The Liberal Party of Australia

FEDERAL SECRETARIAT

FEDERAL DIRECTOR
Lynton Crosby

Joint Standing Committee on Electoral Matters
Submission No. 10
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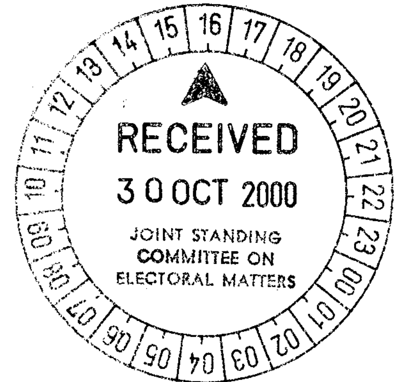

30 October 2000

Beverley Forbes
Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Beverley

Please find enclosed the submission of the Liberal Party of Australia to the Committee's current inquiry on electoral funding and disclosure.

We will, if it is the wish of the Committee, arrange for witnesses to appear before it in explanation and support of our submission.

Yours sincerely

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Submission by the Liberal Party of Australia

to the Joint Standing Committee on Electoral Matters

Electoral Funding and Disclosure

The Liberal Party of Australia is pleased to provide this submission to the inquiry into the residual recommendations of the 1996 and 1998 Funding and Disclosure Reports of the Australian Electoral Commission. If the Committee wishes, we will arrange for appropriate witnesses to appear before it.

We have been advised by the Secretary of the Committee as to which of the recommendations from the 1996 and 1998 reports have not yet been considered and are therefore the subject of this inquiry, and we comment on each of them in turn. We also raise a further relevant matter needing close examination by the Committee.

<u>1996 Report</u>

Recommendation 1 – payments of election funding must be made in the registered name of the particular party or branch

We welcome this as an improvement on present practice.

Recommendation 2 – candidates and Senate groups be allowed to appoint agents up to 6.00pm on polling eve

We support this.

Recommendation 3 - the threshold for disclosures of donations to candidates be raised to $1,000

We agree with this.

Recommendation 4 – the threshold for disclosure of electoral expenditure by third parties be raised to $1,000

We support this.

Recommendation 5 – in their annual returns, political parties be required to identify donations separately from other receipts

We oppose this recommendation. We see it as unnecessary and impractical. It would place a most unfair burden on parties to have to distinguish in every case whether every amount received is wholly or partly or not at all a donation.

There are various instances where what is a donation is a matter of interpretation or judgement, not clear definition. For example, receipts from people attending a function or conference where a judgement would have to be made as to the cost of what was provided and whether some part of the amount received was a donation over and above the cost of the function. In particular, if money is received by a party from a function hosted by another organisation, the party may well be in no position to know with any precision (if at all) what the costs were and whether there is a donation component over and above that in the amount received. As well, membership fees paid by party members sometimes include a donation component which may not be readily able to be calculated as a separate amount.

The AEC is not always effective or efficient or "user-friendly" in its follow-up contact with donors, and these difficulties would only become worse if this recommendation were to be implemented.

Recommendation 6 – political party annual returns be accompanied by a report from an accredited auditor

We are most concerned at this additional burden and cost being placed on parties. At the least, if adopted this audit would need to be instead of the audit or check carried out by the AEC, since two audits of the same return would be duplicative and wasteful. In any case, the recommendation seems to misunderstand the nature of the audit or check involved. A party's annual return is not exactly the same as a set of annual financial accounts, and so it is not appropriate to expect that an auditor, however expert as an auditor, would necessarily be an appropriate person to analyse and report on a party's return. It is best that this recommendation not be implemented.

Recommendation 7- the failure by the agent of a political party to lodge a disclosure return within 12 months of its due date be grounds for de-registration of the party

We have no objection in principle to this, but we point out that it would place an obligation on the AEC to give a series of notices (not just one) to the party about the need to lodge a return, and those notices would need to go, not only to the party's agent, but also to others in senior positions in the party.

Recommendation 8 - the threshold for recovering 'anonymous donations' to registered political parties, candidates and Senate groups be the same as the disclosure thresholds

We agree with this.

Recommendation 9 - the definition of an 'anonymous donor' be revised from the name or address not being known at the time of receipt to not being known at the time of disclosure

We support this.

Recommendation 12 – that a person can only hold one appointment as a Registered Officer at any one time

We agree with this.

Recommendation 16 – require that the secretary of the party be one of the three party members to submit an application for the de-registration of a non-parliamentary party

Difficulties could arise here, if the only way to apply for de-registration is to involve the party secretary. If the secretary is sick, or has an improper unwillingness to act in accordance with the party's wishes, then the desired application may not be made.

Recommendation 17 – all de-registration decisions of the Australian Electoral Commission should be included as reviewable decisions under the Commonwealth Electoral Act

We support this.

Recommendation 18 – the suspension of all party registration activity during the period of the issue of a writ be amended so that only the Australian Electoral Commission's decisions with regard to the registration, de-registration and changes to the Register of Political Parties other than to Registered Officer and Deputy Registered Officer details, is suspended

We agree with this.

1998 Report

Recommendation 1 – require disclosure by donors who have made donations of $1,000 or more to Senate groups the members of which have not all been endorsed by the one registered political party and disclosure by those donors of any donations they received of $1,000 or more which they used, in whole or in part, to incur expenditure for a political purpose

We support this.

Recommendation 2 – amend the requirement for a third party to lodge a return of donations received to instances where those donations were used in whole or in part on electoral expenditure or donations

made which are required to be disclosed by the third party for that same election

We raise no objection to this.

Recommendation 3 – abolish the requirement for broadcasters and publishers to lodge disclosure returns following an election or referendum

We agree with this.

Recommendation 4 - the party agent or, in the absence of a registered party agent those persons who currently form or last formed the party's Executive Committee, be required to lodge an annual return within 16 weeks of the date of deregistration of the party covering the period from 1 July until the date of deregistration; the financial controller of an associated entity should be required to lodge a return covering the period up to the deregistration of the political party that it was associated with, or the period up to when the associated entity ceases operations, as the case may be

We support this as regards political parties. In the case of associated entities the matter may be more complex, at least in the case of an entity associated with more than one party. In such a case it is not clear how the recommendation as it stands would work.

Recommendation 5 – persons who fail to make or maintain such records as enables them to comply with the disclosure provisions of the Act be subject to the same penalty provisions as apply to persons who fail to retain records

We agree in principle with this recommendation. We do note that the nature of the records to be required to be created should not be prescribed in such detail as would be unreasonably onerous. We also note that it will be desirable for the AEC to regularly remind those affected by such a requirement that they are subject to it.

Recommendation 6 – the definition of an associated entity be clarified by inserting the following interpretation into the Act:

- 'controlled' to include the right of a party to appoint a majority of directors or trustees;
- 'to a significant extent' to mean the receipt by a political party of more than 50% of the distributed finds, entitlements or benefit enjoyed and/or services provided by the associated entity in a financial year; and
- 'benefit' to include the receipt of favourable, non-commercial terms and instances where the party ultimately enjoys the benefit

We agree with the first dot point but note difficulties with the second and third dot points. We note that some associated entities are linked with more than one political party. We also note that there could be problems in developing clear definitions for 'distributed funds', 'entitlements' and 'benefits'.

Recommendation 7 – the prohibition on the receipt of an 'anonymous donation' be extended to associated entities on the same basis as those made to registered political parties

The problem here is that associated entities may not exist solely for political purposes but also have other objectives and activities (which attract financial support). There is no reason for this recommendation to be forced on associated entities with regard to anonymous donations they receive which are not specifically given to support the political/electoral activities of the entity. It is far from unknown for donors to various organisations, not least when donating through their wills, to make anonymity a condition of their gift.

Recommendation 8 - the payment of a guarantee to be deemed to be a gift for the purposes of the disclosure provisions of the Commonwealth Electoral Act

We do not oppose this recommendation. We note that persons such as party officebearers, for example, may make arrangements with financial institutions, including about the provision of guarantees, and it is not to be inferred that they would be acting in any way improperly in making those arrangements.

Recommendation 9 – raise the threshold at which donors to political parties are required to disclose gifts received and used by them, whether in whole or in part, to fund their gifts to a registered political party from $1,000 or more to $1,500 or more to maintain a consistent value at which the Act deems disclosure necessary

We support this. However, the recommendation opens up the wider question of the appropriate level for the threshold for disclosure by parties of donations received by them. We have long advocated a very substantial increase in this threshold to well above the present level of $1,500 and we remain of that view. In our submission to the Committee for its inquiry into the conduct of the 1998 election we urged that the level be set at $10,000. We again commend that amount to the Committee as an appropriate one.

Recommendation 10 – the threshold at which donors to political parties are required to disclose gifts received of $1,000 or more (or $1,500 or more if the above recommendation is accepted) to include two or more gifts from the same source which together exceed that threshold

We agree with this.

Recommendation 11 – donations to political parties above a predetermined threshold be subject to compliance audits

We oppose this. The AEC itself admits in the Report that a compliance audit is intrusive and of little value in many cases and that it would discourage the giving of donations. These are very strong reasons for not introducing such an audit requirement on donors. There is no countervailing benefit in the public interest that would outweigh these clear disadvantages from this recommendation, and the AEC Report fails to articulate any persuasive case for this.

Recommendation 12 – contingent debts be treated identically to current debts for disclosure purposes

There is no satisfactory or precise definition of contingent debt, despite the attention of the judicial system, up to the High Court, being given to the matter on occasion. Thus, there is no good reason for introducing the practical and legal uncertainties of this situation into the electoral law.

Additional Matter

We particularly draw to the Committee's attention a clear breach of the purpose of the funding and disclosure laws by the Australian Labor Party. There has already been some media coverage of Labor's rort with regard to Markson Sparks. This is a company which has made substantial donations to the Labor Party, derived from fundraising functions conducted to benefit Labor, but the law as it stands does not seem to require disclosure of the individual donors who make donations via Markson Sparks' fundraising efforts. This is a matter clearly needing close examination by the Committee and we urge that recommendations be made to deal with this situation, so that Labor's abuse of the system is no longer possible.