



PARLIAMENT OF NEW SOUTH WALES

Joint Standing Committee on Electoral Matters

REPORT 1/56 – JUNE 2016

INQUIRY INTO THE FINAL REPORT OF THE EXPERT PANEL - POLITICAL
DONATIONS AND THE GOVERNMENT'S RESPONSE





LEGISLATIVE ASSEMBLY

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO THE FINAL REPORT OF THE EXPERT PANEL -
POLITICAL DONATIONS AND THE GOVERNMENT'S RESPONSE**

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Terms of Reference

Inquiry into the Political Donations Final Report and the Government's Response

That, in the course of its inquiry into the administration of the 2015 State election, the Joint Standing Committee on Electoral Matters consider and report on:

- the recommendations made in the Final Report of the Expert Panel – Political Donations relating to the *Election Funding, Expenditure and Disclosures Act 1981* (NSW); and
- the Government's response to the recommendations made in the Final Report of the Expert Panel – Political Donations.

Chair's Foreword

I am pleased to present the Joint Standing Committee on Electoral Matters' report that contains comments and recommendations in relation to the *Political Donations Final Report* and the Government's Response.

Background to the *Political Donations Final Report*

Premier Baird established a Panel of Experts, chaired by Dr Kerry Schott, to consider and report on options for long term reform of political donations in response to public concerns about the potential for political donations to influence government policy and decisions.

The Panel released its report in December 2014 and made 50 recommendations for reformulating the election funding and disclosure system in NSW, covering overarching reforms including: reviewing the *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act); limits on political donations and expenditure; public funding for elections and party administration; disclosure of political donations and expenditure; regulation of third-party campaigners; governance, compliance and enforcement. The NSW Government indicated its support in principle for 49 of the Panel's 50 recommendations.

Committee's view on the Panel's recommendations and the Government's Response

Overall, the Committee supports the majority of the Panel's recommendations in principle and the Government's Response. The Committee's comments and recommendations throughout this report can be broadly split into three categories:

- Panel's recommendations that the Committee supports in principle, without the Committee making any additional suggestions;
- Panel's recommendations that the Committee supports in principle, with the Committee proposing to either enhance the Panel's recommendations or to offer an alternative approach; and
- Panel's recommendations that the Committee does not support.

Panel's recommendations that the Committee supports in principle, without further suggestions

The Committee supports the Panel's recommendations two to six, eight to 11, 13, 15 to 17, 19 to 30, 32, 35 to 36, 39, 43 and 45 to 50 in principle and the Government's Response. The Committee makes no further recommendations in relation to these issues.

Panel's recommendations that the Committee supports in principle but with additional proposals and/or alternatives

The Committee strongly supports the Panel's first recommendation, that the Government immediately review the EFED Act. During this inquiry, the Committee heard evidence from a broad range of stakeholders that the EFED Act urgently needs to be reviewed because it is complicated and difficult to understand.

In a 2013 report, the Committee recommended new electoral legislation relating to both the conduct of State elections and the regulation of campaign finance and expenditure, which would involve a review of both the EFED Act and the *Parliamentary Electorates and Elections Act 1912*.

While the Committee understands that the Government has commenced work on this, the Committee heard that a number of the Panel's reforms are contingent on finalising the review of the EFED Act. The Committee therefore recommends that both pieces of legislation be reviewed urgently and treated as a high priority. The Committee suggests that the review commence immediately and be carried out comprehensively, with stakeholder input from participants in the electoral system. The Committee would like to see new legislation in place at least 12 months prior to the 2019 election (*see the Committee's recommendation two*).

Since the Panel's report, the High Court has handed down its decision in *McCloy v NSW*, which rejected Mr McCloy's challenge to the ban on political donations by property developers. The Committee supports the Panel's recommendation seven that caps on political donations for local government be introduced to minimise corruption risks and to enhance consistency between State and Local Governments. The Committee further recommends that the effectiveness of the prohibited donor provisions should now be evaluated in the comprehensive review of the EFED Act (*see the Committee's recommendation three*).

While the Committee supports the Panel's recommendations 31, 37, 38, 40, 41 and 44 in principle, the Committee has put forward some additional proposals and alternatives (*see the Committee's recommendations seven, ten, 11, 12 and 13*).

Panel's recommendations that the Committee does not support

The Committee does not support the Panel's fourteenth recommendation, which is that the 'funding linked to electoral expenditure' model for calculating entitlements from the Election Campaigns Fund that applied for the 2011 election be reinstated. The Committee received evidence from smaller political parties that reverting to the earlier model would result in a significant drop in their funding. The Committee has therefore recommended that the 'dollar per vote' model that applied for the 2015 election be continued (*see the Committee's recommendation five*).

The Committee also departs from the Panel's recommendation 18, which was that the model for calculating entitlements from the Administration Fund, which operated immediately prior to the 2014 amendments to the EFED Act, be reinstated.

Instead, the Committee strongly recommends that the current model for calculating entitlements from the Administration Fund be retained. The Committee received persuasive evidence from a diverse range of stakeholders that adequate administration funding is critical to pay for compliance and regulatory requirements, staff, accommodation and other office expenses and that the previous model would result in a decline in funding (*see the Committee's recommendation six*).

The Panel's forty second recommendation was that an independent body be established to approve changes to the levels of public funding for any purpose, including election campaigns and administration. The Committee received evidence that Parliament cannot abdicate its legislative power to any other person or entity. Any such independent body would therefore be ineffective from a legal point of view. The Committee therefore recommends that the NSW Government not pursue the Panel's recommended approach (*see the Committee's recommendation 13*).

The Committee also does not support the Panel's recommendations 12, 33 and 34 but has offered alternative options (*see the Committee's recommendations four, eight and nine*).

Acknowledgements

On behalf of the Committee, I would like to thank each of the individuals and organisations that made submissions to this inquiry and gave evidence at the Committee's public hearing. Their input has been very helpful to the Committee in formulating its comments and final recommendations.

I would also like to thank Committee staff including Jason Arditi, Vedrana Trisic, Jessica Falvey and Derya Sekmen, and my Committee colleagues, The Hon. Robert Borsak MLC, Mr Adam Crouch MP, The Hon. Ben Franklin MLC, The Hon. Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon. Dr Peter Phelps MLC, The Hon. Peter Primrose MLC, Mr Mark Taylor MP and Ms Anna Watson MP, for their diligence and engagement with the relevant issues.

Mr Jai Rowell MP
Chair

List of Findings and Recommendations

RECOMMENDATION 1 _____ 2

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.

RECOMMENDATION 2 _____ 6

a) The Committee recommends that the NSW Government reviews the *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912* 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.

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.

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.

RECOMMENDATION 3 _____ 15

The Committee recommends that the NSW Government implements a modified version of recommendation seven by:

a) reviewing the effectiveness of the prohibited donor provisions in the context of the comprehensive review of the *Election Funding, Expenditure and Disclosures Act 1981*; and

b) introducing caps on political donations and expenditure for local government.

RECOMMENDATION 4 _____ 21

The Committee recommends that instead of implementing recommendation 12 of the Expert Panel's report, the NSW Government retains the current distinction between the party spending sub-cap and the electorate-based cap.

RECOMMENDATION 5 _____ 26

The Committee recommends that instead of implementing recommendation 14a and 14b 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.

RECOMMENDATION 6 _____ 32

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.

RECOMMENDATION 7 _____ 49

The Committee recommends that, before decreasing the cap on electoral expenditure by third-party campaigners to \$500,000 (recommendation 31 of the Expert Panel’s report), the NSW Government considers whether there is sufficient evidence that a third-party campaigner could reasonably present its case within this expenditure limit.

RECOMMENDATION 8 _____ **53**

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.

RECOMMENDATION 9 _____ **56**

The Committee recommends that instead of implementing recommendation 34 of the Expert Panel’s report, the NSW Government:

- 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.

RECOMMENDATION 10 _____ **61**

The Committee recommends that instead of implementing recommendation 37b of the Expert Panel’s report, the NSW Government makes the NSW 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.

RECOMMENDATION 11 _____ **62**

The Committee recommends that instead of implementing recommendation 38b of the Expert Panel’s report, the NSW Government makes the NSW Electoral Commission responsible for auditing the annual financial statements.

RECOMMENDATION 12 _____ **65**

The Committee recommends that the NSW Government implements 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:

- 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.

RECOMMENDATION 13 _____ **69**

The Committee recommends that the NSW Government neither adopts recommendation 41b nor recommendation 42 of the Expert Panel’s report.

RECOMMENDATION 14 _____ **73**

The Committee recommends that the NSW Government implements a modified version of recommendation 44 of the Expert Panel's report by:

- 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.

Glossary

ABN	Australian Business Number
ACT	Australian Capital Territory
APRA	Australian Prudential Regulation Authority
COAG	Council of Australian Governments
DPC	Department of Premier and Cabinet
EFED Act	<i>Election Funding, Expenditure and Disclosures Act 1981</i>
FDC	Funding, Disclosure and Compliance
HCA	High Court of Australia
Hon	Honourable
ICAC	Independent Commission Against Corruption
JSCEM	Joint Standing Committee on Electoral Matters
MLC	Member of the Legislative Council
MP	Member of Parliament
NB	<i>Nota Bene</i> (Latin for please note)
NRMA	National Roads and Motorists' Association
NSW	New South Wales
NSWEC	NSW Electoral Commission
Panel	Panel of Experts who prepared the <i>Political Donations Final Report</i>
PCO	Parliamentary Counsel's Office
PE&E Act	<i>Parliamentary Electorates and Elections Act 1912</i>

Chapter One – Introduction

THE POLITICAL DONATIONS FINAL REPORT

- 1.1 Premier Baird established a Panel, chaired by Dr Kerry Schott and including Mr Andrew Tink AM and The Hon. John Watkins, to consider and report on options for long term reform of political donations in response to public concerns about the potential for political donations to influence government policy and decisions.¹ A copy of the Panel’s full Terms of Reference can be found in Appendix One.
- 1.2 These concerns were prompted by the Independent Commission Against Corruption’s (ICAC) 2014 public hearings in Operations Spicer and Credo, which highlighted evidence of alleged breaches of the NSW election funding laws. Allegations against candidates and parties included receiving donations from banned donors, accepting donations above donation caps and devising schemes to conceal prohibited donations.²

The Panel’s recommendations

- 1.3 The Panel released its report in December 2014 and made 50 recommendations for reformulating the election funding and disclosure system in NSW. These recommendations relate to limits on political donations and expenditure; public funding for elections and party administration; disclosure of political donations and expenditure; regulation of third-party campaigners; governance; and enforcement.
- 1.4 The Panel’s recommendations were informed by the 78 submissions the Panel received in response to its review.³

The Government’s Response

- 1.5 The Government has indicated its in principle support for all of the Panel’s recommendations, apart from recommendations 42, which is discussed in further detail separately in chapter eight of the Committee’s Report.

THE INQUIRY TERMS OF REFERENCE

- 1.6 The Premier referred the inquiry terms of reference to the Committee.⁴
- 1.7 The terms of reference require the Committee to consider the *Political Donations Final Report* and the Government’s Response. These source documents can be

¹ NSW Government, viewed 24 September 2015, http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0003/164595/Donations_Panel_Terms_of_Reference.pdf; Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p ii.

² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 1, 18.

³ Panel of Experts, *Political Donations Final Report Volume 2*, December 2014, Appendix 7.

⁴ Letter from Mr Mike Baird MP, Premier and Minister for Western Sydney, to the Joint Standing Committee on Electoral Matters, dated 20 July 2015 (see extract from minutes in Appendix Four).

found at: http://www.dpc.nsw.gov.au/announcements/panel_of_experts_-_political_donations

THE COMMITTEE'S REPORT

- 1.8 The remaining chapters of the Committee's Report address the Panel's recommendations and the Government's Response in more detail. The Committee's comments and recommendations have been informed by recommendations the Committee has made in some of its earlier reports, along with evidence from public hearings and submissions received for this inquiry and the Committee's ongoing inquiry into the 2015 NSW State Election.
- 1.9 Further information about how the Committee conducted this inquiry can be found in Appendices Two, Three and Four.

Committee comment

- 1.10 Overall, the Committee supports the majority of the Panel's recommendations in principle and the Government's Response. Throughout this report, the Committee identifies any of the Panel's recommendations which the Committee does not support, or recommendations where the Committee supports them in principle but offers further suggestions or an alternative approach.

RECOMMENDATION 1

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.

Chapter Two – Overarching reforms

- 2.1 This chapter addresses the Panel’s recommendations one to three and the Government’s Response to those recommendations.

REVIEWING THE RELEVANT LEGISLATION

- 2.2 The Panel’s first recommendation was:

That the Government immediately review the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) so that it is simple, easy to understand and has clear policy objectives.

- 2.3 According to the Panel’s Report, the Panel supported the key components of the *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act) but believed that the complexity of the legislation impacts on compliance. The Panel was concerned that ad-hoc amendments to the Act over time have made it less coherent and effective. Therefore, the Panel suggested that the EFED Act be rewritten with clear policy objectives in mind.⁵

Government’s Response

- 2.4 The Government accepted the Panel’s recommendation in principle. The Government further stated:

In response to the recommendations of a 2013 report of the Joint Standing Committee on Electoral Matters, the Department of Premier and Cabinet (DPC) began reviewing the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (the ‘EFED Act’) in 2013/2014 in conjunction with the NSW Electoral Commission (NSWEC) and the Parliamentary Counsel’s Office (PCO). This review process was postponed to allow a thorough business process analysis of the legislation to be undertaken by the NSWEC. After the 2015 State Election, this review process will be recommenced in accordance with the Expert Panel’s recommendation.

Committee’s evidence

- 2.5 In 2013, the Committee recommended that the NSW Government draft new electoral legislation relating to the conduct of State elections and the regulation of campaign finance and expenditure. The Committee suggested that the new legislation have a clear structure, be in plain English and contain an objects provision which would assist with judicial interpretation. The Committee’s recommendation would involve reviewing the *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912*.⁶

⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 1, 31.

⁶ Joint Standing Committee on Electoral Matters, *Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981*, report 3/55, Parliament of NSW, May 2013, p xx.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
OVERARCHING REFORMS

- 2.6 A significant number and a broad range of stakeholders to this Inquiry and the Committee's Inquiry into the 2015 NSW State Election also support a review of the EFED Act or support it in principle.⁷
- 2.7 In particular, the NSW Electoral Commission stresses that a comprehensive review of the EFED Act is critical to the successful implementation of the Panel's recommendations.⁸ The Commission expresses the view that the legislation impedes compliance by relevant participants and that successive major reforms have resulted in an 'unbalanced and convoluted Act, which is difficult to understand.'⁹
- 2.8 The Commissioner¹⁰, Mr Colin Barry, describes the complexities of the current legislation:
- We mapped out all the players in this Act and it took a person the best part of four months to simply be able to present it in a diagrammatic form. And my concern is that when you lay this out, it is like an architect's drawings. You suddenly pull a bit out here and fiddle with that, it has tentacles all throughout the legislation.¹¹
- 2.9 A comprehensive review and rewrite of the Act is critical for the Commission's successful transition from an administrative unit to a regulatory one, according to Mr Barry.¹² In his view, 'if you do not get the legislation right you are wasting your time.'¹³
- 2.10 Other participants make similar comments about the convoluted nature of the legislation. Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, describes the political donations area as 'full of an enormous amount of highly complicated provisions and information'.¹⁴
- 2.11 Mr Tony Nutt, State Director, Liberal Party of Australia, says the legislation needs a 'full redesign' with regard to the criteria of simplicity and effectiveness¹⁵ and

⁷ See for example, Submission 4, Christian Democratic Party, p 4; Submission 3, NSW Electoral Commission, p 5; Submission 2, Shooters, Fishers and Farmers Party, p 2; Submission 5, NSW Labor, p 4; Submission 22, Liberal Party of Australia, NSW Division, Inquiry into the 2015 NSW State Election, p 6; Submission 6, Unions NSW, p 3; Submission 7, NSW Nationals, p 2; Submission 9, Local Government NSW, p 4.

⁸ Submission 3, NSW Electoral Commission, p 22.

⁹ Submission 3, NSW Electoral Commission, p 5.

¹⁰ Note: Mr Colin Barry retired as the NSW Electoral Commissioner at the end of 2015. The Acting NSW Electoral Commissioner is Ms Linda Franklin. However, the evidence which the Committee has received from the NSW Electoral Commission has primarily been from the time when Mr Barry was Commissioner. As such, this report will refer to Mr Barry as the Commissioner throughout.

¹¹ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 9.

¹² Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 2.

¹³ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 2.

¹⁴ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, p 36.

¹⁵ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 30.

The Greens' Registered Officer, Mr Geoffrey Ash, describes the legislation as 'excessively complicated'.¹⁶

- 2.12 Mr Mark Lennon, Secretary, Unions NSW, even goes as far as arguing that the EFED Act affects our democracy:

For third-party campaigners, candidates, individuals donating, it has become so difficult to understand and abide by that it is impacting on the democratic process in the State.¹⁷

- 2.13 Some inquiry participants, while supporting a review of the EFED Act, question how the review may impact on smaller parties, independents and third-party campaigners. The Shooters, Fishers and Farmers Party expresses concern that any review will move the balance in favour of major parties¹⁸ and Unions NSW wonders what impact the review would have on third-party campaigners.¹⁹

- 2.14 The NSW Nationals also note that while the EFED Act poses challenges for larger parties, it has a more substantial impact on smaller parties and independents.²⁰

- 2.15 The Commissioner, Mr Barry, emphasises that the review process must commence immediately and that new legislation should be in place at least 12 months before the next election. This is to ensure that stakeholders can be educated on new procedures and processes.²¹

- 2.16 Mr Christopher Maltby, Deputy Registered Officer, The Greens and Mr Nutt are supportive of the review timeframe suggested by the Commissioner.²²

Committee comment

- 2.17 The Committee agrees with the Panel that the *Election Funding, Expenditure and Disclosures Act 1981* should be reviewed urgently.

- 2.18 In 2013, the Committee recommended that new electoral legislation be drafted. This would involve reviewing the *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912*. The Committee acknowledges that the NSW Government has commenced this process.

- 2.19 In light of strong stakeholder evidence throughout this inquiry, the Committee is of the view that this comprehensive review of the electoral legislation is of critical importance and should be a matter of high priority.

¹⁶ Mr Geoffrey Ash, Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 20.

¹⁷ Mr Mark Lennon, Secretary, Unions NSW, transcript of evidence, 30 November 2015, p 55.

¹⁸ Submission 2, Shooters, Fishers and Farmers Party, p 2.

¹⁹ Submission 6, Unions NSW, p 3.

²⁰ Submission 7, NSW Nationals, p 2.

²¹ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, pp 2-3.

²² Mr Christopher Maltby, Deputy Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 20; Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 30.

- 2.20 The Committee agrees with the NSW Electoral Commission and other inquiry participants that new legislation should commence at least 12 months prior to the 2019 State Election, so that stakeholders have sufficient opportunity to familiarise themselves with any new procedures.
- 2.21 The Committee also agrees with inquiry participants that the EFED Act is extremely complicated and that the successful implementation of the Panel's recommendations relies on that Act being reviewed. The Committee believes that the review should include broad stakeholder consultation, so that all participants in the electoral system have an opportunity to provide input.
- 2.22 The Committee acknowledges that changes to the electoral legislation may result in additional administrative burdens for stakeholders. The Committee believes the Government should provide support to stakeholders, if necessary, to assist them in complying with the new framework.

RECOMMENDATION 2

- a) **The Committee recommends that the NSW Government reviews the *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912* 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.**
- 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.**
- 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.**

CO-ORDINATED NATIONAL REFORM

- 2.23 The Panel's second recommendation was:
- That the Premier support co-ordinated national reform of election funding laws, and seek to put the issue on the COAG agenda.
- 2.24 The Panel argued that the federal structure of some political parties creates opportunities for avoiding NSW restrictions on political donations and that greater co-ordination of election funding laws across jurisdictions would assist with this issue.²³

²³ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 31.

Government's Response

2.25 The Government accepted the Panel's recommendation in principle. It stated that:

The Government will consider the best way to pursue co-ordinated national reform of election funding laws.

Committee's evidence

2.26 The Committee has previously stated that it prefers a national approach to electoral and political finance reform.²⁴

2.27 There is support from some inquiry participants for co-ordinated national reforms of election funding laws.²⁵ For example, NSW Labor strongly supports this recommendation and highlights that the restrictions that apply in NSW do not apply at a Federal level or in many other States or Territories.²⁶

2.28 In addition, any apparent constitutional barriers have been removed. Dr Twomey explains that the High Court decision in *McCloy v NSW* [2015] HCA 34 'clears away constitutional doubts about the enactment of similar reforms at the national level.'²⁷

2.29 However, other stakeholders are sceptical about this recommendation. The Shooters, Fishers and Farmers Party argues that for practical purposes, coordinated national reform of election laws is unachievable²⁸ and the Christian Democratic Party submits that implementing this recommendation would inherently favour the major political parties and The Greens.²⁹

Committee comment

2.30 The Committee considers that the NSW Government's main priority should be carrying out a comprehensive review of the NSW electoral laws and actioning subsequent reform.

2.31 However, the Committee also agrees with the Panel that the issue of national reform of electoral laws be put on the COAG agenda for two key reasons. First, to potentially enhance consistency in this area across the States and Territories. Second, because the federal structures of some parties may impact on state branches of those parties complying with state legislation.

2.32 The Committee supports the Panel's second recommendation and the Government's Response in principle.

²⁴ Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, report 2/54, Parliament of NSW, March 2010, p x.

²⁵ See for example, Submission 3, NSW Electoral Commission, p 22; Submission 5, NSW Labor, p 4; Submission 9, Local Government NSW, p 4.

²⁶ Submission 5, NSW Labor, p 4.

²⁷ Submission 8, Dr Anne Twomey, p 3.

²⁸ Submission 2, Shooters, Fishers and Farmers Party, p 2.

²⁹ Submission 4, Christian Democratic Party, p 4.

REPORT ON THE GOVERNMENT'S PROGRESS

2.33 The Panel's third recommendation was:

That the Premier report on the progress made in implementing the Panel's recommendations in June 2015 and annually thereafter, and that these reports be tabled in the NSW Parliament.

2.34 The Panel wanted to maintain the current momentum for change, particularly as the Government previously committed to undertake a comprehensive review of the State's electoral legislation in response to this Committee's 2012 inquiry.³⁰

Government's Response

2.35 The Government accepted the Panel's recommendation in principle. It stated:

The Government response is intended to satisfy the June 2015 reporting requirement. The Government could then report on progress annually, with reports to be tabled in Parliament.

Committee's evidence

2.36 Five of the nine submissions received by the Committee address the Panel's third recommendation with all five of them agreeing or agreeing in principle with the recommendation.³¹

Committee comment

2.37 The Committee agrees that the Premier should provide regular updates on the NSW Government's progress in implementing the Panel's recommendations.

2.38 The Committee supports the Panel's third recommendation and the Government's Response in principle.

³⁰ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 31.

³¹ Submission 2, Shooters, Fishers and Farmers Party, p 2; Submission 3, NSW Electoral Commission, p 22; Submission 4, Christian Democratic Party, p 4; Submission 5, NSW Labor, p 4; Submission 9, Local Government NSW, p 4.

Chapter Three – Limits on political donations

3.1 This chapter addresses the Panel’s recommendations four to nine and the Government’s Response to those recommendations.

NO TOTAL BAN ON POLITICAL DONATIONS

3.2 The Panel’s fourth recommendation was:

That the Government not pursue:

- a) a total ban on political donations on the grounds that it is not in the public interest, not feasible in practice, and not likely to survive constitutional challenge; or
- b) an opt-in, opt-out full public funding scheme as an alternative to a total ban on political donations.

3.3 According to the Panel’s Report, the Panel could not find evidence that banning political donations would prevent corruption. Instead, it expressed the view that other measures, such as caps on donations and expenditure, and more stringent investigation and enforcement, would be more effective in preventing corrupt conduct.

3.4 The Panel highlighted the practical difficulties of banning political donations, such as whether new parties would be eligible for public funding. The Panel also expressed concern that banning political donations would be unconstitutional.

3.5 In addition, the Panel questioned the anti-corruption benefits of an opt-in, opt-out full public funding model. This is where parties could refuse donations from private sources as a condition of receiving full public funding.³²

Government’s Response

3.6 The Government accepted the Panel’s recommendation in principle.

Committee’s evidence

3.7 Various stakeholders accept the Panel’s recommendation or support it in principle.³³

3.8 The NSW Electoral Commission notes that an opt-in, opt-out scheme for enabling a political party to receive full public funding in lieu of donations would be difficult to administer.³⁴

³² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 33, 38.

³³ See for example, Submission 6, Unions NSW, p 4; Submission 9, Local Government NSW, p 4; Submission 4, Christian Democratic Party, p 4; Submission 2, Shooters, Fishers and Farmers Party, p 2.

³⁴ Submission 3, NSW Electoral Commission, p 23.

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- 3.9 Unions NSW urges the NSW Government not to pursue a total ban on political donations, and notes that the Panel's recommendation is 'important in ensuring freedom of political expression for electors and third-party campaigners is maintained'.³⁵
- 3.10 NSW Labor's submission to the Panel called for an opt-in, opt-out public funding model. However, in its submission to the Committee, NSW Labor says it understands the Panel's arguments for rejecting this proposal.³⁶

Committee comment

- 3.11 The Committee agrees with inquiry participants that a total ban on political donations should not be pursued as the Committee does not believe it is in the public interest or in line with freedom of political expression. The Committee also does not support an opt-in, opt-out public funding model and, in particular, acknowledges the NSW Electoral Commission's comments about the difficulties that would arise if such a scheme were implemented.
- 3.12 The Committee supports the Panel's fourth recommendation and the Government's Response in principle.

ANONYMOUS DONATIONS

- 3.13 The Panel's fifth recommendation was:
- That:
- a) the ban on anonymous political donations above a certain amount be retained; and
 - b) the provisions that aggregate multiple political donations from the same donor be amended so that small anonymous donations are exempt.
- 3.14 The Panel's report noted that banning anonymous donations above \$1,000 is sound policy because anonymous donations give rise to a risk of corruption. The Panel highlighted that this practice is also consistent with many other jurisdictions in Australia and internationally.
- 3.15 The Panel noted that it is not clear how the ban on anonymous donations currently works alongside the aggregation provisions. These provisions require multiple donations from the same source to be treated as a single donation for the purposes of the caps on donations and the disclosure rules.
- 3.16 The Panel considered that aggregation of small anonymous donations is onerous and has little benefit. The Panel's recommendation is consistent with the approach in WA, where small donations are exempt from the rules that require multiple donations from a single source to be aggregated.³⁷

³⁵ Submission 6, Unions NSW, p 4.

³⁶ Submission 5, NSW Labor, p 4.

³⁷ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 4, 46-47.

Government's Response

- 3.17 The Government accepted the Panel's recommendation in principle. The Government said it will consider recommendation 5(a) in the review of the EFED Act. In relation to recommendation 5(b), the Government stated:

In reviewing the EFED Act, DPC will consider how best to integrate a ban on anonymous donations above a certain limit with the aggregation provisions in consultation with the NSWEC. Political parties and independent Members will also be consulted in determining how to address this issue.

Committee's evidence

- 3.18 Six of the nine submissions received by the Committee address the Panel's fifth recommendation, all six of them agreeing or agreeing in principle with the recommendation.³⁸
- 3.19 In particular, the NSW Electoral Commission agrees that a ban on anonymous donations above a certain level should be retained. However, the Commission supports a review of the threshold at which a small donation should be subject to the aggregation provisions. The Commission does not believe that \$1,000 is a suitable threshold for small donations.³⁹

Committee comment

- 3.20 The Committee agrees with stakeholders that the ban on anonymous political donations should be retained but that this needs to be reviewed in the context of the aggregation provisions.
- 3.21 The Committee supports the Panel's fifth recommendation and the Government's Response in principle.

FOREIGN DONATIONS

- 3.22 The Panel's sixth recommendation was:

That the ban on political donations from foreign sources be retained.

- 3.23 The Panel noted that the ban on foreign donors is common in many countries.⁴⁰

Government's Response

- 3.24 The Government accepted the Panel's recommendation in principle and said it will be considered in the review of the EFED Act.

Committee's evidence

- 3.25 The Committee has previously recommended that political donations from individuals be limited to those on the NSW or Australian electoral roll. The

³⁸ Submission 2, Shooters, Fishers and Farmers Party, p 2; Submission 4, Christian Democratic Party, p 4; Submission 5, NSW Labor, p 4; Submission 9, Local Government NSW, p 4; Submission 3, NSW Electoral Commission, p 23; Submission 7, NSW Nationals, p 3.

³⁹ Submission 3, NSW Electoral Commission, p 23.

⁴⁰ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 4.

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Committee also recommended that an entity should only be permitted to donate to a political party if the entity is a company with an ABN, a registered trade union or an incorporated association carrying out the majority of its business in NSW.⁴¹

3.26 Four submissions address the Panel's recommendation and support the ban on donations from foreign sources or support it in principle.⁴²

3.27 The NSW Electoral Commission disagrees with the Panel's interpretation of section 96D of the *Election Funding, Expenditure and Disclosures Act 1981*, which requires identification from those making political donations:

The NSW Electoral Commission cannot prevent donations from foreign donors and entities so long as they provide acceptable identification showing an Australian residential address.⁴³

3.28 The Commission considers that legislative amendments will be required to effectively ban donations from foreign sources.⁴⁴

Committee comment

3.29 The Committee continues to support the ban on donations from foreign sources. However, in reviewing the EFED Act, the Committee suggests the NSW Government consider the practical problems associated with banning donations from foreign sources, as highlighted by the NSW Electoral Commission.

3.30 The Committee supports the Panel's sixth recommendation and the Government's Response in principle.

DONATIONS FROM PROHIBITED DONORS

3.31 The Panel's seventh recommendation was:

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:

- a) the High Court's decision in *McCloy v New South Wales*; and
- b) the introduction of caps on political donations for local government.

3.32 The Panel noted that the High Court would soon determine whether the ban on specific donors is constitutionally valid. However, the Panel was concerned that if the ban was struck down by the High Court, political donations from banned donors would be uncapped at the local government level.⁴⁵

⁴¹ Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, report 2/54, Parliament of NSW, March 2010, p x.

⁴² Submission 2, Shooters, Fishers and Farmers Party, p 2; Submission 4, Christian Democratic Party, p 4; Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 5.

⁴³ Submission 4, NSW Electoral Commission, pp 23-24.

⁴⁴ Submission 4, NSW Electoral Commission, p 24.

⁴⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 4.

Government's Response

3.33 The Government accepted the Panel's recommendation in principle and stated:

The Government agrees with the Expert Panel's view that any changes should await the High Court's decision on whether the ban on political donations from prohibited donors is constitutionally valid.

Committee's evidence

3.34 The High Court's decision in *McCloy v NSW*⁴⁶ was handed down on 7 October 2015. The High Court, by a majority, rejected Mr McCloy's challenge to the ban on political donations by property developers.⁴⁷

3.35 Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, notes that the High Court's judgment is directly relevant to the ban on donations by property developers. However, she cautions that similar justifications and evidence would need to be supplied to extend the reach of the prohibition to the liquor, gambling and tobacco industries.⁴⁸

3.36 There is support from a number of inquiry participants for retaining the ban on political donations from certain donors.⁴⁹ Mr Christopher Maltby, Deputy Registered Officer, The Greens, says that prohibited donor provisions are important for public governance issues:

The ICAC and others have clearly indicated that there is a severe conflict of interest and the potential for corruption when people who stand to benefit in substantial ways from government decision-making at all levels are also the gatekeepers to the capacity for people to get elected.⁵⁰

3.37 Other stakeholders, such as the Shooters, Fishers and Farmers Party and the Christian Democratic Party, also agree with the Panel's recommendation in principle but question the need for provisions relating to prohibited donors given the low caps on donations generally.⁵¹

3.38 The NSW Nationals express the view that the provisions relating to prohibited donors, particularly the definition of a 'close associate', need to be reviewed to better achieve the anti-corruption purposes of the legislation.⁵² Further, Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, believes the provisions relating to prohibited donors could be made

⁴⁶ [2015] HCA 34.

⁴⁷ Submission 8, Dr Anne Twomey, p 1.

⁴⁸ Submission 8, Dr Anne Twomey, p 3.

⁴⁹ See for example, Submission 5, NSW Labor, p 5; Submission 9, Local Government NSW, pp 3-4; Mr Geoffrey Ash, Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 14.

⁵⁰ Mr Christopher Maltby, Deputy Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 21.

⁵¹ Submission 2, Shooters, Fishers and Farmers Party, p 2; Submission 4, Christian Democratic Party, p 4.

⁵² Submission 16, NSW Nationals, Inquiry into the 2015 NSW State Election, pp 7-8.

less complicated.⁵³ The Commission requests that their enforcement options be increased in this area, if the ban is retained.⁵⁴

Caps on political donations for local government

3.39 There is stakeholder support for introducing caps on political donations for local government, including support from Local Government NSW, which suggests that the Committee's changes be implemented prior to the local government elections in September 2016.⁵⁵ The Committee has also previously recommended introducing caps on donations for local government election campaigns.⁵⁶

3.40 Dr Twomey could not envisage any legal impediments to caps on donations at the local government level, but suggests that there could be a practical issue about whether the NSW Electoral Commission could effectively administer and enforce such a scheme. She believes it may be costly and difficult to administer at the local government level due to a greater number of independents and less defined political party structures.⁵⁷

3.41 However, if the scheme was found to be practical, Dr Twomey considers that caps on donations for local government could be useful:

In regard to the potential for corruption, given that local government in particular is involved in making critical decisions about property development and those sorts of things, I suspect that the potential for corruption is greater at that level than it is at the State level.⁵⁸

3.42 According to Local Government NSW, matters involving political or campaign donors may result in a non-pecuniary conflict of interest under the current Model Code of Conduct for Local Councils in NSW.⁵⁹

3.43 Local Government NSW explains that a councillor must declare a non-pecuniary conflict of interest where they have received, or knowingly benefited from, a reportable political donation from a major political donor being one who had donated \$1000 or more in the previous four years and who has a matter before council. The councillor is also required to disclose the nature of the interest and manage the conflict in accordance with the Code. However, a councillor is not prevented from participating in a decision to delegate council's decision-making

⁵³ Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 12.

⁵⁴ Submission 4, NSW Electoral Commission, p 24.

⁵⁵ Submission 3, NSW Electoral Commission, p 24; Submission 5, NSW Labor, p 5; Submission 9, Local Government NSW, pp 3-4; Submission 8, The Greens, Inquiry into the 2015 NSW State Election, pp 10-11; Mr Filip Despotoski, State Director, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 44.

⁵⁶ Joint Standing Committee on Electoral Matters, *Public funding of local government election campaigns*, report 4/54, December 2010, p vi.

⁵⁷ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, p 36.

⁵⁸ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, p 36.

⁵⁹ Submission 9, Local Government NSW, pp 3-4.

role to staff or appointing another person or organisation to deal with the decision.⁶⁰

- 3.44 Local Government NSW notes that political donations below \$1,000 to a party by which a councillor is endorsed may still give rise to a non-pecuniary conflict of interest under the Code.⁶¹

Committee comment

- 3.45 In light of the recent High Court decision in *Mc Cloy v NSW*⁶² and current matters before the ICAC relating to prohibited donors, the Committee is in favour of retaining the existing prohibited donor provisions and not repealing or extending them at this stage. However, the effectiveness of the provisions should be considered in the NSW Government's comprehensive review of the EFED Act.
- 3.46 The Committee continues to strongly support caps on political donations for local government to minimise corruption risks and to enhance consistency between State and Local Governments.

RECOMMENDATION 3

The Committee recommends that the NSW Government implements a modified version of recommendation seven by:

- a) reviewing the effectiveness of the prohibited donor provisions in the context of the comprehensive review of the *Election Funding, Expenditure and Disclosures Act 1981*; and
- b) introducing caps on political donations and expenditure for local government.

CURRENT CAPS ON POLITICAL DONATIONS

- 3.47 The Panel's eighth recommendation was:

That the current caps on political donations be retained and adjusted annually for inflation, rounded up to the nearest whole number multiple of \$100.

- 3.48 The Panel argued that caps are appropriate for targeting large donations which pose the greatest corruption risk. The Panel contended that caps are consistent with democratic principles because they encourage parties to seek small contributions from a broad base of constituents. The Panel also noted that many overseas jurisdictions impose caps on political donations.⁶³

Government's Response

- 3.49 The Government accepted the Panel's recommendation in principle and said it will be considered in the review of the EFED Act.

⁶⁰ Submission 9, Local Government NSW, p 3.

⁶¹ Submission 9, Local Government NSW, p 3.

⁶² [2015] HCA 34.

⁶³ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 53.

Committee's evidence

- 3.50 Many stakeholders support retaining the current caps on political donations.⁶⁴
- 3.51 Additionally, Dr Anne Twomey advises that the High Court's decision in *McCloy v NSW*⁶⁵ directly supports the continuation of caps on political donations as recommended by the Panel.⁶⁶
- 3.52 The NSW Nationals consider that the caps on political donations are set 'broadly at the correct level', however, they suggest that any transfer of funds made by a political party to an endorsed candidate or Member be exempt from the caps.⁶⁷
- 3.53 The Panel's recommendation is not supported by the Shooters, Fishers and Farmers Party and the Christian Democratic Party.
- 3.54 The Shooters, Fishers and Farmers Party submits that caps on donations were envisaged as a means of averting political corruption by parties capable of forming government and that the existing arrangements favour the larger established parties. It argues that a sliding scale principle should be applied to political donations and recommends a cap of \$20,000 per annum per donor be applied to parties with fewer than four parliamentary members, while retaining the \$5,000 cap for major parties and coalitions.⁶⁸ The Christian Democratic Party makes an identical submission.⁶⁹

Committee comment

- 3.55 The Committee agrees with the Panel's recommendation to retain the current caps on political donations to minimise corruption risks and encourage political donations from a broad range of constituents.
- 3.56 The Committee supports the Panel's eighth recommendation and the Government's Response in principle.

INDIRECT CAMPAIGN CONTRIBUTIONS

- 3.57 The Panel's ninth recommendation was:

That:

- a) the cap on indirect campaign contributions (or in-kind donations) be made consistent with the caps that apply to other political donations (i.e. \$2,000 for donations to candidates and \$5,000 for donations to parties); and
- b) the NSW Electoral Commission issue guidelines to help smaller parties and volunteers better understand their obligations in relation to in-kind donations.

⁶⁴ See for example, Submission 3, NSW Electoral Commission, p 24; Submission 5, NSW Labor, p 5; Submission 9, Local Government NSW, p 4.

⁶⁵ [2015] HCA 34.

⁶⁶ Submission 8, Dr Anne Twomey, p 3.

⁶⁷ Submission 16, NSW Nationals, Inquiry into the 2015 NSW State Election, p 9.

⁶⁸ Submission 2, Shooters, Fishers and Farmers Party, pp 2-3.

⁶⁹ Submission 4, Christian Democratic Party, p 5.

- 3.58 The Panel's Report noted that capping indirect campaign contributions at the same level as other political donations is important for consistency.
- 3.59 The Panel also highlighted that the current definition of 'indirect campaign contribution' creates uncertainty for smaller parties, particularly in relation to whether volunteer labour is captured. The Panel suggested that guidelines from the NSW Electoral Commission could assist with this issue.⁷⁰

Government's Response

- 3.60 The Government accepted the Panel's recommendation in principle and said it will be considered in the review of the EFED Act.

Committee's evidence

- 3.61 Stakeholders generally support this recommendation, or do not oppose it.⁷¹
- 3.62 The NSW Electoral Commission does not oppose setting caps on indirect campaign contributions consistent with caps on other political donations, but notes that legislative amendment would be required to achieve this. The Commission advises that following the High Court's decision in *McCloy v NSW*,⁷² it will commence a review of in-kind donations provisions with a view to issuing guidelines to help people and parties understand their obligations.⁷³

Committee comment

- 3.63 The Committee supports making caps on indirect campaign contributions consistent with the caps that apply to other political donations. The Committee notes that the NSW Electoral Commission is already beginning work on preparing appropriate guidelines.
- 3.64 The Committee supports the Panel's ninth recommendation and the Government's Response in principle.

⁷⁰ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 55.

⁷¹ Submission 3, NSW Electoral Commission, p 25; Submission 2, Shooters, Fishers and Farmers Party, p 3; Submission 4, Christian Democratic Party, p 5; Submission 5, NSW Labor, p 5; Submission 7, NSW Nationals, p 5; Submission 9, Local Government NSW, p 4.

⁷² [2015] HCA 34.

⁷³ Submission 3, NSW Electoral Commission, p 25.

Chapter Four – Expenditure

- 4.1 This chapter addresses the Panel’s recommendations ten to twelve and the Government’s Response to those recommendations.

CAPS ON ELECTORAL EXPENDITURE

- 4.2 The Panel’s tenth recommendation was:

That the current caps on electoral expenditure be retained and adjusted before each election for inflation, rounded up to the nearest whole number multiple of \$100.

- 4.3 The Panel’s report explained that the expenditure cap for parties contesting Legislative Assembly seats is \$100,000 per seat, plus an additional \$100,000 cap per seat for each endorsed candidate. This additional \$100,000 cap is subject to a \$50,000 sub-cap in each electorate so each party’s cap in individual seats is \$150,000. The expenditure cap for parties primarily contesting the Legislative Council is about \$1 million and the cap for independent candidates is \$150,000.
- 4.4 The Panel noted that in the 2011 election, the Labor Party spent around \$16.1 million and the Coalition spent around \$18.6 million. The Panel expressed the view that the current level of the caps appeared to be appropriate.⁷⁴

Government’s Response

- 4.5 The Government accepted the Panel’s recommendation in principle and said it will consider it in the review of the EFED Act.

Committee’s evidence

- 4.6 A number of stakeholders agree with the Panel’s recommendation or support it in principle.⁷⁵ Mr Tony Nutt, State Director, Liberal Party of Australia, observes that ‘caps are crucial for the arms race.’ He states that caps provide certainty that you can reach the level of money you require without being wasteful with public or party money.⁷⁶
- 4.7 Some participants call for changes to the caps on expenditure. For example, the NSW Nationals argue for a higher cap in regional electorates because of the increased cost of carrying out campaigns in these areas.⁷⁷
- 4.8 The Greens prefer that the expenditure caps on political parties, candidates and third parties be reduced.⁷⁸ They suggest that this would ease the State’s financial burden and reduce the perception that wealthy donors can influence an election

⁷⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 58.

⁷⁵ Submission 2, Shooters, Fishers and Farmers Party, p 3; Submission 4, Christian Democratic Party, p 5; Submission 3, NSW Electoral Commission, p 25; Submission 5, NSW Labor, p 5; Submission 9, Local Government NSW, p 4.

⁷⁶ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 33.

⁷⁷ Submission 7, NSW Nationals, p 5.

⁷⁸ Submission 8, The Greens, Inquiry into the NSW 2015 State Election, p 9.

outcome.⁷⁹ The Greens propose that expenditure caps be reduced proportionately:

Any attempt to reduce the limits on third parties without an equivalent reduction in the spending of political parties would shift the balance of capacity to communicate with voters away from community and working people's organisations and into the professionalised parties. This outcome would work against a healthy democracy.⁸⁰

Committee comment

- 4.9 The Committee agrees with the Panel and a number of inquiry participants that the current caps on electoral expenditure should be retained.
- 4.10 The Committee supports the Panel's tenth recommendation and the Government's Response in principle.

EXPENDITURE FOR THE PURPOSE OF INFLUENCING VOTING

- 4.11 The Panel's eleventh recommendation was:

That all electoral expenditure incurred for the purpose of influencing the voting at an election be caught by the caps on electoral expenditure.

- 4.12 The Panel's report noted that expenditure caps apply to 'electoral communications expenditure'. There is currently a lengthy list of the kinds of expenditure that fall within this definition. In the Panel's view, it would be preferable for all electoral expenditure to be reimbursable to reduce the current complexities associated with this definition.
- 4.13 The Panel suggested a more general and expansive definition would allow parties and candidates to determine which activities best suit their individual campaigns, free from financial incentives to choose activities that fall within the current list of permitted expenditure.⁸¹

Government's Response

- 4.14 The Government accepted the Panel's recommendation in principle and said it will consider it in the review of the EFED Act.

Committee's evidence

- 4.15 The majority of stakeholders that address this recommendation either agree with it in principle or support it.⁸²
- 4.16 The NSW Nationals argue that the current distinction between electoral expenditure and electoral communication expenditure should remain,

⁷⁹ Submission 8, The Greens, Inquiry into the NSW 2015 State Election, p 8.

⁸⁰ Submission 8, The Greens, Inquiry into the NSW 2015 State Election, p 8.

⁸¹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 66-67.

⁸² Submission 2, Shooters, Fishers and Farmers Party, p 3; Submission 4, Christian Democratic Party, p 5; Submission 5, NSW Labor, p 5; Submission 9, Local Government NSW, p 4; Submission 3, NSW Electoral Commission, p 25.

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particularly given that activities such as travel and campaign research have recently been brought within the relevant caps.⁸³

- 4.17 The NSW Electoral Commission, in supporting the Panel's recommendation, suggests that there be 'an appropriate, purposive, straightforward definition of electoral expenditure.'⁸⁴

Committee comment

- 4.18 The Committee agrees with the Panel and the majority of stakeholders that all electoral expenditure incurred for the purpose of influencing the voting at an election be caught in the caps on electoral expenditure.
- 4.19 The Committee supports the Panel's eleventh recommendation and the Government's Response in principle.

ELECTORAL-BASED CAPS

- 4.20 The Panel's twelfth recommendation was:

That the electoral-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.

- 4.21 The Panel heard concerns about the current NSW definition of electorate-based spending, which refers to advertising that mentions the name of a candidate contesting the electorate or the name of an electorate. The Panel received evidence that the current definition could easily allow a party to flood marginal electorates with campaign expenditure.
- 4.22 The Panel suggested that the definition of 'candidate advertising' used in New Zealand should instead be adopted. The New Zealand definition refers to advertisements which encourage or persuade the public to vote for a candidate, or not to vote for a candidate, whether or not the candidate's name is mentioned.⁸⁵

Government's Response

- 4.23 The Government accepted the Panel's recommendation in principle and said it will consider it in the review of the EFED Act.

Committee's evidence

- 4.24 Most inquiry participants that address this recommendation support it or support it in principle.⁸⁶

⁸³ Submission 7, NSW Nationals, p 5.

⁸⁴ Submission 3, NSW Electoral Commission, p 25.

⁸⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 67-68.

⁸⁶ Submission 3, NSW Electoral Commission, p 26; Submission 4, Christian Democratic Party, p 5; Submission 2, Shooters, Fishers and Farmers Party, p 3; Submission 5, NSW Labor, pp 5-6; Submission 9, Local Government NSW, p 4.

- 4.25 However, the NSW Nationals do not support the Panel's recommendation, expressing significant concerns at how the Panel's proposal would operate in practice. In their view, the current formulation for capping electoral expenditure is clearly defined and provides certainty to political parties.
- 4.26 The NSW Nationals' submission questions whether, under the formulation recommended by the Panel, certain expenditure would fall within the party general cap or the candidate sub-cap under section 95F(13) of the EFED Act.⁸⁷ Their submission raises the following examples of where uncertainty could arise under the proposed reformulation:
- a party promotional advertisement with the leader of the party, airing in their local electorate among others;
 - a Member of Parliament featuring in a party advertisement covering multiple electorates including their own, for example, if the Member has responsibility for a geographic area; and
 - an advertisement explaining what a party intends to deliver for a specific electorate.⁸⁸

Committee comment

- 4.27 The Committee notes the Panel's concern that the current definition of electorate-based spending could allow a party to flood marginal electorates with campaign expenditure. However, the Committee agrees with the NSW Nationals that the reformulation proposed by the Panel may lead to more uncertainty.
- 4.28 As such the Committee does not support the Panel's recommendation 12 and believes that the current distinction between the caps should be maintained.

RECOMMENDATION 4

The Committee recommends that instead of implementing recommendation 12 of the Expert Panel's report, the NSW Government retains the current distinction between the party spending sub-cap and the electorate-based cap.

⁸⁷ Submission 7, NSW Nationals, p 6.

⁸⁸ Submission 7, NSW Nationals, p 6.

Chapter Five – Public funding

5.1 This chapter addresses the Panel’s recommendations thirteen to twenty two and the Government’s Response to those recommendations.

ELECTION CAMPAIGNS FUND

5.2 The Panel’s thirteenth recommendation was:

That:

- a) all expenditure incurred for the purpose of influencing the voting at an election be reimbursable from the Election Campaigns Fund; and
- b) the NSW Electoral Commission issue guidelines on the costs that can be reimbursed as electoral expenditure.

5.3 The Panel:

- supported expanding the types of election campaign expenditure that can be reimbursed from public funding;
- suggested that a more expansive definition would better reflect the costs associated with a modern election campaign; and
- wants to simplify the election funding scheme to allow parties to decide which election activities best suit their campaigns, without being influenced to choose activities that can be claimed through public funding.

5.4 The Panel proposed authorising the NSW Electoral Commission to give guidance to further assist Members and help to alleviate concerns that parties and candidates may try to claim expenses that are only vaguely related to a campaign.⁸⁹

Government’s Response

5.5 The Government accepted the Panel’s recommendation in principle and stated:

The Government will await the outcome of the Joint Standing Committee on Electoral Matters’ (JSCEM’s) review of the administration of the 2015 election before further amendments are made to the public funding model.

⁸⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 75.

Committee's evidence

- 5.6 Overall, there is support for this recommendation in principle from various stakeholders including the Shooters, Fishers and Farmers Party, the Christian Democratic Party, NSW Labor and Local Government NSW.⁹⁰
- 5.7 The NSW Electoral Commission suggests that an all-inclusive definition of electoral expenditure for caps and public funding will simplify the scheme for everyone involved.⁹¹
- 5.8 The NSW Nationals support the recommendation if the distinction between electoral communication expenditure and electoral expenditure is removed. In their view, allowing the reimbursement of all expenditure incurred for the purpose of influencing voting will promote consistency.⁹²

Committee comment

- 5.9 The Committee supports the Panel's recommendation that all expenditure incurred for the purpose of influencing voting at an election be reimbursable from the Election Campaigns Fund and that the NSW Electoral Commission issue guidelines on the costs that can be reimbursed. The Committee agrees with the Panel and stakeholders that this will hopefully simplify the scheme and provide clarity.
- 5.10 The Committee supports the Panel's thirteenth recommendation and the Government's Response in principle.

PUBLIC FUNDING MODEL

- 5.11 The Panel's fourteenth recommendation was:

That:

- 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 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).

⁹⁰ Submission 2, Shooters, Fishers and Farmers Party, p 3; Submission 4, Christian Democratic Party, p 6; Submission 5, NSW Labor, p 6; Submission 9, Local Government NSW, p 4.

⁹¹ Submission 3, NSW Electoral Commission, p 26.

⁹² Submission 7, NSW Nationals, p 6.

- 5.12 The Panel highlighted that public funding for the 2011 election was conducted via the ‘funding linked to electoral expenditure’ model, whereas the 2015 election relied on a ‘dollar per vote’ model.⁹³
- 5.13 In debate on the Bill that introduced the ‘dollar per vote’ model, the Premier said the model:
- adopts the approach applied in other jurisdictions, namely the Commonwealth, Australian Capital Territory and Queensland; and
 - is considered fairer as the amount of funding that parties and candidates are entitled to is related to their electoral results. As such, public funding would no longer be calculated according to the amount that a candidate or party spent, which was the approach under the ‘funding linked to electoral expenditure’ model.⁹⁴
- 5.14 The Panel’s Report noted that:
- the ‘dollar per vote’ model was expected to increase public funding for parties and candidates; and
 - the new model would leave taxpayers liable for an additional \$11.5 million, based on figures from the NSW Electoral Commission.⁹⁵
- 5.15 The Panel preferred the ‘funding linked to electoral expenditure’ model because the Panel is of the view that it achieves a more level playing field by providing the same rates of public funding for all parties and candidates once they reach the eligibility threshold. The Panel also took into account the NSW Electoral Commission’s view that this model prevents a serious imbalance in public funding.
- 5.16 The Panel suggested the new ‘dollar per vote’ model advantages the party that wins the election because funding is tied to electoral performance. The Panel was concerned that under this model, opposition parties may feel pressured into raising significant funds from donations, which could encourage corruption.⁹⁶

Government’s Response

- 5.17 The Government accepted the Panel’s recommendation in principle and stated:

The Government will await the outcome of the JSCEM’s review of the administration of the 2015 election before further amendments are made to the public funding model.

Committee’s evidence

- 5.18 There is some division among stakeholders about which funding model should be used for the next election. However, there is support from smaller and larger

⁹³ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 69-71, 77.

⁹⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 76.

⁹⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 69-71.

⁹⁶ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 69-71, 77.

political parties for the 'dollar per vote' model that applied for the 2015 State Election.

- 5.19 The NSW Nationals, Shooters, Fishers and Farmers Party and Christian Democratic Party all support the 'dollar per vote' model.
- 5.20 The NSW Nationals support continuing with the 'dollar per vote' model for several reasons. The NSW Nationals argue that increased public funding reduces the reliance on private donations, which they believe minimises the perception of undue influence.⁹⁷ The NSW Nationals also believe that linking public funding to electoral performance would be easier for constituents to comprehend.⁹⁸
- 5.21 The Shooters, Fishers and Farmers Party suggest that the existing 2015 election campaign entitlements be retained, as they consider minor parties were disadvantaged under the 2011 model.⁹⁹
- 5.22 The Christian Democratic Party expresses similar sentiments¹⁰⁰ and advises that, if the Panel's recommendations are implemented, it would lead to a significant decrease in their current level of funding.¹⁰¹
- 5.23 In the NSW Electoral Commission's experience, the 'funding linked to electoral expenditure model' provided more certainty to stakeholders than the 'dollar per vote model' and was less onerous for parties to make their claims.¹⁰²
- 5.24 In terms of processing payments for election funding, Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, notes there are advantages and shortcomings associated with both models.¹⁰³
- 5.25 The Commission does not support a model with elements of the 'funding linked to electoral expenditure model' and the 'dollar per vote model'. In the Commission's view, this would be difficult to administer, more complicated and confusing.¹⁰⁴
- 5.26 NSW Labor supports the 'funding linked to electoral expenditure' model, however, Ms Kaila Murnain, Assistant General Secretary, NSW Labor, notes the merits of both systems.¹⁰⁵ NSW Labor's submission also states that the 'dollar per vote' model was implemented with relative ease and improved transparency.¹⁰⁶

⁹⁷ Submission 7, NSW Nationals, p 7.

⁹⁸ Submission 7, NSW Nationals, p 7.

⁹⁹ Submission 2, Shooters, Fishers and Farmers Party, p 3.

¹⁰⁰ Submission 4, Christian Democratic Party, p 6.

¹⁰¹ Mr Ian Smith, Treasurer and Party Agent, Christian Democratic Party, transcript of evidence, 30 October 2015, p 47.

¹⁰² Submission 3, NSW Electoral Commission, p 27.

¹⁰³ Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 4.

¹⁰⁴ Submission 3, NSW Electoral Commission, p 27.

¹⁰⁵ Ms Kaila Murnain, Assistant General Secretary, NSW Labor, transcript of evidence, 30 October 2015, p 28.

¹⁰⁶ Submission 5, NSW Labor, p 6.

- 5.27 The Greens' submission to the Panel's review expresses general support for the model used for the 2011 election.¹⁰⁷ However, the Greens consider that the election capping, expenditure and reimbursement model needs to be simplified. They suggest that this could be done by adopting a per-vote dollar amount as a direct entitlement, similar to what happens for Federal Elections.¹⁰⁸

Committee comment

- 5.28 The Committee notes the Panel's view that the 'dollar per vote' model creates an imbalance in public funding and advantages the winning parties. The Committee also notes the Panel's concerns about potential corruption risks if smaller parties are deprived of funding under the 'dollar per vote' model and need to raise significant amounts of money from elsewhere.
- 5.29 However, the Committee received evidence from smaller political parties, including the Shooters, Fishers and Farmers Party and the Christian Democratic Party, that they prefer the 'dollar per vote' model and that reverting to the 'funding linked to electoral expenditure' model will result in a significant drop in their funding.
- 5.30 The Committee also refers to the compelling evidence it received (which is highlighted later in this chapter) from a broad range of stakeholders raising concerns about the effects of a reduction in administrative funding if the Panel's recommendation 18 is implemented. While recommendation 14 deals with entitlements from the Election Campaigns Fund, the Committee considers that parties, large and small, should have sufficient funding to run election campaigns and cover their administrative costs.
- 5.31 The Committee therefore recommends that the NSW Government continue with the 'dollar per vote' model.

RECOMMENDATION 5

The Committee recommends that instead of implementing recommendation 14a and 14b 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.

ADVANCE PAYMENTS

- 5.32 The Panel's fifteenth recommendation was:
- That advance payments to parties from the Election Campaigns Fund be increased from 30 percent to 50 percent of a party's entitlement at the previous election.
- 5.33 The Panel's Report noted that, parties can apply for advance payments from the Election Campaigns Fund to pay for the up-front costs of an election. Payments can be equal to 30 percent of the party's public funding entitlement at the

¹⁰⁷ Submission 8, The Greens, Inquiry into the 2015 NSW State Election, p 7.

¹⁰⁸ Submission 8, The Greens, Inquiry into the 2015 NSW State Election, pp 7-8.

previous election. The Panel supported increasing the advance payment percentage to assist parties with their up-front costs.¹⁰⁹

Government's Response

5.34 The Government accepted the Panel's recommendation in principle and stated:

The Government will await the outcome of the JSCEM's review of the administration of the 2015 election before further amendments are made to the public funding model.

Committee's evidence

5.35 Inquiry participants that address this issue support the Panel's recommendation in principle, agree with it, or do not oppose it.¹¹⁰ In particular, the NSW Nationals suggest that this recommendation, if implemented, will help to reduce the dependency of parties on campaign loans and the need to raise funds to cover the interest associated with these arrangements.¹¹¹

5.36 Some stakeholders, while supporting this recommendation in principle, suggest some additional changes to the existing provisions. For example, the Shooters, Fishers and Farmers Party believes that if the full amount of the loan (at 50% or less) is not repaid, then any unpaid balance should be forgiven. They consider that minor parties will be unfairly impacted if this approach is not taken.¹¹²

5.37 Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, explains the party's position in more detail:

A minor party like ourselves, or other minor parties, from one election to another we get advanced funding for the campaign. If the candidate does not get elected then the actual amount is still there owing, there is no reimbursement. Where that happens we think the advances that are not repaid should be forgiven because the funding is not coming back or the reimbursement for it.¹¹³

5.38 The Christian Democratic Party also supports this recommendation but agrees that the operation of the current arrangements disadvantage minor parties.¹¹⁴

Committee comment

5.39 The Committee agrees with the Panel's recommendation to increase advance payments from the Election Campaigns Fund from 30 percent to 50 percent of a party's entitlement at the previous election to assist parties with their up-front costs. In the Committee's view, the concerns raised about the operation of the existing provisions should be considered by the NSW Government in its review of the EFED Act.

¹⁰⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 78-80.

¹¹⁰ Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 5, NSW Labor, p 6; Submission 3, NSW Electoral Commission, p 28; Submission 9, Local Government NSW, p 4; Submission 4, Christian Democratic Party, p 6; Submission 7, NSW Nationals, p 8; Submission 9, Local Government NSW, p 4.

¹¹¹ Submission 7, NSW Nationals, p 8.

¹¹² Submission 2, Shooters, Fishers and Farmers Party, p 4.

¹¹³ Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 43.

¹¹⁴ Submission 4, Christian Democratic Party, p 6.

- 5.40 The Committee supports the Panel's fifteenth recommendation and the Government's Response in principle.

CANDIDATE'S ENTITLEMENTS FROM ELECTION CAMPAIGNS FUND

- 5.41 The Panel's sixteenth recommendation was:

That a candidate's entitlement from the Election Campaigns Fund be paid directly to the candidate, unless the candidate directs otherwise.

- 5.42 The Panel's Report stated that, as a result of the 2014 changes to the EFED Act, a candidate's party will be reimbursed for electoral communication expenditure incurred by the candidate. Previously, the payment was made directly to the candidate.
- 5.43 The Panel preferred that entitlements be paid directly to candidates. The Panel expressed the view that centralising payments through party head offices creates a significant corruption risk.¹¹⁵

Government's Response

- 5.44 The Government accepted the Panel's recommendation in principle and further stated:

The Government will await the outcome of the JSCEM's review of the administration of the 2015 election before further amendments are made to the public funding model.

Committee's evidence

- 5.45 The Shooters, Fishers and Farmers Party, Christian Democratic Party, Local Government NSW and NSW Labor agree with this recommendation in principle.¹¹⁶
- 5.46 Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, argues that funds should be paid to candidates rather than parties as candidates will be held accountable for donations and expenditure.¹¹⁷
- 5.47 Ms Kaila Murnain, Assistant General Secretary, NSW Labor, says her party supports this recommendation in principle but she notes that the current form allows candidates to choose where funds are to be deposited.¹¹⁸
- 5.48 According to Mr Geoffrey Ash, Registered Officer, The Greens, funding should be paid to the candidate's election campaign account as party money will usually be spent on the candidate's campaign. He suggests that if there is no candidate's campaign account then funding should go to the party.¹¹⁹

¹¹⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 80.

¹¹⁶ Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 4, Christian Democratic Party, p 6; Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 6.

¹¹⁷ Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 41.

¹¹⁸ Ms Kaila Murnain, Assistant General Secretary, NSW Labor, transcript of evidence, 30 October 2015, p 24.

¹¹⁹ Mr Geoffrey Ash, Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 14.

5.49 The NSW Nationals do not support a return to the 2011 model for disbursing funds from the Election Campaigns Fund. They submit that a system of public funding disbursement should account for the different accounting and campaign structures of various parties, rather than a one-size-fits-all approach.¹²⁰

5.50 The NSW Nationals note the validity of the Panel's argument that the individual candidate level is where the greatest corruption risk lies, but offer an alternative approach:

That is why some parties have centralised operations, which involve experienced and appropriately trained staff determining compliance relating to both expenditure and income. Ensuring that donations and expenditure are held in one location is, for major parties at least, vital to ensuring that donation and expenditure caps are not breached.¹²¹

Committee comment

5.51 The Committee acknowledges the arguments for and against the Panel's recommendation 16 and particularly notes the Panel's concerns that centralising payments through head office can create a significant corruption risk.

5.52 The Committee notes that the Panel has recommended that a candidate's entitlement from the Election Campaigns Fund be paid directly to the candidate, unless the candidate directs otherwise. As such, the Committee believes there is scope for a candidate to direct that their entitlements be paid to the candidate's party.

5.53 The Committee supports the Panel's sixteenth recommendation and the Government's Response in principle.

ADMINISTRATION FUND REIMBURSEMENTS

5.54 The Panel's seventeenth recommendation was:

That there be clear rules, and that the NSW Electoral Commission issue guidelines, for the costs that can be reimbursed from the Administration Fund.

5.55 The Panel's Report noted that the Administration Fund provides public funding for political party administration. The Panel is concerned that, at present, the criteria for public funding relating to administration is vague and allows parties to claim a very broad range of expenses. The Panel suggested that the type of administration-related expenditure which can be reimbursed should be clear given that it is public money.¹²²

Government's Response

5.56 The Government accepted the Panel's recommendation in principle:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Political parties and independent members will also

¹²⁰ Submission 7, NSW Nationals, p 8.

¹²¹ Submission 7, NSW Nationals, p 8.

¹²² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 87.

be consulted in determining how to address this issue. Guidelines can be developed once the EFED Act has been reviewed.

Committee's evidence

- 5.57 Inquiry participants who address this issue generally agree with the Panel's recommendation or accept the recommendation in principle.¹²³
- 5.58 The Shooters, Fishers and Farmers Party notes that the current guidelines are very specific and appear adequate, judging by the high level of audit approval applied by the Election Funding Authority to the party's returns.¹²⁴

Committee comment

- 5.59 The Committee agrees with the Panel that there should be clear rules relating to the costs that can be reimbursed from the Administration Fund. The Committee can also see the benefit of the NSW Electoral Commission issuing guidelines on this issue.
- 5.60 The Committee supports the Panel's seventeenth recommendation and the Government's Response in principle.

ADMINISTRATION FUND ENTITLEMENTS MODEL

- 5.61 The Panel's eighteenth recommendation was:
- That the model for calculating entitlements from the Administration Fund which operated immediately prior to the 2014 amendments to the Act be reinstated.
- 5.62 The Panel's Report noted that in 2014, Administration Fund payments were increased. However, the Panel believed that the policy reasons for the increase were not adequately explained.¹²⁵

Government's Response

- 5.63 The Government accepted the Panel's recommendation in principle and stated:
- The Government will await the outcome of the JSCEM's review of the administration of the 2015 election before further amendments are made to the public funding model.

Committee's evidence

- 5.64 The NSW Electoral Commission does not oppose reinstating the earlier funding entitlements and Local Government NSW supports this recommendation.¹²⁶
- 5.65 However, other stakeholders prefer the current model for calculating entitlements from the Administration Fund. In fact, the Shooters, Fishers and Farmers Party suggests there should be an increase in administrative funding, for

¹²³ Submission 4, Christian Democratic Party, p 6; Submission 5, NSW Labor, p 6; Submission 9, Local Government NSW, p 4; Submission 3, NSW Electoral Commission, p 28.

¹²⁴ Submission 2, Shooters, Fishers and Farmers Party, p 4.

¹²⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 83.

¹²⁶ Submission 3, NSW Electoral Commission, pp 28-29; Submission 9, Local Government NSW, p 4.

minor parties in particular. They claim approximately \$460,000 per annum and consider that this does not sufficiently meet current compliance requirements.¹²⁷ The Shooters, Fishers and Farmers Party estimates that the party would require at least an additional \$200,000 per annum if the Panel's recommendations are implemented.¹²⁸

- 5.66 Mr Tony Nutt, State Director, Liberal Party of Australia, also questions the suggestion to cut administrative funding at a time when the Panel's recommendations, if implemented, will result in a substantial increase in obligations for candidates, political parties and other stakeholders.¹²⁹
- 5.67 The Christian Democratic Party believes that if the Panel's recommendations are implemented, the associated financial and administrative burden would result in the Party searching for additional funds to meet the costs of compliance.¹³⁰ In particular, the Hon Paul Green MLC, describes a reduction in funding as 'like cutting an artery'¹³¹ and Rev the Hon Fred Nile MLC says that the Party would need to start asking itself some difficult questions:
- 'Can we afford the office space? Can we maintain the staff we have and our whole operation?'¹³²
- 5.68 The Christian Democratic Party's State Manager, Mr Greg Bondar, argues that more funding results in greater professionalism and more training and better equips the Party to meet the regulatory requirements of the NSW Electoral Commission and other bodies.¹³³
- 5.69 The NSW Nationals explain that administration funding allows them to supplement the activities and resources of Members of Parliament and participate in community engagement. They also highlight the challenges of administering a party that covers such a large geographic area. In particular, they note that administration funding assists with the substantial compliance obligations of all political parties.¹³⁴
- 5.70 The NSW Nationals further suggest that the Panel did not provide any persuasive reasons as to why public funding levels should be decreased and that small and minor parties would be disproportionately and unfairly affected by such a change.¹³⁵
- 5.71 Mr Nathan Quigley, State Director, NSW Nationals, says due to the growth in administrative funding, the party has been able to retain key staff and also

¹²⁷ Submission 2, Shooters, Fishers and Farmers Party, p 4.

¹²⁸ Submission 2, Shooters, Fishers and Farmers Party, p 4.

¹²⁹ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 33.

¹³⁰ Submission 4, Christian Democratic Party, p 6.

¹³¹ The Hon Paul Green MLC, Christian Democratic Party, transcript of evidence, 30 October 2015, p 47.

¹³² Rev The Hon Fred Nile MLC, Christian Democratic Party, transcript of evidence, 30 October 2015, p 47.

¹³³ Mr Greg Bondar, State Manager, Christian Democratic Party, transcript of evidence, 30 October 2015, p 48.

¹³⁴ Submission 7, NSW Nationals, pp 8-9.

¹³⁵ Submission 7, NSW Nationals, p 9.

employ extra administrative staff during the recent election campaign to enhance compliance.¹³⁶

- 5.72 Support for the existing model for calculating administrative funding entitlements was also expressed by NSW Labor:

The Administration Fund provides funds to Political Parties to hire staff to ensure compliance and to build systems to help Candidates manage donations and expenditure. Any move to decrease Administration Funding, could see the erosion of compliance standards across Parties.¹³⁷

- 5.73 The Greens believe that the amount of public funding available for administrative expenditure should be based on a party's vote in an election for either House of Parliament rather than the number of politicians in a party.¹³⁸

- 5.74 Third-party campaigners also have a significant administrative burden due to the current reporting requirements, according to Unions NSW. It argues that additional funding should be provided to political parties and third-party campaigners to assist with this burden.¹³⁹

Committee comment

- 5.75 The Committee has received persuasive and compelling evidence from a diverse range of stakeholders that the current model for calculating entitlements from the Administration Fund should be retained.
- 5.76 The Committee agrees with stakeholders that adequate administrative funding is critical to pay for compliance and regulatory requirements, staffing, accommodation, other office expenses and the provision of information to the public.
- 5.77 On the basis of the evidence that the Committee has received in this inquiry, the Committee strongly recommends that the current model for calculating entitlements from the Administration Fund be retained.

RECOMMENDATION 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.

OVERSIGHT OF THE ADMINISTRATION FUND

- 5.78 The Panel's nineteenth recommendation was:

That the NSW Electoral Commission focus on:

- a) strategic oversight of the Administration Fund to ensure the integrity and proper use of the Fund; and

¹³⁶ Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, pp 61-62.

¹³⁷ Submission 5, NSW Labor, p 6.

¹³⁸ Submission 8, The Greens, Inquiry into the 2015 NSW State Election, p 9.

¹³⁹ Submission 6, Unions NSW, p 5.

- b) monitoring and enforcing the rules to prevent the use of administration funds for electoral expenditure.

5.79 The Panel identified potential loopholes in the laws relating to the Administration Fund which it suggested requires attention and close monitoring by the NSW Electoral Commission.¹⁴⁰

Government's Response

5.80 The Government accepted the Panel's recommendation in principle and stated:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Political parties and independent members will also be consulted in determining how to address this issue. Some administrative and operational changes by the NSWEC will be required.

Committee's evidence

5.81 All of the inquiry participants who address this issue support the recommendation or accept it in principle.¹⁴¹

5.82 In particular, the NSW Nationals submit that recommendation 19, coupled with the Panel's seventeenth recommendation, mitigate concerns about any perceived lack of oversight of the Fund, and ensure that the use of funding is better monitored by the NSW Electoral Commission:

...these recommendations [17 and 19] will also ensure that the funding is used in the manner that the Parliament intended, this being to ensure compliance with the law and to promote healthy political parties ... It is absolutely critical that the general public have a high degree of confidence that the public funding of political parties is being utilised and administered effectively and with sufficient oversight from a regulatory body. Recommendations 17 and 19 will work towards that end.¹⁴²

Committee comment

5.83 The Committee notes support from inquiry participants for this recommendation.

5.84 The Committee supports the Panel's nineteenth recommendation and the Government's Response in principle.

POLICY DEVELOPMENT FUND NAME CHANGE

5.85 The Panel's twentieth recommendation was:

That the Policy Development Fund be renamed the 'New Parties Fund' to better reflect its aims.

¹⁴⁰ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 91.

¹⁴¹ Submission 3, NSW Electoral Commission, p 29; Submission 5, NSW Labor, p 7; Submission 9, Local Government NSW, p 4; Submission 7, NSW Nationals, p 9; Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 4, Christian Democratic Party, p 7.

¹⁴² Submission 7, NSW Nationals, p 9.

- 5.86 The Panel's Report noted that the Policy Development Fund provides funding to parties that are not represented in the Parliament and therefore do not qualify for administration funding.
- 5.87 The Panel stated that, at present, new parties can be reimbursed for the same costs as can be paid for through the Administration Fund. The Panel said this was strange given that new parties have very different costs to established parties.¹⁴³

Government's Response

- 5.88 The Government accepted the Panel's recommendation in principle:

This recommendation will be considered in the review of the EFED Act. Some administrative and operational changes by the NSWEC will be required.

Committee's evidence

- 5.89 The inquiry participants who raise this recommendation with the Committee either support it or do not oppose it.¹⁴⁴
- 5.90 The NSW Electoral Commission does not oppose changing the name of the Policy Development Fund to better reflect its aims. However, the Commission explains that most parties that are eligible to receive money from the fund are not technically new parties as new parties cannot receive any payments until the year after they have endorsed candidates at a State Election.¹⁴⁵

Committee comment

- 5.91 The Committee notes the general support from inquiry participants for this recommendation and that the NSW Electoral Commission also does not oppose it.
- 5.92 The Committee supports the Panel's twentieth recommendation and the Government's Response in principle.

NEW PARTIES FUND EXPENDITURE AND REIMBURSEMENT

- 5.93 The Panel's twenty-first recommendation was:

That:

- a) payments from the 'New Parties Fund' be retained at the current levels and adjusted annually for inflation, rounded up to the nearest whole number multiple of \$100;
- b) electoral expenditure for the purpose of influencing the voting at an election in election years is to be reimbursable from the 'New Parties Fund'; and

¹⁴³ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 92-93.

¹⁴⁴ Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 3, NSW Electoral Commission, p 29; Submission 4, Christian Democratic Party, p 7; Submission 5, NSW Labor, p 7; Submission 9, Local Government NSW, p 4; Submission 7, NSW Nationals, p 9.

¹⁴⁵ Submission 3, NSW Electoral Commission, p 29.

- c) that the ability for parties to be reimbursed for administration expenses in non-election years be retained.

5.94 The Panel suggested that in an election year, the types of expenses covered under the Policy Development Fund should be expanded to assist parties with election-related costs. The Panel argued that parties should then be able to receive payments from the fund in non-election years to cover administrative and operating expenses.¹⁴⁶

Government's Response

5.95 The Government accepted the Panel's recommendation in principle and stated:

This recommendation will be considered in the review of the EFED Act. Some administrative and operational changes by the NSWEC will be required.

Committee's evidence

5.96 There is general support for this recommendation among stakeholders who raise it.¹⁴⁷

5.97 The NSW Electoral Commission prefers consistency with the models for reimbursing electoral expenditure for candidates and parties.¹⁴⁸

Committee comment

5.98 The Committee notes support from various inquiry participants for this recommendation.

5.99 The Committee supports the Panel's twenty-first recommendation and the Government's Response in principle.

STREAMLINGING PAYMENTS FROM THE NEW PARTIES FUND

5.100 The Panel's twenty-second recommendation was:

That the process for making claims for payments from the 'New Parties Fund' be streamlined.

5.101 The Panel heard that small parties can find it difficult to access the Policy Development Fund. The Panel contended that costs should be reimbursed in a timely manner.¹⁴⁹

Government's Response

5.102 The Government accepted the Panel's recommendation in principle and stated:

This recommendation will be considered in the review of the EFED Act. Some administrative and operational changes by the NSWEC will be required.

¹⁴⁶ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 93.

¹⁴⁷ Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 4, Christian Democratic Party, p 7; Submission 7, NSW Nationals, p 9; Submission 9, Local Government NSW, p 4.

¹⁴⁸ Submission 3, NSW Electoral Commission, p 30.

¹⁴⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 93.

Committee's evidence

- 5.103 Six of the nine submissions received by the Committee address the Panel's twenty-second recommendation. Inquiry participants either agree with the recommendation, agree with it in principle or do not oppose it.¹⁵⁰

Committee comment

- 5.104 The Committee acknowledges support from inquiry participants who raise this issue.
- 5.105 The Committee also supports the Panel's twenty-second recommendation and the Government's Response in principle.

¹⁵⁰ Submission 3, NSW Electoral Commission, pp 30-31; Submission 4, Christian Democratic Party, p 7; Submission 2, Shooters, Fishers and Farmers Party, p 4; Submission 5, NSW Labor, p 7; Submission 7, NSW Nationals, p 9; Submission 9, Local Government NSW, p 4.

Chapter Six – Disclosure

- 6.1 This chapter addresses the Panel’s recommendations twenty three to thirty and the Government’s Response to those recommendations.

ONLINE DISCLOSURE

- 6.2 The Panel’s twenty-third recommendation was:

That the NSW Electoral Commission replace paper-based disclosures with an online disclosure system as soon as possible.

- 6.3 The Panel’s Report noted that many jurisdictions have online, real-time disclosure of political donations but NSW still operates a paper-based disclosure system. The Panel highlighted that reporting is so delayed as to be of little interest to voters.¹⁵¹

Government’s Response

- 6.4 The Government accepted the recommendation in principle and said some administrative and operational changes by the NSWEC will be required.

Committee’s evidence

- 6.5 There is significant support from a wide variety of stakeholders for the implementation of an online disclosure system. Seven of the nine submissions received by the Committee address this recommendation, agreeing or agreeing in principle to the recommendation.¹⁵²
- 6.6 NSW Labor believes that the development of an online disclosure system is an ‘urgent priority’. In its view, such a system will ensure consistency between political parties in the way donations are disclosed, improve transparency and increase compliance with the legislation.¹⁵³
- 6.7 The NSW Nationals also support an online disclosure system. They contend all disclosure requirements should be met through this system as the forms are complicated and burdensome.¹⁵⁴
- 6.8 While the Shooters, Fishers and Farmers Party supports this recommendation in principle, the party also notes that regular changes to compliance requirements results in resource and administrative challenges, especially for minor parties.¹⁵⁵

¹⁵¹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 9.

¹⁵² Submission 3, NSW Electoral Commission, p 31; Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 7; Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 7; Submission 6, Unions NSW, p 6; Submission 7, NSW Nationals, p 10.

¹⁵³ Submission 5, NSW Labor, p 7.

¹⁵⁴ Submission 7, NSW Nationals, p 10.

¹⁵⁵ Submission 2, Shooters, Fishers and Farmers Party, p 5.

- 6.9 The Christian Democratic Party also agrees with this recommendation in principle but argues there should be funding for parties to offset any increased costs associated with implementing an online disclosure system.¹⁵⁶
- 6.10 The NSW Electoral Commission believes an online election funding, expenditure and disclosure system which facilitates more than just the disclosure of donations and expenditure is required.¹⁵⁷ The Commission says such a system could allow stakeholders to manage most, if not all, contact with them.¹⁵⁸
- 6.11 Mr Colin Barry, NSW Electoral Commissioner, believes the new legislative framework firstly needs to be in place to give a better of idea of how much funding would be required to support the functions of the online portal. Mr Barry also says he has not received any indication from the Government that they will not fund this new system.¹⁵⁹

Committee comment

- 6.12 The Committee notes broad stakeholder support for an online disclosure system. The Committee is of the view that such a system should be implemented as soon as possible.
- 6.13 The Committee supports the Panel's twenty-third recommendation and the Government's Response in principle.

EXPLAINING POLITICAL DONATIONS TO THE PUBLIC

- 6.14 The Panel's twenty-fourth recommendation was:
- That the NSW Electoral Commission supplement disclosures with explanatory material and analysis to inform the public about the sources and amounts of political donations.
- 6.15 The Panel's Report noted criticisms from stakeholders that publicly available information about political donations is currently presented in a complicated manner.¹⁶⁰

Government's Response

- 6.16 The Government accepted the Panel's recommendation in principle and said some administrative and operational changes by the NSWEC would be required.

Committee's evidence

- 6.17 Several stakeholders who address this recommendation support it or accept it in principle.¹⁶¹

¹⁵⁶ Submission 4, Christian Democratic Party, p 7.

¹⁵⁷ Submission 3, NSW Electoral Commission, p 31.

¹⁵⁸ Submission 3, NSW Electoral Commission, p 11.

¹⁵⁹ Mr Colin Barry, Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 11.

¹⁶⁰ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 99.

¹⁶¹ Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 7; Submission 5, NSW Labor, p 7; Submission 9, Local Government NSW, p 4.

- 6.18 The NSW Electoral Commission says its proposal for an online disclosure system includes enhanced features such as data analysis. The Commission also advises that disclosure returns for the period ending 30 June 2015, will identify for whose benefit a political donation has been made, and in which electoral district expenditure was incurred.¹⁶²
- 6.19 The NSW Nationals do not agree with this recommendation. While they support the idea of supplying additional explanatory material and analysis to supplement disclosures, the NSW Nationals do not believe the Commission is the best body to provide this information. They suggest that the disclosing body or person is better able to provide this analysis, due to the diversity of party and campaign structures.¹⁶³

Committee comment

- 6.20 The Committee notes that inquiry participants who address this issue are generally supportive of it. The Committee agrees with measures to provide clear and accessible information about political donations to the public.
- 6.21 The Committee supports the Panel's twenty-fourth recommendation and the Government's Response in principle.

DISCLOSURE BEFORE AN ELECTION

- 6.22 The Panel's twenty-fifth recommendation was:
- That online, real-time disclosure of political donations of \$1,000 or more be introduced for the six-month period before the election.
- 6.23 The Panel expressed the view that real-time disclosure of political donations should operate in the pre-election period with annual disclosure at other times to provide a sufficient level of transparency.¹⁶⁴

Government's Response

- 6.24 The Government accepted the Panel's recommendation in principle and stated:
- This recommendation will be considered in the review of the EFED Act. Some administrative and operational changes by the NSWEC will be required. The NSWEC has indicated that implementation of this particular recommendation will ultimately enable it to perform certain functions more efficiently (for example, with more frequent disclosure the NSWEC will be able to produce more frequent, up to date explanatory material and analysis [Recommendation 24] within a shorter period of time).

Committee's evidence

- 6.25 There is broad support for this recommendation from various stakeholders.¹⁶⁵

¹⁶² Submission 3, NSW Electoral Commission, pp 31-32.

¹⁶³ Submission 7, NSW Nationals, p 10.

¹⁶⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 98.

¹⁶⁵ Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 7; Submission 3, NSW Electoral Commission, p 32; Submission 5, NSW Labor, p 7; Submission 12, Unions NSW, Inquiry

- 6.26 The NSW Electoral Commission says this recommendation, if implemented, will allow the Commission to perform certain activities more efficiently¹⁶⁶ and Unions NSW suggests that real-time reporting of donations is the best way to regulate donations and prevent corruption.¹⁶⁷

Committee comment

- 6.27 The Committee is of the view that this recommendation is likely to increase transparency, better regulate donations and allow the NSW Electoral Commission to perform some of its activities more efficiently.
- 6.28 The Committee supports the Panel's twenty-fifth recommendation and the Government's Response in principle.

DONATIONS SOLICITED BY OR BENEFITING CANDIDATES

- 6.29 The Panel's twenty-sixth recommendation was:
- That political parties be required to identify where a political donation has been solicited by, or made for the direct benefit of, an endorsed candidate of the party.
- 6.30 The Panel's Report noted concerns about transparency around political donations that are made to a political party but are either solicited by, or intended to benefit, a particular candidate. The Panel received evidence that while the sources of such donations are disclosed by the party, the link, if any, to a particular candidate is not.¹⁶⁸

Government's Response

- 6.31 The Government accepted the Panel's recommendation in principle and stated:
- In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Political parties will also be consulted in determining how to address this issue.

Committee's evidence

- 6.32 Inquiry participants generally support this recommendation.¹⁶⁹ In particular, the NSW Electoral Commission says it has already amended its disclosure form to capture this information.¹⁷⁰
- 6.33 However, the NSW Nationals do not support the recommendation. While they agree that transparency of donations is important, the NSW Nationals consider

into the 2015 NSW State Election, p 6; Submission 3, Funding and Disclosure Inc, Inquiry into the 2015 NSW State Election, p 2; Submission 9, Local Government NSW, p 4.

¹⁶⁶ Submission 3, NSW Electoral Commission, p 32.

¹⁶⁷ Submission 12, Unions NSW, Inquiry into the 2015 NSW State Election, p 6.

¹⁶⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 99.

¹⁶⁹ Submission 3, NSW Electoral Commission, p 33; Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 8; Submission 5, NSW Labor, p 7; Submission 9, Local Government NSW, p 4.

¹⁷⁰ Submission 3, NSW Electoral Commission, p 33.

the Panel's recommendation unsuited to the task for several reasons. They advise that donations can be received from fundraising functions attended by a number of Members of Parliament, in which case it is unclear which Member is the solicitor of the donation. Further, where donations are made with some delay following a fundraising function, it is difficult to administer a system requiring that the donation be linked back to a soliciting Member. The NSW Nationals also raise concerns around the definitions of terms used by the Panel in its recommendation.¹⁷¹

Committee comment

- 6.34 The Committee notes that there is support from a number of inquiry participants for the Panel's recommendation and that the NSW Electoral Commission has already made some changes in line with it. The Committee suggests that the NSW Nationals' concerns should be considered in the NSW Government's review of the EFED Act.
- 6.35 The Committee supports the Panel's twenty-sixth recommendation and the Government's Response in principle.

DISCLOSING THE TERMS AND CONDITIONS OF LOANS

- 6.36 The Panel's twenty-seventh recommendation was:
- That parties and candidates be required to disclose the terms and conditions of reportable loans (other than loans from financial institutions).
- 6.37 The Panel was concerned that a party could take out a substantial loan from an entity or individual to finance their election campaign and then claim interest on the loan from the Administration Fund with no incentive or obligation to repay the loan. The Panel's Report suggested that a loan of this nature would be similar to a political donation to the party from which the donor receives an ongoing return at the taxpayers' expense.
- 6.38 The Panel expressed the view that disclosure of the terms and conditions of loans is important to ensure that loans are legitimate and that they are not being used to circumvent the caps on political donations.¹⁷²

Government's Response

- 6.39 The Government accepted the Panel's recommendation in principle and stated:
- In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Political parties and independent members will also be consulted in determining how to address this issue.

Committee's evidence

- 6.40 The inquiry participants who address this issue support the Panel's recommendation.¹⁷³ In particular, the NSW Electoral Commission says the recommendation, if implemented, will promote transparency and compliance.¹⁷⁴

¹⁷¹ Submission 7, NSW Nationals, p 10.

¹⁷² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 100.

Committee comment

- 6.41 The Committee notes support for this recommendation from inquiry participants. The Committee agrees with measures of this nature that enhance transparency.
- 6.42 The Committee supports the Panel's twenty-seventh recommendation and the Government's Response in principle.

EXPENDITURE INFLUENCING THE VOTING IN AN ELECTORATE

- 6.43 The Panel's twenty-eighth recommendation was:
- That:
- a) political parties be required to identify electoral expenditure aimed at influencing the voting in a specific electorate; and
 - b) the NSW Electoral Commission issue guidelines to assist parties to comply with this disclosure obligation.
- 6.44 The Panel stated that there is currently a cap on party spending of \$50,000 per electorate during the election period. The Panel heard that there is a lack of transparency around how much parties are spending on their campaigns in each electorate. According to the Panel, the lack of transparency undermines the effectiveness of the electorate-based expenditure caps.¹⁷⁵

Government's Response

- 6.45 The Government accepted the Panel's recommendation in principle and stated:
- This recommendation will be considered in reviewing the EFED Act. Guidelines can be developed once the EFED Act has been reviewed.

Committee's evidence

- 6.46 Six of the nine submissions to the inquiry address this recommendation, agreeing or agreeing in principle with it.¹⁷⁶
- 6.47 The NSW Electoral Commission has already made some changes in line with the Panel's recommendation.¹⁷⁷

Committee comment

- 6.48 The Committee acknowledges that inquiry participants generally agree with the Panel's recommendation. The Committee notes again that it supports reforms to increase transparency in this area.

¹⁷³ Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 3, NSW Electoral Commission, p 33; Submission 5, NSW Labor, p 8; Submission 9, Local Government NSW, p 4.

¹⁷⁴ Submission 3, NSW Electoral Commission, p 33.

¹⁷⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 102-103.

¹⁷⁶ Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 3, NSW Electoral Commission, pp 33-34; Submission 4, Christian Democratic Party, p 8; Submission 5, NSW Labor, p 8; Submission 7, NSW Nationals, p 11; Submission 9, Local Government NSW, p 4.

¹⁷⁷ Submission 3, NSW Electoral Commission, pp 33-34.

- 6.49 The Committee supports the Panel's twenty-eighth recommendation and the Government's Response in principle.

ELECTORAL EXPENDITURE SIX MONTHS BEFORE THE ELECTION

- 6.50 The Panel's twenty-ninth recommendation was:

That for the six months before the election, political parties and candidates be required to specify the details of electoral expenditure incurred and the total electoral expenditure.

- 6.51 The Panel said that the public should be able to quickly and easily use the NSW Electoral Commission website to determine whether parties and candidates have complied with the relevant caps on electoral communications expenditure during the six month period leading up to the election. The Panel's Report noted that there is currently no requirement to separately disclose expenditure incurred during the capped period. The Panel said there is no simple way to determine whether the cap on electoral communication expenditure has been breached.¹⁷⁸

Government's Response

- 6.52 The Government accepted the Panel's recommendation in principle and said that it would be considered in reviewing the EFED Act.

Committee's evidence

- 6.53 Most stakeholders who address this recommendation support it.¹⁷⁹
- 6.54 The NSW Electoral Commission believes that this recommendation, if implemented, will enable the Commission to perform certain functions more efficiently and expeditiously.¹⁸⁰
- 6.55 The Shooters, Fishers and Farmers Party and the Christian Democratic Party do not support the recommendation. The Shooters, Fishers and Farmers Party believes that a six month period prior to an election is insufficient. To maintain proper accountability, the party suggests the reporting period should be the whole electoral cycle over four years.¹⁸¹
- 6.56 The Christian Democratic Party also expresses the view that a longer reporting period is more workable and consistent with current accountability requirements.¹⁸²

Committee comment

- 6.57 Most of the inquiry participants who address this recommendation support it. While the Committee acknowledges the call by the Shooters, Fishers and Farmers

¹⁷⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 103.

¹⁷⁹ Submission 3, NSW Electoral Commission, p 34; Submission 5, NSW Labor, p 8; Submission 7, NSW Nationals, p 11; Submission 9, Local Government NSW, p 4.

¹⁸⁰ Submission 3, NSW Electoral Commission, p 34.

¹⁸¹ Submission 2, Shooters, Fishers and Farmers Party, p 5.

¹⁸² Submission 4, Christian Democratic Party, p 8.

Party and the Christian Democratic Party for a longer reporting period, the Committee believes the Panel's recommendation is a step in the right direction.

- 6.58 The Committee supports the Panel's twenty-ninth recommendation and the Government's Response in principle.

ASSOCIATED ENTITIES

- 6.59 The Panel's thirtieth recommendation was:

That:

- a) specific provisions be introduced regulating 'associated entities' (being entities that are controlled by a political party or that operate solely for the benefit of a political party); and
- b) that the disclosure obligations of associated entities be the same as those of political parties.

- 6.60 The Panel's Report noted that NSW does not impose any specific disclosure obligations on associated entities. Associated entities are entities that are controlled by a political party or that operate for the benefit of a party. They are subject to the disclosure requirements that apply to major donors (to the extent that they make reportable political donations) and third-party campaigners (to the extent that they incur electoral communication expenditure). However, they are not subject to the more detailed disclosure requirements applying to political parties.

- 6.61 The Panel suggested that NSW adopt a similar approach to other Australian jurisdictions, including the Commonwealth, which makes associated entities subject to the same disclosure obligations as political parties. The Panel was concerned that the existing situation creates an incentive for political parties to use these entities to avoid the more detailed disclosure obligations that apply to other stakeholders.¹⁸³

Government's Response

- 6.62 The Government accepted the Panel's recommendation in principle and said that it would be considered in reviewing the EFED Act.

Committee's evidence

- 6.63 A broad range of inquiry participants agree with this recommendation or agree with it in principle.¹⁸⁴
- 6.64 However, some stakeholders highlight that the term 'associated entities' needs to be clearly defined. For example, Unions NSW suggests that any definition should not limit the political participation of third parties.¹⁸⁵

¹⁸³ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 104.

¹⁸⁴ See for example, Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 3, Christian Democratic Party, p 4; Submission 5, NSW Labor, p 8; Submission 7, NSW Nationals, p 11; Submission 9, Local Government NSW, p 4.

- 6.65 Similarly, the NSW Electoral Commission proposes a comprehensive review of the legislation to ensure that any definition of ‘associated entities’ is consistent with other provisions.¹⁸⁶

Committee comment

- 6.66 The Committee notes broad support from stakeholders for this recommendation. The Committee suggests that the NSW Government, in its review of the EFED Act, ensures that any definition of ‘associated entities’ is clear and consistent with other provisions.
- 6.67 The Committee supports the Panel’s thirtieth recommendation and the Government’s Response in principle.

¹⁸⁵ Submission 6, Unions NSW, p 4.

¹⁸⁶ Submission 3, NSW Electoral Commission, p 34.

Chapter Seven – Third-party campaigners

- 7.1 This chapter addresses the Panel’s recommendations thirty one and thirty two and the Government’s Response to those recommendations.

CAP ON EXPENDITURE FOR THIRD-PARTY CAMPAIGNERS

- 7.2 The Panel’s thirty-first recommendation was:

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.

- 7.3 The Panel explained that third-party campaigners are organisations or individuals that are not contesting the election but that finance campaigns on policy issues to influence policy at the election.¹⁸⁷

- 7.4 The Panel noted that the current third-party spending cap is around \$1 million. However, at the 2011 election, the NRMA, the highest spending third-party campaigner, still only spent approximately \$400,000. The Panel supported decreasing the current cap to \$500,000 to balance the rights of third parties with those of candidates and political parties.

- 7.5 The Panel suggested that third-party campaigners should have sufficient scope to run campaigns and influence voting at an election but not to the same extent as parties and candidates.

- 7.6 The Panel also cautioned that setting caps too low could impact on the implied freedom of political association in the Commonwealth Constitution.¹⁸⁸

Government’s Response

- 7.7 The Government accepted the Panel’s recommendation in principle and stated:

NB This recommendation overlaps in part with Recommendation 21 of the December 2014 ICAC Report ‘Election funding, expenditure and disclosure in NSW: Strengthening accountability and transparency’, which recommends that the EFED Act be amended to require third-party campaigners to disclose all electoral expenditure.

This recommendation will be considered in reviewing the EFED Act.

Committee’s evidence

- 7.8 This recommendation elicited mixed reactions from inquiry participants. Some stakeholders, including the Shooters, Fishers and Farmers Party, the Christian

¹⁸⁷ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 105.

¹⁸⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 105, 112.

Democratic Party, the NSW Nationals and Local Government NSW support this recommendation or support it in principle.¹⁸⁹

- 7.9 The NSW Nationals contend that third-party campaigners are an important part of a democracy. However, they suggest that reducing the third-party campaigner expenditure cap, in combination with the donation caps that already exist, strikes the correct balance between an engaging and free political environment and one that is limited by expenditure.¹⁹⁰
- 7.10 The NSW Electoral Commission does not oppose this recommendation. However, the Commission suggests that the change should be considered in a comprehensive review of the EFED Act.¹⁹¹
- 7.11 The Greens argue that caps on third-party campaigners' spending should be substantially reduced to minimise the influence of wealth on election outcomes.¹⁹² They suggest a differentiation between for-profit corporations and unions, other membership-based organisations and not-for-profit organisations. In particular, The Greens argue that the latter organisations have an important role in the democratic process by giving the less powerful a vehicle for expressing their views and protecting their interests.¹⁹³ They also suggest that campaign spending by for-profit corporations and other business entities should be prohibited.¹⁹⁴
- 7.12 The Public Service Association of NSW, Unions NSW and NSW Labor do not support this recommendation.¹⁹⁵
- 7.13 According to the Public Service Association of NSW, if the Panel's recommendation is implemented, there may be an increase in micro parties running for election to the Legislative Council as organisations seek to circumvent the reduced expenditure limit.¹⁹⁶
- 7.14 Unions NSW argue that the significant reduction in expenditure proposed by the Panel would impact on the ability of third-party campaigners to participate in a meaningful way during a State Election.¹⁹⁷
- 7.15 Mr Mark Lennon, Secretary, Unions NSW, contends that the Panel made this recommendation on the premise that third-party campaigners could outspend

¹⁸⁹ Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 8; Submission 7, NSW Nationals, p 11; Submission 9, Local Government NSW, p 4.

¹⁹⁰ Submission 7, NSW Nationals, p 11.

¹⁹¹ Submission 3, NSW Electoral Commission, p 35.

¹⁹² Submission 8, The Greens, Inquiry into the 2015 NSW State Election, pp 8-9.

¹⁹³ Submission 8, The Greens, Inquiry into the 2015 NSW State Election, pp 8-9.

¹⁹⁴ Submission 8, The Greens, Inquiry into the 2015 NSW State Election, p 9.

¹⁹⁵ Submission 6, Unions NSW, pp 4-5; Submission 5, NSW Labor, p 8; Submission 1, Public Service Association of NSW, p 1.

¹⁹⁶ Submission 1, Public Service Association of NSW, p 1.

¹⁹⁷ Submission 6, Unions NSW, pp 4-5.

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the candidates, and in doing so, give disproportionate weight to their concerns. However, he does not believe that the Panel provided evidence of this.¹⁹⁸

7.16 In answers to questions taken on notice at the public hearing, Unions NSW also highlights that the Panel was not able to take into account the spending of third-party campaigners in the 2015 NSW State Election as the Panel's report was published in 2014.¹⁹⁹

7.17 The NSW Electoral Commission has now published third-party campaigners' disclosures for the period 1 July 2014 to 30 June 2015. The third-party campaigners with the largest expenditure during this period are as follows:

No	Name of third-party campaigner	Total expenditure
1	Electrical Trade Union of Australia NSW Branch	\$997,555.58
2	NSW Nurses and Midwives' Association	\$907,831.22
3	Unions NSW	\$843,283.14
4	NSW Business Chamber Limited	\$490,375.64
5	NSW Minerals Council Limited	\$481,479.51

7.18 Mr Lennon explains that Unions NSW's spending for the 2015 election included:

...\$380,000 on advertising expenditure; \$264,000 on production and distribution of electoral materials; \$15,000 on the internet, telecommunications, stationery and postage; \$120,000 on staff costs; \$8,000 on travel; and \$52,000 on research.²⁰⁰

7.19 Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, explains some of the key constitutional considerations for setting a cap on third-party campaigner expenditure:

The question is: Is it enough for an organisation – a third-party campaigner – to reasonably be able to present its case to people? If it can do that, that is fine – you do not need to go to excess – but if the cap is not high enough for a third-party campaigner reasonably to alert people to its concerns then you might find yourselves in trouble. The main thing is that the courts have said that caps are fine if the caps are for the purposes of preventing corruption and all those sorts of things,

¹⁹⁸ Mr Mark Lennon, Secretary, Unions NSW, transcript of evidence, 30 October 2015, p 53.

¹⁹⁹ Unions NSW, answers to questions taken on notice at the public hearing on 30 October 2015, 5 November 2015, p 1.

²⁰⁰ Mr Mark Lennon, Secretary, Unions NSW, transcript of evidence, 30 October 2015, p 53.

but you have to make sure the caps are reasonable and that they do not prevent the free flow of political communication.²⁰¹

Committee comment

- 7.20 The Committee believes that third-party campaigners should be able to spend a reasonable amount of money to run their campaign. However, the Committee agrees with the Panel that this should not be to the same extent as candidates and parties.
- 7.21 The Committee acknowledges the third-party campaigner expenditure from the 2015 State Election.
- 7.22 The Committee supports the Panel’s recommendation to reduce the cap on expenditure for third-party campaigners. The Committee is of the view that, before implementing this change, the NSW Government should consider whether there is sufficient evidence that a third-party campaigner could reasonably present its case with an expenditure cap of \$500,000.

RECOMMENDATION 7

The Committee recommends that, before decreasing the cap on electoral expenditure by third-party campaigners to \$500,000 (recommendation 31 of the Expert Panel’s report), the NSW Government considers whether there is sufficient evidence that a third-party campaigner could reasonably present its case within this expenditure limit.

ASSOCIATED AND OTHER ENTITIES

- 7.23 The Panel’s thirty-second recommendation was:
- That:
- a) the electoral expenditure of a political party and its ‘associated entities’ be aggregated for the purposes of the party’s expenditure cap;
 - b) the definition of ‘associated entity’ be limited to those entities that are controlled by a party or elected Member, or that operate solely for the benefit of a party or elected Member; and
 - c) a third-party campaigner be prohibited from acting in concert with others to incur electoral expenditure that exceeds the third-party campaigner’s expenditure cap.
- 7.24 The Panel recommended introducing a new aggregation provision to prevent parties from attempting to avoid their own spending caps by establishing front organisations to incur electoral expenditure on their behalf.
- 7.25 The Panel expressed the view that the definition of an ‘associated entity’ should exclude organisations that exist independently of parties and have their own constituencies and political views.

²⁰¹ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, p 37.

7.26 The Panel supported the introduction of a provision similar to section 205H of the ACT *Electoral Act 1992*, which provides that a third-party campaigner must not act in concert with others to incur expenditure in excess of its spending cap. According to the Panel, this would prevent third-party campaigners with common interests from launching a coordinated campaign with a combined expenditure cap that would overwhelm parties, candidates and other third parties acting alone.²⁰²

Government's Response

7.27 The Government accepted the Panel's recommendation in principle and said it will consider it in reviewing the EFED Act.

Committee's evidence

7.28 Various stakeholders agree with this recommendation or support it in principle.²⁰³

7.29 The NSW Nationals strongly support this recommendation and argue that reform of this nature will help prevent front organisations from incurring expenditure in excess of the relevant caps. The NSW Nationals believe that independent organisations, such as unions, should still be able to run campaigns within their own caps.²⁰⁴

7.30 NSW Labor supports limiting the definition of 'associated entity' to an entity within the control of a political party or member. NSW Labor contends that this is critical to ensuring the constitutional validity of such a provision in accordance with the High Court's decision in *Unions NSW v NSW*.²⁰⁵

7.31 The NSW Electoral Commission does not oppose this recommendation but notes that it should be considered as part of a comprehensive review of the EFED Act to ensure that caps are set at the correct levels and the definition of 'associated entity' is consistent across related legislation.²⁰⁶

7.32 Unions NSW and the Public Service Association of NSW raise some concerns about the Panel's recommendation. Mr Mark Morey, Assistant Secretary, Unions NSW, argues that the most effective way for some of their affiliate organisations to have their voice heard is to work collaboratively and combine resources.²⁰⁷

7.33 The Public Service Association of NSW does not support recommendation 32(c) and believes the Panel's recommendation seeks to reintroduce provisions declared to be unconstitutional by the High Court in *Unions NSW v NSW*. The Association says the Court clarified that everyone should have the right to comment on public policy:

²⁰² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 105, 116.

²⁰³ Submission 9, Local Government NSW, p 4; Submission 2, Shooters, Fishers and Farmers Party, p 5; Submission 4, Christian Democratic Party, p 8; Submission 7, NSW Nationals, p 11.

²⁰⁴ Submission 7, NSW Nationals, p 11.

²⁰⁵ Submission 5, NSW Labor, p 8.

²⁰⁶ Submission 3, NSW Electoral Commission, p 35.

²⁰⁷ Mr Mark Morey, Assistant Secretary, Unions NSW, transcript of evidence, 30 October 2015, p 54.

The idea that during an election campaign this right could be restricted in a way it wasn't at other times, conflicts with the ideals of a modern and democratic society.²⁰⁸

Committee comment

- 7.34 The Committee notes that several inquiry participants support this recommendation. The Committee acknowledges the concerns raised about recommendation 32(c) with regards to possible prohibitions on third-party campaigners acting in concert with each other. However, the Committee agrees with the Panel's reasoning that recommendation 32(c), if implemented, would prevent third-party campaigners with common interests from combining their expenditure caps and then overwhelming the expenditure of parties, candidates and other third-party campaigners acting alone.
- 7.35 The Committee supports the Panel's thirty-second recommendation and the Government's Response in principle.

²⁰⁸ Submission 1, Public Service Association of NSW, p 2.

Chapter Eight – Governance

8.1 This chapter addresses the Panel’s recommendations thirty three to forty two and the Government’s Response to those recommendations.

GOVERNANCE STANDARDS AND ACCOUNTABILITY PROCESSES

8.2 The Panel’s thirty-third recommendation was:

That:

- 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.

8.3 The Panel noted that political parties currently receive significant public funding for ongoing administration costs. The Panel is of the view that public funding should be conditional on good governance practices and assurance that public funds are appropriately used and accounted for.

8.4 The Panel supported a recent ICAC recommendation that parties be required to regularly lodge governance standards and methods of accountability with the NSW Electoral Commission for approval.²⁰⁹

Government’s Response

8.5 The Government accepted the Panel’s recommendation in principle and stated:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Amendments to the *Parliamentary Electorates and Elections Act 1912* (the ‘PE&E Act’) will also be required. Political parties will be consulted in determining how to address this issue.

The NSWEC has indicated that considerable changes to NSWEC practices, policies and systems will be required to implement this recommendation.

Committee’s evidence

8.6 Some inquiry participants, including Local Government NSW and NSW Labor, support this recommendation in principle.²¹⁰

8.7 The NSW Nationals are willing to provide the NSW Electoral Commission with details of their governance and accountability processes but they do not believe

²⁰⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 117, 122.

²¹⁰ Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 8.

the Commission should approve these processes. In their view, the Commission does not have expertise in this area.²¹¹

- 8.8 The NSW Electoral Commission is in favour of stronger governance and accountability of political parties, particularly those receiving public funding. The Commission notes that this recommendation will introduce challenges in compliance and enforcement, however, the Commission's recent review and restructure of its Funding Disclosure and Compliance branch will assist with this.²¹²
- 8.9 Smaller parties do not support this recommendation. For example, the Shooters, Fishers and Farmers Party say that if this recommendation is implemented without associated funding, no minor parties will exist. They believe governance and accountability standards should reflect the size of an organisation.²¹³
- 8.10 The Christian Democratic Party express similar sentiments that allowances need to be made for smaller parties that do not have the staffing or resources to manage governance and accountability in the same way as larger parties can.²¹⁴

Committee comment

- 8.11 The Committee agrees with the Panel that political parties should have appropriate governance processes in place given they receive public funding.
- 8.12 However, in light of the many different sizes and structures of political parties, the Committee does not support a one-size-fits-all approach to how a political party is governed. The Committee therefore recommends that the NSW Electoral Commission provide broad guidance to parties on appropriate governance and accountability principles.

RECOMMENDATION 8

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.

SENIOR OFFICEHOLDERS OF POLITICAL PARTIES

- 8.13 The Panel's thirty-fourth recommendation was:

That:

- a) parties be required to regularly submit a list of senior officeholders to the NSW Electoral Commission for approval as a condition of receiving administrative 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,

²¹¹ Submission 7, NSW Nationals, p 11.

²¹² Submission 3, NSW Electoral Commission, p 36.

²¹³ Submission 2, Shooters, Fishers and Farmers Party, p 5.

²¹⁴ Submission 4, Christian Democratic Party, p 8.

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 website.

8.14 The Panel referred to recent ICAC investigations which revealed unwillingness by some senior party officials to accept responsibility for compliance with election funding laws and allegations about the use of federal structures and associated entities to avoid liability.

8.15 The Panel supported the ICAC's recommendation that the roles and responsibilities of senior party officeholders be made public and updated on a regular basis.²¹⁵

Government's Response

8.16 The Government accepted the Panel's recommendation in principle:

While the Government agrees with the spirit of this recommendation, further detailed consideration and consultation with the NSWEC is required.

The Government's preliminary view is that parties are best placed to determine whether a nominated officer is of sufficient seniority, control and decision-making authority to be responsible for the party's compliance with the Act. The obligation above to submit a list of senior officeholders to the NSWEC should be sufficient, particularly given the guidance provided by the Expert Panel as to who might be nominated by the Labor Party and the Liberal Party.

There are alternative ways of dealing with the potential risk that a 'token' officer who does not have a senior role in the management of the party is nominated as a senior officeholder. For example, as part of the review of the EFED Act, steps could be taken to ensure that there is sufficient scope in the EFED Act to prohibit the provision of misleading information by political parties about senior officeholders.

Committee's evidence

8.17 A broad range of stakeholders express concerns about this recommendation, particularly in relation to the NSW Electoral Commission's right to veto a political party's list of senior officers if the Commission does not believe the officers have sufficient seniority, control and decision-making authority to be responsible for compliance.²¹⁶

8.18 The Christian Democratic Party is one such stakeholder who objects to the proposed veto power:

²¹⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 121, 124.

²¹⁶ See in particular, Submission 2, Shooters, Fishers and Farmers Party, pp 5-6; Submission 4, Christian Democratic Party, p 9; Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 63; Mr Christopher Maltby, Deputy Registered Officer, The Greens, transcript of evidence, 30 October 2015, p 20; Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 35.

This provision is akin to for example APRA approving if the directors of financial institutions are of sufficient seniority.²¹⁷

8.19 Mr Greg Bondar, State Manager, Christian Democratic Party, argues that parties are best placed to appoint their executive officers and to determine their capabilities in meeting regulatory and compliance requirements.²¹⁸

8.20 The Shooters, Fishers and Farmers Party question the proposition of a regulator being empowered to veto officers of a political party.²¹⁹

8.21 Mr Nathan Quigley, State Director, NSW Nationals, says his party would support disclosure of senior officeholders to the NSW Electoral Commission and to the public, but not the power of the Commission to veto those officers:

If they are putting their mailroom boy down as the person who is most responsible for what is going on, the media will have a field day. Therefore, the incentive is to make sure they are complying with the requirement to submit authentic senior office bearers.²²⁰

8.22 The NSW Nationals also argue that the Commission has no expertise with respect to corporate governance and no prior history in carrying out an equivalent function. They highlight the diversity in officeholders with decision-making authority across political parties:

For some, paid officials will be ultimate decision makers in regards to budgets and strategic direction, for others, it could be a volunteer working from their lounge room. Both structures are just as legitimate as each other, but the law must be able to accommodate both and it ought not to be for the NSW Electoral Commission to say which is acceptable.²²¹

8.23 Mr Tony Nutt, State Director, Liberal Party of Australia, believes the Commissioner should only consider whether or not an officer of a political party is a fit and proper person to be in their role in very limited circumstances, such as if the officer in question has committed a criminal offence.²²² However, like the NSW Nationals, Mr Nutt is also supportive of political parties being required to report publicly about their senior officeholders, for example, on their website.²²³

8.24 NSW Labor and Local Government NSW support the Panel's recommendation in principle.²²⁴ However, NSW Labor suggest that the NSW Electoral Commission should provide criteria to political parties to determine whether the relevant officer has the requisite seniority, control and decision-making authority. They also suggested that training should be provided to such officers.²²⁵

²¹⁷ Submission 4, Christian Democratic Party, p 9.

²¹⁸ Mr Greg Bondar, State Manager, Christian Democratic Party, transcript of evidence, 30 October 2015, p 47.

²¹⁹ Submission 2, Shooters, Fishers and Farmers Party, pp 5-6.

²²⁰ Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 63.

²²¹ Submission 7, NSW Nationals, p 12.

²²² Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 35.

²²³ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, pp 34-35.

²²⁴ Submission 5, NSW Labor, pp 8-9; Submission 9, Local Government NSW, p 4.

²²⁵ Submission 5, NSW Labor, pp 8-9.

8.25 Ms Kaila Murnain, Assistant General Secretary, NSW Labor, says that to impose a one-size-fits-all set of standards on political parties in terms of governance and structure would take away the power from the party's members who have set up their structure in the first place:

You can still simultaneously have improved governance and improved transparency without forcing a system on a political party.²²⁶

8.26 The NSW Electoral Commission strongly supports the introduction of governance and accountability measures of this nature. The Commission considers that implementation of recommendations relating to these issues need to reflect the different ways in which parties operate as there is no single approach as to how a party should be governed.²²⁷

Committee comment

8.27 The Committee supports increased transparency and accountability with respect to political parties. However, the Committee agrees with inquiry participants that it is not appropriate or practical for the NSW Electoral Commission to be empowered to veto a political party's senior officeholders. The Committee believes political parties are best placed to determine who should be in such roles.

8.28 However, the Committee would support political parties being required to disclose their senior officeholders to the NSW Electoral Commission and publicly, on their websites. The Committee would also support the Commission providing best practice advice to parties 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 compliance.

RECOMMENDATION 9

The Committee recommends that instead of implementing recommendation 34 of the Expert Panel's report, the NSW Government:

- 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.**

LIABILITY OF SENIOR OFFICEHOLDERS FOR OFFENCES

8.29 The Panel's thirty-fifth recommendation was:

That:

²²⁶ Ms Kaila Murnain, Assistant General Secretary, NSW Labor, transcript of evidence, 30 October 2015, p 27.

²²⁷ Submission 3, NSW Electoral Commission, pp 14-15.

- a) the common law duties that already apply to senior officeholders of both incorporated and unincorporated associations be codified in the Act; and
- b) senior officeholders who breach these duties be personally liable for offences and penalties under the Act.

8.30 The Panel found that senior officeholders in the major parties are not subject to the statutory duties required of company or not-for-profit directors. The Panel said the common law duties which apply to officeholders in the major parties do not have statutory penalties and sanctions are rare.

8.31 The Panel argued that imposing duties on senior officeholders would result in cultural change and improved governance structures. It also noted that, in practice, an officeholder who is actively involved in financial and compliances processes and who behaves ethically would be unlikely to breach any duties.²²⁸

Government's Response

8.32 The Government accepted the Panel's recommendation in principle:

This recommendation will be considered in reviewing the EFED Act. Amendments to the PE&E Act will also be required.

Committee's evidence

8.33 NSW Labor and Local Government NSW support this recommendation in principle.²²⁹

8.34 The NSW Electoral Commission also notes that it supports stronger governance and accountability of political parties and their senior officers.²³⁰

8.35 The NSW Nationals believe that if officers and directors of unincorporated political parties are to be made liable for breaches of relevant common law duties, the manner in which this is to occur needs to be carefully considered, particularly in light of the different political party structures.²³¹

8.36 The Shooters, Fishers and Farmers Party and The Christian Democratic Party do not support this recommendation.²³² In particular, the Shooters, Fishers and Farmers Party suggests that political parties be required to incorporate.²³³

Committee comment

8.37 The Committee supports increasing accountability of senior officeholders.

8.38 The Committee supports the Panel's thirty-fifth recommendation and the Government's Response in principle.

²²⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 117, 124.

²²⁹ Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 9.

²³⁰ Submission 3, NSW Electoral Commission, p 37.

²³¹ Submission 7, NSW Nationals, p 12.

²³² Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 9.

²³³ Submission 2, Shooters, Fishers and Farmers Party, p 6.

DUTY FOR SENIOR OFFICEHOLDERS TO REPORT BREACHES

8.39 The Panel's thirty-sixth recommendation was:

That there be a duty for senior officeholders to report any election funding law breaches or suspected breaches to the NSW Electoral Commission.

8.40 The Panel said that an important question raised by the allegations before the ICAC regarding the conduct of Members of Parliament is why neither party chose to investigate the matters themselves at an earlier stage.²³⁴

Government's Response

8.41 The Government accepted the Panel's recommendation in principle:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Political parties will also be consulted in determining how to address this issue.

Committee's evidence

8.42 Various stakeholders support this recommendation or accept it in principle.²³⁵

8.43 The NSW Nationals support this recommendation in principle but raise some concerns about the Panel's suggestion that suspected breaches be mandatorily referred to the NSW Electoral Commission. They believe the term 'suspected' can be open to interpretation.²³⁶

8.44 The NSW Electoral Commission suggests that this recommendation be considered as part of a comprehensive review of the EFED Act which includes additional enforcement options for the Commission.²³⁷

Committee comment

8.45 The Committee notes broad support from stakeholders for this recommendation. The Committee suggests that the NSW Government, in its review of the EFED Act, consider whether this recommendation should be supported by additional enforcement options for the NSW Electoral Commission.

8.46 The Committee supports the Panel's thirty-sixth recommendation and the Government's Response in principle.

AUDITING DISCLOSURES

8.47 The Panel's thirty-seventh recommendation was:

That:

²³⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 124.

²³⁵ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 9; Submission 5, NSW Labor, p 9; Submission 7, NSW Nationals, p 13; Submission 9, Local Government NSW, p 4.

²³⁶ Submission 7, NSW Nationals, p 13.

²³⁷ Submission 3, NSW Electoral Commission, pp 37-38.

- a) the current requirement for double-auditing of disclosures of political donations and electoral expenditure and claims for payment of public funding be removed; and
- 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.

8.48 The Panel heard that the auditing requirements are expensive and onerous as the current systems requires auditing of disclosures and claims for payment by a registered company auditor and then by the NSW Electoral Commission.

8.49 The Panel supported transferring the audit function to the NSW Auditor-General and, in making this recommendation, highlighted the standards, independence and integrity of the Auditor-General and that, in the Panel's opinion, the Auditor-General has the skills, competence and capacity to audit political parties. The Panel also noted that the Auditor-General is obliged to report any corrupt conduct to the ICAC.²³⁸

Government's Response

8.50 The Government accepted the Panel's recommendation in principle and said it will consider it in reviewing the EFED Act, in consultation with the Auditor-General.

Committee's evidence

8.51 Several parties, including the Shooters, Fishers and Farmers Party and the Christian Democratic Party question how replacing the NSW Electoral Commission with the NSW Auditor-General will remove double-auditing of disclosures.²³⁹

8.52 However, various inquiry participants including Unions NSW, the NSW Nationals, NSW Labor and the NSW Electoral Commission support removing double auditing in principle.²⁴⁰ In particular, Unions NSW is of the view that removing double auditing will alleviate some of the administrative and financial burdens placed on third-party campaigners and political parties.²⁴¹

8.53 The NSW Electoral Commission agrees that double auditing is counter-productive but does not agree that the NSW Auditor-General should be given a new role in this area. In the Commission's opinion, this would introduce duplication and complexity into the current system. The Commission explains that, if the Panel's recommendation is implemented, this would result in the NSW Auditor-General auditing parliamentary parties and the Commission auditing candidates, Members, third-party campaigners and other parties.²⁴²

²³⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 125-126.

²³⁹ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 9.

²⁴⁰ Submission 6, Unions NSW, p 6; Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 62; Submission 5, NSW Labor, p 9; Submission 3, NSW Electoral Commission, p 38.

²⁴¹ Submission 6, Unions NSW, p 6.

²⁴² Submission 3, NSW Electoral Commission, p 38.

- 8.54 The Commission instead believes that its new Funding Disclosure and Compliance branch should be responsible for this role.²⁴³ The Commission recently reviewed its audit function and implemented risk based audits.²⁴⁴
- 8.55 Several other stakeholders, including the NSW Nationals, Ms Kaila Murnain, Assistant General Secretary, NSW Labor, and The Greens, also support the NSW Electoral Commission having responsibility for auditing disclosures and claims for payment for political parties receiving administrative funding.²⁴⁵
- 8.56 Mr Nathan Quigley, State Director, NSW Nationals, says the Commission is better equipped to take responsibility for this function:
- ...we think that the Auditor-General, to our knowledge, does not have many parallel roles of this type and that the Electoral Commission with its knowledge and its previous capacity to deal with this should remain with the audit function.²⁴⁶
- 8.57 Mr Tony Nutt, State Director, Liberal Party of Australia, describes the Commission as 'thorough and diligent within an inch of your life' in relation to the Commission's current auditing role.²⁴⁷ Other stakeholders, including representatives from the Shooters, Fishers and Farmers Party and the Christian Democratic Party, also praise the Commission for being thorough, diligent and helpful.²⁴⁸

Committee comment

- 8.58 The Committee is persuaded by evidence from inquiry participants that the NSW Auditor-General should not be responsible for auditing disclosures and claims for all political parties that receive administrative funding. The Committee agrees with stakeholders that giving the NSW Auditor-General a role in this area may cause more complexity and confusion.
- 8.59 In the Committee's view, the NSW Electoral Commission is better placed to carry out this function, particularly given that the Commission has recently reviewed its auditing function and adopted a risk based approach for future audits.
- 8.60 The Committee also agrees with the Panel and stakeholders that double-auditing of disclosures of political donations and electoral expenditure and claims for payment is counter-productive and should not continue.

²⁴³ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 9.

²⁴⁴ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 2.

²⁴⁵ Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 62; Submission 8, The Greens, Inquiry into the NSW 2015 State Election, p 8; Ms Kaila Murnain, Assistant General Secretary, NSW Labor, transcript of evidence, 30 October 2015, p 24.

²⁴⁶ Mr Nathan Quigley, State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 62.

²⁴⁷ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 32.

²⁴⁸ Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 43; Mr Ian Smith, Treasurer/Party Agent, Christian Democratic Party, transcript of evidence, 30 October 2015, p 48.

RECOMMENDATION 10

The Committee recommends that instead of implementing recommendation 37b of the Expert Panel's report, the NSW Government makes the NSW 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.

FINANCIAL STATEMENTS

- 8.61 The Panel's thirty-eighth recommendation was:
- That:
- 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;
 - b) the NSW Auditor-General be responsible for auditing these statements; and
 - c) a summary of these statements be published on the NSW Electoral Commission's website.
- 8.62 The Panel expressed the view that political parties should be subject to similar annual financial reporting requirements to corporations and registered not-for-profit organisations given the large amounts of public funding they receive.
- 8.63 The Panel argued that this would allow the NSW Electoral Commission and the auditor to form a true understanding of the relevant financial transactions. For transparency reasons, the Panel suggested that a summary of the information should be published on the NSW Electoral Commission's website.²⁴⁹

Government's Response

- 8.64 The Government accepted the Panel's recommendation in principle:
- This recommendation will be considered in reviewing the EFED Act, in consultation with the NSWEC and the Auditor-General. Political parties will also be consulted in determining how to address this issue.

Committee's evidence

- 8.65 There was support or support in principle for this recommendation from NSW Labor, the NSW Nationals and Local Government NSW.²⁵⁰
- 8.66 The NSW Electoral Commission supports annual financial statements being compliant with Australian Auditing Standards.²⁵¹
- 8.67 The Shooters, Fishers and Farmers Party does not support this recommendation as the party already produces annual audited financial statements as required by the incorporated associations legislation. The Shooters, Fishers and Farmers Party

²⁴⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 126.

²⁵⁰ Submission 5, NSW Labor, p 9; Submission 7, NSW Nationals, p 13; Submission 9, Local Government NSW, p 4.

²⁵¹ Submission 3, NSW Electoral Commission, p 39.

does not see the logic in the NSW Auditor-General reviewing these statements again.²⁵² The Christian Democratic Party is also opposed to this recommendation.²⁵³

Committee comment

8.68 Although some stakeholders do not support this recommendation, on balance, the Committee agrees with the Panel that political parties should be subject to similar annual financial reporting requirements to corporations and registered not-for-profit organisations given they receive public funding.

8.69 The Committee suggests that when the NSW Government is reviewing the EFED Act, the Government consider how best to implement this recommendation to take into account the various structures of political parties.

8.70 The Committee also believes that the NSW Electoral Commission should carry out this function, not the Auditor-General.

RECOMMENDATION 11

The Committee recommends that instead of implementing recommendation 38b of the Expert Panel's report, the NSW Government makes the NSW Electoral Commission responsible for auditing the annual financial statements.

POLITICAL PARTIES DEEMED AS LEGAL ENTITIES

8.71 The Panel's thirty-ninth recommendation was:

That registered political parties be deemed to be legal entities for the purposes of prosecutions and the imposition of penalties under the Act.

8.72 The Panel highlighted that the major parties operate as voluntary associations with no separate legal status. As such, they cannot be prosecuted in their own right, making it difficult for them to be held accountable for breaches of the law.²⁵⁴

Government's Response

8.73 The Government accepted the Panel's recommendation in principle and will consider it in reviewing the EFED Act.

Committee's evidence

8.74 Most inquiry participants who address this recommendation support it or support it in principle.²⁵⁵

8.75 In particular, the NSW Electoral Commission supports this recommendation but suggests this issue should be considered in the context of a comprehensive

²⁵² Submission 2, Shooters, Fishers and Farmers Party, p 6.

²⁵³ Submission 4, Christian Democratic Party, pp 9-10.

²⁵⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 127.

²⁵⁵ See for example, Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 40; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 9; Submission 7, NSW Nationals, p 13; Submission 9, Local Government NSW, p 4.

review of the legislation.²⁵⁶ Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, explains that deeming a party to be a legal entity would allow the Commission to prosecute the party as an entity rather than prosecuting individuals within the party.²⁵⁷

8.76 Mr Thomas Aubert, Deputy State Director, NSW Nationals, believes that deeming political parties as legal entities for prosecution purposes would be a 'simple and effective solution' to some of the issues that the Panel grappled with.²⁵⁸

8.77 There was concern from stakeholders that deeming a political party to be a legal entity may result in a requirement that political parties incorporate. Mr Tony Nutt, State Director, Liberal Party of Australia, says parties should be structured in a way that promotes their primary purpose:

I do not think that volunteers serving on a management committee are best treated as if they were directors of Rio Tinto, unless the State would like to pay us significant sums of money so they can all have lawyers.²⁵⁹

8.78 While NSW Labor says it supports the Panel's recommendation in principle, they would not support a provision requiring political parties to become incorporated entities.²⁶⁰

Committee comment

8.79 The Committee agrees with the Panel and stakeholders that political parties should be deemed to be legal entities so that they can be properly held accountable and prosecuted for breaches of the law. The Committee is also of the view that political parties should be free to adopt a structure that best suits their purposes. As such, the Committee suggests that, in reviewing the EFED Act, the NSW Government ensure that the deeming provision does not include a requirement for political parties to incorporate.

8.80 The Committee supports the Panel's thirty-ninth recommendation and the Government's Response in principle.

ABOLISHING PARTY AND OFFICIAL AGENTS

8.81 The Panel's fortieth recommendation was:

That the scheme of party and official agents be abolished and that candidates and elected Members be responsible for compliance with the Act.

8.82 The Panel highlighted that there is no requirement that a party agent be a senior officeholder within a party, or that they have sufficient authority to control compliance with the legislation.

²⁵⁶ Submission 3, NSW Electoral Commission, p 40.

²⁵⁷ Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 7.

²⁵⁸ Mr Thomas Aubert, Deputy State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 61.

²⁵⁹ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 34.

²⁶⁰ Submission 5, NSW Labor, p 9.

- 8.83 The Panel noted that the original intent behind the agent scheme was to provide a segregation of duties and ensure that the financial records of groups, candidates and Members are overseen by a properly trained person.
- 8.84 The Panel argued that, in reality, the introduction of agents has led to a substantial shift in responsibility and liability away from elected Members to agents who do not necessarily have sufficient authority or control within the party. The Panel said that, in effect, responsibilities under the Act have been contracted out.²⁶¹

Government's Response

- 8.85 The Government accepted the Panel's recommendation in principle and will consider it in reviewing the EFED Act.

Committee's evidence

- 8.86 Several inquiry participants agree with this recommendation or agree with it in principle.²⁶²
- 8.87 The NSW Electoral Commission strongly supports this recommendation and believes the current arrangements have resulted in situations where candidates and groups are not responsible for their compliance with the legislation.²⁶³ The Commissioner, Mr Colin Barry, says Members of Parliament receive donations so they should be accountable for them.²⁶⁴
- 8.88 While NSW Labor supports the Panel's recommendation in principle, it also highlights that the role of Party Agent has allowed the party to have strong ties with the Commission. In NSW Labor's view, it is important to have one contact point for compliance in political parties.²⁶⁵ Ms Kaila Murnain, Assistant General Secretary, NSW Labor, notes that although it encourages transparency to keep candidates' away from their direct relationship with donations, candidates also need to be responsible for the final declaration or any issues with their disclosure.²⁶⁶
- 8.89 The NSW Nationals make similar comments and believe that empowering an individual within a political party with compliance responsibility ensures there is no shifting of blame for issues that may arise.²⁶⁷
- 8.90 The NSW Nationals also raise concerns that making candidates and elected members responsible for compliance is 'grossly inappropriate' in some circumstances where a party has centralised its compliance obligations. However,

²⁶¹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 127-128.

²⁶² Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 10; Submission 3, NSW Electoral Commission, p 40; Submission 5, NSW Labor, p 9; Submission 9, Local Government NSW, p 4.

²⁶³ Submission 3, NSW Electoral Commission, p 40.

²⁶⁴ Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 8.

²⁶⁵ Submission 5, NSW Labor, p 9.

²⁶⁶ Ms Kaila Murnain, Assistant General Secretary, NSW Labor, transcript of evidence, 30 October 2015, p 24.

²⁶⁷ Submission 7, NSW Nationals, p 13.

the party suggests that consideration be given to making candidates and Members more responsible for compliance in situations where those individuals have a greater degree of control over these matters.²⁶⁸

Committee comment

- 8.91 The Committee agrees with the Panel and some inquiry participants that candidates and Members should ultimately be responsible for their compliance with the Act, even though they may have other individuals who assist them with this function, for example, a compliance staff member in their party's head office.
- 8.92 However, the Committee also acknowledges that it can be helpful to have one contact point within a party for compliance issues, whether or not this person is a Party or Official Agent. The Committee is of the view that such a contact point is useful in relation to dealings with the NSW Electoral Commission and also to ensure that parties have someone who has particular expertise in compliance matters.
- 8.93 The Committee is therefore of the view that the NSW Government should implement a new scheme, or revise the existing scheme of Party and Official Agents. The Committee believes there needs to be a better balance between candidates and elected Members taking more responsibility for compliance with the legislation and ensuring that there is still one contact point within a party for compliance for practical purposes.

RECOMMENDATION 12

The Committee recommends that the NSW Government implements 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:

- 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.**

SENIOR OFFICEHOLDER TO LODGE CERTAIN DOCUMENTS

- 8.94 The Panel's forty-first recommendation was:

That:

- 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.

- 8.95 The Panel argued that those with sufficient seniority and standing within a party should be responsible for compliance.²⁶⁹

²⁶⁸ Submission 7, NSW Nationals, pp 13-14.

Government's Response

8.96 The Government accepted the Panel's recommendation in principle:

This recommendation will be considered in reviewing the EFED Act. See comments above in relation to Recommendation 34.

Committee's evidence

8.97 Most inquiry participants who address this recommendation support it or support it in principle.²⁷⁰

8.98 The NSW Electoral Commission strongly supports this recommendation and believes the obligation of a person to lodge disclosures for a party should rest with someone senior within the party:

This would avoid situations where a party appoints a junior employee as the party agent knowing that the agent does not have sufficient access to the party's records and other resources in order to make proper and valid disclosures.²⁷¹

8.99 Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, believes that parties should be able to choose their key officers but those officers should take responsibility for whatever is being disclosed or lodged.²⁷²

8.100 The NSW Nationals argue that the Commission should not have a role in approving persons nominated to lodge disclosures on behalf of a party. They consider that the intention behind this recommendation is admirable but the application of it is difficult.²⁷³

Committee comment

8.101 The Committee agrees with the Panel and the NSW Electoral Commission that those with sufficient seniority within a party should be responsible for compliance.

8.102 However, in the Committee's view, the NSW Electoral Commission should not approve the relevant officeholder within a party.

8.103 The Committee therefore agrees with recommendation 41a of the Panel's Report but not recommendation 41b.

INDEPENDENT BODY TO APPROVE CHANGES TO PUBLIC FUNDING

8.104 The Panel's forty-second recommendation was:

That:

²⁶⁹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 128.

²⁷⁰ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 9; Submission 9, Local Government NSW, p 4; Submission 5, NSW Labor, p 9.

²⁷¹ Submission 3, NSW Electoral Commission, pp 41-42.

²⁷² Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 42.

²⁷³ Submission 7, NSW Nationals, p 14.

- 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
- b) this body consist of a retired judge and a person with financial or audit skills.

- 8.105 The Panel's Report noted that, at present, legislation sets the levels of public finding via the Election Campaigns Fund, Administration Fund and Policy Development Fund.
- 8.106 The Panel supported independent oversight of the public funding scheme on the basis that parliamentarians should not legislate on an area where they have a direct financial interest without some additional oversight. The Panel noted the risk of major parties agreeing on a funding scheme that advantages them at the expense of other electoral contestants and taxpayers.
- 8.107 The Panel highlighted other areas where independent bodies have been established to oversee areas where parliamentarians would otherwise make decisions on issues where they have a direct interest, such as the Parliamentary Remuneration Tribunal.²⁷⁴

Government's Response

- 8.108 The Government did not accept the Panel's recommendation and stated:

The Government has concerns about this recommendation.

The Government notes that 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.

An independent body of the kind proposed by the Expert Panel could unduly delay reform in this area, and may be a costly and inefficient alternative to relying on existing oversight mechanism.

It is noted that the JSCEM 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.

Committee's evidence

- 8.109 The Shooters, Fishers and Farmers Party and the Christian Democratic Party support the Panels' recommendation in principle.²⁷⁵ However, the Shooters, Fishers and Farmers Party suggests that the Joint Standing Committee on Electoral Matters should review the work of the independent body on a regular

²⁷⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 129-130.

²⁷⁵ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 10.

basis.²⁷⁶ The Christian Democratic Party requests further clarification about referrals only being available to the Premier.²⁷⁷

8.110 Mr Tony Nutt, State Director, Liberal Party of Australia, does not agree that public funding should be set by an entity other than the Parliament. In his view, changes to laws should be subject to the parliamentary process so there is public accountability and the media have the opportunity to scrutinise the relevant issues.²⁷⁸

8.111 NSW Labor says it accepts the NSW Government's position on this recommendation.²⁷⁹

8.112 Dr Twomey explains that as Parliament cannot abdicate its legislative power to another body, legislation establishing an independent body would be ineffective from a legal point of view:

...from a technical legal point of view, if you tried to have legislation that said you cannot change the rules about public funding unless you get the agreement of this other body, that legislation would be ineffective. You could still legislate to change without the approval of that body.²⁸⁰

8.113 However, Dr Twomey notes that while legislation of this nature would be ineffective from a legal point of view, it can be politically effective because it would put political pressure on the Government not to amend the laws without the approval of the independent body.²⁸¹

Committee comment

8.114 The Committee does not support establishing an independent body to approve changes to the level of public funding for election campaigns, administration or any other related purpose.

8.115 In particular, the Committee notes Dr Twomey's evidence that Parliament cannot abdicate its legislative power to another body. Any such independent body would therefore be ineffective from a legal point of view. Parliament could disregard any decision made by the independent body and introduce and pass legislation regardless of any determination made in regards to public funding.

8.116 For these reasons, the Committee does not support the establishment of an independent body to determine levels of public funding for political parties.

²⁷⁶ Submission 2, Shooters, Fishers and Farmers Party, p 6.

²⁷⁷ Submission 4, Christian Democratic Party, p 10.

²⁷⁸ Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 35.

²⁷⁹ Submission 5, NSW Labor, p 9.

²⁸⁰ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, pp 38-39.

²⁸¹ Dr Anne Twomey, Professor of Constitutional Law, University of Sydney, transcript of evidence, 30 October 2015, p 39.

RECOMMENDATION 13

The Committee recommends that the NSW Government neither adopts recommendation 41b nor recommendation 42 of the Expert Panel's report.

Chapter Nine – Compliance and enforcement

- 9.1 This chapter addresses the Panel’s recommendations forty three to fifty and the Government’s Response to those recommendations.

REVIEW OF PENALTIES IMPOSED BY LOCAL COURT

- 9.2 The Panel’s forty-third recommendation was:

That the maximum monetary penalty that can be imposed by the local court for offences be increased as part of the review of the Act.

- 9.3 The Panel heard that most electoral funding matters are dealt with in the local court. However, the local court can only impose a maximum monetary penalty of \$4,400, despite the fact that there have been recent increases to some of the maximum penalties in the EFED Act.²⁸²

Government’s Response

- 9.4 The Government accepted the Panel’s recommendation in principle and will consider it in reviewing the EFED Act.

Committee’s evidence

- 9.5 Six inquiry participants address this recommendation. All of them either agree with it or agree with it in principle.²⁸³

- 9.6 In particular, the NSW Electoral Commission, in supporting this recommendation, says the EFED Act needs a range of enforcement options tied to the objectives of the legislation:

Penalties should reflect the gravity of offences as well as achieve the objects of deterrence, retribution and rehabilitation.²⁸⁴

Committee comment

- 9.7 The Committee notes broad support from inquiry participants for this recommendation. The Committee agrees with the Panel’s recommendation that there be an increase in the maximum monetary penalty that the local court can impose for electoral offences. The Committee also suggests that enforcement options more generally should be considered in the NSW Government’s review of the EFED Act.

²⁸² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 135.

²⁸³ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 42; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 10; Submission 7, NSW Nationals, p 14; Submission 9, Local Government NSW, p 4.

²⁸⁴ Submission 3, NSW Electoral Commission, pp 42-43.

- 9.8 The Committee supports the Panel's forty-third recommendation and the Government's Response in principle.

STRICT LIABILITY OFFENCES

- 9.9 The Panel's forty-fourth recommendation was:

That:

- 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.

- 9.10 The Panel noted that strict liability offences are contrary to criminal law principles that a person must have a guilty mind to commit an offence and that a person is presumed innocent until proven guilty. As a result of this, strict liability offences usually only apply in areas where there is a compelling public interest in compliance. Stakeholders argued for strict liability offences for some of the less serious electoral offences. The Panel also noted that prosecutions can sometimes be ineffective in this area due to technical problems in proving intent.²⁸⁵

Government's Response

- 9.11 The Government accepted the Panel's recommendation in principle:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC, noting that there should be scope for the NSWEC to work with the person or party lodging the incomplete disclosure to attempt to resolve any problems before taking enforcement action. Political parties and independent Members will also be consulted in determining how to address this issue.

Committee's evidence

- 9.12 A strict liability offence has been described as follows:

An offence of strict liability is one in which a person may be punished for doing something whether or not they have guilty intent (*mens rea*) unless they can show that they made an honest and reasonable mistake of fact.²⁸⁶

- 9.13 The Legislation Review Committee went on to explain that strict liability offences are typically used for offences of a regulatory nature, to maximise compliance, for example, in relation to public safety or protection of the environment.²⁸⁷
- 9.14 Several inquiry participants express support or support in principle for the Panel's recommendation that certain strict liability offences be retained and that another be introduced.²⁸⁸

²⁸⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, pp 135-136.

²⁸⁶ Legislation Review Committee, *Strict and absolute liability: responses to the discussion paper*, Parliament of NSW, October 2006, p 2.

²⁸⁷ Legislation Review Committee, *Strict and absolute liability: responses to the discussion paper*, Parliament of NSW, October 2006, p 2.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
COMPLIANCE AND ENFORCEMENT

- 9.15 In particular, the NSW Electoral Commission supports the Panel's recommendation and believes that the review of the EFED Act should consider whether further strict liability offences are required.²⁸⁹
- 9.16 While the Christian Democratic Party agrees with this recommendation in principle,²⁹⁰ when questioned by the Committee at the public hearing about strict liability offences, Mr Greg Bondar, State Manager, Christian Democratic Party, said that it is 'very harsh and almost unconscionable to have one individual be responsible for an error of judgment or whatever it might be.'²⁹¹
- 9.17 At the Committee's public hearing, Mr Tony Nutt, State Director, Liberal Party of Australia, agreed that extending the strict liability offences under the existing framework is fraught.
- 9.18 Mr Nutt highlights that the Liberal Party is overwhelmingly a voluntary body. He says the law should be clear and that breaches should be considered in light of common sense. In his view, if the error or omission was made in good faith, this is different to a pattern of behaviour that may raise legitimate concerns. Mr Nutt suggests that the approach taken when dealing with a breach of the law should be proportionate to the facts of the case.²⁹²
- 9.19 The NSW Nationals support recommendation 44(a), however, with respect to part (b), they note that larger parties can have sub-entities across the State. The NSW Nationals clarify that head offices can rely on these entities returning their disclosure forms for their overall party disclosure:
- A difficulty is posed if a sub-entity fails to return a form on time and therefore the overall Party disclosure requires amending. Further, some sub-entities may return to activity after a period of inactivity or a new sub-entity formed with the Head Office unaware to their existence.
- It ought not to be the case in such circumstances outlined above that a person or Party be held responsible for lodging an 'incomplete disclosure' although arguably it is a mistake as to fact and therefore a defence to a strict liability offence.²⁹³
- 9.20 Mr Thomas Aubert, Deputy State Director, NSW Nationals, also questions whether strict liability offences are necessary given the NSW Electoral Commission's extensive investigatory powers.²⁹⁴

Committee comment

- 9.21 The Committee notes that some stakeholders support retaining and extending strict liability offences in the electoral legislation. However, the Committee

²⁸⁸ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 43; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 10; Submission 9, Local Government NSW, p 4.

²⁸⁹ Submission 3, NSW Electoral Commission, p 43.

²⁹⁰ Submission 4, Christian Democratic Party, p 10.

²⁹¹ Mr Greg Bondar, State Manager, Christian Democratic Party, transcript of evidence, 30 October 2015, p 48.

²⁹² Mr Tony Nutt, State Director, Liberal Party of Australia, transcript of evidence, 30 October 2015, p 32.

²⁹³ Submission 7, NSW Nationals, p 14.

²⁹⁴ Mr Thomas Aubert, Deputy State Director, NSW Nationals, transcript of evidence, 30 October 2015, p 63.

acknowledges that strict liability offences are contrary to some criminal law principles, including that a person must have a guilty mind to commit an offence and that a person is innocent until proven guilty. The Committee also acknowledges evidence that political parties have many different structures and often rely heavily on assistance from volunteers.

- 9.22 In light of stakeholder evidence and given that strict liability offences are contrary to some general criminal law principles, the Committee believes the NSW Government should, in its review of the EFED Act, consider whether there are other appropriate alternatives to retaining or extending strict liability offences that would assist prosecutions. However, the Committee would support strict liability offences as a last resort, if no other alternative can be identified, but only if any such offences include a defence relating to honest and reasonable mistake of fact.

RECOMMENDATION 14

The Committee recommends that the NSW Government implements a modified version of recommendation 44 of the Expert Panel's report by:

- 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.**

SIMPLIFYING CERTAIN OFFENCES

- 9.23 The Panel's forty-fifth recommendation was:

That the offences under the Act that require the prosecution to prove knowledge, awareness or intent be simplified to maximise the chances of successful prosecutions.

- 9.24 While the Panel heard from stakeholders that the prosecution should have to prove intent or knowledge before a person is found guilty of a serious criminal offence, stakeholders submitted that there are still technical difficulties in the way offences are worded.²⁹⁵

Government's Response

- 9.25 The Government accepted the Panel's recommendation in principle:

In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. As the Panel's Report noted, implementation of this recommendation should be done in close consultation with the NSWEC and with the benefit of any legal advice it has obtained on problems associated with the current offence provisions.

²⁹⁵ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 136.

Committee's evidence

- 9.26 Most stakeholders who address this recommendation agree with it or agree with it in principle.²⁹⁶
- 9.27 The NSW Nationals believe that the NSW Electoral Commission has sufficient powers under the legislation to collect evidence relating to the offences as they are currently stated. The NSW Nationals argue that to differentiate offences under these laws from other criminal laws is unjustifiable.²⁹⁷

Committee comment

- 9.28 The Committee notes that most stakeholders who address this recommendation support it or support it in principle. The Committee agrees with the Panel that technical difficulties in the current wording of offences should not be a significant barrier to successful prosecutions. However, the Committee believes that the prosecution should generally have to prove knowledge, awareness or intent before an individual is found guilty of a serious offence. The Committee also refers to its comments in relation to strict liability offences, in the section above.
- 9.29 The Committee supports the Panel's forty-fifth recommendation and the Government's Response in principle.

INTRODUCTION OF MID-LEVEL ENFORCEMENT OPTIONS

- 9.30 The Panel's forty-sixth recommendation was:
- That a range of mid-level enforcement options be made available to the NSW Electoral Commission, including the ability to withhold public funding entitlements from parties and candidates.
- 9.31 The Panel noted that the only enforcement available to the NSW Electoral Commission for offences other than penalty notice offences is prosecution. The Panel argued that the Commission should have a range of enforcement options that allow it to intervene as soon as possible in instances of minor non-compliance and poor governance. The Panel said this may reduce the risk of corruption.²⁹⁸

Government's Response

- 9.32 The Government accepted the Panel's recommendation in principle:
- In reviewing the EFED Act, DPC will consider how to implement this recommendation in consultation with the NSWEC. Amendments to the PE&E Act will also be required, as will some administrative and operational changes by the NSWEC.

²⁹⁶ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 43; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 10; Submission 9, Local Government NSW, p 4.

²⁹⁷ Submission 7, NSW Nationals, p 15.

²⁹⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 137.

Committee's evidence

- 9.33 All stakeholders who address this recommendation either support it or support it in principle.²⁹⁹
- 9.34 The NSW Electoral Commission, in supporting this recommendation, notes that there are current provisions in the EFED Act to allow the Commission to withhold public funding in certain cases. In the Commission's view, this is an example of the kind of provisions that should be broadened.³⁰⁰

Committee comment

- 9.35 The Committee agrees with inquiry participants and the Panel that the NSW Electoral Commission should have a range of mid-level enforcement options available to it. The current situation, as highlighted by the Panel, whereby the Commission has few options in between issuing a penalty notice and commencing prosecution would not allow the Commission to appropriately deal with varying situations in different cases.
- 9.36 The Committee supports the Panel's forty-sixth recommendation and the Government's Response in principle.

RISK-BASED REGULATION BY NSW ELECTORAL COMMISSION

- 9.37 The Panel's forty-seventh recommendation was:
- That measures be introduced to support the NSW Electoral Commission to transition from a focus on administration to risk-based regulation.
- 9.38 The Panel suggested that the NSW Electoral Commission should be alleviated of some its administrative burdens associated with paper based disclosures and double auditing of claims for public funding so that the Commission can become a strong and effective regulator.³⁰¹

Government's Response

- 9.39 The Government accepted the Panel's recommendation in principle:
- NB This recommendation overlaps with Recommendations 7, 8, 9 and 11 of the ICAC Report.
- This recommendation will be considered in reviewing the EFED Act, in consultation with the NSWEC.

²⁹⁹ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 44; Submission 4, Christian Democratic Party, p 10; Submission 5, NSW Labor, p 10; Submission 7, NSW Nationals, p 15; Submission 9, Local Government NSW, p 4.

³⁰⁰ Submission 3, NSW Electoral Commission, p 42.

³⁰¹ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 138.

Committee's evidence

9.40 All inquiry participants who address this recommendation agree with it or agree with it in principle.³⁰²

9.41 The NSW Electoral Commission supports this recommendation and highlights its work in reviewing and restructuring its Funding, Disclosure and Compliance Branch:

The restructure has focused on FDC's audit, investigation and enforcement practices, procedures and systems, as well as developing quality and professional services to stakeholders. Included in the new structure is an education function responsible for improving our education for stakeholders, with the aim of achieving a higher level of stakeholder compliance.³⁰³

Committee comment

9.42 The Committee agrees with the Panel's recommendation that the NSW Electoral Commission should transition from a focus on administration to risk-based regulation. The Committee notes support from inquiry participants for this change and acknowledges the work the Commission has already undertaken to implement the Panel's recommendation.

9.43 The Committee supports the Panel's forty-seventh recommendation and the Government's Response in principle.

RE-ORGANISATION OF THE NSW ELECTORAL COMMISSION

9.44 The Panel's forty-eighth recommendation was:

That the NSW Electoral Commission conduct a root and branch review to identify gaps between its organisational capabilities and the demands of best practice electoral regulation.

9.45 The Panel's recommendation overlaps with a similar recommendation made by the ICAC.³⁰⁴

Government's Response

9.46 The Government accepted the Panel's recommendation in principle:

NB This recommendation overlaps with Recommendation 4 of the ICAC Report.

The NSWEC will be required to undertake a detailed review of its operations.

Committee's evidence

9.47 Inquiry participants who address this recommendation agree with it in principle or accept it.³⁰⁵

³⁰² Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 4, Christian Democratic Party, p 11; Submission 3, NSW Electoral Commission, pp 44-45; Submission 5, NSW Labor, p 10; Submission 9, Local Government NSW, p 4.

³⁰³ Submission 3, NSW Electoral Commission, pp 44-45.

³⁰⁴ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 138.

- 9.48 The NSW Electoral Commission supports this recommendation and notes that it has already conducted a branch review.³⁰⁶ Ms Alison Byrne, the Commission's Director of the Funding, Disclosure and Compliance Branch, highlights that the branch has been restructured into three teams based on the Commission's functions under the EFED Act and the increasing regulatory focus of the Commission.³⁰⁷

Committee comment

- 9.49 The Committee acknowledges the work that the NSW Electoral Commission has carried out to implement the Panel's recommendation. The Committee notes stakeholder support for this recommendation.
- 9.50 The Committee supports the Panel's forty-eighth recommendation and the Government's Response in principle.

EDUCATION BY NSW ELECTORAL COMMISSION

- 9.51 The Panel's forty-ninth recommendation was:

That the NSW Electoral Commission be given a specific education function and that the Commission deliver an extensive and engaging education program before the 2019 State election.

- 9.52 The Panel was concerned by the extraordinarily poor levels of attendance at the NSW Electoral Commission's education seminars for candidates for the 2015 State election. The Panel argued that education can be a driver of behavioural change within the major parties.³⁰⁸

Government's Response

- 9.53 The Government accepted the Panel's recommendation in principle:

As a result of amendments made to the PE&E Act in 2014 which reconstituted the NSWEC, section 21C(2)(d) of the PE&E Act provides that one of the functions of the NSWEC is to 'promote public awareness of electoral matters that are in the general public interest by means of education and information programs'.

The Government will request that the NSWEC develop an appropriate education program before the 2019 State election and ensure that it is appropriately equipped to do so.

The ICAC should also participate in the education program envisaged in the Report. A number of the ICAC's principal functions are educative in nature.

³⁰⁵ Submission 2, Shooters, Fishers and Farmers Party, p 6; Submission 3, NSW Electoral Commission, p 45; Submission 4, Christian Democratic Party, p 11; Submission 5, NSW Labor, p 10; Submission 9, Local Government NSW, p 4.

³⁰⁶ Submission 3, NSW Electoral Commission, p 45.

³⁰⁷ Ms Alison Byrne, Director of Funding Disclosure and Compliance, NSW Electoral Commission, transcript of evidence, 30 October 2015, p 11.

³⁰⁸ Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 139.

Committee's evidence

- 9.54 Inquiry participants who address this recommendation agree with it or agree with it in principle.³⁰⁹
- 9.55 In particular, Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, states that he would like to see a lot more educational output from the NSW Electoral Commission. He suggests that when there are changes to practices and procedures, it would be helpful if the Commission told parties about those changes promptly and held an open forum to discuss those in more detail.³¹⁰
- 9.56 The NSW Electoral Commission notes that its newly restructured Funding, Disclosure and Compliance Branch includes a team to provide stakeholder education.³¹¹

Committee comment

- 9.57 Throughout this inquiry, the Committee has heard about the complexities of the legislative framework which underpins the obligations on candidates, Members, political parties, third-party campaigners and other stakeholders. In light of this, the Committee is very supportive of the NSW Electoral Commission delivering relevant education to assist stakeholders with their obligations.
- 9.58 The Committee supports the Panel's forty-ninth recommendation and the Government's Response in principle.

EDUCATION BY NSW PARLIAMENT

- 9.59 The Panel's fiftieth recommendation was:
- That:
- a) Members of Parliament be required to attend a mandatory induction and continuing education program delivered by the NSW Parliament, with non-participation to result in the following penalties:
 - i) failure to attend annual seminar – withhold a portion of a party's administration funding (for an endorsed Member) and/or some part of a Member's entitlements; and
 - ii) failure to complete the online education module on ethics – withhold a Member's first salary payment pending completion.
 - b) the Premier refer this recommendation to the Parliamentary Remuneration Tribunal for a special determination.
- 9.60 The Panel heard that parliamentary training has not been taken as seriously as it should by some Members of Parliament. The joint response to the Panel from the

³⁰⁹ Submission 2, Shooters, Fishers and Farmers Party, p 7; Submission 4, Christian Democratic Party, p 11; Submission 5, NSW Labor, p 10; Submission 3, NSW Electoral Commission, p 45; Submission 9, Local Government NSW, p 4.

³¹⁰ Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, transcript of evidence, 30 October 2015, p 42.

³¹¹ Submission 3, NSW Electoral Commission, p 45.

Clerks of the Legislative Assembly and the Legislative Council noted that many professions, such as the legal profession, are required to undertake mandatory continuing education.

- 9.61 The Clerks suggested to the Panel that a ‘point of leverage’ to require attendance would be to make full payment of some part of a Member’s entitlements contingent on the Member participating in continuing annual education.³¹²

Government’s Response

- 9.62 The Government accepted the Panel’s recommendation in principle and will consider the best way to implement educational programs and penalties for non-attendance.

Committee’s evidence

- 9.63 Stakeholders who address this recommendation generally support it or agree with it in principle.³¹³

- 9.64 The NSW Electoral Commission, in supporting this recommendation, says it will work with the NSW Parliament to align this recommendation with the Commission’s education function.³¹⁴

- 9.65 The NSW Nationals support this recommendation in principle, although, they suggest an alternative to withdrawing a portion of a party’s administration funding for failing to attend a seminar:

A more effective means, also recommended by the Expert Panel would be to withdraw a portion of their Member entitlements; alternatively that Member of Parliament could have a portion of their pay withheld.³¹⁵

Committee comment

- 9.66 The Committee is of the view that parliamentary training is very important and Members of Parliament should take this training seriously. The Committee agrees with the Panel and stakeholders that it is appropriate to introduce penalties for failure to attend relevant parliamentary training.

- 9.67 The Committee supports the Panel’s fiftieth recommendation and the Government’s Response in principle.

³¹² Panel of Experts, *Political Donations Final Report Volume 1*, December 2014, p 140.

³¹³ Submission 2, Shooters, Fishers and Farmers Party, p 7; Submission 4, Christian Democratic Party, p 11; Submission 5, NSW Labor, p 10; Submission 3, NSW Electoral Commission, p 46; Submission 9, Local Government NSW, p 4.

³¹⁴ Submission 3, NSW Electoral Commission, p 46.

³¹⁵ Submission 7, NSW Nationals, p 15.

Appendix One – Panel's Terms of Reference

The Government supports improvements to political transparency and accountability that are in the long term interests of the State. Accordingly, it wishes to investigate the potential for further reforms to election funding laws.

For these purposes, the Government has appointed a Panel of experts to consider and report to the Premier by 31 December 2014 (the Report) on options for long term reform of political donations, including:

- 1 Whether or not it is feasible and in the public interest given all considerations (including legal, constitutional and others), to provide full public funding of State election campaigns.
- 2 What is the appropriate level to cap the expenditure on State election campaigns and what methodology should be utilised to determine that cap?
- 3 If full public funding of State election campaigns is to be provided:
 - (a) what measures can be put in place to ensure the integrity of public funding;
 - (b) what is the appropriate regulation of third-party campaigners (such as peak bodies, companies or industrial organisations) to run political campaigns and the impact of full public funding on them;
 - (c) what is the impact on minor parties and independent candidates; and
 - (d) what is the level of public funding that would be required?
- 4 If full public funding of State election campaigns is not to be provided, what models are recommended, taking into account issues including:
 - (a) what is the appropriate level of caps on political donations;
 - (b) what measures can be put in place to ensure that any caps are effective;
 - (c) what is the appropriate regulation of third-party campaigners (such as peak bodies, companies or industrial organisations) to run political campaigns and the impact of any proposed models on them;
 - (d) what is the impact on minor parties and independent candidates; and
 - (e) what is the level of public funding that would be required?
- 5 In considering all reform options, the Panel should consider:
 - (a) what controls should apply to the making of donations, such as
 - i whether or not particular entities or groups of donors should be excluded;

- ii whether prior approval of a majority of members of a corporate entity or other organisation is required;
 - iii Any limitations or restrictions on such political donations; and
- (b) the appropriate frequency and timing of disclosure obligations under election funding laws.
- 6 Whether the penalties for contravening provisions in the *Election Funding and Disclosures Act 1981* are commensurate with the nature of the offence. This should include advice on penalties that could apply to donors, intermediaries or recipients of unlawful donations.
- 7 Any amendments to legislation to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of artificial structures or other means.
- 8 Any other matters relevant to political donations.

In proposing options for reform in its report, the Panel of experts is to have regard to:

- (a) international practices, and their applicability to a Westminster system;
- (b) the compatibility of any proposed changes with democratic principles;
- (c) the potential for any proposed changes to improve the accountability, integrity and quality of government;
- (d) any risks or negative consequences of any proposed changes for the accountability, integrity and quality of government; and
- (e) constitutional constraints, including those identified by the High Court in *Unions v State of New South Wales* [2013] HCA 58.

The panel is ultimately to consider the best way to remove any corrosive influence of donations in New South Wales.

Appendix Two – List of Submissions

1	Public Service Association of NSW
2	Shooters, Fishers and Farmers Party
3	NSW Electoral Commission
4	Christian Democratic Party
5	NSW Labor
6	Unions NSW
7	NSW Nationals
8	Dr Anne Twomey, Professor of Constitutional Law, The University of Sydney
9	Local Government NSW

Appendix Three – List of Witnesses

FRIDAY, 30 OCTOBER 2015 - WARATAH ROOM, NSW PARLIAMENT

Witness	Organisation
Mr Colin Barry NSW Electoral Commissioner	NSW Electoral Commission
Ms Alison Byrne Director, Funding Disclosure and Compliance	NSW Electoral Commission
Mr Geoff Ash Registered Officer	The Greens
Mr Chris Maltby Deputy Registered Officer	The Greens
Ms Kaila Murnain Assistant General Secretary	NSW Labor
Mr Tony Nutt State Director	Liberal Party of Australia, NSW Division
Dr Anne Twomey Professor of Constitutional Law	The University of Sydney
Mr Filip Despotoski State Director	Shooters, Fishers and Farmers Party
Mr Grant Layland Treasurer	Shooters, Fishers and Farmers Party
Rev the Hon Fred Nile MLC	The Christian Democratic Party
The Hon Paul Green MLC	The Christian Democratic Party
Mr Greg Bondar State Manager	The Christian Democratic Party
Mr Ian Smith Treasurer/Party Agent	The Christian Democratic Party
Mr Mark Lennon Secretary	Unions NSW
Mr Mark Morey Assistant Secretary	Unions NSW
Mr Nathan Quigley State Director	NSW Nationals
Mr Thomas Aubert Deputy State Director	NSW Nationals

Appendix Four – Extracts from Minutes

MINUTES OF MEETING No 4

8:32am, Thursday, 17 September 2015

Waratah Room

Members Present

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Ms Anna Watson MP.

Officers in Attendance: Jason Arditi, Vedrana Trisic, Jessica Falvey and Derya Sekmen

1. Apologies

Mr. Mark Taylor, MP

2. Minutes of Meeting No. 2 and No. 3

Resolved, on the motion of Mr. Phelps seconded by Mr. Crouch, that the minutes of meeting No. 2, held on 25 June 2015, and the minutes of meeting No. 3, held on 27 August 2015, be confirmed.

4. The Premier's referral to conduct an inquiry into the Final Report of the Expert Panel - Political Donations and the Government's response

4.1. Consideration of the Premier's referral

Resolved, on the motion of Mr. Crouch seconded by Mr. Borsak, that the:

- Committee adopts the terms of reference for an inquiry into the Final Report of the Expert Panel – Political Donations and the Government's response to it, as set out in the letter from the Premier's, dated 20 July 2015;
- Committee publishes a report on the inquiry by the end of the Spring Parliamentary Session; and
- Chair writes to the Premier advising him of the Committee's resolutions.

The Hon Ms. Houssos joined the meeting at 8.37am.

4.2. Call for submissions

Resolved, on the motion of Ms. Watson seconded by Mr. Phelps, that the Committee advertises the inquiry on the Committee's website by cob 17 September 2015 and that the closing date for submissions be 16 October 2016.

Mr. Jason Arditi joined the meeting at 8.41am.

4.3. Proposed list of stakeholders to be invited to make a submission

Resolved, on the motion of Mr. Crouch seconded by Mr. Primrose, that the stakeholders as per the list circulated, be informed of the inquiry and be invited to make a submission.

4.4. Brief on Final Report of the Expert Panel- Political Donations Report

Resolved, on the motion of Mr. Phelps seconded by Mr. Primrose, that the Committee notes the contents of the brief in its examination of the *Final Report of the Expert Panel – Political Donations* and the Government's response.

The Committee adjourned at 8:46 am sine die.

MINUTES OF MEETING No 5

8:29am, Wednesday, 21 October 2015
Room 1254

Members Present

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Ms Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC and Mr Mark Taylor MP.

Officers in Attendance: Jason Arditi, Vedrana Trisic, Jessica Falvey and Derya Sekmen

1. Apologies

Ms Anna Watson, MP

2. Minutes of Meeting No.4

Resolved, on the motion of Mr. Franklin, seconded by Mr. Borsak, that the minutes of meeting No. 4, held on 17 September 2015, be confirmed.

3. Inquiry into the Political Donations Final Report and the Government's Response:

3.1. Considerations of submissions

Resolved, on the motion of Mr. Borsak seconded by Ms. Pavey:

- That the Committee receives and authorises the publication-in-full (with signatures and direct contact details redacted) of the submissions numbered 1-3 and 5-9.
- That the Committee receives and authorises the partial publication (with signatures and direct contact details redacted and Attachment A suppressed) of submission numbered 4.
- That in preparing submissions for publication, material in any published submission be redacted which identifies or tends to identify any third party either by name; address; business name, type or location; includes any photographs; defames or potentially defames any individual third party through a description of their business or activity; or may expose any submission maker to unwanted attention.

3.2. Public hearing- identifying additional witnesses

Resolved, on the motion of Mr. Phelps seconded by Ms. Pavey, that the Committee invites Professor Anne Twomey as an additional witness to its public hearing on 30th October 2015.

3.3. Correspondence

The Committee noted the correspondence to and from the Committee:

- Letter to The Hon. Mike Baird MP, Premier and Minister for Western Sydney advising him of the Committee's resolution to accept the terms of reference for the Inquiry into the Political Donations Final Report and the Government's Response - 17 September 2015.
- Letter from Mr Tony Nutt, State Director, Liberal Party of Australia (NSW Division) in relation to the Inquiry into Political Donations Final Report and the Government's Response – 16 October 2015.
- Email from Mr Geoff Ash, Registered Officer, The Greens (NSW) in relation to the Inquiry into Political Donations Final Report and the Government's Response - 16 October 2015.

The Committee adjourned at 8:36 am until 8:45 am on 30 October 2015.

MINUTES OF MEETING No 6

8:45am, Friday, 30 October 2015

Waratah Room

Members Present

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Dr Peter Phelps MLC, The Hon Peter Primrose MLC, Mr Mark Taylor MP and Ms Anna Watson MP

Officers in Attendance: Mr Jason Arditi, Ms Vedrana Trisic, Ms Jessica Falvey and Ms Derya Sekmen

1. No apologies

2. Minutes of Meeting No. 5

Resolved, on the motion of Mr. Crouch, that the minutes of meeting No. 5, held on 21 October 2015, be confirmed.

3. Public hearing on the Inquiry into the Political Donations Final Report and the Government's Response – 30 October 2015

Media

Resolved, on the motion of Ms. Houssos, seconded by Mr. Taylor: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 30 October 2015 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

Transcript of evidence

Resolved, on the motion of Mr. Taylor: That the corrected transcript of evidence given on 30 October 2015 be authorised for publication and uploaded on the Committee's website.

Answers to questions on notice

Resolved, on the motion of Mr. Franklin, seconded by Mr. Crouch: That the witnesses be requested to return answers to questions taken on notice within two business days of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.

Resolution in relation to documents tendered during the public hearing

Resolved, on the motion of Dr. Phelps seconded, by Mr. Taylor: That documents tendered during the public hearing be accepted by the Committee and published on the Committee's website.

The Committee adjourned at 8:49 am.

At 9:55am, the Chair declared the public hearing open and witnesses and the public were admitted.

NSW Electoral Commission

Mr Colin Barry, NSW Electoral Commissioner, NSW Electoral Commission was affirmed and examined.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
EXTRACTS FROM MINUTES

Ms Alison Byrne, Manager, Director, Funding Disclosure and Compliance, NSW Electoral Commission was affirmed and examined.

The Greens

Mr Geoff Ash, Registered Officer, The Greens was affirmed and examined.

Mr Chris Maltby, Deputy Registered Officer, The Greens was affirmed and examined.

NSW Labor

Ms Kaila Murnain, Assistant General Secretary, NSW Labor was affirmed and examined.

Liberal Party of Australia, NSW Division

Mr Tony Nutt, State Director, Liberal Party of Australia, NSW Division was sworn and examined.

The University of Sydney

Dr Anne Twomey, Professor of Constitutional Law, The University of Sydney was sworn and examined.

Shooters, Fishers and Farmers Party

Mr Filip Despotoski, State Director, Shooters, Fishers and Farmers Party was sworn and examined.

Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party was sworn and examined.

The Christian Democratic Party

Mr Ian Smith, Treasurer, The Christian Democratic Party was sworn and examined.

Rev The Hon Fred Nile MLC, The Christian Democratic Party was sworn and examined.

The Hon Paul Green MLC, The Christian Democratic Party was sworn and examined.

Mr Greg Bondar, State Manager, The Christian Democratic Party was sworn and examined.

Unions NSW

Mr Mark Lennon, Secretary, Unions NSW was sworn and examined.

Mr Mark Morey, Assistant Secretary, Unions NSW was affirmed and examined.

NSW Nationals

Mr Nathan Quigley, State Director, NSW Nationals was affirmed and examined.

Mr Thomas Aubert, Deputy State Director, NSW Nationals was affirmed and examined.

Evidence concluded, the witnesses and public withdrew.

The Committee adjourned at 3:33 pm until next meeting, at a date to be confirmed.

MINUTES OF MEETING No 7

1:11 pm, Wednesday, 1 June 2016

Parkes Room

Members present

Mr. Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr. Adam Crouch MP, Mrs. Melinda Pavey MP, The Hon Dr. Peter Phelps MLC, The Hon Peter Primrose MLC.

Officers in attendance: Ms. Vedrana Trisic, Ms. Jessica Falvey and Ms. Derya Sekmen.

1. Apologies

The Hon Ben Franklin MLC, The Hon. Courtney Houssos MLC, Mr. Mark Taylor MP and Ms. Anna Watson MP.

2. Minutes of Meeting No. 6

Resolved, on the motion of Mr. Crouch and seconded by Mrs. Pavey that the minutes of meeting no. 6, held on 30 October 2015 be confirmed.

3. Inquiry into the Political Donations Final Report and the Government's Response

3.1 Consideration of the supplementary submission from the NSW Electoral Commission

Resolved, on the motion of Mrs. Pavey and seconded by Mr. Primrose that the Committee receives and authorises the publication-in-full (with signatures and direct contact details redacted) of the supplementary submission from the NSW Electoral Commission dated 27 April 2016.

...

7 General business

7.1 The Chair provided an update on the progress of the draft report for the *Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response*.

The Committee adjourned at 1:14 pm until 8:45 am on Wednesday, 22 June 2016, Room 1043.

UNCONFIRMED MINUTES OF MEETING No 8

8:55 am, Wednesday 22 June 2016

Room 1043, Parliament House

Members Present

Mr Jai Rowell MP (Chair), The Hon Robert Borsak MLC (Deputy Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, The Hon Courtney Houssos MLC, Mrs Melinda Pavey MP, The Hon Peter Primrose MLC and Ms Anna Watson MP

Officers in Attendance: Mr Jason Arditi, Ms Jessica Falvey and Ms Derya Sekmen

8 Apologies

Mr Mark Taylor MP, The Hon Dr Peter Phelps MLC

3. Minutes of Meeting No. 7

Resolved, on the motion of Mr Crouch, seconded by Mr Franklin, that the minutes of meeting No.7, held on 1 June 2016, be confirmed.

4. Inquiry into the Political Donations Final Report and the Government's Response: Consideration of the Chair's Draft Report

Resolved, on the motion of Mr Borsak, seconded by Mr Crouch, that the Committee considers the Chair's draft report chapter by chapter.

The Committee proceeded to consider the Chair's draft report chapter by chapter.

Chapter one proposed

Resolved, on the motion of Mr Franklin, that chapter one be adopted. Motion agreed to.

Chapter two proposed

Resolved, on the motion of Mr Franklin, that chapter two be adopted. Motion agreed to.

Chapter three proposed

Ms Houssos moved, seconded by Mr Primrose, that recommendation 3(b) be amended by inserting the words 'and expenditure' after the word 'donations'.

Discussion ensued. Question put and passed.

Resolved, on the motion of Ms Watson, that chapter three, as amended, be adopted. Motion agreed to.

Chapter four proposed

Mr Franklin moved, seconded by Mr Primrose, that paragraph 4.3 be amended by inserting the

words 'This additional \$100,000 cap is subject to a \$50,000 sub-cap in each electorate so each party's cap in individual seats is \$150,000' after the sentence which ends 'per seat for each endorsed candidate'.

Discussion ensued. Question put and passed.

Resolved, on the motion of Mr Borsak, seconded by Mr Crouch, that chapter four, as amended, be adopted. Motion agreed to.

Chapter five proposed

Mr Franklin moved, seconded by Mr Crouch, that recommendation 5 be amended by inserting the words 'and 14b' after the words 'recommendation 14a'.

Discussions ensued. Question put and passed.

Mr Franklin moved that paragraph 5.75 be amended by omitting the word 'Administrative' and inserting instead the word 'Administration'.

Discussion ensued. Question put and passed.

Mr Franklin moved that paragraph 5.77 be amended by omitting the word 'Administrative' and inserting instead the word 'Administration'.

Discussion ensued. Question put and passed.

Resolved, on the motion of Mrs Pavey, that chapter five, as amended, be adopted. Motion agreed to.

Chapter six proposed

Resolved, on the motion of Mr Franklin, that chapter six be adopted. Motion agreed to.

Chapter seven proposed

Ms Houssos moved several amendments to chapter seven, which are set out below and which were considered by the Committee in globo.

Ms Houssos moved that the following words be omitted from paragraph 7.34:

'However, the Committee agrees with the Panel's reasoning that recommendation 32(c), if implemented, would prevent third-party campaigners with common interests from combining their expenditure caps and then overwhelming the expenditure of parties, candidates and other third-party campaigners acting alone.'

Ms Houssos moved that paragraph 7.35 be amended by omitting the words 'The Committee supports the Panel's thirty-second recommendation and the Government's Response in principle' and inserting instead the following words:

'The Committee does not support section (c) of the Panel's thirty-second recommendation due to significant concerns around freedom of political expression. The Committee agrees with evidence given to it by the Public Service Association of NSW which called into question the constitutionality of, in effect, preventing third-party campaigners from acting in concert with each other.'

Ms Houssos moved that the following new paragraph be inserted after proposed paragraph 7.35:

'In forming this view, the Committee has taken into account the evidence of Mr Mark Morey from Unions NSW who submitted that often, the most effective way for smaller organisations to engage with the political process and have their voices heard, was to work collaboratively with each other.'

Ms Houssos moved that a new recommendation be inserted after the proposed new paragraph 7.36:

Recommendation 8: The Committee recommends that the Government does not adopt Recommendation 32(c) of the Expert Panel's Report.

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Houssos, Mr Primrose and Ms Watson.

Noes: Mr Borsak, Mr Crouch, Mr Franklin, Mrs Pavey and Mr Rowell.

Question resolved in the negative.

Resolved, on the motion of Mrs Pavey, that chapter seven be adopted. Motion agreed to.

Chapter eight proposed

Mr Franklin moved, seconded by Mr Crouch, that paragraph 8.62 be amended by omitting the word 'that' after the words 'The Panel expressed the view.'

Discussion ensued. Question put and passed.

Resolved, on the motion of Mrs Pavey, that chapter eight, as amended, be adopted. Motion agreed to.

Chapter nine proposed

Resolved, on the motion of Mr Franklin, that chapter nine be adopted. Motion agreed to.

Resolved, on the motion of Mrs Pavey, seconded by Mr Crouch:

- That the Committee adopts the draft report, as amended, and signed by the Chair for presentation to the House, and authorises the Secretariat to make appropriate final editing and stylistic changes as required.
- That, once tabled, the report be published on the Committee's webpage.
- That the Chair issues a press release announcing the tabling of the Committee's report, for dissemination by the Committee's Secretariat.

Motion agreed to.

The Committee adjourned at 9:09 am until Friday, 5 August 2016.