

**ACT**

Government

Justice and Community Safety

28 of 44

MINISTERIAL BRIEF

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MINISTERIAL-IN-CONFIDENCE

TRIM No.: 2015/0278

To: Attorney-General

Date Rec'd Minister's Office 13/2/15

From: Executive Director Legislation, Policy and Programs**Subject:** Debate of *Electoral Amendment Bill 2014 (No. 2)***Critical Date:** 19 February 2015**Critical Reason:** The Bill is scheduled to be debated on this day.

• DDG

13/2/15 Maureen Sheehan

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Page 1 of 3

High Court challenge

7. On 28 July 2014 Jeff McCloy (former Lord Mayor of Newcastle, under investigation by ICAC NSW) lodged a writ in the High Court of Australia challenging the constitutional validity of s 96GA of the *Election Funding, Expenditure and Disclosure Act 1981* (NSW), which prohibits donations from the property development, alcohol, tobacco and gambling industries. It is alleged that the effect of this provision is to impermissibly burden the implied freedom of communication in the *Constitution*.
 8. On 29 September 2014, it was reported that the High Court challenge to the NSW Act was being broadened so that it now also seeks to strike down as invalid provisions that cap donations at \$5,000 for a party or \$2,000 for a candidate.
 9. By creating uncertainty regarding the validity of such caps, the High Court case provides a further argument in favour of the Government's proposed amendment to remove the \$10,000 cap on political donations in the ACT. However, there is a risk that the Government will be criticised should the High Court determine such caps to be valid. The High Court is expected to hear this case in June 2015.
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Recommendations

That you:

1. note the information contained in this brief.

 **Noted/ Please Discuss**

Simon Corbell MLA.....

...../...../.....

Minister's Comments

17.2.15

Signatory Name: Julie Field

Phone:X70522

Title: Executive Director

Date: 12 February 2014

Action Officer: Belinda Robilliard

Phone:X72503

Justice and Community Safety

Minister: Attorney General
Ref: Electoral Amendment Bill 2014
(No. 2)

Q&A

1

The Bill proceeds on the basis that the best way to avoid corruption is to have a robust system for the disclosure of political donations, supported by partial public funding and caps on electoral expenditure.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Have the limits on donations changed?

A. The Bill removes restrictions on how much can be donated to a party or a candidate.

The Bill removes the \$10,000 limit on donations on the basis that the limit provides an incentive for people to find ways to make donations outside of the \$10,000 cap. Instead, the Government is implementing a scheme with a robust system for the disclosure of political donations, supported by partial public funding and caps on electoral expenditure.

This change will be achieved by removing sections 205I and 205J from the Act, including section 205I (4) which is likely to be invalid following the High Court decision of *Unions NSW v NSW* (2013).

As a result of the Bill, free room hire (and other related facilities like chairs and tables) for regular meetings will no longer be considered as a gift. However, parties will still have to report free room hire in their annual return to the Electoral Commissioner.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JUSTICE AND COMMUNITY SAFETY

ASSEMBLY BRIEF

Minister: Attorney-General

Cleared as correct and accurate as at: 6 March 2015

By Executive Director: Karen Greenland

Telephone: 76244

Action Officer: Belinda Robilliard

Telephone: 72053

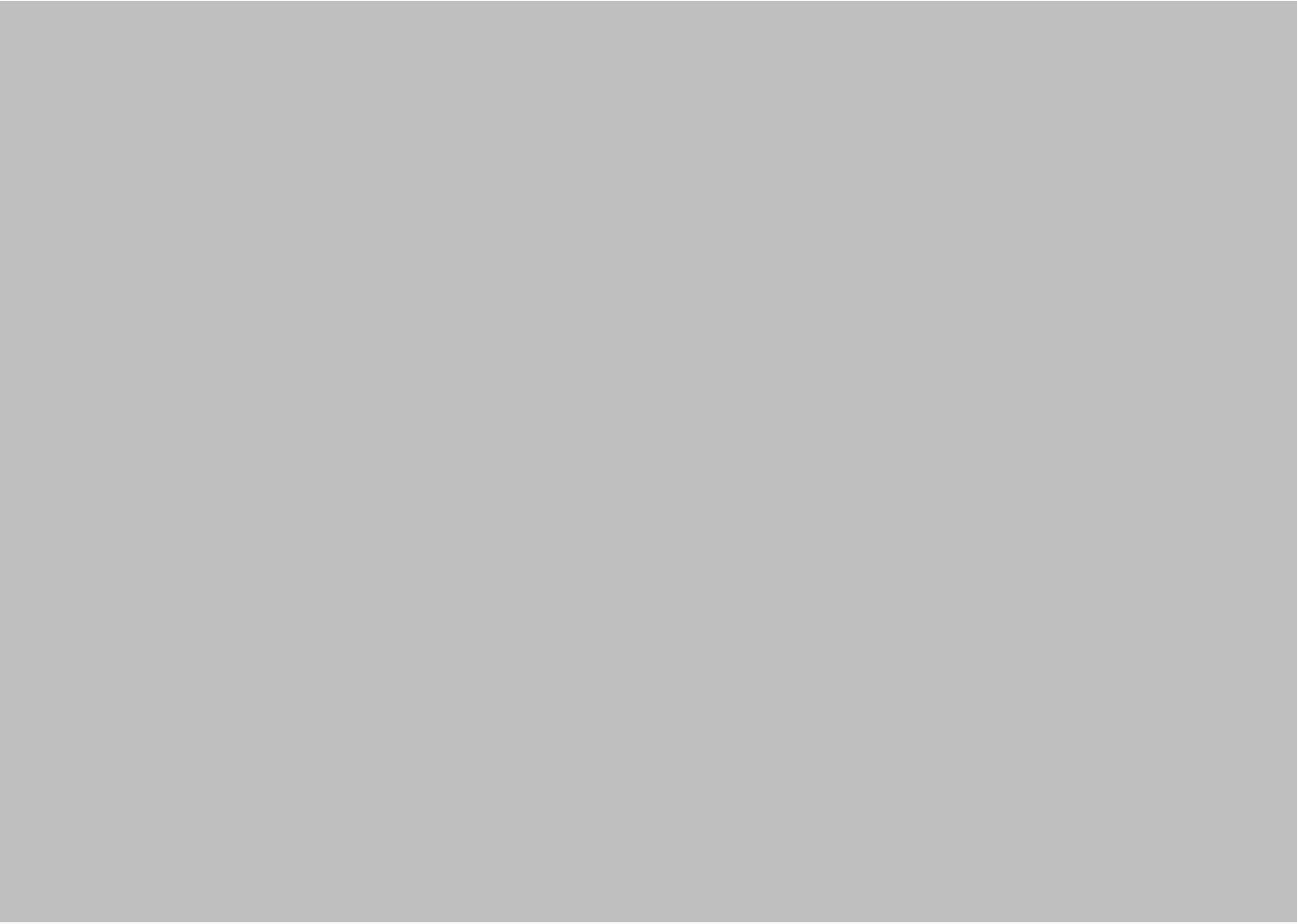
ISSUE: Electoral Reforms

Context



Talking points – measures implemented by the Amendment Act

- The Act removed the \$10,000 limit on donations on the basis that the limit provided an incentive for people to find ways to make donations outside of the \$10,000 cap. Clear and enforceable reporting of donations will ensure that high levels of transparency and accountability are maintained.
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- The amendments were based on a careful balancing of various interests across the community. The result is a package of reforms that strengthen the integrity of our electoral system as the cornerstone of a robust democracy and a society in which citizens can truly participate.
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ACT
Government

Justice and Community Safety

**MEDIA QUESTIONS; PROPOSED
RESPONSE FOR MINISTER'S OFFICE**

Minister:

Ref: B

Question/s

1. Why did the government decide to remove donation caps? If the money can be used for party administration as well as electoral expenses, are electoral spendings caps enough to discourage large donations?
2. Why did the ACT government choose to go with \$8 of public funding a vote, double the nearest state in NSW?
3. Will this reform give the green light to large donors once again giving large sums of money to the ACT government?

Requested by Ben Westcott, The Canberra Times

Deadline required to JACS Media (who will gain approval from Deputy Director-General)

4.30pm TODAY

Proposed Response

1. Why did the government decide to remove donation caps? If the money can be used for party administration as well as electoral expenses, are electoral spendings caps enough to discourage large donations?

The Government believes that the existing limit on donations creates an unintended incentive for donors to look for ways to circumvent the caps.

It is more effective to limit electoral expenditure, impose expenditure caps that are enforced and ensure an effective reporting regime to provide transparency

2. Why did the ACT government choose to go with \$8 of public funding a vote, double the nearest state in NSW?

The purpose of public funding is to limit undue influence on MLAs and political parties. While full public funding of elections would not be appropriate, the Government has decided to increase public funding to \$8 per eligible vote as part of its overall strategy to minimise incentives for corruption and undue influence. Increasing public funding achieves a balance between public and private funding and means that candidates do not have to seek as much from private donations to fund electoral campaigns.

3. Will this reform give the green light to large donors once again giving large sums of money to the ACT government?

No. The limit on electoral expenditure means there is a limited use to which large donations can be put.

Background

Ben Westcott email:

I'm writing a follow up on the donations article from today. I have legal experts saying it is a poor decision to remove donation caps, while others claim \$8 of public funding per vote is too high.

Additional sensitivities (not public)

Andrew Benson has requested the answer to number 3 mention the disclosure laws.

Action officer: Pam Jenkins

Cleared by (Business Unit Head): Julie Field

Date: 28/11/14

Cleared by (D/DG):
