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**Northern Territory Electoral Commission (NTEC) comments on the
Discussion Paper released by the Inquiry into Options for the
Reform of Political Funding and Donations in the Northern Territory**

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The NTEC's Submission¹ to the Inquiry into Options for the Reform of Political Funding and Donations in the Northern Territory:

- outlined the status of the present Territory disclosure provisions
- referred to recommendations to update those provisions contained in its 2016 Territory Election Report² and in the McGuinness Report³
- drew attention to contemporary funding and disclosure issues in the public domain and in other jurisdictions.

The NTEC is an independent agency; its role is not to form electoral policy but rather to provide advice of a frank, free and impartial nature on electoral matters.

The following comments relate to questions raised in the Inquiry's discussion paper released in October 2017. The comments are made without prejudice and in full cognizance of the funding and disclosure developments currently facing all electoral administrations and their capacity or otherwise to respond to those concerns and to public expectations.

Electoral expenditure

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

Yes. Democracy is not about the person who has the most money holding elected office.

A consideration here is whether third party campaigners falling outside the definition of associated entities could conduct campaign activities on behalf of a party/candidate, thereby avoiding the cap?

b. What would be the appropriate amount for any cap?

The ACT cap is \$40K - a suitable frame of reference.

Given the additional costs of campaigning in NT remote divisions, a higher cap could be implemented e.g. \$50K or \$60K for remote divisions. Indexation is recommended.

c. Should spending for party-backed candidates be pooled in the same way in the NT?

Yes.

d. Would independent candidates be disadvantaged by a cap?

It is possible that an independent candidate in a marginal seat may see expenditure above the cap for party affiliated candidates. However, overall a cap presents a more even playing field than when no cap is mandated.

¹[NTEC Submission to political donation enquiry](#)

²[2016 Territory Election Report](#)

³Review on the Process of Political Donations in the Northern Territory (The McGuinness Report)

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

See comments in b. and d. above.

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

The ACT model specifies 1 January in an election year.

Under fixed term elections, a cap commencing just 3 months before election day could preclude inclusion in the cap of initial campaign costs by candidates already pre-selected by major parties and the start of early campaigning.

Given that the Territory has a fixed term election on the 4th Saturday in August, commencing the expenditure cap from 1 January of an election year would seem appropriate.

Public funding

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

Yes. All other jurisdictions except Tasmania have a public funding model. It is in the interests of democracy that parties/candidates are not reliant solely on donations to fund campaigns.

Recommendations:

- Any public funding model should be complemented by a cap on election expenditure to prevent spending escalation. Parties/ candidates exceeding the cap should forego access to public funding or have their funding reduced proportionately.
- A candidate, political party or group should not be able to benefit from a public funding model – should be reimbursement based.
- Consideration to be given to an appropriate level of administrative funding to compensate for any limitation on industry, union or individual donations.

b. How much funding should be given?

The Commonwealth model of \$2.60 per first preference vote above a threshold is not appropriate for the NT jurisdiction, which has 130K electors, as it would not equate to a material amount of money. The ACT model of \$8.00 per first preference vote would provide approximately \$1m in public funding for a Territory election.

Recommendation:

- Any funding regime to be indexed, and forthcoming only when relevant returns have been submitted and verified as accurate.

Disclosure returns are verified through a compliance review conducted by an accounting firm.

Table: Possible disbursement of entitlement funds following the 2016 Territory election with a >4% or >20% threshold and funding of \$8.00 per vote

Affiliation and number of candidates standing	Number of candidates receiving first preference votes		Number of first preference votes gained by candidates		Possible funding disbursed at \$8.00 per first preference vote	
	> Threshold		> Threshold		> Threshold	
	4%	20%	4%	20%	4%	20%
1 Territory Party 13	11	0	3,262	0	\$26,096	0
Australian Labor Party 25	25	23	41,476	40,106	\$331,808	\$320,848
Citizens Electoral Council 4	0	0	0	0	0	0
Country Liberals 25	25	23	31,263	30,224	\$250,104	\$241,792
The Greens 6	6	0	2,817	0	\$22,536	0
Independents 40	30	7	17,655	12,065	\$141,240	\$96,520
Shooters and Fishers 2	2	0	523	0	\$4,184	0
Total 115	99	53	96,996	82,395	\$775,968	\$659,160

Donations

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

A strong argument exists for a reasonable cap on donations if a public funding model was introduced. The level of cap should meet public expectation that the amount of the donation does not create the perception of undue influence.

- b. *Should the cap on anonymous donations be changed?*

The current cap of \$1,000 is reasonable.

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

The issue is not the number of anonymous donations but their total value. Any cap on anonymous donations to candidates, parties and associated entities needs to pass the pub test i.e. be low enough so as to avoid the perception of undue influence.

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

The NTEC does not hold a conclusive view on this, as there are convincing arguments to both limit donations to individuals or allow them from individuals, companies, unions and other entities. In the absence of such an exclusion, an annual cap (or possibly 4 year cap based on the election cycle) could be imposed on the value of donations.

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

The NTEC does not hold a position on this except that any limitation must be practical to administer. In a global world, overly prescriptive delineations may be queried – is a business based in another jurisdiction, but carrying out work in the Northern Territory. (e.g. a legal or PR firm), prevented from making a donation?

f. Should anonymous donations be banned?

See comment at b. above. The current cap of \$1000 is reasonable.

g. Do foreign donors contribute to NT political parties?

Since the introduction of political disclosure returns from 2005/06 there has been one foreign donation to the value of \$3,064.

h. Should donations from foreign donors be banned?

i. Should donations from certain industries be banned?

The NTEC has no position on these two questions – they are matters for the parliament. The Commission notes that both issues are frequently being raised in the public domain in jurisdictions where no such bans exist and that the Commonwealth Government indicated on 5 December 2017 its intention to introduce a ban on foreign political donations.

Financial disclosure

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

Yes. See Recommendation 20 in the 2016 Territory Election Report.

The cost of moving to ongoing real-time disclosure outweighs the benefits due to the price tag for administering such a system. However, donations during the election period should be in the public domain before election day – an option could be for monthly reporting in an election year with weekly reporting in July and August leading up to election day. Outside election years, material donations (>\$10k) should be disclosed in a more timely manner i.e. within four weeks.

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

Yes. See Recommendation 21 in the 2016 Territory Election Report and the comments on the previous question.

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

Yes. That was in Recommendation 20 in the 2016 Territory Election Report and is one possible measure to improve the timeliness of disclosure returns. If the option in *a.* adopted, this would not be relevant.

Disclosure of MLA interests

The record of interests of elected Members of the Legislative Assembly is not the responsibility of the NTEC.

Audit, enforcements and sanctions

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

Yes. This was Recommendation 24 in the 2016 Territory Election Report. There needs to be a capacity to exercise discretion in issuing fines i.e. to cover a legitimate excuse for lateness or error.

b. Should the penalties be changed?

Yes. Recommendation 24 of the 2016 Territory Election Report advocates a statutory fine as an alternative to the referral to the DPP and/or Police for minor breaches.

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

The ACT model would seem to be appropriate: the penalty amounts to twice the amount of the breach i.e. expenditure \$2k over the cap, penalty would be \$4k.

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

Yes. Such explanations should be made available on the website.

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

Yes. However, there should be discretion as to whether a fine is issued i.e. no fine where there is a legitimate reason, as per comment to question a.

Dated: 14 December 2017