

Our ref: 20170628/AW

Peter Katsambanis MLA
Chair
Community Development and Justice Standing Committee
Legislative Assembly Committee Office
Level 1 / 11 Harvest Terrace
WEST PERTH WA 6005

Via email: lacdjsc@parliament.wa.gov.au

Dear Mr Katsambanis

SUBMISSION TO THE INQUIRY INTO THE 2017 STATE ELECTION

Please find attached a submission to the *Community Development and Justice Standing Committee* inquiry into the administration and management of the 2017 State General election on behalf of The Nationals WA.

The following submission outlines our reasons for calling for this parliamentary inquiry and seeks to address the terms of reference outlined. We have also taken this opportunity to raise other issues which we regard as critical to ensuring the integrity of the electoral process in Western Australia.

I am happy to provide further information as required.

Yours sincerely,

Simon Glossop
STATE DIRECTOR

The National Party of Australia (WA) Inc

Submission to the Community Development and Justice Standing Committee's

***Inquiry into the Administration and Management of the 2017 State General
Election***

Submission

4 August 2017

Terms of Reference

The Committee will inquire into and report on the Western Australian Electoral Commission's administration and management of the 2017 State General Election. In particular, the Committee will assess the adequacy of the Commission's procedures in relation to:

- a. Ballot security, including paper ballots and electronic ballots;*
- b. The participation of communities with traditionally low levels of enrolment or turn out, and/or high levels of informality;*
- c. Remote polling services; and*
- d. The operation of polling places, including early voting centres, campaign advertising and the distribution of campaign material.*

In doing so, the Committee will consider the responsiveness of the Electoral Act 1907 to the electoral needs of Western Australia.

1. Introduction

On Wednesday, 21 June 2017, the Leader of The Nationals WA moved a motion on the floor of the Legislative Assembly outlining our concerns about the State Election. This included the unprecedented influence of third parties, the use of unauthorised advertising material and the disproportionate increase in voters in the electoral district of Pilbara.

In the debate that followed, Nationals MPs explained that in other jurisdictions, namely New South Wales and Victoria, there is a process for ensuring due-diligence where a parliamentary committee is exclusively tasked with providing oversight on a range of electoral matters. The nature of the inquiries previously undertaken cover core issues such as misleading and deceptive electoral content, political donations and reviews of the preparation and administration of State Elections.

The Nationals regard this level of oversight as necessary in providing the community, candidates and Members of Parliament with confidence in the electoral system and ultimately their representative democracy.

The terms of reference for this inquiry only address some of the issues our party has raised in the past. The Nationals hope that other matters – such as the appropriateness of current donations, contributions, expenditure and disclosure regimes as well as the regulations of political donations and contributions from foreign sources, other persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties - form the subject of other related inquiries.

These broader issues are at the core of well-functioning democracies, and The Nationals look forward to them being canvassed in detail to ensure the *Electoral Act* 1907 can continue to meet community expectations.

In this submission, we will draw upon anecdotal evidence from Members of Parliament, candidates and volunteers about some key operational issues experienced during the 2017 State Election campaign. We will also use this submission to outline other issues that we believe impacted the integrity of the election.

2. Ballot Security

This was the first election in which WA's iVote software was utilised, allowing people with a disability to cast a ballot online or by telephone. In April 2016, The Nationals Member for the Agricultural Region Hon Martin Aldridge MLC, during a second reading speech to the *Electoral Amendment* Bill 2016, raised the importance of ensuring the integrity of a technology-assisted voting system in Western Australia¹. In this debate, Mr Aldridge subsequently recommended an amendment to the Bill that would make it a statutory requirement to have an independent audit of the system taking place before and after voting occurred. This suggestion sought to ensure that regardless of the form of technology used in the future – whether via telephone, internet or some other mechanism – the validity of the votes to be collected, considered and counted would be guaranteed. Mr Aldridge argued this should be a minimum requirement to give the community confidence in the use of technology now and into the future.

¹ Hansard 2016. Electoral Amendment Bill 2016.

[http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/66653522d0c1e2ce48257fcd001005f5/\\$FILE/C39%20S1%2020160407%20p2268b-2280a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/66653522d0c1e2ce48257fcd001005f5/$FILE/C39%20S1%2020160407%20p2268b-2280a.pdf)

Mr Aldridge recommended the need to specifically outline two key audit procedures in the Bill, namely:

- (a) *test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test vote record produced under those procedures prior to voting commencing; and*
- (b) *at the close of polling and prior to the votes being admitted to the count, the votes recorded in the information technology used under the approved procedures accurately reflect the votes cast in the final poll.*

As it stands, the only requirement detailed within the Act is for an audit of the information technology system to take place prior to a vote being received. Mr Aldridge argued that undertaking an audit after the vote was collected and counted was more critical than prior. He then suggested that by legislating this auditing requirement, the community could have greater confidence in the system.

In the ensuing debate, the amendment was considered unnecessary and therefore not supported, as the then-Minister for Electoral Affairs, Hon Peter Collier MLC noted the Electoral Commission's preference for flexibility in line with changing technology. The Commission also explained it intended to undertake additional procedures in the form of a second audit, assessing the validity of votes stored in different data bases. However, prior to the State Election, there was concern raised about the security of WA's iVote², which suggests the need for greater scrutiny and specific assurance procedures to be clearly defined in the *Electoral Act* 1907 to give the community confidence in the system.

3. Voter Participation

Ongoing challenges exist with ensuring Aboriginal communities engage with the electoral process. Nationals MPs suggest that part of the challenge in this space relates to having adequate communication with remote Aboriginal communities throughout the political term, not just for the purposes of voting. However, there is considerable difficulty in providing parliamentary representation to large and geographically remote districts, especially when resources afforded to regional parliamentarians have not increased in line with population growth. These challenges have been further exacerbated by the recent changes to the electoral boundaries, where the electorates have increased considerably in size without a commensurate increase in resources to service these diverse communities. This only serves to disenfranchise Aboriginal communities further from the political process, and naturally hinders their willingness to engage with the electoral process.

During the consultation process prior to the boundary changes, The Nationals outlined the party's concerns in a submission to the Electoral Commissioner. In this submission, The Nationals explained that major changes to country districts which resulted in larger and more geographically diverse electorates - as is the case of Roe, North West Central and Central Wheatbelt - would have a substantial impact on the ability for Members of

² Tillett, 2017. *iVote hack concerns rejected*

<https://thewest.com.au/politics/state-election-2017/ivote-hack-concerns-rejected-ng-b88406330z>

Parliament to provide effective representation, communication and community engagement.

Despite the WAEC taking steps to engage with Aboriginal communities on polling day, The Nationals continue to argue the willingness of these remote communities to vote hinges on the level of trust with their respective Members of Parliament and the political process. The Nationals suggest greater effort needs to be directed at engaging and communicating with Aboriginal communities to build trust and awareness.

4. Remote Polling Services

Residents living in very remote areas of Western Australia face considerable challenges in engaging with the electoral process. Polling places are provided in most regional centres, but the challenge of delivering polling services to very remote communities remains significant. The Nationals believe there is a need for more printed advertisements in local languages that informs the community of the upcoming State Election as the methods used were considered ineffective in raising awareness. There was also an evident need for more interpreters to assist in the process of interpretation of ballot papers. Furthermore, it was also suggested that a local community support person is necessary to provide assistance to the Electoral Commission officers in liaising with local people and identifying them.

5. Operations of Polling Places

Early Voting

The Nationals WA consider one of the principle concerns with the early voting concept is that while up to 30 per cent of voters had already cast their vote, political parties were making policy announcements up until the Friday prior to the election. For example, 48 hours prior to the election, the Liberal Party's election costing showed \$800 million would be redirected from Royalties for Regions to fund recurrent costs of regional programs over a period of two years. Similarly, 24 hours prior to the election, Labor's financial management plan showed \$631 million would be redirected out of Royalties for Region for capital funding. This creates a concerning situation where early voters are not casting as an informed vote as those who vote on polling day. The same issues applies to remote polling, which also requires remote voters to vote earlier. It seems disingenuous that political parties seem to use this to their advantage by releasing controversial information later in the campaign.

In addition, The Nationals consider there to be little evidence that three week early voting period was comparatively more beneficial than two weeks and was at extra expense to the Commission and in some circumstances strained their ability to deploy early voting so soon after the close of nominations. Anecdotally, it was suggested that voter turnout for many of the regional polling stations was low in the first week, increasing over the second and third weeks. Many felt that the lack of advertising and signage informing the community that early voting was open greatly impacted voter turnout in the first week.

There was also the suggestion that the tight scheduling between the close of nominations (being Friday 10 February) and the start of early voting (being Monday 20 February) meant the Electoral Commission was not logistically prepared for the first week at some of the regional polling booths. Similarly, there was the view that there was not enough time for polling places to be adequately resourced for polling day, when polling day started at 8am and early voting closed the previous night at 6pm.

Moreover, inadequate resourcing of early voting centres was an issue experienced throughout the early voting period at a number of regional polling places. Centres in Katanning and Narrogin, for example, ran out of ballot papers. In Esperance, the first week of early voting was greatly impacted by the incorrect distribution of Kalgoorlie ballot papers.

There was also considerable concern over the inconsistent opening hours of polling places during early voting. For example, it was observed that one polling place in Katanning was closed sporadically for almost half of the three week period. With no consistency in the hours of operations, this was a considerable source of frustration for candidates, volunteers and voters.

Moreover, greater emphasis needs to be given to the training requirements of electoral officers, particularly with regard to the importance of centres being open and available during the designated period. If there were resourcing constraints that limited the number of Electoral Commission officers to provide that service, The Nationals argue that limiting the early voting period to one or two weeks prior to polling day would be a more suitable arrangement.

There was also concern raised around parking and disability access at some polling centres, suggesting that this should be a key requirement in selecting polling places. The Early Voting Centre in Geraldton was an example of a poorly selected location, with high volumes of traffic flowing past the centre resulting in a number of pedestrian and motor vehicle near misses due to the operation of the centre.

Campaign Advertising

2017 was in many ways an extraordinary election campaign. Some commentators have suggested advertising attributed to third party organisations was greater than the political parties themselves³. The Chamber of Minerals and Energy (CME) and the Minerals Council of Australia, on behalf of Rio Tinto and BHP, as well as the Unions were unashamed participants in the 2017 State Election.

The Nationals' concern with campaign advertising extends beyond what was distributed at polling stations, albeit this was an issue. Appendix 1 provides a copy of the corflutes authorised by the CME which read "JOBS – NOT TAXES. Say no to the new mining tax". Section 187 of the *Electoral Act* 1907 requires that signs be authorised by an individual, not an organisation. On polling day, these signs were removed in Newman due to the breach, and The Nationals are of the understanding that the Electoral Commission sent a text message to other officers at other polling stations to have them removed. Despite this, the signs were still in circulation at polling places and elsewhere throughout the State.

The aforementioned corflutes were just one component of what was a well-resourced TV, radio, print, and digital campaign that spanned several months prior to the election. In the context of the CME's campaign spending, the CME's Chief Executive, Reg Howard-Smith indicated: *"I've mentioned a figure publicly on a number of occasions. That was the \$2 million figure. I don't have an update on that. We haven't finished reconciling all the figures to be quite honest and that will take some time. Our initial budget was \$2 million, I would hope we don't exceed that by much at all."*

³ WA Today, 2017. Mining industry spends \$2 million fighting Brendon Grylls' tax <http://www.watoday.com.au/wa-news/mining-industry-spends-2-million-fighting-brendon-grylls-tax-20170208-gu8iz7.html>

On 16 March 2017, Mr Howard-Smith likened the CME's intervention into the 2017 State Election to that of the unions, saying the CME was, a "participator" in the election. In Western Australia, there are currently no restrictions to the level of third-party involvement – referred to as "Other Persons" in the *Electoral Act* 1907 – in a State Election. Similarly, there are no restrictions to the amount affiliated organisations can gift to these third party organisations for the purposes of political campaigning. The only mechanisms for accountability and transparency is under section 175Q and 175SD of the *Electoral Act* 1907, which requires these third party campaigners to disclose expenditure and gifts to the Electoral Commission.

Specifically, section 175Q requires that:

Where a person (not being a political party, an associated entity, a candidate or a group) incurs expenditure for a political purpose during the disclosure period for an election, the person shall, within 15 weeks after polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out the relevant details of all gifts received by the person during that disclosure period.

And Section 175SD states that:

Where electoral expenditure in relation to an election was incurred by or with the authority of a person and that expenditure was not incurred with the written authority of a political party, a candidate in the election or a person included in a group in the election, the person shall, before the expiration of 15 weeks after the polling day in the election, lodge a return with the Electoral Commissioner in an approved form setting out details of that electoral expenditure.

However, section 175SD only requires disclosure from the day when the writs were issued, which in this instance, presents a significantly distorted view of electoral expenditure by third-party campaigners.

While these disclosure requirements provide some scope for transparency, questions must be asked about our democratic processes when this level of third-party infiltration is only possible by well-resourced organisations, which are targeting a particular policy they disagree with. In Australia, NSW has restrictions on the electoral expenditure of political parties, groups of candidates, candidates and third-party campaigners. Furthermore, the required period for disclosure is from 1 October in the year before the election, ending on the election day, which provides greater transparency.

While disclosure mechanisms do exist in Western Australia, the level of importance placed on these disclosures seems to be lacking. On Monday 24 July, the WAEC published the electoral disclosures of candidates, political parties and other persons. The CME failed to submit their disclosures as required under s. 175Q and s. 175SD. The Nationals sought clarification from the Electoral Commissioner, and after several media reports, a spokesperson for CME indicated the Chamber would disclose.

This episode suggests that the current system places the onus of responsibility on the public to identify any failures to disclose, not the Electoral Commission. Moreover, the penalties under s. 175U do not seem to act as a deterrence, especially for well-resourced companies or organisations. The penalties for non-disclosure by third party organisations is currently \$1500, plus \$150 per day until the disclosure is submitted. The Nationals have also been advised that despite their lack of disclosure, the CME will not be required to pay the fine as required under s. 175U, which calls into question the

integrity of the *Electoral Act* 1907 and level of enforcement by the Electoral Commission. That the WAEC pursue enrolled individuals who fail to vote and don't pursue either those who distribute material or fail to disclose in accordance with the *Electoral Act* 1907 is cause for concern.

6. Other Issues

There has been ongoing debate, both in Western Australia and internationally about mechanisms to restrict donations and expenditure to create a balanced and fairer electoral system. Emeritus Professor, Marian Sawer from the Australian National University suggested that Australia lags behind other nations in this respect⁴. For example, Professor Sawer noted that only 66 out of 180 countries do not prohibit donations to political parties from foreign interests, and Australia is one of those.

The Professor also compared Australia with that of other countries. Canada, for example, has strict regulations including banning corporate and union donations and the use of expenditure caps on political party, candidate and third-party expenditure. New Zealand and the UK also restrict the amount that political parties and third-parties can spend on elections. In fact, paid political advertising in electronic media has also been banned in the UK, with the rationale outlined below:

The fundamental rationale of the democratic process is that if competing views, opinions and policies are publicly debated and exposed to public scrutiny the good will over time drive out the bad and the true prevail over the false. It must be assumed that, given time, the public will make a sound choice when, in the course of the democratic process, it has the right to choose. But it is highly desirable that the playing field of debate should be so far as practicable level. This is achieved where, in public discussion, differing views are expressed, contradicted, answered and debated. It is the duty of broadcasters to achieve this object in an impartial way by presenting balanced programmes in which all lawful views may be ventilated. It is not achieved if political parties can, in proportion to their resources, buy unlimited opportunities to advertise in the most effective media, so that elections become little more than an auction. Nor is it achieved if well-endowed interests which are not political parties are able to use the power of the purse to give enhanced prominence to views which may be true or false, attractive to progressive minds or unattractive, beneficial or injurious⁵.

A concerning trend whereby policy debate is undermined by well-resourced vested corporate interests is emerging in Australia's political landscape. BHP and Rio Tinto's successful \$22 million campaign against the Rudd Government's super profits tax in 2010 is another key example. This unfortunately creates an environment where parliamentarians and political parties will be reluctant to put forward policy ideas in fear of retribution. The Nationals therefore suggest Western Australia needs to implement urgent reform by ensuring the integrity of elections and the creation of a level playing field for policy debate.

7. Conclusion and Recommendations

⁴ Sawer, M. 2016. Australia trails way behind other nations in regulating political donations. <https://theconversation.com/australia-trails-way-behind-other-nations-in-regulating-political-donations-59597>

⁵ Judgments - R (On The Application of Animal Defenders International) V Secretary of State For Culture, Media and Sport (Respondent) <https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080312/animal-2.htm>

The Nationals WA requested a parliamentary inquiry into the 2017 State Election as an area to air critical and underlying issues that speak to the integrity of the electoral process in our State. In doing so, the party suggested the need to investigate the appropriateness of current measures regulating political party, candidate and third-party expenditure and donations, as well as the operations of the 2017 State Election. The Nationals are most concerned with the activities of well-resourced corporate interests and the significant influence they can have on an election outcome.

There were also operational issues that Members of Parliament, candidates and volunteers experienced and our party suggests the below recommendations would assist in improving the administration and management of the 2021 State Election:

Ballot Security

- Consider including comprehensive auditing procedures in the *Electoral Act* 1907

Voter Participation

- Increasing the level of communication and engagement with Aboriginal communities outside of the election cycle is an essential first step in increasing participation on polling day. This requires increased resources and increased number of Legislative Assembly Districts to reduce the likelihood of voter disenfranchisement.

Remote Polling Services

- Increased advertising in local languages to inform remote communities of the State Election
- Enhanced interpreting services are required to assist communities with interpretation of ballot papers
- Local support person to assist the Electoral Commission officers in remote communities

Operations of Polling Places

- Limit early voting to two weeks only
- Increase the time between close of nominations and the start of early voting to ensure preparedness for the first week of early voting
- Ensure resources are directed at advertising and signage for early voting
- Increase resources at polling places, ensuring centres do not run out of ballot papers or close due to lack of staffing capability
- Ensure polling places have adequate parking and disability access
- Review mechanisms that exist where campaign advertisements are in breach of the *Electoral Act* 1907 and how quickly they are removed from polling places
- Consider imposing campaign expenditure caps
- Consider the appropriateness of current penalties for non-compliance with financial disclosure requirements

Other issues

- Undertake an extensive review of Western Australia's current system of donations and electoral expenditure, with reference to systems utilised in other countries.
- Ensure integrity in electoral processes and the creation of an even playing field for policy debate

