Joint Standing Committee on Electoral Matters
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Secretary

Premier of New South Wales
Australia

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TCO/21588 – LB

Mr Daryl Melham MP
Chairman
Joint Standing Committee on Electoral Matters
PO Box 6201
Parliament House
CANBERRA ACT 2600

By email: <jscem@aph.gov.au>

Dear Chairman

I refer to your letter of 20 March 2008 advising that the Joint Standing Committee on Electoral Matters (the "Committee") has commenced an inquiry into the conduct of the 2007 federal election. I welcome the opportunity to make a submission to the Committee.

I am particularly concerned about the high rate of informal voting which occurred in the recent federal election for the House of Representatives.

Based on statistics published by the Australian Electoral Commission, New South Wales has once again recorded the highest level of informal voting (i.e. 4.95 percent) of all State and Territories. This consistently high rate of informal voting is unacceptable and was raised by the NSW Government with the former Prime Minister following the 2004 federal election.

While the overall informal voting rate has decreased slightly since the 2004 federal election, the 15 electorates with the highest rates of informal voting are all located in New South Wales. Of the ten electorates to record a rise in informality rates, seven are located in New South Wales. In two electorates, Blaxland and Watson, nearly one in every ten votes did not count because they were classified as informal.

The NSW Government recognises that a number of factors impact upon the rate of informal voting in Commonwealth elections. A significant factor is the difference in voting arrangements between New South Wales, where preferential voting is optional, and the Commonwealth, where preferential voting is compulsory. This leads to voter confusion, resulting in a higher number of otherwise valid votes being classified as informal.

I encourage the Committee to consider the benefits of optional preferential voting in the interests of removing inconsistency between State and Federal voting

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arrangements. State and Federal education programs designed to improve voter understanding of the electoral process would no doubt be more effective if consistent voting arrangements applied across all jurisdictions.

On 12 March 2008, the Senate agreed that a number of additional matters relating to political donations, gifts and expenditure should be referred to the Committee for inquiry and report.

As you may be aware, on 28 February 2008 I announced proposals to reform donations disclosure laws in New South Wales. These proposals for reform were outlined by the NSW Government in a submission to the NSW Select Committee on Electoral and Political Party Funding in April 2008.

I enclose a copy of the NSW Government's submission. I trust that it will be of benefit to the Committee in preparing its report to Parliament

Yours sincerely

Morris Iemma MP

NEW SOUTH WALES GOVERNMENT

SUBMISSION TO THE SELECT COMMITTEE ON ELECTORAL AND POLITICAL PARTY FUNDING (THE "COMMITTEE")

INTRODUCTION

The Government welcomes the opportunity to make a submission to the Committee on the important issue of political funding in New South Wales.

The NSW Government recognises that the laws governing political donations must change. To this end, the Premier announced a package of reforms in his address to Parliament on 28 February 2008 (see **Annexure A**).

The aims of the proposed reforms can be summarised as follows:

- Increasing the amount of information that must be disclosed.
- Improving the quality of disclosure.
- Preventing the improper use of donations.
- Reducing the risk of undue influence and corruption.
- Improving transparency in NSW planning and approval processes.

The proposed reforms will improve transparency and accountability in relation to political donations and promote public confidence in the electoral system.

The following submission focuses on the Government's current proposals for reform, which are discussed in turn below.

1. INCREASING THE AMOUNT OF INFORMATION TO BE DISCLOSED

The Government firmly believes that voters have a right to know about the financial relationship between donors and elected representatives. Mandatory disclosure requirements therefore apply to parties and candidates who receive political donations under the *Election Funding Act 1981* (the *Election Funding Act*).

The disclosure regime under the *Election Funding Act* is based on the principle that the integrity of the electoral system can be preserved despite the presence of private contributions if the public is made aware of the sources of such contributions and of any possible influence.

Increasing the frequency of disclosure and reporting

Under the current disclosure rules, parties, groups and candidates are required to lodge declarations of political contributions every four years following a general election. [1] Donors must also disclose 'electoral expenditure', including donations made to parties and candidates, every four years following a general election.[2] Persons who do not comply with the disclosure requirements or deliberately withhold relevant information are guilty of an offence punishable by pecuniary penalties.[3]

The Government wants New South Wales to have the best system in the country. The Premier has therefore proposed a system of *biannual disclosure*, with full reports for the six months to June and December in each calendar year. The Commonwealth Government has also announced that it proposes to move to biannual disclosure at the federal level, consistent with the New South Wales approach.

Currently, the Election Funding Authority (*EFA*) is required to include details of "gifts" including political donations in its annual report to Parliament, and must make disclosure returns and associated records available for public inspection. Under the new arrangements, details of donations reported by parties, groups, candidates and donors will be published by the EFA on its website and updated twice every calendar year.

These changes to the disclosure regime are significant and will provide the community with more timely updates on donation activity.

Lowering the disclosure threshold

In 2005, the Howard Government amended the *Commonwealth Electoral Act 1918* to increase the federal disclosure threshold to 'more than $10,000'. This amount is indexed with effect from 1 July each year based on movements in the consumer price index. Currently, parties, groups and candidates are not obliged to disclose details of gifts and donations received unless they exceed $10,500.

In New South Wales, it is unlawful for a party, group or candidate to receive any political contribution that exceeds the 'applicable threshold' on an anonymous basis. The applicable thresholds are $200 for candidates, $1,000 for groups, and $1,500 for parties. The *Election Funding Act* also makes provision for the aggregation of contributions made by one body, person or organisation where the total amount of those contributions exceeds the applicable monetary thresholds.[4]

The NSW Government has pledged that, "If the Commonwealth Government adopts a disclosure limit below $1,500, the NSW Government will apply the same lower limit". [5] The Rudd Government has since announced that the federal disclosure threshold will be reduced from $10,500 to $1,000.

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[1] *Election Funding Act 1981*, section 87(1).
[2] *Election Funding Act 1981*, section 85A.
[3] *Election Funding Act 1981*, section 96.
[4] *Election Funding Act 1981*, section 87(5).
[5] New South Wales, *Parliamentary Debates*, Legislative Assembly, 28 February 2008, page 23.

Consistent with the Premier's announcement, a reduced monetary threshold of $1,000 will apply to parties in New South Wales.

The reduced disclosure threshold will make the details of a broader range of donations available for public scrutiny. This will ensure that electors have access to more information about donations when casting their vote.

2. IMPROVING THE QUALITY OF DISCLOSURE

The Government recognises that, in addition to improving the frequency and timeliness of disclosure, the *quality* of disclosure can also be improved. This will ensure that electors have access to more accurate and complete records of donation activity engaged in by parties and candidates.

To this end, the Government will:

- ban individual Members of Parliament (*MPs*), councillors and candidates from having personal campaign accounts;
- limit the involvement by MPs, councillors and candidates in the fundraising process, by ensuring all donations are organised, received, handled and administered by the central party office;
- recommend that the EFA, or another independent body, provide a similar service for independent MPs and councillors; and
- legislate to ensure that loans and other credit facilities provided to parties, MPs, councillors and candidates must be disclosed under the *Election Funding Act*.

Under the proposed changes, the current system of multiple individual disclosures will be replaced by a more centralised approach. Responsibility for private donations will be shifted to organisations with the expertise and resources to properly manage and account for them. Inaccuracies and non-compliance with reporting requirements will be reduced, thereby improving the integrity of the disclosure system. The proposed arrangements will also reduce the administrative burden on individual candidates.

Importantly, the new structure will also address, to some extent, public perceptions of bias by distancing individual politicians from the process of soliciting and accepting private donations, at least for those who are members of political parties.

In order to further strengthen the quality of disclosure, the *Election Funding Act* will be amended to clarify that the provision of loans and other credit facilities to parties, MPs, councillors and candidates are subject to the disclosure requirements under Part 6 of the *Election Funding Act*. This reform will remove any uncertainty in the existing provisions which may allow parties and candidates to avoid disclosure of loans. These changes are consistent with the Commonwealth approach.

The Government believes that the arrangements outlined above will promote more complete and accurate disclosure of political donations.

3. PREVENTING THE USE OF DONATIONS FOR PERSONAL GAIN

Individuals and organisations provide financial support to parties, groups and candidates for the purposes of assisting election campaigns.

The Government believes that donors are entitled to expect that any money donated by them will be used by the party, group or candidate primarily for the purposes of contesting an election and not for the personal private gain of a candidate. The current legislation is unclear on this point.

The Government therefore proposes to legislate to provide greater certainty that funds raised for campaign purposes are used exclusively for those purposes. This will remove any doubt about whether funds raised by parties and candidates will be used for personal or other non-election purposes.

4. REDUCING THE RISK OF UNDUE INFLUENCE AND CORRUPTION

Most countries, including Australia, Canada, the United Kingdom and the United States, rely to some extent on private donations as a source of funding for election campaigns. A high degree of transparency must attend the making of private donations in order to counter the risk of undue influence and corruption.

In New South Wales, elected representatives and public officials are subject to a number of controls which seek to minimise the risk of undue influence, including criminal law sanctions, codes of conduct, formal guidelines, and anti-corruption laws. These controls are outlined in more details at **Annexure B** and apply in addition to the disclosure requirements that are already in place under the *Election Funding Act*.

In order to further reduce the risk of private funding affecting the decisions of public officials, the Government proposes to ban the making of 'in kind' donations, including the provision of offices, cars and telephones to candidates.

A ban on the payment by third parties of campaign expenses incurred by candidates will also be introduced.

Finally, and as noted above, the Government will introduce measures to limit the involvement of MPs, councillors and candidates in the fundraising process.

These changes will promote a more 'arms length' approach to private funding by limiting the involvement of politicians in the process of soliciting and accepting donations.

5. SPECIFIC MEASURES TO PROMOTE INTEGRITY IN THE NSW PLANNING AND APPROVAL PROCESS

In September 2007, the Independent Commission Against Corruption (***ICAC***) released *Corruption risks in NSW development approval processes – Position Paper* (the ***ICAC Position Paper***) following a period of consultation with industry stakeholders. The ICAC Position Paper contains 24 corruption prevention recommendations, a

number of which specifically relate to political donations in the context of planning and approval processes.[6]

A number of the reforms announced by the Premier are specifically aimed at minimising corruption risks arising from the making of political donations in the planning context. These reforms include:

- Mandatory reporting of donations made by applicants for development approvals, with the details to be made public at the time of lodging the development application.
- New guidelines for councils to help address situations where there might be a perceived conflict of interest arising from donations, to be developed and implemented in consultation with the ICAC.
- Mandatory reporting by all councils on the voting history of individual councillors on development applications.

Each proposal is discussed in turn below.

Mandatory reporting of donations by developers

The Premier has announced that:

> [The Government] will seek a system of disclosure by applicants for development approvals by which they detail their donations at the time they lodge [their] development application. The Government agrees that disclosure should be publicly available as part of the development application.[7]

The *Environmental Planning and Assessment Regulation 2000* currently provides that development applications must be accompanied by detailed information about proposed developments. Under section 12(1) of the *Local Government Act 1993,* interested persons are "entitled to inspect the current version of... development applications... and associated documents... free of charge".

In relation to development applications lodged under Part 3A of the *Environmental Planning and Assessment Act 1979* where the Minister for Planning is the consent authority, section 75E(2) provides that the development application must describe the project, and contain any other matter required by the Director General.

Under the new arrangements, information about political contributions made by the proponents of developments will be required to accompany all development applications. This information will include the amount and recipient of political donations made by the applicant and the property developer (where that developer is not also the applicant) in a designated period before the development application is lodged.

New 'conflict of interest' guidelines for councils

Consistent with Recommendation 20 of the ICAC Position Paper, the Premier has announced that:

[6] See Chapter 11 – 'Political Donations', page 70.

[7] New South Wales, *Parliamentary Debates*, Legislative Assembly, 28 February 2008, page 23.

> The Government will also make clearer the requirements for councillors to deal with these situations where a perceived conflict of interest might arise from donations. That will be done in consultation with the Independent Commission Against Corruption.[8]

Currently, clause 6.15 of the Model Code provides that "Councillors should note that matters before council involving campaign donors may give rise to a non-pecuniary conflict of interests". More detailed guidance on non-pecuniary conflicts of interest is contained in the *Guidelines for the Model Code*, which are non-binding.

Under the proposed reforms, the current provisions of the Model Code will be expanded to incorporate more detailed guidance for councillors in relation to political donations. Using the Guidelines as a reference, the Model Code will be amended to include clear instructions for councillors on the circumstances in which political donations will give rise to non-pecuniary conflicts of interest, and how such conflicts should be managed. The necessary amendments will be formulated in consultation with the ICAC.

Mandatory reporting of voting histories

Currently, under Part 10 of the *Local Government (General) Regulation 2005* the general manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the council's minutes when a division on a motion is demanded. Otherwise, councils are not obliged to record the voting patterns of individual councillors.

A system which requires local councils to document the individual voting decisions of councillors on planning matters would reinforce public confidence in Local Government decisions, discourage factional or block voting, and ensure that rate payers know how their representatives are performing on key issues.

Under the new arrangements, the votes of each councillor will be recorded and made public.

CONCLUSION

The NSW Government is committed to maintaining a fair and transparent electoral system. The reforms outlined above are the first step.

In its discussion paper, the Committee identifies a number of other possible areas for reform including bans, caps and other restrictions on private political funding. These options raise broader questions about the role that private funding should play, if any, in our electoral system.

The NSW Government considers that there is considerable merit in the option of a ban on private donations along with increased public funding of elections. The Government therefore welcomes further discussion and debate about the advantages and disadvantages of this approach.

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[8] New South Wales, *Parliamentary Debates*, Legislative Assembly, 28 February 2008, page 24.

disease and fitting in medical visits and treatment, he battled through. I am pleased to advise that this year he is studying a Bachelor of Engineering and a Bachelor of Business at the University of Technology, Sydney. I am sure that the House will want to acknowledge the outstanding achievements of Samantha and Andrei.

Mr ANDREW STONER (Oxley—Leader of The Nationals) [2.19 p.m.]: On behalf of the Opposition I am pleased to join the Government in congratulating this year's recipients of the Brother John Taylor award. These young people, Samantha Dickson, formerly of Bega High School, and Andrei Gudas, formerly of Sydney Technical High School, have made enormous achievements despite very considerable personal difficulties. In so doing they have inspired not only fellow members of their generation but also the wider society. Their achievements send a very strong message to us all about the importance of education and the opportunities that education provides to us all, regardless of circumstance or background. I am sure that Samantha and Andrei, despite the significant obstacles they faced and perhaps will continue to face, have very bright futures ahead of them. I wish them the very best in the future—in their studies and in their careers. They are indeed an inspiration to us all.

QUESTION TIME

MINISTER FOR PLANNING AND DEVELOPER POLITICAL PARTY DONATIONS

Mr BARRY O'FARRELL: My question is directed to the Premier. With yet another developer getting the nod from the Minister for Planning after thousands of dollars were donated to Labor, why has the Premier failed to implement the Independent Commission Against Corruption's six-month-old recommendations that development applications lodged by political donors with the Minister for Planing should be subject to a commission or inquiry, expert report or other arm's length safeguards? Is the Premier under orders from Sussex Street fundraisers?

Mr MORRIS IEMMA: That is a bit rich, Barry, coming from a former State director of the Liberal Party whose main responsibility was raising funds.

Mr Barry O'Farrell: Point of order—

The SPEAKER: Order! The Premier has barely started his answer.

Mr Barry O'Farrell: Point of clarification: We do not run our party—

The SPEAKER: Order! The Leader of the Opposition will resume his seat. The Premier has the call.

Mr MORRIS IEMMA: As with an ever-increasing number of issues, the Leader of the Opposition, firstly, has got it wrong. Secondly, the Minister for Local Government in his address to the Local Government and Shires Associations in fact outlined that the Government was considering these measures and was providing a response.

The SPEAKER: Order! The Leader of the Opposition will cease interjecting.

Mr MORRIS IEMMA: In the reforms that are in draft by the Minister for Planning he in fact picks up—

[Interruption]

The SPEAKER: Order! The behaviour of the Leader of the Opposition is grossly disorderly. I ask the Leader of the Opposition to resume his seat.

CAMPAIGN FINANCE LAWS

Dr ANDREW McDONALD: My question is to the Premier. What direction will the Government take to improve campaign finance laws in New South Wales?

Mr MORRIS IEMMA: In relation to the previous question, the establishment of an assessment commission is consistent with what the ICAC said and, secondly, independent panels. The Leader of the

Opposition might read the draft reforms that the Minister has released. As I said last week, donations laws need to change, and for the better. We will make that happen. The Government does support the upper House inquiry into donation reform and the Australian Labor Party has already made a submission. The Government has been doing further work on this issue. I am pleased to inform the House of the work that has been going on to ensure that reform takes place, contrary to what the Leader of the Opposition just said. We will ensure that the reforms work—that there is reform, not just change. These will be a carefully considered series of measures to improve the donations laws and accountability and transparency—

The SPEAKER: Order! The member for Willoughby will cease interjecting.

Mr MORRIS IEMMA: The member should worry about the Greiner fundraiser that she is busy organising for Friday.

The SPEAKER: Order! The House will come to order.

Mr MORRIS IEMMA: What is it—$10,000 a table? Is the member on the organising committee?

The SPEAKER: Order! I call the member for Willoughby to order.

Mr MORRIS IEMMA: The first of the measures, requiring disclosure on a more regular basis rather than the current system of every four years, will make our system more transparent. Annual disclosure would be equal to best practice in Australia.

The SPEAKER: Order! The members for Bathurst and Coffs Harbour will cease interjecting.

Mr MORRIS IEMMA: The first measure is to change the disclosure system for this State from every four years to an annual basis. We will go further. In the interests of having the best system in the country, New South Wales will move to a system of twice-yearly disclosures with full reports in June and December. The Government has also given consideration to the issue of lowering the level of disclosure. The level of disclosure in New South Wales is currently $1,500 for donations to State members of Parliament or candidates and $200 for council members. That figure is consistent with other Australian jurisdictions and far stricter than the $10,500 donation limit that John Howard introduced federally. But rather than undertake unilateral change, the New South Wales Government will give a commitment that if the Commonwealth Government adopts a disclosure limit below $1,500, the New South Wales Government will apply the same lower limit. ICAC has made a number of recommendations—

[*Interruption*]

The member can say that, but we are going from four-yearly disclosure to twice-yearly disclosure. ICAC has made a number of recommendations regarding the potential for conflict of interest between development applications and donations. My Ministers for Planning and Local Government, as I just outlined to the Leader of the Opposition, have been reporting on these issues—the Minister for Local Government reported to the Local Government and Shires Associations. As a result, we will seek a system of disclosure by applicants for development approvals by which they detail their donations at the time they lodge that development application. The Government agrees that disclosure should be publicly available as part of the development application.

The Government will also make clearer the requirements for councillors to deal with these situations where a perceived conflict of interest might arise from donations. That will be done in consultation with the Independent Commission Against Corruption. Another proposal I want considered is mandating that all councils record the voting history of individual councillors on development matters. The Minister for Planning is already proposing changes to the Environmental Planning and Assessment Act to enable him to delegate his decision-making powers, and ICAC's recommendations are being considered in this current planning reform process.

The Government will formalise these recommendations and proposals and put them before the upper House inquiry. I will also be proposing measures that result in all fund-raising efforts for members of Parliament, councillors and candidates being handled through their relevant central party office—that is, members from each side will not be permitted to organise or collect donations or hold their own campaign accounts. Instead they will refer all contributions to their party headquarters, the registered agents under the

ANNEXURE B

In order to maintain public confidence in the integrity of the electoral process, stringent disclosure requirements apply to candidates, groups and political parties who receive political contributions under the *Election Funding Act.*

The disclosure requirements under the *Election Funding Act* are part of a broader framework of laws, codes of conduct and guidelines which are designed to protect Government and statutory decision-making from being influenced by improper considerations, including political donations.

Common law and Criminal Law Offences

Corruptly receiving a gift or benefit is an offence at both the common law and under New South Wales criminal law. These laws apply to political contributions which are made specifically in exchange for a Member taking particular action to favour a person or group.

The common law offence of bribery is defined as receiving or offering any undue reward by, or to, any person in public office in order to influence his or her behaviour in that office, and to incline that person to act contrary to the known rules of honesty and integrity.[9]

The *Crimes Act 1900* includes wide-ranging offences in relation to the provision of corrupt commissions or rewards. These include:

- corruptly agreeing to receive or solicit any benefit for doing something (or not doing something), or showing (or not showing) favour or disfavour to any person in the exercise of official duties; and
- corruptly receiving or soliciting any benefit to do something (or to not do something), or show (or not show) favour or disfavour to any person in the exercise of official duties.[10]

The maximum penalty for a conviction under section 249 of the *Crimes Act 1900* is seven years imprisonment. Section 249J of the *Crimes Act 1900* also provides that custom is not a defence to the receiving, soliciting, giving or offering of any benefit.

Section 13A of the *Constitution Act 1902* provides for the disqualification of any Member of Parliament who is convicted of an 'infamous crime' or an offence punishable by a term of 5 years or more. While the precise definition of 'infamous crime' is still uncertain, it is likely that bribery of a Member of Parliament would fall within this category.[11]

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[9] *R v Glynn* (1994) 71 A Crim R 537, 541-42.

[10] *Crimes Act 1900*, section 249B. See also ICAC, *Bribery, Corrupt Commissions and Rewards – Tip Sheet for NSW Public Officials*, February 2008, page 1.

[11] Twomey, Anne, 'The Constitution of New South Wales', The Federation Press, 2004, page 428.

Codes of Conduct and Guidelines

Code of Conduct for Members of Parliament

In recognition of their special responsibilities as public officials, Members of the Legislative Assembly and the Legislative Council reached agreement on a *Code of Conduct for Members of Parliament* (the "Members' Code") in 1998.[12] The Members' Code applies to Ministers of the Crown in their capacity as Members of Parliament.

The Preamble to the Members' Code states that:

> *Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.*

Clause 2 of the Members' Code contains a prohibition against bribery. Specifically, it provides that:

> *A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.*

In line with the Government's proposal, this clause was amended by Parliament in June 2007 to capture the receipt of non-pecuniary benefits.[13] Clause 2 is aimed at the most serious instances of undue influence (i.e. where political contributions are solicited or received by a Member directly in return for that Member taking particular action in Parliament).

In addition, under the clause 3 of the Members' Code, Members must:

- "declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests" (clause 3(a)).
- "...not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties" (clause 3(b)).
- "...only accept political contributions in accordance with Part 6 of the *Election Funding Act 1981*" (clause 3(c)).

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[12] Legislative Assembly, Parliament of New South Wales, *Code of Conduct for Members and the Pecuniary Interests Register*, Reprinted June 2007, No. 18.

[13] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 June 2007, p1430 to p1431.

Subsection 9(d) of the *Independent Commission Against Corruption Act 1988* (the ***ICAC Act***) was introduced as part of amendments made in 1994. It provides that an act by a Minister or a Member of Parliament can amount to corrupt conduct under the *ICAC Act* if it also amounts to "a substantial breach of an applicable code of conduct", such as the Members' Code. This provides a nexus between Members' obligations under the Members' Code and the statutory anti-corruption regime under the *ICAC Act*, which is discussed in further detail below.

Code of Conduct for Ministers of the Crown

In addition to the Members' Code, Ministers are also subject to the *Code of Conduct for Ministers of the Crown* (the "Ministerial Code").

The Ministerial Code consists of a set of principles to guide Ministers in the resolution of ethical issues, and is designed to ensure that Ministers "pursue, and [are] seen to pursue, the best interests of the people of New South Wales *to the exclusion of any other interest*" (emphasis added).

The introduction to the Ministerial Code states that the conduct of Ministers should be consistent with two main principles, the first being that "Ministers will perform their duties impartially, disinterestedly and in the best interests of the people of New South Wales".

Under Part 1 of the Ministerial Code, Ministers are under a general obligation to "exercise their office honestly, impartially and in the public interest" (clause 1.1). The following clauses of the Ministerial Code are also relevant to the extent that they minimise the risk of undue influence:

- "Ministers should avoid situations in which they have, or might reasonably be thought to have, a private interest which conflicts with their public duty" (clause 1.2).
- "A Minister shall not use his or her position for the private gain of the Minister or for the improper gain of any other person" (clause 3.2(a)).
- "A Minister shall not solicit or accept any gift or benefit the receipt or expectation of which might in any way tend to influence the Minister in his or her official capacity to show or not to show favour or disfavour to any person" (clause 6.1).

Model Code of Conduct for public agencies: policy and guidelines

To ensure that the above principles also apply to non-elected public officials, the then NSW Premier's Department in conjunction with the ICAC developed the *Model Code of Conduct for NSW public agencies: policy and guidelines* (the "Model Code") in 1997.

The Model Code provides detailed guidance on the standards of behaviour expected of public employees. It states that all conflicts of interest that could lead to partial decision-making by public sector employees should be avoided. The phrase 'conflict of interest' is described in the Model Code as any situation where it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty.[14]

The Model Code attempts to limit the prospect of political donations impacting upon agency decision-making processes by providing that:

- "Employees are to promote confidence in the integrity of public administration and always act in the public interest and not in their private interest"; and
- "Employees should not accept a gift or benefit that is intended to, or is likely to, cause them to act in a partial manner in the course of their duties".[15]

Model Code of Conduct for Local Councils in New South Wales

At the Local Government level, the *Model Code of Conduct for Local Councils in New South Wales* sets the minimum requirements of behaviour for council officials in carrying out their functions. The *Local Government Act 1993* requires every council to adopt a code of conduct that incorporates the provisions of the *Model Code of Conduct for Local Councils in New South Wales.*

Of particular relevance is clause 6.15 – Political Support, which provides that "Councillors should note that matters before council involving campaign donors may give rise to a non-pecuniary conflict of interests".

Guidelines for Managing Lobbyists

The *Guidelines for Managing Lobbyists* were developed in recognition of the fact that, where Ministers or public officials are exercising statutory decision-making functions, care should be taken to ensure that lobbying activities do not compromise objective decision-making.[16]

The Guidelines provide, among other things, that Ministers, Ministerial staff and public officials who are lobbied should:

- be aware of which person, organisation or company a lobbyist is representing;

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[14] New South Wales Premier's Department, *Model Code of Conduct for NSW public agencies: policy and guidelines*, 1997, page 3.
[15] New South Wales Premier's Department, *Model Code of Conduct for NSW public agencies: policy and guidelines*, 1997, pages 2 to 4.
[16] See Premier's Memorandum 2006-01, *Guidelines for Managing Lobbyists and Corruption Allegations Made During Lobbying.*

- ensure that the making of a statutory decision is not prejudiced by the giving of undertakings to an interested party prior to the decision-maker considering all relevant information;

- ensure as a decision-maker that, as far as possible, competing parties are treated fairly and consistently - for example, it may be necessary to provide a group with an opportunity to make submissions in relation to a proposed decision in circumstances where another group with a different view has been afforded an opportunity to make representations on the proposed decision; and

- ensure that no action is taken which involves a breach of a relevant code of conduct (such as the Ministerial Code of Conduct), for example, by accepting inappropriate hospitality or gifts from lobbyists.

Anti-Corruption Laws

The disclosure requirements under the *Election Funding Act* are complemented by an anti-corruption regime administered by the ICAC under the *ICAC Act*.

Under the *ICAC Act*, 'corrupt conduct' is defined broadly as:

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or

- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or

- any conduct of a public official or former public official that constitutes or involves a breach of public trust; or

- any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Section 9 of the *ICAC Act* provides that, to constitute 'corrupt conduct', the relevant conduct must also involve or constitute:

- a criminal offence; or

- a disciplinary offence; or

- reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official; or

- in the case of conduct of a Minister of the Crown or a member of a House of Parliament — a substantial breach of an applicable code of conduct.

The *ICAC Act* applies to all public officials including Ministers, other Members of Parliament, and New South Wales local government councillors. Section 9 of the *ICAC Act* makes clear that conduct which involves a contravention of the *Crimes Act 1900* or a substantial breach of the Members' Code (discussed above) will constitute 'corrupt conduct' and be capable of triggering the ICAC's broad investigative powers. In this way, the New South Wales anti-corruption regime further limits the potential for private donations to influence legislative and executive behaviour.

Other Safeguards

In addition to the specific measures discussed above, a range of other safeguards aim to protect Government decision-making from being influenced by the giving of political donations and other extraneous matters.

Administrative decisions made by public officials are generally subject to judicial review. The principles of administrative law prevent irrelevant considerations being taken into account (e.g. whether or not a political donation was made) and prevent decisions being made with an improper motive or purpose. The principles of natural justice prevent decision makers from acting with bias.

Similarly, many statutory decisions are subject to full appeal rights, and in many instances third parties are permitted to bring appeals if it is considered that decisions have been improperly made.

The availability of independent scrutiny by the courts and bodies such as the Administrative Decisions Tribunal reduces the risk of political contributions compromising the integrity of statutory decision-making processes in New South Wales.