

**Submission
No 8**

INQUIRY INTO THE 2015 NSW STATE ELECTION

Organisation: The Greens
Name: Mr Geoff Ash
Position: Registered Officer
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**The Greens submission to the
Joint Standing Committee On Electoral Matters
Inquiry into the administration of the 2015 NSW Election**



Geoff Ash, Registered Officer

Chris Maltby, Deputy Registered Officer

The Greens

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SUMMARY OF RECOMMENDATIONS

Recommendation 1 That a Hare-Clark proportional representation election system similar to that used in Tasmania should be introduced, with New South Wales divided into electoral districts each returning between five and nine members, with each electoral district having the number of members to be elected directly proportional to the number of voters in the district.

Recommendation 2 The NSW Government direct that its departments must not force its employees to take leave or leave without pay if they become a state election candidate.

Recommendation 3a: The NSW Electoral Commission ensure that District Returning Officers and Officers in Charge at polling locations, especially pre-poll locations have discretion to intervene in relation to possible breaches of the 6m rule when there are reasonable grounds (eg inclement weather) to do so.

Recommendation 3b: The NSW Electoral Commission ensure that Officers in Charge at polling locations and other polling officials receive adequate training to correctly respond to questions from voters or other issues that arise.

Recommendation 4a: The Electoral Act be amended to require that iVote software be made open source.

Recommendation 4b: The NSW Parliament conduct an inquiry into the impacts of increased early voting and use of internet voting with a view to further amendments to the Electoral Act to defend the integrity of and public confidence in the electoral system.

Recommendation 5 Completed postal vote application forms should only be returned to the local returning officer or the NSWEC and it be made illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer or the NSWEC.

Recommendation 6 That pre-poll voting commence on the Friday, that is, eight days before polling day.

Recommendation 7a Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.

Recommendation 7b Establish an independent election tribunal with power to: adjudicate on the truth of public election statements quickly; make prompt public announcements about the inaccuracy of published statements; and impose appropriate penalties.

Recommendation 7c: Registration of leaflet provisions in S151G of the PE&E Act and procedures of the NSWEC should be reviewed to prevent the registration of material which would be considered by a reasonable person to be likely to mislead electors as to the candidate or party actually responsible for the material.

Recommendation 8 Amend the reimbursement for expenses election funding model so that both party and candidate funding is based solely on a dollar amount per vote obtained, similar to federal election funding, provided that the dollar amount is sufficient for a “no frills” comprehensive campaign to be conducted in a Legislative Assembly seat within the funding available for 4% of the vote.

Recommendation 9: The NSWEC to conduct audits of disclosures and claims for election funding payment instead of private registered company auditors.

Recommendation 10a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 10b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 percent.

Recommendation 11 Individual membership fees be capped at \$250 per annum and be permitted to be deposited in a party's state election campaign account.

Recommendation 12 The amount of public funding available for party administrative expenditure be based on the vote a party obtains in the election for either house of parliament rather than on the number of politicians from a party.

Recommendation 13 That the state government formally requests the federal government to legislate for a ban on developer, tobacco and for profit gambling and alcohol industry political donations so that the NSW ban on such donations cannot be circumvented.

Recommendation 14 That there be an exemption from the cap on donations in respect of party donations of funds to the campaign account of a Legislative Assembly candidate endorsed by the party.

Recommendation 15: The state government legislate in 2015 for low caps on political donations and electoral communication expenditure to apply to local government elections.

Recommendation 16 That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day be electoral expenditure for which electoral funding can be claimed.

Recommendation 17a: The EFA meet more frequently in the months following an election and particularly in the months surrounding the due date for lodging electoral and annual financial returns so that election funding payments can be approved in a timely fashion.

Recommendation 17b: The EFA as well as communicating by post about funding payments and financial compliance of electoral returns, communicate by email with the party agent or candidate agent about these matters to save time.

1. LEGISLATIVE ASSEMBLY ELECTIONS UNDEMOCRATIC

The Greens again highlight that there needs to be a major overhaul of the method of Legislative Assembly (LA) elections. The absence of the issue of the type of electoral system in the inquiry terms of reference is a serious deficiency – the Greens made this point in our submission to the JSCEM Inquiry into the 2011 state election – and the Committee should nonetheless examine the impacts of an outmoded and undemocratic system of single member electorates for the Legislative Assembly elections.

In the 2015 state election, the result of use of this system was that the Liberal, National and Labor parties won more seats than their respective vote justified.

PARTY	% OF VOTE	NO. OF SEATS WON	NO. OF SEATS BASED ON VOTE	% OF SEATS WON
LIB	35.1	37	33	40
NAT	10.5	17	10	18
LAB	34.1	34	32	37
GRNS	10.3	3	10	3
OTHERS	9.9	2	9	2

Figures from the ABC's / Antony Green's New South Wales Election 2015 [website](http://www.abc.net.au/news/nsw-election-2015/results/)¹ show the Liberal party polled 35.1% of the primary vote but won 40% of the seats (37 of 93). The National party polled 10.5% of the vote and won a disproportionate 18% of the seats (17 seats). If the election system were fair, it would have resulted in the Coalition winning about 46% of the seats or 43 seats. Instead combined they won 54

1 <http://www.abc.net.au/news/nsw-election-2015/results/>

seats which is a significant difference of about 11 seats more than their vote deserved. Labor won 34.1% of the vote and 37% of the seats which was 34 seats.

In contrast to the Coalition's fortunes, The Greens polled 10.3 % of the LA votes but won just 3% of the seats being three seats. A fair outcome would have resulted in the Greens winning 10 seats. The solution to this unfair system is simple. Hare-Clark proportional representation similar to that used in Tasmania should be introduced, with New South Wales divided into electoral districts each returning between five and nine members. The number of seats won would then more accurately reflect the vote received by political parties, whilst maintaining (or increasing) a reasonable degree of local representation and community access to local politicians. The Tasmanian system also largely eliminates the need for by-elections, with a count-back system used to fill vacancies that may arise.

Ideally the bulk of the districts would have nine members, but some variation on the suggested number of members elected from each region would be possible without defeating the democratic objectives of implementing such a system. In particular, in order to contain the geographical area of rural electoral districts they could have as few as five members. Each electoral district would have the number of members to be elected in that district directly proportional to the number of voters in the district.

The Greens acknowledge that our party would be more likely to have an increased number of candidates elected under the proposed system, however it is clearly true that it is much fairer and more democratic.

In contrast, the Legislative Council election result was much more democratic. The proportional representation system ensured that parties won the number of seats much more closely in proportion to the percentage vote that they obtained.

Recommendation 1: That a Hare-Clark proportional representation election system similar to that used in Tasmania should be introduced, with New South Wales divided into electoral districts each returning between five and nine members, with each electoral district having the number of members to be elected directly proportional to the number of voters in the district.

2. PUBLIC SERVANTS CONTESTING STATE ELECTIONS

In the past, various state government departments have taken different approaches when one of their public servant employees became a candidate in a state election. Some departments have not taken issue with an employee becoming a candidate, while others urged the employee to take leave or leave without pay, and some even insisted that leave be taken.

The approach of pressuring or forcing a public servant to take leave or leave without pay is discriminatory. It is an interference with a democratic right of a citizen to contest an election. Most public servants cannot afford to take leave for a three to four week period or more, and some have been forced to abandon contesting the election.

It is not just public sector employees who are affected. In the case of teachers, for example, their students' education is disrupted if the teacher is forced to take leave.

The Greens believe that provisions restricting the candidature of those employed in the public sector are anachronistic. The operation and scale of the public sector has changed dramatically since the time in which these kinds of provisions may have been warranted.

For example, the contract for employment of a public servant should prohibit any misuse of government resources by a candidate or use of confidential information received during the course of employment. In any case, if a public servant is determined to misuse confidential information, taking leave will not prevent them from doing so. Note that sitting members of parliament must observe these kinds of restrictions on the use of public resources for campaigning.

Recommendation 2: The NSW Government direct that its departments must not force its employees to take leave or leave without pay if they become a state election candidate.

3. POLLING BOOTH MATTERS

In relation to Pre-Poll locations, a number of offices were in locations where no shelter from sun or rain was available that was not within the 6m canvassing restriction. While some NSWEC officials were willing to use discretion in enforcement of the 6m rule, this was inconsistent. In most cases, perhaps due to the general slowness at pre-poll locations, the various candidate representatives maintain friendly relations during the

pre-poll period. An overly strict application of the 6m restriction does not assist the voters, the candidates or the NSWEC officials.

Training of polling officials

We received reports from a number of polling booths of incorrect advice being given to voters, specifically in relation to the number of squares to be completed on the Legislative Assembly ballot. Whilst it is understandable considering the number of polling day workers engaged to officiate at booths and the continuing differences between voting at state and federal elections, it highlights the importance of ensuring all officials are thoroughly trained on the state election voting system. In particular, the training given to officials should cover the instructions to electors printed on each ballot paper and how to explain them to electors.

Recommendation 3a: The NSW Electoral Commission ensure that District Returning Officers and Officers in Charge at polling locations, especially pre-poll locations have discretion to intervene in relation to possible breaches of the 6m rule when there are reasonable grounds (eg inclement weather) to do so.

Recommendation 3b: The NSW Electoral Commission ensure that Officers in Charge at polling locations and other polling officials receive adequate training to correctly respond to questions from voters or other issues that arise.

4. iVOTE

The Greens have a number of concerns relating to the iVote system. Over 250,000 voters used the iVote system (6.2%) in the 2015 election – a sixfold increase over the 2011 election. The rapid increase in the popularity of this method of voting and the issues exposed in the 2015 election indicate that it is now overdue for a comprehensive review and legislative support.

Security

The Greens have a general concern about the security implications of adoption of any form of online voting, some of which arises from the intrinsic conflict between proper scrutiny of the process, both by electors and by parties and candidates, and the maintenance of secrecy of individual votes. Nonetheless, the benefits of increasing participation rates and, potentially, from improvements to ease of use may justify online voting being available or expanded further.

The emergence of implementation flaws which had the potential to allow voter secrecy to be breached and votes to be altered was deeply concerning to The Greens. Further, the mandated use of proprietary closed-source software makes effective scrutiny of the iVote system impossible. We note that the ACT has made the online voting software it uses open-source so that it can be checked for flaws. We believe that this should be a requirement of any system used in NSW and should replace S120AG(2) of the Act which mandates the secrecy of the source code.

Usability

While iVote usability was reasonable, we believe it would benefit from design improvements to improve accessibility, reduce the risk of bias (see below) and to make relevant information to voters (such as registered how-to-vote information from parties and candidates) available to iVote users.

One example where usability might be improved (and potential bias reduced) would be to offer a simplified version of the Legislative Council ballot paper to those who have selected the “vote above the line” method.

Bias

Antony Green noted in his [analysis of iVote2](http://blogs.abc.net.au/antonygreen/2015/04/does-electronic-voting-increase-the-donkey-vote.html) that there was a pronounced increase in the so-called “donkey vote” in the Legislative Council affecting the first four groups on the ballot paper. This seems most likely to be due to most computers showing only these four columns on screen in the first presentation of the ballot, and requiring the voter to scroll to the right to see and vote for other groups. This is also likely to affect Assembly districts which have larger number of candidates.

2 <http://blogs.abc.net.au/antonygreen/2015/04/does-electronic-voting-increase-the-donkey-vote.html>

The ACT Assembly (also proportionally elected) addresses this issue by selecting a random column to be presented at the left of the initial view, which would go some distance to reducing the bias. Addressing this problem as part of the overall usability of the iVote system might produce a better outcome.

Voter target groups

The Electoral Act limits online voting to those with vision impairment, those residing more than 20km from a polling place and those who declare that they will be “outside NSW on polling day.” Anecdotal evidence suggests that many users of iVote may have used the “outside NSW” declaration as a way to avoid the hassle of voting in person at pre-poll or on election day, or of using a postal vote. The Greens have concerns with the trend away from almost universal participation of voters in voting on election day and its impact on the perceived significance of the electoral process. With over 25% of electors in 2015 voting by pre-poll, iVote or post, further investigation into the causes and consequences are warranted.

Recommendation 4a: The Electoral Act be amended to require that iVote software be made open source.

Recommendation 4b: The NSW Parliament conduct an inquiry into the impacts of increased early voting and use of internet voting with a view to further amendments to the Electoral Act to defend the integrity of and public confidence in the electoral system.

5. POSTAL VOTE APPLICATIONS RETURNED DIRECTLY TO NSWEC

Currently many parties and candidates encourage voters to send applications for a postal vote to the candidate’s campaign address.

While it is appropriate that parties encourage voters to legitimately apply for a postal vote, the completed application forms should only be returned to the local returning officer or the NSWEC. It should be illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer or NSWEC.

The current system causes delay for the voter and an extra administrative burden for the NSWEC when parties arrive with large bundles of accumulated applications close to the deadline for receipt of postal vote applications. It also undermines the identity of the NSWEC and leads to a blurring of the boundaries between official communications and those emanating from the political parties.

Further, the current system is open to various kinds of fraud or unwarranted advantage, especially when information distributed to voters encouraging a postal vote is designed to appear as if it is official NSWEC material.

Recommendation 5: Completed postal vote application forms should only be returned to the local returning officer or the NSWEC and it be made illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer or the NSWEC.

6. REDUCE DURATION OF PRE-POLL VOTING PERIOD

The trend in recent elections at both NSW and Federal levels for significant increases in pre-poll voting was repeated in the 2015 election. The pre-poll voting rate increased from 8.2% in 2011 to 14.2% in 2015. Candidates and parties cannot ignore such a significant voter segment but are faced with many logistical challenges, particularly with the writs for NSW elections being issued less than three weeks before election day resulting in an interval of 3 days between the close of nominations and commencement of pre-poll voting.

Despite the increase in pre-poll voting, the first week of pre-poll voting remains slow. The vast bulk of pre-poll votes are cast in the second week. If pre-poll voting were instead commenced on the Friday, eight days before polling day, it would still allow those voters going away for that weekend to vote while conserving resources of the NSWEC and parties which would not have to staff pre-poll offices on the Monday to Thursday in the first week of pre-poll voting.

Those small number of voters who would have otherwise voted on those days can either vote on the Friday, lodge an iVote, or avail themselves of the opportunity to cast a postal vote.

Recommendation 6: That pre-poll voting commence on the Friday, that is, eight days before polling day.

7. STRENGTHEN LEGISLATION TO STOP FALSE STATEMENTS

Some media outlets and political candidates spread false or misleading information about other parties or candidates in order to damage their credibility and hence their vote. This is done in print, on radio, television and websites. The existing provision to discourage this is largely ineffectual. Where this does occur, there is little that the victim of such slurs can do in the time-scale of an election period.

Section 151A of the Parliamentary Electorates and Elections Act 1912 which deals with publishing false information is far too narrow. It is confined to misleading a voter “in relation to the casting of his or her vote” which we understand has been interpreted by the courts as being confined to false or misleading information influencing a voter in the act of numbering a ballot paper. The narrowness of the provision fails to prohibit simple false statements designed to damage a political opponent during an election campaign. Such a limited interpretation is not a deterrent for those wanting to publish false or misleading information during an election campaign.

Legislative provisions which prohibit false or misleading statements being made about a party or candidate whether it be by an individual or a media outlet are needed to enhance democracy.

A clear example of the need for this occurred in the campaign for the marginal seat of East Hills in 2015 where a candidate narrowly lost the election after being vilified in widely distributed material.

The penalties for breach of such provisions should be sufficiently punitive to deter such behaviour. Matters would need to be referred to an independent election tribunal that could: adjudicate on the truth of a statement quickly if election day was imminent; have the power to make public announcements before the election about the inaccuracy of published statements; and impose appropriate penalties.

Recommendation 7a: Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.

Recommendation 7b: Establish an independent election tribunal with power to: adjudicate on the truth of public election statements quickly; make prompt public announcements about the inaccuracy of published statements; and impose appropriate penalties.

Recommendation 7c: Registration of leaflet provisions in S151G of the PE&E Act and procedures of the NSWEC should be reviewed to prevent the registration of material which would be considered by a reasonable person to be likely to mislead electors as to the candidate or party actually responsible for the material.

FINANCIAL ASPECTS

8. COMPLEXITY OF FUNDING MODEL

The legislation relating to the electoral funding model for the 2015 election has now expired and Parliament will need to consider a replacement based on the findings of the Schott review and the experience with the 2015 system. The Greens submission to the Schott review expressed our general support for the model used for the 2011 election. We anticipate making more detailed input into the process for determining the replacement model, but make the following observations in relation to the evolution of state electoral funding in NSW.

The election expenditure capping and reimbursement model that applies in NSW is too complex. In 2011 for lower house seats there was a tiered reimbursement model with funding ratios declining sharply as thresholds of expenditure were reached. In addition to each candidate's expenditure cap there is a separate cap for the party's expenditure in that seat as part of a state-wide cap. While this provided some certainty to candidates and parties as to the likely public campaign funding level to expect, there were different reimbursement formulae for the two expenditure categories.

The changes made for the 2015 election retained the reimbursement for expenditure component of funding and introduced a generous per-vote amount, though with differing rates for Assembly and Council votes. While the need will remain for candidate and party expenditure to be properly checked to ensure that caps are not being breached, the payment of electoral funding could be significantly simplified by adoption of a per-vote dollar amount as a direct entitlement similar to that used for federal elections. The per-vote amount

should be determined to be sufficient for a “no frills” comprehensive campaign to be conducted within the funding available for 4% of the vote.

This would result in electoral funding payments being made by the NSWEC within weeks instead of many months.

In conjunction with such a change it would be advisable to legislate to specify that electoral funding could only be spent on political campaigning, administration, and election costs and it be made an offence to spend election funding on personal private matters.

Recommendation 8: Amend the reimbursement for expenses election funding model so that both party and candidate funding is based solely on a dollar amount per vote obtained, similar to federal election funding, provided that the dollar amount is sufficient for a “no frills” comprehensive campaign to be conducted in a Legislative Assembly seat within the funding available for 4% of the vote.

9. AUDIT REQUIREMENTS

The current requirement is that claims for election funding and financial disclosures are to be audited by a registered company auditor before being submitted to the NSWEC.

The NSWEC has substantially increased the resources it devotes to funding and disclosure assessment and compliance.

Claims and disclosures are given a very thorough assessment by the NSWEC. Bank statements are now required to be lodged with the NSWEC as well as a party’s computer financial records. In effect the NSWEC conducts a second audit, making the external audit by a registered company auditor practically redundant.

Nevertheless parties are required to use an auditor incurring unnecessary expense and wasting time while the external auditor carries out the work.

It would simplify matters for parties and candidates if the NSWEC formally conducted the audits instead.

Recommendation 9: The NSWEC to conduct audits of disclosures and claims for election funding payment instead of private registered company auditors.

10. EXPENDITURE CAPS

The NSW expenditure caps on both political parties and candidates and third parties are too generous. However, their existence has resulted in a reduction in the massive expenditure that took place in some hotly contested seats in the 2007 election. With the expansion of state electoral funding amounts, party expenditure caps of \$9.3 million, and candidate expenditure caps of \$100,000 should be reduced substantially to ease financial pressure on the state and to further reduce the perceived and actual influence of donors in buying an election outcome.

There are strong arguments that caps on all spending should be reduced substantially. Along with adequate public funding, constraining expenditure is an important vehicle for reducing the influence of wealth on political outcomes.

The Greens propose that caps on all entities should be reduced proportionately. Any attempt to reduce the limits on third parties without an equivalent reduction in the spending of political parties would shift the balance of capacity to communicate with voters away from community and working people's organisations and into the professionalised parties. This outcome would work against a healthy democracy.

The corporate response to the previous federal government's proposed Resource Super Profits Tax (RSPT) where mining interests spent \$22 million in a successful campaign to change the proposal is a clear example of how wealthy third parties can, in the absence of appropriate caps, deploy their wealth to change election outcomes and affect policy changes in a deeply undemocratic way.

It is unacceptable that the sheer wealth of large corporations can buy an election outcome through a massive advertising campaign when an election should be won or lost by voters assessing the merit of parties and candidates.

Unions and other membership-based not-for-profit organisations and their peak bodies act as third parties to articulate the aggregated views of their members. Their contribution might at times be uncomfortable for

some political parties but their role in the democratic process should be protected as a fundamental expression of freedom of political communication.

It is particularly important in an environment where wealthy individuals and corporations can make political donations that the less powerful have a vehicle for expressing their views and protecting their interests by campaigning collectively.

For-profit corporations and the peak bodies that represent them can lay no such claim to political validity. As typified by the RSPT example, their intervention is almost always about protecting profitability and reducing restraints on their business activity in a way that works against the public interest.

There is a strong case therefore for differentiated treatment of third parties depending on whether they are membership-based, democratic and not-for-profit or in the alternative a business entity or a peak body representing business entities.

Recommendation 10a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 10b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 percent.

11. INCOME THAT CAN BE DEPOSITED IN CAMPAIGN ACCOUNT

There are some overly strict limitations on the types of income that can be deposited in a party's election campaign bank account. Membership fees for example are prohibited to be deposited in such an account even though they are subject to a cap per member and are a non-corrupting source of income for a party.

The cap on membership fee amounts in the Election Funding and Disclosures Act is too generous at \$2,000 (indexed) per annum and should be more reflective of the costs to parties of the administration of that membership.

Recommendation 11: Individual membership fees be capped at \$250 per annum and be permitted to be deposited in a party's state election campaign account.

12. FUNDING FOR PARTY ADMINISTRATION BASED ON VOTE NOT MPS

The public funding available for party administrative expenditure has helped reduce parties' reliance on corporate donations. The method of calculating the amount parties are to receive is currently based on the number of politicians from a party. A fairer system however would be to base the calculation on the vote a party obtains in the election for either house of parliament.

The single member electorate system in the Legislative Assembly results in a substantially larger proportion of MPs for major parties than their proportion of the primary vote. The current method of calculation could well produce party administration funding outcomes that are grossly disproportionate to a party's vote and not reflecting the reasonable costs of administering parties capable of genuinely contesting elections state wide.

Recommendation 12: The amount of public funding available for party administrative expenditure be based on the vote a party obtains in the election for either house of parliament rather than on the number of politicians from a party.

13. CLOSING LOOPHOLE ON BAN ON TYPES OF DONATIONS

The ban on donations from developers, the tobacco industry and for profit alcohol and gambling industries can be avoided by a party by depositing such donations in a federal election account instead of its state election campaign account or state administration account which would be illegal.

It clearly is not an acceptable practice in terms of ethics in politics and election campaigns.

The ban on these donations should apply to the party, and not just some of its bank accounts. In an effort to close the loophole, the state government should request the federal government to introduce similar legislation to ban developer, tobacco and for profit gambling and alcohol industry political donations at a federal level.

Similarly, the NSW caps on donations are circumvented by a similar process of parties banking large donations in federal election accounts. To close this loophole comprehensive federal legislation is required.

Recommendation 13: That the state government formally requests the federal government to legislate for a ban on developer, tobacco and for profit gambling and alcohol industry political donations so that the NSW ban on such donations cannot be circumvented.

14. REMOVE CAP ON DONATIONS FROM PARTY TO ITS CANDIDATES

Most supporters and members of a party donate to the party rather than to the party's candidate. This combined with the fact that the \$2,000 cap on donations to a candidate applies to a party when donating to its candidate, creates a problem for parties not being able to transfer available funds to the campaign account of its endorsed candidate.

Currently parties effectively donate much more than \$2,000 to its candidates by utilising section 84(7) of the Act and invoicing them for election expenses incurred by the party, but the candidate never pays the invoice, or by making loans to the candidates. Either method is a convoluted way for a party to provide essential financial support to its candidates' campaigns. Section 84(7) effectively acknowledges that parties will need to finance their candidates, but it is a cumbersome and questionable way to achieve this objective.

The simple solution is that parties and candidates should be exempt from the donations caps when the party makes donations to its endorsed Legislative Assembly candidates. Apart from being more transparent than the current obscure method of parties funding their candidates, it would facilitate more local campaigning autonomy as the funds would end up in the campaign account of a local candidate rather than remain in a party head office bank account. It is also noted that the expenditure cap on candidates would still apply so that it would be pointless for parties to donate an amount above the limit the candidate may spend.

Recommendation 14: That there be an exemption from the cap on donations in respect of party donations of funds to the campaign account of a Legislative Assembly candidate endorsed by the party.

15. LOCAL GOVERNMENT AND NSW FUNDING LAWS

Section 83 of the Election Funding, Expenditure and Disclosures Act makes it clear that the caps on political donations and electoral communication expenditure do not apply to local government elections.

This is a major flaw in the state's efforts to clean up the perception that large donations influence local council and state government decisions and are corrupting our democracy. Appropriate modest donation and spending caps for local government elections should have been enacted before the 2012 local government election which saw donations accepted beyond the limit of the state donations caps and some excessive election expenditure.

An important reason for creating reasonable caps on electoral expenditure is one of equality and fairness. It is not acceptable for any party or candidate to be in a position to effectively "buy" an election by vastly outspending their opponents. Such elections are not contests of political ideas, but rather contests between political bank accounts.

An effective way to bring fairness to the system of electoral funding and to reduce the corrupting influence of large donations is to put controls on the demand side. This can be achieved by introducing caps on election expenditure for local government elections. The level at which the cap is fixed should be reasonably low to reflect the grassroots nature of local politics. Local government election expenditure caps apply in a number of overseas jurisdictions.

As the number of voters enrolled per council area/ward varies greatly, a formula calculating the level of an expenditure cap would need to allow for these variations. The formula would need to create an expenditure cap that was not too low for councils/wards with large enrolments and not too high for councils/wards with low enrolments.

For councils with popularly elected Mayors there should be an increase in the expenditure cap available to the mayoral candidates. This should be at a lower rate per voter as much of the additional campaigning should be done within the expenditure cap that applies to the party or group of candidates of which the Mayoral candidate is a member. To reflect the additional campaign expense the expenditure cap amount for a mayoral candidate should be increased by an amount that is 50% of the cap applicable for a candidate for councillor calculated across the entire council area, regardless of the ward structure.

Some options for a cap on local government election expenditure by candidates and a group of candidates include: whichever is the greater amount of: 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward, or \$10,000; or a suitable alternative formula could be a base cap of \$5,000 plus 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward (similar to the UK model).

For a ballot for a popularly elected Mayor an additional expenditure cap for mayoral candidates should apply. The additional amount could be 25 cents for each voter in the local government area (i.e. 50% above the councillor expenditure cap).

Party expenditure for state registered parties for local government elections could be capped at \$500,000. This amount is to be treated as separate from campaign expenditure incurred by the party's candidate or group of candidates for a local council area or ward. Expenditure under this cap must not be targeted at specific local government areas.

If electoral expenditure restrictions are to be effective they must also apply to associated entities of political parties as well as third parties. Local government expenditure by associated entities of political parties should be treated as expenditure by the political party itself, or if spent locally, as expenditure by the local group of candidates or candidate in the ward or council area. A third party expenditure cap of \$5,000 for local government elections would be appropriate.

The scheduled date for the next NSW local government elections is September 2016 so legislation is needed urgently.

Recommendation 15: The state government legislate in 2015 for low caps on political donations and electoral communication expenditure to apply to local government elections.

16. AFTER POLLING DAY ELECTORAL EXPENDITURE

There are some items of election expenditure that are legitimate and unavoidable but do not attract electoral funding because they are incurred after polling day. Two key examples are campaign office rent for one week following the election and wages for a campaign manager for one week after polling day. These are practically unavoidable and reasonable election expenses. They need not necessarily be included as part of the election expenditure cap but are expenses for which a candidate or party should be able to claim election funding.

Recommendation 16: That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day be electoral expenditure for which electoral funding can be claimed.

17. OVERCOMING DELAYS IN NSWEC FUNDING PAYMENTS

Following a general state election, there is an enormous amount of financial work for parties and candidates to complete, including an audit before election funding can be obtained from the NSWEC. Usually considerable time has elapsed following an election before payment is made. On occasions this time has been extended because the NSWEC whose approval is required before payment can be made does not meet that often. It would assist parties if the NSWEC met more frequently in the months following an election up to a few months following the due date for lodging electoral and annual financial returns in an election year in order to sign off on election funding payments in a timely fashion.

The remittance advice from the NSWEC as well as being posted should be sent to the party agent or candidate agent by email. In previous elections following part payment of a claim for electoral funding there was also significant delay in the NSWEC sending follow up compliance letters containing queries about the financial return. This resulted in delays in parties obtaining substantial amounts of funding to which they are entitled.

Recommendation 17a: The NSWEC meet more frequently in the months following an election and particularly in the months surrounding the due date for lodging electoral and annual financial returns so that election funding payments can be approved in a timely fashion.

Recommendation 17b: The NSWEC as well as communicating by post about funding payments and financial compliance of electoral returns, communicate by email with the party agent or candidate agent about these matters to save time.
