

## Proposals to increase voter engagement, participation and confidence

### Supplementary questions for ICAC witnesses – 17 March 2025

(Q1) **Amendments have been made to allow the Electoral Commission to disclose information about the progress or outcome of an investigation into possible breaches of the Electoral Act or Electoral Funding Act (sub 35, p 48). However, this amendment did not cover information about investigations into possible breaches of the *Local Government Act 1993* (for election offences) or the *Lobbying of Government Officials Act 2011*. Should the Electoral Commission be able to disclose information about these types of investigations?**

(A1) The Commission supports the NSW Electoral Commission (EC) disclosing information about the progress or outcome of an investigation into possible breaches of the *Local Government Act 1993* (for election offences) and the *Lobbying of Government Officials Act 2011* – in line with current provisions of the *Electoral Funding Act 2018*. For example, the ICAC notes that although the EC has power to disclose information about possible breaches of the Electoral Act or Electoral Funding Act, *it is not a requirement*. Rather, disclosure of information is pursuant to s 268 (2)(c) *the Electoral Commission or the Electoral Commissioner, as the case requires, is satisfied the disclosure is in the public interest*.

The ICAC acknowledges the risks of disclosing information in certain circumstances. For example, information relating to a matter referred to the ICAC by the EC should not be publicly disclosed while it is being assessed and/or investigated by the ICAC.

(Q2) **What impact could the recent changes to Federal election funding laws have on the risks arising from inconsistencies in election funding laws between NSW and the Commonwealth? (sub 5, p 1)**

(A2) The Chief Commissioner referred to inconsistencies during his evidence to the Committee on 17 March 2024, and subsequently provided the Committee with a Table comparing various elements of electoral funding in NSW and the Commonwealth. Key areas of risk relate to the following inconsistencies:

- prohibited donors in NSW are not prohibited donors at the federal level - this permits donors such as property developers to donate to the federal account of a registered political party.

The above issue featured in the ICAC's '*Investigation into the conduct of the City of Canada Bay Council mayor and others*' (Operation Tolosa: 2023) whereby the former mayor of the Council resigned from Council to unsuccessfully contest a seat at the 2016 federal election as the ALP candidate for Reid. Several donations from donors associated with property developers were made to his federal campaign. In September 2017 he was

returned to general local government election. The Commonwealth political donations made to the former mayor's federal election campaign raise the question as to whether he ought to have made a non-pecuniary conflict of interest declaration at subsequent Council meetings dealing with development matters of interest to those donors. The disclosure of Commonwealth political donations to the AEC does not serve as a substitute for disclosing non-pecuniary conflicts of interest at a local-government level. A Model Code of Conduct should explicitly require local government councillors to disclose political donations received under electoral laws of the Commonwealth, or another state or territory, as non-pecuniary conflicts of interest.

- donation caps are significantly higher at the federal level than in NSW.
- the donation disclosure threshold is significantly lower in NSW than the federal level
- administration funding is unconditional at the federal level.

**(Q3) We've heard that all parties are structured differently and a one-size-fits-all model would not be constructive or effective (sub 33, p 3). What types of internal controls and systems should political parties be required to have, regardless of their size and structure?**

**(A3)** The ICAC report 'Investigation into political donations facilitated by Chinese Friends of Labor in 2015' (Operation Aero, page 271) stated:

*Political parties are voluntary not-for-profit organisations that organise themselves in accordance with their own philosophical ideals. Even well-established parties such as NSW Labor tend not to have significant resources and rely heavily on party volunteers.*

Accepting that very small or new parties will not have extensive resources, the ICAC would nonetheless expect all parties to have documented policies and procedures (including record keeping procedures) that address the following topics:

- Accounting for, receipting and banking donations
- The organisation of fundraising events
- Identifying prohibited donors and donations that exceed statutory caps
- The roles and responsibilities of staff, including volunteers
- Whistleblowing and complaint-handling
- A code of conduct or ethics that should address the management of gifts and conflicts of interest.

In Operation Aero, the ICAC recommended that a working party be established, comprising of a cross section of party representatives (with input from the EC) to agree on minimum governance standards that would not unreasonably penalise very small or new political parties.

Model policies and procedures could potentially be made available to political parties, which should assist those organisations without the necessary in-house staff.

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(Q4) **What at powers would the Electoral Commission need to audit and enforce compliance with party governance and internal control standards, should they be implemented?**

(A4) While the EC already has a compliance and auditing role, it may be reasonable to expect registered parties to adopt a risk management and internal audit program that is proportionate to their size and the volume of taxpayers' funds they receive.

However, if the NSWEC was to conduct *regular and ongoing* audits of compliance by parties with party governance and internal control requirements, the EC's power could be enhanced by:

- a) Providing a specific compliance audit similar to [section 59](#) of the Electoral Funding Act (which currently only applies to the audit of disclosures).
- b) Extending the scope of the powers at [section 138](#) – currently these powers can only be used for the purpose of enforcement, which means there needs to be a *reasonable suspicion* that the law has been contravened. The powers would need to extend to regular/routine audits even in cases where there is no suspicion the law has been contravened.

(Q5) **We have heard that the voting age should be lowered to 16 (sub 6, p 1). What is your view on lowering the voting age?**

(A5) Lowering the voting age to 16 in NSW is a matter of policy for the NSW Government and Parliament. The ICAC does not express a view on this issue.