

10 August 2001

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

Dear Ms Forbes,

The Australian Labor Party welcomes the opportunity to provide the enclosed submission to the Committee's current inquiry on electoral funding and disclosure.

Yours sincerely

**Tim Gartrell**  
**Assistant National Secretary**

## **Submission by the Australian Labor Party to the Joint Standing Committee on Electoral Matters inquiry into electoral funding and disclosure**

The guiding principle for the ALP in dealing with the regulation of electoral funding and disclosure is that there must be a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties. This is an essential precondition if the disclosure system is to be effective.

When the Hawke Labor Government first introduced electoral funding and disclosure legislation in Australia in 1983, Senator Robert Ray stated that

“It is interesting that legislation requiring donations to political parties be disclosed has aroused such opposition from the Liberal Party. The Liberals have always taken the attitude that donations are a private matter. I believe that the public has a right to know who is donating to political parties. I do not allege that there is undue influence over political parties, but as long as the prospect is there for that to occur, there should be disclosure.”

Second Reading Debate: Commonwealth Electoral Legislation Amendment Bill 1983, Senate, Debates, 30 November 1983, p 3044.

The ALP has always been the party that has taken the initiative to reform the rules governing the disclosure of donations to political parties. The ALP has a strong record of reform in this area. The Liberal Party has opposed almost all of those reforms.

### **Full disclosure by all political fundraising bodies**

The Australian Labor Party strongly supports a tightening of the laws governing donations to make sure all fundraising bodies that are assisting political parties fully disclose the source of their donations.

Against the opposition of the Liberal Party, the ALP successfully moved amendments in the Senate in 1998 to attempt to close the loophole that was being exploited by the shadowy Liberal Party fundraising body, the Greenfields Foundation.

It is worth reviewing the character and political history of the Greenfields Foundation as it is from the AEC's investigation of that shady organisation that many of the matters currently before JSCEM arise.

In 1994-1995 the Liberal Party was in serious financial trouble. The National Australia Bank requested the title to Menzies House as security for the Liberal Party's substantial overdraft. They had run up quite a debt in the 1993 Federal election. The Treasurer of the Liberal Party at the time, Mr Ron Walker, guaranteed the Liberal Party's \$4.6 million debt to the National Australia Bank. Ron Walker then assigned his debt to the mysterious Greenfields Foundation sometime in mid-1996, thus modestly disguising his extraordinary generosity under the cloak of that so-called "charitable foundation".

Two of the three Trustees of the Greenfields Foundation are also Trustees of the Free Enterprise Foundation, namely Tony Bandle and the former National President of the Liberal Party, Sir John Atwill. The two Foundations also shared the same PO Box.

Up until 1995, the Free Enterprise Foundation donated huge sums to the Coalition but was not required to reveal the donations it received. The then Labor Government closed that loophole in the Electoral Act.

The AEC wrote to Greenfields in December 1997 to ask them to put in an annual return. One of Greenfields' trustees, Tony Bandle, wrote back to the AEC in January 1998 to the effect that Greenfields was not an associated entity of the Liberal Party. Tony Bandle stated that Greenfields did not operate for the benefit of any registered political party. Nevertheless, the AEC concluded that

“Greenfields was treating the Liberal Party in an uncommonly favourable manner in that it appeared that annual repayments of only \$100,000 on the original debt of \$4,750,000 had been demanded and that no interest had been charged or demanded. The AEC's view was that the trustee's lenient treatment of the Liberal Party in servicing the debt represented a benefit to the party.”

In January 1999 the AEC served Greenfields with a formal notice to produce documents. In June 1999, such was the AEC's concern that it briefed Senior Counsel to advise it on the Liberal Party's use of the Greenfields loophole and its apparent failure to disclose. At around this time, the AEC also started closely consulting the office of the DPP in relation to Greenfields.

In December 1999, the AEC found that Greenfields was in fact an Associated Entity. As such, Greenfields was finally forced to lodge a return with the AEC, some two years after they were requested to do so. In a fit of petulance, Greenfields refused to sign its Return. In its most recent Return to the AEC, dated 20 October 2000, the Greenfields Foundation has once again contemptuously noted that it has submitted its Associated Entity Return “under protest” and “unsigned”.

The AEC furnished the Minister with its report on Greenfields on 17 March 2000. The responsible Minister, Senator Ellison, then sat on this Report until the preceding round of Senate Estimates finished. Such was his Minister's confidence in the propriety of the activities of the Liberal Party the Greenfields Foundation.

Despite the Greenfields Foundation lodging, under protest, disclosure returns covering 1996 – 1999, the AEC made clear in its Report that it did not believe Greenfields' operation was consistent with the spirit of public disclosure of political donations. The Report states that "a person ... or in certain circumstances a corporation" could avoid disclosure by "a series of transactions based on the Greenfields model", and recommends that the loophole be closed "as a matter of priority". Labor has been arguing for three years that this loophole be properly closed.

The AEC had to take at face value Ron Walker's assertion that he personally covered the \$4.6 million debt. But the AEC warns that:

*Should the creditor not have any individual disclosure obligations, for instance as an associated entity, the identity of the guarantor - the real source of the funds - need not be disclosed anywhere.*

As a result of the Liberal Party and Greenfields actions, the true source of the funds that were used for the benefit of the Liberal Party through the agency of the Greenfields Foundation has to date remained hidden.

The Electoral Commission's *Funding and Disclosure Report - Election 1998* vindicated the Labor Party's concerns over the Greenfields Foundation. The AEC found what Labor had suspected for a long time, that Greenfields was a money laundering vehicle through which the Liberal Party concealed its donors.

The actions of the Greenfields Foundation were sanctioned by the Liberal Party and at times coordinated by it. The Greenfields loophole was engineered by the Liberal Party and the criticisms contained in the Electoral Commission's report are therefore criticisms of the Liberal Party and of its senior political representatives. Namely, their current National Director Lynton Crosby, their former National Director Andrew Robb and the Prime Minister, John Howard.

Through the AEC's diligent inquiries we have discovered half of the Greenfields story. The half we do not know covers the questions of

1. Who really put up the \$4.6 million? And
2. For what political reason did that person or Company do so?

We will eventually find out the answer to these questions. But, what we now know is that the Liberal Party established Greenfields as the vehicle for its secret political donations. The AEC has exposed that for a fact.

Given the recent experience of the AEC with the Greenfields Foundation and the contempt that Greenfields and the Liberal Party showed to both the AEC and to the funding and disclosure rules, it would be appropriate for the AEC to be able to audit or order the independent audit of Associated Entities. It would also be appropriate for the AEC to be given stronger powers to investigate and compel recalcitrants such as Greenfields and the Liberal Party to produce documentation and reveal the true source of their donations.

Since the Greenfields Foundation was exposed, it appears that the Liberal Party has developed other mechanisms to disguise its political fundraising.

To that end, the John Howard launched the Millennium Forum on 30 November 1999. Its stated purpose is "*To administer a sponsorship for a political party*" - that party is the Liberal Party. The Millennium Forum has a Chairman, sponsors, regular functions and a clear common purpose. It raises huge amounts of money for the Liberal Party, yet it has never been mentioned in one Return by the Liberal Party to the AEC. The Millennium Forum's exact relationship with the Liberal Party and Bunori Pty Ltd needs to be clarified, as does the flow of money from their "sponsors".

It is also of concern that, as part of his research for the Liberal Party, Mr John Seyffer arranged for \$18,000 to be paid for documents relating to former Prime Minister Keating's piggery interests. It appears that these documents were procured for the Liberal Party's parliamentary and/or election campaign purposes and that the \$18,000 was drawn from money that "some businessmen" had pooled to "pay John Seyffer for his work".

In the circumstances, it is doubtful whether the \$18,000 that was used to buy documents for the Liberal Party has ever been disclosed by Mr Seyffer, the Liberal Party or anyone else as required by the Act. It is also doubtful whether the donors to that "pool" of money have appeared in any Liberal Party Returns, despite the fact that donations to that murky "pool" are actually donations to the Liberal Party under s.305B(2) of the Act. The ALP awaits with interest the results of the AEC's investigation of this matter.

The Labor Party supports amendments to the Act that will ensure that there is a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties.

### **Comments on the residual recommendations from the AEC's Report on Funding and Disclosure following the 1996 election.**

**96 AEC Rec 1:** Payments of election funding must be made in the registered name of the particular party or branch.

*The ALP supports this recommendation.*

**96 AEC Rec 2:** Candidates and Senate groups be allowed to appoint agents up to 6:00 pm on polling eve.

*The ALP supports this recommendation.*

**96 AEC Rec 3:** The threshold for disclosure of donations to candidates be raised to \$1,000.

*The ALP opposes any raising of the threshold for disclosure of donations.*

**96 AEC Rec 4:** The threshold for disclosure of electoral expenditure by third parties be raised to \$1,000.00.

*The ALP opposes any raising of the threshold for disclosure of donations.*

**96 AEC Rec 5:** In their annual returns, political parties be required to identify donations separately from other receipts.

*The ALP supports this recommendation.*

**96 AEC Rec 6:** Political party annual returns be accompanied by a report from an accredited auditor.

*While the ALP has sympathy with this Recommendation, we would prefer that the AEC conducts its usual audits or is able to require audits to be conducted when the AEC believes it is necessary or appropriate. Given that party returns are unlike companies annual financial accounts, careful thought would have to go the requirements and structure of the audit process.*

*Noting the recent experience of the AEC with the Greenfields Foundation and the contempt that Greenfields and the Liberal Party showed to both the AEC and to the funding and disclosure rules, this auditing mechanism should be extended to Associated Entities. It would also be appropriate for the AEC to be given stronger powers to investigate and compel recalcitrants such as Greenfields and the Liberal Party to produce documentation and reveal the true source of their donations.*

**96 AEC Rec 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 that party.

*The failure to lodge a return at all seriously undermines the disclosure provisions of the Act. In the case of political parties, such failure should be treated as a grave neglect of the responsibilities of federal registration. The possibility of de-registration would be a more appropriate means of ensuring compliance.*

*The ALP supports this recommendation.*

**96 AEC Rec 8:** The threshold for recovering 'anonymous donations' to registered political parties, candidates and Senate groups be the same as the disclosure thresholds.

*The ALP supports this recommendation.*

**96 AEC Rec 9:** The definition of an 'anonymous donation' be revised from the name or address not being known at the time of receipt to not being known at the time of disclosure.

*The ALP supports this recommendation.*

**96 AEC Rec 12:** That a person can only hold one appointment as a Registered Officer at any one time.

*The ALP supports this recommendation.*

**96 AEC Rec 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.

*The ALP understands the AEC's concern that applications for voluntary de-registration be properly authorised by the relevant party, however providing the Secretary of a party with the opportunity to very undemocratically veto the legitimate decision of a party to deregister itself could create even more problems.*

*The ALP believes that this proposal needs more thought.*

**96 AEC Rec 17:** All de-registration decisions of the Australian Electoral Commission should be included as reviewable decisions under the Commonwealth Electoral Act.

*The ALP supports this recommendation.*

**96 AEC Rec 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 decision 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.

*The ALP supports this recommendation.*

## **Residual AEC recommendations from their Report on Funding and Disclosure following the 1998 election.**

**98 AEC Rec 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.

*The ALP supports making all fundraising bodies that are assisting political parties or candidates fully disclose the source of their funds.*

*The ALP supports this recommendation.*

**98 AEC Rec 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.

*The ALP supports this recommendation.*

**98 AEC Rec 3:** Abolish the requirement for broadcasters and publishers to lodge disclosure returns following an election or referendum.

*The ALP supports this recommendation.*

**98 AEC Rec 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.

*The ALP supports this recommendation.*

**98 AEC Rec 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.

*The ALP supports this recommendation.*

**98 AEC Rec 6:** The definition of an associated entity be clarified by inserting the following interpretations 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 funds, entitlements or benefits 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.

*The ALP supports this recommendation in principle.*

**98 AEC Rec 7:** The prohibition on the receipt of an 'anonymous donation' be extended to associated entities on the same basis as for those made to registered political parties.

*The necessity to prohibit the receipt of anonymous donations by political parties is equalled by the necessity to prohibit their receipt by associated entities.*

*The ALP supports this recommendation.*

**98 AEC Rec 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.

*The ALP supports this recommendation.*

**98 AEC Rec 9:** Raise the threshold at which donors to political parties are required to disclose gifts received and used by them, either 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.

*For clarity and consistency the threshold should be set at the same level as for the disclosure of donations made to a political party (i.e. \$1,500).*

*The ALP supports this recommendation.*

**98 AEC Rec 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.

*The ALP supports this recommendation.*

**98 AEC Rec 11:** Donors to political parties above a predetermined threshold be subject to compliance audits.

*There is a strong public interest consideration in having the disclosure regime enhanced by making persons and organisations that make substantial donations to political parties open to compliance audits by the AEC.*

*The ALP supports this recommendation.*

**98 AEC Rec 12:** Contingent debts be treated identically to current debts for disclosure purposes.

*Expenses or debts that have not yet arisen but are contingent upon the occurrence of some other event could be as significant to a political party or an associated entity as an existing debt. Such contingent liabilities could be used as leverage to 'strike a deal' with a political party. Without disclosure of the contingent liability there is no public transparency of any such transaction.*

*Contingent liabilities, such as the giving of a guarantee over party debt, should be disclosed where the potential liability could exceed \$1,500.*

*The ALP supports this recommendation.*