

**Submission
No 12**

INQUIRY INTO THE 2015 NSW STATE ELECTION

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Unions NSW Submission
Electoral Matter Committee
Inquiry into the 2015 NSW State Election

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Introduction

1. Unions NSW is the peak body for trade unions and union members in New South Wales with over 65 affiliated trade unions and Trades and Labour councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce.
2. Unions NSW welcomes the opportunity to make a submission to the Electoral Matters Committee Inquiry into the 2015 NSW state election. Unions NSW believes systematic review of election processes is an important element in ensuring democratic values and the rights of political expression are upheld, while also ensuring community confidence in the system is maintained.
3. Trade unions have a long tradition of engaging union members in electoral campaigns. In the 2015 NSW state election Unions NSW ran a third party campaign which was jointly founded by Unions NSW and a number of its affiliated unions.
4. Unions NSW opposes any legislation that would seek to restrict the campaigning activities of third party campaigners. We believe they play a legitimate and crucial role in ensuring the integrity of our democratic system of government.

Unions NSW campaign

5. Unions NSW was a registered third party campaigner in the 2015 State Election campaign and ran a prominent electoral campaign with the tagline: ‘NSW Not For Sale’. The campaign focussed on the NSW Liberal Government’s agenda of privatisation of public assets and services. This was an important issues for union members as privatisation threatens the job security and employment conditions of workers in the affected industries as well as the quality of services that are provided to the people of NSW (the majority of whom are also workers).
6. The ‘NSW Not for Sale’ campaign was run as both a response to policies implemented by the Liberal NSW Government in their first term which removed many of the industrial rights of workers, as well as explaining policies the Liberal

Party planned to implement if returned to government which would affect the community adversely. Some of the key issues unions campaigned around included:

- Privatisation of electricity generation and distribution;
 - Introduction of competitive tendering and deterioration of vocational education;
 - The outsourcing of public sector jobs, including in hospitals and public works;
 - The cutting of over 15,000 jobs over a four year period;
 - Changes to the NSW Workers Compensation Scheme that severely limited access to support for tens of thousands of injured workers;
 - Forced amalgamations of local councils.
7. The Unions NSW campaign involved hundreds of union members going out and talking to people in their local communities about the issues at play for workers in the election. Campaign activities included door knocking, phone calling union members, holding public candidate's forums and running street stalls. The campaign culminated in the presence of hundreds of union members volunteering on polling booths, handing out how-to-votes instructing voters to 'put the Liberals last'.
 8. Over a 12 month period hundreds of union members volunteered their time to campaign. Over the campaign, volunteers made 3,761 phone calls to voters and knocked on 20,046 doors. This is representative of how deeply and widely felt concerns about privatisation were among union members. It is also representative of a union membership actively engaged in public policy, a central tenant of any democratic electoral process.
 9. Unions NSW and its affiliates take an active role in political debates for the purpose of representing the interests of working people. The interaction between government decisions and impacts on workers is broad, from workers' rights, to a strong social safety net, to access to health and education.
 10. Working people are well aware that not all individuals have the financial, social or political capital to affect change on their own. This is why union members have

historically pooled their resources to run campaigns collectively.

11. A large part of union engagement in politics is campaigning during election periods. Election periods are when candidates are most accountable to electors, it therefore makes sense for this to be a key time for engagement of union members in politics.
12. During the 2015 State Election Unions NSW was registered with the Election Funding Authority as a third party campaigner. Unions NSW complied with all requirements under the *Election Funding, Expenditure and Disclosures Act 1981* and the *NSW Electoral Act, 1912*.

Attack on third party campaigners

13. Third party campaigners, including unions, are member based organisations which work to educate and mobilise large numbers of activists and members to take part in political activities during election periods. Unions NSW believes recent successful activation of working people as campaigners in the New South Wales election has prompted a negative reaction from members of political parties, often with significantly fewer members than third party campaigners, who are unable to mobilise activists and volunteers in the same way. Unions NSW has submitted in inquiries and publically that any move to limit the involvement of third party campaigners' in electoral campaigns could be seen as being politically motivated and would constitute a significant attack on the right to the freedom of political communication.
14. The Unions NSW 'Not for Sale' campaign was attacked by the NSW Liberal and National Parties, who challenged the legitimacy of union members as third party campaigners and questioned their right to express their views through the freedom of political communication.
15. During the campaign, it was claimed volunteers who work in health and emergency services were lying about their professional qualifications. During the campaign hundreds of nurses, paramedics and fire fighters volunteered their personal time to campaign, out of frustration for how cuts to their industry by successive conservative governments have affected service provision. These workers are entitled to express

their views through the democratic electoral process and they have a right to the freedom of political expression. Representatives from a variety of professions did not campaign in their current uniforms but rather in union clothing. All volunteers who presented as working in a particular profession or industry were indeed employed in that profession or industry and could provide a position based on their personal experience.

16. The NSW Coalition Government has sought to restrict the role of third party campaigners in election periods through a series of amendments to the *Election Funding, Expenditure and Disclosure Act* (the Act). These amendments sought to significantly limit the amount of money third party campaigners are able to spend while increasing the administrative burden of election campaigning. The most significant of these was the introduction of amendments in 2012 which banned associations making political donations in NSW. Unions NSW successfully challenged the legislation in the High Court on the grounds it breached the implied freedom of political communication contained in the *Constitution*. In October 2014 the Coalition Government then attempted to make amendments to the Act which would have restricted the spending of third party campaigners in election periods to \$250,000. These amendments did not gain support from the NSW Legislative Council, however they are indicative of the NSW Coalition Government's continued attempts to significantly constrain the implied freedoms of political expression of third party campaigners.

Election funding and disclosure requirements

17. NSW has one of the most effective and stringent regulatory frameworks in regards to political donations. Since its inception in 1981 the *Election Funding, Expenditure and Disclosures Act* has been regularly amended making the Act unwieldy and difficult to navigate for those it seeks to regulate. As stated in previous inquiries, Unions NSW supports the redrafting and simplification of the Act including the clarification of definitions relating to:

- Electoral expenditure and electoral communications expenditure;
- The untangling of provisions relating to third party campaigners from those provisions applying to political parties and candidates; and

- Regulation of third party campaigners to be included in a separate part of the Act.

18. Unions NSW believes the best way to regulate donations and prevent corruption is by having:

- Real time reporting of donations; and
- Harsher punishments for contravening the electoral funding laws or undertaking corrupt actions which breach the legislation.

19. Recent ICAC hearings have strongly indicated the potential for corruption lies at the politician and party level, not at a campaigning level. Recent hearings have also highlighted the effectiveness of the current legislation to identify and punish corrupt behaviour within elected officials.

20. Unions NSW believes any changes to electoral funding must facilitate openness, transparency and ensure no one group has undue influence over the political process.

Election Expenditure

21. The *Election Funding, Expenditure and Disclosures Act* restricts electoral communication expenditure incurred by third party campaigners during the capped expenditure period to \$1,050,000. Further, amendments to the Act introduced in October 2014, require vigorous reporting of all electoral communication expenditure and the setting up of a specific ‘campaign account’ with the third party campaigner’s bank.

22. The new reporting requirements prescribed by the 2014 amendments to the Act placed a significant administrative and cost burden on Unions NSW and other third party campaigners during the 2015 State Election.

23. In order to comply with the new reporting requirements for electoral expenditure, Unions NSW implemented new internal systems for the classification and reporting of election expenditure, including enlisting the services of accounts consultants to aid in the setting up of new internal procedures. Unions NSW also sought legal advice to

ensure compliance with the legislation. It is estimated the increased regulatory reporting requirements of electoral expenditure cost Unions NSW \$70,000 in external advice. Further, the requirement of expenditure to be individually classified, reported and reformatted for the NSW Electoral Commission has significantly increased the administrative burden on existing Unions NSW staff.

24. Unions NSW believes the current reporting requirements place a significant and excessive administrative burden on third party campaigners. Unions NSW believes additional administrative funding should be supplied to political parties and third party campaigners to assist with the stringent reporting requirements or alternatively to streamline the administrative requirements outside normal auditing requirements.

25. Unions NSW is also concerned by the lack of clarity provided by the legislation in relation to the definition of ‘electoral communication expenditure’. Section 87 (4) of the Act specifies:

“expenditure incurred by an entity or other person (not being a registered party, elected member, group or candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.”

26. Unions NSW does not believe the Act clearly defines the kind of communications considered exempt from being considered electoral communication expenditure under Section 87 (4). Unions NSW contacted the Election Funding Authority in order to seek clarity on this issue; however they declined to express a view which required them to interpret the legislation. Unions NSW understands the intention of this exemption was to limit expenditure restrictions on issues-based campaigns. The lack of clarity in the current legislation however limits this intention, as third party campaigners are likely to err on the side of caution in interpreting the application of this exemption.

Donation caps

27. In relation to donation caps during election periods, Consideration must be made for third party campaigners who are peak councils, including peak industry or community

organisation, who may seek to pool funds from constituent organisations to campaign collectively. As such, caps placed on peak councils.

28. Where a peak council pools funds from its constituent organisations, as was the case for Unions NSW in the 2015 State Election, it should not be regarded that those constituent organisations have made a political donation.
29. There is a need to clearly define the meaning of ‘peak council’ to prevent third party campaigners from creating ‘non-genuine’ bodies in order to bypass funding caps. By definition, large representative bodies with clear governance structures, a participatory membership structure and a registered ABN would be the characteristics underpinning any definition of a peak council.

Disclosure of donations

30. Unions NSW supports the introduction of requirements for more frequent disclosures of political donations to candidates, parties and third party campaigners. While Unions NSW does not have a prescribed time frame for the reporting, voters have a right to have information available on the donations received by parties, candidates and third party campaigners well before they vote. As such, Unions NSW supports a ‘black out’ period of donations both before and after a general election or by-election that would ensure donation disclosure at the time of the election was up-to-date and accurately identifies who financed the parties or third party campaigners.
31. Unions NSW supports recommendation 23 of the 2014 Schott Review, calling for an online centralised disclosure system for donations to political parties, candidates and third party campaigners.
32. The objective of transparency, in the current disclosure requirements, is undermined by the fact disclosures are not known until after the electorate has voted. The deadline for disclosures to be lodged by political parties and third party campaigners is September 2015. As such, the timeline for this Inquiry does not allow for the scrutiny of disclosures.

Payment of political election workers

33. Unions NSW is aware a number of political parties pay their booth workers to hand out material on election day. Unions NSW does not believe such actions are covered by the right to political expression. We are also concerned these practices have led to the exploitation and underpayment of workers.
34. Unions NSW was concerned by the employment practices of the ‘No Land Tax’ Party in the 2015 NSW Election. In the lead up to the election, the ‘No Land Tax’ party advertised for workers to hand out election campaign material on election day at the website electiondaywork.com. About three thousand people worked for the ‘No Land Tax’ party on election day at an agreed rate of \$30 an hour.
35. The ‘No Land Tax Party’ did not win a seat in Parliament, and since the election, none of the workers engaged for election day have received payment. The Fair Work Ombudsman has filed action in the Federal Circuit Court against against the ‘No Land Tax Party’ and its secretary Peter Jones for the non-payment of these workers¹. The New South Wales Electoral Commission has also been alerted of this issue, but indicated this will not affect the party’s registration status².
36. Party officials have claimed workers will not be paid because the election result did not entitle the ‘No Land Tax Party’ to receive public funding. Workers for the ‘No Land Tax Party’ were not informed of this arrangement prior to performing work. Unions NSW believes the ‘No Land Tax Party’ engaged in deceptive behaviour by not informing workers that payment was contingent on electoral results.
37. Unions NSW believes if people are engaged in paid employment, they should be paid for the work they perform. The NSW Electoral Commission should have the ability to de-register political parties who have engaged in deceptive behaviour and non-

1. Work Force, 11 August 2015, No. 19742

2 ABC News, 18 May 2015, available at: <http://www.abc.net.au/news/2015-05-18/no-land-tax-party-workers-still-waiting-to-be-paid/6478452>

payment of workers. The Electoral Commission should also be empowered to restrict the elected officials of such parties from forming and registering new political parties.

38. The large scale deception of workers performed by the ‘No Land Tax Party’ at the 2015 NSW election undermined the community’s trust in political parties and the electoral system and exploited thousands of workers. Unions NSW believes, if proven, these are appropriate grounds by which to suspend the registration of a political party.