

**Submission
No 27**

**ADMINISTRATION OF THE 2023 NSW STATE ELECTION AND OTHER
MATTERS**

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The Greens NSW submission to the Joint Standing Committee On Electoral Matters



Inquiry into the administration of the 2023 NSW Election

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SUMMARY OF RECOMMENDATIONS

Recommendation 1a: That elections for the Legislative Assembly use a proportional representation election system, with New South Wales divided into electoral districts of approximately equal size of voters, each returning between five and nine members.

Recommendation 1b: That the number of districts for the Legislative Assembly be restored to 99.

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.

Recommendation 4a: That the voting system for the NSW Legislative Council is 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 with a method involving partial vote values (transfer values).

Recommendation 5a: That the NSW Constitution be amended to require additional voting squares be numbered in Legislative Assembly elections, and to allow savings provisions to allow counting of ballots with fewer boxes numbered.

Recommendation 5b: That the parliament consider legislation to ban or limit the use of “Just Vote 1” advertising material.

Recommendation 6: That the parliament amend the Electoral Act 2017 and Local Government Act 1993 and associated regulations to permit the early opening of early voting boxes for sorting but not counting in line with Sections 274(2AA) of the Commonwealth Electoral Act.

Recommendation 7: That the Electoral Act 2017, or if necessary, the Constitution Act 1902 be amended to require an independent security risk assessment of automated systems used to scrutinise votes similar to the 2021 amendment of s273 the Commonwealth Electoral Act, but including the requirement for a public statistical audit that compares a random sample of paper ballots with their digitised preferences.

Recommendation 8: The Electoral Act 2017 be amended to require that any Technology Assisted Voting software be made open source.

Recommendation 9a: 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 9b: That the Local Government Act be amended to require the Electoral Commission to conduct elections for Local Government Areas.

Recommendation 10: 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 11a: 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 11b: Establish an independent election tribunal with the 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 11c: 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 that 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 12a: That the two expenditure caps for Legislative Assembly candidates be combined, receive a modest increase and carve-outs be removed.

Recommendation 12b: That the definition of Political Expenditure be more clearly defined.

Recommendation 12c: That public funding on a reimbursement basis be introduced for Local Government elections.

Recommendation 13a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 13b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 per cent.

Recommendation 14a: That an amount not in excess of \$250 (indexed) from each membership or affiliation subscription to be able to be deposited into a party's state or local government campaign accounts.

Recommendation 14b: That the cap on membership and affiliation fees be reduced from \$2,000 (unindexed) to \$500 (indexed).

Recommendation 15: 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 16a: That the definition of prohibited donors in the Electoral Funding Act 2018 (s51) be extended to include mining interests.

Recommendation 16b: That the NSW 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 17: 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.

1. LEGISLATIVE ASSEMBLY ELECTIONS ARE 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, 2015 and 2019 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 2023 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	26.8%	25	25	26.9%	+0.1%
National	8.6%	11	8	11.8%	+3.2%
Labor	37.0%	45	34	48.4%	+11.4%
Greens	9.7%	3	9	3.2%	-6.5%
Others	14.6%	9	14	15.1%	+0.5%

Figures from the ABC's / Antony Green's New South Wales Election 2023 [website](#)¹ show Liberal party representation was in proportion to its vote, but the National party polled 8.6% of the vote and won 12% of the seats (11 seats). Labor's 37% of the vote delivered 48% of the seats (45). If the election system were fair, it would have resulted in the Coalition winning about 39% of the seats or 33 seats. Instead combined they won 36 seats. Labor won 11 more seats than their vote deserved.

In contrast to the Coalition's fortunes, The Greens polled 9.7% of the LA votes (more than the National Party) but won just 3.2% of the seats (3 seats). A fairer outcome would have resulted in the Greens winning 9 seats. The outcomes for parties in the 2019 and earlier elections are similarly undemocratic. The solution to this unfair system is the adoption of proportional representation, with the state 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 any casual 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, they could have as few as five members to contain the geographical area of rural electoral districts. Each electoral district would have the number of members to be elected in that district directly proportional to its number of voters.

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 much fairer and more democratic.

In contrast, the Legislative Council election result was much more democratic. The proportional system ensured that parties won the number of seats much closer to the percentage vote that they obtained.

Without a move toward a proportional representation system, the Legislative Assembly should be increased (restored) to 99 members. The increase should be tied to the number of voters per Legislative Assembly district so that the number of MLAs rises (or falls) in proportion to the population.

Recommendation 1a: That elections for the Legislative Assembly use a proportional representation election system, with New South Wales divided into electoral districts of approximately equal size of voters, each returning between five and nine members.

Recommendation 1b: That the number of districts for the Legislative Assembly be restored to 99.

¹ <https://www.abc.net.au/news/elections/nsw/2023/results/party-totals>

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.

Pressuring or forcing a public servant to take leave or leave without pay is discriminatory. It is an interference with the 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 the employment of a public servant should prohibit any misuse of government resources by a candidate or the use of confidential information received during their 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 using 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, several 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](#)², 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. The trend continued in 2023 with above-the-line preferencing reaching 39.2% of all ballot papers. These increases are clearly related to increased familiarity with the Senate voting system changes.

Voters have become accustomed to the abolition of group voting tickets and their capacity to direct preferences as they wish while parties are showing preference advice on their how-to-vote cards. The loss of vote values through exhaustion of further preference directions has also declined significantly from 1.7 Quotas (7.85% of the total votes) in 2019 to 1.2 Quotas (5.57% of the total vote).

Nevertheless, the loss by exhaustion of 1.2 Quotas and the election of candidates with as little as 0.66 of a quota is undesirable.

The Greens NSW reiterate our support for adopting the Senate voting system for NSW Upper House elections with a requirement that voters number at least six boxes above the line. 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 nomination 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 randomness in counting Local Government elections has been removed.

Recommendation 4a: That the voting system for the NSW Legislative Council is 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 with a method involving partial vote values (transfer values).

5. LEGISLATIVE ASSEMBLY VOTING

NSW is the only state in Australia with single-member districts that uses optional preferential voting - it's enshrined in the NSW Constitution Act. The rate of vote exhaustion has been around 13% in both of the 2019 and 2023 elections, with varying exhaustion rates for different parties. The impact on election outcomes is significant according to Antony Green's [analysis](#)³. There is an antidemocratic incentive for

² <https://antonygreen.com.au/increase-in-voters-showing-preferences-at-2023-nsw-legislative-council-election/>

³ <https://antonygreen.com.au/preference-flows-by-party-2019-nsw-election/>

candidates to advocate against voters indicating preferences for strategic reasons, and it is not uncommon to see “Just Vote 1” advertising material as a way to entice voters to disenfranchise themselves.

A change to require full preferencing or at least an increase in the number of boxes to be numbered with savings provisions similar to those that apply to Senate voting. This would reduce the vote exhaustion rate and help to ensure that successful candidates enjoyed majority support in their electorates, while not increasing the number of informal votes.

A suggested approach would be to require voting instructions on ballot papers and registered how-to-vote material to stipulate that at least half of the ballot squares be numbered, or 5 boxes, whichever is less. Votes with fewer preferences indicated, including just a single 1, would be accepted under suitable savings provisions.

In the absence of the required constitutional changes, parliament should investigate ways to ban or limit the use of “just vote 1” advertising.

Recommendation 5a: That the NSW Constitution be amended to require additional voting squares be numbered in Legislative Assembly elections, and to allow savings provisions to allow counting of ballots with fewer boxes numbered.

Recommendation 5b: That the parliament consider legislation to ban or limit the use of “Just Vote 1” advertising material.

6. EARLY VOTING COUNTING

During the 2023 state general election, the NSWEC advised that they would only count one early voting booth on election night for most electorates. However, not all of those booths that were counted were completed by the commission’s 10 pm deadline so there were several seats where there were no early votes counted on the night recorded. This created some issues such as in the seats of Ryde and Terrigal where the votes counted on the night had the Labor party in the lead only to have those leads overturned as early votes were counted. This also impacted other seats such as Balmain where the leading candidate was not able to claim victory on the night given the size of the uncounted early votes but as those votes came through it was clear that the leading candidate would go on to win the seat.

This is in contrast to how things happened at the federal election where there were votes counted for all the early voting booths on the night. One significant advantage the Australian Electoral Commission (AEC) and the Victorian Electoral Commission (VEC) have in this regard is that they can open and sort ballot papers for early voting centres from 4 pm on election day rather than waiting until 6 pm to start that process. This means that when the polling places close at 6 pm on election day the staff at the district office where the early votes are counted can start counting rather than sorting the ballots which permits the results to be able to be returned on election night.

Recommendation 6: That the parliament amend the Electoral Act 2017 and Local Government Act 1993 and associated regulations to permit the early opening of early voting boxes for sorting but not counting in line with Sections 274(2AA) of the Commonwealth Electoral Act.

7. AUTOMATED VOTE COUNTING ASSURANCE

The data entry (including by scanning) and automated counting and preference distribution of both Legislative Assembly and Legislative Council ballot papers have become established in NSW and within other Australian jurisdictions. While there are safeguards around the data entry process and some opportunities for scrutineers to monitor the process, the handling of ballot paper data is not generally able to be subject to scrutiny or audited for accuracy.

In 2021 the S273 of the Commonwealth Electoral Act was amended to require an independent security risk assessment of automated systems used to scrutinise (data enter) votes. While undoubtedly a step forward, the

risk assessment requirement should specifically require that there be a clear, public, statistical audit that compares a random sample of paper ballots with the digitised preferences⁴.

An audit of this kind would allow scrutineers to verify that the data entry error rate is low enough to support the announced election result or to ask for more investigation if the rate of discrepancies seems high.

Recommendation 7: That the Electoral Act 2017, or if necessary, the Constitution Act 1902 be amended to require an independent security risk assessment of automated systems used to scrutinise votes similar to the 2021 amendment of s273 the Commonwealth Electoral Act, but including the requirement for a public statistical audit that compares a random sample of paper ballots with their digitised preferences.

8. TECHNOLOGY ASSISTED VOTING

While iVOTE was not used in the 2023 NSW Election, The Greens retain concerns with Technology Assisted Voting (TAV). We acknowledge the [TAV Review](#)⁵ undertaken by the NSW Electoral Commission and note the shared concerns around the significant expansion of internet voting.

The last use of iVote in 2019 resulted in over 5% of votes being cast this way, much more than is envisaged in the review for people with blindness or low vision (approximately 5,000 voters). Nonetheless, some access to internet voting would enhance availability for interstate or overseas voting which was cited as the reason for iVote applications in 2019 of 160,025 (interstate), and 47,977 (overseas).

Security

The Greens retain a general concern about the security implications of the adoption of any form of online voting (including the use of kiosks), some of which arise 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. The collapse of the iVote platform at the 2021 local government elections and the need for some elections to be rerun further demonstrate the risks. The mandated use of proprietary closed-source software has made effective scrutiny of the iVote system difficult, despite the subsequent 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 8: The Electoral Act 2017 be amended to require that any Technology Assisted Voting software be made open source.

⁴ <https://www.efa.org.au/the-senate-assurance-bill-plugs-a-critical-gap-in-australian-election-security/>

⁵ <https://elections.nsw.gov.au/technology-assisted-voting-review/review-papers>

9. REGISTRATION OF ELECTORAL MATERIAL

During the 2019 NSW Election there were delays to online registration of electoral material. Furthermore, some items 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 registration of material process was much more efficient in 2023, and was assisted by the reduction of the pre-poll period. However, there is still a relatively short interval between the ballot draw and the opening of pre-poll voting. Registration turnaround time is 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 the NSW 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 NSW EC, listed in s215 of the act.

Recommendation 9a: 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 9b: That the Local Government Act be amended to require the Electoral Commission to conduct elections for Local Government Areas.

10. 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 delays 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 10: 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.

11. STRENGTHEN LEGISLATION TO STOP FALSE STATEMENTS

Some media outlets and political candidates spread false or misleading information about other parties or candidates 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 the radio, on television and on 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 that 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 11a: 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 11b: Establish an independent election tribunal with the 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 11c: 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 that 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

12. COMPLEXITY OF FUNDING MODEL

The current rules regarding what, and when, political parties can spend is overly complicated. The Act currently treats political party candidates effectively as independents and penalises parties who wish to centralise financial procedures. This creates anomalies in both donations that candidates and political parties can spend, as well as with expenditures. The rules should be streamlined and made clearer. The two caps for legislative assembly candidates should be combined. ‘Political expenditure’ needs to be defined so it is clear what political participants can and cannot spend.

The most recent changes to exempt travel and office accommodation have further complicated expenditure caps. It is appropriate that there is a modest increase in expenditure caps for Legislative Assembly candidates and carve-outs are removed.

Additionally, political participants who run in multiple jurisdictions are affected by the lack of reimbursement available for expenditure in local government elections. While the remit of this inquiry is into the conduct of the 2023 State Election, elections and campaigns are not conducted in a vacuum. While some in the community believe the local government is the domain of independents, that is not the reality.

Groupings of independents act as de facto political parties despite their protestations. Just as public funding has levelled the playing field for minor parties and independents at Federal and State levels, and had the added benefit of reducing the corrupting influence of corporate donations (when they are properly disclosed), Local government needs public funding. Our democracy would be enhanced if ordinary people could afford to contest elections.

Recommendation 12a: That the two expenditure caps for Legislative Assembly candidates be combined, receive a modest increase and carve-outs be removed.

Recommendation 12b: That the definition of Political Expenditure be more clearly defined.

Recommendation 12c: That public funding on a reimbursement basis be introduced for Local Government elections.

13. 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 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 [\\$123m by a party](#)⁶ in the 2022 federal election are clear examples of how wealthy interests can, in the absence of

⁶ <https://theconversation.com/big-money-was-spent-on-the-2022-election-but-the-party-with-the-deepest-pockets-didnt-win-198780>

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 so 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 13a: Prohibit campaign spending by for-profit corporations and other business entities that support the election of a candidate or party.

Recommendation 13b: Reduce expenditure caps on political parties, candidates and third parties from their current levels by 50 per cent.

14. 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 from being 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.

Allowing a modest amount of each membership or affiliation subscription to be transferred to a party's election campaign account would not prejudice the donations cap regime.

The exemption for membership fee amounts in the Electoral Funding Act 2018 (s26(8)(a)) is too generous at \$2,000 per annum and should be more reflective of the costs to parties of the administration of that membership. The amount should then be indexed in line with other donation caps.

Recommendation 14a: That an amount not in excess of \$250 (indexed) from each membership or affiliation subscription to be able to be deposited into a party's state or local government campaign accounts.

Recommendation 14b: That the cap on membership and affiliation fees be reduced from \$2,000 (unindexed) to \$500 (indexed).

15. 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 party's vote and do not reflect the reasonable costs of administering parties capable of genuinely contesting elections statewide.

Recommendation 15: 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.

16. EXTENDING BAN ON PROHIBITED DONORS

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 concerning 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 NSW caps on donations are circumvented by parties banking large donations in federal election accounts. To close this loophole comprehensive federal legislation is required.

Recommendation 16a: That the definition of prohibited donors in the Electoral Funding Act 2018 (s51) be extended to include mining interests.

Recommendation 16b: That the NSW 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.

17. AFTER POLLING DAY ELECTORAL EXPENDITURE

Some items of election expenditure 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 as well as 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.

Recommendation 17: 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.