

**PROPOSALS TO INCREASE VOTER ENGAGEMENT, PARTICIPATION AND
CONFIDENCE**

Organisation: NSW Independent Commission Against Corruption
Date Received: 13 August 2024



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

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

By email: electoralmatters@parliament.nsw.gov.au

Our Ref: AD24/0074

Dear Mr Primrose

Inquiry into proposals to increase voter engagement, participation and confidence

Thank you for the invitation to make a submission to the inquiry into *Proposals to increase voter engagement, participation, and confidence*, which is being conducted by the Joint Standing Committee on Electoral Matters.

The Commission's attached submission focuses primarily on parts 1 (e) and (f) of the Terms of Reference that address the recommendations set out in the Commission's report *Investigation into political donations facilitated by Chinese friends of Labor in 2015 (Operation Aero)*. It draws on policy observations made during Operation Aero including the need to strengthen the governance and control standards of political parties. While over two years have passed since the original recommendations, the Commission welcomes a new impetus around these important issues.

If you require further information or assistance on any of the matters raised in the submission, please contact my office or Lewis Rangott, Executive Director Corruption Prevention on [REDACTED]
[REDACTED]

Yours sincerely

The Hon John Hatzistergos AM
Chief Commissioner

12 August 2024



INDEPENDENT COMMISSION
AGAINST CORRUPTION
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**Submission to the Inquiry into proposals to increase voter
engagement, participation and confidence.**

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About the Commission

The Commission was established as an independent body in 1988 to investigate and prevent corruption in and affecting the NSW public sector.

The Commission's principal functions are set out in s 13 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act). In summary, s 13 provides that the Commission:

- as part of an investigation process, consider whether laws, methods of work, practices or procedures should be changed to reduce the likelihood of the occurrence of corrupt conduct.
- examine laws, practices and procedures of public authorities to facilitate the discovery of corrupt conduct.
- instruct, advise and assist public authorities on ways in which corrupt conduct may be eliminated, the likelihood of corrupt conduct reduced, and the integrity and good repute of public administration promoted.
- enlist and foster public support in combating corrupt conduct and in promoting the integrity and good repute of public administration.

The terms of reference include the Commission's report on its *Investigation into political donations facilitated by Chinese Friends of Labor in 2015*, known as Operation Aero. For brevity, this submission does not reproduce the detailed findings contained in Operation Aero, the Commission's related reports or any earlier submissions made to the Committee. However, **Appendix A** provides an overview of these earlier reports and the Commission would be happy to provide further detail if that would be of assistance to the Committee.

The State-Commonwealth gap

As discussed in the Operation Aero report, the Commission has observed differences in election funding laws in NSW and the Commonwealth. Its principal concern is that if a donor or donation that is prohibited in NSW can be lawfully made into a party's federal election account, the anti-corruption objective of the NSW law could be circumvented.

One manifestation of the issue arose in the Commission's *Investigation into the conduct of a City of Canada Bay Council mayor and others* (Operation Tolosa, November 2023). The Commission's investigation found that the mayor, who was running for a federal seat, received donations from a number of individuals who had development-related matters before council. If made under NSW law, these same donations would likely be prohibited based on their amount and the nature of the donor.

That said, the Commission understands that the Commonwealth Government is preparing some legislative amendments that may go some way to bridging the gap.

Improving systems for party governance and control standards

Operation Aero highlighted a number of shortcomings in the governance of NSW Labor head office. Evidence heard during the inquiry referred to the process around the handling of donations as "sloppy, poor governance, terrible way of functioning".¹

¹ ICAC, *Investigation into political donations facilitated by Chinese Friends of Labor in 2015*, p. 272.

The Operation Aero report recommended that payments to political party from the Administration Fund be made “contingent on the achievement of acceptable standards of party governance and internal control” (see recommendation 2, p. 274). This remains the Commission’s position.

The table below contains some additional detail about desirable governance arrangements. Most, but not all of these were also raised in Operation Aero.

Governance requirement / enhancement	Comment
<p>Documented policies and procedures relating to:</p> <ul style="list-style-type: none"> • accounting for, receipting and banking donations • the management of fundraising events • identification of prohibited donations/donors. 	<p>It would be reasonable to expect all registered parties to have policies and procedures covering these areas as they are necessary for compliance with the <i>Electoral Funding Act 2018</i>. In addition, the NSW Electoral Commission already publishes extensive guidance material and template forms on these topics.</p> <p>One potential way to manage these connected processes is for parties to introduce a quality management system (QMS). A QMS can be applied to most administrative processes and can be independently audited pursuant to the ISO 9001 standard. The Commission does not suggest that a QMS become a mandatory obligation for registered political parties but it may be a convenient mechanism that can be considered.</p>
<p>Documented policies and procedure relating to:</p> <ul style="list-style-type: none"> • a code of conduct • whistleblowing and complaints • avoiding, disclosing and managing conflicts of interest • the receipt and management of personal gifts and hospitality made to party officials • lobbying of and by party officials • access to and use of the electoral roll • betting on the outcome of elections. 	<p>The Commission has not conducted a detailed study but expects that many registered parties would already have a suite of codes, policies and procedures covering these areas. The Commission and the NSW Electoral Commission have guidance material on most of these topics. In addition, while they are not public authorities, the Commission would be happy to give advice to individual registered parties that are interested in developing or improving policies.</p> <p>While small parties might not be expected to have a sophisticated set of internal controls and IT system, it would be reasonable to expect them to maintain a suite of integrity-related policies, most of which could be relatively simple.</p> <p>The Commission would not expect a registered political party to adopt a whistleblowing policy that aligns with the <i>NSW Public Interest Disclosures Act 2022</i>. It would, however, be useful if parties had policies that encouraged reports:</p> <ul style="list-style-type: none"> • internally, or to external authorities such as the NSW Electoral Commission

	<ul style="list-style-type: none"> • from members and volunteers • from anonymous reporters. <p>As noted below, the recent UK general election was marred by allegations of “insiders” betting on the date of the election. Based on this recent incident and the prevalence of gambling in Australia, there would be merit in requiring registered parties to have policies that prohibit, or at least limit, betting on election-related matters.</p>
Candidate screening	<p>The <i>Constitution Act 1902</i>, <i>Electoral Act 2017</i> and the <i>Local Government Act 1993</i> set out some criteria regarding who may hold elected office in NSW. For local council elections, s 308 of the <i>Local Government Act 1993</i> requires the provision of candidate information sheets. It is reasonable to expect registered parties to have systems in place to comply with those statutory requirements and cooperate with the NSW Electoral Commission.</p> <p>Beyond that, it is matter for each individual party to determine who is nominated to run for election and how they are pre-selected. At the present time, the Commission does not see that payments from the Administrative Fund ought to be contingent on parties having particular procedures in relation to selecting and screening candidates.</p> <p>However, overall voter confidence in the electoral process would be enhanced if political parties adopted robust candidate screening procedures and chose to be transparent about those procedures. The Commission understands that a number of registered parties already do this.</p>
Risk management and audit	<p>While the NSW Electoral Commission already has a compliance and auditing role, it may be reasonable to expect registered parties to adopt a risk management and internal audit program that is proportionate to their size and the volume of taxpayers' funds they receive.</p>
Training	<p>It would be reasonable to expect a registered party to train its paid staff in its relevant policies and procedures. The Commission would not necessarily expect that a party would have to administer formal tests or develop expensive online learning modules. There should also be a requirement for paid staff to participate in any training administered by the NSW Electoral Commission.</p> <p>It would be more onerous to train volunteers and members but simple awareness-raising and</p>

	compliance materials (such as factsheets and checklists) could be required, especially for processes in relation to fundraising.
Roles and responsibilities	It would be reasonable to expect registered parties to assign integrity-related functions to key officials. The Commission accepts that smaller parties have fewer staff and limited resources that could be devoted to integrity-related functions.

Foreign interference

When deciding to commence its Operation Aero investigation, one of the factors considered by the Commission was the “*significant public interest, given its context in connection with possible foreign influence in NSW electoral processes*” (p 22).

In ASIO’s Annual Threat Assessment 2024, Director-General Mike Burgess stated:

*Espionage and foreign interference is, by definition, clandestine. And its most severe impacts are cumulative. But just because you cannot always see it does not make it less real or less serious or less pervasive. Espionage and foreign interference corrodes our democracy, sovereignty, economy and community. It undermines our freedoms. It degrades our decision-making and strategic advantage. It truly is a threat to our way of life.*²

While Operation Aero did not make an explicit finding that any conduct amounted to “foreign interference”, the report sets out some obvious risk areas. For example, a former party secretary gave evidence that an illegal donor was seeking “*Friendship, proximity, to power*”.

In addition to Operation Aero, a number of other Commission investigations have involved corrupt conduct that has taken place overseas or involved foreign business. In these cases, there were clear signs of elected officials being groomed.

The Commonwealth Department of Home Affairs has established a National Counter Foreign Interference Coordinator and a Counter Foreign Interference Coordination Centre. The Commission understands these new institutions are working with at-risk groups such as elected officials. It would enhance public confidence in the electoral system if political parties cooperated with these endeavours and took steps to alert elected officials and their staff about the risks of foreign interference and grooming.

Lobbying

In June 2021, the Commission issued a report on its *Investigation into the regulation of lobbying, access and influence in NSW* (Operation Eclipse). That report was not primarily concerned with the connection between political donations and lobbying practices. However, one of the key concerns arising from the report was the corruption risks associated with secret (as opposed to

² See: <https://www.oni.gov.au/news/asio-annual-threat-assessment-2024>

private) interactions between lobbyists and decision makers. The Commission notes that the recommendations made in Operation Eclipse are yet to be addressed.

Operation Aero showed that lobbying efforts can take place via a registered political party. Because they are not public authorities and their staff are not public officials, any lobbying that occurs via a political party is difficult to regulate and can more easily be kept secret.

The Commission also made some brief comments about misinformation, disinformation and deepfakes in its submission to the Committee's *Inquiry into administration of the 2023 state election and other matters*. These comments may also apply to the Committee's current inquiry.

UK betting scandal

In June 2024, there was widespread media coverage of allegations that individuals with "inside" knowledge had placed bets on the timing of the UK general election. The Commission has not identified any outcomes, but media reporting indicates that the allegations were being investigated by the UK Gambling Commission.

While placing bets about the timing of an election is legal; the UK *Gambling Act 2005* criminalises various forms of cheating, likely including the misuse of insider information.

This specific form of gambling is less of a risk in NSW, where the dates of state and local elections are set. It is, however, still possible to bet on a variety of election outcomes in NSW and Australia and some party insiders will inevitably have access to information such as unpublished polling data.

If political insiders were to place bets on election outcomes, public confidence in the electoral system would be damaged. The Commission does not suggest this is a widespread problem in NSW, but the issue could be addressed via suitable policies, procedures and training.

APPENDIX A

In recent years, a number of recommendations and initiatives have been made to strengthen the integrity framework. The Commission's role in these proposed reforms is listed in the Table below.

Table: ICAC recommendations to improve systems for political donations, electoral funding and party governance

Date	Report / submission	ICAC
Feb 2024	Submission to the JSCEM <i>Inquiry into the Administration of the 2023 NSW State Election and other matters</i>	See: Submission 14 - NSW Independent Commission Against Corruption.pdf
Feb 2024	Submission to the Australian Parliament Senate Finance and Public Administration References Committee <i>Inquiry into access to Australian Parliament House by lobbyists</i>	Submission number 32 Submissions – Parliament of Australia (aph.gov.au)
Nov 2023	<i>Investigation into the conduct of the City of Canada Bay Council mayor and others</i> (Operation Tolosa)	The Commission considered the issue of whether political donations made during a mayor's federal election campaign by donors connected to developers ought to have been disclosed as a conflict of interest under the Model Code when the mayor dealt with the relevant development matters. The Commission recommended in the investigation report that councillors be explicitly required to disclose political donations made in other jurisdictions as conflicts of interest.
Feb 2022	<i>Investigation into political donations facilitated by Chinese Friends of Labor in 2015</i> (Operation Aero)	The ICAC made seven recommendations for reform of financing of political parties and elections.

Date	Report / submission	ICAC
June 2021	<i>Investigation into the corruption risks involved in lobbying, accessing and influencing public officials and public authorities in New South Wales (Operation Eclipse)</i>	The ICAC made nine key findings and 29 recommendations to improve the regulation of lobbying in NSW.
Aug 2016	<i>Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters (Operation Spicer)</i>	<p>Rather than recommendations, ICAC made findings related to:</p> <ul style="list-style-type: none"> • the making of donations by 'prohibited donors' under NSW law • disguising the identity of donors by channelling donations through third parties • disguising donations as payments for services • breaches of relevant funding and expenditure caps and disclosure requirements.
Dec 2014	ICAC report: <i>Election Funding, Expenditure and Disclosure in NSW: Strengthening Accountability and Transparency.</i>	This report dealt with political donations and disclosures, and the integrity of government decision-making. It made 22 recommendations drawn from best practice in international electoral regimes affecting electoral funding, disclosure, election expenditure and party registration operations in the context of NSW state elections. It also dealt with issues on governance and compliance, and one recommendation related to third-party expenditure.