



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON THE INTEGRITY COMMISSION AND
STATUTORY OFFICE HOLDERS**

(Reference: [Inquiry into Annual and Financial Reports 2023-24](#))

Members:

**MR E COCKS (Chair)
MR A BRADDOCK (Deputy Chair)
MR T WERNER-GIBBINGS**

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 19 FEBRUARY 2025

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**Secretary to the committee:
Ms K de Kleuver (Ph: 620 70524)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 10.41 am.

Appearances:

ACT Electoral Commission

Cantwell, Mr Damian AM CSC, Electoral Commissioner

Hickey, Mr Scott Hickey CA, Chief Finance Officer

THE CHAIR: Good morning and welcome to the public hearings of the Standing Committee on the Integrity Commission and Statutory Office Holders for its inquiry into annual and financial reports 2023-24. The committee will today hear from the ACT Electoral Commission.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses could use these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome witnesses from the ACT Electoral Commission. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to be the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the privilege statement and that you agree to comply with it.

Mr Cantwell: I have read and understand the privilege statement and will comply with those requirements.

Mr Hickey: I have read and understand and will comply with the privilege statement.

THE CHAIR: Thank you very much. As we are not inviting opening statements, we will proceed directly to questions.

MS CASTLEY: I have searched the ACT Electoral Commission website and I cannot find a public list of prohibited donors. I am wondering why that list is not public.

Mr Cantwell: The prohibited donor requirement, as required by legislation, is something that we pay very close attention to. We do our very best to do that which we can by way of audit arrangements that we have in place to review where donations have come from. Separately, though, the funding and disclosure of provisions and the arrangements which we published and worked for some time is whereby we engage an independent auditor, which I am sure previous MLAs are familiar with, while we work through the full disclosure provisions and requirements in accordance with the schedule

on that planning disclosure provision schedule detailed online, and those results are promulgated routinely. If there is a specific issue about prohibited donors that you would like to query?

MS CASTLEY: My thought is that the whole point of the list being public would help with transparency, and that, rather than fixing it after the fact, it would seem helpful to have it up-front.

Mr Cantwell: Publishing a list would be difficult to be exhaustive and complete. The legislation, as it stands, as you know, has recently been extended to include donations from foreign entities, and we apply that legislative requirement over the top of situations as they may arise. So rather than saying, “The following entities are hereby prohibited from making donations,” or “are covered by the prohibited donor legislation,” I think the legislation speaks for itself in terms of who can and cannot or is prohibited from making donations, as per the law. We would look at the particular circumstances as they arise.

MS CASTLEY: I note the definition of “property developers” and “close associates”. A close associate to those property developers include body corporates, spouses, domestic partners and trust beneficiaries.

Mr Cantwell: Yes.

MS CASTLEY: Would you consider an example of a prohibited donor one which derives a significant amount of its income from property as a close associate of a property developer?

Mr Cantwell: Again, it is difficult to answer a question of that nature without looking at the particular case that will be under consideration at the time. In that regard, the commissioner will also seek further advice to ensure that our considerations are duly within the legal context and take advice in that matter, without disclosing that legal privilege, of course. We would, and do, examine those situations in close detail as they may arise. It would be difficult for me to give a blanket answer without looking at the specifics of the case. Again, I am always inclined to seek advice in this matter, where it is a legal interpretation. Again, we cannot provide legal advice.

I also wish to commend the staff and, indeed, the MLAs directly, who routinely reach out in advance where a situation of that nature may arise or they have questions, whether it be about a donation or a gift of any type. I always encourage staff and MLAs to reach out to us whereby we can go and engage practically with the advice we might need to seek and to give that advice back to whomever asked for it in the first instance. We have had a great series of engagements with staff, which is welcomed by the commission—and we continue to do so.

MS CASTLEY: Great. Were you aware that the 1973 Foundation Pty Ltd donated \$750,000 to the ACT Labor Party in 2023-24?

Mr Cantwell: I cannot talk to specifics. I would have to go back to the records of donations—again, promulgated subsequent to the audit of such donations and their compliance checks—and see what was donated at the time.

MS CASTLEY: Are you able to take that on notice?

Mr Cantwell: I will take it on notice, yes, if I can give you more specifics.

MS CASTLEY: Thank you. And possibly also this: that the majority of the 1973 Foundation income, as declared via the AEC Transparency Register, comes from investment sale proceeds times two, including via a trust or a rental income, and whether you would consider these type of transactions as that of an organisation that is a close associate of a property developer.

Mr Cantwell: Again, I am happy to take the detailed question on notice. We can duly consider it and make the response that you are asking for.

MS CASTLEY: I would also like you to respond on whether or not you have undertaken a compliance audit of the 1973 Foundation in the last couple of years.

Mr Cantwell: Yes We routinely undertake those compliance audits. We are about to commence the compliance audit for the election returns. That will commence in late March-early April and that will run its course. I cannot really make any comments about the election donations and returns until such time as their compliance audit is complete. But, again, I can give further detail or a full considered response in response to a detailed question. I am happy to take that on notice.

MS CASTLEY: Great. Thank you.

MR BRADDOCK: I have a question about the definition of “electoral expenditure”. Looking through the act, it very much seems to be focused on the production of electoral material for the purposes of the act. Do you agree that there are other aspects of campaign expenses that are incurred that are not covered by the electoral expenditure definitions?

Mr Cantwell: Again, as you are aware, we have been very happy to take on questions of that nature directly from staff or MLAs where we consider the commission’s position on the application of the legislation in this case. I would be happy to take on a context or detailed question that you may wish to provide to us. But I think the commission has made the point a few times to others who have asked me this question previously that it relates to the timing and the impact, as such, of a gift. Your question overlays to expenditure, sorry.

MR BRADDOCK: Yes.

Mr Cantwell: Sorry; expenditure. Again, I am happy to take on notice a specific question about expenditure so that we can give you a more considered response. Again, we are grateful for the opportunity to consider such questions when they arise with specifics so that we can engage as we might need to with our advisers and then provide detailed advice to anyone who asks us those sorts of questions.

MR BRADDOCK: Fair enough. The Electoral Commission has in the past suggested the capping of public funding to match with electoral expenditure.

Mr Cantwell: Sorry, I missed that point.

MR BRADDOCK: The Electoral Commission in the past has recommended that the public funding be capped to the amount of electoral expenditure that has been declared for the purpose of the act. Does the Election Commission understand or appreciate that electoral expenditure is a narrow definition of the expenses incurred as part of running a campaign?

Mr Cantwell: I understand your point. We are happy to consider recommendations or the like and provide advice to MLAs or, indeed, to the Assembly in the context of potential changes to legislation. But my role in this matter is to apply that as it sits with the legislation accordingly. Indeed, if it is the provision of funding, whether it be election or administrative funding, we just apply it as per the law. Again, we are happy to provide advice and take considerations to help that debate in the Assembly, should those legislation records be considered for change in the future.

MR BRADDOCK: Thank you.

THE CHAIR: You mentioned the engagement with MLA officers, with political parties and with staff around specific pieces of advice. I would say that all officers are very grateful for the responsiveness we get there. Can you tell me how many times in 2024 the office was approached for advice regarding electoral material?

Mr Cantwell: How many times?

THE CHAIR: Yes; on how many occasions.

Mr Cantwell: I cannot give you a specific number. I would say it increased in frequency as, of course, the election approached, when this became clearly more topical. There are some MLAs who demonstrate a very keen willingness to reach out and engage or have instructed their staff to do so. That comes over the top of our forward leaning in this space, whereby we give a series of presentations—which are streamed to the broader public—to anyone who wishes to come along to them. We did two or three of those late last year ahead of the election.

THE CHAIR: Where I am heading is that I am keen to find out whether there is much of an overlap in the questions that you are getting. Perhaps you could take on notice the number of times that you were approached and—

Mr Cantwell: Okay. To do with electoral expenditure?

THE CHAIR: With regard to electoral material.

Mr Cantwell: Election material? Whether it be an electoral matter or not, is that what you—

THE CHAIR: Yes; that is one of the key things. If you could take it relatively broadly, are you able to provide a bit of a breakdown or an indication as to whether there are particular overlapping themes or different people asking the same question?

Mr Cantwell: Yes; we can look at the numbers. I am sure we can gather some data there and summarise the sorts of observations. Yes; I am happy to take it on notice.

THE CHAIR: Wonderful; thank you.

MR WERNER-GIBBINGS: We have an inquiry into the 2024 election, and probably in the second half of the year we will be having deeper conversations. To help inform my thinking, can you please give me a quick appraisal of where you thought it went well and where there might be areas for improvement, where you will require assistance from the legislature or where there is more work to be done in terms of the effectiveness of the 2024 election?

Mr Cantwell: Thank you for the question. I would also, if I can, on behalf of the commission, express our appreciation for the willingness to extend the submission date for that actual inquiry, given that the draft report into the election is still an ongoing piece of work. My deputy, who, due to his illness, is not able to attend with us today, is knee-deep in working through that draft as we speak. I think it is very important that that report be properly considered by the commission and then duly tabled for the Assembly, in turn, for the public to be able to review it, inform their own potential submissions or their views and then to make a more fulsome and wholesome contribution to the inquiry itself. So we are grateful for that.

I am reluctant to get ahead of the commission's findings or recommendations, particularly as it might relate to any legislative reform, which I think you referred to. Needless to say, overall, I think the election was successful. As publicly stated, the intent of the commission was to deliver a trusted, transparent, secure and accessible election. We worked very hard, along with our partners within the ACT government—the ICT team, for example, and the cybersecurity team—but also federal security agencies and a range of vendors and academics. A raft of organisations helped us deliver this outcome for the community. In that regard, it was a successful collaborative effort—of course, noting the independent nature of the commission's responsibilities and actions here.

It was a different election to that in 2020, in the context of the COVID impacts. The legislation passed at that time, new at that time, permitted all eligible electors to vote early, and there was an active message which the commission promulgated in the interests of COVID safety. Notwithstanding those differences, there was a reduced early voting period, as you will recall, in this election in 2024, with a three-week postal voting period but a two week attendance voting period. That brought some operational challenges in terms of messaging and also the provision of services. Nonetheless, I think the commission met its aims in terms of delivery of the electoral services across those key windows.

It was marked by record high enrolments. We had, by May, 321,721 eligible electors enrolled and the turnout was 279,370, which was slightly down from the 2020 turnout. That is one thing we will look at. But the context of turnouts is always vexed in terms of its percentage of eligibility. If the enrolment is high and nothing else changes, then the percentage of turnout might slightly decrease, understandably. The percentage of people who turned up to vote early and, in turn, those who cast their votes electronically,

again, was slightly down from 2020. These details will be promulgated more fully with observations attached in our forthcoming election report. But, again, they must be viewed in the context of different circumstances to 2020.

We will look at those outcomes and the lessons as we further analyse the election for 2020. We will certainly be applying the lessons and, if there is a need for recommendations for legislative reform—getting to, I think, the key part of your question—we will certainly reach out to the Assembly by way of the report but also any advice which we can provide to help the Assembly consider our viewpoints in these matters. We look forward to taking part in the inquiry, as making one of the key submissions to it, and being able to talk to specifics in due course.

But, in a nutshell, I was happy with the way it was presented. We will always look to do better on each occasion, of course. One of those key enablers, of course, is our resources. Although we are not intending to make a budget submission or business case for the forthcoming 2025-26 budget, we will be making, at this point, a submission for the 2026-27 budget which will reflect our assessment that we probably need to enhance the capacity of the Elections ACT team in a couple of key aspects, in particular procurement and ICT project management, to make sure that we are able to deliver those trusted, transparent and secure electoral services, largely underpinned by ICT services in the future.

MR WERNER-GIBBINGS: Okay. A new element was the offence created in the Electoral and Road Safety Legislation Amendment Bill restricting limits on road signs on public land. Anecdotally, I heard directly that that is very difficult to count and implement. What were the mechanisms for enforcing that limit?

Mr Cantwell: The responsibility for enforcing the requirements around road signs and the like rests with Transport Canberra and City Services rather than Elections ACT. We acknowledge the difficulty in going around if someone wishes to try to individually count such signs. But, again, if members of the public wish to make complaints or submit concerns, they should raise them with the responsible authority, as opposed to Elections ACT. But we acknowledge the practical difficulties in trying to manage such electoral material.

MR WERNER-GIBBINGS: Almost an impossibility, I would think. But noted. Thank you.

MS CASTLEY: I have a question about the election. I note it took a week from election day last year before the final seat was counted with Mr Cocks in Murrumbidgee. I wonder if you could explain to us why it took so long? Is this a desirable outcome?

Mr Cantwell: It is critical that every vote is recorded fully accurately, as per the voter's intention. In this case, there are 120,000 paper ballots, including 20,000 postal votes from overseas. As you know, the legislation allows for a period of time, up to a week, after polling day closes for postal votes to be received, as long as they are stamped on or before the last day. We need to allow for the delivery of those and the receipt of those and to be appropriately scanned and gone through the integrity assurance requirements to ensure that the annotations or the markings as cast on that ballot paper are scanned and reviewed and, in this case, audited separately and independently of our own review

to ensure that the vote is recorded appropriately.

That takes a bit of time. Electronic voting, of course, is much simpler, and we are able to produce and deliver an indicative count within the first hour of polls having closed, which is a hallmark of the eVACS system. But paper ballots must be all individually scanned into the system and verified through a three-step verification process before being admitted to the count. Therefore, the result cannot be promulgated until all those are duly administered and counted.

As well as that, for 2024 we introduced, as I said or referred to before, a ballot paper scanning assurance audit, which was conducted live or in near-live time, whereby an independent team of auditors audited how we were doing that process to ensure that the error was absolutely minimal and ensure that the process was as assured as it could be. So, yes, it takes time. It is really important we get that done very carefully.

MS CASTLEY: Of course.

Mr Cantwell: But, again, I would just refer back to the eVACS count. That was released publicly pretty quickly after the polls were closed on the day.

MS CASTLEY: So why, in particular, did the Murrumbidgee electorate take so long?

Mr Cantwell: No particular reason; it is the way the votes played out, effectively. As the preferences were updated on a daily basis, the day's scanning proceeded and, at the end of each day, I and the deputy conducted a formal review of that day's scanning outcomes to ensure the process was correct, and then the votes for that day's as updated were admitted to the count, and that changed the preferences. Indeed, I think the key public messaging that I tried to get to as we progressed in that was to make sure people were aware of that—that things can change and it is not until all the papers are counted that the result can be determined, and then I can make a formal announcement later on.

MS CASTLEY: Sure. So it was not a resourcing issue? Do you need to request additional resources from the ACT government?

Mr Cantwell: I would love additional resources. I would always love additional resources.

MS CASTLEY: What would your priorities be with additional resources?

Mr Cantwell: Again, I think we should leave the question of exactly what we wish to resource better to the election inquiry, again going to an earlier point. The scanning process was exhaustive. It has to be. It is also a public accessible event, by way of scrutineers that are appointed by parties and candidates representing them to attend and to watch. We had a number of such scrutineers attend. It was great to be able to see them, to talk them through the system and to walk them around the floor. They could see what was going on. They could see the screens. They could see the results of any questions or challenges that were being raised and they could, in turn, raise challenges themselves. That was a good process. As to the question of resources, I will put that one to one side, in terms of considerations of how the election could be improved for 2028 in terms of resources.

MS CASTLEY: Great. Thanks.

THE CHAIR: I will quickly make a comment that my scrutineers thoroughly appreciated being taken through and shown how everything worked.

Mr Cantwell: It was good to see them.

THE CHAIR: I want to turn very quickly to the electronic voting system. I want to understand whether there has been any work in recent years to look into security and audit any potential vulnerabilities around the system.

Mr Cantwell: Absolutely, it is paramount in our assurance processes. Our service delivery plan, which I published in June last year before the election, listed a range of those integrity assurance measures, and detail about our integrity assurance measures are also listed on our website. I referred to some of the partners that we work with to assist us in presenting to the public and the community that the system is as good as it can possibly be and can be trusted, as it needs to be. They involve our own testing and trialling progressive improvements to the eVACS.

THE CHAIR: Is it an ongoing process or do you have periodic independent audits?

Mr Cantwell: It is an ongoing process, focused on the 12 to 18 months before each election, historically. I have shifted the culture around our preparations, though, to be a continuous organisation process over the last couple of elections, since taking up this appointment, because ICT systems, particularly those upon which we rely so heavily for eVACS, are always a work in progress. We cannot afford to just put the thing away in a box, in a server, and then open it up again a few months before we roll out the 2028 election. Of course, we must continue to benchmark that against best practice. We invite public scrutiny by way of releasing the source code for eVACS publicly. The intent was—and we achieved that intent—to release that code a minimum of six months out before the election for the public to have a look at. We had a range of engagements with people who helped us ensure that it was operating as it intended.

THE CHAIR: Wonderful.

MR BRADDOCK: I have a quick question on the real-time reporting that happened over the last year. Were there any issues experienced as part of that and were there any compliance actions that needed to be undertaken of that?

Mr Cantwell: We did not experience any issues as such. We acknowledge that it is a lot of work to meet the legislative requirements in terms of reporting, in particular, as you were alluding to, the reporting of gifts over \$1,000. Once the threshold is reached, any gift after that point must be declared. As you recall, I sought and was provided additional funding for the commission to provide an online portal, which is for this current financial year to be developed and which is underway. That process is well underway and we are hopeful to have that developed within this financial year, which will ease the administrative burden of staff and MLAs to be able to submit the requisite returns under the continuous reporting requirements.

But, no, we did not have any issues as such. But, again, it is a lot of work. My small funding and disclosure team work very closely with advisers and staff right across the board and with MLAs to make people aware of the requirements and to support their compliance requirements. Lastly, as you are aware, I routinely conduct the compliance checks and then write to all party members about how they may or may not have met those requirements.

MR BRADDOCK: Just to make sure I understand, though: you experienced no issues last year and then hence I assume no compliance action was required last year?

Mr Cantwell: With election funding, there is still yet to undergo the compliance audit and checks. I cannot talk to specifics or if there are any detailed issues. We are aware of a couple of points which need close assimilation. I will not make any further comment on those until such time as those compliance checks have been complete and I can judge those matters more appropriately.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, and I believe there were a couple—

Mr Cantwell: Yes. There were a few.

THE CHAIR: —please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank Broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today.

The committee adjourned at 11.10 am.