

**Submission
No 21**

**INQUIRY INTO PUBLIC FUNDING OF LOCAL GOVERNMENT
ELECTION CAMPAIGNS**

Organisation: The Greens
Name: Mr Chris Maltby
Position: Registered Officer
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The Greens submission – Public funding of local government election campaigns



Joint Standing Committee on Electoral Matters
Parliament House
Macquarie St
Sydney NSW 2000

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Mr Robert Furolo MP, Chairperson.

The Greens welcome the opportunity to make this submission to the committee on the public funding of local government election campaigns in NSW.

Chris Maltby
Registered Officer
The Greens
19 Eve Street
Erskineville NSW 2043

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Summary

The Greens welcome this inquiry as another important step in the process of halting the corroding influence of corporate political donations in New South Wales. The rich and powerful in this state have access to politicians that few members of the public will ever experience. Much of this access is gained through large political donations and large contributions at fundraisers.

Electoral funding reform at the local government level requires not only limits on donations (the supply side) but also limits on expenditure (the demand side).

There are existing and workable international models for public funding and donations reform that can be readily adopted by New South Wales. Relevant examples are found in Canadian and English local government.

The current system gives the appearance that many local government decisions are influenced by donations rather than based on the common good. This appearance erodes both the value of, and support for, our precious democracy. A modest degree of public funding is a fair public investment to curb this practice and affirm that public, not private, interests direct local government decisions in this State.

The main principles that underpin The Greens recommendations are to enhance our democracy by creating a level election playing field and to improve the integrity of decision making by councillors by limiting instances of corrupt behaviour and conflicts of interest for parties and councillors.

These recommendations include:

- ◆ a reasonable wage for councillors;
- ◆ modest public funding of local government elections;
- ◆ a prohibition on all but small donations by individuals;
- ◆ greater transparency in relation to donations to political parties made specifically for use by a particular local campaign;
- ◆ caps on local government election spending;
- ◆ limits on third party election expenditure; and
- ◆ an appropriate compliance process.

1. Councillors must be paid a reasonable wage

Many councillors work very long hours on council matters and for some it is a full time but appallingly paid job. Most councillors receive less than \$15,000 annual allowance. This offends industrial relations principles of fair wages and conditions. It also discriminates against some community minded individuals who would make excellent councillors. They are effectively prohibited from contesting council elections because the level of payment of councillors is so poor. The election contest is left to those who are either prepared to make large and unacceptable financial sacrifices and those who are wealthy or those with the possibility of having commercial vested interests.

This situation is unacceptable and has limited the quality of performance of many councils. The Mayoral allowance is often an amount that is reasonable and the same principle should apply to councillors. Wealth should not determine who is able to nominate to contest a local government election.

As the state government has so deprived local government of funds through rate caps, loss of section 94 developer contributions and imposition of extra costs such as conducting local government elections, the state government should meet the expense of paying councillors a reasonable allowance.

Recommendation 1

- 1.1. That NSW local government councillors allowance be increased to match an appropriate award wage based on an estimated work load of three days per week. That councils be financed by the NSW state government to meet this cost.

2. Modest public funding of local government election campaigns

Any analysis of how much was spent on a local government election by those who were elected compared to how much was spent by those candidates who were unsuccessful would reveal that campaign spending is a significant factor in determining who is elected.

To enhance democracy our electoral system needs to move away from the scenario that cashed up candidates can effectively buy an election result. To achieve this requires a levelling of the election playing field. This entails modest public funding of election campaigns; a ban on donations from organisations, a limit on donations from individuals and a cap on election expenditure.

Considering public funding is provided for state and federal elections, it is logical to extend this provision to local council elections. Public funding for state and federal elections is widely accepted in Australia. There is no prominent voice for the removal of this form of funding from the current political process. There would be wide support for public funding of local council elections on a reimbursement for electoral expenses basis. It would help reduce the influence exerted by big donors, and it is a necessary prerequisite for cleaning up the political funding process.

Public funding also enhances democracy as it assists those who are not wealthy to engage in elections. The amount of funding should be modest to reflect the grassroots nature of local politics. As noted in the issues paper, some jurisdictions in Canada have public funding for local government elections.

In relation to election funding payments by the Election Funding Authority, state registered parties should be able to determine distribution of election reimbursement funds to their branches or candidates according to their own rules.

Recommendation 2

- 2.1. The NSW Government provide public funding for local government elections with funding granted to those candidates or groups who gain four per cent or more of the primary vote and those who are elected.
- 2.2. The NSW public funding of candidates and groups in local government elections to be based on a reimbursement model requiring invoices or receipts for election expenditure to be submitted.
- 2.3. The size of the funding pool for each council or ward should be the same as applies for Legislative Assembly seats in a general election, adjusted according to the number of voters on the electoral roll for each council or ward.
- 2.4. The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
- 2.5. No candidate or group is to receive more than half of the total pool of potential funding available for the council or ward contested.
- 2.6. Public funding in relation to candidates or groups of candidates endorsed by state registered political parties should be paid to the registered political party unless the political party advises the Election Funding Authority to make the payment to the bank account of the relevant group of candidates or candidate.

3. Ban on donations from corporations and limit on individual donations

Bans and limits on political donations have been discussed extensively during the Joint Standing Committee on Electoral Matters Inquiry into Public Funding of Election Campaigns. The Greens are strongly opposed to the Committee's Recommendation 6 that only limits political donations from entities to \$2,000 per annum adjusted according to the CPI. The Greens view is that there should be a ban on political donations from companies and other entities to remove the inappropriate and destructive influence of such donations.

Our party also opposes Recommendation 8 that the current NSW ban on donations from developers be repealed. Any developer donation to a party or candidate has the potential to influence the decisions of elected representatives and the ban should remain. The people of NSW will not be convinced that politics has been cleaned up in this state until there is a complete ban on the corroding influence of corporate political donations.

As submitted to the previous enquiry the Greens support a limit on individual political donations being capped at \$1,000 per annum.

Donations to a party to benefit a specific local campaign to be revealed

A shortcoming in the current electoral financial disclosure requirements is that when a reportable donation is made to a political party, but the purpose of the donation is for it to be utilised in a particular local election campaign, then that is not always revealed. While the party may disclose the donation and then spend it on or pass it on to a local campaign, there is no way to link the donor with the local campaign. The local candidate or group of candidates simply declares receipt of funds from the party.

Local donations, particularly those from corporations can have an influence on the decision making of a local councillor and the true source and beneficiary of the donation should be revealed. Further, the exclusions on councillor participation on matters relating to the pecuniary interests of their donors require that the donation process is fully transparent.

While this transparency issue is not an easy one to remedy, amendments to the EFA's disclosure forms would assist. If the donors disclosure form asked an additional question along the lines of was the donation you made to a party intended to be applied to a particular local campaign, and if so which campaign? Similarly the party and candidate disclosure forms could ask if the party, candidate or group of candidates was aware that a donation or donation in kind from the party to the local campaign was made as a result of a reportable donation being made to the party that was intended to be applied to the local campaign.

A particular political party which contested the 2008 Council elections made its disclosures of donations at the state level, with candidates and candidate groups almost universally making nil returns. Evidence gathered from inspection of the receipts and donor declarations reveals that many donors identified specific local campaigns to receive the funds; and that these donations would have resulted in conflicts of interest exclusions under the Local Government Act amendments had they been disclosed in the candidate's or candidate group's returns. The funnelling of these donations through the party's state office successfully bypassed the legislated conflict of interest test, allowing councillors to vote on matters of pecuniary interest to these donors.

The Greens understand that a number of complaints made to the Department of Local Government have been dismissed by virtue of this loophole.

Recommendation 3

- 3.1. That there be a ban on all political donations from corporations and other entities.
- 3.2. That the current ban on political donations by developers remain in force.
- 3.3. That political donations from individuals be limited to \$1,000, with an exemption for party compulsory levies on parliamentarians.
- 3.4. That the EFA disclosure forms be amended to require those who make reportable donations, parties and candidates to reveal whether a particular reportable donation was made to a party with the intention that the money be spent or subsequently donated to benefit a particular local campaign.
- 3.5. Donations disclosed in registered party returns should be considered to have the capacity to create conflicts of interest for all elected councillors and mayors nominated by that party who have benefited from campaign expenditure disclosed in that party's return, as if the donation had been made individually to each councillor or mayor. Further, candidates or candidate groups who have received a donation from a candidate or group in another council area or ward should be treated as if they had directly received a donation from the original donors to the donor group.

4. Election expenditure caps to apply to local government elections

An important reason for creating reasonable caps on electoral expenditure is one of equality and fairness. While it is recognised that, to some extent, the level of funding that a party or campaign is able to attract is some indication of the level of broader community support it has, 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. For any democracy to flourish, controls should be put in place to discourage this practice.

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.

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. In councils with wards, mayoral candidates would need to campaign in all the wards. 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.

As noted in Appendix C of the issues paper, local government election expenditure caps apply in a number of overseas jurisdictions.

If electoral expenditure restrictions are to be effective they must also apply to associated entities of political parties as well as third parties.

Third parties may be special interest groups, lobby groups or individuals, corporate or institutional supporters of a political party or candidate. Election expenditure caps on third parties would enhance our local government democracy and remove loopholes that would enable parties and candidates to avoid any expenditure caps. These caps would also prevent a third party dominating an election campaign through excessive levels of expenditure.

Recommendation 4

4.1. Place a cap on local government election expenditure by candidates and a group of candidates at 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).

- 4.2. For a ballot for a popularly elected Mayor an additional expenditure cap for mayoral candidates should apply. The additional amount would be 25 cents for each voter in the local government area (i.e. 50% above the councillor expenditure cap).
- 4.3. Party expenditure for state registered parties for local government elections should 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 claimed under this cap must not be targeted at specific local government areas.
- 4.4. Local government expenditure by associated entities of political parties for the purposes of implementing an election expenditure cap are to 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.
- 4.5. There be a third party expenditure cap of \$5,000 for local government elections.
- 4.6. Election expenditure caps to apply for the four month period up to and including an election to all candidates, registered political parties, third parties and associated entities.
- 4.7. The cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning, but should not apply to volunteer labour.

5. Compliance with limits on donations and expenditure caps

No system of regulation can be effective unless it is enforced. At a minimum effective and independent auditing of both donations and expenditure would be required. More regular disclosure would be required of expenditure during any election period. During this period continuous on-line disclosure of electoral expenditure should be mandatory. The costs of compliance, including auditing expenses, must be considered in any public funding model.

Given the highly politicised nature of any allegation of non-compliance it would be appropriate for there to be an independent Electoral Commissioner(s) appointed to the Election Funding Authority. Such a position would be modelled on the existing statutory position of the Director of Public Prosecutions. This officer would be given the role of general oversight of the electoral funding and expenditure scheme and standing to commence prosecutions for breaches.

Penalties for breach would depend on the seriousness of the breach. They would range from on the spot fines for minor breaches, total or partial loss of public funding, confiscation of unlawful donations, hefty fines; and in extreme cases of over expenditure disqualification as a candidate or councillor.

Intention to deceive should not be an element of any offence relating to false disclosure, non-disclosure or breach of expenditure cap as such an element has historically been extraordinarily difficult to prove with the consequence that few actions are commenced or convictions obtained. Absence of intent should however be a factor in defending these cases and in determining the level of any penalty.

Given the potential serious consequences of any alleged breach, any prosecution for a substantial breach of the Act should be brought before an independent judicial body modelled on the Court of Disputed Returns.

Recommendation 5

- 5.1. That an independent commissioner in the election funding authority, modelled on the statutory position of the Director of Public Prosecutions, be created with the role of general oversight of the scheme and standing to commence prosecutions for breaches.
- 5.2. Suggested penalties for breach to include on the spot fines for minor breaches, total or partial loss of public funding, hefty fines, confiscation of unlawful donations; and in extreme cases of over expenditure disqualification as a candidate, or councillor.
- 5.3. Penalties for more serious breaches to be imposed by a court modelled on the Court of Disputed Returns in cases where breaches of the electoral funding and expenditure rules are identified.
- 5.4. Intention to deceive should not need to be proved for any offence relating to false disclosure, non-disclosure or breach of expenditure cap though it should be a factor in the defence and for determining the severity of any penalty.
- 5.5. To ensure compliance auditing of any party or candidate who receives public funding must be compulsory.
- 5.6. Continuous disclosure of electoral expenses to be required for the four month period up to and including any election.
- 5.7. The costs of compliance to be considered in any public funding model.