



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2024-2025

Ms Nicole Lawder MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Miss Laura Nuttall MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by: Mr Peter Cain MLA

Addressed to: Electoral Commissioner

Redirected to: n/a

Reference: Uncorrected Hansard Transcript [Page 51]

In relation to: Proposed ban on developer donations and legal advice

Hearing Date: 1 August 2024

QTON lodgement date: 2 August 2024

Answer Due Date: 7 August 2024

MR CAIN: So, you put the submission through on the proposed amendments to ban developer donations. Was there anything in your submission that was not agreed to or implemented? Well, you can take it on notice if you wish.

Mr Cantwell: I might—I might correct my response because I crossed my wires here. In fact, when you started talking about property ban, I was merely thinking about other aspects of legislation. So, I am having to go back to how we approached the consideration of the input into that particular piece of legislation. We can take them on notice and provide the detail around how we respond to that as well.

MR CAIN: Did you get any—if you got any legal advice on, I guess, to inform your view and your submission? Are you able to take that on notice to provide that as well?

Mr Cantwell: Look, I am not at liberty, nor would wish to provide detail of any legal advice we have received in our deliberations. But rather, I would offer that it is our position is—our considered review of Electoral Legislation or other legislation relevant to that, which is being proposed.

THE CHAIR: Mr Cantwell, you have just said you are not at liberty to provide that information. Are you making a claim of confidentiality?

Mr Cantwell: Could you expand upon that particular aspect?

THE CHAIR: Well, parliamentary privilege overrides any claim of confidentiality. And we

have a continuing resolution 8b that is been passed by the Assembly, which uses a public interest test. So, you could withhold—ask to withhold the information if, in your view, it is in the public interest to withhold that information.

Mr Cantwell: No. And indeed—so that may—I suppose to be as the point, I am happy to take a question on notice. In doing so, I also consider how I would respond to the aspect that Mr Cain has raised about provision of a legal advice, as I think—as I interpreted your question. So, I will take that on notice.

THE CHAIR: Yes, I just want to add though—

Mr Cantwell: No. So, the answer is, thank you, is no. I am not making such a claim.

THE CHAIR: You will take that on notice.

Mr Damian Cantwell AM CSC: The answer to the Member's question is as follows:

The ACT Electoral Commission (Commission) made a submission to Select Committee Inquiry into the 2016 ACT Election and the Electoral Act, on 15 May 2017.

At the time of the submission, the only jurisdiction with a ban on gifts from property developers was NSW. The enabling legislation, the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (EFED), was undergoing a full review in response to a recommendation made in the Report from the Expert Panel – Political Donations and the NSW Joint Standing Committee on Electoral Matters (JSCEM) Inquiry into the Expert Panel.

The Commission's submission recommended, among a range of other recommendations on separate electoral issues, that the issue of banning or limiting gifts from property developers in the ACT await the outcome of the review of the *Election Funding, Expenditure and Disclosures Act 1918* (NSW) in New South Wales.

The NSW *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (EFED), was ultimately repealed and replaced by the *Electoral Funding Act 2018* on 1 July 2018. The ACT bill, Electoral Amendment Bill 2018, which introduced a ban on donations from property developers in the ACT was presented in the Assembly on 29 November 2018 but was not notified until 4 September 2020.

The Commission's submission of 15 May 2017 further noted that any proposals to ban or limit political donations involve policy issues, legal constraints and practical implementation concerns. The Commission noted that, if such bans or limitations were not applied at the national level under Commonwealth law, then it may become difficult for the ACT to impose bans or limitations on political participants active at both the national and ACT level of politics.

While this complexity was not addressed by the ACT Legislative Assembly, the issue raised by the Commission was inadvertently addressed by the Commonwealth parliament through enactment of amendments, commencing 1 January 2019, that had the effect of enabling ACT registered political parties that also have registration at the federal level, to quarantine gifts from the Territory funding and disclosure laws, if the gifts were immediately deposited into a federal election account. This meant that even without similar Commonwealth prohibitions on property developer bans, the ban in the ACT could be more easily enacted and enforced.

In answer to the Member's question if the Commission received any legal advice which informed the Commission's view and submission, the Commission did not seek or receive legal advice prior to the lodgement of the 15 May 2017 submission to the Committee.

For the Committee's information, the Commission's submission to the Select Committee Inquiry into 2016 ACT Election and the Electoral Act is linked in the email covering this response.

Approved for circulation to the Select Committee on Estimates 2024-2025

Signature: 

Date: 6/8/2024

By the Electoral Commissioner, Mr Damian Cantwell AM CSC