

**Electoral Commissioner**

Our Ref: 15/488

Lynn Beverley  
Secretary  
Senate Finance and Public Administration References Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Beverley

**Re: AEC appearance at public hearing inquiry into the Commonwealth legislative provisions relating to oversight of associated entities of political parties**

Thank you for the opportunity to appear before the committee at the public hearing on 28 April 2016. I undertook to provide answers to a number of questions.

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**1. HANSARD, Page 7**

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**Senator WONG:** Does the number of associated entities vary substantially from year to year?

**Mr Rogers:** That is hard to answer. I might take that on notice in terms of the figures but, as Mr Pirani was indicating before, an entity that is not necessarily an associated entity in one year may become an associated entity in the next year through its activities. I will come back to you on that.

**Senator WONG:** Sure. I am just asking a numerical figure, because I think it would be of use to understand what the behaviour is—do we get fewer returns from associated entities at different points in the electoral cycle?

**Mr Pirani:** Yes.

**Mr Rogers:** I would almost guarantee that is the case, and we will confirm that through the figures.

*AEC response*

The figures for the last five financial years provided in answer to question 2 indicate there is little fluctuation in the numbers of associated entities lodging disclosure returns across the electoral cycle.

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**2. HANSARD, Page 7**

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**Senator WONG:** On notice, could you give us the number of annual returns submitted by associated entities over the past five years by year?

**Mr Rogers:** Certainly.

*AEC response*

The following table shows the number of annual disclosure returns lodged for associated entities over the last five financial years.

2014-15	182
2013-14	187
2012-13	188
2011-12	193
2010-11	195

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**3. HANSARD, Page 7**

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**Senator WONG:** I will try and skip through this. Mr Rogers, can you tell me when the FEF was first recognised as an associated entity—was it in 1998-1999? That is the first return we can find.

**Mr Rogers:** I will have to take that specific question on notice.

*AEC response*

The Free Enterprise Foundation first lodged an annual disclosure return as an associated entity for the 1995-96 financial year. The concept of what is an associated entity was inserted through the *Commonwealth Electoral Amendment Act 1995* (number 42) which received Royal Assent on 15 June 1995.

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**4. HANSARD, Page 15**

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**Senator SESELJA:** My understanding, and you can come back to us as to whether this is correct or not, is that of the \$843-odd million that has been disclosed by associated entities, \$818,835,000 is from Labor associated entities, primarily trade unions. Could you, on notice, confirm that?

**Mr Rogers:** I will confirm that for you.

**Mr Pirani:** Which financial year?

**Senator SESELJA:** I believe this is for 2014-15....

*AEC response*

The amount is \$818,829,000 and it is primarily, though not exclusively, disclosed by trade unions. This amount may be varied from time to time, subject to amendments from associated entities.

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**5. HANSARD, Page 19**

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**Senator SESELJA:** So these later on had to be amended just before the royal commission. Are you aware of any other situation where someone who is being funded for a position and fills out a return in relation to that has filled out a nil return notwithstanding that they would clearly know that their position is being funded by that money, which of course has to be disclosed?

**Mr Rogers:** If you are asking me do I know specifically of any other case, I do not but somebody else in my organisation may. As we are going through the process of doing compliance reviews, that situation may or may not have emerged previously. I can check for you.

**Senator SESELJA:** Will you take on notice whether that situation has emerged in the past? In relation to that evidence, going back to my earlier question, you have got your risk based matrix where you look at things in relation to some associated entities, CFMEU being one but AWU being another, where pretty damning evidence has been laid against them. Is that enough for you to make further inquiries or does there need to be something else which would lead you to actually inquire as to how these associated entities have disclosed things, how these associated entities have received their funds?

*AEC response*

The AEC is not aware of any other situation that follows the circumstances as outlined in the question.

When formulating its program of reviews under s. 316 of the *Commonwealth Electoral Act 1918* the Australian Electoral Commission takes into account information indicating there has been, or may have been, a failure in disclosure obligations.

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**6. HANSARD, Page 21**

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**Mr Rogers:** We have completed a compliance review of Foundation 51 and the returns that they have submitted, and in my view they have therefore met the requirements under the Electoral Act.

**Senator WONG:** By returns they have subsequently submitted?

**Mr Rogers:** That is correct.

**Senator WONG:** I refer you to the email, which I have previously questioned you about, that is attached to the submission. This is an email from a Mr Graeme Lewis to Mr Davis, Mr Connolly and Mr Terry Mills. It contains evidence of an expenditure of \$216,000 on the 2012 Northern Territory election, and it states:

In the months to 31 August— of that year, obviously, I will interpolate— another \$200,000 was received, spent on polling \$110000, consultants re the debt strategy and policies ... concept development \$34160, plus travel, McGrath, outgoings etc. Once again, the contributors were clearly aware, and did generally stipulate that the funds raised would be devoted to [Northern Territory] elections in 2012 or thereafter. In relation to those amounts, were all of those amounts, Mr Rogers, declared by Foundation 51 in the statutory period for declaration?

**Mr Rogers:** I will take that on notice.

**Senator WONG:** You do not know?

**Mr Rogers:** I have just said we conducted a compliance review. You asked me the initial question about whether I think that Foundation 51 have met their requirements, and I am telling you they have. I will take it on notice to provide the detail of the breakdown of that.

*AEC response*

The quoted excerpts from the email from Mr Graeme Lewis appear to refer to amounts relevant to the 2012-13 financial year. Foundation 51 lodged its annual return for that year on 28 November 2014, which is outside the statutory period for lodgement of the return.

The quoted excerpts primarily refer to payments made by Foundation 51. Associated entities are required to report total payments in a financial year but are not required to further itemise the payments. The AEC conducted a compliance review of Foundation 51's annual return for 2012-13 and found that Foundation 51 had over-disclosed its total receipts by \$1,066, and disclosed certain receipts above the threshold that were in fact not above the statutory threshold. Amendments were lodged by Foundation 51 to reflect these findings.

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**7. HANSARD, Page 24**

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**Senator WONG:** I will not go through this now, but I will give you notice that I will be seeking the production of some documents relating to Foundation 51 held in your possession. We would appreciate your assistance.

**Mr Rogers:** Certainly.

*AEC response*

The AEC is considering its response to Senator Wong's request for additional information.

Finally, by way of a clarification to evidence (see Proof Hansard at page 14), harmonisation of funding and disclosure schemes was an agenda item at the meeting of the State and Territory Electoral Commissions on 4 November 2015. The AEC attended this meeting in the capacity of an observer.

Yours sincerely 

Tom Rogers

 2 May 2016





## **Electoral Commissioner**

The Secretary  
Senate Finance and Public Administration  
Reference Committee  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Secretary

### **Claim of public interest immunity**

I refer to the email from Ms Sarah Brasser dated 29 April 2016 following the public hearing of the Committee on 28 April 2016 as part of the Inquiry into Legislative oversight of associated entities of political parties. Attached to that email was a document seeking that the Australian Electoral Commission (AEC) disclose five documents to the Committee that comprise correspondence from the Northern Territory Electoral Commissioner, Mr Iain Loganathan, to myself and another Senior AEC officer, Ms Seema Srivastava.

In accordance with the Order of the Senate dated 13 May 2009, I am of the view that the five documents in question should not be disclosed on the grounds that it would not be in the public interest. The basis for this claim of public interest immunity is as follows.

On my receipt of the details of the documents sought by the Committee last Friday, I contacted the Northern Territory Electoral Commissioner to ascertain his views as to whether there were any concerns with the possible disclosure of those documents. Both Commissioners believed disclosure of the documents could compromise the investigation that has been ongoing in the Northern Territory into the events surrounding the activities of Foundation 51 and could also prejudice the enforcement of lawful methods used for the investigation of breaches of the electoral laws in the Northern Territory.

Additionally it is my view that the lawful processes in train in the Northern Territory in which these documents were the subject of a request for disclosure under the NT Freedom of Information Act are being subverted through this request. Mr Loganathan advised that the five documents had been refused access under the Northern Territory Freedom of Information Act.

Disclosure of the documents being sought by the Committee may also result in a diminution in the information flows between the Northern Territory Electoral Commission (NTEC) and the AEC and would damage the relations between the Commonwealth and the Northern Territory.

I submit that there are strong grounds for a claim for public interest immunity existing in relation to the five documents being sought by the Committee and therefore respectfully decline to provide the five documents at this time. The situation may change pending the results of any application for review of the decision made by the NTEC under NT laws for access to these documents.

Yours sincerely

Tom Rogers

2 May 2016