



**AUSTRALIAN  
LABOR  
PARTY**

## National Secretariat

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

Dear Mr Rowe

The Australian Labor Party welcomes the opportunity to provide the enclosed submission to the Committee's current inquiry into the conduct of the 2001 election.

At your convenience, please advise if the Committee wishes the ALP to give evidence at a public hearing.

Yours sincerely

Geoff Walsh  
National Secretary

Joint Standing Committee on Electoral Matters	
Submission No.	153
Date Received	23.07.02
Secretary	<i>[Signature]</i>

# Joint Standing Committee on Electoral Matters Inquiry into the 2001 Federal Election Submission by the Australian Labor Party

## Overview

Events leading to and following the 2001 election have made it clear that reform is urgently needed in a number of areas of electoral law, namely:

1. The laws governing political donations must be improved to ensure all fundraising bodies that are assisting political parties fully disclose the source of their donations;
2. The rules for government advertising must be tightened so the abuse of taxpayer funded advertising by the Howard Government cannot be repeated;
3. Serious issues in relation to enrolment and the franchise need to be addressed. That is, young Australians, aborigines and the homeless are systematically being left off the Roll. It is a very serious matter that only 54% of Aborigines are enrolled whereas 95% of all Australians are enrolled;
4. The rules governing the registration of parties need to be tightened to stop people registering front parties with names similar to existing parties; and
5. The use of parliamentary entitlements needs to be more transparent and open to independent audit.

In stark contrast to the ALP's support for accountability and protection of the franchise, the Liberal Party continues to support:

- Raising the threshold above which donations have to be declared from \$1,500 to \$10,000, thus hiding a vast amount of donations from public scrutiny<sup>1</sup>;
- Raising the level of tax-deductibility for donations to political parties from \$100 to \$1,500, thus slugging the tax-payers \$15 million per year<sup>2</sup>;
- Closing the electoral rolls the day a federal election is called, thus potentially disenfranchising over 80,000 Australians (most of whom are under 21) and forcing 250,000 - 300,000 people to vote using the wrong address<sup>3</sup>;
- Cutting services that assist Aborigines in remote parts of Australia to understand and maintain their voting rights<sup>4</sup>; and
- Hiding massive, secret donations through organisations such as the Greenfields Foundation and resisting attempts to reform the disclosure laws.<sup>5</sup>

<sup>1</sup> Liberal Party submissions to 2001 review of Funding and Disclosure & 1998 review of Federal election by JSCEM.

<sup>2</sup> *Taxation Laws Amendment (Political Donations) Bill 1999*

<sup>3</sup> *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*

<sup>4</sup> 1996 Budget decision.

## **1. The ALP supports reforms to ensure full disclosure by all political fundraising bodies**

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.

The ALP strongly supports a tightening of the laws governing donations to make sure all fundraising bodies that are assisting political parties fully and promptly disclose the source of their donations. Fundraising organisations working for political parties, such as Markson Sparks, should be obliged to disclose in full. That the ALP NSW Branch complied with the spirit of the law and disclosed monies raised for them by Markson Sparks is helpful, but such disclosure should be mandatory for all parties.

There is a significant public interest in the publication of the donors to political parties, yet that public interest is considerably affected by confusion over whether parties are fully disclosing all donations.

The problem of accountability of political donations has been exposed by the case of the Greenfields Foundation. It was found to be an Associated Entity of the Liberal Party, yet it still refuses to provide the AEC with full Donor Returns, submitting unsigned returns in defiance of the AEC's finding. As such, the true donors of the \$4.6 million (effectively to the Liberal Party) remain hidden.

### **Enhanced obligations and powers to audit**

There is a strong public interest argument that disclosure returns of political parties (and associated entities) should carry some guarantee they are free from errors and omissions at the time that they are made public. Requiring parties to submit disclosure returns certified by a registered auditor would address this concern.

It would also be in the public interest to have the disclosure regime enhanced by making persons and organisations that make substantial donations to political parties open to compliance audits by the AEC.

### **Anonymous donations**

Two examples of potentially anonymous donations received by parties in recent times are those received by the Liberal Party from the Greenfields Foundation and the ongoing secret funding of the Citizens Electoral Council.

The \$4.6 million interest free loan given by the Greenfields Foundation to the Liberal Party has been well canvassed; however, the CEC received over \$1 million in donations in 2000/2001, yet declared that it had received only \$106,899 in donations of over \$1,500. That is, the CEC received \$958,613 from as yet undisclosed sources. The Labor Party is concerned that the CEC may not be fully disclosing donations or other support it receives that is valued at over \$1,500.

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<sup>5</sup> AEC 1998 *Election Funding & Disclosure Report*, Chapter 5 and opposition to the ALP's "Greenfields amendments".

Under the Electoral Act the penalty for accepting anonymous donations is a sum equivalent to the sum received, and is forfeited to the Commonwealth.

The ALP believes the current penalty is only a moderate deterrent at very best. The penalty does no more than return the party to the financial position that it would have been in had it observed the law in the first place. In other words, there is nothing to be lost by accepting money that the Electoral Act deems to be illegal. The penalty should contain some element of punishment for breaking the law if it is to operate as a deterrent. Further, the rules should be extended to cover anonymous donations received by associated entities.

### **Donations from overseas**

Currently, there are no restrictions placed upon political parties on the source of donations. Australia allows political donations to be received from overseas sources, although they appear to have been relatively rare. Nevertheless, donations sourced from overseas can pose problems for disclosure.

Australian law generally has limited jurisdiction outside our shores and hence the trail of disclosure can be broken once it heads overseas. If the overseas based person or organisation who makes a donation to the political party were not the original source of those funds there would be no legally enforceable trail of disclosure back to the true donor, nor would any penalty provisions be able to be enforced against persons or organisations domiciled overseas.

There are two options to address this loophole. The first would be to place a blanket prohibition on the receipt of funds that have come from or passed through an overseas entity. This clearly is the easiest solution and removes any doubt from those receiving donations.

The second option would be to make the retention of overseas donations conditional upon full disclosure, including by the overseas entity or entities. Disclosure that does not identify the true source of a donation that has passed through overseas hands would be forfeited to the Commonwealth.

### **Increase the AEC's powers and resources**

The ALP strongly supports increasing the powers and resources of the AEC to ensure compliance with the rules governing disclosure of political donations.

## **ALP recommendations – political donations**

1. That political party annual returns must be accompanied by a report from an accredited auditor.
2. That donors giving more than \$25,000 to political parties be subjected to compliance audits by the AEC.
3. That the AEC be given the power to audit and/or investigate organisations it reasonably suspects have not disclosed gifts or other resources they have given to political parties or candidates.



4. That the prohibition on the receipt of 'anonymous donations' is extended to associated entities.
5. That the amount to be forfeited to the Commonwealth where a sum deemed to be illegal under the disclosure provisions has been received (such as an anonymous donation), be increased to double the value of the sum received.
6. That donations received from outside Australia either be prohibited or forfeited to the Commonwealth where the true original source of that donation is not disclosed through the lodgement of disclosure returns by those foreign persons and/or organisations.
7. That debts and loans sourced from outside Australia or owed to an entity outside Australia either be prohibited, or forfeited to the Commonwealth where the true original source is not fully disclosed by the political party or associated entity.
8. That funds raised on behalf of candidates or registered parties by commercial or other organisations be treated as if those funds are directly donated to the party and that the fundraising entity have disclosure obligations for all those funds. In particular, funds raised at auctions or celebrity dinners by organisation such as Markson Sparks need to be detailed so that the person who actually paid the money is disclosed.
9. That where a donation, debt or contingent liability of \$1,500 or more has been omitted from a disclosure return of a political party, associated entity, donor to a political party, candidate or Senate group, or the details of a receipt included on such a disclosure return do not clearly identify the true source and value of those funds or debts, then a sum equivalent to that receipt should be forfeited to the Commonwealth.
10. That the AEC's resources be increased so it can properly enforce the rules governing funding and disclosure.

## **2. Inappropriate government advertising**

The Howard Government has spent huge and unprecedented amounts of public money on government advertising. Over the three years to June 30, 2000 the Government spent \$122 million a year on advertising, making it Australia's biggest spender on advertising, beating Coca-Cola, Telstra, Coles Myer, McDonald's, Toyota and other major corporations.

The Howard Government spent a total of \$220 million selling and promoting the GST. Further, over the calendar year prior to the 2001 election, the Howard Government spent around \$150 million on advertising.

In his critical report on the Government's Community Education and Information Programme in October 1998, the Auditor-General put forward draft guidelines to clearly define the characteristics of government advertising that differentiate between Government and party-political material.<sup>6</sup> These guidelines were later slightly

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<sup>6</sup> The Auditor-General's 1998 report: *Taxation Reform - Community Education and Information Program, Audit Report No.12* queried the Government's timing of the GST advertising campaign to coincide with the electoral cycle, in particular the \$15 million pro-tax reform campaign run by the Government up to the eve of the calling of the 1998 Federal election. The Auditor-General examined

amended and endorsed by the Parliamentary Joint Committee on Public Accounts and Audit.<sup>7</sup>

When the Howard Government refused to adopt the guidelines proposed by the Joint Committee, the Labor Party incorporated the committee's draft guidelines on government advertising into a Private Members Bill: *Government (Advertising Objectivity, Fairness and Accountability) Bill*. Twice Labor introduced this Bill, but the Government resisted any moves to have it properly considered.

It is worth noting that some of the Government's advertising campaigns were legitimate expenditures for Government, such as the continuous Defence recruitment advertisements and the Health Department's successful anti-smoking TV campaign. However, several campaigns were clearly political in nature, such as:

- \$5 million spent on a campaign over the 2000-2001 financial year-end announcing the abolition of the FID – a State tax;
- \$9.5 million throughout the year promoting the benefits for pensioners of the 2001 May Budget (a demographic which prior to the Budget was very negative for the Liberals);
- The \$6 million "Networking the Nation" TV advertising campaign centred in image and content around the marginal Liberal Seats of Hume, Eden Monaro, Wide Bay and Kalgoorlie;
- The \$9 million campaign promoting the Advancing Australian Agriculture program, targeted at regional Australia when a cheap \$100,000 mail-out to Australia's farmers would have easily sufficed; and
- At least \$15 million on Private Health Insurance "reforms". These advertisements should have been funded by the Private Health insurance sector.

The above campaigns were political in purpose and targeted at swinging voters. If the Joint Committee's Guidelines had been in force these campaigns would not have gone ahead.

There is no doubt the saturation advertising had a political impact and deliberately targeted the elderly and people living in rural and regional Australia. The bulk of the \$150 million spent in 2001 was a taxpayer-funded supplement to the Liberal Party's official election campaign advertisements.

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the pattern of expenditure by Governments and concluded (at para 2.18) "The patterns of expenditure shown above could raise questions in Parliament and the general community about the nature and purpose of government advertising, particularly in the lead up to elections."

<sup>7</sup> The Joint Committee on Public Accounts and Audit agreed on guidelines on advertising that aimed to prevent Governments abusing taxpayers by spending millions on a political agenda through advertising. In particular: (1) Information campaigns should be justified by a cost/benefit analysis; (2) The nature of the campaign should be justified in terms of a society's needs, efficiency and effectiveness, and (3) Care should be taken to ensure that media placement of Government advertising is determined on a needs basis and targeted accordingly.

## **ALP recommendations – government advertising**

11. That the Recommendations from the Auditor-General's 1998 report titled *Taxation Reform - Community Education and Information Program, Audit Report No.12* and the guidelines on Government advertising proposed by the Joint Committee on Accounts and Audit be implemented.
12. That the requirement under section 310 of the Commonwealth Electoral Act for broadcasters to disclose details of election advertising be extended to require quarterly disclosure of all non-program matter broadcast containing political matter (as defined by the ABA). This would cover material placed by Governments, political parties or others, and would include programs such as the "Landscape" broadcasts by the Prime Network.

### **3. Improving the integrity of the electoral roll**

The ALP believes that the integrity of electoral enrolment can only be assured if all Australians can easily get onto the Roll and if the Roll is secure and electoral fraud deterred. These matters are equally important – enrolment must be fair and the electoral roll must be safe.

The ALP believes it is incumbent upon the AEC and JSCEM to develop improvements to the management of the electoral roll and to protect the franchise. There are three significant issues in this area that require urgent attention, namely:

#### **Homeless people are being left off the Roll.**

Homeless people are very significantly under-enrolled and the Government's proposed early closure of the rolls and bureaucratic enrolment-witnessing regime would make it worse. The ABS estimates that on any given night in Australia there are 105,000 homeless people. Very few of them are enrolled to vote. Under section 96 of the Electoral Act, people can enrol as "itinerant electors", yet in March 2002 only 4,201 people were enrolled that way.

Even allowing for the wide range of circumstances affecting enrolment and homelessness, such a huge gap between the number of homeless Australians and those enrolling as *itinerant voters* indicates many homeless people effectively lose their right to vote when they lose the roof over their head.

#### **Young Australians are not enrolling.**

Young Australians are significantly under-enrolled and the Government's proposed early closure of the rolls and bureaucratic enrolment-witnessing regime would make the situation worse.

AEC reports show that, as at 30 June 2002, only 53% of 18 year olds are enrolled. This figure is as low as 46% in NSW and 31% in the NT. If the rolls were closed for new enrolments on the day the election is called 80,000 people (most of whom are under 20 years old) would be blocked from voting.

### **Aboriginal Australians are being systematically kept off the Roll.**

Currently, out of the 260,000 Aborigines in Australia that are over 18 years old, only approximately 140,000 (or 54%) are enrolled to vote. The fact that only 54% of Aborigines are enrolled whereas 95% of non-indigenous Australians are enrolled is not simply because of extreme poverty and low education standards; it is also in large part due to the policies of the Howard Government. For example, in its 1996 Budget, the Government forced the AEC to cut the Aboriginal and Torres Strait Islander Electoral Information and Education Service.

A response to declining Aboriginal enrolment rates is urgently required.

The Government's only initiatives in relation to altering the system of electoral enrolment have been the early closure of the rolls and voter identification measures. These measures would have reduced the integrity of the electoral roll and led to:

- a reduction in the franchise, particularly affecting the young and the socially disadvantaged;
- less accurate rolls for polling day;
- queuing delays, confusion and inconvenience at polling booths;
- an increase in declaration voting; and
- delays in the delivery of election results.

The Governments proposed system for electoral enrolment, which was disallowed by the Senate in 2002, would not have stopped fraud, but would have disenfranchised homeless people, Aborigines and Australians living in remote areas.

The Government's current proposal to close the rolls as soon as the election is called would also have a dramatic negative effect on the franchise. When Malcolm Fraser closed the rolls without notice in 1983 it was estimated that between 150,000 and 500,000 people were disenfranchised or had to vote in the wrong electorate.

Both the Victorian Government and the AEC have developed models for ensuring the integrity of the electoral roll that are vastly superior to the Howard Government's flawed enrolment witnessing regime.

### **The Victorian model**

Under an alternative approach suggested by the Victorian Government, those applying for enrolment or transfer of enrolment would be required to provide their driver's licence number on the enrolment form. No further witnessing would be required. If an applicant for enrolment did not have a driver's licence, the enrolment form could be witnessed by an elector who did and who would include their drivers licence number on the enrolment form.

Enhanced crosschecking could take place using data from licence registration authorities, who would be obliged to provide electoral authorities with the relevant data to enable them to verify and store name, date of birth, signature and address information.

This proposal has genuine merit as, unlike the flawed regime proposed by the Commonwealth, it is simple, secure and provides for genuine verification of an



enrollee's name and address. It will improve the integrity of the Roll without affecting the franchise.

The Victorian proposal was welcomed at a meeting of State and Commonwealth Electoral Commissioners on Friday 8 February 2002.

**The AEC's "Direct Address Change" proposal**

"Direct address change" (DAC) was discussed by the AEC in its 17 October 2000 submission to the JSCEM Inquiry into the Integrity of the Electoral Roll.

DAC would allow the AEC to use the data it already receives from other agencies to update the elector records of Australians. This information would be received from suitable government agencies without seeking a specially signed elector enrolment or transfer of enrolment form.

Suitable agencies for DAC roll update would be the Australian Tax Office, Medicare, Centrelink and State and Territory Motor Registries. The data required from these agencies is name, address, gender and data of birth. DAC roll updating would therefore take advantage of the proof of identity already supplied to these agencies by their clients for identification requirements for electoral roll updating.

DAC may provide advantages for the elector and enrolment processes because:

- (a) The elector would not have to separately obtain an enrolment card, complete it and forward it to the AEC as their enrolment details would be entered automatically from their advice to the particular DAC agency.
- (b) Proof of identity would already be provided as the change of address data has originated from an agency which has already confirmed the identity of the client through drivers licences, citizenship documents, birth certificates, etc.
- (c) It would probably make the enrolment process simpler for electors in remote or regional areas who have limited access to government agencies. For example, it could extend enrolment services to electors who may be handicapped, from a non-English speaking background or reliant on governmental support.
- (d) DAC provides greater accuracy and integrity to the electoral roll as change of address data is provided from suitable government agencies from an identified source and contains elector specific details.

Importantly, DAC could allow for the provision of enrolment transactions via "*all of government*" change of address forms and/or also accommodate the promotion of government services through electronic transactions.

### **ALP recommendations – integrity of the electoral roll**

13. That the age and gender details be included on the certified roll on polling day, thus providing two extra checking points for voter identity.
14. That the Aboriginal and Torres Strait Islander Electoral Information and Education Service be reintroduced.
15. That the AEC be requested to report to JSCEM on the effectiveness of Commonwealth and State programs currently devoted to improving and sustaining the enrolment levels of young and homeless Australians. That the AEC also be requested to provide recommendations on how to improve the levels of enrolment of those groups and other groups it identifies.
16. That the Commonwealth Electoral Act be amended to allow:
  - Those applying for enrolment or transfer of enrolment to provide their driver's licence number on the enrolment form, without further witnessing; and
  - If an applicant for enrolment did not have a driver's licence, the enrolment form to be witnessed by an elector who did have a licence and who would include their licence number on the enrolment form.

Enrolment by this method would be subject to satisfactory arrangements between the AEC and State authorities regarding the privacy, integrity and security of data and appropriate funding being provided to the AEC to establish systems for cross-checking the data.

17. That the AEC be requested to prepare a report for JSCEM on enrolment through *direct address change* (i.e. receiving enrolment data from government agencies, without seeking a specially signed elector form). The report should cover issues of feasibility, cost, security, suitable government agencies, privacy, consultative processes, and legislative and regulatory requirements.

## **4. Registration of party names**

The issue of the name under which political parties can be registered received prominence recently following the application for registration from the political parties 'Liberals for Forests' and the 'Curtin Labor Alliance'.

In relation to the application for registration by the 'Liberals for Forests', the AEC stated in its 3 August 2001 submission to JSCEM's inquiry into Electoral Funding and Disclosure that

“After considering objections lodged to the party's proposed name and legal advice obtained, it was determined that the party's proposed name so nearly resembled the name of a currently registered party (the Liberal Party of Australia) as to cause confusion and the application for registration was rejected. On considering the applicant's request for a review of the delegate's decision, the Commission upheld the delegate's decision.

The applicant then lodged an appeal with the Administrative Appeals Tribunal (AAT) for review of the Commission's decision to reject the application for registration of 'Liberals for Forests' on the basis of its proposed name. On 6 March 2001, the AAT set aside the decision of the AEC to reject the application. The AAT determined that it was not likely that a voter would mistake one party for the other when marking a ballot paper. The party, 'Liberals for Forests', was formally registered on 1 May 2001."

In relation to the registration of the 'Curtin Labor Alliance', it remains the strong view of the ALP that the mere use of the term *Labor* is likely to contribute to confusion as to whether some relationship exists between two registered political parties the names of which appear on the ballot paper.

The effect of the use of "Labor" by another group running at an election would be to both mislead and confuse voters as to the relationship of that other group with the Australian Labor Party. The use of the distinctive term "Labor" as part of the name "Curtin Labor Alliance" makes their name so similar to the name of the Australian Labor Party that a voter would be likely to think they had a close political connection.

Furthermore, confusion is likely to arise by virtue of the use of the name "Curtin". As a former Labor Prime Minister, John Curtin is widely and strongly identified with the ALP and its abbreviation, Labor. While the Act does not prohibit the use of a person's name in the name of a political party", in our view the use of the term "Curtin" accentuates the confusion between the 'Curtin Labor Alliance' and Labor.

The ALP believes that there is a serious issue of political parties registering with names identical or close to the names of recognised organisations. Parties have a legitimate concern that other parties with no association to it should be precluded from using the organisation's name or part of their name.

#### **ALP recommendation – registration of party names**

18. That the AEC be requested to prepare a report for JSCEM on the issues and legislative options for reforming the rules governing the registration of political parties to ensure that parties whose proposed name is the same as or uses part of the name of a recognised organisation are appropriately restricted.

### **5. Use of Parliamentary entitlements**

The use of Parliamentary printing and postage entitlements during election campaigns continues to be a problem. Allegations of abuse of entitlements are often made in campaigns and have the potential to become political issues.

ALP Members and Senators were uncertain about the precise limits on the sort of material they could produce and distribute during the campaign and found it difficult to obtain detailed guidance. As such, the ALP calls for greater clarity in the departmental guidelines applying to the use of parliamentary entitlements, particularly during election campaigns. Such guidance should be available well in advance of the next election. The ALP notes in this regard that the Government has agreed, in

response to a request from the Opposition, to prepare a discussion paper on this issue for circulation to the parliamentary parties.

The ALP also supports the greatest possible transparency in the use of all Parliamentary entitlements. We consider the practice of tabling details of travel costs should be extended to include details of other entitlements. The ALP also supports the establishment of an independent Auditor of Parliamentary Allowances and Entitlements with appropriate powers of investigation.

### **ALP Recommendations – use of Parliamentary entitlements**

19. That departmental guidelines applying to the use of parliamentary entitlements, particularly during election campaigns, be redrafted to ensure greater clarity and the new guidelines be made available well in advance of the next federal election.
20. That the details of travel costs tabled in Parliament are extended to include details of other entitlements.
21. That an independent Auditor of Parliamentary Allowances and Entitlements be established, with appropriate powers of investigation.