Submission No 18

INQUIRY INTO ADMINISTRATION OF THE 2007 NSW ELECTION AND RELATED MATTERS

Organisation: The Greens

Name: Mr Chris Maltby

Position: Registered Officer

Telephone: 02 9519 0877

Date Received: 3/03/2008

The Greens submission to the
Joint Standing Committee On Electoral Matters –
Inquiry into the administration of the 2007 NSW Election

Written by Chris Maltby, Registered Officer, 19 Eve St, Erskineville NSW 2043.

1 March 2008

1. LEGISLATIVE ASSEMBLY ELECTIONS UNDEMOCRATIC

There needs to be a major overhaul of the method of Legislative Assembly (LA) elections. The absence of the issue of the type of electoral system in the inquiry terms of reference is a serious deficiency and the Committee should nonetheless examine the impacts of an outmoded and undemocratic system of single member electorates for the Legislative Assembly elections.

In the 2007 state election, the result of use of this system was that the Labor party won considerably more seats than its vote justified.

Figures from Antony Green's, *New South Wales Election 2007: Final Analysis*, *NSW Parliamentary Library Research Service, Background Paper No 108* show Labor (including Country Labor) polled 39 % of the primary vote but won an astonishing 55.91% of the seats (52 of 93). The Labor vote, if the election system were fair, should have resulted in Labor winning about 36 seats. That is a huge difference of 16 seats.

Conversely the Greens polled over 8.95 % of the LA votes which was 352,805 votes, but won none of the 93 seats, but should have received 8 seats.

The solution to this unfair system is simple. Hare-Clark proportional representation similar to that used in Tasmania should be introduced, with New South Wales divided 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.

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, and some even insist that leave be taken.

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

It is not just public sector employees who are 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.

The NSW Government should clarify the situation and direct that its departments must not force state election candidates to take leave or leave without pay if they become a candidate.

3. SECTION (PROVISIONAL) VOTES UNFAIRLY EXCLUDED

At state elections when the names of voters can not be found on the electoral roll, but the voter maintains that they should be on the roll, the vote they cast is apparently called a “section” vote (in a federal election this is called a provisional vote). It seems that the large majority of section/provisional votes are rejected by the Returning Officer and not included in the count. Evidence for this was available during the counting of the 2007 federal election when the AEC website showed that around only 10% of provisional votes cast were actually admitted and counted.

These figures are no longer available on the AEC website but would be accessible by inquiry. In most federal divisions something like 1,000 provisional votes per federal electorate (about 1% of the vote) were not accepted while only about 100 were.

The number of section votes actually counted in state electoral districts, (each containing about half the number of voters of a federal division), indicates that a similar rate of exclusion of section/provisional voters happens at state elections.

The Greens view is that most provisional voters are probably voters who have been on the electoral roll then moved to a new home, failed to change their electoral roll address, and then unknown to them have been removed by the Australian Electoral Commission from the roll. Correspondence from the AEC may not have been forwarded to their new address. Their vote is then rejected because they are not on the electoral roll anywhere.

This discriminates against people who have moved house, including renters, many of whom have to relocate regularly. Tens of thousands of otherwise eligible citizens have their votes rejected for essentially bureaucratic reasons.

A possible solution to this problem is if a person has been on the roll and can produce on election day evidence of their current residential address, such as a driver's licence, or other suitable identification detailing an address to the satisfaction of the electoral official at a polling booth, then their vote should be accepted and be included in the count.

4. IMPROVING ACCURACY OF THE ELECTORAL ROLL

Part of the solution to the issue involving section/provisional voters would be to implement strategies to prevent the problem and maintain the enrolment for as many of these people as possible. While enrolment is largely governed by the AEC and it is federal legislation under which it conducts its activities, there is good reason for the Joint Standing Committee to make recommendations to the AEC and federal government on matters that would increase democratic participation by voters in NSW state elections.

There are many residential properties where no-one is enrolled. It would presumably require collaboration with the AEC, but a data base of houses and units without enrolments could be maintained. These addresses could then be doorknocked by the AEC or State Electoral Commission to assist any new residents to enrol. Alternatively, enrolment forms could be posted to those addresses. While some would be holiday homes with no-one eligible to enrol, a number of eligible people will be assisted to get on the roll .

Another profitable avenue for strengthening the rolls would be ensure that the old addresses of people changing addresses were supplied with enrolment forms, either by mail or personal visit. Residences that have been vacated by a voter are likely to soon be filled by other voters who may not take the time to complete change of address forms.

The Greens also support the concept of automatic enrolment and updating of the rolls by the AEC using approved databases such as those maintained by Motor Registries and Centrelink. The AEC would probably need additional powers to be created by the federal government in order to carry out this task.

Alternatively the AEC could write to all people who change their address with particular government instrumentalities and public utilities, and enclose an enrolment form. This would be useful but not as effective as automatic enrolment.

The Joint Standing Committee could make recommendations to the federal government and the AEC along these lines.

5. INACCURACY OF PROGRESSIVE LEGISLATIVE COUNCIL COUNT

In the weeks following the election the State Electoral Commission website displayed a progressive count of the Legislative Council results which lacked accuracy. The count gave the percentage vote of each group, but separately included the informal vote of about 8% as if it were part of the formal votes. As a result, the percentage of the formal vote for the ballot paper groups was significantly understated.

When the informal votes were removed and the groups' true percentage calculated, the percentage vote of those groups who polled well increased markedly. For example, The Greens were in reality polling one percent better than the figure displayed on the website, and Labor and the Coalition were polling about three or four per cent higher than the website figure.

The web figures confused the public and some media outlets so that they were underestimating the number of seats won and percentage vote of those groups that polled well.

The percentage vote should only ever be expressed as a fraction of the total formal vote. It is misleading to include the informal vote in the count.

The State Electoral Commission's website also did not contain parties' state wide votes for the Legislative Assembly which was inconvenient for political parties and the media.

6. POSTAL VOTE APPLICATIONS & PRE-POLL 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 returned to the local returning officer. It should be illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer.

The current system causes delay for the voter and an extra administrative burden for the SEO when parties arrive with large bundles of accumulated applications close to the deadline for receipt of postal vote applications. It also undermines the identity of the State Electoral Commission and leads to a smearing 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 SEO material. For example, the use by the part of voter information from the application to distribute how-to-vote material at the time the ballots are mailed by the SEO is questionable on privacy grounds.

A trend in recent elections at both State and Federal levels has been a significant increase in pre-poll voting. At both elections in 2007 there were problems at pre-poll centres with long queues, especially close to election day. This trend to increased pre-poll voting seems to be associated with changes to working arrangements etc, and will require additional staff resources and possibly additional pre-poll centres at future elections.

7. STRENGTHEN LEGISLATION TO STOP FALSE STATEMENTS

Some media outlets and political candidates spread false or misleading information about other parties or candidates in order to damage their credibility and hence their vote. This is done in print, on radio, television and websites. The existing provision to discourage this is largely ineffectual.

Where this does occur, there is little that the victim of such slurs can do in the timescale of an election period.

Section 151A of the Parliamentary Electorates and Elections Act 1912 which deals with publishing false information is far too narrow. It is confined to misleading a voter "in relation to the casting of his or her vote" which we understand has been interpreted by the courts as being confined to false or misleading information influencing a voter in the act of numbering a ballot paper. The narrowness of the provision fails to prohibit simple false statements designed to damage a political opponent during an election campaign. Such a limited interpretation deters only a small percentage of people who publish false or misleading information during an election campaign.

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

The penalties for breach of 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.

Note: In addition to this submission, The Greens have made a submission to the Select Committee Inquiry into Electoral and Political Party Funding in relation to a number of financial matters arising from the 2007 NSW election.

Ph: (02) 9519 0877
Fax: (02) 9519 2177
GPO Box 1220
Sydney 2001