

**Submission  
No 63**

## **2012 LOCAL GOVERNMENT ELECTIONS**

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**The Greens submission to the  
Joint Standing Committee On Electoral Matters  
Inquiry into the administration of the September 2012  
Local Government Elections**

Joint Standing Committee on Electoral Matters 15 February 2013  
Parliament House  
Macquarie St  
Sydney NSW 2000

Mr Jai Rowell, Chair.

The Greens welcome the opportunity to make this submission to the committee on the conduct of the 2012 Local Government elections in NSW.

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**Inquiry Terms of Reference:** *To inquire into and report on the September 2012 Local Government elections with particular reference to:*

- a) the costs of the elections;*
- b) the experience of councils that conducted their own elections;*
- c) possible legislative changes to improve the efficiency of and participation in Local Government elections;*
- d) non-residential voting in Local Government elections; and*
- e) the impact of requirements under the Election Funding, Expenditure and Disclosures Act 1981 on participation by candidates in Local Government elections and possible legislative changes to remove any barriers to participation; and*
- f) any other related matter.*

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## Summary of recommendations.

### Voting System

1. The NSW Government should legislate to require a minimum of three councillors per ward for councils with wards.
2. The election of popularly elected mayors be amended so that the popular mayoral ballot elects the mayor from amongst only those councillors elected in the normal manner.
3. Removal of Group Voting Squares and above the line voting be trialled for council/ward elections with no more than five councillors to be elected.
4. Referendums must be held before any changes to ward structures and boundaries are made (other than those required by population changes).
5. Referendums must be held in each affected council before any councils are amalgamated.
6. That only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside.
7. That a count-back method be introduced for the filling of any casual vacancies that may occur during the period between council elections.

### Public Funding

8. 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.
9. That councils be financed by the NSW state government to meet this cost.
10. 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.
11. The 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.
12. The size of the funding pool for each council or ward should be modest to reflect the grassroots nature of local politics and adjusted according to

the number of voters on the electoral roll for each council or ward.

13. The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
14. No candidate or group is to receive more than half of the total pool of potential funding available for the council or ward contested.
15. 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.
16. That the cost of conducting NSW Local Government elections be paid for by the NSW Government as part of the NSW Electoral Commission's budget.

### Funding, Expenditure and Disclosure

17. That caps on donations apply to local government elections.
18. That there be an exemption from the prohibition on donations in respect of party donations of funds to the campaign account of its endorsed local government candidates or group of local government candidates.
19. Cap local government election expenditure by candidates and a group of candidates at whichever is the greater amount of \$10,000 or:
  - a) 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 alternatively,
  - b) a base amount of \$5,000 plus 25 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).
20. 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).

21. 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 under this cap must not be targeted at specific local government areas.
  22. 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.
  23. There be a third party expenditure cap of \$5,000 for local government elections with a ban on corporations being third parties.
  24. Election expenditure caps to apply for the four month period up to and including election day. The caps to apply to all candidates, registered political parties, third parties and associated entities.
  25. The cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning, but should not apply to volunteer labour.
  26. 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 to benefit a particular local campaign.
  27. 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.
  28. That an independent commissioner in the Election Funding Authority or Local Government Department, 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.
  29. 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.
  30. 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.
  31. 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.
  32. To ensure compliance auditing of any party or candidate who receives public funding must be compulsory.
  33. Continuous disclosure of electoral expenses to be required for the four month period up to and including any election.
  34. The costs of compliance to be considered in any public funding model.
  35. The threshold for requiring an audit should be raised from \$2,500 to \$5,000 for candidates and groups which are not entitled to electoral funding.
  36. Accredited accountants be included as permitted auditors for returns with amounts less than \$20,000.
- Conduct of the Election**
37. Elections for local government in NSW be conducted solely by the NSW Electoral Commission.
  38. That the requirement for a candidate statutory declaration be discontinued. The candidate's signature would be sufficient on the candidate's statement.
  39. That the "Request to form a Group" form be reviewed with a clear space provided on the form to write the name of the group. The

composite name request section should be on a separate form or clearly specify that it is not to be used by candidates running on a single party ticket.

40. The Electoral Commission allow joint council and ward how to votes to be registered for handing out at shared booths, and allow multi-council how-to-votes to be handed out during council elections.
41. That use of on-demand printing of ballot papers be investigated with a view to allowing absent voting in local government elections.
42. That use of *ivote* online voting be extended to NSW local government elections.
43. That the pre-poll period be shortened to commence on the Friday a week prior to election day.

### **Counting, Scrutiny, Counting Centre**

44. Counting should be done in local returning offices.
45. A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.

# 1. Voting system

## *Undemocratic election systems*

In March 2012 the state Government changed the method of election for councils with two councillors per ward to proportional representation where the quota to elect a councillor became 33.33% of the vote plus one vote. This was a welcome move which helped improve the democracy of the elections of a number of councils. The quota however is still too high.

In response to the legislation in a successful attempt to maintain the Labor party's 100% dominance of the councillor positions and avoid improved proportional representation, Botany Council changed its election system. The council divided all of its two councillor wards into wards of one councillor thus maintaining a 50% quota for a multi member council. When all of the councillors are from one party as they are on Botany Council this often has the effect of entrenching power for a controlling group and can lead to poor decision making and community disillusionment with local government. Wollongong Council was a notorious example of the effect of an anti-democratic voting system prior its sacking.

While the Botany Council election system should be banned more comprehensive action is required. In general, a more proportional representation system is better suited to local government and single or two councillor wards have election quota thresholds too large to allow genuine diversity of representation.

### **Recommendation:**

1. The NSW Government should legislate to require a minimum of three councillors per ward for councils with wards.

## *Popularly elected mayors*

The creation of an additional council seat for the mayor for councils with a popularly elected mayor distorts proportionality of representation for the council. In many cases, the party/group receiving the largest number of first preference votes is rewarded with an extra position as the mayor, as well as the opportunity to use a mayoral casting vote. A political party or independent group can end up with majority control of a council with voter support substantially less than 50%.

An example of this is the City of Sydney, particularly at the first election with its current boundaries. In that election the Clover Moore group secured around 40% of the vote and elected 4 councillors among the total 9, but then went on to win the separate Mayoral election. The effect was for that group to have (by exercise of the Mayor's additional casting vote) effective control of decision making. In the recent election the same result was achieved with the group polling approximately 46% of the vote.

The idea of popularly elected mayors has good support among the community generally, but needs reform to avoid the cost to fairness and the risk of entrenchment of power. The Greens advocate for the popular mayoral election count to be conducted after the election of councillor and only from among the elected councillors. That is, with the exclusion of mayoral candidates who have not been successfully elected as councillors.

### **Recommendation:**

2. The election of popularly elected mayors be amended so that the popular mayoral ballot elects the mayor from amongst only those councillors elected in the normal manner.

## *Above the line voting*

The candidate grouping and group voting square mechanism used in NSW for council elections is cumbersome, potentially misleading and unnecessary for elections where only small numbers of councillors are to be elected.

This system is the evolutionary result of the system introduced to reduce a growing informal vote in the Australian Senate due to increased candidate numbers and ballot paper complexity. It provided a ticket voting box for each group on the ballot paper which registered between one and three preference tickets.

This system later spread to NSW elections, again to address the high incidence of informal voting in NSW Legislative Council elections. NSW council elections inherited the system despite a high informal voting rate not being a significant factor.

Following the 1999 NSW state election and the infamous "table cloth" LC ballot paper and the misleading use of party group names and preference harvesting strategies, changes advocated by the Greens were introduced to abolish registered

tickets. The new system allowed voters to mark preferences above the line if they wished, which also had the effect of requiring parties to nominate groups of sufficient candidates to ensure that a single "1" was a formal vote. This is the system that applied to most council ballots in the last three elections.

There is substantial evidence that voters do not understand the changes or the differences between the NSW system and the ticket voting system that still applies for the Senate. The option of voting either above or below the line on a small council ballot paper is confusing to many voters. This shows up as papers marked both above and below the line, and particularly in a very low rate of above the line preference allocation and a high rate of preference exhaustion.

In the absence of a significant problem with informal voting prior to the introduction of ticket voting there is no advantage in persisting with group voting squares and above the line voting for council elections for most councils elections.

The advantages in returning to only below the line voting are many – a simpler ballot paper, no need for groups to nominate large lists of candidates to secure group voting boxes, more focus on candidates as individuals and less on party allegiances and an overall increase in voter empowerment.

The change would have little impact on the use of ballot paper data entry and computerised counting which relies for its supposed efficiency on the low rate of use of above the line preferencing – however this submission argues later that the computerised vote counting system is unnecessary, expensive and hard to scrutinise for most local government elections.

The Greens believe there is a strong case for below-the-line only voting in many councils, especially those divided into wards. It may well be the case that group voting squares and above the line voting could be abandoned for all council elections including those without wards, and this could be further considered in the light of experience following its abandonment in ward elections.

#### **Recommendation:**

3. Removal of Group Voting Squares and above the line voting be trialled for council/ward elections with no more than five councillors to be elected.

### ***Council and ward boundaries and amalgamations***

In furtherance of the principle of grassroots democracy and in support of the view to empowering local communities through the forum of local government the Greens NSW support the requirement that proposed significant local government area boundary changes be approved by referenda in each affected council area; and that open, public debate on the proposed boundary changes be conducted prior to referenda.

It seems clear that many people find ward systems confusing. Arbitrary redrawing of ward boundaries compounds the problem, especially when polling places which voters regularly use in state or federal elections are not available for voting in their ward.

For example, in Marrickville changes were made prior to the 2004 elections to move from three wards of four councillors to four wards of three which saw boundaries created which had more to do with the protecting the electoral advantage of the majority block of incumbent councillors than community of interest. There is a need to provide assurance that the system is transparent, as well as stopping last minute attempts to gerrymander ward boundaries by incumbent councillors.

The Greens NSW support the requirement for referenda in each affected council for approval of proposed council amalgamations. The Greens will not support forced amalgamations or boundary changes, and will hold the O'Farrell government to its 2011 election commitment that it would not support forced amalgamations.

The Greens NSW recognise that questions of amalgamation and boundary change facing regional and rural council areas are vastly different to those facing urban metropolitan councils. Where amalgamations and boundary changes do occur in geographically larger council areas, they must be approved by referenda by local communities.

Council amalgamations should not occur without complete protection for council staff jobs, wages and working conditions.

There are other viable options, including resource sharing, creative regional governance structures and greater state support that should be considered prior to amalgamation in most circumstances.



### **Recommendations:**

4. Referendums must be held before any changes to ward structures and boundaries are made (other than those required by population changes).
5. Referendums must be held in each affected council before any councils are amalgamated.

### ***The non-residential roll***

The non-residential enrolment allowed to property owners and others subject to payment of rates works to privilege the already wealthy, and allows the election of councillors who are more likely to have conflicts of interest due to having solely a financial interest in the council area and not as a resident. The enfranchisement of representatives of corporate entities on the non-residential roll compounds the problem. For example, Marrickville currently has four non-resident Councillors who were eligible to nominate for the 2013 election because of direct business interests or as the nominees of companies. Business owners, non-resident landlords and corporates already have sufficient capacity to influence local affairs without distorting the council voting system by granting them additional votes and eligibility to nominate for a council area in which they do not live.

### **Recommendation:**

6. That only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside.

### ***By-election elimination***

The replacement of councillors who resign or are removed from elected office results in the need for a single-position by-election, except where the vacancy occurs in the last year of their term. Besides resulting in significant additional costs to conduct the election, the outcome will also often affect the proportional make-up of the council.

The Senate and NSW Legislative council have a casual vacancy replacement method that preserves proportionality of representation. The Tasmanian Legislative and the Australian Capital Territory Assembly utilise a count-back method for determining the replacement of a casual vacancy.

The same ballot papers which were used to originally fill the position are recounted to elect a replacement, a method which usually results in

replacement by a member of the same party or group of candidates.

The present limit on replacements during the final year of the term could be reduced to a few months as the count back method could be operated quickly and would entail minimal cost.

### **Recommendation:**

7. That a count-back method be introduced for the filling of any casual vacancies that may occur during the period between council elections.

## 2. Public Funding

### Summary

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). The current system creates the perception that many local government decisions are influenced by donations rather than being motivated by the common good. This perception 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.

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

These recommendations include:

- a) a reasonable wage for councillors;
- b) modest public funding of local government elections;
- c) caps on donations
- d) greater transparency in relation to donations to political parties made specifically for use by a particular local campaign;
- e) caps on local government election expenditure; and
- f) limits on third party election expenditure.

These reasonable restrictions already apply to candidates and parties in state elections.

### ***Councillors to be paid a reasonable wage***

Many councillors work very long hours on council matters and for some it is a full time but very poorly paid job. Councillor allowances are based on the council's size and presently range from roughly \$7,500 to \$25,000 annually with most councillors receiving no more than \$16,000. 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. If they are elected, their ability to represent constituents may be limited by the need to have other employment.

The election contest is left to those who are either prepared to make large and unacceptable financial sacrifices and limits participation to those who are wealthy or possibly having commercial vested interests.

This situation is unacceptable and has limited the quality of performance of many councils. Wealth should not determine who is able to nominate to contest a local government election, and the need for councillors to have other work reduces their capacity to respond to the needs of their constituencies. Many residents assume that councillors will be available during normal working hours to respond to their queries and are surprised to learn that their local representatives have other jobs.

As state governments have 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:**

8. 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.
9. That councils be financed by the NSW state government to meet this cost.

### ***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 leveling of the election playing field. This would entail modest public funding of election campaigns;

a limit on donations from individuals and caps 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 large donors, and it is a necessary prerequisite for cleaning up political funding.

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.

#### **Recommendations:**

10. 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.
11. The 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.
12. The size of the funding pool for each council or ward should be modest to reflect the grassroots nature of local politics and adjusted according to the number of voters on the electoral roll for each council or ward.
13. The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
14. No candidate or group is to receive more than half of the total pool of potential funding available for the council or ward contested.
15. 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.

#### ***Cost to councils of conducting elections***

The use of the NSW Electoral Commission for the conduct of council elections has generally resulted in more professional and trustworthy local elections but at a substantial financial cost to councils. A significant part of the extra expense has been due to the mandatory use of the electronic counting system and the counting centre at Riverwood. The data entry process at the counting centre is difficult to scrutinise, especially for independent candidates and for candidates from councils remote from the centre.

This submission argues for conducting the count for ward elections and the simpler at-large council elections at local returning offices, which would yield substantial reductions in time to count completion, improvements in opportunity for scrutiny of the counting process and financial savings to councils.

Nevertheless, the Greens support the cost of elections being borne by the Electoral Commission and the NSW Government, not the individual councils as this is a vital part of the NSW political system.

#### **Recommendation:**

16. That the cost of conducting NSW Local Government elections be paid for by the NSW Government as part of the NSW Electoral Commission's budget.

### **3. Funding, Expenditure and Disclosure**

#### ***Caps on donations to apply to local government elections***

The caps on political donations and electoral communication expenditure that apply to state elections under the Election Funding, Expenditure and Disclosures Act 1981 do not apply to local government elections. Sections 95AA and 95E of the Act make this explicit. It was remiss of the previous and current NSW governments not to extend the application of donation and expenditure caps to local government elections.

The Election Funding Authority and the public will not know the amounts of donations and expenditure in relation to the 2012 local government election until the second half of 2013 when disclosures are required to be lodged.

A final conclusion must wait until the candidate and party returns for the 2012-13 year have been analysed, but based on accounts of the volume of electoral material that was disseminated in some LGAs it seems likely that state election donations cap amounts (\$2,000 to a candidate and \$5,000 to a party or group) were exceeded.

It is an absurd situation to have a cap on donations and expenditure in relation to state elections without a similar arrangement for local government elections. The people of NSW will not be convinced that politics has been cleaned up until the corroding influence of large donations is eradicated.

#### **Recommendation:**

17. That caps on donations apply to local government elections.

#### ***Party funding of campaigns of their endorsed candidates***

Most supporters and members of a party donate to the party rather than to the party's candidate or group of candidates, but parties as organisations are now prohibited from making donations to their own candidates campaign accounts. It is an unnecessary problem for parties wanting to donate party funds to their own candidates' campaigns, while maintaining a highly desirable level of transparency regarding the funding and expenditure for each individual candidate's campaign.

The simple solution is for parties and candidates to be exempted from the donation prohibition provisions when the party is making a donation to the campaign accounts of its endorsed local government election candidates.

#### **Recommendation:**

18. That there be an exemption from the prohibition on donations in respect of party donations of funds to the campaign account of its endorsed local government candidates or group of local government candidates.

#### ***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.

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 or individuals, corporate or institutional supporters of a political party or candidate. As corporations exist for the primary purpose of making profits, the Greens support a ban on such corporations being third parties in election campaigns.

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.

#### **Recommendations:**

19. Cap local government election expenditure by candidates and a group of candidates at whichever is the greater amount of \$10,000 or:
  - a) 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 alternatively,
  - b) a base amount of \$5,000 plus 25 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).
20. 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).
21. 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

under this cap must not be targeted at specific local government areas.

22. 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.
23. There be a third party expenditure cap of \$5,000 for local government elections with a ban on corporations being third parties.
24. Election expenditure caps to apply for the four month period up to and including election day. The caps to apply to all candidates, registered political parties, third parties and associated entities.
25. The cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning, but should not apply to volunteer labour.

#### ***Donations to a party to benefit a specific local campaign to be disclosed***

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 spend it on a local campaign, there is no way for the public to link the donor with the local campaign. The local candidate or group of candidates is not required to disclose the donation nor the benefit derived from it.

Local donations 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 be 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 of any reportable donation being made to the party with the intention that it be applied to the local campaign.

The 2013 EFA disclosures are likely to reveal most donations made to the state parties, with candidates and candidate groups almost universally making nil returns despite the dissemination of abundant election campaign material on their behalf.

Evidence gathered from inspection of the receipts and donor declarations for the previous election reveals that some 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 some donors. The Greens understand that a number of complaints made to the Department of Local Government between 2008 and 2012 have been dismissed by virtue of this loophole.

### **Recommendations:**

26. 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 to benefit a particular local campaign.
27. 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.

### ***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 should be required. More regular disclosure should 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 Commissioner(s) appointed to the Election Funding Authority or Local Government Department. 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, significant 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.

### **Recommendations:**

28. That an independent commissioner in the Election Funding Authority or Local Government Department, 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.

29. 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.
30. 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.
31. 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.
32. To ensure compliance auditing of any party or candidate who receives public funding must be compulsory.
33. Continuous disclosure of electoral expenses to be required for the four month period up to and including any election.
34. The costs of compliance to be considered in any public funding model.

### **Auditing**

Auditing of disclosure returns has proved to have had some practical difficulties in implementation. In particular access to and the fees charged by Registered Company Auditors and the various thresholds for requiring an audit.

The Greens believe that accredited accountants (eg those authorised under the Oaths Act) should be able to audit disclosure returns, perhaps with an upper limit on overall donations or expenditure.

The monetary thresholds of expenditure and income for a campaign to attract a requirement of auditing are low (especially combined with the above limit on auditors). For political parties the cost of auditing hundreds of ward campaigns that are fairly small is cumulatively high with no obvious benefit to the public. More expensive individual campaigns, or those claiming public funding should such a scheme be introduced, should still require an audit.

### **Recommendations:**

35. The threshold for requiring an audit should be raised from \$2,500 to \$5,000 for candidates and groups which are not entitled to electoral funding.
36. Accredited accountants be included as permitted auditors for returns with amounts less than \$20,000.

## 4. Conduct of the Election

### *Privatised elections*

Following the 2008 local government election, a number of local councils and the Local Government Association raised concerns about the increased cost of council elections charged by the NSW Electoral Commission (NSWEC).

In 2011 the O'Farrell government addressed these concerns by permitting local councils to choose to run their own election rather than hire the NSWEC. In 2012 there were 14 councils which decided to run their own elections.

In practice this meant privatising the council election, and most of these councils hired the Australian Election Company, and the remaining councils took advice and used forms provided by the NSWEC. The private AEC was readily confused with the Australian Electoral Commission a federal government entity widely known as AEC.

These privatised elections were riddled with errors that undermined public confidence in the electoral process. While not everything that could have gone wrong did go wrong there were a litany of errors and frequent examples of returning officers demonstrating a serious lack of professionalism.

The Greens found it very difficult to get information on how these elections would be run differently from the NSWEC. Many of these councils would not provide information on how to nominate, where polling booths would be located, or when pre-polling would take place until much later than the NSWEC.

The nomination forms used by these councils were much less user-friendly and required a lot more time to fill out. It took much longer to compile lists of polling places for those councils with privatised elections.

There were other problems that were more serious than a simple lack of user-friendliness.

In one privatised election the Greens Mayoral candidate submitted the completed "candidate of a registered party" forms for nomination. The Returning Officer required that she use another set of forms (for nomination by electors) which resulted in her appearing on the mayoral ballot paper with no party affiliation next to her name and on the

councillor ballot paper as a candidate for The Greens.

In another council area, it was reported that some candidates had complained after others allegedly had their nominations accepted despite submitting their nomination deposit fees hours after the close of nominations deadline.

It was extremely difficult to get proper information on who had nominated for these councils. In some cases a list of candidates was posted without information on their party or which candidates were grouped together. In other cases nomination information was hand-written on a piece of paper then posted online as a scanned PDF. The inability to provide the proper information online to be accessed by voters and political parties is a serious problem for our electoral processes.

All materials handed out on election day must be registered with the local Returning Officer. The registration of how to votes largely ran smoothly, with a few exceptions. For those councils which didn't employ the New South Wales Electoral Commission (NSWEC) to run their election, some of the Returning Officers were very inconsistent and difficult when it came to registering materials. In the case of the NSWEC there were clear standards that all Returning Officers followed, and where there were issues the position could be clarified.

For Council elections run by private companies the Returning Officers were the final decision-makers and there was no ability to appeal a decision in a reasonable time frame, considering the urgency of getting how-to-votes printed. Port Stephens Council had two successive Returning Officers resign prior to election day.

In the cases of Cessnock and Port Stephens (both run by the same company), the Greens were instructed to make changes to how-to-votes for which registration was sought, which were not required by any other council, and the changes were contradictory between those two councils. In other cases privatised Returning Officers demanded a change of colours on designs or just took a very long time (up to four days) to respond to simple requests for registration.

When registering materials, these returning officers regularly issued rulings that were unnecessarily prescriptive and very different to those issued by the NSWEC. The Port Stephens returning officer (one of them) demanded that we show all three of



the Greens candidates on the ballot paper mock-up on the how-to-vote, while the Cessnock returning officer demanded that we show the names of all the other lead candidates on the ballot paper mock-up, yet neither asked us to do what the other one asked us to do. These two ROs worked for the same company for councils in the same part of NSW.

Following election day, these privatised returning officers were much slower at posting results. Barely any figures were posted on election night, while every NSWEC council had most of the primary votes posted on election night. It took longer to get most of the primary votes posted, and in some cases it took weeks before final results were available. Twenty days after election day, some results for Fairfield and Newcastle councils had still not been posted, although the candidates had been informed of the results.

The concept of private companies running public elections is flawed. Australia has one of the most competent, effective, independent systems of electoral administration in the world. The NSWEC costs more money than a private company because they have the experience and they spend the money to do a thorough job. The private companies may be less expensive but the resulting low standard of the process is unacceptable.

The Greens do not expect that a better performance is likely at future elections, and so this experiment should not be repeated.

#### **Recommendation:**

37. Elections for local government in NSW be conducted solely by the NSW Electoral Commission.

#### ***Improved Nomination Forms***

At state and federal elections, candidates' signatures on nomination forms are not required to be witnessed by a Justice of the Peace and there have been no negative repercussions arising from this.

Local government elections have the extra requirement for a candidate statement that is mainly for advertising the candidate's qualifications and takes the form of a statutory declaration. It requires that the candidate's signature must be witnessed according to the Oaths Act.

It is an unnecessary and antiquated inconvenience, particularly if there is a lengthy ticket of candidates

forming a group, all of whom must sign in the presence of the witness. It is not always easy to find an approved witness, especially if time is running short and particularly in geographically large LGAs. This declaration acts as a bureaucratic barrier to participating in an election.

The "Request to form a Group" form also needs improvement. Many candidates were confused about where they could write the name of a party group. The issue was compounded by having a rarely used section on the form for a composite name group comprised of two or more parties. This section contained the only obvious place to write the name of the group but it was not to be completed by a group endorsed by a single party.

#### **Recommendations:**

38. That the requirement for a candidate statutory declaration be discontinued. The candidate's signature would be sufficient on the candidate's statement.
39. That the "Request to form a Group" form be reviewed with a clear space provided on the form to write the name of the group. The composite name request section should be on a separate form or clearly specify that it is not to be used by candidates running on a single party ticket.

#### ***Joint Local Government Areas how to votes and shared polling booths***

The NSW Electoral Commission would not register some multi-council how to vote cards for distribution at polling booths where voting was being conducted for two or more LGAs. This resulted in voters at booths shared by different councils receiving how to vote cards not relevant to their council, or none at all because there is not the time or opportunity for booth workers to ascertain in what council area each voter lives. These types of cards make it easier for voters and booth workers at shared polling booths. They are permitted at state and federal elections.

In the case of polling places covering two LGAs the NSWEC permitted registration of how-to-votes with one LGA on one side of the piece of paper and the other LGA on the other, but this was of little use for the Sydney Town Hall which was a booth for all councils.

**Recommendation:**

40. The Electoral Commission allow joint council and ward how to votes to be registered for handing out at shared booths, and allow multi-council how-to-votes to be handed out during council elections.

**Absent voting**

Many voters remain unaware of the requirement to vote, not just within the boundaries of their local government area, but where applicable, within their ward.

Many voters were unable to get back to their local areas by the close of polling, thus they were not able to cast a vote despite the best of intentions. The generally low voter turnouts in local elections are compounded by the increased difficulty in voting for those who are away from their local government area on election day.

Absentee voting has previously been restricted by the local conduct of council elections and the sheer number of different ballot papers that would need to be stocked.

The availability of new information technology systems makes possible some form of absentee voting by allowing for custom ballot papers to be printed on demand at one or more designated absent voting polling places in each council area. The vote would still be a declaration vote.

**Recommendation:**

41. That use of on-demand printing of ballot papers be investigated with a view to allowing absent voting in local government elections.

**Ivote**

Online voting has proved to be a success at NSW State elections. It's extension to Local Government elections should be made a priority. If additional funding is required by the NSWEC this should be provided.

**Recommendation:**

42. That use of *ivote* online voting be extended to NSW local government elections.

**Pre-poll voting period**

The provision of two weeks for pre-poll voting is excessive, especially with the extension of alternatives such as absent voting or *ivote*. The first

week of the pre-poll period attracts many fewer voters than the second and is very demanding to staff and scrutineer for independent candidates or smaller parties.

**Recommendation:**

43. That the pre-poll period be shortened to commence on the Friday a week prior to election day.

## 5. Counting, Scrutiny, Counting Centre

### *Local Counting*

Conducting the count for ward elections and the simpler at-large council elections at local returning offices would save the Electoral Commission money compared to conducting the count for all councils at a centre such as Riverwood. The experience with local counting in past elections shows that the result is more quickly determined with no less confidence in its accuracy.

Local counting would also mean that scrutineering could be more easily carried out by people who live in the council area. To travel to Riverwood to scrutineer was impractical for most people who would have scrutineered if the count were conducted locally.

Scrutineering at Riverwood was also hampered by the potential need to provide many scrutineers as data entry is done by teams of 20 or more operators at a time. Although candidates could have reasonable confidence in the accuracy of data entry, there was no way to establish confidence in the original sorting of ballot papers in local returning offices other than by the means of a recount.

### **Recommendation:**

44. Counting should be done in local returning offices.

### **Recounts**

Greens council candidates were involved in some close races. When combined with the above mentioned difficulties with scrutiny of the process, there was reduced confidence in the accuracy of the final result.

Whether a free recount is conducted is currently at the discretion of electoral officials. If a difference of less than 50 votes for example and/or a difference of a very small percentage of the vote between a successful and unsuccessful candidate were established as a trigger for a free recount, it would remove a lot of uncertainty for candidates and electoral officials. Other triggers could be substantial differences between booth election night counts and the check counts for those booths.

If the Returning Officer decides not to order a recount, the individual candidate(s) are faced with significant costs if they choose to require one.

### **Recommendation:**

45. A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.