



COUNTRY LIBERAL PARTY
of the NORTHERN TERRITORY

TERRITORY DIRECTOR

15th December 2017

The Hon. John Mansfield, QC
Commissioner, Political Funding and Donations Inquiry
GPO Box 4396,
DARWIN NT 0801

Dear Commissioner Mansfield,

**COUNTRY LIBERAL PARTY SUBMISSION – POLITICAL FUNDING AND DONATIONS
INQUIRY, OCTOBER 2017 DISCUSSION PAPER**

On behalf of the Country Liberal Party of the Northern Territory, please find our submission relating to the questions posed in your October 2017 Discussion Paper.

The Country Liberal Party has chosen to respond directly to the questions posed in your discussion paper rather than including any other erroneous material.

We thank you for giving our Party the opportunity to contribute to this important Discussion Paper. If you or your office have any questions regarding the contents of this submission, please do not hesitate to contact the Country Liberal Party Secretariat.

Yours sincerely,

BRAD VERMEER
Territory Director



COUNTRY LIBERAL PARTY
of the NORTHERN TERRITORY

SUBMISSION TO THE INQUIRY INTO OPTIONS FOR THE REFORM OF POLITICAL FUNDING AND DONATIONS IN THE NORTHERN TERRITORY – DISCUSSION PAPER OCTOBER 2017

The following responses reflect the views of the Organisational Wing of the Country Liberal Party of the Northern Territory

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

In considering this proposition, the Country Liberal Party examined the systems that currently exist in other jurisdictions. Whilst not advocating for the implementation of such a system, we have provided these views on the basis of discussing the aspects of importance to our Party if such an initiative was to be considered for legislative action in the future.

The states of New South Wales and South Australia currently have legislated spending caps in place for general elections. Whilst the New South Wales system has existed for approximately 8 years, the system that is currently in place in South Australia will not be tested until the March 2018 State Election.

The South Australian system puts in place an overall cap for election expenditure for a political party based on the number of electoral districts in which the Party endorses a candidate. This funding may then be apportioned amongst the electoral district campaigns to a maximum cap figure which would be based on agreements between the political parties and their endorsed candidates. A separate cap is also included for unendorsed or independent candidates where they choose to run. There are no specific provisions for third-party campaigners and the system has not yet been used for a by-election. These caps are only applied if a political party or candidate has applied and been approved for public funding at a particular election.

Whereas the New South Wales system has been in existence for years and includes spending caps for independent candidates, political parties who endorse 10 or more candidates seeking election to the Legislative Assembly, third-party campaigners and has differing caps for general elections

and by-elections. The relevant caps are in place for all parties and candidates who are contesting an election.

It is also worth noting that as both South Australia and New South Wales have bicameral legislatures, there are significant caps allocated to political parties and candidates who run for election to either of the state's respective Legislative Councils, which can be considered additional expenditure a political party could make for its central campaign activities.

A more comparable jurisdiction that currently uses electoral spending caps is the Australian Capital Territory. Currently this system employs caps for each candidate, third party campaigner and associated entity and also allows this funding to be pooled between candidates of a political party.

Given this, the Country Liberal Party would submit that the New South Wales and South Australian systems are quite complex in their makeup and require significant work in compliance throughout the expenditure cap period for political parties, candidates and the Electoral Commission. If a streamlined reporting system with clear guidelines for expenditure that is included in the cap are provided, then any increased compliance efforts during an election campaign would be minimalised.

Whilst the New South Wales system has been through a number of elections, the South Australian system has yet to be tested during a general election. The South Australian system also does not employ separate caps for general and by-elections, nor does it include specific caps for third-party expenditure. The Country Liberal Party intends to monitor how the South Australian systems operates in the upcoming March 2018 State Election.

The Country Liberal Party would be open to the consideration of electoral spending caps for candidates, parties and particularly third-party campaigners, if the proposition was part of a broader discussion regarding public funding of Northern Territory general elections.

If the proposition of electoral spending caps were pursued, the Country Liberal Party would seek the development of clear guidelines to instruct political parties and candidates as to what expenditure is included in such caps (eg. does the cap only apply to communications material produced for the election of a candidate etc.) and that a streamlined reporting system be developed to enable compliance by all parties and to minimise the additional administrative burden on the Electoral Commission. We would seek a spending cap for not only political parties and candidates, but also for third-party campaigners and would seek that such caps be altered in the case of by-elections.

What would be the appropriate amount for any cap?

Whilst not advocating for the implementation of such a system, we are providing these views on the basis of discussing the aspects of importance to our Party if such an initiative was to be considered for legislative action in the future. In considering the question, the Country Liberal Party explored the electoral spending caps in place in other jurisdictions:

South Australia:

Unendorsed House of Assembly Candidate - \$100,000 (indexed)

A Registered Political Party is allocated \$75,000 (indexed) for each district in which they endorse a candidate however the party must, by agreement with the candidates, allocate a portion of this cap to

each candidate. The amount allocated to each candidate cannot exceed \$100,000. The agent of the party must provide the Electoral Commissioner written notice of any cap allocation agreement at least 8 days before polling day. If no amount is agreed between the party and the candidate, a cap amount of \$40,000 is allocated to the candidate by default. Therefore, the applicable expenditure cap for an endorsed House of Assembly candidate will vary depending on the agreement reached with the party.

New South Wales:

Parties with more than 10 Legislative Assembly candidates in a general election (29 March 2015 – 23 March 2019) incurs a cap of \$122,900 per seat.

Candidates in Legislative Assembly by-elections (29 March 2015 – 23 March 2019) incur a cap of \$245,600 per by-election.

Third-party campaigners are limited to \$1,288,500 if the third-party campaigner was registered prior to the commencement of the capped expenditure period for the election or \$644,300 if the third-party campaigner was not registered prior to the commencement of the capped expenditure period for the election and \$24,700 for a by-election (for the 29 March 2015 – 23 March 2019 period).

Additional cap for individual Legislative Assembly seats if the expenditure is incurred advertising something that explicitly mentions the name of a candidate in the election in that electorate or the name of that electorate, is communicated to electors in that electorate and is not mainly communicated to electors outside that electorate. In that case an additional \$61,500 in the case of a party or \$24,700 in the case of a third-party campaigner (29 March 2015 – 23 March 2019) is added to the cap.

In the cases of both South Australia and New South Wales, there are significant caps available to political parties and grouped candidates to run election campaigns for Legislative Council candidates. As in both jurisdictions these candidates are elected by the entire state voting as one electorate, choosing generally from registered tickets of candidates, the funds for these campaigns provide additional resources to a party's central campaign. Such additional expenditure included in any cap would not be available in jurisdictions with unicameral legislatures such as the Northern Territory, the Australian Capital Territory and Queensland.

Australian Capital Territory:

Each candidate, third party campaigner and associated entity may spend \$40,000 with party spending pooled and a party spending a maximum of \$40,000 per candidate up to maximum of 25 candidates (with a total spending cap of \$1 million).

If expenditure caps were to be instituted in the Northern Territory, the Country Liberal Party would seek the caps be limited to electoral communications material such as is the case in New South Wales, be instituted only if a party applies for public funding as approved, and be set as follows:

A political party should have a total pooled cap of funds of \$50,000 per electorate in which that party has nominated a candidate, with the size of the total expenditure cap to be determined by the number of seats a party is contesting. If an upper spending cap per seat after the pooling of funds was implemented, the Country Liberal Party submits that cap should be set at a maximum of \$100,000.

The Country Liberal Party would seek an additional \$10,000 to \$20,000 in expenditure be added to each rural and remote seat that a party may be contesting, for the same electorates and in the

same proportion currently provided for by under the Northern Territory Remuneration Tribunal Determination concerning Electorate Allowances (see Chapter 4, Legislative Assembly of the Northern Territory Guide to Members' Entitlements, available at https://parliament.nt.gov.au/_data/assets/pdf_file/0004/396346/Guide-to-Members-Entitlements-January-2017.pdf). However, that additional expenditure should not be eligible for 'pooling' and must be spent for the purposes of the candidate's election in that seat. If an upper spending cap per seat after the pooling of funds was implemented, the Country Liberal Party submits that even with the additional \$10,000 to \$20,000 in expenditure, the cap should be set at a maximum of \$100,000.

The Country Liberal Party also believes consideration should be given to the size of the overall cap imposed on political parties contesting all 25 seats in the Legislative Assembly, as such a large campaign will include additional central expenditure that may not be able to be included in the cap provided by the pooling of money available from the electorates contested.

Further, the Country Liberals Party submits that any non-endorsed candidate who nominates for election to the Legislative Assembly should be entitled to an expenditure cap of \$50,000 for the seat which they are contesting unless that candidate is contesting a rural and remote electorate in which case they should receive an additional \$10,000 to \$20,000 for their electoral spending cap.

Finally we submit that each third-party campaigner should be limited to a total expenditure across the Northern Territory of \$50,000 and material distributed under such a cap should exclude the names of any candidate running for election, whether it would be intended to be used in a positive or negative context.

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

The Country Liberal Party submits that if such a system were implemented in the Northern Territory, spending by party-backed candidates should be able to be pooled in the manner described above.

Would independent candidates be disadvantaged by a cap?

The Country Liberal Party submits that if such a system were implemented in the Northern Territory, that independents would not be disadvantaged by a spending cap as such caps would ensure all candidates start with the same entitlement of spending per seat regardless of whether the candidate is endorsed by a political party or is contesting the election as an independent.

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

The Country Liberal Party submits that if such a system were implemented in the Northern Territory, that if an allowance is made in the setting of a cap for candidates contesting rural and remote electorates, any such cap should take into account the increased costs of, among other things, the cost of the distribution of material, transport, petrol, accommodation, higher cost of goods and services, etc. This would ensure that no disadvantage is created for candidates campaigning in remote and rural electorates.

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

Whilst not advocating for the implementation of such a system, we are providing these views on the basis of discussing the aspects of importance to our Party if such an initiative was to be considered for legislative action in the future. In considering this question, the Country Liberal Party considered the electoral expenditure cap period instituted in other states:

South Australia:

Commences 1 July in the year before the election and extends until polling day (the next State Election will occur on the 17th March 2018) equating to a period of over 8 months.

New South Wales:

Commences 1 October in the year before the election and ending on election day (the previous State Election was held on the 28th March 2015) equating to a period of almost 6 months.

Australian Capital Territory:

Commences 1 January in an election year and extends until election day (the previous Territory Election was held on the 15th October 2016) equating to a period of almost 10 months.

If the expenditure cap period for a Northern Territory Election was to be held on 1 January of an election year up until election day, it would equate to a period of almost 8 months. This appears to be the mean of such periods in other jurisdictions.

Therefore the Country Liberal Party would submit that if an expenditure cap and an associated period was implemented, the expenditure cap period should commence either from 1 January of an election year or at a minimum 6 months out from election day and conclude on the day of the election.

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

Whilst not advocating for the implementation of such a system, we are providing these views on the basis of discussing the aspects of importance to our Party if such an initiative was to be considered for legislative action in the future.

The Country Liberal Party believes that if election expenditure caps are to be considered in the future, that such considerations should be conducted hand-in-glove with that of public funding.

All other jurisdictions in Australia, including the Commonwealth but with the exception of Tasmania, provide some level of public funding to candidates and political parties for the conduct of elections. Having said that, the Northern Territory is unique given the smaller population size of our electorates and the geographic distribution of our population which inhibits many economies of scale that are available in other jurisdictions.

As a result of this, finding a model of public funding that is both financially sustainable for the Government but also effective for political parties and candidates in the Northern Territory, will be challenging.

This challenge is twofold. Due to our small population and higher cost base, the level of public funding required per vote to create an effective system would be substantial and, given this, it may

cause somewhat of an undue drain on the public purse, limiting the benefits of such a system. Whilst the Country Liberal Party is not opposed to exploring models of public funding, we are cognisant that such a model needs to be sustainable, effective and acceptable to political parties, but more importantly Territorians.

Finally, the costs of running political parties are not just over the months in the lead up to elections. Political parties are organisations which operate over the entire term of office and whilst expenditure incurred over this period is minimised, it is not insignificant. Whilst the Country Liberal Party operates currently without any public funding from the Northern Territory, depending on the model of public funding which may be examined in the future, these costs may need to be considered.

How much funding should be given?

Whilst not advocating for the implementation of such a system, we are providing these views on the basis of discussing the aspects of importance to our Party if such an initiative was to be considered for legislative action in the future.

When considering this question, the Country Liberal Party examined the public funding models used by other jurisdictions in Australia. As mentioned above, the difficulty in selecting a public funding model which would be effective in the Northern Territory is difficult due to our small population, geographic distribution and higher cost base. Therefore, the Country Liberal Party does not submit any suggestions regarding what level of public funding should be given to political parties and candidates should such a system be implemented in the Northern Territory. However, we believe that if such a system was to be pursued, further consideration would need to be given to the unique conditions in the Northern Territory when designing any kind of public funding process and such considerations would need to be balanced against the benefit any such system would bring to Territorians when factoring in its cost.

Further, the Country Liberal Party believes that if a public funding system was to be pursued, that there should be a minimum primary vote threshold that a candidate or political party must surpass in each individual electorate before they are entitled to receive public funding. When considering the threshold requirements of other Australian jurisdictions, it appears the percentage of primary vote required in an electorate to be eligible for public funding is between 4% and 6%. The Country Liberal Party believes that due to the smaller population size of Northern Territory electorates in comparison to those of other jurisdictions (even when considering the Hare Clarke system of Tasmania and the Australian Capital Territory), that the threshold to qualify for public funding should be at the upper end of the spectrum of other jurisdictions.

The Country Liberal Party also believes that the intent of public funding is to reimburse expenditure incurred only and that no party or candidate should be able to profit from a system of public funding in anyway.

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

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate and does not propose any changes.

Should the cap on anonymous donations be changed?

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate and does not propose any changes.

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

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate and does not propose any changes.

Should donations be limited to individuals on the electoral roll?

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate and does not propose any changes.

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

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate. We also believe that if such an arrangement was instituted it would place further auditing pressure on the resources of the Electoral Commission.

Should anonymous donations be banned?

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate and does not propose any changes.

Do foreign donors contribute to Northern Territory political parties?

It is rare for this to occur and in terms of receipts by the Country Liberal Party, any such donations have been incredibly minimal in number and size.

Should donations from foreign donors be banned?

The Country Liberal Party believes the current legal arrangements in the Northern Territory in relation to this matter are adequate, however; does support the current move by the major federal political parties to ban all foreign political donations.

Should donations from certain industries be banned?

In the event that a ban substantially similar to the New South Wales ban on donations from property developers and the alcohol, gambling and tobacco industries were to be considered in the Northern Territory, the Country Liberal Party would strongly advocate for a similar ban on

cash and in-kind donations from trade or labour unions and industry super funds. The Inquiry should also consider a ban on cash donations from entities that receive funding from the Northern Territory Government, due to the ability of the government of the day to influence donations based on funding decisions.

At the very least, any in-kind donations from trade or labour unions or industry super funds—as well as charities and other associated political entities—should count towards any cap on political donations that might be instituted.

In the recent past, certain political parties in the Northern Territory have been the beneficiary of substantial in-kind donations from various politically motivated entities across Australia, including labour and trade unions. These donations include the provision of political advisers, campaign staff, organisers, canvassers and election-day polling place workers. Under current arrangements, the rules around donations of such services have been open to interpretation. For example, classing a campaign worker as a ‘volunteer’ would not require a disclosure.

However, these campaign workers may not be true ‘volunteers’, as their expenses are being paid by a trade or labour union or a super fund, for the exclusive benefit of a particular political party. The rules around such donations must be clarified and ‘volunteers’ that do not pay their own expenses, out of their own unreimbursed personal funds, should no longer be allowed to escape disclosure legislation. Simply because a particular political party is not directly paying for campaign workers expense, it does not follow that these workers are ‘volunteers’—they are being paid.

The same principle would therefore need to extend to charities and associated political entities. In the event that a charity or associated entity provides in-kind support to a particular party, those amounts should be disclosed and count towards the aforementioned donation caps. It would be a simple matter for a trade or labour union or super fund to simply transfer funds to a charity or other entity to pay the expense of a campaign worker and avoid any disclosure rules that might apply, which would be clearly unacceptable.

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

The Country Liberal Party does not object to this proposal, however; in the interest of ensuring compliance by political parties, to ensure timeliness of disclosures and to reduce the administrative burden on the Electoral Commission, the Country Liberal Party would seek that an efficient and user-friendly submission system be developed if this initiative was to be pursued.

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

The Country Liberal Party does not object to this proposal; however, in the interest of ensuring compliance by political parties, to ensure timeliness of disclosures and to reduce the administrative burden on the Electoral Commission, the Country Liberal Party would seek that an efficient and user-friendly submission system be developed if this initiative was to be pursued.

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

The Country Liberal Party does not object to this proposal; however, in the interest of ensuring compliance by political parties, to ensure timeliness of disclosures and to reduce the administrative burden on the Electoral Commission, the Country Liberal Party would seek that an efficient and user-friendly submission system be developed if this initiative was to be pursued.

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

The Country Liberal Party does not object to more frequent tabling of the Register of Interest; however, we believe this is a matter for Members of the Legislative Assembly to determine.

Should the Register of Interests be available online?

The Country Liberal Party does not object to making the Register of Interests available online; however, we believe this is a matter for Members of the Legislative Assembly to determine.

Should public access to the register of past MLA's interests be available?

If the purpose of this question is to ask whether copies of past Registers of Interest of previous Members of the Legislative Assembly of the Northern Territory be publicly available, the Country Liberal Party does not object to this proposal. However, we believe this is a matter for Members of the Legislative Assembly to determine.

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

The Country Liberal Party does not object to the public and more frequent disclosure of the Register of Interests, but we believe that this is a matter for the Members of the Legislative Assembly to determine.

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

The Country Liberal Party does not object to this proposal as long as the Electoral Commissioner is given a level of discretion in the issuing of fines and that inadvertent errors and unforeseen circumstances be considered appropriate defences to any breaches which may require 'on the spot fines'.

Should the penalties be changed?

The Country Liberal Party believes the current legal arrangements in the Northern Territory are adequate and does not propose any changes.

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

The Country Liberal Party believes that the amount equal to the size of the breach of the cap, or the prohibited donation that was received, should be paid into the fund used for the purpose of publicly funding elections, if such a system was put in place in the Northern Territory.

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

The Country Liberal Party believes the current legal arrangements in the Northern Territory are adequate and does not propose any changes.

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

The Country Liberal Party does not object to this proposal as long as the Electoral Commissioner is given a level of discretion in the issuing of fines and that inadvertent errors and unforeseen circumstances be considered appropriate defences to any breaches which may require such fines.