

Submission to Political Donations Inquiry

December 2017

Thank you for the opportunity to meet privately and to make a formal submission regarding options for reform of political funding and donations in the Northern Territory.

Although in recent times my office has conducted numerous investigations into alleged improper conduct by public officers and public bodies, none of these investigations have related to the impact of political donations on the conduct of an officer or agency. For this reason, I do not profess to be an expert in the area of political donations from a corruption prevention perspective. I am however well aware of the need for constant vigilance, clear rules and robust regulation in any areas where personal and business interests potentially conflict with the public interest- and political donations is one such area.

One cannot assume from the fact that there have been no PID investigations regarding political donations, that there have been no occasions where a political donation has improperly influenced a public officer's decision-making. Such a conclusion would be naïve. Although the PID Act contains strong powers to investigate public bodies and public officers generally, it does have its limitations. These include the fact that the PID Commissioner has no own-motion power to investigate such matters without having first received a complaint. If for example, a matter of concern is reported in the local press, the PID Commissioner cannot investigate it unless it is also received as a PID complaint.

Further, one would anticipate that many investigations regarding political donations would involve the alleged misconduct of Ministers, Members of the Legislative Assembly (MLAs) and their staff. The PID Commissioner can only investigate complaints regarding allegations of improper conduct by an MLA (including a Minister) if they are referred by the Speaker¹. In this circumstance, the investigation power does not include the right to make recommendations for change. To date, this Office has received no referrals from the Speaker on this or any other allegation of improper conduct by an MLA (including a Minister).²

It is also relevant that many ministerial staff are engaged under contractual arrangements that mean they do not fall within the definition of a 'public officer' for the purposes of the PID Act and their conduct cannot be investigated. If the PID Commissioner receives information alleging criminal behaviour that is not able to be investigated under the PID Act, the information is referred instead to the NT Police with the consent of the complainant if their identity is known.

Ministers, MLA's and their staff are not the only individuals who are potentially vulnerable to acting improperly as a result of political donations made by a business or individual. Any public body or public officer can potentially be involved in such misconduct, which is often difficult to substantiate. It is vital from an anti-corruption perspective that the rules regarding the making of political donations are clear and unambiguous and that serious breaches of those rules are investigated and prosecuted.

It is intended that the *Public Interest Disclosure Act* will be revoked once the *Independent Commissioner Against Corruption Act* (the ICAC Act) is commenced and the appointed Commissioner is ready to accept complaints. The ICAC Act will provide broader powers to the ICAC Commissioner (the ICAC) to investigate allegations or concerns about 'corrupt conduct' and 'anti-democratic conduct' and to refer less serious misconduct to other bodies (including the NT Electoral Commissioner) to investigate. The ICAC will have own motion powers and a greater ability to investigate a complaint about a Minister, an MLA or their staff. ICAC investigations will be able to be conducted privately or via a public hearing. The ICAC can also apply for warrants to search private premises and

¹ Section 11(1)(a) and 12(1) of the PID Act

²This information is reported annually in our Annual Report as required by Section 48(2)(b) of the PID Act

consequential amendments to other legislation will allow the ICAC to install surveillance devices, intercept telecommunications activities and conduct covert operations. The establishment of an ICAC in the Northern Territory with broad jurisdiction and powers will do much to restore and protect public confidence in government and public sector decision-making.

Commissioner Mansfield has sought comment on options for change to ensure that the NT's electoral system remains safe and well managed and to promote trust and transparency in government. I have appreciated reading the Commissioner's Discussion Paper dated October 2017 and various reports and commentary about these matters from other Australian jurisdictions. I have also read with interest the detailed submission made by the NT Electoral Commission. It is submitted that the Electoral Commissioner, Iain Loganathan is in a prime position to make worthwhile recommendations for consideration by Commissioner Mansfield.

I conclude my submission with the following general comments.

It is vital that there is an electoral system in the NT that includes:

- The maintenance of a low threshold for disclosure of gifts, donations and loans to take account of the fact that the NT is a small jurisdiction population-wise with small electorates.
- Clear rules requiring greater transparency and timeliness in disclosure reporting including the requirement for audited annual returns by political parties and associated entities.
- Stronger regulatory powers provided to the Electoral Commissioner, including the ability to impose fines for late or incomplete disclosures and a review of the current resources available to the Electoral Commissioner to regulate breaches of the *Electoral Act*.

Finally, in my role as the Information Commissioner, I have published a series of decisions that relate to the release of documents regarding the former Foundation 51 Pty Ltd. Those decisions are publicly available at <https://infocomm.nt.gov.au/resources/decisions-and-case-notes>

From a privacy perspective, there is a need to balance an individual's right to privacy and freedom of choice as regards their political beliefs against the need

for transparency where gifts and donations are concerned. Ideally, public reporting of political donations should reasonably identify an individual donor (e.g. by name and suburb) whilst retaining on a private register details of their full address etc. Discretion should remain with the Commissioner or delegate to disclose further information as required.

Thankyou for the opportunity to comment.

A handwritten signature in blue ink, appearing to read 'Brenda Monaghan', is written over the printed name and title.

Brenda Monaghan

Commissioner, Information and Public Interest Disclosures.