

**Submission  
No 17**

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

**Organisation:** NSW Labor  
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15 February 2024

The Hon. Peter Primrose MLC  
Chair, Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Chair,

Thank you for your invitation to make a submission to the Joint Standing Committee on Electoral Matters Review of the 2023 NSW State Election.

We note the Inquiry's terms of reference, which encompasses the administration of the 2023 NSW state election and other critical aspects, including political donations and truth in political advertising.

The recommendations outlined in this submission address the perspectives of NSW Labor Members of Parliament, candidates for public office, officials, staff, and volunteers.

They are informed by NSW Labor's belief that we should be aiming for 100 per cent participation in NSW elections, with laws and strategies that encourage 100 per cent enrolment, 100 per cent formality and 100 per cent turnout.

NSW Labor is of the view that this overarching objective serves as a reference point against which electoral reform decisions can be evaluated.

In this submission, we outline recommendations in the following areas:

- Electoral Scrutiny and Voting
- Integrity, Ethics and Probity measures
- NSW Electoral Commission engagement with political participants
- Steps to improve the electoral system.

We also express our gratitude to the NSW Electoral Commission for their ongoing efforts in administering free and fair elections.

**DOMINIC OFNER**  
NSW Labor General Secretary



**Labor**

# **NSW Labor Submission to the Joint Standing Committee on Electoral Matters**

*Administration of the 2023 NSW state election and other matters*

**2024**

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# Scrutiny, and Counting

## Early Counting

An important component of the Australian and New South Wales voting system is the ability for electoral participants to scrutinise electoral proceedings.

The pace of proceedings after 6pm on election day help to shape the public's image of the integrity of our electoral systems.

NSW Labor recognises the need for an appropriate balance between the speed of counting and the accuracy and consistency of the results. We also acknowledge that it is necessary for multiple counts to be conducted as part of a meticulous process before the results are officially declared.

To assist with expeditious communication of results, during the most recent federal election, the Australian Electoral Commission allowed the sorting and handling of ballots cast in early voting from 4pm on election day, to speed up the post-election count.

This process allowed for a result to be known faster while having no detrimental effects on the integrity of the election.

Early handling of ballots has been practised in Victorian elections where initial processing of ballots was also permitted from 4pm on election day.

Scrutineers were able to observe the count however all communication devices were quarantined.

Given the significant increase in early vote ballots - and the potentially determinative impacts on the results of specific districts - this would allow earlier accurate information about the likely outcome of an election to be communicated, and therefore greater trust from the voting public in the electoral process.

**RECOMMENDATION: The New South Wales Electoral Commission should consider options for commencing early vote ballot sorting before polls close on election day.**

## Vote Count Priority

To enhance transparency and uphold the integrity of the electoral process, candidates have the option to appoint scrutineers. These scrutineers play a pivotal role in observing the counting of ballot papers, ensuring that the election procedures are executed in a proper and lawful manner.

Their presence serves as an additional layer of oversight, contributing to the credibility and fairness of the democratic process. By appointing scrutineers, candidates actively participate in fostering public trust in the electoral system and reinforcing the fundamental democratic principles.

They also play an important role in helping political parties and other political participants to formulate an understanding of the result of the election, prior to a result being declared.

This is particularly important in circumstances where the result of an election is close, or where the results in a small number of seats may have a determinative impact on the political direction of the jurisdiction.

For this reason, political parties, candidates, and electors rightly expect transparency around the counting process and an expeditious timeframe for results.

The NSW Electoral Commission should take all steps to ascertain results in highly contested elections with greater speed, concentrating on allowing results to be, as much as is practicable, known on election night.

If the result is not able to be ascertained on the election evening, then resources should be prioritised to those electoral districts where the results of the 'initial count' and 'two candidate preferred' are the least conclusive. This may have consequences for the speed of concluding counts in comparatively less consequential ballots, Legislative Council ballots, and check counts. Additionally, preference should be given to initial counts of ballots received at a voting centre after election day, ahead of Legislative Council ballots, and check counts.

In electoral district of Miranda on the first day of additional scrutiny (27 March 2023) for the 2023 State Election, NSWEC staff conducted a check count of Legislative Council (LC) ballots for Sylvania Early Voting Centre (EVC). The LC ballots were counted before the Legislative Assembly (LA) ballots for that same EVC.

The LC votes were also counted before counting the LA ballots cast at Illawong Public School and Gymea North Public School, despite all these locations failing to report their LA results on election day.

At the time of counting the Sylvania EVC LC ballots, the electoral district of Miranda was too close to call.

This consequence was that after the first full day of additional scrutiny in Miranda, only one booth of the remaining LA votes had been counted, with LA votes cast at the remaining two booths counted on subsequent days.

This decision by the NSW Electoral Commission was repeated in Kiama, where on the first day of additional counting, a check count was conducted of Albion Park EVC LA ballots, while fresh LA votes were yet to be counted.

The same issue was confronted in the electoral district of Ryde, and in a litany of districts across the state.

Priority should also be given to counting those ballots that will have a tangible impact on the outcome of the result in the electoral district, this means prioritising ballots which are yet to be counted (postal, declared, etc), over check counts, and another form of counting.

The NSWEC should be guided by the public's expectations of a timely determination of, and transition to, government when making resource allocation decisions.

**RECOMMENDATION: That the New South Wales Electoral Commission should prioritise those divisions, and vote types, that have the greatest electoral significance.**

## Scrutiny Communication

Transparency must extend to the timing, location, and priority of different electoral counts.

For candidates and political parties to provide scrutiny, which is central to the oversight of, and confidence in, our political system, they must know where, when and how many resources to allocate to a counting centre.

For this reason, NSW Labor is of the view that the NSW Electoral Commission publish, no less than 14 days before a general election or by-election day, or no later than 5pm the day prior of post-election counting - the proposed time, location, and the number of NSW Electoral Commission counters at each counting centre.

The inconsistency in the number of scrutineers allowed at each venue and the lack of communication about scrutiny caused confusion for political participants.

The number of *'tables'* of counters at a counting centre determines the number of scrutineers permissible and necessary.

On the first day of additional counting for the 2023 State election, the number of *tables* available for each electoral district was:

Miranda: one *table*

Drummoyne: six *tables*

Terrigal: six *tables*

Oatley: two *tables*

Participants did not receive this information in advance. This resulted in a misallocation of scrutineers.

Additionally, scrutineers could not enter the venue in Holsworthy until about one hour after the scheduled start time on the first day of additional counting.

A published schedule would prevent these issues and ensure proper scrutiny of the count.

The contents and order in which ballot material is proposed to be counted should also be communicated.

This change will ensure that participants in the political process have adequate time to appoint scarce resources to the location and at the times that are most appropriate and efficacious.

**RECOMMENDATION: That the New South Wales Electoral Commission publish not less than 14 days prior to a general election or by-election day, or no later than 5pm the day prior of post-election counting, the proposed time, location, and the number of NSW Electoral Commission counters who will be allocated to counting.**



# Integrity and Ethics

Ethical behaviour by politicians and political participants, and integrity in our political system, plays a pivotal role in fostering trust in elections.

The credibility of democratic governance hinges on the ethical behaviour of elected officials and public servants.

Free and fair elections form the cornerstone of representative governance, allowing citizens to express their will through a transparent and credible electoral system. One key mechanism for maintaining ethics and integrity in the Australian political landscape is the effective functioning of integrity bodies, such as the NSW Independent Commission Against Corruption (ICAC).

Below summarises two recent inquiries and NSW Labor's response.

## Implementation Of Operation Aero Recommendations

Project Aero acknowledged the important reforms that have already taken place to reduce the potential for donations to influence the political process. The ICAC acknowledged that, while they cannot direct recommendations at a federal government level, coordination must exist between state, federal, and territory governments to ensure that reforms close loopholes which allow donors to circumvent jurisdictional laws.

The report also made recommendations that relate to:

- Payment of administrative funding being contingent on upholding minimum standards, as they related to:
  - Accounting for, receipting and banking donations
  - The organisation of fundraising events
  - Identifying prohibited donors and donations that exceed statutory caps
  - The roles and responsibilities of staff, including volunteers
  - Risk management and internal audit
  - Whistleblowing and complaint-handling
  - Management of gifts and conflicts of interest
  - Compliance and ethical obligations of senior party officials

- Providing the New South Wales Electoral Commission with the necessary powers to, administrate, and to assess, audit, and enforce non-compliance by political parties to internal and governance controls;
- Punishment of political parties for failing to adhere to established governance standards, amendments to the Electoral Funding Act to require office holders to report reasonably suspected contraventions of the act, powers for the New South Wales Electoral Commission to publish results of compliance, audits and investigations.

**RECOMMENDATION: NSW Labor recommends a systematic and holistic response to the recommendations of the ICAC as they relate to political donations and the governance of political parties. In particular, we note the ‘working group’ approach recommended in the Operation Aero final report.**

## Operation Eclipse

The June 2021 Operation Eclipse ICAC report “Investigation into the regulation of lobbying, access and influence in NSW” concluded that “new legislation, or significant reform of the LOGO act, is required to safeguard the public interest against the inherent lobbying risks of corruption and undue influence.”

The report went on to clarify that there is a requirement for additional oversight of Lobbyists and compliance with the Act. The Report made 29 recommendations focussing on the following reforms:

- Greater clarity around the obligation of government officials who are lobbied, and greater transparency about lobbyists activities,
- The necessity for the extension of the provisions of the act to local government,
- the requirement for greater cooling off periods, for former public officials,
- greater transparency around ministerial, and parliamentary diaries,
- A prohibition on the practice of gift giving by lobbyists,
- Inadequate recordkeeping by lobbyists,
- significant reform to the Lobbyists code of conduct including greater powers and resources to the lobbying regulator to develop minimum standards, provided advice, and insure compliance,
- extension of the Act to all public sector agencies,
- Improvement and expansion of training,
- Registration, declaration of foreign interest, and statutory recordkeeping for in-house (as is currently the case for third-party lobbyists),

- Greater transparency, and recordkeeping by lobbyists on the lobbying register of the nature of their meetings and communications with Ministers,
- Greater facilitation for whistleblowing when a lobbyist fails to adhere to regulatory requirements,
- Stricter requirements of former public officials who wish to become lobbyists,
- a dedicated New South Wales lobbying commissioner,
- more regular publication of ministerial diaries,
- greater powers to the regulator to investigate, and report unlawful or dishonest conduct,
- Greater training for Members of Parliament, and former Members of Parliament
- Increased disclosure of exclusive and private access to ministers, including fundraising events, and
- The establishment of a lobbying reform panel.

While some, or all, of these changes may assist in improving the political eco-system in NSW, NSW Labor believes that changes to the treatment of lobbyists and lobbying should not be made in isolation and should be accompanied by a holistic approach to political reform.

NSW Labor believes that the Parliament would benefit from the meeting disclosure requirements currently imposed on Ministers being extended to the Leader of the Opposition and Shadow Ministers. It has been the practice of the former NSW Labor Opposition Leader to publicly publish their diary.

**RECOMMENDATION: NSW Labor concurs with the sentiment of Operation Eclipse, and broadly agrees with the recommendations contained within. These recommendations should be considered as part of a systematic and holistic response to the other recommendations of the ICAC .**

**NSW Labor recommends that the procedures and instruction of meeting disclosure be strengthened and clarified as it relates to Lobbyists and that meeting disclosure be extended to relevant members of the Opposition.**

# Banning Of Real Estate Agents And Property Developers

It is acknowledged that some participants in the political process present a danger to the integrity of our political system. Prohibitions exist in relation to donations from:

- property developers
- a tobacco industry business entities
- a liquor or gambling industry business entity, including a registered club if the business undertaken by the registered club includes wagering, betting or other gambling
- any industry representative organisation if the majority of its members are such prohibited donors

This list reflects entities and persons for whom the risk of allowing them additional influence on the state's political system would be detrimental to our state's interests.

NSW Labor contends that real estate agents, who share many financial incentives with property developers, should be added to the list of prohibited donors.

NSW Labor also believes that real estate agents and property developers be barred from holding public office at the local government level while continuing in their respective occupations.

In March of 2022 the peak body for local government, Local Government NSW, representing 126 local government areas in NSW, voiced their support for a ban on property developers and real estate agents from holding office in elected councils.

**RECOMMENDATION: NSW Labor recommends the prohibition of property developers and real estate holding Local Government Office while remaining a real estate agent or property developer.**

**RECOMMENDATION: NSW Labor proposes to ban donations from real estate agents.**

## Regular Disclosure

For many years, various inquiries have urged Australia and New South Wales to enhance the transparency of their donation disclosure rules. These inquiries emphasise the need for greater clarity, specificity, and regularity in reporting.

NSW is widely praised for its transparency in most government practices, but voters still do not have a timely and accurate picture of who funds their elections.

To address this, political parties and participants should disclose their donations more often, in line with the NSW electorate's expectations. Voters rightfully expect continuous, and accurate, information about the funding sources for candidates and political participants.

To achieve this, the disclosure requirements need to change. This should come with either more administrative funding for eligible registered political parties or a major improvement of the Electoral Commission's financial disclosure system (as explained later in our submission) or both.

**RECOMMENDATION: That continuous disclosure be implemented and that an accompanying increase to administrative funding be allocated and/or an enhancement of the Electoral Commission's financial disclosure system, to support compliance with increased disclosure requirements.**

# **NSW Electoral Commission: Engagement, Education, Communication and Consultation**

## **Engagement**

The NSW Electoral Commission's key stakeholders, after the people of NSW, and the Parliament, are the registered political parties and the other political participants, including third-party campaigners.

The role of the Commission could be strengthened through greater engagement with political parties, with the goal of increasing compliance. Regular, formalised engagement will assist the Commission and the Political Parties achieve this objective.

Electoral finance and disclosure obligations in NSW are amongst the most stringent, and complex, in Australia. NSW Labor supports the spirit and intent of these obligations.

Substantive, rather than generalised, guidance by the regulator on the interpretation and implementation of complex provisions will help ensure all political participants are executing their obligations consistently.

As is noted, the ICAC has recommended various changes to the engagement and oversight by the Commission in relation to political parties, which NSW Labor welcomes. This only emphasises the need for substantive and regular engagement between political participants and the Commission.

**RECOMMENDATION: That the NSW Electoral Commission increase its engagement with, and substantive advice to, political parties and participants including regular formal meetings.**

## Education

As the key regulator for the political system, the New South Wales Electoral Commission aims to “provid[e] transparent processes and guidance to assist political participants (including candidates, parties, elected members, donors, third-party campaigners and lobbyists) to comply with their legal obligations”.

While the Commission evidently fulfils the former through the provision of general elections, by-elections, and management of funding, disclosure, and lobbying registers, the latter requires increased concentration from the Commission.

Education, especially as it relates to the role of the Party Agent, and facilitating greater compliance with electoral laws, could enhance our electoral integrity. Party Agents face significant legal risk and responsibility in running a political party, but they receive little education from the Commission.

Political participants in local government elections also face this risk. The candidates, the lead candidates of the group, or the elected members are responsible for local government disclosures, but they get no training from the Commission.

With an increasingly complex electoral system, a lack of training disadvantages independents, smaller parties, and newer parties - leaving them vulnerable to error.

Training and education could help political parties and participants, third-party campaigners and lobbyists engage with our democratic institutions in a lawful and ethical way.

Early and rigorous training could assist in reducing the enforcement and oversight burden on the Commission concerning NSW electoral funding laws.

Training should be in-person and individualised. The needs of a large political party like NSW Labor are incomparable to those of a small political party, let alone an independent candidate or third-party campaigner.

Providing one-size-fits-all training is detrimental to all participants. While we commend the efforts of the NSW Electoral Commission in providing webinars, they are impersonal and may not address the unique needs of each participant. Webinars also lack the additional benefit of building relationships between the Commission and political participants.

**RECOMMENDATION: That the NSW Electoral Commission increase its training of political participants especially as it relates to the role of the Party Agent and local government participants and complying with electoral funding and disclosure laws. This training should be personalised and in-person.**

# Communication

Legislative reform remains the primary mechanism for changing the practices of electoral participants, however, greater communication and consultation with political participants, during election cycles, could assist in providing improved behaviour and positive outcomes.

We understand the necessity for the independence of the Electoral Commission, both perceived and actual. This independence should not unnecessarily constrain the Commission's ability to engage in a meaningful way with political participants, or to work with political parties to achieve its goal of "engaging with the public to make it easier for people to understand and participate in the democratic process".

Political participants need clear and consistent guidance from the Commission.

During the 2023 election, NSW Labor experienced contradictory advice from the Commission on several occasions. This also happened to other political participants.

An example of this related to the state-wide how to vote for NSW Labor. NSW Labor lodged its state-wide how to vote for approval. The Commission advised that the vote was inconsistent with the legal requirements for how to votes. The reason was that the how to vote did not contain the political party 'Independent' below the name of the candidate.

At the same time, the Commission gave the opposite advice on an individual how to vote, asking NSW Labor to remove the word 'Independent' from the how to vote.

This happened while the how to vote for the NSW Liberals was approved even though it did not contain the political party 'Independent'.

Examples like this show that regular and consistent communication is necessary.

**RECOMMENDATION: That the NSW Electoral Commission increase its communication with political parties and participants and ensure that advice provided to political parties is consistent.**



# A More Cohesive System

## Signage On Election Day: Victoria

Election days in New South Wales have all the hallmarks of an arms race. Political parties, third-party campaigners, and other political organisations compete for limited fence space in front of schools and public buildings. This process degrades our environment and the participatory nature of democracy in NSW by advancing only those who can afford kilometres of coreflute, bunting, and A-frames. Not to mention the frustration of electors who must navigate their way past this material and into polling booths.

Prior to the last state election, the limitations on electoral signage sizing were removed. This change only exacerbated the problem.

New South Wales should look to Victoria for an example of how to have an equitable approach to election day. In Victoria, there is a limit on the size and number of signs that candidates and parties can display within one hundred metres of the designated entrance to a voting centre.

Signs must not be bigger than 600 mm x 900 mm. Independent candidates can have no more than two signs and registered political parties can have up to two signs for endorsed district candidates, two signs in total between all endorsed region candidates, and two signs for a party.

There is also a prohibition on displaying a mobile billboard within 100 metres of the designated entrance to a voting centre or early voting centre.

Many local government areas already have prohibitions on the erection of signs on private and public land.

It is time to restrict sizing and introduce restrictions on the quantity of election signage once again.

**RECOMMENDATION: NSW Labor recommends that practical restrictions be placed on election signage on election day, similar to restrictions in Victoria.**

## Nsw Disclosure System

New South Wales has some of the most intricate disclosure requirements in the country. These laws can pose significant challenges for new political parties and participants. To address this, the NSW Electoral Commission should enhance its electronic financial disclosure system. By doing so, it can better monitor donations and expenditures, ensuring full compliance with the Electoral Funding Act. An upgrade to the system would also reduce barriers for new political entrants.

Currently, the NSW Electoral Commission Financial Disclosure System (FDS) lacks integration with modern accounting software, such as MYOB. Additionally, it is not compatible with Comma Separated Values (CSV)—a data standard that has been in use since 1972.

Under the current FDS process, political participants must manually download files from accounting software suites and upload them individually into the Electoral Commission system. Each upload is limited to a maximum of 25 items. For instance, uploading 300 invoices takes approximately 6 hours. Notably, between July 2023 and December 2023, the NSW Labor financial return included over 2500 invoices.

This existing process often results in transcription errors and input inaccuracies.

To improve efficiency and accuracy, the FDS should be made compatible with CSV. Ideally, it should also support other modern formats, including XLSX, aligning with industry-standard accounting software.

**RECOMMENDATION: NSW Labor recommends the Electoral Commission improve the FDS program to ensure it is fit for purpose including being cross compatible with modern accounting software.**

## Electoral District Expenditure Loophole

At New South Wales state elections, there are limits on the amount that political participants can spend on campaigning as a result of electoral expenditure caps. These caps apply during the capped expenditure period for an election. The caps apply to the electoral expenditure of political parties and their associated entities, candidates, groups of candidates, and third-party campaigners.

The main electoral caps for parties are the *electoral district caps* and the *general election cap* (the party's overall expenditure cap).

The electoral district caps apply to electoral expenditure incurred by a party or third-party campaigner for the purposes of the election in a particular electoral district. This includes advertising or other material that mentions the name of a candidate that is contesting in the electoral district in which the material is distributed, or that names the electoral district. It is communicated, in the main, to electors in that electoral district and not to electors outside that electoral district.

While there is some variability in the types and amounts a party can spend in an election or by-election, the *general election cap* is \$150,700 multiplied by the number of electoral districts in which candidates are endorsed by the party (eg 93 x 150,700 = \$14,015,100.00). The *electoral district cap* is \$150,700 plus \$75,500 (which sits within the party's overall expenditure cap).

The assumption for this purpose is that a political party can spend \$14,015,100 on macro activities (less the amount not exceeding \$75,500 per seat, spent in an electoral district specific manner), and \$226,200 for targeted activities within an electoral district and remain under the cap.

These caps can be gamed to increase the general election cap by falsely hypothecating, macro activities in individual electoral districts. This is because of the \$226,200, \$150,700 of which sits outside the overall Party cap.

As an example:

*A political party may choose to nominate a candidate in the electoral district of Mount Druitt, and then spend \$26,200 on that candidate. That same party also has a \$50,000 state-wide advertising campaign, in doing so they exceed the \$14,015,100 cap by \$50,000. Currently that party could attribute that \$50,000 to the electoral district of Mount Druitt to avoid breaching the cap. This is despite knowing that this content was not incurred in the pursuit of the electoral district of Mount Druitt.*

The outcome described above is clearly not in the spirit of the rules, however, it is permissible.

The loophole allows arbitrary hypothecation of expenditure to electoral districts. The loophole should be closed. While this could be achieved through several mechanisms, and we do not aim to prescribe the remedy, what is clear is that the status quo is insufficient.

**RECOMMENDATION: NSW Labor recommends the electoral district expenditure loophole be remedied.**

## Party Logos

NSW Labor has advocated for ballot papers to include political party logos across numerous electoral cycles.

The adoption and implementation of party logos on ballot papers has been rolled out federally and in Victoria. Party logos would reduce confusion and increase formality. It would reduce the likelihood that a vote cast does not match the intention of the elector, especially in the case of the Legislative Council.

NSW Labor understands that the process for integrating party logos on ballot papers is already underway. This process must be finalised before the 2027 state election. Providing party logos will assist with voter formality and vote accuracy.

**RECOMMENDATION: NSW Labor recommends that logos should be present on ballot papers at the 2027 NSW state election.**

## Postal Vote Applications Issued By Political Parties

The distribution of postal vote applications by political parties undermines trust in the political system, rather than enhancing it.

Voters typically believe that their application are both issued by and returned to the NSW Electoral Commission.

At present, political parties have the ability to distribute postal vote applications and receive them back before they are processed.

The practice of political parties managing postal votes should be discontinued.

**RECOMMENDATION: NSW Labor recommends that political parties should not handle or distribute postal vote applications.**

## Languages Other Than English

Languages other than English are spoken in 29.5% of households in NSW and 26.6% of people in NSW use a language other than English at home.

During the 2023 State Election the highest informal rates were in Fairfield 7.1%, Bankstown 6.6%, Auburn 6.6%, Liverpool 6.0%, Granville 5.9% - all electoral districts characterised by large cultural and linguistic diverse communities. While the informal voting rate across all NSW electoral districts stood at 3.28%, less than half the rate in Fairfield.

Addressing this disparity is crucial to ensuring that voters from ethnically and linguistically diverse communities experience equitable enfranchisement.

There is a pressing need to allocate additional staff with language skills from the NSW Electoral Commission to communities who speak languages other than English. Increasing instructional advertising campaigns in multicultural media, including social media, is essential to guide voters on the correct procedures for casting a formal vote.

Precautionary measures are warranted to prevent undue influence on non-English-speaking voters, especially via social media, and by volunteers proficient in their languages. The NSW Electoral Commission must also ensure that signs in languages other than English are unambiguous and free from any intention to mislead voters, as observed in the Chisholm division during the 2019 Federal Election.

Considering these challenges, NSW Labor recommends that the NSW Electoral Commission provide additional resources for culturally and linguistically diverse voters. These resources should be allocated to polling places where a significant portion of the population speaks a language other than English. This initiative should encompass additional support, language services, and targeted informational campaigns to promote equal participation in these communities.

**RECOMMENDATION: NSW Labor recommends that the NSW Electoral Commission provide additional resources for culturally and linguistically diverse voters in polling places**

## Administrative Funding For Independents

The Administrative Funding reimburses eligible parties and MPs for quarterly administrative and operating expenses. Eligible parties and MPs can claim payments from the NSW Electoral Commission.

The burden for complying with the requirements to receive administrative funding places unique challenges on independents. Independents receive monies in order to comply with these requirements.

NSW Labor recognises that the challenges for independents to comply with administrative funding requirements may be significant. We believe the Commission should take a non-punitive approach when there are minor breaches or administrative inconsistencies by independents.

The Electoral Commission should consider if reasonable attempts have been made to comply with the spirit and intent of the Act, or if any breaches by independent members were inadvertent.

**RECOMMENDATION: NSW Labor recommends that the NSW Electoral Commission take a 'non-punitive' approach to dealing with Independents in regard to administrative funding requirements.**

## Restrictions On Early Voting

NSW Labor acknowledges the increasing prevalence of early voting in general elections and by-elections. This increase has been observed across numerous electoral cycles. NSW Labor considers early voting crucial for facilitating broad access for voters.

With the rising trend of early voting, some individuals may opt to cast their ballots early for the sheer convenience it offers. Presently, restrictions on early voting during state elections mandate that an elector must meet specific criteria, such as being outside New South Wales on election day, facing illness or infirmity, or having work commitments.

It is observed that reporting the reasons for requesting an early vote leads to delays at early voting centres. Removing these restrictions on early voting aligns with the evolving voting landscape and acknowledges the practical considerations of voters.

Removing restrictions was successfully implemented in Victoria during the 2018 state election.

NSW Labor recommends a consistent approach to early voting, aimed at eliminating restrictions that may limit individuals from casting early votes. By doing so, early voting centres can operate more efficiently, reducing lines and ensuring a smoother voting process.

**RECOMMENDATION: NSW Labor recommends the removal of limitations on voters seeking to cast an early vote, aligning with the precedent set in Victoria.**

## I-Vote

NSW Labor endorses the utilisation of technology for election processes and recognises the significance of offering diverse mediums to facilitate voter participation. However, iVote introduced biases to voting which were incompatible with democratic outcomes and posed a systemic risk to election security.

In previous electoral cycles concerns were raised as voters experienced difficulties in receiving pertinent information, such as login codes essential for accessing the online voting system. iVote's shortcomings prompted its removal from use.

Australians have witnessed an increase in the number and severity of cyber-attacks. In September 2022, Optus, Australia's second-largest telecommunications company, confirmed a data breach that affected 9.8 million customers and in December 2022, Medibank, Australia's largest private health insurer, disclosed a data breach that impacted 9.7 million people.

Both cyber intrusions have demonstrated the fragility of modern IT systems. While we are sure that the NSW Electoral Commission has high security standards, no organisation is free from the threat of cyber actors.

In light of these challenges, and in order to bolster the confidentiality, availability, and reliability of our voting system, we commend the Electoral Commission for removing iVote as an option for voting.

An exception may exist for vision impaired persons, for whom iVote may be a viable option for allowing them an autonomous enfranchisement option. Safeguards should be in place to prevent proliferation beyond those vision impaired users. Cyber security matters would still need to be appropriately dealt with in this use case.

**RECOMMENDATION: NSW Labor commends the removal of iVote and recommends the consideration of its reintroduction only in the context of vision impaired persons.**

## Pre-Poll Period

The one week early voting window at the 2023 Election proved successful with 1,572,516 votes cast early. The current pre-poll period should be retained.

The NSW Electoral Commission should publish and publicise the location and timing of early polling centres as early as possible. NSW Labor recommends that the location and opening hours of early voting centres be published no less than 14 days prior to the opening of early voting.

**RECOMMENDATION: NSW Labor commends the one week early voting period.**

## Overseas Voting

At the 2023 election the NSW Electoral Commission forced electors enrolled to vote in New South Wales and living or holidaying overseas during a State election period to vote by post.

At previous elections and in other Australian jurisdictions voters had been able to cast their votes through other methods including iVote, and in person at polling booths at embassies and High Commissions.

The previous arrangements delivered greater enfranchisement to electors, for whom it is compulsory to cast a vote. The UK is estimated to have 166,000 Australians as residents and a further 99,000 in the USA. With an aim of increasing voter enfranchisement these electors should be given in person voting booths in the most populous major cities for the Australian diaspora.

**RECOMMENDATION: NSW Labor recommends the reintroduction of in person polling booths in select major international voting centres.**



# Voter ID Laws

Voter ID laws are unnecessary.

Australia and NSW have no substantial history of mass voter fraud. It does have a history of Governments using the fear of fraud to try and introduce Voter ID laws.

These laws impose additional burdens on voters, and on the staff who run our elections. They exclude or discourage legitimate voters who do not have the appropriate identification. This disadvantages young people, the elderly, Indigenous people, homeless people, and people from low-income, minority backgrounds, and people for whom English is not their first language.

Those who suggest that elections are vulnerable to fraud and manipulation, use a thin wedge of fear to try and remove voting rights.

Voter ID laws will only slow the voting process.

Instead of voter ID laws, New South Wales should focus on enhancing voter education, engagement, and accessibility, especially for the groups that are least likely to vote formally. We must ensure electors can exercise their right to vote freely and fairly.

**RECOMMENDATION: NSW Labor opposes any introduction of voter ID laws.**

## Candidates' Right To Hand Out At Elections

The rights of candidates to hand out how-to-vote cards should be codified. There should be no doubt about the rights of candidates and their campaigns to distribute voting instructions at polling booths.

In recent elections, excessive discretion was given to polling booth officials to determine the location and ability of candidates and electoral participants to hand out on election day.

The distribution of how-to-vote cards is central to our political process, especially in a jurisdiction where the mode of voting, namely optional preferential, differs from the federal election.

During Covid-19, local government elections were held with a prohibition on the handing out of official party materials by candidates. While we acknowledge that the world was in the grip of a health crisis, the rules were enforced with variable discretion.

By establishing the rights of candidates and electoral participants, we remove ambiguity. We can stipulate clearly where and how they are able to distribute how-to-vote material.

**RECOMMENDATION: NSW Labor supports the establishment of precise rules that prescribe the rights of candidates to hand out how to votes.**

## Federal And NSW Cooperation On Electoral Roll Data And Conduct Of Elections

The collection and retention of electoral data is a key function of the NSW Electoral Commission. Concerns about the ongoing security of data by governments and private organisations are well documented.

With each federal and state jurisdiction managing their own electoral roll, NSW Labor believes there would be benefit in the NSW Electoral Commission and the Australian Electoral Commission exploring options to share resources for electoral roll management. This may include coordination in areas such as electoral roll migration between the two jurisdictions and platform sharing. Such coordination could lead to economic efficiencies and strengthened security of data.

Likewise, there are also opportunities to explore greater cooperation between the two jurisdictions on the conduct of elections. This could include functions such as staff training, recruitment collaboration, and management of election venues.

**RECOMMENDATION: NSW Labor supports the investigation of greater cooperation between the NSW Electoral Commission and the Australian Electoral Commission on electoral roll data and conduct of elections.**

## Acting In Concert

The 'acting in concert' laws aimed to limit the amount of money that third-party campaigners could spend on election campaigns if they acted together or in a coordinated way with other third-party campaigners or registered political parties. These rules were part of the Electoral Funding Act 2018.

UnionsNSW and several other unions led a legal challenge to the laws. The matter was heard in the High Court of Australia in 2022. The unions argued that the acting in concert provisions violated the implied freedom of political communication, as they restricted the ability of unions and other groups to express their views and influence public opinion during elections.

The High Court agreed with UnionsNSW and the other applicants and found that the acting in concert provisions were invalid and unconstitutional. The court ruled that the provisions imposed a disproportionate burden on the freedom of political communication. It found the laws did not sufficiently advance the stated purpose of preventing corruption and undue influence in the electoral system.

The acting in concert laws had a chilling effect on the political participation of third-party campaigners. Any law with a similar purpose would have an identical outcome.

The experience of NSW Labor is that political parties and third-party campaigners run campaigns wholly independently of each other. There is no evidence that allowing third-party campaigners to communicate or coordinate with each other has a detrimental impact on elections. Third-party campaigners should be permitted all the benefits of free communication and association.

While organisations may have similar political objectives, the mode and process for achieving those outcomes, as well as the measures of success, differ greatly. This is true of third-party campaigners and other political participants.

NSW Labor has always developed and implemented its campaign strategy independently from all other third-party campaigners.

**RECOMMENDATION: NSW Labor does not support the previous Government's attempts to limit third-party campaigners**

## Truth In Advertising

NSW Labor may seek to make a supplementary submission at a later date on the subject of truth in advertising.