

**Submission
No 16**

INQUIRY INTO THE 2015 NSW STATE ELECTION

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NSW Nationals Submission

Joint Standing Committee on
Electoral Matters

**Inquiry into the 2015 NSW
State Election**

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24 August 2015

Submission in relation to matters related to the *Parliamentary Electorates and Elections Act 1912 (NSW)*.

Please note that any reference to ‘the Act’ in this section refers to the *Parliamentary Electorates and Elections Act 1912 (NSW)*.

Nomination timeframe

At the 2015 State election pre-poll voting commenced on the Monday after the close of nominations. This left little time for preparation for the pre-poll voting for political parties and candidates. The results indicate that pre-poll voting was an enormous form of voting for electors across New South Wales.

Of much greater concern is the resulting confusion and delay associated with postal vote applications.

The NSW Nationals received countless complaints from postal vote applicants and campaigns across the state, from regional centres to small rural communities that despite lodging an appropriate application that they had still not received their ballots in the last week before polling day.

For many electors the absence of their ballots can be a distressing and stressful situation as they fear both that they may not be able to have their voice heard at the ballot box and consequently, may be fined for non-compliance.

The problem with postal vote applications was clearly two-fold. First, a delay was caused by the short time between the ballot draw and the actual date of the election. Secondly, and more disturbingly, the Electoral Commission, who had been in receipt of postal vote applications from February 12, did not assign adequate resources to the fulfilling of these applications.

In correspondence with the NSW Electoral Commission on 23 March 2015¹, in relation to the delayed postal vote applications, the Commission’s Director of Elections stated “postal ballot papers packs were progressively dispatched from Tuesday 17 March 2015.”

In further correspondence with the Commissioner on 25 March 2015, he stated “First, let me repeat there is no problem with the central postal voting system. There are no outstanding postal vote applications to process and we have turned them all around on a daily basis since the end of last week.”²

The ‘end of last week’ that the Commissioner refers to is the week ending Friday 20 March. Thus there was clearly a backlog of postal vote applications between the printing of ballot papers and their availability on 17 March. Given that a significant proportion of applications would have been received before the 17 March, the NSW Electoral Commission was evidently not prepared to turn around postal vote applications with appropriate efficiency.

Of further concern is the Electoral Commissioner’s statement that, “I can see postal voting is going to be even more problematic at the 2019 State Election when Australia Post downgrade their service even more. We have to encourage electors to use iVote as a better alternative...It is very simple. Less computer experienced people may be able to get a trusted helper to show them how to use it.”³

The importance of postal voting cannot be understated. Access to a reliable internet connection in regional New South Wales cannot be guaranteed, and is a particular problem in rural and remote communities. Thus the capacity for some voters to access iVote is limited by geography. The same geography then limits their access to pre-poll locations and again when it comes to polling day. Due to this, there remains voters who rely upon postal voting to exercise their franchise.

Importantly, a delay of even one day or more can have dramatic effects on the delivery of ballots to regional areas. In some areas of the state mail delivery may only occur once a week, and a lost day in transit could delay the receipt of ballot papers by up to a week. This is of course a worst case scenario, however it must be acknowledged that a problem in ballot distribution is going to be felt far greater in regional and rural areas.

Examining the numbers of electors who cast their ballot through iVote and postal voting demonstrates the

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latter's continuing importance. In 2011, 46,862 electors voted using iVote, whilst 245,411 voted by post. In 2015 the iVote figure has grown significantly to 283,669 whilst postal voters has slightly declined to 203,625. This shows that the growth in iVote is not predominantly at the expense of postal voters and further, that for many electors their preferred, most convenient or only method of voting is by post.

Recommendation

That the time between the close of nominations and the opening of pre-polling and other early voting be extended.

Recommendation

That an investigation be undertaken into the processes associated with the administration of postal vote applications for the 2015 state election.

Electoral Commission – conduct on election day

The NSW Nationals wish to express profound disappointment in the conduct of the Electoral Commissioner and Electoral Commission on election day, 28 March 2015.

Throughout the North Coast electorates of Ballina and Lismore, opposition parties had erected election day signage far in excess of the limit that exists in section 151B(2) of the *Parliamentary Electorates and Elections Act 1912 (NSW)* ('the Act').

The law on the matter is quite clear.

Section 151B states:

“(2) Posters in grounds of enclosure of polling place Without limiting subsection (1), a person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area within the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

(2AA) Posters on boundary of enclosure of polling place A person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.”

This is a simple provision, clear in operation and one that prohibits the display of posters over 0.8m².

The NSW Nationals notified the NSW Electoral Commission that these posters were present in the electorates of Lismore and Ballina prior to polling opening on 28 March 2015. Having not received a response from the Director of Elections after polls opened the matter was referred to the Commissioner.

The Commissioner stated, “The ALP have advised they are arranging for the signs to be cut back to the legal limit.”⁴

The NSW Nationals submitted that as the signage was clearly illegal, it should have been removed in the interim.

Throughout the morning of 28 March 2015, the NSW Nationals continued to highlight that illegal signage

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was in place throughout the Ballina and Lismore electorates. The Electoral Commissioner was then informed by an ALP Assistant General Secretary at approximately 11am that all illegal signage that had been erected by their party had been cut back to the correct size.⁵ This had not in fact occurred.

At the same time as the correspondence between the Electoral Commissioner and the NSW Nationals was occurring, the Party sought and received legal representation to seek the enforcement of the law.

This was based upon the power in section 151D of the Act that states:

151D Removal and confiscation of posters

(1) The returning officer, any polling place manager or any election official assigned by the returning officer or polling place manager for the purpose may remove or cause to be removed any poster exhibited or posted in contravention of this Act:

- (a) within a polling place, or
- (b) in or on a public place within 6 metres of an entrance to a polling place.

The NSW Nationals sought that the Electoral Commissioner utilise section 151D and instruct their staff to remove the offending posters.

The NSW Nationals continued to inform the Electoral Commissioner of illegal signage that was in place.

Throughout the course of the day, the Electoral Commissioner opted to take the advice of the opposing parties as to whether the offending posters had been taken down. It would seem a much more objective means by which to ascertain facts surrounding electoral offences to speak to and seek the advice of polling place managers and District Returning Officers, rather than the offenders themselves.

At 11:21am, the first indication that the NSW Electoral Commissioner has actually instructed their staff to remove illegal signage was received by the NSW Nationals.⁶ However, at 1pm on 28 March 2015, five hours after polling had commenced, the NSW Electoral Commission was in some instances still requesting offending parties for illegal material to be removed from polling booths.⁷

Despite the Commissioner's direction of 11:21am, illegal signage continued in some areas to stay erected through to the close of polls.

The events of election day in relation to section 151B and 151D were disturbing for a number of reasons. Firstly, they indicated an inability of the Electoral Commissioner and their staff to understand the significance of the illegal signage. In two very marginal electorates, the presence of this substantially larger than allowed signage at polling booths throughout the electorate created an unfair playing field, with the NSW Nationals and other parties and candidates adhering to what are both well-known and straight forward election day signage rules. The signs allowed both the ALP and the Greens to better communicate their final messages for the election campaign.

Further, the events indicate a complete breakdown in communication between the Electoral Commissioner and their staff. At no point was it clear that, other than through the advice of the NSW Nationals, the Commissioner was aware of the actual status of the illegal signage. This in itself is strongly indicative that local polling place staff had not been given appropriate training to assess the legality of polling place signage.

Additionally, the Commissioner took at least three hours to direct, in apparently limited circumstances, local polling place staff to remove posters if the offending parties did not. By this time, a significant proportion of electors who cast their ballots on election day would have already done so.

It is submitted that this enforcement policy and capacity cannot be allowed to continue. In this instance

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it was in relation to signage that may have impacted on the election result, however it is more disturbing to think of the repercussions of such enforcement action if the conduct related to offences such as voter intimidation.

Registered polling day material

Section 151F of the Act requires that any electoral material that is to be distributed on polling day must be registered with the NSW Electoral Commission. Section 151G(12A) goes on to state that this material:

“must be available for inspection at the office of the returning officer for the district during the hours of polling on polling day, and on all days to which the polling is adjourned, at the request of any person enrolled for the district or of any scrutineer”.

The NSW Nationals became aware early on polling day that the computer system by which the NSW Electoral Commission distributed registered material to District Returning Officers had crashed in a number of electorates. For several hours, the registered material was not able to be viewed in the electorates of Tamworth, Upper Hunter, Monaro and Ballina.

A further problem in the electorate of Tamworth occurred when only some material was able to be downloaded. This led to confusion as to whether some material was able to be distributed and if a mistake had been made and material seized that was registered or material allowed that was not, the outcome of the election could have been negligently altered as a result.

The number of electorates that this affected demonstrates an inherent flaw in the NSW Electoral Commission’s system and prevented candidates, parties and Electoral Commission staff from determining whether material on polling booths had been appropriately registered.

Recommendation

That the Electoral Commission’s election day enforcement policies and systems for election day offences be investigated and improved.

Election night results

There was a degree of confusion in electorates across the State as to whether the pre-poll votes were to be counted on election night. As these votes accounted for a large proportion of overall ballots cast, it was important that they be counted and that information be made publicly available on election night so the actual result of the election could be more accurately represented.

The NSW Electoral Commissioner in Registered Political Party Bulletin no 9, had indicated that at a minimum, initial results from pre-poll were not going to be published on election night. The situation then became increasingly blurred as individual District Returning Officers informed campaigns that they would indeed be undertaking a preliminary count of pre-poll ballots, however that count would not be published.

In future elections, it is submitted that the pre-poll ballots be counted on election night as occurs with all ordinary booths. Without the pre-poll count being available, the outcome of an election in individual seats and possibly state-wide may be uncertain for an unnecessarily long period of time.

Access to polling places for persons with mobility impairment

Reports were once again received of polling places that were not suitable for use by people of limited mobility. In one instance, an elderly person was attempting to make their way into a polling booth in the electorate of Oxley but fell and broke their arm. Factors such as wheelchair accessibility, availability of car parking and the gradient of any slope ought to be considered in polling place selection.

Pre-poll

The NSW Nationals believe that two weeks of pre-poll voting at the 2015 election was appropriate given that the time between the drawing of the ballot and polling day was only two weeks. In future elections, if the closing date for nominations and polling day is a longer period, consideration should be given to focusing longer pre-poll times in an electorate's larger centres only.

A disturbing report to come out of the pre-poll phase of the 2015 election was that in Mudgee, the pre-poll centre ran out of ballot papers. Such an event is completely unacceptable and highlights the need for the Electoral Commission to continue to prepare its pre-poll voting booths for ever increasing quantities of electors.

Submission in relation to matters related to the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*

Please note that any reference to ‘the Act’ in this section refers to the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*.

Restrictions on state donations

Prohibited donations

The Act currently prohibits three classes of persons from donating to a New South Wales political party other than for a federal election or purpose.

These three classes are set out in Division 4A of the Act and include:

- (a) A property developer, or
- (b) A tobacco industry business entity, or
- (c) A liquor or gambling industry business entity⁸

It is made clear in section 96GAA that it is unlawful for a prohibited donor to make a political donation, for a person to make a political donation on behalf of a prohibited donor and for a person to accept a political donation made by or on behalf of a prohibited donor. Furthermore it is unlawful for a person to solicit another person on behalf of a prohibited donor to make a political donation.

Section 96I makes it a criminal offence for a person to do the above if the person at the time of the act is aware of the facts that result in the act being unlawful.

This is fairly straight forward, however issues arise when the definition of the prohibited classes is explored further. For all three classes of prohibited donor, a “close associate” of a relevant corporation are also prohibited from making a political donation.

A close associate is defined as:

- (a) a director or officer of the corporation or the spouse of such a director or officer,
- (b) a related body corporate of the corporation,
- (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,
- (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security-the other stapled entity in relation to that stapled security,
- (e) if the corporation is a trustee, manager or responsible entity in relation to a trust-a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).⁹

This can be confusing for potential donors, especially those associated with the three classes in only a superficial or distant manner.

Further problems exist when the definitions of the three classes are further examined. In regards to property

8. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 96GAA.

9. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 96GB(3).

developers, Corporations that are, “engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit”, are deemed to be property developers for the purpose of the prohibition in Division 4A of the Act.

What constitutes “regularly” is given no meaning or expansion by either the Act or any NSW Electoral Commission guidelines. Thus a strict reading of the section suggests that a corporation that lodges more than one relevant development application may be caught by the prohibition.

In addition there is the peculiarity that the section only captures corporations who are property developers for the purposes of Division 4A. People who may develop property as sole traders or in any capacity outside of the confines of a “corporation” will not be caught.

Issues exist also with the definition of a “liquor or gambling industry business entity”. Entities of this nature are caught by the prohibition only if they operate “for the ultimate purpose of making a profit.”¹⁰ This means that one of the largest poker machine and licenced venue operators in the state () may legally donate, however a proprietor of a small country pub cannot. As a result of this, it is submitted that the current definition needs to be revisited to better achieve its anti-corruption purpose.

The NSW Nationals acknowledge that Division 4A of the Act is subject to challenge in the High Court of Australia in the case of *McCloy v New South Wales*. Regardless of the outcome of this case, if prohibitions on certain types of entities and persons making political donations is to continue it must be better defined, easier to understand and be better suited to the anti-corruption purposes it serves.

Anonymous donations

The NSW Nationals support the disclosure limit for political donations, which is set at \$1000 under section 86 of the Act. It is unlawful to receive a donation of \$1000 or more without knowing the name and address of the donor¹¹, which is then disclosed to the community as a reportable political donation¹². Donations of less than \$1000 from the same donor are aggregated over the course of a financial year, which means if the total of their donations for that year reaches \$1000 it is then disclosed as a reportable political donation¹³.

The NSW Nationals support the retention of this limit on anonymous donations and disclosure threshold. However, it is an important part of Australian democracy and for liberal democracies more broadly for grassroots community engagement to be encouraged. In effect this means morning and afternoon teas, sausage sizzles, raffles and other events where participants may contribute a very small amount towards covering the cost of the event. Although these amounts would fall far short of the \$1000 disclosure limit and limit on anonymous donations, if a small donor like this were to have given a donation or a series of donations nearing that limit, the small contribution could in practice result in them exceeding a \$1000 aggregated donation to the Party. This aggregation does not serve an effective function in the combatting of corruption or the management of political donations, so it is suggested that it be considered to amend the *Election Funding, Expenditure and Disclosure Act 1981* (NSW) to provide that small donations, perhaps representing a proportion of the cap on anonymous donation, be excluded from the aggregation provisions.

10. *Election Funding, Expenditure and Disclosure Act 1981* (NSW) s 96GB(2B)(a).

11. *Election Funding, Expenditure and Disclosure Act 1981* (NSW) s 96F.

12. *Election Funding, Expenditure and Disclosure Act 1981* (NSW) s 86.

13. *Election Funding, Expenditure and Disclosure Act 1981* (NSW) ss 86(2), 95A(2).

Caps on political donations

The NSW Nationals consider that the caps on political donations contained within section 95A are set broadly at the correct level. However, the NSW Nationals submit that the transfer of funds from a Party to its endorsed candidates be exempted from the donation cap. Currently, major parties are required to invoice their endorsed candidates for electoral expenditure under section 84(7) of the Act, which allows for that expenditure to be paid from the public funding and prevents the Party from breaching the limited cap on donations to endorsed candidates.

Recommendation

That any transfer of funds made by a political party to an endorsed candidate or Member of Parliament be exempt from the donation caps.

Caps on in-kind donations

The NSW Nationals submit that the caps on certain types of indirect campaign contributions that exist in section 96E of the Act be repealed. A persuasive argument for this reform is that the current provision in section 96E was implemented in 2008, meaning that it has in effect been superseded by the general donation caps that exist in section 95A. Further the section is strangely formulated in that it makes indirect campaign contributions unlawful but then explicitly states an exception for those that do not exceed \$1000.¹⁴

It is submitted that a more effective means by which to regulate indirect donations is to amend section 95A to explicitly include a cap on indirect political donations, the amount of which should correspond to the current caps on Party and candidate donations.

Party levies

It is submitted that the distinction between Party levies, being compulsory payments made by a Member of Parliament to their Party and other payments made by those members to their Party be remedied. Currently all payments made by a Member of Parliament and candidates are subject to the cap on political donations to parties as contained in section 95A. The exception to this are contributions made by Members of Parliament and candidates to fund their own campaigns¹⁵, which are still not deposited into the state campaign account of the Party but rather the individual candidate's account. Party levies are also exempt from the cap on political donations by section 95D(4).

The NSW Nationals believe that the right of a candidate to be able to fund their campaign to whatever degree they desire is an important element of our electoral system and must not be curtailed or restricted. However, the application of the cap on political donations for Members of Parliament to their own parties and the exemption that applies to levies unfairly favours those parties that make use of levies.

Recommendation

That donations made by a Member of Parliament to their own Party and any levies paid by Members of Parliament to their own Party be treated in the same manner under the Election Funding, Expenditure and Disclosures Act 1981 (NSW).

14. *Election Funding, Expenditure and Disclosures Act 1981 (NSW)* s 96E(3)(c).

15. *Election Funding, Expenditure and Disclosures Act 1981 (NSW)* s 95A(4).

Expenditure caps

The NSW Nationals support the limitation on state campaign spending through the use of expenditure caps.

The Act as it currently stands establishes two separate caps for expenditure by parties in Legislative Assembly electorates. There is a \$100,000 candidate cap¹⁶ and a \$50,000 Party cap in respect of each electorate¹⁷. The Party cap falls within the overarching Party cap, which is calculated by multiplying \$100,000 by the number of electoral districts in which a candidate is so endorsed¹⁸. This is an effective measure to ensure that a Party is not able to by pass the operation of the candidate cap by funnelling significant funding into an electorate by virtue of the overall Party cap.

It is submitted that the above caps are set at an appropriate level, however the division between Party spending under the electorate specific sub-cap and the candidate cap is unnecessary. The NSW Nationals have previously argued that these two caps, being the \$100,000 candidate and \$50,000 seat specific candidate cap be combined to create a single cap of \$150,000 for electorate specific expenditure.

The reasoning behind this suggestion is that most major parties, including The Nationals, have centralised accounting systems within their Head Offices. This relates both to expenditure and receipt of donations. The reason why expenditure and donations are centralised in the Head Office is to ensure that the legal requirements of expenditure caps, donation caps and the other donation restrictions are adhered to. The Act remains a very difficult instrument to work under, which is beyond the scope of the expertise or experience of many local campaign teams.

By combining the candidate and Party caps the risk of corruption or unlawful conduct is reduced by placing compliance in the hands of experienced and professional Head Office staff.

In addition to this, current practice by many political parties including The Nationals is to invoice candidates for electoral expenditure following an election. This is allowed by section 84(7)(b) and results in expenditure authorised and paid for by the Party Head Office to be brought out of the Party cap and into the candidates caps. A combined cap would avoid this unnecessary and burdensome accounting system.

Recommendation

That the candidate electoral communication expenditure cap and the electorate specific Party electoral communication sub-cap be combined to create a single electorate specific electoral communication cap of \$150,000.

The distinction between electoral expenditure and electoral communication expenditure

The NSW Nationals submit that the current distinction between electoral expenditure and electoral communication expenditure remain. The current formulation in section 87 is a suitable and effective means by which to limit expenditure that goes towards promoting a Party and candidate. This is particularly the case since the 2014 amendments to the Act brought travel and campaign research within the applicable caps.

It is further submitted that expenditure incurred in raising funds for an election or in auditing accounts¹⁹ continue to fall outside of the definition of electoral communication expenditure. As there is still a need for funds to be raised for New South Wales elections, the inclusion of fundraising expenditure within any cap

16. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 95F(6).

17. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 95F(12)(a).

18. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 95F(2).

19. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 87(2)(i).

would be improper and operate inequitably across different parties and candidates who have different means and different donors from whom they seek to raise election funds.

Recommendation

That the current definition of electoral expenditure and electoral communication expenditure be retained and the operation of the expenditure cap continue to apply only to electoral communication expenditure.

The effect of the expenditure caps in regional electorates

As a Party dedicated solely to representing regional New South Wales, The Nationals face costs not ordinarily incurred by parties with a metropolitan focus.

In regional electorates there is added expense with television and radio advertising, the production of these and other communication such as postal promotional material. Access to distinct media markets that cover substantial or entire electorates has resulted in an expectation, both from the public and candidates, that individualised television advertising occur.

This is not purely a Party based expectation but it is clear from recent elections that Independents and minor parties are also utilising individual television and radio advertisements as key facets of their campaign strategies. In metropolitan areas there is often only a single media market, resulting in general messaging and generic advertisements for a Party. These messages are required also for regional electorates, which again adds to the cost of regional campaigning.

In relation to the higher cost of postal communications, this occurs due to the often limited availability of reliable distributors other than Australia Post. In all electorates that The Nationals contest, promotional material has to be delivered either by volunteers or by Australia Post, the latter of which is the most expensive (although most reliable) means of distribution.

Lastly, the increased costs of travel are also a necessary consequence of regional campaigning. Extensive car use is to be expected of both volunteers and staff, as well as in many instances plane travel and accommodation for both Head Office and electorate based staff.

Recommendation

That the NSW government investigate the development of expenditure caps that take into account the increased cost of campaigning in regional electorates.

Public funding – campaign

The NSW Nationals support the continuation of Part 7A of the Act for future state elections. This part of the Act only applies to the 2015 state election and set down a system of public funding based on either \$4 per first preference vote in the Legislative Assembly, \$3 per first preference vote in the Legislative Council or the total amount of the actual campaign expenditure of the Party and of those endorsed candidates of the Party, whichever is the lesser amount.²⁰

This system of public funding is similar to that which exists in the Commonwealth jurisdiction, although the New South Wales formulation prevents a Party or candidate from making a profit from their performance at the election.

20. Election Funding, Expenditure and Disclosure Act 1981 (NSW) s 103C(2).

The provision of a dollar per vote figure has resulted in the level of public funding for most major parties increasing from the level provided by the system of partial reimbursement of electoral expenditure that exists in Part 5 of the Act. This is not a negative outcome, but one that reduces the reliance of parties and candidates on private fundraising and thereby reducing the opportunities for the types of corruption and allegedly unlawful behaviour that has been exposed in recent ICAC inquiries.

Further, the dollar per vote system also ensures that the public funding of parties and candidates is linked to their electoral performance, an outcome that is arguably a significant expectation of electors. At a time when voter confidence in the electoral and political processes is at an all-time low, it is submitted that tying public funding to electoral performance would be the most acceptable form of campaign public funding for the New South Wales public.

Under changes to the Act in 2014, public funding for endorsed candidates is required to be paid directly to their Party. The NSW Nationals support the continuation of such a scheme because as it was noted earlier, financial compliance and campaign expenditure is centred in Head Office. This is where it should remain, as was previously argued there needs to be experienced and qualified professional Party staff overseeing compliance. This centralisation does not increase the risk of unlawful behaviour, it minimises it by ensuring that the resources of the Party are focused on compliance. Lastly, it is the Head Office that bears the burden of the expenditure and is then required to invoice candidates following the election, thus finalising financial matters after the election would be made simpler if public funding for candidates was made directly to the Party. As the Act currently stands, Parties may then forward the public funding onto the candidates and it is submitted that this remain unamended.

Public funding – administration

The NSW Nationals believe that the current system of public funding as found in Part 6A of the Act is well suited to ensuring a vibrant electoral system in New South Wales.

The general scheme for parties is as follows:

- (3) The annual amount to be distributed from the Administration Fund to any such eligible party is the amount of actual administrative expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding:
- (a) \$250,800 if there is only one elected member endorsed by the party, or
 - (b) \$450,000 if there are only 2 elected members endorsed by the party, or
 - (c) \$600,000 if there are only 3 elected members endorsed by the party, or
 - (d) \$600,000 if there are more than 3 elected members endorsed by the party plus \$100,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.²¹

If a Party is unable to meet the threshold required contained in section 97E(3) above, they may be eligible for administrative funding under section 97I. Additionally, independent Members of Parliament are also entitled to administrative funding under section 97F(3).

In regards to the system that operates for registered political parties with Parliamentary representation, it is submitted that both the method of calculation of public funding entitlement and the level of that entitlement are both appropriate. Contemporary political parties are faced with enormous administrative burdens due to the increasing quantity and complexity of government regulation.

21. *Election Funding, Expenditure and Disclosure Act 1981 (NSW) s 97E(3).*

The administrative burden of ensuring compliance with the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) requires a Party to have a strong financial and legal protocols to assist with compliance with the increasingly complicated regulatory environment. The recent amendments to the Party Administration Fund ('PAF') have helped to offset these increasing costs.

Political parties are similar in respect to ordinary businesses. They require an understanding of what their budget for the coming year will be and the current formulation gives that to a degree. As stated above, the NSW Nationals believe that the current funding levels are appropriate and should not change. Any reduction in the Party Administration Fund will impact negatively upon our capacity to maintain the checks, structures and systems that have so effectively ensured our compliance with electoral funding legislation. The NSW Nationals also face significantly higher costs due to the regional nature of its Parliamentary representation and membership base.

The membership of the NSW Nationals and all Nationals Member of Parliament are regionally based. This adds significant costs to undertaking normal administrative activities such as but not limited to Conferences, Branch meetings, community engagement and membership development.

Recommendation

That the funding entitlements set out in section 97E continue in operation unamended.

Recommendation

That the higher cost of administration for regional based political parties be considered in any review of the Party Administration Fund.

What can be claimed under the Party Administration Fund

The NSW Nationals submit that the current items for which administrative funding may be received for as set out under section 97B of the Act should be retained. These represent both the core costs associated with the administration of a political party but also allow engagement activities to be conducted with the community at large.

The NSW Nationals support increased oversight from the NSW Electoral Commission as to the use by parties of the PAF.

Disclosure of political donations

The NSW Nationals continue their support for a movement away from the paper based lodgement forms that are still used by the NSW Electoral Commission. These forms are complicated and burdensome and there is no compelling reason why all disclosure requirements cannot be met through the introduction of an online system.

The NSW Nationals also support the retention of the current \$1000 threshold for the disclosure of political donations and all other disclosure related matters under the current legislation.

Recommendation

That the New South Wales Electoral Commission introduce an online system for disclosures requirements under the Election Funding, Expenditure and Disclosures Act 1981 (NSW).

Third-party campaigns

Third-party campaigns are becoming an increasingly prominent feature of Australian elections. The NSW Nationals accept their right to political communication and role in election campaigns.

Currently the rules surrounding third party campaigns are objectively quite strict.

A third-party campaigner is defined under section 4 of the Act to be, “means an entity or other person (not being a registered party, elected member, group or candidate) who incurs electoral communication expenditure during a capped expenditure period (as defined in Part 6) that exceeds \$2,000 in total.”

This means that only third-party campaigners who incur expenditure above \$2,000 need to be registered under Part 4 of the Act.

It is unlawful for a third-party campaigner to make payments for electoral communication expenditure incurred during the capped period or to accept political donations for the purposes of incurring that expenditure unless they are registered²².

At the 2015 state election there were a number of unlawful third party campaigns operating in regional New South Wales. The most significant of which was undertaken in the last week of the election campaign. The unlawful campaign comprised a professional television advertising campaign that aired across northern electorates, starting approximately on the 20 March 2015. The matter was reported to the NSW Electoral Commissioner on 21 March.

The unlawful third-party campaign involved significant expenditure through an extensive ad buy in addition to what would have been large production costs for their advertisement. No response was received from the Commissioner and the matter was followed up in the following days as the advertisements had continued to air.

On 25 March 2015 the Commissioner informed the NSW Nationals that, “We have advised the people concerned that they are not RTPCs and these ads are illegal. They were advised to immediately cease running the ads. As you are aware the blackout commences at Midnight tonight.”²³

On 26 March 2015, the NSW Nationals received information that the unlawful campaign had continued and was distributing printed material. The Commissioner was again informed that the unlawful campaign was continuing, the name of the street that their campaigners were present and even the name and phone number of one of their staff.

Further on the 26 March 2015, the NSW Nationals received an email from the Funding, Disclosure and Compliance Branch of the NSW Electoral Commission stating that the unlawful third-party campaign would undergo, “preliminary review and assessment. Depending on the outcome of the review, the matter may be referred for formal investigation.”²⁴

This response to an unlawful campaign that had expended a six figure sum in marginal electorates was manifestly inadequate. The Commissioner and the Commission failed to quickly address the campaign, restrain the campaign from continuing and offered only a preliminary investigation into the activities, which would have occurred after the campaign had served its purpose. Furthermore the close proximity of the television advertising blackout under the Broadcasting Services Act (an Act that the Commission does not administer) seems to have been a factor in their enforcement strategy.

Following the election, the NSW Nationals have been provided with no update from the Commissioner or Commission on the status of this investigation or others that arose during the election.

It is clear that there are serious and fundamental flaws in the way that the NSW Electoral Commission handle complaints regarding unlawful third-party campaigns and that substantial changes to the resources and statutory powers of the Commission are in need of urgent review.

22. *Election Funding, Expenditure and Disclosure Act 1981 (NSW)* s 96AA(1).

23. Appendix B1.

24. Appendix B2.

Recommendation

That the NSW Electoral Commission investigations be subject to appropriate oversight.

Recommendation

That the NSW Electoral Commission be provided appropriate resources to ensure effective enforcement of the Election Funding, Expenditure and Disclosures Act 1981 (NSW).

Caps on electoral expenditure for third-party campaigns

As the Act currently stands, section 95F(10) provides for a third-party campaign cap of \$1,050,000. Although it is understood that most registered third-party campaigns do not near that level of expenditure, there is the potential for New South Wales to go down the route of jurisdictions in the United States in which third-party campaigns called “Super PACs” dominate election spending and campaign activity, even to the extent of overshadowing the candidates and their campaigns themselves. It is submitted that third-party campaigns are an important element of our democratic electoral system, but that to follow the ‘Super PAC’ route would be a negative development for the oversight of election campaigns. That is why the NSW Nationals propose that the cap for third-party campaigns be reduced to \$500,000 to ensure that these campaigns are proportionate to an election campaign at large.

Recommendation

That the cap on electoral expenditure for registered third-party campaigns be reduced to \$500,000.

Overview of party corporate governance and structure

The NSW Nationals understand the importance of sufficient oversight over political parties that receive public funding under the Act. It must be ensured that there is appropriate systems in place in political parties for the management of compliance with all aspects of the Act. However, these are matters for the political parties themselves to establish and organise.

Most major political parties in New South Wales are steeped in history and their Constitutions are a result of evolution of many decades. Any government intervention in the choice of their corporate structure would represent an unjustifiable incursion into a decision that is one for the constituent parts and members of a Party to decide.

Many political parties including the NSW Nationals are unincorporated associations, which presents difficulties when it comes to prosecutions under the Act due to issues of legal personality. However, it is submitted that the provisions currently contained in section 112 of the Act, which allows for an enforcement action to be brought against an officer of an unincorporated political party for offences under the Act is effective in avoiding the issue of legal personality.

Alternatively the Parliament may wish to introduce a deeming provision that provides that political parties, regardless of structure, are identifiable bodies or persons for the purposes of enforcement of the Act.

Appendix A1

From: [REDACTED] >
Sent: Monday, March 23, 2015 4:36 PM
To: [REDACTED]
Subject: RE: Postal Vote Applications

Hi [REDACTED]

Thank you for your email today. I have followed up with the centralized postal vote team. I can advise that upon receipt of postal vote applications, postal ballot papers packs were progressively dispatched from Tuesday 17 March 2015 following the close of nominations and printing of the ballot papers. Most electors would have received their postal packs by Friday 20 March. Where electors reside in rural districts, they should be receiving their postal vote packs either today or tomorrow.

Postal vote applications were accepted from 12 February, but nominations didn't close until 12 March, and ballot papers were subsequently printed to enable the first postal vote packs to be sent out on 17 March. If electors applied in February, then they would have experienced this time lag.

We suggest that electors who still haven't receive their postal packs by COB tomorrow, to contact our call centre or [REDACTED]. We can then look up the status of when their Postal ballot papers were sent, and give the option to re-issue if necessary.

Kind regards

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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From: [REDACTED]
Sent: Monday, 23 March 2015 12:42 PM
To: [REDACTED]
Subject: Postal Vote Applications

Hi [REDACTED]

We're receiving a lot of queries from concerned voters who have lodged a postal vote application, in some cases weeks ago but haven't received their ballots.

Can you advise me as to how this process is progressing?

Thanks

Appendix A2

From: [REDACTED]
Sent: Wednesday, March 25, 2015 11:49 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Postal Vote Applications - delays

Hi [REDACTED],

First, let me repeat there is no problem with the central postal voting system. There are no outstanding postal vote applications to process and we have turned them all around on a daily basis since the end of last week. The problem is with Australia Post and I am sure that you know how patchy the mail is the further you get away from Sydney.

I can only suggest:

Pre poll vote;or

Encourage them to now make an iVote (with assistance if necessary).

Any elector can call 1300 135 736.

If you are putting out a bulletin advise you workers that from a practical perspective in the bush it is way too late to apply for a postal vote – get an iVote.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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From: [REDACTED] [mailto:[REDACTED]]
[REDACTED] 11:40 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Postal Vote Applications - delays

Hi again [REDACTED],

I have just spoken to [REDACTED] who has advised that substantial numbers of postal voting applicants from Broken Hill have not received their ballot papers either.

This is quite concerning because the mail can take some time to be delivered back to Sydney from Broken Hill and I am very worried these people could be disenfranchised.

I would be grateful if you could advise me of the status of Barwon postal votes as well and any information that you can provide to ease the increasing concerns of nationals around the state on the postal voting issue.

We are obviously beginning to get worried that there could be major problems in the processes of the statewide Postal Voting system and I would be grateful for any assurance you can provide.

I put out a campaign bulletin each morning to all campaigns and would like to include some information about the status of postal voting across regional NSW (and perhaps a contact number for people to call if they want to

Appendix A2 (cont)

enquire about the status of their PVA).

Many thanks,

■

From: ■

Sent: Wednesday, 25 March 2015 11:■

Cc: ■ ■

Subject: Postal Vote Applications - delays

H ■,

I am advised that the Member for Tamworth has received a number of complaints from voters in his electorate who applied for postal vote applications but have not yet received their ballot papers.

This has also been an issue with PVAs from Lismore.

I would be grateful if you could confirm if ballot papers have been sent to all voters who requested them in Tamworth and if not, when that is likely to happen.

(Obviously many people apply for Postal Votes if they know they are going to be away on the weekend of the election so it is hoped that they would receive their ballot papers well before that time.)

Many thanks for your assistance with this matter.

Kind regards,

■

Appendix A3

From: [REDACTED] <[REDACTED]>
Sent: Wednesday, March 25, 2015 11:43 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Postal Vote Applications - delays

Hi [REDACTED]
This is an issue that comes up at every State election (and local government election) and particularly in the country.
What I can advise is that we have no outstanding postal votes to process other than what come in today and those who apply on-line.
I am sure that you will appreciate that delivery of mail in the bush and regional towns is very patchy. I agree that some electors have applied for a postal vote as they will be away on the weekend but they do have until next Wednesday to get them back to us (if they receive them before Friday).
I can see that postal voting is going to be even more problematic at the 2019 State Election when Australia Post downgrade their service even more. We have to encourage electors to use iVote as a better alternative.
You can always suggest to any electors who are calling that if they can get access to a computer they can use iVote. It is very simple. Less computer experienced people may be able to get a trusted helper to show them how to use it.

[REDACTED]

[REDACTED]
[REDACTED]

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From: [REDACTED] [mailto:[REDACTED]]
Sent: Wednesday, 25 March 2015 11:29 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Postal Vote Applications - delays

Hi [REDACTED]

I am advised that the Member for Tamworth has received a number of complaints from voters in his electorate who applied for postal vote applications but have not yet received their ballot papers.

This has also been an issue with PVAs from Lismore.

I would be grateful if you could confirm if ballot papers have been sent to all voters who requested them in Tamworth and if not, when that is likely to happen.

(Obviously many people apply for Postal Votes if they know they are going to be away on the weekend of the election so it is hoped that they would receive their ballot papers well before that time.)

Many thanks for your assistance with this matter.

Kind regards,

[REDACTED]

Appendix A4

From: [REDACTED]
Sent: Saturday, March 28, 2015 8:52 AM
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: Re: Unlawful Lismore Signage

Hi [REDACTED]
[REDACTED] have advised they are arranging for the signs to be cut back to the legal limit.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] 49 am, [REDACTED] wrote:

Hi [REDACTED] and [REDACTED]

There has been no progress with regards to the illegal Labor and Greens signage.

Obviously given that polls are open we desire the law to be enforced immediately.

Kind regards

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] see the attached photo of significantly oversized posters in Lismore. These
splayed at a majority of booths and measure 120 by 80, substantially over
the limit of .80 metres squared as allowed by section 151B (2) of the
Parliamentary Electorates and Elections Act.

I this week their immediate removal from all polling booths.

<IMG_0430.JPG>

<IMG_0431.JPG>

Appendix A5

From: [REDACTED]
Sent: Saturday, March 28, 2015 11:29 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Letter to NSW Electoral Commission 28 March

[REDACTED]
That has not occurred at all in Ballina. Some signage in Lismore has been removed but a majority has not.

For example, attached is a photograph of Ballina Hospital taken moments ago. The sign in question is itself too large but they have been attached together compounding the problem.



This issue is replicated across both Ballina and Lismore at numerous booths.

Also, the Greens signage, which [REDACTED] has already raised with you remains in place.

Our lawyers are being made aware of this and further action taken.

[REDACTED]
Sent from my iPad

Appendix A5 (cont.)

On 28 Mar 2015, at 11:12 am, [REDACTED] wrote:

Hi [REDACTED],

I have again spoken to the Labor Party and have the following written response.

I can confirm that in the Northern Rivers, the issue with the posters has been rectified by the volunteers and the small number of posters affected by this issue, have now been reduced in size, allowing them to remain on the property at the legal size.

Upon receiving your phone call this morning and being alerted to this issue, we immediately took action to reduce the size of the small number of posters affected.

Please do not hesitate to contact me if you require further information.

Thank you

[REDACTED]

[REDACTED]

[REDACTED]

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From: [REDACTED]
Sent: Saturday, 28 March 2015 10:30 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Letter to NSW Electoral Commission 28 March

Dear [REDACTED],

Please find attached formal correspondence from our lawyers regarding illegal oversized signage in Lismore and Ballina.

Please note there is a deadline of 11am for this to be remedied.

We look forward to your earliest response.

Sincerely,

[REDACTED]

Appendix A6

From: [REDACTED]
Sent: Saturday, March 28, 2015 11:32 AM
Subject: Fwd: Letter to NSW Electoral Commission 28 March

Sent from my iPad

Begin forwarded message:

From: [REDACTED] <[REDACTED]>
Date: 2 [REDACTED] 15
[REDACTED] March

Hi [REDACTED],

I have now instructed the RO at Lismore to call the PPMs and request the ALP to remove the oversized posters. If the ALP workers refuse to do so, the PPMs have been told to remove the oversized signs and retain until the ALP have resources to cut them down to the legal limit. When cut down they can be replaced.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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From: [REDACTED] [mailto:[REDACTED]]
Sent: Saturday, 28 March 2015 10:30 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Letter to NSW Electoral Commission 28 March

Dear [REDACTED],

Please find attached formal correspondence from our lawyers regarding illegal oversized signage in Lismore and Ballina.

Please note there is a deadline of 11am for this to be remedied.

We look forward to your earliest response.

Sincerely,

[REDACTED]

Appendix A7

From: [REDACTED]
Sent: Saturday, March 28, 2015 1:03 PM
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: RE: Illegal signage

[REDACTED]
I have instructed the RO to contact the PPM to request these posters are removed.

[REDACTED]

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-----Original Message-----

From: [REDACTED]
Sent: Saturday, 28 March 2015 10:56 AM
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: Illegal signage

Hi [REDACTED] and [REDACTED]

Please find attached further unlawful signage which is present on the fence of St Paul's booth.

Again this should be immediately removed.

Kind regards

[REDACTED]

Appendix B1

From: [REDACTED]
Sent: Wednesday, March 25, 2015 3:29 PM
To: [REDACTED]
Subject: RE: Complaint regarding [REDACTED]

Hi [REDACTED]
We have advised the people concerned that they are not RTPCs and these ads are illegal. They were advised to immediately cease running the ads. As you are aware the black out commences at Midnight tonight.

[REDACTED]

[REDACTED]

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From: [REDACTED]
Sent: Wednesday, 25 March 2015 3:09 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Complaint regarding [REDACTED]
Importance: High

Dear [REDACTED]

I can confirm that these ads have continued to air since Saturday in considerable quantities. I am very concerned that an unlawful campaign has been undertaken by this group that has the capacity to alter the election outcome on the North Coast.

Can you please advise what action is being undertaken with regard to this matter?

Thank you for your time and assistance

[REDACTED]

From: [REDACTED]
Sent: Saturday, March 21, 2015 4:25 PM
To: [REDACTED]
Subject: Complaint regarding [REDACTED]
Importance: High

Dear [REDACTED]

Please find attached a complaint regarding a potentially unlawful third party television campaign airing in the electorates of Ballina, Clarence and Lismore.

This is again an instance of a campaign that could affect the outcome of the election in those electorates.

Appendix B1 (cont.)

You can find a link to the ad in question at [REDACTED]

Thank you for your time and assistance with this matter.

Kind regards

[REDACTED]

Appendix B2

From: [REDACTED]
Sent: Thursday, March 26, 2015 5:07 PM
To: [REDACTED]
Subject: Alleged unlawful third party campaign

Dear [REDACTED]

I refer to your recent letter in relation to [REDACTED]

Regarding your concern about the possible breach of section 151E of the Parliamentary Electorates and Elections Act 1912 due to lack of printer details on the attached pamphlet, I note that the purpose of authorisation is to allow the identification of the person responsible for producing the pamphlet and their location, which doesn't appear to be of concern in this instance given the [REDACTED] logo is clearly displayed on the pamphlet along with the authoriser's address.

I can confirm that the matters raised by you in relation to the recent activities of [REDACTED] will undergo preliminary review and assessment. Depending on the outcome of this review, the matter may be referred for formal investigation.

The purpose of the review is to determine whether there may have been any breaches of the *Election Funding, Expenditure and Disclosures Act 1981*. This process includes a review of documentation to which an allegation might relate, seeking further information or clarification from the complainant or other source of the allegation, making initial enquiries of the subject of the allegation and of other individuals or organisations where appropriate.

The NSW Electoral Commission (NSWEC) will commence a formal investigation where it is intended to invoke statutory powers to obtain information and/or where it is necessary to interview individuals in order to obtain information.

The NSWEC will not comment on on-going case reviews or investigations (see the NSWEC Compliance Policies at http://www.efa.nsw.gov.au/about_us/policy_documents).

Kind regards,

Funding, Disclosure and Compliance Branch
NSW Electoral Commission

[REDACTED]
[REDACTED]

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