Submission No 24

ADMINISTRATION OF THE 2019 NSW STATE ELECTION

Organisation: The Greens NSW

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The Greens NSW submission to the Joint Standing Committee On Electoral Matters Inquiry into the administration of the 2019 NSW Election

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SUMMARY OF RECOMMENDATIONS

Recommendation 1: That a Hare-Clark proportional representation election system similar to that used in Tasmania should be introduced, with New South Wales divided into electoral districts each returning between five and nine 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: That the ability of public sector employees to contest elections be included in a review of NSW Constitutional provisions relating to elections.

Recommendation 3a: The NSWEC ensure that Officers in Charge at polling locations, especially pre-poll locations have the 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 NSWEC ensure that Officers in Charge at polling locations and other polling officials receive adequate training to correctly respond to questions from voters or other issues that arise.

Recommendation 3c: The NSWEC invest in an online incident reporting system for the reporting and effective management of incidents, including any future risks to volunteers and candidates.

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Recommendation 5b: The NSW Parliament conduct an inquiry into the impacts of increased early voting and use of internet voting with a view to further amendments to the Electoral Act 2017 to defend the integrity of and public confidence in the electoral system.

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Recommendation 6b: That the NSW Parliament consider the implications of s215 for when councils run their own elections.

Recommendation 7: Completed postal vote application forms should only be returned to the local returning officer or the NSWEC 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 or the NSWEC.

Recommendation 8: That pre-poll voting commences on the Friday that is eight days before polling day.

Recommendation 9a: Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material, similar to the South Australian Act, with appropriate penalties.

Recommendation 9b: 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 9c: Registration of leaflet provisions in s200 of the Electoral Act 2017 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 10: Amend the reimbursement for expenses election funding model so that both party and candidate funding is based solely on a dollar amount per vote obtained, similar to pre-2019 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 11a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 11b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 per cent.

Recommendation 12a: That the Electoral Funding Act 2018 be amended to revoke s37(3)(a) and s37(5)(a) to permit membership revenue to be transferred for utilisation in campaign accounts

Recommendation 12b Individual membership fees be capped at $250 per annum and be permitted to be deposited in a party's state election campaign account.

Recommendation 13: 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 14a: That the definition of prohibited donors in the Electoral Funding Act 2018 (s51) be extended to include mining interests.

Recommendation 14b: That the JSCEM obtain advice on the impact of Spence vs. Queensland on NSW practice and that the advice be provided to the NSWEC, Registered Parties and the public.

Recommendation 14c: That s36(1) and (2) of the Electoral Funding Regulations be repealed or otherwise amended in light of the Spence vs. Queensland judgment.

Recommendation 14d: That the state government formally requests the federal government to legislate for a ban on developer, tobacco and for profit gambling and alcohol industry political donations so that the NSW ban on such donations cannot be circumvented.

Recommendation 15: 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 16a: That necessary campaign staff including the campaign manager/coordinator and election compliance staff and campaign office rent for these staff following polling day be electoral expenditure for which electoral funding can be claimed.

Recommendation 16b: That audit costs are permitted as claimable items in election expenditure returns.

Recommendation 17: The NSWEC should invest in online systems with secure file transfer options to streamline and make the necessary compliance work be done as efficiently as possible for disclosures and expenditure claims.

1. LEGISLATIVE ASSEMBLY ELECTIONS UNDEMOCRATIC

The Greens again highlight that 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 – the Greens made this point in our submission to the JSCEM Inquiry into the 2011 and 2015 state elections – 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 2019 state election, the result of use of this system was that the Liberal, National and Labor parties won more seats than their respective vote justified.

PARTY	VOTE %	SEATS WON	SEATS BASED ON VOTE	SEATS WON %	DIFFERENCE %
Liberal	32.0%	35	30	37.6%	+5.6%
National	9.6%	13	9	14.0%	+4.4%
Labor	33.3%	36	31	38.7%	+5.4%
Greens	9.6%	3	9	3.2%	-6.4%
SFF	3.5%	3	3	3.2%	-0.3%
Others	12.1%	3	11	3.2%	-8.8%

Figures from the ABC's / Antony Green's New South Wales Election 2019 website[1] show the Liberal party polled 32.0% of the primary vote but won 37.6% of the seats (35 of 93). The National party polled 9.6% of the vote and won 14% of the seats (13 seats). If the election system were fair, it would have resulted in the Coalition winning about 42% of the seats or 39 seats. Instead combined they won 48 seats which is a significant difference of about 9 seats more than their vote deserved. Labor won 33.3% of the vote and 38.7% of the seats which was 36 seats.

In contrast to the Coalition's fortunes, The Greens polled 9.6% of the LA votes (equivalent to the National Party) but won just 3.2% of the seats being three seats. A fair outcome would have resulted in the Greens winning 9 seats. The lower house outcomes for parties in the 2015 state election and earlier elections are similarly undemocratic. 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 into electoral districts each returning between five and nine 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 nine 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 five 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

[1] https://www.abc.net.au/news/elections/nsw/2019/results/party-totals

between five and nine 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

In the past, various state government departments have taken different approaches when one of their public servant employees became a candidate in a state election. Some departments have not taken issue with an employee becoming a candidate, while others urged the employee to take leave or leave without pay, and some even insisted 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 affected. 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: That the ability of public sector employees to contest elections be included in a review of NSW Constitutional provisions relating to elections.

3. POLLING BOOTH MATTERS

In relation to Pre-Poll locations, a number of offices were in locations where no shelter from sun or rain was available that was not within the 6m canvassing restriction. While some NSWEC officials were willing to use discretion when enforcing the 6m rule, this was inconsistent. In most cases, perhaps due to the general slowness at pre-poll locations, 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.

A number of our volunteers and candidates suffered significant verbal abuse and even assault by booth workers for other political parties. Support was provided to our volunteers and candidates in accordance with our obligations under the Work Health and Safety Act 2011, including reporting relevant incidents to the NSW Police.

However, we believe that it is incumbent upon, if not required under Work Health and Safety legislation, for the NSW Electoral Commission (NSWEC) to facilitate the gathering and reporting of information about incidents of this nature at polling stations, and to train polling place officials in handling them. If patterns are evident in the collected data, this should be provided to parties and candidates to allow additional support for volunteers.

Recommendation 3a: The NSWEC ensure that Officers in Charge at polling locations, especially pre-poll locations have the 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 NSWEC ensure that Officers in Charge at polling locations and other polling officials receive adequate training to correctly respond to questions from voters or other issues that arise.

Recommendation 3c: The NSWEC invest in an online incident reporting system for the reporting and effective management of incidents, including any future risks to volunteers and candidates.

4. LEGISLATIVE COUNCIL VOTING

The 2016 changes to the Australian Senate voting system by the replacement of group voting tickets with a requirement to number at least six above-the-line boxes have had a beneficial impact on Senate representation without a substantial loss of vote values through exhaustion.

According to Antony Green, there was a doubling of the use of above-the-line preferencing in the 2019 NSW election to around 25% of all votes as compared to the 2015 rate, as well as an increase in below-the-line voting. These increases seem most likely to be a result of the Senate changes, with voters becoming familiar with the abolition of group voting tickets and their capacity to direct preferences as they wish.

Nonetheless, the loss of vote values through exhaustion of further preference directions has remained high in NSW Upper House elections with 1.7 Quotas (7.85% of the total votes) exhausting in 2019 - similar to 2015 (1.6 Quotas). By comparison, the 21st elected candidate managed to reach a little less than 0.6 Quotas, barely over one third of the exhausted vote total.

Adopting the Senate voting system for NSW Upper House elections and requiring voters to number at least six boxes above the line could provide a number of benefits. First and most importantly, it would reduce the exhaustion rate giving more voters a say and representation in the NSW Parliament. Second, it would allow the minimum number of candidates required in a group to be reduced from the present fifteen to as few as three reducing the complexity of the ballot paper and nominations process for both candidates and the NSWEC, while still ensuring compliance with the NSW Constitution's minimum of 15 effective candidate preferences. Finally, the alignment with the Senate system would reduce voter confusion in NSW at both state and federal levels of government.

The requirement for below-the-line voters to number at least fifteen boxes would remain unless savings provisions similar to those in the Commonwealth Electoral Act were to be provided by Constitutional amendment.

In addition to the above, and as part of a review of NSW Constitutional provisions relating to elections, the Legislative Council counting system should be amended to remove the element of randomness in the selection of the ballots to form a transfer of a surplus. The automated counting of NSW Upper House elections has eliminated any practical benefits provided by the random sampling method for manual counting. The removal of the random sampling would have the key benefit of making possible the validation of the proprietary vote counting software used by the NSWEC in any given election.

We note that the Committee has previously supported the removal of randomness in counting Local Government elections.

Recommendation 4a: That the voting system for the NSW Legislative Council be aligned with that for the Australian Senate, with voters required to number no fewer than six boxes above the line.

Recommendation 4b: That the NSW Constitution Act be amended to replace the random sampling of ballots in surplus transfers to a method involving partial vote values (transfer values).

5. iVOTE

The Greens have a number of concerns relating to the iVote system. The iVote audit notes that 234,404 voters used the iVote system (5.2%) in the 2019 election – a small decline since the 2015 election but a large increase over the 2011 election. The rapid increase in the popularity of this method of voting and the issues exposed in the 2015 election indicate that it is now overdue for a comprehensive review and legislative support.

Security

The Greens retain a general concern about the security implications of adoption of any form of online voting, some of which arises from the intrinsic conflict between proper scrutiny of the process, both by electors and by parties and candidates, and the maintenance of secrecy of individual votes. Nonetheless, the benefits of increasing participation rates and, potentially, from improvements to ease of use may justify online voting being available.

The emergence of implementation flaws after the 2015 election which had the potential to allow voter secrecy to be breached and votes to be altered was deeply concerning to The Greens. Further, the mandated use of proprietary closed-source software has made effective scrutiny of the iVote system difficult, despite the recent provisions for limited access to the code. We note that the ACT has made the online voting software it uses open-source so that it can be checked for flaws. We believe that this should be a requirement of any system used in NSW and should replace s159(2) of the NSW Electoral Act 2017 which mandates the secrecy of the source code.

Voter target groups

The Electoral Act limits online voting to those with vision impairment, those residing more than 20km from a polling place and those who declare that they will be "outside NSW on polling day." Anecdotal evidence suggests that many users of iVote may have used the "outside NSW" declaration as a way to avoid the hassle of voting in person at pre-poll or on election day, or of using a postal vote. The Greens have concerns with the trend away from almost universal participation of voters in voting on election day and its impact on the perceived significance of the electoral process. With over 25% of electors in 2015 voting by pre-poll, iVote or post, further investigation into the causes and consequences are warranted.

Recommendation 5a: The Electoral Act 2017 be amended to require that iVote software be made open source.

Recommendation 5b: The NSW Parliament conduct an inquiry into the impacts of increased early voting and use of internet voting with a view to further amendments to the Electoral Act 2017 to defend the integrity of and public confidence in the electoral system.

6. REGISTRATION OF ELECTORAL MATERIAL

During the 2019 NSW Election there were delays to online registration of electoral material. Furthermore there were some items that were approved but then subsequently unapproved by the NSWEC which would suggest that there needs to be some review of processes. The delays may have been associated with insufficient trained staff at the NSWEC. It impacted more seriously and unfairly on those parties and candidates whose material was not lodged immediately after the draw of ballot papers - with those approvals seemingly stuck in the processing queue behind material from better resourced parties.

The short interval between the ballot draw and the opening of pre-poll makes time of the essence for parties and candidates who cannot afford additional print runs for pre-poll and election day materials.

Also the Greens would strongly recommend that there is an amendment made to Electoral Act 2017 to ensure that there be specific consideration as part of s200 of the act (registration of electoral material), for the offence of publishing material falsely appearing to be authorised by the NSWEC, listed in s215 of the act.

Recommendation 6a: That the NSW Parliament amend s200 of the Electoral Act 2017 to directly reference Section 215 of the act in the consideration of an application to register electoral material.

Recommendation 6b: That the NSW Parliament consider the implications of s215 for when councils run their own elections.

7. 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 be required to be returned only to the local returning officer or the NSWEC. It should be illegal for parties and candidates to encourage voters to send a completed application to anyone other than the District Returning Officer or NSWEC.

The current system causes delay for the voter and an extra administrative burden for the NSWEC 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 NSWEC 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 NSWEC material.

Recommendation 7: Completed postal vote application forms should only be returned to the local returning officer or the NSWEC 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 or the NSWEC.

8. REDUCE DURATION OF PRE-POLL VOTING PERIOD

The trend in recent elections at both NSW and Federal levels for significant increases in pre-poll voting was repeated in the 2019 election. The pre-poll voting rate increased from 8.2% in 2011 to 14.2% in 2015 to 21.7% in 2019. Candidates and parties cannot ignore such a significant voter segment but are faced with many logistical challenges, particularly with the writs for NSW elections being issued less than three weeks before election day resulting in an interval of 3 days between the close of nominations and commencement of pre-poll voting.

Despite the increase in pre-poll voting, the first week of pre-poll voting remains slow. 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 Monday to Thursday in the first week of pre-poll voting.

A delay in the start of pre-polling would ameliorate issues that arose with delays in registration of materials. Although it is not a requirement that material distributed to voters at pre-poll booths be registered, the impracticality of having separate printing jobs effectively mandates that materials be registered before any printing, either for pre-poll or polling day.

Those small number of voters who would have otherwise voted on those days can either vote a little later, lodge an iVote, or avail themselves of the opportunity to cast a postal vote.

Recommendation 8: That pre-poll voting commences on the Friday that is eight days before polling day.

9. 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. Our experience in 2019 was that an independent candidate tried to pass himself off as a Greens candidate using materials with Greens colours and a similar logo.

These statements can be made 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 misrepresentations can do in the time-scale of an election period.

Section 180 of the NSW Electoral Act 2017 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. A relevant model exists in South Australia's Electoral Act 1985 s113(2) "*A person who authorises, causes or permits the publication of an electoral advertisement (an Advertiser) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.*"

The South Australian Electoral Commissioner is then empowered to request withdrawal of the material, require a publication to be retracted, and take court action. An election tribunal could also fill this role particularly if constituted by members of the public and legal professionals to provide a broad spectrum view of the legal and practical effect of such conduct.

A clear example of the need for this occurred in the campaign for the marginal seat of East Hills in 2015 where a candidate narrowly lost the election after being vilified in widely distributed material.

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.

Recommendation 9a: Legislate to prohibit false or misleading statements being made about a party or candidate in the media and electoral material, similar to the South Australian Act, with appropriate penalties.

Recommendation 9b: 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 9c: Registration of leaflet provisions in s200 of the Electoral Act 2017 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

10. COMPLEXITY OF FUNDING MODEL

The Greens submission to the Schott review expressed our general support for the model used for the 2011 election and we make the following observations in relation to the evolution of state electoral funding in NSW.

The election expenditure capping and reimbursement model that applies in NSW is too complex. In 2011 for lower house seats there was a tiered reimbursement model with funding ratios declining sharply as thresholds of expenditure were reached. In addition to each candidate's expenditure cap there was a separate cap for the party's expenditure in that seat as part of a state-wide cap. While this provided some certainty to candidates and parties as to the likely public campaign funding level to expect, there were different reimbursement formulae for the two expenditure categories.

The changes made for the 2015 election and enshrined in the Electoral Funding Act 2018 retain the reimbursement for expenditure component of funding and introduced a generous per-vote amount, though with differing rates for Assembly and Council votes. While the need will remain for candidate and party expenditure to be properly checked to ensure that caps are not being breached, the payment of electoral funding could be significantly simplified by adoption of a per-vote dollar amount as a direct entitlement similar to what was used for federal elections until 2018. The per-vote amount should be determined to be sufficient for a “no frills” comprehensive campaign to be conducted within the funding available for 4% of the vote.

This would result in electoral funding payments being made by the NSWEC within weeks instead of many months.

In conjunction with such a change it would be advisable to legislate to specify that electoral funding could only be spent on political campaigning, administration, and election costs and it be made an offence to spend election funding on personal private matters.

Recommendation 10: Amend the reimbursement for expenses election funding model so that both party and candidate funding is based solely on a dollar amount per vote obtained, similar to pre-2019 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.

11. EXPENDITURE CAPS

The NSW expenditure caps on both political parties and candidates are too generous. However, their existence has resulted in a reduction in the massive expenditure that took place in some hotly contested seats in pre-2011 elections. With the expansion of state electoral funding amounts, 2023 party expenditure caps of $12.3 million, and candidate expenditure caps of $132,600 should be reduced substantially to ease financial pressure on the state and to further reduce the perceived and actual influence of donors in buying an election outcome.

There are strong arguments that caps on all spending should be reduced substantially. Along with adequate public funding, constraining expenditure is an important vehicle for reducing the influence of wealth on political outcomes.

The Greens propose that caps on all entities should be reduced proportionately. Any attempt to reduce the limits on third parties without an equivalent reduction in the spending of political parties would shift the balance of capacity to communicate with voters away from community and working people's organisations and into the professionalised parties. This outcome would work against a healthy democracy.

The corporate response to the previous federal government's proposed Resource Super Profits Tax (RSPT) where mining interests spent $22 million in a successful campaign to change the proposed legislation, or the expenditure of over $60m by a party in the 2019 federal election are clear examples of how wealthy interests

can, in the absence of appropriate caps, deploy their wealth to change election outcomes and affect policy changes in a deeply undemocratic way.

It is unacceptable that the sheer wealth of large corporations or wealthy individuals can buy an election outcome through a massive advertising campaign when an election should be won or lost by voters assessing the merit of the policies and qualities of parties and candidates.

Unions and other membership-based not-for-profit organisations and their peak bodies act as third parties to articulate the aggregated views of their members. Their contribution might at times be uncomfortable for some political parties but their role in the democratic process should be protected as a fundamental expression of freedom of political communication.

It is particularly important in an environment where wealthy individuals and corporations can make political donations that the less powerful have a vehicle for expressing their views and protecting their interests by campaigning collectively.

For-profit corporations and the peak bodies that represent them can make no similar claim to political validity. As typified by the examples above, their intervention is almost always about protecting profitability and reducing restraints on their business activity in a way that works against the public interest.

There is a strong case therefore for differentiated treatment of third parties depending on whether they are membership-based, democratic and not-for-profit or in the alternative a business entity or a peak body representing business entities.

Recommendation 11a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 11b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 percent.

12. 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. Party subscriptions (membership fees) 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. (See sections 37(3)(a) and 37(5)(a) of the Electoral Funding Act 2018. This restriction disproportionately impacts smaller parties with lower revenue streams

The cap on membership fee amounts in the Electoral Funding Act 2018 (s26(8)(a)) 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 12a: That the Electoral Funding Act 2018 be amended to revoke s37(3)(a) and s37(5)(a) to permit membership revenue to be transferred for utilisation in campaign accounts

Recommendation 12b Individual membership fees be capped at $250 per annum and be permitted to be deposited in a party's state election campaign account.

13. 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 statewide.

Recommendation 13: 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.

14. CLOSING LOOPHOLE ON BAN ON TYPES OF DONATIONS

The definition of a prohibited donor in the Electoral Funding Act 2018 includes property developers and tobacco, liquor and gambling business entities because of a perception of undue influence or corruption. We believe that the public shares the same perception in relation to mining interests. Therefore, the same prohibition should be extended to include those who seek licences to explore or exploit mineral resources for the same reasons.

The ban on donations from developers, the tobacco industry and for profit alcohol and gambling industries may be able to be avoided by a party by depositing such donations in a federal election account instead of its state election campaign account or state administration account which would be illegal. The impact of the High Court judgement in the Spence vs. Queensland case on this question needs consideration.

It clearly is not an acceptable practice in terms of ethics in politics and election campaigns.

The ban on these donations should apply to the party, and not just some of its bank accounts. In an effort to close the loophole, the state government should request the federal government to introduce similar legislation to ban developer, tobacco and for profit gambling and alcohol industry political donations at a federal level.

Similarly, the NSW caps on donations are circumvented by a similar process of parties banking large donations in federal election accounts. To close this loophole comprehensive federal legislation is required.

Recommendation 14a: That the definition of prohibited donors in the Electoral Funding Act 2018 (s51) be extended to include mining interests.

Recommendation 14b: That the JSCEM obtain advice on the impact of Spence vs. Queensland on NSW practice and that the advice be provided to the NSWEC, Registered Parties and the public.

Recommendation 14c: That s36(1) and (2) of the Electoral Funding Regulations be repealed or otherwise amended in light of the Spence vs. Queensland judgment.

Recommendation 14d: That the state government formally requests the federal government to legislate for a ban on developer, tobacco and for profit gambling and alcohol industry political donations so that the NSW ban on such donations cannot be circumvented.

15. REMOVE CAP ON DONATIONS FROM PARTIES TO THEIR OWN CANDIDATES

Most supporters and party members donate to the party rather than to the party's candidate. This combined with the fact that the current $2,700 cap on donations to a candidate applies to a party when donating to its candidate, creates a problem for parties not being able to transfer available funds to the campaign account of its endorsed candidate.

Currently parties effectively donate much more than $2,700 to their candidates by utilising section 9(9) of the Act and invoicing them for election expenses incurred by the party on their behalf. Those expenses are then classified as being part of the candidate's electoral expenditure, whether or not the invoice is paid by the candidate. The method is a convoluted way for a party to provide essential financial support to its

candidates' campaigns. Section 9(9) effectively acknowledges that parties will need to finance their candidates, but it is a cumbersome and questionable way to achieve this objective.

Now that, in addition to parties claiming electoral funding for its own election expenses, only parties can claim funding for expenses of its candidates, the provision is not as strange as it was when candidates could claim election expenses. (See sections 67 and 70.) Nevertheless, parties should have the option of directly transferring campaign funds to its candidate, rather than be forced to use the convoluted method set out in section 9(9).

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 15: 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.

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. Key examples include wages for critical campaign staff including the campaign manager for one month after polling day and compliance and finance staff who have been employed to complete the State election return for approximately two and a half months beyond the election day and the campaign office rent for these staff members.

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.

Election expenditure exponentially increases the volume of transactions and responsible political parties choose to audit this expenditure. As the audit fees associated with elections can be significant, audit costs should be included as claimable items in election expenditure.

Recommendation 16a: That necessary campaign staff including the campaign manager/coordinator and election compliance staff and campaign office rent for these staff following polling day be electoral expenditure for which electoral funding can be claimed.

Recommendation 16b: That audit costs are permitted as claimable items in election expenditure returns.

17. MINIMISING THE ADMINISTRATIVE BURDEN OF COMPLIANCE

The NSWEC currently uses manual processes for auditing electoral and administrative funding for political parties, and this is time intensive for finance and compliance staff. The compliance burden associated with these manual processes can account for 70% of the work in our finance and compliance team during election periods and accounts for a significant proportion of the funding for small parties.

Information technology improvements have been introduced in many government departments for the upload of confidential documents such as online forms and the secure file transfer to assist with disclosures and expenditure claims for example the ATO and the NDIS.

Recommendation 17: The NSWEC should invest in online systems with secure file transfer options to streamline and make the necessary compliance work be done as efficiently as possible for disclosures and expenditure claims.
