

**Submission
No 20a**

INQUIRY INTO THE 2015 NSW STATE ELECTION

Organisation: NSW Electoral Commission

Date Received: 1/09/2015

Mr Jai Rowell MP
Chair
Joint Standing Committee on Electoral Matters
Parliament House
Macquarie Street
SYDNEY NSW 2000

27 April 2016

Dear Mr Rowell

Inquiry into the Final Report of the Expert Panel – Political Donations and the Government’s Response

I refer to the above Inquiry and seek the Committee’s approval to make a brief submission supplementary to that made by the NSW Electoral Commission on 16 October 2015.

One of the key drivers for the establishment of the Expert Panel - and therefore the current Inquiry - was evidence presented to the Independent Commission Against Corruption in Operation Spicer to the effect that:

- donations were accepted from banned donors;
- some of these were made in breach of the applicable caps;
- false invoices were created to hide donations; and
- schemes were devised to ‘wash’ illegal donations through the federal branch of the Liberal Party and channel them back into New South Wales.

The Expert Panel concluded that the systemic failures in terms of enforcing the *Election Funding, Expenditure and Disclosures Act 1981* (the EFED Act) could be partly attributed to barriers to effective regulation by the NSWEC (previously the Election Funding Authority). It therefore recommended that the NSWEC have available to it a range of enforcement options, including the power to withhold public funding: see *Recommendation 46*.

As you are no doubt aware, the NSWEC has recently had cause to withhold funding from the Liberal Party of Australia (NSW Division) until such time as the party has disclosed all reportable political donations, including the names and other required information about donors, pursuant to the requirements of the EFED Act. The relevant documentation published by the NSWEC is available here: <http://www.elections.nsw.gov.au/about-us/work-of-the-commission/statements-issued-by-the-chair-of-the-commission>

Accordingly, while this matter is not yet concluded, I would suggest that the Report of this Inquiry would be incomplete if the Committee did not take into consideration the proactive use by the reconstituted NSWEC of its powers to withhold funding under s 70(1) and s 97L(1) of the EFED Act, with reference to the documents available at the above link to the NSWEC website.

I would also like to take this opportunity to stress two key reform proposals of the Expert Panel which I consider will best allow the NSWEC to achieve the effective regulation of campaign finance in NSW, and the transparency required for public confidence in that regulation.

Comprehensive review of the EFED Act

The NSWEC has consistently maintained that the most effective means of promoting the transparency of campaign finance in NSW is in fact that comprehensive review of the EFED Act proposed by the Expert Panel: see *Recommendation 1*. Examples of this position include the NSWEC's submission to the Committee's 2011 Review of the *Parliamentary Electorates and Elections Act 1912* and the EFED Act; and its submission to the Committee's current Inquiry, where it was noted as follows:

There is no doubt that should the implementation of the Expert Panel's recommendations be achieved by a further series of ad hoc amendments, the election campaign finances scheme will only become more incoherent and ineffective. Indeed, success will be dependent upon a comprehensive review of the EFED Act and PEE Act to ensure NSW has legislation which is contemporary, cohesive and comprehensible.

Accordingly, I once again stress the need for a thorough-going, holistic review of the EFED Act with reference to the lessons learnt from Operation Spicer of the potential for damage to the integrity of the campaign finance regime in NSW due to an unwieldy and outdated piece of legislation.

Online disclosures

The Expert Panel noted that "[t]imely and meaningful disclosure is the cornerstone of any effective campaign funding regime", and urged the NSWEC to replace its paper-based disclosure process with an on-line disclosure system as soon as possible: see *Recommendation 23*.

In its ensuing submission to this Inquiry, the NSWEC not only agreed with this Recommendation, but proposed a more far-reaching election funding, expenditure and disclosure management system which would not only increase the currency of available information, but allow stakeholders to manage most, if not all, contact with the NSWEC through that system.

I note that requests for the requisite funding to develop such a system have to date been unsuccessful. However, the NSWEC will again put to the Government a proposal for the funding needed to implement this recommendation of the Expert Panel, and I would suggest that any support for the implementation of this system in the Committee's Report would be invaluable.

Finally, I would ask that the Committee include this supplementary submission on its Parliamentary webpage; if you wish to do so, please also include the documents referred to above, or simply add the relevant link to the NSWEC website.

Yours sincerely



Linda Franklin
Acting Electoral Commissioner