

**THE FINAL REPORT OF THE EXPERT PANEL –  
POLITICAL DONATIONS AND THE GOVERNMENT’S  
RESPONSE**

**Organisation:** NSW Labor  
**Name:** Ms KAILA MURNAIN  
**Date Received:** 16/10/2015



## **Joint Standing Committee on Electoral Matters**

### **Inquiry into the Final Report of the Expert Panel on Political Donations and the Government's response**

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#### **Submission by NSW Labor**

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Mr Jai Rowell MP  
Chair  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**NSW Labor Submission to the Joint Standing Committee on Electoral Matters  
Political Donations- Final Report**

Dear Mr Rowell

Thank you for allowing NSW Labor the opportunity to comment on the Report into Political Donations.

We would like to acknowledge the work of the work of Dr Kerry Schott, John Watkins and Andrew Tink.

In our submission, we support the comments by the Review Panel on the need for more transparency and the introduction of systems that assist political parties in achieving compliance with new legislation.

NSW Labor supports the current model for Administration Funding for Political Parties. With new requirements for disclosure and the need for increased transparency in relation to political donations and expenditure, the Administration Fund is an important resource for political parties to adequately fund compliance measures. In recognition of the increased compliance costs for Political Parties arising from these reforms, there should be an increase in the level of administrative support.

We look forward to your response in due course.

Yours sincerely



**Jamie Clements**  
General Secretary

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## Overview

NSW Labor supports the Expert Review Panel on Political Donations, and the recommendations to improve transparency and accountability in Political Parties in NSW.

While in Government, NSW Labor led the way on donation and expenditure reforms, introducing legislation that would improve transparency to allow for publicly funded elections. NSW Labor is committed to publicly funding elections in NSW

NSW Labor notes that increasing disclosure, governance and compliance procedures requires Political Parties to put in place significant additional administrative support and resources.

As such, NSW Labor urges the Committee to recommend to retain current levels of Administration funding.

NSW Labor also notes that every Political Party operates differently, with different structures and membership configurations. As such, any recommendation about improving governance procedures, should take this into account.

We congratulate the Expert Review Panel for their work, and look forward to the recommendations of the Joint Standing Committee on Electoral Matters.



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## **Overarching reforms**

### **Recommendation One**

NSW Labor supports a review into the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*. We agree with the Panel that, in recent years, ‘knee-jerk’ amendments have made the Act less coherent. Furthermore, some amendments have been motivated more by a political agenda, rather than what is in the best interests of the State. For instance, the O’Farrell Government’s 2012 amendments to prohibit donations from entities and to aggregate the electoral communication expenditure of NSW Labor and its affiliated unions under the one cap, were politically motivated.

Therefore, it is important to ensure that the recommendations of any review is not influenced by the political agenda of the Government of the day.

### **Recommendation Two**

NSW Labor strongly supports this recommendation. As the Panel notes, the federal campaign finance system has the potential to create opportunities for avoiding NSW restrictions. The differences also cause confusion for local Party units who raise funds for both state and federal campaigns.

We note that the restrictions that apply in NSW do not apply at a federal level or in most other state and territory jurisdictions. If, and when, COAG discussed and agrees to a national reform agenda, this must not be used as an excuse to reduce any of the restrictions currently in place. Our system – especially after the Panel’s recommendations are implemented – should be heralded as the benchmark to which other jurisdictions aspire.

### **Recommendation Three**

NSW Labor supports annual reports to the Parliament on the progress made in implementing the Panel’s recommendations.

## **Limits on political donations**

### **Recommendation Four**

While NSW Labor’s submission to the Panel called for an ‘opt-in, opt-out’ public funding system, we understand the Panel’s arguments rejecting this proposal. Whilst NSW Labor remains committed to the principle of the full funding of election campaigns as the best deterrent to corruption, we accept the recommendations proposed.

### **Recommendation Five**

NSW Labor supports this recommendation.

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## **Recommendation Six**

NSW Labor supports this recommendation.

## **Recommendation Seven**

NSW Labor supports this recommendation. We welcome the recent decision of the High Court to maintain the prohibition on donations from property developers and liquor, gambling and tobacco industry business entities.

We also believe that, given the evident corruption risk, property developers should be prohibited from standing as candidates for local government elections. We call for changes to be made to relevant legislation to ensure this prohibition is implemented prior to the next local government elections.

NSW Opposition Leader, Luke Foley has announced that if elected, property developers and real estate agents will be banned from holding office at the local government level and the same donation and expenditure caps should apply to local government elections.

## **Recommendation Eight**

NSW Labor supports this recommendation.

## **Recommendation Nine**

NSW Labor supports the existing \$1,000 cap on indirect campaign contributions be retained as an important safeguard against corruption, however NSW Labor does not object to the recommendation of the Review Panel.

## **Expenditure**

### **Recommendation Ten**

NSW Labor supports this recommendation.

### **Recommendation Eleven**

NSW Labor supports this recommendation.

### **Recommendation Twelve**

NSW Labor supports this recommendation in principle.

NSW Labor however notes that it can be difficult to define which electorate expenditure falls into, for example the Greens at the last election had a number of large billboards on major roads, aimed at influencing voters in their target electorates. These billboards were on major arterial roads, for example Parramatta



Road, but were in electorates other than those who the Greens were attempting gain at the last election.

The Electoral Commission would need to establish mechanisms to properly enforce any changes of this nature and clearly define candidate related expenditure.

### **Public Funding**

#### **Recommendation Thirteen**

NSW Labor supports this recommendation.

#### **Recommendation Fourteen**

NSW Labor supports publicly funded election campaigns, and the reforms introduced by the Labor Government in the lead up to the 2011 NSW State Election campaign ensured transparency and provided a strong mechanism to deter corruption. NSW Labor notes that the 2015 public funding model was implemented with relative ease and also helped to improve transparency in this area.

#### **Recommendation Fifteen**

NSW Labor supports this recommendation.

#### **Recommendation Sixteen**

NSW Labor supports this recommendation in principle. Political parties have the responsibility to ensure that their selected candidates and their local campaign teams are fully aware of their obligations. NSW Labor particularly supports recommendation 49 of the Panel's report for the need for education and training to ensure compliance.

#### **Recommendation Seventeen**

NSW Labor supports this recommendation.

#### **Recommendation Eighteen**

NSW Labor supports the current model for Administration Funding for Political Parties. With new requirements for disclosure and the need for increased transparency in relation to political donations and expenditure, the Administration Fund is an important resource for political parties to adequately fund compliance measures. When in Government, NSW Labor introduced strict donations laws to stamp out corruption. The Administration Fund provides funds to Political Parties to hire staff to ensure compliance and to build systems to help Candidates manage donations and expenditure. Any move to decrease Administration Funding, could see the erosion of compliance standards across Parties.

#### **Recommendation Nineteen**



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NSW Labor supports this recommendation.

### **Recommendation Twenty**

NSW Labor supports this recommendation.

### **Recommendation Twenty-Two**

NSW Labor supports this recommendation.

### **Disclosure**

### **Recommendation Twenty-Three**

NSW Labor supports this recommendation. We believe the development of an online disclosure system is an urgent priority.

Since the commencement of the current legislative scheme governing political donations in NSW, NSW Labor has invested significant resources into developing our own internal systems and processes to ensure compliance with the *Election, Funding Expenditure and Disclosures Act 1981 (NSW)*.

NSW acknowledges that not all political parties have access to these resources and often paper-based systems can be administratively cumbersome. Accordingly, NSW Labor supports the development of a centralised online system that can be used for processing of donations in real time.

This system should be administered by the NSW Electoral Commission and should be readily available to all registered political parties. We believe that this will ensure consistency between political parties in the way donations are disclosed, will enhance transparency and will increase compliance with the Act. NSW submits that the development of this system should be publicly funded.

### **Recommendation Twenty-Four**

NSW Labor supports this recommendation.

### **Recommendation Twenty-Five**

NSW Labor supports this recommendation. Moreover, we believe that consideration should be given to online, real-time disclosure of political donations throughout the four year Parliamentary term – not just the six month period prior to an election.

### **Recommendation Twenty-Six**

NSW Labor supports this recommendation.

### **Recommendation Twenty-Seven**



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NSW Labor supports this recommendation.

### **Recommendation Twenty-Eight**

NSW Labor supports this recommendation.

### **Recommendation Twenty-Nine**

NSW Labor supports this recommendation.

### **Recommendation Thirty**

NSW Labor supports this recommendation, however NSW Labor stresses the importance of a clear and precise definition of 'associated entity'.

### **Recommendation Thirty-One**

NSW Labor believes the current restrictions on expenditure and donations for third-party campaigners is adequate and would not support any legislation that would seek to restrict the campaigning activities of third party campaigners. We believe that third party campaigners play a legitimate and crucial role in promoting the integrity of our democratic system of government.

### **Recommendation Thirty-Two**

NSW Labor supports limiting the express definition of 'associated entity' to an entity within the control of a political party or member. This is crucial in ensuring the constitutional validity of such a provision in accordance with the High Court's decision in *Unions NSW & Ors V State of New South Wales*. Unlike the provisions at issue in that case, the proposed definition of associated entity specifically excludes organisations that have their own political views and agendas.

This is crucial to ensuring that any aggregation provision not equate the independent voice of an organisation with its own rules, constitution and membership, with a major political party or Member of Parliament.

Accordingly, NSW Labor stresses the importance of a clear and precise definition of 'associated entity'.

### **Recommendation Thirty-Three**

While NSW Labor supports this recommendation in principle, we believe that the Electoral Commission should clearly define requirements for governance standards and accountability mechanisms. NSW Labor notes that expectations should be made clear, particularly for minor parties who have limited existing resources.

### **Recommendation Thirty-Four**

NSW Labor supports this recommendation in principle, however believes that the Electoral Commission should provide criteria to political parties to ascertain whether a

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party's nominated officers have sufficient seniority, control and decision-making authority. Training must also be provided to such officers.

### **Recommendation Thirty-Five**

NSW Labor supports this recommendation.

### **Recommendation Thirty-Six**

NSW Labor supports this recommendation.

### **Recommendation Thirty-Seven**

NSW Labor supports in principle the recommendation to remove double auditing of Political Party claim for payments and disclosures.

### **Recommendation Thirty-Eight**

NSW Labor supports this recommendation in principle, and further notes the significant cost of auditing.

### **Recommendation Thirty-Nine**

NSW Labor supports this recommendation. NSW Labor believes that Political Parties be deemed legal entities for the purpose of prosecution under the Act. NSW Labor acknowledges the uncertainty surrounding the current legal structure of major political parties which makes enforcing the Act very difficult. This provision would overcome that uncertainty and foster greater compliance and accountability.

However, NSW Labor would not support a provision which would prescribe or mandate that political parties become incorporated entities. NSW Labor believes that this should be a decision for individual political parties and their membership to decide.

### **Recommendation Forty**

NSW Labor supports this recommendation in principle, however NSW Labor notes that the creation of the role of Party Agent has enabled our Party to have a strong line of communication with the Electoral Commission. NSW Labor believes it is important to have one contact point for compliance in Political Parties.

### **Recommendation Forty-One**

NSW Labor supports this recommendation.

### **Recommendation Forty-Two**

NSW Labor accepts the Government's viewpoint on this recommendation.



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## **Compliance and Enforcement**

### **Recommendation Forty-Three**

NSW Labor supports this recommendation.

### **Recommendation Forty-Four**

NSW Labor supports this recommendation. These offences are an important component of ensuring compliance and transparency. NSW Labor also supports the retention of increased penalties introduced via the most recent amendments to the Act for serious offences, noting that most of these offences require an element of intent or knowledge.

NSW Labor appreciates that complete and accurate disclosures are a crucial to the integrity of the funding and disclosure system.

Strict liability offences are typically employed when it is crucial to ensure compliance to protect the public's interest. NSW Labor believes that enforcing the requirement for political parties to submit complete and accurate disclosures fits this 'public interest' criteria.

Accordingly, NSW Labor believes that if a strict liability offence were to be introduced, the appropriate administrative support, including the development of an online donation system, should be provided. Further, the definition of an incomplete disclosure, needs to be further clarified.

### **Recommendation Forty-Five**

NSW Labor supports this recommendation.

### **Recommendation Forty-Six**

NSW Labor supports this recommendation.

### **Recommendation Forty-Seven**

NSW Labor supports this recommendation.

### **Recommendation Forty-Eight**

NSW Labor supports this recommendation.

### **Recommendation Forty-Nine**

NSW Labor supports this recommendation.

### **Recommendation Fifty**

NSW Labor supports this recommendation.