations Limits

Cash donations lead to lower levels of accountability and transparency. While removing or reducing cash donations will not remove the ability for individuals or groups to circumvent electoral laws. Restrictions on cash donations will instead add an additional barrier.

Cash is more anonymous, more easily transferred and harder to trace. It possesses attributes that conflict with the purpose of electoral disclosure laws. For this reason, NSW Labor supports restricting cash donations to no more than \$100 for a single donation transaction. An exemption should exist for payments related to nomination fees, membership dues, and levies placed upon candidates for public office.

***Recommendation:** NSW Labor supports a ban on cash donations of more than \$100 with an exemption for the payment of fees by a candidate for public office and membership dues.*

6. ELECTION DATA

6.1 Access to list of early voters

The introduction of electronic roll mark off at early voting centres gives the NSW Electoral Commission an immediate understanding of who has voted prior to the election date.

The information is useful to political parties to better understand voting patterns of people who have already cast their vote.

Previously at a basic level, day to day early voting counts were provided upon request to local party officials. This request was denied to parties at the 2019 state election.

***Recommendation:** NSW Labor recommends that data collected through electronic rolls of early voters be provided to registered political parties (upon request) for the duration of the early voting period on a day-to-day basis.*

6.2 Timing of Electoral Information

NSW Labor notes the benefit provided by section 222 of the Electoral Act 2017.

NSW Labor notes that it is now more than six months since the 2019 state election occurred and no information has been made available to NSW Labor.

NSW Labor notes the prompt provision of commensurate election information within a few months of federal elections (including the 2019 federal election) by the Australian Electoral Commission.

***Recommendation:** NSW Labor recommends the inclusion of an amendment to the Electoral Act 2017 requiring the NSW Electoral Commission to provide election information under section 222 of the Act by no later than three calendar months after the date of the NSW election to which the election information relates.*

7. VOTER ENFRANCHISEMENT

7.1 Assisting CALD and LOTE voters.

Almost 5% of New South Wales residents in the 2016 census spoke a language other than English and had little or no understanding of English. At the 2019 State Election Bankstown, Lakemba, Auburn, Fairfield and Liverpool had the highest rates of informal voting. All of these electoral districts have large culturally and linguistically diverse communities.

The median informal rate in an NSW electoral district was 3.28%. In Lakemba the rate was 6.15%, almost double. More needs to be done to ensure voters from ethnically and linguistically diverse communities enjoy the same levels of enfranchisement as the broader community.

Additional NSW Electoral Commission staff need to be allocated who have language skills to engage with members of these communities who speak a language other than English. Instructional advertising in multicultural media, including social media, to assist voters on how to cast a valid vote is necessary. Additional steps should also be taken to ensure that undue influence isn't placed on non-English voters, including via social media, from volunteers who speak their particular language.

The NSW Electoral Commission will also need to ensure that signs in languages other than English are not intended to mislead voters as was witnessed in the division of Chisholm at the 2019 Federal Election.

***Recommendation:** NSW Labor recommends that where a significant proportion of a polling places catchment speaks a language other than English the NSW Electoral Commission provide additional resources for culturally and linguistically diverse voters. This should include additional*

in-language support, additional staff to assist at polling booths and additional advertising to encourage formal voting.

7.2 Political Party Logos

NSW Labor believes that ballot papers should include political party logos. This has been adopted federally and in Victoria, which allow party logos to be present on ballot papers.

Adding logos would reduce confusion and increase formality, especially in the case of the Legislative Council.

This would reduce misappropriated votes on the basis of party name, for example a vote unintentionally cast for Liberal Democrats rather than the Liberal Party.

Recommendation: *NSW Labor recommends that political party logos appear on ballot papers for the Legislative Assembly and Legislative Council.*

7.3 Overseas and Interstate Voting

At the 2019 state election international and interstate early voting centres were removed as a voting option. They were instead replaced by iVote and postal votes.

The iVote system had numerous periods of malfunction and postal votes are inappropriate, especially in areas where postal delivery is less frequent.

NSW Electoral Commission should ensure in-person early voting centres are re-established interstate and overseas. This will ensure that voters outside of the NSW jurisdiction are not disenfranchised.

Recommendation: *NSW Labor recommends that the NSW Electoral Commission reinstate interstate and international early voting centres.*