

# Submission to the Electoral Reform Green Paper

## AUSTRALIAN GREENS

### INTRODUCTION

The Australian Greens are committed to participatory democracy and welcome the opportunity to identify a suite of electoral reforms to make the Australian electoral system more fair and equitable, transparent and accountable. The Electoral Reform Green Paper – *Strengthening Australia's Democracy* raises a number of important issues including enfranchisement, party conduct within election campaigns, keeping up with changes to the way people engage with politics and outlining a range of innovations that could ensure maximum democratic participation in elections by Australians now and into the future.

This submission responds to a number of proposed reforms outlined in the Green Paper including fixed term elections for the federal parliament, proportional representation in the House of Representatives, optional preferential voting above the line in Senate elections, the need for legislative mechanisms to guarantee truth in political advertising and the limited capacity of the Australian Electoral Commission to enforce and police existing requirements. This submission also addresses political donations, truth in political advertising, the rise in postal voting, options for dual citizens to vote and maximising youth engagement in electoral processes.

The Greens believe that our democracy will be strengthened by greater participation and broader representation in the electoral process and that the current system militates against both. The Greens have made a submission to the Electoral Reform (*Donations, Funding and Expenditure*) Green Paper. The recommendations of this earlier submission are summarised at the end of this document.

The recommendations set out below outline some practical measures to create a fairer and more transparent electoral system.

#### 1. Close of the electoral roll

The primary purpose of an electoral roll is to enable electors to exercise their franchise<sup>1</sup>. The announcement of an election date is the main prompt for people to enrol for the first time, or for those enrolled to update their details (e.g. change of address). Amendments to the Electoral Act in 2006 introduced a new set of deadlines for the closing of the electoral roll which drastically reduced the number of people enrolling for the first time, or changing their enrolment details upon announcement of the federal election in 2007 compared to the previous election.

Amendments made to the Act by the Howard Government provided two deadlines for the close of the rolls:

1. 8pm on the day the writ is issued for people enrolling for the first time, or re-enrolling after having been removed from the roll.
2. 8pm on the third working day after the writ was issued for those
  - eligible who are currently enrolled, but needing to update their details

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<sup>1</sup> *Electoral Reform Green Paper*, September 2009 p.91

- not enrolled but who will turn 18 between the issue of the writ and polling day
- eligible who are not enrolled, who are to receive Australian citizenship between the issue of the writ and polling day.

	2004	2007
Number of first time enrolments	78,816	29,659
Number of people who changed their enrolment details	345,177	242,498

These changes were deemed necessary by unsubstantiated claims by the Coalition government of the day of an untenable administrative burden on the AEC, electoral fraud damaging the integrity of the roll and encouraging voters to leave updating the details with the AEC until the last minute. It's worth noting that following the 2001 election, the Australian Electoral Commission conducted an audit in South Australia of address changes in the week from the issuing of the writs to the close of rolls. In a roll of over one million people, no evidence of fraud was discovered.<sup>2</sup>

In its second submission to the JSCEM inquiry into the 2007 election, the AEC noted that of the 279,469 enrolment transactions that took place during the close of rolls period 17 208 would have been invalid if the earliest possible date for the issuing of the writs was applied.<sup>3</sup>

Between 1 July 2006 and 30 June 2008, over 500,000 electors were deleted from the roll through an objection process, mostly through the AEC receiving information that the elector was not living at their enrolled address and after unsuccessful attempts to locate the elector at their new address.<sup>4</sup> With technological advances, agencies such as Centrelink are now better able to provide the AEC with information that identifies address discrepancies that lead to people being struck off the roll. These developments have led some to comment that AEC is getting better at removing people from the roll than it is in getting them back on the roll at a new address.<sup>5</sup>

Early closure of the rolls impacts disproportionately on younger voters in terms of adequate provision for first time enrollers, and due to the fact that the living arrangements of younger Australians are more likely to change from one election to the next. Young people are identified as a priority cohort for achieving the AEC target participation rate of 95% of eligible electors being enrolled to vote.

The Australian Greens will move amendments to the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009* in the Senate to repeal the 2006 amendments.

## Recommendation

<sup>2</sup> Commentary by Norm Kelly, ANU Democratic Audit of Australia - *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*

<sup>3</sup> Australian Electoral Commission, *Second Submission to the Inquiry by the Joint Standing Committee on Electoral Matters into the 2007 Federal Election*, Australian Electoral Commission, Canberra, September 2008, p. 9, viewed 19 October 2009, <http://www.aph.gov.au/house/committee/em/elect07/subs/sub169.1.pdf>.

<sup>4</sup> AEC, *Annual Report 2006-07* p.33 and *AEC Annual Report 2007-08* p.33

<sup>5</sup> Democratic Audit Discussion Paper 3/08, Peter Brent February 2008.

1.1 That the 2006 amendments to the Electoral Act changing the deadlines for the close of the electoral roll be repealed and restore the former provision of a single deadline for the close of the rolls seven days after the issue of the writ.

## 2. Lowering the voting age to 16 years of age

Young people pay taxes, live under Australian laws and can leave home, have children, and join political parties. At 16 ½ years, young people can join the Defence forces. The Greens believe that if our Australian society bestows young people with all these responsibilities, it is reasonable to afford young people access to the opportunity to vote. In its report on the conduct of the 2007 federal election, the Joint Standing Committee on Electoral Matters noted that by lowering the provisional enrolment age to 16, outreach to potential first time enrolleurs would be easier, as many more young people are still in fulltime study at that age. Effective enrolment efforts could then focus on schools and technical colleges to target 16 year olds. This would be an important component in building an effective enrolment strategy over the longer term.

The Greens believe that all Australian citizens over the age of 16 should be eligible to vote.

### Recommendation

2.1 That the age of eligibility to enrol and vote be 16.

2.2 That the AEC be adequately funded to deliver targeted, effective programs to engage young people in electoral processes, including enrolment.

## 3. Restricting the use of postal vote applications for party political purposes

The widespread distribution of postal voting applications (PVAs) by political parties and sitting members has resulted in a marked increase in postal votes at federal elections. Since 1996 there has been an increase in postal votes of approximately 96 per cent - rising from 383,264 in 1996 to 749,566 in 2007 (see Figure 1 below).

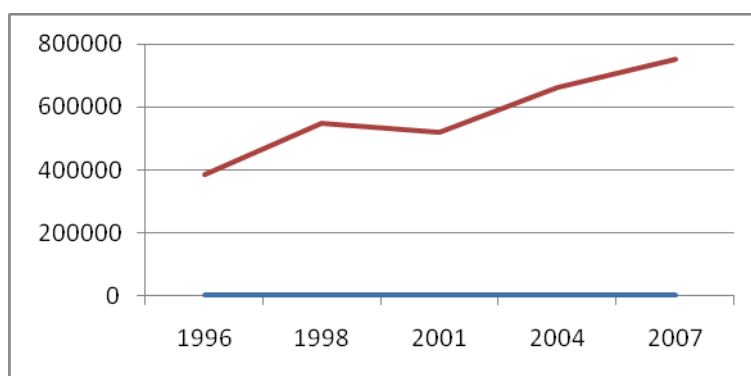


Figure 1 Increase in postal vote applications from 1996 – 2007

Source: Australian Electoral Commission (AEC), *Election Statistics 1993, 1996, 1998*, AEC, Canberra, 1999 (CD-ROM); AEC, *Election Results 2001*, AEC, Canberra, 2002 (CD-ROM); AEC, *Election Results 2004*, AEC, Canberra, 2005 (CD-ROM); AEC, 'Virtual Tally Room: The Official Election Results Election 2007', AEC website, viewed 28 September 2009

A recent ANAO Audit Report noted that the AEC produces PVAs for each election, and makes them widely available on announcement of the election at AEC offices, post offices,

and the AEC website and to all federal Members and Senators<sup>6</sup>. As a result, it is not necessary for parliamentarians to use their printing entitlement in order to effectively disseminate postal vote applications to constituents. Indeed, prior to 2004, there was no entitlement that allowed parliamentarians to use their printing allowance to produce PVAs.

Currently under the *Commonwealth Electoral Act* application forms for postal voting can be issued by any person or organisation provided they conform to 'the approved form' and are attached to or form part of other written material issued by that person or organisation.

Parliamentarians can use their Printing and Communications Allowance to print and distribute PVA forms with a reply-paid envelope as a service to constituents. The Auditor-General's report released in September 2009 found that parliamentarians from the major parties and the Nationals produced at least 8.23 million PVA documents in 2007-08 using their printing entitlement. This is 2.9 million more postal vote application forms than the number of voters enrolled for the election in 2007 -08<sup>7</sup>.

The Greens believe there are no grounds from an administrative or participatory democracy perspective for postal vote applications supplied by parliamentarians to be returned to parliamentary offices prior to being forwarded to the AEC. Data from the 2007 election demonstrates a considerable delay of forms returned via reply paid envelopes to parliamentarians arriving at the AEC. Of the PVAs issued by the AEC 69% were returned on the same day as the witness signature, whereas only 27% of PVAs issued by Liberal party were returned within 4 days, and 36% of Labor PVAs were returned within 4 days.

Irrespective of whether deadlines for the close of the electoral roll are extended, this practice of double-handling presents the very real risk of electors not being enrolled prior to the close of rolls. This practice is also being used by political parties to harvest voter information without their knowledge or consent. "Party" PVAs contain a return address to a local or state-based campaign postal address, where electors' information is recorded before the information is passed on to the AEC. This diminishes, rather than enhances electors' enfranchisement.

The Australian Greens will move amendments to the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009* in the Senate that will require any PVAs sent out by political parties to be returned directly to the AEC, and that will remove the amendment to the Act that allows the inclusion of other written materials with any PVAs distributed by political parties and other organisations.

## **Recommendations**

- 3.1 That all "party" postal voting applications (PVAs) that have been sent to voters by political parties or politicians are to be returned directly from the elector to the Australian Electoral Commission (AEC) rather than via the political party campaign office or the office of the politician
- 3.2 That no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

## **4. Enabling enrolled electors to update their details online**

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<sup>6</sup> ANAO Audit Report No.3 2009-10 Dept of Finance and Deregulation p.144

<sup>7</sup> Ibid p.147

Given the mobility, ageing and diversity of the Australian population, maintaining the existing participation rate is emerging as an increasingly challenging dimension of the AEC's work. In June 2009, the AEC estimates that 1,232,935 eligible voters are not enrolled. This is up from 1,139,961 as at the November 2007 election. Based on population projections, the AEC has calculated that 700,000 new enrolments will be required before mid 2010 to achieve a 95% participation rate of eligible voters being enrolled to vote.<sup>8</sup>

As mentioned elsewhere, technological advances have made inter-agency communications easier, so that the AEC is receiving more comprehensive information about electors' details from other agencies such as Centrelink and Australia Post. Technology also presents a range of (under-utilised) opportunities to make it easier for people to engage in the political process. As the Green Paper notes, the internet is now Australians' most preferred mode of contacting the government – 31% of Australians now use the internet for the majority of their contact with government (up from 14% in 2004-05)<sup>9</sup>.

Enabling electors to update their enrolment details (e.g. change of address) entirely online would be a simple measure to assist electors easily maintain their enrolled status. At present, there is a limited online option for electors of downloading forms to either post, or scan and email forms to the AEC. This is an unwieldy process for a straightforward administrative update. There should be no obstacle for electors to retain their status as enrolled electors.

### **Recommendation**

- 4.1 That the Electoral Act be amended to make provision for enrolled electors to update their enrolment details online, with appropriate safeguards and identification requirements established to ensure integrity of the electoral roll is maintained.

## **5. Allowing public citizens and dual citizens to stand as candidates in federal elections**

Candidate nominations are governed by Part XIV of the Electoral Act. A person who has reached the age of 18 years, is an Australian citizen, and is either 'an elector entitled to vote at a House of Representatives election' or eligible to become such an elector, is qualified to be elected to the Commonwealth Parliament<sup>10</sup>.

Section 44 of the Constitution sets out particular persons who are disqualified from being chosen or sitting as a member or Senator, including persons who hold any office of profit under the Crown, or those who hold dual citizenship ("allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power"<sup>11</sup>)

Senator Brown on behalf of the Australian Greens will introduce a private Senator's Bill, *the Constitution Alteration (Right to Stand for Parliament – Qualification of Members and Candidates) Bill 2009* to alter the Constitution with respect to the qualification and disqualification of members of the Parliament and Parliamentary candidates.

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<sup>8</sup> AEC submission no.169.1 to JSCEM *Inquiry into the 2007 Federal Election*, p.12-13

<sup>9</sup> Australian Government Information Management Office, *Interacting with Government: Australians' use and satisfaction with e-government services*, 2008, p. 5, quoted in the *Electoral Reform Green Paper*, Sept 2009 p.91

<sup>10</sup> *Electoral Act*, Section 63

<sup>11</sup> Commonwealth Of Australia Constitution Act Section 44, accessed 17 November 2009

<http://www.aph.gov.au/Senate/general/Constitution/par4cha1.htm>

## **Recommendations**

- 5.1 That section 44 of the Australian Constitution be amended to allow any public servant who has no conflict of interest to stand for election to federal parliament
- 5.2 That section 44 of the Australian Constitution be amended to allow Australian citizens with dual citizenship to stand for election to federal parliament

## **6. Fixed terms of Parliament**

The benefits of fixed term elections are widely recognised. The Greens advocate for the adoption of fixed three-year terms for the federal parliament to improve the democratic objectives of the Australian electoral system. Under the current system, the Prime Minister has discretion on the timing of an election which accords considerable advantage to the incumbent government.

Minor parties, new parties and independents are significantly disadvantaged under this system as they have less capacity to plan, prepare and fund election campaigns with their limited resources. Furthermore, fixed term electoral cycles will facilitate the system of public electoral funding which is advocated in this submission.

The Greens support the adoption of fixed three-year terms federally as this important change does not require a referendum to change the Constitution but can be achieved through legislation.

### **Recommendation**

- 6.1 That legislation is introduced to adopt fixed three year terms for the federal parliament.

## **7. Public funding for elections - banning corporate and capping individual donation**

The Greens have outlined their concerns about the deleterious impact of corporate donations on Australia's political processes in our response to the first Green Paper in February 2009. The Greens believe that undue influence and problems of corruption arise from unchecked private funding of election campaigns.

A rigorous regime for disclosure of electoral funding is essential to ensure accountability and transparency in the system. The current system allows for substantial areas of funding to avoid proper scrutiny through the disclosure requirements of the Electoral Act.

The Greens support amendments to the Act to require all the component activities of private funding, including donations, fundraising activities, membership fees, investments and debt is properly disclosed.

Additionally, the Greens propose that the time frame of the current disclosure regime does not enhance transparency or accountability. Lodgement of returns at the end of the financial year which are then made public on the first working day of February in the following calendar year, results in a public disconnection between the cause and effect of the spending. A system which required continuous disclosure would better address the goals of transparency and accountability. Online disclosure could make this requirement straightforward.

Reform to election funding which includes substantial restrictions on current funding sources such as donations will require some increase in public funding for parties and

election campaigns. The Greens believe that public funding should be set at a level that ensures proper democratic participation by voters, candidates and political parties.

### **Recommendations**

- 7.1 That individual donations will be capped at \$1,000.
- 7.2 That there is a ban on all political donations by corporations
- 7.3 That full disclosure requirements are applied to all sources of private funding.
- 7.4 That mechanisms for continuous disclosure of electoral funding be investigated.
- 7.5 That public funding for election campaigns be set at a level that ensures proper democratic participation by voters, candidates and political parties.

## **8. Proportional representation in the House of Representatives**

This is the single most important reform for achieving true democracy in Australia, replacing single member electorates with multi-member electoral districts. The number of seats won by each party would more accurately reflect the vote obtained by respective political parties, while maintaining an appropriate degree of local representation and community access to local politicians.

The Green Paper acknowledges the extensive commentary on the subject of proportional representation since the 19th century. The Greens support a move to proportional representation in the House of Representatives: such a system is more likely to produce a 'proportional' vote, where politically significant parties would receive parliamentary membership in proportion to the number of votes cast in their favour.<sup>12</sup> Achieving gender equity in terms of political representation is also served by proportional representation models – the Green Paper notes that such systems have proved to be more conducive to the election of women than majority systems. a recent study of 24 national legislatures showed women made up 27.49% of systems with proportional representation, compared to just 18.24% within majority systems<sup>13</sup>. It is reasonable to expect the same would be true for other societal groups currently under-represented in Parliament.

Proportional representation has been adopted throughout continental Europe, in the European Parliament, in Ireland and New Zealand. Like suffrage for women and the secret ballot, it is fundamental to achieving the modern democratic ideal of one person, one vote, one value.

### **Recommendation**

- 8.1 That proportional representation in the House of Representatives is introduced on a whole of state basis as provided for in the Constitution and, guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.

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<sup>12</sup> S Bennett, *Winning and Losing: Australian National Elections*, Melbourne University Press, Carlton South, 1996, p. 25. Quoted in Electoral Reform Green Paper No.2, p.55

<sup>13</sup> J Ballington and A Karam, *Women in Parliament: Beyond Numbers*. Revised Edn, International IDEA, Stockholm, 2005, p. 100. Quoted in Electoral Reform Green Paper No.2, p.55

## 9. Optional preferential voting above the line in Senate elections

Any electoral reforms should serve to make our electoral system more transparent, fairer and more democratic. Increasing the degree of control of expression for each elector's vote is an important part of the progress towards an improved electoral system. By restoring to the elector the distribution of party preferences (rather than leaving it in the hands of party preference arrangements) is a means to do so.

In 2008 Senator Bob Brown introduced a private member's bill into the Senate which provides the legislative means for optional preferential voting above the line in Senate elections. As Senator Brown noted in his second reading speech for the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)*:

"Above-the-line voting for the Senate was introduced in 1984 to address the problem of increasing informal votes. While this was an easier alternative for voters, the cost has been that the decision on preferences was removed from the voter and given to the party which the voter first selects.

The *Commonwealth Electoral Act* requires each party or group contesting elections to provide the Australian Electoral Commission with a paper indicating how preferences will flow if a voter chooses that party or group by voting for it above the line.

This bill removes that requirement from the party or group and returns to the voter the sole obligation to allocate preferences. The voter is advantaged because she or he decides the flow of preferences and directly chooses who is next elected if her or his vote is not used, in full, to elect the party or group of first choice."

This would remove the scope for competition, inducement and cross-dealings by parties and other groups over preferences. It would forestall any public opprobrium in relation to preference 'deals'.

These amendments provide a straightforward way to enhance democracy and enable voters to have full control of the destiny of their vote, and consequently, the make-up of the Senate.

### **Recommendation**

- 9.1 Introduce Senator Bob Brown's private Senator's bill, the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)* which amends the Commonwealth Electoral Act to give voters the right to allocate their vote according to their own preferences.

## 10. Truth in Political Advertising

The Australian Greens support the introduction of legislation to ensure truth in political advertising. Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

Elections are an opportunity for political accountability and it is critical that representations are accurate and honest. Under the current system, it is possible for advertising that contains misrepresentation and outright false statements to go unchallenged and without penalty. This can be particularly damaging in cases where the advertisements are presented by third parties, which under the current system are not required to identify themselves and therefore make known their own political or ideological position.

Although such legislation was enacted briefly in Commonwealth law in 1983 -1984 it was repealed with the support of both the major parties. Opposition to such legislation relies on the argument that it infringes the right of free political communication. However truth in political advertising legislation introduced in South Australia in 1985 was found to be constitutionally valid by the High Court. South Australia's legislation doesn't ban all untruths in advertising, but rather relates to inaccurate statements of fact (not opinion) found to be untrue<sup>14</sup>

The Greens advocate an amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent, similar to legislation introduced in South Australia.

## **Recommendation**

10.1 That effective legislation to ensure truth in political advertising is introduced.

## **11. Enfranchisement to reflect the contemporary Australian population**

The Australian community is diverse and changing – nearly a quarter of all Australians were born overseas<sup>15</sup>. The Green Paper notes the diversity of migrants – in 2006-07, migrants to Australia had been born in over 200 different countries<sup>16</sup>.

Indigenous Australians are identified in the Green Paper as having disproportionately low participation rates in electoral processes compared to the wider community. The Greens believe there should be increased funding support for targeted programs to increase indigenous enfranchisement, with particular reference to enrolment, election information and the provision of translation services and materials where relevant.

The Australian population is also ageing. Both these demographic shifts present challenges to ensuring people can readily engage with electoral information and processes. The Green Paper identifies a lack of proficiency in English to be the major contributing factor to informal voting in recent elections<sup>17</sup>.

There are also an increased number of Australians abroad and enrolment process and access to voting should reflect this reality of life and work in a globalised world. The rate of enrolment amongst Australian expatriates is very low: the Department of Foreign Affairs and Trade estimates over a million Australians at any one time are living overseas, yet only 22,584 people were enrolled as eligible overseas voters at the close of rolls in 2007<sup>18</sup>.

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<sup>14</sup> Senate Finance and Public Administration Legislation Committee, Commonwealth Parliament, *Report on the Charter of Political Honesty Bill 2000 [2002]; Electoral Amendment (Political Honesty) Bill 2000 [2002]; Provisions of Government Advertising (Objectivity, Fairness and Accountability) Bill 2000; Auditor of Parliamentary Allowances and Entitlements Bill [No. 2], 2002*, p. 83. Quoted in Electoral Reform Green Paper No.2 p.154

<sup>15</sup> *Electoral Reform Green Paper*, September 2009 p.15

<sup>16</sup> ABS publication 3412.0, *Migration, Australia*, 2006-07, p. 48. quoted in *Electoral Reform Green Paper*, September 2009 p.35

<sup>17</sup> JSCEM, *Civics and Electoral Education*, 2007. 30 October 2008 p.108-09 quoted in *Electoral Reform Green Paper*, September 2009 p.35

<sup>18</sup> Department of Foreign Affairs and Trade, 'Living and Working Overseas', available at [www.smartraveller.gov.au/tips/working\\_os.html](http://www.smartraveller.gov.au/tips/working_os.html). quoted in the Electoral Green Paper p.38

**Recommendations:**

- 11.1 That a review of the languages into which electoral materials are translated is undertaken, with consideration given to expanding this range to include languages spoken by more recent migrant arrivals in Australia
- 11.2 That there be a targeted electoral education program to increase indigenous enfranchisement – including enrolment, candidacy, and formal voting rates.
- 11.3 That there be a targeted electoral education program in the lead up to federal elections in electorates with a high proportion of voters from non-English speaking backgrounds
- 11.4 That the provision requiring an expatriate intend to resume residing in Australia within a specified period in order to remain on the roll be removed and replaced with a provision for expatriates who have returned within a specified period (such as three years, even for a short period, as applies in New Zealand) to be eligible to vote.
- 11.5 That permanent residents are permitted to vote.

**12. Electronic voting**

The AEC has identified that people with disabilities and those coming from a non-English speaking background are disproportionately likely to be disenfranchised by the electoral process, and also to cast an informal vote. Technology has an important role to play in improving participation and accuracy rates. A limited trial of electronic voting in a small number of booths for the visually impaired, plus online voting for defence personnel in the 2007 federal election demonstrated the potential of electronic voting to enhance enfranchisement. There is considerable scope to extend the application of electronic voting to other constituencies, for example to provide comprehensive translation services to electors for whom English is a second language. Such measures would help address the stated priority of improving the voting experience for people with disabilities and those from a non-English speaking background.

**Recommendation**

- 12.1 That trials of electronic voting continue in successive elections to determine the capacity of technology to improve enfranchisement outcomes, with particular reference to people with disabilities and people from non-English speaking backgrounds.

## Summary of recommendations in the Australian Greens' submission to the Electoral Reform (Donations, funding and expenditure) in February 2009

- That political donations by corporations, associations and groups are banned.
- That full disclosure requirements are applied to all sources of private funding.
- That mechanisms for continuous disclosure of electoral funding be investigated.
- That legislation to ensure truth in political advertising is introduced.
- That legislation is introduced to adopt fixed three year terms for the federal parliament.
- That proportional representation in the House of Representatives is introduced on a whole of state basis as provided for in the Constitution and, guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.
- Introduce Senator Bob Brown's private members bill, the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)* which amends the Commonwealth Electoral Act to give voters the right to allocate their vote according to their own preferences.
- That the Australian Electoral Commission is properly resourced to ensure it has the capacity to quickly and effectively enforce the requirements of the Electoral Act.