

STATEMENT

Sam Dastyari

1. My name is Sam Dastyari of [REDACTED]
2. I make this statement at the request of the Royal Commission into Trade Union Governance and Corruption (the **Commission**).
3. At paragraphs 13 to 21 below, I respond to matters which the Commission has asked me to address, which relate to loans made to the Australian Labor Party (NSW Branch) (**ALP NSW**) by each of the following:
 - (a) the Electrical Trades Union, NSW Branch (**ETU NSW**);
 - (b) the Transport Workers Union of NSW (**TWU NSW**); and
 - (c) Unions NSW.
4. At paragraphs 22 to 28 below, I respond to matters which the Commission has asked me to address, which specifically relate to the loan made by the ETU NSW to the ALP NSW.

Background

5. I am an Australian Senator representing New South Wales. I was appointed to fill a vacant Senate seat at a joint sitting of the Parliament of NSW held on 21 August 2013.
6. Immediately prior to my appointment as an Australian Senator, I was the General Secretary of the ALP NSW, having been elected to this role in March 2010.
7. During the period of the issuing of these loans to August 2013, as General Secretary of the NSW ALP, I was an ex officio member of:
 - (a) the Administrative Committee of the ALP NSW;
 - (b) the Finance Committee of the ALP NSW; and
 - (c) the National Executive of the Australian Labor Party.

The ALP NSW

8. The ALP NSW is:
 - (a) a not-for-profit unincorporated association;
 - (b) a branch of the Australian Labor Party;
 - (c) constituted in accordance with the provisions of the NSW Labor Rules, as they apply from time to time; and
 - (d) made up of members and affiliated trade unions.
9. The ETU NSW and the TWU NSW are both trade unions affiliated with the ALP NSW.
10. Unions NSW is the State Peak Council for employees under section 215 of the *Industrial Relations Act 1996* (NSW). Twenty seven of Unions NSW's affiliated unions, including the ETU NSW and the TWU NSW, are also affiliated with the ALP NSW.

11. The Administrative Committee is responsible for the management and administration of the ALP NSW between Annual Conferences.
12. It is customary for the Administrative Committee to delegate authority for various matters to the General Secretary, including the ability to negotiate and enter into agreements for and on behalf of the ALP NSW.

The Loan Agreements

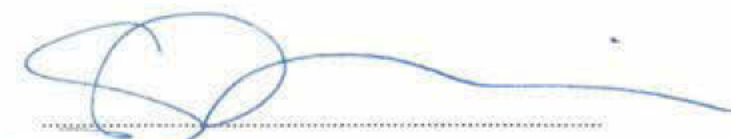
13. In about late 2010, the ALP NSW required funds to assist with its cash-flow in the lead up to the 2011 NSW State election. At the time, the ALP NSW was finding it difficult to pay for day-to-day operating expenses and also required funds to pay for election campaign expenses, including advertising.
14. The Party delegated to me the responsibility of approaching the ETU NSW, the TWU and Unions NSW to ascertain if they would each be prepared to loan funds to the ALP NSW.
15. It was the expectation of the ALP NSW that, in entering into loan agreements, the ALP NSW would be able to repay these loans. An important source of funds to repay the loans was to be public funding for the 2011 NSW State election from the NSW Election Funding Authority, in accordance with Part 5 of the *Election Funding and Disclosures Act 1981* (NSW) (as the *Election Funding, Expenditures and Disclosures Act 1981* (NSW) was then called).
16. The ALP NSW entered into loan agreements with each of the TWU NSW, the ETU NSW and Unions NSW, respectively dated 21, 22 and 23 December 2010 (together, the **Loan Agreements**). A copy of the Loan Agreement between the ALP NSW and the ETU NSW is annexed and marked **SD-01**.
17. I signed each of the Loan Agreements in my capacity as General Secretary of the ALP NSW. It was and is my understanding and belief that the Loan Agreements were binding on the ALP NSW and its members.
18. The Administrative Committee was aware that I had executed the Loan Agreements for and on behalf of the ALP NSW and the parties had intended the Loan Agreements to be binding on the ALP NSW and its members.
19. It is also my understanding that most political parties in Australia are unincorporated associations.
20. The objectives of each of the parties to the Loan Agreements were achieved. The ALP NSW received funds to assist with its cash-flow in the lead-up to the 2011 NSW State election, and the ETU NSW, the TWU and Unions NSW were paid interest at a competitive interest rate.
21. Each of the loans has been repaid in full.

The ETU NSW Loan

22. I address specific matters regarding the ETU NSW Loan below.
23. Annexed and marked **SD-02** is a copy of a letter dated 25 November 2010 from me and addressed to Mr Bernie Riordan, General Secretary of the ETU NSW.
24. My signature appears on the letter and it was my usual practice to arrange for letters to be sent once they had been signed, although I did not personally post them. I understand that the letter has been filed in the ALP NSW's document management system, indicating that it has been sent, and I have no reason to believe the letter was not sent to Mr Riordan.

25. I recall that I had a meeting with Mr Riordan in about December 2010 regarding the terms of the proposed loan from the ETU to the ALP NSW. I do not recall the date of the meeting or the precise matters discussed. To the best of my recollection, it was during this meeting that I proposed to Mr Riordan the terms of the ETU NSW Loan, including payment of a commercial rate of interest.
26. Annexed and marked **SD-03** is a copy of a letter dated 14 September 2011 which I sent to Steve Butler, then General Secretary of the ETU NSW.
27. I recall that I drafted the letter in response to a request to confirm the circumstances in which the ETU NSW Loan was entered into.
28. I recall that the request was made in the context and for the purposes of an internal review that was being undertaken by the ETU NSW. I do not recall whether the request was made by Mr Butler or another ETU NSW Official.

3 June 2015



.....
Sam Dastyari

SD-01



Dated 22 DECEMBER 2010

Electrical Trades Union NSW Branch
ETU

Australian Labor Party (NSW Branch)
ALP

LOAN AGREEMENT

© Holding Redlich 2010

Contact
Sydney
Ian Robertson
ILR.SDB.28660024

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THIS LOAN AGREEMENT is dated 22 DECEMBER

2010

PARTIES:

ELECTRICAL TRADES UNION NSW BRANCH (ABN 24 379 005 569) of Level 5, 370 Pitt Street, Sydney NSW 2000 (ETU)

AUSTRALIAN LABOR PARTY (NSW BRANCH) of Level 9, 377 - 383 Sussex St, Sydney NSW 2000 (ALP)

INTRODUCTION:

- A** The ETU has agreed to make the Loan to the ALP upon and subject to the terms and conditions of this agreement.
- B** The ALP agrees to repay the Loan to the ETU, and pay interest on the Loan to the ETU at the Interest Rate, in accordance with the Repayment Schedule and upon and subject to the terms and conditions of this agreement.

IT IS AGREED:

1 DEFINITIONS

In this agreement, unless the context clearly indicates otherwise:

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Confidential Information means the terms of this agreement and all confidential information, material and technology disclosed or provided in any form by any party to any other party in connection with the subject matter of this agreement;

Due Date means each date in the Repayment Schedule on which the ALP must repay the Loan and pay interest on the Loan to the ETU;

Interest Rate means 8.5% per annum;

Loan means the sum of \$500,000;

Repayment Schedule means the repayment schedule in clause 3 of this agreement; and

Tax or Taxes means any tax or charge levied or imposed by any government or governmental agency in Australia.

2 LOAN

The ETU must make the Loan to the ALP not later than 31 December 2010.

3 REPAYMENT AND INTEREST

3.1 Repayment and interest

The ALP must repay the Loan to the ETU and pay interest on the Loan to the ETU at the Interest Rate in accordance with the following schedule:

Date	Loan Opening Balance	Annual Fixed Interest Rate	Interest Payment	Principal Payment	Loan balance after repayment
31/12/2010	\$500,000	8.50%	\$0	\$0	\$500,000
31/12/2011 (Due Date 1)	\$500,000	8.50%	\$42,500	\$100,000	\$400,000
30/06/2012 (Due Date 2)	\$400,000	8.50%	\$17,000	\$100,000	\$300,000
31/12/2012 (Due Date 3)	\$300,000	8.50%	\$12,750	\$150,000	\$150,000
30/06/2013 (Due Date 4)	\$150,000	8.50%	\$6,375	\$150,000	\$0
Total	\$500,000		\$78,625	\$500,000	

3.2 Terms of repayment

All payments to be made by the ALP under this agreement will be made in immediately available funds by direct deposit to such account in Australia as the ETU may notify to the ALP in writing.

3.3 Withholdings

All payments made under this agreement must, to the full extent permitted by law, be made by the ALP without any deduction of Taxes or withholdings of any kind (collectively *Withholdings*). If the ALP is compelled by law to deduct any *Withholdings* from any payment, the ALP must:

- (i) deduct the minimum amount required by law; and
- (ii) pay to the ETU whatever additional amount is necessary to ensure the ETU receives the full amount that it would otherwise have received.

4 CONFIDENTIAL INFORMATION

4.1 Obligation

Subject to this clause, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential, unless:

- (a) a party is required by law to disclose the Confidential Information;
- (b) the Confidential Information is in or enters the public domain for reasons other than a breach of this agreement; or
- (c) a party reveals the Confidential Information to its professional advisers to obtain professional advice.

4.2 Survival of clause

This clause 4 will survive the termination of this agreement.

5 WARRANTIES OF CAPACITY

Each party warrants to each other party that:

- (a) this agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms;
- (b) it has taken all necessary action to authorise the entry into and performance of this agreement and the conduct of the transactions contemplated by this agreement; and
- (c) the execution and delivery of and the performance of its obligations under this agreement do not breach contractual restrictions or any existing law, regulation, consent or authorisation binding on it.

6 GENERAL

- (a) This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- (b) Neither party may assign, sublicense or otherwise transfer its interest in this agreement to any person.
- (c) Each party will do all things, including complete and sign all documents, necessary to give effect to any and all of the arrangements set out in this agreement.
- (d) A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. If a party waives a right under this agreement (either wholly or in part), that waiver will not operate as a subsequent waiver of the same right or of any other right of that party.
- (e) This agreement and the rights and obligations of the parties under this agreement will survive, not merge with or be extinguished by the exercise of a party's rights under this agreement.

- (f) This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- (g) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this agreement,
- expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (h) The laws applicable in New South Wales govern this agreement. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.
- (i) Any notice, demand, consent or other communication to be given under this agreement will be deemed duly given if given in writing and signed by a director or manager or secretary for the time being of the party giving the notice and if left or posted by registered mail or despatched by facsimile addressed to the party at its facsimile number or at its address as shown in this clause or such other address as such party may from time to time notify to the other party for the purpose of this clause.

The ALP

Address: Level 9, 377 - 383 Sussex St, Sydney 2000

Facsimile No: (02) 9264 2574

Attention: Brendan Cavanagh

The ETU

Address: Level 5, 370 Pitt Street, Sydney NSW 2000

Facsimile No: (02) 9267 4877

Attention: Bernie Riordan

- (j) In this agreement:
- (i) **person** includes natural persons, corporations (including statutory corporations) and all other types of legal entity;
 - (ii) a reference to the **introduction, a clause, schedule or annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;

- (iii) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement and forms part of this agreement;
- (iv) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (v) a reference to a time is to that time in New South Wales;
- (vi) **monetary amounts** are expressed in Australian dollars;
- (vii) **including** and **includes** are not words of limitation; and
- (viii) the singular includes the plural and vice-versa.

EXECUTED as an agreement.

Bernie Riordan
Secretary
For and on behalf of the ETU



Signature

Date: 23.12.10

Sam Dastyari
General Secretary
For and on behalf of the Australian Labor Party (NSW Branch)



Signature

Date: 22/12/2010

SD-02

25 November 2010

Mr Bernie Riordan
Secretary
Electrical Trades Union (NSW Branch)
Level 5, 370 Pitt Street
Sydney NSW 2000

Request for loan

Dear Bernie,

Thank you for your continued support for NSW Labor.

Without your support, the Party could not continue to fight for better services or defend the rights and conditions of working Australians.

I am writing to you following our conversation regarding the Party borrowing funds from the ETU NSW.

I would like to request you investigate the possibility of providing a loan of \$1,500,000 be made available to the Party before the Christmas break this year.

This loan would be repaid according to the following repayment schedule:

Date	Loan Opening Balance	Annual Fixed Interest Rate	Interest Payment	Principal Payment	Loan Balance after repayment
31/12/2010	\$1,500,000	8.50%	\$0	\$0	\$1,500,000
31/12/2011	\$1,500,000	8.50%	\$127,500	\$500,000	\$1,000,000
30/06/2012	\$1,000,000	8.50%	\$42,500	\$250,000	\$750,000
31/12/2012	\$750,000	8.50%	\$31,875	\$500,000	\$250,000
30/06/2013	\$250,000	8.50%	\$10,625	\$250,000	\$0
Total	\$1,500,000		\$212,500	\$1,500,000	

I would appreciate it if you and your Executive could consider this matter at your earliest convenience.

If a loan of this amount and on these terms can be made available to the Party, I will arrange for the Party's solicitors to draw up a formal loan agreement.

If you require any further information, please do not hesitate to contact me on [REDACTED]

Yours in solidarity,

Sam Dastyari
General Secretary
Australian Labor Party (NSW Branch)

Level 5, 377 Sussex Street, Sydney NSW 2000
PO Box K408 Haymarket NSW 1240
T: (02) 9207 2000 F: (02) 9264 2574
E: NSWLabor@nswalp.com www.nswalp.com
*34 35 192 855 016



25 November 2010

Mr Bernie Riordan
Secretary
Electrical Trades Union (NSW Branch)
Level 5, 370 Pitt Street
Sydney NSW 2000

Request for loan

Dear Bernie,

Thank you for your continued support for NSW Labor.

Without your support, the Party could not continue to fight for better services or defend the rights and conditions of working Australians.

Date	Opening Balance	Interest Rate	Interest Payment	Principal Payment	after repayment
31/12/2010	\$1,500,000	8.50%	\$0		\$1,500,000
31/12/2011	\$1,500,000	8.50%	\$127,500	\$500,000	\$1,000,000
30/06/2012	\$1,000,000	8.50%	\$42,500	\$250,000	\$750,000
31/12/2012	\$750,000	8.50%	\$31,875	\$500,000	\$250,000
30/06/2013	\$250,000	8.50%	\$10,625	\$250,000	\$0
Total	\$1,500,000		\$212,500	\$1,500,000	

I would appreciate it if you and your Executive could consider this matter at your earliest convenience.

If a loan of this amount and on these terms can be made available to the Party, I will arrange for the Party's solicitors to draw up a formal loan agreement.

If you require any further information, please do not hesitate to contact me on [REDACTED]

Yours in solidarity,

A handwritten signature in black ink, appearing to read 'Sam Dastyari', with a long horizontal stroke extending to the right.

Sam Dastyari
General Secretary
Australian Labor Party (NSW Branch)

SD-03

Level 9, 377 Sussex Street, Sydney NSW 2000
PO Box K408 Haymarket NSW 1240
T: (02) 9267 2000 F: (02) 9264 2574
E: NSWLabor@nswalp.com www.nswalp.com
ASN 36 192 855 005



Steve Butler
NSW Secretary
Electrical Trades Union
Level 5, 370 Pitt Street
SYDNEY NSW 2000

14 September 2012

Dear Steve,

I refer to our discussions regarding the loan agreement entered into between the NSW Branch of the NSW Branch Australian Labor Party (NSW Labor) and the Electrical Trades Union NSW Branch (ETU) in December 2010.

A loan of \$500,000 was sought by NSW Labor to assist us in overcoming a cash flow shortfall for the 2011 NSW election, as we moved towards a new legislative environment.

In that context, I raised with the then Secretary of the ETU, Bernie Riordan, the possibility of NSW Labor and the ETU entering into a loan agreement on commercial terms in late 2010.

Bernie undertook to discuss the proposal with the ETU Executive at their meeting on the 20th of December 2010.

Following the meeting, Bernie advised me that the Executive had agreed that the ETU would provide the loan, on commercial terms, as requested.

On the 23rd of December 2010 I met with Bernie to sign the document, a copy of which is attached. The money was subsequently received by the Labor Party.

This commercial loan helped Labor providing a spirited defence of our principals and values in a tough electoral environment.

I thank the ETU for their continued support.

Yours in Labor,

A handwritten signature in black ink, appearing to be "SD" followed by a long horizontal stroke.

Sam Dastyari
GENERAL SECRETARY