Submission

No 15

Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981

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The Greens submission to the Joint Standing Committee on Electoral Matters – Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981

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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 in to electoral districts each returning between 5 and 9 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 PE&E Act be amended to confirm the right of public servants, other than those in the most senior positions, to be candidates in NSW elections.*

Recommendation 3a: *Division 9 of the PE&E Act should be amended to require that completed postal vote application forms be returned to the local returning officer or Elections NSW and it be made illegal for parties and candidates or others to encourage voters to send a completed application to anyone other than the District Returning Officer or Elections NSW.*

Recommendation 3b: *That pre-poll voting commence on the Friday, eight days before polling day.*

Recommendation 3c: *That Section 151 of the PE&E Act be amended to provide that polling place manager be granted reasonable discretion to vary the 6m exclusion limit.*

Recommendation 3d: *The NSW Electoral Commission review and, if necessary, update its agreement with the owners/lessees of premises to be used for polling booths to ensure that politically discriminatory behaviour by the owner or lessee of the premises, or by their agents, in relation to legitimate use of the polling booth, is explicitly forbidden and subject to penalty for breaches. Amendment of section 85 of the PE&E Act or the regulations may be required to give force to this requirement.*

Recommendation 4a: *Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.*

Recommendation 4b: *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 4c: *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 5 *Amend the election funding model so that both party and candidate funding is based 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 6: *The definition of the types of "electoral expenditure" for the purpose of claiming funding, and also compliance with the expenditure cap, should be broadened to include legitimate electoral expenditure currently excluded. Alternatively the definitions of "electoral expenditure" for the two different purposes should be decoupled with the definition for the*

purposes of claiming electoral funding broadened to include legitimate electoral expenditure currently excluded.

Recommendation 7a: *Where a third party entity's membership is composed of more than 75% with membership of a particular political party, its electoral expenditure is to be aggregated into that of the political party as occurs under s. 96G (6).*

Recommendation 7b: *Corporate for-profit organisations are to be banned from being third parties.*

Recommendation 8: *Membership fees be permitted to be deposited in a party's state election campaign account.*

Recommendation 9: *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 10: T*hat 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 or local government candidate or group endorsed by the party.*

Recommendation 11: *That the EFE&D Act be urgently amended so that modest caps on political donations and caps on electoral communication expenditure apply to local government elections.*

Recommendation 12: *The EFA clarify for candidates and parties that election expenditure from a party branch bank account and then a corresponding invoice to a candidate is a legal and appropriate financial arrangement and that if all candidate expenditure is incurred by this method then the LA candidate is not required to open a campaign bank account.*

Recommendation 13: *That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day, and expenses associated with auditing funding returns be electoral expenditure for which electoral funding can be claimed.*

Recommendation 14: *The EFA should be comprised of the Commissioner and two completely independent members who are not appointees of the major parties.*

Recommendation 15a: *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 15b: *The EFA as well as communicating by post about funding payments and financial compliance of electoral returns, communicate by email with the party or candidate agent about these matters to save time.*

Recommendation 16: *That the EFE&D Act be amended to include a provision requiring the EFA to make a preliminary funding payment to candidates of 70% of the total amount the EFA estimates to be payable to the candidate if the EFA cannot finalise the claim within 14 days of it being lodged.*

Recommendation 17: *That Section 93 of the EFE&D Act be amended to require disclosure of party electoral communication expenditure incurred substantially for the purposes of an election in a particular electorate, detailing each electorate in respect of which such expenditure was incurred and the amount spent in relation to each electorate.*

Recommendation 18: *That section 96D of the EFE&D Act be amended to provide an exemption to the requirement for donors to be on the roll of electors when the amount of any individual donation is less than $100 and the aggregate amount of that person's donations in any year does not exceed the threshold for reportable donations.*

Parliamentary Electorates and Elections Act 1912

1. PROPORTIONAL REPRESENTATION FOR LEGISLATIVE ASSEMBLY ELECTIONS

A comprehensive examination of the PE&E Act should also examine whether the electoral system in NSW is delivering fair representation of the community. The division of the state into single-member Legislative Assembly districts, combined with optional preferential voting, is resulting in increasingly biased outcomes.

In the 2011 state election, the result of use of this system was that the Liberal and National parties won considerably more seats than its vote justified.

Figures from the ABC's/Antony Green's New South Wales Election 2011 website http://www.abc.net.au/elections/nsw/2011/ show the Liberal party polled 38.6% of the primary vote but won an astonishing 54.8% of the seats (51 of 93). The National party polled 12.6% of the vote and won a disproportionate 19.3% of the seats (18 seats). If the election system were fair, it should have resulted in the Coalition winning about 51% of the seats or 47 seats. Instead combined they won 69 seats which is a huge difference of about 22 seats more than their vote deserved. Labor won 25.6% of the vote and 21.5% of the seats which was 20 seats.

In contrast to the Coalition's fortunes, The Greens polled over 10.3 % of the LA votes but won just 1% of the seats being one seat. A fair outcome would have resulted in the Greens winning nine seats.

An even more extreme outcome occurred under this system in the 2012 Queensland Election, where an LNP primary vote of 49.7% delivered 88% of the Legislative Assembly seats while the ALP's 26.6% (more than ALP's 25.6% in NSW in 2011) delivered just 8% of the Assembly seats and an Opposition party unlikely to be able to effectively perform its important role in our system of government.

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 in to electoral districts each returning between 5 and 9 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 9 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 5 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 in to electoral districts each returning between 5 and 9 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

Various state government departments take different approaches when one of their public servant employees becomes a candidate in a state election. Some departments do not have any issue with an employee becoming a candidate, while others urge the employee to take leave or leave without pay.

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 effected. 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 PE&E Act be amended to confirm the right of public servants, other than those in the most senior positions, to be candidates in NSW elections.*

3. POSTAL, PRE-POLL AND ORDINARY VOTING

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 required to be returned directly 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 Elections NSW 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 NSW Electoral Commission 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 material. For example, the use by the party of voter information from the application to distribute how-to-vote material at the time the ballots are mailed by Elections NSW is questionable on privacy grounds.

Recommendation 3a: *Division 9 of the PE&E Act should be amended to require that completed postal vote application forms be returned to the local returning officer or Elections NSW and it be made illegal for parties and candidates or others to encourage voters to send a completed application to anyone other than the District Returning Officer or Elections NSW.*

A trend in recent elections at both NSW and Federal levels has been a significant increase in pre-poll voting. Yet the first week of pre-poll voting remains very slow with only a small number of votes cast. 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 Elections NSW 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 3b: *That pre-poll voting commence on the Friday, eight days before polling day.*

While the provisions excluding canvassing for votes within 6m of a polling place (including pre-poll centres) are generally appropriate and effective, it should be possible for the official in charge of the polling place to permit canvassing to occur closer when there are reasonable grounds, such as inclement weather.

Recommendation 3c: *That Section 151 of the PE&E Act be amended to provide that polling place manager be granted reasonable discretion to vary the 6m exclusion limit.*

There have been a number of incidents (see the Greens and other submissions to earlier Inquiries) where the owners of lands used as polling places, or their agents, have exercised discrimination on political grounds against particular party representatives or election material such as the display of posters otherwise legally displayed near the polling place. Elections NSW should be prevented from leasing premises for use as pre-poll or polling booths without securing an enforceable undertaking from the lessor that there will be no such discrimination against those engaged in lawful canvassing for candidates.

Recommendation 3d: *The NSW Electoral Commission review and, if necessary, update its agreement with the owners/lessees of premises to be used for polling booths to ensure that politically discriminatory behaviour by the owner or lessee of the premises, or by their agents, in relation to legitimate use of the polling booth, is explicitly forbidden and subject to penalty for breaches. Amendment of section 85 of the PE&E Act or the regulations may be required to give force to this requirement.*

4. FALSE AND MISLEADING 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 PE&E 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. See, for example, Section 113 of the South Australian Electoral Act 1985 makes misleading election advertising an offence. See <http://www.legislation.sa.gov.au/LZ/C/A/ELECTORAL%20ACT%201985/CURRENT/1985.77.UN.PDF>

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.

S151G of the PE&E Act is intended to prevent the distribution of leaflets which might mislead voters as to which candidate or party is responsible for them. The Greens are aware of a number of incidents where leaflets were registered which relied on this kind of misconception to be effective. For example, a leaflet which is aimed at voters considering voting for a Greens

candidate, is printed to resemble a Greens leaflet, but which solicits that voter to direct preferences to another party, while clearly against the spirit on this section of the Act, are within a narrow reading of its provisions. These kinds of misleading leaflets should also be prohibited.

Recommendation 4a: *Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.*

Recommendation 4b: *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 4c: *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.*

Election Funding, Expenditure and Disclosures Act 1981

5. COMPLEXITY OF FUNDING MODEL

The election expenditure capping and reimbursement model adopted in NSW is too complex and needs simplifying. For lower house seats there is a tiered reimbursement model with funding ratios declining sharply as thresholds of expenditure are 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 does provide some certainty to candidates and parties as to the likely public campaign funding level available, there are different reimbursement formulae for the two expenditure categories.

The extra complexity of co-ordinating lower house campaigns between state-wide and local committees distracts from the business of campaigning. It would be simpler to legislate for a payment model based on a dollar amount per vote obtained provided that the dollar amount is sufficient for a "no frills" comprehensive campaign to be conducted within the funding available for 4% of the vote. A dollar amount per vote similar to that currently provided for federal elections would meet this requirement.

Recommendation 5 *Amend the election funding model so that both party and candidate funding is based 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.*

6. DEFINITION OF ELECTORAL EXPENDITURE

The definition of the types of "electoral expenditure" for the purpose of claiming funding, and also compliance with the expenditure cap, should be broad and realistic. Alternatively the definitions of "electoral expenditure" for the two different purposes should be decoupled.

Parties with a preponderance of electronic and other advertising spending will tend to prefer a narrow definition so that election advertising expenditure can be maximised by excluding other kinds of campaign activities from the expenditure cap. On the other hand, small parties whose budgets are much lower than the expenditure caps prefer a broader definition of electoral expenditure so that all legitimate election expenditure is able to be reimbursed.

This unnecessary conflict over the definition of "electoral expenditure", which is set out in section 87 of the EFE&D Act, has led to the strange situation in NSW where expenditure on candidate travel (which has a big impact or rural candidates), compulsory auditing of election claims and research such as polling and focus groups do not fall within the definition of electoral expenditure.

Recommendation 6: *The definition of the types of "electoral expenditure" for the purpose of claiming funding, and also compliance with the expenditure cap, should be broadened to include legitimate electoral expenditure currently excluded. Alternatively the definitions of "electoral expenditure" for the two different purposes should be decoupled with the definition for the purposes of claiming electoral funding broadened to include legitimate electoral expenditure currently excluded.*

7. EXPENDITURE CAPS

The NSW expenditure caps remain too generous but at least they have been responsible for a reduction in the massive expenditure that took place in some hotly contested seats in the 2007 election. Party expenditure caps of $9.3 million, and candidate expenditure caps of $100,000 could be reduced a little to ease financial pressure on parties and candidates and to help ensure that wealth is not buying an election outcome.

Nevertheless, the current aggregations provisions in section 96G (6) and (7) of the EEF&D Act unfairly impact on the electoral expenditure of third party organisations formally affiliated with a

political party (eg unions) while leaving third parties composed entirely of members of one particular political party free to advertise for that party without being accounted for as expenditure for that party.

Further there is nothing in the current laws that would stopping a corporation which makes a profit from the sale of tobacco, gambling products or alcohol or a developer or land speculator from incurring up to $1.15 million in electoral expenditure as a third party. The EFE&D Act leaves open the ability of corporate for-profit entities to offer to advertise in favour of whichever political party promises to provide the most favourable outcome for their industry.

The stated intent of the Election Funding, Expenditure and Disclosures Amendment Bill 2012 of driving the impacts of large donors out of the political system has not been achieved.

It is unacceptable that sheer wealth 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.

Recommendation 7a: *Where a third party entity's membership is composed of more than 75% with membership of a particular political party, its electoral expenditure is to be aggregated into that of the political party as occurs under s. 96G (6).*

Recommendation 7b: *Corporate for-profit organisations are to be banned from being third parties.*

8. MEMBERSHIP FEE INCOME TO BE PERMITTED FOR CAMPAIGN ACCOUNTS

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, as a class, a non-corrupting source of income for a party.

Recommendation 8: *Membership fees be permitted to be deposited in a party's state election campaign account.*

9. FUNDING FOR PARTY ADMINISTRATION BASED ON VOTE NOT MPS

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 parties vote and not reflecting the reasonable costs of administering parties capable of genuinely contesting elections state wide.

Recommendation 9: *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.*

10. PARTY FUNDING OF CAMPAIGNS OF THEIR ENDORSED CANDIDATES

The 2010 cap and 2012 prohibition on donations from organisations, while welcome, has created an unnecessary problem for parties wanting to donate party funds to their own candidates' campaigns. Most supporters and members of a party donate to the party rather than to the party's candidate, but parties as organisations are prohibited from making donations to their own candidates campaign accounts

Parties must instead utilise section 84(7) of the EFE&D Act for state elections and directly incur the campaign expenses and then invoice their candidate for those expenses to make them claimable election expenditure. The candidate may never or only partially pay the invoice when funding is

received. Parties may also provide loans to their candidates, but a candidate's inability to pay appropriate interest on the loan or repay the principle sum would also breach the 2012 donations provisions.

Either is a convoluted method for a party to provide essential support to its candidates' campaigns while maintaining a highly desirable level of transparency as to the funding and expenditure for each individual candidate's campaign. 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 for parties and candidates to be exempted from the donations caps and provisions when the party is making a donation to the campaign accounts of its endorsed Legislative Assembly and local government election 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 state election 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. Section 96B6 of the EFE&D Act already provides for surplus funds in a candidate's campaign account to be transferred to the campaign account of the party which endorsed them.

Recommendation 10: T*hat 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 or local government candidate or group endorsed by the party.*

11. DONATION AND EXPENDITURE CAPS TO APPLY TO LOCAL GOVERNMENT ELECTIONS

Under the EFE&D Act caps on political donations and caps on electoral communication expenditure only apply to state elections and do not apply to local government elections.

Sections 95AA and 95E are the first sections in the divisions 2A and 2B of the Act that cover donation and expenditure caps and those provisions make it clear that the divisions do not apply to local government elections. Section 83 and the note below it reinforce this point. See http://www.legislation.nsw.gov.au/maintop/view/inforce/act+78+1981+cd+0+N

It is clearly good public policy that appropriate donations caps and expenditure caps apply to local government elections. The expenditure limits should be considerably less than those that apply to candidates at state elections.

When the electoral funding reforms were enacted in 2010 it was clear that the JSCEM was of the view that there would almost certainly be further legislation to reform donations and expenditure in relation to local government elections which will be held in a matter of months

Recommendation 11: *That the EFE&D Act be urgently amended so that modest caps on political donations and caps on electoral communication expenditure apply to local government elections.*

12. CANDIDATE BANK ACCOUNTS AND SPENDING FROM AN ELECTION ACCOUNT

Prior to the 2011 NSW Election, The Greens were left with the impression by the EFA that every Legislative Assembly candidate must have a campaign bank account in their own name and that all election expenditure must come from the party's campaign account or a candidate's campaign account. We understand however that during the 2011 NSW election one or more parties invoiced its LA candidates without the candidate opening a bank account and that in some instances the expenditure for which the candidate was invoiced was made from a party branch bank account rather than the party's campaign account.

On face value such an arrangement does not sit well with section 96(3) and (4) of the EFE&D Act which requires parties "to make payments for electoral expenditure for a State election campaign from the State campaign account of the party." While it is understood that once a candidate has

been invoiced by a party the amount is regarded as electoral expenditure by the candidate, even if the invoice is never paid, the legality of such an arrangement that involves a party account other than its state election campaign account is unclear.

Recommendation 12: *The EFA clarify for candidates and parties that election expenditure from a party branch bank account and then a corresponding invoice to a candidate is a legal and appropriate financial arrangement and that if all candidate expenditure is incurred by this method then the LA candidate is not required to open a campaign bank account.*

13. 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. The expenses incurred in auditing funding returns should also be claimable.

Recommendation 13: *That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day, and expenses associated with auditing funding returns be electoral expenditure for which electoral funding can be claimed.*

14. MEMBERS OF THE EFA TO BE COMPLETELY INDEPENDENT

Under section 6 of the EFE&D Act the three EFA members are the Commissioner, a nominee of the Premier and a nominee of the Leader of the Opposition. The nominees of leaders of the major political parties should not be members of the EFA which should be completely independent of political parties. The EFA adjudicates on a range of electoral financial matters including those that impact significantly on major parties and minor parties sometimes in different ways. All members of the EFA should be independent of political parties and be seen to be independent of them.

Recommendation 14: *The EFA should be comprised of the Commissioner and two completely independent members who are not appointees of the major parties.*

15. OVERCOMING DELAYS IN EFA 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 EFA. Usually considerable time has elapsed following an election before payment is made. On occasions this time has been extended because the EFA whose approval is required before payment can be made does not meet that often. It would assist parties if the EFA 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 EFA as well as being posted should be sent to the party or candidate agent by email. Following part payment of a claim for electoral funding there was also significant delay in the EFA 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 15a: *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 15b: *The EFA as well as communicating by post about funding payments and financial compliance of electoral returns, communicate by email with the party or candidate agent about these matters to save time.*

16. PART PREPAYMENT OF FUNDING FOR CANDIDATES ON LODGEMENT OF CLAIMS

Under section 69 of the EFE&D Act if the EFA is unable to finalise a claim for election funding payment by a party within 14 days of lodgement, then the EFA is required to make a preliminary payment of 70% of the total amount it estimates to be payable to the party.

No similar provision exists in relation to claims for payment by LA candidates. This can result in considerable delays while all details are clarified before candidates receive any electoral funding.

Recommendation 16: *That the EFE&D Act be amended to include a provision requiring the EFA to make a preliminary funding payment to candidates of 70% of the total amount the EFA estimates to be payable to the candidate if the EFA cannot finalise the claim within 14 days of it being lodged.*

17. PARTIES TO DISCLOSE SPECIFIC ELECTORATE EXPENDITURE

Under the EFE&D Act there is no requirement for parties to disclose the amount of electoral expenditure incurred substantially for the purposes of an election in a particular electorate. This means that electorate specific expenditure can be hidden in the state party's return making it difficult to determine if the party electorate specific expenditure cap of $50,000 per electorate has been observed or breached. There are strong suspicions that one or more parties in the 2011 state election breached this cap in relation to a number of electorates, but the absence of a disclosure requirement makes this harder to verify.

Recommendation 17: *That Section 93 of the EFE&D Act be amended to require disclosure of party electoral communication expenditure incurred substantially for the purposes of an election in a particular electorate, detailing each electorate in respect of which such expenditure was incurred and the amount spent in relation to each electorate.*

18. UNWORKABLE AND POTENTIALLY UNINTENDED ASPECTS OF THE 2012 EFE&D ACT CHANGES

The passage of the Election Funding, Expenditure and Disclosures Amendment Bill 2012 brought many worthwhile changes to electoral funding in NSW that should be adopted in other jurisdictions. However, the amendments impose unreasonable compliance burdens for candidates and parties engaged in traditional forms of fundraising where donations being solicited or made are a small percentage of the disclosure thresholds or donation caps.

For example, a candidate or party must ensure that every member, attendee at a fundraising event or donor (even for a $2 donation at a street stall) is enrolled even though there is no way to validate their enrolment. One immediate consequence is that a party may not admit or retain members under the age of 18 if it levies a membership fee from them because they are not able to be on the electoral roll. While the number of affected members is likely to be small, there are many politically aware young people who may be denied the opportunity and historical right to join a political party by this provision.

The effectiveness of the EFE&D Act in preventing the corrupting influence of large donors and especially corporations on the political system would not be materially reduced by the addition of a provision of an exemption for donations from individuals less than a low threshold of (say) $100. If the aggregate amount from any particular donor were to exceed the reportable donation amount then the exemption would cease to apply.

Recommendation 18: *That section 96D of the EFE&D Act be amended to provide an exemption to the requirement for donors to be on the roll of electors when the amount of any individual donation is less than $100 and the aggregate amount of that person's donations in any year does not exceed the threshold for reportable donations.*

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