



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

FINAL REPORT

COMMISSIONER JOHN MANSFIELD

JUNE 2018



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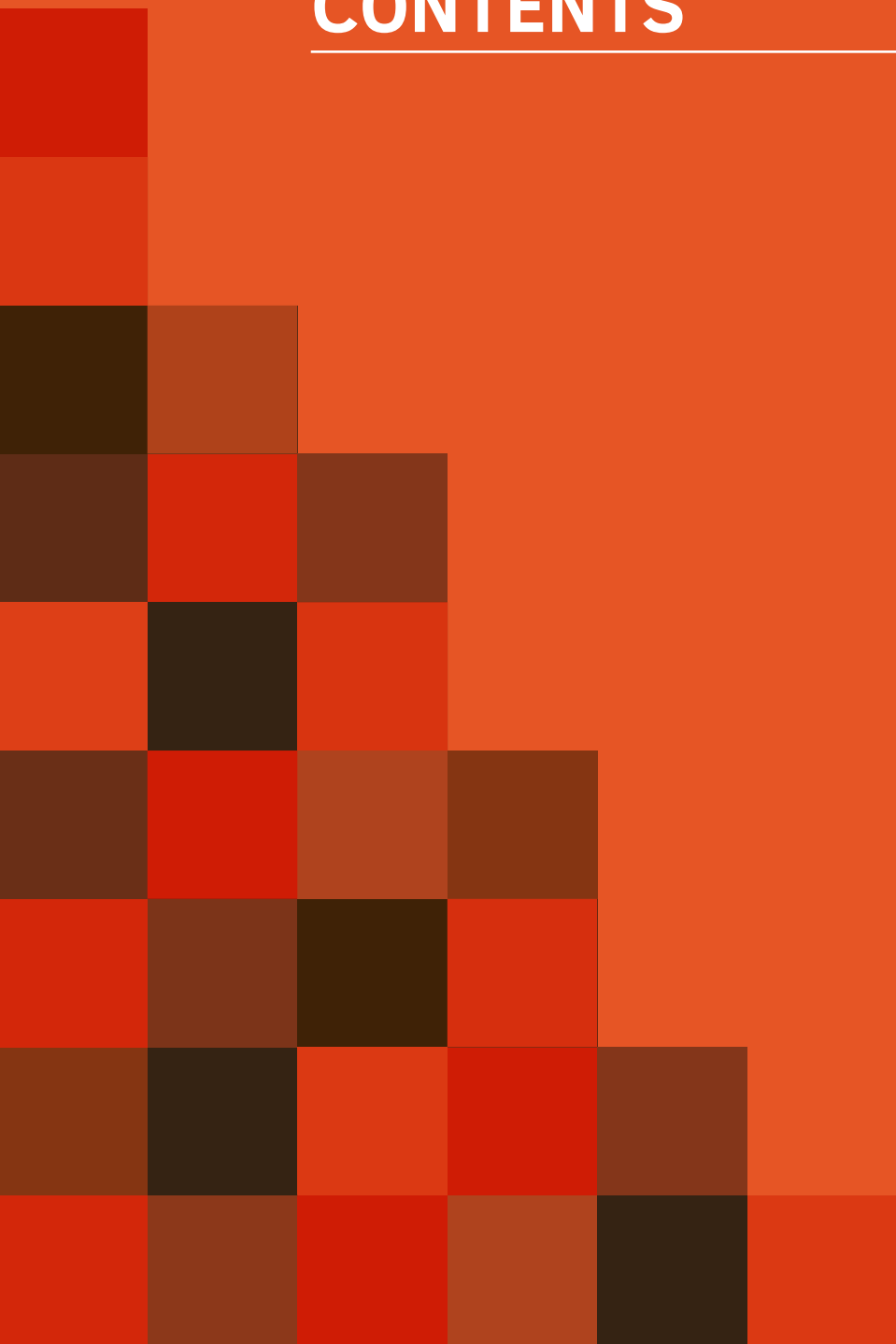
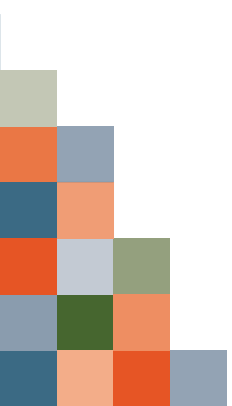


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1. INTRODUCTION

1.1 APPOINTMENT

On 1 December 2016 the Legislative Assembly of the Northern Territory resolved to conduct an Inquiry under section 4A of the *Inquiries Act* (NT) into options for the reform of political funding and donations in the Northern Territory ('the Inquiry'). I was appointed by the Administrator to conduct the Inquiry on 29 June 2017. On 19 October 2017 the Legislative Assembly duly passed a motion extending my tenure to twelve months with a reporting date of 29 June 2018.

1.2 ACKNOWLEDGMENTS

I have been greatly assisted in the content of this Inquiry by Ms Isabel Roper, solicitor, appointed by the Department of the Chief Minister to assist me in the conduct of this Inquiry. She has undertaken her role with great commitment and enthusiasm, and with great competence.

Whilst, of course, the views and recommendations expressed in this Report are my own, Ms Roper's thoroughness and industry, and her professionalism have ensured that, so far as I have been able to do so, I have formed my views and made my recommendations following all appropriate enquiries and after endeavouring to give all potential interested persons and entities a proper opportunity to make submissions to the Inquiry, and where necessary to respond to particular concerns about certain matters which directly touched upon certain persons and entities.

During the conduct of the Inquiry, I received prompt and helpful cooperation from all officers of the Northern Territory who either made submissions to the Inquiry or who I approached for information either generally or on specific matters that I was considering. The Inquiry has benefited from this contribution.

It is also important to record that, as far as I could determine, each of the persons or entities making submissions to, or providing information to, my Inquiry, did respond positively to the Inquiry, sometimes involving, as in the case of both the Australian Labor Party (ALP) and the Country Liberal Party (CLP), quite extensive documentary material.

I also acknowledge the work done by the late Auditor-General Frank McGuinness in his report on the process of political donations in the Northern Territory. That report was completed in February 2015 following his appointment in November 2014. I have drawn on Mr McGuinness' research, findings and recommendations in assembling this Report.

I thank all who provided thoughtful submissions to my Inquiry.



1.3 TERMS OF REFERENCE

The Terms of Reference (TOR) governing my Inquiry are the following:

1. Should there be a cap on how much parties can spend on a campaign, how it should be calculated and what other details should be considered.
2. Whether or not 'full' or 'partial' public funding of political parties and candidates should be provided.
3. If a 'partial' public funding scheme is considered preferable, recommendations as to a potential model, the basis upon which such funding is to be provided and whether a threshold for such funding should be adopted (consideration should extend to any legislative/regulatory amendments that would be required to affect such a model).
4. What is the appropriate level to cap the value of political donations to parties, groups, candidates, elected members and third-party campaigners; what methodology should be used to determine that cap; and what measures can be put in place to ensure that any caps are effective.
5. Whether the current donations disclosure requirements are appropriate including potential changes to the method, timing and publication of disclosures.
6. What controls should apply to the making of political donations, including:
 - whether or not particular entities or groups of donors should be excluded; and
 - any limitations or restrictions or caps on such political donations.
7. Whether there have been any breaches of the Northern Territory *Electoral Act* (NT) (the Act) in relation to donations made to political parties and candidates in the Northern Territory over the last 10 years.
8. Any legislative or regulatory amendments that should be made to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of third parties, associated entities or other means. To this end the inquiry will investigate:
 - The structure of Foundation 51 and the scope of its activities;
 - The relationship between Foundation 51 and the Northern Territory Government and its Agencies and any related conflicts of interest;
 - The relationship between Foundation 51 and the Country Liberal Party and any related conflicts of interest;
 - The extent of direct and indirect financial and in-kind support provided by Foundation 51 to the Country Liberal Party, Members of Parliament and candidates for Parliamentary elections;
 - The extent of breaches of the Act and any other Territory legislation by Foundation 51; and
 - The activities of Harold Nelson Holdings and its compliance with the Act.
9. Any other matters relevant to political funding and donations.

1.4 GLOSSARY

The following acronyms and abbreviations are used throughout this report.

ALP	Australian Labor Party (Northern Territory branch)
CLP	Country Liberals Party (Northern Territory)
EFED Act	<i>Electoral Funding, Expenditure and Disclosures Act 1981 (NSW)</i>
EDS	Electronic Disclosure Scheme
EGM	Electronic Gaming Machine
McCloy Case	<i>McCloy v New South Wales</i> [2015] HCA 34
NTEC	Northern Territory Electoral Commission
QCCC	Queensland Crime and Corruption Commission
The Act	<i>Electoral Act (NT)</i>
TOR	Terms of Reference
Unions NSW Case	<i>Unions NSW and Ors v New South Wales</i> [2013] HCA 58
VEC	Victorian Electoral Commission

2. EXECUTIVE SUMMARY

- 2.1** As discussed in the body of the Report, there is a strong trend apparent in Australian jurisdictions to achieve electoral fairness and transparency by a combination of caps on electoral expenditure of political parties and candidates for election, the funding of electoral campaigning by political parties and candidates for election, the regulation of the extent of political donations, and timely transparency in the making of political donations.
- 2.2** Each jurisdiction has adopted, or is in the process of adopting, a combination of elements to achieve the objectives which is assessed by that jurisdiction to be the most suitable and effective to achieve those objectives in its circumstances. In the case of the Northern Territory, therefore, the Inquiry was a timely one.
- 2.3** The particular recommendations of this Inquiry, in relation to the Northern Territory, in some instances with suggested detailed implementation of the conceptual recommendations are as follows:
- A.1** The Northern Territory should introduce a cap on electoral expenditure in elections, calculated by an allowance of \$40 000 per endorsed candidate in the cases of registered political parties, and fixed at \$40 000 for each unendorsed candidate (to be indexed).
- A.2** The cap should apply to each political party and to each individual candidate which or who elects to participate in the public funding of the election (see B.1 below).
- A.3** The more detailed recommendations for the implementation of the electoral expenditure cap are set out in section 5.2 of this Report.
- B.1** The electoral process should be partly publically funded in election years, by the payment to each registered political party and to each unendorsed candidate of \$8 (to be indexed) per first preference vote received by that candidate, provided that the candidate received at least 4% of the formal first preference votes in the electorate which that candidate sought to represent.
- B.2** The availability of public funding to each registered political party and to each unendorsed candidate should depend on that party or candidate electing to participate in the public funding of an election.
- B.3** The more detailed recommendations for the implementation and regulation of the public funding for each election are set out in Section 5.3 of this Report.
- C.1** Donations to registered political parties and to individual candidates should be capped at \$5000 or \$10 000 per year (to be indexed).
- C.2** Donations to registered political parties and to individual candidates for election should be reported to the Northern Territory Electoral Commission (NTEC) regularly, and be disclosed by the NTEC on its website as soon as practicable on receipt of the report.
- C.3** The more detailed recommendations for the implementation and regulation of the making and reporting of donations are set out in Sections 5.3 and 5.4 of this Report, including increased frequency of reporting and public disclosure in election years.
- C.4** There is no need to change the definition of 'associated entity' in the Act. In other relatively minor respects the level of anonymous donations or the definition of donations in kind may be simplified as recommended.



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- D.1** Certain provisions of the Electoral Act (NT) should be changed to extend the time within which any prosecution for contravention of the Act may be instituted and to facilitate the speedy imposition of penalties for contravention of the Act by the Electoral Commission. These are the subject of recommendations in Sections 5.4 and 5.5 of this Report.
- E.1** The investigation of past conduct possibly constituting contravention of the Electoral Act, and of past conduct which might have exposed improper influence on the formation of political policy or the making of executive and administrative decisions, as identified to the Inquiry, is set out in detail in Annex E to this Report.
- E.2** The only breaches of the Electoral Act identified by the Inquiry, as reported in Section E.2 of Annex E, concerned the conduct of Foundation 51 in, and in relation to, its failure to report its donations or the value of its donations to the CLP in the period between 2011 and 2014.
- E.3** The other conduct investigated as discussed in Sections E.3-E.9 of Annex E did not reveal any improper conduct, but revealed conduct which reasonable members of the public could reasonably have attributed to improper influence on the making of political policy or executive and administrative decisions.

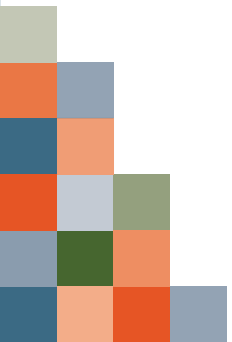
3. INQUIRY PROCESSES

3.1 GENERAL PROCESS

- 3.1.1** The Inquiry commenced its investigations through a public call for preliminary submissions on the TOR. 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 had been identified as holding a potential interest in the Inquiry. These included statutory officers, Members of the Legislative Assembly, representatives from Northern Territory media organisations and other public bodies operating in the Northern Territory.
- 3.1.2** Six preliminary written submissions were received by the deadline on 29 September 2017. A Discussion Paper was released in October 2017 (Annex B) and a further 9 submissions were received after the release of the Discussion Paper in October 2017. All submissions can be found in Annex C. This does not include the content of submissions made to the Inquiry on a confidential basis or which contained material which is properly treated as confidential.
- 3.1.3** I conducted extensive meetings in the weeks commencing 11 September 2017, 6 November 2017, 4 December 2017, 22 January 2018 and 9 April 2018. A list of interviewees can be found at Annex D. I also had regard to the extensive documentary material provided to me in response to my requests. I have carefully considered all that material.

3.2 PROCESS FOR INVESTIGATION OF PAST CONDUCT

- 3.2.1** TOR 7 required me to investigate potential breaches of the Act in relation to donations within the last 10 years.
- 3.2.2** As discussed above, in August 2017 I sent letters to people and organisations who I had identified as potentially holding information relevant to matters which should be considered for the purpose of TOR 7. The letters indicated my interest in identifying any such information, and my preparedness to receive such information for the purposes of properly fulfilling TOR 7. A number of respondents took up this opportunity. Of course, TOR 7 specifically identified the activities of Foundation 51 and Harold Nelson Holdings as matters which would require consideration.
- 3.2.3** When a respondent had identified an instance of past conduct which I considered to be within the scope of my Inquiry, I then gathered additional evidence to assess the circumstances of the conduct. Some matters required me to request production of Northern Territory Government records. For other matters I conducted further interviews with relevant people. I then approached each person or organisation who was the subject of allegations of past conduct in breach of the Act and requested either a written statement or an interview. Respondents were entitled to bring legal representatives or other people to the interviews and some chose to do this.
- 3.2.4** In the few instances where I reached a provisional view that an adverse finding against a person might be made, in line with the principles of procedural fairness, I gave that person notice of the relevant draft findings for further response.



4. HISTORY OF POLITICAL DONATIONS AND FUNDING IN THE NORTHERN TERRITORY AND ELSEWHERE

4.1 BRIEF HISTORY IN THE NORTHERN TERRITORY

- 4.1.1** 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.
- 4.1.2** In 2004, the Act came into effect. The Act established an independent Northern Territory Electoral Commission (NTEC), provided for fixed-term elections, the registration of political parties and requirements for financial disclosure by parties and candidates. The parts of the Act relevant to my Inquiry are discussed in the following section.
- 4.1.3** A motion to inquire into connections between the CLP and a 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. He produced a Report which was tabled in the Assembly in April 2015. This Report did not investigate any past conduct (such as the activities of Foundation 51, which were under investigation by the NTEC at that time), but made recommendations for reform based on developments in other Australian jurisdictions. This Report is also available on the website.¹
- 4.1.4** I note that the current Government is undertaking legislative reforms of all non-financial aspects of the Act and will consider reform of the political donation and election expenditure regulatory scheme in light of this Report.

¹Political Donations Inquiry, www.politicaldonationsinquiry.nt.gov.au.

4.1.5 THE PRESENT POSITION

4.1.5.1 Part 10 of the Act contains the current requirements for disclosure of information relating to donations and expenditure by candidates, parties, donors, broadcasters and publishers to the NTEC.

4.1.6 DETAILS DISCLOSED

4.1.6.1 Registered parties and associated entities must file annual returns containing the details of gifts, loans and payments made.² In addition, candidates,³ donors⁴ and others incurring political expenditure⁵ are required to file reports following Legislative Assembly elections with details of gifts, loans and expenditure. Broadcasters and publishers are subject to different requirements and must report details of election advertising they have aired.⁶

Entity	Reporting requirement	
	Donations	Expenditure
Candidates	Gifts over \$200, loans over \$1500	Details of all electoral expenditure by category
Registered parties	Gifts over \$1 000, loans over \$1500	Total amounts paid during year
Associated entities	Gifts and loans over \$1500	Total amounts paid during year
Donors	Outside election periods, over \$1500 In election periods, over \$200 to candidates and \$1 000 to parties	N/A

4.1.7 THRESHOLDS

4.1.7.1 Disclosure thresholds in Part 10 of the Act were set with the intent to mirror 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 increase of the Federal disclosure threshold in 2005 to \$10 000 broke the link between the schemes. In addition, the Northern Territory threshold for disclosure, \$1 500, has not been adjusted for inflation. The Federal threshold is now \$13 500. The following thresholds apply to the reporting of 'defined details' of gifts and loans. Generally this means the name and address of the person or entity making the gift or loan.⁷

4.1.7.2 Accordingly, anonymous donations must not exceed \$1 000 to a party and \$200 to a candidate. Anonymous loans must not exceed \$1 500.

4.1.7.3 While candidates are required to report details of electoral expenditure incurred, in practice candidates campaigning within a registered party generally do not report party campaign spending. Inspection of returns published on the NTEC website thus provides more detailed insight into the spending of independent candidates than those of party candidates.

² ss 205(3)(a)-(c), s 208.

³ s 191.

⁴ s 193.

⁵ s 192.

⁶ s 202. These returns must be filed within 8 weeks of polling day.

⁷ s 189, defined details.



4.1.8 TIMEFRAMES

- 4.1.8.1** The annual returns of registered parties and associated entities must be filed within sixteen weeks of the event of each financial year.⁸
- 4.1.8.2** As an example of this, the returns for the 2016-17 financial year (which covered donations and expenditure in the final eight weeks of campaigning before the Legislative Assembly election on 27 August 2016) were not required to be lodged with the NTEC until late October 2017 and were not publically available until March 2018.⁹
- 4.1.8.3** Donors to registered parties must file a return within twenty weeks after the end of the financial year.¹⁰ Candidates,¹¹ persons incurring political expenditure,¹² and donors to candidates must file an election return within fifteen weeks of the polling date.¹³

4.1.9 COMPLIANCE

- 4.1.9.1** Division 6 of Part 10 sets out various offences for failing to give the NTEC a return, failing to keep records, giving false or misleading returns or misinforming others such that they give false or misleading returns.¹⁴
- 4.1.9.2** The NTEC is empowered to conduct investigations, seek search warrants and compel the production of documents.¹⁵ It is an offence to contravene an investigation notice or give false or misleading information. The NTEC also has the power to amend returns to rectify formal errors.¹⁶

⁸ s 205.

⁹ Northern Territory Electoral Commission, 2016 Territory Election Report, p 82.

¹⁰ s 194(2).

¹¹ s 191(1).

¹² s 192(2).

¹³ s 193(3).

¹⁴ s 215.

¹⁵ ss 216, 219.

¹⁶ s 223.

4.2 DEVELOPMENTS IN OTHER JURISDICTIONS

4.2.1 NEW SOUTH WALES

- 4.2.1.1** New South Wales is an important jurisdiction to consider because it has made significant changes to its laws governing political donations and electoral expenditure, and because some of those laws have been the subject of constitutional challenge. In 2010, the *Election Funding, Expenditure and Disclosure Act 1981* (NSW) ('EFED Act') was amended in the following ways:
- Donations were capped at \$5 000 to a party and \$2 000 to candidates and third party campaigners;¹⁷
 - Spending caps were imposed for the 6 months prior to an election. The caps were set at \$100 000 per party candidate and \$150 000 per independent candidate in the 2011 Legislative Assembly general election;¹⁸
 - Public funding was increased to cover approximately three-quarters of actual expenditure through the use of a tiered reimbursement model.
 - Donations were banned from 'prohibited donors', a group which originally referred only to property developers and later extended to the liquor, tobacco and gambling industries;¹⁹
- 4.2.1.2** In 2012 the EFED Act was further amended to ban donations from all entities except individuals on the electoral roll. An amendment to aggregate expenditure by parties and affiliated entities was also passed. Both of these later amendments were ruled invalid by the High Court in *Unions NSW v State of New South Wales* ('Unions NSW case')²⁰. The court held that the laws did not serve a legitimate end in preventing corruption or undue influence.
- 4.2.1.3** The ban on donations from 'prohibited donors' was challenged in the High Court in 2015 in the case of *McCloy v NSW* ('McCloy case')²¹. The EFED Act had an objects clause added since the decision in the Unions NSW case to explicitly state one of the Act's purposes was to 'help prevent corruption and undue influence in the government of the State'.²² In the *McCloy* case, the High Court found the ban on prohibited donors to be valid.
- 4.2.1.4** The *Electoral Funding Act 2018* (NSW) will replace the EFED Act on 1 July 2018. While largely consolidating the numerous amendments that have been made to the EFED Act, there are some significant changes to the electoral funding scheme in that State.
- 4.2.1.5** The separate category of 'electoral communication expenditure' has been removed. All expenditure incurred for the purpose of influencing the voting at an election will be subject to the existing caps.²³ While this has been done 'to allow parties to choose which activities best suit their campaigns free from financial incentives to engage in particular types of campaign activities',²⁴ I believe that a cap applying only to electoral communication expenditure still has merit in the context of the NT's many rural and remote electorates. I discuss this further later in this Report.
- 4.2.1.6** Shorter timeframes for the disclosure of reportable donations (over \$1 000) have also been created. Donations made in the 6 months prior to a general election must be disclosed within fourteen days. Donations made at other times must be disclosed within 4 weeks of the end of the quarter in which they were made. Prior to this, disclosure was only required on an annual basis. The limitation period for commencing proceedings has been increased to 10 years.
- 4.2.1.7** I discuss these and other changes with potential relevance to the Northern Territory in the following discussion sections of this Report.

¹⁷ Adjusted for inflation, those figures are \$6100 and \$2700 at the time of writing.

¹⁸ Adjusted for inflation, the figure for party and independent candidates are \$122 900 and \$184 200 at the time of writing.

¹⁹ s 96GA.

²⁰ [2013] HCA 58.

²¹ [2015] HCA 34

²² s 4A.

²³ Electoral Funding Bill 2018 Explanatory Note, (s).

²⁴ NSW Legislative Council Hansard, 23 May 2018, Second Reading Speech.

4.2.2 VICTORIA

4.2.2.1 At the time of writing, the Legislative Council is debating the Electoral Legislation Amendment Bill 2018 (Vic). If passed, the Bill will bring in a number of changes to the Victorian political donations scheme³³. These potential changes include:

- Bans on foreign donations;
- A cap of \$4 000 for each four-year election period on donations per donor;
- A limit so that donors cannot donate to more than 6 third party campaigners for each election period in attempts to circumvent the cap;
- All donations must be disclosed to the Victorian Electoral Commission ('VEC') within 21 days of making or receiving by both donor and recipient. VEC must publish returns within 7 days of receipt;
- Public funding to be increased from \$1.20 to \$3 (Council) or \$6 (Assembly) per first-preference vote in recognition of the limits on private funding imposed by donation caps.
- Changes to the definition of associated entity:
associated entity means—

(a) an entity that is controlled by one or more registered political parties; or

(b) an entity that operates wholly, or to a 15 significant extent, for the benefit of one or more registered political parties; or

(c) an entity that is a financial member of a registered political party; or

(d) an entity on whose behalf another 20 person is a financial member of a registered political party; or

(e) an entity that has voting rights in a registered political party; or

(f) an entity on whose behalf another 25 person has voting rights in a registered political party—but does not include a nominated entity of a registered political party;³⁴

4.2.2.2 This is noteworthy for the purposes of this Report as the definition appears to extend to registered industrial organisations under Federal, State or Territory legislation.

4.2.2.3 At the time of drafting this Report, the Bill has not been passed.³⁵

³³ABC 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>.

³⁴Electoral Legislation Amendment Bill 2018 (Vic), s 40(1).

³⁵ABC News Online, 'Political donations laws overhaul in Victoria may not pass after Opposition reverses support', <http://www.abc.net.au/news/2018-06-19/coalition-rejects-victorian-political-donation-laws-overhaul/9885544>.

4.2.3 QUEENSLAND

- 4.2.3.1** In 2017 Queensland enacted a number of changes to the *Electoral Act 1992* (Qld) which reformed the thresholds for disclosing donations and timeframes for reporting.³⁷
- 4.2.3.2** The changes to the threshold for donations disclosure were not unprecedented. In May 2011, the Bligh Labor Government enacted legislation to require disclosure of all donations of \$1 000 or more. After coming to power in 2012, the Newman Liberal National Party (LNP) Government raised the threshold to \$12 400, aligning with the Federal threshold for disclosure at that time. The threshold for reporting of donations was later lowered from the current Federal limit of \$13 500 to \$1 000, consistent with New South Wales and Victoria.³⁸
- 4.2.3.3** Regardless of when they are received in the electoral cycle, all donations above this threshold must be reported using the Electronic Disclosure System (EDS) within 7 business days. While the EDS was originally touted as a ‘real-time’ disclosure system, the continuing use of cheques by some donors was stated as the cause of the 7 business day limit.³⁹
- 4.2.3.4** In contrast to most other jurisdictions, parties and candidates must receive at least 6% of the first preference votes to qualify for public funding. The LNP government proposed a 10% threshold in the *Electoral Reform Amendment Bill 2013* (QLD). A higher threshold would have a clear deleterious effect on the financial prospects of minor parties and independents. The 6% level was reached as a compromise after scrutiny by the Legal Affairs and Community Safety Committee in February 2014.⁴⁰
- 4.2.3.5** In October 2017 the Queensland Crime and Corruption Commission (QCCC) recommended banning donations from property developers to candidates running in local council elections.⁴¹ This followed an investigation into allegations of misconduct by some candidates campaigning in the March 2016 local government elections. In response, the Labor government responded by imposing a broader ban on property developer donations at both the council and *state* levels in May 2018.⁴² That ban also accompanied provisions requiring councillors to declare conflicts of interest and associated ‘integrity offences’ for failure to do so.

³⁷Via the *Electoral and Other Legislation Amendment Act 2015* (Qld).

³⁸This was retrospective and required disclosure of donations received before the 2015 State Election. Resisting disclosure, the Liberal National Party unsuccessfully attempted to challenge the cap on the grounds of constitutional inconsistency in *Electoral Commission of Queensland v Awabdy* [2018] QSC 33.

³⁹“Real Time” political donations reports to have seven-day delay’, Felicity Caldwell, Brisbane Times, 23 February 2017, <https://www.brisbanetimes.com.au/national/queensland/real-time-political-donations-reports-to-have-sevenday-delay-20170223-gujcom.html>.

⁴⁰QLD Legal Affairs and Community Safety Committee, Report No. 56, February 2014, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T4538.pdf>.

⁴¹Queensland Crime and Corruption Commission, ‘Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government’, October 2017, <http://www.ccc.qld.gov.au/corruption/operation-belcarra>.

⁴²The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018* was passed on 17 May 2018.



4.2.4 AUSTRALIAN CAPITAL TERRITORY

- 4.2.4.1** In 2008 the Australian Capital Territory (ACT) threshold for disclosure of donations was lowered to \$1 000 in anticipation of the proposed – but never realised – changes to the Commonwealth disclosure thresholds.⁵⁰ Electoral expenditure caps of \$60 000 per seat were introduced in 2011.⁵¹
- 4.2.4.2** Notably, the ACT had a \$7 000 cap on donations to parties imposed in 2011⁵¹ but this was removed in 2015.⁵² At the same time, public funding was increased from \$2 to \$8 per vote. This was justified as supporting the right of political campaigners to take part in public life.
- 4.2.4.3** The electoral spending caps dropped from \$60 000 to \$40 000 per candidate, as the Assembly increased by 8 seats, to keep total expenditure per party at approximately 1 million dollars. While this created a more level playing field for candidates, the influence of donations – which should be curtailed when they are displaced by public funding – has now been unchecked.
- 4.2.4.4** Noting the High Court’s decision in *Unions NSW* ruling that the New South Wales EFED Act’s limit of the ability to make donations to those on the electoral roll was invalid,⁵³ the ACT also legislated to remove an equivalent provision from the *Electoral Act 1992* (ACT).

4.2.5 WESTERN AUSTRALIA AND TASMANIA

- 4.2.5.1** Western Australia and Tasmania have yet to make the substantive changes to their electoral funding laws now made by most other Australian jurisdictions.
- 4.2.5.2** In Western Australia, the disclosure threshold for donations is \$2 300. While details must be reported, there are no caps on electoral expenditure. Public funding is awarded at \$1.89 per first preference vote.
- 4.2.5.3** In Tasmania, which is still partly governed by the *Electoral Act 1918* (Cth), donations must only be disclosed above \$13 500 and are not aggregated. A donor could therefore donate an amount just below the threshold on multiple days in any year without being required to disclose their gifts. There is no public funding for campaigns.
- 4.2.5.4** Legislative Council election campaigns do have an expenditure cap of \$16 500 per candidate (party-based spending is not allowed)⁵⁹, but there is no cap on spending for Legislative Assembly campaigns.
- 4.2.5.5** An attempt at reform occurred in 2013 when the Labor Government introduced the Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2013 (Tas). This would have introduced disclosure of donations over \$1 500, real-time disclosure of donations and a cap of \$75 000 on campaign spending by each Legislative Assembly candidate. That bill had reached the second reading stage when Parliament was prorogued in 2014.
- 4.2.5.6** At the time of writing the Tasmanian Labor and Greens parties have proposed lower limits for donation disclosure and bans on specific industry donations consistent with those adopted in New South Wales.⁶⁰ It may be only a matter of time before reforms are passed.

⁴⁹ *Electoral Legislation Amendment Act 2008* (ACT).

⁵⁰ *Electoral Amendment Act 2012* (ACT).

⁵¹ *Electoral (Election Finance Reform) Amendment Bill 2011* (ACT).

⁵² By which time the cap had risen as a result of indexation to \$10 000.

⁵³ s 96D.

⁵⁹ *Electoral Act 2004* (Tas) s 162.

⁶⁰ Democracy not for Sale, Tasmanian Greens, Jan 2018, <https://tasmps.greens.org.au/sites/default/files/Democracy%20not%20for%20Sale.pdf>.

4.2.6 COMMONWEALTH

4.2.6.1 The *Electoral Act 1918* (Cth) provides for public funding of elections, but does not contain any restriction on the amount which may be expended for election purposes or any restriction on the amount which may be given as a political donation.

4.2.6.2 The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth) ('the Bill') seeks to ban foreign political donations. That Bill has recently been the subject of an Advisory Report by the Joint Standing Committee on Electoral Matters. The Bill is still being considered. The proposal to ban foreign donations is discussed, in relation to the Northern Territory, later in this Report.

4.2.7 SOUTH AUSTRALIA

4.2.7.1 The South Australian position is significant as it has now introduced a cap on electoral expenditure. It applied to the recently completed election.

4.2.7.2 That cap is imposed on any registered political party and a candidate or group (as defined) on an opt-in basis. The 'opt-in' relates to the eligibility for public funding benefits.⁶³ The cap at the election was \$500 000 for any registered political party endorsing candidates for the Legislative Council, and \$75 000 per electoral district in which the party endorses a candidate for the House of Assembly and \$100 000 per endorsed candidate for the Legislative Council. Individual non-endorsed candidates have different caps, as do candidates of political parties who do not opt in to the public funding entitlement. The caps are indexed. There is a similar system provided for in the ACT.⁶⁴

4.2.7.3 In South Australia, the implementation of the expenditure capping requires the establishment of a designated campaign account, and that all donations be paid into the account and all electoral expenditure made from that account.

4.2.7.4 All donations, gifts and loans over \$5 000 (indexed) must be disclosed by political parties, candidates, associated entities and third party campaigners, as well as by donors. Donations of less than that amount must be recorded if they exceed \$200 (or \$1 000 in the case of loans).

4.2.7.5 In an election year, donation disclosure reports are required by 5 February and thereafter weekly until thirty days after the election (in March). In non-election periods, the disclosure obligation is half yearly.

4.2.7.6 The public funding scheme provides presently for each formal first preference vote to be paid at \$3, except for new unendorsed candidates who receive \$3.50 per such vote up to 10% of the votes and \$3 per vote thereafter.

4.2.7.7 In helpful discussions with the Secretary of each of the ALP and the Liberal parties, the Inquiry was informed that the administrative concerns about managing expenditure within the permitted level was not overly difficult. The South Australian government had provided one off funding to establish the necessary software systems. They each also pointed out that there was no requirement that the party allowance per candidate had to be spent in the seat of that candidate, but could be applied on general activities or promotions or on targeted areas at the election of the party. They emphasised the desirability of such flexibility.

4.2.7.8 Finally, they each said that the cap figure fixed for funding the election had no science attached to it. As a starting point, it was the indexed expenditure for the previous election. And, as it happened (and as appears to have been a rule of thumb in public funding of elections), the amount to be paid in total for first preference votes would represent roughly half of the amount expended under the expenditure cap.

⁶³ *Electoral Act 1995* (SA), s 130Y.

⁶⁴ *Electoral Act 1992* (ACT) Div 14.2B

5. DISCUSSION AND RECOMMENDATIONS

5.1 GENERAL APPROACH

- 5.1.1** As noted above, the Inquiry invited and received preliminary submissions from a number of persons and entities. That led to the Discussion Paper annexed to this Report, summarising the range of suggested issues arising for consideration.
- 5.1.2** The Inquiry, in the light of the responses then received and the TOR, consulted widely with interested persons on a range of options for changes to the structure and content of political funding and donations in the Northern Territory.
- 5.1.3** It is not surprising that the range of options largely mirrored the TOR topics. It is also not surprising that, in the course of those consultations, there was by and large either agreement or acquiescence to proposals that:
- There should be a cap on how much parties (and candidates) can spend on a campaign;
 - There should be partial public funding of political parties and candidates in an election;
 - There should be, as there is, political donations disclosure requirements, and
 - The current disclosure requirements for political donations do not require disclosure in a sufficiently timely manner in some respects.
- 5.1.4** There was less accord at a general level about whether particular entities or groups of donors should be precluded from making political donations or whether the level of political donations should be capped.
- 5.1.5** Those two matters were informed by the Inquiry pursuing the matters raised in TOR 7 and 8. In the end, those matters required extensive investigation and commitment of resources by the Inquiry. However, those investigations into the particular matters drawn to the attention of the Inquiry and which it identified did not disclose any clear breaches of the Act in relation to donations made to political parties or candidates in the Northern Territory over the last 10 years, other than the now well-known failure of Foundation 51 to report the value of its contributions to the CLP over the period 2010-2014 when its relationship with the CLP required that it should have done so.
- 5.1.6** In addition, the Inquiry considered under TOR 8 (to the extent necessary as authorised by TOR 9) whether there were other instances of policy formulation or administrative decision-making (for example, in matters of zoning or development) which were or may have been inappropriately influenced by political donations.
- 5.1.7** The details of the matters investigated and the result of those investigations are contained in Annexure E to this Report. In short, putting aside the matters concerning Foundation 51, there were no clear instances of breaches of the Act or of political policy formulation or implementation, or administrative decision-making, which were or may have been influenced by political donations. That is not to say that, from a reasonable viewpoint of some members of the community, the contrary was the case. Upon investigation, and with further information, the reasonable suspicions were not supported.
- 5.1.8** It is not necessary, in the circumstances, to refer to all individual submissions on the matters arising under TOR 1-6. It would be unduly repetitive, and nuances of submissions would be hard to reflect, especially those made at interview. I have referred to particular submissions where it is helpful to do so. I have acknowledged the great assistance received from the submissions and interviews. In respect of these TORs, I should particularly acknowledge the contribution by way of data provision as well as submissions from the Electoral Commissioner, Iain Loganathan.

5.2 ELECTORAL EXPENDITURE

5.2.1 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.

5.2.2 Before the possibility of imposing a cap on electoral expenditure is discussed, it is important to assess the appropriateness of the current definition. Electoral expenditure is currently only governed under the Act when it requires candidates to report the details of their campaign spending.⁶⁷ Jurisdictions with capped expenditure provide more detailed definitions of what is included within those caps. For instance, spending on political advertising is commonly included,⁶⁸ while travel expenses are usually excluded.⁶⁹ There are some variations between states: New South Wales excludes expenditure on 'research associated with election campaigns' (polling),⁷⁰ while the Northern Territory,⁷¹ South Australia and the Australian Capital Territory include it within their caps.⁷²

5.2.3 I now turn to discuss the levels at which caps are set and submissions made on this point.

5.2.4 In the Northern Territory, there are currently no limits imposed on spending by parties, candidates or associated entities during election campaigns. Other states, including New South Wales and the ACT, have imposed limits on party and candidate campaign spending.

5.2.5 A cap may reduce reliance on private donations and minimise excessive advertising (radio, print ads, letterbox drops, corflute signs) in campaign periods. Submissions made to my Inquiry were generally supportive of a cap.

5.2.6 The comment most widely made was that a cap on expenditure could reduce party and candidate reliance on private donations which might later improperly influence, or be suspected of influencing, decision-making in public office.⁷³

5.2.7 The central role of media coverage of campaigns and the influence of paid advertisements in political campaigns was discussed. Mark Guyula MLA noted that advertising undeniably affects voters and all candidates should be able to run influential campaigns without access to the wealth required to buy significant 'airtime'.⁷⁴ Clare Hasewski also suggested that the media already present the campaign platforms of candidates and parties without paid advertisements.⁷⁵

⁶⁷S 200.

⁶⁸Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 87(2)(a), Electoral Regulations 2009 (SA) s 18A(1)(a).

⁶⁹Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 87(2)(j), Electoral Regulations 2009 (SA) s 18A(3)(d)(xi).

⁷⁰Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 87(2)(h).

⁷¹Electoral Act (NT) s 199, definition of 'electoral expenditure' (g).

⁷²Electoral Act 1992 (ACT) s 198, definition of 'electoral expenditure' (a)(vii).

⁷³Submissions made by Mark Guyula MLA, Clare Hasewski and the 1 Territory Party.

⁷⁴Submission made by Mark Guyula MLA.

⁷⁵Submission made by Clare Hasewski.



- 5.2.8** A cap could also function to reduce the disadvantage faced by independent candidates in elections. The current system disadvantages independent candidates who cannot compete with the substantial funds spent or volunteer labour used by parties.⁷⁶
- 5.2.9** To assess the viability of imposing a cap, I sought input from the ALP and CLP in April 2018 regarding their past election spending and suggestions for a suitable spending cap figure but did not receive any further response.⁷⁷ I note that the CLP did provide earlier relevant suggestions about a cap in their original submission.
- 5.2.10** Several submissions made to the Inquiry did suggest specific caps.
- 5.2.11** The 1 Territory Party suggested a cap of \$100 000 per party and \$20 000 per independent candidate. Its submission also suggested that the expenditure be further corralled into agreed categories of spending such as electronic media, corflutes and so on.⁷⁸
- 5.2.12** Gerry Wood MLA gave the example of Canada's North-West Territories (NWT), where each candidate is limited to \$30 000 CAD (approximately \$30 500 AUD) of campaign expenditure.
- 5.2.13** Approximate figures are useful when comparing schemes in other jurisdictions. The North-West Territories have a population of 41 500, with 28 900 enrolled voters and 12 700 votes cast in the 2015 General Election (44% turnout).⁷⁹ The NT has a population of 246 000, with 135 000 enrolled voters and 100 300 votes cast in the 2016 NT Legislative Assembly election (74% turnout).⁸⁰ Thus the NWT cap is in fact set at a very high level in proportion to the size of their electorates.
- 5.2.14** NTEC suggested the level of cap currently imposed in the ACT: \$40 000 per candidate with party pooling available.⁸¹ An additional \$10 000 to \$20 000 would be allowed in rural and remote electorates.
- 5.2.15** The CLP suggested that a cap of \$50 000 per candidate might be appropriate, with parties entitled to pool their spending to a limited extent.⁸¹ Pooling could occur to a total of \$100 000 in any particular seat. They agreed to the level of additional spending proposed by NTEC in rural and remote seats but suggested that those additional funds should not be able to be pooled in the same manner. Their submission acknowledged the complications for the logistics and reporting of centralised expenditure if a partial pooling scheme was implemented.
- 5.2.16** As I have discussed above, if the definition of electoral expenditure is revised in line with other jurisdictions and costs incurred for travel during a campaign are excluded, the difficulty created by a higher cap for rural seats may be avoided.
- 5.2.17** The CLP also stated that if caps were imposed, different (presumably higher) levels should be set for by-elections. The CLP also suggested a \$50 000 cap on spending by each third-party campaigner.⁸³
- 5.2.18** I also conducted interviews with the Secretaries of the South Australian ALP and Liberal parties. Their views were valuable as South Australia underwent its first State election with an electoral campaign expenditure cap in March 2018. Both major parties had generally positive comments on the scheme and the following useful comments were made:
- Both parties valued the one-off reimbursement of up to \$96 000 to assist with the acquisition of the specialist accounting software necessary to record and report expenditure as required.⁸⁴
 - Opinions differed regarding the optimal length of the capped period. One party thought that the

⁷⁶Submission made by Sam Wilks.

⁷⁷Party input into any potential cap was also a recommendation suggested by the 1 Territory Party.

⁷⁸Submission by 1 Territory Party, page 23-24.

⁷⁹Elections NWT, 2015 Official Voting Results.

⁸⁰2016 Legislative Assembly Election statistics.

⁸¹Submission made by NTEC, December 2017, page 1.

⁸²Submission by Country Liberals (NT), page 3-4.

⁸³Submission by Country Liberals (NT), page 4.

⁸⁴Electoral Act 1985 (SA), s 130UA.

length imposed by the Act (start of the financial year to 30 days after the polling day in March) was appropriate as it prevented parties 'pre-spending' before the commencement of the cap. The other major party representative believed that the cap should commence no earlier than 6 months before polling day as managing capped spending over the longer period was difficult.

- Weekly auditing of expenditure was perceived as an excessive burden on each party, particularly later in the election cycle.
- Reporting of debts should be based on the invoice due date, not issue date, as parties frequently received them late and were then in breach of their weekly reporting obligations.

5.2.19 There is overall strong support for capping electoral expenditure. One important consideration is that capping such expenditure can properly be seen as an appropriate trade-off for the benefit of public funding in elections.

5.2.20 It is also, in my view, an attractive aspect of the South Australian scheme that it is an 'opt-in' scheme. If a party or candidate does not opt in to the public funding scheme, then that party or candidate is not confined in electoral expenditure. That structure has the benefit of making a further step away from the sort of constraints on electoral donations considered by the High Court in the Unions NSW case and the McCloy case. I do not assert that, without such a structure, the capping of electoral expenditure might be unlawful; that is a matter for legal advice. But it does require the political party or candidate also to choose to submit to the cap, and to any electoral donation constraints.

5.2.21 As both the CLP and the ALP urged, a cap fixed by reference to the number of members to be elected is a sensible step provided that the cap, once fixed, does not require that the expenditure be applied to each candidate or each seat equally. That would be almost impossible to regulate, because electoral expenditure is to a significant degree applied across the Territory or regions, or is issues-based when the issues are not seat-specific. An obvious example is some forms of media advertising. That view was also urged by the State Secretaries of both the ALP and the Liberal party in South Australia.

5.2.22 The timing of the period for the capped electoral expenditure to apply is also important. In the Northern Territory, the election is held in August of each fourth year. In my view, the better starting period (for accounting ease) is 1 January in each election year, and ending thirty days after the election is held. The 'run up' period is sufficiently long to discourage pre-period electoral expenditure. In addition, because the routine operations of each political party, including staff salaries, should not be included in electoral expenditure, that is a long enough period to discourage the employment of short term staff to support the election process early, so as to avoid those staff salaries being included as electoral expenditure. The longer term staff costs would discourage that practice. A starting date of 1 March in each election year would also be an alternative, giving almost a six month period before polling day.

5.2.23 As to the amount of the cap, I accept the suggestion of the NTEC as calculated on the basis of \$40 000 per candidate of each political party, and for each candidate not endorsed by a political party. It follows the ACT figure. There was no particular submission justifying a distinction between endorsed candidates and independent candidates, although a distinction exists in some States. That would mean the cap on expenditure for the next election on both the ALP and the CLP, if each stood a candidate in each of the 25 electorates, would be \$1 million. As I have said, once the cap is fixed, the way the political party allocates that expenditure should not be restricted. Obviously, where a cap is fixed, either for electoral expenditure or for donations, it should be indexed.

5.2.24 In my view, it would also be appropriate for the Government to consider providing an allowance to each of the political parties, having regard to their respective size or membership, to assist in setting up the electronic system to enable the monitoring and reporting on electoral expenditure (and on donations) during the electoral cycle. I do not comment on how much might be allowed. There was no detailed submission about that excluding the comments from the South Australian party representatives. There is a public interest in transparency of the expenditure cap (and of donation disclosure) operating effectively.



5.2.25 As noted, having regard to the additional travel and accommodation expenses which may be incurred by candidates in rural and remote electorates, as the cap makes no specific allowance for that, I suggest that such expenditure generally should not be included in the expenditure cap.

5.2.26 In summary, I recommend the following:

- The definition of electoral expenditure in section 199 of the Act be reviewed.
- That electoral expenditure by parties and candidates be capped in election years, provided the parties or candidates have opted to participate in the public funding benefits.
- The cap should begin on 1 January of each election year and end thirty days after polling day.
- Expenditure should be capped at \$40 000 per candidate, up to a total of \$1 million for parties with candidates campaigning in all 25 electorates, and \$40 000 for each unendorsed candidate.
- Expenditure does not need to be reported throughout the campaign period but must be fully reported within thirty days of the end of the capped period (sixty days after polling day).
- The NTEC should be empowered to investigate the accuracy of the reported expenditure.
- One-off financial reimbursement should be offered to parties to enable them to acquire and use any accounting software necessary to accurately record and report their campaign expenditure.
- Education sessions by the Electoral Commission, particularly on the nature of in-kind donations, should be delivered to facilitate the uptake of the expenditure capping scheme.
- Penalties should allow the Electoral Commission discretion to impose a 'civil fine' on those in breach of the cap up to 10 times the amount of the breach, reserving the entitlement of the alleged offending person or entity to require a formal prosecution in a court.

5.3 PUBLIC FUNDING

5.3.1 There is no public funding provided to parties or candidates to assist them to run election campaigns in the NT. All other Australian jurisdictions except for Tasmania provide some form of public funding to candidates, which reduces the reliance of parties and candidates on private donations. Public funding tied to disclosure obligations may increase rates of compliance with statutory requirements.

5.3.2 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, parties and candidates are more fully reimbursed for low levels of spending within the defined cap and must meet their own costs for higher levels of spending. Submissions and informal discussions with Territorians revealed to me the concern that election campaigns were protracted and wasteful.

5.3.3 Submissions made suggested that:

- The issue of attracting campaign finance is a 'major distraction' and compels candidates to join parties whose rhetoric may not align with the candidate's beliefs or values.⁸⁵
- The campaign process is 'financially exhaustive' for independent candidates.⁸⁶
- Some supported limited public funding for independent candidates only.⁸⁷
- Public funding can aid candidates from electorates with large voter populations who have limited means to donate.⁸⁸

⁸⁵Submission made by Sam Wilks, page 1.

⁸⁶Submission made by Sam Wilks, page 5.

⁸⁷Submission by Clare Hasewski, page 1.

⁸⁸Submission made by Mark Guyula MLA, page 1.

- 5.3.4** NTEC suggested adoption of a public funding model calculated as an amount multiplied by the number of first preference votes gained. They suggest the ACT level of funding – \$8 per first preference vote.⁸⁹ This would have resulted in total funding of approximately \$776 000 paid to eligible parties and candidates campaigning in the 2016 Legislative Assembly Election. This model, which exists in all other Australian jurisdictions, does favour party candidates and returning candidates over new candidates.
- 5.3.5** There were several suggestions made in submissions designed to overcome this disadvantage.
- 5.3.6** The 1 Territory Party suggested that \$20 000 of public funding be given to each candidate within a registered political party, or independent candidates who receive 300 signatures of support from voters enrolled in the NT.⁹⁰ A prospective candidate would find it much easier to source 300 signatures from supporters across the NT than campaigning and polling 200 votes within their single electorate.⁹¹ This standard may set the bar too low, resulting in public money spent on campaigns for those with no real prospects of winning a seat in their electorate.
- 5.3.7** Mark Guyula MLA also advocated for public funding for new candidates and parties to encourage success on the basis of merit rather than wealth.⁹²
- 5.3.8** However, the other recommendations I make in this Report compensate for some of the disadvantage faced by independent and new candidates in the NT. In my view a public funding model should be adopted, along the lines of the opt-in structure in South Australia. Public funding becomes part of the package to secure the integrity of the electoral process and its transparency, as the community contribution by public funding entitles the public to expect the regulation of electoral expenditure and it should reduce the need for such high levels of political donations. That is discussed in the next section.
- 5.3.9** I recommend the following:
- That registered political parties and unendorsed candidates receive public funding in election years in order to reimburse them for campaign expenses, provided they accept that funding and thereby submit to the expenditure cap.
 - The recommended level of funding is \$8 per first preference vote received (as in the ACT).⁹³
 - This level of funding should be indexed.
 - Parties and candidates will be entitled to the funding if they receive at least 4% of the first preference vote in the particular electorate where the party endorsed them or where the independent candidate is standing.
 - Funding should be paid on a reimbursement basis.
 - Public funding will only be paid where a party or candidate has given their donation and electoral expenditure returns to the NTEC within the required timeframe.
 - Decisions by the NTEC not to grant funding will be subject to the appeal process set out in Part 11 of the Act.
- 5.3.10** I note that, based upon the 2016 election, that level of public funding would represent somewhat under 40% of the proposed cap. There is no precise reason to select that rate of \$8 per vote. It is fair to say, as NTEC said in its submissions, that a smaller electorate such as the Northern Territory or the ACT does appear to incur a higher expenditure cost per vote by candidates and political parties. There is no reason in principle why the proposed rate of public funding could not be reduced, perhaps pro rata with the permitted electoral expenditure. It must be at a level which incentivises the political parties and individual candidates to opt in to the public funding scheme and the complementary expenditure cap.

⁸⁹Submission made by NTEC, page 2.

⁹⁰Submission made by 1 Territory Party, page 24.

⁹¹As each Territory electorate contains approximately 5000 voters, 200 votes represents 4% of the first preference votes.

⁹²Submission made by Mark Guyula MLA, page 1.

⁹³This would have amounted to less than \$776 000 in funding paid for the 2016 Legislative Assembly Election. As a comparative figure, the costs incurred by the Electoral Commission to run the election were approximately \$3.46 million.



- 5.3.11** I have proposed a 4% qualification level of eligibility. That is a reasonable requirement, having regard to the size of the electorates and would exclude those persons from public funding who really have no prospect of winning a meaningful vote. They can, of course, stand for election. They may choose not to be subject to the expenditure caps, and so may not be eligible for public funding in any event.
- 5.3.12** I do not consider the number and size of electorates in the Northern Territory as justifying any more sophisticated public funding scheme.

5.4 DONATIONS

BANS

- 5.4.1** Some submissions called for a total ban on donations to parties and candidates.⁹⁴ Mark Guyula MLA noted the risk of 'loss of [the] primary tie to civil society' faced by political participants who become wholly dependent on the state for finances.⁹⁵
- 5.4.2** Some submissions suggested limiting donations to individuals on the NT electoral roll.⁹⁶ This was attempted in NSW in 2012, but the High Court found it to be constitutionally invalid in the *Unions NSW* case because the law lacked an evidence-based rationale for restricting donations from non-voters (like corporations and unions).⁹⁷
- 5.4.3** In the course of my Inquiry I have not been presented with the considerable amount of evidence which would be required to prove that those who are not eligible to vote pose a great risk to the integrity of the electoral process. Even if constitutionally valid, such a ban could also reduce transparency if business owners or unions made donations under the personal names of NT residents as a means of avoiding such a ban. For these reasons I have not made any recommendation along these lines.
- 5.4.4** However, the High Court also held that bans on donations by specific industry groups in NSW were valid where there was evidence to support their necessity and proportionality to a legitimate end. In the *McCloy* case the Court accepted that the proven corrupt practices of property developers in NSW justified specific regulation designed to prevent further corruption and undue influence on government.⁹⁸ This decision also has relevance to the recommendations I make. I have not found evidence of, far less proof of, equivalent corrupt practices.
- 5.4.5** I received several submissions calling for bans on donations from two particular types of industries in the Territory. The first were industries whose donor influence on candidates could lead to government decisions with negative implications for community health and wellbeing: the tobacco,⁹⁹ liquor,¹⁰⁰ gambling¹⁰¹ and pharmaceutical industries.¹⁰² Some of those submissions cited statistics that show the extraordinary levels of community harm suffered in the Northern Territory and in Australia more generally in connection with health and social problems caused by high levels of substance use and addiction to alcohol, drugs and gambling.
- 5.4.6** The second group censored in submissions were industries who rely heavily on government decision-making for their commercial success: the liquor industry and property developers.¹⁰³ Much of the past conduct referred to me concerned alleged inappropriate influence by both the liquor and gambling industries and property developers in the Northern Territory. They are discussed in Annex E. In contrast, no past conduct matters relating specifically to the effects of donations made by the tobacco and pharmaceutical industries were referred to me or became apparent from my investigations.

⁹⁴Submission made by the 1 Territory Party.

⁹⁵Submission made by Mark Guyula MLA, page 1.

⁹⁶Submissions made by Clare Hasewski and Terry Mills MLA.

⁹⁷[2013] HCA 58.

⁹⁸[2015] HCA 34.

⁹⁹Submissions made by Mark Guyula MLA, page 2, Gerry Wood MLA, page 4, and the Heart Foundation NT, page 2-3.

¹⁰⁰Submissions made by Mark Guyula MLA, page 2, and Gerry Wood MLA, page 4.

¹⁰¹Submission made by Gerry Wood MLA, page 4.

¹⁰²Submission made by Mark Guyula MLA, page 2.

¹⁰³Submission made by Gerry Wood MLA, page 4.

- 5.4.7** In the Northern Territory, the publically available material would justify a ban on tobacco companies donating to political parties. It may be that such a proscription is not necessary. I expect political parties would not be prepared to accept such donations.
- 5.4.8** The submissions also did not focus on, or provide particular information about, the pharmaceutical industry. There was nothing referred to me, or which I identified, about the pharmaceutical industry which required investigation under TOR 7-9, or any reference to that industry in Annex E. I do not recommend any prohibition on that group of businesses making political donations.
- 5.4.9** The liquor and gambling industries and property developers have had some apparent troubling influence over government decision-making in the Northern Territory in the last 10 years. I do not consider there to be an acceptable threshold at which to limit donations from these industries. As discussed in 'Developments in Electoral Law', other jurisdictions have banned donations from these industries. The Electoral Amendment Bill 2016 (Serial 155) originally proposed by independent Gerry Wood MLA in March 2016 sets out a potential draft of these amendments to the Act (Annex F).
- 5.4.10** However, my investigations into some of that alleged conduct has not confirmed that in fact any of the members of those groups has achieved a perverse political outcome by the making of donations. In those circumstances, I am not disposed to recommend that any of those groups should be prohibited from making donations to political parties. There are three other reasons why I do not make such a recommendation. The first is that, with the establishment of the Northern Territory Independent Commission against Corruption ('ICAC'), the sorts of behaviours which many suspect will be more readily investigated through that process.
- 5.4.11** I am aware that breaches of the Act will nevertheless be referred to the NTEC for investigation, but for conduct involving the making of administrative decisions, based upon some form of corruption, the ICAC Commissioner will have the investigative role.
- 5.4.12** The second is the facility with which such a ban can be worked around, by devices such as donations from personal resources or family members. It is noted in Annex E, for example, that Mick Burns, the then President of the Australian Hotels Association (NT Branch) ('AHA NT'), made significant personal donations to both the ALP and the CLP (as was transparently disclosed) whilst the AHA NT made no donations. I do not suggest his donation was in fact on behalf of the AHA NT or to achieve any AHA NT 'agenda'. Nor do I suggest that his donation was other than entirely proper. That is simply an example, because some persons did connect his donation to the formation of government policy. I did not conclude that that was the case.
- 5.4.13** Finally, I note the current public debate about foreign interests interfering with the proper electoral processes more generally in Australia. The Joint Standing Committee on Electoral Matters has recently reported on that matter.¹⁰⁴ There has been nothing to suggest a similar concern is specifically relevant to the Northern Territory. The NTEC has reported only one foreign donation of some \$3 000 over the last several years.¹⁰⁵ I make no recommendation in that respect. It is no doubt a matter being addressed collectively by Australian governments.

¹⁰⁴Advisory report on the Electoral Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), April 2018.

¹⁰⁵NTEC Submission to the Inquiry, December 2017, p 4.

CAPS

- 5.4.14** When considering voter confidence in the conduct of candidates who later hold elected office, the perception created by large donations can be equally problematic as the extent of the influence they may actually confer on the donor. As an example, in January 2017 local media reported on a perceived connection between a \$40 000 donation made to the ALP by a prominent member of the AHA NT, albeit under his own name, and subsequent policy decisions adopted to limit the maximum floor size of takeaway liquor licences.¹⁰⁶ I have concluded there was no such connection.
- 5.4.15** Many of the submissions I received supported the imposition of a cap on donations.
- 5.4.16** The NSW caps were suggested as a potential model to follow (scaled to the smaller population of the NT).¹⁰⁷ At the time of the 2015 NSW State Election, there were approximately 5 million enrolled voters and donors' annual giving was capped at \$5000 per party and \$2000 per candidate or third-part campaigner.¹⁰⁸
- 5.4.17** For the Northern Territory population of 135 000 enrolled voters (approximately 2.7% of the NSW voters), the equivalent figures as proportionate to the voting population would be \$135 per party and \$54 per candidate. Even when the small size of the Territory is considered,¹⁰⁹ these figures are clearly so low as to discourage donations entirely. Such an analysis is not appropriate.
- 5.4.18** One submission suggested a cap of \$200 to both parties and candidates.¹¹⁰ Another suggested \$1 000 to candidates or \$5000 for in-kind donations.¹¹¹
- 5.4.19** Some comment was made also on the need for change to the threshold for reporting donations – i.e. how large an anonymous donation can be. NTEC suggested that the current cap of \$1 000 per donation be retained, one submission suggested a threshold of \$200¹¹² and another submission believed they should be banned entirely.¹¹³
- 5.4.20** Again, no clear picture emerged from the submissions or considerations. There was a strong emphasis on transparency, and transparency in a timely manner, particularly in the period of an election cycle.
- 5.4.20** I do not consider it appropriate to adopt a version of the NSW set of provisions, adjusted to the comparative population size of the Northern Territory. The comparative population means that the number of potential donors is very much smaller in the Northern Territory.
- 5.4.21** I have set out above in Section 4.1 the current position in the Northern Territory. No case has been made by submissions or at interviews to recommend change to that position, save for the consequences of public funding of elections. Political parties will still require funding for their routine operations, and during election cycles much more funding. It is presently only in New South Wales that a cap on donations exists. Whilst there is understandably scope to expect that significant donations buy favours, the compulsory disclosure of any significant donations (anonymous donations cannot exceed \$1 000 at present) does expose the gift and invite attention to its propriety. Any selected upper cap on donations to a political party or any candidate would be fixed without a good foundation for showing that, at that level, inappropriate influence on policy or administrative decision-making has resulted from inappropriate conduct. I have not found that to be the case in the Northern Territory.

¹⁰⁶Political donations under fire after NT hotels boss confirms \$100k gift to Labor, Country Liberals', Jacqueline Breen, ABC News, 30 Jan 2017, <http://www.abc.net.au/news/2017-01-30/fresh-call-for-ban-on-political-donations-in-nt/8222568>, 'Labor given \$50 000 from AHA', Chris Walsh, NT News, 27 Jan 2017, <http://www.ntnews.com.au/news/northern-territory/labor-given-50000-from-aha/news-story/a68a7d68ca35b8eb98e1f42873617c1a>.

¹⁰⁷Submissions made by NTEC and Mark Guyula MLA.

¹⁰⁸NSW Electoral Commission, 'Caps on Political Donations', http://www.elections.nsw.gov.au/fd/political_donations/caps_on_political_donations.

¹⁰⁹Comment on the small size of the NT was made by Brenda Monaghan and Terry Mills MLA.

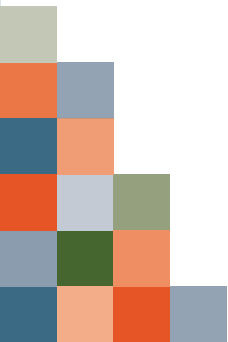
¹¹⁰Submission made by Clare Hasewski.

¹¹¹Submissions made by the 1 Territory Party.

¹¹²Submission made by Terry Mills MLA.

¹¹³Submission made by Clare Hasewski.

- 5.4.22** Nevertheless there is a strong case for imposing a cap on political donations. First, despite the fact that I have not found any example of a political donation improperly influencing political policy or administrative decision making, the submissions and interviews show that many reasonable citizens do reasonably suspect that occurs. In the absence of fuller information (as I sought to procure), such suspicions are understandable. So the level of political donations, unless controlled, may give rise to some loss of confidence in the integrity of the political system.
- 5.4.23** Second, the introduction of public funding of elections and its concomitant expenditure cap should reduce the need of political parties for funds to contest elections. But more importantly, an element of public funding of elections as an investment in the integrity of the electoral process is the reduced need for additional funding for elections. It is therefore reasonable to expect that that reduced need should in part be effected by controlling the level of political donations.
- 5.4.24** The converse proposition, when stated, demonstrates the validity of control over the level of donations. The converse is that, despite the control of electoral expenditure, a political donation of very substantial size should be permitted. That would prompt the 'why' question, as it could not be for the conduct of the election. The third reason is simply the trend in other jurisdictions in Australia, now to include Victoria.
- 5.4.25** I therefore recommend the introduction of control upon the level of political donations. It is really a community value judgment, informed by the expenditure cap on elections. The NSW cap is quite low, but it has particular and well-known reasons for that. In the Northern Territory, the donations of Harold Nelson Holdings and CLP Gifts & Legacies should not be the cause of any public concern. The funding of the ALP from union support, and of the CLP from business support, is understandable, provided it is not too large as to cause suspicion or concern. Political parties and individual members of the Legislative Assembly, and candidates in elections, must operate over a period longer than the election cycle.
- 5.4.26** In that light, my tentative view is that the cap on political donations should be either \$5 000 or \$10 000 for parties, and \$2 000 for party-endorsed candidates. Independent candidates should be able to receive donations at the level of cap applied to parties. It is not realistic to think those levels of donations are of such size as to 'buy' a precise political or administrative decision outcome at a Territory level (it may be different at a lower level of government).
- 5.4.27** However, I must point out that the Legislative Assembly as an elected body is in fact the representative of the community and should be best placed to determine the appropriate cap on political donations. It may be less (as in NSW – around \$5 000) or more. I observe that, at the Federal level, the indexed level for the disclosure of political donations is now \$13 500.
- 5.4.28** Obviously, that should permit periodic (disclosed) donations. In my view, the cap should be applied on an annual basis. A calendar year basis would be better, as half yearly reporting (more frequent in election years) would expose political donation levels before elections. Donations should be aggregated from each donor, preventing the making of multiple donations just below the cap within any given year.
- 5.4.29** I see no reason to change the requirement to disclose all donations above \$1 000. That is, a donation up to \$1 000 may be anonymous. A different threshold for candidates, or for the disclosure of loans, is probably unnecessary.





5.5 FINANCIAL DISCLOSURE

5.5.1 The current disclosure regime is not satisfactory. At present, details of donations received and expenditure by parties campaigning in the final 2 months of the Legislative Assembly election are not made public until fifteen months after polling day. Small adjustments to the period covered by a return in an election year will effectively reduce that time to 6 months. Additional requirements for parties to disclose donations made in election years in a timely fashion will improve voter access to contemporary information informing their voting decisions. It will better serve the integrity of the electoral process.

5.5.2 Several submissions called for real-time disclosure of donations.¹¹⁴ However, as I have discussed above in Section 4.2, a real-time or 24 hour reporting scheme will be expensive to administer, overly burdensome on parties and candidates and likely to be of interest only to a small portion of the population.

5.5.3 DISCLOSURE OF ANNUAL RETURNS

- I recommend that in election years, registered parties' annual returns should cover the period of 1 July in the previous year to 30 September in the election year.
- The return must be given to the Electoral Commission within 30 days of that period (30 October).
- The return must be published by the Electoral Commission on 1 March in the following year

5.5.4 DISCLOSURE OF DONATIONS BEFORE POLLING DAY

- In election years, donations received by parties and candidates should be reported monthly between 1 January and 1 June (e.g. on 1 Feb, 1 Mar, 1 Apr, 1 May, 1 Jun).
- Donations received between 1 June and polling day should be reported weekly (E.g. 8, 15, 22, 29 Jun, 6, 13, 20, 27 Jul, 3, 10, 17, 24 Aug).
- Donations reported to the NTEC should be publically viewable on the NTEC's website within 24 hours of receipt.

5.5.5 I see no reason to change the level of the anonymous donation threshold from its present figure of \$1 000. The above recommendation means that donations over that sum will have to be disclosed to the NTEC during an election cycle by political parties and candidates frequently, and should be available to the public through the NTEC website within a few days of the donation. The voting public will be able to see what contributions have been made and who has made them. It can make of such information what it will.

5.5.6 I have commented in Annex E to this Report about the possible non-disclosure of the value of donations by 'volunteer' labour used in the Blain by-election and during the 2016 election. In my view, if such conduct did take place as asserted, it would be a donation in kind and should be reported as such by the relevant political party. I do not consider it necessary to make any recommendation on the topic, as the fact that it has been raised should mean that the relevant political party should no longer assume that all 'volunteer' labour provided during an election campaign is in fact in relevant respects merely volunteer labour.

¹¹⁴Submissions made by Mark Guyula MLA, Terry Mills MLA, and Clare Hasewski MLA.

5.6 AUDIT, ENFORCEMENT AND SANCTIONS

- 5.6.1** Not surprisingly, the most helpful submissions on this topic came from the NTEC. There were two submissions which specifically concerned the need to impose penalties for failure to disclose political donations, or to do so in a timely manner.
- 5.6.2** To that extent, the NTEC might have been suggested to have been too willing to accept remedial conduct by the filing of late or corrected returns.
- 5.6.3** The discretion which lies with the Electoral Commissioner in that regard is one he clearly exercises after careful consideration. Not surprisingly, he has regard to the erroneous conduct and the reasons for it, and to the impact or potential impact of the erroneous conduct upon public confidence in the political process and in particular the electoral process.
- 5.6.4** I do not think that the bases for such decision-making by the NTEC or the Electoral Commissioner in the past have been inappropriate.
- 5.6.5** I have reviewed current penalty levels for offences in the Act. They do appear adequate. There is no submission that any lack of compliance with the Act, or the reporting obligations, is a consequence of diffidence in light of the penalties. That also did not emerge from any interviews. However, the NTEC did comment that the current system makes it challenging for the NTEC to enforce sanctions against those who breach their requirements under the Act. A regulatory system can only be effective if it is enforced.
- 5.6.6** I adopt the NTEC's suggestions and so recommend the following:
- The timeframe for the commencement of prosecutions for offences under the Act should be increased from 3 to 4 years.
 - The NTEC should be given discretion and statutory power to impose 'civil penalty' fines in response to breaches of the Act, but preserving the entitlement of any person or entity to have the alleged conduct or penalty referred to a Court.
- 5.6.7** Two submissions suggested that public funding should be repaid in certain situations – e.g. if returns given to the Electoral Commission are incomplete¹¹⁵ or if independent candidates join political parties within a certain period of their election.¹¹⁶ Such matters are complex and difficult to respond to. The recommendations above provide for public funding to be paid only after the lodging of the electoral expenditure returns. If they are incorrect, or if a potential donation return is incorrect in a material way, then the NTEC will take that into account in assessing the size of any 'civil penalty' or in deciding to prosecute the contravener. The amount improperly procured will of course have to be repaid but the fact of its payment will be likely to lead to a significant penalty by reference to that amount. I do not consider any more specific recommendation is necessary.

¹¹⁵Submission by 1 Territory Party.

¹¹⁶Submission by Clare Hasewski.



5.7 CONCLUDING REMARKS

- 5.7.1** In undertaking the Inquiry and in the Report I have been mindful of the need to preserve public confidence in the electoral process. I have also been mindful of the size of the Northern Territory. As the NTEC said, it is a small jurisdiction with finite resources so, as far as possible, my proposed changes to the electoral disclosure regime and any funding regime should be effected by as practical and straightforward measures as can be done.
- 5.7.2** There are a raft of minor procedural matters which the NTEC referred to the Inquiry. They were not the subject of any submission or unprompted comment during the interview process. They included the suggestions that donor returns are not necessary, as the party/candidate/associated entity returns will disclose the donation and the subsequent audit will check it. The NTEC said the same applies to broadcaster returns.
- 5.7.3** In the absence of contention, I accept what the NTEC has said on such matters. Although I have not separately included their adoption as a recommendation, it would be appropriate to adopt them. In other respects my recommendations adopt a number of the NTEC suggestions.
- 5.7.4** As I have said, apart from the issues about prohibiting donations from particular groups or categories of donor, and capping the level of donations, the matters addressed under the TOR (other than TORs 7 and 8) were largely uncontentious. Many who made submissions to, or provided information to, the Inquiry did not see the need to address the detail underlying the concepts.
- 5.7.5** There was also little debate about implementation of concepts. That may reflect an acceptance of the primary recommendations as likely to preserve and enhance the integrity and the perceived integrity of the electoral process and of the political process more generally.

ANNEX A: TERMS OF REFERENCE

GOVERNMENT BUSINESS**MOTION – TERMS OF REFERENCE: INQUIRY INTO POLITICAL DONATIONS****FOR: CHIEF MINISTER****DATE: 30 NOVEMBER 2016**

MADAM SPEAKER I MOVE THAT:

The Northern Territory Legislative Assembly appoints a person under section 4A of the Northern Territory *Inquiries Act* to inquire into and report on options for the reform of political funding and donations in the Northern Territory by no later than 12 months from today, including:

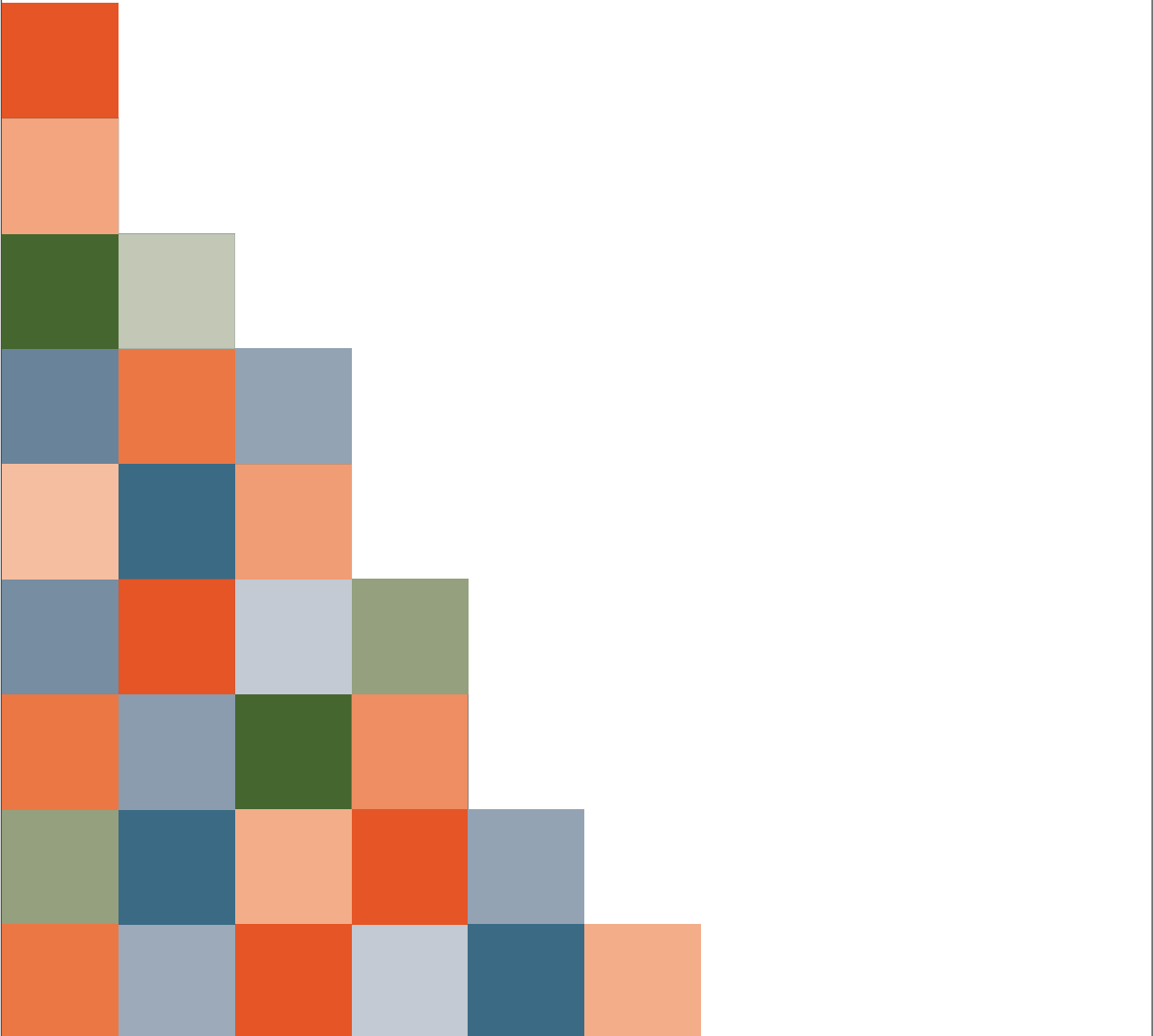
1. Should there be a cap on how much parties can spend on a campaign, how it should be calculated and what other details should be considered.
2. Whether or not 'full' or 'partial' public funding of political parties and candidates should be provided.
3. If a 'partial' public funding scheme is considered preferable, recommendations as to a potential model, the basis upon which such funding is to be provided and whether a threshold for such funding should be adopted (consideration should extend to any legislative/regulatory amendments that would be required to affect such a model).
4. What is the appropriate level to cap the value of political donations to parties, groups, candidates, elected members and third-party campaigners; what methodology should be used to determine that cap; and what measures can be put in place to ensure that any caps are effective.
5. Whether the current donations disclosure requirements are appropriate including potential changes to the method, timing and publication of disclosures.
6. What controls should apply to the making of political donations, including:
 - i. whether or not particular entities or groups of donors should be excluded; and

- ii. any limitations or restrictions or caps on such political donations.
7. Whether there have been any breaches of the Northern Territory *Electoral Act* in relation to donations made to political parties and candidates in the Northern Territory over the last 10 years.
8. Any legislative or regulatory amendments that should be made to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of third parties, associated entities or other means. To this end the inquiry will investigate:
 - i. The structure of Foundation 51 and the scope of its activities;
 - ii. The relationship between Foundation 51 and the Northern Territory Government and its Agencies and any related conflicts of interest;
 - iii. The relationship between Foundation 51 and the Country Liberal Party and any related conflicts of interest;
 - iv. The extent of direct and indirect financial and in-kind support provided by Foundation 51 to the Country Liberal Party, Members of Parliament and candidates for Parliamentary elections;
 - v. The extent of breaches of the Northern Territory *Electoral Act* and any other Territory legislation by Foundation 51; and
 - vi. The activities of Harold Nelson Holdings and its compliance with the Northern Territory *Electoral Act*.
9. Any other matters relevant to political funding and donations.

SIGNATURE:



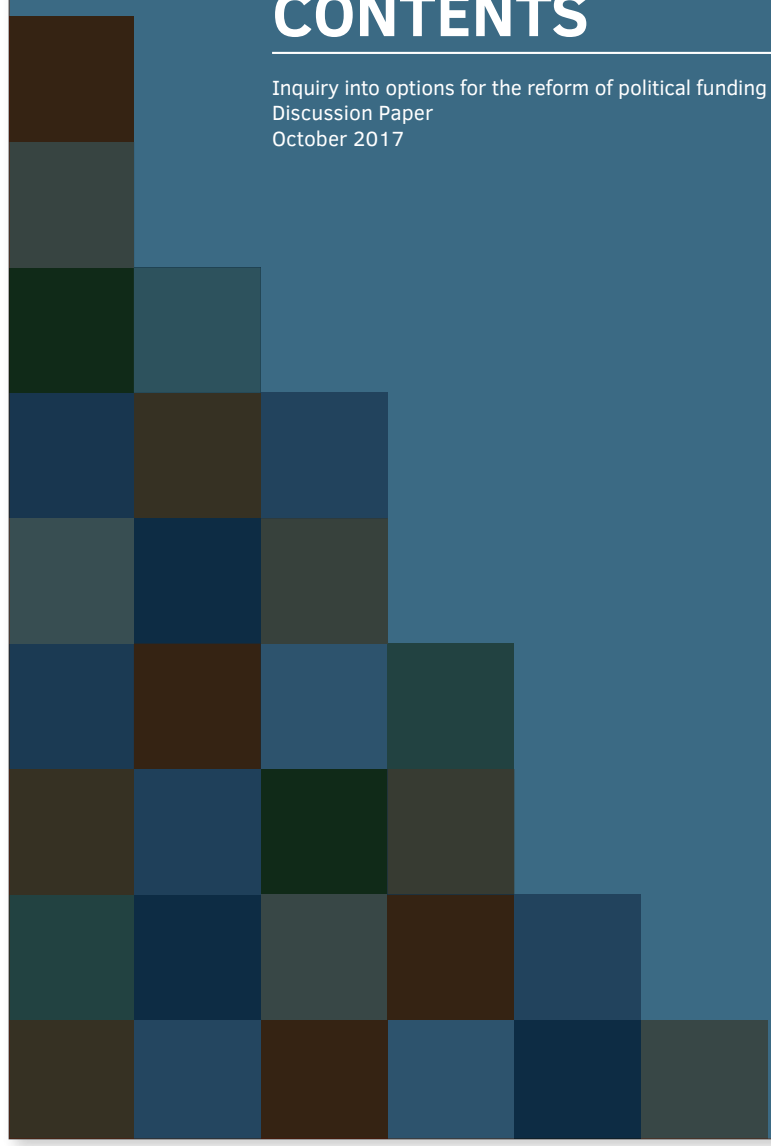
INQUIRY INTO OPTIONS FOR THE REFORM OF
POLITICAL FUNDING and **DONATIONS**
in the **NORTHERN TERRITORY**
DISCUSSION PAPER OCTOBER 2017





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



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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.

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.



04

HISTORY OF POLITICAL DONATIONS AND FUNDING IN THE NORTHERN TERRITORY

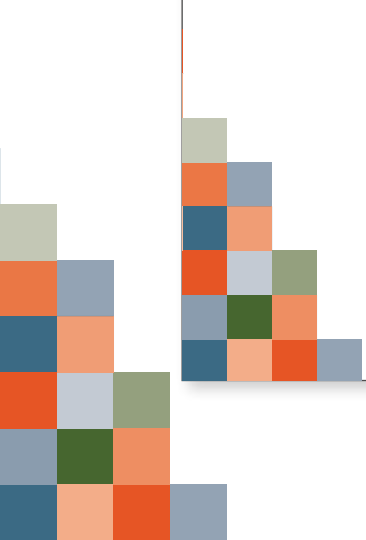
The first election in the Northern Territory was held in 1974 to elect 19 Members to the Legislative Assembly, several years before self-government was granted by the Commonwealth in 1978. At this time, there was no requirement for disclosure of donations received by candidates or parties. As early as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

06

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*,¹ 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.

¹*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 \$40 000.² 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 day³.

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?

² Electoral Act 1992 (ACT), Division 14.2B.
³ Electoral Act (NT) s 200.

08

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.⁴ Rates are highest in the ACT, at 817 cents per vote.⁵

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 st preference votes gained by candidates receiving 4%+ votes	Possible funding at \$2.6 per 1 st preference vote	Possible funding at \$8 per 1 st 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
Total	115	99	96996	\$252187	\$775968

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.⁵

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

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

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.⁷ 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?

⁴Australian Electoral Commission 'Current Funding Rate', http://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm.

⁵ACT Elections, 'Election Funding', https://www.elections.act.gov.au/funding_and_disclosure/election_funding.

⁶Northern Territory Electoral Commission, 2016 Territory Election Report, p 7.

⁷Northern Territory Electoral Commission, 2016 Territory Election Report, p 82.

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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.⁸

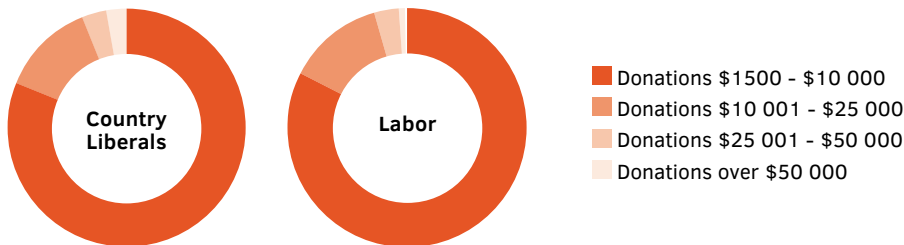
While the Act uses 'gift', this Discussion Paper uses the phrase 'donations' when referring to the range of contributions that can be made by a donor, including gifts of money, purchase of tickets to fundraiser events such as dinners and golf days, free services, office space or other benefits.

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.⁹ Victoria has more stringent limits, with donations to parties capped at \$4000 over the course of a four-year parliamentary term.¹⁰

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,¹¹ 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.¹²

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 \$25 000.¹³

⁸ Electoral Act (NT) s 176.
⁹ Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 95A.
¹⁰ 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>.
¹¹ Electoral Act (NT) s 215.
¹² Electoral Act (NT) s 189, s 197.
¹³ 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.¹⁴ Foreign donations made up more than 5% of federal donations in 2013-14.¹⁵

In New South Wales, donations from property developers or members of the alcohol, tobacco or gambling industries have been banned since 2010.¹⁶ 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?

¹⁴ 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.

¹⁵ 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-have-foreign-donors-given-australian-political-parties>.

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

¹⁷ *McCloy v New South Wales* [2015] HCA 34.

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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.

Table 4: Financial disclosure requirements in the Northern Territory

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

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Data sourced from NT Electoral Commission submission

FINANCIAL DISCLOSURE

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 2018.¹⁹

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.²⁰ 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/>.²¹

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?

¹⁸ Extracted from the preliminary submission provided by the NT Electoral Commission.

¹⁹ Northern Territory Electoral Commission, 2016 Territory Election Report, p 82.

²⁰ Northern Territory Electoral Commission, 2016 Territory Election Report, p 84.

²¹ 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

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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.

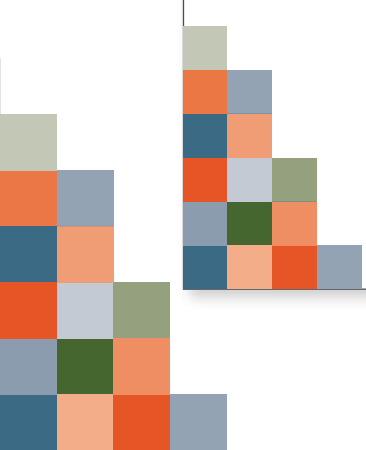
To date, the approach of the Electoral Commission has focused on compliance rather than punishment. Parties who have filed incorrect returns are given opportunities to amend them without penalty. Candidates and donors who fail to file returns are followed up by the Commission and the financial review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

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.

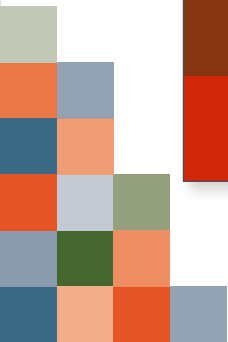
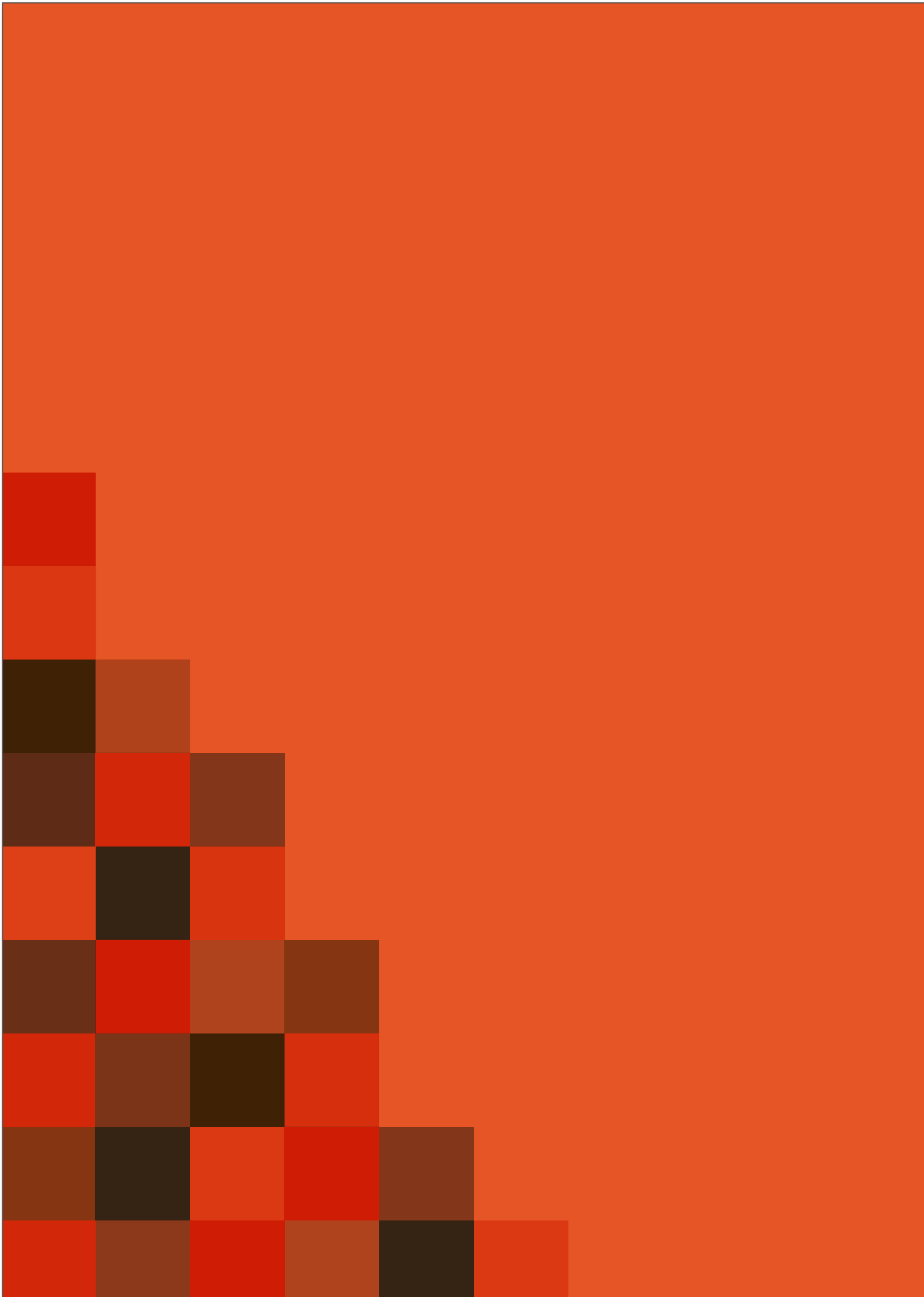
Following its consideration of the responses, and any additional investigations in relation to specific matters, particularly those referred to above in the section headed 'Preliminary Submissions and Preliminary Inquiries', the Inquiry proposes to then proceed to its Final Report on the Terms of Reference. 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 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



- Australian Labor Party (Northern Territory Branch)
- Law Society NT
- Yingiya (Mark) Guyula MLA
- Gerry Wood MLA
- Robyn Lambley MLA
- Northern Territory Electoral Commission
- Northern Territory Information Commissioner
- Clare Hasewski
- Sam Wilks
- Terry Mills MLA
- 1 Territory Party
- Country Liberal Party
- Graeme Lewis
- Heart Foundation Northern Territory

ANNEX D: INTERVIEWS (BY DATE INTERVIEWED)

- Electoral Commissioner Iain Loganathan
- Information Commissioner Brenda Monaghan
- Hayley Sorensen (NT News)
- Sara Everingham (ABC News)
- Jeff Collins MLA
- Natasha Fyles MLA
- Kezia Purick MLA
- Clerk Michael Tatham
- NT Ombudsman Peter Shoyer
- Gary Higgins MLA
- Robyn Lambley MLA
- Bob Gosford
- Kathleen Bruin (9 News)
- Auditor-General Julie Crisp
- ALP Secretary Kent Rowe
- Chris Walsh
- Gerry Wood MLA
- Director of Public Prosecutions Jack Karczewski
- Police Commissioner Reece Kershaw
- Paul Sharp (NT Greens)
- Terry Mills MLA
- AHA NT CEO Des Crowe
- 1 Territory President Braedon Earley
- Graeme Lewis
- Shane Stone
- Suzanne Cavanagh
- Sean Parnell
- Kieran Philips
- Helen Nezeritis
- Mick Burns
- Alf Leonardi
- CLP Director Brad Vermeer
- Director-General of Licensing Cindy Bravos
- Trish Brick
- Tim Radburn
- David Tollner



ANNEX E: PAST CONDUCT INVESTIGATIONS

E.1 GENERAL OBSERVATIONS

- E.1.1** As noted above, TOR 7 requires an Inquiry into whether there have been any breaches of the Act in relation to donations made to political parties and candidates in the Northern Territory over the last 10 years – that is, from 2007. TOR 8 is in a somewhat different context but in essence it directs attention to any prospective legislative or regulatory amendments to ensure that limits on political donations and disclosure requirements cannot be avoided through the use of third parties, associated entities, or other means. It specifically refers to Foundation 51 and Harold Nelson Holdings. It is clear that there is a suggestion (and in the case of Foundation 51, a strong suggestion) that those entities may have been used as vehicles for conduct involving a breach of the Act in the past.
- E.1.2** I have briefly referred above to the means by which I sought to identify past conduct which may have contravened the Act for the purposes of considering TOR 7 and 8. In only one respect, that is in relation to Foundation 51, was I persuaded that there is a likelihood that, over the past 10 years, there had been a relevant breach of the Act.
- E.1.3** However, whilst I do not consider that the material available to me shows a likelihood of other conduct by other entities or persons in breach of relevant provisions of the Act over the last 10 years, there is other conduct which, understandably, gave rise to suspicions of such contraventions.
- E.1.4** It is also important to record those allegations, and my consideration of them. Of course that is in part to indicate that each of those allegations has been carefully considered. More importantly it is also relevant to show how and why such suspicions and concerns arose. Conduct of such character, if it raises in the minds of reasonable members of the community the prospect that an election may not have been contested within the proper boundaries prescribed by the Act, might warrant a ban on the making of political donations in support of a party or candidates for election, or a limit on the permitted level of political donations in an election period.
- E.1.5** Each of the matters which I specifically considered is addressed in the succeeding sections of this Annexure. Some are only briefly addressed, as they did not, upon investigation, expose a real possibility of contravention of the Act. Some, such as Foundation 51, required more detailed consideration.
- E.1.6** In the following text, it should be noted that not all sources of information are specifically attributed. That is because, in interviews, some information was provided but not to be attributed. I have considered the unattributed information. Its sources are not critical, mainly because it is material from which more specific inquiries were conducted or because it raised issues which were otherwise in the public arena.

E.2 FOUNDATION 51

E.2.1 SCOPE AND STRUCTURE OF ACTIVITIES

Following the CLP's defeat in the 2008 Legislative Assembly election, Foundation 51 was registered in February 2009 by accountant and long-time CLP loyalist Graeme Lewis and the then Chief Minister Terry Mills' chief-of-staff, James Lantry. It should be noted that Lewis died earlier in 2018. The Foundation was modelled on bodies like Eightbyfive and the Millennium Foundation operating in New South Wales as an institution for fundraising for the conduct of political research. The name of the Foundation was simply drawn from the number of donors who had expressed an interest in donating to such a body, and who broadly speaking had donated to the CLP ahead of its recent unsuccessful election campaign.

E.2.2 THE LANTRY MANIFESTO & PROPOSED ACTIVITIES

A document referred to as the 'Lantry manifesto' was published in early 2009.¹¹⁷ It described Foundation 51 as 'designed to strengthen the liberal conservative politics in the Territory' and included in its planned activities the following:

- 'fostering discussion through guest speakers and research papers';
- allowing members to 'articulate their views on issues to the Conservative leadership'; and
- fundraising to provide material support to strengthen the Territory's own Country Liberal [sic].¹¹⁸

Membership fees were set at \$5500 or \$22 000 for a 'platinum' membership. The 5-person board was to include the deputy leader of the CLP and the chief of staff of the CLP parliamentary team (James Lantry).¹¹⁹

The Lantry manifesto envisaged that the leader of the parliamentary wing of the CLP – which was Mills at the time – would serve as the patron of the Foundation. Mills initially played a 'directorial role' but was never listed as a director of the company.¹²⁰

The manifesto outlined plans to hold 3 events each year, to produce an annual research report, and to provide members with an 'overview' of polling and research conducted. A 2009 pamphlet described Foundation 51's plan to conduct 8 research programs over 12 months and labelled the Foundation as 'an initiative of the Country Liberals'.¹²¹

E 2.3 ACTUAL ACTIVITIES

The activities of Foundation 51 can be classed in two distinct stages. The first ran from the company's founding in February 2009 through to the end of 2010. This period was characterised by a proliferation of research material presented to members, although some of that material appeared to be mere compilations of public information and statistics. This period generally reflected the intended operation of the Foundation as described in the manifesto.

Payments from Foundation members largely consisted of the membership fees mentioned above or payments for attendance at specific functions.

The research publications commissioned and presented by the Foundation included:¹²²

As the table illustrates, there were significant research projects and speaker events open to all Foundation members before 2011, but fewer in the following years.

¹¹⁷At that time, Foundation 51 was known as Foundation 49 – but the latter name was already registered.

¹¹⁸"Lantry manifesto – Foundation 49", circa 2009.

¹¹⁹After Lantry's departure, Hopton and Maley held brief directorships in the Foundation.

Directors	Period
Graeme Lewis & James Lantry	13 Feb 2009 – 22 July 2010
Graeme Lewis	23 July 2010 – 15 Feb 2013
Graeme Lewis & Peter Hopton	15 Feb 2013 – 20 Aug 2014
Graeme Lewis & Peter Maley	2 Jan 2014 – 11 May 2014
Graeme Lewis	21 Aug 2014 – 13 May 2015 (deregistered)

¹²⁰Email from Graeme Lewis to Braedon Earley, 22 November 2012 10:37pm.

¹²¹Foundation 51 Pamphlet, circa 2009.

¹²²Some of these are described in the NT Information Commissioner's decision of 29 August 2017, F20/15-16 Charlie Phillips v Northern Territory Electoral Commission.

Date	Material
2009/10	'The makeup and change of Defence in the Territory as a result of the White Paper' (Publically available material)
2009/10	Social Media: Its Changing Nature and Opportunities for Business (Publically available material)
2009/10	Demographics of Darwin and Palmerston (1996-2006) (Publically available material)
2009/10	10 years of crime in the Territory (1996-2006) (Publically available material) Disseminated at a Darwin demographics and crime event
2010	Enterprise V2 – how blogs, instant messaging and wikis can be applied to business today (Publically available material)
2010	Bernard Salt KPMG presentation 'Australia has a role to play in delivering resources, energy and food at peak humanity'(Publically available material)
2011/12	Seminar event on 'Where are the economies of the Northern Territory and Australian Heading?' & Crosby Textor research project
2011/12	Seminar event on 'Oil and gas potential in the NT'
2011/12	Crosby Textor election-related research
2013	Kormilda College Interim Report
2014	Report on Voting Trends – for Blain by-election

The second stage of the Foundation's activities was best described by Lewis himself in November 2013:

*'The business model of the foundation has evolved over the four year life of the Foundation and it is basically this. The Foundation conducts business and marketing assignments for selected clients, who agree that the Foundation can leverage advantage for the Party...vital advantage came to the Party [in the last four years] in the form of consultants, market research and polling.'*¹²³

In this period, payments were made to the Foundation without any connection to scheduled events or specific research projects.

E 2.4 LOCATION

The CLP paid for the Foundation's domain address for several years, although Lewis contended that this was an error caused by the Foundation engaging the services of an IT consultant who also worked for the CLP.

The postal address used by Foundation 51 on all donor and associated entity returns was PO Box 199. This address was shared by CLP Gifts & Legacies on their associated entity returns in 2011/12, 2012/13 and 2013/14. Lewis was the financial controller responsible for lodging returns on behalf of CLP Gifts & Legacies in those years.¹²⁵

PO Box 199 was also used by the Country Liberals Darwin Branch,¹²⁶ of which Lewis was a member.¹²⁷

¹²³Notes from speech given to the November 2013 CLP Central Council meeting.

¹²⁵*Electoral Act* (NT) s 208.

¹²⁶As donor to CLP, in CLP annual returns 2011/12 and 2012/13.

¹²⁷As donor to the CLP, in CLP annual return 2012/13.

E 2.5 RELATIONSHIP WITH THE CLP

The Foundation's relationship with the CLP was complex. As the Foundation was at almost all times a sole directorship with all decisions made by Lewis, the Foundation's relations with the CLP were Lewis' personal relations.

Lewis was on close terms with other senior and long-term members of the CLP, including Shane Stone and Suzanne Cavanagh. Lewis was committed to the party's success. There is some material to suggest he held strong views, and sometimes forcefully maintained them, including keeping secret much detail about the finances of Foundation 51 and indeed of the CLP. Other executive members who were involved with Lewis in their roles as Treasurers or Deputy Treasurers had little say in decisions where one might expect their contribution to be relevant.¹²⁸

When other party members did ask for access to information about either the CLP's finances¹²⁹ or the role of the Foundation, altercations ensued.

For example, Braedon Earley unsuccessfully sought information about Foundation 51 from Lewis shortly after he became party President in November 2012. Two years later, Eli Melky made similar enquiries in his role as the Deputy Treasurer. He wrote a letter to President Ross Connolly which was circulated within the party management complaining of the lack of a detailed response from Lewis.¹³⁰ Both Earley and Melky left the CLP at least in part because of those events.

The respective chains of email correspondence were publicised in 2014 and led to a referral of Foundation 51 to the NTEC.

Much of the following emerges from the material assembled by the NTEC, subsequently submitted to the Northern Territory Police for further investigation as necessary and then submitted to the Northern Territory Director of Public Prosecutions. As is well known, the Director of Public Prosecutions decided that it was not in the public interest for any charges for breach of the Act to be laid against Foundation 51. By the time of his consideration, the corporate body of Foundation 51 had been de-registered, and its activities had ceased. Both Foundation 51 and the CLP had provided declarations (belatedly) declaring the value of the support provided by Foundation 51 to the CLP over several years, and had thereby accepted that there was such an association between them as to have required the lodging of the returns to the NTEC.

The CLP did not receive the full value of donations made by donors, many of whom expected their contributions to go to the party via Foundation 51.¹³¹ Lewis discouraged others within the CLP management from fundraising or approaching potential donors. When donors were approached by others in the CLP, they claimed they had already donated to the party through Foundation 51, when no funds had been received.¹³²¹³³ Few members of the CLP were granted full access to the results of the polling research that Lewis paid several hundred thousand dollars to Crosby Textor to undertake:

*'Out of the blue, polling information was provided by Graeme or Terry in similar meetings however there was no way of knowing its validity or how the information came about. This information was never given on paper and it was always the case that Graeme or Terry would provide the information verbally or leave with whatever paperwork they were making reference to.'*¹³⁴

¹²⁸Statutory declaration by Eli Melky, 30/6/15, 'I was told, by others in the party, and not Lewis, that my role as Deputy Treasurer was that if something happened to the Treasurer, I would be required to know the goings on of the party and take over. However, no effort was made by Lewis to provide me with any details or knowledge of the CLP's financial position or the goings on of the party or Foundation 51;'

Statutory declarations by two CLP members in 2015, 'My only role in Management ... was as Deputy Treasurer, the positional was a nominal position, just a voting position, I didn't have to do anything, I had no involvement in money or the finances. Graeme Lewis was the Treasurer and did everything;'; '... the role is pretty much a vote system, I don't have anything to do with ongoing accountability, that's another side of it.'

¹²⁹Statutory declaration by two CLP members in 2015, 'In my time on Management I've had some significant issues with the failure of the CLP having audited accounts...as far as I am aware the CLP accounts have not been audited for about 5 years, Graeme Lewis says he's a busy man, and that he doesn't have time to do them, and that it's only a volunteer appointment;'; 'It was pretty hard to get anything out of Graeme to be honest, we were fighting with him around this time to have him provide audited accounts for the party as he was party Treasurer. These were never provided by Graeme.'

¹³⁰Email from Eli Melky to Ross Connolly, 24 March 2014.

¹³¹Statutory declaration by CLP member in 2015.

¹³²Statutory declaration by CLP member in 2015: Anecdote about Lewis 'beating down with a stick' Tory Mencshelyi when she offered to do fundraising. 'Graeme Lewis would say things, like, "these are my clients and I will get fundraising from them", and he didn't want anyone else involved, not even the Chief Minister.'

¹³³Interview with Shane Stone and Suzanne Cavanagh, 5/12/17.

¹³⁴Statutory declaration by CLP member in 2015.



*With regard to the polling documents, I don't recall getting any documents or actual results. We would be told verbally ... always from Graeme Lewis telling us generally some results and telling us to do a few things, but never gave us details.*¹³⁵

It appears that Lewis used his access to Foundation funds as a means of influence within the CLP. Lewis used both his control over spending of the funds, and polling data commissioned with Foundation funds, to influence party decisions,¹³⁶ including the pre-selection of candidates he favoured:¹³⁸

*'CLP members were unhappy with Lewis due to his total control of Foundation 51 and influence that gave him over the CLP. Members were also unhappy that Lewis was spending the money raised by Foundation 51 on what he wanted, despite being CLP related, and that he funded pre-selected candidates of his choice...'*¹³⁹

An extract from a statement made by a CLP member to the police in 2015 reveals:

*I am not convinced that [Foundation 51 is an associated entity] on the basis of the question "What have we (the CLP) received?" As far as I know we have not received any cash except for small payments for people attending dinners in the two years that Graeme has declared it as an "Associated Entity". Outside of that I am aware that on occasions around election time Graeme has provided bits of interpreted polling data to the party on a one page sheet of paper as an example. We would get a briefing like 'these are the polling results' but the information that was handed over was very basic and brief. Polling data is usually comprehensive and consisting of hundreds of pages and it seemed that what Graeme was providing was just his interpretation of those results. The party did not really have any way of working out whether the polling results were an accurate reflection of community sentiment at the time of whether the results were to assist in running the agenda of those involved with and in support of Foundation 51. Without us being provided with any information we could not ascertain whether Foundation 51 was a lobbying body or whether it was used as a fundraising body.*¹⁴⁰

However, the fact that Lewis used Foundation 51 funds in that way does not preclude a finding that Foundation 51 was an Associated entity of the CLP. Indeed, as noted, that came to be accepted, at least as the direct involvement of Lewis in the campaign management of the CLP became more evident.

Section 176 of the Act provides:

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*

Section 208 of the Act provides:

(1) If an entity is an associated entity at any time during a financial year, the entity's financial controller must, within 16 weeks after the end of the year, give the commission a return in the approved form.

It is sufficient for Foundation 51 to have operated 'to a significant extent' for the benefit of the CLP 'at any time' in a given financial year to me to find it to have been an Associated entity in that year.

¹³⁵Statutory declaration by CLP member in 2015.

¹³⁶Statutory declaration by CLP member in 2015: 'The contributions made to the CLP by Foundation 51 afforded Graeme Lewis and others involved in Foundation 51, the likes of Shane Stone, great influence over party decisions and other matters that they should have had no involvement in. It is very difficult to support my claims with evidence and I can only offer examples of instances where I observed inappropriate influence.'

¹³⁸Email from Graeme Lewis to Terry Mills, David Tollner, Sue Fraser Adams, Barry Coulter, Suzanne Cavanagh, Peter Allen, Colin Fuller, Belinda Dukic, 22/11/11 9:08, 'Unfortunately these matters of preselection are in the hands of Branches, branch officers and to an extent (some) MLA's, and sometimes those very folk are too involved with personal issues to see the best interests of our Party, as we march towards Government.'

¹³⁹Statutory declaration by Eli Melky, 30/6/15.

¹⁴⁰Statutory declaration by CLP member in 2015.

E.2.6 THE SUPPORT PROVIDED TO THE CLP

Findings in this section are made on the basis of bank statements, receipts, written statements made by Graeme Lewis and other members of the CLP. A forensic audit was not conducted as it would not have been an appropriate use of public money in light of the findings reached.

The 2011-12 year was addressed by NTEC.¹⁴¹

2012 ELECTION CAMPAIGN CONTRIBUTIONS

In mid-2011, Lewis became one of the members of the 'strategy taskforce' established to prepare for the 2012 election. The taskforce included Terry Mills, David Tollner, Barry Coulter and Suzanne Cavanagh. Mills and Lewis were responsible for canvassing donors.¹⁴²

Although Lewis contended that the strategy taskforce operated for a maximum of three months, I find that it operated for at least one year.

Lewis stated that:

I acknowledge that on the strategic committee I provided information from my head. All I was doing was sitting at the table and talking about strategies for election. Issues regarding property, education, health I was aware of, if someone asked how to promulgate policy – I'd contribute. There was no way of valuing it and no relationship to the accounting of Foundation 51 whatsoever.¹⁴³

Lewis volunteered the services of the Foundation in conducting research on policy issues.¹¹⁸

Invoices made out to Graeme Lewis in his capacity as director of Foundation 51 from Crosby Textor detail spending in that year:

- An invoice in January 2012 for 'NT CLP Palmerston Spot Polls Feb 2012' for \$13 500.¹⁴⁵
- An invoice in May is for an 'NT CLP Benchmark survey' for \$83 050.¹⁴⁶
- An invoice in June for 'the conduct of research and consulting services' for \$132 000.¹⁴⁷
- A second invoice in June 'for the conduct of 8 focus groups and disbursements' of \$56 743.¹⁴⁸

Mark Textor offered a quote for election tracking, research and consulting services for a projected sum of approximately \$380 000.¹⁴⁹ Lewis assented to the quote.¹⁵⁰

Invoices received in August for \$348 757 detailed the outcome of the work commissioned in April 2012. They included 'NT Election research for the conduct of 8 focus groups and 8 surveys' charged at \$216 700.¹⁵¹

Yet this sum does not amount to the full total invoiced in August 2012, which was \$348 757. I am unable to make findings about the extent of Foundation 51's contribution to the remaining sum invoiced. The fact that the invoices were explicitly addressed to Lewis at Foundation 51 does not mean they were paid by the Foundation.

¹⁴¹NTEC findings paras [84]-[96].

¹⁴²Email from Graeme Lewis to Suzanne Cavanagh dated 18 June 2011: 'Resources ... Mills and Lewis preparing strategy for canvassing of Corporate Donors commencing 1 July.'

¹⁴³Interview with Graeme Lewis, 7 December 2017.

¹⁴⁴December 2011 Task Force Sheet: 'July 2011 – Research – vagrants. F51 to be approached for assistance – in progress. Graeme Lewis'. David Tollner's Report to Taskforce 5 July 2011: 'Urban drift ... I understand that Foundation 51 is talking to Charles Darwin University about the demographic of those people sleeping rough around Darwin and this will be valuable but it will not happen right away.'

¹⁴⁵Dated 23 January 2012.

¹⁴⁶Invoice dated 16 May 2012 for 'NT CLP Benchmark survey' or 'market research as commissioned by G J Lewis' (as described on two invoices dated identically).

¹⁴⁷Invoice dated 25 May 2012.

¹⁴⁸Dated 30 June 2012.

¹⁴⁹Email to Graeme Lewis and Suzanne Cavanagh dated 5 April 2012.

¹⁵⁰Email to Mark Textor dated 10 April 2012; statement from David Tollner 29/6/15: 'There was research from Mark Textor and I understand it was paid for by Foundation 51.'

¹⁵¹Invoices dated 16 August 2012 and 23 August 2012 for 8 focus groups (\$52 800), disbursements (\$3943), 2 focus groups and CATI survey (\$40 700) and NT Election research with 8 focus groups and 8 surveys (\$216 700), additional changes to focus groups (\$5500), additional survey (\$1 7600) and additional disbursements (\$11 513). Total of \$348 757.



It is easy to conclude that in the period leading up to the 2012 election, Foundation 51, guided by Lewis, and having regard to both Lewis' relationship with the CLP and the nature of the Foundation 51 activities and the use to which they appear to have been directed, operated to a significant extent for the benefit of the CLP.

That nature and value of its contributions to the CLP were not declared at the appropriate time to the NTEC, either by Foundation 51 or by the CLP.

2014 BY-ELECTION CAMPAIGN CONTRIBUTIONS

Terry Mills was replaced by Adam Giles as leader of the CLP in March 2013. Mills resigned from the Legislative Assembly on 20 February 2014, triggering a by-election in his seat of Blain. The CLP's candidate was Nathan Barrett.

Lewis gave Barrett a loan of \$10 000 to compensate Barrett for his loss of income while campaigning. Lewis has consistently claimed that this money was his own, and not Foundation 51 funds. He justified the personal loan on the basis that he approved of Barrett and his candidacy.¹⁵² It is not, despite some media suggestion to the contrary,¹⁵³ appropriate to conclude that that was the use of Foundation 51 funds.

However, it is on the other hand clear that Foundation 51 was again operating to a significant extent for the benefit of the CLP in the period leading up to the by-election.

In March 2014 Lewis described the Foundation's contributions to then party President Ross Connolly:

*The Foundation has already contributed significantly to the activities of the Blain by-election.*¹⁵⁴

While Lewis publically characterised this contribution as the giving of 'advice' to the party,¹⁵⁵ he later revealed that Foundation 51 paid \$8 525 for polling data from Crosby Textor ahead of the election and that his contribution of information was based on this data.¹⁵⁶ The Associated Entity return filed for this year included a donation of 'information' worth \$1 550. I think that this amount was intended to refer to the advice Lewis gave ahead of the by-election. Lewis explained the discrepancy between the cost of the polling data and the figure listed on the return in this manner:

*The value of my information was decreasing over time.*¹⁵⁷

The by-election took place on 12 April 2014 and Barrett was elected. I do not have the basis for commenting specifically about the quantification of the value of the information received by Foundation 51 under the direction of Lewis. Clearly, its significant purpose was to gather information for the benefit of the CLP, and Lewis in his capacity as an active member of the CLP provided the party with the benefit of that information. It also appears that at least conceptually by reason of the declaration to NTEC, by then Foundation 51 acknowledged its status as an Associated entity of the CLP.

E 2.7 BREACHES OF THE ACT BY FOUNDATION 51

It is clear that Lewis was the sole director and shareholder of Foundation 51 for the majority of the period of the Foundation's operation. He was also the person responsible for keeping the financial records of the Foundation for its entire period of operation, and had the practical control of the operation. In my view, Lewis at all material times was the financial controller of Foundation 51, as defined in section 176 of the Act.

Section 208 of the Act deals with annual returns of donations by associated entities.

For the reasons I have detailed above, I consider that Foundation 51 was an associated entity of the CLP at least during parts of the 2010/11, 2011/12 and 2012/13 financial years. Relevantly to this Inquiry with its focus on political donations, that covers both the periods of the 2012 election and the Blain

¹⁵²Interview with Graeme Lewis 7 December 2017, "I met Nathan Barrett and liked him, thought he was a good candidate. When he put his name up, he made it clear he was going to struggle through the campaign. I met him at the Cool Spot and said would you be assisted by a personal loan? He was very grateful. I said 'If you don't win we'll have to talk about how to repay me because it's a personal loan.'"

¹⁵³'Candidate loaned \$10 000 by man he had never met during Northern Territory by-election', Christopher Walsh, NT News, 22 January 2015, <http://www.ntnews.com.au/news/northern-territory/candidate-loaned-10000-by-man-he-had-never-met-during-northern-territory-byelection/news-story/85c12f2c73551cabbbd7558d3db14a77>.

¹⁵⁴Email dated 26 March 14 from Graeme Lewis to Connolly.

¹⁵⁵Comment by Graeme Lewis in article, 'Foundation 51: CLP, Electoral Comm, need to lift game', Erwin Chlanda, Alice Springs News, 4/11/15, <http://www.alicespringsnews.com.au/2015/11/04/foundation-51-electoral-commission-clp-need-to-lift-their-game/>:

"You write about the Blain election. Yes – I gave plenty of advice about that campaign, and once again, reported on that advice being an in-kind donation ... There is no doubt I gave plenty of advice, so I owned up."

¹⁵⁶An invoice in March 2014 for 'NT Blain by-election poll' for \$8525.

¹⁵⁷Interview with Graeme Lewis, 7 December 2017.

by-election. However, I consider that, at least soon after its formation, the arms-length separation which was contemplated was gradually removed due to the close relationship of Lewis to each of Foundation 51 and the CLP, and the direction and focus of the Foundation's activities.

As Foundation 51 is deregistered and Lewis is deceased, there is little purpose in referring to further detail of their respective responsibilities. However, I think that it is likely that Foundation 51 breached section 215 of the Act. Section 215 in Part 10 of the Act creates offences for failing to lodge returns at all, or within specified times, and for providing false or misleading information within a return.

It appears that Foundation 51 failed to comply with the Act in the following ways:

- A return for the 2010/11 year was due by 20 October 2011. It has never been lodged.
- A return for the 2011/12 year was due by 20 October 2012. It was not lodged until 5 June 2015¹⁵⁸.
- A return for the 2012/13 year was due by 20 October 2013. It was not received by the NTEC until 11 December 2014.¹⁵⁹

I note that the return for the 2013/14 year was due on 20 October 2014 and filed on 18 September 2014, within the specified time period.¹⁶⁰

Section 218(2) of the Act provides:

A person must not, in response to an investigation notice, give evidence the person knows is false or misleading in a material particular.

The NTEC requested that the Foundation file an associated entity return for the 2011/12 financial year by letter on 6 June 2014. Follow-up correspondence was sent on 7 October 2014 and 1 December 2014. On 11 December, the NTEC received a donor return for the 2011/12 financial year – not an associated entity return, as was requested. A further request for the associated entity return was made by the NTEC on 19 January 2015.

The NTEC commented on the Foundation's 'contumelious ignorance' of requests for information.¹⁶¹

The NTEC referred its investigation to the NT police in May 2015. The associated entity return was received by the NTEC on 5 June 2015.

Even if Foundation 51 were to be re-registered, the limitation period expired on 20 October 2015 for the bringing of any such charges.

Section 215(3) of the Act creates an offence for anyone who gives a return containing particulars which are, to the person's knowledge, false or misleading in a material particular.

The associated entity return ultimately filed for the 2011/12 financial year listed a donation to the CLP of \$200 000 'in kind advice, January to June 2012'.

Lewis made the following comment in an email discussing the NTEC auditing the CLP's returns in April 2015:

*'The two gifts declared in kind re Foundation 51 can be supported by a bullshit story if required. The amounts are at best guesses or estimations. There has been no "documentation" ever created....Wouldn't have a clue how to provide supporting documentation re Gifts in Kind from F51 or CLP G&L. Guess I'll go to jail. I am amazed that an associated entity must also lodge a donor return. Never done before?...'*¹⁶²

When this material was put to Lewis in interview, he stated that he had arrived at the final figures in this manner:

*'Think of a number and double it.'*¹⁶³

Lewis' submission to the Inquiry stated:

*'How a monetary value can be ... computed in relation to these transmissions of knowledge is problematical, and can only be related, albeit remotely, to the costs incurred by Foundation 51 in the course of its collection of information for and on behalf of its commercial clientele over a long period.'*¹⁶⁴

¹⁶¹NTEC brief, [116].

¹⁶²Email Graeme Lewis to CLP management, 13 April 2015.

¹⁶³Interview with Graeme Lewis, 7 December 2017.

¹⁶⁴Submission to Inquiry, 14/12/17, page 3.



There is some scope for questioning the reliability of the asserted value of Foundation 51's contribution to the CLP during that year. But I do not think the material is sufficient to confidently assert that it is not an accurate estimate of that value. I do not, therefore, consider that Foundation 51 or Lewis can be shown to have breached section 215(3) in that respect.

The associated entity return filed for the 2013/14 financial year included cash donations to the CLP which represented payments made by Lewis for himself and Peter Hopton, as Foundation directors, to attend CLP events. It appears that the money spent by Foundation 51 on Crosby Textor polling in March 2014 for the Blain by-election is not included, either as a direct payment or as an estimate of value of the input of Lewis. There would, therefore, appear to be a foundation for arguing that that return was not accurate, and that both Foundation 51 and Lewis himself, committed an offence under section 215(3) in that respect.

Section 215(4) creates an offence to provide a person who is required to give a return information relevant to the return that is, to the provider's knowledge, false or misleading in a material particular.

The CLP filed amended annual returns for the 11/12,¹⁶⁵ 12/13¹⁶⁶ and 13/14¹⁶⁷ financial years shortly after the Foundation filed associated entity returns. The total donations disclosed on each CLP return were identical to the donations disclosed by the Foundation.

At interview, Lewis said that he had not advised the CLP of its need to file an amended return, or told them that the sum or value of the donations from the Foundation was not correct. There is no basis for concluding that the CLP itself lodged with NTEC a return knowing it to be false.

¹⁶⁵The Foundation filed a donor return for the 11/12 year on 9 December 2014. The CLP filed an amended annual return on 17 February 2015.

¹⁶⁶The Foundation filed a donor return for the 12/13 year on 13 September 2014 and an Associated Entity return on 11 December 2014. The CLP filed an amended annual return on 17 February 2015.

¹⁶⁷The Foundation filed an Associated Entity return for the 13/14 year on 13 September 2014. The CLP filed their original annual return on 18 October 2014.

E.3 2016 ANTI-FRACKING BRIBE CLAIM

On 23 June 2016, 2 months before the Legislative Assembly election polling day, 1 Territory Party ('1 Territory') President Braedon Earley appeared on the radio station Territory FM with host Daryl Manzie. During a discussion about 1 Territory's policies, Earley stated that a representative of oil and gas company Pangaea Resources had offered him \$1 million to back down from 1 Territory's anti-fracking stance.¹⁶⁸

This claim was repeated in the submission made by 1 Territory to this Inquiry.¹⁶⁹

I conducted interviews to investigate this claim. Earley claimed that the alleged offer was made during a meeting at the Duck's Nuts Café with a Pangaea Director, and Dr Corinne Hutchinson and Ray Hall of EcOz. Ray Hall is the principal of EcOz Environmental Consulting.

It was common ground among interviewees that a meeting did take place at the Duck's Nuts Café between November 2015 and June 2016 without being able to identify a specific date. The meeting was instigated by Hall, who sought to connect Earley with the director as an industry figure to discuss the general value and benefits that fracking could deliver to the Territory.

While Earley suggested that the director's motive for offering him money was to silence his public opposition to fracking in the Territory, I find this unlikely. 1 Territory first publicised their anti-fracking policy in July 2015 and were registered as a political party in November 2015.¹⁷⁰ A review of the public and media presence of anti-fracking groups (including Don't Frack the Territory and the Lock the Gate Alliance) in 2015 and 2016 give little weight to the claim that 1 Territory

was particularly prominent or influential in the anti-fracking movement in those years. It was an assertion denied by both Hall and the director.

I do not accept that such an offer of money was made to either Braedon Earley or the 1 Territory Party on that occasion by or on behalf of Pangaea. It is possible that Earley misconstrued something said at that meeting. But the circumstances of the meeting, the contextual media publicity and the information provided both by Hall and the Pangaea director do not support Earley's assertion.

I observe that, as a matter of general significance, allegations to the Inquiry that a political party's representative was offered a substantial sum of money by an industry representative to resile from one of the party's key policy stances which was unfavourable to the industry would be important. The broad issue of the influence on policy development by commercial, industrial, or other interest groups by significant donations is a significant matter.

¹⁶⁸'One Territory Leader Braedon Earley says company offered him \$1m for fracking deal', Christopher Walsh, NT News, 24 June 2016, <http://www.ntnews.com.au/news/northern-territory/one-territory-leader-braedon-earley-says-company-offered-him-1m-for-fracking-deal/news-story/df098a342af8ab6a8f9e75b05bfe5788>.

¹⁶⁹Submission made to Inquiry, 29 November 2017.

¹⁷⁰Proposed new political party in the Northern Territory reveals first policy: "say no to fracking", Emma Masters, ABC Radio Darwin, 17 July 2015, <http://www.abc.net.au/news/2015-07-17/new-proposed-political-party-opposed-to-fracking/6627904>.

E.4 DONATIONS MADE UNDER THIRD-PARTY NAMES

One matter referred to me concerned the making of donations paid indirectly to the CLP in 2008.

In December 2006, miner Norm McCleary unsuccessfully attempted to claim two very valuable uranium leases in Central Australia by physically staking the claimed land when the Crown Land reservations expired at midnight. He entered the leased area and began pegging his claims at midnight without permission of the mining warden. Ultimately, in Court proceedings, his claim to the leases failed. In 2008 he was prosecuted for trespass on the leases and engaged the services of solicitor Peter Maley.¹⁷¹

In July 2008, Maley contacted McCleary by telephone and asked for a donation of \$10 000 to assist with election advertising for the CLP. It is said that Maley suggested that McCleary would be given the opportunity to review files related to his claims if the CLP formed government in 2012. McCleary agreed.

The first donation occurred when Maley transferred \$5 174.40 from McCleary's trust account with Maley's legal firm. This money was paid to NT Broadcasters Pty Ltd to settle a CLP invoice.

NT Broadcasters Pty Ltd did not file a Broadcaster Election Return for the 2008/09 year. The donation was not disclosed by the CLP in their Political Party and Branch Annual returns for that year. McCleary did not file a donor return declaring this donation.

The second donation occurred when Maley transferred a further \$4 825.60 directly to the CLP from McCleary's trust account. The two sums amounted to \$10 000.

The 2008/09 CLP Political Party and Branch Annual return declared a donation of \$4 825 from 'Maley Pty Ltd'. Neither Maley nor McCleary filed a donor return declaring this donation.

The CLP formed government in August 2012. McCleary made several attempts to seek access to the promised files from Maley. His attempts frustrated, he contacted the then-Chief Minister, Adam Giles. This correspondence was publicised in Parliament and the NTEC commenced investigations.¹⁷⁵ McCleary retrospectively filed a donor return for \$10 000 in September 2014.

The NTEC finalised its investigation in November 2014. No further action was taken as all potential breaches of the Act were outside the 3-year limitations period.

I do not consider, on the material available to me, that there is shown to be any mutual understanding between McCleary and officers of the CLP that, in exchange for a significant donation or donations there would be an opportunity for McCleary to have access to Government records which he would not otherwise have. There is a significant elapse of time between the 2006 conduct, the civil and criminal proceedings in and after 2008, the contact between McCleary and Maley and the expectation of access to confidential records after 2012. The fact is that no such access was given.

¹⁷¹Anderson v McCleary & Anderson v McCleary Investments Pty Ltd [2008] NTMC 077, <http://www.localcourt.nt.gov.au/judgements/20081204ntmc077.htm>; 'Norm McCleary, the midnight pegger, at centre of NT cash-for-documents claims', James Purtil, ABC News, 30 August 2014, <http://www.abc.net.au/news/2014-08-29/mining-entrepreneur-norm-mccleary-the-midnight-pegger/5705476>.

¹⁷⁵Parliament hears claims about cash for access to government files', Ben Smee, NT News, 25 August 2014, <http://www.ntnews.com.au/news/northern-territory/parliament-hears-claims-about-cash-for-access-to-government-files/news-story/b4ad1c7be092f35e4f05063748261ae6>; 'Miner Norm McCleary claims dirt on NT Minister Adam Giles', Amos Aikman, The Australian, 30 August 2014, <https://www.theaustralian.com.au/national-affairs/miner-norm-mccleary-claims-dirt-on-nt-minister-adam-giles/news-story/9bacaa44b428c1e9bd2556a62e69e67b>; 'Dave Tollner lashes out over cash-for-document claims made by Norm McCleary', Rick Hind and Xavier La Canna, ABC News, 29 August 2014, <http://www.abc.net.au/news/2014-08-29/tollner-hits-back-at-cash-for-document-claims/5705292>.

E.5 HAROLD NELSON HOLDINGS

TOR 8 requires me to investigate the activities of Harold Nelson Holdings and its compliance with the Act.

Harold Nelson Holdings is a company limited by shares and the trustee of the ALP Investment Trust. It was registered in the Northern Territory in 1995.

The death of a sitting Member of the Legislative Assembly in that year resulted in a life insurance policy payout to the NT ALP.¹⁸⁰ That money was used, in conjunction with a loan from the party, to buy office space at 38 Woods St.¹⁸¹

That office space (now part-owned with several other entities, including union groups) is leased and the annual rental profits donated by the NT ALP Investment Trust to the NT ALP. The Trust has filed an associated entity return with the Electoral Commission for each year a donation has been made.¹⁸²

In April 2014, Commissioner John Lawler detected unexplained discrepancies in the Trust's activities during his Inquiry into Stella Maris.

These discrepancies - between the NT ALP's annual returns (listing donations made to the party by Harold Nelson Holdings) and testimony made to Commissioner Lawler's Inquiry (regarding rent paid by the office tenant to Harold Nelson Holdings) - were referred to the NTEC for investigation.¹⁸³

The NTEC concluded its investigations in June 2014. It found the discrepancies to be the result of errors in the calculation of GST applicable to rent received by Harold Nelson Holdings.¹⁸⁴

Section 215(3) of the Act describes an offence for a person who gives a return containing particulars that are, to the person's knowledge, false or misleading in a material particular.

There is no evidence that the erroneous figures in the returns were known to the person filing the returns to be false or misleading. Additionally, there is insufficient evidence that the differences in the figures amounted to a material particular.

The NTEC exercised its discretion by choosing not to require Harold Nelson Holdings to file adjusted returns, possibly in light of the frequent small discrepancies that can be found in many party, candidate and donor returns filed with the Commission each year.¹⁸⁵ Commissioner Lawler made no findings regarding Harold Nelson Holdings or the NT ALP Investment Trust.¹⁸⁶

I reach no adverse conclusions regarding the activities of Harold Nelson Holdings and its compliance with the Act.

¹⁸⁰Wes Lanhupuy.

¹⁸¹'NT Labor owns stake in union HQ that was to be redeveloped', Ben Smee, NT News, 30 November 2013.

¹⁸²E.g. 2013/14, 2014/15, 2015/16 returns.

¹⁸³Letter from John Lawler to Bill Shephard, 24 April 2014, and letter from Iain Loganathan to Kent Rowe, 14 May 2014.

¹⁸⁴Correspondence between Iain Loganathan, Ian Fraser and John Lawler, various dates.

¹⁸⁵Letter from Iain Loganathan to John Lawler, 5 June 2014.

¹⁸⁶Inquiry into Stella Maris, May 2014, page 63.

E.6 123/130 ESPLANADE

In May 2017, the NT News reported that then Chief Minister Adam Giles had occupied a penthouse apartment on the Esplanade managed by a major developer and CLP donor without paying rent. The apartment was managed by Halikos Hospitality, one of the Halikos Group companies.¹⁸⁷

Subsequent media stories disclosed the referral of the matter to both police and the Auditor-General.¹⁸⁸ The matter was later referred to my Inquiry.¹⁸⁹

I investigated this matter with reference to bank statements and other information provided by Giles, an interview with Halikos Hospitality manager Geoff Weeks and other financial information provided by Halikos.

In February 2013, Halikos entered into a 4-year management contract with the owner of a 3-bedroom penthouse apartment in the 130 Esplanade building.¹⁹⁰ The contract provided the owner with a guaranteed return of \$1 600 per week. There is some dispute about the use of the term 'penthouse'.

Before moving in to the penthouse apartment at 130 Esplanade, Giles intermittently stayed in another property managed by Halikos from early 2013 to late 2014 – the C2 apartments. Giles paid a weekly rate of \$1 000 for his 2-bedroom apartment.¹⁹¹

In December 2014 he sought to change residences for personal reasons and was offered the penthouse apartment in the 130 Esplanade building, which had been vacated in the previous month.¹⁹² The previous tenant had paid a weekly rate of \$1 895.¹⁹³ However, Halikos honoured Giles' original weekly rate of \$1 000 after he moved into the penthouse.¹⁹⁴ There is nothing to suggest that there was any suggestion made to Giles that he was receiving any favour by the rental level, or any expectation by Halikos Group that it would receive any other benefit by the rental charged.

While I am unable to make definitive findings regarding the rental market value of each property in 2013 and 2014, I note that the current rental rates for 2-bedroom apartments in the C2 building are also approximately two-thirds that of the

apartment at 130 Esplanade leased to Giles.¹⁹⁵ That apartment was advertised for lease in February 2018 for a weekly rate of \$1 400.¹⁹⁶

Although there is material that suggests the apartment at 123/130 Esplanade was somewhat superior to that at the C2 Apartments, Giles has pointed out that there was no suggestion made by Halikos Hospitality at the time to that effect. The internal living area size was similar, although the 123/130 apartment had a larger balcony. It was not a newer building. The servicing was less frequent. It is also said that other tenants moved from the C2 Apartments to the 130 Esplanade Apartments at about the same time, also with unchanged rentals.¹⁹⁷

Clearly, the suggestion that the Halikos Group provided Giles with free accommodation, in the expectation of some later favour, is not correct.

I have also considered whether Giles was given a favourable rental rate which constituted 'sponsored travel or hospitality received since the date of the member's election and exceeding \$300 in value'. If so, it was a 'registrable interest' as defined in the Schedule of the *Legislative Assembly (Disclosure of Interests) Act 2008*. Under section 4(3) of that Act, Giles would then have been required to give notice to the Clerk of any alteration to his registrable interest within twenty-eight days of becoming aware of the alteration.

Under section 6(1)(b) of the Act, a member commits a contempt of the Legislative Assembly if that member knowingly fails to give notice to the Clerk about any alteration to their registrable interest.

Giles gave no notice to the Clerk of his occupancy of the penthouse apartment when he took up residence on or around 4 December 2014. I do not think that the material shows that Giles considered that he was given a favourable rental rate in the circumstances. His rental

¹⁸⁷'Halikos housed former Chief Minister Adam Giles in Darwin penthouse', Chris Walsh, NT News, 1 May 2017.

¹⁸⁸'Auditor-General to look at Adam Giles-Halikos travel allowance matter', Chris Walsh, NT News, 3 May 2017. 'NT Police weighing up investigation over Adam Giles penthouse occupation', Chris Walsh, NT News, 4 May 2017.

¹⁸⁹29 September and 14 November 2017 correspondence with anonymous source.

¹⁹⁰Contract with unit owner provided by Geoff Weeks, 20 February 2018.

¹⁹¹Guest folio for Adam Giles provided by Geoff Weeks, 28 February 2018.

¹⁹²Correspondence from Adam Giles' solicitors with personal statement, 22 January 2018.

¹⁹³Contract with Inpex provided by Geoff Weeks, 5 March 2018.

¹⁹⁴Guest folio for Adam Giles provided by Geoff Weeks, 28 February 2018, and bank statements provided by Adam Giles' solicitor, 22 January 2018.

¹⁹⁵The full nightly rate for a 3-bed higher-level apartment in 130 Esplanade is \$900. The full nightly rate for a 2-bed apartment in C2 Esplanade is \$600. Accessed through thebookingbutton.com.au on 28 February 2018.

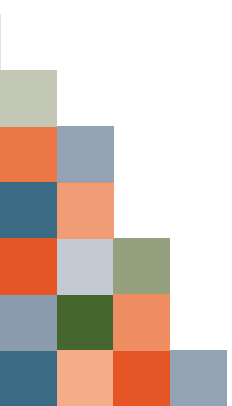
¹⁹⁶Price comparison February 2018.

¹⁹⁷Letter from Maleys Solicitors to the Inquiry, 13 June 2018; email from Geoff Weeks, 12 June 2018.

was unchanged, and the topic of paying more was simply not discussed. There are reasons why Giles may not have appreciated that the continued rental rate was quite a favourable one. From the point of view of Halikos Hospitality, the rental income for that apartment provided some cash flow where, at the time, the particular apartment was not tenanted. Indeed, the value

of accommodation varies from day to day and is influenced by demand and occupancy rates. Without a fixed value, it is challenging to argue that an amount paid for such accommodation was inadequate consideration.

In addition, I do not regard the material as showing that Giles received any 'gift' as defined in s 176 of the Act.



E.7 SPOT REZONING – 4 BLAKE ST

This matter concerns three lots of land in the inner-city suburb of The Gardens.¹⁶⁵

A developer purchased a block of land at 4 Blake St zoned Community Purpose in December 2009 for approximately \$3 million.¹⁹⁹ The developer paid in excess of the appraised market value of the lot (a figure between \$1.3 and \$1.9 million).²⁰⁰

In March 2014 the developer filed an application to rezone the lot to Zone HR (Higher Density Residential Use). After an application is exhibited for public comment and a hearing held, a Planning Commission reporting body will write a report for the Minister to consider, containing details of the application, objections, relevant policy and other issues the Minister should take into account.

The rezoning application met with considerable protest from the local community²⁰¹ and an objection from the City of Darwin.²⁰² The reporting body did not at the time support the proposed rezoning.²⁰³ The 3-person reporting body was unanimous in stating that ‘the developer has the right to develop the site’ but diverged on the appropriate maximum height and density of the proposed development.²⁰⁴

In July 2015, Lands and Planning Minister David Tollner approved the rezoning of the lot.²⁰⁵ In response to the community complaints about 4 Blake St, Tollner modified some of the conditions of the High Density Residential zone by reducing the maximum number of storeys permitted and increasing setbacks.

As the conditions of an existing category of zoning were modified, a Specific Use Zone (‘SD 46’) was created.²⁰⁶ When the lot was rezoned, it was revalued at \$3.5 million.²⁰⁷

The conditions of SD 46 included a requirement that the developers were to construct ‘a landmark development through high quality architectural quality and distinctive streetscapes.’

The developer donated \$31 000 to the Country Liberal Party in 2015-16.²⁰⁸

It is not surprising that the Minister’s decisions should have given rise to some cynicism or suspicion about why it was given. Tollner was interviewed to explain the basis for his decision.²⁰⁹ He openly stated that the re-zoning occurred on his personal initiative, and without fully following the normal processes. He had no specific contact with the developer. He regarded the location as ripe for that type of development, and so approved it subject to conditions. He said his actions were part of the then Government’s mandate to encourage development in the Northern Territory.

The history of the development thereafter can be noted briefly. A high rise development application was made. It was resisted by many local residents. The Government Architect Lawrence Nield advised that it did not qualify as a landmark development. In July 2017, the Development Consent Authority approved the proposed development. In November 2017, the NT Civil and Administrative Tribunal reversed that decision. That decision sets out in detail the processes referred to.

There is no foundation for concluding that the rezoning decision was made other than for the reasons given by the then Minister. They are not themselves indicative of any relevant impropriety on his part or on the part of the developer. The fact that the developer some years earlier had paid well above the market value for the land does indicate that rezoning was contemplated, but the elapse of time then does not suggest any long term developer/CLP shared expectation of that rezoning for any improper reason.

Nevertheless, the departure from process and the nature of the decision in the circumstances understandably gave rise to some in the community being suspicious of there having been some improper interchange between the developer and the then Minister and/or the CLP.

Such understandable community concerns may inform the view of this Inquiry about the appropriate responses to certain of the TOR.

¹⁹⁸Original referral 20 September 2017 from NT Information Commissioner, who received it as an anonymous complaint.

¹⁹⁹Land valuation email IR to JM and attached records, 1 February 2018.

²⁰⁰‘First look at controversial The Gardens development’, Zach Hope, NT News, 14 July 2015.

²⁰¹‘Darwin residents question process around purchase of community land for housing development’, Jane Bardon, ABC News, 2 July 2015.

²⁰²City of Darwin objection, 12 September 2014.

²⁰³Planning Body Report PA2014/0240, late 2014.

²⁰⁴1 favoured proposal of 9 storeys (HR), 1 favoured a 6-7 storey development (HR), 1 favoured up to 4 storeys (MR).

²⁰⁵Rezoning press release, statutory instrument and reasons for decision, all 9 July 2015.

²⁰⁶‘Rezoning approved to meet Darwin’s future housing needs’, Media Release, 9 July 2015 <http://newsroom.nt.gov.au/mediaRelease/13381>

²⁰⁷Land valuation email IR to JM and attached records, 1 February 2018.

²⁰⁸Receipt of \$31 000 in 15/16 financial year by Kahlmera Pty Ltd.

²⁰⁹Interview conducted 14 April 2018.

E.8 OTHER DEVELOPER MATTERS REFERRED TO THE INQUIRY

A number of submissions and informal discussions raised concerns around the grant of development consent applications or tenders for public works on favourable terms. Several of these so-called 'sweetheart deals' have been reported on by the NT News.

Concerns ranged from suggestions that developers were awarded contracts for comparatively low bids to the possibility that the value of contracts was increased at the subcontractor tender board level. Many of the developers in question routinely donate substantial sums to both the CLP and the ALP.

The NT Auditor-General's March 2018 report addressed one of these recent tenders – the lease of the Berrimah Farm site to developer group Halikos.

In her report, the Auditor-General made the following comments:

- There was insufficient evidence of consideration and mitigation of all financial and reputational risks to the Territory;
- There were significant changes to the deliverables when the tender process moved from negotiations with 2 parties to deliberations with Halikos as the preferred bidder. Lands and Planning Minister Dave Tollner removed the requirement for the development to include a 15 hectare school and allowed the construction of a non-government school. This resulted in 11 hectares of land being retained by the developer;
- The requirement to build a bus interchange was reduced to the provision of bus stops and a layover bay, and the requirement to provide a 5 hectare site for cattle was removed;
- The requirement to provide a serviced primary school site at no cost to the Territory was amended with the effect that the Territory bore the \$4.9 million cost of the site;
- The developer was given a longer timeframe to complete the development;
- The valuer was given only 2 business days to complete the valuation.

The Department commented in response: 'Changes [to the Project Objectives and Deliverables] were undertaken either at the request of, or approved by the Government of the day and reflect the priorities of Government at that time.'

While I am unable to make any findings about specific donors, their successful tenders and their connection to political donations, a clear conflict arises when candidates and political parties accept donations from those figures most dependent on government favour to be successful in their business dealings.

The Auditor-General's Report, with those comments, highlights the issue. In the case of the Berrimah Farm site, the then Minister David Tollner told the Inquiry he acknowledged that there had been some procedural cutting of corners,²¹⁰ but that such action was to facilitate the quicker development of housing in the Berrimah Farm area for the public benefit at a cost which was realistic (he gave an example of an apparently expensive truck turning bay requirement which was later removed) and which encouraged local developers.

His comments again re-inforce the issues about whether funding for political purposes, at least in relation to election periods, should be permitted to developers, when there is clearly scope for a reasonable belief on the part of many in the community that political donations by developers enhance their prospects of successfully securing development approval on terms they consider appropriate. That is a matter considered in the Report of this Inquiry.

²¹⁰Interview conducted 11 April 2018.

E.9 THE USE OF INTERSTATE VOLUNTEERS IN ELECTION CAMPAIGNS

One referral to the Inquiry concerned the participation of interstate volunteers in the Northern Territory during the 2016 Legislative Assembly election campaign period, and in the earlier Blain by-election.

It was suggested that a certain union or a group of unions had paid for airfares and accommodation for volunteers to travel to the Territory for the purpose of campaigning for the ALP and that this had not been disclosed as a donation to the party. It was also suggested that some volunteers were union members who were not required to take leave in order to participate in the campaign, but continued to be paid as if they were working.

Volunteer labour is not a donation and is not required to be disclosed in election or annual returns.²¹¹

The NTEC's Disclosure Handbook interprets the phrase 'volunteer labour' in this way:²¹²

Volunteer labour does not need to be disclosed as a donation. The donation of unpaid time by a person is considered volunteer labour where it is provided by:

- an office-holder of the party or a party member; or
- any other person where that service is not one for which that person normally receives payment.

However, where a person is not required to take leave to participate in a campaign, the wages or salaries incurred by their employer for that period will constitute a gift.²¹³ In effect the payer of the salaries is making a gift to the party or candidate.

There are other ways in which a volunteer's participation in an election campaign may involve gifts being given to a party or candidate. The value of airfares or accommodation will constitute a gift if these are paid by any person other than the volunteer or the registered party/candidate for whom they are volunteering.

My investigations of the suggestion of funded 'volunteer' support in relation to the Blain by-election and into the most recent general election did not lead to positive confirmatory evidence of that practice. Nevertheless, it was accepted by the ALP that in each instance volunteers came from interstate, without expense to the ALP, and were in part groups of members of particular unions. That is neither surprising nor sinister. The available records of the ALP did not disclose whether such groups were being reimbursed for their time or whether their expenses, including airfares, were paid for by others (perhaps their unions) rather than themselves.

I observe that, in the circumstances posited by the suggestion, the value of the airfares and/or payments should be included in the returns lodged with the NTEC. I do not have a view, on the material before me, whether there has been inaccurate or incomplete donor or party returns by reason of such conduct.

I have recommended imposing a cap on electoral expenditure for registered parties and candidates. Registered agents for parties and candidates will be required to ensure that spending on volunteer labour forces (including airfares, accommodation and the value of wages where the volunteer is not taking unpaid leave) does not exceed the cap.

I note that the referral contained a secondary concern: that the number of volunteers used in a specific electorate was excessive. A cap on electoral expenditure will constrain any party's ability to direct a very high level of resources to a campaign in a specific seat.

²¹¹'Donation' is used throughout this report, but refers to the Electoral Act's definition of 'gift' in section 176:

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...

²¹²Northern Territory Electoral Commission, 'Financial Disclosure', <http://www.ntec.nt.gov.au/FinancialDisclosure/Pages/default.aspx>.

²¹³Handbook for Donors, page 6.

E.10 LICENCING POLICY AND INFLUENCE OF INDUSTRY

This heading addresses three separate policy development issues: the takeaway liquor licence moratorium; the cap on gaming machines and maximum size of takeaway liquor outlets.



E.10.1 TAKEAWAY LIQUOR LICENCE MORATORIUM

On 1 January 2015, as part of Government policy the Northern Territory-wide cap of 1190 community gaming machines was removed.

Additionally, from 1 July 2015, as part of Government policy the number of electronic gaming machines available to individual venues was increased. Hotels/taverns (Category One) were previously allowed 10 machines while clubs (Category Two) were allowed 45 machines per venue. This was increased to 20 and 55 respectively. A \$132 application fee applied to an application for an increase in gaming machines. There was also a levy based on the licence authority held. The levy for 2015-16 was \$51 801 per machine for hotels/taverns and \$10 361 per machine for clubs.

*The levy did not apply to licensees seeking additional machines where the total remained under the former venue caps of 10 and 45 that existed prior to 1 July 2015. It also did not apply to applicants for a gaming licence if the number of machines sought remained below the former venue cap.*²¹⁴

There was material before the Inquiry that both the removal of the moratorium on the grant of takeaway liquor licences, and the removal of the cap on the number and distribution of gaming machines was not supported by all within the relevant Department, and was driven by the relevant Minister David Tollner, and in the case of gaming machines later by the Chief Minister Adam Giles.

The Inquiry explored whether there was any inappropriate reason for the change in policy relevant to the TOR.

In June 2006, the Northern Territory Licensing Commission announced a moratorium on the grant of takeaway liquor licences. In effect, subject to any special circumstances, no new such licences were to be granted. The only way to license a new premise was to buy an existing licenced premise and transfer the licence.

In the period up to the August 2012 election, won by the CLP, the CLP published certain policies including that the moratorium should be relaxed. That policy, according to the then relevant Minister David Tollner, was in response to what the CLP (or he in particular) regarded as a limiting restriction on the development of small business in the Territory.

In the period following the election, at Tollner's instigation (he then being the relevant Minister), steps were taken by his officers and through the NT Licensing Commission leading to the relaxation of the moratorium policy in June 2014. At that time the Licensing Commission issued a memorandum that new licences could be allowed in areas of new residential development, in areas of recent and substantial population growth, where the proposed licensee produces its licenced products to be sold, and where there was a 'very clearly established public need'.²¹⁵

In January 2015, the NT Licensing Commission was abolished. Its functions were transferred to a statutory position: Director-General of Licensing within the Department of Business.

It is apparent that some within the office of the former Northern Territory Licensing Commission did not support the changed policy. Having regard to the files inspected, and as Tollner himself said, the change was driven or encouraged by himself. He accepted that accountability.

His reasons were both general and specific. Generally, he considered there should be a greater opportunity for small businesses to participate in the take-away liquor industry in the Northern Territory. Specifically, he was concerned that the existing rules might have led to the closure of a particular take-away licensed Liquorland outlet (to be transferred to another area by Liquorland) which would have a significant detrimental effect on the shopping centre where it was at the time located. The loss of such a store, he considered after meeting with the owner of the shopping centre, might mean the shopping centre with its other small businesses might not survive.

There is nothing to suggest that that shopping centre operator acted other than properly. The AHA NT was itself to a degree opposed to the removal of the moratorium, although some within it supported the change. As one would expect, those views were apparently driven by self-interest: what is best for the members.

There is nothing to suggest that the significant contributions to both the CLP and the ALP in the lead-up to the 2012 election improperly, or at all, influenced the policy development or its implementation. After the 2012 election, the AHA NT announced that it would no longer make donations to political parties.

In the period leading up to the 2016 election, one of its officers in a personal capacity made significant donations to both the CLP and the ALP. There is no reason to infer that his donations improperly acquired benefits from either party. That is discussed under heading E.10.3.

²¹⁴NT Director-General of Licensing Annual Report 2015-16.

²¹⁵NT Licensing Commission, Guideline dated 19 June 2014 and re-issued 16 December 2014.

E.10.2 CAP ON GAMING MACHINES

For many years, certain venues were entitled to operate different numbers of EGMs based on their venue type. The cap for hotels was 10. The cap for clubs and pubs was 45. The SkyCity Casino operated under a different regime.

In July 2008 the Labor Government introduced a cap on the number of electronic gaming machines (EGMs) allowed in the Northern Territory. The cap was set at 1190, being the number of EGMs in the Northern Territory at that time. While a trading scheme was planned to enable transfer of EGMs within the cap between venues, this did not eventuate.²¹⁶

By August 2014, 9 EGMs had been forfeited as a result of venues closing. The NT Licensing Commission did not accept applications from venues seeking to increase their EGM entitlement as there was no equitable means of prioritising applications.

In January 2015, the CLP Government lifted the cap on EGMs, both for hotels – to twenty – and for licensed clubs – to fifty-five. There was imposed both an application fee and a levy payable upon increased EGMs in any hotel or club.

That was short lived. The ALP Government, elected in August 2016, imposed a cap on EGMs at a maximum of 1852,²¹⁷ representing the then licensed number of EGMs.

The fact of the lifting of the cap was a matter raised to this Inquiry. That is understandable, as the social and personal problems associated with EGMs were and are well known.

There is some background to note.

One impetus for the CLP reviewing the moratorium was the concern expressed by the Alice Springs venue Club Eastside to its local member, Adam Giles. It wanted to acquire additional EGMs from another venue in Alice Springs which had ceased trading. Club Eastside 'made numerous representations' to Giles to increase their number of EGMs.²¹⁸ Giles directed then Minister for Business David Tollner to effect legislative amendments to achieve the outcome desired by this specific venue. There is nothing to indicate any improper motivation or incentive for Giles to initiate the change. Tollner received advice in the form of ministerial briefs that warned that an increase to the cap on EGMs would have negative consequences. These included:

- Incompatibility with the regulatory framework under development for implementation in 2015;
- Loss of revenue if no purchase fees were stipulated for the new EGMs to be available upon increase of the cap;
- Criticism from the AHA NT if no changes to venue-specific caps accompanied the raising of the Territory-wide cap.²¹⁹

In any event, the financial solvency of Club Eastside was questionable and the Chief Minister was told that this was likely to affect the success of any application for additional EGMs they made to the Northern Territory Licensing Commission. In the event, Club Eastside's request was not accommodated.

Relevantly, it was not the Chief Minister who had the authority to approve amendments to the Gaming Regulations under the Administrative Arrangements Order, but the Minister for Business.²²⁰ Minister Tollner was removed from the portfolio on 29 August 2014 following an unrelated incident and Chief Minister Giles assumed control of the Business portfolio.

Before that time, the proposal had progressed. Tollner had a firm view that SkyCity Casino had a favourable imbalance of EGMs, and that it was in the interests of the Northern Territory and small business that there should be a better spread of EGMs. His advice was that he could not reduce the number of EGMs available to SkyCity, so the alternative to him was to increase the number of EGMs elsewhere.²²¹ He also made certain regulatory changes to the terms of operation of SkyCity.²²²

²¹⁶Note the AHA's policy letters to both parties in 2011, requesting the introduction of a trading scheme as soon as possible.

²¹⁷The 2008 cap was 1190.

²¹⁸Department of Business Memorandum, Acting Chief Executive to Minister for Business, 'Executive Council Submission – Gaming Machine Amendment Regulations 2014' (C2014/0021)

²¹⁹Department of Business Memorandum, Chief Executive to Minister for Business, 'Increase in Territory-Wide EGM Cap' (B2014/0405)

²²⁰Department of Business Memorandum, Chief Executive to Minister for Business, 'Approval to Increase Territory-Wide EGM Cap' (B2014/0441)

²²¹Interview with David Tollner conducted 11 April 2018.

²²²Tollner's desire to change the status of SkyCity was confirmed by another interview with a senior departmental officer.



As Minister for Business, Giles signed the Executive Council submission to increase the cap to 1 500 on 14 September 2014.

He also asked the Department to draft and circulate a discussion paper providing options for reform of the EGM system. The AHA NT was also broadly in favour of the change.

In late September 2014, the Chief Executive of the Department of Business recommended that the Minister halt the increase of the cap after community consultation, including with representatives of the AHA NT, suggested a lack of support for increase of the cap outside the broader regulatory reforms anticipated in 2015.²²³ That Executive Council submission was withdrawn, but the topic was maintained.

A further September 2014 departmental brief discusses introduction by 1 January 2015.²²⁴

Executive Council received the drafted amendment regulations increasing the Territory-wide cap in November 2014 (to come into effect 1 Jan 2015).²²⁵ At this time they also received drafted regulations to amend the venue caps from 10-20 (hotels) and 45-55 (clubs) (to come into effect July 2015).

There is no material to suggest that Giles, in pursuing that policy change, as it appears in part in the face of some community opposition, was motivated by any improper influence. It appears to have been a policy outcome consistent with the CLP Agenda.

²²³Department of Business Memorandum, Chief Executive to Minister for Business, 'Community Gaming Reforms' (B2014/xxx)

²²⁴B2014/0542.

²²⁵C2014/0130.

E 10.3 MAXIMUM SIZE OF TAKEAWAY LIQUOR OUTLETS

On 20 December 2016, the present government announced that all takeaway liquor licences would be subject to a maximum floor size of 400 square metres.²²⁶

Chief Minister Gunner said in the Legislative Assembly that the policy was founded on research which suggested that larger liquor outlets led to greater harm from alcohol in the community.²²⁷

Media coverage queried the connection between the decision and donations made by the AHA NT to the ALP before the 2016 Legislative Assembly election.²²⁸

Some days after that announcement, Endeavour Drinks Group (a subsidiary of Woolworth's) announced plans to open an 1800 square metre Dan Murphy's store near Darwin International Airport. Endeavour Drinks Group commenced action in the Federal Court in March 2017, criticising the floor size regulation as 'arbitrary'.²²⁹ In response, the Gunner government repealed the 2016 amending Regulations and enacted the Liquor Legislation Amendment Act 2017 (No 14),²³⁰ in order to curtail any challenge to the validity of the Regulations.

The Government then commissioned the Alcohol Policies and Legislation Review ('the Riley Review'), which was released in October 2017. The Riley Review made the following comment on the size of takeaway liquor outlets:²³¹

In relation to the size of off premises venues (ie takeaway), the relationship between the size of the outlet and any increase in harms is less clear. Some recent research seeks to draw a correlation between the size of a takeaway outlet and alcohol related harms. However, as presently informed, we think the evidence rather demonstrates the relationship between low price alcohol, alcohol sales and alcohol harms rather than the size of the outlet alone.

The Chief Minister Gunner understandably agreed that the policy of a cap on the floor

size of outlets had been 'wrong'.²³² The Liquor Legislation Amendment Act 2017 (No 14) was repealed in November 2017.

Nevertheless, to the Inquiry it was asserted that the adoption of the 400 square metre cap on takeaway liquor licence holders was inappropriately influenced by political donations. That is the issue I have considered.

Several questions must be answered to understand this sequence of events.

In the period leading up to the 2016 election, the AHA NT (as it had done in the past) presented its 'wish list' to the competing political parties for response. By this time, at a board meeting in February 2016, the AHA NT had endorsed that 'the AHA NT shall not make political donations' but provided an exception for payment to attend some political dinners or functions. Mick Burns stated that while this policy was formally endorsed in February 2016, it had been a matter of general consensus since after the 2012 election. As also noted, AHA NT President Mick Burns personally donated \$40 000 to the ALP and \$25 000 to the CLP.²³³

In June 2015, the AHA NT had also made a submission in response to the Liquor Authority Discussion Paper circulated by the Director-General of Licensing, Sean Parnell. The submission 'urged' Licensing NT to introduce a maximum floor size limit of 300 square metres for takeaway liquor licences.²³⁴

After meeting with Licensing NT staff in July 2015 and being informed that the largest current licensed area was 330 square metres, the AHA NT amended their stated preferred maximum size to 400 square metres.

As noted, in April 2016, AHA NT Chief Executive Officer Des Crowe sent the AHA NT policy agenda to then-Chief Minister Adam Giles and Leader of the Opposition Michael Gunner to seek confirmation of party positions on issues relevant to the AHA NT, including maximum floor size:

²²⁶Liquor Amendment Regulations 2016 (No 43), in force on 20 December 2016 until repeal/replacement on 27 June 2017, inserted Regulation 5BA in Part 2A of the Liquor Act:

(1) It is a condition of a store licence that the area in which the public can browse for and purchase liquor is limited to a maximum of 400 m².

²²⁷Hansard, 14 March 2017.

²²⁸ABC News, Jacqueline Breen, 'Political donations under fire after NT hotels boss confirms \$100k gift to Labor, Country Liberals', 30 January 2017, <http://www.abc.net.au/news/2017-01-30/fresh-call-for-ban-on-political-donations-in-nt/8222568>.

²²⁹ABC News, Georgia Hitch, 'Dan Murphy's to take action against NT Government over floor size restriction', 8 March 2017, <http://www.abc.net.au/news/2017-03-08/dan-murphys-to-take-nt-government-to-court/8334632>

²³⁰Commenced on 27 June 2017. Repealed in November 2017.

²³¹The Alcohol Policies and Legislation Review Final Report, page 59.

²³²Comments by Michael Gunner at launch of the Alcohol Policies and Legislation Review Final Report, 'I got that one wrong going into the election and it has been good to see that Trevor [Riley] has come forward with this report with a much more considered, better way of dealing with density and sales of take-away outlets.'

²³³Interview with Michael Burns. Burns stated that he intended equal or roughly equal amounts to both but another person supporting the donations backed out.

²³⁴AHA, Submission – Liquor Authority Discussion Paper, 24 June 2015.

The AHA (NT) seeks a commitment that a maximum bottleshop size of 400sq metres of 'public area' be introduced, through legislative amendments. 'Public area' is defined as area which a customer can go to purchase alcohol, but does not include drive-thru areas or storage areas. This would apply to all future applications (new licence application, licence relocations or material alterations of existing licenced premises) [sic].

The CLP's response was:

*The NT Government agrees in principle to preparing legislation limiting the maximum bottleshop size of 400sq metres of 'public area'. The Minister for Business will consider this issue and advise.*²³⁵

The ALP's response was:

We will restrict the public area of a bottle shop to a maximum of 400 square metres.

It was a common policy.

The Inquiry conducted interviews with 3 members of the Labor policy team responsible for responding to letters from industry and interest groups, including the submission from AHA NT. They suggested that Labor consciousness of the 'threat' of a large bottle-shop to existing take-away liquor outlets evolved before a cap on floor size was proposed by the AHA NT.

In September 2014 the Parap Tavern was sold to Woolworths. The then-member for Fannie Bay, Michael Gunner, noted in his electorate newsletter 'concern that the combination of the CLP government increasing the cap on poker machines and Woolworths purchasing the Parap Tavern

will lead to an increase in poker machines.'²³⁶

In April 2015, Gunner received concerns from his constituents when Woolworths lodged a development application for proposed alterations and additions to the Tavern. In December 2015, the Director-General of Licensing granted the Parap Tavern an increase of 10 gaming machines on top of their existing 10.²³⁷

Despite the assertion of some, there is not material to support the claim that the response of the ALP (or of the CLP) to the AHA NT was influenced by Burns' donation. The Inquiry explored the development of the policy position taken by the ALP for the 2016 election through the officers directly involved in that process. This particular topic was not addressed at the ALP Conference in February 2016, when its major policies were formulated. It was developed in response to the AHA NT enquiry, and 'organically', that is in part during 2015 as a result of the now Chief Minister dealing with his electorate during 2015 and at a discussion with the AHA NT at a dinner, so the topic was not new in 2016, and then in part by the now Chief of Staff in the Chief Minister in the day to day political process of the election. The Chief Minister was not consulted at the time. The group ultimately deciding the response by the ALP was not aware of Burns' donation at the time.²³⁸

I see no reason to consider that the ALP policy (now reversed) was driven by any improper influence or improper motivation.

²³⁵Letter from Adam Giles to Des Crowe, 25 May 2016.

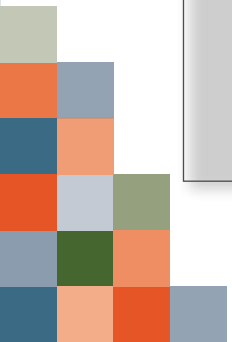
²³⁶Fannie Bay Electorate Newsletter, September 2014.

²³⁷Application for Increase in Gaming Machines: Decision Notice, 11 December 2015.

²³⁸Information provided by Alf Leonardi, interview conducted 24 January 2018 and separately by 2 other staff members at interview conducted 5 November 2017.

Serial 155
Electoral Amendment Bill 2016
Mr Wood

A Bill for an Act to amend the *Electoral Act*



NORTHERN TERRITORY OF AUSTRALIA**ELECTORAL AMENDMENT ACT 2016**

Act No. [] of 2016

Table of provisions

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2016

An Act to amend the *Electoral Act*

[Assented to [] 2016]
[Second reading [] 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Electoral Amendment Act 2016*.

2 Act amended

This Act amends the *Electoral Act*.

3 Section 3 amended

Section 3

insert (in alphabetical order)

close associate, for Part 10, Division 3A, see section 198A.

donation, for Part 10, Division 3A, see section 198A.

liquor or gambling industry business entity, for Part 10, Division 3A, see section 198A.

prohibited donor, for Part 10, Division 3A, see section 198A.

property developer, for Part 10, Division 3A, see section 198A.

tobacco industry business entity, for Part 10, Division 3A, see section 198A.

tobacco product, , for Part 10, Division 3A, see section 198A.

4 Part 10, Division 3A inserted

After section 198

insert

Division 3A Prohibited donations

198A Definitions

In this Division:

close associate, of a corporation, means:

- (a) a director or secretary of the corporation, or a spouse or de facto partner of the director or secretary; or
- (b) a corporation that is a related body corporate to the corporation, within the meaning of the Corporations Act 2001; or
- (c) a director or secretary of such a related body corporate; or
- (d) another corporation (the ***second corporation***), if:
 - (i) the ability or capacity to control or procure the composition of the board of directors of the second corporation is held by not less than 50% of the persons comprising, or having the ability or capacity to control or procure, the composition of the board of directors of the corporation; or
 - (ii) the ability or capacity to cast, or control or procure the casting of, not less than 50% of the maximum number of votes that may be cast at a general meeting of the second corporation is held by persons having the ability or capacity to control, or procure the control of, not less than 50% of the maximum number of votes that may be cast at a general meeting of the corporation; or
 - (iii) the holding of legal title to, or of a beneficial interest, direct or indirect, whether by medium of interposed corporations or trusts or otherwise in, not less than 50% of the shares in the second corporation carrying voting rights in respect of one or more subject matters capable of resolution at a general meeting of the second corporation, is held by persons holding legal title to, or a beneficial interest, direct or indirect, whether by medium

of interposed corporations or trusts or otherwise, in not less than 50% of the shares in the corporation carrying voting rights of the same kind.

donation means a donation that is a gift or loan mentioned in Division 3.

liquor or gambling industry business entity means:

- (a) a corporation that engages in a business that includes, for the purpose of making a profit, one or both of the following:
 - (i) the manufacture or sale of liquor as defined in section 4(1) of the *Liquor Act*;
 - (ii) gambling, including the manufacture of machines used primarily for gambling; or
- (b) a close associate of a corporation mentioned in paragraph (a).

prohibited donor means a property developer, a tobacco industry business entity or a liquor or gambling industry business entity and includes any other corporation the majority of members of which are prohibited donors.

property developer means a corporation that engages in a business that regularly involves the making of development applications under the *Planning Act* with the ultimate purpose of the sale or lease of land, or a close associate of the corporation.

tobacco industry business entity means a corporation that engages in the business of the manufacture or sale of a tobacco product, or a close associate of the corporation.

tobacco product, see section 6 of the *Tobacco Control Act*.

198B No donations by prohibited donors

- (1) A prohibited donor must not make a donation.
- (2) A person must not make a donation on behalf of a prohibited donor.
- (3) A person must not accept a donation that is wholly or partly made by a prohibited donor or by a person on behalf of a prohibited donor.
- (4) A prohibited donor must not solicit another person to make a donation.

- (5) A person must not solicit another person on behalf of a prohibited donor to make a donation.
- (6) A person who contravenes any of subsections (1) to (5) commits an offence.

Maximum penalty: 200 penalty units.

198C Determination that person not prohibited donor

- (1) A person (the **applicant**) may apply to the Commissioner for a determination that the applicant is not a prohibited donor.
- (2) The application must be made in the approved form and contain information as to why the person does not consider that they are a prohibited donor.
- (3) The Commissioner must consider the application and, not later than 60 days after the application is made, do one of the following:
 - (a) make a determination in writing as to whether the person is not a prohibited donor;
 - (b) refuse to make such a determination.
- (4) The determination remains in force for 12 months after it is made but the Commissioner may revoke the determination at any time by notice in writing to the applicant.
- (5) A determination, while in force, has the following effects:
 - (a) it creates an irrebuttable presumption that the applicant is not a prohibited donor, as regards a person who makes or accepts a donation;
 - (b) it does not create a presumption in favour of a person who knows that any of the information contained in the application was false or misleading in a material particular.
- (6) The Commissioner must keep a public register of the determinations that the Commissioner makes under this section and publish it in the manner that the Commissioner considers appropriate.
- (7) An applicant must not make an application under this section that the applicant knows contains information that is false or misleading in a material particular.

Maximum penalty: 200 penalty units.

5 Expiry of Act

This Act expires on the day after it commences.



