

OUR REF: 2024/004080-1

29 August 2024

Rebecca White MP

Chair, Standing Committee on Government Administration B

By email: ben.foxe@parliament.tas.gov.au

Dear Chair

Response to written questions on notice

I am writing in response to your letter of 21 August 2024 setting out questions on notice in relation to the Committee's inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (no.9). It follows Ms Frost and Ms Hickey's appearance before the Committee at its public hearing on 12 August 2024.

Set out below are the Board's responses to the Committee's questions.

1. *Given the evidence the Committee has received about the administrative challenges for providing the detail of donors within 24 hours, does the Integrity Commission have a view on whether seven days within an election period is satisfactory?*

It would not be satisfactory if donations in the week prior to an election were not declared until after the election.

We reiterate our view that all disclosure timeframes should be consistent. The draft Bill provides for the disclosure timeframe of 24 hours 'within 7 days before a polling day'. Disclosure rules are likely to be more easily understood, and hence complied with, if they apply consistently.

If the committee considers that 24 hours is too onerous, one alternative that may warrant consideration is a prohibition on donations in the seven days before the election. This was recommendation 16 relating to local government elections made by the Queensland Crime and Corruption Commission in its 2017 'Operation Belcarra' report¹. It does not appear that this recommendation has been implemented in Queensland. The ever increasing percentage of postal votes in parliamentary elections also suggests an option such as this may warrant consideration.

We also note that the degree of administrative burden will, to an extent, depend on the logistics of the system used to make declarations.

¹ <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

2. *What role does the Integrity Commission expect to play in monitoring compliance with Electoral Act?*

We are not specifically empowered to monitor compliance with the provisions of the *Electoral Act 2004*. Any role that we would play would be confined to investigating alleged misconduct (as defined by the Integrity Commission Act) by public officers.

3. *If someone makes a complaint about what they perceive to be a breach of the Electoral Amendment Act, such as failure to disclose a donation within a certain timeframe, or over a certain amount with the assertion being one of electoral bribery or corruption, what action would the Integrity Commission take, and does the Commission expect they will have difficulty providing a timely response to any such complaint given the community would expect that these matters would need to be dealt with swiftly within an election period?*

We understand this question to mean whether we would assess, investigate and inquire into the complaint under the *Integrity Commission Act 2009* (the Act). It is not possible to answer this definitively as a hypothetical; decisions such as this are made on a case-by-case basis and would depend on the specifics of the complaint. However, in general terms we note that:

- We do not investigate or prosecute potential offences under any Act. If the allegations related to a breach of the *Electoral Act 2004* to which offence provisions attach, we would share the complaint with the relevant investigative or prosecuting authorities. We note that 'Electoral bribery or corruption' are potential crimes under the *Electoral Act 2004* and the *Criminal Code Act 1924*.
- We have jurisdiction over alleged 'misconduct' and 'serious misconduct' by 'public officers' and 'designated public officers' as defined in the Act. Candidates for a parliamentary election are not public officers or designated public officers under the Act. We would therefore only pursue such a complaint under the Act if the conduct otherwise fell within our jurisdiction.

Regarding the timeliness of a response, if we received a complaint about conduct that could amount to an offence under the *Electoral Act 2004* (or any other Act), we would share it with the relevant investigative and prosecuting authorities. This can be done in a very short timeframe if necessary, i.e. a day. If the authorities with whom we shared the complaint chose not to act and if the complaint fell within our jurisdiction, we may then decide to take further action under the Act.

We note that our ability to investigate and report quickly on a complaint could be constrained by any legal action taken by the subject officers of the complaint or other matters outside of our control.

4. *In the Integrity Commission's 2018 submission it was written, "While the Commission appreciates the benefits of such prohibitions in some situations, it considers at this stage that the operation of the NSW and Queensland provisions should be monitored. It believes that the introduction of transparency through a scheme modelled on the Queensland EDS is a reasonable first step, and that further measures should be introduced if that does not deliver the necessary public confidence". Is this still the Commission's view?*

As a general rule, it is important that there is a sound evidence base to justify the introduction of measures such as prohibitions.

We do not have any information regarding the effectiveness of the NSW and Queensland provisions, and whether they have led to increased public confidence.

5. *The Commission has recommended the prohibition of donations for a period prior to an election. How would the Commission propose the Committee deal with instances where a donation is pledged during the election campaign but not made until after the election? How would the Committee be satisfied that there was proof of a pledge?*

To our knowledge, we have not explicitly stated that we recommend the prohibition of donations for a period prior to an election – although we have stated above that it may warrant consideration.

Noting that we are unaware of the extent of the practice of ‘pledging’ donations, we believe it would be preferable for donations that are ‘pledged’ but not received prior to an election to be disclosed in the same way as donations that are received during an election campaign. Irrespective of when a donation is received, a ‘pledge’ indicates a clear intention to make a financial contribution.

6. *In both the 2018 and 2021 submissions to the Review of the Electoral Act the Commission cited the need for additional resourcing for the Tasmanian Electoral Commission. To assist the Committee, what additional resourcing does the Commission view to be appropriate to ensure the TEC can do its job adequately?*

We note that any increase in powers and functions for the TEC must be accompanied by increased resourcing so that the TEC can properly fulfil its extra duties.

The TEC itself is the appropriate body to respond to this question.

7. *There has been quite a lot of discussion and submissions regarding the difficulty with charities in disclosing donations. The situation might be with - and we've used this example a number of times now - the Cancer Council, for instance. They often receive lots of donations right throughout the year for a whole variety of works - cancer prevention, awareness, education, all those kinds of things. They might choose to conduct a small political campaign in an election period and the difficulty for them is in identifying who is the donor who has donated to that particular campaign, where perhaps they've paid for that political campaign or electoral campaign out of consolidated funds. Do you have a view on how any sort of disclosure regime might be able to accommodate that difficulty and how they should be dealing with that, if we take the principles we're concerned about who is influencing political campaigns, who's donating to them and who's spending on campaigns? Does the Commission have a view on how we would do that?*

We consider that donations from charities should be defined simply as from the entity itself. If the charity were to conduct a specific fundraising campaign in relation to a discrete matter or policy, and its donation to a candidate or party was specifically linked to that matter, it is possible that that donation could be identified as such. However, we consider that this is a highly unlikely scenario.

It is reasonable to assume that individual donors to a charity do so in the belief that their interests are aligned with the charity, and hence they entrust the charity to advocate in alignment with the charity's vision and/or mission.

Should you have any further questions, please contact Ms Julia Hickey, Acting Chief Executive Officer at [REDACTED]

Yours sincerely,

[REDACTED]

Greg Melick AO SC
Chief Commissioner