

# CORRECTED EVIDENCE

## ELECTORAL MATTERS COMMITTEE

### Inquiry into the conduct of the 2014 Victorian state election

Melbourne — 11 August 2015

#### Members

Ms Louise Asher — Chair

Ms Ros Spence — Deputy Chair

Ms Lizzie Blandthorn

Mr Martin Dixon

Mr Russell Northe

Ms Fiona Patten

Mr Adem Somyurek

#### Staff

Executive officer: Mr Mark Roberts

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#### Witness

Ms Jenny Hammett, state director, The Nationals Victoria.

**The CHAIR** — Thank you, Ms Hammett, for coming along to expand on your submission from The Nationals party. We have received your first submission and your amended submission. Thank you for that. I advise you that you are covered by parliamentary privilege for the evidence that you give to this committee, but should you repeat something outside this particular hearing you are not covered by parliamentary privilege, which you may wish to take into account. Can you please state your full name and business address and also indicate whether you are representing your organisation or whether you are appearing in a private capacity.

**Ms HAMMETT** — My name is Jenny Hammett, I am the state director of The Nationals party. I am here today to represent The Nationals party. My business address is Level 5, 30 Collins Street, Melbourne.

**The CHAIR** — Thank you very much. A pamphlet has been given to you about the process for submissions to and appearing at public hearings, which I hope you have read. I now want to ask if you want to expand on your submission and then we will ask some questions on it.

**Ms HAMMETT** — Thank you, Louise. I really appreciate the opportunity to be here to present to the committee today. In speaking on behalf of The Nationals Victoria, I acknowledge the professionalism of the Victorian Electoral Commission in the conduct of the 2014 state election and the 2015 Gippsland South by-election. In particular I commend the commissioner for the efforts he made to communicate with political parties in the lead-up to the election. That started from the time of his appointment, so I think it is worth noting that he made a considered effort to engage with parties. The Nationals' submission is concerned with the impact from our experience as a party whose interests lay beyond the metropolitan boundaries. It addresses four key matters: voter intent, voter accessibility, election campaign funding and scrutiny of electoral communications. Today I will speak further to the first three matters.

In commencing my presentation I pose a question to the panel: what integrity is there in a system that enables a candidate to sit in our Parliament when over 98 per cent of the voters eligible to vote for his party or him personally chose not to. The Nationals say there is little. The Victorian Electoral Commission, at the behest of this Parliament, reimburses election costs to candidates and parties. It is the considered judgement of the legislators and has been for many years that those who draft the legislation recognise that the campaigns of candidates who do not receive 4 per cent of the first-preference vote are not worthy of a refund, yet today five candidates whose campaigns were not worthy of a refund sit as members of the Legislative Council. Five members with a first-preference vote of under 4 per cent have, through the services of a paid preference harvester, taken a seat in the Parliament when 96 per cent of the voters in their regions made a deliberate choice not to select them above the line and not to preference them above the line. How does that reflect voter intent? Very poorly is the only legitimate answer to that question.

The Nationals hold a firm belief that this committee has an obligation to review the existing system and reform it, so that the intention of voters rather than the intention of a paid operative is reflected on the benches of the Legislative Council. It is logical that the legislators would look at their own standard — a standard of 4 per cent — as a guide to what is a reasonable representation of voter intent before a distribution of preferences can take place. It is also logical to give voters a choice to preference above the line. If there are 12 group tickets and a number of independents, allow the voters the allocation of the group preferences above the line. We urge the committee to consider its responsibility to provide a system that voters can be confident in.

The question of voter confidence is one that should be a concern to all who sit in our parliaments throughout Australia. It is a reasonable assumption that the faith of the public in the political class is at a very low point — if not the lowest point — since the history of our federation. Royal commissions into unions, the use and abuse of parliamentary entitlements and the receipt of donations from shady characters or vested interests is contributing to a lack of trust and a lack of faith in our political system. If our system is seen to be in decline then the security of our freedom becomes more vulnerable. This committee has the opportunity to take steps towards the restoration of trust through the facilitation of a review into election campaign funding. It is no secret that the *Age* has been pursuing what it perceives as a lack of transparency in campaign funding for over 12 months, and it has recently run a number of stories relating to it. These stories only add to the public perception that politicians cannot be trusted. That is a view that we know to

be false, but unfortunately it is a view that is being held in increasing numbers by the public who vote for you.

Democracy costs money. It is an unpalatable and indisputable fact that the freedoms we enjoy as a democratic society come at a cost. The question is: who pays the cost, and what price is the payment? Election campaign funding reform is not new. It was introduced into Queensland by the former Labor Premier, Anna Bligh, and has had a number of changes in that time. The jury in Queensland is still out on how successful it is — and it is in the process of change at the moment, as I understand it. However, in New South Wales the system introduced by Labor has operated since 2011, through the terms of coalition governments, and it continues to be reviewed and refined to reflect the concern of voters.

New South Wales introduced caps on political donations in 2011, coinciding with the introduction of new public funding guidelines and caps on electoral communication expenditure. New South Wales has much more stringent requirements for reporting of political donations than currently exists under the AEC, the reporting requirement that governs Victoria. All donations with a value of \$1000 are deemed to be reportable in New South Wales. A strong argument can be made that New South Wales offers a more open and transparent model than the one currently operating in Victoria, and The Nationals urge the committee to examine the New South Wales model but also to look further in the field and explore the Canadian model, which has operated since 2006.

The Nationals' interest in this area in this particular election has been sparked by the events that occurred in the seat of Morwell. A so-called independent ran in Morwell. The independent was largely backed by environmental groups. Significant funding went into her campaign and into the mock community preselection process that was provided through third-party election funding. Another significant contributor to the Morwell election process was the CFMEU. That is not unusual in Morwell. Back in 2002 when I stood in Morwell the CFMEU provided significant funding for an independent candidate at that time.

The point made by The Nationals is that there is significant funding going into election campaigns that the public knows nothing about. The Canadian model regulates third-party election advertising through a requirement to register with the chief electoral officer once \$500 or more has been spent on election advertising, and report election advertising expenses within four months of the election day. Third parties that spend more than \$5000 must include an auditor's report and include the names and addresses of any contributor that gave more than \$200 for election advertising in the six months preceding the election.

All the parties and all candidates, whether they are party based or not, have an obligation to respond to the AEC's funding and disclosure reforms. However, that does not necessarily indicate or show to the public the amount of effort and funding that goes in from third-party organisations. Unions and particularly in today's society environmental groups mask themselves as charitable organisations and take significant amounts of money that have been donated to a charity and use it to fund aggressive election campaigns. Victoria is tied to the federal model. This committee can take the lead on electoral funding reform in Victoria and identify the model that provides the community with the openness, accountability and transparency required to commence the restoration of faith in our political system and our political representation.

The third area that I would like to touch on, which has been covered in our report, is voter accessibility. Our primary concern is that there is action to give the VEC the opportunity to incorporate emerging technologies to provide a system that provides secure accessibility for voters at the voting centre. Later in the next two days I believe you will hear from the blind society. They wrote a very good letter to I suspect all candidates in the election, talking about the need for accessibility for people who have blindness. The Nationals actually agree with most of what was said in that, and in particular the points they made in relation to how-to-vote cards. We believe that there is a growing trend to vote over a two-week period that does not align with the current wording or intent of the act. The Nationals suggest that early voting should be restricted to seven days prior to the election day. This, though, should coincide with an expansion of early voting options. By this we mean that the act as it stands today should be looked at to ensure that the

Victorian Electoral Commission has the opportunity to explore whatever options may be available to give greater accessibility to voters, but to do that within a period that is no longer than seven days.

The last two New South Wales elections have trialled internet voting and, from afar, these voting systems are always fraught with the concern that they are open to corruption, but they should be explored. The AEC at this point in time is looking at an audit of voting centres. That is not such an issue in the city, where people live in a kilometre area of perhaps 10 kilometres — a 45-kilometre circumference. But in some of our electorates, voters have to travel 45 minutes, an hour or even more to get to a polling centre.

**The CHAIR** — Sorry to interrupt, but these are introductory remarks. I am sure the members of the committee might like to ask some questions, particularly given that you have been very specific with your recommendations. I indicate to you that time is moving on, and if you are able to conclude, I would be grateful.

**Ms HAMMETT** — Yes, absolutely. We would encourage the committee to look at ways of ensuring that the act allows the VEC to explore and introduce the options that come with the emerging technologies of the future, and we believe that as the population ages this will be an even more important area to be looking at.

**The CHAIR** — Thank you very much for your presentation. Are there any questions?

**Ms SPENCE** — Could you please let us know on what basis seven days was determined by you to be an appropriate period?

**Ms HAMMETT** — We have looked at that over a number of years. Our last submission to this committee after the other election had a similar view. If the emerging technologies can be harnessed, and well harnessed, most people within a seven-day period have plenty of time to lodge a postal vote, vote electronically in a new system of voting or travel to an area. As it is at the moment, the idea of having it open for two and, at a federal level, two and half weeks is giving people an opportunity to exploit the act to the limit.

The act actually states that there are a series of reasons as to why you should be voting early. I think that there would be unlikely to have been a booth across the state where anybody was questioned on that right. Most people know seven days out what they are doing, so seven days is a reasonable amount of time. Perhaps you would open it on the Friday or the Saturday. You would not expect it to be open on the Sunday, but the Friday and the Saturday and then right through to the election — Monday right through to the Friday. People know. The only exceptions to that are obviously accidents and illness that gets you into hospital or a tragedy that changes your life circumstances, but most people know what they are doing a week out from an election, given that in Victoria they have four years notice of when the election will be. At a federal level they have at least five to six weeks.

**Ms PATTEN** — Thank you for your submission and for speaking so well to it. I was interested in your position on the minor parties. On reading your submission this morning I went back and had a look at Western Victoria, which was one that you specifically spoke about. In that region 20 per cent of the vote went to smaller parties, and then if you were to include the Greens in that you are looking at closer to 30 per cent of the vote. While someone with a small vote was elected, I think that demonstrates what you also said — that there is distrust of the major parties, so people are voting away from major parties. I would argue that having over 20 per cent of the vote being cast for those smaller parties, and those smaller parties having 5 out of the 40 seats in the upper house, is somewhat reflective. I also want to make the point that you can exclude me from any paid harvesting. You and I spoke about preferences prior to the election.

**Ms HAMMETT** — We did.

**Ms PATTEN** — You know that was my position. But would you care to comment on that?

**Ms HAMMETT** — I would expect you to take that view, Fiona. It is not The Nationals' intention in any way to stop minor parties or independents. We strongly endorse and support the democratic process and having that open to all players. It is an anomaly of the upper house; I do not think there is anybody in this room, let alone at this table, who would expect anyone who stands for Parliament in the lower house and gets a 4 per cent vote to end up sitting in the Parliament. In all the seats that I have mentioned, under 4 per cent, but in the western district I think it was about 96 per cent — it might even have been 98 per cent — of voters across the state voted above the line. That is a deliberate choice of voters, to allocate a vote above the line.

One could well argue that there are so many below the line you cannot blame voters for going above the line. That is fine. But how many of that 98 per cent of voters chose the person who ended up in the seat? Less than 2 per cent of the vote — 1.26 per cent I think it was in western Victoria — chose to vote for the person above the line. That means 98 per cent of the voters chose not to. I appreciate there is a concern and a move to other areas. However, if you look at it as 98 per cent of voters chose not to vote for that particular person, at least if you reformed it and you gave them the opportunity to vote across the top of the line, that would still leave the opportunity open for the smaller parties, but they would be the voters who were really indicating what the vote is. I do not think you can get away from the fact.

**Ms PATTEN** — So The Nationals are suggesting an above-the-line preference vote — that you could vote 1 to 5 above the line?

**Ms HAMMETT** — Yes, we are.

**The CHAIR** — They are suggesting two options.

**Ms HAMMETT** — Yes. The other option that we are looking at is section 180 of the act indicates that a refund will be paid to anybody who gets a 4 per cent primary vote. It seems to me, and to the party at large, an abomination that your vote is not worthy of a refund at 4 per cent but you can hold a seat in the Parliament. That is something the legislators — the parliamentarians, yourselves — need to look at.

**Ms PATTEN** — I think, with respect, Ms Hammett, when the 4 per cent was set, that was when there were probably eight parties contesting the election. Now, when we are looking at over 21 parties contesting an election, I think it is a new story.

**Ms HAMMETT** — So a reason to reform.

**The CHAIR** — That is a couple of thoughts.

**Ms HAMMETT** — A reason to reform.

**The CHAIR** — Can I ask a question in relation to false information. You are suggesting the committee has a look at what you believe is false information, and you have given some examples in your submission. Can I just flesh that out a bit? Broadly you have suggested that we have a look at it. Who would you suggest should determine if electoral information is false or not? We all get agitated by what we believe to be false information.

**Ms HAMMETT** — It is a very challenging area, and again I reflect on our experiences during the campaign, where we actually went to the commissioner. His powers within the act were limited. This came about particularly because of a website that was established in the name of Russell Northe. Russell had no role in that website. There was information put on that website, and the information was [www.russellnorthe.com](http://www.russellnorthe.com). Somebody looking for Russell's website would have come upon that website first. There was nothing we could do, quite literally. We pursued the avenues we could. There were no avenues for us to pursue. The commissioner, to his credit, tried to pursue it, and again there were no avenues.

We will see increasing incidents of this occurring with the expanding use of social media. I am not sure what the answers to that are, Louise, but it is something that we do need to be considering. In a newspaper

if somebody puts something down there that is false and can be proved to be false, there is legal redress for that, there is defamation et cetera. At the moment it does not appear that we have those sorts of avenues to pursue false information in terms of what is going on on the internet. I think it is an increasing challenge for us as we go forward.

**Mr SOMYUREK** — Chair, we did do an inquiry last term. Unfortunately it was getting too close to the election so we had to wind it up. We might want to look at that.

**The CHAIR** — We might look at wanting to flesh that out.

**Ms BLANDTHORN** — Just to pick up on your earlier point about seven days and the pre-poll, you said we could not have it on Sunday. I am just wondering why you say that. What is your view about Sunday?

**Ms HAMMETT** — Penalty rates. I am a bit of a realist. I used to be an HR manager. At the end of the day elections cost a lot of money, and the Victorian Electoral Commission will have a budget which they would have to work to. I imagine that is exactly why they did not count votes on Sunday. It is our contention, and I make that point in our submission, that the pre-poll voting needs to be counted on election night. I say Sunday, not from a religious point of view. There would be people who would argue that, although I think that is probably more diverse. But as it currently stands, it would cost a lot more money for the electoral commission to run the polling booths, the open centres, on a Sunday, simply because I would expect they would have to pay penalty rates. We have to consider all of those things in terms of what we are doing. We need to do it within a budget framework. That is why I am saying not Sundays.

**Mr SOMYUREK** — Just on the point of campaign finance reform, I think you are right — we are probably the least regulated state in Australia and one of the least regulated jurisdictions in the Western world in terms of campaign finance laws. We do piggyback off the national laws.

**Ms HAMMETT** — We do.

**Mr SOMYUREK** — I would like to talk about the example of Morwell. But before I get to that, in Queensland, the reforms were identical to those in New South Wales. The LNP then rolled those back, and I think they are sort of being reintroduced up there now. In terms of Morwell, the issue seems to be that there is a loophole for independent candidates or non-nationally registered candidates where there are disclosure issues, because we disclose federally. Is that what you are referring to in the Morwell instance?

**Ms HAMMETT** — I guess it is not so much that actually. It is about the public being aware of where the support is really coming from. In the same way as Labor has been attacked for their union support, and the Liberal Party and to some extent The Nationals get attacked for business support, there are people out there professing to be a certain thing that clearly they are not. Regardless of which political party we are talking about, in the Latrobe Valley there are some significant issues in relation to the power industry. There have been long, ongoing campaigns by particular environmental groups. It is on the record, and there is a submission that I quote and refer to in my report to the federal inquiry that goes on the record saying, that the independent in actual fact was not truly an independent candidate but was supported very much by an environmental group. Her campaign manager was employed by an environmental group. She was there as an independent candidate when in fact she was well resourced by a third party. There is no obligation to be putting that up there because it was in-kind support.

**Mr SOMYUREK** — In that case, what you are referring to is ongoing disclosure. Is that right? So that before they get to vote people get an understanding of who is contributing both in kind and in cash to their campaign.

**Ms HAMMETT** — Certainly that is something that is being put forward. I guess we are talking about ongoing disclosure, but what we are really interested in seeing is more accountability and a better system of funding.

**Mr SOMYUREK** — Transparency?

**Ms HAMMETT** — Yes, absolutely. We are interested in seeing a better system of funding, one that does not exclude the smaller parties and the independents. There is no perfect system. Any system that gets put in would have to be monitored and reviewed and whatever, but looking to the future we need to have something that ensures the security of our democratic political process, so that the faith of the public stays strong in it, because if the faith of the public is not strong, if people do lose heart, eventually that will have an impact on the security of our society.

**Ms PATTEN** — Just a very quick follow-up to this disclosure query. Obviously there are lots of parties that voluntarily disclose and set in place positions where they do make that public. Do The Nationals do that?

**Ms HAMMETT** — We disclose to the AEC as per the requirements of the act.

**Ms PATTEN** — So you just act on the regulations, you do not take it any further?

**Ms HAMMETT** — We do.

**Ms BLANDTHORN** — Can I just also follow up my earlier question in relation to a Sunday pre-poll, because I am reminded that in your submission you actually say that Sunday counting should be mandatory. If you are saying that penalty rates is a reason not to have the pre-poll open, why do you then also express in your submission that it should be mandatory for counting to be done on Sunday?

**Ms HAMMETT** — Because I think it is important that an outcome for the election is done as quickly as is possible.

**Ms BLANDTHORN** — But not that people have every opportunity to vote?

**Ms HAMMETT** — Well, look, at the end of the day it is up to the Parliament as to whether they want to give the opportunity to that extent. I do not have any problem with people working on Sunday, but I am a realist about the fact that that creates additional costs to the election. But in terms of getting an election outcome, I do not think that that should be an issue. I think that they should be counting on that day, and that is the view of The Nationals.

**The CHAIR** — I am conscious of the timetable. I will try to have as many questions as possible, but we have many people coming before us.

**Ms HAMMETT** — Of course.

**The CHAIR** — I thank you for appearing before the committee today. Can I also remind you that you are covered by privilege for what you say here, but you are not covered by privilege for what you say outside these hearings. You will receive a copy of the Hansard transcript in about two weeks time. Again, if you feel that an error has been made, you have a right to correct it, but obviously you cannot completely change or fabricate the evidence provided. Again, thank you very much for your submission and your appearance.

**Ms HAMMETT** — Thank you, and thank you all for your time.

**Witness withdrew.**