

UPDATE TO STATEMENT OF 23 MARCH 2016

By Chairperson, NSW Electoral Commission

31 March 2016

RE: Liberal Party of Australia (NSW Division) ineligible for further public funding

1. The next meeting of the 3 member NSW Electoral Commission (“Commission”), is scheduled for 6 April 2016.

2. On 29 March 2016, the Commission received the NSW Liberal Party’s emailed letter (dated 24 March 2016) signed by the Liberal Party of Australia (NSW Division) State Director, Mr Chris Stone. Representatives of the NSWEC staff agency are to meet with the Party’s representatives on Friday 1 April to discuss the requirements for making a requisite declaration of disclosures for the 2011 disclosure period.

“The Commission welcomes the public statement of the new NSW Liberal Party’s State Director Mr Stone that the Party will comply with NSW’s election funding laws. The Commission expects the reportable political donations not yet disclosed in the Party’s 2011 declaration, will be disclosed promptly, which will allow a new decision about funding claims to be made,” said the Hon Keith Mason AC QC.

3. Once a declaration is received from the Party it will be reviewed as per standard procedure before being submitted for the Commission’s consideration as to whether a payment of funding is to be made.

4. The law stipulates what details must be included in a requisite declaration and how that declaration must be made. The appropriate forms to be completed are publicly available at elections.nsw.gov.au.

Prosecutions

5. The Commission is unable to prosecute any person in relation to breaches of disclosure laws during the relevant disclosure period ending 30 June 2011 that have come to light through the public hearings in Operation Spicer which commenced on 28 April 2014. This is because, at the relevant time, the time limit for prosecution of offences under the EFED Act was 3 years. In October 2014, the NSW Parliament passed an amendment to the EFED Act which increased the time limit for prosecutions to 10 years; however, this only applies to offences that were committed after 28 October 2014.

The 23 March 2016 decision by the Commission

6. The Commission's decision of 23 March 2016 is unchanged. This means the NSW Liberal Party needs to disclose all reportable political donations, including the names and other required information about donors under NSW election laws. These laws govern the disclosure of political donations and expenditure.

7. The Commission's decision of 23 March 2016 makes findings about the legal status of the Free Enterprise Foundation. These findings impact on what the NSW Liberal Party needs to disclose, as it is not enough to state the amounts the NSW Liberal Party received from the Foundation for State election purposes, but also details of the donors who donated the amounts of money to the Party via the Foundation. Depending on the amount these donors donated and if it was a donation through the Foundation for a NSW state electoral campaign, the individual donor is legally required to separately disclose their donation under NSW electoral laws [Section 88(2)].

8. Enquiries about disclosures required by the Free Enterprise Foundation for the period ending 30 June 2011 under NSW's election funding laws should be directed to the Foundation. The Commission received a submission from the Foundation which is part of the information released to the Commission's website on 23 March 2016.

Resignation of a Party Agent

9. On 30 March 2016 the Commission received a "Notification of Revocation/Resignation/Death of an Official Agent or Party Agent" from Mr Simon McInnes. Section 41 of the EFED Act is to be followed in the event there is a change of Party Agent. Under this Section, if the position of Party Agent is not filled due to resignation or death, the legally responsible person for the purposes of compliance with NSW election funding laws is the Registered Officer. Mr Tony Nutt is the Registered Officer.

Other matters

10. The Commission will post to its website the letter received from Arnold Bloch Leibler, legal representative for Mr Arthur Sinodinos AO dated 24 March 2016 and the Commission's letter in reply dated 31 March 2016.

11. Each time the Commission makes a final decision about claims for public funding at a meeting it will release a Statement to its website. Statements will be released irrespective of the amount of public funding being claimed.

"Keeping the public informed by releasing Statements to the website about public funding decisions made by the Commission and the legal basis for the decision is key to public confidence that NSW's electoral laws are complied with. Statements will be released irrespective of the amount of public money claimed", said the Hon Keith Mason AC QC.

31 March 2016