

Reference: A1707422

Ms Helen Minnican
Acting Clerk of the Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Ms Minnican

I refer to Report No. 1/56 of the Joint Standing Committee on Electoral Matters entitled 'Inquiry into the Final Report of the Expert Panel – Political Donations and the Government Response' dated June 2016.

In accordance with Legislative Assembly Standing Order No. 303A, I wish to present the enclosed Government response to the Clerk.

I have written separately to the Clerk of the Legislative Council to present the Government's response in accordance with Legislative Council Standing Order No. 233.

The contact officer for this matter in the Department of Premier and Cabinet is Sarah Wyatt, Principal Legal Officer (T: 9228 4903, email: sarah.wyatt@dpc.nsw.gov.au).

Yours sincerely



The Hon. John Barilaro MP
Acting for and on behalf of the Premier



INQUIRY INTO THE FINAL REPORT OF THE EXPERT PANEL – POLITICAL DONATIONS AND THE GOVERNMENT'S RESPONSE (REPORT 1/56 – JUNE 2016)

GOVERNMENT RESPONSE

In May 2014, the NSW Government announced the appointment of an independent panel of experts (the **Panel**) chaired by Dr Kerry Schott to consider and report on options for the reform of election funding laws. The Panel was ultimately tasked with considering 'the best way to remove any corrosive influence of donations in New South Wales'.

On 24 December 2014, the Panel provided its final report to the Government. While the Panel supported the key pillars of the existing *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (the **Election Funding Act**), its report contained 50 recommendations for improving the current rules in areas such as disclosure of political donations and expenditure, caps and bans on donations, expenditure limits, public funding, regulation of third-party campaigners, political party governance, and compliance and enforcement.

Central to the Panel's report was its finding that the Election Funding Act has become complex and difficult to administer due to a series of significant, ad hoc amendments. The Panel's first recommendation was that the Election Funding Act be comprehensively reviewed so that it is simple, easy to understand and has clear policy objectives.

The Government issued its response to the Panel's final report in March 2015. All but one of the Panel's recommendations were accepted by the Government in principle, subject to further review of the Panel's final report (and the Government's response) by the Joint Standing Committee on Electoral Matters (the **Committee**) in the context of its review of the 2015 election. The only Panel recommendation that the Government did not accept was that an independent body be established to approve future changes to the public funding entitlements of parties and candidates (Recommendation 42). This recommendation was rejected on the basis that the parliamentary process ensures that amendments to election funding laws are subject to proper scrutiny and debate, noting that such a body does not exist in any other jurisdiction that administers a public funding scheme.

On 23 June 2016, the Committee published its final report. The Committee endorsed 44 of the Panel's 50 recommendations in principle. Importantly, the Committee shared the Panel's view that the Election Funding Act should be comprehensively reviewed and rewritten to ensure that it achieves its objects.

The Government accepts all of the Committee's recommendations. The Government's views on each of the Committee's recommendations (and the corresponding recommendations of the Panel) are set out in further detail in **Attachment A**. As the ICAC noted in its recent report on Operation Spicer, the shared recommendations of the Panel and the Committee align closely with the majority of the corruption prevention recommendations made by the ICAC in its

December 2014 report, *Election funding, expenditure and disclosure in NSW: Strengthening accountability and transparency*.

The Government is committed to electoral reform as a matter of priority. Consistent with the views of both the Committee and the Panel, the Government will continue its review of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) and the *Parliamentary Electorates and Elections Act 1912* (NSW) in consultation with stakeholders, and is working towards having new electoral laws in place at least 12 months before the 2019 election.

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>General recommendations</p>		
<p>1</p>	<p>The Committee recommends that the NSW Government adopts and implements all recommendations of the Panel of Experts on Political Donations with the exception of those identified in subsequent recommendations.</p>	<p>The Government released its response to the Final Report of the Panel of Experts on Political Donations (the Panel) in March 2015. The Government indicated in-principle support for 49 of the Panel's 50 recommendations, subject to the inquiry of the Joint Standing Committee on Electoral Matters (the Committee) into the Panel's Final Report and the Government response.</p> <p>The Government accepts all of the recommendations of the Committee in principle, noting that some of the Committee's recommendations depart from those of the Panel.</p>
<p>2</p>	<p>a) The Committee recommends that the Government review the <i>Election Funding, Expenditure and Disclosures Act 1981</i> (the EFED Act) and the <i>Parliamentary Electorates and Elections Act 1912</i> (the PE&E Act) as a matter of urgency and that the review be treated as a high priority; commence immediately; be carried out comprehensively; and include stakeholder input from all participants in the electoral system.</p> <p>b) The Committee recommends that, when the NSW Government considers its timetable for introducing the new electoral legislation into NSW Parliament, the NSW Government aims to have the legislation in place at least 12 months prior to the 2019 election.</p> <p>c) The Committee recommends that the NSW Government examines any extra administrative burden that will apply to stakeholders as a result of changes to the existing framework in the new electoral legislation and, if necessary, provides further support to ensure all stakeholders are able to fully comply with the new framework.</p>	<p>This is consistent with Recommendation 1 of the Panel, which was:</p> <p>That the Government immediately review the <i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW) so that it is simple, easy to understand and has clear policy objectives.</p> <p>The Government commenced a review of the EFED Act and the PE&E Act in 2013 consistent with the Committee's previous recommendations on the State's electoral legislation (see Report 3/55 – May 2013).</p> <p>The Government will continue this review in consultation with key stakeholders, consistent with Recommendation 2 of the Committee and Recommendation 1 of the Panel.</p>

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>Limits on Political Donations</p>		
<p>3</p> <p>The Committee recommends that the NSW Government implements a modified version of recommendation seven by:</p> <ul style="list-style-type: none"> a) reviewing the effectiveness of the prohibited donor provisions in the context of the comprehensive review of the EFED Act; and b) introducing caps on political donations and expenditure for local government. 	<p>Accept</p>	<p>Recommendation 7 of the Panel was:</p> <p>That the ban on political donations from prohibited donors (property developers and liquor, gambling and tobacco industry business entities) be retained for the time being, subject to:</p> <ul style="list-style-type: none"> a) the High Court’s decision in <i>McCloy v New South Wales</i>; and b) the introduction of caps on political donations for local government. <p>In 2015, the High Court upheld the constitutional validity of the ban on political donations from prohibited donors in the <i>McCloy</i> decision.</p> <p>The Government also notes that on 22 June 2016, the <i>Local Government and Elections Legislation Amendment (Integrity) Bill 2016</i> was passed by the Parliament. The Bill imposes caps on political donations in relation to local government elections.</p> <p>The Government will consider whether the policy objectives of the prohibited donor provisions are still valid in light of these developments, consistent with Recommendation 3 of the Committee and Recommendation 7 of the Panel.</p>
<p>4</p> <p>The Committee recommends that instead of implementing recommendation 12 of the Expert Panel’s report, the NSW Government retain the current distinction between the party spending sub-cap and the electorate-based cap.</p>	<p>Accept</p>	<p>Recommendation 12 of the Panel was:</p> <p>That the electorate-based caps on expenditure by political parties apply to all expenditure which encourages or tries to persuade electors to vote for or against a candidate in a particular electorate.</p> <p>Under the current section 95F(13) of the EFED Act, the electorate-based caps only apply to spending on material that mentions the name of a candidate contesting an electorate or the name of an electorate. The Panel was concerned that this ‘could easily allow parties to flood marginal seats’ with advertising, contrary to the purpose of</p>

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
	<p>the cap.</p> <p>The Panel therefore recommended that NSW adopt the NZ model, so that the electorate-based caps capture expenditure on all material that encourages or persuades voters to vote (or not to vote) for a particular candidate, whether or not the name of the candidate or the electorate is stated.</p> <p>During its inquiry, the Committee heard that the current definition creates certainty as it is based on objective criteria (i.e. the name of candidate or electorate), and that the broader definition favoured by the Panel could create uncertainty for parties about whether or not certain expenditure is caught by the electorate-based caps (e.g. a party-promotional advertisement with the leader of the party airing in his or her electorate as well as others).</p> <p>The Government accepts the Committee's recommendation that the current definition of electorate-based expenditure should be maintained.</p> <p>The Government will, however, consult with key stakeholders and consider whether there are other options for addressing the concerns underpinning the Panel's Recommendation 12.</p>	
<p>Public Funding</p> <p>5 The Committee recommends that instead of implementing recommendation 14(a) and 14(b) of the Expert Panel's report, the NSW Government retains the model for calculating entitlements from the Election Campaigns Fund utilised in the 2015 State Election.</p>	<p>Accept</p>	<p>Recommendation 14 of the Panel was that:</p> <ul style="list-style-type: none"> a) the 'funding linked to electoral expenditure' model that operated for the 2011 State election for calculating entitlements from the Election Campaigns Fund be reinstated following the 2015 election; and b) if the Government decides to pursue a 'dollar per vote' model, it should only be used to allocate a small proportion of public funding, with the remainder to be allocated on a 'funding linked to electoral expenditure' basis; and c) whatever public funding model is adopted, it should not

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
	<p>provide for 'full' public funding (i.e. where parties and candidates are entitled to be reimbursed for the total amount they are permitted to spend on election campaigns).</p> <p>The Government continues to support the Panel's recommendation against a 'full' public funding model.</p> <p>The Government also supports the Committee's recommendations about the model for calculating entitlements from the Election Campaigns Fund for future elections. While the Government notes the Panel's concerns about the 'dollar per vote' model giving an unfair advantage to the winning party at an election, the Committee heard evidence from smaller parties that a return to the 'funding linked to electoral expenditure' model that applied in 2011 would significantly reduce their entitlements.</p> <p>The Government therefore intends to amend the EFED Act to ensure that the funding model that was utilised for the 2015 State election will apply at future elections, consistent with Recommendation 5 of the Committee.</p>	
<p>6 The Committee recommends that instead of implementing recommendation 18 of the Expert Panel's report, the NSW Government retains the current model for calculating entitlements from the Administration Fund.</p>	<p>Accept</p> <p>Recommendation 18 of the Panel was:</p> <p>That the model for calculating entitlements from the Administration Fund which operated immediately prior to the 2014 amendments to the Act be reinstated.</p> <p>The Government accepts the Committee's recommendation that the current model for Administrative Funding be maintained. In this regard, the Government notes that the Committee received 'persuasive and compelling evidence from a diverse range of stakeholders' that the current funding model is appropriate, and that any reduction in Administration Funding could erode governance and compliance standards across parties.</p>	

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION		GOVERNMENT RESPONSE	COMMENT
Third-Party Campaigners			
<p>7</p>	<p>The Committee recommends that before decreasing the cap on electoral expenditure by third-party campaigners to \$500,000, the NSW Government considers whether there is sufficient evidence that a third-party campaigner could reasonably present its case within this expenditure limit.</p>	<p>Accept</p>	<p>Recommendation 31 of the Panel was that:</p> <p>That the cap on electoral expenditure by third-party campaigners be decreased to \$500,000 and adjusted annually for inflation, rounded up to the nearest whole number multiple of \$100.</p> <p>The Government will review the cap on electoral expenditure by third-party campaigners in the course of its review of the EFED Act and in consultation with key stakeholders, consistent with Recommendation 7 of the Committee and Recommendation 31 of the Panel.</p> <p>In particular, the Government will analyse disclosures lodged by third-party campaigners for the 2014-15 disclosure period (which covers the 2015 State election) to assess whether the proposed \$500,000 expenditure limit is reasonable.</p>
Governance			
<p>8</p>	<p>The Committee recommends that instead of implementing recommendation 33 of the Expert Panel's report, the NSW Government instructs the NSW Electoral Commission to provide broad guidance to political parties on appropriate governance and accountability principles.</p>	<p>Accept</p>	<p>Recommendation 33 of the Panel was that:</p> <ul style="list-style-type: none"> a) political parties that receive public funding for administration expenses be required to regularly submit details of their governance standards and accountability processes to the NSW Electoral Commission; and b) the payment of public funding for administration expenses be conditional on NSW Electoral Commission approval of those standards and processes. <p>The Government is committed to raising the governance standards of all parties that participate in the NSW electoral system, particularly those that receive Administrative Funding. The Government considers that the Committee's proposed approach will achieve this in a manner that minimises the regulatory burden on the NSW Electoral Commission (the NSWEC) and respects the diversity of</p>

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
		<p>political parties in NSW.</p> <p>The Government will consult with the NSWEC and with key stakeholders in implementing Recommendation 8 of the Committee.</p>
<p>9 The Committee recommends that instead of implementing recommendation 34 of the Expert Panel’s report, the NSW Government:</p> <ul style="list-style-type: none"> a) requires political parties to disclose their senior officeholders to the NSW Electoral Commission and on their websites; and b) instructs the NSW Electoral Commission to provide best practice advice to political parties in the guidance referred to in recommendation 8 to assist them with determining whether a senior officeholder is likely to have the requisite seniority, control and decision-making authority to be responsible for the party’s compliance with the legislation. 	<p>Accept</p>	<p>Recommendation 34 of the Panel was that:</p> <ul style="list-style-type: none"> a) parties be required to regularly submit a list of senior officeholders to the NSW Electoral Commission for approval as a condition of receiving administration funding. The Panel expects that, at a minimum, the NSW Branch of the Labor Party would nominate its President, Deputy Presidents, General Secretary and Assistant General Secretaries, and the NSW Division of the Liberal Party would, at a minimum, nominate its President and Vice-Presidents, Treasurer and State Director; b) the Commission only approve the list if it is satisfied that the nominated officers have sufficient seniority, control and decision-making authority to be responsible for the party’s compliance with the Act; and c) the approved officeholders, and a brief description of their roles and responsibilities, be published on the NSW Electoral Commission’s website. <p>The Government accepts the Committee’s findings that it is not appropriate or practical for the NSWEC to be empowered to veto a party’s senior officeholders and that parties are best placed to determine who should be in such positions, informed by guidance from the NSWEC on appropriate governance and accountability principles.</p> <p>The Government will consult with the NSWEC and with key stakeholders in implementing Recommendation 9 of the Committee.</p>
<p>10 The Committee recommends that instead of implementing recommendation 37(b) of the Expert Panel’s report, the NSW Government makes the NSW</p>	<p>Accept in principle</p>	<p>Recommendation 37 of the Panel was that:</p> <ul style="list-style-type: none"> a) the current requirement for double-auditing of disclosures of political donations and electoral

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>Electoral Commission responsible for auditing disclosures and claims for all political parties that receive public funding for administration expenditure and adopts an approach using generally accepted audit standards and practices.</p>	<p>Electoral Commission responsible for auditing disclosures and claims for all political parties that receive public funding for administration expenditure and adopts an approach using generally accepted audit standards and practices.</p>	<p>expenditure and claims for payment of public funding be removed; and</p> <p>b) the NSW Auditor-General be responsible for the auditing of the disclosures and claims for all political parties that receive public funding for administration expenditure.</p> <p>The Government notes that the Committee's recommendation is consistent with the submissions of the NSWEC that it should be responsible for the auditing of disclosures and claims for all parties that receive public funding, not the NSW Auditor-General.</p> <p>The Government will consult with the NSWEC and with key stakeholders in relation to Recommendation 37 of the Panel.</p>
<p>11 The Committee recommends that instead of implementing recommendation 38(b) of the Expert Panel's report, the NSW Government makes the NSW Electoral Commission responsible for auditing the annual financial statements.</p>	<p>Accept in principle</p>	<p>Recommendation 38 of the Panel was that:</p> <p>a) political parties be required to produce annual financial statements that comply with Australian Accounting Standards, as a condition of receiving public funding for administration expenditure;</p> <p>b) the NSW Auditor-General be responsible for auditing these statements; and</p> <p>c) a summary of these statements be published on the NSW Electoral Commission's website.</p> <p>The Government agrees that parties should be required to produce annual financial statements that comply with Australian Accounting Standards as a condition of receiving public funding for administration expenditure, and ensuring that these statements are audited by an appropriate body. The NSWEC considers, however, that its audit expertise is in compliance audits rather than financial audits.</p> <p>The Government will continue to consult with the NSWEC and other key stakeholders in relation to Recommendation 38 of the Panel, particularly regarding the most appropriate body to audit party financial statements.</p>

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>12 The Committee recommends that the NSW Government implement a modified version of recommendation 40 by implementing a new scheme, or revising the existing scheme of Party and Official Agents. The new scheme should balance:</p> <ul style="list-style-type: none"> a) the practical needs for one contact point within a party for compliance, and b) the need for candidates and elected Members to take more responsibility for compliance with the legislation. 	<p>Accept</p>	<p>Recommendation 40 of the Panel was that: The scheme of party and official agents be abolished and that candidates and elected Members be responsible for compliance with the Act.</p> <p>The Government agrees with the Committee's view that, while candidates and elected Members must ultimately be responsible for their obligations under the EFED Act, the centralised management of political party fundraising and finances means that it is desirable to have one contact point for compliance within a party.</p> <p>The Government will consider these issues in consultation with the NSWEC and stakeholders, consistent with Recommendation 40 of the Panel.</p>
<p>13 The Committee recommends that the NSW Government neither adopts recommendation 41b nor recommendation 42 of the Expert Panel's report.</p>	<p>Accept</p>	<p>Recommendation 41 of the Panel was that:</p> <ul style="list-style-type: none"> a) parties be required to nominate a senior officeholder to lodge disclosures and claims for payment on behalf of the party, for example, the State Director of the Liberal Party or the General Secretary of the Labor Party; and b) this officeholder be approved by the NSW Electoral Commission as a person of seniority and standing within the party. <p>As noted above in relation to Recommendation 9 of the Committee, the Government agrees that it is not appropriate or practical for the NSWEC to be empowered to veto a party's senior officeholders and that parties are best placed to determine who should be in such positions, informed by guidance from the NSWEC on appropriate governance and accountability principles.</p> <p>Recommendation 42 of the Panel was that:</p> <ul style="list-style-type: none"> a) an independent body be established to approve any changes to levels of public funding for any purpose, including election campaigns and administration, following a referral by the Premier; and

Attachment A – Government Response to Report 1/56 of the Joint Standing Committee on Electoral Matters

JSCEM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
		<p>b) this body consist of a retired judge and a person with financial or audit skills.</p> <p>The Government maintains its initial view that Recommendation 42 of the Panel should not be implemented. No equivalent body exists in any other jurisdiction that administers a public funding scheme. The Government believes that the parliamentary process ensures that all amendments to election funding law are subject to proper scrutiny and debate. In addition, the Committee has the power to inquire into and report on matters relating to the Act that are referred by either House of the Parliament or a Minister. In the past, the Committee's terms of reference have also provided that all matters relating to the previous election stand referred to the Committee for any inquiry it may wish to make, including in relation to public funding entitlements.</p>
<p>14 The Committee recommends that the NSW Government implements a modified version of recommendation 44 of the Expert Panel's report by:</p> <ul style="list-style-type: none"> a) considering whether there are other appropriate alternatives to retaining or extending strict liability offences that would assist prosecutions; b) only retaining existing, or introducing further, strict liability offences as a last resort; and c) ensuring that any strict liability offences included in the legislation contain a defence relating to honest and reasonable mistake of fact. 	<p>Accept in principle</p>	<p>Recommendation 44 of the Panel was that:</p> <ul style="list-style-type: none"> a) the strict liability offences for failing to lodge a disclosure and failing to keep records be retained; and b) a new strict liability offence be created for lodging incomplete disclosures. <p>The Government will review the offence provisions of the EFED Act to ensure that they are fair and deter non-compliance with key obligations, consistent with Recommendation 14 of the Committee and Recommendation 44 of the Panel.</p>