



Unions NSW Submission

Joint Select Committee on Electoral Matters Inquiry into Campaigning at Polling Places

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Recommendations

Recommendation One

The handing out of how-to-votes at election booths should not be banned or restricted.

Recommendation Two

The Committee acknowledge the crucial role that third party campaigners play in a democratic electoral system.

Recommendation Three

The Federal Government carefully consider the impact that any proposed changes to electoral laws would have on the implied freedom of political communication for political parties and third party campaigners.

Recommendation Four

No amendments should be made to the NSW or Federal electoral acts in relation to the conduct of volunteers at polling booths.

Recommendation Five

All political parties and third party campaigners should be required to brief their election day volunteers on appropriate campaigning conduct including all requirements stipulated by the relevant electoral act.

Recommendation Six

The Australian Electoral Commission should produce a briefing paper for political party and third party campaigner volunteers outlining their responsibility under the Commonwealth Electoral Act, 1989.

Recommendation Seven

The introduction of an approval process for how-to-votes be considered at the Federal level.

Recommendation Eight

Unions NSW opposes any moves to restrict the duration or accessibility of pre-poll.

Recommendation Nine

If workers are paid to work on election booths, this relationship should be defined as paid employment and subject to payment regardless of electoral outcomes as well as relevant regulations through the Fair Work Act.

Recommendation Ten

Mass levels of underpayment and deceptive behaviour in relation to employment is unacceptable behaviour. There should be a means by which the AEC or relevant commission can suspend the registration of a political party and restrict the ability of its elected officials to register other political parties or stand as a candidate at elections.

Introduction

1. Unions NSW welcomes the opportunity to make a submission to the Inquiry into Campaigning at Polling Booths. Unions NSW supports an electoral system that maintains the confidence of the community while upholding democratic values and rights to political expression. This system must also maintain the implied freedom of political communication, derived from the Commonwealth Constitution which exists to support the representative system of government established by the Commonwealth Constitution.
2. Unions NSW is the peak body for unions in NSW and one of the organisations key activities is engaging in state and federal political processes as an active ‘third party campaigner’, alongside many other community groups and advocacy organisations that promote social change, as well as business and corporate lobby groups.
3. A third party campaign is run by an organisation or group of individuals who are not a registered political party or political candidate. These campaigns are often run by member-based organisations around a specific set of issues that are of concern for the relevant membership base. Third party campaigns that are electorally based, seek to influence the way electors vote based on a specific set of issues and may direct electors to vote (or not to

vote) for certain parties or candidates based on their position in relation to certain issues. Alternatively they may simply inform voters of each party or candidate's position.

4. Unions NSW contends this inquiry, by the narrowness of its terms of reference and the issues it is seeking to consider, may seek to identify way in which it could limit the rights of third party campaigners to participate in the electoral process at polling places on election days. Unions NSW believe such a move would work against the principles of supporting the freedom associated with democratic election, the encouragement of civic engagement and burden the freedom of political communication.
5. Third party campaigners, including unions, are member based organisations which work to educate and mobilise large numbers of activists and members to take part in political activities, including polling day. Unions NSW believes that recent successful activation of working people to participate in the democratic process in New South Wales, Victoria and Queensland has prompted a reaction for members of political parties, often with significantly fewer members, who are unable to staff polling booth with the same numbers on election day. Consequently, any move to limit the involvement of third party campaigners' would arguable significantly burden their right to political communication.

How to Vote Cards

6. How-to-vote cards play a crucial role in upholding Australia's democratic electoral process. Their importance is twofold, firstly, they maximise the number of valid votes cast and secondly, they allow electors to cast a vote that best represents their political preference.
7. Casting a valid vote in an Australian election can be confusing, with different jurisdictions having different definitions of 'valid'. At Federal Elections voters must exhaust their preferences on their ballot paper for the House of Representatives whereas, NSW State Elections have an optional preferential system for their lower house. However, further confusion is added by the lack of consistency across all States. For example, Victoria requires full preferential voting for State and Local Government elections, but not in the Melbourne City Council Councillors' elections.

8. Unions NSW acknowledges the Australian Electoral Commission and the relevant State Electoral Commissions provide advice on how to cast a valid vote through instructions on ballot papers and posters in polling booths. Unions NSW believes how-to-vote cards complement this information and make an important contribution towards removing barriers to casting a valid vote.
9. How-to-vote cards also play an important role informing voters how their vote can elect the representatives of their preferred political party.
10. The Australian voting system is complex in many if not all jurisdictions. As a result, many voters rely on their preferred party to assist them in directing their preferences. The fact so few electors vote below the line in Upper House elections clearly demonstrates the intention of voters to rely on how-to-votes provided to them by the parties or third party campaigners who represent their voting intention.
11. The role of third party campaigners on polling day is as important as booth workers from any of the major parties in informing electors who may choose to exercise their vote in response to a specific political issue of concern to them. This was arguably the case for hundreds of thousands of voters concerned about industrial relations reform in the 2007 Federal Election. Just as party how-to-vote cards inform electors of the best way to support their preferred party, third party how-to-vote cards inform electors on how their vote can be best used to advance their political issue of concern.
12. Research has shown that how-to-votes play a particularly important role for electors with low numeracy or literacy skills and electors from non-English speaking backgrounds¹. These electors often seek out how-to-votes as a means of ensuring their vote represents their political preference and validly lodged. This is crucial in communities where English is a second language.
13. To deprive voters of the assistance provided by how-to-votes might well be, in effect, depriving them of their democratic right to exercise their vote in the way they intended.

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14. Unions NSW believes there is no valid case to restrict or ban the distribution of how-to-vote cards at polling booths and any move to do so, has to be seen through the prism of the inability of certain political parties or interest groups to staff polling booths, rather than democratic outcomes.

Recommendation One

The handing out of how-to-votes at election booths should not be banned or restricted.

Unions NSW and Political Campaigning

15. One of the objectives of Unions NSW and its affiliates is to represent and advance the interests of working people in NSW. The majority of this work takes place at the workplace level and through the industrial relations systems. However, the interests of workers are also inextricably linked to the Government of the day and their legislative and policy agenda.
16. Unions NSW and our affiliates take an active role in political debates for the purpose of representing the interests of working people. The interaction between Government decisions and impacts on workers is broad, from workers rights, to a strong social safety net, to access to health and education and more. If it affects the lives of union members, then unions will take an active role in ensuring their best interests are represented.
17. Working people are well aware that not all individuals have the financial, social or political capital to affect change on their own. This is why union members have historically pooled their resources to run campaigns collectively.
18. A large part of our engagement in politics is campaigning during election periods. Election periods are when candidates are most accountable to electors and it therefore makes sense for this to be a key time for engagement of union members in politics.
19. Unions NSW and our affiliated unions have a long history of electoral campaigning. Most recently, Unions NSW ran a prominent electoral campaign in the 2015 NSW State Election. The campaign tagline was 'NSW Not For Sale' and focussed on the NSW Liberal Government's agenda of privatisation of public assets and services. This was a an important issues for union members as privatisation threatens the job security and conditions of

employment of workers in the affected industries as well as the quality of services that are provided to the people of NSW (the majority of whom are also workers).

20. The 'NSW Not for Sale' campaign was run as both a response to policies implemented by the Liberal NSW Government in their first term which removed many of the industrial rights of workers, as well as explaining policies the Liberal Party planned to implement if returned to government which would affect the community adversely. Some of the key issues that unions campaigned around included:
 - Privatisation of electricity generation and distribution;
 - Introduction of competitive tendering and deterioration of vocational education;
 - The outsourcing of public sector jobs, including in hospitals and public works;
 - The cutting of over 15,000 jobs over a four year period;
 - Changes to the NSW Workers Compensation Scheme that severely limited access to support for tens of thousands of injured workers;
 - Forced amalgamations of local councils.

21. The Unions NSW campaign was based on union members going out and talking to people in their local communities about the issues at play for workers in the NSW State Election, the key issue being the privatisation of public assets. Union members took the lead on what campaigning activities they were prepared to put their time into. Members spoke to their community through door knocking, phone calling union members, holding public candidates forums and running street stalls. The campaign culminated in a presence of hundreds of union members volunteering on polling booths, handing out how-to-votes instructing voters to 'put the Liberals last'.

22. Our campaign was honest and authentic. Union members reflected on how Liberal Government reforms either had or would affect them at work, and took this message directly to voters. Our political opponents have made spiteful claims challenging the authenticity of our campaigners, claiming our volunteers who work in health and emergency services were lying about their professions. These claims are offensive to our volunteers and to health and emergency service workers. We had hundreds of nurses, paramedics and firefighters volunteer their spare time to campaign, out of frustration for how their industry had been undervalued by successive conservative governments. These workers are entitled to express their frustrations through the democratic electoral process

and they have a right to political expression. Representatives from each of these professions campaigned in either decommissioned uniforms or union specific clothing. All volunteers who presented as working in a particular profession or industry, were indeed employed in that profession or industry.

23. Over a 12 month period we had hundreds of union members volunteer their time to campaign. Together we made 3761 phone calls and knocked on 26,046 doors. This is representative of how deeply and widely felt concerns about privatisation were among our members. It is also a representation of a union membership actively engaged in public policy, a central tenant of any democratic electoral process.
24. All of the Unions NSW election campaign activities were within the law and complied with the *NSW Electoral Act, 1912*. Unions NSW opposes any legislation that would seek to further restrict the campaigning activities of third party campaigners. We believe they play a legitimate and crucial role in ensuring the integrity of our democratic system of government.

Recommendation Two

The Committee acknowledge the crucial role that third party campaigners play in a democratic electoral system.

Recommendation Three

The Federal Government carefully consider the impact that any proposed changes to electoral laws would have on the implied freedom of political communication for political parties and third party campaigners.

Regulation of behaviour on election day

25. At both the State and Federal levels, legislation is in place to regulate the behaviour of campaign volunteers during elections, particularly at polling booths. In NSW the *NSW Parliamentary Electorates and Elections Act 1912* prohibits the use of intimidation or force in relation to voting activities and empowers returning officers to take necessary actions to maintain order at election booths. The NSW Act also refers power onto police in extreme instances where order must be maintained. Federally, the *Commonwealth Electoral Act*,

1989 specifies a number of electoral offences relating to the conduct of election volunteers including interference with political liberty and behaviour at polling places. The Presiding officer of the polling booth is an authorised person in relation to controlling behaviour on polling booths.

26. Unions NSW believes that the current legislation appropriately stipulates unacceptable behaviour on polling booths and provides the relevant Electoral Commission officer with the powers to maintain order. As such, the legislation regarding volunteer conduct does not need to be amended. Unions NSW does however acknowledge that there is a role to play for political parties and third party campaigners in ensuring their volunteers are aware of these requirements and adhere to them.
27. Unions NSW takes the conduct of our volunteers throughout the election period, including on election day, very seriously. We are proud that during the 2015 NSW election campaign our volunteers behaved in a manner that was professional and respectful of other volunteers and voters. We refute any claims to the contrary and note no formal complaints were received by Unions NSW from the NSW Electoral Commission regarding our campaign volunteers.
28. In the 2015 NSW election Unions NSW took steps to ensure our volunteers were briefed on appropriate behaviours when volunteering on election booths and were provided with a chain of escalation should issues arise.
29. On election day, Unions NSW distributed how-to-vote cards at 63 polling booths with a booth captain appointed at each one. The booth captain was provided with a briefing sheet that included the below instructions for all volunteers:
 - Stay 6 metres away from the polling booth entrance, as directed by the returning officer;
 - Be polite and respectful to all people who are handing out on polling booths;
 - Do not argue with the returning officer or any other officials;
 - Do not question people for not taking your material, simply say thank you and move out of their way;

- Do not engage in arguments with voters or other polling booth volunteers. If voters or other polling booth volunteers persist in being aggressive, make a complaint to your Unions NSW booth captain who will then speak to the returning officer;
 - If anyone physically stands over you or touches you, advise them to leave you alone and then walk away. Report this to your Unions NSW booth coordinator who will then speak with the returning officer or the Unions NSW safety officer.
30. All volunteers were advised that if they had any issues relating to conduct on the booths they were to speak to their booth captain who would then refer the matter to the returning officer as well as a relevant Unions NSW officers whose contact details had been provided. This briefing and reporting system worked effectively on election day and all political parties and third party campaigners would benefit from a similar system.

Recommendation Four

No amendments should be made to the NSW or Federal electoral acts in relation to the conduct of volunteers at polling booths.

Recommendation Five

All political parties and third party campaigners should be required to brief their election day volunteers on appropriate campaigning conduct including all requirements stipulated by the relevant electoral act.

Recommendation Six

The Australian Electoral Commission should produce a briefing paper for political party and third party campaigner volunteers outlining their responsibility under the Commonwealth Electoral Act, 1989.

Regulation of electoral material used on election day

31. Electoral Legislation at a State and Federal level regulates how-to-votes that are distributed at polling booths. However, this regulation is not consistent across all jurisdictions.

32. In NSW, the *Parliamentary Electorate and Election Act, 1912* requires all material handed out on election day to be registered with and approved by the NSW Electoral Commission. The returning officer has the authority to confiscate any unregistered polling material. At a Federal level there is no requirement for how-to-votes to be approved by the Australian Electoral Commission prior to the election. There is however a requirement that all material be authorised by the relevant party or third party campaigner.
33. In the 2015 NSW Election, Unions NSW produced how-to-vote cards that instructed voters to ‘put the liberals last’. Unions NSW underwent the required registration and approval process with the NSW Electoral Commission. The initial Unions NSW how-to-vote was rejected by the electoral commission on the basis that its wording could have been interpreted as encouraging an informal vote. With the assistance of the Electoral Commission staff, Unions NSW made appropriate amendments and removed any ambiguity. The how-to-vote cards were successfully registered and approved before polling day. This process was quick and efficient.
34. Unions NSW favours a system that requires pre-registration and approval of how-to-vote with the appropriate electoral commission. This would eliminate the distribution of any misleading information on election day, and would avoid any disputes between opposing campaigners on election day who interpret their opponents material to be misleading.
35. Unions NSW believes our experience with the NSW registration and approval process is a testament to the effectiveness of the electoral commission ensuring that no material on election day can be considered misleading or deceptive.

Recommendation Seven

The introduction of an approval process for how-to-votes be considered at the Federal level.

Pre-poll and postal votes

36. Pre-poll, or early voting, plays a crucial role in removing barriers to voting. This is particularly important with the growing number of workers required to work on weekends and unsociable hours who will not have access to a polling booth on election day.

37. Pre poll is also crucial for voters with a disability or who care for someone with a disability. In a report produced by the AEC in 2010, pre-poll was recognised as an important element of access to voting for people with a disability². Unions NSW believes that democratic electoral systems have a responsibility to take all possible steps to encourage voting in elections.
38. Unions NSW is concerned suggestions to remove or limit pre-poll are motivated by political parties and campaigners who are more concerned with their ability to staff pre-poll booths than the accessibility of the electoral system for all votes

Recommendation Eight

Unions NSW opposes any moves to restrict the duration or accessibility of pre-poll.

Payment of political election workers

39. Unions NSW is aware a number of political parties pay their booth workers to hand out material on election day. Unions NSW does not believe such actions are covered by the right to political expression. We are also concerned that these practices have led to the exploitation and underpayment of workers.
40. In the most recent Federal Election campaign in 2013, Unions NSW has been advised a number of Liberal candidates engaged labour hire firms to employ people to hand out how-to-vote cards on election day and during pre-poll. In light of these arrangements, Unions NSW believes it is contradictory for Liberal Candidates, Branch members and Members of Parliament to challenge the legitimacy of union members voluntarily participating in election campaigns and talking to voters about issues they are deeply concerned about. As Unions NSW has argued, our volunteers are exercising their right to freedom of political communication. The same cannot be said about political parties paying employees to sell their political message.
41. Unions NSW is also concerned by the employment practices of political parties who engage workers to hand out electoral material, particularly the behaviour of the 'No Land Tax' Party

² <http://annualreport.aec.gov.au/2010/management-and-accountability/providing-access.htm>

in the 2015 NSW Election.

42. In the lead up to the 2015 NSW Election, the 'No Land Tax' party advertised for election day workers, directing them to a website: electiondaywork.com. Three thousand people worked for the 'No Land Tax' party on election day and were promised \$30 an hour for this work.
43. The 'No Land Tax Party' did not win a seat in Parliament, and since the election no election workers appear to have been paid. The non-payment of workers has been raised with the Fair Work Ombudsman, who has indicated that the matter is being looked into. The New South Wales Electoral Commission has also been alerted of this issue, but have indicated that this won't affect the party's registration status³.
44. Party officials alluded to the fact payment of workers was reliant on the 'No Land Tax Party' receiving public funding. The party did not receive enough votes to be entitled to public funding, which has undermined the likelihood of the workers being paid. Workers for the 'No Land Tax Party' were not informed of this arrangement prior to performing work. Unions NSW believes that the 'No Land Tax Party' engaged in deceptive behaviour by not informing workers that their payment was contingent on electoral results.
45. Despite our reservations regarding political parties paying election booth workers, Unions NSW believes if people are engaged in paid employment, they should be paid for the work they perform. We also believe the Australian Electoral Commission should have the ability to de-register political parties who have engaged in deceptive behaviour and non-payment of workers. The Electoral Commission should also be empowered to restrict the elected officials of such parties from forming and registering new political parties.
46. The large scale deception of workers performed by the 'No Land Tax Party' at the 2015 NSW election undermines the community's trust in political parties and the electoral system and exploited thousands of workers. Unions NSW believes, if proven, these are appropriate grounds by which to suspend the registration of a political party.

Recommendation Nine

If workers are paid to work on election booths, this relationship should be defined as paid

³ <http://www.abc.net.au/news/2015-05-18/no-land-tax-party-workers-still-waiting-to-be-paid/6478452>

employment and subject to payment regardless of electoral outcomes as well as relevant regulations through the Fair Work Act.

Recommendation Ten

Mass levels of underpayment and deceptive behaviour in relation to employment it unacceptable behaviour. There should be a means by which the AEC or relevant commission can suspend the registration of a political party and restrict the ability of its elected officials to register other political parties or stand as a candidate at elections.