



## Submission by The Greens NSW to the Joint Standing Committee On Electoral Matters Inquiry into the 2010 Federal Election

- I.POLITICAL FUNDING.....2
  - Limitations on donations.....2
  - Caps on campaign expenditure and third-party expenditure.....2
  - Public funding.....2
- II.CONDUCT OF ELECTION.....2
  - Strengthen Legislation To Stop False Statements.....2
  - Automatic enrolment, provisional voting.....3
  - Ensure Political Parties Are Genuine.....4
  - Limits On Electoral Adverts On Polling Booth Fences.....5
- RECOMMENDATIONS.....6

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## Introduction

**This submission is made in conjunction with the submission from the Australian Greens and makes recommendations on matters identified more specifically in relation to the circumstances in NSW.**

### I. POLITICAL FUNDING

The passing of the NSW Election Funding and Disclosures Amendment Act 2010 has substantially changed the political funding landscape in that state and should become a precedent for reform nationally. While the NSW Act is not perfect, for the first time in Australia there are caps on donations and expenditure for parties, candidates and third-parties. The largest single looming problem for the implementation of the NSW Act is the lack of harmony with funding and disclosure rules nationally.

The Greens NSW believe that national laws on funding and disclosure are required and would support the use of the NSW legislation as a starting point for those laws.

#### *Limitations on donations*

The NSW reforms continue to allow political donations from corporations and other entities, though these are limited to modest amounts. The Greens NSW support the introduction of donation caps by the Commonwealth and their extension to include a total ban on donations to parties and candidates by corporations.

#### *Caps on campaign expenditure and third-party expenditure*

The NSW reforms cap expenditure by parties and candidates for both Legislative Assembly and Legislative Council elections at an amount that The Greens NSW consider to be generous. The reforms also introduce expenditure caps for third-parties such as corporations, associations, lobby groups etc. We support the capping of campaign expenditure for federal elections using a similar model.

#### *Public funding*

To compensate for the inability of parties to raise significant amounts from the traditional sources of campaign funding, the NSW reforms include a more generous scheme for funding election campaigns and party administration. An increase in public funding for election campaigns is inevitable if the dependence on large donors is to be reduced. The additional cost (and demand for donor funds) is limited by the campaign expenditure caps mentioned above.

#### **Recommendation 1:**

- That national electoral funding and disclosure laws be enacted, containing at least the restrictions on donations and expenditure in the NSW legislation, and correspondingly reforming the system of public funding of election campaigns and party administration.

### II. CONDUCT OF ELECTION

#### *Strengthen Legislation To Stop False Statements*

The Greens NSW were dismayed by the recommendations in the Electoral Matters committee's majority report on the infamous leaflet distributed in the division of Lindsay in Western Sydney in the 2007 federal election campaign. We support the

views expressed in minority report of Senator Bob Brown.

Although some of those responsible for the production of the Lindsay leaflet were able to be prosecuted and fined for failing to have a proper authorisation on the leaflet, subsequently one defendant was acquitted when the court accepted the claim that the offence of distributing unauthorised material was carried out unknowingly.

Astonishingly there was, and still is, no electoral offence relating to the maliciously deceptive content of leaflets of that kind, and had the leaflet been correctly authorised, no action could have been taken under electoral laws. The committee's response in recommending tougher penalties for breaches of the authorisation rules is inadequate.

The Greens NSW believe that the continuing lack of protection from the publication of deliberate false statements is more detrimental to public confidence in the electoral system than any perceived limitation to the implied right of political free speech.

The Greens NSW support the introduction of legislation similar to that enacted in South Australia which prohibit the knowing authorisation of publication of materials which contain untrue or misleading information.

### **Recommendation 2:**

- Legislative provisions, similar to those in s.113 of the South Australian Electoral Act 1985 to prevent the publication of deliberately false or misleading statements of fact.
- The penalties for breach of this provision should be strong especially during an election campaign and include provisions to avoid abuse of this section by frivolous claims.

### ***Automatic enrolment, provisional voting***

The 2010 election once again saw a very high rate of disallowance of provisional ballots. According to the AEC, 131,123 provisional vote applications were refused, 64% of the total issued. In 2007, the rejection rate was 75%, but in 2004, prior to the introduction of the Howard Governments "roll integrity" changes, the rate was 38% on a much lower total number issued.

These figures demonstrate that the enrolment rules, although improved in 2010, are still effectively disenfranchising large numbers of voters.

In 2009 the NSW Government, with the support of Greens NSW MPs, legislated to provide for a form of automatic enrolment and to allow those eligible to enrol and cast a provisional vote on polling day on the production of a driver licence or equivalent ID.

The Greens NSW support the introduction of similar changes to the Commonwealth Electoral Act.

At the 2007 NSW election and at subsequent local government elections, NSW electoral officials have been provided with devices containing the entire electoral roll for the state. The officials are able to search for voters enrolment details and supply them with the correct absentee voting papers as well as an enrolment form should they be found to have an out-of-date enrolment. In the event they are found to be not enrolled, an enrolment form is supplied.

Polling day is the best opportunity to ensure that electoral rolls are accurate, as this is when electors are most likely to be focussed on their electoral obligations. The feasibility of these devices has been demonstrated and their cost would be modest if

supplied to polling booths above a threshold size.

### **Recommendation 3:**

- The Commonwealth Electoral Act be amended to provide for automatic enrolment and polling day enrolment and voting for electors who can produce sufficient identification, based on similar provisions in the NSW Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009.
- The AEC should adopt and expand the use of online roll checking devices in polling places as used at state and local government elections in NSW since 2007.

### ***Ensure Political Parties Are Genuine.***

The continued existence of Senate group voting ticket continue to result in ever larger Senate ballot papers, with 32 ballot groups on the NSW paper in 2010 of whom many had the appearance of being little more than preference harvesting vehicles. This is approaching the situation prior to reform of the voting system for the NSW Legislative Council prior to the 2003 NSW election.

It is presumably only the increased quota for the election of Senators that is preventing Senate ballot papers approaching the legendary 1999 “table cloth” NSW Legislative Council ballot paper. But (unlike NSW) the requirement for a single row and equal size print means that any increase in the number of NSW Senate paper groups would make the ballot paper technically challenging (eg text too small to be readable).

The NSW government's response to the “table cloth” was to discontinue group-voting tickets and to attempt to reduce the registration of stooge parties by strengthening the membership requirements on political parties seeking NSW registration. While this has been somewhat effective in NSW, it may not scale well to the national sphere.

The Greens NSW are also aware of claims that the process for testing membership requirements for parties seeking registration lacks transparency, especially when membership claims are rejected by the AEC. The registration process in NSW provides to applicants and renewing parties a list of members whose enrolment or membership status is challenged by the Commission. We support this approach to the membership qualification test applied by the AEC.

Another approach to reducing the number of non-genuine parties, preferred by The Greens NSW, would be the addition of a requirement for political parties to demonstrate a functioning party democracy. It is quite common for prospective parties to collect “members” by signature drives at events associated with issues of concern to those parties. These “members” may not even know they have joined a party, may never pay a membership fee, may never receive information on their rights and responsibilities as members, and may indeed have no ability to influence the selection of candidates or party policy.

These registration tests could take the form of requirements for party constitutions to ensure membership control of the party by a requirement for free and fair internal elections and requiring a minimum annual membership fee etc. Parties which are unable to ensure internal democracy should not be assisted by registered party status recognition. The advertisement of a catchy party name on ballot papers could falsely influence the allocation of votes or preferences.

### **Recommendation 4:**

- Amend the Commonwealth Electoral Act to ensure minimum standards of party democracy and organisation in registered party constitutions, including more

stringent testing of party membership numbers.

- Amend the Commonwealth Electoral Act to make the process of checking the membership numbers for party registration more transparent.

### ***Limits On Electoral Adverts On Polling Booth Fences***

While the display of election materials at polling booths can be informative for voters it is unfair when one party or candidate dominates the public space where such materials can be displayed.

As there is no size limit on banners or placards, some parties or candidates attach long rolls of plastic advertising along the entire length of the school fences, which means other candidates have limited options where they can display their materials.

The stage has been reached where some candidates in marginal seats are fixing signage on school fences the evening before polling day and hiring security to guard placards. A prohibition on placement of election signs on school fences prior to election day would solve this problem.

Under NSW election rules it is unlawful to use signs above a specific size at polling places. Even without a limit on the total number of signs, the effective banning of roll-out plastic banners has made the allocation of advertising space at booths fairer.

### **Recommendation 5:**

- Amend the Commonwealth Electoral Act to limit the size of advertising materials that can be displayed at polling booths and prohibit the placing of electoral advertising material at polling booths prior to 6 am on election day.

## **RECOMMENDATIONS**

### **1. National Electoral Funding and Disclosure laws be enacted**

- That national electoral funding and disclosure laws be enacted, containing at least the restrictions on donations and expenditure in the NSW legislation, and correspondingly reforming the system of public funding of election campaigns and party administration.

### **2. Strengthen Legislation To Stop False Statements**

- Legislative provisions, similar to those in s.113 of the South Australian Electoral Act 1985 to prevent the publication of deliberately false or misleading statements of fact.
- The penalties for breach of this provision should be strong especially during an election campaign and include provisions to avoid abuse of this section by frivolous claims.

### **3. Automatic Enrolment, Provision Voting, Roll Checking at booths**

- The Commonwealth Electoral Act be amended to provide for automatic enrolment and polling day enrolment and voting for electors who can produce sufficient identification, based on similar provisions in the NSW Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009.
- The AEC should adopt and expand the use of online roll checking devices in polling places as used at state and local government elections in NSW since 2007.

### **4. Ensure Political Parties Are Genuine**

- Amend the Commonwealth Electoral Act to ensure minimum standards of party democracy and organisation in registered party constitutions, including more stringent testing of party membership numbers.
- Amend the Commonwealth Electoral Act to make the process of checking the membership numbers for party registration more transparent.

### **5. Limits On Electoral Adverts On Polling Booth Fences**

- Amend the Commonwealth Electoral Act to limit the size of advertising materials that can be displayed at polling booths and prohibit the placing of electoral advertising material at polling booths prior to 6 am on election day.