

## Re Inquiry into the Electoral Commission of Queensland's online publication of the preliminary and formal counts of the votes cast in the 2020 quadrennial local government election and the Bundamba and Currumbin state by-elections held on 28 March 2020.

### Submission from the Liberal National Party of Queensland

11 May 2020

From the outset, the conduct and publication of the count of votes cast in the 2020 Brisbane City Council election and Bundamba and Currumbin by-elections was unsatisfactory.

Noting that the terms of reference of this inquiry relate to the online publication of the preliminary and formal count, the obvious point should be made that the ECQ's failure to publish results limits any external observations to the extent that results were not visible to those outside the ECQ.

#### ECQ Direction of 26 March

As Members would be aware, the Electoral Commission of Queensland (ECQ) issued a direction on 26 March at 6.59pm that scrutineers would only be permitted to observe the opening and resealing of ballot boxes. Scrutineers would not be permitted to observe the sorting of ballot papers or the preliminary count, and as a consequence, would have no way of observing the accuracy of the sorting and counting of ballot papers before they were returned to the ballot box.

The Liberal National Party (LNP) found this direction to be entirely unsatisfactory and unnecessary, given arrangements could have been made to permit the presence of scrutineers with social distancing measures put in place. Other parties were dissatisfied with the ECQ's overreach in this instance.

The LNP was also dissatisfied with the degree to which the ECQ was not prepared to at least discuss this unprecedented arrangement. A text exchange between the Campaign Director and a senior officer of the ECQ went as follows:

#### LNP Campaign Director

26 March, 8.19pm

*Hi [REDACTED], We've now had a chance to read the Direction about Candidates and Scrutineers at Particular Places.*

*The political parties have serious concerns about Direction 1. We would like to have a call with you this evening to discuss the Direction.*

*Will you please advise a time that will work? [REDACTED] and I would be on the call. Regards  
Lincoln*

#### ECQ Officer

26 March, 8.29pm

*Hi Lincoln. Sorry, not available tonight. The Direction will not change. Regards, [REDACTED]*

The response from the ECQ officer was extraordinary. The approach from the LNP's Campaign Director to *discuss* the Direction was an entirely reasonable request. The ECQ's Direction left some ambiguity that, at the very least, had to be cleared up for the benefit of candidates, parties and the ECQ's returning officers.

The ECQ had the power to use audio-visual equipment to facilitate scrutineering but failed to do so.

The direction, while made in the interests of the health and safety of returning officers and booth workers, was unprecedented in any liberal democracy. Indeed, if it was replicated in one of the jurisdictions in which the Commonwealth sends parliamentary observers, it would be met with condemnation.

### **Election Day and Updated Direction of 28 March**

The ECQ subsequently amended its direction on Election Day, 28 March at 3.02pm. In short, the direction permitted the presence of one scrutineer who could observe the sorting and preliminary counting of votes from outside the polling place.

This was a welcome concession from the ECQ, albeit limited and very late in the day – especially with the requirement of candidates to complete and distribute updated scrutineer forms, when many of their scrutineers were at home and would be required to provide their updated scrutineer form to the returning officer or booth supervisor before the close of polls.

The LNP moved swiftly to advise its candidates of the ECQ's updated direction and facilitate the completion and distribution of the updated scrutineers form.

However, it became apparent later that afternoon that the ECQ had either failed to advise their returning officers and booth supervisors of the direction, or they had missed or ignored the updated direction.

The LNP received reports from many candidates that booth supervisors were advising our scrutineers that the updated direction did not allow the scrutineer to observe the sorting and counting of votes from a door or window outside the polling place, in contradiction of the ECQ's updated direction.

The LNP contacted some returning officers to advise them of the updated direction but met with outright refusal in some instances. To the ECQ's credit, the LNP's Campaign Director contacted a senior officer in the ECQ who was helpful in contacting those returning officers and instructing them to comply with the ECQ's updated direction.

### **Election Night and Publication of Preliminary Results**

The counting and publishing of results on election night was an abject failure.

The ECQ's website published only a very small portion of votes counted that night, with some booths seemingly published and then withdrawn.

When the ECQ failed to report results and that failure was criticised by the media, they belatedly invited scrutineers to come into the counting centre for 15 minutes to ascertain the status of the sorting and counting of votes at that booth.

However, the invitation came very late on election night (after 9pm), affecting the parties' ability to mobilise scrutineers.

This was effectively a concession from the ECQ that they had failed to conduct the scrutiny of ballots on their own and required the assistance of the parties to communicate results to the media, despite the ECQ's earlier and absolute refusal to permit the presence of scrutineers.

This farcical situation could have been avoided had the ECQ engaged with the parties beforehand.

There was also a broad inconsistency on election night about which votes were being counted for Brisbane City Council (between the Ward Councillor Candidate and the Lord Mayor) and whether a preliminary distribution of preferences would be conducted that night.

### **Official Count**

There was no consistent advice from the ECQ about when the post-election count would resume.

The lack of consistent advice from the ECQ meant the LNP had to contact candidates and scrutineers to ascertain the status of their count, with some receiving very limited advice from the ECQ about resumption of their count.

In some instances, the resumption of the preliminary count and the official count took place without notice being given to the candidate, and accordingly, without the presence of their scrutineer.

The LNP would have expected the ECQ to be at pains to ensure the notification and presence of scrutineers at the resumption of the preliminary count and the official count given the situation on election night.

Some candidates and councillors also reported that their returning officers had advised they would not conduct an official distribution of preferences, until they were directed by the ECQ. Given the lack of transparency at the count on election night, the approach of some returning officers in the official count was entirely unsatisfactory.

In the majority of Brisbane City Council wards, the official count proceeded at a glacial pace, with some wards not declared until after Easter.

### **Concluding Remarks**

While the circumstances of these elections were unprecedented, they underscore the important role political parties play in communicating to voters and their own candidates.

Members would be aware that the parties entered voluntary arrangements at these elections to minimise the risk of contact with the public. These arrangements were made in advance of the ECQ issuing directions. The parties were always cognisant of and working toward minimising health risks.

The ECQ must take time to consider their failure to engage meaningfully with parties in advance of making decisions and communicating with candidates. In many cases, parties were only advised of updated directions minutes before candidates were advised. This left parties with no time to consider the ECQ's directions, seek clarification from the ECQ and advise candidates of their effect.

The LNP notes the limited scope of the terms of reference of this inquiry, however there are broader issues that must be considered with regard to the ECQ's performance and powers. The LNP respectfully submits that the Queensland Parliament should consider a broader review of the ECQ.

The LNP respects the independence of the ECQ, but that independence is not at the expense of communication, transparency and a respect for democratic participants.

Thank you for the opportunity to make this submission.

Yours sincerely,



**Michael O'Dwyer**  
**State Director**  
**Liberal National Party of Queensland**