

The Greens submission to the
Joint Standing Committee On Electoral Matters –
NSW State Election 2003

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1. LEGISLATIVE ASSEMBLY ELECTIONS UNDEMOCRATIC

The most important point in this submission is the need to improve the method of Legislative Assembly (LA) elections. Any election enquiry that does not include the issue of the type of electoral system is next to useless.

The most undemocratic and unethical aspect of the 2003 NSW state election was the use of a single member electorate system for the Legislative Assembly elections.

In the 2003 state election, the result of this system was that the Labor party won considerably more seats than its' vote justifies. Labor polled 42.68 % of the primary vote but won an astonishing 59% of the seats or 55 out of 93 seats. The Labor vote, if the election system were fair, should have resulted in Labor winning 39 or 40 seats. That is a huge difference of 15 seats.

The Coalition polled 34.35% of the vote and won 34.4% of the seats or 32 out of 93 seats.

Independent candidates collectively polled 8.18 % of the vote across NSW and won 6.45% of the seats or 6 out of 93 seats.

Conversely the Greens polled over 8.25 % of the LA votes but won none of the 93 seats. The Greens polled over 315,000 in the LA and won no seats.

Collectively the smaller parties (including The Greens) polled 14.79% of the vote or well over half a million votes but won none of the 93 seats.

The solution to this unfair system is simple. A Hare-Clark proportional representation type system needs to be introduced, with New South Wales divided in to approximately 11 regions/electoral districts each returning approximately 9 members. The number of seats won would more accurately reflect the vote of political parties and independent candidates, whilst maintaining a reasonable degree of local representation and community access to local politicians.

Small variations on the suggested number of regions and members elected from each region are possible without defeating the democratic objectives of implementing such a system.

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 obvious that the system proposed is much fairer and more democratic.

The Joint Standing Committee cannot in good conscience, as is usually done in parliamentary enquiries into elections, simply dismiss this proposal. The Committee which is largely comprised of Labor party and Coalition party members of parliament need to acknowledge that the largest parties have a vested interest in maintaining the current Legislative Assembly electoral system. If the thrust of the proposal is not supported by the Committee, then detailed and cogent reasons as to why the current system is a more democratic system than that proposed need to be provided by the Committee.

There are approximately 20 registered parties for NSW elections and The Greens would confidently assert that almost all of them, apart from Labor and the Coalition parties, would regard the current system as unacceptably undemocratic.

In contrast, the Legislative Council election result was much more democratic. Parties won the number of seats much more closely in proportion to the percentage vote that they obtained. There was also a significant improvement on the 1999 LC election because in the 2003 election, no candidate won a seat polling less than 2 % of the vote. This is a substantial vote of approximately 75,000 votes.

2. NUMBER OF ENTRANCES TO POLLING BOOTHS

In the recent federal election the Australian Electoral Commission (AEC) was able to advise candidates of the number of entrances/gates that would be open at each polling booth on election day. This was of significant benefit to candidates in terms of being better able to organise their roster of booth workers for handing out how to vote cards. As perhaps 90% or more of the same booths are used by both the State Electoral Office (SEO) and the AEC on respective election days it should not be too difficult for the SEO to provide the same information to parties at least a few weeks before election day.

This would avoid candidates being forced to shift workers from one booth to another on election day because a particular booth unexpectedly has an extra gate or two open.

3. ELECTION RETURNS

Election returns for Legislative Council (LC) elections in their current form involve an enormous amount of work for political parties. We understand that most parties experienced significant difficulty compiling their 2003 LC election returns. Part of the problem is that income relating to the preceding four years is required to be included in the return, when most of that money is not related to the state election, but to federal elections or other general activities.

Many political parties, particularly the larger ones are also registered with the Australian Electoral Commission and are required to submit annual returns disclosing income and expenditure including finances relating to an LC election if it fell in that financial year.

Essentially much of the information required by the state and federal electoral commissions is duplicated. If parties that submitted annual returns to the AEC were

permitted by the SEO to rely on their previous AEC annual returns, which are publicly disclosed, it would significantly reduce the workload for parties whilst maintaining proper disclosure of income and expenditure. It would also reduce the workload for the SEO/EFA.

Parties should still be required to submit a LC electoral return which included any income or expenditure not disclosed in earlier AEC returns.

Any expenditure sought to be claimed as electoral expenditure and attracting electoral funding would also still need to be disclosed in the LC electoral return.

It is also suggested that all Electoral returns are placed on the SEO website as soon as possible so that they are easily available to the public in good time.

It is important to maintain public accountability and transparency in all matters relating to the finances of political parties. The current system can be reformed to maintain or improve disclosures while reducing the amount of work involved in preparing returns.

4 REFORM OF ELECTORAL FUNDING

Electoral funding provided by the SEO to candidates should be on the basis of the vote obtained as is done in Federal elections rather than on the basis of the amount of expenditure incurred.

The current system, which is a reimbursement model, encourages candidates to overspend. It also provides a dangerous incentive for those candidates that reach 4% of the vote - the threshold to be eligible for funding - to manufacture invoices to maximise their entitlement.

The federal election funding system is more likely to encourage candidates to incur expenditure that is consistent with their budget.

The proposed system would reduce the workload for the SEO/EFA.

If this funding system were adopted, candidates and parties should still be required to include income and expenditure in their electoral returns.

5. CHANGE TO COMPOSITION OF ELECTION FUNDING AUTHORITY

The current composition of the Election Funding Authority is specified in Section 6 of the Election Funding Act. It is a three member Authority comprised of the Electoral Commissioner, a nominee of the Premier and a nominee of the leader of the Opposition.

One of the functions of the EFA is to rule on what constitutes electoral expenditure under the Election Funding Act in order to determine whether candidates receive electoral funding for that item of expenditure. Effectively a Labor party and Liberal party appointee adjudicate on the electoral expenditure of the other, smaller political parties. This is inappropriate. It could have considerable impact on the funding that

the smaller parties receive. The method of determining the composition of the EFA creates an unethical set of circumstances.

There are two possible solutions to this problem. The first is an amendment to the legislation so that the three person EFA is comprised solely of employees of the State Electoral Office.

A more far-reaching solution is to legislate for the SEO to take over the functions of the EFA and disband the EFA.

Either way, party political appointments to the EFA should end.

6. POSTAL VOTE APPLICATIONS

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. It should be illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer. The current system causes delay for the voter and an extra administrative burden for the SEO when parties arrive with large bundles of accumulated applications close to the deadline for receipt of postal vote applications.

Further, the current system is open to rorting, especially when information distributed to voters encouraging a postal vote is designed to appear as if it is official SEO material.

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 and is far too weak.

Some campaigns and media outlets are in fact publishing highly damaging but completely untrue information about a party or candidate. There is little that the victim of such slurs can do in the timescale 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 deters only a small percentage of people who 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.

The penalties for breach of this provision should be strong. 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 an appropriate penalty.

8. RESOURCING THE SEO

The state electoral office does a good job considering its resources, but in our view it is clearly understaffed and the government needs to increase the allocation of budgetary resources to the SEO.

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