

# **REVIEW INTO THE NSW LABOR HEAD OFFICE**

## **Interim Report**

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## Chapter One

### Context and Executive Summary: A Blueprint to Reform NSW Labor

This Review arises directly because of ICAC's Operation Aero, which has heard evidence that the NSW Branch of the Labor Party failed to meet fundamental legal and regulatory obligations. While awaiting ICAC's final report, it is evident that Head Office behaviour has shaken the faith of the Party membership, contradicted Labor values, damaged Labor's reputation and fuelled cynicism about politics in the wider community.

This incident would have been bad enough on its own. But it follows earlier failures in Head Office, and other examples of poor leadership by its senior officers. The last two General Secretaries have been obliged to leave the role following damaging controversies. None of the previous six General Secretaries has served a full term. An earlier ICAC inquiry led to the conviction of two former Labor State Ministers. Poor workplace culture in the Party's Head Office and dysfunctional relationships in the Party's administration have been widely reported in the media.

And to the immense disappointment of its loyal supporters and all those who rely on Labor to deliver stable government and progressive policies, this once formidable election-winning machine has - for the first time since 1971 - lost three consecutive State elections.

This is not Labor. This is not what Labor believes in. A chasm has emerged between the culture and behaviours of Head Office and the values and expectations of Labor members and Labor voters. Party members from around New South Wales have made submissions to the Review to express their dismay, their sense of betrayal and their demand for reform:

*"First and foremost, I must say that I am embarrassed, infuriated, disgusted, horrified, humiliated, pissed-off and ropeable about the literal degeneration of what is now called the Labor Party of NSW."*

*"I would like to belong to a party that I don't find myself apologising for so much."*

*"Who do these clowns think they are, to trash our efforts in such a way? ... We as the honest rank and file Labor army must hand back the shame and blame to those involved."*

*"As a life member ... The party needs to reflect, evaluate and rediscover why it exists and how to be a part of integrity that brings all its professional skill to solve the big political problems of our day."*

*"Many members like me are at a crossroads, to decide if to stay as members of the party. I believe strongly in the principles and policies of the party, but I am feeling ashamed of the actions by some of the leadership, past or present, that makes us ALL members look so bad."*

Such sentiments from the Party grassroots are echoed at its highest levels.

In establishing this Review, the Party's Federal and State Parliamentary leaders made clear their demand of the Party's governance.

State leader Jodi McKay spoke of 'serious shortcomings' in the governance of the Party's Head Office and called for a 'new era of transparency and accountability.' Federal leader Anthony Albanese said he, and Party members, had been shocked by 'the reprehensible things they've seen' from the NSW Party Office and wanted 'real, lasting reform' to 'fundamentally change NSW Labor's Party Office culture.'

This is not the first occasion that the NSW Branch has sought to address problems in its own administration. In 2015, an internal Panel chaired by two independent members of the Administrative Committee, Dr John Tarrant and David Tierney, reviewed the party's Administrative Committee and Finance Committee; lawyers John Whelan and Simone Farrar conducted a review of the Head Office workplace; Jane Needham SC and Renee Bianchi reviewed the Party Rules. Separately, a Panel of Experts led by Kerry Schott reported on political donations and party governance.

Arising from these reviews, important reforms have been introduced since the events now exposed in the ICAC's Operation Aero. These include governance reforms to professionalise the Party's compliance processes, a code of conduct for staff, donation disclosures which exceed the requirements of NSW legislation, and investment in IT systems to track and disclose donations.

As useful as these reforms have been, they have been overshadowed by the subsequent ICAC revelations and still fall short of what is needed. The aim of this Report is to provide a blueprint to restore trust, close the deficit between Labor values and Head Office performance and give the Branch a healthy culture and a robust contemporary governance structure.

To do this and build a culture within the Head Office which places a premium on Labor values of fairness, honesty, integrity and social, economic and industrial justice, the Branch must confront the issue of power. Where power lies within the Branch, how that power is exercised, what are the checks and balances to the use of power and how those entrusted with power are held accountable for using power in the best interests of the Party as a whole.

The starting point to understand how the Branch deals with power is to go to the Party Rules. It is the rules which govern how the Branch as an unincorporated body is structured. The rules place power over the administration of the Branch in the annual State Conference. From the Conference, power is vested (subject to some reservations) in the Administrative Committee. Between meetings of the Administrative Committee, power to administer the Branch is placed in the Party Officers - the President, three Vice-Presidents, the General Secretary and two Assistant General Secretaries. The members of the Administrative Committee are prescribed by the rules and mostly elected by the Conference. The Party Officers are elected by the Conference.

At best, the Rules give a bare skeleton of where power resides and how it is exercised. The reality is far more complex and much more nuanced. And in large measure the dynamics of power are not written down but operate through a combination of shared understandings, customs and practices, and the iron dictate of politics that those who control the numbers wield the power.

In this regard, the Branch is not dissimilar to the broader system of Government in Australia. The Commonwealth Constitution lays out the division of power between the Commonwealth and States, between the Parliament, Executive and Judiciary and between the Houses of Parliament, but it says little about how that power actually operates. In fact, the Constitution doesn't even mention the Prime Minister and has but one reference to the existence of political parties.

The Party Rules also make no direct mention of factions, although their existence and the power associated with the factions is reflected in the Rules. It would however be artificial in the extreme to conduct a review into the Branch Head Office and not acknowledge that factions are pivotal in the dynamics of power within the Branch.

Labor historian Michael Hogan has written that factions have in NSW Labor have certainly existed since the creation of the so-called Industrial Section in 1916. With over a century of tradition, it is clear that factions aren't going to be eliminated through any recommendation in this Report. The submissions made to the Review by and large did not seek the demise of factions but rather argued either for a relocation of where factional power notionally resides and/or much stronger accountability measures. Submissions which advocated the removal of direct factional roles for Party Officers were much vaguer as to where the power associated with a relationship with the faction should then go, and how the exercise of this power should be made accountable.

Each Branch of the Labor Party has its own history and there is no single prevailing model or 'best practice' standard as to how factions are or should be organised. Rather, there are simply different approaches arising from the distinctive way Labor politics have emerged over time in each State and Territory. In NSW the Right and Left have largely remained as coherent wholes as opposed to operating in sub-factions. Factional convenor roles have rested in the Head Office.

It is abundantly clear that the exercise of power within the Branch needs to be subject to substantial and meaningful reform. The approach taken in this report is not to endeavour to prescribe factional arrangements. Rather the premise adopted is that factional power like all power should be recognised, made subject to checks and balances, and ultimately subordinated to the best interests of the Party overall.

In this respect, the Review follows in the footsteps of former Premier Neville Wran, who at the invitation of the Administrative Committee conducted a review of Labor's 2001 election campaign in New South Wales. Wran's observations in his 2002 report remain relevant.

"Factions within the Party are not recognised by the rules. Nonetheless, they exist and their existence is acknowledged by the proportional representation rules. In many

instances they assist to manage differences within the Party and to achieve appropriate resolution of conflict. We recommend that those members of the Party who are active in factions should clearly recognise that:

- Many members of the rank and file of the Party are not committed to any faction, and indeed dislike factionalism.
- The interests of the Party must be seen as absolutely superior to the interests of any faction, or sub-faction.
- No faction has a monopoly on good, principled and active members of the ALP.
- There must be a role both in the Parliamentary Party and in the Party structure for those who decline to give adherence to any particular faction or sub-faction.

Factionalism should always be subordinate to the broader interests of the Party.”<sup>1</sup>

Many of the submissions made to the Review endeavoured to grapple with the issue of power within the Branch. Common themes dealt with basic expectations on how power should be exercised and changes to governance structures and the roles of Party Officers. The approach adopted by the Review has been to assess the performance of the key roles, structures and power dynamics within the Head Office against a set of guiding principles. These principles reflect basic understandings as to how a well-managed and ethical organisation should operate and how a healthy culture would be manifested. Equally, proposals and options for reform have been measured against the guiding principles.

Invariably, the weighing up of reform proposals involve considerations of benefits and consequences. It is rare that there is only one way an organisation could be configured and usually there are choices to be made. The Review has endeavoured to be pragmatic and to recognise that proposed changes must be achievable and affordable.

The Review has been given Terms of Reference to direct its focus. While endeavouring to be mindful that behaviours and practices within the Head Office are not occurring in a vacuum, the Review does not canvass a number of important and interrelated issues that fall outside the Terms of Reference, including:

- the Labor Party’s performance in the 2019 State election or the 2019 Federal election. There are separate reviews into both election campaigns;
- Labor’s policy platform;
- the relationship between the trade union movement and the Labor Party;
- other than Labor Action Committees, Party structures beyond the Head Office;
- public policy settings around public funding of elections and the regulation of political party fundraising
- broader changes in the community which are impacting on politics and political parties.

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<sup>1</sup> Neville Wran, ‘2001 Federal Election Review Report’, p25.



Having set out the broad context and background of the Review, the remainder of this Chapter sets out in summary form the principal arguments and recommendations that are made in the subsequent Chapters.

**Chapter Two** articulates five principles to guide a healthy culture and robust governance in NSW Labor. The principles have been informed by Labor Party values, as well as governance standards applying to trade unions, not-for-profit organisations and corporate governance principles.<sup>2</sup> While the governance standards need to be adapted in application to reflect the differences between a political party and a charitable or other not-for-profit entity, they reflect prevailing community standards and expectations.

The primary and overarching principle is that power must be exercised in the best interests in the Party as a whole and not for personal or sectional advantage. To support and enliven the Party's best interests, four additional principles are adopted by the review as follows:

- That the exercise of power and decisions and actions which flow from being entrusted with power should be accountable and transparent (accountability and transparency);
- That meeting all legal, regulatory, social and moral obligations is a paramount operating imperative (honesty and fidelity);
- That the Party's values and objectives steer its actions and are reflected in its strategy and plans (clarity of purpose); and,
- That resources be allocated to further Labor's values and objectives and to maximise electoral prospects (efficiency and effectiveness).

It is recognised that there are other important considerations such as ensuring a safe, fair and tolerant workplace, respecting and implementing equity goals and affirmative action rules and ensuring that regional views are heard.

**Chapters Three to Five** describe the current state of governance in Head Office and assesses it against these guiding principles. It is concluded that the Head Office has been operating well short of the expectations which would flow from adherence to the principles. Accordingly, the Review recommends significant structural changes to improve the performance and accountability of the leadership of the Branch's organisation wing.

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<sup>2</sup> These include:

*Governance Standards* published by the Australian Charities and Not for profits Commission (<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-standards>),

*Fact Sheets and Guidance Notes* published by the Registered Organisations Commission which regulates unions and employer associations (<https://www.roc.gov.au/resources-and-decisions/fact-sheets-templates-and-webinar>),

*Not for Profit Principles* published by the Australian Institute of Company Directors (2nd edition, January 2019) (<https://aicd.companydirectors.com.au/resources/not-for-profit-resources/not-for-profit-governance-principles>) and

*Corporate Governance Principles* published by the ASX Corporate Governance Council (4<sup>th</sup> edition, February 2019) (<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>)

**Chapter Three** considers the political leadership of Head Office, particularly the key roles of the General Secretary, Assistant General Secretaries and the Party President. It is clear that these roles currently:

- lack clarity;
- have inadequate lines of authority and reporting;
- rely entirely on personal dynamics to be effective; and,
- fall short in terms of accountability and transparency in decision making.

At the same time, the General Secretary, as the CEO and leader of the organisational wing, does not have full capacity to marshal all the resources available in Head Office. In particular, the senior leadership team - the General Secretary and the two Assistant General Secretaries – do not always and consistently work together as a cohesive team. As a result, efficiency and effectiveness has been compromised.

And clearly the principle of honesty and fidelity has not always been paramount - or the decisions revealed in Operation Aero would not have been made. That the best interests of the Party have not always prevailed is illustrated by a number of behaviours – notably, the apparent use of the key leadership roles as stepping stones to achieve personal Parliamentary positions.

To address these shortcomings the roles within the Head Office firstly need to meet basic governance and management standards. For each of the roles of the President, General Secretary and the two Assistant Secretaries there should be:

- a role description; and
- a statement of the expected skills and experience

For each of the Secretaries, as paid employees and senior professional political leaders of the Party's organisational wing, there should be:

- performance expectations against which they are assessed annually;
- a contract of employment setting out terms of employment, including the grounds for termination and the fundamental obligation to respect confidentiality within the workplace; and,
- publication of remuneration details.

It is not proposed that the Conference delegate its power to elect the Secretaries. The practical implication of this means that candidates for the positions will continue to emerge through internal factional considerations. But what should be expected is that the Conference will be presented with candidates that have skills, experience and maturity which can reasonably equip the Secretaries to do the work.

The senior leadership group within the Head Office needs to be empowered and then held accountable for the use of that power. To this end there should be from the Administrative Committee an instrument of delegation which places authority into the General Secretary as CEO. In turn the General Secretary needs to provide a delegation to the two Assistant General Secretaries and the Governance Officer as the senior leaders of the Office. This delegation should be approved by the Administrative Committee. It is recommended that

Party Organisers no longer be Conference-elected positions but be appointed on a skills and merit basis by the Secretaries acting as a selection panel.

To reflect the importance of the leadership roles within the organisational wing and to address squarely the issue of recent short terms of senior positions, a new rule is proposed to make the General Secretary and the two Assistant General Secretaries ineligible for election or appointment to Parliamentary office during a first term or 5 years from first commencing as a Party Officer. This is not intended to stop talented people from seeking Parliamentary Office but to mark out clearly that leading the Party Office is not a short stepping stone to another role.

The Party President is a multifaceted and nuanced role somewhat akin to a Chair of a Board and the Speaker of a Parliament. The President is part of the senior leadership group of the organisation but needs a degree of separation from the paid full-time officers who comprise the management of the Party Office. The President chairs the Conference and the Administrative Committee and will under the proposal in Chapter Four become chair of the key governance oversight body - the State Executive Board. As Chair, the President is of the Party but needs a level of detachment from the internal politics of the Party to sustain respect and authority.

In addition to the position description, it is proposed that the President's role have clear lines of authority to exercise oversight of the General Secretary. This would see the President:

- hold authority to monitor and approve personal expenditures of the General Secretary (credit card), approve leave requests and the like of the General Secretary;
- conduct annual performance reviews of the General Secretary and the senior leadership group as a team; and
- oversee an appropriate response and investigation if matters of poor behaviour are raised about the General Secretary;

It is important that the President hold an authority which supports the role. This authority in part stems from the manner of the President's appointment. At the moment the President is elected from the State Conference in the same fashion as the General Secretary and other Party Officers. It is proposed that the President's authority to play the governance leadership role recommended in this report be enhanced by means of a different method of appointment.

There are essentially two options for this (although there can be variations on the theme). First, the President could be elected from Conference by way of a 'special majority' of 75% of Conference delegates<sup>3</sup>. Second the President could be directly elected by the Party membership.

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<sup>3</sup> That is, applying the 'special majority' or 'super majority' principle set out in the Rules for the Administrative Committee to elect three independent members 'by a three quarters majority vote' (D2 (a) (v)) and likewise three members of the Finance and Compliance Committee (B16 (a) (iii)).

Each method has advantages and disadvantages, costs and benefits. Direct election of the state President has been introduced in some other Branches of the Party and for the National President. In NSW, members have a vote in the election of the State and Federal Parliamentary leaders. Participation in such elections clearly provides a tangible additional benefit for Party members. On the other hand, the process is costly and for a time distracting for the Party organisation. And the reality is that direct election does not result in an unheralded stalwart from a local branch gaining appointment but a profile candidate who invariably has the backing of one of the factions.

Election via a 'special majority' of three quarters of the State Conference would also almost certainly see a factionally aligned candidate prevailing. But the requirement to achieve a 75% majority would vest those elected by this method with substantially greater authority than at present. Nominees for the position would more likely be well regarded leaders with broad based respect and support, able to seek and win support across the Conference - not simply from the faction with a simple majority at the particular Conference. Against this, it is possible that a well-regarded candidate might still be stymied by Party dynamics at the time, where the vote for President becomes a bargaining chip in some other debate. A Conference election does not involve the cost or have the period of distraction associated with direct election - but is much less engaging for rank and file members.

For the purposes of the governance role which the President is to play in the recast structures, it does not so much matter which option is adopted provided the source of authority is different and, in a sense, deeper than that which the other Party Officers obtain from a simple majority vote from Conference.

**Chapter Four** reviews the Branch Governance structures - the Administrative Committee, the Party Officers group and the Finance and Compliance Committee. It is evident that the structures collectively are not meeting the guiding principles and as result the Branch has not been sufficiently well equipped to understand and address weaknesses within the management of the Head Office. In part this is a product of inadequate design and a failure of the Branch to instil a culture that encourages and expects strategic thinking and an active testing of management, as opposed to the passive reception of reports.

The Administrative Committee is universally recognised as an inadequate governance body. It is argued to be too large and acts like a mini Conference in terms of set piece debates. But the issue is not so much the size of the Committee but the mismatch between its actual and potential role in the governance of the Branch. In the judgement of the Review, the overall design of governance should recognise the broadly-defined distinction between political management on the one hand and governance oversight on the other. As a reflection of Conference, the Administrative Committee will inevitably be a political forum. It should continue to take responsibility for political matters. Responsibility for governance oversight – particularly, for oversight of the Party's regulatory obligations - should be placed elsewhere.

The Party Officers group – consisting of the President and the presidential panel of the three Vice Presidents and the Secretaries - is vested with all the powers of the Administrative Committee. As a result it is an amalgam of a senior management team responsible for day

to day management and a non-executive oversight body. But it is fundamentally compromised as a result: it cannot over-sight itself.

Its actual operation reflects this tension. It meets very frequently but at irregular intervals, usually at short notice, and with little or no time for its non-management members to be prepared. It is dealing with both political issues (pre-selection timetables and the like) and governance matters (including regulatory compliance). Like all structures, it can be effective despite design faults if people of good intention are trying to make it work, but at times of stress the fault-lines will manifest themselves.

The Finance and Compliance Committee is, somewhat usually, given by the Rules a more precise remit than the other two bodies in relation to financial management and oversight. Its membership puts some weight on expertise and its processes are more orderly compared to Party Officers. But despite its name, the emphasis remains oversight of budget expenditures and not compliance in relation to public regulation obligations arising from fund-raising and disclosure. Risk management does not appear to feature greatly in the Committee's agendas.

It is proposed that the governance structures be substantially reformed to better align with the guiding principles. As an overall design, political decisions are placed with politically focussed structures while governance processes including finance, compliance, regulatory responsibilities and risk management are placed separately with a specialist structure. As a result:

- core political decision making and strategic direction rests with the Administrative Committee;
- core governance direction and oversight of public regulatory obligation and financial control rests with a new State Executive Board;
- day to day management rests with the Head Office led by the General Secretary and supported by the Assistant General Secretaries and Governance Officer as the senior management team;
- lower level political decisions are made by the Secretaries operating essentially on a consensus basis; and,
- urgent or other limited political matters as delegated by the Administrative Committee are entrusted to the Party Officers

Under this model, the Administrative Committee:

- makes core 'political' decisions such determining pre-selections and Party membership matters;
- has oversight of election campaign preparations and performance;
- takes ownership of, the Party's Strategic Plan and its operational plans and budget by deliberating on and approving them and monitoring their implementation;
- takes responsibility for deliberating on and approving delegations to the State Executive Board, General Secretary and other persons for particular decisions (such as Party Officers for urgent political decisions, for example, suspension from Party Membership);

- approves the delegation of responsibilities between the General Secretary and the Assistant Secretaries;
- fills casual vacancies arising between Conferences, for example, Secretary positions; and,
- appoints non-ex officio members of the State Executive Board

The Administrative Committee should become more forward looking in its agenda rather than mostly considering reports of recent Party Office activity. It will delegate its corporate, financial governance and regulatory governance responsibilities to the State Executive Board. It should be able to move to a quarterly meeting pattern with the meetings being of more substance.

Consideration could be given to reducing the size of the Administrative Committee. A smaller Committee would be more efficient and better able to support the professional development of its members. However this move is less pressing if the Committee is not playing a primary regulatory governance role. With less frequent meetings, the justification for proxy members is removed.

A new State Executive Board would be created. The Board is to focus on governance responsibilities of the Branch, specifically:

- compliance with State and Federal fund-raising, expenditure and disclosure laws;
- obligations under Electoral Acts and public funding laws;
- financial and budget monitoring including external auditing;
- support of people and culture within the Head Office; and,
- all other regulatory obligations imposed on the Party.

In formal terms, the Board is to be established in the Party Rules. It is to operate under a delegation from the Administrative Committee with a charter approved by the Committee. The Board would consist of nine members chaired by the Party President and comprise the Presidential Panel and five additional members elected by the Administrative Committee by a three quarters majority. The additional members between them are to have skills and experience in the areas of:

- corporate governance;
- compliance and risk management;
- accounting and finance;
- law; and,
- workplace relations and organisational culture.

The senior management of the Head Office including the General Secretary will report and be accountable to the Board but will not be members of the Board. The Board will provide an overview report to the Administrative Committee on a quarterly basis and will report to the Conference.

The Board will incorporate the functions given under the Party Rules by the Finance and Compliance Committee and as a result the Finance and Compliance Committee should be

dissolved. The Board will be supported by an Audit and Risk Committee. This Committee will:

- be appointed by the Board;
- operate in accordance with a Committee charter approved by the Board;
- be comprised of four 'independent' members following an open and merit-based selection process;
- act as a probity check on all regulatory obligations placed on the Branch; and,
- have the authority to report any suspected illegalities, not acted upon by the Branch, directly to the responsible regulator.

'Independence' here means that the members have no involvement with the management of the Branch, hold no State level Party position, or have no involvement in any organisation that provides services to the Branch. It would be open to the Board to appoint Committee members who are not Party members. In light of the responsibilities the Committee members should receive a modest remuneration.

The Party Officers Group also takes on a substantially different character. Its nominal governance oversight functions are placed into the State Executive Board. Strategic political direction is more firmly placed with the Administrative Committee. Day to day management including political management is placed with the management team lead by the General Secretary as Branch CEO. The Party Officers as a group would operate only to:

- deal with matters specifically delegated by the Administrative Committee; and
- decide urgent political issues unable to be resolved by the General and Assistant Secretaries on a consensus basis, for example, member suspension.

**Chapter Five** is a brief survey of the need of the Branch to improve its operations in terms of planning and risk management. It is evident that the Branch would benefit from a number of improvements including:

- delegations, policies and register;
- induction program for Administrative Committee members (and the new proposed Board and Committees) together with a committee member's handbook;
- comprehensive register of financial holding and other interests for Party Officers, Administrative and other Board and committee members and all paid staff;
- improved financial budgeting including cash flow and capital expenditure budgets;
- strengthened risk framework; and,
- business continuity plan.

The General Secretary should also prepare for consideration and approval of the Administrative Committee a strategic plan to guide the Party's goals during the term of the Secretary. Developed with the Assistant Secretaries and with the input of other staff, the plan is a vehicle for the senior leadership team to build a shared and clear purpose as what the Party should strive to achieve over a four to five-year horizon.

**Chapter Six** deals with implementation and next steps. The final report will deal the administrative arrangements in the Head Office and compliance issues within the Office

and the Branch more broadly including Labor Action Committees. These matters have not been deeply reviewed at this point.

It is recognised that implementation of the Review recommendations will require significant amendment of the Party Rules. These amendments will need to be drafted and placed before Conference.

It is proposed that the National Secretariat play an over-sight role in the implementation of the report recommendations. To this end the Branch should report to the National Executive on a six-monthly basis on the progress of implementation. Further the Finance, Risk, Audit and Compliance Committee of the National Executive should be charged to conduct a risk review of the Branch in 2020 to deep dive into the Branch's implementation of measures to improve risk and compliance post this Review.



## **Chapter Two**

### **Guiding Principles for a healthy culture and robust governance**

It is a truth universally acknowledged that the Branch is in want of significant reform. The Review has benefitted from Submissions made by some 425 members, branches, Labor networks, employees past and present and members of parliament. They came from life members, new members, members in the inner city and members in regional towns, individuals and groups. They came from branches forwarding resolutions that had been debated and passed. Many of the submissions were detailed and substantial. They made comments and proposals for change to structures, roles, approaches to campaigning, the power of factions, the interplay between the parliamentary and organisational wing, the role of local branches, policy formation, the workings of State Conference, the relationship between the political and industrial wings of the Party and a myriad of other thematic concepts and individual and quite specific ideas.

This was a tremendous and heartening response, highlighting the extent to which recent events in Head Office have let down the party members and deeply dismayed them. The Review thanks all members who took the trouble to lodge submissions.

Underpinning many submissions, and the Terms of Reference, is an implicit belief that a perverse culture had developed within the Head Office which enabled the compliance and regulatory failures detailed in Operation Aero to occur. In short, it is asked how could a large amount of cash be delivered to the Office and not serious questions be raised. And then some time later, how could inquiries from the Electoral Commission as to the legitimacy of the claimed source of the donations not result in the triggering of the Branch compliance mechanisms, notice to senior Party Officers such as the President and a full disclosure of all discovered facts to the Electoral Commission.

The full facts of these events will be dealt with in ICAC's report and will not be pre-empted by the Review, but the circumstances of Operation Aero and more long-term issues identified in the earlier reviews of the Office do readily point to an unhealthy culture in the Office, and at least to some extent the Branch more widely. To move forward requires an honest appraisal of where the culture of the organisation has gone wrong and identifying principles which can be the foundation for both expected behaviours and structural reform of the Branch.

In simple terms an organisation's culture can be described as the norms of behaviour flowing from shared values and beliefs. Culture can be driven from a range of sources such as

- the understood purpose and objectives of the organisation
- the lived history and common aspirations of people within the organisation
- the example set by leadership
- governance frameworks and the workings of formal structures for decision making
- accountability for actions and the consequences which flow from good behaviour and poor behaviour

No organisation operates in a vacuum and being a fungible concept, culture will also be influenced by factors not fully within the control of an organisation's leaders. As political parties operate in a market place of ideas where the aim is to shape public policy by winning elections, then the reality of remaining electorally competitive cannot be divorced from the pressure to manage the representation of the Party in media cycles and raise funds to fight elections.

Further as a large and diverse organisation, NSW Labor does not have a single culture. The culture of the Party membership is separate from the formal organisation embodied in the Head Office and this is again different from the culture within the Parliamentary wing of the Party. And there is no single culture within affiliated unions even given the broad shared history of the industrial movement in Australia.

So what has gone wrong in the Head Office? In 2015/16 a review of the Head Office workplace practices was conducted by employment lawyers and consultants John Whelan and Simone Farrar, and while this examination was focussed more narrowly than the current review, it did identify a workplace which, while comprising bright and dedicated individuals, experienced:

- low levels of trust;
- high levels of unresolved conflicts;
- poor quality internal communications; and
- negative norms suffocating positive intent and behaviours

At a higher level the culture of the Head Office has often been described as 'whatever it takes', which means winning contests regardless of the methods employed or the stakes involved. While this snappy phrase has moved more into political mythology than being an accurate diagnostic, it does raise the question of whether behaviour and choices prioritise ends over means. Further in the circumstances of Operation Aero, Labor traditions of loyalty, solidarity and collective decisions binding the individual, seem to have been distorted to keeping silent in an utterly misguided belief that this was in the Party's interests.

To move forward and reset the Branch culture and to weigh up the adequacy of existing governance structures and proposals to reform them, some core guiding principles are required. In framing these principles, the Review has been mindful of a number of inputs:

- first and foremost, the values and objectives of the NSW Branch as embodied in the Party Rules and Policy Platform
- good governance standards applying to trade unions and published by the Registered Organisations Commission
- standards published by the Australian Charities and Not for Profit Commission
- Not for Profit Principles published by the Australian Institute of Company Directors
- Corporate Governance Principles published by the ASX Corporate Governance Council

The first principle, and in many ways the golden thread which should connect all decisions and be woven into the design of all structures, is that *power is to be exercised in the best interests of the Party as a whole*; personal or sectional advantage is subordinate to the Party's interests. This principle is stated in the Party Code of Conduct incorporated in the Party Rules and the 'best interests' rule is a fundamental obligation applying to trade union officials and company directors.

Properly understood, the Party's best interests means that laws are always obeyed in letter and in spirit, personal ambition does not risk the wider endeavours, loyalty to an individual does not prevail over loyalty to Party's reputation and standing, and factional supremacy runs second to the benefit of the Party as a whole.

The second principle is that the exercise of power, and the decisions and actions which flow from being entrusted with power, should be accountable and transparent. The principle of *accountability and transparency* is critical in all organisations where members by necessity place power to direct and manage the organisation in the hands of representatives.

Accountability and transparency underpin an effective division of power and responsibilities between Party Officers and governance committees, and support the routine use of governance tools such as delegation instruments. Further the principle is critical in meeting the public regulatory obligations imposed on political parties which require for instance, the reporting of donations and the identification of individuals responsible for authorising campaign materials on behalf of the party.

Acting consistently with this principle is also a hallmark of a healthy organisational culture. If decision making occurs with undue secrecy and/or decisions are not able to be effectively tested by governance structures, then this will usually indicate cultural problems such as a lack of trust or a failure of the organisation to have a shared purpose.

The third principle is that meeting all legal, regulatory, social and moral obligations is a paramount operating feature. This principle can be summarised as *honesty and fidelity*. It captures both regulatory expectations placed upon the Branch and the fundamental expectation of Party members that those entrusted with power will uphold Labor values and and not tarnish the Party's standing.

The fourth principle is that the Party's values and objectives should steer its actions and be reflected in its strategy, planning and organisational design. This principle can be summarised as *clarity of purpose* and would be expressed in actions such as the setting of core outputs such planning documents and annual budgets. This principle also facilitates the proper division between the role played by an organisation's management and the oversight and governance of management power.

The fifth principle is that resources will be allocated to further Labor's values and objectives and to maximise its electoral prospects. This principle recognises that resources are limited and must be used *efficiently and effectively* to advance the Party's objective. This captures the financial resources which come from the contributions of members, affiliated unions

and the wider community directly or through public funding; equally it captures the human resources represented by the efforts of volunteers and supporters.

In identifying these principles, it is not suggested that there aren't other considerations that are hugely important when assessing the Branch's culture and the performance of its existing structures and reform proposals. For instance, the workplace environment within the Party Head Office needs to meet basic standards of safety, fairness, tolerance and respect. Core governance structures need to be constituted in accordance with the Party's commitment to equity and equality such as the affirmative action requirements.

Accordingly, the Review uses the five principles as a guide but by no means the sole guide in framing and considering the issues canvassed in the balance of this report. For ease of reference the principles in this report will be described as:

- Party's best interests
- Accountability and Transparency
- Honesty and Fidelity
- Clarity of purpose
- Efficiency and Effectiveness

### Chapter Three

#### The Political Leadership of the Branch

The Labor Party is a political organisation, devoted to winning elections, in order to achieve through Parliament and government its stated objectives of equality, democracy, liberty and social cooperation.<sup>4</sup> Individuals within the Labor Party – whether they are members, elected officials or members of Parliament – have politics in their DNA. It's important, in reforming the Party's governance, not to lose sight of this essentially political character. A political party can operate consistently with the principles outlined in Chapter Two, but it can't, nor should it, be depoliticised.

The key figures in the political leadership of the organisational wing are the General-Secretary, the two Assistant General-Secretaries, the President, and the three Vice- Presidents. Collectively, these are identified in the Rules as 'Party Officers'.<sup>5</sup> In addition to these leadership roles, organisers also play important roles before and during election campaigns. All Party Officers, and the organisers, are elected by the annual State Conference, and thus carry the authority of the Party's supreme policy making and governing body. The three secretarial positions hold office for 'four annual conferences' as do organisers; the four presidential positions hold office for 'two conferences.'<sup>6</sup>

The Rules require all elected officials to be financial members of the Party for one year.<sup>7</sup> Beyond this, there is not a great deal of detail about how they are to be chosen or what their duties and responsibilities are. Convention and culture shape behaviours more than a literal reading of the rulebook. The roles have evolved over time, reflecting the changing political character and distinctive political history of the Party in NSW – its relationship with the union movement, its factions, its periods in government and in opposition.

The interplay between the various leadership roles is dynamic, depending on the experience, personal chemistry and management and leadership style of the individuals. A system capable of stable and productive collaboration has at other times been the scene of dysfunction. But culture can change, rules can be strengthened, productive collaboration can be rewarded. Good governance practice followed in other branches of the Party and in the broader community can be drawn upon and adapted to meet the Branch's needs.

This Chapter considers first the secretarial roles, then the presidential roles, and concludes with the organisers. For each set of roles, the Rules and current responsibilities are outlined, before offering a critical assessment based around the guiding principles enunciated in Chapter Two. The recommendations, grouped together at the end of the Chapter, are designed to ensure the Branch's political leadership better reflects those principles.

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<sup>4</sup> The Objectives are set out in the Rules under 'Basic Principles', page 4.

<sup>5</sup> Rule D.1. (e)

<sup>6</sup> Rule B.6 (a). In effect this means the secretarial positions are elected to five year terms, given that conferences are not usually held in election years

<sup>7</sup> Rule B.4. Party Officers are also automatically elected as NSW delegates to the National Conference

### 3.1 The General Secretary

#### 3.1.1 Emergence of the role

The role of the General Secretary is a mixture of CEO and powerbroker. Of peacemaker and enforcer. Of campaign guru and fundraiser. Of office administrator and membership manager and compliance chief. The role follows convention and custom, not clear design: while the Party Rules specify dozens of administrative and procedural functions the General Secretary can perform, what gives the role its real authority is largely unwritten. The office originated in the 1890s, as the party itself evolved from autonomous local leagues and unions and discovered the need for someone to handle the paperwork, maintain the membership roll and organise the annual conference. Its fusty title reflects its humble origins and secretarial duties as ‘chief clerk’.<sup>8</sup>

Over the decades, and especially since the 1970s, the role accumulated power and influence, to the point where it has become accepted as not only the most powerful position in the NSW Party Office but a very significant position in the Party nationally. The evolution of a powerful General Secretary largely took place while Labor enjoyed long periods in government at both the State and Federal level under Neville Wran (Premier 1976-1986), Bob Hawke (Prime Minister 1983-1991), Barrie Unsworth (Premier 1986-88), Paul Keating (Prime Minister 1991-96) and Bob Carr (Premier 1995-2005). The stability and predictability of the NSW Branch, and its effective support of those Labor Governments, was exemplified by the lengthy tenures of three successive General Secretaries (Graham Richardson 1976- 83, Stephen Loosley 1983-90 and John Della Bosca 1990-99).

The more recent history has been quite different. General Secretaries have become short-term occupants of Head Office. None of the last six General Secretaries has held the position for longer than three years.<sup>9</sup> The last two have been obliged to leave following damaging controversies. Other General Secretaries have completed only partial terms in Head Office before moving on to Parliamentary positions. This has created the impression that a leadership role in the Head Office is just a stepping stone towards Parliament.<sup>10</sup> This run of short-term General Secretaries has been destabilising and is viewed cynically by rank and file Party members.

#### 3.1.2 Current responsibilities

The Terms of Reference of the Review require the Review to examine ‘the role of the General Secretary as both a member of the Executive and a director of the NSW Branch’.<sup>11</sup>

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<sup>8</sup> Rodney Cavalier, *Power Crisis* (Cambridge University Press 2010) p72

<sup>9</sup> Mark Arbib, General Secretary 2004-07; Karl Bitar 2007-08; Matt Thistlethwaite 2008-10; Sam Dastyari, 2010-13; Jamie Clements 2013-16 and Kaila Murnain 2016-2019

<sup>10</sup> Rule B 6 b (ii)) and D 11 (a)

<sup>11</sup> This picked up the earlier recommendation of the Needham review that a review of “the role of the General Secretary in both management and administration of the Party” be undertaken by the Administration Committee with a view to taking that review to the annual conference (63)

This dual function is inherent in the Rules, which provide for the General Secretary to be involved in both the Party's day-to-day management and its oversight of management. Under the Rules, the General Secretary is:

- elected by the annual State Conference for a period covering 'four annual conferences';
- a member of the Administrative Committee,<sup>12</sup> the Finance and Compliance Committee<sup>13</sup> and other committees; and,
- one of the Party Officers responsible for 'management and administration' of the Party between meetings of the Administrative Committee.<sup>14</sup>

The same provisions apply to the two Assistant General Secretaries.

In contrast to the substantial description of the functions and responsibilities of a local Branch Secretary (I.26), the Party Rules do not provide clear guidance as to the duties and authority of the General Secretary.

The Organisation Chart provided to the Review however, makes clear that the General Secretary is not merely part of the executive but has principal responsibility for the day to day management of the Party. In this capacity the General Secretary is ultimately responsible for the Party administration and staff in Head Office including a membership team, a financial management and reporting team, governance and disclosures officers, information technology systems, and event management.

Chief Executive functions such as these would be broadly familiar in most organisational contexts in the private or non-profit sectors. Beyond the Chief Executive Officer role, however, the General Secretary is responsible for two other broad sets of activities that are distinctive to the political character of the NSW Branch of the Labor Party. These are:

- Campaign Manager for NSW State elections and for NSW seats in Federal elections – itself a varied and complex responsibility covering macro-messaging, strategy, market research, advertising, organising, fieldwork, digital communications, data analysis and fundraising; and,
- Managing political issues and relevant stakeholders across the entire party organisation including the State Conference and Administrative Committee, the State and Federal Parliamentary parties, trade unions, local government and branches.

It is clear that these two roles, particularly being a successful campaign director, are regarded by many stakeholders, as being most important. According to former Minister and Party historian Rodney Cavalier, the 'performance indicators' have been clear since the

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<sup>12</sup> Rule D.2 (a)

<sup>13</sup> Rule B.16 (a) (i)

<sup>14</sup> Rule D.1 (e) (i)

1970s: ‘an ability to win general elections and deliver control of annual conference. In later years the ability to raise funds for the party became important.’<sup>15</sup>

At the same time, it is clear that the growing public regulatory obligations associated with public funding and donation disclosures has demanded more attention on compliance and risk management.

The role of General Secretary is thus wide-ranging while being not being formally defined. The focus on internal Party affairs is combined with important external responsibilities. While to some extent, the responsibilities revolve around somewhat predictable cycles of conferences and election campaigns, the role also needs to be highly responsive to unpredictable daily events. State-based, the role also requires a broad national perspective while being called to delve into the minutiae of local government pre-selections. It carries responsibilities for expenditure, fundraising and regulatory compliance.

Combining the roles of Chief Executive, member of the Administrative Committee, Party Officer, campaign manager and factional convenor, the General Secretary’s writ runs very large indeed.

Despite these wide-ranging responsibilities, the General Secretary’s formal position and employment conditions are poorly enunciated:

- There is no documented position description for the role setting out the General Secretary’s required duties, performance indicators (KPIs), accountabilities and reporting lines;<sup>16</sup>
- The General Secretary has no employment contract;<sup>17</sup>
- The General Secretary’s reporting line is to the Administrative Committee and Conference but, in practice, this provides inadequate oversight;
- Beyond the requirement in the Rules requiring twelve months continuous Party membership,<sup>18</sup> there is no statement of selection criteria - the skills, experience, employment history or qualifications - required for this critical position;
- Under the Rules, the four-conference term of a General Secretary can only be curtailed by death, mental incapacity, resignation or ceasing to be a member of the Party.<sup>19</sup> That is, the Rules make no provision for sanction for dereliction of duties; the General Secretary cannot be easily fired for serious misconduct.
- There is no required notice period.

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<sup>15</sup> Cavalier, p76

<sup>16</sup> This is despite the 2015 Tarrant-Tierney review having recommended ‘the introduction of duty statements for all staff including political staff’. The Review was told that contracts for elected officials were drafted but not finally agreed

<sup>17</sup> The Tarrant-Tierney review also recommended the introduction of employment contracts for all staff

<sup>18</sup> Rule B.4

<sup>19</sup> Rule B.6 (a) (ii)



### 3.2 The Assistant General Secretaries

Many of the observations made about the General Secretary apply to the two positions of Assistant General-Secretary. Elected by conference for terms of ‘four Annual Conferences’, their roles are ill-defined in the Rules. There are no job descriptions, selection criteria or employment contracts. Beyond membership of the key oversight committees, neither the Rules or the Organisation Chart provide guidance as to the roles of the Assistant Secretaries. As with the General Secretary, the roles are governed by custom and importantly the personal dynamic with and management style of the General-Secretary. Both positions are engaged in factional activities.

In practice, and as a consequence of Proportional Representation voting, the ‘first elected’ Assistant General-Secretary is a representative of the Right (Centre Unity) faction and the ‘second elected’ Assistant General-Secretary is of the Left faction. Further the Left Assistant Secretary is the direct counterpart of the General Secretary in being the convenor of the Left. Logically the three Secretaries comprise the backbone of the Head Office and work in a unified and collegial manner as the organisation's senior management team.

Historically the relationship between the Secretaries has oscillated between periods of collaboration and dysfunction. Collegiality has been frequently missing, although it is generally reported that the Office pulls together during election campaigns. Outside of elections, information about the Party's financial position, the provision of legal advice and other critical matters has not been properly shared. Confidences have been broken and trust eroded with background briefings and leaks. Short-termism and a focus on future Parliamentary careers are also a concern in relation to the Assistant General-Secretaries.

The Organisation Chart shows a direct reporting line from both Assistants to the General-Secretary. But this can be more formal than real given neither Assistant Secretary has a position description or employment contract. The Left Assistant General-Secretary in particular has often had latitude (and been obliged) to operate within an organisational silo. Even if the General-Secretary was king, one person in the kingdom is not a subject.

### 3.3 The Party President and Vice-Presidents

In addition to the three secretarial roles, the Party's political leadership includes the President, a Senior Vice-President and two Junior Vice-Presidents. These office holders are all elected by State Conference. They hold office for ‘two conferences’<sup>20</sup> and can be re-elected. In addition to the requirement that they be members of the Labor Party, the Rules also stipulate that one of the three Vice-Presidents should be a woman.<sup>21</sup>

Again, the Rules are largely silent on the actual roles and responsibilities of the Presidential positions. Custom and culture have been more crucial in shaping the exercise of

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<sup>20</sup> Rule B.6 (a) (i) (ii) and (iii)

<sup>21</sup> Rule B.6 (a) (iii)

Presidential power. The Rules are more descriptive about how the president of a local branch should chair a branch meeting than they are about the President of the Party.<sup>22</sup>

Under the system of Proportional Representation used for elections by State Conference, the positions are filled on a factional basis. Currently the President, the Senior Vice-President and one of the Junior Vice-Presidents are representatives of the Right and the other Junior Vice-President is a representative of the Left. The President has generally been a senior leader from the trade union movement such as the legendary John Ducker (President 1971-79) and currently Mark Lennon (2014-present) or significant Parliamentary figures such as future Prime Minister Paul Keating (1973-83) and Federal Minister Michael Lee (2010-2014).<sup>23</sup>

The President chairs the State Conference, Administrative Committee and the Party Officers meeting. The senior and junior vice-presidents act as deputies to the President in these roles. In a governance sense the leadership role of the President is not an executive one. The President needs to work closely with the General Secretary and the Assistants. But the functions are different – just as the chairman of a company board stands apart from and above the Chief Executive, or as the Speaker of the House of Representatives is independent of the Executive Government. Thus while the secretarial Party Officers clearly fall into the executive management category, the Presidential Officers have roles that should properly be understood as strategic leadership and oversight roles.

### 3.4 The Organisers

Under the Rules, State Conference can elect organisers ‘as they are needed.’<sup>24</sup>

Organisers are important Party assets in election campaigning. Their main contribution is in boosting the presence of the Party in local communities, identifying issues and building networks in the lead up to and during election campaigns. Their election for terms of ‘four annual conferences’ recognises that the role is essentially linked to the quadrennial NSW electoral cycle.

There are currently two organisers, a State Organiser and a Country Organiser. The Country Organiser has a specific brief to work in regional NSW on behalf of the ‘Country Labor’ Party. Currently he is also the Registered Officer of the Country Labor Party.

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<sup>22</sup> Cf Rule I.24. The Rules do state that the Party President co-chairs the NSW Policy Forum with the leader of the parliamentary party (Rule 8.19 (m) (i)) and is a member of the Labor Advisory Council (Rule R.1 (c)). The President is also tasked with holding the ‘material personal interest declarations’ that are to be completed by members of the Administrative Committee and Finance and Compliance Committee (Rule D.2 (h)).

<sup>23</sup> Neville Wran described John Ducker as ‘the most effective Yorkshireman to come to Australia since Captain Cook.’ Graham Freudenberg, *Cause for Power: the Official History of the NSW Branch of the ALP*, Pluto Press, 1991.

<sup>24</sup> Rule B.6 (c)

Since 2016 the State Organiser position in practice has moved from being an elected position to an appointed position.

The State and Country Organisers are both factional positions. The State Organiser role has traditionally served as a Head Office apprenticeship role; successful State Organisers often go on to serve as Assistant General-Secretary; several General Secretaries started out in Head Office as State Organiser.

In the lead-up to election campaigns, more Organisers are appointed as campaigning ramps up. Some of these additional Organisers are selected from the Left by the Left Assistant General-Secretary.

The Organisation Chart shows the State Organiser and Country Organiser reporting to the Right Assistant General-Secretary; additional organisers are shown reporting to the State Organiser.

### **3.5 Assessing the existing arrangements against the Guiding Principles**

It is evident that the arrangements governing the Political leadership are inadequate:

- the failure of the key leadership roles to be properly described is a serious weakness. It contributes to the possibility that ill-equipped individuals will be elected to positions and certainly it impedes accountability in the performance of the roles;
- the lack of employment contracts also weakens the personal accountability of the senior management team and places the Party in a difficult position to deal with serious misconduct by an office holder;
- delegation of authority and responsibility from governing structures such as the Administrative Committee and the Party Officers group to the General Secretary as Branch CEO has been governed by custom and practice and not by clear design. As a result, there is a blurring between management and oversight which offends basic governance principles;
- in turn there has been no consistent and certainly no published delegation of responsibilities between the General Secretary and the Assistant Secretaries; this lack negatively impacts on accountability, transparency, efficiency and effectiveness; and
- all of these weaknesses are made more complicated by factional dynamics.

It was a common theme in a number of submissions that the General Secretary role is too expansive or demanding for one person, but this is hard to accept. The NSW Branch in the great scheme of things is not a big organisation. It has an ongoing staff in the order of 20 full time equivalents (larger during election periods) and an annual budget which is dwarfed by many not for profit organisations. It is a membership organisation but so are numerous other bodies. Certainly, the staging of the annual State Conference is a major undertaking but again many organisations hold large conferences of their members on a regular basis. Obviously only a political party has the demands of conducting election campaigns and it is

this aspect of the General Secretary role which very much sets it apart from other CEO type positions.

Overall however the challenge of the General Secretary's role is not so much its size but the nature of the political environment both within and external to the Party, the complicated and delicate stakeholder relationships to be managed and the high stakes involved. Getting the Branch working well is an important factor in Labor succeeding in its policy and political mission. The task for the General Secretary as CEO is to use the resources available in the most effective way possible. This requires planning, strong organisational skills, deft people skills, good communication skills and a demonstrated commitment to Labor and the Party's values. In most respects this describes the skills and the remit of a successful CEO in non-political settings.

There is no doubt that the highly structured factions within the Branch is a significant and to some extent complicating factor for the political leadership to navigate. But this is a political party and it will have factions. The NSW Branch is no different from the other Branches of the Party or the Party nationally in this regard. Certainly, the Branch centres its factional convener roles in the Secretarial group and this is not as directly the case in the other two large State branches - Victoria and Queensland - but it is naive to believe that factional considerations and management are not in play in the Party Offices of the other branches. Dealing with factional machinations is part and parcel of holding a leadership role in the Labor Party, be it in the Parliamentary Party or the organisational wing.

Some submissions urged the Review to decouple the General Secretary from a factional convenor role. Others argued that factionalism be removed from Head Office altogether. These submissions by and large did not articulate what the new factional arrangements should be. Given that the factions will not be disappearing through the stroke of a pen by any recommendation in this report, it is not clear that endeavouring the removal of factional roles from the Head Office would improve the overall accountability and transparency of the Branch administration.

In line with the observations of Neville Wran's 2002 report, cited in Chapter One, the approach taken by the Review is to have factional power subjected to improved checks and balances, to improve accountability and transparency. The outcome should be, in Wran's words, that 'factionalism should always be subordinate to the broader interests of the Party'. The Party must come first.

Another proposal in some submissions was to have the General Secretary concentrate on 'administration' and decouple the position from the campaign manager function. In this argument, campaign management would become a 'professional' role selected on merit. The Review does not support this approach. Best practice by political parties throughout Australia, within Labor and beyond, emphasises strong centralisation of party and campaign effort through designating the organisational head as campaign manager.

In reaching this conclusion, the Review is not dismissing concerns expressed about campaign expertise being built up during election periods only to be dissipated outside the campaign and then built up again. Nor are critiques about the need for a continuous

campaign to support the Parliamentary teams illegitimate. But clearly these matters bring into play financial resourcing questions which are beyond the Review's mandate and are correctly matters for the General Secretary and the senior management team to pursue.

A major design weakness with both the roles of General Secretary and the Assistant Secretaries is that they combine and confuse managerial and oversight functions. As chief executive, the General Secretary is responsible for managing the Party, but the General Secretary along with the other Secretaries is also a member of the Administrative Committee, Party Officers and the Finance and Compliance Committee. This dual role blurs accountability. In the words of one Party member's submission, this allows General Secretaries to "oversee themselves".

In their 2015 review of the Party Rules, Jane Needham SC and Renee Bianchi commented unfavourably on this situation. 'The General Secretary is both a member of the "board" and the "management" of the Party'. 'It can be seen where one person has effective control of the board and functions as management then the lines of reporting (particularly oversight reporting) may be blurred. The duality (indeed the plurality) of the role of General Secretary has a significant potential to ensure that the way in which the Party operates is dictated by one person.'

For governance in the non-profit sector, the Australian Institute of Company Directors makes the same point in its *Not-for-Profit Governance Principles*. Principle 2.5 states: The role of the Board is clearly delineated from the role of management.' The commentary explains further that: 'The board oversees the strategy while management develops and implements the plans to achieve it.'

### **3.6 Reform Proposals**

To address these shortcomings basic governance reforms should be introduced:

- role descriptions and contracts of employment;
- clear lines of reporting;
- instruments of delegations; and
- clear authority to dismiss for misconduct

Beyond this, some more substantive reforms are required. The Branch should adopt an operating model which recognises the differences between political decision making and administration on one hand and regulatory responsibilities and compliance oversight on the other hand. Further the blurring of management roles and governance oversight needs to be tackled, but in a manner customised for a political party.

Chapter Four deals with changes proposed to the Branch Governance Structures. To further support the new structural arrangements, it is proposed that the Branch make an important change to the role of the Party President. The President needs to play a strengthened role in the governance of the Branch and to oversee the General Secretary and the senior management as a group.

At present the President is appointed by the State Conference by a simple majority. The President assumes important leadership functions in chairing the Conference, Administrative Committee and Party Officers meeting. While the President has no formalised role description, the position seems in some ways to act as a support to the management of the Head Office. Certainly, in recent times President Mark Lennon has been obliged to devote many hours to the internal operations of the Head Office as the Branch worked its way through the aftermath of the Operation Aero hearings.

It is proposed that the President be enabled more clearly to play the governance role expected of the chair of a board. To this end the President should be given a position description. This description would include:

- chairing of the Conference, the Administrative Committee and the proposed State Executive Board;
- oversight of the General Secretary and the senior management team;
- representing the Party in relation to Branch governance;
- spokesperson for the State Executive Board (i.e. in relation to governance matters); and
- other responsibilities that may be delegated from the Administrative Committee

The oversight of the General Secretary would include financial approvals, leave approvals and the consideration of professional development needs of the Secretary. Further the President should conduct periodic, usually annual performance reviews of both the General Secretary and the senior management team as a group. The performance reviews would be informed by the Branch Strategic Plan and annual operational plans canvassed in Chapter Five.

To carry out these governance roles it is submitted that the President should draw on an authority which is a sense broader than that given by a simple majority of the State Conference. There are a range of ways the President could be appointed, but essentially there are two choices - election from the Conference or direct election from the Party membership. In proposing a change here, it should be understood that the Review is not making a statement about a Party-wide democratic reform agenda. Such reforms are a legitimate matter for debate, but they are beyond the remit of this Review. The change being advocated here relates to what is considered necessary to give the Branch a robust governance system consistent with the Guiding Principles.

Appointment by the State Conference is an acceptable method for governance purposes, but the President needs to draw from the Conference a mandate which is deeper than that given to the elected management team - the Secretaries - in order to play the governance oversight role being proposed. To this end, appointment of the President from Conference should be by way of a special majority of 75% of delegates.

The other available method of appointment is by direct election by the Party members. Direct election is used in some other branches of the Party and for the national Labor President. NSW Party members also have a vote in the selection of the State and Federal

Parliamentary leaders. A variation of this method is a combination of direct vote by Party members and delegates to the State Conference from affiliated unions. This method is in place in the Victorian branch.

Each method has advantages and disadvantages, costs and benefits. Direct election provides a tangible benefit for Party members to have say in an important decision. But it is costly for the Branch to run and for a time distracting for the Party organisation. The reality is that a high profile factionally aligned candidate will be successful in the election, not an unheralded local branch stalwart.

Election by Conference special majority will also result in a factionally aligned candidate emerging as Party President, but the successful candidate will need support across the Conference delegates. This means the candidates will invariably be well regarded and widely respected. But there remains the risk that the Conference dynamic will see the President vote become a bargaining chip in some other debate. The Conference option has the advantage of not putting the Branch to additional expense and avoiding the period of distraction. It is however not as engaging for the Party membership.

For the purposes of the governance reforms, it does not matter which option is selected but it is important that the President be given the enhanced authority necessary by the changed method of appointment. If direct election is selected, then the term of the President could be extended to match that of the General Secretary, so the expense and effort of a direct election is not required every two years.

The corollary of making clear the President is empowered to lead on governance is to ensure that the Secretaries are not members of the structure created to provide governance oversight. In a corporate or not for profit setting this would be reflected by the CEO and the management team reporting to the board but not being members of the board. Within the model proposed for the NSW Branch, the General Secretary and the Assistant Secretaries remain members of the politically focussed Administrative Committee but are not members of the governance focussed State Executive Board.

There should be some changes to the role of the Party Organisers. Essentially the positions should fall within the resource base able to be directed by the General Secretary. It is considered undesirable that the positions are elected by Conference. Rather the positions should be appointed by the Head Office as merit-based positions – ideally, with the Secretaries acting as the selection panel in consensus or, failing consensus, by the Party Officers on recommendation of the General Secretary as CEO.

In other respects, the same reforms as to position descriptions and employment contracts (duly modified) applying to the Secretaries should equally to the Organisers.

Finally, it is proposed that the issue of short duration Secretaries which has been a feature of the Head Office in recent times be directly addressed. The positions should not be viewed as stepping stones to quick Parliamentary office. Accordingly, there should be a Party Rule making the Secretaries ineligible for Party nomination or endorsement for a Parliamentary office within the length of first term of office.



## **Chapter Three – Recommendations**

### ***The General Secretary and Assistant General Secretaries***

*1. That position descriptions be settled by the Administrative Committee for the General Secretary and two Assistant General Secretaries which specify:*

- key responsibilities;*
- expected qualifications and experience;*
- skills and competencies;*
- accountabilities and reporting lines; and,*
- key performance indicators.*

*2. That contracts of employment be entered into with the General Secretary and the two Assistant General Secretaries which specifies:*

- appointment term and notice period;*
- reporting lines and accountabilities;*
- duties and responsibilities;*
- undertakings in relation to disclosures of conflicts of interests and compliance with employment policies such as code of conduct and media policy;*
- acknowledgement that the employee is ineligible to obtain Party nomination for parliamentary office during the term of the contract or five years from commencement (first term contract only);*
- remuneration package;*
- terms and conditions, for example, hours of work, leave entitlements;*
- protection of confidential information and intellectual property; and,*
- termination of employment by Administrative Committee for serious misconduct, absence without leave, refusal to follow lawful and reasonable direction of supervisor.*

*3. That it be confirmed in position descriptions and contracts of employment that the two Assistant General Secretaries report to and are accountable to the General Secretary as their supervisor.*

*4. That the base remuneration for the General and Assistant General Secretaries be disclosed to the Administrative Committee and the State Conference as part of financial reporting.*

*5. That the Party Rules be amended to expressly authorise the Administrative Committee to terminate the employment of the General Secretary and the two Assistant General Secretaries with a decision to terminate to require a 75% majority vote of the Committee.*

*6. That the Administrative Committee's delegation of authority and responsibilities to the General Secretary be documented and submitted to State Conference as a schedule to Party Rules (with the Administrative Committee empowered to amend from time to time).*



*7. That the General Secretary's delegation of substantive and functional responsibilities to each of the Assistant General Secretaries be submitted to the Administrative Committee for endorsement and once endorsed submitted to State Conference as a schedule to the Party Rules (with the Administrative Committee empowered to amend from time to time).*

*8. That the Party Rules be amended to provide that the General Secretary and the Assistant General Secretaries not be eligible for Party endorsement or nomination for Parliamentary office during the Secretaries first term of office or for a period of five years from the date of first appointment as a Party Officer.*

### ***The President and Vice-Presidents***

*9. That a position description be settled by the Administrative Committee for the Party President and this description be added as a Schedule to the Party Rules. The description to include duties of the President such as:*

- chairing the State Conference, the Administrative Committee and the State Executive Board;*
- oversight of the General Secretary and senior management team;*
- representing the party in relation to Branch governance;*
- acting as spokesperson for the Party in relation to deliberations of the State Executive Board; and,*
- any other responsibilities delegated from the Administrative Committee.*

*10. In providing oversight of the General Secretary, the President, be given responsibilities to include:*

- general oversight and support in the exercise of the General Secretary's duties;*
- financial authorisations and approvals;*
- approving leave and like entitlements;*
- considering professional development needs; and*
- conducting periodic performance appraisals.*

*11. That the Party Rules be amended to provide for a new appointment process for the Party President with one of the following options to be adopted:*

- direct election by a ballot of NSW Branch members; or,*
- election by the State Conference on a special majority of 75% of Conference delegates.*

*12. That the President and Vice Presidents be ex officio voting members of the Administrative Committee, State Executive Board and the Party Officers group.*

*13. In view of these increased responsibilities and as some recompense for the time commitment that flows from these recommendations, a modest stipend (not a salary) be paid to the President.*

***Party Organisers***

*14. That the Party Rules be amended to provide for the appointment of any Party Organisers rather than election by State Conference. The appointment process to involve:*

- advertising to and open nomination available for Party members;*
- merit-based selection by the General Secretary and Assistant State Secretaries in consensus; and,*
- failing consensus, appointment by the Party Officers on the recommendation of the General Secretary.*

*15. That position descriptions be developed by the General Secretary for Party Organisers which specify:*

- key responsibilities;*
- expected qualifications and experience;*
- skills and competencies;*
- accountabilities and reporting lines; and,*
- key performance indicators.*

*16. That contracts of employment be entered into with Party Organisers based upon (but appropriately modified) to those entered into with the Secretaries.*

## **Chapter Four**

### **Branch Governance and Oversight**

In a well-functioning organisation, robust oversight shapes the exercise of power by managers and by directors, and provides assurance to all stakeholders, not least regulators, that the organisation is functioning as it should. A central design feature of good governance practice, whether in private, public or non-profit sectors, is the separation of oversight functions from management functions.

This critical distinction applies with equal validity in political organisations. In a well-functioning political party, we would expect to see both executives (the political leadership) and directors (the oversight bodies such as the Administrative Committee) operate with a clear understanding of their distinct and interrelated roles and responsibilities. In particular, the need to separate political decision-making from regulatory compliance is understood and is both structurally and operationally provided for. As currently constituted, the NSW Branch of the Labor Party does not display these features. The lack of explicit clarity about management roles identified in Chapter Three is also apparent in relation to the oversight bodies. As a result, they collectively fail the tests supplied by the Guiding Principles.

Notwithstanding recent improvements, the Party's governance and oversight system remains generally inadequate for a major political party. A new design for the party's oversight structures is required. The primary recommendation is for the Branch to adopt, as a central organisational design, the separation of its political functions from its regulatory compliance functions.

#### **4.1 The Administrative Committee**

The supreme authority for policy and governance in the NSW Party is the annual State Conference. Conference is ultimately responsible for the Party's Rules and Platform, elects its officers, preselects some of its parliamentary candidates, and receives the Party's annual audited financial statements.<sup>25</sup> Delegates to conference are representative of party members and affiliated unions.

Between annual conferences, responsibility for the management and administration of the Party passes to the Administrative Committee.<sup>26</sup> Between meetings of the Administrative Committee, this responsibility passes to the Party Officers.<sup>27</sup> Party Officers are also responsible for 'matters delegated to them by the Administrative Committee'.<sup>28</sup> This cascade of responsibility is essential for the democratic legitimacy of decision-making outside the state conference.

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<sup>25</sup> Rule B.2

<sup>26</sup> Rule D.1 (a)

<sup>27</sup> Rule D.1 (e) (i)

<sup>28</sup> Rule D.1 (e) (ii), with some express limitations set out in Rule D.1 (a) (b) and (d)

The Administration Committee meets monthly, eleven times a year.

The functions of the Administrative Committee are numerous and wide-ranging. They are helpfully listed in the index to the Rules; there are more than fifty items. In their 2015 Review, Dr John Tarrant and David Tierney summarised and reconfirmed what they described as the ‘core functions’ of the Administrative Committee as follows:

- managing the party’s affairs;
- conducting all election campaigns on behalf of the Party;
- approving budgets;
- selecting and endorsing ALP candidates for public office;
- upholding Party Rules;
- maintaining membership records;
- approving all material issued by the party and compliance with all laws and regulations.<sup>29</sup>

The membership of the Administrative Committee is set out in the Rules under five categories:<sup>30</sup>

- the Party Officers (that is, the Party President, the three Vice-Presidents, the General Secretary and the two Assistant General-Secretaries);
- 18 members elected by affiliated union delegates at the annual Conference;
- 18 members elected by non-union affiliated (i.e. rank and file) delegates at the annual Conference;
- The Federal and State parliamentary leaders or their nominees;
- Three additional members, non-voting, who are elected by a three-quarters majority of the Administrative Committee. These are referred to informally as ‘Independent Directors’. There is currently one vacancy in this category.

At full membership, then, the Administrative Committee has 48 members of whom 45 are voting members. In addition, the Administrative Committee elects 16 ‘proxy members’ who also have full rights, including voting rights, of the members whom they replace. These proxy members are elected under proportional representation.<sup>31</sup> Thus the total pool of individuals who can attend, speak at and vote at meetings of the Administrative Committee is 61 (45+16). Attendance records for meetings held through 2018-19 show an average attendance of 38, of whom on average 5 were proxies.

## **4.2 The Party Officers Meeting**

The cascade of responsibility, flowing from the conference to the Administrative Committee, thereafter flows down to a further stage, to the Party Officers Meeting. This group of seven officers - four presidential and three secretarial – assumes responsibility for the party’s affairs between meetings of the Administrative Committee and for matters

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<sup>29</sup> Tarrant-Tierney, 49

<sup>30</sup> Rule D.2 (a)

<sup>31</sup> Rule D.2 (c)

delegated to them by the Administrative Committee. The Rules envisage them acting as a kind of collective executive team.

The Party Officers Meeting has no formal charter or meeting schedule. Meetings need a quorum (of two). Minutes are kept and reported to the Administrative Committee.<sup>32</sup> It has evolved as a highly flexible tool to provide expeditious executive decisions on a wide range of party matters:

- Between January and June 2019, a Party Officers Meeting was convened on 26 occasions, including fourteen in the two months of February and March alone (in the lead up to the state election campaign);
- Meetings tend to be convened at short notice and irregular intervals
- Two meetings were held on the same day;
- Most, but not all, meetings are held on weekdays;
- They are brief and focussed: some have only a single agenda item and last for only five or ten minutes.

### **4.3 The Finance and Compliance Committee**

The Finance and Compliance Committee is appointed under the Rules<sup>33</sup> to assist the Administrative Committee in the management of the finances of the Party.<sup>34</sup> With unusual specificity, the Party Rules bestow a range of tasks. These include ‘assisting the Administrative Committee in’

- preparation of budgets
- ensuring that management accounts presented to state conference present a true and fair view of the party’s finances
- ensuring that statutory accounts are completed in accordance with the party’s legal obligations
- maintaining appropriate financial controls
- expenditure control<sup>35</sup>

The Committee is further tasked with ‘assisting the Party Officers’ in a range of activities including preparing budgets, financial accounts, statutory accounts and approving expenditure of amounts of more than \$100,000.<sup>36</sup> Additional activities of the Committee include recommending the terms and conditions of employment for all staff.<sup>37</sup>

The Committee was originally established as the Finance Committee but in line with a recommendation of the Tarrant-Tierney review its title was extended to include ‘Compliance.’ This reflected that review’s observation that the committee’s role also

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<sup>32</sup> Rule D.1 (e) (iii) and (v). The quorum can be as low as two.

<sup>33</sup> B.16

<sup>34</sup> D.8 (a)

<sup>35</sup> D.8 (a) (i) to (v)

<sup>36</sup> D.8 (b) (i) to (v)

<sup>37</sup> D.8 (b) (ix)

included regulatory compliance and audit.<sup>38</sup> However in practice it does not appear to have taken an active role in this area.

The Committee is not a sub-committee of the Administrative Committee. Its status as a separately constituted committee elected by state conference was reviewed and endorsed by the Tarrant-Tierney review.<sup>39</sup> It is however limited to an advisory role in relation to both the Administrative Committee and the Party Officers.

It is a specialist group, with requisite skills and training. The membership of this Committee reflects its specialised mandate. Members are:

- the General Secretary and the two Assistant General Secretaries
- the three trustees
- three members with specialist skills elected by a special (three-quarters) majority of the Administrative Committee<sup>40</sup>
- the 'non-voting' (independent) members of the Administrative Committee
- a treasurer as chair.<sup>41</sup>

Members hold office for two years and received formal induction and training.

Meetings are also routinely attended by the Governance Director and the Financial Controller, both of whom present reports for discussion.

Documentation prepared for this Committee – agendas, reports and minutes – appears to be thorough and professional. Meeting material however it is not always circulated in advance, forcing members to digest complex material at the meeting itself.

#### **4.4 Assessing the existing arrangements against the Guiding Principles**

When assessed against the Guiding Principles it is evident that there are significant shortcomings in the governance arrangements of each of these bodies.

Well-governed organisations are led by oversight boards that provide clarity of purpose through broad, forward-looking strategic planning. These oversight bodies do not engage in passive sign-offs and retrospective rubberstamping. Their members are fully engaged, not represented by proxies. They are fully aware of their responsibilities to monitor compliance with their regulatory obligations and regularly devote time to doing this. They have proper separation from management and deliberate delegation to management. This allows them

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<sup>38</sup> Tarrant-Tierney 55. In reality the audit function is outsourced with internal responsibility for providing access to accounts and the like resting with the General Secretary. Rule B.2 (iv)

<sup>39</sup> Tarrant-Tierney

<sup>40</sup> Rule B16 (a) (iii) specifies eligibility for this role as follows: *"To be eligible to stand as a candidate for the Finance and Compliance Committee, a nominee must have professionally recognised financial, accounting, legal, regulatory or compliance qualifications as prescribed by the Administrative Committee, the Party's non-voting members of the Administrative Committee, Auditor and any relevant legislation."*

<sup>41</sup> Rule B.16 (a) (i) to (v).

to hold management to account, through questioning, deliberation and constructive supervision of day to day management performance. They operate transparently. The Branch's oversight system does not display those characteristics. The principal failing is, as has been noted earlier, the lack of separation between management and oversight. Management and oversight tasks are blurred, and decision making on political matters is not separated from decision making on regulatory compliance, and regulatory compliance suffers as a result.

The critical problem is the Administrative Committee. In the cascade of responsibility that flows from the annual state conference, the Administrative Committee occupies a dominant place. Yet it has done little to give effect to the strategic or supervisory responsibilities that come with that role. It has failed to provide independent oversight of the kind required by the Party.

In their 2015 Review, the two independent directors John Tarrant and David Tierney concluded that the Administrative Committee does not play an effective governance role:

"All contributions to the Review, including from members of the Administrative Committee itself, agreed that the Administrative Committee does not act as a Review of the Party affairs, nor does it provide the functions of reviewing the Executive or Party Officers' recommendations. The sheer size of the Committee works against any effective Review process. This lack of oversight role is contrary to the practice of most management committees whether they be company boards, government authorities or not-for-profit executive committees." <sup>42</sup>

Four years later, this Review received similar feedback in its consultations:

- Its membership was seen to be too big and cumbersome.
- Proceedings were largely driven by the General Secretary and other party officers, who presented activity reports in order of seniority to a largely passive and unresponsive Committee.
- The changing cast of members and their proxies did not facilitate real discussion or deep engagement and strengthened the influence of the party officers.
- Meetings were said to play out like mini-conferences, along factional lines.

Inspection of recent (2018-19) Administrative Committee agendas and minutes confirms the impression of a body not equipped or accustomed to probing or challenging the party management:

- Most of its formal business consists of receiving retrospective activity reports from party officers, and approving the range of membership, branch and other issues that come to it under the Rules.
- No agenda items were devoted to discussion of 'big picture' or forward-facing party strategy, regulatory compliance or management oversight. There were no 'directors

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<sup>42</sup> Tarrant-Tierney, 48

only' discussions, i.e. discussions held without the presence of the paid Party officials.<sup>43</sup>

- The independent directors attend meetings but do not appear to play a significant role. They were not consulted on the issues arising from the current ICAC inquiry.
- Most of the meetings in 2018-19 ran for about an hour; the meeting of June 2019 held in the wake of two election defeats and which included a 'vale' (tribute) for former Prime Minister Bob Hawke ran for under 1 hr 20 mins.

Proxy membership is a particular blight. It suggests members have higher priorities elsewhere and believe they can outsource their leadership responsibilities on this committee. Proxy members cannot be expected to bring the requisite degree of focus, experience and authority to the Committee's work.

The innovation of introducing independent directors, elected by supermajority to overcome factional rivalry, has been worthwhile. The two independent directors have proven diligent and capable members. But their mandate is too narrow, and they have not been able to fulfil the potential of this initiative.

Beyond the Administrative Committee, the other nominal oversight body, the Party Officers meeting, has also failed to provide proper governance of Party affairs. Neither of these bodies is structured to question or monitor management or provide independent deliberation and analysis. In Chapter Three, the presence of the managerial team (General Secretary and Assistant General Secretaries) in the oversight structure was noted. This blurs functions and has permitted management to escape appropriate oversight. Too easily the oversight bodies have become in effect rubberstamps.

Moreover, the ad hoc nature of the Party Officers Meeting has further limited its ability to provide any meaningful oversight. Certainly, there needs to be a mechanism for urgent political decisions to be made between Administrative Committee meetings, but the ad hoc character placed unreasonable barriers to participation by Party Officers, not least those (e.g. the Vice-Presidents) who do not work in Head Office.

There is a deeper problem. Managers are supposed to manage. Day to day operations matters that were sent to the Party Officers meeting for decision and authorisation didn't need to go there. They should have been simply carried out by the relevant managers and reported later. If authorisation of more substantial and complex matters is required, this should be referred for proper consideration by a properly constituted governance body.

The third oversight structure, the Finance and Compliance Committee, also appears to have fallen short in its oversight functions. While the titular duties of the Committee cover both Finance and Compliance, its mandate under the Rules, and its actual work program, seems heavily focussed on financial management and reporting. The Committee's compliance function is further limited by poor internal procedures. Committee papers

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<sup>43</sup> The Tarrant-Tierney review recommended (47) 'time allowed for open discussion on strategy and a focus on future political developments; that is, more forward planning rather than reviewing the month's past actions.'



including reports are often not received by members in advance of meetings but are tabled at the meeting.

A more serious problem is that its 'compliance' function appears limited to ensuring compliance with the Party's financial reporting regulations. It does not appear to extend to the equally important function of ensuring compliance in relation to campaign fundraising, donations and disclosure regulations. The Review has heard that the Finance and Compliance Committee does not receive reports on and is not privy to fundraising, and has no oversight of disclosure of electoral funding. This gap alone suggests a fatal flaw in the Committee's focus. Moreover, membership of this Committee by the Secretarial executives offends the principle of separation of management and oversight.

Finally, there are no established procedures, were compliance flaws detected or suspected, for the Committee, or individual members, or individual members of staff, to escalate those concerns internally or, ultimately, to the proper external authorities. This, combined with the misplaced culture of loyalty and silence that appears to have operated in the Head Office, means the poor judgements exposed by Operation Aero are not identified or addressed.

In effect, the Party oversight structures are flying blind on fundamental regulatory compliance.

#### **4.5 Reform proposals**

It is clear that NSW Labor's current oversight structures are not delivering the high-quality governance outcomes that are needed. What alternative structures would serve the Branch better? How can Labor redesign itself to achieve better governance standards?

These questions are answered with the central proposition about separation of management and oversight; in particular, separation of political management and regulatory compliance. It is clear that the Administrative Committee can and should exercise primary responsibility for political strategy and political management. It is equally clear that it is not capable of not exercising primary responsibility for regulatory oversight. Rather than trying to make the Administrative Committee do something that it is not equipped to do, the answer lies in separating regulatory oversight from political management.

Fulfilling its primary responsibility for political strategy and political management will allow the Administrative Committee to provide clarity of purpose to the Party and to ensure that the Party's best interests are better served. In the absence of a considered strategic capacity, oversight bodies are ill-equipped to measure progress, allocate resources or supervise performance. In the context of a political party, with its superordinate need to win elections, the need for proper strategic planning is paramount. This would require two interrelated elements.

First, the Administrative Committee should take a proactive role in deliberating on, approving and monitoring implementation of an overarching strategy for the organisation,

with the goal of achieving electoral success. Chapter Five recommends that the General Secretary develop a strategic plan. As well as responsibility for this plan, the Administrative Committee might, after each annual Conference, devote a meeting to planning the forthcoming twelve months.- operational planning. Considerations will include the changing political and electoral environment, policy development and issue management, resource availability and the like.

Second, it should consider and renew instruments of delegations to Party Officers to reflect the Strategic and operations plans. The cascade of responsibility from Conference is the critical element that allows the Party to operate efficiently and with democratic legitimacy from one annual Conference to the next. Yet how it works is at present almost completely undocumented: there appears to be no instruments of delegation from the Administration Committee to Party Officers, or (as noted in Chapter Three) from the General Secretary to others within Head Office. Instruments of delegation promote accountability and transparency and improve efficiency. Without proper delegation it is difficult to fully assess the performance of the General Secretary and senior management team.

In summary, NSW Labor must, if it is to meet the guiding principles of governance, have an agreed strategy, and a high-level body that is responsible for defining and articulating that strategy. This is the right job for the Administrative Committee.

It was widely suggested to the review that the Administrative Committee as currently constituted was simply too big and cumbersome. With 48 members and 16 proxies, it is certainly much larger than any corporate or non-profit board and is larger than the equivalent bodies in other State Party branches. Consideration could be given to reducing its size and various proposals were made to this end. A smaller committee might be more efficient and better able to support the professional development of its members. However the Review believes that it is not the size of the committee itself which is the problem. Indeed, its size does make it broadly representative. If as recommended the Administrative Committee takes a broader strategic overview of political affairs, and does not play a primary regulatory governance role, then its current size is less of a problem. Further it should be able to move to a quarterly meeting pattern.

These changes also remove the justification for members of the Administrative Committee to be represented by proxies.

While repurposing the Administrative Committee on to political decision making and administration, the Review also proposes a new oversight body that is designed to provide a dedicated focus on regulatory obligations and governance of the Branch. The State Executive Board's mandate would be:

- management of financial affairs and budget expenditure monitoring;
- compliance with State and Commonwealth campaign finance laws on fund-raising, expenditure and disclosure; and
- overseeing workplace relations and organisational culture;
- all other regulatory requirements

The Board would be established in the Party Rules. It would report to Conference and the Administrative Committee. Its membership would comprise the President as chair, the Vice-Presidents and five additional members appointed by the Administrative Committee by special majority of 75% of Administrative Committee Members. These additional members would need between them to provide skills and experience in:

- corporate governance;
- compliance and risk management;
- accounting and financial management;
- law; and
- workplace relations and organisational culture

Management would report to the Board but not be members. So the General Secretary and the Assistant General Secretaries would remain members of the politically focussed Administrative Committee, but not be members of the regulatory governance focussed State Executive Board.

To support the Board, an Audit and Risk Committee would be established with a mandate as a probity-oriented entity across the whole field of regulatory compliance, including compliance with statutory financial reporting requirements as well as with election fundraising and disclosure regulated under the Election Funding Act (2018). It would also monitor risk management which is an area that the Branch appears to have very weak systems.

It is essential that the Audit and Risk Committee be entirely independent of management: it would fall under the authority of the State Executive Board with its four members selected by the Board. Its independence would be guaranteed in a Committee charter. No person with any financial or other relationship to the Party Office or holding a State position in the Party (State Conference delegate, Administrative Committee members etc), or working with any organisation providing services to the Branch would be eligible to be a Committee member. It would be open to the State Executive Board to appoint non-Party members as Committee members if this is required to ensure the calibre of the Committee. A modest payment to the Committee should be considered.

The Committee would be empowered to report suspected illegal activities directly to regulatory authorities if the leadership of the Branch or other Party officials have failed to take action on the concerns.

This governance structure would provide NSW Labor with stronger accountabilities, greater transparency, more efficient and orderly management and improved confidence that it will meet its compliance obligations.

## **Recommendations – Chapter Four**

### ***Branch Governance and Oversight***

*17. That the Branch adopt as an organising model the separation of the governance and oversight of political administration and decision making from governance and oversight of regulatory obligations. As a result:*

- political administration and decision making at the strategic level will rest with the Administrative Committee, urgent and delegated decisions with Party Officers and day to day delegated decisions with the General Secretary supported by the senior management team of Head Office; and,*
- legal and regulatory governance of the Branch's operations will rest with the State Executive Board supported by Board Committees and with day to day management with the General Secretary supported by the senior management team.*

*18. That the Administrative Committee act as the primary strategic decision making body for political decisions with the Committee to delegate:*

- urgent matters and other limited political decisions to Party Officers; and,*
- day to day political decisions to the General Secretary in conjunction with the Assistant General Secretaries operating on a consensus basis*

*19. That the Party Rules be amended to provide for the creation of a State Executive Board with the Administrative Committee to delegate power and responsibility to the Board on the governance and oversight of:*

- compliance with State and Federal fund-raising and disclosure requirements;*
- compliance with the Electoral Acts and public funding laws;*
- finance and budget expenditure monitoring;*
- all other legal and regulatory obligations; and,*
- fostering a culture within the Head Office consistent with the guiding principles.*

*20. That the Party Rules provide for the State Executive Board to be constituted of nine members comprising:*

- the Party President as Chair;*
- the Party Vice Presidents; and,*
- five additional Board members appointed by the Administrative Committee by way of a special majority of a 75% vote of Committee Members.*

*21. That the Party Rules provide in the appointment of non-Presidential members of the State Executive Board that the Administrative Committee to the extent possible ensure that the Board has within its membership individual members with qualifications, expertise or skills in the areas of:*

- corporate governance;*
- compliance and risk management;*
- accounting and financial management;*
- law; and,*

- *Workplace relations and organisational culture.*

*22. That the Finance and Compliance Committee be dissolved with all of its functions to be allocated to the State Executive Board.*

*23. That the State Executive Board be supported by an Audit and Risk Committee with responsibilities detailed in a Committee Charter adopted by the Board. The Committee to be:*

- *Appointed by the Board after an open and merit-based selection process; and,*
- *Comprised of four members each of whom are independent of the management of; the Branch, not involved in any organisation providing services to the Branch and not holders of any State level position within the Branch.*

*24. That the members of the Audit and Risk Committee be paid modest remuneration is light of their skills and responsibilities.*

*25. That the mandate of the Audit and Risk Committee is to advise the Board on matters including:*

- *statutory accounts and annual financial statements;*
- *monitoring and reviewing the external audit process including the effectiveness of the external auditors and the appointment, removal and remuneration of the external auditors;*
- *recommending any internal audit of the Party's regulatory obligations under fundraising disclosure or other laws;*
- *risk management and reviewing the Branch's risk management framework; and,*
- *compliance monitoring of all regulatory obligations and advising on continuous improvement of the Head Office's culture of compliance.*

*26. That the Party Rules be amended to authorise the Audit and Risk Committee to report directly to the Electoral Commissions or any other appropriate regulatory authority any suspected illegalities in the Branch's compliance with regulatory and legal obligations which have not be acted upon by the Branch after identification by the Committee.*

*27. That the Administrative Committee settle a Committee Charter to guide expectations of its focus and priorities canvassing matters including:*

- *its meeting pattern (possibly quarterly);*
- *its consideration of strategic plans and operational plans presented by the senior management team; and,*
- *its oversight of the political administration of the Branch by the senior management team.*

*28. That the Party Rules be amended to remove proxy members of the Administrative Committee.*

## Chapter Five

### Planning and Risk Management

Politics is an art where unexpected events regularly intervene, and this can make orderly planning far more challenging for leaders and managers compared to more predictable environments. At a high level the cycle of planning can reflect the Commonwealth, State and Local Government electoral cycles and the staging of principal set pieces within the internal Party calendar such as the annual Conference. These cycles in turn trigger their own cycles such the conduct of pre-selections for elections and the appointment of delegates to attend the Conference.

The dynamic within the Head Office is quite different from election campaign periods and non-election periods. The Whelan/Farrar review into the operation Head Office noted that at election times the Office pulled together and underlying weaknesses in the organisation or culture of the Office did not stop the cooperation and team effort needed to fight the election. It is clear that the over-arching aspiration to see Labor governments elected put into perspective conflicts which manifested outside of the campaign period. The trick in simple terms is to build a Head Office where the election campaign *esprit de corps* is the prevailing culture at all times.

The structural reforms canvassed in Chapter Four and the proper and documented roles and delegations recommended in Chapter Three will provide a stronger foundation for the Head Office, as will the implementation of a robust planning and risk management framework. In 2015 the Finance, Risk and Audit Committee of the National Executive conducted a risk review of the NSW Branch. The findings of the review identified a range of actions required to improve governance and reduce risk. A survey of the current status on these issues indicate progress has been made but further works needs to be done in areas such as:

- stronger induction, support and training for the members of governance and oversight bodies including the production of a member's handbook;
- a comprehensive delegations and associated registers;
- orderly and embedded staff induction program;
- better budgeting and budgeting reporting;
- a number of compliance risk actions; and,
- business continuity planning.

At the macro level the Branch would benefit from the development of a strategic plan and supporting operational plans aligned to the budget cycle. The strategic plan should be for a timeframe which aligns with the term of the General Secretary and the Assistant Secretaries and be presented to the Administrative Committee for consideration and adoption. The development of the plan can be vehicle to build a shared understanding between members of the senior management team and the allocation of responsibilities between the Secretaries recommended in Chapter Three can be adjusted to align with the planning priorities.

While the subject matter of the plans would be for the General Secretary to lead on and the Administrative Committee to debate and settle, it would likely deal with goals such as:

- election campaign preparation and implementation of a continuous campaign in conjunction with the Parliamentary teams, Labor local government representatives and union movement;
- support for marginal and target seats;
- digital campaigning and engagement;
- research;
- engagement activities with the Branch membership;
- growing Party membership;
- fund-raising;
- community engagement; and,
- building skills and understanding of compliance obligations amongst Party volunteers.

It seems that the Branch does not have a developed risk framework and this is a fundamental weakness. A typical risk framework would identify core areas of operation and the risks which may impact on the achievement of the organisation's objectives. Risks should be identified and the appetite the organisation has for each category of risk settled. Once settled, a treatment for the risk can be selected and implemented and the risk then monitored. It should be a responsibility of the General Secretary as Branch CEO to lead the Branch on risk management with the support of the senior management team. The risk framework and risk register would be presented to the State Executive Board would monitor risk through regularly reporting from management.

It would reasonable to assume that the Branch has no appetite for certain risks such as regulatory non-compliance and an unsafe workplace for employees. For these risks, the Branch must ensure a robust control environment and immediate remediation of the risk if it was to occur. In other areas the Branch might be willing to take risks in terms of innovation in seeking to use new and emerging campaign technologies.

## **Recommendations**

### ***Planning and Risk Management***

*29. That the General Secretary develop for each of the members of the Branch governance bodies*

- *an induction program on the role of the governance structure and the responsibilities of the member; and,*
- *a member's handbook modelled on those in place in other State Branches of the Party.*

*30. That the General Secretary (in conjunction with the senior management team) present for consideration and approval of the Administrative Committee the following planning documents:*

- *a strategic plan (to align with the term of the General Secretary) to guide the Branch's key priorities in areas such as policy development, membership growth, campaign preparations, community outreach, and fundraising; and,*
- *annual operational plans and budgets.*

*31. That the General Secretary present for the consideration and approval of the State Executive Board governance and risk management plans, policies, procedures and reports sufficient to satisfy the Board of the Branch's continuous compliance with and readiness for matters such as:*

- *compliance with all legal and regulatory obligations under the Electoral Acts of the State and Commonwealth;*
- *public funding and donation disclosure laws;*
- *financial reporting;*
- *registers and policies concerning the interests of Party Officers, staff, Administrative Committee members;*
- *delegation registers;*
- *risk management;*
- *business continuity; and,*
- *human resources policies, codes and procedures.*



## **Chapter Six**

### **Conclusions and Implementation**

This report has considered most but not all of the matters in Part A of the Terms of Reference. The report does not examine the internal management of the Head Office and the need for additional senior administration position. It is proposed to assess this component of the Terms of Reference in Part B of the Review and in the final report.

It is recognised that the implementation of the report's recommendations will require:

- a substantial revision of the Party Rules;
- an appointment process for new governance structures;
- the drafting of a range of governance documents and policies;
- drafting of position descriptions;
- drafting of employment contracts; and,
- a range of other actions and measures.

The experience of recent past reviews of aspects of the Branch has shown that initial enthusiasm for reform can be overtaken by events, and full implementation falls by the wayside. In part this is understandable as the imperative of fighting elections will tend to overshadow other issues; but in part, at least, it would seem that partial implementation of previous review recommendations has arisen because of a lack of a clearly structured implementation process which is duly monitored and against which responsible Party Officers are held to account.

In order to ensure that the recommendations agreed by the Party are implemented it is necessary for there to be an implementation plan which clearly identifies each action required, the persons or persons responsible and a timeline for the action to be completed. Further it is important that the implementation plan is monitored.

It is proposed that the internal structures of the Branch hold primary responsibility to progress implementation but also the Party's National Executive should play an oversight role. The National Executive is empowered under the rules of the Labor Party nationally, to intervene into the affairs of a State Branch. Formal intervention into the NSW Branch during the current process has not occurred but would remain an option if the Branch were to fail to faithfully carry out those recommendations which have been accepted in a timely fashion.

Further the Finance, Risk, Audit and Compliance Committee of the National Executive periodically conducts reviews in risk management practices of the State and Territory Branches of the Party. As noted in Chapter Five, such a review was conducted in 2015 after the Tarrant/Tierney review of the Branch. It would be timely for another review by the national committee to occur in 2020, to provide an external analysis of how the report's recommendations have been implemented and the adequacy and effectiveness of the risk and compliance controls.

**Recommendations*****Implementation and next steps***

*32. That an implementation plan be prepared by the General Secretary of the report recommendations accepted by the Party and that progress against this plan be reported*

- to the Administrative Committee, State Executive Board (once established) and State Conference; and,*
- to the National Executive on a six-monthly basis*

*33. That by the end of 2020 the Finance, Risk, Audit and Compliance Committee of the National Executive conduct a review and report to the National Executive on the status of implementation of the accepted recommendations and provide an overall assessment of the adequacy and effectiveness of the Branch's policies, plans and systems in regard to regulatory compliance and risk management.*

## CONSOLIDATED RECOMMENDATIONS

### *The General Secretary and Assistant General Secretaries*

*1. That position descriptions be settled by the Administrative Committee for the General Secretary and two Assistant General Secretaries which specify:*

- key responsibilities;*
- expected qualifications and experience;*
- skills and competencies;*
- accountabilities and reporting lines; and,*
- key performance indicators.*

*2. That contracts of employment be entered into with the General Secretary and the two Assistant General Secretaries which specifies:*

- appointment term and notice period;*
- reporting lines and accountabilities;*
- duties and responsibilities;*
- undertakings in relation to disclosures of conflicts of interests and compliance with employment policies such as code of conduct and media policy;*
- acknowledgement that the employee is ineligible to obtain Party nomination for parliamentary office during the term of the contract or five years from commencement (first term contract only);*
- remuneration package;*
- terms and conditions, for example, hours of work, leave entitlements;*
- protection of confidential information and intellectual property; and,*
- termination of employment by Administrative Committee for serious misconduct, absence without leave, refusal to follow lawful and reasonable direction of supervisor.*

*3. That it be confirmed in position descriptions and contracts of employment that the two Assistant General Secretaries report to and are accountable to the General Secretary as their supervisor.*

*4. That the base remuneration for the General and Assistant General Secretaries be disclosed to the Administrative Committee and the State Conference as part of financial reporting.*

*5. That the Party Rules be amended to expressly authorise the Administrative Committee to terminate the employment of the General Secretary and the two Assistant General Secretaries with a decision to terminate to require a 75% majority vote of the Committee.*

*6. That the Administrative Committee's delegation of authority and responsibilities to the General Secretary be documented and submitted to State Conference as a schedule to Party Rules (with the Administrative Committee empowered to amend from time to time).*

*7. That the General Secretary's delegation of substantive and functional responsibilities to each of the Assistant General Secretaries be submitted to the Administrative Committee for endorsement and once endorsed submitted to State Conference as a schedule to the Party Rules (with the Administrative Committee empowered to amend from time to time).*

*8. That the Party Rules be amended to provide that the General Secretary and the Assistant General Secretaries not be eligible for Party endorsement or nomination for Parliamentary office during the Secretaries first term of office or for a period of five years from the date of first appointment as a Party Officer.*

### ***The President and Vice-Presidents***

*9. That a position description be settled by the Administrative Committee for the Party President and this description be added as a Schedule to the Party Rules. The description to include duties of the President such as:*

- chairing the State Conference, the Administrative Committee and the State Executive Board;*
- oversight of the General Secretary and senior management team;*
- representing the party in relation to Branch governance;*
- acting as spokesperson for the Party in relation to deliberations of the State Executive Board; and,*
- any other responsibilities delegated from the Administrative Committee.*

*10. In providing oversight of the General Secretary, the President, be given responsibilities to include:*

- general oversight and support in the exercise of the General Secretary's duties;*
- financial authorisations and approvals;*
- approving leave and like entitlements;*
- considering professional development needs; and*
- conducting periodic performance appraisals.*

*11. That the Party Rules be amended to provide for a new appointment process for the Party President with one of the following options to be adopted:*

- direct election by a ballot of NSW Branch members; or,*
- election by the State Conference on a special majority of 75% of Conference delegates.*

*12. That the President and Vice Presidents be ex officio voting members of the Administrative Committee, State Executive Board and the Party Officers group.*

*13. In view of these increased responsibilities and as some recompense for the time commitment that flows from these recommendations, a modest stipend (not a salary) be paid to the President.*

**Party Organisers**

*14. That the Party Rules be amended to provide for the appointment of any Party Organisers rather than election by State Conference. The appointment process to involve:*

- *advertising to and open nomination available for Party members;*
- *merit-based selection by the General Secretary and Assistant State Secretaries in consensus; and,*
- *failing consensus, appointment by the Party Officers on the recommendation of the General Secretary.*

*15. That position descriptions be developed by the General Secretary for Party Organisers which specify:*

- *key responsibilities;*
- *expected qualifications and experience;*
- *skills and competencies;*
- *accountabilities and reporting lines; and,*
- *key performance indicators.*

*16. That contracts of employment be entered into with Party Organisers based upon (but appropriately modified) to those entered into with the Secretaries.*

**Branch Governance and Oversight**

*17. That the Branch adopt as a organising model the separation of the governance and oversight of political administration and decision making from governance and oversight of regulatory obligations. As a result:*

- *political administration and decision making at the strategic level will rest with the Administrative Committee, urgent and delegated decisions with Party Officers and day to day delegated decisions with the General Secretary supported by the senior management team of Head Office; and,*
- *legal and regulatory governance of the Branch's operations will rest with the State Executive Board supported by Board Committees and with day to day management with the General Secretary supported by the senior management team.*

*18. That the Administrative Committee act as the primary strategic decision making body for political decisions with the Committee to delegate:*

- *urgent matters and other limited political decisions to Party Officers; and,*
- *day to day political decisions to the General Secretary in conjunction with the Assistant General Secretaries operating on a consensus basis*

*19. That the Party Rules be amended to provide for the creation of a State Executive Board with the Administrative Committee to delegate power and responsibility to the Board on the governance and oversight of:*

- *compliance with State and Federal fund-raising and disclosure requirements;*
- *compliance with the Electoral Acts and public funding laws;*
- *finance and budget expenditure monitoring;*
- *all other legal and regulatory obligations; and,*
- *fostering a culture within the Head Office consistent with the guiding principles.*

*20. That the Party Rules provide for the State Executive Board to be constituted of nine members comprising:*

- *the Party President as Chair;*
- *the Party Vice Presidents; and,*
- *five additional Board members appointed by the Administrative Committee by way of a special majority of a 75% vote of Committee Members.*

*21. That the Party Rules provide in the appointment of non-Presidential members of the State Executive Board that the Administrative Committee to the extent possible ensure that the Board has within its membership individual members with qualifications, expertise or skills in the areas of:*

- *corporate governance;*
- *compliance and risk management;*
- *accounting and financial management;*
- *law; and,*
- *human resources and organisational culture.*

*22. That the Finance and Compliance Committee be dissolved with all of its functions to be allocated to the State Executive Board.*

*23. That the State Executive Board be supported by an Audit and Risk Committee with responsibilities detailed in a Committee Charter adopted by the Board. The Committee to be:*

- *Appointed by the Board after an open and merit-based selection process; and,*
- *Comprised of four members each of whom are independent of the management of; the Branch, not involved in any organisation providing services to the Branch and not holders of any State level position within the Branch.*

*24. That the members of the Audit and Risk Committee be paid modest remuneration is light of their skills and responsibilities.*

*25. That the mandate of the Audit and Risk Committee is to advise the Board on matters including:*

- *statutory accounts and annual financial statements;*
- *monitoring and reviewing the external audit process including the effectiveness of the external auditors and the appointment, removal and remuneration of the external auditors;*

- *recommending any internal audit of the Party's regulatory obligations under fundraising disclosure or other laws;*
- *risk management and reviewing the Branch's risk management framework; and,*
- *compliance monitoring of all regulatory obligations and advising on continuous improvement of the Head Office's culture of compliance.*

*26. That the Party Rules be amended to authorise the Audit and Risk Committee to report directly to the Electoral Commissions or any other appropriate regulatory authority any suspected illegalities in the Branch's compliance with regulatory and legal obligations which have not be acted upon by the Branch after identification by the Committee.*

*27. That the Administrative Committee settle a Committee Charter to guide expectations of its focus and priorities canvassing matters including:*

- *its meeting pattern (possibly quarterly);*
- *its consideration of strategic plans and operational plans presented by the senior management team; and,*
- *its oversight of the political administration of the Branch by the senior management team.*

*28. That the Party Rules be amended to remove proxy members of the Administrative Committee.*

### ***Planning and Risk Management***

*29. That the General Secretary develop for each of the members of the Branch governance bodies*

- *an induction program on the role of the governance structure and the responsibilities of the member; and,*
- *a member's handbook modelled on those in place in other State Branches of the Party.*

*30. That the General Secretary (in conjunction with the senior management team) present for consideration and approval of the Administrative Committee the following planning documents:*

- *a strategic plan (to align with the term of the General Secretary) to guide the Branch's key priorities in areas such as policy development, membership growth, campaign preparations, community outreach, and fundraising; and,*
- *annual operational plans and budgets.*

*31. That the General Secretary present for the consideration and approval of the State Executive Board governance and risk management plans, policies, procedures and reports sufficient to satisfy the Board of the Branch's continuous compliance with and readiness for matters such as:*

- *compliance with all legal and regulatory obligations under the Electoral Acts of the State and Commonwealth;*
- *public funding and donation disclosure laws;*

- *financial reporting;*
- *registers and policies concerning the interests of Party Officers, staff, Administrative Committee members;*
- *delegation registers;*
- *risk management;*
- *business continuity; and,*
- *human resources policies, codes and procedures.*

***Implementation and next steps***

*32. That an implementation plan be prepared by the General Secretary of the report recommendations accepted by the Party and that progress against this plan be reported*

- *to the Administrative Committee, State Executive Board (once established) and State Conference; and,*
- *to the National Executive on a six-monthly basis*

*33. That by the end of 2020 the Finance, Risk, Audit and Compliance Committee of the National Executive conduct a review and report to the National Executive on the status of implementation of the accepted recommendations and provide an overall assessment of the adequacy and effectiveness of the Branch's policies, plans and systems in regard to regulatory compliance and risk management.*



## Appendix

### Background to the Review

The Review was formally established on 13 October 2019 with a joint announcement by NSW Labor leader Hon Jodi McKay MP and Federal Labor leader Hon Anthony Albanese MP. The leaders' media release is **attached** below

The leaders released Terms of Reference for the review, which cover the governance and administration of the NSW Party Office including the role of the General Secretary, the effectiveness of legal compliance mechanisms, and oversight of electoral and donation laws. The Terms of Reference are **attached** below.

The leaders announced that the Review would be conducted by former Commonwealth Attorney-General, Emeritus Professor Hon Michael Lavarch AO. He would be assisted by University of Sydney academic Dr Stephen Mills.

### Scope of the Review

The Terms of Reference direct the focus of this Review on to 'the governance and culture of the NSW Branch administration and campaigning operations including Head Office'. The Review did not look at the state parliamentary party, the state branch structure or its membership, or any part of the federal branch of the party.

### The work program

The Review sought and was granted access to internal party records and documents including:

- Party Rules, codes and policies;
- Party financial statements;
- previous reviews of the NSW state branch;
- minutes of and reports to the Administrative Committee, the Finance and Compliance Committee and the Party Officers' Meeting; and
- other documents relating to the role of the General Secretary and Assistant General Secretaries.

The Review read relevant transcripts of hearings conducted by the Independent Commission against Corruption (ICAC) as part of Operation Aero.

Other State and Territory Labor Party branches generously provided details about their Rules and governance arrangements.

The Review received submissions from around 425 individual party members, branches, Labor networks, employees past and present and members of parliament.

The Review also spoke with a number of people involved in the management and administration of the state branch, including

- Federal Parliamentary leader Anthony Albanese MP,

- State Parliamentary leader Jodi McKay MP,
- Members of the state parliamentary Labor Party;
- elected Party officials including State Party President Mark Lennon, Acting General Secretary Pat Garcia, Assistant General Secretary George Simon and Assistant General Secretary Bob Nanva;
- Secretary of Unions NSW Mark Morey, and representatives of affiliated trade unions;
- Administrative Committee members including the two independent directors David Tierney and Dr John Tarrant.

The Review expresses gratitude to all those who made themselves available and thanks them for their time, candour and wise counsel.



**JODI MCKAY MP  
NSW LABOR LEADER**

**ANTHONY ALBANESE MP  
FEDERAL LABOR LEADER**

**MICHAEL LAVARCH TO LEAD NSW LABOR HEAD OFFICE REFORM**

NSW Labor Leader Jodi McKay and Federal Labor Leader Anthony Albanese today announced the appointment of distinguished former Commonwealth Attorney-General and Emeritus Professor Michael Lavarch to lead the review into NSW Labor's Party Office.

Professor Lavarch will review NSW Labor's corporate governance and organisational structure, before providing an independent report with recommendations to Ms McKay and Mr Albanese.

The report will critically examine the NSW Party Office's governance and administration, including the role of the General Secretary, the effectiveness of legal compliance mechanisms and oversight of electoral and donation laws.

Ms McKay said that since 2015, the Party had established procedures to improve governance at head office but current ICAC hearings had exposed serious shortcomings.

"I said at the beginning of this inquiry that we needed to keep rebuilding trust with the people of NSW and that I would take further action," she said.

"NSW Labor is full of thousands of decent, principled members who deserve a Party that lives up to its high ideals – and one they can be proud of every single day."

"I'm here for a fresh start. I'm confident that Professor Lavarch can identify and recommend the change we need at Party headquarters."

"It's time to let the sunshine in. This is about establishing a new era of transparency and accountability as we move into the 2020s."

Mr Albanese said he expected Professor Lavarch to undertake a frank and fearless review to fundamentally change NSW Labor's Party Office culture.

"There is something fundamentally wrong when people running a political party office think it's normal to behave this way," Mr Albanese said.

"Good, honest Party members have been shocked by the reprehensible things they've seen from the NSW Party Office, and so have I."

"The NSW headquarters needs real, lasting reform – and Michael Lavarch is the person to do it. He will bring the professional values, integrity and independence this review needs."

Mr Albanese said the events in NSW headquarters also highlighted the need for a Federal Integrity Commission.

Professor Lavarch will be assisted by Dr Stephen Mills, a University of Sydney academic with specialist expertise and proven credentials in political organisations and political funding.

Members of NSW Labor can make submissions to the review until 5pm Friday October 25 at [review@nswlabor.org.au](mailto:review@nswlabor.org.au).

Full terms of reference and photographs and bios for Professor Lavarch and Dr Mills are attached.

**SUNDAY OCTOBER 13, 2019**

**NSW ALP REFORM PROCESS - TERMS OF REFERENCE**

Michael Lavarch has been appointed by the State and Federal Labor parliamentary leaders. He will commence a reform process into the governance and culture of the NSW Branch administration and campaigning operations including Head Office.

Michael Lavarch will furnish a report to the State and Federal parliamentary leaders with recommendations.

The reform process will consider previous governance reviews conducted by the NSW Branch including a review of any recommendations not as yet implemented.

The report will examine the following matters:

**Part A - Party Governance**

1. The role of the General Secretary as both a member of the Executive and a Director of the NSW Branch including:
  - The responsibilities and duties of the General Secretary
  - The rules governing the role and conduct of the General Secretary
  - The reporting lines and oversight of the General Secretary
  - The responsibilities, duties, reporting lines and oversight of the Assistant General Secretaries
  - The responsibilities, duties, reporting lines and oversight of the Compliance Officer
2. The governance mechanisms of the Party including the role and structure of the Administrative Committee, the Party Officers and the Finance and Compliance Committee.
3. The structure of the management of the Branch's Head Office including the need for additional senior administration positions.
4. Changes and initiatives which would strengthen a culture of compliance within the Branch Head Office.

**Part B - Compliance with Legal Obligations**

1. Legal compliance mechanisms and responsibilities within the Party and Branch Head Office regarding electoral and donation laws including examining:
  - The fund-raising activities of the NSW Branch
  - The operation of the Labor Action Committees
  - Donation reporting
  - Support and training for branch officials and candidates

The NSW Administrative Committee and the Branch Head Office are directed to provide all necessary support to the Reviewer to enable the Review to be conducted.

An interim report and recommendations on Part A will be provided to the Parliamentary Leaders in a timely fashion for their consideration prior to submission to the NSW Administrative Committee and National Executive.

A final report on Part A and Part B will follow.