Submission No 14

Administration of the 2011 NSW election and related matters

Organisation: The Greens NSW

Name: Mr Chris Maltby

Position: Registered Officer

Date Received: 22/02/2012

The Greens submission to the Joint Standing Committee On Electoral Matters Inquiry into the administration of the 2011 NSW Election

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

21 February 2012

Contents

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 into 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 NSW Government direct that its departments must not force its employees to take leave or leave without pay if they become a state election candidate.

Recommendation 3a: The NSW Electoral Commission ensure that District Returning Officers and Officers in Charge at polling locations, especially pre-poll locations have discretion to intervene in relation to possible breaches of the 6m rule when there are reasonable grounds (eg inclement weather) to do so.

Recommendation 3b: 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, is explicitly forbidden and subject to penalty for breaches.

Recommendation 4a The NSW Electoral Commission conduct a proper two candidate preferred count in every electorate, including a full distribution of preferences and display these results on its website.

Recommendation 4b The NSW Electoral Commission calculate each party's state wide Legislative Assembly vote tally and display the result on its website.

Recommendation 5 Completed postal vote application forms should only be returned to the local returning officer and it be made illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer.

Recommendation 6 That pre-poll voting commence on the Friday, that is, eight days before polling day.

Recommendation 7a Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.

Recommendation 7b 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 7c: 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 8 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 9 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 10 Reduce the third party election expenditure cap of $1.1 million substantially to an amount of $250,000.

Recommendation 11 Individual membership fees be capped at $250 per annum and be permitted to be deposited in a party's state election campaign account.

Recommendation 12 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 13 That the state government and EFA confirm and advise parties that the ban on developer, tobacco and for profit gambling and alcohol industry donations applies to political parties registered with the NSWEC and not just to particular bank accounts of such parties.

Recommendation 14 That 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 endorsed by the party.

Recommendation 15 The EFA clarify for candidates and parties that election expenditure from a party branch bank account accompanied by 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 16 That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day be electoral expenditure for which electoral funding can be claimed.

Recommendation 17 The EFA should be comprised of the Commissioner and two completely independent members who are not appointees of the major parties.

Recommendation 18a: 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 18b: 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 19: That the 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 20 That Section 93 of the 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.

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 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.

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 into 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, 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.

Recommendation 2: The NSW Government direct that its departments must not force its employees to take leave or leave without pay if they become a state election candidate.

3. POLLING BOOTH MATTERS

A number of concerns were raised with The Greens by local campaigners relating to issues with the selection of polling places and interactions with landowners where booths are sited.

In relation to Pre-Poll locations in particular, a number of offices were without shelter that was not within the 6m canvassing restriction. While some NSWEC officials were willing to use discretion in enforcement of the 6m rule during periods of inclement weather, this was inconsistent. In most cases, perhaps due to the general slowness at pre-poll locations and especially when it is raining, the various candidate representatives maintain friendly relations during the pre-poll period. An overly strict application of the 6m restriction does not assist the voters, the candidates or the NSWEC officials.

Polling booths are often sited on private land, particularly property belonging to one or another religious organisation. An incident occurred [redacted] involving a Greens member handing out Greens HTV's. I quote from a report received from the local group convenor [redacted]

> "Our member took over from a previous booth worker and stood in the same spot as the previous worker had been in all morning. The spot was one metre in from the left gate column and one metre inside the fence line. He was standing beside booth workers from other parties and legitimately handing out voting material. They were all outside the prescribed distance from the electoral booth entrance.
>
> "The local Monsignor approached our member and demanded that he "get off his property". The electoral officer was called and she informed the Monsignor of our

> members right to stand where he was. The Monsignor then demanded that he remove our two Greens signs that were mounted on the church halls' fence. The Electoral Officer upheld the decision to remove the Greens posters, based on the fact that it was the "landlord's" right to decide which posters were allowed.
>
> "So our member did so, noting that were no less than seventy signs from other political parties attached to the fence. It is critical that the Electoral Commission has control of the conduct of the entire election period on any properties they rent for the day and if senior representatives of this church cannot respect our democratic electoral process then this venue must not be used in future elections and this should extend to all potential "landlords" in the future."

This was not the only booth location at which there were unpleasant interactions with representatives of the landowners. The NSWEC should review its standard agreement with the owners of lands where polling places are to be located to make it clear that there is to be no discrimination for/against any candidate or candidates or their representatives or parties, including the installation of temporary signs, etc.

Recommendation 3a: The NSW Electoral Commission ensure that District Returning Officers and Officers in Charge at polling locations, especially pre-poll locations have discretion to intervene in relation to possible breaches of the 6m rule when there are reasonable grounds (eg inclement weather) to do so.

Recommendation 3b: 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, is explicitly forbidden and subject to penalty for breaches.

4. INACCURACY OF RESULTS ON STATE ELECTORAL COMMISSION WEBSITE

In approximately 16 Legislative Assembly districts the NSW Electoral Commission website continues to display incorrect candidates in the two candidate preferred (TCP) count. This occurs when either a Greens candidate or an independent outpolled a major party candidate, which in the case of the 2011 election was almost always a Labor candidate.

The Greens came first or second in 14 electorates on primary vote and after distribution of preferences but only in two of these electorates are the Greens displayed on the NSWEC website as being in the two candidate preferred count. Inexplicably the NSWEC includes the Labor candidate in the TCP count when the candidate came third or worse.

This is completely misleading for the general public and media and will continue to be so until after the 2015 election. It understates and is inaccurate in relation to the performance of Greens candidates in those electorates. The error should be corrected as soon as possible.

Antony Green in his *2011 New South Wales Election: Analysis of Results Background Paper No3/2011* published by the NSW Parliamentary Research Service, reveals the true two candidate preferred counts in those 16 or so electorates. If Antony Green can display the correct result, then the NSWEC with its resources should also be able to do that.

The NSWEC should also complete and publish a full distribution of preferences for all LA electorates, including those where a candidate has obtained more than 50% of the primary vote.

The NSW Electoral Commission's website also does not contain parties' state wide vote tally for the Legislative Assembly which is inconvenient for political parties and the media.

Recommendation 4a: The NSW Electoral Commission conduct a proper two candidate preferred count in every electorate, including a full distribution of preferences and display these results on its website.

Recommendation 4b: The NSW Electoral Commission calculate each party's state wide Legislative Assembly vote tally and display the result on its website.

5. POSTAL VOTE APPLICATIONS RETURNED DIRECTLY TO NSWEC

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 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 SEO 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 the SEO is questionable on privacy grounds.

Recommendation 5: Completed postal vote application forms should only be returned to the local returning officer and it be made illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer.

6. SHORTEN PRE-POLL VOTING PERIOD

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 the NSWEC 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 6: That pre-poll voting commence on the Friday, that is, eight days before polling day.

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 time-scale 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 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.

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.

The Greens are also aware of registered leaflets distributed in a number of districts which were intended to encourage Greens voters to indicate a particular preference order for other candidates. As in the past, these leaflets relied on the superficial and misleading appearance of being an official Greens leaflet. In one case [redacted] a Greens representative was informed by the District Returning Officer that the leaflet was registered and that he could not prevent its distribution. The Greens are concerned that these kinds of leaflets are in breach of the spirit of S151G of the Parliamentary Electorates and Elections Act or indeed the actual provisions regarding content, and should not be being registered by the NSWEC or District Returning Officers.

Recommendation 7a: Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material with appropriate penalties.

Recommendation 7b: 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 7c: 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.

FINANCIAL ASPECTS

8. COMPLEXITY OF FUNDING MODEL

The election expenditure capping and reimbursement model adopted in NSW is too complex. 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 reimbursement of electoral expenses up to cap of a specified and indexed 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 8: 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.

9. 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 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 9: 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.

10. EXPENDITURE CAPS

The NSW expenditure caps are too generous but at least they have seen 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.

The third party expenditure cap of $1.1 million should be reduced substantially to an amount of about $250,000. The corporate response to the federal governments proposed Resource Super Profits Tax (RSPT) where mining interests spent $22 million in a successful campaign to change the proposal is a clear example of how wealthy third parties can vastly outspend political parties. In an election contest should third parties such as companies or unions campaign collaboratively with vast financial resources they will have a huge impact on engineering an election outcome.

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. Reducing the third party expenditure cap would still allow third party campaigning but weaken the unfair influence that third party wealth could currently buy.

Recommendation 10: Reduce the third party election expenditure cap of $1.1 million substantially to an amount of $250,000.

11. INCOME THAT CAN BE DEPOSITED IN CAMPAIGN ACCOUNT

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 a non-corrupting source of income for a party.

The cap on membership fee amounts in the Election Funding and Disclosures Act is too generous at $2,000 (indexed) per annum and should be more reflective of the costs to parties of the administration of that membership.

Recommendation 11: Individual membership fees be capped at $250 per annum and be permitted to be deposited in a party's state election campaign account.

12. FUNDING FOR PARTY ADMINISTRATION BASED ON VOTE NOT MPS

The public funding available for party administrative expenditure has helped reduce parties' reliance on corporate donations. 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 12: 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.

13. BAN ON CERTAIN TYPES OF DONATIONS NEEDS CLARIFICATION

Some confusion surrounds the ban on donations from developers, the tobacco industry and for profit alcohol and gambling industries. An article in the Sydney Morning Herald, 7 November 2011, "*Billionaire Tinkler investigated over Nationals campaign donations*"[1]: suggested that if a party deposited such donations in a federal election account other than its state election campaign account then that would be acceptable under the law.

It clearly is not acceptable in terms of ethics in politics and election campaigns and it is submitted that the intention of the act was to ban parties and donors from accepting and making those types of donations.

We are unaware of any wording in the Election Funding, Expenditure and Disclosures Act 1981 that would permit such donations. The ban on these donations should apply to the party, and not just its state election campaign bank account. This is a reasonable interpretation, and the issue should be clarified. To allow such donations to be banked in another bank account of the party would make a mockery of the ban on developer, tobacco and for profit gambling and alcohol industry donations.

Recommendation 13: That the state government and EFA confirm and advise parties that the ban on developer, tobacco and for profit gambling and alcohol industry donations applies to political parties registered with the NSWEC and not just to particular bank accounts of such parties.

14. CAP ON DONATIONS FROM PARTY TO ITS CANDIDATES NEEDS CLARIFICATION

Most supporters and members of a party donate to the party rather than to the party's candidate.

This combined with the fact that the $2,000 cap on donations to a candidate applies to a party when donating to its candidate, creates a problem for partyies not being able to transfer available funds to the campaign account of its endorsed candidate. Currently parties effectively donate much more than $2,000 to its candidates by utilising section 84(7) of the Act and invoicing them for election expenses incurred by the party, but the candidate never pays the invoice, or by making loans to the candidates. Either is a convoluted method for a party to provide essential support to its candidates' campaigns. 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 that parties and candidates should be exempt from the donations caps when the party makes donations to its endorsed Legislative Assembly 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 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.

Recommendation 14: That 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 endorsed by the party.

---

1 http://www.smh.com.au/nsw/billionaire-tinkler-investigated-over-nationals-campaign-donations-20111107-1n3ch.html

15. CANDIDATE BANK ACCOUNTS AND SPENDING FROM AN ELECTION ACCOUNT

The Greens were left with the impression by the EFA that every LA candidate must have a campaign bank account and that all election expenditure must come from the party's campaign account or a candidate's campaign account. We understand however that 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 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 15: The EFA clarify for candidates and parties that election expenditure from a party branch bank account accompanied by 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.

16. 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.

Recommendation 16: That campaign office rent and wages for a campaign manager/coordinator in respect of the week following polling day be electoral expenditure for which electoral funding can be claimed.

17. MEMBERS OF THE EFA TO BE COMPLETELY INDEPENDENT

Under section 6 of the 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 17: The EFA should be comprised of the Commissioner and two completely independent members who are not appointees of the major parties.

18. 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 18a: 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 18b: 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.

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

Under section 69 of the 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 19: That the 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.

20. PARTIES TO DISCLOSE SPECIFIC ELECTORATE EXPENDITURE

Under the 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 20: That Section 93 of the 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.

Ph:(02) 9045 6999
Fax:(02) 9519 2177
GPO Box 1220
Sydney NSW 2001