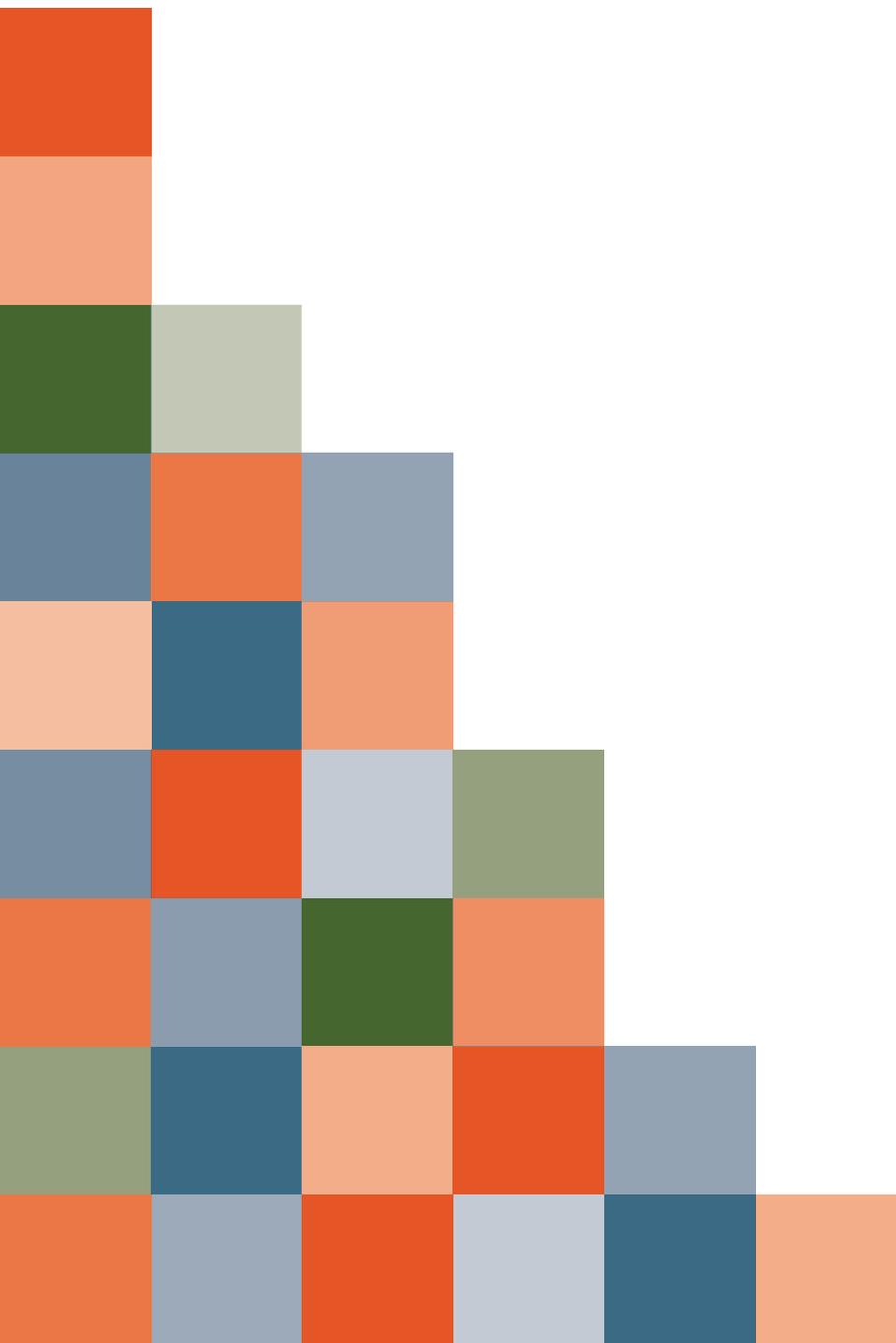


INQUIRY INTO OPTIONS FOR THE REFORM OF  
**POLITICAL FUNDING** and **DONATIONS**  
in the **NORTHERN TERRITORY**

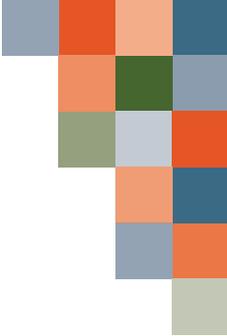
DISCUSSION PAPER OCTOBER 2017



# CONTENTS

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Inquiry into options for the reform of political funding and donations in the Northern Territory  
Discussion Paper  
October 2017



**03 INTRODUCTION**

**04 PRELIMINARY SUBMISSIONS AND PRELIMINARY INQUIRIES PROCESS**

**05 OPTIONS FOR REFORM**

**06 ELECTORAL EXPENDITURE**

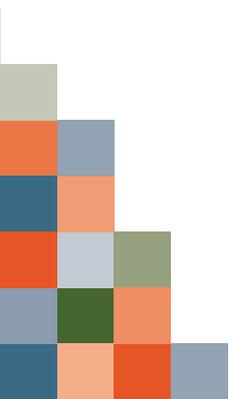
**08 PUBLIC FUNDING**

**10 DONATIONS**

**12 FINANCIAL DISCLOSURE**

**13 AUDIT, ENFORCEMENT AND SANCTIONS**

**14 PUBLIC CONSULTATION**



On 1 December 2016 the Legislative Assembly of the Northern Territory resolved to conduct an Inquiry into options for the reform of political funding and donations in the Northern Territory ('the Inquiry'). Commissioner John Mansfield was appointed to conduct the Inquiry on 29 June 2017. The Terms of Reference can be found on the Inquiry website at [www.donationsinquiry.nt.gov.au](http://www.donationsinquiry.nt.gov.au).

Broadly speaking, the Terms of Reference called for investigation of the following topics:

- Caps on electoral expenditure
- Public funding of political parties and candidates
- Caps on donations
- Thresholds for the disclosure of donations
- Bans or caps on donations from specific sources
- Breaches of the Act in relation to donations in the past 10 years
- Reform to ensure compliance of associated entities and third parties with the Act
- Foundation 51 and its relationship with the Country Liberal Party
- Harold Nelson Holdings and its compliance with the Act
- Any other matters relevant to political funding and donations

This Discussion Paper reviews preliminary submissions received and discusses options for reform and proposed lines for further investigation. Most of them have been broadly referred to in the Terms of Reference. Examples of electoral laws in other jurisdictions have been incorporated to illustrate possible changes.

Finally, the paper indicates the Inquiry's anticipated timeline for further consultation on this Discussion Paper and provision of a Final Report.

## INQUIRY PROCESSES

The Inquiry commenced its investigations through a public call for preliminary submissions on the matters the subjects of the Terms of Reference. Advertisements inviting submissions were placed in the NT News, the Centralian Advocate, the Katherine Times and the Tennant & District Times between 2 and 6 September 2017. In addition, letters were sent to approximately 50 persons and organisations who may have an interest in the Inquiry. These were intended to encourage written preliminary submissions and to ensure that the Inquiry identified matters which should be considered for the purposes of clause 7 of the Terms of Reference.

The deadline for preliminary submissions was 29 September 2017. Some submissions were also received in early October 2017. A list of preliminary written submissions is provided in the Annexure and the submissions can also be found on the Inquiry's website. This does not include the content of submissions made to the Inquiry on a confidential basis.

Informal discussions between Commissioner Mansfield and public officers, some MLAs, some Ministers and some media representatives were conducted in the week of 11 September 2017.



## HISTORY OF POLITICAL DONATIONS AND FUNDING IN THE NORTHERN TERRITORY

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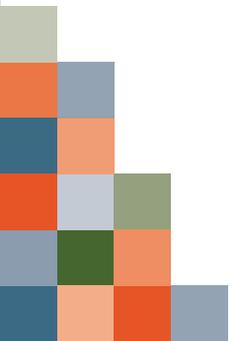
**The first election in the Northern Territory was held in 1974 to elect 19 Members to the Legislative Assembly, several years before self-government was granted by the Commonwealth in 1978. At this time, there was no requirement for disclosure of donations received by candidates or parties. As early as 1986, Members of the Legislative Assembly called for greater transparency through introduction of a financial disclosure scheme.**

In 2004, the Electoral Act (NT) ('the Act') came into effect. This Act established an independent NT Electoral Commission, provided for fixed-term elections, the registration of political parties and requirements for financial disclosure by parties and candidates.

Disclosure thresholds in Part 10 of the Act mirrored the relevant Commonwealth Electoral Act 1918 (Cth) provisions as they existed in 2004 in order to streamline compliance for parties who also lodged federal returns. However, the federal government's increase of the disclosure threshold in 2005 to \$10 000 broke the link between the NT and federal disclosure schemes. In addition, the NT threshold for disclosure, \$1500, has not been adjusted for inflation (the federal threshold is now \$13 500).

A motion to inquire into connections between the Country Liberal Party and possible associated entity Foundation 51 was passed by the Legislative Assembly in 2014, but discontinued two months later. Former Auditor-General Frank McGuinness was instructed by the then-Chief Minister Adam Giles to conduct an investigation into the political donations process in November 2014 and produced a report which was tabled in the Assembly in April 2015. This Report did not investigate any past events in Territory history relating to political funding, but made certain recommendations for reform based on developments in other Australian jurisdictions. This Report is also available on the website.

As noted, in December 2016, the Legislative Assembly passed a motion pursuant to section 4A of the Inquiries Act establishing the present Inquiry.



## PRELIMINARY SUBMISSIONS AND PRELIMINARY INQUIRIES PROCESS

**In response to advertisements placed in newspapers and direct invitation by letter, 7 written submissions were received by the Inquiry. Certain informal discussions took place in the week of 11 September 2017 between Commissioner Mansfield and public officers, certain media representatives and certain MLAs.**

Information received from discussions, submissions and research revealed a list of issues of concern to participants in the NT political process over the last ten years. The Inquiry has identified the following topics, which it proposes to further consider to meet Clause 7 of the Terms of Reference.

Consequently, the Inquiry is prepared to receive information within the period fixed for further submissions pertaining to any of the matters referred to below, or to any further matter which might properly inform any recommendation of the Inquiry in relation to the Terms of reference.

If it emerges in the course of the Inquiry that a particular person or entity may, in the past, have engaged in conduct in contravention of the Act, or in some other respect may have engaged in conduct which the Inquiry considers might or should be the subject of specific adverse findings to that person or entity findings and may be relevant to its Report on the Terms of Reference, the Inquiry proposes to notify that person or entity of its possibly adverse findings and to give to that person or entity the opportunity to provide evidence or other material on that topic and to make submissions in relation to the possible adverse findings.

### ISSUES REFLECTED IN THE TERMS OF REFERENCE

- The structure and activities of Foundation 51 and its relationship to the Country Liberal Party
- Compliance of Labor associated entity Harold Nelson Holdings with their disclosure obligations

### CONCERNS ABOUT TRANSPARENCY

- Paid labour classified as volunteer contributions during the 2016 election campaign
- Donations made under the names of third parties
- Donations undisclosed by donors and/or parties
- Lack of public access to or audit of the MLA's Register of Interests

### LIMITATIONS IN THE ELECTORAL ACT (NT)

- Long delays between the filing of financial returns and them being made available to the public
- The Electoral Commission's lack of statutory power to impose fines for breaches of the Act
- Three year limitation period preventing the Electoral Commission taking action in response to historical breaches of the Act

### IMPROPER INFLUENCE OF DONATIONS

- Connections between donations made by specific industry donors and formulation of Cabinet policy favourable to the donors, including the fixing of maximum floor space for takeaway alcohol vendors under the Liquor Act
- Connections between donations from property developers and the granting of leases and approval of development applications on favourable terms
- Donations between parties in the form of payment for campaign costs in exchange for preference arrangements

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## OPTIONS FOR REFORM

**The terms of reference detail several topics for consideration by the Inquiry. This section of the Discussion Paper gives specific examples of options for reform with illustrations of their operation in other jurisdictions.**

It is important to note that, in the light of the decision of the High Court of Australia in *McCloy v New South Wales*,<sup>1</sup> any recommendation of the Inquiry which is adopted by the Legislative Assembly by amendment to the Act, and which may impair the entitlement to fully and freely participate in the electoral process or which may impair the opportunity to speak freely in relation to electoral matters, may need to be justified as reasonable and proportionate and balanced in the light of past conduct and experience. Participation in the electoral process include, among other things, supporting political parties or candidates through financial contributions such as donations or in-kind gifts.

<sup>1</sup>*McCloy v New South Wales* [2015] HCA 34



**Electoral expenditure is defined in section 199 of the Act:**

*"electoral expenditure", for an election, means expenditure incurred (whether or not incurred during the election period) on:*

- (a) publishing an electoral advertisement during the election period in a journal; or*
- (b) broadcasting an electoral advertisement during the election period; or*
- (c) displaying an electoral advertisement during the election period at a theatre or other place of entertainment; or*
- (d) producing an electoral advertisement that is published, broadcast or displayed as mentioned in paragraph (a), (b) or (c); or*
- (e) producing any printed electoral matter to which Part 13, Division 1, Subdivision 2 applies (other than material mentioned in paragraph (a), (b) or (c)) that is published during the election period; or*
- (f) producing and distributing electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or*
- (g) carrying out an opinion poll or other research, about the election during the election period.*

In the NT, there are no limits imposed on spending by parties, candidates or associated entities during election campaigns. Imposing a limit on spending may lead to a reduced reliance on political donations.

Although electoral expenditure cannot be precisely calculated for each registered political party, in the 2012/13 financial year the ALP and CLP had outgoing expenses of \$1 851 495 and \$1 953 041 respectively, much of which can be inferred to be electoral expenditure for the 2012 Legislative Assembly election.

In the Australian Capital Territory (ACT), each candidate, third party campaigner and associated entity may spend \$40 000. <sup>2</sup>Party spending is pooled, and the party may spend \$40 000 per candidate up to a maximum of 25 candidates (\$1 million).

In New South Wales, candidates can spend between \$122 900 and \$184 200 (depending on whether they are campaigning for a seat in the Legislative Assembly or Legislative Council). However, limited spending is incentivised through a 'sliding scale' system of reimbursement through public funding (discussed below, in 'Public Funding').

The administrative burden of imposing an expenditure cap may be limited, as candidates and parties in the NT are already required to provide the Electoral Commission with a return detailing all expenditure within 15 weeks of polling day<sup>3</sup>.

Imposing a cap may effectively reduce reliance on private donations and minimise public advertising (radio, print ads, letterbox drops, corflute signs) in campaign periods.

**DISCUSSION QUESTIONS**

*Should the electoral spending of candidates, parties and associated entities be capped?*

*What would be the appropriate amount for any cap?*

*Should spending for party-backed candidates be pooled in the same way in the Northern Territory?*

*Would independent candidates be disadvantaged by a cap?*

*Would candidates campaigning in rural electorates be disadvantaged by a cap?*

*Should capped spending commence on 1 January in an election year, 3 months before polling day or at another date?*

<sup>2</sup> Electoral Act 1992 (ACT), Division 14.2B.

<sup>3</sup> Electoral Act (NT) s 200.

## PUBLIC FUNDING

**There is no public funding provided to parties or candidates to assist them to run election campaigns in the NT. Provision of public funding may reduce the reliance of parties and candidates on private donations and the potential accompanying sense obligation to treat donors favourably.**

All other Australian jurisdictions except for Tasmania provide some form of public funding to candidates. In those jurisdictions, candidates or parties must meet eligibility criteria to receive public funding. Funding is usually limited to the amount required to reimburse expenditure only; recipients cannot make a profit from public funding.

The most common criterion imposed (at the federal level as well as in New South Wales, the ACT, South Australia, Western Australia and Victoria) requires parties or candidates to obtain 4% of the first preference vote to be eligible for funding. In Queensland the threshold is 6%.

The amount of public funding paid is calculated through multiplying the number of first preference votes by a set funding rate – approximately 263 cents per vote at the Commonwealth level.<sup>4</sup> Rates are highest in the ACT, at 817 cents per vote.<sup>5</sup>

The following table shows the public funding that would have been paid to parties and candidates for the 2016 Legislative Assembly election using the 4% first preference threshold criterion and the two different financial rates per vote paid in the Commonwealth and ACT.

**Table 1:**  
**Modelling of public funding for the 2016 Legislative Assembly election based on rates applied in the Commonwealth and ACT jurisdictions**

Affiliation	Number of candidates	Number of candidates receiving at least 4% of first preference votes	No of 1 <sup>st</sup> preference votes gained by candidates receiving 4%+ votes	Possible funding at \$2.6 per 1 <sup>st</sup> preference vote	Possible funding at \$8 per 1 <sup>st</sup> preference vote
1 Territory Party	13	11	3262	\$8481	\$26096
Australian Labor Party	25	25	41476	\$107837	\$331808
Citizens Electoral Council	4	0	0	0	0
Country Liberals	25	25	31263	\$81283	\$250104
The Greens	6	6	2817	\$7324	\$22536
Independents	40	30	17655	\$45903	\$141240
Shooters and Fishers	2	2	523	\$1359	\$4184
<b>Total</b>	<b>115</b>	<b>99</b>	<b>96996</b>	<b>\$252187</b>	<b>\$775968</b>

Data sourced from NT Electoral Commission submission

As a comparative figure, the costs incurred by the Electoral Commission to run the 2016 Legislative Assembly election were approximately \$3.46 million.<sup>6</sup>

While public funding may be paid as a set rate calculated through votes received or other eligibility criteria, it can be further adjusted to incentivise limited electoral expenditure. In New South Wales, the payment of public funding is calculated in proportion to the level of expenditure incurred within the level of capped spending. This table shows the 'bracket' system by which parties and candidates are more fully reimbursed for low levels of spending within the defined cap and must meet their own costs for high levels of spending.

**Table 2:**  
**Proportion of electoral expenditure reimbursed in NSW, by Legislative Assembly election entity**

<b>Party</b>		<b>% of expenditure refunded</b>
<b>Expenditure within first 0-10% of cap</b>		<b>100%</b>
<b>Expenditure within next 10-90% of cap</b>		<b>75%</b>
<b>Expenditure within last 90-100% of cap</b>		<b>50%</b>
<b>Endorsed Candidate</b>		<b>% of expenditure refunded</b>
<b>Expenditure within first 0-10% of cap</b>		<b>100%</b>
<b>Expenditure within next 10-50% of cap</b>		<b>50%</b>
<b>Independent Candidate</b>		<b>% of expenditure refunded</b>
<b>Expenditure within first 0-10% of cap</b>		<b>100%</b>
<b>Expenditure within next 10-80% of cap</b>		<b>50%</b>

One option for the provision of public funding in the NT could be to provide public funding only if a party or candidate discloses their donations and expenditure returns in compliance with the timeframes set out in the Act. In 2016, 38% of candidate election returns were filed late or not at all.<sup>7</sup> In this way, public funding can act as an effective incentive for parties and candidates to meet their statutory obligations.

### **DISCUSSION QUESTIONS**

*Should public funding be given to candidates and parties running for election?*

*How much funding should be given?*

<sup>4</sup> Australian Electoral Commission 'Current Funding Rate', [http://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/Current\\_Funding\\_Rate.htm](http://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm).

<sup>5</sup> ACT Elections, 'Election Funding', [https://www.elections.act.gov.au/funding\\_and\\_disclosure/election\\_funding](https://www.elections.act.gov.au/funding_and_disclosure/election_funding).

<sup>6</sup> Northern Territory Electoral Commission, 2016 Territory Election Report, p 7.

<sup>7</sup> Northern Territory Electoral Commission, 2016 Territory Election Report, p 82.

## DONATIONS

### Donations are included in the definition of 'gift' in section 176 of the Act:

"gift" means any disposition of property made by a person to someone else, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes providing a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a disposition of property by will; or
- (b) an annual subscription paid to a registered party by a person for the person's membership of the party.<sup>8</sup>

While the Act uses 'gift', this Discussion Paper uses the phrase 'donations' when referring to the range of contributions that can be made by a donor, including gifts of money, purchase of tickets to fundraiser events such as dinners and golf days, free services, office space or other benefits.

### CAPS ON DONATIONS

Caps are limits on the maximum monetary value of a donation, in-kind gift or loan. There are currently no caps on the monetary value of donations in the NT, except for those given by anonymous donors.

The following table illustrates the breakdown of donation sizes given to the two major parties in the NT from 2011 to 2016. Donations under \$1500 are not required to be disclosed under the Act.

**Table 3:**  
Donations to the ALP and CLP, by size (approximate figures)



Some jurisdictions have caps on the size of donations, although they are not capped at the Commonwealth level or in the ACT. In New South Wales, donations to parties are capped at \$6100, and donations to candidates at \$2700 per year.<sup>9</sup> Victoria has more stringent limits, with donations to parties capped at \$4000 over the course of a four-year parliamentary term.<sup>10</sup>

Where caps exist, they cannot be avoided by making multiple donations below the cap threshold: donations must be aggregated, including donations from associated sources

Capping donations could lead to a loss of transparency if a donor attempts to subvert the threshold by splitting their donation to be given by several individuals. While this behaviour is prohibited under the Act,<sup>11</sup> it may be difficult to detect without detailed audit.

### CAPS ON ANONYMOUS DONATIONS

Anonymous donations are any given where the receiver does not know the donor's name and address.<sup>12</sup>

Anonymous donors in the NT can give a maximum of \$1000 for a donation and \$1500 for a loan. There is no limit on the total monetary value or number of anonymous donations a party or candidate can receive from donors. In the ACT, anonymous donations are capped at \$1000 and parties, candidates and associated entities may only receive anonymous gifts up to a combined value of \$25 000.<sup>13</sup>

<sup>8</sup> Electoral Act (NT) s 176.

<sup>9</sup> Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 95A.

<sup>10</sup> ABC News Online, "Victoria set to ban foreign political donations, shake up disclosures under new reforms", <http://www.abc.net.au/news/2017-09-18/victoria-to-introduce-new-political-donation-reforms/8956102>.

<sup>11</sup> Electoral Act (NT) s 215.

<sup>12</sup> Electoral Act (NT) s 189, s 197.

<sup>13</sup> Electoral Act 1992 (ACT), s 222.

## CAPS ON DONATIONS FROM ASSOCIATED ENTITIES

**Associated entities are defined in section 176 of the Act:**

*"associated entity" means an entity that:*

- (a) is controlled by one or more registered parties; or*
- (b) operates wholly or to a significant extent for the benefit of one or more registered parties.*

Associated entities may take the form of a company or trust which gives donations from third parties, fundraising takings or profits from investment holdings to a registered political party or candidate. In the Northern Territory, active associated entities include the NT ALP Investment Trust Pty Ltd and CLP Gifts & Legacies Pty Ltd.

In the ACT, parties are not allowed to use more than \$10 000 of donations from associated entities for the *purposes of incurring electoral expenditure*.

### DISCUSSION QUESTIONS

*Should donations to parties, candidates or associated entities be capped, and if so on what terms?*

*Should the cap on anonymous donations be changed?*

*Should there be a cap on the total number of anonymous donations?*

## THE SOURCE OF DONATIONS

There are currently no restrictions on donations from any source in the NT. The majority of donations (78%) received by political parties in the years 2007–2016 came from business entities rather than individuals (some donations could not be clearly identified as individual or business, such as those made by private trusts). Of course, business owners may also donate in their own names.

## BANS ON DONATIONS FROM SPECIFIC SOURCES

Bans can limit donations to those given only by individuals on the electoral roll, or prohibit donations from specific sources, such as foreign nationals. In March 2017 the federal Joint Standing Committee on Electoral Matters recommended banning donations from foreign individuals and interests.<sup>14</sup> Foreign donations made up more than 5% of federal donations in 2013–14.<sup>15</sup>

In New South Wales, donations from property developers or members of the alcohol, tobacco or gambling industries have been banned since 2010.<sup>16</sup> The New South Wales bans were challenged in the High Court in 2015. The Court held that the bans were valid, as they had been enacted for a legitimate purpose and were balanced and proportionate to the problem faced by the objective risk of large donations affecting the public decision-making process. In New South Wales, this risk had been well-documented and investigated by ICAC.

Any similar ban enacted in the NT may face the same challenge to its constitutional validity. This may require evidence of a number of dealings between a particular industry and government where undue influence has been shown.

An industry ban could reduce influence on political candidates or elected governments from industries which may have significant business interests in the NT.

### DISCUSSION QUESTIONS

*Should donations be limited to individuals on the electoral roll?*

*Should donations be limited to individuals and businesses based in or carrying on business in the Territory?*

*Should anonymous donations be banned?*

*Do foreign donors contribute to Northern Territory political parties?*

*Should donations from foreign donors be banned?*

*Should donations from certain industries be banned?*

<sup>14</sup> Joint Standing Committee on Electoral Matters, 'Second interim report on the inquiry into the conduct of the 2016 Federal Election: Foreign Donors', [http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024053/toc\\_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federalelectionForeignDonations.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024053/toc_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federalelectionForeignDonations.pdf;fileType=application%2Fpdf).

<sup>15</sup> The Guardian, 'Something to declare: How much have foreign donors given Australian political parties?', <https://www.theguardian.com/news/datablog/2017/mar/10/something-to-declare-how-much-12> have-foreign-donors-given-australian-political-parties.

<sup>16</sup> Election Funding, Expenditure and Disclosures Act 1981 (NSW), Division 4A, Part 6.

<sup>17</sup> McCloy v New South Wales [2015] HCA 34.

## FINANCIAL DISCLOSURE

In the NT, financial disclosure refers to the obligations parties, candidates, donors, associated entities and broadcaster/publishers have to report the details of their financial returns to the Electoral Commission. While candidates and broadcaster/publishers only need to report in election years, parties, donors and associated entities must report every financial year.

Disclosure requirements for financial returns, including donations, vary depending on who is making the disclosure under the Act.

The following table briefly describes the disclosure obligations of parties, candidates and other political participants in the NT. Disclosure Handbooks published by the Electoral Commission give a more detailed explanation and can be found at [www.ntec.nt.gov.au/FinancialDisclosure/Pages/default.aspx](http://www.ntec.nt.gov.au/FinancialDisclosure/Pages/default.aspx).

**Table 4: Financial disclosure requirements in the Northern Territory**

Entity	What must be disclosed	Period covered in disclosure return	Return due
<b>Candidate</b>	<ul style="list-style-type: none"> <li>• Details of each gift of \$200 or more</li> <li>• All persons/organisations making gifts</li> <li>• Loans of \$1500 or more</li> <li>• Details of all expenditure by category</li> </ul>	Independent candidate – commences day candidature announced or day nominated, whichever is the earlier Newly endorsed party candidate – commences from the date of endorsement Candidate from the previous election nominating again – commences 30 days after the previous polling day Ends 30 days after polling day	within 15 weeks of polling day
<b>Registered Party</b>	<ul style="list-style-type: none"> <li>• Total amounts received and paid during year</li> <li>• Loans by individual persons or parties of \$1500 or more</li> <li>• In-kind gifts of goods, assets and services</li> </ul>	Financial year	16 weeks after financial year end
<b>Associated Entity</b>	<ul style="list-style-type: none"> <li>• Total amounts received and paid during year.</li> <li>• From whom or on whose behalf payments of \$1500 were received</li> <li>• From whom or on whose behalf liabilities totalling \$1500 were incurred</li> <li>• Organisation/individual contributing capital and the amount</li> </ul>	Financial year	16 weeks after financial year end
<b>Donor</b>	Donations outside elections: <ul style="list-style-type: none"> <li>• Direct or indirect donations of \$1500 or more</li> <li>• Donations of \$1000 or more used in whole or part to make party donations of \$1500 or more</li> </ul> Donations during the election period: <ul style="list-style-type: none"> <li>• Donations totalling \$200 or more to a candidate or \$1000 or more to parties and other organisations</li> </ul>	Both financial year and election returns	Annual returns – 20 weeks after the end of the financial year where total donations are \$1500 or more Election returns - 15 weeks after polling day
<b>Broadcaster/Publisher</b>	<ul style="list-style-type: none"> <li>• Details of all electoral advertisement broadcast and published</li> <li>• Free/below-market rate ads are classified as donations requiring separate reporting if valued at \$1000 or more</li> </ul>	Election returns only	8 weeks after polling day

## CURRENT DISCLOSURE OF ANNUAL AND ELECTION RETURNS

As the above table shows, there is a significant gap between relevant disclosure periods and the time when they must be made public. Under the Act, party returns for the 2016-17 financial year (which cover donations and expenditure in the final two months of campaigning before the Legislative Assembly election on 27 August 2016) were not required to be lodged with the Electoral Commission until 18 October 2017. They will not be publically available until 1 March 2018.<sup>19</sup>

The Electoral Commission, in its 2016 Legislative Assembly Election Report, recommends that this is remedied either by extending the time period to 30 September in election years, or mandating that parties prepare a separate return for the election period to be made public no later than 1 March in the following year.<sup>20</sup> This would reduce the current 18-month gap to 6 months.

In other jurisdictions, reforms have been enacted to increase transparency through more timely lodgement and publication of returns.

## DISCLOSURE OF DONATIONS BEFORE POLLING DAY

Another option would be to require disclosure of donations before polling day to increase transparency and accountability.

In Queensland, it appears that candidates must disclose all gifts over \$1 000 within 7 business days using the online lodgement website at <https://disclosures.ecq.qld.gov.au/>.<sup>21</sup>

### DISCUSSION QUESTIONS

*Should the current annual disclosure of donations be made more frequent?*

*Should disclosures be made more frequently immediately before and after an election?*

*Should the financial year deadline be changed to 30 September in election years?*

## MONETARY THRESHOLDS FOR DISCLOSURE

In the NT, registered parties must declare gifts and loans over \$1500 in their annual return. Candidates must declare gifts over \$200 and loans over \$1500. While at the Commonwealth level the threshold sits at \$13 500, NSW has the same limit of \$1500. Some states larger than the NT have lower limits: in Victoria, Queensland and the ACT, the limit is \$1000.

## DISCLOSURE OF MLA INTERESTS

While candidates seeking election are required to file election-specific returns, between election years the record of interests of the elected Members of the Legislative Assembly is tabled annually in the Legislative Assembly each March.

This register is maintained by the Clerk of the Legislative Assembly and governed by the Legislative Assembly (Disclosure of Interests) Act (NT).

Members must declare any gifts received over \$300 or, if received from official sources, \$750. They must also declare personal assets and memberships of organisations. They must declare any change in their interests to the Clerk within 28 days, but any alterations will not be made public until the next annual tabling of the register.

### DISCUSSION QUESTIONS

*Should the Register of Interests be tabled in the Legislative Assembly more frequently?*

*Should the Register of Interests be available online?*

*Should public access to the register of past MLAs' interests be available?*

*Should audits be conducted of the register in a similar manner to election returns?*

<sup>18</sup> Extracted from the preliminary submission provided by the NT Electoral Commission.

<sup>19</sup> Northern Territory Electoral Commission, 2016 Territory Election Report, p 82.

<sup>20</sup> Northern Territory Electoral Commission, 2016 Territory Election Report, p 84.

<sup>21</sup> Queensland Electoral Commission, State Handbook Funding and Disclosure Manual, [https://www.ecq.qld.gov.au/\\_data/assets/pdf\\_file/0010/69688/State-Handbook-Funding-and-Disclosure-Manual-July-2017.pdf](https://www.ecq.qld.gov.au/_data/assets/pdf_file/0010/69688/State-Handbook-Funding-and-Disclosure-Manual-July-2017.pdf)

## AUDIT, ENFORCEMENT AND SANCTIONS

### OFFENCES UNDER THE ACT

Rules to govern the behaviour of parties, candidates, associated entities and donors will be ineffective unless they are backed with an appropriate system of audit and sanctions to enforce compliance and penalise failure to meet the standards required by the Act.

Current offences are described in section 215 of the Act. It is an offence to:

- fail to provide a return without reasonable excuse
- give an incomplete return
- fail to keep records to be used in a return
- give a return knowing it contains false or misleading details
- give another person material for a return that is known to be false or misleading

For each of these offences, the maximum penalty for an individual is 200 penalty units (\$30 800) or 12 months imprisonment. For a corporation, it is 1000 penalty units (\$154 000).

The Electoral Commission may conduct investigations into compliance but is not required to do so. Prosecution of any of these offences can only be commenced within 3 years of the offence being committed. There have been no prosecutions under the Act since it first came into existence in 2004.

Any imposition of a cap on donations, as discussed in 'Donations', would require the creation of an offence provision to punish breaches of the cap.

In the ACT, the penalty for breach of electoral expenditure or donation caps is payment of twice the excess amount.

### DISCUSSION QUESTIONS

*Should the Act allow the Commission to issue 'on the spot' fines for non-compliance?*

*Should the penalties be changed?*

*If a cap or ban on certain donations was imposed, what would the appropriate penalty be?*

### REVIEW OF RETURNS

Compliance reviews have been undertaken by a Northern Territory accounting firm for the financial years 2012-13 to the present year. The 2016 Legislative Assembly returns were also reviewed.

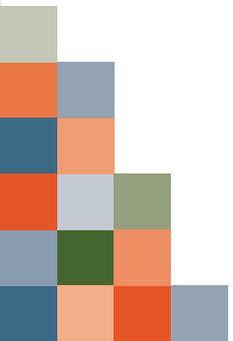
To date, the approach of the Electoral Commission has focused on compliance rather than punishment. Parties who have filed incorrect returns are given opportunities to amend them without penalty. Candidates and donors who fail to file returns are followed up by the Commission and the financial review firm.

A high number of donors fail to file election returns. Imposition of fines may encourage timely compliance and reinforce the importance of meeting obligations under the Act.

### DISCUSSION QUESTIONS

*Should parties be required to provide explanation for late or incorrect returns?*

*Should there be a fine for late or incorrect returns filed?*



Public comment on this paper will be open until Friday 15 December 2017. Any comment may include material relating to all or any of the matters discussed under the headings 'Preliminary Submissions and Preliminary Inquiries' and 'Options for Reform'. At present, the Inquiry does not propose to provide any further public document for public discussion or submission following the responses provided in relation to this Discussion Paper.

Following its consideration of the responses, and any additional investigations in relation to specific matters, particularly those referred to above in the section headed 'Preliminary Submissions and Preliminary Inquiries', the Inquiry proposes to then proceed to its Final Report on the Terms of Reference. Of course, that intended process may need to be reviewed and varied in the light of further material and submissions received in response to the Discussion Paper.

Comments can be made by using the form on the website, emailing [donations.inquiry@nt.gov.au](mailto:donations.inquiry@nt.gov.au) or by post addressed to:

**Commissioner John Mansfield**  
**Political Funding and Donations Inquiry**  
**GPO Box 4396**  
**Darwin NT 0801**

#### **ANNEXURE: PRELIMINARY SUBMISSIONS RECEIVED**

Australian Labor Party (Northern Territory Branch)  
Law Society NT  
Mr Yingiya (Mark) Guyula MLA  
Mr Gerry Wood MLA  
Mrs Robyn Lambley MLA  
Northern Territory Electoral Commission  
Mr Terry Mills MLA

