



Parliament of New South Wales

# Joint Standing Committee on Electoral Matters

Report 1/57 – October 2020

## Administration of the 2019 NSW State Election



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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## Chair's foreword

It has been my pleasure to chair the inquiry of the Joint Standing Committee on Electoral Matters into the Administration of the 2019 NSW State Election.

Administering the free and fair elections that the people of NSW rightly expect in a democracy such as ours is a major undertaking and I would like to commend the NSW Electoral Commissioner, Mr John Schmidt and his staff for their professionalism in delivering the election in March 2019.

In the course of the inquiry, the COVID-19 pandemic hit NSW, with significant implications for the conduct of elections into the future. While the Committee did not consider this to be an appropriate focus for an inquiry reviewing the administration of a past election, I would like to acknowledge at the outset of this report that COVID safe elections are a matter at the forefront of Committee members' minds, and will continue to be so.

The inquiry has been a valuable opportunity for the Committee to hear from a range of stakeholders about the conduct of the 2019 NSW State election and to reflect on what worked well, and where improvements could be made for future elections. The Committee's recommendations are wide-ranging covering election timeframes and the campaign period; the electoral roll and the ballot paper; early voting; election day; and compliance with and enforcement of the electoral legislation.

An issue of particular note for the Committee was the continuing and significant rise in the number of people who chose to vote at an early voting centre over the last three NSW State elections. Amidst some calls for a move to a voting period instead of an election day to recognise this trend, the Committee has found that there should continue to be an election day in NSW, an important part of our democratic processes.

Other important issues covered in the Committee's report include technology-assisted voting; the reliability of the electronic mark-off system; suggested changes to the Legislative Council ballot paper; issues around the election count; and increasing the accessibility of voting in NSW. The Committee has also made a number of recommendations in the area of compliance and enforcement, including around managing complaints about breaches of electoral legislation; and recommendations to reduce the administrative burden of complying with the legislation.

I would like to thank all stakeholders who took the time to provide written submissions, and to give evidence at the Committee's hearings for the inquiry. Your insight has been vital to the Committee in forming the findings and recommendations contained in this report.

I would also like to take this opportunity to thank my fellow Committee members for their valuable contributions to the inquiry, and the Committee staff for their professionalism and support throughout the inquiry process.

I commend the report.

A handwritten signature in blue ink, appearing to read 'Lee Evans', with a large, sweeping flourish extending to the right.

**Lee Evans MP**  
Chair



# Executive Summary

On 7 August 2019, the Committee noted that the Legislative Assembly and Legislative Council had referred to it an inquiry into the administration of the 2019 NSW State election. The Committee resolved to conduct an inquiry as per the referral. The Committee has responded to the feedback it received from stakeholders during the inquiry, making recommendations and findings to improve the administration of NSW State elections into the future.

**Chapter One** explores issues raised with the Committee concerning election timeframes and the campaign period. These include whether NSW should have an election day or election period; time to register campaign materials; the nominations process; negative campaigning; issues affecting third party campaigners; and the cost of campaigning in regional electorates.

In particular, the Committee found that there should continue to be an election day in NSW. There was a continuing and significant rise in the number of people who chose to vote at an early voting centre over the last three NSW State elections and to recognise this, some stakeholders called for a move to a voting period, rather than an election day and early voting period.

However, in finding that there should continue to be an election day and early voting period in NSW, the Committee noted that a move to an electoral period would represent a fundamental shift in the democratic process, and that it would encourage voters to vote prior to parties and candidates having released all their policies. This should not be encouraged.

Further, some party stakeholders told the Committee that there should be more time between the ballot draw for NSW State elections and the start of the early voting period so that parties and candidates have time to register and distribute campaign materials. In response, the Committee recommended that the NSW Government should consider delaying the start of the early voting period so that parties and candidates have more time to register materials after the ballot draw. Accordingly it also recommended that early voting should run for seven days prior to election day, instead of the 12 days for which it ran during the 2019 NSW State election.

Another significant recommendation concerned the cost of campaigning in regional electorates. Some party stakeholders raised concerns about these costs, especially as regards travel and accommodation. In particular, electoral expenditure caps that apply across all electorates do not take these increased costs into account. Therefore, the Committee recommended that the NSW Government consider amending the *Electoral Funding Act 2018* so that travel and accommodation expenses are not captured as 'electoral expenditure' for the purposes of the electoral expenditure caps for NSW State election campaigns. This would create a more level playing field for those campaigning across the State.

**Chapter Two** explores issues around the electoral roll and the ballot paper. These include requirements for voter identification; concerns about the electronic mark-off system; responses to data breaches of enrolment information; fines for not voting; party logos on the ballot paper; and the suggestion of a short-form Legislative Council ballot paper.

Of particular significance was the issue of electronic mark-off. During the inquiry, the Committee heard of instances where the electronic mark-off system broke down at early

voting centres for the 2019 NSW State election, resulting in some voters being turned away without voting. The Committee was deeply concerned that there was no backup system in place to deal with this service interruption.

The Committee recommended that the NSW Electoral Commission review the reliability of the electronic mark-off system before the next NSW State election and make any necessary changes. It also recommended that at every polling place in NSW that uses electronic mark-off for State elections, the NSW Electoral Commission implements a backup system, such as a paper roll, to cover potential breakdowns of the electronic mark-off system.

Another significant issue centred around a short-form Legislative Council ballot paper. During its inquiry the Committee noted evidence that the size and complexity of the current Legislative Council ballot paper may be causing particular problems for postal voters, contributing to rates of informal voting, and creating operational issues for the NSW Electoral Commission. It also noted a recommendation from the Commission that consideration be given to offering electors a choice between a short-form Legislative Council ballot paper (for those who wish to vote above the line) and a longer-form ballot paper (for those who wish to vote below the line).

The Committee was of the view that while a short-form Legislative Council ballot paper would have a number of advantages, there are a number of issues with respect to the design of such a ballot paper. Any such change would also raise operational issues for the NSW Electoral Commission around matters such as printing, scanning and counting. Having regard to these design and operational issues, the Committee found that there should be no short-form Legislative Council ballot paper at this stage but that this could be considered in the future.

**Chapter Three** explores issues raised with the Committee concerning early voting. Early voting options in NSW State elections include voting in person at an early voting centre, voting at a declared facility, postal voting, and technology-assisted voting i.e. 'iVote' online and telephone voting.

One particular issue that arose concerned the number and location of early voting centres for NSW State elections. Given the abovementioned increases in early voting, and the Committee's recommendation in Chapter One for the early voting period to be shortened, the Committee recommended that the NSW Electoral Commission conduct a review of the number and location of early voting centres in NSW prior to the 2023 State election to ensure an appropriate level of accessibility.

Technology-assisted voting was also a significant issue for the inquiry given that the NSW Electoral Commission provides online and telephone voting called 'iVote'. Eligibility requirements apply to use iVote. For example, people who are blind or have low vision; who need assistance to vote because they have a disability or have difficulty reading; or who live more than 20km from a voting centre are eligible to use iVote.

During its inquiry the Committee heard of a number of concerns with iVote. For example, some academics raised security concerns, warning that iVote was vulnerable to an internet-based attacker and vote manipulation. The Committee also heard of reliability concerns with iVote and that there were system outages during the early voting period. In addition, disability groups raised concerns about iVote's usability and accessibility.

Notwithstanding these concerns, and in acknowledging them, many stakeholders argued for iVote's retention for voters who may otherwise be disenfranchised e.g. voters with disability and voters living in remote areas. Therefore, the Committee found that iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this.

However, the Committee also made a number of recommendations to address the concerns. For example, it recommended that iVote should be thoroughly reviewed, upgraded and tested well in advance of the next NSW State election to ensure optimal security, reliability and accessibility. It also recommended that the NSW Government consider amending the *Electoral Act 2017* to make the iVote development process for the 2023 NSW State election subject to independent oversight by a panel of technology experts that has power to publicly recommend against the system's use if it fails to meet pre-determined security and reliability requirements. The panel of technology experts would report directly to the Committee. In addition, the Committee recommended that in future the verification system that iVoters can use to confirm that their vote has been recorded correctly be delivered by a provider other than the provider with whom iVoters have cast their vote.

**Chapter Four** explores issues raised with the Committee concerning election day including the election count, regulation of voting centres, training of voting centre staff, and accessible voting. The Committee notes that many of the issues raised apply equally to early voting centres and where this is the case reference has been so made in the Chapter.

Regarding the election count, the Committee noted that the NSW Electoral Commission had raised work health and safety concerns about staff working excessive hours on election night and that the Commission is considering no longer conducting the initial Legislative Council count on election night. In this context, the Committee considered that priority must be given to obtaining a likely result on election night for the Legislative Assembly, where governments are formed, and it so recommended. The Committee accepted that if an initial Legislative Council count cannot take place on election night whilst paying due regard to workplace health and safety, it would have to be delayed. However, the Committee believes that an initial count of Legislative Council ballot papers should happen on election night if at all possible.

Another significant issue explored in the Chapter relates to the enforcement of the 'six metre rule'. Under the *Electoral Act 2017* a person must not display a poster or canvass for votes within six metres of an entrance to a voting centre, and the Act makes similar provision for early voting centres.

During the inquiry, some stakeholders called for NSW Electoral Commission staff in charge at voting centres and early voting centres to be given discretion in the enforcement of this rule where there are reasonable grounds e.g. where strict adherence to the rule would mean those handing out how-to-vote cards have to stand in bad weather or an unsafe place.

The Committee agreed and recommended that the *Electoral Act 2017* be amended to allow such discretion with regard to the rule where there are reasonable grounds. It also recommended guidelines and appropriate training for those staff who are to exercise the discretion; and the consideration of extra funding to pay for such staff.

The Committee also made recommendations to increase the accessibility of voting in NSW. For example, it noted evidence that more work needed to be done to assist people experiencing homelessness to vote in NSW State elections; and it noted the excellent work that the

Victorian Electoral Commission had done in this area. Therefore, the Committee recommended that the NSW Electoral Commission produce written materials about enrolment, elections and voting for people experiencing homelessness, similar to those produced by the Victorian Electoral Commission, and publish them on the Commission website as well as provide hard copies for distribution at homelessness services.

**Chapter Five** explores issues raised with the Committee concerning compliance with, and enforcement of, electoral legislation. This includes issues around procedures to deal with complaints; electoral funding; political donations; the compliance burden for electoral participants; the role of technology; and resourcing.

Regarding complaints, during the inquiry, the Committee heard a number of concerns about the need for the NSW Electoral Commission to respond in a more timely way to complaints about non-compliance with electoral legislation made during the voting period. Stakeholders stated that timely resolution of complaints is needed to ensure the election is conducted fairly but that a number of complaints were not resolved at the conclusion of the election.

The Committee agreed that timely resolution of complaints made during the voting period is essential for the fair conduct of the election, whilst acknowledging that not all complaints can be resolved in that constrained timeframe. It considered that it would assist with accountability in this area if the Commission were required to publish figures benchmarking the timeliness of complaints resolution against past practice, and it so recommended.

Regarding electoral funding, a significant issue explored by the Committee related to administration funding. Under the *Electoral Funding Act 2018*, parties with elected Members of Parliament, and independent Members of Parliament are entitled to quarterly re-imbursment for specified administration and operating expenses out of the 'Administration Fund' that is kept by the NSW Electoral Commission. Under the legislation, half of the quarterly payment is made in advance with the rest made in arrears.

The Committee heard concerns that the fact the quarterly payments are made half in advance, half in arrears, disadvantages minor parties that lack working capital. The Committee agreed that this may disadvantage smaller parties that lack working capital, and may also disadvantage independent Members of Parliament for the same reason. Therefore, the Committee recommended the *Electoral Funding Act 2018* be amended so that quarterly payments of administration funding are made in advance, not in arrears.

During its inquiry the Committee also heard of a range of areas in which the administrative burden of complying with electoral legislation was thought by stakeholders to be quite cumbersome. It therefore made recommendations aimed at reducing this compliance burden. For example, the Committee heard concerns about requirements for parties and candidates to submit separate returns to claim public funding for campaign expenditure on the one hand, and to disclose electoral expenditure on the other, even though these returns contain similar information.

For increased efficiency, the Committee recommended that the NSW Government consider amending the *Electoral Funding Act 2018* to remove the need for parties and candidates to submit separate returns to claim public funding from the Election Campaigns Fund on the one hand, and to disclose electoral expenditure on the other; and so that these returns could instead be filed as one. However, the Committee also recommended that to ensure maximum

flexibility, the option to submit two separate returns, if parties and candidates desire, should remain.

The Committee also heard of the need to harness technology to assist with compliance and enforcement. In particular, stakeholders called for the introduction of an online system to allow electronic lodgement and management of disclosures of electoral expenditure and political donations. Many stated that the current paper-based system is causing unnecessary compliance burdens. The Committee agreed that the Commission should implement an online system for the electronic lodgement and management of disclosures and funding claims as a matter of priority and so recommended.

In addition, the Committee noted that the NSW Electoral Commission administers significant compliance and enforcement functions under the electoral legislation and that adequate resourcing is needed for the task. It therefore recommended that the NSW Government review the level of resourcing provided to the NSW Electoral Commission to fulfil its compliance and enforcement role and to retain relevant expertise within the organisation from election to election.

## Findings and recommendations

### Finding 1 \_\_\_\_\_ 2

There should continue to be an election day and early voting period in NSW.

### Recommendation 1 \_\_\_\_\_ 7

That the NSW Government consider legislative amendments to delay the start of the early voting period to allow parties and candidates more time between the ballot draw and the start of early voting to register campaign materials:

- the early voting period should start on the Saturday, seven days prior to election day, and
- early voting centres should be open 8am to 6pm during this period except for the Thursday when they should be open 8am to 9pm.

### Recommendation 2 \_\_\_\_\_ 10

That the NSW Government consider providing funding to the NSW Electoral Commission to allow information supplied to the Commission by candidates, as part of the registration process under the *Electoral Funding Act 2018*, to be integrated with the Commission's online nominations system.

### Recommendation 3 \_\_\_\_\_ 10

That the NSW Government amend the *Electoral Act 2017* and/or the *Electoral Regulation 2018* to provide that where nomination papers are lodged electronically with the NSW Electoral Commission electronic signatures are sufficient and there is no requirement for written signatures.

### Recommendation 4 \_\_\_\_\_ 11

That the NSW Government consider amending the *Electoral Act 2017* to require registered parties to provide one set of contact details for its endorsed candidates to be published on the NSW Electoral Commission's website, thereby removing the need for candidates of this class to provide their contact details on their nomination form.

### Recommendation 5 \_\_\_\_\_ 14

That the NSW Government amend the *Electoral Funding Act 2018* so that a registered party no longer has disclosure obligations in respect of a candidate that it has dis-endorsed, once it has advised the NSW Electoral Commission of that dis-endorsement in writing.

### Recommendation 6 \_\_\_\_\_ 20

That the NSW Government amend the *Electoral Funding Act 2018* to provide that the applicable cap for electoral expenditure by third party campaigners for State election campaigns is:

- \$1,288,500 for those registered under the Act before the capped state expenditure period, and

- \$644,300 in any other case,

with these amounts to be adjusted for inflation as provided for in Schedule 1 of the Act.

Recommendation 7 \_\_\_\_\_ 31

That the NSW Government consider amending the *Electoral Funding Act 2018* so that travel and accommodation expenses are not captured as ‘electoral expenditure’ for the purposes of the electoral expenditure caps for NSW State election campaigns.

Finding 2 \_\_\_\_\_ 34

There should be no change to NSW laws to require voters to produce proof of identity to vote at NSW State elections.

Recommendation 8 \_\_\_\_\_ 37

That the NSW Electoral Commission review the reliability of the electronic mark-off system before the next NSW State election and make any necessary changes.

Recommendation 9 \_\_\_\_\_ 37

That at every polling place in NSW that uses electronic mark-off for State elections, the NSW Electoral Commission implements a back-up system, such as a paper roll, to cover potential breakdowns of the electronic mark-off system.

Recommendation 10 \_\_\_\_\_ 42

That the NSW Government make legislative amendments so that where there is unauthorised use or disclosure of enrolment information collected under Part 5 of the *Electoral Act 2017*, individuals to whom the information relates are informed.

Recommendation 11 \_\_\_\_\_ 43

That the NSW Electoral Commission collect data on the number of people issued with failure to vote notices following NSW State elections who in fact voted.

Recommendation 12 \_\_\_\_\_ 45

That the NSW Government amend the *Electoral Act 2017* to require party logos to be included on the ballot papers for the Legislative Assembly and the Legislative Council.

Finding 3 \_\_\_\_\_ 51

There were unacceptable failures at a number of early voting centres at the 2019 NSW State election, including a failure of the electronic mark-off system which led to voters being unable to cast their vote for a number of hours. Systems must be improved so this does not occur again.

Recommendation 13 \_\_\_\_\_ 53

That the NSW Electoral Commission conduct a review of the number and location of early voting centres in NSW prior to the 2023 State election to ensure an appropriate level of accessibility.

Recommendation 14 \_\_\_\_\_ 55

That the NSW Electoral Commission publish a finalised list of declared facilities, and the dates they will be visited, on its website prior to the start of the early voting period.

Recommendation 15 \_\_\_\_\_ 56

That the NSW Government consider funding the NSW Electoral Commission for the development of an online portal for the submission and tracking of postal vote applications.

Recommendation 16 \_\_\_\_\_ 57

That the NSW Electoral Commission review its guidelines and systems for processing postal vote applications, and communicate clearly with stakeholders about the requirements for submitting applications, to avoid any processing errors occurring in future.

Finding 4 \_\_\_\_\_ 65

iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this.

Recommendation 17 \_\_\_\_\_ 68

That the NSW Electoral Commission facilitate a thorough review, upgrade and testing of the iVote system well in advance of the 2023 NSW State election, in consultation with all relevant stakeholders to ensure optimal security, reliability and accessibility.

Recommendation 18 \_\_\_\_\_ 70

That the NSW Government consider amending the *Electoral Act 2017* to make the iVote development process for the 2023 NSW State election subject to independent oversight by a panel of technology experts, that has power to publicly recommend against the system's use if it fails to meet pre-determined security and reliability requirements. The panel of technology experts would report directly to the Joint Standing Committee on Electoral Matters.

Recommendation 19 \_\_\_\_\_ 72

That the NSW Electoral Commission make the iVote source code available for interested members of the public to test at least six months prior to the relevant election, and limit any associated non-disclosure agreement to that necessary for security reasons.

Recommendation 20 \_\_\_\_\_ 74

That in future the verification system that iVoters can use to confirm that their vote has been recorded correctly be delivered by a provider other than the provider with whom iVoters have cast their vote.

Recommendation 21 \_\_\_\_\_ 75

That all voters who use the iVote system be provided with a hyperlink to each party's registered How-To-Vote.

Recommendation 22 \_\_\_\_\_ 75

That the NSW Government amend the *Electoral Act 2017* to:

- require the NSW Electoral Commission to translate registered how-to-vote cards into formats accessible to persons who are blind or have low vision; and



- require the NSW Electoral Commission to publish these accessible versions on its website, where possible.

Recommendation 23 \_\_\_\_\_ 77

That the NSW Electoral Commission disseminate information about iVote to disability advocacy groups well in advance of the relevant NSW State election to ensure that it reaches their members in time.

Recommendation 24 \_\_\_\_\_ 78

That in future the NSW Electoral Commission employ specialised staff at its elector call centre, with appropriate qualifications and training to provide iVote users with technical support.

Recommendation 25 \_\_\_\_\_ 78

That in future the NSW Electoral Commission provide disability awareness and confidence training to all staff working at its elector call centre.

Recommendation 26 \_\_\_\_\_ 85

That the NSW Electoral Commission conduct the Legislative Assembly first preference count, and the Legislative Assembly two candidates preferred count on election night as a matter of priority.

Recommendation 27 \_\_\_\_\_ 85

That the Legislative Council count not take place until the Legislative Assembly first preference count, and the Legislative Assembly two candidates preferred count, have been completed.

Recommendation 28 \_\_\_\_\_ 86

That the NSW Electoral Commission stop sorting Legislative Assembly ballot papers into single preference and multi preference ballot papers before conducting the two candidates preferred count.

Recommendation 29 \_\_\_\_\_ 87

That in the counting of declaration and postal votes for the Legislative Assembly, the NSW Electoral Commission prioritise ballot papers for electoral districts that are closely contested.

Recommendation 30 \_\_\_\_\_ 88

That the NSW Electoral Commission examine ballot paper scanning to replace the manual Legislative Council ballot paper check count and data entry processes, and report back to the Committee on the accuracy, reliability and security of such a system before it is implemented.

Recommendation 31 \_\_\_\_\_ 88

That if there were any move to ballot paper scanning to replace the manual Legislative Council ballot paper check count and data entry processes:

- paper ballots must be retained so that an audit can take place,
- under the auditing process randomly sampled electronic ballots should be checked against the paper ballots to see that the digitised preferences have been accurately recorded, and

- candidate or party-appointed scrutineers must be included as part of the auditing process.

Recommendation 32 \_\_\_\_\_ 91

That the NSW Government amend the *Electoral Act 2017* to provide Voting Centre Managers, Early Voting Centre Managers and designated staff at polling places ('designated staff') discretion with regard to the enforcement of the 'six metre rule' where there are reasonable grounds.

Recommendation 33 \_\_\_\_\_ 91

That the NSW Government consider whether it is necessary to allocate additional funding to the NSW Electoral Commission to exercise such a discretion with regard to the enforcement of the 'six metre rule'.

Recommendation 34 \_\_\_\_\_ 91

That the NSW Electoral Commission issue guidelines, and provide appropriate training, to Voting Centre Managers, Early Voting Centre Managers and designated staff on exercising discretion in the enforcement of the 'six metre rule'.

Recommendation 35 \_\_\_\_\_ 94

That the NSW Electoral Commission review the training provided to voting centre and early voting centre staff to ensure that it equips staff to:

- appropriately regulate the centres, and
- issue correct instructions on how to fill out a ballot paper.

Recommendation 36 \_\_\_\_\_ 96

That the NSW Electoral Commission conduct a review to determine what steps could be taken to increase the number of fully accessible voting centres and early voting centres for future NSW State elections.

Recommendation 37 \_\_\_\_\_ 98

That the NSW Government continue to fund programs under which the NSW Electoral Commission partners with community organisations to provide information to target communities (including voters from culturally and linguistically diverse (CALD) communities; Aboriginal voters; voters with disability; and young voters) about the electoral process.

Recommendation 38 \_\_\_\_\_ 100

That the NSW Electoral Commission label voting centres and early voting centres in any language where it is assessed that a significant proportion of that electoral district speaks that language at home.

Recommendation 39 \_\_\_\_\_ 100

That the NSW Electoral Commission partner with homelessness services to provide information to staff and clients about enrolment, elections and voting.

Recommendation 40 \_\_\_\_\_ 100

That the NSW Electoral Commission produce written materials about enrolment, elections and voting for people experiencing homelessness, similar to those produced by the Victorian Electoral Commission and:

- publish them on the NSW Electoral Commission website;
- provide hard copies for distribution at homelessness services.

Recommendation 41 \_\_\_\_\_ 104

That the NSW Electoral Commission collect and publish data to allow stakeholders to evaluate the timeliness with which the Commission resolves complaints about non-compliance with electoral legislation, made during the voting period (that is, from the start of early voting until the end of election day).

Recommendation 42 \_\_\_\_\_ 104

That the NSW Government make legislative amendments to require the NSW Electoral Commission to advise complainants of the outcome of complaints they have made to the Commission about non-compliance with electoral legislation.

Finding 5 \_\_\_\_\_ 109

Entitlements to administration funding under the *Electoral Funding Act 2018* should continue to be paid and claimed on a quarterly basis.

Recommendation 43 \_\_\_\_\_ 109

That the NSW Government amend the *Electoral Funding Act 2018* so that:

- quarterly payments of administration funding are made in advance, not in arrears, and
- any unused portion of the quarterly payment can be carried over to the subsequent quarter within a calendar year.

Recommendation 44 \_\_\_\_\_ 112

That the NSW Government consider amending the *Electoral Funding Act 2018* so that claims from the Electoral Campaigns Fund are paid to eligible parties and candidates in two instalments following an interim claim and a final claim.

Recommendation 45 \_\_\_\_\_ 115

That the NSW Government consider amendments to the *Electoral Funding Act 2018* so that party membership subscription fees can be used for campaign purposes if the party chooses, with appropriate quarantining so that subscription fees from prohibited donors cannot be so used.

Recommendation 46 \_\_\_\_\_ 119

That the NSW Government consider amending the *Electoral Act 2017* and/or the *Electoral Regulation 2018*:

- to make it clear that there is no requirement for each individual post of online electoral material to be authorised, and

- to make it clear that it is sufficient for the authorisation to appear in a prominent place on a webpage or social media page to certify that everything posted to the page is authorised.

Recommendation 47 \_\_\_\_\_ 120

That the NSW Government amend the *Electoral Act 2017* to provide that the NSW Electoral Commission may, from time to time, determine and issue guidelines not inconsistent with the Act or regulations about the location and method of authorisation for online electoral material.

Recommendation 48 \_\_\_\_\_ 122

That the NSW Government consider amending the *Electoral Funding Act 2018*:

- to remove the need to submit separate returns to claim funding from the Election Campaigns Fund on the one hand, and to disclose electoral expenditure on the other,
- to provide that these returns could instead be filed as one.

However, the option to submit two separate returns, if desired, should remain.

Recommendation 49 \_\_\_\_\_ 128

That the NSW Government amend the *Electoral Funding Act 2018* to change the claim period for the New Parties Fund from a calendar year to a financial year.

Finding 6 \_\_\_\_\_ 128

Annual financial statements of parties should not be adopted as a source of information, in addition to other applicable vouching, for claims on the New Parties Fund.

Recommendation 50 \_\_\_\_\_ 130

That the NSW Government amend section 15(1)(b) of the *Electoral Funding Act 2018* so that political donations covered by that section must be disclosed within six weeks after the end of the half-year within which the donation was received or made, except for political donations made or received in the half-year period immediately prior to an Assembly general election for which the disclosure cut-off should continue to be four weeks after the end of that half-year.

Finding 7 \_\_\_\_\_ 130

The timeframes for disclosure of reportable political donations made or received during a pre-election period for an Assembly general election, as set down in section 15(1)(a) of the *Electoral Funding Act 2018* – that is, 21 days or such shorter period as prescribed by the regulations – should not be lengthened.

Recommendation 51 \_\_\_\_\_ 133

That the NSW Government amend section 57 of the *Electoral Funding Act 2018* to raise the threshold for the exception to the aggregation rule for small donations at fundraising ventures and functions from \$50 to \$100.

Recommendation 52 \_\_\_\_\_ 137

That the NSW Government amend the *Electoral Funding Act 2018* to provide that:

- where the party agent is not available, the party's registered officer can sign documentation as required under the *Electoral Funding Act 2018* and regulations on the party agent's behalf; and that in any such case the party agent's obligations under the legislation pass to that registered officer and can be enforced against the registered officer;
- to require registered officers to undertake the NSW Electoral Commission's agent training program consistent with current requirements for party agents under section 102(e) of the *Electoral Funding Act 2018*.

Recommendation 53 \_\_\_\_\_ 139

That as a matter of priority, the NSW Electoral Commission implement an online system that allows the electronic lodgement and management of:

- disclosures of electoral expenditure and political donations as required under the *Electoral Funding Act 2018*, and
- funding claims made pursuant to the *Electoral Funding Act 2018*.

Recommendation 54 \_\_\_\_\_ 145

That the NSW Government review the level of resourcing provided to the NSW Electoral Commission to fulfil its compliance and enforcement role and to retain relevant expertise within the organisation from election to election.



# Chapter One – Election timeframes and the campaign period

- 1.1 This Chapter explores issues raised with the Committee during its inquiry concerning election timeframes and the campaign period. These include whether NSW should have an election day or an election period; time to register campaign materials; negative campaigning; issues affecting third party campaigners; and the cost of campaigning in regional electorates.

## Election timeframes

### What are the timeframes and key dates for NSW State elections?

- 1.2 The timeframes and key dates for NSW State elections are set down in the *Constitution Act 1902* and the *Electoral Act 2017*. Under the *Constitution Act 1902* a State election must be held on the fourth Saturday in March every four years. The key provisions are as follows:
- Expiry of the NSW Legislative Assembly: Unless sooner dissolved, the Legislative Assembly automatically expires on the Friday before the first Saturday in March, four years after the official end of the last State election (*Constitution Act 1902*, section 24(1)).
  - Election day, Legislative Assembly: Following the expiry of the Legislative Assembly, the date of the general election for the Legislative Assembly is the fourth Saturday in March next following the expiry (*Constitution Act 1902*, section 24A(a)).
  - Election day, Legislative Council: A writ for a periodic Legislative Council election is not to be issued until after the issue of writs for the general election of the Legislative Assembly and is to name the same polling day (*Constitution Act 1902*, section 22(3)). During voting in a State election, voters must elect representatives to all 93 seats of the Legislative Assembly but only half of the 42 seats in the Legislative Council.<sup>1</sup>
  - Issue of the writs: On the Monday following the day on which the Legislative Assembly expired, the Governor must issue the writs directing the NSW Electoral Commissioner to conduct an election (*Constitution Act 1902*, section 11A and *Electoral Act 2017*, sections 74(1)(a) and (2) and 75(1)(a)). The writs are the formal trigger, setting the electoral process in motion. They must specify: the date of the writs, the nomination day for the election, the election day, and the day by which the writs are to be returned to the Governor.<sup>2</sup>

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<sup>1</sup> See *Constitution Act 1902*, ss3, 22A and Schedule 6, cl1. See also NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/How-voting-works/Voting-in-New-South-Wales/State-elections-and-by-elections/How-does-a-State-election-work>

<sup>2</sup> *Electoral Act 2017*, s75(1)(b).

- Opening of nominations: for ordinary quadrennial elections, (that is, general elections that follow the expiry of the Legislative Assembly under section 24(1) of the *Constitution Act 1902*), nominations of candidates open on the Monday prior to the expiry of the Legislative Assembly (*Electoral Act 2017*, section 84(3)(a)).
- Close of nominations: the ‘nomination day’ or close of nominations for ordinary quadrennial elections is the Wednesday following the date of the expiry of the Legislative Assembly at 12 noon (see *Electoral Act 2017*, section 75(2) and 3(a) and 84(3)(a)).
- Ballot draw: although a date for the ballot draw is not set down in the legislation, the *Electoral Act 2017* does provide that the Electoral Commissioner is to determine the order in which candidates’ names and groups of candidates appear on the ballot paper (sections 101(1) and 102(1)).
- Early voting period: The Electoral Commissioner can approve the days and hours of operation of early voting centres for an election. However, he or she cannot approve the opening of an early voting centre any day before the Monday after the close of nominations, and after the day preceding the election day (*Electoral Act 2017*, section 114).
- Return of the writs: The return of the writs to the Governor is to occur within 60 days of their date of issue, or on a later day proclaimed by the Governor (*Electoral Act 2017*, section 75(3)(b)). The returned writs include the names of the successfully declared candidates. The NSW Electoral Commissioner must certify the names of the successful candidate for each Legislative Assembly district, and the names of the successful candidates for the Legislative Council on the writs before returning them.<sup>3</sup>

### Electoral period versus election day

*There should continue to be an election day and early voting period in NSW*

#### Finding 1

##### **There should continue to be an election day and early voting period in NSW.**

- 1.3 There was a continuing and significant rise in the number of people who chose to vote at an early voting centre over the last three NSW State elections, and if all early voting methods are taken into account nearly 30 per cent of voters voted early at the 2019 NSW State election. As a result, some stakeholders told the Committee that there should be a move to an electoral period for NSW State elections instead of an election day and early voting period.
- 1.4 However, the Committee considers that there should continue to be an election day and early voting period in NSW, and no move to an electoral period. If NSW were to move to an electoral period, this would represent a fundamental shift in the democratic process from an electoral event occurring on the one day, giving a snapshot of the community’s views; to an electoral period over which voters

<sup>3</sup> See NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/How-voting-works/Voting-in-New-South-Wales/State-elections-and-by-elections/How-does-a-State-election-work>, viewed 16 July 2020.



have their say and during which one day is as important as another. Further, voters may be voting prior to parties and candidates having released all of their policies, and prior to all electoral broadcasts having occurred. This should not be encouraged.

1.5 The Committee acknowledges that the increase in early voting suggests that many people are disregarding eligibility requirements to vote early in NSW, and are voting at early voting centres for reasons of convenience. Further, the Committee heard that it would be hard for the NSW Electoral Commission to more strictly enforce the eligibility requirements. Even so, the NSW Electoral Commission should continue to make it clear to voters that early voting is subject to eligibility requirements.

1.6 In its *Report on the conduct of the 2019 NSW State Election*, the NSW Electoral Commission noted an increase in early voting at the 2019 NSW State election and other recent Australian elections and stated that:

In recognition of the increase in early voting at the 2019 NSW State election, and other recent Australian elections, the Electoral Commission would support legislative amendments to introduce a voting period rather than an election day.<sup>4</sup>

1.7 In its submission to the inquiry, NSW Labor made similar observations, noting the current statutory restrictions on early voting and stating that:

NSW Labor recognises that early voting constitutes a rising proportion of the voting at an election. Early voting is critical to enabling all people to access the vote. As the number of early votes increase some electors may be casting their vote early when they are not strictly entitled to. These voters may be doing so out of the convenience of early voting...Removing restrictions on early voting would recognise this reality.<sup>5</sup>

1.8 Currently, the *Electoral Act 2017* provides that people who vote early must satisfy certain criteria to do so, for example, they will be outside NSW on election day, will be working on election day, or are seriously ill or infirm and cannot attend a voting centre.<sup>6</sup>

1.9 When asked, at the Committee's hearing on 18 November 2019, Mr Mark Lennon, President of the Australian Labor Party (NSW Branch) agreed that the proposal to lift the current restrictions would promote a fundamental shift in the way elections are viewed. That is, the election would no longer be held on a particular day, but over a period. However, Mr Lennon considered that this would simply recognise the current realities:

...that is what is happening in practice now when up to 30 per cent of people are voting before the election. It has changed the nature of the election – it is now not a day; it is two weeks and a day. Ask any candidate of any political party who is

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<sup>4</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, available at NSW Electoral Commission website:

[https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/NSW-Electoral-Commission-2019-State-election-report\\_Part-1.pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/NSW-Electoral-Commission-2019-State-election-report_Part-1.pdf), viewed 16 July 2020.

<sup>5</sup> Submission 22, NSW Labor, pp4-5.

<sup>6</sup> See *Electoral Act 2017*, in particular, ss6, 113, 118, 143, 152 and 154.

standing on pre-poll booths for two weeks that, yes, the election is definitely on and the election is now two weeks in effect.<sup>7</sup>

1.10 In contrast, in noting a near threefold increase in early voting in NSW since 2011, the Liberal Party of Australia – NSW Division told the Committee that there should be more education about, and enforcement of, eligibility requirements for early voting.<sup>8</sup>

1.11 The Liberal Party stated that the increase in early voting could not be explained by a corresponding increase in the number of people who are unable to vote on election day, and raised concerns about the pattern:

...it means 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.<sup>9</sup>

1.12 At the Committee’s hearing on 18 November 2019, Mr Christopher Stone, State Director of the Liberal Party of Australia – NSW Division spoke further about the Party’s position:

My view is that if the intent of Parliament is to have an election day and with certain criteria for those who are not able to attend a polling booth on election day to be able to vote early then the community should be educated, informed and indeed policed at the point at which people attend a polling booth. I do not see any reason to change the current arrangements. We have had parliamentary democracy in this country for over 120 years. It has always been based on an electoral event occurring on a single day. It provides the community with a snapshot of the community’s views at a point in time and I think it fundamentally changes the democratic process when you move to an electoral period across which people are expressing views.<sup>10</sup>

1.13 Mr Christopher Maltby, Registered Officer of The Greens NSW told the Committee that there would be pros and cons were there to be a move to an electoral period rather than an election day:

The de facto situation, as I am sure everyone is aware, is that people access early voting without meeting all the requirements, which the Commission tends to ignore. ...We would not like to see access to early voting become too onerous, many people need it, but we also do not want to de-emphasise the importance of election day...[which] is an important part of the theatre of democracy and part of what binds us together as a society – that people turn out, go to the local school, have a sausage and vote. To spread that out across a longer period is, in our view, undesirable because it also has implications for the way campaigns are conducted...There are pros and cons. I think Labor was suggesting that the test should be abandoned because it was effectively not being enforced and we can understand that point of view.<sup>11</sup>

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<sup>7</sup> Mr Mark Lennon, President, Australian Labor Party (NSW Division), *Transcript of Evidence*, 18 November 2019, p5.

<sup>8</sup> Submission 18, Liberal Party of Australia – NSW Division, pp2-3.

<sup>9</sup> Submission 18, p3.

<sup>10</sup> Mr Christopher Stone, State Director, Liberal Party of Australia – NSW Division, *Transcript of Evidence*, 18 November 2019, p15.

<sup>11</sup> Mr Christopher Maltby, Registered Officer, The Greens NSW, *Transcript of Evidence*, 18 November 2019, p28.

- 1.14 Mr Ross Cadell, State Director of the National Party of Australia – NSW emphasised that if the eligibility requirements around early voting were to be enforced, there would need to be a more lenient approach in country areas of NSW:

I believe that there is a fundamental difference in access to a polling booth in the metropolitan area and the country area. In an electorate that is 20 or 30 square kilometres, you should be able to get to a polling booth – there are 25 of them on the day. Therefore, the rules should be applied. In the bush, there can be no polling booth within 100 kilometres, so when you are in town, you vote. The rules apply quite strongly there so I am slightly different to the Liberal Party on this. I believe that those rules should be more loosely interpreted in the regions.<sup>12</sup>

- 1.15 At the Committee’s hearing on 19 February 2020, Mr Antony Green, Election Analyst, spoke of the research around why people vote early:

...the Victorian Electoral Commission did a research report on why people pre-poll vote and basically once someone has pre-poll voted they do it again. Anyone who has pre-poll voted is more likely to do it again because they found it very easy and convenient...[S]econdly, they cite the lack of people trying to stick things in their hand outside polling places...<sup>13</sup>

- 1.16 Mr Green further stated that if early voting were limited, it would merely diminish the turnout:

...there are a number of reasons why people have switched to using pre-poll votes. If by limiting pre-poll voting you just actually diminish the turnout. I am not sure that is the response you will want either. So there is a fine balance between trying to get people to listen to the whole of the campaign before they vote and trying to deal with the needs of people who just want to do their duty.<sup>14</sup>

- 1.17 At the 18 November hearing, the NSW Electoral Commissioner, Mr John Schmidt stated that the NSW Electoral Commission does not encourage early voting, and makes it clear that it is subject to eligibility requirements. However, in acknowledging the suspicion that people are turning out to vote early who may not be entitled to do so, the Commissioner stated that this raises a tension in his role:

It raises an interesting tension in my role as Commissioner. On the one hand, obviously, the legislative requirement is something not to be treated lightly, but I also have a driving imperative to get as many people out to vote as possible.<sup>15</sup>

- 1.18 The Commissioner also stated that fully enforcing eligibility requirements for early voting may be hard for the NSW Electoral Commission to do:

The challenge would be, if we move to full enforcement, I could require that anybody who turns up for early voting in some way substantiates the basis of their excuse. So what do I do? The biggest source, I think, of early voting, the biggest

<sup>12</sup> Mr Ross Cadell, State Director, National Party of Australia – NSW, *Transcript of Evidence*, 18 November 2019, p18.

<sup>13</sup> Mr Antony Green, Election Analyst, *Transcript of Evidence*, 19 February 2020, p6.

<sup>14</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2019, p6.

<sup>15</sup> Mr John Schmidt, NSW Electoral Commissioner, *Transcript of Evidence*, 18 November 2019, p51.

category of people who say they will be out of the State on election day, a prospective event, do I get them to sign a statutory declaration? What evidence could a person produce on the spot to say that was the case? Would I have to have bank of JPs lined up to witness statutory declarations? What would I do after the election event? I would not be able to make enquiries in the time of the voting period itself to look at those excuses and then determine whether that person has made a false statement – the election event would have gone and I would require significant resources then to carry out investigations to pursue those people, and to what end?<sup>16</sup>

1.19 In addition, the Commissioner confirmed that he would welcome the Committee considering whether to move to an electoral period as some other jurisdictions have, rather than an election day and early voting.<sup>17</sup>

1.20 Following are figures on the increases in early voting in person, that is, at an early voting centre, over the last three NSW State elections for the Legislative Assembly:<sup>18</sup>

Year	Number of early voting centre votes	Total votes	Percentage of total votes cast at an early voting centre
2019	1,020,780	4,714,783	21.65%
2015	641,910	4,561,234	14.01%
2011	352,741	4,290,595	8.22%

1.21 The NSW Electoral Commission also provided the following Legislative Assembly figures for all types of early voting, that is, at an early voting centre, at declared facilities, via iVote, and via postal voting.<sup>19</sup> They show that nearly 30 per cent of people voted early at the 2019 NSW State election:

<sup>16</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, pp51-52.

<sup>17</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p52.

<sup>18</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p19. An email from the NSW Electoral Commission to the Committee Secretariat dated 23 March 2020 confirmed that these figures related to the Legislative Assembly only.

<sup>19</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p19. An email from the NSW Electoral Commission to the Committee Secretariat dated 23 March 2020 confirmed that these figures related to the Legislative Assembly only.

Legislative Assembly	2019		2015		2011	
	Votes	% of Total Votes	Votes	% of Total Votes	Votes	% of Total Votes
Early Voting Centre	1,020,780	21.65%	641,910	14.07%	352,741	8.22%
Declared Facility	15,094	0.32%	14,278	0.31%	14,880	0.35%
iVote	234,401	4.97%	283,669	6.22%	46,862	1.09%
Postal	136,572	2.90%	203,625	4.46%	245,411	5.72%
<b>Total LA Early (at an early voting centre)</b>	<b>1,020,780</b>	<b>21.65%</b>	<b>641,910</b>	<b>14.07%</b>	<b>352,741</b>	<b>8.22%</b>
<b>Total LA Early (by any means)</b>	<b>1,406,847</b>	<b>29.84%</b>	<b>1,143,482</b>	<b>25.06%</b>	<b>659,894</b>	<b>15.38%</b>

### Concerns regarding key dates for NSW State elections

*The amount of time between the ballot draw and the start of early voting should be greater*

#### Recommendation 1

**That the NSW Government consider legislative amendments to delay the start of the early voting period to allow parties and candidates more time between the ballot draw and the start of early voting to register campaign materials:**

- **the early voting period should start on the Saturday, seven days prior to election day, and**
- **early voting centres should be open 8am to 6pm during this period except for the Thursday when they should be open 8am to 9pm.**

1.22

During the inquiry, some party stakeholders told the Committee that there should be more time between the ballot draw for NSW State elections, and the start of the early voting period so that parties and candidates have time to register and distribute campaign materials. As noted earlier, the key dates for NSW state elections are set down in the electoral legislation.

- 1.23 One way to ensure more time between the ballot draw and the start of the early voting period would be to delay the start of that early voting period. The other would be to alter other key dates for NSW State elections that are set out in the electoral legislation (see above). If the steps between expiry of the Legislative Assembly and the ballot draw occurred in quicker succession, that draw could occur earlier leaving more time to register material before early voting started.
- 1.24 The Committee is of the view that the NSW Government should consider delaying the start of the early voting period so that parties and candidates have more time to register material after the ballot draw. Early voting should run for seven days from the Saturday prior to election day, instead of the 12 days for which it ran during the 2019 NSW State election.
- 1.25 As noted earlier, currently the Electoral Commissioner can approve the days and hours of operation of early voting centres for an election.<sup>20</sup> Further, the Electoral Commission told the Committee that it makes decisions that are ‘fit for purpose’ – not all early voting centres were open for the full 12 days during the 2019 NSW State election, some centres had a shorter early voting period.<sup>21</sup>
- 1.26 If there were a move to a seven day early voting period, the Committee considers that all early voting centres should be open from 8am to 6pm, except for the Thursday when they should be open from 8am to 9pm. The Committee believes that this would give people enough opportunity to vote, and would also make staffing early voting centres easier. Those who could not attend to vote during these timeframes would still have the option of iVote or postal voting.
- 1.27 For the 2019 NSW State election, there was an interval of three clear days between the ballot draw and early voting opening, two of which fell on the weekend. The timetable for the election was as follows:
- Monday 25 February: Opening of nominations
  - Friday 1 March: Expiry of the Legislative Assembly
  - Monday 4 March: Writs issued
  - Wednesday 6 March: Close of nominations (12 noon)
  - Thursday 7 March: Legislative Assembly and Legislative Council ballot draws (10am)
  - Monday 11 March: Early voting period opened
  - Saturday 23 March: Election day.<sup>22</sup>
- 1.28 The National Party of Australia – NSW told the Committee:

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<sup>20</sup> See *Electoral Act 2017*, s114.

<sup>21</sup> Mr Simon Kwok, Executive Director, Elections, NSW Electoral Commission, *Transcript of Evidence*, 18 November 2019, p51.

<sup>22</sup> See NSW Electoral Commission, *2019 NSW State Election Calendar*.

To meet print deadlines for election material to be registered, delivered and distributed to polling places, there was little time for preparation of these materials. This is particularly the case with the Nationals who have to contend with huge distances and unreliable postal services.<sup>23</sup>

- 1.29 Similarly, the Shooters, Fishers and Farmers Party noted that the timeframes meant parties had to 'rush the design, printing and distribution of their How To Vote material'.<sup>24</sup> State Director, Mr Filip Despotoski expanded on this at the Committee's hearing on 18 November:

Something of particular concern...was the timing of the ballot draw and the registration of electoral material. It is beyond me and beyond the Party how, given the nature of fixed elections, you can have pre-poll starting on Monday and your opportunity to get your material registered on the Thursday afternoon or Friday morning...There should be a longer period for registration of electoral material in preparation for pre-poll and polling day...[I]t puts a lot of pressure on party staff and the Electoral Commission.<sup>25</sup>

- 1.30 One possible remedy would be to delay the start of early voting, thereby shortening the early voting period. As early voting started on 11 March for the 2019 NSW State election, it ran for 12 days preceding election day.<sup>26</sup> This is the maximum currently allowed under the legislation (outlined above).<sup>27</sup>

- 1.31 The Greens NSW and the Shooters, Fishers and Farmers Party stated that the early voting period should instead run for eight days, from the Friday through to (but not including) the election day (Saturday). They cited registration of materials and being able to staff early voting centres as reasons for this view.<sup>28</sup> The Greens NSW submitted:

Despite the increase in pre-poll voting, the first week of pre-poll remains slow. The vast bulk of pre-poll votes are cast in the second week. If pre-poll voting were instead commenced on the Friday, eight days before polling day, it would still allow those voters going away for that weekend to vote while conserving resources of the NSWEC and parties which would not have to staff pre-poll offices Monday to Thursday in the first week of pre-poll voting. A delay in the start of pre-polling would ameliorate issues that arose with delays in registration of materials...Those small number of voters who would have otherwise voted on those days can either vote a little later, lodge an iVote, or...cast a postal vote.<sup>29</sup>

- 1.32 In contrast, Mr Stone of the Liberal Party of Australia, NSW Branch told the Committee that two weeks strikes the right balance for an early voting period:

<sup>23</sup> Submission 15, National Party of Australia – NSW, p6.

<sup>24</sup> Submission 25, Shooters Fishers and Farmers Party, p1.

<sup>25</sup> Mr Filip Despotoski, State Director, Shooters, Fishers and Farmers Party, *Transcript of Evidence*, 18 November 2019, pp47&48.

<sup>26</sup> See NSW Electoral Commission, *2019 NSW State Election Calendar*, available at NSW Electoral Commission website: [https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Calendar/EL\\_2746\\_SE-108\\_State-election-calendar\\_V5.pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Calendar/EL_2746_SE-108_State-election-calendar_V5.pdf), viewed 16 July 2020.

<sup>27</sup> *Electoral Act 2018*, s114.

<sup>28</sup> See submission 24, The Greens NSW, pp8-9 and Mr Christopher Maltby, *Transcript of Evidence*, 18 November 2020, p27; and Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2020, pp47-48.

<sup>29</sup> Submission 24, The Greens NSW, pp8-9.

The three week period during the Federal election was too long. Whether you are a candidate trying to muster volunteers to be standing outside a pre-poll centre, or indeed a registered political party, it is difficult to be able to manage multiple locations over extended periods of time in such a situation. I think the two week period strikes the right balance in New South Wales. However, I think the issue is around enforcement and the education of the various criteria that are in place for those who cannot attend a polling booth on polling day.<sup>30</sup>

- 1.33 At the Committee's hearing on 18 November, the Electoral Commissioner noted the concerns raised about time to register electoral material after the ballot draw and prior to early voting starting. The Commissioner stated that he would welcome more time between the ballot draw and early voting starting.

I think there are sound reasons and good arguments for having a longer period between the ballot draw and the commencement of early voting. I appreciate the difficulty that parties and other political participants have in getting their how-to-vote material together, the logistics of getting the ballot papers proofed and produced and out to early voting centres, so I would welcome actually if there was a broader space between those two events.<sup>31</sup>

- 1.34 The Commissioner also stated that he was 'agnostic' about the length of the early voting period as long as it gave people sufficient opportunity to exercise their right to vote:

I would be concerned if there was a suggestion that it would be limiting the capacity of some people who are entitled to pre-poll to be able to do it. There is a particular focus, obviously, on getting as many people through the doors as possible to vote. A shorter period? It depends – how long is a bit of string? I heard eight days being mentioned. That is a period – I would leave that to Parliament.<sup>32</sup>

## Nominations

### Nominations process

*The nominations process should be streamlined*

#### Recommendation 2

**That the NSW Government consider providing funding to the NSW Electoral Commission to allow information supplied to the Commission by candidates, as part of the registration process under the *Electoral Funding Act 2018*, to be integrated with the Commission's online nominations system.**

#### Recommendation 3

**That the NSW Government amend the *Electoral Act 2017* and/or the *Electoral Regulation 2018* to provide that where nomination papers are lodged electronically with the NSW Electoral Commission electronic signatures are sufficient and there is no requirement for written signatures.**

<sup>30</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2020, p11.

<sup>31</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p53.

<sup>32</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, pp52-53.



#### Recommendation 4

**That the NSW Government consider amending the *Electoral Act 2017* to require registered parties to provide one set of contact details for its endorsed candidates to be published on the NSW Electoral Commission's website, thereby removing the need for candidates of this class to provide their contact details on their nomination form.**

- 1.35 The Committee considers that the nomination process for candidates for NSW State elections should be as streamlined as possible. Unnecessary barriers to nominating should not exist. The Committee acknowledges the work of the NSW Electoral Commission in this regard in developing a nominations online management system for the 2019 NSW State election to help candidates complete their nomination forms correctly.
- 1.36 The Committee considers that steps should be taken to further streamline the nominations process, following suggestions from the NSW Electoral Commission. First, the NSW Government should consider funding the Commission so that electoral funding registration information could be integrated with the online nominations system. This would allow nomination forms to be pre-populated with information captured as part of the registration process.
- 1.37 Further, the NSW Government should consider amending the provisions for nominations that are set down in the *Electoral Act 2017* and the *Electoral Regulation 2018* so that:
- nomination forms could be submitted electronically without the need for written signatures; and
  - registered political parties must provide one set of contact details for its endorsed candidates to be published on the Electoral Commission's website with the list of nominated candidates, instead of each candidate having to provide contact details on their nomination form. Currently, after the close of nominations the Commissioner must publish the names of candidates and their suburb, town or other locality, as stated on their nomination paper.
- 1.38 During the inquiry, the Liberal Party of Australia – NSW Division told the Committee that the nominations process for candidates for NSW State elections is time consuming and confusing and should be streamlined. At the 18 November 2020 hearing, Mr Stone stated:
- We believe there is too much red tape around the nomination process for candidates in New South Wales. That political parties and candidates must register and candidates must also then be nominated is absurd. As a general rule there should be as few regulatory barriers to standing as a candidate as possible.
- 1.39 Mr Stone continued:
- The nomination process in New South Wales can be time consuming and confusing with multiple forms required to nominate. In contrast the Federal nomination process to date has required a single two page form with a qualification check list to

demonstrate a candidate has satisfied section 44 of the Constitution at this recent Federal election. We believe there is scope to further simplify and streamline the process.<sup>33</sup>

1.40 Regarding nomination and registration, the NSW Electoral Commission stated that registering with the Commission for electoral funding regulation purposes is different from the process of nominating to the Commissioner as a candidate in a particular election. The Commission stated:

Under the current legislative framework, candidates and groups nominated for an election for the NSW Parliament or a council of a local government area are taken to be registered for the election under the *Electoral Funding Act 2018* on nomination day. A candidate or group is only required to apply to register separately for an election in order to lawfully accept political donations or make payments for electoral expenditure before that date. If a candidate or group registers for electoral funding regulation purposes prior to the nomination date they are also still required to go through the nomination process.<sup>34</sup>

1.41 The NSW Electoral Commission also told the Committee that for the 2019 NSW State election about half of all candidates were registered with the Commission prior to being nominated to the Commissioner, and that those candidates carried out two separate processes for nominating and registering.<sup>35</sup>

1.42 Regarding the nominations process, the NSW Electoral Commission stated that the *Electoral Act 2017* requires each candidate to complete a nomination form and a child protection declaration, and to lodge a nomination deposit.<sup>36</sup>

1.43 In addition, the Commission told the Committee that for the 2019 NSW State election the Commission had developed a nominations online management system (NOMS), 'designed to assist candidates to complete their nomination form(s) correctly'.<sup>37</sup> All registered political parties were invited to provide feedback during the development stages of NOMS, and to attend training sessions on how to use it.

1.44 NOMS was available to all candidates to start completing their nomination forms from Monday 21 January 2019, and as noted earlier, nominations opened on Monday 25 February 2019. Of the 575 candidates for election to the Legislative Assembly, 69 per cent lodged their nomination online; and of 352 candidates for election to the Legislative Council, 73 per cent lodged their nomination online.<sup>38</sup>

1.45 The NSW Electoral Commission provided the following suggestions for further streamlining the nomination process, noting that they would be subject to any necessary legislative amendments, and funding from the NSW Government for system changes:

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<sup>33</sup> Mr Christopher Stone, *Transcript of Evidence* 18 November 2019, p10. See also Submission 18, Liberal Party of Australia – NSW Division, p2.

<sup>34</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, pp3-4.

<sup>35</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p4.

<sup>36</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p3

<sup>37</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p3.

<sup>38</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p3.

- Electoral funding registration information could be integrated with the online nominations system. This would allow nomination forms to be pre-populated with information captured as part of the registration process. The Commission advised that while this would not require legislative amendment, it would require capital funding.
- Allowing electronic submission of nomination forms where written signatures are not required.
- Allowing a registered party to provide one set of contact details for its endorsed candidates to be published on the Electoral Commission's website with the list of nominated candidates instead of each candidate having to provide contact details on their nomination form.<sup>39</sup>

1.46 Part 7, Division 3 of the *Electoral Act 2017* sets down the requirements to nominate as a candidate for election. In particular, section 83(2) provides that to be a candidate at any election a person must be nominated by:

- the registered officer of a registered party, or
- in relation to an election for a district – at least 25 persons, each of whom is enrolled for the district as at 6pm on the date of issue of the writ for the election, or
- in relation to a periodic Legislative Council election – at least 25 persons, each of whom is enrolled as at 6pm on the date of issue of the writ for the election.

1.47 A 'registered party' means a party registered under Part 6 of the Act.<sup>40</sup>

1.48 Further, section 84(1) of Part 7, Division 3 provides that a nomination is to be made by lodging a nomination paper in the approved form with the Electoral Commissioner, and section 84(7) provides that the regulations may make further provision for the electronic lodgement of nomination papers with the Electoral Commissioner. Accordingly, clause 5B of the *Electoral Regulation 2018* provides that a nomination paper lodged through an online electronic nomination system made available by the Electoral Commissioner is taken to have been lodged with the Electoral Commissioner.

1.49 Section 93 of Part 7, Division 3 also sets down the steps that must be taken after nomination day. Section 93(1) provides that if at 12 noon on the nomination day there are: two or more candidates for election for a district; or more than 21 candidates for election at a periodic Legislative Council election, then a poll must take place for that election.

1.50 Further, section 93(2) provides that if a poll is to take place for an election, the Electoral Commissioner must, on the day after nomination day (or as soon as reasonably practicable after that day) announce:

<sup>39</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p4.

<sup>40</sup> *Electoral Act 2017*, s4(1).

- that the poll is to be taken on the day named in the writ for that election, and
- the names of the candidates, and
- in relation to a periodic Council election – the names of any candidates who are included in the group, and
- the suburb, town or other locality of the enrolled address of each candidate, as stated on the nomination paper.

1.51 In addition, section 93(3) provides that the Electoral Commissioner must, as soon as reasonably practicable after the announcement, publish these details.

#### **Dis-endorsement of candidates**

*Parties should not be responsible for making disclosures on behalf of a candidate once they have advised the NSW Electoral Commission of the candidate's dis-endorsement*

#### **Recommendation 5**

**That the NSW Government amend the *Electoral Funding Act 2018* so that a registered party no longer has disclosure obligations in respect of a candidate that it has dis-endorsed, once it has advised the NSW Electoral Commission of that dis-endorsement in writing.**

1.52 During the inquiry, the Committee heard concerns about parties continuing to be held responsible for making disclosures on behalf of candidates under the *Electoral Funding Act 2018* even after they had advised the NSW Electoral Commission that they had dis-endorsed the candidate or that the candidate had resigned from the party.

1.53 The Committee notes that the current statutory rules for determining who is responsible for lodging a candidate's disclosures are based on the candidate's party membership. Therefore, a party agent will continue to be responsible for a candidate's disclosures for as long as the candidate remains a member of the relevant party, and regardless of any dis-endorsement.

1.54 It appears that a party that no longer wants to be responsible for making disclosures on behalf of a dis-endorsed candidate has the option of cancelling that candidate's party membership and advising the Commission. However, in many cases a party does not want to cancel a dis-endorsed candidate's membership e.g. where the candidate has been dis-endorsed for health reasons.

1.55 Therefore, the Committee considers that the NSW Government should amend the *Electoral Funding Act 2018* so that a registered party no longer has disclosure obligations in respect of a candidate that it has dis-endorsed, once it has advised the NSW Electoral Commission of that dis-endorsement in writing.

1.56 During the inquiry, the Committee heard concerns from the Shooters, Fishers and Farmers Party that the NSW Electoral Commission had continued to hold it responsible for making disclosures on behalf of candidates who had resigned from the Party or been dis-endorsed:

On a few occasions, candidates resigned membership of the Party and/or were dis-endorsed. In these circumstances, we made the NSW Electoral Commission aware of the candidate resignation/dis-endorsement as soon as possible, almost immediately. Yet the “candidate” continued to be sent disclosure material and obligations well after this. The NSW Electoral Commission would only remove the member as a candidate on the candidate advising...[and] insisted and threatened our Party with fines until disclosure documents were lodged for a candidate that was an independent from the time of resignation from the Party.<sup>41</sup>

1.57 At the Committee’s hearing on 18 November 2019, Mr Despotoski stated further:

...we argue that a very simple fix...to disendorsing that person from the Electoral Commission perspective is a form completed by the Deputy Registered Officer and the Registered Officer...just letting the Electoral Commission know that this person is no longer a candidate of ours and we will meet their disclosure requirements up to that date. Beyond that, they are not a candidate so it does not need to go beyond that.<sup>42</sup>

1.58 When asked to comment, the NSW Electoral Commission noted that the current statutory rules for determining who is responsible for lodging disclosures are based on a candidate’s party membership.<sup>43</sup> The Committee notes that, Part 3 of the *Electoral Funding Act 2018* sets down requirements for the disclosure of political donations and electoral expenditure, and section 14 of that Part makes clear which persons are responsible for making those disclosures. In the case of an elected member or candidate who is a member of a registered party, the party agent of that registered party is responsible for making the disclosures. However, in the case of an elected member or candidate who is not a member of a registered party, the elected member or candidate is themselves responsible for making the disclosures.

1.59 The Commission told the Committee that, given the statutory rules, a party agent will continue to be responsible for a candidate’s disclosures for as long as the candidate remains a member of the relevant party, and regardless of any dis-endorsement.<sup>44</sup>

1.60 The Commission also told the Committee that where a candidate applies to be registered for an election (under Part 7 Division 2 of the *Electoral Funding Act 2018*) the application form asks if they are a member of a party. The Commission relies on this information to assess who is responsible for lodging their disclosures, and informs the relevant party agent of the registration. However, sometimes party agents will contact the Commission and advise that the candidate is not, in fact, endorsed by their party. The Commission told the Committee that where this occurred in the lead up to the 2019 NSW State election it advised the party agent that he or she would nevertheless be responsible for the candidate’s disclosures for as long as the candidate remains a member of the party:

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<sup>41</sup> Submission 25, Shooters, Fishers and Farmers Party, pp1-2.

<sup>42</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2018, p45.

<sup>43</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p4.

<sup>44</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p4.

Party agents were advised by the NSW Electoral Commission that it remains a matter for the party to determine any action to be taken in relation to the candidate's membership of the party and that the party agent will remain responsible for the candidate's disclosures while the candidate remains a member of that party.<sup>45</sup>

## Campaigning

### Negative campaigning and truth in advertising

*There should be no changes to the law regarding negative campaigning and truth in advertising*

- 1.61 Some party stakeholders told the Committee that laws should be introduced in NSW prohibiting negative campaigning for NSW State elections, or promoting truth in advertising. However, the Committee does not propose to do so. Laws such as this raise issues about who is to adjudicate the 'negativity' or 'truth' of a statement, and how they do so. In reaching decisions on particular cases of electioneering there is also a risk that any such person or body could come to be seen as 'political'. Ultimately, it is for voters to make assessments about what is 'negative' and what is 'true'.
- 1.62 Further, the Committee would not like to put constraints on legitimate political debate during election periods – this needs to be robust to hold all parties and candidates to account. The Committee considers that the constraints that are currently in place surrounding non-complying material strike the right balance. It also notes evidence that some broadcasters already require substantiation before airing claims.
- 1.63 In its submission to the inquiry, the National Party of Australia – NSW argued that negative campaigning should be legislatively prohibited. The Nationals argued that 'this would provide more civil debate, create a more level playing field for candidates and likely encourage more individuals to seek election to office without having to consider their reputation being damaged through such tactics'.<sup>46</sup>
- 1.64 At the Committee's hearing on 18 November 2019, Mr Cadell expanded on the National Party's views:
- ...at a time when people are looking down on their politicians – their beliefs and stuff like that – we are our own worst enemies...As long as we are driving each other down and ourselves down, we do nothing to raise the level of what you people do as public servants for Australia...I am not going to individually go out there and de-arm the race and lose elections because we are noble, but if there was some mechanism where we actually respected each other more, that would be a good thing.<sup>47</sup>
- 1.65 When asked how negativity would be measured and who would be the arbiter, Mr Cadell responded:
- There can be an independent panel that does that...[T]here are ways of doing it. It can be if it is not talking positively...You know what is a negative ad. If I am talking

<sup>45</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, pp4-5.

<sup>46</sup> Submission 15, National Party of Australia – NSW, p12.

<sup>47</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2020, p22.

about one of my candidates, I am not going to say anything bad. If I am talking about one of your candidates, I am. I should not be able to advertise and say, "Mr X from Party X did this," or something like that. It should be stopped.<sup>48</sup>

1.66 In its submission to the inquiry, The Greens NSW made a similar recommendation regarding truth in advertising legislation. In particular, The Greens called for legislation to prohibit false or misleading statements being made about a party or candidate in the media and electoral material, with appropriate penalties.

1.67 The Greens also called for the establishment of an independent electoral tribunal to adjudicate the truth of public election statements and to impose appropriate penalties. The Greens pointed to provisions regarding misleading electoral advertising that apply in South Australia and stated that the current legislative provisions that apply in NSW relating to non-complying electoral material are 'largely ineffectual'.<sup>49</sup>

1.68 Mr Despotoski of the Shooters, Fishers and Farmers Party was asked at the 18 November 2019 hearing whether he thought negative advertising should be eliminated. In response he stated:

We received negative advertising and we dished it out...I think it is negative to frame negative advertising in that sense. We view it as holding other parties and the Government of the day to account.<sup>50</sup>

1.69 Mr Despotoski further stated that he would like to think it is the voter who is the arbiter of what is true and what is and is not negative. He also noted that there can already be requirements imposed by broadcasters for claims to be substantiated:

In our experience, particularly with television advertisements, we had to substantiate any claims we made...with media articles, with *Hansard* and with other documentary evidence...We had to do a justification to the television broadcaster.<sup>51</sup>

1.70 At the November hearing, the Electoral Commissioner was also asked his views about truth in advertising legislation and laws prohibiting negative advertising. The Commissioner responded that this was a matter for Parliament but stressed that if such laws were to be introduced the Electoral Commission should not be called on to adjudicate:

There would be a couple of real practical problems if it was the Commission – I am agnostic about another body. First, it runs the risk of politicising the Commission or creating the perception that the Commission has been politicised if it were to take a position on a particular bit of electioneering. Second, there is an issue with the resourcing required. In the middle of the election period our people are flat out as it is.<sup>52</sup>

<sup>48</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2020, p22.

<sup>49</sup> Submission 24, The Greens NSW, p9.

<sup>50</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2020, p46.

<sup>51</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2020, p46.

<sup>52</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2020, p56.

- 1.71 Section 180 of the *Electoral Act 2017* currently deals with non-complying electoral material and provides that material contravenes Part 7, Division 14, Subdivision 2 of the Act if, amongst other things:
- the material contains voting directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
  - the material contains an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote.
- 1.72 Further, section 183 of the *Electoral Act 2017* provides that a person must not, during the 'regulated period' print, publish or distribute electoral material that contravenes Part 7, Division 14, Subdivision 2 of the Act. If they do so, the maximum penalty is an \$11,000 fine in the case of a corporation; or a \$2,200 fine or imprisonment for six months, or both, in any other.<sup>53</sup>
- 1.73 Professor George Williams has noted that in the case of *Evans v Chrichton-Browne*<sup>54</sup> the High Court decided that the words 'in or in relation to the casting of his vote' in section 161(e) of the *Commonwealth Electoral Act 1918(Cth)* were limited to 'the act of recording or expressing the political judgment which the elector has made rather than to the formation of that judgment'.
- 1.74 Professor Williams has further noted that this may mean that provisions such as these:
- ...can only have a minimal impact on preventing false and misleading statements of fact during election campaigns. If interpreted in the same way as section 161(e), they would only relate to statements that affect the actual physical casting of a person's vote and not to statements that affect the formation of a political judgment by the elector.<sup>55</sup>
- 1.75 In contrast, the South Australian electoral legislation provides that a person who authorises, causes or permits the publication of an electoral advertisement is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. The maximum penalty for doing so is a \$5000 fine for an individual and a \$25,000 fine for a body corporate.<sup>56</sup>

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<sup>53</sup> The 'regulated period' is defined to mean the period starting on the date of the issue of the writ for the election and ending at 6pm on election day; and in the case where an election is adjourned, includes the period starting on the original election day and ending at 6pm on the day to which voting for the election is adjourned, see *Electoral Act 2017*, s4(1).

<sup>54</sup> *Evans v Chrichton-Browne* (1981) 147CLR169.

<sup>55</sup> See Williams, G. 'Truth in Political Advertising Legislation in Australia', 1997, available at Parliament of Australia website: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9697/97rp13](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp13) viewed 22 July 2020.

<sup>56</sup> *Electoral Act 1985* (SA), s113(2).



### Third party campaigners

*What laws applied to third party campaigners regarding expenditure caps and 'acting in concert' in the lead-up to the 2019 NSW State election?*

- 1.76 A third party campaigner is an individual or entity that campaigns for a State or local government election in NSW but does not stand as a candidate or group, and is not a political party, an associated entity or an elected member. To be legally recognised as a third party campaigner for a State election, an individual or entity must have incurred more than \$2,000 in electoral expenditure during the 'capped State expenditure period' or registered with the NSW Electoral Commission as a third-party campaigner for an election.<sup>57</sup> With regard to quadrennial State elections, the 'capped State expenditure period' runs from 1 October in the year before an election is to be held, to the end of election day.<sup>58</sup> In any other case, it runs from the day of the issue of the writ or writs for the election to the end of election day.<sup>59</sup>
- 1.77 A NSW State register of third party campaigners is available on the Electoral Commission website.<sup>60</sup>
- 1.78 In May 2018, the *Electoral Funding Act 2018* came into law, which placed restrictions on third party campaigners in the lead-up to the 2019 NSW State election. In particular, the Act:
- Reduced the applicable cap for electoral expenditure by third party campaigners for State election campaigns (that is, during the 'capped State expenditure period'). For the March 2015 election the cap for those registered before 1 October 2015 had been \$1,288,500, and for those registered after this date had been \$644,300.<sup>61</sup> These were reduced to \$500,000 and \$250,000 respectively, to be adjusted for inflation as provided for in Schedule 1 of the Act.<sup>62</sup>
  - Restricted third party campaigners from acting in concert, making it unlawful for two or more campaigners to coordinate campaigns where their combined expenditure exceeded the applicable caps.<sup>63</sup>
- 1.79 This followed a report by an Expert Panel on Political Donations, chaired by Dr Kerry Schott, which found that third party campaigners should be able to spend a

<sup>57</sup> See NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Political-participants/Third-party-campaigners/Register-as-a-third-party-campaigner> viewed 23 July 2020; and *Electoral Funding Act 2018*, section 4.

<sup>58</sup> *Electoral Funding Act 2018*, s27(a).

<sup>59</sup> *Electoral Funding Act 2018*, s27(b).

<sup>60</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/public-register-and-lists/Register-of-Third-Party-Campaigners/State-Register-of-Third-Party-Campaigners> viewed 23 July 2020.

<sup>61</sup> See *Election Funding, Expenditure and Disclosure Act 1981*, ss95F(10) and 95H(b). Section 95F(10) provided a cap of \$1,050,000 for those who were registered before the 'capped State expenditure period' and for a cap of \$525,000 for those registered after this date. However, the amounts for the 2015 election took into account indexing for inflation as required by Schedule 1, cl3 of the 1981 Act. See also *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice*, Schedule 1, cl2(8): <https://www.legislation.nsw.gov.au/#/view/regulation/2011/597/sch1> viewed 24 July 2020.

<sup>62</sup> *Electoral Funding Act 2018*, s29(10)&(14); see also Schedule 1, cl3.

<sup>63</sup> *Electoral Funding Act 2018*, s35.

reasonable amount to voice their concerns but not to the same extent as candidates and parties “drown[ing] out the voice of the direct election contestants”.<sup>64</sup> The Panel recommended the caps be reduced to \$500,000.<sup>65</sup>

- 1.80 A number of third party campaigner union organisations challenged the legislation in the High Court of Australia arguing that the expenditure caps of \$500,000 or less and the ‘acting in concert’ provisions impermissibly burdened the implied freedom of political communication in the Australian Constitution.
- 1.81 On 29 January 2019, the High Court found in favour of the third party campaigners. The Court found that the cap of \$500,000 impermissibly burdened the freedom of political communication in the Australian Constitution. However, the Court did not address the question of the validity of the ‘acting in concert’ provisions finding it was unnecessary to do so with the caps no longer applying.<sup>66</sup>
- 1.82 Following the High Court’s decision, on 8 February 2019, the Government made the *Electoral Funding Amendment (Savings and Transitional) Regulation 2019* which re-instated caps for third party campaigners of \$1,288,500 if they were registered before 1 October 2018, and \$644,300 if registered after that date.<sup>67</sup> This Regulation was drafted to apply to the 2019 NSW State election only. That is, its application ceased after 31 December 2019.<sup>68</sup>

*Third party campaigners have raised concerns about the impact of expenditure caps*

### **Recommendation 6**

**That the NSW Government amend the *Electoral Funding Act 2018* to provide that the applicable cap for electoral expenditure by third party campaigners for State election campaigns is:**

- **\$1,288,500 for those registered under the Act before the capped state expenditure period, and**
- **\$644,300 in any other case,**

**with these amounts to be adjusted for inflation as provided for in Schedule 1 of the Act.**

- 1.83 During the inquiry the Committee heard concerns from third party campaigners, including Unions NSW, the NSW Nurses and Midwives Association (NSWNMA), and the Public Service Association of NSW (PSA) about the impact of the expenditure caps imposed by the *Electoral Funding Act 2018* in the lead-up to the

<sup>64</sup> Panel of Experts, *Political Donations Final Report – Volume 1*, December 2014, p8, available at NSW Department of Premier and Cabinet website: [https://www.dpc.nsw.gov.au/assets/media-news/95/attachments/611c3861d7/Volume\\_1\\_-\\_Final\\_Report.pdf](https://www.dpc.nsw.gov.au/assets/media-news/95/attachments/611c3861d7/Volume_1_-_Final_Report.pdf) viewed 23 July 2020.

<sup>65</sup> Panel of Experts, *Political Donations Final Report – Volume 1*, December 2014, p113.

<sup>66</sup> *Unions NSW v New South Wales* [2019] HCA 1.

<sup>67</sup> Clause 2 of the *Electoral Funding Amendment (Savings and Transitional) Regulation 2019* provided that it commenced on the date on which it was published on the NSW Legislation website, which was 8 February 2019. See NSW Legislation website: <https://www.legislation.nsw.gov.au/#/view/notification/20190204> viewed 23 July 2020.

<sup>68</sup> *Electoral Funding Amendment (Savings and Transitional) Regulation 2019*, schedule 1.

2019 NSW State election. They told the Committee that the expenditure caps affected how they campaigned in the pre-election period.

- 1.84 They also argued that the new legislation was drafted too broadly, capturing unions' day to day activities representing their members within the expenditure caps, instead of focussing on capping the money they spent on electoral advertising. They argued for higher caps to allow them to campaign more extensively, and caps that did not capture their day to day activities; and stated that any future legislation in this area should take into account the implied right to freedom of political communication in the Australian Constitution.
- 1.85 As discussed above, on 8 February 2019, following the High Court's decision, the Government made the *Electoral Funding Amendment (Savings and Transitional) Regulation 2019* which re-instated the caps for third party campaigners that had applied at the 2015 NSW State election. That is, \$1,288,500 if they were registered before 1 October 2018, and \$644,300 if registered after that date. However, the Regulation ceased to apply after 31 December 2019.
- 1.86 The Committee considers that the NSW Government should amend the *Electoral Funding Act 2018* to enshrine these amounts in primary legislation. That is, the Act should be amended to provide that the applicable cap for electoral expenditure by third party campaigners for State election campaigns is:
- \$1,288,500 for those registered under the Act before the capped state expenditure period, and
  - \$644,300 in any other case.
- 1.87 Further, these amounts should be adjusted for inflation as provided for in Schedule 1 of the Act. Schedule 1, clause 3 provides that the caps on electoral expenditure provided for in the Act are to apply for the first election period that is current when the provision commences. They are then to be adjusted for inflation for subsequent election periods, according to the method provided for in that clause.
- 1.88 By permanently re-instating the third party campaigner caps that applied prior to the May 2018 changes, and allowing adjustments for inflation in the future, the Committee considers that third party campaigners would have adequate opportunity to present their case; and that the caps would be proportionate to the expenditure caps that apply to political parties under the Act, and other direct contestants at elections.
- 1.89 Later in the chapter, the Committee also recommends consideration of legislative amendments so that travel and accommodation are not captured as 'electoral expenditure' for the purposes of the caps for State election campaigns. This may further assist to resolve third party campaigner concerns about the impact of caps on their campaigns. It may also assist to resolve their concerns about the impact of the caps on their everyday business.
- 1.90 During the inquiry, unions told the Committee that the caps that applied in the lead-up to the 2019 NSW State election affected their campaigns. In its submission Unions NSW stated:

The pending High Court decision created significant uncertainty among third-party campaigners regarding their spending within legislative requirements in the lead-up to the election. This resulted in unions significantly curtailing the scale of third-party campaigns during the 2019 NSW State election.<sup>69</sup>

1.91 Similarly, NSWNMA stated:

Due to the volatile environment around electoral expenditure, the NSWNMA was forced to hold off on paid media advertising (TV or radio) until the cap was restored to \$1,288,500. During the period between the High Court decision and the Regulation we campaigned conservatively despite the opportunity presented without any cap...If the cap had not be altered by [the *Electoral Funding Act 2018*] and the subsequent uncertainty we would have run a very different campaign and prosecuted our case in the public arena by including broadcast television in support of our campaign.<sup>70</sup>

1.92 The PSA told the Committee:

The \$500,000 limit imposed on the Association was an immediate impediment...Although the Association did run our overarching campaign state wide, there was a clear focus on containing costs. The campaign ran for a limited period of time on electronic media (television, cinema and radio) with a greater focus on physical billboards and digital targeting in regional areas...It was clear that the Association's ability to represent its members, who are based NSW-wide and whose work impacts every electorate in the State, was severely compromised by the expenditure limit.<sup>71</sup>

1.93 In raising concerns about the breadth of the legislation, the third party campaigners noted the definition of 'electoral expenditure' introduced by section 7 of the *Electoral Funding Act 2018*. As the Act caps 'electoral expenditure' of third party campaigners and others, the caps and the definition are, in the words of the NSWNMA 'inextricably linked'.<sup>72</sup>

1.94 Section 7 defines electoral expenditure to be 'expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election' and which is expenditure of a kind listed therein including:

- expenditure on advertisements in radio, television, the internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material,
- expenditure on the production and distribution of election material,
- expenditure on the internet, telecommunications, stationery and postage,

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<sup>69</sup> Submission 20, Unions NSW, p6.

<sup>70</sup> Submission 16, NSW Nurses and Midwives Association, pp14-15.

<sup>71</sup> Submission 26, Public Service Association of NSW, p3.

<sup>72</sup> Submission 16, NSW Nurses and Midwives Association, p16.

- expenditure incurred in employing staff engaged in election campaigns,
- expenditure on travel and accommodation for candidates and staff engaged in electoral campaigning, and
- expenditure on research associated with election campaigns (other than in-house research).

1.95 The NSWNMA and Unions NSW argued that the definition was too broad and thereby captured the daily business activities of third party campaigners.<sup>73</sup> The NSWNMA also noted that the definition was broader than the one that had applied for the purpose of the caps under the previous legislation.<sup>74</sup> The abovementioned caps that had applied to third party campaigners under the previous legislation (of \$1,288,500 and \$644,300) had applied to 'electoral communications expenditure'.<sup>75</sup> Mr Brett Holmes, General Secretary of the NSWNMA told the Committee:

We agree that advertising should rightly be disclosed as electoral expenditure but business as usual activities such as working with our members to advance their interests should not be captured. Broadening of the electoral expenditure definition away from the communications expenditure prior to the 2019 election resulted in our association having to disclose sundry expenses, such as member meeting costs, to the NSW Electoral Commission.<sup>76</sup>

1.96 In its submission the NSWNMA also stated:

The definition of electoral expenditure should not be so broad as to capture our business as usual and everyday staff and travel costs which then impacts the ability to comply with the electoral expenditure cap.<sup>77</sup>

1.97 The NSWNMA provided the following examples of expenditure that it disclosed to the NSW Electoral Commission under the new definition:

The NSWNMA's core usual business where organisers visit members across NSW to discuss their issues and speak to members on the phone all met the definition of electoral expenditure. These staff costs along with travel to rural areas all added up to significant disclosable expenditure...

The NSWNMA's [nurse to patient] Ratio campaign is our normal business and the dominant purpose has not been to influence the voting at an election and accordingly has not been disclosed previously. Our different approach in the 2019 State election meant that this was disclosable.<sup>78</sup>

<sup>73</sup> See Mr Mark Morey, *Transcript of Evidence*, 18 November 2019, p33; and Submission 16, NSW Nurses and Midwives Association, p16.

<sup>74</sup> Submission 16, NSW Nurses and Midwives Association, p16.

<sup>75</sup> See *Election Funding, Expenditure and Disclosures Act 1981*, ss87(2)-(4) and 95F(1)&(10).

<sup>76</sup> Mr Brett Holmes, General Secretary of the NSW Nurses and Midwives Association, *Transcript of Evidence*, 18 November 2019, pp32-33.

<sup>77</sup> Submission 16, NSW Nurses and Midwives Association, p16.

<sup>78</sup> Submission 16, NSW Nurses and Midwives Association, pp16-17.

1.98 Mr Troy Wright, Acting General Secretary of the PSA also raised concerns about the impact of the electoral funding legislation on the PSA's day-to-day business and advocating on behalf of its members:

...the greatest difficulty we had with the current regime is the impossibility of separating our core business of promoting our members' interests in a viable, resourced and recognised public sector from election campaigning...The union has been strongly advocating for reform in the youth justice sector. We had two riots in June and July [2019]. We were on the front foot about that, promoting our members' interests for a safer workplace both for them and for the detainees. Had that occurred during the State election campaign – had those riots occurred in January or February – that core business activity would arguably have attracted the electoral funding laws.<sup>79</sup>

1.99 Unions NSW told the Committee that the implied right to freedom of political communication in the Australian Constitution must be taken into account 'if further attempts are made to restrict the ability of third party campaigners to participate in electoral campaigns'.<sup>80</sup>

1.100 Unions NSW also stated that legislation should set expenditure caps 'at a level that allows third party campaigners to generally participate in elections'.<sup>81</sup> On the definition of 'electoral expenditure' it also told the Committee that 'the definition should not be so broad that it captures the daily business activities and everyday staff and travel costs of...third party campaigning organisations particularly those that are membership-based'.<sup>82</sup>

1.101 Similarly, the PSA stated that a cap at any level would not be appropriate 'unless there is a very clear distinction between our core activities as a trade union representing public sector workers in this State and electoral campaigning'.<sup>83</sup>

1.102 For its part, the NSWNMA stated that it supported a cap of \$2 million subject to annual indexation for third party campaigners:

We believe this is a realistic and proportionate to the expenditure caps of political parties...The cap proposed by the NSWNMA will in no way drown out the voices of the political parties with their far greater expenditure caps.<sup>84</sup>

1.103 According to the NSW Electoral Commission website, the following expenditure caps will apply to political parties at the 2023 NSW State election:

- Party with more than 10 endorsed Legislative Assembly candidates at a general election: \$132,600 multiplied by the number of electoral districts in which a candidate is endorsed by the party.

<sup>79</sup> Mr Troy Wright, Acting General Secretary, Public Service Association of NSW, *Transcript of Evidence*, 18 November 2019, p34.

<sup>80</sup> Mr Mark Morey, *Transcript of Evidence*, 18 November 2019, p33.

<sup>81</sup> Mr Mark Morey, *Transcript of Evidence*, 18 November 2019, p33.

<sup>82</sup> Mr Mark Morey, *Transcript of Evidence*, 18 November 2019, p33.

<sup>83</sup> Mr Troy Wright, *Transcript of Evidence*, 18 November 2019, p34.

<sup>84</sup> Submission 16, NSW Nurses and Midwives Association, p13.

- Party that endorses candidates in a group for the Legislative Council but does not endorse any candidates for election to the Legislative Assembly or does not endorse candidates in more than 10 electoral districts: \$1,389,900.<sup>85</sup>

1.104 Similarly, the following expenditure caps will apply to other direct contestants at that election:

- Independent Legislative Council group: \$1,389,900.
- Endorsed Legislative Assembly candidate: \$132,600.
- Independent Legislative Assembly candidate: \$198,700.
- Ungrouped Legislative Council candidate: \$198,700.<sup>86</sup>

*Third party campaigners have raised concerns about the impact of the ‘acting in concert’ provisions*

1.105 In the course of the inquiry, Unions NSW, the NSWNMA and the PSA also raised concerns about the impact of the ‘acting in concert’ provisions imposed by the *Electoral Funding Act 2018* in the lead-up to the NSW State election. They told the Committee that these provisions stopped them pooling resources or discussing issues of mutual concern in their campaigns, and called for their repeal.

1.106 At the Committee’s hearing on 18 November 2019, Mr Holmes of the NSWNMA told the Committee:

We work with peak bodies including Unions NSW and other affiliate unions, as well as civil society organisations, on issues of concern to our members. Section 35 of the *Electoral Funding Act 2018* also introduced acting in concert provisions which prohibit third party campaigners from acting together. This would have resulted in those combined parties being capped to a single amount. Alarming, informal discussions between unions could be defined as acting in concert and force one union’s campaign spending to be included into the expenditure cap of another union.<sup>87</sup>

1.107 Unions NSW called for the acting in concert provisions to be removed from the *Electoral Funding Act 2018* stating that they are ‘an attack on the ability of unions and other third-party campaigners to collaborate and coordinate on key issues shared between groups’. As the High Court did not rule on the constitutionality of the provisions in its January 2019 decision, Unions NSW indicated that it would ‘strongly consider’ bringing a further court challenge should they apply at future elections.<sup>88</sup>

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<sup>85</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>, viewed 24 July 2020. See also *Electoral Funding Act 2018*, s29.

<sup>86</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections>, viewed 24 July 2020. See also *Electoral Funding Act 2018*, s29.

<sup>87</sup> Mr Brett Holmes, *Transcript of Evidence*, 18 November 2019, p33.

<sup>88</sup> Submission 20, Unions NSW, pp7-8.

1.108 Unions NSW also stated that the provisions are drafted broadly:

The definition of ‘act in concert’ is broad and refers to a formal or informal agreement to campaign with the principal object of having a party or candidate elected or opposing their election...It remains unclear what campaign activities would be captured by the provision or how it would be enforced.<sup>89</sup>

1.109 The PSA stated ‘not all individuals have the financial, social or political capital to affect change on their own. This is why unions have historically pooled their resources to run campaigns collectively’.<sup>90</sup> It also told the Committee that the acting in concert provisions affected how it had campaigned in the lead-up to the 2019 NSW State election:

An example for the Committee was our campaign around election time regarding TAFE. We are committed to a funded and non-voucher-based but block-funded TAFE system and Vocational Education and Training education sector in this State. Unfortunately in TAFE NSW there are currently two unions. We represent non-teaching staff and the NSW Teachers Federation represents teaching staff. What the overruled legislation in regard to acting in concert required us to do was actually to have an absurd separation between our unions and our campaigns.<sup>91</sup>

1.110 Similarly, the NSWNMA told the Committee:

In the interests of democracy there should be no impediment to running joint campaigns. Third party campaigners should not be prohibited from discussing their respective campaigns or from advocating together on social justice issues – like family violence or climate change – just in case it is likely to be captured within an expenditure cap.<sup>92</sup>

*Concerns have been raised about the effect of the developer donation ban on the ability to raise funds for third party campaign activities*

1.111 During its inquiry, the Committee also heard from another third party campaigner, the Commercial and Economic Planning Association (CEPA). CEPA raised concerns that the ban on property developers making political donations in NSW, under the *Electoral Funding Act 2018*, affects its ability to raise funds for third party campaign activities.

1.112 The Committee notes that some industry associations might want to influence policy debates in the lead up to NSW State elections by becoming third party campaigners. For example, an industry association of property developers may want to contribute to debates about affordable housing. However, they cannot levy money from their membership to do so if the majority of that membership are prohibited donors under the *Electoral Funding Act 2018*. Such a levy would constitute a political donation from a banned donor to a third party campaigner.

1.113 Prohibited donor laws have been introduced to reduce the risk of undue or corrupt influence in political decision making. If the laws were relaxed to allow

<sup>89</sup> Submission 20, Unions NSW, p7.

<sup>90</sup> Submission 26, Public Service Association of NSW, p4.

<sup>91</sup> Mr Troy Wright, *Transcript of Evidence*, 18 November 2019, pp33-34.

<sup>92</sup> Mr Brett Holmes, *Transcript of Evidence*, 18 November 2019, p33.



prohibited donors to raise funds for campaigns in the lead up to election – even if those campaigns were to focus on policy, not political issues – there could follow a perception that funds from prohibited donors had helped a candidate to get elected in a particular case.<sup>93</sup>

- 1.114 Therefore, the Committee considers that the laws should not be relaxed. While it accepts prohibited donors may have a valuable contribution to make to policy debates on particular issues, there is ample opportunity to do so outside the electoral period, that is outside the 'capped State expenditure period' of 1 October in the year before an election is to be held, to the end of election day.
- 1.115 Under the *Electoral Funding Act 2018*, a political donation is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third party campaigner in NSW. People and entities making political donations are called 'donors'.<sup>94</sup>
- 1.116 Relevantly, a political donation to a third party campaigner is a gift intended (in whole or in part):
- to enable the third party campaigner to make (directly or indirectly) a political donation or incur electoral expenditure; or
  - to reimburse the third party campaigner for making (directly or indirectly) a political donation or incurring electoral expenditure.<sup>95</sup>
- 1.117 Certain individuals and entities are classified as 'prohibited donors' under the *Electoral Funding Act 2018*, and they cannot make a political donation.<sup>96</sup> Prohibited donors are defined to include:
- property developers
  - tobacco industry business entities,
  - liquor or gambling industry business entities, and
  - any industry representative organisation if the majority of its members are such prohibited donors.<sup>97</sup>
- 1.118 Property developers were classed as prohibited donors when legislative changes to the then *Election Funding and Disclosures Act 1981* were passed in 2009.<sup>98</sup> These provisions have been retained in the current *Electoral Funding Act 2018*

<sup>93</sup> See *Transcript of Evidence*, 19 February 2020, pp47-48 for a discussion about this.

<sup>94</sup> See *Electoral Funding Act 2018*, ss4 and 5, and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/What-is-a-political-donation> viewed 31 July 2020.

<sup>95</sup> See NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/What-is-a-political-donation> viewed 31 July 2020 and *Electoral Funding Act*, s5(d).

<sup>96</sup> *Electoral Funding Act 2018*, Part 3, Division 7.

<sup>97</sup> *Electoral Funding Act 2018*, s51.

<sup>98</sup> *Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009*.

“to reduce the risk of undue or corrupt influence in the area relating to planning decisions”.<sup>99</sup>

1.119 According to its website, CEPA was established in 2017 to represent the interests of small developers, associated companies and new homebuyers.<sup>100</sup> The website lists CEPA’s key objectives as to:

- represent small and medium developers, financiers, planners, architects and associated companies, their customers and employees to local and state government,
- promote sound economics as a critical factor in the planning system,
- advocate in favour of good policy outcomes that benefit housing supply, and advocate against policy that decreases supply and increases costs and prices,
- increase the understanding of state government of the effects of local government policies,
- inform the public and members of the importance and challenges faced by small developers,
- increase the confidence of smaller industry players.<sup>101</sup>

1.120 CEPA was registered as a third party campaigner with the NSW Electoral Commission for the 2019 NSW State election.<sup>102</sup>

1.121 However, CEPA told the Committee that over 50 per cent of its membership are property developers.<sup>103</sup> Therefore, according to the above laws, CEPA is itself a ‘prohibited donor’ because it is an industry representative organisation and a majority of its members are prohibited donors.

1.122 This means that CEPA could not raise a levy from its membership to fund its own third party campaign activities for the 2019 NSW State election – such a levy would constitute a political donation from a banned donor to a third party campaigner. Mr Martin Musgrave, Executive Director of CEPA, put it thus:

As our membership is made up of more than 50 per cent developers and developers are prohibited donors we cannot raise a levy to then undertake third party

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<sup>99</sup> The Hon. Anthony Roberts MP, Minister for Planning, Minister for Housing and Special Minister of State, *Legislative Assembly Debates*, 17 May 2018, p595, NSW Parliament website: <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1> viewed 31 July 2020.

<sup>100</sup> Commercial and Economic Planning Association website: <http://www.cepa.org.au/about-us/> viewed 31 July 2020.

<sup>101</sup> Commercial and Economic Planning Association website: <http://www.cepa.org.au/> viewed 31 July 2020.

<sup>102</sup> See NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/public-register-and-lists/Register-of-Third-Party-Campaigners/State-Register-of-Third-Party-Campaigners> viewed 31 July 2020.

<sup>103</sup> Mr Martin Musgrave, Executive Director, Commercial and Economic Planning Association, *Transcript of Evidence*, 19 February 2020, p44.

campaigns or third party activities that would then highlight problems that our members have.<sup>104</sup>

- 1.123 Mr Musgrave told the Committee that, as a result, CEPA cannot engage properly in policy debates in the lead up to a NSW State election:

This limits our legitimate ability to get the message out about what we think about Government and Opposition policies. It means we can be ignored or attacked because we cannot defend ourselves. Without being unable to undertake campaign activities we have no influence over policy.<sup>105</sup>

- 1.124 Mr Musgrave further explained that because it could not raise a levy for campaign activity in the capped State expenditure period for the 2019 NSW State election, the only thing CEPA could do was to issue a press release and that “did not get run”.<sup>106</sup> He told the Committee:

We are able to release media statements and those sort of things so we are not precluded from having a voice. But we are precluded from running ads because that costs money, from running a public awareness campaign that might cost more than we have got and raising a levy to do so.<sup>107</sup>

- 1.125 Mr Matthew Daniel, President of CEPA made similar comments about CEPA’s inability to raise a levy from its membership for third party campaign activities, stating it was a poor outcome for democracy:

The result is that we are unable to influence the political system – and not for the sake of getting an individual development through – that is not our remit. What we are trying to do is make sure the system is as efficient as possible so that it can actually deliver the benefits that the Environmental Planning and Assessment Act seeks to do...We are inhibited from doing that effectively and efficiently. I think it is a poor outcome for democracy. I think it is a poor outcome for parliamentarians dare I say, that need to capture as much evidence as they can when making very important decisions that affect the community.<sup>108</sup>

- 1.126 Mr Daniel further stated that CEPA respected that “there is a community expectation...in relation to developers seeking for personal interest to develop links to political parties” and that CEPA did not seek changes to the law in that regard. However, Mr Daniel told the Committee that he thought it was “important that we are able to raise funds to run specific campaigns on specific issues for the benefit of good clear communication to the community”.<sup>109</sup>

- 1.127 Mr Musgrave emphasised that had CEPA been able to campaign during the 2019 NSW State election it would have campaigned across the State and not targeted particular electorates – its campaigning was to have a policy, not a political focus:

<sup>104</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p44.

<sup>105</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p44.

<sup>106</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p46.

<sup>107</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p46.

<sup>108</sup> Mr Matthew Daniel, President, Commercial and Economic Planning Association, *Transcript of Evidence*, 19 February 2020, p45.

<sup>109</sup> Mr Matthew Daniel, *Transcript of Evidence*, 19 February 2020. P45.

The planning system applies across the whole State and we would not have been looking to target individual electorates. I would think that from an industry association point of view, when you start to play politics...you get found out. That dilutes the message and our message is a policy message...<sup>110</sup>

1.128 At the Committee's hearing on 19 February 2020, CEPA also clarified that there was nothing stopping it raising funds outside the 'capped State expenditure period' to engage in policy debates.<sup>111</sup> CEPA was therefore asked why it is necessary for it to influence debate during the capped period:

**Mr PAUL SCULLY:** Some people argue in the community more broadly that industry groups, associations and the like already have a disproportionate influence over policymaking, in general terms, because of their capacity to be involved between distinct election periods...How is it then that you feel so constrained by not being able to participate in a period starting 1 October in the year before an election is due when you have got three years and nine months before that?

**Mr DANIEL:** That is a fair call. The last thing we want to do is have imbalanced views coming out of the community to the Parliament. The problem is that what we are trying to do is have a rational debate around these sort of things, not just specifically run some campaign on some issue...

**Mr PAUL SCULLY:** Are election campaigns the best time to do that? Some would argue they are not.

**Mr DANIEL:** Well, it is and it isn't. You can raise the emotive issues and concerns and things like that. But, of course, planning system processes and how they work – I wish they weren't but they are slow by nature a lot of the time. The policy development around them and seeing the impacts from them do take time...

**Mr PAUL SCULLY:** ...In that vein, there is nothing to stop you raising funds outside of an electoral period to do advertising, membership, information, events, functions and whatever else that you might want to do is there?

**Mr MUSGRAVE:** No, but I would also say that an election campaign period is also the time that new policies are being brought to the fore.

**Mr PAUL SCULLY:** Sure. But most of the development, as you well know, is done long before, often.

**Mr MUSGRAVE:** Yes, often. Sometimes it can be a surprise. Sometimes between 1 October and the fourth weekend in March is the time that policies get released from both governments and oppositions.

**Mr PAUL SCULLY:** They obviously get released but a lot of the work is done before.

**Mr MUSGRAVE:** A lot of work is done before. We are not necessarily privy to that work because oftentimes we are not consulted...<sup>112</sup>

<sup>110</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p46.

<sup>111</sup> Mr Martin Musgrave, *Transcript of Evidence*, 19 February 2020, p47.

<sup>112</sup> *Transcript of Evidence*, 19 February 2020, p47.

**Cost of campaigning in regional electorates – travel and accommodation**

*The Government should consider exempting travel and accommodation costs from the electoral expenditure caps*

**Recommendation 7**

**That the NSW Government consider amending the *Electoral Funding Act 2018* so that travel and accommodation expenses are not captured as ‘electoral expenditure’ for the purposes of the electoral expenditure caps for NSW State election campaigns.**

- 1.129 During the inquiry, the Committee heard concerns from some party stakeholders about the cost of campaigning in regional electorates for NSW State elections, especially as regards travel and accommodation. In particular, electoral expenditure caps that apply across all electorates do not take these increased costs into account.
- 1.130 There was some party and third party campaigner support for removing travel and accommodation from the expenditure caps. As there is also a requirement under the *Electoral Funding Act 2018* to disclose electoral expenditure, some third party campaigners also indicated that any requirement to include travel expenses in their returns makes this particularly administratively burdensome.
- 1.131 The Committee considers that travel and accommodation expenses should be removed from what is captured as ‘electoral expenditure’ for the purposes of the electoral expenditure caps for State election campaigns. This would create a more level playing field for those campaigning across the State. It may also assist to resolve the concerns that union third party campaigners raised with the Committee about the impact of expenditure caps on their campaigns and everyday business (discussed earlier); and may limit any administrative burden associated with the requirement to disclose electoral expenditure.
- 1.132 During the inquiry, the National Party of Australia – NSW raised concerns about the cost of campaigning in regional NSW stating this is ‘not necessarily taken into consideration with the electoral spending caps that apply across the board’.<sup>113</sup> In particular, the Party raised concerns about the cost of travel and accommodation when campaigning in geographically large regional electorates, and argued that these expenses should not be taken into account in applying the electoral spending caps.<sup>114</sup>
- 1.133 As noted earlier in the chapter, the *Electoral Funding Act 2018* includes provisions to cap ‘electoral expenditure’ for State election campaigns. Section 29 sets down the caps that apply to political parties and candidates for the ‘capped State expenditure period’; and with regard to quadrennial State elections, the ‘capped State expenditure period’ runs from 1 October in the year before an election is to be held, to the end of election day.<sup>115</sup>

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<sup>113</sup> Mr Bradley Vermeer, Operations Director, National Party of Australia – NSW, *Transcript of Evidence*, 18 November 2019, p19.

<sup>114</sup> Mr Bradley Vermeer, *Transcript of Evidence*, 18 November 2019, pp18-19.

<sup>115</sup> *Electoral Funding Act 2018*, s27(a).

- 1.134 As also noted earlier, as the legislation caps ‘electoral expenditure’ as defined, this definition and the caps themselves are linked. Further, this definition currently includes ‘expenditure on travel and travel accommodation for candidates and staff engaged in electoral campaigning’.<sup>116</sup>
- 1.135 In its submission, the National Party stated:
- ...the increased costs of travel are a necessary consequence of campaigning in regional electorates. As an example, the regional electorate of Barwon is 356,291.70km<sup>2</sup> whilst in comparison, the metropolitan electorate of Newtown is just 10.29km<sup>2</sup>...This massive increase in geographical size has a proportional increase in the cost of travel to campaign across the electorate. While a candidate contesting the seat of Newtown could drive 7km across the electorate in just fifteen minutes, it would take a candidate nine hours to traverse the over 850km across the electorate of Barwon by road. As such, the extensive use of cars, planes and accommodation by candidates and campaign staff to move across a regional electorate has a disproportional impact on the expenditure cap compared with metropolitan counterparts.<sup>117</sup>
- 1.136 It is also noted earlier in the chapter that the *Electoral Funding Act 2018* also set down electoral expenditure caps for third party campaigners and that the definition therein of ‘electoral expenditure’ was drafted to apply to them too (although the caps as set were ruled unconstitutional by the High Court in January 2019). And as noted, some union third party campaigners raised concerns about the impact of caps on their ability to campaign, and on their everyday business.
- 1.137 Accordingly, Unions NSW and the PSA told the Committee that they too would support travel and accommodation expenses being removed from what is captured as ‘electoral expenditure’ for the purposes of the electoral spending caps under the legislation.<sup>118</sup> The views of the NSWNMA are also relevant in this regard. As discussed earlier, the NSWNMA stated that ‘the definition of electoral expenditure should not be so broad as to capture...everyday staff and travel costs which then impacts the ability to comply with the electoral expenditure cap’.<sup>119</sup>
- 1.138 As there is a requirement to disclose electoral expenditure to the NSW Electoral Commission under Part 3, Division 2 of the *Electoral Funding Act 2018* these union stakeholders also emphasised that including travel in the caps adds to the administrative burden of furnishing these disclosures.<sup>120</sup> For example, Mr Wright of the PSA stated:

If we were handing out, for example, we did a lot of activity around the State election campaign handing out even at metropolitan train stations – our campaign material...Some staff volunteered to do that from 6:00am. Some said they wanted to

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<sup>116</sup> *Electoral Funding Act 2018*, s7(1)(f).

<sup>117</sup> Submission 15 – National Party of Australia – NSW, p3.

<sup>118</sup> See the discussion of travel expenses *Transcript of Evidence*, 18 November 2020, pp38-39 and in particular the responses of Mr Morey and Mr Wright p39 to the question asked by the Hon Ben Franklin MLC about whether they would support travel and accommodation being removed from what is captured as ‘electoral expenditure’ for the purpose of the expenditure caps.

<sup>119</sup> Submission 16, NSW Nurses and Midwives Association, p16.

<sup>120</sup> See *Transcript of Evidence*, 18 November 2019, pp38-39.

do it on paid time. So our return is littered with different staff who were paid at that time and some that were not. We had to go detail by detail for six weeks about which staff were paid for that two-hour window, and the same goes for their travel. For some of them it is down to the train ticket they used to get to Penrith and return. But then if they went to Penrith and they did some other activities and went out to, say, the rowing centre and saw some members, do we only do one way or do we do both ways?...Again, things like advertising and printing are very easy for us to say, "Yes, that's how much we spent." But once you get into the day-to-day activities and the travel and accommodation...it became very difficult for us.<sup>121</sup>

1.139 When the Shooters, Fishers and Farmers Party was asked whether travel and accommodation should be removed from the electoral expenditure caps, Mr Despotoski responded:

Certainly it is more difficult to campaign in regional areas due to the size of some of those seats. We are talking seats that are bigger than most European countries. With respect to travel and accommodation and the funding around that, we would support looking into that. We would need to see some detail around that before we would give unequivocal support to that. Certainly it is a lot easier and less expensive for candidates to get around in seats like Newtown, Sydney or any seat in the metropolitan areas than it is in a seat like Barwon, Wollondilly, Murray, Orange or Clarence. Often the candidates themselves take on a lot of that cost. I think to that end it is perfectly sound to look into that, definitely.<sup>122</sup>

1.140 Similarly, Mr Grant Layland, State Treasurer of the Shooters, Fishers and Farmers Party stated 'I agree about the costs and obviously the logistics of moving people around electorates of that size. We do notice it through the wear and tear on motor vehicles and that sort of stuff, yes'.<sup>123</sup>

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<sup>121</sup> Mr Troy Wright, *Transcript of Evidence*, 18 November 2019, pp38-39.

<sup>122</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, pp41-42.

<sup>123</sup> Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, *Transcript of Evidence*, 18 November 2019, p42.

## Chapter Two – The electoral roll and the ballot paper

- 2.1 This Chapter explores issues that were examined during the Committee’s inquiry concerning the electoral roll and the ballot paper. These include requirements for voter identification; concerns about the electronic mark-off system; responses to data breaches of enrolment information; fines for not voting; party logos on the ballot paper; and the possibility of a short-form Legislative Council ballot paper.

### The electoral roll and mark off

#### Voter identification

*There should be no change to require voters to produce proof of identity at NSW State elections*

#### Finding 2

**There should be no change to NSW laws to require voters to produce proof of identity to vote at NSW State elections.**

- 2.2 Voters do not currently have to produce proof of identity to vote at a NSW State election. The introduction of such a requirement has sometimes been raised as a possibility to mitigate the risk of electoral fraud, including multiple voting and impersonation, which can damage the perception of electoral integrity.
- 2.3 However, during its inquiry the Committee heard from a number of stakeholders that such a requirement could disenfranchise vulnerable individuals who may not have ready access to appropriate identification documents, including people experiencing homelessness, and people in domestic violence situations.
- 2.4 The Committee also notes that the Joint Standing Committee on Electoral Matters in the last Parliament recommended that the NSW Government introduce a requirement for voters to show proof of identity at the time of casting their vote.<sup>124</sup> However, the Government did not support this suggestion.<sup>125</sup>
- 2.5 In its response to the Committee’s recommendation, the Government noted that multiple voting had not been established as a significant issue in NSW and that it was not clear how requiring voters to produce identification would address the risk of multiple voting as it would not prevent a person from attending more than one voting centre. The Government also noted the risk that introduction of voter

<sup>124</sup> Joint Standing Committee on Electoral Matters, *Report 2/56: Administration of the 2015 NSW election and related matters*, 17 November 2016, recommendation 3, p6.

<sup>125</sup> NSW Government, *Report of the Joint Standing Committee on Electoral Matters – Administration of the 2015 NSW State election and related matters (Report 2/56 -17 November 2016) – Government response*, 17 May 2017, p3.



identification requirements would disenfranchise some voters who may not have ready access to identification documents.<sup>126</sup>

2.6 During its current inquiry, the Committee did not receive evidence to indicate that the situation with regard to rates of multiple voting had changed. Further, it acknowledges as valid concerns raised that vote identification requirements may disenfranchise some voters and notes that it is vital for democracy that all eligible voters can cast a vote. In light of these considerations, the Committee does not propose any changes to the current law to require voters to produce proof of identity to vote at NSW State elections.

2.7 In its submission to the inquiry, NSW Labor opposed any changes to require voter identification as it may prevent eligible voters from being able to vote:

Many people do not have a drivers licence 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.<sup>127</sup>

2.8 At the Committee's hearing on 18 November 2019, Mr Lennon of NSW Labor expanded on the Party's position:

...we see that people would be disadvantaged, particularly the marginalised in society, by the fact that you have to turn up with ID. They may not have it because of their particular circumstances; they may not be able to produce the necessary ID.<sup>128</sup>

2.9 Similarly, in its submission to the inquiry Homelessness NSW stated that provisions requiring voters to show identification could have a disenfranchising effect for certain vulnerable groups:

Many rough sleepers...have issues with keeping forms of identity on their person...Homelessness NSW has also been advised by our members working with victims of family and domestic violence that it is not unknown for women to arrive at a refuge without identification.<sup>129</sup>

2.10 At the Committee's hearing on 19 February 2020, Mr Digby Hughes, Senior Policy and Research Officer of Homelessness NSW further emphasised these points, urging the Committee against a voter ID requirement:

We know that many rough sleepers do not have identification at times in their lives. In New South Wales, if we go down the road of ensuring that everybody has to have ID when they go to vote, we will be excluding some people from being able to vote. Rough sleepers are one. The other group, and I had a conversation recently with a number of our services working in the domestic violence area— on many occasions women have to escape without identity and unfortunately it makes perfect sense. The

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<sup>126</sup> NSW Government, *Report of the Joint Standing Committee on Electoral Matters – Administration of the 2015 NSW State election and related matters (Report 2/56 -17 November 2016) – Government response*, 17 May 2017, pp3-4.

<sup>127</sup> Submission 22, NSW Labor, p7.

<sup>128</sup> Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, p4.

<sup>129</sup> Submission 11, Homelessness NSW, p2.

perpetrator controls their lives and he controls their ID. They know if they try to grab their ID as they are trying to get out the door, they will not get out the door. I cannot urge this Committee strongly enough not to recommend to go down the road of voter identification.<sup>130</sup>

- 2.11 Further, at the 18 November hearing, Mr Despotoski of the Shooters, Fishers and Farmers Party told the Committee that the Party did not have a firm view on voter identification but he noted that such a requirement may impact regional and rural voters:

We would need to see the detail of that proposal before committing ourselves to that in its entirety. We do not have a strong view either way...We would need to ensure that there is fairness...especially in areas in New South Wales where, if you forget your wallet or you forget some sort of ID and have to drive 50 kilometres or 60 kilometres down the road to get it – in some instances more – it becomes a bit of an issue.<sup>131</sup>

- 2.12 Ms Jaci Armstrong Principal Policy Officer, Guide Dogs Australia also discussed the possible effect of voter ID requirements on people with disability. At the Committee's 19 February hearing she told the Committee that voters using iVote already require proof of identification to register, but noted that a requirement to produce identification at voting centres may still present obstacles for voters with disability:

I think it is important to note that in registering to use iVote, you already need to provide identification. But also if we are talking about identification at a polling booth, people who are blind or vision impaired often do not have driver's licences or sometimes even passports. So it would be dependent on the form of that ID and again community awareness and education beforehand.<sup>132</sup>

- 2.13 However, Mr Peter Doukas Chairperson of the Ethnic Communities Council of NSW stated that voter ID requirements may help avoid multiple voting in some communities:

From the multicultural perspective, I think [voter ID] would help. There are concerns in the community that people are voting for other people. They are voting twice. I have exactly the same name as my grandfather, for example, and that is probably endemic throughout the community.<sup>133</sup>

- 2.14 Electoral analyst Mr Antony Green told the Committee that he disagreed with photo ID requirements to vote:

I do not agree with photo ID because there are people who do not have photo ID and we know the groups that do not have photo ID. They will be older women, they will be migrant groups – particularly females from certain migrant groups – people in remote districts. So when Queensland brought in voter ID it was not photo ID.<sup>134</sup>

<sup>130</sup> Mr Digby Hughes, *Transcript of Evidence*, 19 February 2020, p37.

<sup>131</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p48.

<sup>132</sup> Ms Jaci Armstrong, *Transcript of Evidence*, 19 February 2020, p38.

<sup>133</sup> Mr Peter Doukas, *Transcript of Evidence*, 19 February 2020, p38.

<sup>134</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p9.

- 2.15 Mr Green further argued that voter fraud was not prevalent enough to warrant photo identification requirements for voters:

I would hate to see people turned away without being given a vote. The hoary chestnut is that someone is turning up and voting for their daughter and stuff: 'My daughter is overseas, I don't want her to get a fine'...I think the parties that complain about this are the ones that, by conspiracy theories, are the ones who are committing this crime. So I am not convinced we need photo ID....We have got some evidence of people voting more than once but most of those are clerical error and I suspect – I think it is a problem that is far larger in suspicion than in reality.<sup>135</sup>

- 2.16 With regard to the law in this area, multiple voting occurs where an individual voter casts more than one ballot in any given election. Multiple voting is an offence under section 212(1)(b) of the *Electoral Act 2017* and carries a maximum penalty of a \$22,000 fine or imprisonment for three years or both. Schedule 6, clause 1 of the *Electoral Act 2017* also provides that a person who has been convicted of multiple voting or is suspected on reasonable grounds of multiple voting may be designated by the Electoral Commissioner as a 'special elector'. The effect of such a designation is that the special elector can only cast a declaration vote (schedule 6, clause 6).
- 2.17 Impersonation involves a person identifying and passing off as another individual when casting their ballot at a voting centre. Impersonating a voter for the purpose of voting at any election is an offence under section 212(1)(a) of the *Electoral Act 2017* and also carries a maximum penalty of a \$22,000 fine or three years imprisonment or both.

### Electronic mark-off

*The electronic mark-off system should be reviewed for reliability and a backup system should be available*

### Recommendation 8

**That the NSW Electoral Commission review the reliability of the electronic mark-off system before the next NSW State election and make any necessary changes.**

### Recommendation 9

**That at every polling place in NSW that uses electronic mark-off for State elections, the NSW Electoral Commission implements a back-up system, such as a paper roll, to cover potential breakdowns of the electronic mark-off system.**

- 2.18 During the inquiry, the Committee heard of instances where the electronic mark-off system broke down at early voting centres for the 2019 NSW State election, resulting in some voters being turned away without voting. The NSW Electoral Commission confirmed that service interruptions occurred on 13 March 2019 and some stakeholders advised of problems throughout the early voting period.
- 2.19 The Committee is deeply concerned that there was no backup system in place to deal with this service interruption. It is of the strong opinion that a manual

<sup>135</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p9.

backup system, such as a paper roll, should have been available. It is not acceptable that voters were turned away from voting because there was no such back-up system in place. The Committee notes in particular the significant disadvantage that this could have caused to voters who may have difficulty accessing voting centres including regional and rural voters, voters with disability and elderly voters.

- 2.20 The Committee therefore recommends that the reliability of the electronic mark-off system be reviewed prior to the next NSW State election and that in future a back-up system is available at all polling places that use electronic mark-off.
- 2.21 In their submissions to the inquiry, the National Party of Australia – NSW, NSW Labor, and Country Labor all complained of instances where the electronic mark-off system broke down at early voting centres for the 2019 NSW State election, resulting in some voters being turned away.
- 2.22 The National Party of Australia – NSW emphasised the impact that these service interruptions had on regional and rural voters:

There were a number of reports that at several locations...the NSWEC's system went down in a number of early voting locations, particularly on the 12th and 13th March, resulting in voters being turned away or directed to iVote...During the period of early voting there should be no circumstance where electors who attend a polling centre cannot place a vote. In regional and rural areas in particular, visiting an early voting centre on a specific day may be the only opportunity for an elector to cast a vote.<sup>136</sup>

- 2.23 The National Party therefore recommended that the Electoral Commission improve the stability and reliability of the online systems used during early voting.<sup>137</sup>

- 2.24 Country Labor made similar observations, noting in particular that the technological breakdowns continued throughout the two weeks of early voting:

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 is of particular concern for people in rural areas as many travelled long distances to vote early and would have been inconvenienced by these delays. This was experienced (but not limited to) people in the electoral district of Barwon. Computer failures at the Narrabri voting centre meant that staff wrote people's names down as they voted, with the intention of checking them off on the electronic mark off later in the day. This method raises further concerns of transparency and security of electoral information. These computer failures continued throughout the two weeks of early voting.<sup>138</sup>

- 2.25 Similarly, NSW Labor stated:

Early voting centres experienced significant breakdowns in the computer system. When this occurred NSW Electoral Commission staff were unable to administer ballot

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<sup>136</sup> Submission 15, National Party of Australia – NSW, pp6-7.

<sup>137</sup> Submission 15, National Party of Australia – NSW, p7.

<sup>138</sup> Submission 23, Country Labor, pp1-2.

papers resulting in either delays, confusion or people being turned away from early voting centres...These computer failures continued throughout the period of early voting.<sup>139</sup>

- 2.26 Both NSW Labor and Country Labor recommended that the NSW Electoral Commission have a backup system, such as a backup paper list, at early voting centres to ensure accessibility.<sup>140</sup>
- 2.27 In his submission to the inquiry Mr Ian Brightwell, Voting Centre Manager for Chatswood Civic Pavilion, also raised concerns that had bearing on electronic mark-off. Mr Brightwell reported that one roll look up device that he was issued had deleted its own files by midday. Mr Brightwell also noted that the batteries of the other issued devices had ran out by midday and voting centre staff had to use their own equipment (not tested and tagged) to charge them.<sup>141</sup>
- 2.28 The NSW Electoral Commission's *Report on the conduct of the 2019 NSW State election* confirms that the Commission experienced service interruptions on 13 March 2019 when using the electronic mark-off system at early voting centres:
- On 13 March 2019, access to the online roll data was intermittently unavailable at some early voting centres. The time taken to load the backup system at the election managers' office resulted in delays in voting services at a number of centres. Notwithstanding this service interruption, the number of ordinary votes recorded for 13 March 2019 was only slightly below the projected figure for that day.<sup>142</sup>
- 2.29 At the Committee's hearing on 19 February 2020, Mr Antony Green noted the potential issues that could arise when there are internet service interruptions and no manual backup system available:
- The Hon. COURTNEY HOUSSOS:** So even these initial moves to embrace more technology within the system have shown that they have got dangers for the integrity of our system.
- Mr GREEN:** It is not just elections. I would point out that during the bushfires the sheer number of businesses on the South Coast that could not conduct business because the internet was down and they could not use EFTPOS, for instance. So we are all becoming sort of slightly useless in manual procedures to back up. I agree with your point.<sup>143</sup>
- 2.30 Electronic mark-off was first used at the Sydney Town Hall during the 2012 Local Government elections and was intended to provide a more efficient roll mark-off service and enable voters to vote at any centre regardless of where they were enrolled.<sup>144</sup>

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<sup>139</sup> Submission 22, NSW Labor, p3.

<sup>140</sup> Submission 22, NSW Labor, p3; Submission 23, Country Labor, p2.

<sup>141</sup> Submission 1, Mr Ian Brightwell, p2.

<sup>142</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p55.

<sup>143</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p5.

<sup>144</sup> Joint Standing Committee on Electoral Matters, *Report 2/56: Administration of the 2015 NSW election and related matters*, 17 November 2016, p3.

- 2.31 The Joint Standing Committee on Electoral Matters in the last Parliament recommended that the NSW Government expand the trial of the electronic roll mark-off of electors at pre-polling and election-day polling booths, with a view to a full rollout over the next few elections.<sup>145</sup> In its *Report on the conduct of the 2019 NSW State election*, the Electoral Commission confirmed that it has implemented electronic mark-off using the election management application (EMA) for early voting.<sup>146</sup> However, the Commission noted that it was unable to proceed with a trial of electronic voting in voting centres on election day for the 2019 NSW State election because of competing priorities.<sup>147</sup>

### Data breaches of enrolment information

#### *What is the law in relation to enrolment information?*

- 2.32 Part 5 of the *Electoral Act 2017* sets out the law relating to enrolment procedures and information in NSW. Part 5, Division 4 relates to the Electoral Information Register. Section 41 requires the Electoral Commissioner to keep such an Electoral Information Register of all persons enrolled under the Act and it is to include:
- the surname, given name or names, date of birth and sex of each enrolled person,
  - the residence of the person (except in relation to an eligible overseas elector or itinerant elector)
  - the electoral district for which the person is enrolled,
  - whether the person is a silent elector,<sup>148</sup>
  - such other particulars as the Electoral Commissioner considers necessary to carry out his or her functions under the Act, and
  - such other particulars as are prescribed by the regulations.
- 2.33 Section 41 also requires that the register is to be kept in electronic form.
- 2.34 Section 43 provides that the Commissioner must ensure that the Electoral Information Register is not available for public inspection and is not disclosed. Further, under section 268 it is an offence for a person to disclose any information obtained in connection with the administration or execution of the *Electoral Act 2017* except:
- with the consent of the person from whom the information was obtained, or

<sup>145</sup> Joint Select Committee on Electoral Matters, Administration of the 2015 NSW Election and Related Matters, 17 November 2016, recommendation 1, p3.

<sup>146</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p97.

<sup>147</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p97.

<sup>148</sup> A 'silent elector' is a person whose address has been removed from any authorised roll or list of electors at that person's request because he or she has concerns that its presence on the roll may place his or her safety, or that of his or her family, at risk: *Electoral Act 2017*, ss4 and 36.

- in connection with the administration or execution of the Act, or any other such Act,
- for the purposes of any legal proceedings arising out of the Act, or any other such Act, or of any report of any such proceedings, or
- in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- with other lawful excuse.

2.35 The maximum penalty for contravening section 268 is a \$110,000 fine.

2.36 Part 5, Division 6 of the *Electoral Act 2017* relates to authorised rolls. Under section 46, the Electoral Commissioner must prepare an authorised roll of electors for a district for use at voting centres at an election. The authorised roll must be prepared by the Commissioner as soon as practicable after the issue of the writ for an election and may contain only the following information:

- the surname, given name or names, date of birth and sex of each elector,
- the residence of the elector, except in relation to an eligible overseas elector or an itinerant elector. Section 36 which relates to silent electors also provides for the exclusion of the address of an elector from an authorised roll in certain circumstances where the elector requests.

2.37 Under section 47, as soon as practicable after an authorised roll for a district has been prepared by the Commissioner, the Commissioner is to make a copy of the roll available for public inspection, at the office of the Electoral Commission. It is to remain available for inspection until 40 days after the return of the writ.

2.38 Part 5, Division 7 of the *Electoral Act 2017* relates to the provision of enrolment information. Section 49 relates to the provision of enrolment information to parties, members and candidates. It provides that the Commissioner must provide to each registered party and Member of the Legislative Council, free of charge, a list specifying enrolled persons and their particulars:

- once every 4 years, and
- as soon as practicable after the redistribution of NSW into districts, and
- on receiving a request from the registered officer of the party, or Member (but not more than once a year in the case of the Member), and
- at such other times as the Commissioner considers appropriate.

2.39 Section 49 also makes similar provision in respect of Members of the Legislative Assembly except such a Member is only entitled to a list specifying enrolled persons and their particulars for the district for which the Member was elected.

2.40 With regard to candidates, section 49 also provides that at the request of any candidate for a periodic Legislative Council election the Commissioner must

provide to the candidate, free of charge, a list of electors and their particulars in a form determined by the Commissioner. The same applies for candidates for a Legislative Assembly general election or by-election except such a candidate is only entitled to a list of electors for the for the district for which the candidate is seeking election.

- 2.41 Section 51 restricts the use that can be made of the enrolment information provided under section 49. Registered parties or candidates can only use the information for:
- any purpose in connection with an election, and
  - monitoring the accuracy of enrolment information kept and maintained by the Electoral Commissioner,
  - any purpose prescribed by the regulations.
- 2.42 Further, Members of the Legislative Council and Assembly can only use the information for:
- any purpose in connection with an election,
  - monitoring the accuracy of enrolment information kept and maintained by the Electoral Commissioner,
  - in the case of a Legislative Council Member, exercising the functions of a Member in relation to an elector,
  - in the case of a Legislative Assembly Member, exercising the functions of a Member in relation to the Member's constituents.
- 2.43 Section 51 provides that the maximum penalty for contravening these restrictions is a \$110,000 fine.

*Individuals should be notified where there has been unauthorised disclosure or misuse of their enrolment information*

### **Recommendation 10**

**That the NSW Government make legislative amendments so that where there is unauthorised use or disclosure of enrolment information collected under Part 5 of the *Electoral Act 2017*, individuals to whom the information relates are informed.**

- 2.44 During its inquiry, the Committee heard that where there has been a data breach relating to enrolment information collected by the Electoral Commission under the *Electoral Act 2017*, it would depend on the circumstances as to whether the individual to whom the enrolment information relates was notified of that breach.
- 2.45 In keeping with this, there appears to be no requirement to notify affected persons where there is unauthorised disclosure or misuse of their enrolment information collected under Part 5 of the *Electoral Act 2017*. However, as



discussed above, there are significant penalties for such unauthorised disclosure or misuse. This information is provided to the Commission for specified purposes under the legislation and unauthorised use or disclosure is a serious matter. The Committee considers that where such unauthorised use or disclosure does occur, individuals to whom the information relates should be advised. The Committee recommends legislative amendments to achieve this.

- 2.46 At the Committee's hearing on 18 November 2019, the Electoral Commissioner was asked whether status updates could be given to the Committee in relation to matters involving alleged misuse of enrolment information by candidates. Ms Felicity Wilson MP asked the Commissioner:

I know of two examples in the public domain where it has become known or suggested that candidates have misused the electoral roll...Do you know...what is the status of the investigation that I believe was being commenced into the Port Stephens complaint or whether or not there is an investigation taking place in the case of Mr Jerome Laxale and, if so, what the status of those are...?<sup>149</sup>

- 2.47 As discussed further in Chapter Five, the Commissioner responded that the electoral legislation does not generally permit the Commission to make public statements about the status, conduct or outcome of investigations, nor to tell complainants about the outcome.<sup>150</sup> The Committee considers that it is important that the Commission can fully respond to complainants about the complaints they have made and has therefore recommended in Chapter Five that the Government make legislative amendments to require the Commission to advise complainants of the outcome of complaints they make to the Commission about non-compliance with electoral legislation.
- 2.48 The Commission was then asked whether individuals are notified if there has been a data breach involving enrolment information concerning them.<sup>151</sup> Ms Rachel McCallum, Executive Director, Funding, Disclosure and Compliance and General Counsel responded that it would depend on the circumstances and that if the Commission had an obligation to do so, it would. Ms McCallum also stated that whether such notification should occur is a government policy question.<sup>152</sup>

### Fines for not voting

*The NSW Electoral Commission should collect additional data around failure to vote notices*

#### **Recommendation 11**

**That the NSW Electoral Commission collect data on the number of people issued with failure to vote notices following NSW State elections who in fact voted.**

- 2.49 During the inquiry, the NSW Electoral Commission reported that following the 2019 NSW State election, it issued 384,897 failure to vote notices, and of those

<sup>149</sup> *Transcript of Evidence*, 18 November 2019, p52.

<sup>150</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p52.

<sup>151</sup> Ms Felicity Wilson MP, *Transcript of Evidence*, 18 November 2019, pp52-53.

<sup>152</sup> Ms Rachel McCallum, *Transcript of Evidence*, 18 November 2019, pp52-53.

150,065 people were excused from paying the fine. However, it is not clear how many people who were excused from paying the fine had in fact voted.

2.50 The Committee considers that this information would be useful to indicate whether the electronic and manual mark-off systems are working correctly and whether there are any failures in these systems that need to be addressed. Therefore, the Committee recommends that in future the NSW Electoral Commission collect data on the number of people issued with failure to vote notices who did in fact vote.

2.51 In response to the Committee's questions about the number of failure to vote notices issued after the 2019 and 2015 NSW State elections, and the number of people excused from paying the fine, the Electoral Commission provided the following figures after the 22 June 2020 hearing:<sup>153</sup>

	<b>Electors on Roll</b>	<b>Electors issued with apparent failure to vote penalties</b>	<b>Excused</b>
<b>2015</b>	5,040,622	368,740	155,901
<b>2019</b>	5,271,755	384,879	150,065
	Increase of 4.58%	Increase of 4.37%	Decrease of 3.74%

2.52 After the 18 November 2019 hearing, the Electoral Commission also provided the following slightly more detailed information about fines for not voting in the 2019 NSW State election. They were current at 3 December 2019 (and differ slightly from the figures referred to above) and stated that for the 2019 NSW State election:

- 384,879 apparent failure to vote notices were issued,
- 37,433 non-voters paid the penalty,
- 150,058 were excused,
- 94 elected to attend court, and
- the remaining 197,295 were referred to Revenue NSW.<sup>154</sup>

2.53 With regard to the law in this area, in NSW, it is compulsory for every eligible person over the age of 18 years to be registered to vote, to keep their enrolment details updated and to vote in NSW State elections.

<sup>153</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, p2.

<sup>154</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p5.

- 2.54 Part 4 of the *Electoral Act 2017* deals with the entitlement to enrol and vote. Under section 30(1), a person is entitled to be enrolled in respect of an address in NSW if the person:
- has attained 16 years of age,
  - is an Australian citizen, and
  - resides at that address and has resided at that address for at least one month before the enrolment.
- 2.55 Section 30(2) also entitles certain persons not entitled to be enrolled under section 30(1) to be enrolled, including itinerant electors and enrolled voters leaving Australia.
- 2.56 Further, under Part 5, section 32(1) of the *Electoral Act 2017*, every person who has attained the age of 18 years, is not enrolled, and who is entitled to enrol must enrol to vote within 21 days of becoming entitled to enrol. The maximum penalty for not enrolling is a \$110 fine.
- 2.57 Section 207 of the *Electoral Act 2017* provides that it is an offence for an ‘elector’ to fail to vote. An ‘elector’ means any person entitled to vote at an election under Part 4, however it does not include an eligible overseas elector or an itinerant elector.<sup>155</sup> The maximum penalty for failing to vote is a \$110 fine.
- 2.58 Under section 259 of the *Electoral Act 2017*, the Electoral Commission is the responsible agency for issuing penalty notices for failure to vote. A person may challenge a fine received for not voting if they have a sufficient reason for not voting (section 259(3)).

## The ballot paper

### Party logos on the ballot paper

*Party logos should be included on the ballot paper*

#### **Recommendation 12**

**That the NSW Government amend the *Electoral Act 2017* to require party logos to be included on the ballot papers for the Legislative Assembly and the Legislative Council.**

- 2.59 During its inquiry, the Committee heard significant support – from party stakeholders, disability advocacy groups and the Ethnic Communities Council of NSW – for the inclusion of party logos on ballot papers for NSW State elections. The overwhelming consensus was that logos on ballot papers would simplify the voting process and assist voters to identify their preferred party or candidate.
- 2.60 The Committee agrees that party logos on ballot papers would assist voters to identify their preferred party or candidate, and considers that they may be of particular benefit to voters with disability and voters from a culturally and linguistically diverse (CALD) background. Therefore, the Committee recommends

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<sup>155</sup> See *Electoral Act 2017*, ss4 and 207(3).

that the *Electoral Act 2017* be amended to require party logos to be included on ballot papers for the Legislative Assembly and Legislative Council.

- 2.61 Under section 100 of the *Electoral Act 2017*, ballot papers for NSW State elections are prepared and printed by the Electoral Commissioner consistent with the forms set out in Schedule 4 (Legislative Assembly ballot paper) and Schedule 5 (Legislative Council ballot paper). The Commissioner also determines the order in which candidates' names and groups of candidates appear on the ballot paper by any method of random selection (sections 101 and 102).
- 2.62 Ballot papers for the Legislative Assembly display the name of each candidate and their registered party or the word "independent" (section 101). In regards to the ballot papers for the Legislative Council, candidates are grouped according to their registered party or independent groupings and appear in succession under the word "Group A", "Group B", etc (section 102).
- 2.63 In its submission to the inquiry, NSW Labor stated that ballot papers should include registered party logos to align with the approach taken at the Commonwealth level and in Victoria:
- 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.<sup>156</sup>
- 2.64 At the Committee's hearing on 18 November 2019, a number of representatives of registered parties were asked about their views on the inclusion of party logos on ballot papers in NSW State elections.
- 2.65 Mr Christopher Stone of the Liberal Party of Australia – NSW Division noted his support for party logos to be displayed on ballot papers to help voters identify their preferred candidates:
- I think for electors who are attending a polling booth, particularly in electorates where perhaps there are large numbers of candidates or on the Upper House ballot paper, if it makes the job easier for an elector to identify the candidate of their choice I very much support that.<sup>157</sup>
- 2.66 The National Party of Australia – NSW and The Greens NSW also noted their support for the inclusion of party logos on ballot papers.<sup>158</sup>
- 2.67 At the Committee's 19 February 2020 hearing, the Committee heard from advocates for voters with disability and CALD voters who also voiced their support for this proposal.

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<sup>156</sup> Submission 22, NSW Labor, p13.

<sup>157</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p17.

<sup>158</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2019, p23; Mr Christopher Maltby, *Transcript of Evidence*, 18 November 2019, p26.

- 2.68 Representatives from Vision Australia, Guide Dogs Australia, Blind Citizens Australia and the Ethnic Communities Council of NSW all provided support for party logos on ballot papers.<sup>159</sup> Ms Jaci Armstrong of Guide Dogs Australia noted that the inclusion of logos could help voters with vision impairment:

...for our cohort, if it was done in an accessible format it may be useful, but it is how you would go about doing that. Certainly for ease of identification, if it is accessible, the more information, the better.<sup>160</sup>

- 2.69 Mr Bruce Maguire Lead Policy Advisor, Government Relations and Advocacy, Vision Australia also voiced his support. As discussed in Chapter Three, the Electoral Commission provides internet voting (iVote) for eligible groups, including people who are blind or have low vision<sup>161</sup> and in this context, Mr Maguire noted that logos could be included on electronic ballot papers:

There is no reason why logos could not be included in electronic ballot papers in a way that did not interfere with accessibility or usability if it was going to benefit other groups.<sup>162</sup>

### **Short-form Legislative Council ballot paper**

*There should be no short-form Legislative Council ballot paper at this stage*

- 2.70 During its inquiry, the Committee noted evidence that the size and complexity of the current Legislative Council ballot paper may be causing particular problems for postal voters, contributing to rates of informal voting, and creating operational issues for the NSW Electoral Commission (i.e. making the ballot papers harder to print, transport and count).
- 2.71 The Committee further noted a recommendation from the Commission that consideration be given to offering electors a choice between a short-form Legislative Council ballot paper (for those who wish to vote above the line) and a longer-form ballot paper (for those who wish to vote below the line).
- 2.72 The Committee considers that if steps can be taken to solve the identified operational issues for the NSW Electoral Commission, they should. Further, it is particularly concerned at evidence that the format of the current Legislative Council ballot paper may have contributed to informality rates and to some postal voters not returning their postal votes to the NSW Electoral Commission. The Committee seeks to encourage the participation of all eligible voters and to ensure the voting process is accessible across all methods of voting.
- 2.73 The Committee considers that the option of a short-form ballot paper would have a number of advantages, overcoming or mitigating identified problems. However, it notes that Mr Antony Green raised a number of issues with the Committee concerning the design of such a ballot paper. The Committee also notes that the proposed change would have operational implications for the Commission around matters such as printing, scanning and counting. While any overhaul of

<sup>159</sup> *Transcript of Evidence*, 19 February 2020, pp38-39.

<sup>160</sup> Ms Jaci Armstrong, *Transcript of Evidence*, 19 February 2020, p39.

<sup>161</sup> See *Electoral Act 2017*, ss151-154 and <https://www.elections.nsw.gov.au/Postal-voting-and-iVote->

<sup>162</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p39.

systems may present a large task, the benefits to voters and increased participation rates may outweigh the initial costs of implementing such a scheme.

2.74 Having regard to the design and operational issues further inquiry is needed. There should be no short-form Legislative Council ballot paper at this stage but this could be considered in the future.

2.75 In its *Report on the conduct of the 2019 NSW State Election*, the NSW Electoral Commission recommended that consideration be given to offering electors a choice between a short-form Legislative Council ballot paper (for electors who wish to vote above the line) and a longer-form ballot paper (for electors who wish to vote below the line).<sup>163</sup> With regard to postal voters, the Commission stated:

A manual tally of postal vote packs received by the Electoral Commission up to 12 April 2019 showed that 4,094 were missing Legislative Assembly ballot papers (that is, only Legislative Council ballots were included) and 5,393 were missing Legislative Council ballot papers (that is, only Legislative Assembly ballots were included). This may suggest that the size of the Legislative Council ballot paper could present a challenge for some postal voters with regards to folding and inserting in the envelope to be returned to the Electoral Commission.<sup>164</sup>

2.76 Similarly, the Commission provided the following figures to the Committee which show a greater informality rate where voters mark the ballot paper below the line.<sup>165</sup>

<b>Column 1: Category of marking the ballot paper</b>	<b>Column 2: Total number of electors who marked their ballot paper (either formal or informal) in this category</b>	<b>Column 3: Number of informal ballot papers in this category</b>	<b>Column 4: percentage of informal ballot papers (i.e. column 3 vs. column 2)</b>
<b>Blank ballot papers</b>	200,258	200,258	100%
<b>Above the line only</b>	4,300,804	32,655	0.76%
<b>Below the line only</b>	178,913	60,079	33.58%
<b>Above and below the line</b>	72,852	8,689	11.93%

<sup>163</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p67.

<sup>164</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p67.

<sup>165</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p1.

<b>Totals</b>	4,752,827	301,681	6.35%
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- 2.77 The Electoral Commission also reported that the size of the Legislative Council ballot paper raises operational issues for it including:
- Few suppliers have the capacity to print and deliver across New South Wales the volume of ballot papers required within the legislated four day timeframe between close of nominations and the commencement of early voting and postal voting.
  - Logistical challenges occur with the transportation of ballot papers across the State for election day and their return to the Legislative Council centralised count centre in Sydney after close of voting on election day.
  - It is a labour-intensive task to unfold, sort and count the ballot papers in voting centres on election night and in the weeks after election day.<sup>166</sup>
- 2.78 Mr Antony Green also noted the size of the Legislative Council ballot paper, stating that owing to the requirement for parties to stand a minimum 15 candidates for access to a group voting square, the Legislative Council ballot paper is now deeper than the Senate ballot paper and the largest in Australia.<sup>167</sup> Mr Green noted that the size and complexity of the ballot paper has raised a number of issues, including:
- Informal voting for the Legislative Council is consistently higher than for the Senate. For example, at the 2019 NSW State and Federal elections, the rate of informal voting was 6.3% for the Legislative Council compared to 4.3% for the Senate.
  - A higher impact on resources as the larger size of the ballot requires more paper, larger ballot boxes, and larger declaration envelopes with more robust sealing.
  - Counting delays as a significant amount of time in the current count is used for unfolding the ballot paper.
  - Data entry issues as the size of the ballot paper makes such data entry harder and prevents the use of optical scanning.<sup>168</sup>
- 2.79 Mr Green further noted that if a short-form Legislative Council ballot paper were to be introduced, this would have significant advantages. However, Mr Green also warned of design issues that would need to be dealt with:
- The publication of a short-form ballot paper has significant advantages for handling, manually counting and data entering or scanning ballot papers. A

<sup>166</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p67.

<sup>167</sup> Mr Antony Green, *Answers to Supplementary Questions following 19 February 2020 hearing*, p3.

<sup>168</sup> Mr Antony Green, *Answers to Supplementary Questions following 19 February 2020 hearing*, pp3-4.

short-form ballot paper removes the time-consuming unfolding required with the current full-form ballot paper.

- A short form ballot paper would also be easier for voters to complete.
- There are design issues that need to be resolved concerning layout, particularly in dealing with groups without a group voting square.
- Serious attention needs to be given to how voters can know the names of candidates for each group listed on the short-form ballot paper.
- There should be a way for voters to identify unlabelled groups while neither advantaging nor disadvantaging high profile independents compared to the current full-form ballot paper.<sup>169</sup>

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<sup>169</sup> Mr Antony Green, *Answers to Questions Taken on Notice*, 19 February 2020, p8.



## Chapter Three – Early voting options

- 3.1 This Chapter explores issues raised with the Committee concerning early voting. Early voting options in NSW include voting in person at an early voting centre, voting at a declared facility, postal voting, and iVote online and telephone voting. They are discussed further below.

### Early voting in person

- 3.2 As noted in Chapter One, there is currently an early voting period for NSW State elections. The Electoral Commissioner can approve the days and hours of operation of early voting centres for an election. However, he or she cannot approve the opening of an early voting centre any day before the Monday after the close of nominations, and after the day preceding the election day.<sup>170</sup> As also noted in that Chapter, people who vote early, regardless of the method, must satisfy certain criteria to do so, for example, they will be outside NSW on election day, will be working on election day, or are seriously ill or infirm and cannot attend a voting centre.<sup>171</sup>

### Organisation at early voting centres

*There must be adequate organisation at early voting centres*

#### Finding 3

**There were unacceptable failures at a number of early voting centres at the 2019 NSW State election, including a failure of the electronic mark-off system which led to voters being unable to cast their vote for a number of hours. Systems must be improved so this does not occur again.**

- 3.3 During its inquiry, the Committee heard concerns from some party stakeholders about the level of organisation at some early voting centres for the 2019 NSW State election. While the Committee acknowledges the hard work of the NSW Electoral Commission in successfully delivering the election overall, areas for improvement must also be acknowledged. These include breakdowns in the electronic mark-off system at some early voting centres; some shortages of ballot papers; and irregularities in the hours of operation.
- 3.4 Such issues must be addressed prior to the next NSW State election, and must not be repeated. This is particularly so given there are fixed term elections in NSW – this should allow ample opportunity for adequate planning.<sup>172</sup> The Committee has also made recommendations earlier in the report to specifically address the electronic mark-off issues and hours of operation.
- 3.5 As discussed in Chapter Two, the National Party of Australia – NSW, NSW Labor, and Country Labor all complained of instances where the electronic mark-off

<sup>170</sup> *Electoral Act 2017*, s114.

<sup>171</sup> See *Electoral Act 2017*, in particular, ss6, 113, 118, 143, 152 and 154.

<sup>172</sup> As discussed in Chapter One there are fixed term elections in NSW. Under the *Constitution Act 1902* a State election must be held on the fourth Saturday in March every four years.

system broke down at early voting centres, resulting in some voters being turned away.<sup>173</sup> The Committee has consequently made recommendations in that Chapter for review of the reliability of these systems; and for the NSW Electoral Commission to have a back-up system, such as a paper roll, to cover any system breakdowns that occur in the future.

- 3.6 Further, NSW Labor and Country Labor told the Committee that at some early voting centres there were not enough ballot papers to keep up with turnout.<sup>174</sup> NSW Labor stated:

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 early voting centre ran out of ballots to provide voters potentially leading to the disenfranchisement of voters.<sup>175</sup>

- 3.7 Another issue raised with the Committee was an irregularity in early voting centre opening times. As noted above, the Electoral Commissioner can approve the days and hours of operation of early voting centres for an election, within the prescribed early voting period.<sup>176</sup> In addition, as noted in Chapter One, the Electoral Commission told the Committee that it makes decisions that are ‘fit for purpose’ – not all early voting centres were open for the full 12 days during the 2019 NSW State election, some centres had a shorter early voting period.<sup>177</sup>

- 3.8 In future, the Committee would prefer regular hours of operation. In Chapter One, it has recommended that the NSW Government consider shortening the early voting period so that it starts on the Saturday, seven days prior to election day. It has also recommended fixed opening hours for all early voting centres during this shortened period to foster appropriate access. These should be 8am to 6pm, except for the Thursday for which the hours should be 8am to 9pm.

- 3.9 NSW Labor told the Committee:

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 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 [named electoral district]. The hours of the early voting centre moved and fluctuated on the preferences of the divisional returning officer. This ad hoc

<sup>173</sup> Submission 15, National Party of Australia – NSW, pp6-7; Submission 22, NSW Labor, p3; and Submission 23, Country Labor, pp1-2.

<sup>174</sup> Submission 22, NSW Labor, p3; and Submission 23, Country Labor, p2.

<sup>175</sup> Submission 22, NSW Labor, p3.

<sup>176</sup> *Electoral Act 2017*, section 114.

<sup>177</sup> Mr Simon Kwok, NSW Electoral Commission, *Transcript of Evidence*, 18 November 2019, p51.

approach made it difficult to accurately direct voters to early voting centre locations and created further confusion with people seeking to vote early.<sup>178</sup>

### Number and location of early voting centres

*The number and location of early voting centres should be reviewed*

#### Recommendation 13

**That the NSW Electoral Commission conduct a review of the number and location of early voting centres in NSW prior to the 2023 State election to ensure an appropriate level of accessibility.**

- 3.10 As discussed in Chapter One, there was a continuing and significant rise in the number of people who chose to vote at an early voting centre over the last three NSW State elections, and if all early voting methods are taken into account nearly 30 per cent of voters voted early at the 2019 NSW State election.
- 3.11 During the inquiry, the NSW Electoral Commission provided information about how it makes decisions about the number and location of early voting centres, noting that it takes into account voting trends and tries to reuse previous venues though it does not have permanent sites for early voting centres.
- 3.12 The Committee does not propose a blanket rule as to the number of early voting centres per electorate. This may be arbitrary. Rather, given the increases in early voting, and the Committee’s recommendation in Chapter One for the early voting period to be shortened, the NSW Electoral Commission should conduct a review of the number and location of early voting centres in NSW prior to the 2023 State election to ensure an appropriate level of accessibility. This should of course take into account voting trends and previous locations, and the Commission should continue to make it clear to voters that early voting is subject to eligibility requirements.
- 3.13 As discussed in Chapter One, during the inquiry the Liberal Party of Australia – NSW Division noted increases in early voting and called for more education about and enforcement of the applicable restrictions.<sup>179</sup> In addition, the Liberal Party has recommended that there be a single early voting centre for each metropolitan electorate whilst acknowledging the need for multiple centres in regional electorates, and the state-wide early voting centre at Sydney Town Hall. The Party stated: “This would ensure early voting remains accessible without becoming the option of convenience”.<sup>180</sup>
- 3.14 In contrast, NSW Labor told the Committee that one early voting centre in metropolitan areas would not be enough and that where there had been an early voting centre in a particular area, it was important for accessibility that this generally continued to be the case:

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

<sup>178</sup> Submission 22, NSW Labor, pp3-4.

<sup>179</sup> Submission 18, Liberal Party of Australia – NSW Division, pp2-3.

<sup>180</sup> Submission 18, Liberal Party of Australia – NSW Division, p3.

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...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.<sup>181</sup>

3.15 At the hearing on 18 November 2019, the Mr Maltby of the Greens NSW told the Committee that while he thought it would be too restrictive for there to be one early voting centre per metropolitan electorate, it is possible for there to be an oversupply of early voting centres and that “the smallest number that is convenient for most people is probably the answer”.<sup>182</sup>

3.16 At that hearing, the Electoral Commission also provided information on how it makes decisions regarding the number and location of early voting centres. Mr Simon Kwok, Executive Director, Elections stated that the Commission looks at voting trends, sharing data with the Australian Electoral Commission. And though there are no permanent sites for early voting centres, the Commission takes account of venues used in the past, trying to reuse those of which it has experience.<sup>183</sup>

3.17 In answers to questions taken on notice at the hearing, the Electoral Commission also advised of the number of early voting centres for the last two NSW State elections:

There were 184 early voting centres in the 2015 State general election. Forty six of those were providing early voting for two or more districts. There were 195 early voting centres in the 2019 State general election. Forty three of those were providing early voting for two or more districts.<sup>184</sup>

## Declared facilities

3.18 Another method of early voting for NSW State elections is voting at a declared facility. Section 117 of the *Electoral Act 2017* provides that the Electoral Commissioner may declare that a hospital, nursing home, retirement village or similar facility is to be provided with a mobile voting centre, and the declared facility is taken to be an early voting centre while voting is occurring at the facility.

<sup>181</sup> Submission 22, NSW Labor, p6; and Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, pp6-7.

<sup>182</sup> Mr Christopher Maltby, *Transcript of Evidence*, 18 November 2020, pp28&30.

<sup>183</sup> Mr Simon Kwok, *Transcript of Evidence*, 18 November 2019, p51.

<sup>184</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

**Number and listing of declared facilities**

*A finalised list of declared facilities should be published prior to the start of early voting*

**Recommendation 14**

**That the NSW Electoral Commission publish a finalised list of declared facilities, and the dates they will be visited, on its website prior to the start of the early voting period.**

- 3.19 During the inquiry, the Committee heard concerns from some party stakeholders regarding declared facilities. In particular, that some facilities that were registered as declared facilities for previous elections were not so registered for the 2019 NSW State election; that some facilities needed to be added to the list of declared facilities; and that lists of declared institutions should be published online prior to the early voting period, along with the dates that they will be visited.
- 3.20 However, the Committee understands from the Electoral Commission's response that it seeks the permission of facilities to use in-person voting but some opt for postal voting. Further, the Commission published a list of declared facilities on its website in mid-February, and an updated list in mid-March.<sup>185</sup> The Committee notes that the early voting period started on 11 March.<sup>186</sup> The Committee considers that the Commission should publish a finalised list of declared facilities, and the dates they will be visited on its website prior to the start of the early voting period.
- 3.21 In its submission, Country Labor raised concerns that two declared facilities in Boorowa were not on the final registered list of declared facilities for the 2019 NSW State election but that they had been registered in previous NSW State elections. Country Labor stated that this 'may have disenfranchised some elderly voters in the electoral district'.<sup>187</sup>
- 3.22 Similarly, the National Party of Australia – NSW called for more facilities to be declared facilities:
- In some major centres such as Bathurst, the private hospital was a declared institution and the public hospital was not. It is recommended that more major health and aged care centres are added to the declared institution list to lessen the burden on vulnerable members of the community who may not have access to the internet during their stay.<sup>188</sup>
- 3.23 Further, the Nationals told the Committee that the list of declared facilities, along with the dates they would be visited, needed to be published online prior to the early voting period. The Party stated:
- There was little information available to constituents as to which institutions would be in operation, and the information provided across different electorates varied.

<sup>185</sup> Mr Simon Kwok, *Transcript of Evidence*, 18 November 2019, p63.

<sup>186</sup> See NSW Electoral Commission, *2019 NSW State Election Calendar*.

<sup>187</sup> Submission 23, Country Labor, p2.

<sup>188</sup> Submission 15, National Party of Australia – NSW, p9.

Some campaign staff and volunteers were given detailed information, and in other electorates no information was provided.<sup>189</sup>

3.24 At the Committee's hearing on 18 November 2019, the NSW Electoral Commission responded to these concerns. The Commissioner told the Committee:

I saw in some of the submissions suggestions that we had changed or not made some information available. We go to declared institutions. We ask permission to use in-person voting. Many institutions say they opt for postal. Just because it is not offered – because it is not apparent that there is voting there does not mean that we did not have interaction with the institution.<sup>190</sup>

## Postal voting

3.25 Another method of early voting for NSW State elections is postal voting. Under the *Electoral Act 2017* a person can apply to the Electoral Commissioner to vote by post, specifying the grounds for the application.<sup>191</sup> The application must be received by the Commissioner before 6pm on the fifth day preceding election day.<sup>192</sup> On receiving the application, the Commissioner must determine whether the applicant is entitled to vote by post and, if so, as soon as possible deliver or post him or her:

- a postal vote certificate in the approved form, printed on an envelope, and
- if the envelope on which the post vote certificate is printed is not addressed to the Electoral Commissioner – another envelope that is so addressed, and
- a ballot paper for the election.<sup>193</sup>

3.26 The Australian Electoral Commission also keeps a register of general postal voters for every State and they automatically receive ballot papers in the mail for Federal, State and Local Government elections. Again, certain grounds must be satisfied to be registered as a general postal voter.<sup>194</sup>

## Processing of postal votes

*There were some issues with the processing of postal votes for the 2019 NSW State election*

### Recommendation 15

**That the NSW Government consider funding the NSW Electoral Commission for the development of an online portal for the submission and tracking of postal vote applications.**

<sup>189</sup> Submission 15, National Party of Australia – NSW, pp8-9.

<sup>190</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p59.

<sup>191</sup> *Electoral Act 2017*, s143. As noted earlier, the grounds for voting early by any method are also set down in the Act, see section 6.

<sup>192</sup> *Electoral Act 2017*, s143.

<sup>193</sup> *Electoral Act 2017*, s145.

<sup>194</sup> See *Electoral Act 2017*, s144; and Australian Electoral Commission website:

[https://www.aec.gov.au/Enrolling\\_to\\_vote/Special\\_Category/general-postal-voters.htm](https://www.aec.gov.au/Enrolling_to_vote/Special_Category/general-postal-voters.htm)

## Recommendation 16

**That the NSW Electoral Commission review its guidelines and systems for processing postal vote applications, and communicate clearly with stakeholders about the requirements for submitting applications, to avoid any processing errors occurring in future.**

- 3.27 During the inquiry, the Committee heard that there were some issues with the processing of postal vote applications for the 2019 NSW State election. The National Party of Australia – NSW, and the Electoral Commissioner, also told the Committee that an online portal needed to be developed to allow applicants to submit and track their applications. However, the Commissioner also stated that the development of such a system would depend on competing priorities, such as the development of an online funding and disclosure system, and on the capacity of the Commission.
- 3.28 The Committee appreciates there are finite resources and that projects must be prioritised. Further, it considers that the development of the online funding and disclosure system must take precedence, and this is discussed further in Chapter Five. The Committee also notes in this context that, although continuing to provide a postal voting option is important, rates of postal voting are declining for NSW State elections. With these factors in mind, the Committee is of the view that the NSW Government should consider funding the NSW Electoral Commission for the development of an online portal for the submission and tracking of postal vote applications.
- 3.29 In addition, the Committee considers that the Electoral Commission should review its guidelines and systems for processing postal vote applications, and communicate clearly with stakeholders, including party stakeholders, about the requirements for submitting applications, to avoid any processing errors happening again.
- 3.30 Further, the Committee notes its recommendation in Chapter One to delay the start of the early voting period so that early voting centres do not open until the Saturday, seven days prior to election day. This too may assist with the postal vote situation – the Electoral Commission could have a period during which to completely focus on sending ballot papers to people from whom it had received valid postal vote applications (i.e. from the time the ballot papers had been printed) before having to turn some of its attention to early voting centres.
- 3.31 During the inquiry, the Nationals raised concerns with the Committee that eligible voters did not receive their postal ballots in time for the 2019 NSW State election, despite having made their application on time. The Party stated:

The NSW Nationals received numerous complaints from campaign officers and constituents across the State regarding postal ballots not being received in time for election day. This ranged from constituents from large urban areas such as Port Macquarie, to isolated rural towns and localities in the West of the state. In all cases,

postal vote applications had been submitted in a timely manner to the Commission.<sup>195</sup>

- 3.32 The Nationals also told the Committee that there was evidence some postal vote applications had been received by the Commission but not processed. At the Committee's hearing on 18 November 2019, Mr Cadell of the Nationals stated:

We had situations where postal votes that had two applications on them were sent into New South Wales elections only one of the voters was sent a postal vote in the end. We know they processed the form because they have processed one of them but they have not got the second one. What was more concerning is approximately three months post the New South Wales election we got a lot of notifications via email that batch emails we had sent electronically of postal vote applications to New South Wales elections had been deleted without reading. That was a concern for us and we would like to see greater transparency around that.<sup>196</sup>

- 3.33 The Nationals called for the development of an online portal for the submission and receipt of postal vote applications so that they can be tracked and viewed by applicants.<sup>197</sup>

- 3.34 The Nationals also stated that distribution of postal votes for the election began on 11 March, 12 days prior to election day and that 'This results in an extremely short turn-around period for the Commission to print and distribute postal votes to those who have applied'.<sup>198</sup> The Greens NSW commented that if the start of early voting in person were delayed, this may leave extra days for the Commission to concentrate on processing postal vote applications.<sup>199</sup>

- 3.35 At the Committee's hearing on 18 November 2019, when asked about postal voting, the Electoral Commissioner confirmed that there had been problems. On the subject of two applications having been submitted but only one being processed, the Commissioner stated:

It was a problem with some of the parties printing...two applications for husband and wife on the one application. If it came through in a paper format we had to cut it in half and it is possible that some became separated and misplaced. If they came through via email they were displayed on a screen and had to be cropped and it is possible that some fell off the screen as it were.<sup>200</sup>

- 3.36 Regarding the notifications that had been received that batch emails of postal vote applications had been deleted without reading, the Commissioner told the Committee:

That was a systems issue. The emails had been opened but when they were archived the system into which they were archived, if the person who had sent the email in had asked for a response, for some reason that triggered a further message, and so we had to go out to people. The system we used had some problems. People were

<sup>195</sup> Submission 15, National Party of Australia – NSW, p7.

<sup>196</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2019, p18.

<sup>197</sup> Submission 15, National Party of Australia – NSW, p8.

<sup>198</sup> Submission 15, National Party of Australia – NSW, p7.

<sup>199</sup> Mr Seamus Lee, Deputy Registered Officer, The Greens NSW, *Transcript of Evidence*, 18 November 2019, p28.

<sup>200</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58.



sending in large batches of postal vote applications through the email. We had a capacity constraint about how we could handle some of those things and so there is a lot to be learnt and improved in that space.<sup>201</sup>

3.37 The Commissioner stated that a portal needed to be developed so that more could be done electronically and that ‘Any system we develop or purchase hopefully these days it is quite common place to be able to track your order when you do internet commerce...’.<sup>202</sup> When asked whether such a system might be operational for the 2023 NSW State election, the Commissioner responded that it would depend on competing priorities and the capacity of the Commission:

We already have in the process a number of systems being developed. We are developing an online funding and disclosure system...It had to be put on hold because we were developing the online disclosure of donations in the lead-up to the elections. We are now going back to the original project which was for interaction with participants about donations and funding applications et cetera. We have a series of systems but we have a very small number of people who can actually make these systems changes and oversight the contract with the provider. We will look at our capability...Of course, it will depend on the resources and budget that is given to do so.<sup>203</sup>

3.38 The Commission also provided the following Legislative Assembly figures for postal voting, indicating that rates of postal voting in NSW State elections are declining.<sup>204</sup>

2019		2015		2011	
Postal Votes	% of Total Votes	Postal Votes	% of Total Votes	Postal Votes	% of Total Votes
136,572	2.90%	203,625	4.46%	245,411	5.72%

## iVote

3.39 Another method of early voting for NSW State elections is technology-assisted voting and the NSW Electoral Commission provides telephone and internet voting called ‘iVote’. People can apply to the Electoral Commissioner to vote at an election via iVote and are eligible to do so if they:

- are blind or have low vision,
- are unable to vote without assistance or have difficulty voting at a voting centre because they have a disability or have difficulty reading,

<sup>201</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58.

<sup>202</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58.

<sup>203</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, pp58-59.

<sup>204</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p19. An email from the NSW Electoral Commission to the Committee Secretariat dated 23 March 2020 confirmed that these figures related to the Legislative Assembly only.

- are a silent elector,<sup>205</sup>
- live more than 20km from a voting centre,
- will be interstate or overseas during election day.<sup>206</sup>

### Security, reliability and accessibility concerns

#### *The Committee heard of security concerns with iVote*

3.40 During its inquiry, the Committee heard from a number of academics that they had security concerns with online voting. For example, in a joint submission by Dr Chris Culnane and Associate Professor Vanessa Teague of the University of Melbourne; and Professor Rajeev Gore of the Australian National University, these academics told the Committee that online voting should be discontinued because the results cannot be verified:

...the key concept in electronic elections is *verifiability*, the opportunity to check whether an announced election outcome is accurate. Plain paper voting in a polling place can be verified by observers and scrutineers; computerised voting is much harder to observe, because watching the screen gives scrutineers no real evidence of what the computer is doing with the votes.<sup>207</sup>

3.41 Further, they warned of vulnerability to an internet-based attacker:

In 2015, our team found that the iVote site was vulnerable to an internet-based attacker who could read and manipulate votes.... The attack would not have raised any security warnings at either the voter's or the NSW Electoral Commission...end, but it should have been apparent from iVote's telephone-based verification...A year later it was revealed that 10 per cent of calls to the verification service hadn't been able to retrieve any vote at all. We don't know if this means 10 per cent of iVotes were manipulated or dropped [but]...iVote has proven that serious errors and problems can go unnoticed or unreported.<sup>208</sup>

3.42 At the Committee's hearing on 19 February 2020, when questioned, Associate Professor Teague agreed that paper votes can also be manipulated but stated that internet voting provides much more opportunity for a small number of people to manipulate a large number of votes undetected:

It is a matter of the ease with which a small number of people could manipulate a large number of votes without detection. I agree that manipulation of the paper system is possible. It is a question of how large a conspiracy you would need, how easy it would be to do it away from the eyes of scrutineers versus the possibility that one janitor in the Electoral Commission could potentially fiddle all of the iVote votes.<sup>209</sup>

<sup>205</sup> As noted in Chapter Two, a 'silent elector' is a person whose address has been removed from any authorised roll or list of electors at that person's request because he or she has concerns that its presence on the roll may place his or her safety, or that of his or her family, at risk: *Electoral Act 2017*, ss4 and 36.

<sup>206</sup> See *Electoral Act 2017*, ss151-154 and <https://www.elections.nsw.gov.au/Postal-voting-and-iVote-applications>

<sup>207</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, p2 (emphasis in original).

<sup>208</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, p2.

<sup>209</sup> Associate Professor Vanessa Teague, *Transcript of Evidence*, 19 February 2020, p11.

## 3.43 Professor Teague also stated:

If you think about the two-party preferred count for the Legislative Assembly in a typical polling place...the number of people you would have to involve in manipulating the two-party preferred count in a typical polling place under observation by scrutineers is substantial. If you wanted to make a difference you would have to do that across a variety of different polling places. In the case of iVote it is not about the trustworthiness of people inside the Commission...it is about the fact that they do not really have the technical ability to notice whether something untoward has happened at one of the unscrutinisable steps of this electronic process.<sup>210</sup>

## 3.44 Similarly, Professor Richard Buckland and Dr Roland Wen of the University of NSW told the Committee that the iVote system is not fit for purpose:

The NSW iVote Internet voting system is not fit for the purpose of electronic voting at scale. Originally envisioned as a small scale system for assisting small groups such as vision impaired voters, the system has been built quickly and at low cost. The subsequent three NSW state elections and one WA state election in which iVote systems have been used have experienced multiple incidents and vulnerabilities, and there have been numerous published failings in its security, reliability, scrutiny and transparency.<sup>211</sup>

## 3.45 Professor Buckland and Dr Wen therefore argued that a new online voting system needs to be developed in its place:

A new e-voting system should be developed based on a national approach. This e-voting system should be designed to be suitable for secure long-term large-scale use. Close and ongoing engagement with experts and federal agencies with advanced capabilities (such as the Australian Cyber Security Centre) should be harnessed to ensure the new system is designed, built, tested and operated according to four pillars of best practice for election technology...: 1. failure-critical engineering, 2. risk management, 3. transparency, and 4. a culture of scrutiny.<sup>212</sup>

## 3.46 However, at its hearing on 19 February 2020, the Committee also heard from Mr Lachlan “Sam” Campbell, Director of ScytI, the company that provided the software for iVote at the 2019 NSW State election. Mr Campbell defended the security of the iVote system. For example, he told the Committee that arrangements are in place to ensure that input into the iVote system, and output, are the same:

In the NSW system we have the online voting system, which is where when you cast a vote your vote goes into that ballot box, then we have as part of the 2019 system a mix-net. So what happens is the votes go from the voting system into a mix-net and the intention of the mix-net is to shuffle the ballots and remove the connection between the voter and the ballot while still giving confidence that the input to that system and the output to that system are the same. That is where cryptography

<sup>210</sup> Associate Professor Vanessa Teague, *Transcript of Evidence*, 19 February 2020, p12.

<sup>211</sup> Submission 21, Professor Richard Buckland and Dr Roland Wen, p1.

<sup>212</sup> Submission 21, Professor Richard Buckland and Dr Roland Wen, p2.

comes in and it is around showing that data in is effectively the data out, without tying it to the individual.<sup>213</sup>

3.47 In answers to questions taken on notice, Mr Campbell also stated that arrangements are in place to detect attacks on the iVote system and trigger alerts:

The iVote system by ScytI has a collection of cryptographic signatures and encryptions which trigger alerts in the event votes are compromised – from single votes to all those in the electronic ballot box. In addition to this there are various active monitoring points on the system specifically intended to detect attacks during system operation. It is the combination of these alerts which can be checked and monitored by operational staff in order to detect attacks on the system both in real time and for later audit purposes – much like any other sophisticated computer application.<sup>214</sup>

3.48 Mr Campbell also noted that online voting is generally meant for a particular subset of voters, many of whom would otherwise be using postal voting and that while there are risks associated with remote voting (when compared with attendance voting), iVote is more secure than standard postal voting because in postal voting:

- the vote is protected with a paper envelope, offering a low level of protection,
- the voter's envelope is signed with a handwritten signature,
- if the postal worker intercepts a ballot they can potentially read and/or change the content with little chance the voter will discover this,
- there are a large number of actors involved allowing bad actors access to the process, with low oversight of an individual's actions.

3.49 In contrast, he stated, in iVote:

- the vote is protected by high security encryption, offering a high level of protection,
- the vote is signed by a voter's digital signature which is extremely difficult to forge,
- if an attacker on the network intercepts a ballot they cannot read the content and if they prevent the vote from getting to the server, the voter will be able to detect this,
- there are a small number of players involved allowing oversight across individuals involved in the process,

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<sup>213</sup> Mr Lachlan "Sam" Campbell, Director, ScytI, *Transcript of Evidence*, 19 February 2020, pp27-28.

<sup>214</sup> Mr Lachlan "Sam" Campbell, Answers to Questions Taken on Notice, 19 February 2020, p4.

- the systems support controls which record evidence of actions by operators.<sup>215</sup>

*The Committee heard of reliability concerns with iVote*

3.50 During its inquiry, the Committee also heard numerous complaints about the reliability of the iVote system in the voting period for the 2019 NSW State election.

3.51 According to the NSW Electoral Commission, in the registration and voting periods of 11 February to 23 March 2019, iVote was:

- fully functional 91.71 per cent of the time,
- not available 5.4 per cent of the time,
- available but with degraded service 2.89 per cent of the time.<sup>216</sup>

3.52 Further, during the voting the period from 11 March to 23 March, iVote was:

- fully functional 89.77 per cent of the time,
- not available 0.84 per cent of the time,
- available but with degraded service 9.4 per cent of the time.<sup>217</sup>

3.53 A number of party stakeholders made complaints about system outages. For example, the National Party of Australia – NSW submitted:

...it was disappointing to see a large number of full system outages during peak periods of voting. It was especially concerning and distressing for voters who had not received postal votes to be directed to an online system that was not working. Delays on the phone to the iVote registration and assisted voting line reached over an hour. The iVote system should be significantly upgraded to be able to cope with periods of peak demand.<sup>218</sup>

3.54 The Liberal Party of Australia – NSW Division made similar observations:

...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...attend a polling place on election day, or vote at an early voting centre, they should register to iVote...Unfortunately, during the final 10 days of the campaign, the iVote system crashed and was unavailable for extended periods of time, potentially

<sup>215</sup> Mr Lachlan “Sam” Campbell, Answers to Questions Taken on Notice, 19 February 2020, p7.

<sup>216</sup> NSW Electoral Commission, (2019) *Report on the conduct of the 2019 NSW State Election*, p79, [https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/NSW-Electoral-Commission-2019-State-election-report\\_Part-1.pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Election%20reports/NSW-Electoral-Commission-2019-State-election-report_Part-1.pdf) viewed 17 August 2020.

<sup>217</sup> NSW Electoral Commission, (2019) *Report on the conduct of the 2019 NSW State Election*, p79.

<sup>218</sup> Submission 15, National Party of Australia – NSW, p8.

disenfranchising voters. The Party submits that the iVote system should be reviewed and upgraded to prevent similar occurrences at future elections...<sup>219</sup>

3.55 NSW Labor also reported reliability concerns with iVote:

At the 2019 state election, iVote created unnecessary barriers to people seeking to vote online...[I]t was reported that the iVote had outages throughout its operation...These deficiencies meant that NSW Labor did not actively direct eligible electors to iVote...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.<sup>220</sup>

3.56 In a similar vein, the Blindness Sector complained about the reliability of the iVote system, providing the following details:

It appears that at some points prior to Election Day the iVote system, both phone and internet, were not working...14 voters reported that they began the process of voting online and the site would crash before they were able to submit their vote. This issue continued across several days and several of the voters reported experiencing it on more than one occasion.

Callers using the assisted and telephone keypad voting options noted that they waited on hold for over an hour, only to have their call answered by a staff member who would tell them that voting was currently not available...

In the opening days of early voting, 3 voters noted difficulty when attempting to select preferences for the Legislative Council, repeatedly hearing the message 'press 5 to select a preference', even when pressing the '5' key on their telephone keypad. This resulted in voters choosing to end the call and call back and request personal assistance to cast their vote.<sup>221</sup>

3.57 A private citizen, Mrs Francesca Osborne also told the Committee: 'When I tried to vote online from overseas, the process was continually failing and I was unable to place my vote, despite numerous attempts and hours of frustration'.<sup>222</sup>

*The Committee heard of accessibility concerns with iVote*

3.58 During the inquiry, disability groups also raised concerns with the Committee about iVote's accessibility and usability. For example, the Blindness Sector told the Committee that some people were prevented from casting their vote because they had to solve a 'CAPTCHA' before submitting their vote, which they could not do.<sup>223</sup>

3.59 CAPTCHA stands for 'Completely Automated Public Turing Test to tell Computers and Humans Apart'. According to Google Support:

<sup>219</sup> Submission 18, Liberal Party of Australia – NSW Division, p4.

<sup>220</sup> Submission 22, NSW Labor, p5.

<sup>221</sup> Submission 7, Blindness Sector, pp2-3.

<sup>222</sup> Submission 8, Mrs Francesca Osborne, p1.

<sup>223</sup> Submission 7, Blindness Sector, p2; and submission 13, Vision Australia, pp4-5.

CAPTCHA helps protect you from spam and password decryption by asking you to complete a simple test that proves you are human and not a computer trying to break into a password protected account.

A CAPTCHA test is made up of two simple parts: a randomly generated sequence of letters and/or numbers that appear as a distorted image, and a text box. To pass...the test and prove your human identity, simply type the characters you see in the image into the text box.<sup>224</sup>

- 3.60 Vision Australia explained that CAPTCHAs represented significant accessibility barriers for iVote users who are blind or have low vision:

Some users also reported that they were prevented from casting their vote because of an inaccessible Captcha that they were required to solve prior to submitting their vote. We understand from discussions with the Commission that this was a technical glitch, and that Captcha was intended to be displayed only in rare and specific circumstances. There should, however, have been a "backstop" available even in those rare circumstances for anyone who was unable to complete the Captcha...It is well established...that Captchas present significant accessibility barriers to a number of user groups, including people who are blind or have low vision...<sup>225</sup>

- 3.61 The Blindness Sector also complained that when verifying the submission of an iVote, two devices were needed, and there was the need to scan a QR Code, which again created accessibility issues. The Blindness Sector stated:

It is of great concern that two different devices are required to verify the submission of a vote; blindness and vision impairment are correlated strongly with aging. Many older Australians are less likely to have access to multiple pieces of technology. When this is combined with the need to scan a QR code, this process becomes extremely difficult, if not completely unachievable independently for some.<sup>226</sup>

- 3.62 Finally, Vision Australia raised concerns that there a session time limit for those using iVote online:

...there was a "session time" limit that automatically terminated a voting session after 90 minutes with no way to extend it and with no way to save the data that had been entered...During the user testing phase, our recommendation was that there be a way for a user to extend their voting session after receiving a warning that it would shortly expire.<sup>227</sup>

### Support for the continuation of iVote

*The Committee heard support for the continuation of iVote*

#### Finding 4

**iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this.**

<sup>224</sup> See Google Support: <https://support.google.com/a/answer/1217728?hl=en>

<sup>225</sup> Submission 13, Vision Australia, pp4-5.

<sup>226</sup> Submission 7, Blindness Sector, p2. See also Submission 13, Vision Australia, p5.

<sup>227</sup> Submission 13, Vision Australia, p4.

- 3.63 Notwithstanding the above security, reliability and accessibility concerns with iVote, in acknowledging these problems many stakeholders argued for its retention for voters who may otherwise be disenfranchised e.g. voters with disability and voters living in remote areas. Advocates for people with vision-impairment argued particularly strongly for the retention of iVote stating that its advent had allowed them an independent, secret and verifiable vote for the first time ever.
- 3.64 The Committee agrees that it is important to retain iVote for those who are unable to access other forms of voting. Therefore, it finds that iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this. In addition, steps must be taken to address the security, reliability and accessibility concerns discussed above, and recommendations are made in this vein later in the chapter.
- 3.65 During the inquiry, the Blindness Sector provided strong support for the retention of iVote and told the Committee: "The iVote system has been applauded across Australia by many within the blindness sector recognising the opportunity and facility it provides to enable independent, secret and verifiable voting".<sup>228</sup> Similarly, Vision Australia told the Committee:
- Despite some non-trivial accessibility and usability issues with the online component, we remain convinced that iVote represents the most significant improvement in access to the electoral process for voters who are blind or have low vision that has occurred in the past 100 years...[W]e hope that iVote will continue to improve and evolve...<sup>229</sup>
- 3.66 These advocates expanded on these points at the Committee's hearing on 19 February 2020, with some providing evidence about their own experiences with iVote. For example, Mr Bruce Maguire of Vision Australia told the Committee that before iVote he could not vote without assistance and had no way of verifying that his vote had been recorded correctly:
- I have lived all my life in New South Wales...Until 2011, I was not able to vote by myself and in secret at any New South Wales State election. My family and friends and polling booth staff were always willing to complete my ballot paper for me, but election day never had the same buzz of excitement and anticipation for me as it did for them. I tried to vote below the line once but it took over an hour to convey my voting intentions to the person who was assisting me. At the end of it all, I had no way of verifying that they had completed the ballot paper how I wanted. I did not try voting below the line again.<sup>230</sup>
- 3.67 Mr Maguire further stated that his voting experience changed in 2011 with the advent of iVote, enabling him to vote independently and in secret, and to verify his vote:

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<sup>228</sup> Submission 7, Blindness Sector, p1.

<sup>229</sup> Submission 13, Vision Australia, p6.

<sup>230</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p33.



iVote was introduced in 2011 and my experience of voting in State elections changed profoundly and fundamentally. Being able, for the first time in my life, to vote independently, in secret and with the ability to verify that my voting intentions had been recorded correctly gave me a sense of liberation and dignity, and a feeling that I was now able to really participate in the vibrant democracy that Australians have fought to preserve and which we cherish as a nation.<sup>231</sup>

3.68 Ms Sally Aurisch of Blind Citizens Australia relayed a similar experience:

In 2007 I was able to cast my vote in my first ever State election. I attended a polling booth well prepared to cast my vote below the line and was met with distinct hostility and disgust at this request. The process was tedious and time-consuming and I have no way of knowing whether my vote was cast in the way I intended it to be. Come 2011, with the introduction of the iVote system, I was no longer required to rely on family, friends or polling booth staff. I was able to take the time I needed to ensure that my vote was cast in the way I intended and I was able to do so without needing to disclose my voting preferences to anyone. This is an experience that has been an experience for many people for decades and yet was a first for me and thousands like me, and it is something that I have appreciated at every election since.<sup>232</sup>

3.69 Mr Maguire, Ms Aurisch and Ms Jaci Armstrong of Guide Dogs Australia all urged the retention of the iVote system.<sup>233</sup>

3.70 In acknowledging that security concerns had been raised about online voting, these stakeholders also argued that these concerns should not override the necessity of including all in the democratic process. Mr Maguire stated:

Security should not be used as a pretext or weapon for diminishing human rights or for excluding groups from participating fully in the democratic process. We must have confidence in our technical ingenuity to create inclusive, secure systems that do not recreate the barriers that existed prior to iVote and which do not impose requirements which have a disproportionate negative impact on particular sections of our community...[F]rom our perspective that sense of empowerment of being able to participate in that democratic process far outweighs any concerns that the vast majority of people would have about vulnerabilities in the system.<sup>234</sup>

3.71 Similarly, Ms Aurisch noted that concerns about manipulation and verifiability are not confined to online voting: ‘...when we cast a vote with the assistance of another person, if we cannot physically read what that person has written we are just as vulnerable to that manipulation as we are if it takes place online’.<sup>235</sup>

3.72 Mr Maguire also emphasised the role of early consultation with affected stakeholders to address accessibility and security concerns with iVote, and this is discussed further below.<sup>236</sup>

<sup>231</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p33.

<sup>232</sup> Ms Sally Aurisch, NSW Coordinator, Blind Citizens Australia, *Transcript of Evidence*, 19 February 2020 p34.

<sup>233</sup> See *Transcript of Evidence*, 19 February 2020, pp33-35.

<sup>234</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, pp33-34&39.

<sup>235</sup> Ms Sally Aurisch, *Transcript of Evidence*, 19 February 2020, p39.

<sup>236</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p33&37-38.

- 3.73 In a similar vein, despite the various concerns, some party stakeholders offered support for the continuation of iVote for those groups that may otherwise be disenfranchised. For example, Mr Maltby of the Greens NSW stated at the Committee's 18 November 2019 hearing:

There is no safe way to do online voting: it cannot be both anonymous and secure at the same time. It is a physical limitation on the nature of the beast. We support it because it allows participation, particularly for people overseas and people with impairments who are unable to access other forms of voting, but we do not think it should be particularly encouraged. There are flaws in the design that need to be addressed.<sup>237</sup>

- 3.74 Similarly, in noting the outages in the iVote system that had occurred during the voting period for the 2019 NSW State election and the effect on country people, Mr Cadell of the National Party of Australia – NSW still told the Committee: 'I would rather it be there so some of our people can vote, than not vote'.<sup>238</sup>

- 3.75 Electoral Analyst, Mr Antony Green also offered support for internet voting in limited circumstances:

If we abolish iVoting then people overseas will not vote, they cannot vote; people interstate cannot vote because postal voting will diminish...There are arguments about the security. I will let the experts argue about the security of iVote. I think there is a place for internet voting but it should be limited.<sup>239</sup>

### **Improving the security, reliability and accessibility of iVote**

*iVote should be thoroughly reviewed, upgraded and tested well in advance of the next NSW State election*

#### **Recommendation 17**

**That the NSW Electoral Commission facilitate a thorough review, upgrade and testing of the iVote system well in advance of the 2023 NSW State election, in consultation with all relevant stakeholders to ensure optimal security, reliability and accessibility.**

- 3.76 Having regard to the security, reliability and accessibility concerns with the iVote system that are detailed above, the Committee considers that it is self-evident the system should be subject to thorough review, upgrade and testing prior to the next election in 2023. Further, the Committee heard that a major factor contributing to the reliability and accessibility issues was that not enough time was set aside to develop the iVote system for the 2019 NSW State election. Hence, the Committee stresses that the review, upgrade and testing should take place well in advance of the 2023 NSW State election.
- 3.77 At the Committee's hearing on 19 February 2020, Mr Campbell of ScytI noted that the contract for ScytI to supply the iVote software to the NSW Electoral Commission was signed in April 2018, which was less than a year before the 2019 NSW State election. Mr Campbell stated that 'any project of this scale that comes

<sup>237</sup> Mr Chris Maltby, *Transcript of Evidence*, 18 November 2019, p29.

<sup>238</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2020, pp21&22.

<sup>239</sup> Mr Antony Green, *Transcript of Evidence*, 18 November 2020, p5.

in under a year is always tense'. He also explained the type of work that had to be done as part of such a project:

...ultimately the design of a protocol is known in advance and there will be tests to suit the customer's environment. It is a software delivery project so the customer will go through user acceptance testing...They will find things that they may want different or they might find bugs and they will feed them back to us.<sup>240</sup>

3.78 Dr Roland Wen told the Committee that where there are short timeframes to develop online voting systems, this leads to the type of outages and reliability issues that stakeholders complained were a problem for the 2019 NSW State election. Dr Wen stated:

I think this is a symptom of a commercial-grade approach to developing and operating the system. There are very short timeframes that are often unrealistic for how ambitious the project should be. Essentially, the election is a beta test to iron out the bugs instead of having small-scale beta tests – maybe pilots of a by-election or something – to iron out the bugs so when you have got the main event, you have a lot more assurance that these things are not going to happen. That is what is the current approach and that has been repeated over and over.<sup>241</sup>

3.79 The Committee also heard that the accessibility issues identified above could have been addressed had the Electoral Commission consulted with stakeholders earlier in the development of the iVote system. In its *Report on the conduct of the 2019 NSW State election*, the Commission noted stakeholder feedback about the iVote platform and areas for improvement, including "issues relating to vote verification including accessibility issues with the iVote verification app, the CAPTCHA process and the multiple devices requirement for verification."<sup>242</sup> The Commission further stated that:

...due to time constraints, not all issues identified and improvements suggested could be actioned before the election. The Electoral Commission will continue to work to resolve these issues for future elections in consultation with stakeholders.<sup>243</sup>

3.80 Vision Australia told the Committee that its Digital Accessibility team was contacted by the Electoral Commission in early October 2018, and asked to undertake accessibility and user testing of the iVote system. Problems were found and it was not until close to the March election that the team was confident that the iVote online component would be usable.<sup>244</sup> Vision Australia recommended:

...that the Commission engage with web accessibility and user testing consultants such as Vision Australia much earlier in the election cycle, at least nine months prior to the election, and that if the iVote platform undergoes major redesign, that such consultants be involved from the outset of that redesign.<sup>245</sup>

<sup>240</sup> Mr Lachlan "Sam" Campbell, *Transcript of Evidence*, 19 February 2020, p30.

<sup>241</sup> Dr Roland Wen, *Transcript of Evidence*, 19 February 2020, p22.

<sup>242</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p80.

<sup>243</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p80.

<sup>244</sup> Submission 13, Vision Australia, pp2-3.

<sup>245</sup> Submission 13, Vision Australia, p3.

- 3.81 Mr Maguire of Vision Australia and Ms Armstrong of Guide Dogs Australia expanded on these points at the Committee's 19 February hearing, telling the Committee that given changes to the iVote system over time, early consultation in design and implementation are key.<sup>246</sup> Mr Maguire stated:

I think the paramount recommendation is that there be early and frequent dialogue between our sector and the NSW Electoral Commission...[A]s time goes on I think there will be an increasing need for greater involvement as the systems become more complex and as technology develops and technology itself becomes more complicated.<sup>247</sup>

*The Government should consider making the iVote development process subject to independent oversight by a panel of experts*

### **Recommendation 18**

**That the NSW Government consider amending the *Electoral Act 2017* to make the iVote development process for the 2023 NSW State election subject to independent oversight by a panel of technology experts, that has power to publicly recommend against the system's use if it fails to meet pre-determined security and reliability requirements. The panel of technology experts would report directly to the Joint Standing Committee on Electoral Matters.**

- 3.82 As well as ensuring that enough time is set aside to develop the iVote system for the 2023 State election, the Committee considers that this process should be oversighted by a body of technology experts who are independent of the Electoral Commission, and who have power to publicly recommend against the system's use if it fails to meet pre-determined security and reliability requirements.
- 3.83 The Committee notes that currently, the *Electoral Act 2017* does provide for independent auditing of technology assisted voting. However, the Committee heard that the Electoral Commission sets the scope for these audits; that the decision to proceed with online voting at an election is at the discretion of the Electoral Commission; and that where problems are identified in developing an online voting system, there could be pressures or a tendency to use the system regardless, because the Electoral Commission has already signed the contract with the provider. Independent oversight is necessary to optimise decision-making and thereby better manage risks.
- 3.84 Dr Roland Wen told the Committee:
- A main concern with iVote is that iVote is vulnerable to a wide range of risks that threaten integrity and trust in our elections, so we need new measures to ensure that all the risks are properly considered and addressed and we recommend introducing independent oversight by technology experts.<sup>248</sup>

<sup>246</sup> *Transcript of Evidence*, 19 February 2020, p40.

<sup>247</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p40.

<sup>248</sup> Dr Roland Wen, *Transcript of Evidence*, 19 February 2020, p18.

- 3.85 Regarding the current system of auditing, Dr Wen told the Committee: 'I think there is a difference in that the Electoral Commission is setting the scope for these audits and they may be quite limited in time and budget...'.<sup>249</sup>
- 3.86 Dr Wen further stated that independent oversight was needed so that a system is not used at an election if it has failed checks and balances:
- I think we need some sort of arm's-length oversight that is able to set clear mandates about what the expectations are and what needs to be done, instead of having a single body that determines this. It is really largely at [the Electoral Commission's]...discretion. If the system currently fails checks and balances or does not deliver what it is expected to, it can still be used regardless. There is no external oversight to determine if that is the right call or not and, of course, within the organisation there are natural pressures to make sure the system is used. Essentially they have committed to using the system once they have signed the contract with the vendor, which is typically a year or less than a year out from the election. It is very hard to see that they would not end up using the system for the election regardless of what sort of problems are found.<sup>250</sup>
- 3.87 Professor Richard Buckland provided similar evidence, stating that independent oversight is particularly important to prevent a 'single point of failure' that could be exploited to launch a malicious attack on an online voting system:
- Absolutely [the Electoral Commission] should be conducting, as part of the proper software engineering process, scrutiny of the people they are employing and things they are outsourcing but that is different to an independent check... I am most interested in attack. That a nation state could change the outcome of an election. So you cannot have a single point of failure and if the organisation that does the job and commissions the job also audits and polices the job, that is a single point of failure. An insider or an overlook or a weakness there compromises the whole thing. It is a very easy, tempting target to attack...In my opinion there needs to be oversight from a body that is independent of the Electoral Commission.<sup>251</sup>
- 3.88 Currently, under the *Electoral Act 2017*, the Electoral Commissioner can approve procedures for technology-assisted voting and can engage an independent auditor to conduct audits of the information technology used under the approved procedures. In particular, the auditor is to determine whether test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test ballot papers produced under those procedures.<sup>252</sup>
- 3.89 Further, the auditor can make recommendations to the Commissioner to reduce or eliminate any risks that could affect the security, accuracy or secrecy of voting in accordance with the approved procedures.<sup>253</sup> The Electoral Commissioner can also determine that technology assisted voting is not to be used at a specified

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<sup>249</sup> Dr Roland Wen, *Transcript of Evidence*, 19 February 2020, p23.

<sup>250</sup> Dr Roland Wen, *Transcript of Evidence*, 19 February 2020, p23.

<sup>251</sup> Professor Richard Buckland, *Transcript of Evidence*, 19 February 2020, p23.

<sup>252</sup> *Electoral Act 2017*, ss155 and 156.

<sup>253</sup> *Electoral Act 2017*, s156.

election, and such a determination must be in writing and published on the Commission's website.<sup>254</sup>

*The iVote source code should be publicly released well before the relevant election, and any non-disclosure agreement limited to that necessary for security*

### **Recommendation 19**

**That the NSW Electoral Commission make the iVote source code available for interested members of the public to test at least six months prior to the relevant election, and limit any associated non-disclosure agreement to that necessary for security reasons.**

- 3.90 Public release of the source code for iVote is an important element to ensure effective scrutiny of the system. However, during its inquiry, the Committee heard concerns that the iVote source code for the 2019 NSW State election was not publicly available for testing prior to the election unless parties signed a non-disclosure agreement specifying secrecy about identified issues for five years.
- 3.91 The Committee considers that in future the iVote source code should be available for interested members of the public to test at least six months prior to the relevant election. This would give more opportunity for errors to be detected and addressed prior to voters going to the polls, while also allowing time for the system development processes that are discussed above to have taken place, or to be at an advanced stage, prior to public release of the source code.
- 3.92 Further, the Committee accepts that it may be necessary to require those given access to the source code to sign a non-disclosure agreement. However, this agreement should be limited to what is necessary for security reasons, that is, to that necessary to allow any identified issue to be fixed before the world at large becomes aware of it. For example, an agreement specifying non-disclosure for 45 days would be acceptable, one specifying non-disclosure for five years would not.
- 3.93 During the inquiry, the Committee heard concerns that the source code for the iVote system was not made publicly available for testing until four months after the 2019 NSW State election – too late for any errors to be detected and fixed prior to the election. In their joint submission, Dr Culnane, Associate Professor Teague and Professor Gore stated:
- Source code for iVote has now been made available, more than four months after the election, so it is now possible to inform the electoral commission of the serious problems in the code it ran many months ago. There is, obviously, no hope of fixing such errors in time for the election, which has now passed.<sup>255</sup>
- 3.94 At the Committee's hearing on 19 February 2020, Professor Gore noted that, in contrast, the source code for the Swiss Post electronic voting system was provided six months before the Swiss elections.<sup>256</sup>

<sup>254</sup> *Electoral Act 2017*, s162.

<sup>255</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, p5.

<sup>256</sup> Professor Rajeev Gore, *Transcript of Evidence*, 19 February 2020, p16.

- 3.95 Further, Dr Wen told the Committee that even if the source code were to be publicly released for testing six months prior to the relevant election, this too would not be enough time to fix any identified problems:

So you find these problems and then you need to report them. Then the Electoral Commission and the vendors need to triage them. They need to understand or are these valid issues that are being raised? They may have issues coming in from multiple sources that are being reported. They need to triage these. They need to remediate the issues. They need to test the fixes and then it needs to be re-reviewed. Now six months is really way too tight for that in my opinion.<sup>257</sup>

- 3.96 In addition, Dr Culnane, Associate Professor Teague and Professor Gore complained to the Committee about a lack of openness in the source code review process, given non-disclosure requirements. They stated:

The punitive clauses in the NSW electoral Act, which criminalise sharing system details and source code without permission from NSWEC stand in stark contrast to Swiss laws mandating openness of source code and document (for systems that may be used by up to 100% of voters) well in advance of the election... [T]he NSW parliament should rewrite electoral law to mandate openness of election source code and documentation, rather than punishing people who try to tell other citizens about the details of how their elections work.<sup>258</sup>

- 3.97 Section 159(2) of the *Electoral Act 2017* provides that a person must not disclose to any other person any source code or other computer software that relates to technology assisted voting under the approved procedures, except in accordance with the approved procedures or in accordance with any arrangement entered into by the person with the Electoral Commissioner. This is backed by a maximum penalty of a \$22,000 fine, or imprisonment for two years, or both.

- 3.98 At the 19 February hearing, Associate Professor Teague provided further evidence about the terms under which the 2019 iVote source code was made available in NSW:

Before the election it was available only under a non-disclosure agreement that specified secrecy for five years, which I refused to sign because I cannot think of anything worse than being in the situation where you know there is something fundamentally broken about an electoral process but you have promised not to say...After the election...the Electoral Commission then decided to make it available under a much more reasonable non-disclosure agreement that specifies that you have to remain silent for 45 days, which was fine.<sup>259</sup>

- 3.99 However, Mr Campbell of ScytI told the Committee that non-disclosure periods are needed so that malicious actors cannot exploit identified issues before they are addressed:

Why 45 days? The number 45 – we could debate whether it is 30 days or 60 days, more or less. Ultimately, what people look for in responsible disclosure is that if someone finds a deficiency in some software – the means to exploit it – that that be

<sup>257</sup> Dr Roland Wen, *Transcript of Evidence*, 19 February 2020, p24.

<sup>258</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, p5.

<sup>259</sup> Associate Professor Teague, *Transcript of Evidence*, 19 February 2020, p15.

passed to someone who can resolve the issue and then have that issue fixed before everyone in the world knows that there is an issue there...[W]e would like to notify our existing customers. We would like to generate a patch.<sup>260</sup>

- 3.100 Mr Campbell further stated that this is particularly important in the context of elections, where an identified issue in one part of the world could affect an election elsewhere:

We see part of our role as supplying some software to a customer. If someone finds a bug in that we do not want to be the channel by which other electoral commissions are exposed. For instance, if there is an election happening in two parts of the world at the same time and someone notifies us of a bug, say, in the New South Wales code and that is being executed in another location, we do not want to end up with two electoral commissions impacted or possibly more.<sup>261</sup>

*Verification should be carried out by a company other than the company with whom iVoters cast their vote*

### **Recommendation 20**

**That in future the verification system that iVoters can use to confirm that their vote has been recorded correctly be delivered by a provider other than the provider with whom iVoters have cast their vote.**

- 3.101 Given evidence discussed above that verifiability is a particular issue where online voting is concerned, the Committee was also concerned at evidence that the same company that provided the iVote software for the 2019 NSW State election also provided the verification application for voters to check whether the system had accurately recorded their vote. The Committee considers that the verification process for iVote needs to change so that the verification application is not generated by the same organisation with which the original ballot was cast. This would be a more open and transparent process, providing more effective scrutiny of the iVote system.
- 3.102 As outlined earlier, the Committee heard from Dr Culnane, Professor Gore and Associate Professor Teague that verifiability – the opportunity to check whether an announced election outcome is accurate – is a particular issue where online voting is concerned. They stated that while scrutineers can verify paper votes, online voting is harder to observe because watching a screen gives scrutineers no real evidence of what the computer is doing with the votes.<sup>262</sup>
- 3.103 The Committee heard further that a particular problem is that ScytI, the company that provided the software for iVote at the 2019 NSW State election, also provided the verification application for iVoters to check whether the system has accurately recorded their vote. Thus, Dr Culnane, Professor Gore and Associate Professor Teague told the Committee that the application:

...provides no evidence that the reported vote matches the vote that will be counted... If the software provider is honest and trustworthy, then the software

<sup>260</sup> Mr Lachlan “Sam” Campbell, *Transcript of Evidence*, 19 February 2020, p27.

<sup>261</sup> Mr Lachlan “Sam” Campbell, *Transcript of Evidence*, 19 February 2020, p27.

<sup>262</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, p2.



sends the right vote the first time; if it is not trustworthy it sends the wrong vote and then its verification app lies about what vote was sent. In neither case does the voter get any information by asking a closed-source app from the same company.<sup>263</sup>

3.104 At the Committee's hearing on 19 February 2020, Professor Teague explained further:

If you look at what actually happens to the data through the iVote process, first of all somebody votes using their web browser, then if they do not trust Scytl to accurately record their vote their only option for double-checking that is to download another closed-source app from Scytl and use the Scytl app to test whether the Scytl voting system accurately recorded their vote or not, which proves that either Scytl is honest in both cases or Scytl is lying to them in both cases. It does not really provide any meaningful opportunity to check.<sup>264</sup>

3.105 Given this evidence, Mr Campbell of Scytl was asked whether the verification application should be generated by a different organisation from the one with which the original ballot was cast to which he responded 'To be fair that is a valid argument. There is a case for saying that someone else should generate the verification application'.<sup>265</sup>

3.106 However Mr Campbell also stated that consideration would need to be given to appropriate governance arrangements:

...I would suggest some sort of governance or some sort of process around analysing the risks and benefits of that...One of the risks becomes if someone generates a verification application, let us say we open source that application, a number of people might take that application and then generate their own ones for their own level of confidence that they are verifying their vote...So you do need some way of knowing that this is a trusted verification application.<sup>266</sup>

3.107 In its *Report on the conduct of the 2019 NSW State election*, the Electoral Commission noted that the number of iVotes verified was 111,654 giving a verification rate of 47.6 per cent.<sup>267</sup>

### Information and assistance for iVote users

*All iVoters must have access to registered how-to-vote cards*

#### **Recommendation 21**

**That all voters who use the iVote system be provided with a hyperlink to each party's registered How-To-Vote.**

#### **Recommendation 22**

**That the NSW Government amend the *Electoral Act 2017* to:**

<sup>263</sup> Submission 17, Dr Chris Culnane, Associate Professor Vanessa Teague and Professor Rajeev Gore, pp4-5.

<sup>264</sup> Professor Vanessa Teague, *Transcript of Evidence*, 19 February 2020, p13.

<sup>265</sup> Mr Lachlan "Sam" Campbell, *Transcript of Evidence*, 19 February 2020, p29.

<sup>266</sup> Mr Lachlan "Sam" Campbell, *Transcript of Evidence*, 19 February 2020, p29.

<sup>267</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p80.

- **require the NSW Electoral Commission to translate registered how-to-vote cards into formats accessible to persons who are blind or have low vision; and**
- **require the NSW Electoral Commission to publish these accessible versions on its website, where possible.**

- 3.108 In its submission to the inquiry, Vision Australia noted that while iVote has positively transformed the voting experience for people who are blind or have low vision, there is no requirement for registered how-to-vote cards to be provided in formats accessible to this group.
- 3.109 The Committee considers that such information is essential if this group is to be able to exercise an informed and independent vote. Therefore, the NSW Government should amend the *Electoral Act 2017* to: require the NSW Electoral Commission to translate registered how-to-vote cards into formats accessible to persons who are blind or have low vision; and require the NSW Electoral Commission to publish these accessible versions on its website, where possible. Further, all voters who use the iVote system should be provided with a hyperlink to each party's registered How-To-Vote.
- 3.110 Vision Australia told the Committee:
- While the introduction of iVote has transformed the NSW election process for voters who are blind or have low vision, there is still a gap in providing candidate information in accessible formats. In particular, how-to-vote cards are largely inaccessible. The Electoral Act 2017...introduces provisions that allow for technology-assisted voting...but...the Act retains the traditional definition of how-to-vote cards as printed information only (cards, posters, handbills). There is no provision or requirement in the Act for how-to-vote cards to be provided to the Commission in a format that is, or can be made, accessible to voters who are blind or have low vision.<sup>268</sup>
- 3.111 For the purposes of the *Electoral Act 2017*, a 'how-to-vote card' is defined as 'any card, handbill, pamphlet or notice having any voting directions within it, whether or not it contains: (a) any representation or partial representation of a ballot paper or portion of a ballot paper, or (b) any representation or partial representation apparently intended to represent a ballot paper or portion of a ballot paper'.<sup>269</sup> Similarly, 'electoral material' is defined to include 'how-to-vote' cards, and Part 7, Division 14, Subdivision 6 of the Act sets down a regime for the registration of electoral material.
- 3.112 In its *Report on the conduct of the 2019 NSW State election*, the NSW Electoral Commission stated that registered electoral material was displayed on its website from the Monday prior to election day.<sup>270</sup>

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<sup>268</sup> Submission 13, Vision Australia, p5.

<sup>269</sup> *Electoral Act 2017*, s4.

<sup>270</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p13.

*Information about iVote must be disseminated to disability advocacy groups well in advance of the relevant election*

### **Recommendation 23**

**That the NSW Electoral Commission disseminate information about iVote to disability advocacy groups well in advance of the relevant NSW State election to ensure that it reaches their members in time.**

- 3.113 During its inquiry, the Committee heard concerns that the NSW Electoral Commission left it too late to disseminate information concerning iVote to disability advocacy groups prior to the 2019 NSW State election; that such information is important to allow their members to access the system; and that the lateness may have prevented some from using iVote to vote at the election.
- 3.114 The Committee considers that it is essential that such information is disseminated to disability advocacy groups well in advance of the relevant election so that their eligible members are equipped to use the iVote system, and know about any changes that have been made to it since the last election.
- 3.115 The Blindness Sector (Blind Citizens Australia, Guide Dogs Australia and Vision Australia) told the Committee that these organisations had received information regarding iVote more than a week after voting for the 2019 NSW State election had opened. The Blindness Sector stated: ‘This did not allow time for distribution to people who are blind or vision impaired who do not use email, meaning that many voters were not aware of several changes to iVote; including the option to verify one’s vote...’.<sup>271</sup>
- 3.116 Ms Sally Aurisch of Blind Citizens Australia told the Committee that timely provision of information about changes to the iVote system is essential to allow access to that system:
- Although iVote is the gold standard in providing a secret, independent and verifiable vote, with each election comes necessary changes that must be made...It is vital that we receive the information around the changes that have been made to iVote in a timely manner so that we can share those with our members and ensure that they have everything they need to access the system...<sup>272</sup>
- 3.117 In its submission, Vision Australia noted that the lack of information may have contributed to a drop in the number of people using iVote in the 2019 NSW State election. Vision Australia indicated that if information on iVote is not distributed in a timely manner, people will assume it must have been discontinued and that they will have to rely on friends, family and polling booth staff to assist them to vote. ‘While iVote usage numbers apparently dropped significantly in 2019, we are not aware of any suggestion that the number of votes cast by people who are blind or have low vision has also dropped, lending credence to this view’.<sup>273</sup>

<sup>271</sup> Submission 7, Blindness Sector, p1.

<sup>272</sup> Ms Sally Aurisch, *Transcript of Evidence*, 19 February 2020, pp34-35.

<sup>273</sup> Submission 13, Vision Australia, p1.

3.118 The Electoral Commission provided the following Legislative Assembly figures which confirm that iVoting rates were down in 2019, compared with the previous NSW State election in 2015.<sup>274</sup>

2019		2015		2011	
iVotes	% of Total Votes	iVotes	% of Total Votes	iVotes	% of Total Votes
234,401	4.97%	283,669	6.22%	46,862	1.09%

*NSW Electoral Commission staff must be adequately qualified and trained to assist iVote users*

#### **Recommendation 24**

**That in future the NSW Electoral Commission employ specialised staff at its elector call centre, with appropriate qualifications and training to provide iVote users with technical support.**

#### **Recommendation 25**

**That in future the NSW Electoral Commission provide disability awareness and confidence training to all staff working at its elector call centre.**

3.119 In the eight week period leading up to the 2019 NSW State election day, the NSW Electoral Commission operated an elector call centre. Responsibilities included responding to general enquiries, assisting with iVote and postal vote applications, and facilitating the iVote operator-assisted voting option.<sup>275</sup>

3.120 During the Committee's inquiry, it received concerns that staff at this call centre were not appropriately trained in disability awareness and confidence, nor in technical support. The Committee considers these types of training are crucial in assisting with enquiries about iVote given that many people who use iVote have disability, and given that iVote is a form of technology-assisted voting.

3.121 In future, the Commission should employ specialised staff at the call centre, with appropriate qualifications and training to provide iVoters with technical support. It should also provide disability awareness and confidence training to all staff working at the call centre.

3.122 In its submission, the Blindness Sector noted that it received feedback from several voters with blindness that staff at the elector call centre 'would benefit from additional training around iVote and the needs of people with disability'.<sup>276</sup> Some examples listed included inappropriate remarks in response to being told about a person's disability (e.g. 'Oh, I'm sorry'), or voters with blindness being

<sup>274</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p19. An email from the NSW Electoral Commission to the Committee Secretariat dated 23 March 2020 confirmed that these figures related to the Legislative Assembly only.

<sup>275</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election* (2019), p84.

<sup>276</sup> Submission 7, Blindness Sector, p1.

redirected to the National Relay Service which is a service for people with hearing impairment.<sup>277</sup>

3.123 The Blindness Sector also noted that call centre staff did not appear to be trained in technical support for the iVote verification process, which as discussed earlier, many people with blindness and vision impairment found difficult owing to security features such as QR codes.<sup>278</sup>

3.124 In its *Report on the conduct of the 2019 NSW State election*, the NSW Electoral Commission noted that a post-election review had identified that 'Elector call centre staff required a higher level of skills to handle iVote calls as well as more intensive training and monitoring. A higher ratio of supervisors to operators will be implemented in the future'.<sup>279</sup>

3.125 The Electoral Commission also told the Committee:

Call centre staff for the 2019 election who assisted electors using iVote via the call centre did not receive additional training on providing assistance to people with a disability prior to the election. The NSW Electoral Commission is currently reviewing the training program for iVote call centre staff and exploring options to ensure that staff assisting iVote electors receive specific training relating to servicing electors with additional needs and focusing on sensitivity as part of good customer service. The NSW Electoral Commission is working to have an additional training session provided to call centre staff, particularly the iVote voting call centre staff, for the next election.<sup>280</sup>

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<sup>277</sup> Submission 7, Blindness Sector, pp1-2.

<sup>278</sup> Submission 7, Blindness Sector, p1.

<sup>279</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election* (2019), p85.

<sup>280</sup> NSW Electoral Commission, *Answers to Supplementary questions following 22 June 2020 hearing*, p6.

## Chapter Four – Election Day

- 4.1 This Chapter explores issues raised with the Committee concerning election day including the election count, regulation of voting centres, training of voting centre staff, and accessible voting. The Committee notes that many of the issues raised apply equally to early voting centres, and where this is the case, reference has been so made.

### The election count

#### How are the votes counted for NSW State elections?

- 4.2 Currently, under section 109 of the *Electoral Act 2017*, each voting centre that is to operate on election day must be open for voting from 8am on election day, and, unless adjourned, close at 6pm on that day. However, if any voter entitled to vote is in a voting centre at 6pm on election day and desires to vote, he or she must generally be permitted to do so.
- 4.3 Further, under section 164, as soon as practicable after the close of voting:
- the voting centre manager for each voting centre and the other election officials at the voting centre, and
  - election officials at any ballot counting place at which ballot boxes containing ballot papers are located,
- are, in the presence of any scrutineers present, but of no other persons, to open the ballot boxes and proceed to count the ballot papers in the manner determined by the Electoral Commissioner.
- 4.4 Section 163 also provides for the way in which the Electoral Commissioner is to appoint ballot counting places. It stipulates that the Electoral Commissioner is to appoint for each district one or more places for the counting of ballot papers for the election and to publish this appointment on the Electoral Commission's website. Further:
- a ballot counting place for a district may be within or outside the district concerned, and
  - a single ballot counting place may be appointed for two or more districts.
- 4.5 This means that the Electoral Commissioner can appoint centralised counting places, and for the 2019 NSW State election there was a centralised counting centre for postal and declaration votes at Carriageworks, Eveleigh and a centralised Legislative Council count centre at Rosehill.<sup>281</sup>

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<sup>281</sup> NSW Electoral Commission, NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p42.

4.6 The NSW Electoral Commission's website explains how the count was conducted for the 2019 NSW State election:

- Legislative Assembly initial count: there was an initial count of Legislative Assembly ballot papers. A first preference count was conducted and these results were displayed on the Commission's website. Then, a Legislative Assembly 'two candidates preferred count' was conducted to give an indication of the likely outcome of the election. The Commission explains that this is not the official distribution of preferences, which takes place in the election manager's office following the completion of the check count and data entry of ballot papers. Rather, before election day, the Commissioner selects the two candidates in the district who are likely to be the final two remaining candidates in the count following the distribution of preferences. The Commission explains that the two candidates preferred count is 'conducted by distributing all formal votes of the other candidates to the two selected candidates according to which of the two selected candidates receives the highest preference on each of the other candidates' ballot papers'.<sup>282</sup>
- Legislative Assembly check count: In the weeks after election day, Legislative Assembly ballot papers were check counted, and preferences from the ballot papers data entered into the Commission's computer count system. The Commission explains 'It is this check count which is the official count that is used to conduct the distribution of preferences within the computer count system, to determine the elected candidate in each Legislative Assembly district'.<sup>283</sup>
- Limited Legislative Council initial count: the Electoral Commission provided a limited initial Legislative Council count on election night. Electoral Commission staff sorted and counted the ballot papers marked '1' above the line for seven Legislative Council groups that were chosen because at the time of the decision they held, or previously had held, seats in the Legislative Council.<sup>284</sup>
- Legislative Council check count: the Legislative Council ballot papers were re-examined in the weeks after election day and distribution of preferences occurred. Preferences from Legislative Council ballot papers were data entered into the NSW Electoral Commission's computer count system from election Sunday onwards at the Legislative Council count centre. Again, as with the Legislative Assembly, it is the check count that is the official count that decides the elected candidates.<sup>285</sup>

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<sup>282</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/Counting-the-votes/How-votes-are-counted/How-votes-are-counted-in-a-State-election> viewed 25 August 2020.

<sup>283</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/Counting-the-votes/How-votes-are-counted/How-votes-are-counted-in-a-State-election> viewed 25 August 2020.

<sup>284</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/Counting-the-votes/How-votes-are-counted/How-votes-are-counted-in-a-State-election> viewed 25 August 2020; see also NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p53.

<sup>285</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/Counting-the-votes/How-votes-are-counted/How-votes-are-counted-in-a-State-election> viewed 25 August 2020.

### Counting of early votes

*Counting of early votes should not start until polls have closed on election day*

- 4.7 The Committee heard a call for the counting of early votes to start at 4pm on election day, given the significant increase that there has been in early voting. While the Committee appreciates that this would assist with the timeliness of the count, meaning that the result would be clearer on the night, it does not support the proposal. Counting of early votes should not start until polls have closed at 6pm on election day. The Committee accepts evidence from the NSW Electoral Commissioner that security would be a significant issue and that if results were to leak whilst voting was still in play, this could form the basis of a challenge to a tight election result.
- 4.8 The Committee also accepts the Commissioner's evidence that the tight security arrangements implicit in such a proposal – sealing people in rooms for a sustained period so that the results of counts could not leak – would be particularly problematic in COVID times.
- 4.9 As noted in Chapter Three, early voting options in NSW include voting in person at an early voting centre, voting at a declared facility, postal voting, and iVote online and telephone voting. Further, as noted in Chapter One, there was a continuing and significant rise in the number of people who chose to vote at an early voting centre over the last three NSW State elections and if all voting methods are taken into account, nearly 30 per cent of voters voted early at the 2019 NSW State election.<sup>286</sup>
- 4.10 In its submission to the inquiry, NSW Labor noted this increase and stated 'As a consequence, the time needed to count and scrutineer the count has increased'. NSW Labor therefore recommended that the counting of early votes start from 4pm on election day.<sup>287</sup>
- 4.11 In his submission to the inquiry, Election Analyst Mr Antony Green explained counting procedures for NSW State elections:
- Polling day ordinary votes are counted on election night by the staff employed to run the polling place during the day. The number of staff allocated to polling places is based on how many ballot papers are expected to be issued by the polling place...The counting of pre-poll votes has to be undertaken by additional staff recruited to conduct the count. These are staff in addition to those employed by the Electoral Commission to staff polling places.<sup>288</sup>
- 4.12 Mr Green noted that early voting centres often take a large number of votes – in the 2019 NSW State election, only three polling places took more than 4000 ordinary votes. In contrast, 102 early voting centres took more than 4000 ordinary votes. Mr Green noted that these large numbers can make it hard to finish counting all pre-poll centres on election night:

<sup>286</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p19.

<sup>287</sup> Submission 22, NSW Labor, p9.

<sup>288</sup> Submission 28, Mr Antony Green, pp3-4.



On election night the NSW Electoral Commission counted all polling places and tried to count all pre-poll centres. Some pre-poll centres were not completed until the next day, and some reported only their first preference totals on the night, two-candidate preferred totals completed the next day.<sup>289</sup>

4.13 Mr Green questioned whether, with so many votes to count, and with the size of some early voting centres, it was time to consider bringing forward the start of counting of early votes. He noted some of the arguments in favour, including:

- Counts could be completed on election night, both for first preference and two-candidate preferred.
- By completing the count of all ordinary votes, the result would be clearer on the night.
- It would be easier to hire staff for a shift running through the day rather than until the early hours of the morning.
- New Zealand has counted Advance votes on election day before the close of polls without the results leaking.<sup>290</sup>

4.14 Mr Green also noted arguments against including:

- It will not be possible to have enough secure premises to ensure the secrecy of counts.
- If scrutineers are free to leave the secure counting area at 6pm they may report partial counts that can be confused with official returns.
- Unlike in New Zealand, in Australia parties and candidates can actively campaign on election day meaning that they need volunteers to hand out how-to-vote cards. Given this, they may struggle to commit scrutineers to the secure count before 6pm.<sup>291</sup>

4.15 Mr Green also stated that were it decided to allow the early counting of pre-polls, guidelines would need to be in place including that the early counting only take place in secure premises, and that all scrutineers be required to hand in mobile devices before admission to the count.<sup>292</sup>

4.16 However, at the hearing on 22 June 2020, the Commissioner made it clear that he did not support the proposal to start the counting of early votes before polls closed. The Commissioner cited three reasons for this. First, he noted the security aspect, indicating that if results were to leak while an election was still in play, this could form the basis for a challenge to the electoral result:

...the security requirements and the need to have secure premises, where people are locked away with all the equipment taken away from them; any suggestion of information getting out to the community while they are still voting about potential

<sup>289</sup> Submission 28, Mr Antony Green, p4.

<sup>290</sup> Submission 28, Mr Antony Green, p5.

<sup>291</sup> Submission 28, Mr Antony Green, p5.

<sup>292</sup> Submission 28, Mr Antony Green, p7.

trends in voting patterns – all of it could form the basis of a challenge to a close election after the event.<sup>293</sup>

- 4.17 Similarly, the Commissioner noted the Commission has been trying to cease the election night count at 10:30pm for work health and safety reasons, and that a proposal to move forward the counting of early votes would complicate that:

...historically people have been working well past midnight at election centres. That cannot be tolerated anymore under work health and safety legislation and we have been trying to develop systems whereby the count ceases about 10.30 and we get people out the door by 11. This would be an added complication to that.<sup>294</sup>

- 4.18 The Commissioner also identified that making arrangements for an early count of early votes would be particularly problematic in light of the COVID-19 pandemic:

...COVID...adds an extra complication to it, as it does with almost everything that we do...In a COVID world what do you do? You are having people sealed into a place for a long period of time – to what end? Important as election results are, for the added benefit of having a bit more speed on the night to get results out so that people are able to call the result – if it is not a close election it is not such an issue – I am just not persuaded that that is the path to go down.<sup>295</sup>

### Timeliness of the count

#### *The count must start promptly at the close of voting on election day*

- 4.19 The Committee considers that the count must start promptly at the close of voting on election day and that voting centre managers should allocate resources throughout election day to make sure that this can happen. This is particularly the case given the other issues discussed above that can make it harder to obtain a clear election result on the night (i.e. an increase in the number of early votes and the need to ensure staff do not stay too late for work health and safety reasons).
- 4.20 In its submission to the inquiry, the Liberal Party of Australia – NSW Division raised concerns about the timeliness with which the count started at some voting centres on the 2019 NSW State election day. The Party stated scrutineers reported that at the close of voting, 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.<sup>296</sup>
- 4.21 The Party stated further ‘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’. It also suggested that a better system of breaks should be implemented throughout the day to ensure that there is no unnecessary delay in the counting of votes immediately after the close of polls.<sup>297</sup>

<sup>293</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p8.

<sup>294</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p8.

<sup>295</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p8.

<sup>296</sup> Submission 18, Liberal Party of Australia – NSW Division, p4.

<sup>297</sup> Submission 18, Liberal Party of Australia – NSW Division, p4.

*The Legislative Assembly count should occur prior to the Legislative Council count starting*

### **Recommendation 26**

**That the NSW Electoral Commission conduct the Legislative Assembly first preference count, and the Legislative Assembly two candidates preferred count on election night as a matter of priority.**

### **Recommendation 27**

**That the Legislative Council count not take place until the Legislative Assembly first preference count, and the Legislative Assembly two candidates preferred count, have been completed.**

- 4.22 As noted, the NSW Electoral Commission is concerned about workplace health and safety and staff working excessive hours on election night. It is therefore considering no longer conducting an initial Legislative Council count on election night.
- 4.23 In this context, the Committee considers that priority must be given to obtaining a likely result on election night for the Legislative Assembly, where Governments are formed, and it so recommends. If this means that an initial Legislative Council count cannot take place on election night whilst paying due regard to work health and safety concerns, then the Committee accepts that this count must be delayed, noting that there may be stakeholders, particularly small party stakeholders, who would be disappointed at this outcome. The Committee believes that an initial count of Legislative Council ballot papers should happen on election night if at all possible and notes that if it does not happen, the number of Legislative Council ballot papers would still need to be counted on election night before they are secured to be dealt with more fully at a later date.
- 4.24 In its *Report on the conduct of the 2019 NSW State election* the NSW Electoral Commission stated that it is considering no longer conducting an initial Legislative Council count on election night:
- Having regard to the Electoral Commission's concerns about workplace health and safety for staff in voting centres working excessive hours on election day and issues raised by the minor parties during the election, consideration is being given to not conducting an initial Legislative Council count on election night.<sup>298</sup>
- 4.25 As noted, during the 2019 NSW State election, the Electoral Commission provided a limited initial Legislative Council count on election night. This decision was made for workplace health and safety reasons. The Commission explained:
- Sorting and counting the ballot papers marked '1' above the line was conducted for seven Legislative Council groups. The seven groups were chosen on the basis that at the time of the determination they held, or previously had held, seats in the Legislative Council.<sup>299</sup>

<sup>298</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p17.

<sup>299</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p53.

- 4.26 The Electoral Commissioner has since decided that this process will be reviewed before the next NSW State election:

In the week following election day, a delegation from the groups not selected for the initial count met with the Electoral Commissioner to raise their concerns regarding the initial count process. Noting his concerns regarding workplace health and safety for staff in voting centres working excessive hours on election day, the Electoral Commissioner agreed that the initial Legislative Council count process would be reviewed in consultation with political participants before the next State general election.<sup>300</sup>

- 4.27 At the Committee's hearing on 19 February 2020 Mr Antony Green noted the Commission's proposal not to count Legislative Council ballots on election night and stated 'I would be nervous about that because if they are not counted on the night, when will they be counted?'<sup>301</sup>

- 4.28 Mr Green also stated that the number of Legislative Council ballots would still have to be counted on election night before they were secured to be dealt with at a later date:

The problem...federally was they were just going to count how many ballot papers there were...and then they would go to the central scrutiny centre...As long as the ballot papers are secured and there is some form of back totals, there has to be some counting on the night, you cannot just put them all in a box and send them back. So there needs to be some counting at least how many ballot papers there are, which was the original Senate proposal and I suspect is what the electoral office here is suggesting.<sup>302</sup>

- 4.29 In addition, Mr Green stated that there may be concerns from some stakeholders, particularly minor parties, if there were no Legislative Council results on the night:

If you do not know the result on the night it removes people's confidence in the system. I know the Keep Sydney Open people were extremely upset; they were planning all sorts of parties to follow the result and discovered there were no totals...But that would be a general complaint amongst nearly all small parties if there were no Legislative Council results on the night.<sup>303</sup>

### Counting methods

*Methods used for the Legislative Assembly two candidates preferred count should be modified*

### Recommendation 28

**That the NSW Electoral Commission stop sorting Legislative Assembly ballot papers into single preference and multi preference ballot papers before conducting the two candidates preferred count.**

<sup>300</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p54.

<sup>301</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p8.

<sup>302</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p8.

<sup>303</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p8.

- 4.30 At the hearing on 22 June 2020, the Committee asked the Electoral Commission about the methods it used at the 2019 NSW State election to count ballot papers for the initial Legislative Assembly count. The Electoral Commission stated that it conducted the first preference count and these results were displayed on its website. Then, when it moved on to the two candidates preferred count it sorted ballot papers into those with a single preference on them, and those with multi-preferences, then started the count. Mr Kwok told the Committee:

On the election night, we count and report on first preference to the candidate...Perhaps there is a point about single-preference or multi-preference, perhaps it may be in relation to two-candidate preferred count on election night in the polling places, where we do sort single preference ballot papers by the candidate to simplify the TCP count.<sup>304</sup>

- 4.31 The Committee understands that this sorting process makes it easier for the Commission to enter the necessary data. As Mr Antony Green told the Committee ‘...if the ballot paper only has one...vote it is substantially easier for them to do than to have to data enter all these ones...some of these procedures are just simply done to simplify the process’.<sup>305</sup> However, it lengthens the scrutiny process, particularly in seats that are close, because with two types of votes it is harder to get a clear idea of the patterns that are emerging. To optimise visibility for scrutineers, the Committee considers that this sorting for data entry purposes should not occur until after the two candidates preferred count has taken place.

*In counting postal and declaration votes, the NSW Electoral Commission should prioritise those for closely contested electoral districts*

### **Recommendation 29**

**That in the counting of declaration and postal votes for the Legislative Assembly, the NSW Electoral Commission prioritise ballot papers for electoral districts that are closely contested.**

- 4.32 As noted above, for the 2019 NSW State election there was a centralised counting centre for postal and declaration votes at Carriageworks, Eveleigh. The Committee is of the view that this is a useful initiative and notes evidence from the NSW Electoral Commission that it reduced unnecessary movement of ballot papers from one location to another for processing and counting.<sup>306</sup>
- 4.33 To further increase efficiency and obtain results quickly, the Committee considers that in counting the declaration and postal votes for the Legislative Assembly, the NSW Electoral Commission should prioritise ballot papers for electoral districts that are closely contested. The counting of votes for those districts that are not so closely contested should then follow.

<sup>304</sup> Mr Simon Kwok, *Transcript of Evidence*, 22 June 2020, p8.

<sup>305</sup> Mr Antony Green, *Transcript of Evidence*, 19 February 2020, p6.

<sup>306</sup> Mr Simon Kwok, *Transcript of Evidence*, 22 June 2020, p7.

**Ballot paper scanning**

*The NSW Electoral Commission should investigate ballot paper scanning*

**Recommendation 30**

**That the NSW Electoral Commission examine ballot paper scanning to replace the manual Legislative Council ballot paper check count and data entry processes, and report back to the Committee on the accuracy, reliability and security of such a system before it is implemented.**

**Recommendation 31**

**That if there were any move to ballot paper scanning to replace the manual Legislative Council ballot paper check count and data entry processes:**

- **paper ballots must be retained so that an audit can take place,**
- **under the auditing process randomly sampled electronic ballots should be checked against the paper ballots to see that the digitised preferences have been accurately recorded, and**
- **candidate or party-appointed scrutineers must be included as part of the auditing process.**

- 4.34 In its *Report on the conduct of the 2019 NSW State Election*, the NSW Electoral Commission noted that its manual Legislative Council ballot paper check count and data entry processes could be replaced with scanning technology.<sup>307</sup> The Committee notes that there may be benefits in moving to scanning technology and would support this if the accuracy, reliability and security of such a system could be demonstrated. Therefore, the Committee recommends that the Commission examine these factors and report back to it.
- 4.35 Further, the Committee notes the importance of scrutineers in ensuring the integrity of counts. If there were any move to ballot paper scanning, it would be essential that the paper ballots are retained so that an audit can take place. As part of this process, randomly sampled electronic ballots should be checked against the paper ballots to see that the digitised preferences have been accurately recorded, and candidate or party-appointed scrutineers must be included as part of this process.
- 4.36 In its report, the Commission stated its belief that ‘scanning would provide an accurate, secure, high-performance and cost effective solution to digitally capture the hand-written preferences on Legislative Council ballot papers’.<sup>308</sup> The Commission also noted that the Australian Electoral Commission has used scanning technology for the Senate ballot paper count at the last two Federal elections and that benefits include:

<sup>307</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p15.

<sup>308</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p15.

- reduced manual handling and movement of ballot papers within the count centre,
- less reliance on staff,
- faster declaration of results.<sup>309</sup>

4.37 At the Committee's hearing on 19 February 2020, Associate Professor Vanessa Teague noted the importance of auditing if scanning technology is used so that the electronic output of preferences is matched with paper records. Professor Teague noted that candidate-appointed scrutineers should participate in any such audit:

They are referring to somebody looking at the electronic output of the...preferences and conducting an audit back to the paper records of how people voted. I think that doing that audit is a very good idea. I do not necessarily entirely agree that that should be done by somebody appointed by the Commission. I would suggest that it is entirely appropriate for that to be done with the active participation of candidate-appointed scrutineers because that aligns the incentives better with the people who have an incentive to keep an eye on the process.<sup>310</sup>

4.38 Professor Teague also provided the further details about how auditing of the scanning process might take place:

I would certainly support an auditing process where you take the digitised preferences, which are already published openly in New South Wales, take those, conduct a random sample and for each randomly sampled electronic ballot go back to the paper ballot and check that the digitised preferences are accurately recorded. This kind of process is actually the norm in some enlightened places in the United States.<sup>311</sup>

4.39 At the Committee's hearing on 22 June 2020, the NSW Electoral Commissioner told the Committee of his view that ballot paper scanning would provide greater opportunity for scrutineering:

...my hope is that ballot scanning will enable much more engagement by scrutineers because we will have a copy of every single ballot paper that goes through the process and people will be able to sample it, pull out batches and do all sorts of things, which are just physically impossible at the moment.<sup>312</sup>

## Regulation of voting centres

### Voting centre opening times and signage

*The Committee does not propose additional regulation around voting centre opening times and signage*

4.40 During its inquiry, the Committee heard a call for more regulation about the time at which parties and candidates can start setting up signage at voting centres,

<sup>309</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State Election*, 2019, p54.

<sup>310</sup> Associate Professor Vanessa Teague, *Transcript of Evidence*, 19 February 2020, p12.

<sup>311</sup> Associate Professor Vanessa Teague, *Transcript of Evidence*, 19 February 2020, p12.

<sup>312</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, pp6-7.

including early voting centres, and about the amount of signage that can be erected.

4.41 However, the NSW Electoral Commission stated that this would place significant additional operational burden on it, for which it is not resourced; and that there would be practical barriers as there are limits as to the Commission's level of control over the commercial buildings that it hires to conduct voting. The Committee accepts this evidence and does not propose additional regulation in this area.

4.42 Mr Bradley Vermeer, Operations Director, National Party of Australia – NSW told the Committee:

I would like to see an end to the arms race, especially at pre-poll. In key seats in elections we see people getting up earlier and earlier to get prime real estate – you see 3.00 a.m. setups of booths, which is ridiculous. It is not healthy for our volunteers or anything. If you are going to have the discretion I would also like to see a limit of what you can put in that zone so that people are not required to get up at 3 a.m. to do that. That is farcical...I would like to see a restriction on signage at early voting centres.<sup>313</sup>

4.43 However, the NSW Electoral Commission did not support increased regulation around signage at voting centres and early voting centres, and stated that this would be hard to administer and would place significant additional operational burden on the Commission:

Currently, Voting Centre Managers ensure that the 6 metre exclusion rule is applied at voting centres and that electors are able to freely access the voting centres. Adding...regulation may significantly expand the scope and role of Voting Centre Managers. The NSW Electoral Commission does not have the resources within its compliance team to manage this across the State.<sup>314</sup>

4.44 The Commission also stated that there are practical barriers to increased regulation in this area:

Many of the early voting centres used for state elections are commercial properties, which the NSW Electoral Commission may not take control of until the morning of the day on which early voting opens. Those sites may also operate subject to additional restrictions imposed by the landlord that would interfere with regulating the signage beyond the current provisions. Additionally, many voting centres are rooms or buildings within schools. At those voting locations, the NSW Electoral Commission does not necessarily control the fence or entrance where party or candidate workers erect signage.<sup>315</sup>

4.45 In addition, the Commission told the Committee that further regulation in this area could impact on the resources of local councils and police.<sup>316</sup>

<sup>313</sup> Mr Bradley Vermeer, *Transcript of Evidence*, 18 November 2019, p21.

<sup>314</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, p5.

<sup>315</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, pp5-6.

<sup>316</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, p6.



**Enforcement of the 'six metre rule'**

*There should be discretion about the enforcement of the 'six metre rule' where reasonable*

**Recommendation 32**

**That the NSW Government amend the *Electoral Act 2017* to provide Voting Centre Managers, Early Voting Centre Managers and designated staff at polling places ('designated staff') discretion with regard to the enforcement of the 'six metre rule' where there are reasonable grounds.**

**Recommendation 33**

**That the NSW Government consider whether it is necessary to allocate additional funding to the NSW Electoral Commission to exercise such a discretion with regard to the enforcement of the 'six metre rule'.**

**Recommendation 34**

**That the NSW Electoral Commission issue guidelines, and provide appropriate training, to Voting Centre Managers, Early Voting Centre Managers and designated staff on exercising discretion in the enforcement of the 'six metre rule'.**

- 4.46 Under section 196(b) of the *Electoral Act 2017*, a person must not display or cause to be displayed any poster of any size within six metres of an entrance to a voting centre. Further, under section 198(1), a person must not canvass for votes within six metres of an entrance to a voting centre. The Act makes similar provision for early voting centres.<sup>317</sup>
- 4.47 During the inquiry, some party stakeholders called for NSW Electoral Commission staff in charge at voting centres and early voting centres, to be given discretion in the enforcement of this rule where there are reasonable grounds.
- 4.48 The Committee agrees that the *Electoral Act 2017* should be amended to allow voting centre managers and early voting centre managers discretion with regard to the rule, where there are such reasonable grounds. And as these officers are already busy with other tasks, provision should also be made so that other designated staff at polling places, with an appropriate level of seniority, can exercise this discretion too.
- 4.49 The NSW Electoral Commissioner raised concerns that such a discretion may create uncertainty and cause enforcement problems. However, the Committee considers that there is significant agreement about the circumstances under which it would be appropriate to exercise the discretion for example, where strict adherence to the rule means those handing out how to vote cards have to stand in bad weather, in an unsafe place, or obstruct businesses that are next to the polling place. Further, if the Commission were to issue guidelines and provide training on the exercise of the discretion, this would assist in the management of these concerns.

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<sup>317</sup> See *Electoral Act 2017* ss91(b) and 192(1).

- 4.50 The Committee also notes the Commissioner's evidence that the exercise of such a discretion would require extra resources and recommends that the NSW Government consider whether it is necessary to allocate additional funding to the Commission to exercise such a discretion.
- 4.51 In the course of the inquiry, the Greens NSW submitted that during the early voting period for the 2019 NSW State election, a number of early voting centres were located so that there was no shelter from the sun or rain outside the six metre canvassing restriction. The Greens recommended that Officers in Charge at voting centres, and especially early voting centres, be given discretion regarding enforcement of the six metre rule where there are reasonable grounds (e.g. inclement weather).<sup>318</sup>
- 4.52 Similarly, the National Party of Australia – NSW submitted that the six metre provisions often mean that volunteers at an early voting centre must stand in an awkward position, obstructing the frontage of an adjacent business. The Nationals recommended that discretion be given to early voting centre managers to allow posters and canvassing within the six metre area where it will preclude disruption to surrounding areas, address safety concerns, and is equitable to all candidates involved.<sup>319</sup>
- 4.53 At the Committee's hearing on 18 November, Mr Lennon of NSW Labor confirmed that he would support more discretion in the enforcement of the six metre rule:
- The Hon. PETER PRIMROSE:** ... I am someone who has been rained on at a number of polling booths because I could not move one metre back to be under cover despite all those handing out being prepared to do that because the polling clerk did not have the discretion. I was wondering whether you would support the polling clerks being given the discretion under the Act to allow those booth workers and any paraphernalia they may have—signs et cetera—to move closer than the six metre rule currently allows?
- Mr LENNON:** ... Giving them a bit more power and discretion on the six-metre rule would be a good outcome. In my experience over 40 years the six metres often over time becomes three and sometimes becomes nine, you never know. It depends on how well the booth workers are getting on. I think some discretion in regard to that matter.<sup>320</sup>
- 4.54 Similarly, Mr Despotoski of the Shooters, Fishers and Farmers Party stated that there are examples where everyone could agree the six metre rule should be waived, but that where it has been waived that must be made clear to all:
- Look, there are some very clear circumstances where I think we could all agree on that you could waive that six-metre rule. It is raining, it is dangerous to stand outside, the footpath does not really permit it. There are some very clear, commonsense examples of where we could all agree as political parties.

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<sup>318</sup> Submission 24, The Greens NSW, p5.

<sup>319</sup> Submission 15, National Party of Australia – NSW, pp10-11.

<sup>320</sup> Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, pp8-9.

...So, yes, certainly there are some circumstances which we would support giving that local returning officer some discretion whether to enforce it or not. It is I think more of a point of ensuring that the discretion is made openly and that everyone knows about it, because you have got different people coming on different days, so perhaps some sort of declaration or a sign saying we have waived this rule. That would be important to us too.<sup>321</sup>

- 4.55 Mr Stone of the Liberal Party of Australia – NSW Division emphasised consistency in the application of the six metre rule. When asked whether he would support allowing polling booth staff to have more flexibility in applying the rule he replied:

The issue here is consistency. Yes, local polling officials that are managing individual booths need to be given the authority to make those sorts of decisions but they need to be consistent with the rules that are in place. Unfortunately at virtually every election there are examples where the interpretation of the six-metre rule applied in one place is different from the application in another place, often in the same electorate. My point would be consistency is the key issue here. Local officials need to be mindful of the individual circumstances of a booth—how it is laid out et cetera—but they need to apply the rules consistently.<sup>322</sup>

- 4.56 The NSW Electoral Commissioner told the Committee that he did not support discretion in the enforcement of the six metre rule because it would make parties' rights less clear and therefore make enforcement harder. The Commissioner also noted that it would require extra resources:

I think it does create a risk. As far as possible when it comes to the running of the election we try to have it black and white so that there is clarity of the parties' rights. The voting centre manager has a huge task anyway running the voting centre on the day. If you were to introduce such a discretion I think you would have to bring in an extra person to actually manage that relationship, as I understand it, particularly with early voting centres, the voting centre managers tend to talk to the party workers at the start of the day. They come to an agreement about where the boundary is and talk about the relationship they are going to have for the rest of the day.

If you opened it up to discretion, it raises interesting enforcement issues because now you are having individual discussions at hundreds of voting centres across the State. If there is a subsequent dispute as to whether that gentlemen's agreement, or in the exercise of that discretion, there was a breach of that which will not be solved until months after the election and people have moved on, that could be a problem.<sup>323</sup>

- 4.57 The Commissioner also told the Committee that some of the concerns raised by the six metre rule, such as people having to stand in bad weather, could be addressed to some degree if there were funding to improve the standard of venue for early voting centres:

<sup>321</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p43.

<sup>322</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p14.

<sup>323</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, pp57-58.

There is another way of looking at it, another solution, the challenge we face with a lot of these places, not so much on election day because we tend to use schools, they tend to be set back and have more facilities for people, hopefully more cover for the party workers et cetera.

It is the early voting centres which tend to be more short-term commercial leases. If we had additional funding to perhaps raise the standard of those premises and had clear guidelines or agreement about what were the other facilities that might be required to meet the needs of the party workers, such as shelter, we could certainly look at that but that would come at a cost but if it were agreed we could consider it...In summary, I do not like the idea of a discretion. I believe it would require to implement additional resources as well. But part of the solution might be in actually our choice of venues which we use for early voting.<sup>324</sup>

### **Training of voting centre staff**

*Adequate staff training is essential to ensure proper regulation of voting centres*

#### **Recommendation 35**

**That the NSW Electoral Commission review the training provided to voting centre and early voting centre staff to ensure that it equips staff to:**

- **appropriately regulate the centres, and**
- **issue correct instructions on how to fill out a ballot paper.**

- 4.58 The Committee received some evidence during its inquiry that indicated more rigorous training of the staff of voting centres and early voting centres is needed for them to fulfil their roles. In particular, the Committee heard of an incident where a volunteer from a political party had mistakenly been allowed to issue ballot papers to voters; and concerns about the instructions some staff were issuing to voters about how fill to fill out a ballot paper.
- 4.59 The Committee acknowledges evidence from the NSW Electoral Commission that 23,000 people are employed to run NSW State elections and thus training them is a considerable task. Nonetheless, it is important that all staff are confident and competent in carrying out their roles. If they are not, this could affect the integrity of the electoral process. Therefore, the Committee recommends that the Commission review the training provided to voting centre and early voting centre staff to ensure that it equips staff to appropriately regulate the centres, and to issue correct instructions on how to fill out a ballot paper.
- 4.60 In its submission to the inquiry, NSW Labor told the Committee about an incident in the electoral district of Strathfield:
- 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.

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<sup>324</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58.

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 a 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 ballot and probity of staff.<sup>325</sup>

4.61 NSW Labor recommended more rigorous training for NSW Electoral Commission staff who work at voting centres 'to give confidence that they are able to complete their role in a fair and open manner'.<sup>326</sup>

4.62 NSW Labor also raised concerns about the way in which some NSW Electoral Commission staff issued instructions on how to fill out a ballot paper:

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.<sup>327</sup>

4.63 Again, NSW Labor recommended training so that staff know to inform voters of their right to preference, when they issue instructions on how to fill out a ballot paper.<sup>328</sup>

4.64 In his submission to the inquiry, Mr Nick Casmirri made similar observations, and raised concerns that voters may be discouraged from allocating preferences, if they are not told of this option. He too called for the Commission to review its training in this area:

In my view NSWEC should review its training of polling staff to ensure they are providing more precise instructions to voters at this critical point where ballot papers are issued. These instructions need to cover the fact that further preferences are an option, and the importance of using correct wording and not mistakenly omitting the further preferencing option needs to be reinforced with staff.<sup>329</sup>

4.65 At the hearing on 18 November, the NSW Electoral Commission told the Committee that there are 23,000 people engaged to run NSW State elections and that the level of training they receive depends on their position. Mr Kwok told the Committee:

Election officials are given training. The training tools are available online. They are also given a manual that they need to follow. They are instructed to ask questions that are required to the electors...We engage Election Managers...Training is given face-to-face for close to a week. Then we have different election officials who

<sup>325</sup> Submission 22, NSW Labor, p8.

<sup>326</sup> Submission 22, NSW Labor, p8.

<sup>327</sup> Submission 22, NSW Labor, p8.

<sup>328</sup> Submission 22, NSW Labor, p8.

<sup>329</sup> Submission 6, Mr Nick Casmirri, p1.

require a different level of training...[T]hese are the temporary employees who we engage to work for just one day...we are able to give them training only on an online basis. You can appreciate the scale of the staff involved. That is the extent to which we provide training.<sup>330</sup>

## Accessible voting

### Physical accessibility of voting centres

*Voting centres and early voting centres must be physically accessible wherever possible*

#### Recommendation 36

**That the NSW Electoral Commission conduct a review to determine what steps could be taken to increase the number of fully accessible voting centres and early voting centres for future NSW State elections.**

- 4.66 During its inquiry the Committee received evidence that the number of voting centres and early voting centres that are fully accessible to people with disability needs to be increased. For the 2019 NSW State election only 414 of 2,208 voting centres were fully accessible, and only 52 of 102 early voting centres were fully accessible.<sup>331</sup>
- 4.67 In Chapter Three, the Committee recommended the NSW Electoral Commission conduct a review of the number and location of early voting centres in NSW prior to the 2023 State election to ensure an appropriate level of accessibility. In addition, in choosing early voting centres – and voting centres – the Committee considers that the Commission must examine the accessibility level of the venues themselves. It therefore recommends that the Commission conduct a review to determine what steps could be taken to increase the number of fully accessible voting centres and early voting centres for future NSW State elections.
- 4.68 At its hearing on 19 February 2020, the Committee heard that there need to be more voting centres and early voting centres that are fully physically accessible to people with disability. Mr Digby Hughes of Homelessness NSW told the Committee:
- A large number of rough sleepers do have a disability impairment...We can already work out today when the next State election is going to be...Planning ahead is vital to start finding venues now that are accessible...The fact that polling booths are often not accessible or only accessible with assistance is actually a damning indictment on our society's capacity to make our society fully accessible for all members of the community.<sup>332</sup>
- 4.69 Ms Sally Aurisch of Blind Citizens Australia also spoke to the importance of making sure that voting centres and early voting centres meet accessibility needs:
- I understand that there is a checklist that is often used to determine the suitability of a venue to be a pre-polling or polling station. However, due to the sometimes short notice or short time span for the lease, that a lot of places become unsuitable simply

<sup>330</sup> Mr Simon Kwok, *Transcript of Evidence*, 18 November 2019, p62.

<sup>331</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p47.

<sup>332</sup> Mr Digby Hughes, *Transcript of Evidence*, 19 February 2020, p41.

because they are only needed for a couple of weeks...I think consideration needs to be given to that checklist and making sure that the objectives of it do actually meet the accessibility needs.<sup>333</sup>

- 4.70 In its *Report on the conduct of the 2019 NSW State election*, the NSW Electoral Commission stated that it publishes on its website the accessibility level of every voting centre – fully accessible, partially accessible (assisted access) and not accessible (no wheel chair access). If partially accessible, a description of the accessibility is displayed on the website.<sup>334</sup> The Commission also provided the following accessibility figures for the 2019 and 2015 NSW State elections:<sup>335</sup>

Venue Type	Assisted Access		Fully Accessible		No wheel chair access		Total venues	
	2015	2019	2015	2019	2015	2019	2015	2019
Early voting centre	45	49	46	52	0	1	91	102
Voting centre	1,545	1,486	414	414	314	308	2,273	2,208

#### Staff training to assist voters with special needs

*There must be adequate staff training to assist voters with special needs at voting centres*

- 4.71 During its inquiry, the Committee heard that it is very important that staff at voting centres and early voting centres are appropriately trained to assist voters with special needs.

- 4.72 At the Committee's hearing on 19 February 2020, Mr Bruce Maguire of Vision Australia told the Committee:

Once you are at a polling booth you have to know what to do, you have to find someone who can assist you and hope they have been educated in how to do that. That is not to downplay the inclusive nature of the experience at polling booths...But...we should not ignore the significant challenges that attending polling booths can present for many people.<sup>336</sup>

- 4.73 Ms Aurisch also told the Committee about materials produced by the Australian Electoral Commission to train staff about the services they were expected to provide to people with special needs, and to educate people in the types of assistance they could request:

The Australian Electoral Commission recently produced a training video for their polling booth staff that showed the types of services they were expected to provide to people with disability and people who are frail, elderly, or from diverse backgrounds. At the request of the Australian Electoral Commission's Disability Reference Group, this video was reproduced in a second version to show the way that one could request assistance when attending a polling booth and the types of assistance they could expect to receive. This video...is something the NSW Electoral

<sup>333</sup> Ms Sally Aurisch, *Transcript of Evidence*, 19 February 2020, p41.

<sup>334</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p46.

<sup>335</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p47.

<sup>336</sup> Mr Bruce Maguire, *Transcript of Evidence*, 19 February 2020, p41.

Commission could look at...to ensure that they are providing information that is required.<sup>337</sup>

- 4.74 The NSW Electoral Commission told the Committee that prior to the 2019 NSW State election, staff at voting centres received a guide to providing services to voters, and were required to undertake online training focusing on customer service:

Prior to the 2019 NSW State election, attendance staff at voting centres were provided with a guide to providing services to electors, including people with disability. The information guide focused on skills development and best practice service delivery and also raised awareness about sensitivities and respectful language. Elections staff were also required to undertake an online module that focused on customer service. Embedded into this module is information about working within an inclusive framework, use of respectful language and awareness about stereotypes and biases. This module is compulsory and available for every job category.<sup>338</sup>

#### Information for voters

*Voters must have adequate information about the voting process and candidates*

#### Recommendation 37

**That the NSW Government continue to fund programs under which the NSW Electoral Commission partners with community organisations to provide information to target communities (including voters from culturally and linguistically diverse (CALD) communities; Aboriginal voters; voters with disability; and young voters) about the electoral process.**

- 4.75 During its inquiry, the Committee heard that it is important that certain communities including voters from CALD communities, Aboriginal voters, voters with disability and young voters receive adequate information about the voting process and candidates, to enable them to participate fully in NSW State elections.
- 4.76 In Chapter Three, the Committee recommended that the NSW Government amend the *Electoral Act 2017* to require registered electoral material to be available in accessible formats, to assist voters with disability. Similarly, the Committee notes the excellent work done by the NSW Electoral Commission in partnering with community organisations to provide information to target communities about the electoral process, and recommends that the NSW Government continue to fund such efforts.
- 4.77 In particular, during the inquiry, the Committee received very positive feedback about the “Vote Talk” program, a program to provide culturally appropriate information on voting processes to members of the CALD and Aboriginal communities. In its submission, the Ethnic Communities Council of NSW told the Committee:

<sup>337</sup> Ms Sally Aurisch, *Transcript of Evidence*, 19 February 2020, p35.

<sup>338</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, p6.



[the Ethnic Communities Council of NSW] was engaged by the Australian Electoral Commission (AEC) and NSW Electoral Commission (NSWEC) to facilitate and deliver culturally appropriate educational information to...[CALD] members in their own language...The partnership provided the opportunity for the three agencies to work collaboratively in developing and conveying key messages which can be delivered across various languages and cultures on ethnic and multicultural radio.<sup>339</sup>

4.78 The Ethnic Communities Council of NSW recommended further such partnerships with the NSW Electoral Commission to enable extension of the Vote Talk initiative, and that additional language groups be added.<sup>340</sup>

4.79 Mr Peter Doukas of the Ethnic Communities Council of NSW provided more information about the success of the Vote Talk initiative at the Committee's hearing on 19 February:

The most at-risk language groups were Arabic, Cantonese, Mandarin, Spanish, Hindi, Urdu, Indigenous language groups and we added a youth program for those members of multicultural communities with English just turning 18...We believe the engagement was very successful and some of the key messages that we ensured were delivered as part of the program in those various language groups were: an encouragement of Australian citizens to register to vote; to ensure that they voted properly and to make sure that their vote was counted; the necessity of voting at State, Federal and local council elections and the differentiation between those... the rights associated with having your say in an Australian election; and what it means to not do so...not just a \$55 fine but an absence of democracy and a misrepresentation of our communities...<sup>341</sup>

4.80 In its *Report on the conduct of the 2019 NSW State election*, the NSW Electoral Commission also provided information about the types of stakeholder engagement that it undertook, and resources that it produced, to provide information about the voting process to target communities. This included new citizens, under 18s, Aboriginal people, people from CALD backgrounds and people with disability. The Electoral Commission stated that it partnered with stakeholder organisations including the Ethnic Communities Council of NSW, the Council for Intellectual Disability and the Deaf Society. Methods used to convey information included broadcasts on multicultural radio, how-to-vote videos, Auslan videos and interpreters on election day, multi-lingual election staff, and accessible materials at voting centres.<sup>342</sup>

4.81 With regard to candidate information, the Commission also stated that registered electoral material was displayed on its website from the Monday prior to the 2019 NSW State election day.<sup>343</sup>

<sup>339</sup> Submission 3, Ethnic Communities Council of NSW, p8.

<sup>340</sup> Submission 3, Ethnic Communities Council of NSW, p7.

<sup>341</sup> Mr Peter Doukas, *Transcript of Evidence*, 19 February 2020, p36.

<sup>342</sup> NSW Electoral Commission, NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, pp35-36.

<sup>343</sup> NSW Electoral Commission, NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, 2019, p13.

**Labelling of voting centres in different languages**

*Voting centres and early voting centres should be labelled in different languages*

**Recommendation 38**

**That the NSW Electoral Commission label voting centres and early voting centres in any language where it is assessed that a significant proportion of that electoral district speaks that language at home.**

4.82 The Committee understands that the labelling of voting centres and early voting centres in different languages would improve accessibility of voting for CALD communities. The Committee therefore considers that the NSW Electoral Commission should label voting centres and early voting centres in any language where it is assessed that a significant proportion of that electoral district speaks that language at home.

4.83 At the hearing on 19 February 2020, Mr Doukas indicated to the Committee that the labelling of voting centres and early voting centres in different languages would improve accessibility of voting for CALD communities. He stated: 'Some feedback we have got, particularly from newly arrived communities and recently made Australians is that they did not know what all this commotion was around schools on a weekend on election day'.<sup>344</sup>

4.84 In response, the NSW Electoral Commission stated:

The NSW Electoral Commission would be happy to consider trialling the proposal for polling booths to be labelled in different languages in areas of the Sydney metropolitan where census data provides that a large proportion of the population speak a particular language other than English. This is a matter that the NSW Electoral Commission could raise for discussion and input at future meetings of the Culturally and Linguistically Diverse Reference Group.<sup>345</sup>

**Resources for voters experiencing homelessness**

*There should be increased activity and resources to encourage and assist people experiencing homelessness to vote*

**Recommendation 39**

**That the NSW Electoral Commission partner with homelessness services to provide information to staff and clients about enrolment, elections and voting.**

**Recommendation 40**

**That the NSW Electoral Commission produce written materials about enrolment, elections and voting for people experiencing homelessness, similar to those produced by the Victorian Electoral Commission and:**

- **publish them on the NSW Electoral Commission website;**

<sup>344</sup> Mr Peter Doukas, *Transcript of Evidence*, 19 February 2020, p41.

<sup>345</sup> NSW Electoral Commission, *Answers to Supplementary Questions following 22 June 2020 hearing*, pp6-7.

- **provide hard copies for distribution at homelessness services.**

4.85 During the inquiry, the Committee heard that the NSW Electoral Commission could have done more to assist people experiencing homelessness to vote in the 2019 NSW State election. To optimise accessibility for this group, the Commission must partner with homelessness services to provide information to staff and clients about enrolment, elections and voting. The Committee understands that since the election steps have been taken in this direction.

4.86 The Committee also notes publications produced by the Victorian Electoral Commission to encourage and assist people experiencing homelessness to vote. The Committee is very impressed by these publications and considers the NSW Electoral Commission should produce similar materials to publish on its website and to distribute at homelessness services.

4.87 In its submission to the inquiry, Homelessness NSW noted that there was limited information available on the NSW Electoral Commission website for voters experiencing homelessness. The submission stated:

A search on the website of the NSW Electoral Commission finds no response to either 'homeless' or 'homelessness'. A similar search on the Victorian Electoral Commission site finds a number of resources. Included in these are 'Being homeless doesn't make you voteless' and a 'Homeless not voteless easy English guide'.<sup>346</sup>

4.88 Homelessness NSW called for the NSW Electoral Commission to put such information on its website and to do inreach to prominent homelessness services, providing information to staff and clients on how to enrol.<sup>347</sup>

4.89 Since the submission was made, Homelessness NSW and the NSW Electoral Commission confirmed that arrangements had been made to meet.<sup>348</sup> At the 22 June 2020 hearing, the Commissioner told the Committee:

The Commission, or representatives of the Commission met earlier this year with Homelessness NSW to try to develop a joint pilot program in the lead-up to the local government elections. The aim of the pilot is to increase both awareness and voting amongst individuals who are experiencing homelessness. That work is in train and we are seeing what we can do and certainly liaising with our Victorian colleagues to learn from their experience.<sup>349</sup>

4.90 However, the Commissioner also stated that the level of engagement is linked to the availability of funding:

It is back to the perennial issue and the drum that I constantly beat about: continuity of funding. We tend to get funding for engagement as part of the election cycle, not as part of our core funding base, so we take every election opportunity, which are the major events, to try to enhance our engagement, but that has been a

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<sup>346</sup> Submission 11, Homelessness NSW, p1.

<sup>347</sup> Submission 11, Homelessness NSW, p1.

<sup>348</sup> See Mr Digby Hughes, *Transcript of Evidence*, 19 February 2020, p59; and Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p4.

<sup>349</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p4.

problem...We have not done as much as we could have done in the homelessness space.<sup>350</sup>

4.91 Eligible people experiencing homelessness can enrol and vote in NSW State elections pursuant to section 30(2) of the *Electoral Act 2017* and section 96 of the *Commonwealth Electoral Act 1918*. In enrolling the person, the Electoral Commissioner uses:

- The subdivision for which the person last had an entitlement to be enrolled;
- If no such entitlement exists, the subdivision for which the person's next of kin is enrolled;
- If neither of the above applies, the subdivision in which the person was born;
- If none of the above applies, the subdivision with which the applicant has the closest connection.<sup>351</sup>

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<sup>350</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p4.

<sup>351</sup> See *Electoral Act 2017*, s30(2)(e), and *Commonwealth Electoral Act 1918*, s96.

## Chapter Five – Compliance and enforcement

- 5.1 This Chapter explores issues raised with the Committee concerning compliance with, and enforcement of, electoral legislation. This includes issues around procedures for dealing with complaints; electoral funding; political donations; the compliance burden for electoral participants; the role of technology; and resourcing.

### Complaints and compliance and enforcement procedures

#### Timeliness and effectiveness of compliance and enforcement procedures during the voting period

*What is the NSW Electoral Commission's compliance and enforcement approach?*

- 5.2 During the voting period for the 2019 NSW State election (that is from the start of early voting on 11 March, until the end of election day on 23 March) the NSW Electoral Commission conducted a compliance operation across the State, aimed at ensuring the fair and transparent conduct of the election. For this purpose, a dedicated compliance investigation team was active. In its *Report on the conduct of the 2019 NSW State election*, the Commission explained:

The Electoral Commission was supported by seven investigators, all former police detectives, ICAC senior investigators or current staff at NSW Government agencies such as the Crime Commission, the NSW Ombudsman and Revenue NSW...

Compliance teams were active across NSW from 11 March, and throughout the early voting period until after election day, meeting election staff and engaging with campaign workers, volunteers and members of the public. Investigators visited 182 of 192 early voting centres in regional and metropolitan areas, and all of the 93 voting districts at least once each. Election day operations covered more than 75 regional voting centres and 60 Sydney metropolitan voting centres.<sup>352</sup>

- 5.3 It is understood that the seven investigators were in addition to the NSW Electoral Commission's usual complement of staff that investigate allegations of breaches of electoral legislation (which as at 7 July 2020 was eight officers).<sup>353</sup>
- 5.4 The Commission also advised that it used evidence-based information to prioritise voting centre locations and the issues to be addressed, and that data from the 2019 NSW State election will be used to support subsequent compliance activities.<sup>354</sup>
- 5.5 In relation to its enforcement approach, the Commission advised of the hierarchy of action that it can take:

<sup>352</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, p91.

<sup>353</sup> See NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p2 which were received by the Committee Secretariat on 7 July 2020.

<sup>354</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, p93.

Where contraventions (potential or actual) were identified or reported, inspectors assessed each situation, spoke directly with the parties concerned, escalated matters where relevant and took appropriate action. This action ranged from education, to issuing instructions (such as the removal of non-compliant electoral material), recording details if further investigations were deemed necessary or engaging with local police if matters fell outside the NSW Electoral Commission's area of responsibility.<sup>355</sup>

- 5.6 At the Committee's hearing on 22 June 2020, the Electoral Commissioner also noted that there are a range of offences under the *Electoral Act 2017* and that the Commission can start off with discussions and warnings, working its way up to issuing penalty notices and initiating court action.<sup>356</sup>

*There are concerns about the resolution of complaints made during the voting period*

#### **Recommendation 41**

**That the NSW Electoral Commission collect and publish data to allow stakeholders to evaluate the timeliness with which the Commission resolves complaints about non-compliance with electoral legislation, made during the voting period (that is, from the start of early voting until the end of election day).**

#### **Recommendation 42**

**That the NSW Government make legislative amendments to require the NSW Electoral Commission to advise complainants of the outcome of complaints they have made to the Commission about non-compliance with electoral legislation.**

- 5.7 During its inquiry, the Committee heard a number of concerns from party stakeholders about the need for the NSW Electoral Commission to respond in a more timely way to complaints about non-compliance with electoral legislation, made during the voting period. They stated that timely resolution of complaints is needed to ensure the election is conducted fairly but that a number of complaints were not resolved by the conclusion of the election. As at 22 June 2020, the Committee understands that there were more than 11 matters that remained unresolved.
- 5.8 The Committee also heard that currently the Commission cannot disclose specific compliance outcomes, even to the person who made the allegation that a breach occurred, unless the matter has become the subject of court proceedings. The Committee understands the Commission has suggested legislative change to the Government about its powers to disclose information about these outcomes.
- 5.9 The Committee agrees that timely resolution of complaints made during the voting period is essential for the fair conduct of the election, whilst acknowledging that not all complaints can be resolved in that constrained timeframe. Further, the Committee considers that it would assist with accountability in this area if the Commission were required to publish figures

<sup>355</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, p91.

<sup>356</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p5.

benchmarking the timeliness of complaints resolution against past practice, and it so recommends.

- 5.10 In addition, the Committee considers it important that the Commission can fully respond to complainants about the complaints that they have made. Therefore, it recommends that the Government make legislative amendments to require the Commission to advise complainants of the outcome of complaints they make to the Commission about non-compliance with electoral legislation.
- 5.11 The Committee also heard calls for more resourcing for the Commission to conduct its investigations, and for an online portal for the management of complaints. The Committee agrees that these measures may be helpful and they are dealt with later in the Chapter when discussing resourcing and technology more generally.
- 5.12 During the inquiry, NSW Labor raised concerns that the Commission needs more resources to investigate complaints as they arise if it is to have any meaningful impact on electoral outcomes. The Party stated:
- The nature of the complaints and 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...complaints on a range of issues with seventeen...receiving a resolution.<sup>357</sup>
- 5.13 In its submission to the inquiry, Country Labor made similar observations, stating that it had lodged 15 complaints and that many were not resolved by the conclusion of the election.<sup>358</sup>
- 5.14 The National Party of Australia – NSW also raised concerns about complaints resolution, making the same point as NSW Labor that timely resolution is needed to ensure the election is conducted fairly:
- Throughout the election period the NSW Nationals lodged several notifications of incorrectly authorised or otherwise non-compliant electoral material to the Commission via email...The response time for acknowledgement of receipt of email was approximately one week. Considering the election period is short, this response time is unacceptable...[S]taff and officials should be in a position to respond to complaints from close of nominations to ensure the election is conducted fairly.<sup>359</sup>
- 5.15 The Nationals also suggested that an online complaints portal be created so that complaints can be lodged and categorised based on subject matter. The Party contended that the current system of forwarding all complaints, from those that are booth-specific to those that are of state-wide importance, to the one email address is causing delays and a lack of accountability.<sup>360</sup>
- 5.16 Similarly, at the Committee’s hearing on 18 November 2019, Mr Despotoski of the Shooters, Fishers and Farmers Party stated:

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<sup>357</sup> Submission 22, NSW Labor, p1; see also Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, p2.

<sup>358</sup> Submission 23, Country Labor, p1.

<sup>359</sup> Submission 15, National Party of Australia – NSW, p9.

<sup>360</sup> Submission 15, National Party of Australia – NSW, p9.

I think we can agree on one thing with The National Party. When we both made complaints about one another in those similar circumstances, we were not happy with the resolution of those complaints and how quickly they were done. I say that fully appreciating the constraints and resource constraints on the Electoral Commissioner and his staff. It is not a perfect world. [B]ut, yes, we would stand by that submission that the complaints process could definitely be improved.<sup>361</sup>

5.17 In answers to questions taken on notice, the Shooters, Fishers and Farmers Party also confirmed that it made two complaints during the 2019 NSW State election period, neither of which was resolved:

We made two complaints. One via phone, which remains unsolved to this day. The second was a complaint with respect to the filming of volunteers outside a polling booth which, after 3 days of correspondence back and forth, the Electoral Commission could do nothing about.<sup>362</sup>

5.18 In its *Report on the conduct of the 2019 NSW State election*, the Commission published statistics about the number of complaints it received for the election about non-compliance with the electoral legislation, broken down by offence type and outcome (that is, no further action required, warning or ongoing).<sup>363</sup>

Offence type	Outcome	Number
Electoral Material	No further compliance or enforcement action required	67
	Warning	40
	Ongoing	9
Misconduct at voting centres	No further compliance or enforcement action required	22
	Warning	6
Bribery/Treating	No further compliance or enforcement action required	2
	Warning	-
Electoral Roll offences	No further compliance or enforcement action required	2
	Warning	1
Offences relating to third party campaigners	No further compliance or enforcement action required	10

<sup>361</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p45.

<sup>362</sup> Shooters, Fishers and Farmers Party, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

<sup>363</sup> NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, p92.



	Warning	1
	Penalty notice	1
Offences relating to electoral expenditure	No further compliance or enforcement action required	8
	Warning	6
Potential unlawful donations	No further compliance or enforcement action required	-
	Warning	2
Offences relating to postal votes	No further compliance or enforcement action required	1
	Warning	-
Miscellaneous	No further compliance or enforcement action required	1
	Warning	-
	<b>Total</b>	<b>179</b>

5.19 Commenting on these figures, the NSW Electoral Commission noted that 116 of the 179 matters related to electoral materials and of those 79 related to unauthorised materials, that is deficiencies in the authorisation or printer's details on the electoral material.<sup>364</sup> The Commission also reported that as at 12 December 2019 there were 11 matters still open that arose from allegations made during the voting period.<sup>365</sup> However, at the 22 June 2020 hearing, the Commission advised further that the number of matters still open had gone up because some more voting-related offences (e.g. failure to vote) had come into the statistics since December.<sup>366</sup>

5.20 In addition, the Commission advised that its compliance team took action as soon as practicable on being made aware of an alleged breach during the voting period, to minimise any impact on the conduct of the election:

During the 2019 State election voting period, the compliance team prioritised contacting the person or organisation involved in the alleged breach to inform them of their obligations. If appropriate, the compliance team would then request that person or organisation to rectify the apparent breach. Such action was undertaken as soon as practicable during the voting period to minimise the impact of any breach on the conduct of the election. Case files were then created so that all matters could

<sup>364</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p3.

<sup>365</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p4.

<sup>366</sup> Ms Rachel McCallum, Executive Director, Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission, *Transcript of Evidence*, 22 June 2020, p5.

be managed consistently, in accordance with the NSWEC's compliance and enforcement policy.<sup>367</sup>

- 5.21 As a number of complaints made during the voting period related to unauthorised material, the Commissioner also provided further details of the Commission's compliance and enforcement approach in this specific area. The Commissioner noted most people respond appropriately when the Commission raises concerns with them, and that where formal action is needed, it is hard to complete this within the constrained timeframes of the voting period:

What we would normally do is we would ask the complainant to provide us with a copy of the material; presumably, in most circumstances they will have it because that is the nature of the matter that they are raising. We had at the last election some compliance teams who were out there in the field. If one of those teams was available, they could go and speak to individuals on the spot and record the events. It is very difficult in the time frame—that short period when the election is alive—to take formal compliance action. The endeavour is to try to get evidence, which can be used post the event to bring a prosecution if it is warranted.

But the normal approach first off—and this does seem to work in most occasions—is that people are contacted—the party or the individual who circulated the material. The general experience is that people do respond to that contact and either remove the material or take steps to put the appropriate authorisation on.<sup>368</sup>

- 5.22 The Committee also asked the Commission if it had benchmarked the timeliness of resolution of complaints for the 2019 NSW State election against past practice. However, the Commission responded that 'the data about allegations at previous general elections is limited because the NSWEC had no dedicated compliance teams at those elections'.<sup>369</sup>

- 5.23 With regard to complainants being advised as to the outcome of their complaints, the Commissioner stated that the electoral legislation does not generally permit the Commission to make public statements about the status, conduct and outcome of investigations, nor to tell complainants about the outcome:

I am not in a position, and the Commission has no authority under our legislation to talk about the status of investigations, and even when they are finalised, only if there is a legislative requirement to make a public statement of some sort—the lobbyist legislation is an example, where we are required to give reasons for taking certain actions against lobbyists, or there is a court action where the thing becomes public—the legislation does not permit me to make public statements about the status, conduct and outcome of investigations other than I have received an allegation which is being examined in accordance with our normal procedural requirements and it might be in due course I would say that the matter has been concluded...<sup>370</sup>

<sup>367</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p4.

<sup>368</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p4.

<sup>369</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p2.

<sup>370</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p52.

5.24 The Commissioner stated further:

We advise complainants that the matter has concluded, but we are, again, limited in what we can actually tell them about the outcome. We are developing—and this is a matter for the Parliament ultimately—other regulatory regimes to give more scope for a regulator to say more about their investigations.<sup>371</sup>

5.25 The Commission also advised later that it had made suggestions to the Government concerning the Commission's powers to disclose information about the outcomes of its investigations:

The NSWEC has provided some suggestions for further legislative refinements to the Department of Premier and Cabinet, for its consideration. One of those suggestions concerns the powers of the NSWEC to disclose information about the outcomes of its investigations. The NSWEC is required to provide a statistical report to Parliament each year about its enforcement activities, which forms part of its annual report. It is not empowered, however, to disclose specific compliance outcomes, even to the person who made the allegation, unless the matter has become the subject of court proceedings. Legislative amendments would need to be made if an increased level of reporting – including directly to informants – is considered desirable for investigation outcomes.<sup>372</sup>

## Electoral funding

### Administration funding

*Administration funding should be provided in advance, paid and claimed quarterly, and entitlements calculated on an annualised basis*

#### Finding 5

**Entitlements to administration funding under the *Electoral Funding Act 2018* should continue to be paid and claimed on a quarterly basis.**

#### Recommendation 43

**That the NSW Government amend the *Electoral Funding Act 2018* so that:**

- **quarterly payments of administration funding are made in advance, not in arrears, and**
- **any unused portion of the quarterly payment can be carried over to the subsequent quarter within a calendar year.**

5.26 Under Part 5, Divisions 1 and 2 of the *Electoral Funding Act 2018*, parties with elected Members of Parliament, and independent Members of Parliament are entitled to quarterly re-imbusement for specified administration and operating expenses out of the 'Administration Fund' that is kept by the NSW Electoral Commission. Under section 91(2), half of the quarterly payment is made in advance with the rest made in arrears.

<sup>371</sup> Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p52.

<sup>372</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p4.

- 5.27 Claims for administration funding are also made on a quarterly basis. A claim for quarterly advance payment can be made at least two weeks before the end of each quarter; and a claim for quarterly payment can be made within three months of the end of each quarter. A quarterly payment takes into account whether a party or elected member has received a quarterly advance payment for the quarter; and the amount of expenditure included in a quarter. Further, a claim for payment must:
- be lodged with the NSW Electoral Commission using the approved form,
  - be accompanied by a declaration which includes administrative expenditure incurred in the quarter, and
  - the expenditure referred to in the declaration must be accompanied by copies of the accounts or receipts for the expenditure and any other information the NSW Electoral Commission may require in connection with the claim.<sup>373</sup>
- 5.28 In its submission to the inquiry, the National Party of Australia – NSW called for entitlements to administration funding to be calculated on an annualised basis, but to continue to be paid quarterly, as this would allow the funding to be spread across the year to account for the fact that some quarters are busier than others.<sup>374</sup>
- 5.29 In addition, in its submission, the Shooters, Fishers and Farmers Party argued that the fact the quarterly payments are made half in advance, half in arrears, disadvantages minor parties that lack working capital. The Party stated that administration funding should be paid for the year at the start of the year and any unspent funds refunded.<sup>375</sup>
- 5.30 The Committee agrees that the fact that half of the quarterly payments are made in arrears may disadvantage smaller parties that lack working capital, and this may also disadvantage independent Members of Parliament for the same reason. For example, the maximum quarterly amount of administration funding payable to an independent elected Member of Parliament is currently \$58,600.<sup>376</sup> Therefore, the amount advanced to such Members under the current provisions would be \$29,300 and if they wanted to use any more of their entitlement they would have to foot the bill themselves, and claim it back in arrears, which may not be possible for some.
- 5.31 The Committee also agrees that entitlements to administration funding should be calculated on an annualised basis so that the funding can be spread across the year, accounting for the fact that some quarters are busier than others. However, it supports the actual payments, and the associated claims, continuing to be

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<sup>373</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Public-funding/Administration-Fund> viewed 25 September 2020.

<sup>374</sup> Submission 15, National Party of Australia – NSW, p4.

<sup>375</sup> Submission 25, Shooters, Fishers and Farmers Party, pp2-3.

<sup>376</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Public-funding/Administration-Fund> viewed 27 August 2020.

made on a quarterly basis having regard to evidence from the Electoral Commission that quarterly claims may be more efficient to administer.<sup>377</sup>

5.32 Therefore, the Committee recommends the *Electoral Funding Act 2018* be amended so that quarterly payments of administration funding are made in advance, not in arrears; and so that any unused portion of the quarterly payment can be carried over to the subsequent quarter within a calendar year. Any portion still unused at the end of the calendar year could then be refunded to the Electoral Commission.

5.33 In its submission to the inquiry, in calling for entitlements to administration funding to be calculated on an annualised basis, the National Party stated:

There is no mechanism to account for Party spending that is uneven between the quarters. For instance, if a large payment for insurances or conference is paid during one quarter, but the total amount eligible to be claimed is not spent in another, there is no way to average this out over the year. Whilst the NSW Nationals maintain that claims should be paid quarterly, the amount that a Party is eligible to claim should be able to be reconciled over the entire calendar year to account for this.<sup>378</sup>

5.34 At the Committee's hearing on 18 November 2019, the Party expanded on this point with Mr Ross Cadell stating:

The annualisation is the reverse of what it used to be. At the end of the year you used to work out what you had spent versus what you could and you could almost top up. Now it is a reverse onus where if you do not spend it, you can never catch up. So quarter one, where generally people are on leave or might be away, if you are not spending your entitlement you can never catch that up in the claims system from quarter one. It is a bad way of doing it. It should be annualised on a quarterly basis...The claims go in all the time. They can see that there is some ability to give the money back if it is not required.<sup>379</sup>

5.35 At that hearing, Mr Grant Layland of the Shooters, Fishers and Farmers Party agreed that entitlements to administration funding should be calculated on an annualised basis, but continue to be paid quarterly stating 'January is a slow month for everyone. Everything is shut down but you have to spend the money...[W]e find the third quarter is the busiest so we spend more that quarter'.<sup>380</sup>

5.36 In response, the NSW Electoral Commission stated that currently under the legislation, if administrative expenditure is incurred in excess of the maximum amount to which a member or party is eligible for that quarter, the amount of that excess can be carried over to a subsequent quarter in the same calendar year. It further stated that it is a matter for Parliament whether any unused maximum amount should also be able to be carried over to a subsequent quarter in the same calendar year.<sup>381</sup>

<sup>377</sup> Ms Rachel McCallum, *Transcript of Evidence*, 22 June 2020, p10.

<sup>378</sup> Submission 15, National Party of Australia – NSW, p4.

<sup>379</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2019, p24.

<sup>380</sup> Mr Grant Layland, *Transcript of Evidence*, 18 November 2019, p47.

<sup>381</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p6.

5.37 In addition, the Commission identified that while it would have to make some changes to its systems and processes should there be such an amendment, it did not expect that this would create any significant administrative issues.<sup>382</sup>

5.38 The Commission also provided evidence that processing quarterly claims for administration funding is more administratively efficient than processing annual claims:

If it was an annualised amount obviously that is going to be a larger amount and it may throw up interesting record-keeping and maybe some more challenges for the Commission in terms of us seeking to ensure that the amounts were legitimately incurred during the course of a longer period of time.<sup>383</sup>

### Campaign funding

*What provision is made for public funding of NSW State election campaigns?*

5.39 Under Part 4, Division 2 of the *Electoral Funding Act 2018*, eligible parties and candidates can claim public funding from the Election Campaigns Fund for election campaigns. Moreover, under section 73(1) of the Act, a claim for such payment, other than an advance payment, in respect of a State election must be lodged with the Electoral Commission before the expiration of 120 days after the day for the return of the writs for the election.

5.40 As noted in Chapter One, the writs are the formal trigger setting the electoral process in motion. They are issued the Monday after the expiry of the Legislative Assembly for the State election.<sup>384</sup> The return of the writs is generally to occur within 60 days of their date of issue,<sup>385</sup> and they include the names of the successfully declared candidates. For the 2019 NSW State election it is understood that the deadline for claims for campaign funding to be lodged was 2 September 2019.<sup>386</sup>

*Campaign funding entitlements could be paid in two increments to spread workflow and cash flow*

### Recommendation 44

**That the NSW Government consider amending the *Electoral Funding Act 2018* so that claims from the Electoral Campaigns Fund are paid to eligible parties and candidates in two instalments following an interim claim and a final claim.**

5.41 During its inquiry, the Committee heard that the above timeframes for claiming from the Electoral Campaigns Fund mean the process is too drawn out with parties having to expend a significant amount before re-couping it.

5.42 The Committee notes that under section 72 of the *Electoral Funding Act 2018*, there is some provision for advance payments from the Electoral Campaigns Fund but this only applies to registered parties that have been registered for at least 12

<sup>382</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p6.

<sup>383</sup> Ms Rachel McCallum, *Transcript of Evidence*, 22 June 2020, p10.

<sup>384</sup> *Constitution Act 1902*, s11A and *Electoral Act 2017*, ss74(1)(a) and (2) and 75(1)(a)).

<sup>385</sup> *Electoral Act 2017*, s75(3)(b).

<sup>386</sup> Submission 25, Shooters, Fishers and Farmers Party, p2.

months, that received payment from the Fund for the previous State general election, and that make a claim. The Committee notes further that at the Federal level, the Australian Electoral Commission automatically pays a certain amount of election funding to the agent of each eligible political party, candidate or Senate group as soon as practicable 20 days after the polling day for an election. A claim can then be lodged for further funding where applicable.

5.43 The Committee is of the view that the NSW Government should consider amending the *Electoral Funding Act 2018* so that claims from the Electoral Campaigns fund are paid to candidates in two instalments following an interim claim and a final claim. This may allow parties and candidates to better spread workflow and cash flow, and cover a greater number of election participants than the current advance payments system.

5.44 The Liberal Party of Australia – NSW Division told the Committee:

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...and while the public funding is outstanding, the Party continues to incur interest on those facilities.<sup>387</sup>

5.45 The Liberal Party also argued that the process for claiming public funding should reflect the speed with which public funding claims are assessed and paid at the Federal level:

...despite the federal election being held almost two months after the NSW election, the Australian Electoral Commission had already completed its public funding process and public funding claims [were] paid well before lodging a claim from the Electoral Campaigns Fund for the state campaign.<sup>388</sup>

5.46 Similarly, the Shooters, Fishers and Farmers Party told the Committee:

Under the current Act claims by candidates and parties for campaign funding for the recent State general election had to be made by 2 September. The claim can only be made once. Claims were not submitted until close to the deadline of 2 September in order [that] candidates and parties ensure they capture all claimable expenditure possible. This resulted in the NSW Electoral Commission having to process and make payments within the time period of 14 days as required.<sup>389</sup>

5.47 Like the Liberal Party, the Shooters, Fishers and Farmers Party pointed to the Federal system as preferable: 'A better option would be to follow the current Federal legislation of lodging and paying an interim claim then a final claim. This would spread the workload and cash flow for campaign funding'.<sup>390</sup>

5.48 According to the Australian Electoral Commission (AEC) website, election funding at the Federal level is payable in relation to any candidate or group who receives

<sup>387</sup> Submission 18, Liberal Party of Australia – NSW Division, p6.

<sup>388</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>389</sup> Submission 25, Shooters, Fishers and Farmers Party, p2.

<sup>390</sup> Submission 25, Shooters, Fishers and Farmers Party, p2.

at least 4 per cent of the total first preference votes at an election. Further, the AEC automatically pays an amount to the agent of each eligible political party, candidate or Senate group as soon as practicable after 20 days after the polling day for an election.<sup>391</sup>

- 5.49 To receive election funding of greater than the automatic payment a claim setting out the electoral expenditure incurred must be lodged with the AEC by the agent of the eligible political party, candidate or Senate group. Payment of the election funding is limited to the lesser of:
- the calculated election funding entitlement, or
  - the amount of demonstrated electoral expenditure.<sup>392</sup>

- 5.50 A claim must be lodged with the AEC no earlier than 20 days after polling day, and no later than six months after polling day.<sup>393</sup>

- 5.51 However, there is some provision for advance payments to be paid at the NSW level. Under section 72 of the *Electoral Funding Act 2018*, registered parties that have been registered for 12 months or more that received a payment from the Electoral Campaigns Fund in relation to the previous State general election are entitled to receive an advance payment prior to the next State general election.

- 5.52 According to the NSW Electoral Commission's website:

The advance payment is 50 per cent of the amount to which the party was entitled for the previous State general election. Advance payments are made to eligible parties between 1 October in the year prior to a State general election and election day.

The NSW Electoral Commission advises eligible parties of their entitlement to make a claim for an advance payment. An advance payment to a party is deducted from the party's payment following the state general election. Following a state general election, if a party that has received an advance payment, does not become eligible for payments from the fund after the election, the advance payment is to be repaid to the NSW Electoral Commission.<sup>394</sup>

### Party membership subscriptions

*What laws apply regarding party membership subscriptions and their use for campaign purposes?*

- 5.53 As noted in Chapter One, under the *Electoral Funding Act 2018*, a political donation is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated

<sup>391</sup> Australian Electoral Commission website: [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/](https://www.aec.gov.au/Parties_and_Representatives/public_funding/) viewed 31 August 2020.

<sup>392</sup> Australian Electoral Commission website: [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/](https://www.aec.gov.au/Parties_and_Representatives/public_funding/) viewed 31 August 2020.

<sup>393</sup> Australian Electoral Commission website: [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/](https://www.aec.gov.au/Parties_and_Representatives/public_funding/) viewed 31 August 2020.

<sup>394</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Public-funding/Election-Campaigns-Fund> viewed 31 August 2020.



entity or third party campaigner in NSW. People and entities making political donations are called ‘donors’.<sup>395</sup>

- 5.54 Sections 23 and 24 of the *Electoral Funding Act 2018*, place general caps on political donations. However, under section 26, party subscription fees are partially exempt from the caps on political donations. Section 26 provides that a ‘party subscription’ includes ‘an annual or other subscription paid to the party by a member of the party’. Such a party membership subscription is not subject to the caps on political donations except a fee of more than \$2000.
- 5.55 Further, such party membership subscriptions are not generally permitted to be used for campaign purposes. Under section 37 of the *Electoral Funding Act 2018*, parties must keep a campaign account which is used for receiving political donations and making electoral expenditure.<sup>396</sup> However, under section 37(3), a party membership subscription cannot be paid into the campaign account other than any amount that exceeds \$2000.

*The NSW Government should consider whether party membership subscription fees should be able to be used for campaign purposes*

#### **Recommendation 45**

**That the NSW Government consider amendments to the *Electoral Funding Act 2018* so that party membership subscription fees can be used for campaign purposes if the party chooses, with appropriate quarantining so that subscription fees from prohibited donors cannot be so used.**

- 5.56 During its inquiry, the Committee heard from some stakeholders that the above laws should be changed and that parties should not be prohibited from using party membership subscription fees for campaign purposes.
- 5.57 The Committee is of the view that the NSW Government should consider legislative amendments so that party membership subscription fees can be used for campaign purposes if the party chooses. The Committee agrees that grassroots party members could legitimately expect their membership fees to be used in this way. Further, the current restrictions may disadvantage smaller parties who obtain a greater proportion of funding through membership fees, and less through political donations, than larger parties.
- 5.58 One argument against allowing party membership subscription fees to be used for campaign purposes relates to prohibited donors. As noted Chapter One, certain individuals and entities are classified as ‘prohibited donors’ under the *Electoral Funding Act 2018* and they cannot make a political donation.<sup>397</sup> If the membership fees of such persons could be used for campaign purposes, this would circumvent the prohibited donor laws. However, the Committee considers this could be managed by quarantining the membership fees of prohibited

<sup>395</sup> See *Electoral Funding Act 2018*, sections 4 and 5, and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/What-is-a-political-donation> viewed 31 August 2020.

<sup>396</sup> See also NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Campaign-accounts> viewed 31 August 2020.

<sup>397</sup> *Electoral Funding Act 2018*, Part 3, Division 7.

donors, that is, requiring membership fees from these individuals to continue to be paid into the relevant party's administration account, not the campaign account.

- 5.59 Another argument against the change is that it may have a tendency to subvert the political donation caps, allowing campaign funds to be raised through alternative means. Arguably, political parties could raise supplementary campaign funds through donors becoming nominal party members, thus increasing the total amount that donors can contribute.
- 5.60 In calling for a change to the current laws, the Shooters, Fishers and Farmers Party told the Committee:
- Our members expect that their annual subscription should be available to be used in the promotion of the Party during election periods, however the current restriction on placing membership subscriptions into our Campaign Fund means this is not possible. The Shooters, Fishers and Farmers Party strongly believe that all membership subscriptions should be available to be used at the discretion of the Party during an Election Campaign, in so far as they comply with all NSW Electoral Commission Guidelines.<sup>398</sup>
- 5.61 Similarly, at the Committee's hearing on 18 November 2019, Mr Cadell of the National Party of Australia – NSW noted that parties cannot use the public funding they are given from the Administration Fund discussed earlier, for things of a semi-campaign nature and that freeing up party membership subscriptions so that they could be used for campaigns would assist in these situations:
- I am on my way tomorrow to an advocacy seminar and conference but because there is a potential for a slight campaign aspect of it, because we are talking about technology, I cannot claim that under party administration fund.<sup>399</sup>
- 5.62 However, when Mr Christopher Stone of the Liberal Party of Australia – NSW Division was asked at the 18 November hearing whether he thought party membership subscription fees should be able to be used for campaign purposes, he responded that 'I would not really have a view one way or the other. Obviously they are considered administration at the moment'. Mr Stone also stated that he did not see any compelling reason to change that.<sup>400</sup>
- 5.63 At the 18 November hearing, the Shooters, Fishers and Farmers Party was also asked how its proposal to allow party membership subscriptions to be used for campaign purposes would fit with the laws around prohibited donors. Mr Layland responded that membership funds from such donors could continue to be directed to the relevant party's administration account:

**The Hon. BEN FRANKLIN:** You would like membership subscriptions to potentially be used in the campaigning account... But if you are using membership subscriptions, how do you get around the prohibited donors issue? Does that mean that you would stop prohibited donors being able to become members of the party, which they

<sup>398</sup> Submission 25, Shooters, Fishers and Farmers Party, p2.

<sup>399</sup> Mr Ross Cadell, *Transcript of Evidence*, 18 November 2019, p24.

<sup>400</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p16.

currently are at the moment? Or would you seek to quarantine those membership subscriptions so they could not be used for campaigning?

**Mr LAYLAND:** One way is to quarantine. If you give the party the choice of where they put their membership funds, then if it was a prohibited donor becoming a member that could still go into the administration account. You leave it to the party to direct the membership so that it is not forced into administration, like it is now.<sup>401</sup>

## Political Donations

### Prohibited donors

*Some stakeholders told the Committee there should be additional categories of prohibited donor*

5.64 As noted above, and in Chapter One, certain individuals and entities are classified as ‘prohibited donors’ under the *Electoral Funding Act 2018* and they cannot make a political donation.<sup>402</sup> During its inquiry, some stakeholders told the Committee that there should be additional categories of prohibited donor to reduce the risk or perception of undue influence or corruption in political decision making in NSW.

5.65 The NSW Government could consider whether it is necessary to amend the *Electoral Funding Act 2018* to include additional categories of prohibited donor to reduce the risk or perception of undue influence or corruption in political decision making in NSW. However, another view put to the Committee was that such bans are discriminatory and undemocratic and that the caps that apply to political donations are set at a level that prevents any particular donor from exerting undue influence.

5.66 In its submission to the inquiry, The Greens NSW told the Committee that the definition of a prohibited donor in the *Electoral Funding Act 2018* should be expanded to include mining interests:

The definition of a prohibited donor in the *Electoral Funding Act 2018* includes property developers and tobacco, liquor and gambling business entities because of a perception of undue influence or corruption. We believe that the public shares the same perception in relation to mining interests. Therefore, the same prohibition should be extended to include those who seek licences to explore or exploit mineral resources...<sup>403</sup>

5.67 Similarly, in its submission to the inquiry, NSW Labor stated that provisions banning property developers from making political donations ‘helped return integrity and trust to the funding of political parties and remove the perception of undue influence’. NSW Labor further argued that it was now time to prohibit the following groups from making political donations:

- Real estate agents, as defined under the *Property, Stock and Business Agents Act 2002*, and

<sup>401</sup> *Transcript of Evidence*, 18 November 2019, p43.

<sup>402</sup> *Electoral Funding Act 2018*, Part 3, Division 7.

<sup>403</sup> Submission 24, The Greens NSW, p13.

- Professional lobbyists who appear on the Register of Third Party Lobbyists, and their 'close associates or corporations or organisations that are regularly involved in these practices'. NSW Labor stated that this would affect third party lobbyists as defined under the *Lobbying of Government Officials Act 2011*.<sup>404</sup>

5.68 In contrast, the Shooters, Fishers and Farmers Party told the Committee that it opposed those in certain industries being banned from making political donations, and that such bans are unnecessary when there are caps on political donations:

Our position on bans on participants in certain industries is that they are not needed when there are donations caps in place. Such bans are discriminatory and undemocratic. The donation caps in place prevent any particular individual or entity from exerting influence due to the small size of the caps. In regional NSW it prevents fundamental parts of the community from participation in the political process based on city issues.<sup>405</sup>

5.69 According to the NSW Electoral Commission website, the following caps on political donations apply for the 2020-21 financial year:

- Donation to registered party or group of candidates: \$6,600
- Unregistered party (or party registered for less than 12 months), elected Member, or candidate: \$3000.<sup>406</sup>

## Compliance burden

5.70 During its inquiry, the Committee heard of a range of areas in which the administrative burden of complying with electoral legislation was thought by stakeholders to be quite cumbersome. This section explores those areas and makes recommendations for improvement.

### Authorisation of online electoral material

*What are the laws around authorisation of online electoral material?*

5.71 The *Electoral Act 2017* contains requirements for the authorisation of electoral material. Under section 186(1), a person must not during the 'regulated period' print, publish, distribute or publicly display 'electoral material' (other than an announcement in a newspaper of the holding of a meeting), without legibly showing on the material:

- the name and address of an individual on whose instructions the material was printed, published or distributed, and
- if the material has been printed, the name of the printer and address at which it was printed.

<sup>404</sup> Submission 22, NSW Labor, p10.

<sup>405</sup> Submission 25, Shooters, Fishers and Farmers Party, p3.

<sup>406</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations> viewed 31 August 2020.

- 5.72 The ‘regulated period’ means the period starting on the date of the issue of the writ for the election and ending at 6pm on election day; and ‘electoral material’ means any thing, including a how-to-vote card, poster or advertisement containing ‘electoral matter’, whether in tangible or electronic form. ‘Electoral matter’ is in turn defined to include any matter that is capable of affecting the result of any election.<sup>407</sup>
- 5.73 However, section 186(2)(d) of the *Electoral Act 2017* provides that the above requirements do not apply to any article prescribed, or of a class prescribed, by the regulations. And clause 8A of the *Electoral Regulation 2018* accordingly provides certain exemptions from the requirement to have a name and address recorded on social media posts. In particular, it provides that:
- a social media post made by an electoral participant (or on behalf of an electoral participant by an officer, employee or agent of the electoral participant), is exempt from the requirement to have a name and address recorded on electoral material but only if:
    - the name and address of the electoral participant was included in or directly linked to the post, and
    - no amount was paid to the social media platform provider concerned in connection with the printing, publication, distribution or public display of the post.
- 5.74 Similarly, an accompanying note to clause 8A of the Regulation provides examples of what might satisfy the requirement for the name and address to be ‘included in or directly linked to the post’. For instance, a name and address could be included:
- at the end of a post, or
  - in a photograph or image attached to or embedded in the post, or
  - in the “about”, “bio” or “impressum” part of the webpage or profile of the person who made the post (or on whose behalf the post was made) that is accessible via a hyperlink or URL included in or accompanying the post.

*Requirements around the authorisation of online electoral material should be clarified*

#### **Recommendation 46**

**That the NSW Government consider amending the *Electoral Act 2017* and/or the *Electoral Regulation 2018*:**

- **to make it clear that there is no requirement for each individual post of online electoral material to be authorised, and**

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<sup>407</sup> *Electoral Act 2017*, s4.

- **to make it clear that it is sufficient for the authorisation to appear in a prominent place on a webpage or social media page to certify that everything posted to the page is authorised.**

#### **Recommendation 47**

**That the NSW Government amend the *Electoral Act 2017* to provide that the NSW Electoral Commission may, from time to time, determine and issue guidelines not inconsistent with the Act or regulations about the location and method of authorisation for online electoral material.**

- 5.75 During the Committee's inquiry, some party stakeholders raised concerns about the current compliance burden for authorising online electoral material. In particular, they complained about having to authorise each individual post on webpages and social media.
- 5.76 It appears that there is some confusion about whether it is necessary under the current law to authorise each individual post of online electoral material. As noted above, under the *Electoral Act 2017* and the *Electoral Regulation 2018*, there is some scope so that each social media post does not have to be authorised as long as an authorisation appears on the webpage to which it is posted. However, the Committee heard that given the lack of clarity, stakeholders may be authorising each individual post just in case.
- 5.77 The Committee considers that it imposes an unnecessary compliance burden if electoral participants are required to authorise every post of online electoral material. The underlying principle of requiring authorisation is so that people viewing the material know its origins. Therefore, the NSW Government should consider amending the *Electoral Act 2017* and the *Electoral Regulation 2018* to make it clear that there is no requirement for each post of online electoral material to be authorised; and to make it sufficient for authorisations to appear in a prominent place on the relevant webpage or social media page to certify that everything posted to the page is authorised.
- 5.78 Further, the Committee has heard that given the range of platforms used to post material, and the desire of some electoral participants for greater clarity, it may be helpful if the Electoral Commission were granted a power to issue more detailed guidelines about the location and method of authorisation for online electoral material; and the Committee so recommends.
- 5.79 The Shooters, Fishers and Farmers Party told the Committee that there should be no requirement to authorise each post, and that if there is an authorisation at the top of the social media page or webpage to which the electoral material is posted, that should be enough. Mr Despotoski stated:
- ...if you have got the authorisation at the top of the particular social media page or website, that should be enough. To have to authorise specifically and then be potentially liable for a breach of the Act if you did not frame the authorisation on

every single individual post – of which there are thousands and thousands in an election campaign – is (1) I think nonsensical and (2) almost unenforceable.<sup>408</sup>

- 5.80 Mr Despotoski also raised concerns that he received conflicting guidance about whether it was in fact necessary to authorise each post:

But I remember receiving guidance that if the “about” section of a Facebook page, for example – and there are similar things in Twitter, Instagram and You Tube – as long as that has “authorised by” ...then that would have been sufficient. However, when you would seek guidance from perhaps another individual, they would say you have to put it on every single post.<sup>409</sup>

- 5.81 Similarly, Mr Stone of the Liberal Party of Australia – NSW Division told the Committee that any requirement to authorise each post is ridiculous but that the Party has always sought to follow the rule ‘when in doubt authorise’:

In the context of authorising social media posts, when you have material for those being posted by either a candidate or a political party, the information on that platform includes an authorisation on it. It seems as if we are multiplying the requirements of disclosure to require individual posts to be authorised. As a matter of practice, we have always sought to authorise: When in doubt, always authorise. The requirement to potentially authorise the information of a page of a platform, plus on the tile, plus on a post, is ridiculous.<sup>410</sup>

- 5.82 Mr Stone also stated that if you can see that any material that is posted on a page has been authorised by someone who is taking legal responsibility for it, that is a common sense approach.<sup>411</sup>

- 5.83 When asked about these issues, the NSW Electoral Commission noted that the requirements around authorisation of online electoral material have been drafted to be ‘platform neutral’ and that this supports compliance activities but does not provide a lot of guidance to electoral participants. The Commission further noted the accompanying note to clause 8A of the *Electoral Regulation 2018* (detailed above) which provides some examples of what might satisfy the requirement for the name and address to be ‘included in or directly linked to the post’.<sup>412</sup>

- 5.84 To provide greater clarity, the Commission suggested it may be helpful if it were granted a power to issue guidelines about electoral material:

Given the diverse range of social media platforms used by participants...and the desire of some participants for greater clarity in the lead-up to an election, it may be useful if there was a specific power to issue guidelines about electoral material, including about the location and method of authorisations for online materials.

<sup>408</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p44.

<sup>409</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p44.

<sup>410</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p14.

<sup>411</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p14.

<sup>412</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5.

There is a model for such a power for the Electoral Commission under the *Electoral Funding Act 2018* in section 152, but that is confined to electoral funding matters.<sup>413</sup>

- 5.85 Section 152 of the *Electoral Funding Act 2018* provides that the Electoral Commission may from time to time determine and issue guidelines not inconsistent with the Act or the regulations, for or with respect to any matters dealt with in that Act.

### **Claims for public funding for election campaigns and disclosure of electoral expenditure**

*The NSW Government should consider streamlining the requirements for making campaign funding claims and disclosing electoral expenditure*

#### **Recommendation 48**

**That the NSW Government consider amending the *Electoral Funding Act 2018*:**

- **to remove the need to submit separate returns to claim funding from the Election Campaigns Fund on the one hand, and to disclose electoral expenditure on the other,**
- **to provide that these returns could instead be filed as one.**

**However, the option to submit two separate returns, if desired, should remain.**

- 5.86 Another concern about compliance burden that was raised with the Committee related to requirements for parties and candidates to submit separate returns to claim public funding for campaign expenditure on the one hand, and to disclose electoral expenditure on the other, even though these returns contain similar information. This can be a particular problem as both returns need to be submitted around the same time, creating workflow issues during an election year.
- 5.87 For increased efficiency, the NSW Government should consider amending the *Electoral Funding Act 2018* to remove the need for parties and candidates to submit separate returns to claim public funding from the Election Campaigns Fund on the one hand, and to disclose electoral expenditure on the other; and so that these returns could instead be filed as one. However, to ensure maximum flexibility, the option to submit two separate returns, if parties and candidates desire, should remain.
- 5.88 In its submission to the inquiry, the Liberal Party of Australia – NSW Division questioned why it is necessary for registered political parties to prepare and submit separate public funding and expenditure disclosure returns ‘which contain substantially the same information’.<sup>414</sup> The Party also raised concerns that these two returns must be submitted within a fortnight of each other ‘which is a considerable challenge in an election year’, and argued that combining these returns would be more efficient.<sup>415</sup>

<sup>413</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5.

<sup>414</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>415</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.



- 5.89 At the Committee's hearing on 18 November 2019, Mr Stone expanded on these points:
- ...within a two-week period we had to provide our public funding claim, vouching for that, and then a fortnight later provide in many cases substantially the same information for the purposes of our electoral expenditure return. It is bureaucratic red tape and the extent to which we can streamline that would be useful.<sup>416</sup>
- 5.90 At the hearing, when asked, Mr Layland of the Shooters, Fishers and Farmers Party agreed that public funding and expenditure disclosure returns could be submitted as one, and that this would be more efficient, whilst noting that they are two different things.<sup>417</sup>
- 5.91 As noted in Chapter One, under Part 3, Division 2 of the *Electoral Funding Act 2018* there is a requirement to disclose electoral expenditure to the NSW Electoral Commission. In particular, electoral expenditure incurred by or on behalf of a party, elected member, candidate, group or associated entity must be disclosed to the Commission; as must electoral expenditure incurred by a third party campaigner in a capped State expenditure period.<sup>418</sup> Regarding timing, disclosure of electoral expenditure is to be made within 12 weeks of the end of each 'relevant disclosure period' unless the regulations prescribe a longer period, and 'relevant disclosure period' means each 12 month period ending on 30 June.<sup>419</sup>
- 5.92 And as noted earlier in this Chapter, under section 73(1) of the *Electoral Funding Act 2018*, parties and candidates must lodge claims for public funding of campaign expenditure in respect of a State election, with the Electoral Commission before the expiration of 120 days after the day for the return of the writs for the election; and in 2019, the claims were due on 2 September.<sup>420</sup>

### Vouching requirements

*What vouching requirements does the electoral funding legislation contain?*

- 5.93 As noted above, under Part 3, Division 2 of the *Electoral Funding Act 2018* there is a requirement to disclose electoral expenditure to the NSW Electoral Commission. Further, section 17(8) provides that expenditure disclosures must be vouched for in the manner prescribed by the regulations.
- 5.94 Clause 10 of the *Electoral Funding Regulation 2018* accordingly provides that for the purposes of section 17(8) of the Act, the prescribed manner of vouching for electoral expenditure is by attaching to the relevant Part 3 declaration:

<sup>416</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p13.

<sup>417</sup> Mr Grant Layland, *Transcript of Evidence*, 18 November 2019, p46.

<sup>418</sup> *Electoral Funding Act 2018*, s12(1)&(2). As noted in Chapter One, for quadrennial State elections the 'capped State expenditure period' runs from 1 October in the year before an election is to be held, to the end of election day, see *Electoral Funding Act 2018*, s27(a).

<sup>419</sup> See *Electoral Funding Act 2018*, ss13&16.

<sup>420</sup> See Submission 25, Shooters, Fishers and Farmers Party, p2.

- copies of either the accounts or receipts (or a mixture of both) issued in respect of the expenditure, and
  - copies of any advertising material to which any portion of the expenditure relates, but not online advertising material if the cost of the transaction for the advertising material did not exceed \$20.
- 5.95 Further, clause 10 defines ‘copy of advertising material’ to mean in the case of an advertisement by radio, television or in a cinema:
- the text (if any) of the advertisement, or
  - an electronic copy of the radio, television or cinema advertisement.
- 5.96 As also noted above, under Part 4, Division 2 of the *Electoral Funding Act 2018*, eligible parties and candidates can claim public funding from the Election Campaigns Fund for election campaigns. However, section 75 provides that, to do so, parties or candidates must vouch for the expenditure in the manner prescribed by the regulations.
- 5.97 Clause 37 of the *Electoral Funding Regulation 2018* accordingly provides that for the purposes of section 75 of the Act, the prescribed manner of vouching for expenditure specified in a claim for a Part 4 payment is:
- by the party agent for the party or the candidate attaching to the claim the relevant Part 3 declaration or a copy of the declaration, or, if the claim is required to be lodged before the relevant Part 3 declaration is required to be lodged, copies of the accounts or receipts (or a mixture of both) issued in respect of the expenditure, and
  - if the amount claimed exceeds the amount of expenditure vouched for above, by the party agent or the candidate attaching to the claim the copies of either the accounts or receipts (or a mixture of both) issued in respect of so much of the expenditure not vouched for as in aggregate at least equals the excess amount.

*Stakeholders raised concerns about the administrative burden of vouching requirements*

- 5.98 During the inquiry, the Committee heard a number of concerns from stakeholders about the administrative burden of the requirements to provide vouching documentation when disclosing electoral expenditure and making claims for public funding for election campaign expenditure.
- 5.99 Some of these concerns related to the disclosure of travel and accommodation expenses. As detailed in Chapter One, the definition of ‘electoral expenditure’ in the *Electoral Funding Act 2018* includes travel and accommodation expenses<sup>421</sup> and thus these expenses must be disclosed to the Electoral Commission. As also detailed in that Chapter, union third party campaigners complained that having

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<sup>421</sup> *Electoral Funding Act 2018*, s7(1)(f).

to disclose these expenses to the Electoral Commission is particularly administratively burdensome.<sup>422</sup>

- 5.100 This led the NSWNMA to suggest changes so that when disclosing travel and accommodation expenses there would be no need to vouch for them. Instead, the total amounts for these expenses would have to be disclosed, and material retained in case the Commission wished to conduct an audit.<sup>423</sup>
- 5.101 The Committee also heard more general calls for an increase in the level at which it would be necessary to vouch at the time of disclosure or when making a funding claim, for example, a threshold of \$100.
- 5.102 However, the Committee does not propose changes to vouching requirements. It accepts Electoral Commission evidence that vouching is important to allow it to fulfil its compliance functions, and that reduced vouching may not produce the expected efficiencies for electoral participants as the Commission may have to use its general powers to request the same information; and because participants would have to retain the documentation anyway in case of audit.
- 5.103 In relation to travel and accommodation expenses specifically, the Committee does not propose to exempt them from vouching requirements. However, the Committee notes its recommendation in Chapter One that the NSW Government consider legislative amendments so that travel and accommodation are not captured as 'electoral expenditure' for the purposes of the caps for State election campaigns.
- 5.104 As identified in that Chapter, this may limit any administrative burden associated with the requirement to disclose electoral expenditure. It would mean that electoral participants were no longer required to disclose these expenses and thus submit the required vouching with these disclosures. However, the Committee acknowledges that while this would assist third party campaigners with their administrative burden around disclosures, parties and candidates who wished to claim travel and accommodation expenses as election campaign funding would still have to submit vouching as part of this separate process.
- 5.105 With regard to requirements to vouch more generally, the Committee notes that the Electoral Commission is developing an online portal for the lodgement of disclosures and funding claims, and it agrees with the Commission that this is a better vehicle for improving efficiency and convenience in this area than reduced vouching. Further, later in the Chapter, the Committee notes that the NSW Government could consider reviewing the level of resourcing provided to parties and candidates to comply with the requirements of electoral legislation, and the Committee considers that resourcing for compliance could also assist with some of the concerns that have been raised around administrative burden.
- 5.106 During the inquiry, the Liberal Party of Australia – NSW Division noted the compliance burden associated with vouching requirements:

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<sup>422</sup> See *Transcript of Evidence*, 18 November 2019, pp38-39.

<sup>423</sup> Submission 16, NSW Nurses and Midwives Association, p22.

The requirement to provide vouching documentation at the time of disclosure 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 material to the NSWEC in relation to our claim for public funding and a further 20 folders in support of our annual expenditure return.<sup>424</sup>

- 5.107 The Liberal Party therefore submitted that it would be better if there were a requirement to submit documents on the basis of random sampling to the Commission; or to submit vouching for expenditure of \$100 or more, with random sampling for anything under \$100.<sup>425</sup> When asked at the Committee's hearing on 18 November 2019, the National Party of Australia – NSW, agreed with the proposal for vouching for items over \$100 with random sampling for items below that amount,<sup>426</sup> as did The Greens NSW with that Party stating:

The Greens NSW support the simplification of the claim process as suggested with the proviso that each expense item is listed in the return with some detail and the NSW Electoral Commission has the option to query any item and require the usual vouching. We also agree with the proposed threshold of \$100.<sup>427</sup>

- 5.108 Similarly, the NSWNMA made an alternative proposal for change so that there is no requirement to disclose expenses under \$100, and that there only be a requirement to vouch for expenditure above a certain amount, for example \$500.<sup>428</sup> When asked at the 18 November hearing whether they supported this proposal, representatives of Unions NSW and the PSA indicated that they did.<sup>429</sup>

- 5.109 When asked if they would support an increase in the level at which it was necessary to start vouching – be it \$100 or \$500, representatives of the Shooters Fishers and Farmers Party also stated at the 18 November hearing that they would.<sup>430</sup>

- 5.110 Some stakeholders also highlighted vouching for social media as a particularly burdensome area. For example, Mr Despotoski of the Shooters, Fishers and Farmers Party stated:

When you get the invoice from Facebook, when you go in the background you have a \$100 commitment to boost that particular person's post or page, and there are various ways you can do that, split up in up to 100 different transactions. Then you have to find all those transactions. Sometimes they are on the same list, sometimes they are not, and then return that to the Electoral Commission. When you are spending tens of thousands of dollars, you are talking hundreds, if not thousands of different transactions. The whole thing just becomes a painstaking exercise.<sup>431</sup>

<sup>424</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>425</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>426</sup> Mrs Kathleen Chalmers, Finance Director, National Party of Australia – NSW, *Transcript of Evidence*, 18 November 2019, p20.

<sup>427</sup> The Greens NSW, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

<sup>428</sup> Submission 16, NSW Nurses and Midwives Association, p22.

<sup>429</sup> See *Transcript of Evidence*, 18 November 2019, p39.

<sup>430</sup> See *Transcript of Evidence*, 18 November 2019, p42.

<sup>431</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p44.

5.111 Similarly, Mr Maltby of The Greens NSW told the Committee:

The more you closely target individual online advertisements, the larger the number of items that you have to disclose. If you are doing a targeted advertisement in a small area on a particular issue, you might spend \$20 on it. The more of those you do, the larger the compliance burden becomes. But we do not want to lose the visibility into that stuff.<sup>432</sup>

5.112 In responding to these concerns about the administrative burden of vouching requirements, the NSW Electoral Commission raised concerns about the impact proposals for reduced vouching may have on its compliance activities. The Commission highlighted the importance of vouching. In particular, it stated that the submission of copies of advertising material as vouching for electoral expenditure to the Commission, including online material, can assist the Commission to perform its compliance functions by:

- providing a basis on which to assess whether an electoral participant has stayed within the relevant expenditure cap, and/or has lodged complete disclosures,
- providing an avenue to consider whether electoral material published online during a campaign complied with the requirements of the *Electoral Act 2017*, noting that there is no requirement for such material to be registered with the Commission prior to an election,
- supporting the payment of public funding claims by ensuring there is robust evidence available about the basis on which claims for funding have been made.<sup>433</sup>

5.113 The Commission also stated that reduced vouching may not produce efficiencies for electoral participants because records would still need to be kept in case of audit, and in some cases the Commission may have to require provision of the information anyway to fulfil its compliance functions:

Without detailed vouching supplied by all participants...the Commission may instead have to use its general powers to request the same information, in some circumstances. Such a change may not produce any efficiencies for participants. Records of all electoral expenditure on social media advertising would still need to be retained by participants to vouch for expenditure during the disclosures/claims audit process, in case requested to do so by the Commission.<sup>434</sup>

5.114 In addition, the Commission indicated that an online portal for the lodgement of disclosures and funding claims may be a better vehicle to ensure increased efficiency and convenience, and the Committee understands that such a system is under development:

An online portal for the electronic lodgement of disclosures is presently under active development by the Commission and is intended to assist participants to meet their regulatory obligations in a more convenient and efficient way. It is hoped that the

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<sup>432</sup> Mr Christopher Maltby, *Transcript of Evidence*, 18 November 2019, p27.

<sup>433</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5.

<sup>434</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5.

portal will be available for participants in the Local Government 2021 ordinary elections.<sup>435</sup>

## New Parties Fund

### *What are the laws around the New Parties Fund?*

5.115 Under Part 5, Divisions 1 and 3 of the *Electoral Funding Act 2018*, eligible political parties can claim re-imbursments from the New Parties Fund for policy development expenditure incurred in a calendar year. To be eligible for payments:

- the party must have been a registered party for 12 months or more for the full calendar year in which the policy development expenditure was incurred,
- the NSW Electoral Commission must be satisfied that it operates as a genuine political party, and
- it must not be entitled to payments from the Administration Fund.<sup>436</sup>

5.116 As entitlements are calculated based on the relevant calendar year, claims from the New Parties Fund must be submitted within 6 months of the end of that calendar year.<sup>437</sup>

*The claim period for the New Parties Fund should be changed*

### **Recommendation 49**

**That the NSW Government amend the *Electoral Funding Act 2018* to change the claim period for the New Parties Fund from a calendar year to a financial year.**

### **Finding 6**

**Annual financial statements of parties should not be adopted as a source of information, in addition to other applicable vouching, for claims on the New Parties Fund.**

5.117 In his submission to the inquiry, a Mr Wes Hindmarsh noted that he was an auditor for a small political party, and proposed two amendments to the legislative framework for the administration of the New Parties Fund:

- to change the claim period for the New Parties Fund from a calendar year to a financial year so that financial accounts prepared at the end of the financial year can be used to populate the claim,
- to adopt the annual financial statements of the relevant party as a source of information for the claim in addition to other vouching.<sup>438</sup>

<sup>435</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5; see also Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58, where the Commissioner stated: 'We are developing an online funding and disclosure system to overcome a lot of the paper movement...'

<sup>436</sup> See *Electoral Funding Act 2018*, s93(2)&(3).

<sup>437</sup> *Electoral Funding Act 2018*, s94(2).

<sup>438</sup> Submission 27, Mr Wes Hindmarsh, p1.

5.118 When asked for its views about the first proposal, the NSW Electoral Commission responded:

...the NSW Electoral Commission is not aware of any policy reasons relating to its administration of public funding for maintaining the claim period for the New Parties Fund as a calendar year. The NSW Electoral Commission does not anticipate that significant administrative issues would be associated with changing the claim period to a financial year, provided that suitable transitional provisions are made.<sup>439</sup>

5.119 However, in relation to Mr Hindmarsh's second proposal, the Commission raised concerns that it could delay payments to parties from the New Parties Fund:

...Mr Hindmarsh's second proposed amendment may affect the timing of the availability of public funding to parties. Requiring the provision of annual financial statements with the claim may cause a party to delay its claim for public funding and, accordingly, delay the payment of the claim by the NSW Electoral Commission. Currently, a party can lodge a claim the day after the claim period ends. Any new requirement for the party's annual financial statements to be provided would mean that it may be months until a claim can be lodged, as the party's annual financial statements would first need to be prepared and approved.<sup>440</sup>

5.120 As the first proposal may make claiming easier for parties, and as the NSW Electoral Commission has advised this would not cause administrative problems, the Committee agrees that this change should take place.

5.121 However, the Committee does not support the second proposal given the Commission's advice that it may delay the payment of claims. The Committee considers it likely that most parties would prefer to be able to re-coup monies for policy development expenditure as soon as possible after they are spent.

### **Timeframes for disclosing political donations**

*What laws apply around the disclosure of political donations?*

5.122 Under Part 3, Division 2 of the *Electoral Funding Act 2018*, political donations received or made by or on behalf of a party, elected member, candidate, group, or associated entity must be disclosed to the NSW Electoral Commission. Similarly, third party campaigners must disclose political donations received for the purposes of incurring electoral expenditure during a capped State expenditure period.<sup>441</sup>

5.123 More specifically, under section 15(1)(a), where a 'reportable political donation' was received or made during the pre-election period, it must be disclosed within 21 days of the political donation being received or made, or within such shorter period as prescribed by the regulations. The 'pre-election period' as it relates to quadrennial State elections is defined to mean the period from and including 1 October in the year before the election is to be held, to the end of the election day for the election.<sup>442</sup> And a 'reportable political donation' is a donation valued

<sup>439</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, p1.

<sup>440</sup> NSW Electoral Commission, Answers to Supplementary Questions following 22 June 2020 hearing, pp1-2.

<sup>441</sup> See in particular *Electoral Funding Act 2018*, s12(1)&(2).

<sup>442</sup> *Electoral Funding Act 2018*, s15(4)(a).

at \$1000 or more, and includes multiple donations made by the same donor to the same recipient that in aggregate are valued at \$1000 or more in one financial year.<sup>443</sup>

- 5.124 In any other case, under section 15(1)(b), parties, elected members, candidates, groups, associated entities and third party campaigners must make half-yearly disclosures of political donations. That is, these participants must disclose all political donations every six months, except those disclosed in a pre-election disclosure pursuant to section 15(1)(a).<sup>444</sup> These disclosures must be made within four weeks after the end of the half-year within which the political donation was received or made.
- 5.125 The NSW Electoral Commission publishes pre-election disclosures and half-yearly disclosures of political donations on its website.<sup>445</sup>

*Timeframes for half-yearly disclosures of political donations should be revised*

### Recommendation 50

**That the NSW Government amend section 15(1)(b) of the *Electoral Funding Act 2018* so that political donations covered by that section must be disclosed within six weeks after the end of the half-year within which the donation was received or made, except for political donations made or received in the half-year period immediately prior to an Assembly general election for which the disclosure cut-off should continue to be four weeks after the end of that half-year.**

### Finding 7

**The timeframes for disclosure of reportable political donations made or received during a pre-election period for an Assembly general election, as set down in section 15(1)(a) of the *Electoral Funding Act 2018* – that is, 21 days or such shorter period as prescribed by the regulations – should not be lengthened.**

- 5.126 During the inquiry there was widespread party support for lengthening the timeframes for making the half-yearly donation disclosures. This is because meeting those timeframes each half-year can be hard, with one falling around the end of the financial year and the other falling around the Christmas holiday period. For example, the Committee heard a proposal for change so that political donations must be disclosed within six weeks after the end of the half-year within which the donation was received or made, instead of the current four week timeframe.

<sup>443</sup> *Electoral Funding Act 2018*, s6. It is also noted that ‘major political donors’ – that is, donors who have made a ‘reportable political donation’ of \$1000 or more are also required under Part 3, Division 2 of the *Electoral Funding Act 2018* to disclose reportable political donations they have made, see in particular ss4 and 12(3).

<sup>444</sup> See also NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures/Half-yearly-donation-disclosure> viewed 4 September 2020.

<sup>445</sup> See *Electoral Funding Act 2018*, s22(1) and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures/Half-yearly-donation-disclosure> viewed 4 September 2020.



- 5.127 The Committee broadly agrees with this as it would continue to promote prompt disclosures whilst allowing a little more time to meet obligations. However, the Committee also notes Electoral Commission evidence that extending the timeframes for half-yearly donation disclosures may be problematic in a pre-election year, because it would mean that there was less time for the Commission to process the information and have it published in time for the March election, which is important for transparency and accountability.
- 5.128 Therefore, the Committee considers that section 15(1)(b) of the *Electoral Funding Act 2018* should be amended to provide that disclosures of political donations must be made within six weeks after the end of the half-year within which the political donation was received or made, except for donations made or received in the relevant half-year period that falls immediately prior to an Assembly general election for which the disclosure cut-off should continue to be four weeks after the end of that half-year period.
- 5.129 Further, for abundant clarity, the Committee confirms that it supports the current timeframes for the disclosures of reportable political donations made or received during the pre-election period for an Assembly general election as set down in section 15(1)(a) of the *Electoral Funding Act 2018* – 21 days or such shorter period as prescribed by the regulations – and does not propose to lengthen these.
- 5.130 In its submission, the Liberal Party of Australia – NSW Division stated that the requirement to disclose donations within four weeks after the end of the half year within which the donation was received or made creates problems in both half years:
- 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.<sup>446</sup>
- 5.131 Therefore, the Party argued that a requirement to disclose donations within six weeks after the end of the half year within which the donation was received or made would be more suitable.<sup>447</sup>
- 5.132 At the Committee’s hearing on 18 November 2019, Mr Lennon of NSW Labor agreed that the four week timeframe needed to be changed and stated ‘We...agree that it is too short and difficult, particularly for the disclosure at the end of December where it means you have got people having to work through January to meet the timeline’.<sup>448</sup> NSW Labor stated that the timeframe should be increased to 56 days (eight weeks).<sup>449</sup>

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<sup>446</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>447</sup> Submission 18, Liberal Party of Australia – NSW Division, pp7-8.

<sup>448</sup> Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, p5.

<sup>449</sup> NSW Labor, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

- 5.133 In a similar vein, the National Party of Australia – NSW, agreed with the Liberal Party proposal for the timeframe to be increased from four to six weeks, stating that the four week timeframe is ‘not feasible’.<sup>450</sup> The Shooters, Fishers and Farmers Party also agreed that six weeks would be a more appropriate timeframe.<sup>451</sup>
- 5.134 When asked about the proposal to extend the timeframes from four to six weeks, the NSW Electoral Commission indicated this would not present a problem unless a six week timeframe also applied in a pre-election year. Ms Rachel McCallum of the NSW Electoral Commission told the Committee:

The time frames are set by the legislation. We follow that. The one exception to bear in mind – which, again, is a policy matter – is that in the year before a State election, if you extend the time period closer and closer to the March date, the job for the Commission in processing all of that and getting it published in time to be of use for the election would, no doubt, be a policy issue that would need to be considered.<sup>452</sup>

### **Threshold for the exception to the aggregation provision for small donations at fundraising events**

*What laws apply around the aggregation of political donations?*

- 5.135 As touched upon earlier, the *Electoral Funding Act 2018* places caps on political donations. That is, political donations are capped for a financial year and adjusted annually for inflation and it is unlawful for persons to accept political donations that exceed the caps.<sup>453</sup>
- 5.136 As above, according to the NSW Electoral Commission website, the following caps on political donations apply for the 2020-21 financial year:
- donation to registered party or group of candidates: \$6,600
  - unregistered party (or party registered for less than 12 months), elected Member, or candidate: \$3000.<sup>454</sup>
- 5.137 Further there are aggregation provisions relating to the caps. That is, under section 23 of the *Electoral Funding Act 2018*:
- political donations accepted from the same donor by the same recipient, in a financial year, are to be aggregated for the purpose of the donation caps, and
  - political donations accepted from the same donor by elected members, candidates and groups of candidates endorsed by the same party, in a financial year, are to be aggregated for the purposes of the donation caps.<sup>455</sup>

<sup>450</sup> Mrs Kathleen Chalmers, *Transcript of Evidence*, 18 November 2019, pp19-20.

<sup>451</sup> Mr Grant Layland, *Transcript of Evidence*, 18 November 2019, pp42-43.

<sup>452</sup> Ms Rachel McCallum, *Transcript of Evidence*, 18 November 2019, p56.

<sup>453</sup> *Electoral Funding Act 2018*, ss23&24.

<sup>454</sup> NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations> viewed 31 August 2020.

<sup>455</sup> *Electoral Funding Act 2018*, s23(2)&(3).

- 5.138 Similarly, as discussed above, where a ‘reportable political donation’ is made during the pre-election period it must be disclosed within 21 days of the political donation being received or made, or within such shorter period as prescribed by the regulations.<sup>456</sup>
- 5.139 And as noted, aggregation provisions apply so that a ‘reportable political donation’ is a donation valued at \$1000 or more, and includes multiple donations made by the same donor to the same recipient that in aggregate are valued at \$1000 or more in one financial year.<sup>457</sup>
- 5.140 However, under section 57 of the *Electoral Funding Act 2018* there is an exception to the above aggregation provisions. Section 57 applies to a political donation that:
- is of an amount of \$50 or less,
  - was made by a person at a fundraising venture or function,
  - was the only such donation made by that person at that venture or function.
- 5.141 Section 57 provides that the provisions of section 6 and 23 relating to the aggregation of political donations:
- do not apply in relation to the acceptance of a political donation to which section 57 applies by a party, elected member, group, candidate, associated entity or third-party campaigner, and
  - do not apply in relation to the making of a political donation to which section 57 applies.
- 5.142 The Government introduced this exemption to the aggregation provisions on the basis that aggregation of small, anonymous donations is onerous and has little benefit.<sup>458</sup>

*The threshold for the exception to the aggregation provisions for small donations at fundraising events should be raised*

### **Recommendation 51**

**That the NSW Government amend section 57 of the *Electoral Funding Act 2018* to raise the threshold for the exception to the aggregation rule for small donations at fundraising ventures and functions from \$50 to \$100.**

- 5.143 As a result of recent amendments to the *Electoral Funding Act 2018*, section 50A provides that it is unlawful for a person to make or receive a political donation in cash that exceeds the value of \$100.<sup>459</sup> By improving the traceability of donations

<sup>456</sup> *Electoral Funding Act*, s15(1)(a).

<sup>457</sup> *Electoral Funding Act 2018*, s6.

<sup>458</sup> The Hon Ben Franklin MLC, *Legislative Council Debates*, 23 May 2018, p65, NSW Parliament website, <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1>, viewed 7 September 2020.

<sup>459</sup> See *Electoral Funding (Cash Donations) Bill 2019*, which passed the NSW Parliament on 19 November 2019 and commenced by proclamation on 1 January 2020, see NSW Legislation website: <https://www.legislation.nsw.gov.au/view/pdf/asmade/sl-2019-584> viewed 4 September 2020.

over \$100, this reform aimed to strengthen the Electoral Commission's ability to identify potential non-compliance with disclosure requirements, donations caps and prohibited donor provisions in the Act.<sup>460</sup>

5.144 However, in doing so, as with the aggregation provisions, the Government sought to strike the right balance and not create unreasonable administrative burden, and therefore fastened on a threshold of \$100.<sup>461</sup>

5.145 The National Party of Australia – NSW accordingly told the Committee that the aggregation provisions in section 57 should be aligned with these cash donation requirements so that the aggregation exception relates to amounts of \$100 or less, rather than \$50 or less.

5.146 The Committee notes that this proposal received support from the Liberal Party of Australia – NSW Division, and The Greens NSW, and the Electoral Commission has no operational concerns with it. The Committee also supports the proposal. It is a way to align the Act's provisions to ensure that requirements around disclosures and caps are being met, whilst striking a balance to avoid unnecessary administrative burden.

5.147 The National Party of Australia – NSW told the Committee:

...the NSW Nationals submit that the provisions of s57 of the *Electoral Funding Act 2018* (NSW) should be amended to increase the exception from \$50 to \$100 for the purposes of this section. As a number of these donations at fundraising ventures and functions would often be made in cash, such an amendment would provide a synergy between both legislative requirements and make administration of these provisions simpler.<sup>462</sup>

5.148 At the Committee's hearing on 18 November 2019, Mrs Kathleen Chalmers, Finance Director of the National Party of Australia – NSW also stated that an increase in the threshold would allow greater use of the aggregation exception:

The trouble with the \$50 rule is, if it is a small get-together at a local branch and the ticket might be \$30 just to cover lunch, generally a husband and wife would buy a ticket as a couple which is \$60 therefore that no longer meets the under \$50 rule because that is a one-time donation of under \$50. If we upped it to \$100, there would be more ability to use the rule.<sup>463</sup>

5.149 When asked at the hearing if he would support the proposed \$100 threshold for the aggregation provisions, Mr Stone of the Liberal Party of Australia – NSW Division confirmed that he would, highlighting the administrative advantages:

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<sup>460</sup> The Hon Don Harwin MLC, Special Minister of State, *Legislative Council Debates*, 16 October 2019, p42, NSW Parliament website, <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1>, viewed 7 September 2020.

<sup>461</sup> The Hon Don Harwin MLC, Special Minister of State, *Legislative Council Debates*, 16 October 2019, p42, NSW Parliament website, <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1>, viewed 7 September 2020.

<sup>462</sup> Submission 15, National Party of Australia – NSW, p5.

<sup>463</sup> Mrs Kathleen Chalmers, *Transcript of Evidence*, 18 November 2019, p19.

I have no objection to that. I think in practical terms, in terms of administering such a system at a branch and a conference level within our organisation, that would certainly make life a little easier. Given...the compliance burden and the like – I think it would be a commonsense approach.<sup>464</sup>

- 5.150 Similarly, The Greens NSW told the Committee that the Party would be comfortable with the proposed \$100 threshold for the aggregation provisions ‘noting the link with the \$100 limit that applies to cash donations’.<sup>465</sup>
- 5.151 However, NSW Labor told the Committee that ‘The ALP does not support this proposal at this stage’.<sup>466</sup>
- 5.152 The NSW Electoral Commission confirmed ‘There would be no operational concerns for the NSWEC if the aggregation amount increased from \$50 to \$100, providing there was adequate time and resources available to implement updates to NSWEC materials’.<sup>467</sup>

### Party fees and cash donation limit

*The Committee heard a call for certain party fees to be exempt from the cash donation limits*

- 5.153 As above, as a result of recent amendments to the *Electoral Funding Act 2018*, section 50A provides that it is unlawful for a person to make or receive a political donation in cash that exceeds the value of \$100.<sup>468</sup>
- 5.154 In its submission to the inquiry, NSW Labor stated that while the Party supported 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 on candidates for public office.<sup>469</sup>
- 5.155 As above, by improving the traceability of donations over \$100, the cash donation reform aimed to strengthen the Electoral Commission’s ability to identify potential non-compliance with disclosure requirements, donations caps and prohibited donor provisions in the Act.<sup>470</sup>
- 5.156 The Committee considers that were any party fees to be made exempt from the cash donation limits, the fees so exempted would also have to be set at a certain level so that a loophole for large cash donations, well above \$100, could not be created. Otherwise the policy objectives of the cash donation limits could be defeated.

<sup>464</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p13.

<sup>465</sup> The Greens NSW, *Answers to Questions Taken on Notice*, 18 November 2019, p2.

<sup>466</sup> NSW Labor, *Answers to Questions Taken on Notice*, 18 November 2019, p2.

<sup>467</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

<sup>468</sup> See *Electoral Funding (Cash Donations) Bill 2019*, which passed the NSW Parliament on 19 November 2019 and commenced by proclamation on 1 January 2020, see NSW Legislation website:

<https://www.legislation.nsw.gov.au/view/pdf/asmade/sl-2019-584> viewed 4 September 2020.

<sup>469</sup> Submission 22, NSW Labor, p11.

<sup>470</sup> The Hon Don Harwin MLC, Special Minister of State, *Legislative Council Debates*, 16 October 2019, p42, NSW Parliament website, <https://www.parliament.nsw.gov.au/hansard/pages/home.aspx?tab=Browse&s=1>, viewed 7 September 2020.

5.157 At the Committee's hearing on 18 November 2019, Mr Lennon of NSW Labor was asked further about the recommendation:

**The Hon. BEN FRANKLIN:**...Could we move on to your recommendations about cash donation limits? You talk about the suggestion that membership fees could be exempted from the cash donation restriction. Could I ask, first, a question of information? What are the membership costs for the Labor Party and what would be the highest membership fee that would be paid?

...

**Mr LENNON:** Clearly we have to review the fees but for the average member the membership fee is around \$80.

**The Hon. BEN FRANKLIN:** What would be the highest level of membership fee that the Labor Party would charge?

**Mr LENNON:** I think it is around \$150.

**The Hon. BEN FRANKLIN:** Okay. So when you ask for an exemption for membership fees would it be up to that level of \$150? My point is that we would not want a system being created by any political party—and I am not in any way impugning the Labor Party at this point—that new membership categories could be created whereby \$950 wads of cash would come in under this guise of membership fees.

**Mr LENNON:** That is not the intent of this.

**The Hon. BEN FRANKLIN:** Great. I am just giving you the opportunity to put that on the record.

**Mr LENNON:** There is an issue, as you know, generally, about donations and membership fees et cetera. It is just running the ruler over that particular issue when we are talking about limiting cash donations to less than \$100. There is no intention to have some clever way of getting around membership fees or the level of membership fees.<sup>471</sup>

### Substitute arrangements for party agents

*What responsibilities do party agents have under the Electoral Funding Act 2018?*

5.158 Each party must appoint a part agent and party agents must be notified to the NSW Electoral Commission. If the person satisfies the criteria to be appointed a party agent their details will be entered into a register kept by the Commission.<sup>472</sup> The criteria to be appointed a party agent include being enrolled to vote in NSW and successfully completing the Commission's agent training program, unless exempt.<sup>473</sup>

<sup>471</sup> *Transcript of Evidence*, 18 November 2019, pp5-6.

<sup>472</sup> See *Electoral Funding Act 2018*, ss121-124 and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Political-participants/Party-Agents-and-official-agents/Appointing-an-agent> viewed 7 September 2020.

<sup>473</sup> See *Electoral Funding Act 2018*, s102 and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Political-participants/Party-Agents-and-official-agents/Who-can-be-an-agent> viewed 7 September 2020. Exempt persons include a Certified Practising Accountant member of CPA Australia, NSW Division; a member of, and holding a Certificate of Public Practice issued by, the Institute of Chartered Accountants

- 5.159 Party agents are legally responsible for the following:
- lodging with the NSW Electoral Commission all required disclosures of political donations made and received and electoral expenditure incurred by the party and its members for whom they are responsible
  - providing a copy of all receipts issued to those people who made a reportable political donation to the party (with a disclosure of political donations)
  - providing a copy of all invoices or receipts and a copy of the advertising or printed material for all electoral expenditure with an annual disclosure of expenditure
  - providing a copy of the party's audited annual financial statements and other accounting and bank records of the party
  - making public funding claims for the party
  - as a senior office holder, reporting alleged contraventions of electoral funding laws to the NSW Electoral Commission. A party agent who fails to report this conduct is guilty of an offence.<sup>474</sup>

*The party's registered officer should be able to sign documents on behalf of the party agent where the party agent is unavailable*

#### **Recommendation 52**

**That the NSW Government amend the *Electoral Funding Act 2018* to provide that:**

- **where the party agent is not available, the party's registered officer can sign documentation as required under the *Electoral Funding Act 2018* and regulations on the party agent's behalf; and that in any such case the party agent's obligations under the legislation pass to that registered officer and can be enforced against the registered officer;**
- **to require registered officers to undertake the NSW Electoral Commission's agent training program consistent with current requirements for party agents under section 102(e) of the *Electoral Funding Act 2018*.**

- 5.160 During the Committee's hearing on 18 November 2019, in response to questioning, some parties told the Committee that they would welcome a change so that, where a party agent is not available, an alternative person can sign documents on his or her behalf (for example, applications for public funding, audited financial statements, and disclosure documentation) and thereby fulfil

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in Australia, New South Wales region, or a member of, and holding a Professional Practice Certificate issued by, the Institute of Public Accountants, see *Electoral Funding Regulation 2018*, cl 40 and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Political-participants/Party-Agents-and-official-agents/Agent-training> viewed 7 September 2020.

<sup>474</sup> See in particular *Electoral Funding Act 2018* ss14, 38, 76, 94 and Part 6 and NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Political-participants/Party-Agents-and-official-agents/Party-agent> viewed 7 September 2020.

the party agent's obligations under the *Electoral Funding Act 2018* and regulations. This is not currently possible.

- 5.161 The Committee agrees that it is important that somebody can sign the required documents in the party agent's absence, and accepts that otherwise it is difficult for that agent to take leave. However, the Committee notes evidence from the Electoral Commission that as the party agent has obligations under the legislation, if the changes were made, those obligations would still have to be enforceable in relation to somebody. Further, the alternative person would have to receive the appropriate training.
- 5.162 The Committee also notes that currently under section 122(7) of the *Electoral Funding Act 2018*, if at any time a party does not have a party agent appointed, the party agent is the person who holds office at the time as the registered officer under the *Electoral Act 2017* or the *Local Government Act 1993* as the case requires.
- 5.163 Therefore, the registered officer appears to be the appropriate person to step in in the party agent's absence under the proposed changes and the Committee so recommends. In addition, the party agent's legal obligations should pass to the registered officer in such cases – the person signing the documentation should have legal responsibility for the matters dealt with therein. Further, registered officers should have to undertake the Commission's agent training program consistent with current requirements for party agents under section 102(e) of the *Electoral Funding Act 2018*.
- 5.164 Mr Stone of the Liberal Party of Australia – NSW Division gave the following evidence:

**The Hon. BEN FRANKLIN:** ...There is a requirement that the party agent must personally sign a range of documents, as you would be aware, that have to then be lodged very quickly. The problem is sometimes the party agent might want to have a holiday or some life but the turnaround time is often very short. Would you be supportive of a system wherein the party agent, if they were taking leave, could apply to the Electoral Commission and potentially nominate somebody who could sign on their behalf for a finite period of time until they return to ameliorate that issue?

**Mr STONE:** I would certainly be supportive of that. I make the observation that political parties obviously have a party agent and they have a registered officer and a deputy registered officer. In the event that a party agent wants to take leave, I make the point in our submission around the turnaround times with the half yearly disclosure periods. And, particularly at the end of the financial year there is a tight timeframe during which we are preparing annual returns for the Party.

The financial documents related to the Party as well as our disclosure at the tail end of the year is, obviously, over the Christmas period where naturally there are public holidays that are in place and people want to take time off and enjoy time with their families. There needs to be a level of flexibility there to be able to properly comply with our obligations.<sup>475</sup>

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<sup>475</sup> *Transcript of Evidence*, 18 November 2019, p17.



5.165 Similarly, Mrs Chalmers of the National Party of Australia – NSW agreed it would be helpful if a registered officer could be authorised to sign documents in the absence of the party agent:

As a particular example, with the administration funding advance the form is not available to apply for that until the Electoral Commission release that. We do not know the date that they will release that prior to the quarter that the advance relates to. Then there is a period of only about—I cannot tell you exactly, but it is a short period of time for that to be lodged or you miss out on that advance and then you cannot claim that until the final claim is put in at the end of the year. If the party agent happens to be on leave there is no way around submitting that claim. So if the party agent could authorise another registered officer to sign on that form, that would remediate that. The forms are ongoing through the whole year, so basically the party agent cannot have a holiday.<sup>476</sup>

5.166 When asked if the Electoral Commission would have any concerns with a party agent nominating somebody else to sign documents on their behalf in their absence, Ms McCallum responded that such a change could be made but in any case, any obligations that are now on the agent would still have to be enforceable in relation to somebody and the alternative persons would have to receive appropriate training:

The agent has obligations under the Act and those obligations would need to be able to be enforced in relation to somebody. I think again it is not a question that you could not have a situation which the legislation might be changed in order to enable that, but it would need to take into account that whatever the obligations were on the agent either stayed with the agent or transferred to somebody else, and that it was possible for the Commission to actually enforce those obligations. I believe that there is training for agents as well so obviously there may be an issue about other people needing to be trained as well.<sup>477</sup>

## The role of technology

### Harnessing technology to assist with compliance and enforcement

*An online disclosure and funding system should be implemented as a matter of priority*

#### Recommendation 53

**That as a matter of priority, the NSW Electoral Commission implement an online system that allows the electronic lodgement and management of:**

- **disclosures of electoral expenditure and political donations as required under the *Electoral Funding Act 2018*, and**
- **funding claims made pursuant to the *Electoral Funding Act 2018*.**

5.167 As discussed earlier in the Chapter and in Chapter One, during the inquiry stakeholders raised a number of concerns about the administrative burden of making disclosures of electoral expenditure and political donations as required

<sup>476</sup> Mrs Kathleen Chalmers, *Transcript of Evidence*, 18 November 2019, p23.

<sup>477</sup> Ms Rachel McCallum, *Transcript of Evidence*, 18 November 2019, p57.

under the *Electoral Funding Act 2018*, and of making funding claims under the Act.

- 5.168 Stakeholders called for the introduction of an online system to allow electronic lodgement and management of disclosures of electoral expenditure and political donations. Many stated that the current paper-based system is causing unnecessary compliance burdens. The Committee agrees that technology is key to improving efficiency and convenience, and thereby reducing the compliance burden around making disclosures and funding claims.
- 5.169 As noted, the Committee understands that the Electoral Commission is developing an online portal for the lodgement of disclosures and funding claims.<sup>478</sup> The Committee considers that the Commission should implement an online system for the electronic lodgement and management of disclosures and funding claims as a matter of priority and so recommends.
- 5.170 In its submission to the inquiry, NSW Labor noted that ‘New South Wales has the most complex disclosures system in the country’ and stated that ‘The development of an electronic disclosure system would assist parties, candidates and campaigns to meet their disclosure obligations more easily’.<sup>479</sup>
- 5.171 Similarly, and as noted earlier, the Liberal Party of Australia – NSW Division complained that for the 2019 period it had to deliver 27 folders of material to the Electoral Commission in relation to its claim for public funding and a further 20 folders in support of its annual expenditure return.<sup>480</sup> At the Committee’s hearing on 18 November 2019, Mr Stone alluded to this level of paper movement and stated that he would support a move to electronic lodgement of disclosures:
- I would certainly be supportive of moves to use electronic means to submit our disclosures. I talk in my submission about the numbers of folders with hard copies of invoices that we had to submit. I would be supportive of a move to a more electronic approach to the submission of documents like that.<sup>481</sup>
- 5.172 The National Party of Australia – NSW also called for an online system to fulfil disclosure requirements under the *Electoral Funding Act 2018*. In its submission, the Party stated:
- ...the NSW Nationals support the move away from paper based or electronic spreadsheet lodgement of forms which is still in use by the New South Wales Electoral Commission...These forms are often difficult to complete and cumbersome and there is no compelling reason as to why all disclosure requirements cannot be fulfilled through the introduction of an online system or portal.<sup>482</sup>

<sup>478</sup> NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p5; see also Mr John Schmidt, *Transcript of Evidence*, 18 November 2019, p58, where the Commissioner stated: ‘We are developing an online funding and disclosure system to overcome a lot of the paper movement...’.

<sup>479</sup> Submission 22, NSW Labor, p9.

<sup>480</sup> Submission 18, Liberal Party of Australia – NSW Division, p7.

<sup>481</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p17.

<sup>482</sup> Submission 15, National Party of Australia – NSW, p5.

- 5.173 At the November hearing, Mrs Chalmers of the National Party also indicated support for an online system for submitting funding claims:

...It would be a lot easier. With the Australian Electoral Commission we can just log onto a portal and lodge the forms that way...With the Federal claim for payment, for instance, all we had to do was submit an expenditure claim form detailing the expenditure...<sup>483</sup>

- 5.174 The Greens NSW also told the Committee of the Party's support for information technology improvements to reduce the compliance burden around making disclosures and claims:

The NSWEC currently uses manual processes for auditing electoral and administrative funding for political parties, and this is time intensive for finance and compliance staff. The compliance burden associated with these manual processes can account for 70% of the work in our finance and compliance team during election periods and accounts for a significant proportion of the funding for small parties.

Information technology improvements have been introduced in many government departments for the upload of confidential documents such as online forms and the secure file transfer to assist with expenditure and disclosure claims for example the ATO and NDIS.<sup>484</sup>

- 5.175 At the November hearing, Ms Marina Eugster, State Manager of the Greens NSW, provided the following further evidence about the compliance burden of the current paper-based system:

...it is a very paper-based system that we currently use. We need to type in every single detail and then we need to provide all the vouching that goes with it and that is a substantial amount of work for our party. Further to that there are many sorts of government departments—for example, the NDIS—where you can do everything by secure FilePoint access and those work very efficiently as well. It essentially operates as a Dropbox with very safe security aspects to it. I think there are many other models where you can do online signatures on forms.

Currently the form has to be printed off, scanned, sent to the party agent, then it comes back from the party agent, then it goes off again. So we have this circular process where everybody is filling in forms and chasing them around until they end up with the NSW Electoral Commission in the appropriate form.<sup>485</sup>

- 5.176 Mr Layland of the Shooters, Fishers and Farmers Party also indicated that the Party would support implementation of a system that allowed disclosures to be lodged electronically.<sup>486</sup>

- 5.177 As noted earlier, under Part 3 Division 2 of the *Electoral Funding Act 2018*, third party campaigners also have disclosure responsibilities – they must disclose their electoral expenditure in a capped State expenditure period and political donations received for incurring such electoral expenditure. And as noted above

<sup>483</sup> Mrs Kathleen Chalmers, *Transcript of Evidence*, 18 November 2019, p23.

<sup>484</sup> Submission 24, The Greens NSW, p14.

<sup>485</sup> Ms Marina Eugster, *Transcript of Evidence*, 18 November 2019, p30.

<sup>486</sup> Mr Grant Layland, *Transcript of Evidence*, 18 November 2019, p42.

and in Chapter One, union third party campaigners raised concerns with the Committee about compliance burdens in relation to disclosure requirements, similar to those raised by the parties. Accordingly, these stakeholders also expressed support for an online portal through which to furnish disclosures.

- 5.178 For example, in arguing that disclosures should be able to be lodged online, Unions NSW told the Committee that for the 2019 NSW State election it was not able to lodge the expenditure disclosures required of it under the *Electoral Funding Act 2018* via email. ‘This is because copies of electoral material were too large to be sent via email and needed to be provided to the Electoral Commission via USB’.<sup>487</sup>
- 5.179 The NSWNMA raised similar concerns, stating that ‘it is incredibly unwieldy to even provide the disclosure documents [to the Electoral Commission] with the files being too large to send by email. Ultimately we had to post a USB containing the data’.<sup>488</sup>
- 5.180 The PSA also called for an online portal for disclosures and stated:
- ...the PSA does believe that the system currently in place is archaic and is in need of dire improvement...Submission of electoral expenditure disclosures should be through an online portal (not a form) where disclosure is submitted along with an upload of relevant attachments.<sup>489</sup>

*The Committee heard calls for an online complaints management system*

- 5.181 As detailed earlier in the Chapter, during the inquiry the Committee heard a number of concerns from party stakeholders about the need for the NSW Electoral Commission to respond in a more timely way to complaints about non-compliance with electoral legislation, made during the voting period.
- 5.182 This prompted the National Party of Australia – NSW to suggest that an online complaints portal be created so that complaints can be lodged and categorised based on subject matter. The Party contended that the current system of forwarding all complaints, from those that are booth-specific to those that are of state-wide importance, to the one email address is causing delays and a lack of accountability.<sup>490</sup>
- 5.183 The Greens NSW also suggested that online solutions for complaints management should be introduced.<sup>491</sup> In particular, the Party recommended an online system for reporting and managing incidents at polling booths after complaining that some of its booth workers were subject to verbal abuse and assault during the 2019 NSW State election.<sup>492</sup>

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<sup>487</sup> Submission 20, Unions NSW, p9.

<sup>488</sup> Submission 16, NSW Nurses and Midwives Association, p22.

<sup>489</sup> Public Service Association of NSW, *Answers to Questions Taken on Notice*, 18 November 2019, p2.

<sup>490</sup> Submission 15, National Party of Australia – NSW, p9.

<sup>491</sup> Ms Marina Eugster, *Transcript of Evidence*, 18 November 2019, p25.

<sup>492</sup> Submission 24, The Greens NSW, p5.

5.184 The Committee agrees that such measures would be helpful in ensuring the timely resolution of complaints made during the voting period, and in the effective management of incidents at polling booths – which are themselves important matters for the fair conduct of elections. However, given it is understood that the Electoral Commission is developing an online funding and disclosure portal, and given resources are finite, the Committee considers that this project should take priority. Once implemented, further online initiatives such as a complaints and incident reporting portal should certainly be considered, and the Committee has recommended in Chapter Three that the Government also consider funding the Commission for the development of an online portal for the submission and tracking of postal vote applications.

*The Committee heard calls for a searchable database to identify property developers*

5.185 Still on technology, the Committee also heard calls during its inquiry for a searchable database to identify property developers. As noted Chapter One, certain individuals and entities are classified as ‘prohibited donors’ under the *Electoral Funding Act 2018* and they cannot make a political donation.<sup>493</sup> One such category of prohibited donor is property developers and this includes their close associates, for example, their spouse.<sup>494</sup>

5.186 The Liberal Party of Australia – NSW Division told the Committee that it can be hard for parties to identify prohibited donors, especially property developers, and that a searchable database of pending development applications would assist parties to comply in this area.<sup>495</sup>

5.187 While the Committee agrees that a searchable database would be helpful to reduce compliance burden in this area and to provide clarity for potential donors, it again notes that it is understood that the Electoral Commission is developing an online portal for the lodgement of the disclosures and funding claims, and as resources are finite, the Committee considers the development of this portal should be the priority.

5.188 Similarly, the Committee notes the NSW Planning Portal which is an initiative of the NSW Government acting through the Department of Planning, Industry and Environment. The Portal ‘has been designed to provide public access to a range of planning services and information including documents or other information in the NSW planning database established under the *Environmental Planning and Assessment Act 1979*’.<sup>496</sup>

5.189 It is understood that recent changes to the *Environmental Planning and Assessment Regulation 2000* made use of the Portal mandatory for the lodgement of certain planning applications, and that by July 2021 all councils across NSW will be required to process 100 per cent of planning applications

<sup>493</sup> *Electoral Funding Act 2018*, Part 3, Division 7.

<sup>494</sup> *Electoral Funding Act 2018*, ss51 and 53(1) and (5).

<sup>495</sup> Submission 18, Liberal Party of Australia – NSW Division, p8.

<sup>496</sup> See NSW Planning Portal: <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address> viewed 7 September 2020.

using ePlanning Digital Services.<sup>497</sup> The Committee considers that as the Portal develops it may be the most suitable vehicle to assist parties in accessing useful information about pending development applications and in determining whether a person is a property developer and thus a prohibited donor.

5.190 In its submission to the inquiry, the Liberal Party of Australia – NSW Division told the Committee:

Identification of prohibited donors, especially property developers, continues to be difficult and problematic for registered political parties...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.<sup>498</sup>

5.191 At the Committee's hearing on 18 November 2019, Mr Stone of the Liberal Party provided further evidence about the compliance burden in this area:

...it does require parties to really cross-examine potential donors around business interests they have. Indeed, given the requirement to include spouses as well—asking people whether they are married or in a relationship with a prohibited donor—all of these questions take time and resources particularly when it comes to related companies. Often extensive company searches need to be undertaken to ascertain whether someone fits the category or not. Given the requirement to check whether there is either a current application before council or whether a potential donor has had three applications determined within the last seven years, it is now very difficult. That is why we suggest in our submission that there ought to be a searchable database across all of the 129 councils so we can—with some certainty—ascertain the bona fides of a prospective donor.<sup>499</sup>

5.192 Mr Stone also indicated that the complexities can discourage people from donating to political parties:

Ultimately, you find situations sometimes where people believe they are not a prohibited donor when, in fact, they are and—after some questioning—we point that out to them. This is a process, in terms of education, that needs to be ongoing because at the moment the provisions largely discourage people from participating in the electoral process. The definitions are complex and the penalties are severe for getting it wrong. Many people probably think it is too hard and they refrain from donating to a candidate or a political party for that reason.<sup>500</sup>

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<sup>497</sup> See NSW Planning Portal: <https://www.planningportal.nsw.gov.au/eplanning-mandate> viewed 7 September 2020.

<sup>498</sup> Submission 18, Liberal Party of Australia – NSW Division, p8.

<sup>499</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p12.

<sup>500</sup> Mr Christopher Stone, *Transcript of Evidence*, 18 November 2019, p12.

## Resourcing of compliance and enforcement

### Resourcing of the NSW Electoral Commission

*The level of resourcing provided to the NSW Electoral Commission for its compliance and enforcement activities should be reviewed*

#### Recommendation 54

**That the NSW Government review the level of resourcing provided to the NSW Electoral Commission to fulfil its compliance and enforcement role and to retain relevant expertise within the organisation from election to election.**

- 5.193 As is apparent from this Chapter, the NSW Electoral Commission administers significant compliance and enforcement functions under the electoral legislation and the Committee identifies that adequate resourcing is needed for such a task.
- 5.194 Issues raised with the Committee during the inquiry, including concerns about the timeliness of complaints resolution; a desire on the part of some stakeholders for more guidance from the Commission about legislative requirements; and concerns raised by the Commission and others about the level of funding needed for the Commission to fulfil its role all suggest that resourcing for compliance and enforcement should be reviewed. In particular, the Commission highlighted the need for a certain number of ongoing compliance staff – that is, retaining the relevant expertise within the Electoral Commission from election to election. Resources are of course also needed for the technological projects discussed in this Chapter that could assist with compliance and enforcement.
- 5.195 The NSW Electoral Commission fulfils a vital role in ensuring the integrity of the electoral process in NSW and every step should be taken to assist it to continue to carry out this important work.
- 5.196 As discussed earlier in the Chapter, during the inquiry the Committee heard a number of concerns from party stakeholders about the need for the NSW Electoral Commission to respond in a more timely way to complaints about non-compliance with electoral legislation, made during the voting period; and as at 22 June 2020, the Committee understands that there were more than 11 matters that remained unresolved.<sup>501</sup> As also noted, NSW Labor specifically stated that the Commission needs more resources to investigate complaints as they arise if it is to have any meaningful impact on electoral outcomes.<sup>502</sup> And in noting the Commission's complaints process could be improved, the Shooters, Fishers and Farmers Party noted resource constraints on the Commission as well.<sup>503</sup>

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<sup>501</sup> The Commission reported that as at 12 December 2019 there were 11 matters still open that arose from allegations made during the voting period – see NSW Electoral Commission, *Answers to Questions Taken on Notice*, 18 November 2019, p4. However, at the 22 June 2020 hearing, the Commission advised further that the number of matters still open had gone up because some more voting-related offences (e.g. failure to vote) had come into the statistics since December – see Ms Rachel McCallum, Executive Director, Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission, *Transcript of Evidence*, 22 June 2020, p5.

<sup>502</sup> Submission 22, NSW Labor, p1; see also Mr Mark Lennon, *Transcript of Evidence*, 18 November 2019, p2.

<sup>503</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p45.

- 5.197 In a similar vein, The Greens NSW told the Committee that the Commission 'should continue to be well funded and, in fact, receive additional funding' to fulfil its role.<sup>504</sup>
- 5.198 Union third party campaigners also raised concerns about the amount of support they were able to obtain from the Electoral Commission to assist them to comply with the disclosure requirements under Part 3, Division 2 of the *Electoral Funding Act 2018* in the lead up to the 2019 NSW State election. The PSA told the Committee that the Commission requires more funding to properly carry out this advisory role:
- The PSA found [navigating the disclosure rules]...difficult in part because of an under-resourced NSW Electoral Commission. Our organisation receive unclear advice from the Commission, a situation that likely could have been avoided had the Commission been properly staffed...
- Since third party campaigners have been regulated through state legislation, no government has provided a corresponding increase in funding to the NSW Electoral Commission to account for the increased regulatory workload associated with such a wide-ranging regime.<sup>505</sup>
- 5.199 Similarly, Mr Mark Morey, Secretary of Unions NSW stated:
- We have a number of affiliates when they are involved in the election period ringing our office for advice on what they should and should not declare. We try to give the appropriate advice as we understand the Act. It is often difficult to get information from the Electoral Commission, though they do try to help.<sup>506</sup>
- 5.200 Mr Holmes of the NSWNMA also provided the following evidence:
- Mr PAUL SCULLY:** ...The advice you get from the NSW Electoral Commission with respect to what should and should not be included and how that might be best determined between your ordinary duties as a union representing your members' interests and what is election campaigning during the campaign period: How have you found that information?
- Mr HOLMES:** Our experience in 2015 found that it was non-existent. Based upon that we took, I suppose, independent legal advice as much as we could this time around. The Electoral Commission attended a couple of forums and made a better attempt this time around, but it still left some unanswered questions...
- Mr PAUL SCULLY:** You are not given a dedicated officer at the Electoral Commission where, as a large, registered third-party campaigner you can contact one person to give you a sound and consistent set of advice?
- Mr HOLMES:** No.<sup>507</sup>
- 5.201 In its submission to the inquiry, the Liberal Party of Australia – NSW Division also raised concerns about advice given by the NSW Electoral Commission prior to the

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<sup>504</sup> Ms Marina Eugster, *Transcript of Evidence*, 18 November 2019, p25.

<sup>505</sup> Public Service Association of NSW, *Answers to Questions Taken on Notice*, 18 November 2019, p1.

<sup>506</sup> Mr Mark Morey, *Transcript of Evidence*, 18 November 2019, p38.

<sup>507</sup> *Transcript of Evidence*, 18 November 2019, p39.



2019 NSW State election, this time in relation to electoral expenditure and the criteria for deciding whether it would be considered to have been incurred substantially in respect of the Federal election, having regard to the proximity of the State and Federal elections in 2019. The Party stated:

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.

...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[ly] in relation to its interpretation, and much earlier than it was.<sup>508</sup>

5.202 The NSW Electoral Commission also submitted that adequate resourcing is essential for it to fulfil its compliance and enforcement role. In particular, it highlighted the need for an adequate number of ongoing compliance staff – that is, retaining the relevant expertise within the Commission from election to election. At the hearing on 22 June 2020, when discussing how the Commission deals with complaints about non-compliance with electoral legislation made during the voting period the Commissioner stated:

We have powers. I am not aware of there being concerns about the scope and depth of those powers. Resourcing is the challenge because although we have compliance individuals on an ongoing basis within the organisation, you would have heard me talk previously about some of the funding for those people running out at the end of this financial year. We have been fortunate. We know we are in difficult financial circumstances due to COVID. As part of the current budget round, we have had a 12-month extension for some of our enforcement people and our budget situation. We will see what happens after we get through the COVID year. We have extended those people.<sup>509</sup>

5.203 The Commissioner also acknowledged that it is necessary to employ a surge of people for a State wide election event and stated that the Commission is

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<sup>508</sup> Submission 18, Liberal Party of Australia – NSW Division, pp5-6.

<sup>509</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p6.

‘exploring options to be able to bring in people from other agencies to assist in future elections’.<sup>510</sup>

- 5.204 As touched upon earlier, as at 7 July 2020, the Commission advised that it had eight officers employed to investigate allegations of breaches of the electoral legislation. The Commission stated that five of these officers were funded from an ongoing funding source while the funding for the three remaining officers was due to end in June 2021.<sup>511</sup>
- 5.205 As also noted earlier, during compliance operations for the 2019 NSW State election a dedicated compliance investigation team was active across the State and for this purpose the Commission was supported by seven additional investigators who were former police detectives, ICAC senior investigators or current staff at NSW Government agencies.<sup>512</sup>

### Resourcing of parties and candidates

*The NSW Government could consider reviewing the level of funding provided to parties and candidates to comply with electoral legislation*

- 5.206 During the inquiry, the Committee heard that because of the administrative burdens associated with complying with electoral legislation discussed in this Chapter, parties needed to be provided with adequate public funding for such compliance. The Committee accordingly notes that the NSW Government could consider reviewing the level of funding provided to parties and candidates to comply with the electoral legislation.
- 5.207 This was a particular issue for smaller parties with Mr Despotoski of the Shooters, Fishers and Farmers Party telling the Committee:
- We submit that as a minor party we cannot meet our compliance and reporting measures as quickly or effortlessly as the major parties. Increases in the complexity and frequency of compliance obligations have an inequitable effect on minor parties, as we do not possess the means or resources of our major-party counterparts. To this end, we submit a one-size-fits-all approach cannot apply to political parties with respect to matters of compliance, funding and resource allocation. Adjustments must be made to compensate for the size of political parties. For instance, should the Government or, indeed, this Committee resolve to increase and grow compliance by political parties, we argue this will need to be met with adequate funding to a base level. We would argue that this is critical to ensure the proper functioning of our democracy.<sup>513</sup>
- 5.208 Similarly, when discussing the compliance burdens related to making funding claims and disclosures as required by the *Electoral Funding Act 2018*, Mrs Chalmers of the National Party of Australia – NSW stated: ‘The hours for

<sup>510</sup> Mr John Schmidt, *Transcript of Evidence*, 22 June 2020, p6.

<sup>511</sup> See NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p2 which were received by the Committee Secretariat on 7 July 2020.

<sup>512</sup> See NSW Electoral Commission, *Report on the conduct of the 2019 NSW State election*, p91; and NSW Electoral Commission, *Answers to Questions Taken on Notice*, 22 June 2020, p2.

<sup>513</sup> Mr Filip Despotoski, *Transcript of Evidence*, 18 November 2019, p41.

compliance are absurd and there is just not the funding to pay for extra staff to meet those obligations'.<sup>514</sup>

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<sup>514</sup> Mrs Kathleen Chalmers, *Transcript of Evidence*, 18 November 2019, p23.

## Appendix One – Terms of reference

Resolution passed in the Legislative Assembly on Tuesday 18 June 2019, Legislative Assembly Votes and Proceedings no 10, entry no 13.

Resolution passed in the Legislative Council on Wednesday 19 June 2019, Minutes no 10, entry no 11.

That:

(2) The Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:

(a) The following electoral laws:

(i) Electoral Act 2017 (Other than Part 3);

(ii) Electoral Funding Act 2018; and

(iii) Those provisions of the Constitution Act 1902 that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);”

(b) The administration of and practices associated with the electoral laws described at (a).

(3) All matters that relate to (2) (a) and (b) above in respect of the 23 March 2019 State Election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 18 months of the date of this resolution being agreed to by both Houses.

## Appendix Two – Conduct of inquiry

### Terms of Reference

On 7 August 2019, the Committee noted that on 18 June 2019, and 19 June 2019 respectively, the Legislative Assembly and Legislative Council referred to it an inquiry into the administration of the 2019 NSW State election. The Committee resolved to conduct an inquiry as per the referral. The full terms of reference can be found at Appendix One.

### Submissions

The Committee called for submissions and wrote to key stakeholders inviting them to make a submission. The closing date for submissions was 9 October 2019.

The Committee received 28 submissions from a range of stakeholders including political parties; third party campaigners; academics with expertise in the area of electronic voting; voter accessibility advocacy groups; Election Analyst Mr Antony Green; and private citizens. The NSW Electoral Commissioner, Mr John Schmidt, also requested that the NSW Electoral Commission's *Report on the conduct of the 2019 NSW State election*, tabled in Parliament on 24 October 2019, form part of the Commission's formal evidence to the inquiry.

A complete list of submissions can be found at Appendix Three.

### Hearings

The Committee held public hearings for the inquiry on 18 November 2019 and 19 February 2020. It also held a third hearing on 22 June 2020, and as result of the COVID-19 pandemic, this hearing was conducted via videoconference and web streamed by the Parliament.

37 witnesses appeared to give evidence at the hearings. They included the NSW Electoral Commissioner, Mr John Schmidt and Commission staff; representatives of political parties; third party campaigners; academics with expertise in the area of electronic voting; the Director of ScytI (the company that provided the software for iVote at the 2019 NSW State election); voter accessibility advocacy groups; and Election Analyst, Mr Antony Green. A complete list of the witnesses who appeared at the hearings can be found at Appendix Four.

## Appendix Three – Submissions

Submission No 1	Mr Ian Brightwell
Submission No 2	Name suppressed
Submission No 3	Ethnic Communities Council of NSW
Submission No 4	Mr Robert Rogers
Submission No 5	newDemocracy
Submission No 6	Mr Nick Casmirri
Submission No 7	Blindness Sector
Submission No 8	Mrs Francesca Osborn
Submission No 9	Confidential
Submission No 10	Confidential
Submission No 11	Homelessness NSW
Submission No 12	Australian Education Union New South Wales Teachers Federation Branch
Submission No 13	Vision Australia
Submission No 14	Multicultural Disability Advocacy Association of NSW Inc
Submission No 15	National Party of Australia – NSW
Submission No 15a	National Party of Australia – NSW
Submission No 16	NSW Nurses and Midwives Association
Submission No 17	Professor Rajeev Gore, Associate Professor Vanessa Teague and Dr Chris Culnane
Submission No 18	Liberal Party of Australia – NSW Division
Submission No 19	Mr Malcolm Baalman
Submission No 20	Unions NSW
Submission No 21	Professor Richard Buckland and Dr Roland Wen
Submission No 22	Australian Labor Party (NSW Branch)

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Submission No 23	Country Labor
Submission No 24	The Greens NSW
Submission No 25	The Shooters, Fishers and Farmers Party NSW
Submission No 26	Public Service Association of New South Wales
Submission No 27	Mr Wesley Hindmarsh
Submission No 28	Mr Antony Green
Submission No 28a	Mr Anthony Green

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## Appendix Four – Witnesses

MONDAY 18 NOVEMBER 2019, JUBILEE ROOM, PARLIAMENT HOUSE

<b>Witness</b>	<b>Position/Organisation</b>
Mr Mark Lennon	President, Australian Labor Party (NSW Branch)
Mr Christopher Stone	State Director, Liberal Party of Australia – NSW Division
Mr Ross Cadell	State Director, National Party of Australia – NSW
Mr Bradley Vermeer	Operations Director, National Party of Australia - NSW
Mrs Kathleen Chalmers	Finance Director, National Party of Australia - NSW
Miss Olivia Kerr	Administration Officer, National Party of Australia - NSW
Ms Marina Eugster	State Manager, The Greens NSW
Mr Christopher Maltby	Registered Officer, The Greens NSW
Mr Seamus Lee	Deputy Registered Officer, The Greens NSW
Mr Brett Holmes	General Secretary, NSW Nurses and Midwives Association
Ms Janaki Chellam-Rajendra	Manager, Campaigns and Communication, NSW Nurses & Midwives Association
Mr Troy Wright	Acting General Secretary, Public Service Association of NSW
Ms Laura Moss	Industrial Officer, Public Service Association of NSW
Mr Mark Morey	Secretary, Unions NSW
Mr Filip Despotoski	State Director, The Shooters, Fishers and Farmers Party NSW
Mr Grant Layland	State Treasurer, The Shooters, Fishers and Farmers Party NSW
Mr John Schmidt	NSW Electoral Commissioner, NSW Electoral Commission
Mr John Cant	Executive Director, Information Services, NSW Electoral Commission
Mr Simon Kwok	Executive Director, Elections, NSW Electoral Commission



Ms Rachel McCallum	Executive Director, Funding, Disclosure and Compliance, and General Counsel, NSW Electoral Commission
Mr Matt Phillips	Executive Director, Corporate, NSW Electoral Commission

**WEDNESDAY 19 FEBRUARY 2020, MACQUARIE ROOM, PARLIAMENT HOUSE**

<b>Witness</b>	<b>Position/Organisation</b>
Mr Antony Green	Election Analyst
Professor Rajeev Gore	Professor, Logic and Computation Group and Associate Director of Research, The Australian National University
Dr Vanessa Teague	Associate Professor, Chair Cybersecurity and Democracy Network, Melbourne School of Engineering, University of Melbourne
Dr Aleksander Essex	Associate Professor of Software Engineering, Western University, Canada and Visiting Scholar, Melbourne School of Engineering, University of Melbourne
Professor Richard Buckland	Director, SECedu Australian Cybersecurity Education Network, School of Computer Science and Engineering, The University of NSW
Dr Roland Wen	Visiting Fellow, School of Computer Science and Engineering, The University of NSW
Mr Lachlan "Sam" Campbell	Director, ScytI Australia Pty Ltd
Mr Digby Hughes	Senior Policy and Research Officer, Homelessness NSW
Mr Bruce Maguire	Lead Policy Advisor, Government Relations and Advocacy, Vision Australia
Mr Peter Doukas	Chairperson, Ethnic Communities Council of NSW
Ms Jaci Armstrong	Principal Policy Advisor, Guide Dogs Australia
Ms Robina Yasmin	Community Voices member, Multicultural Disability Advocacy Association
Ms Sally Aurisch	NSW Coordinator, Blind Citizens Australia
Mr Martin Musgrave	Executive Director, Commercial and Economic Planning Association Inc.

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Mr Matthew Daniel	President, Commercial and Economic Planning Association Inc.
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MONDAY 22 JUNE 2020, VIDEO CONFERENCE

<b>Witness</b>	<b>Position/Organisation</b>
Mr John Schmidt	NSW Electoral Commissioner, NSW Electoral Commission
Mr John Cant	Executive Director, Information Services, NSW Electoral Commission
Mr Simon Kwok	Executive Director, Elections, NSW Electoral Commission
Ms Rachel McCallum	Executive Director, Funding Disclosure and Compliance and General Counsel, NSW Electoral Commission
Mr Matt Phillips	Executive Director, Corporate, NSW Electoral Commission
Mr Mark Radcliffe	Director, Election Innovation, NSW Electoral Commission

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## Appendix Five – Extracts from minutes

### **MINUTES OF MEETING No 2**

9:00am, 7 August 2019

Room 1254

#### **Members present**

Mr Evans (Chair), Ms Wilson (Deputy Chair), Mr Borsak, Ms Cusack, Mr Franklin, Mrs Houssos (by telephone), Mr Primrose, Mr Scully and Mr Smith.

#### **Officers in attendance**

Elaine Schofield, Elspeth Dyer, Jacqueline Isles and Ilana Chaffey.

#### **1. Apologies**

Mr Gulaptis.

#### **2. Confirmation of minutes**

Resolved, on the motion of Ms Cusack:

That the draft minutes of meeting no 1, held on 20 June 2019 be confirmed.

#### **3. \*\*\***

#### **4. \*\*\***

#### **5. Inquiry into the 2019 NSW State Election**

The Chair advised that the establishing resolution for the Committee refers to it an inquiry into the 2019 NSW State Election. He invited discussion on previously circulated documents which outlined proposed key dates for the inquiry and potential key stakeholders to be invited to make a written submission to the inquiry.

Discussion ensued.

The Committee agreed that members may email the names of any additional key stakeholders, to be invited to make a written submission to the inquiry, to the secretariat by close of business on Friday 9 August 2019.

Resolved on the motion of Ms Cusack, seconded by Ms Wilson:

- That the Committee note that its establishing resolution referred to it an inquiry into the 2019 NSW State Election;
- That the Committee conduct an inquiry into the 2019 NSW State Election as per the referral contained in its establishing resolution;
- That the Committee call for submissions and advertise the inquiry on the Committee's webpage;
- That the closing date for submissions be 9 October 2019;

- That the Chair issue a media release announcing the inquiry;
- That the key stakeholders on the list circulated plus additional stakeholders nominated by members, be informed of the inquiry and invited to make a submission.

6. \*\*\*

7. \*\*\*

#### 8. Next meeting

The Committee agreed to meet on Wednesday 23 October 2019 at 10.30am and adjourned at 9.16am.

### MINUTES OF MEETING No 3

10:32am, 23 October 2019

Room 1136, Parliament House

#### Members present

Mr Evans (Chair), Ms Wilson (Deputy Chair), Mr Borsak, Mr Franklin, Mrs Houssos, Mr Primrose, Mr Scully and Mr Smith.

#### Officers in attendance

Elaine Schofield, Elspeth Dyer, Jacqueline Isles, Caroline Hopley and Ze Nan Ma.

#### 1. Apologies

Apologies were received from Ms Cusack and Mr Gulaptis.

#### 2. Confirmation of minutes

Resolved, on the motion of Mrs Houssos, seconded by Mr Scully:

That the draft minutes of meeting no 2, held on 7 August 2019 be confirmed.

#### 3. Correspondence

The Committee noted the following items of correspondence:

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#### *Received*

- Mr Sam Campbell, Director, ScytI Australia Pty Ltd, dated 12 September 2019, advising that ScytI will not make a submission to the Committee's inquiry into the administration of the 2019 NSW State Election.
- \*\*\*
- Ms Tara McCarthy, Chief Executive, Local Government NSW, dated 26 August 2019, advising that Local Government NSW will not make a submission to the Committee's inquiry into the Administration of the 2019 NSW State Election.
- \*\*\*

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#### 4. Inquiry into the Administration of the 2019 NSW State Election

##### 4.1. Publication of submissions

The Committee considered the publication recommendations prepared by the secretariat:

- That submission 1, 3-8, 11-14, 16-21 and 24 be received by the Committee and published in full;
- That submission 2 be received by the Committee and published in part;
- That submission 9 be received by the Committee and kept confidential;
- That submission 10 be received by the Committee and kept confidential and that the submission be provided to the Electoral Commissioner for response on the systemic issues involved;
- That submission 15 be received by the Committee and published except for Appendix 1 which is kept confidential, and that Appendix 1 be provided to the Electoral Commissioner for response on the systemic issues involved;
- That submission 22 be received by the Committee and published except identifying words at:
  - Section 1.3, paragraph 3 [REDACTED] and [REDACTED]-and
  - Section 2.2, paragraph 3, [REDACTED]and that the words kept confidential be provided to the Electoral Commissioner for response to the systemic issues;
- That submission 23 be received by the Committee and published except identifying words at Section 2.1, paragraph 8, [REDACTED]  
[REDACTED]  
[REDACTED] and that the words kept confidential be provided to the Electoral Commissioner for response on the systemic issues.

Discussion ensued.

Mr Franklin moved that in submission 22, at section 1.3, paragraph 3, the words [REDACTED] also be kept confidential.

Motion agreed to.

Resolved, on the motion of Mr Primrose, seconded by Ms Wilson:

- That submissions 1-9, 10, 11-14, 15, 16-21, 23 and 24 be published in accordance with the secretariat recommendations circulated to Committee members.
- That submission 22 be published in accordance with the secretariat recommendation as amended.

##### 4.2 Public Hearings

The Committee considered conducting a public hearing for its inquiry on 18 November 2019. The Committee also noted that The NSW Electoral Commissioner's report on the review of the 2019 NSW State Election had not yet been tabled in Parliament but that advice had been received by the Chair that it may be tabled on 24 October 2019.

Discussion ensued.

Resolved, on the motion of Mrs Houssos:

That, if the NSW Electoral Commissioner's review of the 2019 NSW State Election is tabled in Parliament on or before 25 October 2019, the Committee conduct a hearing for its inquiry into the Administration of the 2019 NSW State Election on 18 November 2019.

In addition to the list of possible witnesses circulated by the secretariat:

Mr Franklin proposed that the Committee may wish to hear from business groups in the category of third party campaigners.

Mr Franklin and Mr Primrose proposed that the Committee may wish to hear from electoral experts, Mr Antony Green and Mr Ben Raue.

Resolved, on the motion of Mrs Houssos, seconded by Ms Wilson:

- That the Committee conduct two days of hearings for its inquiry into the Administration of the 2019 NSW State Election, with one day hearing from political parties and third party campaigners; and one day hearing from electoral experts, iVote experts and access stakeholders;
- That the secretariat circulate a revised list of proposed witnesses to Committee members prior to confirming arrangements;
- That the Chair issue a media release announcing the hearings.

5. \*\*\*

## 6. Next meeting

The Committee adjourned at 10:52am until a date and time to be determined.

## MINUTES OF MEETING No 4

9:45 am 18 November 2019

Jubilee Room, Parliament House

### Members Present

Mr Evans (Chair), Ms Wilson (Deputy Chair), Mr Borsak (from 10:13am), Ms Cusack, Mr Franklin, Mr Gulaptis (from 10:20am), Mr Primrose, Mr Scully and Mr Smith.

### Officers in attendance

Elsbeth Dyer, Caroline Hopley, Jacqueline Isles and Ze Nan Ma.

#### 1. Apologies

An apology was received from Mrs Houssos.

#### 2. Confirmation of minutes

Resolved, on the motion of Ms Cusack, seconded by Mr Smith:

That the draft minutes of meeting no 3, held on 23 October 2019, be confirmed.

### **3. Correspondence**

The Committee noted the following items of correspondence:

*Sent*

- \*\*\*
- \*\*\*
- 29 October 2019, Mr John Schmidt, NSW Electoral Commissioner, referring to him entire copies of submissions 10, 15, 22 and 23 to the Committee's inquiry into the 2019 NSW State Election.

### **4. Inquiry into the Administration of the 2019 NSW State Election**

#### ***4.1 Publication of submissions***

The Committee considered publication recommendations prepared by the secretariat.

Resolved, on the motion of Ms Cusack, seconded by Mr Franklin:

That submissions 25, 26 and 27 be received by the Committee and published in full.

#### ***4.2 Further dates for public hearings***

The Committee noted that the secretariat would be in contact with Members' offices concerning suitable dates in the new year for a part day hearing to hear from remaining stakeholders on its agreed witness list; and another part day hearing to hear further from the NSW Electoral Commissioner.

The Chair noted that dates in early February may be the most suitable.

#### ***4.3 Public Hearing***

The Committee considered standard resolutions for the conduct of its public hearing on 18 November 2019 for the inquiry.

Resolved, on the motion of Mr Franklin, seconded by Mr Primrose:

- That at its public hearing on 18 November 2019 the Committee take evidence from witnesses from NSW Labor; the Liberal Party of Australia – NSW Division; the National Party of Australia – NSW; the Greens NSW; Unions NSW; the Nurses and Midwives Association; the Public Service Association of NSW; the Shooters, Fishers and Farmers Party NSW; and the NSW Electoral Commission.
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 18 November 2019;
- That the Chair send questions on notice and any additional questions to witnesses following the 18 November 2019 public hearing as required;
- That the Committee secretariat publish answers to any questions on the Committee's webpage;

- That the Committee secretariat publish the corrected transcript of evidence taken at the public hearing on 18 November 2019 on the Committee's webpage.

5. \*\*\*

**6. Public Hearing – Inquiry into the Administration of the 2019 NSW State Election**

At 9:56am the Chair declared the public hearing open and witnesses and the public were admitted.

At 9:56am Mr Mark Lennon, President, Australian Labor Party (NSW Branch) was sworn and examined.

Mr Lennon confirmed that the Australian Labor Party (NSW Branch) would like submission no. 22 to the inquiry to form part of its formal evidence.

Mr Lennon made an opening statement.

At 10:41am Mr Lennon's evidence concluded and the witness withdrew.

At 10:41am the Committee took the morning tea adjournment and the public withdrew.

The public hearing resumed at 11:02am and witnesses and the public were admitted.

At 11:02am Mr Christopher Stone, State Director, Liberal Party of Australia – NSW Division was sworn and examined.

Mr Stone confirmed that the Liberal Party of Australia – NSW Division would like submission no. 18 to the inquiry to form part of its formal evidence.

Mr Stone made an opening statement.

At 11:47am Mr Stone's evidence concluded and the witness withdrew.

At 11:48am:

- Mr Ross Cadell, State Director, National Party of Australia – NSW was affirmed and examined.
- Mr Bradley Vermeer, Operations Director, National Party of Australia – NSW was sworn and examined.
- Miss Olivia Kerr, Administration Officer, National Party of Australia – NSW was affirmed and examined.
- Mrs Kathleen Chalmers, Finance Director, National Party of Australia – NSW was affirmed and examined.

Mr Cadell confirmed that the National Party of Australia – NSW would like submission no. 15 to the inquiry, with a supplementary change, to form part of its formal evidence.



Mr Cadell made an opening statement.

At 12:27pm the witnesses' evidence concluded and the witnesses withdrew.

At 12:27pm the Committee took the luncheon adjournment and the public withdrew.

The public hearing resumed at 1:15pm and witnesses and the public were admitted.

At 1:15pm:

- Ms Marina Eugster, State Manager, The Greens NSW was affirmed and examined.
- Mr Chris Maltby, Registered Officer, The Greens NSW was affirmed and examined.
- Mr Seamus Lee, Deputy Registered Officer, The Greens NSW was affirmed and examined.

Ms Eugster confirmed that The Greens NSW would like submission no.24 to the inquiry to form part of its formal evidence but that at page 14, item 16 of the submission, The Greens would like the third paragraph and recommendation 16B deleted.

Ms Eugster made an opening statement.

At 1:51pm the witnesses' evidence concluded and the witnesses withdrew.

At 1:51pm Mr Borsak departed.

At 1:58pm:

- Mr Mark Morey, Secretary, Unions NSW was affirmed and examined.
- Mr Brett Holmes, General Secretary, NSW Nurses and Midwives Association was affirmed and examined.
- Ms Janaki Chellam-Rajendra, Manager Campaigns and Communications, NSW Nurses and Midwives Association was affirmed and examined.
- Mr Troy Wright, Acting General Secretary, Public Service Association of NSW was affirmed and examined.
- Ms Laura Moss, Industrial Officer, Public Service Association of NSW was affirmed and examined.

Mr Holmes confirmed that the NSW Nurses and Midwives Association would like submission no.16 to the inquiry to form part of its formal evidence.

Mr Morey confirmed that Unions NSW would like submission no. 20 to the inquiry to form part of its formal evidence.

Mr Wright confirmed that the Public Service Association of NSW would like submission no. 26 to the inquiry to form part of its formal evidence.

Mr Holmes made an opening statement.

Mr Morey made an opening statement.

Mr Wright made an opening statement.

Mr Borsak returned at 2:13pm.

At 2:40pm the witnesses' evidence concluded and the witnesses withdrew.

At 2:40pm Mr Primrose, Mr Scully and Ms Wilson departed.

At 2:40pm the Committee took the afternoon tea adjournment and the public withdrew.

At 3:05pm the public hearing resumed and witnesses and the public were admitted.

At 3:05pm:

- Mr Filip Despotoski, State Director, Shooters, Fishers and Farmers Party NSW was sworn and examined.
- Mr Grant Layland, State Treasurer and Registered Officer, Shooters, Fishers and Farmers Party NSW was sworn and examined.

Mr Despotoski confirmed that the Shooters, Fishers and Farmers Party NSW would like submission no. 25 to the inquiry to form part of its formal evidence.

Mr Despotoski made an opening statement.

Ms Wilson returned at 3:17pm.

At 3:52pm the witnesses' evidence concluded and the witnesses withdrew.

At 3:55pm Mr Smith departed.

At 3:58pm:

- Mr John Schmidt, NSW Electoral Commissioner, NSW Electoral Commission was affirmed and examined.
- Mr John Cant, Executive Director, Information Services, NSW Electoral Commission was affirmed and examined.
- Mr Simon Kwok, Executive Director, Elections, NSW Electoral Commission was affirmed and examined.
- Ms Rachel McCallum, Executive Director, Funding, Disclosure and Compliance, and General Counsel, NSW Electoral Commission was affirmed and examined.
- Mr Matt Phillips, Executive Director, Corporate, NSW Electoral Commission, was sworn and examined.

Mr Schmidt confirmed that he would like his *Report on the Conduct of the 2019 NSW State Election* tabled in Parliament on 24 October 2019 to form part of the NSW Electoral Commission's formal evidence to the inquiry.

Mr Schmidt made an opening statement.

At 5:08pm the witnesses' evidence concluded and the witnesses withdrew.

The public hearing concluded at 5:08pm and the public withdrew.

## 7. Next meeting

The Committee adjourned at 5:08pm until a date and time to be determined.

## MINUTES OF MEETING No 5

10am, 19 February 2020

Macquarie Room, Parliament House

### Members present

Mr Evans (Chair), Ms Wilson (Deputy Chair, from 10:03am), Mr Franklin, Mr Gulaptis, Mrs Houssos, Mr Primrose, Mr Scully and Mr Smith.

### Officers in attendance

Elspeth Dyer, Caroline Hopley, Jacqueline Isles and Ze Nan Ma.

## 1. Apologies

Apologies were received from Mr Borsak and Ms Cusack.

## 2. Confirmation of minutes

Resolved on the motion of Mr Franklin, seconded by Mr Gulaptis:

That the draft minutes of meeting no 4, held on 18 November 2019, be confirmed.

## 3. Correspondence

The Committee noted the following items of correspondence:

### *Received*

- 4 December 2019 – Email from Mr Ben Raue declining to appear at a public hearing for the Committee's inquiry into the administration of the 2019 NSW State Election.
- \*\*\*

Resolved, on the motion of Mr Smith, seconded by Mr Primrose:

- That the Committee note the correspondence.
- \*\*\*
- \*\*\*

## 4. Inquiry into the Administration of the 2019 NSW State Election

**4.1 Publication of submission**

The Chair noted receipt of a late submission to the Committee's inquiry from Mr Antony Green (submission 28), which was circulated to Committee members on 3 December 2019. The Committee considered a publication order for the submission.

Resolved, on the motion of Mr Franklin, seconded by Mr Scully:

That submission 28 to the inquiry into the 2019 NSW State election be accepted by the Committee and published in full.

**4.2 Requested amendments to submissions**

The Chair noted receipt of a letter, previously circulated to Committee members, from the National Party of Australia – NSW seeking to amend its submission (submission 15) to the inquiry.

Resolved, on the motion of Mr Gulaptis, seconded by Ms Wilson:

That the letter from the National Party of Australia – NSW seeking to amend its submission to the Committee's inquiry into the administration of the 2019 NSW State election be accepted by the Committee and published in full as a supplementary submission.

The Committee also considered a request received from The Greens NSW, to amend its submission (submission 24) to the inquiry. This request was made at the Committee's hearing on 18 November 2019 and followed up by letter dated 10 February 2020, attaching an amended submission, both of which were previously circulated to Committee members.

The Committee considered whether to publish the amended submission in place of the original submission, on the inquiry webpage.

Discussion ensued.

Resolved, on the motion of Ms Wilson, seconded by Mr Franklin:

- That the amended submission of The Greens NSW to the Committee's inquiry into the 2019 NSW State election not be accepted by the Committee nor published in place of The Greens' original submission to the inquiry (submission 24).
- That the Chair write to The Greens NSW advising of the Committee's decision and stating that, should the Party wish to pursue the amendment it would need to forward a letter detailing the exact words that it would like to withdraw from its original submission which the Committee could then consider publishing alongside the original submission, as a supplementary submission to the inquiry.

**4.3 Transcript of Evidence – 18 November 2019 Hearing**

The Chair noted that on [REDACTED] of the transcript of evidence for the 18 November 2019 hearing, [REDACTED] stated: [REDACTED]

The Chair further noted that the Committee [REDACTED]

Discussion ensued.

#### **4.4 Public Hearing**

The Committee considered standard resolutions for the conduct of its public hearing on 19 February 2020 for the inquiry.

Resolved, on the motion of Ms Wilson, seconded by Mr Smith:

- That the Committee conduct a public hearing for its inquiry into the Administration of the 2019 NSW State Election on 19 February 2020.
- That at its public hearing on 19 February 2020 the Committee take evidence from Mr Antony Green; Professor Rajeev Gore; Associate Professor Vanessa Teague; Associate Professor Aleksander Essex; Professor Richard Buckland; Dr Roland Wen; and from witnesses from ScytI; Homelessness NSW; Vision Australia; the Ethnic Communities' Council of NSW; Guide Dogs Australia; the Multicultural Disability Advocacy Association; Blind Citizens Australia; and the Commercial and Economic Planning Association Inc.
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 19 February 2020.
- That the Chair send questions on notice and any additional questions to witnesses following the 19 February 2020 public hearing as required.
- That the Committee secretariat publish answers to any questions taken on notice or additional questions on the Committee's webpage.
- That the Committee secretariat publish the corrected transcript of evidence taken at the public hearing on 19 February 2020 on the Committee's webpage.

#### **5. General Business**

The Chair raised the issue of the possibility of *in camera* evidence being given at the hearing on 19 February 2020, and arrangements for witnesses' opening statements.

Discussion ensued.

#### **6. Public Hearing – Inquiry into the Administration of the 2019 NSW State Election**

At 10:15am the Chair declared the public hearing open and the witness and the public were admitted.

At 10:17am, Mr Antony Green, Election Analyst, was affirmed and examined.

Mr Green confirmed that he would like submission 28 to the inquiry to form part of his formal evidence.

Mr Green made an opening statement.

At 10:59am Mr Green's evidence concluded and the witness withdrew.

At 10:59am Mr Gulaptis departed.

At 10:59am the Committee took the morning tea adjournment and the public withdrew.

The public hearing resumed at 11:15am and witnesses and the public were admitted.

At 11:15am:

- Professor Rajeev Gore, Professor, Logic and Computation Group and Associate Director of Research, The Australian National University was affirmed and examined.
- Dr Vanessa Teague, Associate Professor, Chair Cybersecurity and Democracy Network, Melbourne School of Engineering, University of Melbourne was affirmed and examined.
- Dr Aleksander Essex, Associate Professor of Software Engineering, Western University, Canada and Visiting Scholar, Melbourne School of Engineering, University of Melbourne was affirmed and examined.

Professor Gore and Dr Teague confirmed that they would like submission 17 to the inquiry to form part of their formal evidence.

Professor Gore made an opening statement.

Dr Teague made an opening statement.

Dr Essex made an opening statement.

At 11:26am Mr Gulaptis returned.

At 11:56am the witnesses' evidence concluded and the witnesses' withdrew.

At 11:56am Ms Wilson departed.

At 12 noon:

- Professor Richard Buckland, Director, SECedu Australian Cybersecurity Education Network, School of Computer Science and Engineering, The University of New South Wales, was affirmed and examined.
- Dr Roland Wen, Visiting Fellow, School of Computer Science and Engineering, The University of New South Wales, was affirmed and examined.

Dr Wen made an opening statement.

Professor Buckland made an opening statement.

Professor Buckland and Dr Wen confirmed that they would like submission 21 to the inquiry to form part of their formal evidence.

At 12:38pm the witnesses' evidence concluded and the witnesses' withdrew.

At 12:38pm Mrs Houssos departed.

At 12:38pm the Committee took the luncheon adjournment and the public withdrew.

The public hearing resumed at 1:31pm and the witness and the public were admitted.

At 1:31pm, Mr Lachlan James Campbell, Director, Scytl Australia Pty Ltd, was affirmed and examined. Mr Campbell noted that he is also known as Sam Campbell.

Mr Campbell made an opening statement.

At 2:03pm Mr Campbell's evidence concluded and the witness withdrew.

At 2:08pm Mr Scully departed.

At 2:08pm:

- Ms Jaci Armstrong, Principal Policy Advisor, Guide Dogs Australia, was sworn and examined.
- Mr Digby Hughes, Senior Policy and Research Officer, Homelessness NSW, was affirmed and examined.
- Ms Sally Aurisch, NSW Coordinator, Blind Citizens Australia, was affirmed and examined.
- Mr Bruce Maguire, Lead Policy Advisor, Government Relations and Advocacy, Vision Australia, was affirmed and examined.
- Ms Robina Yasmin, Community Voices Member, Multicultural Disability Advocacy Association, was sworn and examined.
- Mr Peter Doukas, Chairperson, Ethnic Communities' Council of NSW, was sworn and examined.

Ms Armstrong, Ms Aurisch and Mr Maguire confirmed that they would like submission 7 to the inquiry to form part of their formal evidence. Mr Maguire also confirmed that he would like submission 13 to the inquiry to form part of his formal evidence.

Mr Hughes confirmed that he would like submission 11 to the inquiry to form part of his formal evidence.

Ms Yasmin confirmed that she would like submission 14 to the inquiry to form part of her formal evidence.

Mr Doukas confirmed that he would like submission 3 to the inquiry to form part of his formal evidence.

Mr Maguire made an opening statement.

Mr Scully returned at 2:13pm.

Ms Armstrong made an opening statement.

Ms Aurisch made an opening statement.

Ms Yasmin made an opening statement.

Mr Doukas made an opening statement.

Mr Hughes made an opening statement.

At 3:12pm the witnesses' evidence concluded and the witnesses' withdrew.

At 3:12pm Mr Primrose departed.

At 3:12pm the Committee took the afternoon tea adjournment and the public withdrew.

At 3:32pm the public hearing resumed and witnesses and the public were admitted.

At 3:32pm:

- Mr Matthew Daniel, President, Commercial and Economic Planning Association Inc., was sworn and examined.
- Mr Martin Musgrave, Executive Director, Commercial and Economic Planning Association Inc., was affirmed and examined.

The Chair declared that he knows Mr Daniel as a member of the Liberal Party in the Sutherland Shire.

Mr Franklin declared that he knows Mr Musgrave as a member of the National Party in the Ballina Shire.

Mr Smith declared that he knows Mr Daniel as a member of the NSW Liberal Party.

Mr Musgrave made an opening statement.

Mr Daniel made an opening statement.

At 3:59pm the witnesses' evidence concluded and the witnesses withdrew.

The public hearing concluded at 3:59pm and the public withdrew.

## **7. Next meeting**

The meeting adjourned at 3:59pm until 30 March 2020 at 1:30pm.

## **MINUTES OF MEETING No 6**

10am, 22 June 2020

Jubilee Room, Parliament House

### **Members present**

Mr Evans (Chair), Ms Wilson (Deputy Chair, via videoconference), Mr Borsak (via videoconference), Ms Cusack (via videoconference), Mr Franklin (via videoconference), Mr Gulaptis (via videoconference), Mrs Houssos (via videoconference), Mr Primrose (via videoconference), Mr Scully (via videoconference) and Mr Smith (via videoconference).

### **Officers in attendance**

Elaine Schofield, Elspeth Dyer, Caroline Hopley, Jacqueline Isles and Ze Nan Ma.



**1. Confirmation of minutes**

Resolved on the motion of Mr Franklin, seconded by Mrs Houssos:

That the draft minutes of meeting no 5, held on 19 February 2020, be confirmed.

**2. Correspondence**

The Committee noted the following items of correspondence:

*Received*

- \*\*\*
- \*\*\*
- 19 February 2020 – Letter from Hon Gareth Ward MP on behalf of Mr Wes Hindmarsh seeking a response to the issues raised in Mr Hindmarsh's submission to the Committee's inquiry into the 2019 NSW State Election (submission 27) (with Chair's draft response).

*Sent*

- 27 February 2020 – Letter to Mr Chris Maltby, Registered Officer, The Greens NSW, concerning the Party's request to amend its submission to the Committee's Inquiry into the 2019 NSW State Election.
- \*\*\*

Resolved, on the motion of Mr Gulaptis, seconded by Mr Franklin:

- That the Committee note the correspondence.
- \*\*\*
- \*\*\*
- That the Chair's response to the Hon Gareth Ward MP be sent as circulated.

**3. Inquiry into the Administration of the 2019 NSW State Election****3.1 Requested amendments to submission**

The Chair noted that the Committee had received a written request from Mr Antony Green to amend his submission (submission 28) to the inquiry.

Resolved, on the motion of Mr Franklin, seconded by Mrs Houssos:

That the document from Mr Antony Green seeking to amend his submission to the Committee's inquiry into the administration of the 2019 NSW State election be accepted by the Committee and published in full as a supplementary submission to the inquiry.

**3.2 Public Hearing**

The Committee considered standard resolutions for the conduct of its public hearing on 22 June 2020 for the inquiry.

Resolved, on the motion of Mr Gulaptis, seconded by Mr Franklin:

- That at its public hearing on 22 June 2020 the Committee take evidence from witnesses from the NSW Electoral Commission.

- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 22 June 2020.
- That the Chair send questions on notice and any additional questions to witnesses following the 22 June 2020 public hearing as required.
- That the Committee secretariat publish answers to any questions taken on notice or additional questions on the Committee's webpage.
- That the Committee secretariat publish the corrected transcript of evidence taken at the public hearing on 22 June 2020 on the Committee's webpage.

**4. \*\*\***

**5. Public Hearing – Inquiry into the Administration of the 2019 NSW State Election**

At 10:08am the Chair declared the public hearing open and witnesses were admitted via videoconference.

At 10:08am:

- Mr John Schmidt, NSW Electoral Commissioner, NSW Electoral Commission was affirmed and examined.
- Mr John Cant, Executive Director, Information Services, NSW Electoral Commission was affirmed and examined.
- Mr Simon Kwok, Executive Director, Elections, NSW Electoral Commission was affirmed and examined.
- Ms Rachel McCallum, Executive Director Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission was affirmed and examined.
- Mr Matt Phillips, Executive Director, Corporate, NSW Electoral Commission was sworn and examined.
- Mr Mark Radcliffe, Director, Election Innovation, NSW Electoral Commission was affirmed and examined.

At 11:07am the witnesses' evidence concluded and the witnesses withdrew.

The public hearing concluded at 11:07am.

**6. Next meeting**

The meeting adjourned at 11:07am until a date and time to be determined.

**MINUTES OF MEETING No 7**

12 noon, 3 August 2020

Room 814/815, Parliament House

**Members present**

Mr Evans (Chair), Ms Wilson (Deputy Chair, via videoconference), Mr Borsak, Mr Franklin, Mr Gulaptis (via videoconference), Mrs Houssos, Mr Primrose, Mr Scully and Mr Smith (via videoconference).

**Officers in attendance**

Clara Hawker, Elspeth Dyer, Caroline Hopley and Ze Nan Ma.

### 1. Apologies

An apology was received from Ms Cusack.

### 2. Confirmation of minutes

Resolved on the motion of Mrs Houssos, seconded by Mr Franklin:

That the draft minutes of meeting no 6, held on 22 June 2020, be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

*Sent*

- \*\*\*
- \*\*\*
- \*\*\*
- 22 June 2020 – Letter to Hon Gareth Ward MP responding to his letter on behalf of Mr Wes Hindmarsh concerning issues raised in Mr Hindmarsh's submission to the Committee's inquiry into the 2019 NSW State Election (submission 27).

### 4. Inquiry into the Administration of the 2019 NSW State Election

The Committee held a roundtable discussion about possible recommendations and findings to include in its report for the inquiry.

### 5. \*\*\*

### 6. Next meeting

The meeting adjourned at 1:02pm until a date and time to be determined.

## MINUTES OF MEETING No 8

10:02am, 26 October 2020

Room 814/815, Parliament House

### Members present

Mr Evans (Chair), Ms Wilson (Deputy Chair, via videoconference), Mr Borsak, Ms Cusack (via videoconference), Mr Franklin, Mrs Houssos, Mr Primrose (via videoconference), Mr Scully (via videoconference) and Mr Smith (via videoconference).

### Officers in attendance

Elaine Schofield, Elspeth Dyer, Caroline Hopley and Ze Nan Ma.

### 1. Apologies

An apology was received from Mr Gulaptis.

### 2. Confirmation of minutes

Resolved, on the motion of Mr Franklin:

That the draft minutes of meeting no 7, held on 3 August 2020, be confirmed.

3. \*\*\*

4. \*\*\*

**5. Inquiry into the Administration of the 2019 NSW State Election – Consideration of Chair's Draft report**

The Committee agreed to consider the Chair's draft report, *Administration of the 2019 NSW State Election*, distributed to Members by email on 2 October 2020 chapter by chapter.

Chapter One proposed.

Question put: That Chapter One stand as part of the report.

Question resolved in the affirmative.

Chapter Two proposed.

Upon which, Mrs Houssos moved, seconded by Mr Franklin:

That Recommendation 13 "That the NSW Government consider amending the *Electoral Act 2017* to offer electors a choice between a short-form Legislative Council ballot paper for those who wish to vote above the line, and a longer form ballot paper for those who wish to vote below the line"; and Recommendation 14 "That in considering the introduction of a short-form Legislative Council ballot paper, the NSW Government consult with the NSW Electoral Commission regarding design issues and any operational issues in implementing such a change" be deleted.

Discussion ensued.

Question put: That the amendments be agreed to.

Question resolved in the affirmative.

The Committee agreed to the secretariat making consequential changes flowing from the amendments:

- That the subheading above paragraph 2.70 "The Government should consider the option of a short-form Legislative Council ballot paper" be deleted and replaced with "There should be no short-form Legislative Council ballot paper at this stage".
- That paragraph 2.74 "Therefore, the Committee recommends that the Government consider amending the legislation to allow voters a choice between a short-form Legislative Council ballot for those who wish to vote above the line, and a longer form ballot for those who wish to vote below the line" be deleted and replaced with "Having regard to the design and operational issues further inquiry is needed. There should be no short-form Legislative Council ballot paper at this stage but this could be considered in the future".

- That paragraph 2.75 "Having regard to the planning that will need to go into the design of any new ballot paper and associated operational issues that may arise with its implementation, the Committee also recommends that in considering the introduction of a short-form Legislative Council ballot paper, the NSW Government consult with the NSW Electoral Commission regarding these issues" be deleted.

Question put: that Chapter Two, as amended, stand as part of the report.

Question resolved in the affirmative.

Chapter Three proposed.

Upon which, Mrs Houssos moved, seconded by Mr Franklin:

That Finding 3 "There were issues with the administration of some early voting centres at the 2019 NSW State election, which must not be repeated" be deleted and replaced with "There were unacceptable failures at a number of early voting centres at the 2019 NSW State election, including a failure of the electronic mark-off system which led to voters being unable to cast their vote for a number of hours. Systems must be improved so this does not occur again".

Discussion ensued.

Question put: that the amendment be agreed to.

Amendment resolved in the affirmative.

Upon which, Mrs Houssos moved:

That Finding 4 "iVote should not be expanded beyond its existing role but should continue to be available to the groups to whom it is currently available" be deleted and replaced with "iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Committee agreed to the secretariat making consequential changes flowing from the amendment:

- That the second sentence of paragraph 3.64 "Therefore, it finds that iVote should be retained for those groups who are currently eligible to use it (i.e. those groups are listed earlier)" be deleted and replaced with "Therefore, it finds that iVote should return to its original purpose, enfranchising voters with disability, and voters at remote locations and overseas. The use of iVote should not be expanded beyond this".
- That the fourth sentence of paragraph 3.64 "Further, in balancing the competing priorities of voter participation and security, the Committee finds that iVote should not be expanded beyond its existing role to further voter groups" be deleted.

Upon which, Mrs Houssos moved:

That the following sentence be inserted at the end of recommendation 18 (circulated as recommendation 20 in the Chair's draft report) "The panel of technology experts would report directly to the Joint Standing Committee on Electoral Matters".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mrs Houssos moved:

That a new recommendation 21 be inserted below the subheading "All iVoters must have access to registered how-to-vote cards" under paragraph 3.107 "That all voters who use the iVote system be provided with a hyperlink to each party's registered How-To-Vote".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mrs Houssos moved:

That the following words be deleted from recommendation 22 (circulated as recommendation 23 in the Chair's draft report) "require registered how-to-vote cards to be available in formats accessible to persons who are blind or who have low vision" and replaced with "require the NSW Electoral Commission to translate registered how-to-vote cards into formats accessible to persons who are blind or have low vision".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Committee agreed to the secretariat making consequential changes flowing from the amendments:

- That the following words be deleted from the second sentence of paragraph 3.109: "require registered how-to-vote cards to be available in formats accessible to persons who are blind or who have low vision" and replaced with "require the NSW Electoral Commission to translate registered how-to-vote cards into formats accessible to persons who are blind or have low vision".
- That a third sentence be inserted into paragraph 3.109: "Further, all voters who use the iVote system should be provided with a hyperlink to each party's registered How-To-Vote".

Question put: that Chapter Three, as amended, stand as part of the report.

Question resolved in the affirmative.

Chapter Four proposed.

Upon which, Mr Franklin moved:

That the following words be deleted from recommendation 27 (circulated as recommendation 28 in the Chair's draft report) "which may mean delaying the start of the Legislative Council count until after election night".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mr Franklin moved:

That the following words be deleted from paragraph 4.23 "who are disappointed at this. The Committee does note, however, that the number of Legislative Council ballot papers would still need to be counted on election night before they are secured to be dealt with more fully at a later date" and replaced with "who would be disappointed at this outcome. The Committee believes that an initial count of Legislative Council ballot papers should happen on election night if at all possible and notes that if it does not happen, the number of Legislative Council ballot papers would still need to be counted on election night before they are secured to be dealt with more fully at a later date".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mr Franklin moved:

That the following words be inserted at the end of recommendation 30 (circulated as recommendation 31 in the Chair's draft report) "before it is implemented".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

Upon which, Mrs Houssos moved:

That the following words be deleted from recommendation 31 (circulated as recommendation 32 in the Chair's draft report) "should actively participate in" and be replaced with "must be included as part of".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Committee agreed to the secretariat making consequential changes flowing from the amendment:

That the words "should actively participate in this process" be deleted from the third sentence of paragraph 4.35 and replaced with "must be included as part of this process".

Upon which Mr Franklin moved:

That recommendation 38 (circulated as recommendation 39 in the Chair's draft report) "That the NSW Electoral Commission label all voting centres and early voting centres at NSW State elections in the 24 languages in which it currently provides voting information on its website" be deleted and replaced with the following words "That the NSW Electoral Commission label voting centres and early voting centres in any language where it is assessed that a significant proportion of that electoral district speaks that language at home".

Discussion ensued.

Question put: that the amendment be agreed to.

Question resolved in the affirmative.

The Committee agreed to the secretariat making consequential changes flowing from the amendment:

That the following words be deleted from paragraph 4.82 "The NSW Electoral Commission currently provides information on enrolling, elections and voting on its website in 24 languages other than English. To maximise accessibility for people from CALD communities regardless of where they live in NSW, the Committee considers that the Commission should also label all voting centres and early voting centres in these 24 languages" and replaced with "The Committee therefore considers that the NSW Electoral Commission should label voting centres and early voting centres in any language where it is assessed that a significant proportion of that electoral district speaks that language at home".

Question put: that Chapter Four, as amended, stand as part of the report.

Question resolved in the affirmative.

Chapter Five proposed.

Question put: That Chapter Five stand as part of the report.

Question resolved in the affirmative.

Question put: that the Chair and secretariat review the Executive Summary and make any consequential changes from the amendments and that the Executive Summary stand as part of the report.

Question resolved in the affirmative.



Resolved, on the motion of Mr Franklin:

- That the Committee adopt the Chair's draft report as amended and that it be signed by the Chair and tabled out of session;
- That the Committee authorise the secretariat to make appropriate final editing and stylistic changes as required;
- That once tabled the report be published on the Committee's webpage;
- That the Chair issue a media release announcing the tabling of the Committee's report, for dissemination by the Committee secretariat.

Ms Wilson thanked the Chair for his work on the inquiry.

The Chair thanked Committee members and Committee staff for their work on the inquiry.

**6. \*\*\***

**7. Next meeting**

The meeting adjourned at 10:52am until a date and time to be determined.