

Hon Dr Sally Talbot MLC
Chair
Standing Committee on Legislation
Legislative Council

Dear Dr Talbot,

Thank you for the opportunity to make a submission to the Standing Committee inquiry into the *Electoral Amendment Bill 2020* on behalf of The National Party of Australia (WA) Inc.

We support the Government in its intent to increase transparency around donation disclosure and fairness regarding electoral expenditure during campaign period. There are however amendments that present a number of policy issues.

The submission will comment on provisions within the following clauses:

- Clause 12 – Quarterly returns and Commonwealth returns
- Clause 13 – Ban on foreign donations
- Clause 15 – New Division 4A - Caps on electoral expenditure
- Clause 24 – Transitional provisions
- Other amendments
 - Clause 8 – Specified amount, quarterly return and expenditure period
 - Supplementary Notice provisions

Overview of recommendations from The Nationals WA:

- That amendment to provisions in Clause 12 are considered for quarterly returns to be lodged within four weeks rather than 10 business days due to the administrative constraints of smaller, decentralised and grassroots-oriented parties.
- That the foreign donor definitions in Clause 13 are aligned with the federal definitions outlined in the Commonwealth Electoral Act 1918 for consistency of interpretation.
- The Committee consider the application of Clause 15 to the parties, associated entities and others that will be affected by expenditure caps and whether there is cause to review the current application of expenditure caps in NSW and SA to improve the current provisions in the Bill.
- Furthermore, that the provisions within Clause 15 are amended to remove the ability to reallocate any underspend from one district to another.
- That provisions be strongly considered relating to Clause 8 and the 1 October commencement date for expenditure caps, acknowledging that parties, candidates and entities are now effectively operating within a campaign period without full knowledge or understanding of the provisions and policies that may come into effect retrospectively.
- That the Committee consider further Transitional Provisions which recognise the problematic timing of retrospectively enacting provisions in relation to lodging a return within ten business days of the quarter ending 31 March following the election held 13 March.
- Overall, it is recommended that it is more appropriate to commence the new rules from 1 July 2021, so as to ensure there is a more seamless introduction of the provisions in this Bill and all people who will be captured by it are fully aware of the constraints and requirements of them engaging in donations and support for local candidates.

CLAUSE 12 – QUARTERLY RETURNS and COMMONWEALTH RETURNS

While the increased disclosure transparency requiring quarterly returns is commended and supported by The Nationals WA, the quarterly returns required to be lodged within ten business days of the end of the quarter will represent administrative challenges for parties.

The Nationals WA is a grassroots political organisation, proudly decentralised in structure and operation across regional WA and relying on the commitment and work of its volunteer members, particularly those in local leadership positions.

Reporting within the ten-day timeframe may present practical issues sourcing the required local party unit disclosure information from volunteer office-bearers.

Ensuring this information is accurately collated from all party units is important to correctly disclose accumulated donations from an individual meeting the disclosure threshold.

Currently SA, Queensland and NSW require half-yearly returns, due between four to eight weeks after periods ending 30 December and 30 June.

WA matching these precedents would still allow for transparent, timely and accurate disclosure of donation information compared to the current annual return requirements.

Allowing this additional timeframe for submitting returns will assist all parties and candidates to report accurately and in a timely manner, which should be an important aspect of the aim to increase transparency.

CLAUSE 13 – BAN ON FOREIGN DONATIONS

This clause is supported, though the way it has been defined in the Bill may allow for relatively simple means to bypass i.e. the ease with which an entity can apply for an ABN.

It is suggested the Committee consider aligning the definition of foreign donations and foreign donor with the current federal legislation.

The Commonwealth Electoral Act 1918 restricts political entities (registered political parties and candidates), political campaigners and third parties from receiving gifts or donations from foreign donors defined as:

- 1) a body politic of a foreign country;
- 2) a body politic of a part of a foreign country;
- 3) a part of a body politic mentioned in paragraph (a) or (b);
- 4) a foreign public enterprise;
- 5) an entity (whether or not incorporated) that does not meet any of the following conditions:
 - a) the entity is incorporated in Australia;
 - b) the entity's head office is in Australia;
 - c) the entity's principal place of activity is, or is in, Australia;
- 6) an individual who is none of the following:
 - a) an elector;
 - b) an Australian citizen;
 - c) an Australian resident;
 - d) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the Migration Act 1958 (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).

This would help maintain a consistency of interpretation between state and federal foreign donor rules during a period of heightened public concern over foreign influences in Australian politics.

CLAUSE 15 – NEW DIVISION 4A - CAPS ON ELECTORAL EXPENDITURE

The application of expenditure caps to elections and how they will operate under the provisions of the Bill is an issue The Nationals WA indicated they will not support in its current form.

The motivation for expenditure caps is to create an even playing field, however being able to reattribute underspend in some districts to others may allow parties to exploit this by nominating a candidate in each seat and increase total spend focusing on key marginal seats, which disadvantages smaller parties or independents.

The committee may consider the application of clause 15 to the parties, associated entities and others that will be affected by expenditure caps and whether there is cause to review the current application of expenditure caps in NSW and SA to improve current provisions.

A final concern is the commencement date for capped expenditure being 1 October as defined in clause 8.

Due to the Committee referral of this Bill, parties, candidates and entities will be operating during an intensifying campaign period without full knowledge of the provisions that may come into effect retrospectively.

CLAUSE 24 – TRANSITIONAL PROVISIONS

As per concerns raised regarding the retrospective nature of the provisions, it is concerning that parties and individuals are potentially operating under a strict reporting regime effective 1 July 2020 for which the requirements have not been finalised and may not be until half-way through the financial year and just months out from the March election.

The last annual return period will report to 30 June 2020. Political parties and associated entities will disclose the last annual return by 30 November 2020. The first quarterly returns to include the July and October quarters of 2020 must be lodged by 15 January 2021.

These reporting dates from 30 June are effective three months prior to the close of submissions for this inquiry, and the proposed commencement date for the electoral expenditure period defined as Thursday 1 October as a further retrospective provision.

Once the Committee inquiry is completed and report tabled for consideration, it will be almost half-way through the current financial year during a period of heightened political activity and fundraising.

This raises concerns for individuals who will be captured by the changes and who may be unaware of the constraints and requirements placed on any recent activity with donations.

There is also a lack of any provision for the return due 10 business days after the quarter ending 31 March, following the election held 13 March. This will be a significant return for parties and candidates on the back of a peak period of fundraising and campaign expenditure.

I suggest the Committee consider provisions which recognise the problematic timing of the election in March in relation to the requirement to lodge a return within ten days of that quarter ending – and recommend it is more appropriate to commence the new rules from 1 July 2021, so as to ensure there is a more seamless introduction of some of the provisions in this bill.

OTHER AMENDMENTS

CLAUSE 8 – SPECIFIED AMOUNT, QUARTERLY RETURNS AND EXPENDITURE PERIOD

Suggestions and concerns are noted above regarding the new capped expenditure period for State elections defined as commencing on 1 October before the election is held the following March.

SUPPLEMENTARY NOTICE

The Nationals WA note the Supplementary Notice given by Hon Alison Xamon, in particular inserting “175RB. Prohibited donor and related concepts” section 2:

(2) Each of the following persons is a **prohibited donor** —

- (a) a foreign donor;
- (b) a property developer;
- (c) a liquor or gambling industry business entity;
- (d) a mineral resources or fossil fuel industry business entity;
- (e) a tobacco industry business entity;
- (f) an industry representative organisation if the majority of its members are persons referred to in paragraphs (a) to (d).

NSW (property developers and tobacco, liquor and gambling businesses) and QLD (property developers) are states that include banned donor industries in electoral legislation.

For regional communities in NSW in particular this has resulted in the capture of small business operators and community leaders as prohibited donors e.g. a local pub licensee or winery is considered a prohibited donor, likewise local town planners and surveyors lodging development applications in the course of their work may be considered prohibited donors.

Similarly, the unprecedented inclusion of “mineral resources or fossil fuel industry business entity” in the proposed amendment may capture local small business operators in mining service hubs like Kalgoorlie. Mining-related operators are a significant influence on the future development of regional cities and towns across our vast state.

By including these provisions, there will no doubt be an impact on local individuals and community leaders at the centre of our communities, not only the intended larger corporations.

In relation to the above concerns noted on the transitional provisions and proposed commencement of spending caps at 1 October, the inclusion of banned industry donors over a current reporting period would lead to a range of legal, administrative and financial concerns for parties, candidates and individuals currently operating under different rules.

CONCLUSION

Thank you for the opportunity to provide these considerations to the Standing Committee on Legislation. The Nationals WA support and welcome efforts to improve disclosure laws around political donations and increase transparency, though note concerns around the transitional period, expenditure caps and foreign donor definition as outlined above, in addition to comments on aspects of the tabled Supplementary Notice.

Overall, it may be reasonably argued under the current timeframes that it is more appropriate to commence the new rules from 1 July 2021, so as to ensure there is a thorough review and understanding of the significant considerations and current issues within the Bill. This would allow a more seamless introduction of the provisions with all people who will be captured by it fully aware of the constraints and requirements of them engaging in donations and the political process.

I would also like to offer my availability to appear at the hearings should further information be required.

Kind regards,



Jack Mallick
Acting State Director – Operations
The Nationals WA