



Tuesday, July 23, 2019

Secretary  
Social Policy Scrutiny Committee  
GPO Box 3721  
Darwin NT 0801  
[SPSC@nt.gov.au](mailto:SPSC@nt.gov.au)

Dear Secretary

**RE: Electoral Legislation Further Amendment Bill 2019**

**1. Introduction**

The Country Liberals would like to make a few comments regarding the *Electoral Legislation Further Amendment Bill 2019* to assist the Committee's deliberations on the bill.

**2. Executive Summary**

The Country Liberals recommend that the Economic Policy Scrutiny Committee of the NT Legislative Assembly does not support the passage of the *Electoral Legislation Further Amendment Bill 2019* unless amendments are proposed and passed by the Legislative Assembly to address the following concerns.

**3. Cap on Electoral Expenditure**

The Country Liberals oppose the imposition of a blanket cap on electoral expenditure, as proposed by Clause 115, new section 203B of the Bill. *Instead*, as suggested in the Country Liberal's submission to the *Inquiry into options for the reform of political funding and donations in the Northern Territory*, the cap on expenditure should be higher for rural and remote divisions. Adding an additional \$10,000 to \$20,000 to the expenditure cap on rural and remote divisions would be justified given the geographic realities of those electorates and the need to visit electors in areas that are expensive to canvass.

Under such a framework, it would be unnecessary to exclude travel and accommodation expenses from the cap for any division, as the increased applicable cap would compensate for the increased expense in canvassing those areas. Removing new section 176A(4) from the Bill—which specifically excludes travel and accommodation from the definition of electoral expenditure—would add transparency and further promote the interests of democracy.

In addition, the electoral expenditure cap should apply with equal force to Third Party Campaigners and Associated Entities. Where a Third-Party Campaigner or Associated Entity is acting as an agent for a candidate or political party, they should be subject to a cap in expenditure. Indeed, this is precisely what was recommended in the Final Report on the *Inquiry into options for the reform of political funding and donations in the Northern Territory*. As Justice Mansfield stated at p 69:

I have recommended imposing a cap on electoral expenditure for registered parties and candidates. Registered agents for parties and candidates will be required to ensure that spending on volunteer labour forces (including airfares, accommodation and the value of wages where the volunteer is not taking unpaid leave) does not exceed the cap.

Imposing a cap on Third Party Campaigners and Associated Entities that are the agents of political parties will ensure that a truly 'level playing field' is established. Instead, as drafted, the Bill provides a significant loophole, whereby agents of political parties may exert disproportionate influence over an election, without having to comply with the same requirements as other parties.

#### **4. Registration of Third-Party Campaigners and Associated Entities**

The Country Liberals support in principle, subject to issues raised below on the reporting requirements, the provisions in the Bill that require Third Party and Associated Entities to register with the Northern Territory Electoral Commission, namely Clause 92, new Part 9A.

#### **5. Third Party Campaigners and Associated Entities**

With respect to the application of the Bill on Third Parties and Associated Entities, the Country Liberals wish to raise a number of concerns. Primarily, not including a cap on electoral expenditure by a certain category of Third-Party campaigners and Associated Entities completely undermines the intent of the expenditure cap provisions of the Bill.

- The Country Liberals believe that the Bill as presented for comment would allow for the intent of the election expenses cap to be circumvented by members or supporters of a political party or candidate registering as a third party.
- While cognisant of the High Court judgement of 29 January 2019 in the case of *Unions NSW v State of NSW* [2019] HCA 1 and the need to not place a disproportionate burden on Third Party Campaigners and Associated Entities, those entities should face the same, or at least similar, restrictions on electoral expenditure as those proposed to be applicable to political parties.
- Many Unions are either members of a political party or have formal associations with a political party. In the case of the Australian Labor Party, this may explain why Union sponsored election material or advertising overwhelmingly, if not exclusively, favours the Australian Labor Party or its candidates and policies as many Unions are affiliated with and even enjoy full voting rights with the Australian Labor Party.
- This concern was highlighted by Justice Mansfield in the Final Report on the *Inquiry into options for the reform of political funding and donations in the Northern Territory* and it was recommended that such 'agents' of political parties should be subject to an electoral expenditure cap—including travel and accommodation expenses.
- The Bill as printed would also permit an individual Political Party member, or supporter of an individual candidate to also register as a third party. This would enable this

individual to expend money or resources towards a Party or candidates' campaign without being subject to the provisions of the expenditure cap.

The Country Liberals consider this apparent potential "loophole" in the proposed Bill a serious consequence that would undermine the Legislation's intent to limit election campaign expenditure. There appears no reason to apply a cap on campaign expenditure upon political parties or individual candidates if you could quite simply get around any cap by having a member, supporter or affiliated entity assume expenditure on your behalf.

***The Country Liberals, while providing in principle support for a cap on electoral expenditure, cannot support this Bill without amendments made to address the above concerns.***

## **6. Dedicated Campaign Account**

The Country Liberals do not support this provision within the proposed legislation, which is set forth at Clause 125, new section 213A.

Our Party has several branches across the Northern Territory who all maintain separate bank accounts for fundraising and political related expenditure. Each of these accounts are currently subject to reporting requirements and consolidating them would add unnecessary complexity for no benefit whatsoever.

All branches currently report donations and campaign related expenditure to the party secretariat for inclusion in the party's consolidated electoral commission returns.

We do not believe that closing all branch accounts and using one campaign account is necessary—or desirable—in order to comply with any NTEC or AEC reporting requirements. The Country Liberals propose that the Committee consider amending the Bill to remove this provision.

## **7. Disclosure Requirements**

The Country Liberals support the disclosure of reportable donations and expenditure of political parties, unaligned candidates, associated entities and third parties. The Country Liberals do not support the contention that more frequent reporting is required to monitor or confirm expenditure under any proposed expenditure cap.

We believe that it is the responsibility of all political parties, unaligned candidates, associated entities and third parties to keep all records and submit their returns to comply with the applicable electoral acts. The Electoral Commission should review these returns and prosecute any breaches of the law, including exceeding any potential electoral cap, after the election.

Requiring electoral commission staff to review and publish campaign returns as frequently as every six weeks immediately before and during the election as proposed, is considered a significant impost upon electoral commission staff when they would already be experiencing their heaviest workload of the year in actually running an election.

While public interest and donor transparency is important, burdening electoral commission

staff with this work at a time that they should be dedicating their resources to running an election is not considered the best use of NTEC resources during this period. Indeed, the implementation of overly onerous reporting requirements may lead to unintended consequences and may detract from—rather than adding to—the quality and accuracy of those reports, leading to more amended reports due to inadvertent errors or omissions.

The Country Liberal recommend that the current requirement for Annual Returns and Annual Donor returns remain unchanged. Should a campaign expenditure cap be introduced, we further propose that a post-election expenditure report be submitted by all applicable individuals or entities within 30 days of the return of the writs.

## **8. Non-financial Reforms**

### Election Timetable

The Country Liberals support the extending the issuing of the writs by an additional four days. We support this provision on the basis that the change would allow for the close of nominations and the ballot draw to occur four days earlier, giving additional time for postal votes to be mailed out and returned to be included in the count. The situation of weekly mail planes in some regions has previously resulted in some electors experiencing difficulties in lodging their vote.

### Provisional Voting by Declaration Ballot

The Country Liberals do not support allowing any individual to cast a vote if they are not enrolled to vote by the date of the close of rolls. The integrity of the electoral roll is critical to our voting and election system and as the Northern Territory has fixed four-year parliamentary terms, the Country Liberals propose that additional resources be provided to the NTEC for electoral educational and enrollment campaigns between elections.

Nonetheless, if changes are to be made to allow same-day enrollment, safeguards must be put in place to ensure that the eligibility provisions of Part VIII of the *Commonwealth Electoral Act 1918* (Commonwealth Act) are enforced. For example, under the Commonwealth Act, an elector who lives at an address may only be registered in the place where he or she lives under section 99(1). According to the same section, upon relocating a person must have lived at his or her new address for a period of one month or more.

Most importantly, requirements must be put in place to ensure compliance with the identity requirements of section 99AA of the Commonwealth Act. This would include, requiring that the declaration ballot is accompanied by either: (a) the person's driver license showing residency in the Northern Territory; or (b) an Australian passport accompanied by a declaration that the person resides in the Territory, is whom he or she claims and is signed by another person that is enrolled.

It is only with these safeguards in place that a declaration vote can be verified as a formal vote by an eligible voter.

### Campaign Material Requirements

The Country Liberals support the provision to require all campaign material to include the name of the Political Party, unaligned candidate or Third-Party Campaigner. This provision should remove the potential for ambiguous campaign material being distributed.

## 9. Conclusion

Should the committee wish to discuss any aspect of this submission or to clarify any of the positions or recommendations contained herein, please do not hesitate to contact me.

Additionally, should the committee decide to conduct public hearings into the *Electoral Legislation Further Amendment Bill 2019* I would be happy to present the Country Liberals position and to answer any questions.

Yours sincerely



Ron Kelly  
President  
Country Liberals

