

## Introduction

I would like to thank the committee for the opportunity to make a submission to the inquiry into the events in the seat of Lindsay during the 2007 Federal Election Campaign.

This is not the first time that the NSW Liberals have been caught doing something like this, but it is the first time that they have been properly brought to justice. In doing so, the *Commonwealth Electoral Act* has proven to be lacking when it comes to ensuring the integrity of electoral material.

In the Greenway Campaign during the 2004 election, the ALP Candidate Ed Husic was subjected to a similar spate of letterboxing fake, unauthorised, and misleading material (Appendix A). Whilst this cannot be traced to the Liberal Party, they were the direct beneficiary. There are also examples of likely electoral rorting by the Liberal party in Penrith City Council Elections in recent years.

It is a matter of public knowledge that I was amongst the group of individuals who were made aware of the local Liberal party campaign's intention to distribute false, misleading, and unauthorised flyers in North St Marys on the night of 21<sup>st</sup> November 2007. As a part of this group, I actively sought out and apprehended this group of Liberal party campaigners in the middle of their escapades.

I have given evidence in relation to these events in the NSW Local Court, which led to the successful conviction of Mr Gary Clark, the husband of the former Member for Lindsay, Jackie Kelly.

My submission to the committee will address the dirty tricks and electoral skulduggery by the NSW Liberals in the Western Sydney region, the events in North St Marys on the night in question and the prosecutions under the *Commonwealth Electoral Act 1918* s 328 arising from those events.

Finally, I provide four recommendations for the committee's consideration to strengthen the offences contained within the *Commonwealth Electoral Act* and ensure that it remains in line with community standards and expectations. These recommendations are: -

### *Recommendation 1*

*Section 328 of the Commonwealth Electoral Act 1918 should be amended to be a strict liability offence.*

### *Recommendation 2*

*The maximum fine payable for a breach of s 328 should be raised to \$10,000 for an individual and \$50,000 for a body corporate. A table outlining the various levels of severity should be included to ensure that more minor breaches are not unduly punished.*

### *Recommendation 3*

*Recommendations 1 and 2 should be implemented with respect to the Commonwealth Electoral Act 1918 ss 328A, 329, 351*

### *Recommendation 4*

*That all electoral material, including open letters, direct mail, and reproductions of newspaper articles be required to carry the name of the individual/company/organisation that printed the material and the address where the material was printed.*

## **1999 – Suspected electoral fraud in Penrith City Council Elections**

The 1999 Penrith Council elections were characterised by a particularly high number of micro parties in the Council's East Ward, the ward I resided in at the time. A close connection between these single issue parties and the Liberal party were revealed upon further investigation.

At the close of nominations for the 1999 Penrith Council Elections there were three candidates who claimed to reside at 15 Avon Place, St. Clair. Two of these candidates were Mr Paul Matosin and Mr Joe Matosin, representing the Marijuana Smokers Rights Party. In itself, this is not unusual. The same cannot be said of the enrolment of Mr Adam Brown, the head of the No Badgerys Creek Airport Party ticket, at the very same address. Nor can it be said of the fact that Messrs Paul and Joe Matosin were revealed to be living outside the council area until a month before electoral rolls closed, or the fact that both of these men appeared on an 11<sup>th</sup> August 1999 Rossmore branch Young Liberals flyer.

An inspection of the house a week after the lodgement of the electoral rolls revealed no signs of occupation. The absence of any furnishing seemed to be a clear indication that there was in fact no-one currently living at the address.

It is also instructive to consider who owned the property at 15 Avon Place. A land title search at the time showed that it was co-owned by Ms Liliana Djuka and Mr Stan Celar. Mr Celar appears to be the same Stan Celar that was running in the Number 2 position on the No Badgerys Creek Airport Party's West Ward ticket. Ms Liliana Djuka was the number 4 candidate on the Liberal party ticket in the East Ward.

The close connection of all these people with the Liberal Party can only suggest the existence of a front designed to siphon votes to the Liberal Party through feeder tickets.

It might seem unreasonable to suggest that the-then Member for Lindsay would have any knowledge or involvement in these electoral shenanigans. Except that Mr Steve Simat and Ms Christine Bourne, two of her electorate officers, were in winnable positions on the Liberal Party tickets.

## **2004 – Unauthorised material in the electorate of Greenway**

In the seat of Greenway during the 2004 Federal Election Campaign, a number of unauthorised flyers were strategically distributed across part of the electorate, designed to have maximum effect by inciting anti-Muslim sentiment.

Whilst a tangible link to the Liberal party could not be proven at the time, there is no question that the Liberal Party was the direct beneficiary of this reprehensible behaviour. This was a premeditated action premised on racism of the worst kind designed to tarnish a candidate by association.

## **2007 – Caught red-handed in Lindsay**

In 2007, the Liberal Party was caught in the act and their involvement was proved in a way that it could not be on earlier occasions.

On November 21 2007, myself and a group of other Labor party members confronted a group of men who were distributing misleading and unauthorised electoral material. These men, it was later confirmed in the courts, were Liberal Party members or associates.

The fake pamphlets had on them an old, out-of-date ALP logo and were claiming to be endorsed by a non-existent “Islamic Federation of Australia”. These flyers stated that Labor wanted the Bali Bombers forgiven and the building of a mosque in St. Marys, where the leaflets were distributed. This represented another attempt, bearing remarkable similarities to the Greenway flyer, to incite racial prejudice in unauthorised material purported to be associated with the Labor Party.

The NSW Police commenced legal proceedings against 5 of the men who were involved in handing out the flyers based on Section 328 of the *Commonwealth Electoral Act 1918* (Cth). Three of these men pleaded guilty whilst Mr Gary Clark and Mr Jeff Egan pleaded not guilty. Following the court case, Mr Clarke (the husband of the former Member for Lindsay, Jackie Kelly) was convicted and fined \$1100 and costs, the maximum sentence under the Act. Jeff Egan was found not guilty after maintaining that he did not know what he was handing out.

## **Other relevant incidents**

During the decade that the seat of Lindsay was held by the Liberal Party, elections at all levels have experienced numerous instances of fraudulent activities like those above. These events have not taken place in a vacuum

During the 1998 Federal Election, an article written by Paul Sheehan and making direct comment on the election was photocopied and distributed en masse across the electorate without authorisation. This instance points to a gap in the current laws regarding authorisation given that the *Commonwealth Electoral Act 1918* (Cth) s 4 defines “electoral matter” as “matter which is intended or likely to affect voting in an

election". In this instance is it to be assumed that the newspaper publisher is the authoriser or should copies of newspaper articles not be considered electoral matter? Further, when electoral matter is distributed en masse by private individuals, it should be clarified precisely where and by whom the material was printed.

A similar problem arose in the 2007 election (and no doubt in a number of electorates) when 3<sup>rd</sup> party endorsement letters, written by Troy Craig (one of the individuals caught distributing the unauthorised leaflets) and Jackie Kelly were widely distributed in support of the then-Liberal Candidate, Karen Chijoff. Whilst it is generally not required that letters be authorised, a private citizen's capacity to produce so many copies of a letter must be seriously questioned. In these cases the law needs to make provision for the inclusion of printing details to ensure that corporations, organisations or indeed, Members of Parliament aren't supporting candidates covertly by providing the resources to mail third-party endorsements.

### **Recommendations**

I submit that four changes are needed to bring the *Commonwealth Electoral Act* 1918 in line with public expectations.

#### ***Recommendation 1***

***Section 328 of the Commonwealth Electoral Act 1918 should be amended to be a strict liability offence.***

Of the two individuals who entered a plea of not guilty, Jeff Egan, a former Blue Mountains City Councillor, staffer to Senator Helen Coonan, and member of the NSW Liberal Party Executive was the only one who succeeded in defending the charge. In this instance the trial judge found that Mr Egan was not acting with intent or recklessness, but rather on the reasonable belief that the material he was distributing was authorised.

Consequently, I am recommending to the committee that the *Commonwealth Electoral Act* s 328 be amended to be a strict liability offence. This would mean that no evidence of intent or recklessness would be necessary and the mere fact of publication and distribution without authorisation would be sufficient for a finding of guilt.

I recognise that this offence is framed in such a way that if it were to be a strict liability offence it may catch low-level offenders where the omission of an authorisation is a genuine mistake. However, given the emphasis placed on authorisations as the primary basis for holding a person accountable for the contents of electoral material, even instances of genuine mistake should be considered a breach of s 328. In saying this, it is only reasonable that the penalty should reflect the relative severity of the omission.

### ***Recommendation 2***

***The maximum fine payable for a breach of s 328 should be raised to \$10,000 for an individual and \$50,000 for a body corporate. A table outlining the various levels of severity should be included to ensure that more minor breaches are not unduly punished.***

In the first instance, it needs to be acknowledged that the maximum offence for a breach of s 328 is manifestly insufficient and out of step with community standards.

The community outrage apparent in the letters pages of the major newspapers following the scandal is a clear demonstration that the community viewed the acts of the Liberal Party in Lindsay as an egregious affront to our proud democratic tradition, and one that should not be tolerated.

Fortunately, given the timing of the media coverage, the public was given an opportunity to tell the Liberal Party exactly what they thought about their dirty tricks campaign tactics. It is worth noting that, had the events of *Lindsaygate* not been made public prior to the 2007 Federal Election, the only penalty faced by the perpetrators would have been maximum fine of \$1000.

Further, if the perpetrators had not been members of the NSW Liberals but rather a third party acting off their own bat, they would not have been democratically accountable for their actions. In such cases, it is critical that justice is seen to be done and strong punitive penalties are in place to enable this.

A table outlining the relative severity of possible offences under this section should be inserted into the Act to ensure that penalties are commensurate with the severity of the offence. Alternatively, s 328 could be divided up into a series of different offences with varying levels of severity with different maximum penalties. The sentencing table or different offences could have regard to: -

- The motive (if any) of the distributor/publisher in omitting an authorisation;
- The likely or actual impact of the material being distributed without authorisation;
- Whether or not the individual or body corporate was acting on behalf of another candidate or political party;
- The extent of the material's distribution; and
- Any other aggravating or mitigating factors that the court considers appropriate.

### ***Recommendation 3***

***Recommendations 1 and 2 should be implemented with respect to the Commonwealth Electoral Act 1918 ss 328A, 329, 351.***

There are three other offences that are substantially similar in character and nature to s 328 in the *Commonwealth Electoral Act 1918*. These are:

- s 328A – failure to authorise a paid electoral advertisement on the internet
- s 329 – printing, publishing, distributing or causing, permitting or authorising to be printed, published or distributed, any matter of thing that is likely to mislead or deceive an elector in relation to the casting of a vote.
- s 351 – prohibition on claiming a candidate’s association with or support of a group or organisation, or advocating a first preference vote for that candidate without the candidate’s consent.

In all of these cases, a breach, irrespective of intention or recklessness, is substantially serious enough to justify a serious penalty, albeit it one that is commensurate with the relative severity of the breach.

#### **Recommendation 4**

***That all electoral material, including open letters, direct mail, and reproductions of newspaper articles be required to carry the name of the individual/company/organisation that printed the material and the address where the material was printed.***

This recommendation will go further in ensuring that individuals, companies and organisations are not able to subvert accountability measures by resourcing the distribution of newspaper articles with the intention of affecting voting at an election or by resourcing the printing of third-party endorsement material in the form of letters.

Senator Steve Hutchins