



Dissenting Report—Mr Michael Danby MP, Mr Alan Griffin MP, Senator Kim Carr & Senator John Hogg, Australian Labor Party

The guiding principle for the Australian Labor Party (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 committee members do not believe that the amendments canvassed in the Majority report (essentially those of the Government's Electoral and Referendum Amendment [Electoral Integrity and Other Measures] Bill 2005) will uphold this guiding principle. In fact, it is more likely that the proposed changes will erode the primary objectives of the scheme first established by the Joint Select Committee on Electoral Reform under the Hawke Labor Government in 1983.

This is not surprising. Even in 1983, as Senator Robert Ray noted, it was clear that the Liberal Party was opposed to meaningful reform of electoral funding and disclosure in Australia:

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.¹

¹ Senate, *Debates*, Commonwealth Electoral Legislation Amendment Bill 1983: Second Reading Debate, 30 November 1983, p. 3044.

This Dissent focuses on six aspects of the current funding and disclosure scheme, on which the ALP has repeatedly made recommendations, namely:

- thresholds at which donations must be disclosed;
- tax deductibility of donations;
- disclosure of 'donations' given at fundraising events and anonymous donations;
- overseas donations;
- enhanced obligations and audit compliance of donation receivers; and
- the powers of the Australian Electoral Commission (AEC) in managing the scheme.

Disclosure thresholds

Increases in disclosure thresholds in Australia have only ever been advocated, for very different reasons, by two groups: the AEC and the Liberal Party of Australia.

The AEC's recommendations have been made on the premise of 'consistency': raising the threshold at which donors to political parties are required to disclose gifts received and used by them either from \$1,000 or more, to \$1,500 or more, would 'maintain a consistent value at which the Act deems disclosure necessary'.

The Liberal Party, on the other hand, has recommended higher disclosure on the argument that these would in no way unduly influence political parties:

We urge that a further attempt be made to legislate for lifting the thresholds to at least \$3,000. In fact, we remain of the view, as put by us to this Committee in the past, that it would be reasonable to lift the thresholds to \$10,000. It is not realistic in 2005 to think that donations below this level could raise any question of undue influence.²

On this recommendation alone, the Government has introduced legislation to amend the Electoral Act (Electoral and Referendum Amendment [Electoral Integrity and Other Measures] Bill 2005), raising the threshold of donation disclosure – not to \$3,000, but to above \$10,000.

The underlying object of the Government's proposed changes is to make it easier for corporate donors to give money to the Liberal Party without having to disclose it. Since the State and Territory divisions of the Liberal Party are legally separate entities, this would mean that a person could make 8 separate donations of \$10,000 without having to provide a return to the AEC.

2 Liberal Party of Australia (Submission No. 95 to 2004 Federal Election Inquiry), p. 1.

The Liberal Party has also justified this increase on the basis that the current threshold of \$1,500 discourages 'small business' and 'ordinary individuals' from donating. It is more the case, however, that the Liberal Party believes that the current threshold disadvantages their donors, and ultimately, their donations.³

We are firmly opposed to any change in the current disclosure regime, and reject the weak arguments presented by the Coalition Government for change. We reject as misleading the view that nearly 90% of donations received in 2003-04, as asserted by Brian Loughnane during the JSCEM inquiry into the 2004 Federal Election, would be disclosed if the threshold were raised to \$10,000.⁴

Mr Loughnane appears to have arrived at these figures by calculating the proportion of the total monetary value of donations to be disclosed under the proposed regime, rather than the total number of receipts that will be removed from public scrutiny. The ALP committee members believe that for the electoral system to be transparent, the public need to see who has contributed to a party's funding, and not just those who donated the largest amounts. The current \$1,500 threshold helps ensure this level of transparency. Had the Government's planned changes been in place in 2004-05, roughly 80% of receipts for the approximately \$143 million received by the major parties could have escaped public scrutiny.

If the current donors in the last round of AEC disclosure contributed a similar amount to the Liberal Party of Australia, and its state branches, then millions would go undisclosed. Raising the disclosure threshold to above \$10 000 would allow large amounts of money to flow, without scrutiny, from the existing donor base of the Liberal Party.

The ALP committee members also reject the Government's proposal to index the disclosure limit to the Consumer Price Index. This would see the amount increasing each at around 2-2.5% a year. This is a fundamental break with the traditional way the disclosure of political donations has been regulated, and an annual measure could lead to confusion from donors as to whether their donations fall within, or outside, the disclosure limit.

It may be that it is not possible to influence government decisions with a donation of \$10,000 – although it may be more possible with a donation of \$80,000 where a donor makes 8 separate donations of \$10,000 to each branch of the Liberal Party without having to file a return. But that is not the point. The point is that the public has a right to know, within reason, the sources of funding for political parties. We reject any change which makes it easier for individuals or corporations

3 See 'PM pushed on donation rules', *Sunday Age*, 3 April 2005, p. 5. See also Liberal Party (Submission No. 95 to 2004 Federal Election Inquiry, Submission No. 10 to Funding and Disclosure Inquiry, 40th Parliament, Submission No. 10 to Funding and Disclosure Inquiry, 39th Parliament).

4 Mr B Loughnane (Liberal Party) *Transcript of Evidence*, 8 August 2005, p. 26.

to make large donations to political parties in secret.

Recommendation 1

That any proposal by the Government to increase disclosure thresholds to above \$10,000 be rejected, and that the existing regime of disclosure thresholds, as set out in the *Commonwealth Electoral Act 1918*, be retained.

Tax deductibility

It is also Liberal Party policy to increase the tax deductibility of political donations. They submitted that:

The present limit of \$100 for tax deductibility for political donations is quite inadequate. A significant increase in that amount needs to be made.⁵

In stark contrast, the ALP Platform, as amended at the January 2004 National Conference is that 'Labor will abolish the tax-deductibility of political donations.'⁶

The Government's Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 proposes to increase the tax-deductibility of political donations from \$100 to \$1,500, extend the regime to allow corporations to claim a deduction and include donations made to independent candidates.

The Government's proposal is an unjustified attempt to transfer private political donations into a taxpayer subsidy. According to the Government's own figures set out in the Explanatory Memorandum to the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, this would cost Australian taxpayers an estimated \$22 million over 4 years.⁷

The ALP committee members support public funding for the electoral process which is transparent and reflects the votes gained by political parties. We believe that a general tax-deductibility clause as outlined by the Majority will encourage individuals and other entities to make extensive political contributions, in secret, and at taxpayer expense.

5 Liberal Party (Submission No. 95 to the 2004 Federal Election Inquiry), p. 3.

6 ALP, 2004, *National Platform and Constitution 2004*, p. 272.

7 Explanatory Memorandum, *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, p. 3.

As Tham and Orr submitted:

The problem with tax deduction regimes are that they are disproportionately attractive to high-income earners who benefit most from deductibility and least of an incentive to pensioners etc.⁸

Recommendation 2

That proposals by the Government to increase the tax-deductibility of political donations from \$100 to \$1,500 and extend the regime to corporations and donations made to independent candidates, be rejected.

Fundraising bodies and trusts

Currently, a further loophole exists in the Electoral Act allowing donors at fundraising events the discretion to disclose. As the AEC explained in evidence to the Committee:

There does seem to be an expectation in the community that when one pays money at a fundraising event the payment should be disclosed because the purpose of attending the fundraising event is to benefit the party. Currently, with the definition of ‘gift’ in the legislation, it would not necessarily be disclosed. It would depend on what was in the mind of the person who made the payment about whether they had gotten their money’s worth from attending that function.⁹

To avoid this ‘discretionary power’, the AEC has consistently recommended that all payments made at fundraising events be deemed ‘donations’, and therefore required to be disclosed.

By way of example, the ALP previously highlighted the activities of a fundraising body known as the Millennium Forum, launched by John Howard on 30 November 1999. Its stated purpose is ‘to administer a sponsorship for a political party’ – that party being the Liberal Party. The Millennium Forum has a Chairman, sponsors, regular functions and a clear common purpose. It raises huge

⁸ Tham and Orr (Submission No. 5 to Funding and Disclosure Inquiry, 40th parliament), pp. 30-31 [fn 82].

⁹ Ms K. Mitchell (AEC), *Transcript of Evidence*, 11 May 2004, pp. EM22-23.

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 needs to be clarified, as does the flow of money from their 'sponsors'.¹⁰

The ALP committee members strongly support 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 should be obliged to disclose in full and such disclosure should be mandatory for all parties.

Recommendation 3

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.

Anonymous donations

From both an administrative and a political perspective, anonymous donations have proved difficult and confusing. For this reason, the AEC has made recommendations relating to the:

- definition of 'anonymous' (as identified at the time of disclosure, rather than the time of receipt);
- thresholds of anonymous donations (that the threshold for recovering anonymous donations be the same as the disclosure thresholds, and that the cumulative thresholds outlawing the acceptance of anonymous donations apply irrespective of the source of the gift); and
- disclosure provisions relating to associated entities (that these be the same as those relating to political parties, Senate groups and candidates).

The ALP has stated its support for all of these recommendations, but is particularly concerned that the last has not been accepted and implemented by the Government.

10 See ALP (Submission No. 16 to Funding and Disclosure Inquiry, 39th Parliament), p. 4.

There is a significant public interest in the publication of the donors to political parties, yet that public interest is considerably affected by the confusion over whether parties are fully disclosing all donations. Because the provisions relating to anonymous donations received by political parties, Senate groups and candidates do not currently extend to associated entities, a number of entities have successfully escaped the disclosure scheme.¹¹

Changes contained in the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 do nothing to address these issues – in fact the Bill increases the threshold at which political parties can receive anonymous donations from \$1,000 to \$10,000 or less and completely fails to address the existing loophole which allows associated entities to receive anonymous donations.

The ALP has previously raised the following examples of non-disclosure:

- The Greenfields Foundation 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.¹²
- The Citizens Electoral Council (CEC) received over \$1 million in donations in 2000-01, 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 ALP is concerned that the CEC may not be fully disclosing donations or other support it receives that is valued at over \$1,500.¹³
- In 2002-03 the companies Piliwinks Pty Ltd and Doogary Pty Ltd provided massive amounts to the Victorian branch of the National Party of \$95,955 and \$661,455 respectively and did not provide a return to the AEC.¹⁴ In 2004-05, both companies once again donated \$30,521.59 and \$374,750.00 respectively to the Victorian branch of the National Party without providing a return to the AEC. Despite the requirements of the Electoral Act, and despite the fact that both companies should declare as associated entities of the National Party, neither provided a donor or an associated entity return to the AEC in 2002-03 or 2004-05.¹⁵

11 See AEC, *Funding and Disclosure Report following the Federal Election held on 3 October 1998*, p. 13.

12 ALP (Submission No. 136 to 2004 Federal Election Inquiry), p. 5.

13 ALP (Submission No. 136 to 2004 Federal Election Inquiry), p. 5.

14 See *Australian Financial Review*, 20 March 2004.

15 ALP (Submission No. 8 to Funding and Disclosure Inquiry, 40th Parliament), pp. 1-2; AEC, Annual Returns 2004-05, National Party of Australia, Victorian branch, <http://fadar.aec.gov.au/>, accessed 17 March 2006.

- The companies Bunori Pty Ltd and Liberal Properties Ltd are associated entities of the Liberal Party (NSW Division). According to ASIC, the NSW Division of the Liberal Party is their ultimate holding company although it is not a registered company. There are a number of interest-free multi-million-dollar 'intercompany' loans between the NSW Division and its associated entities, none of which are properly disclosed or linked to a financial institution. This arrangement is far from transparent and is suggestive of another Greenfields Foundation-style arrangement.¹⁶

In its 1998 Funding and Disclosure report, the AEC remarked that the current scheme:

...would appear to be an oversight in the legislation. The necessity to prohibit the receipt of anonymous donations by political parties is equalled by the necessity to prohibit their receipt by associated entities.¹⁷

The ALP committee members therefore recommend that associated entities be required to disclose and source all of its donations, and that political parties and individual candidates continue to be required to maintain a record of the sources of their donations above \$1,000 and \$200 respectively.

In the past, the ALP has supported the idea that the threshold for anonymous donations should be the same as the disclosure threshold. However, these statements were made assuming a \$1,500 threshold. In light of the Government's proposal to increase the disclosure threshold to \$10,000 or less, the ALP committee members do not support this proposal.

Recommendation 4

That the prohibition on the receipt of 'anonymous donations' is extended to associated entities.

Recommendation 5

That unless the current disclosure threshold of \$1,500 is retained, the thresholds above which political parties and individual candidates cannot receive anonymous donations remain at \$200 for individual candidates and \$1,000 for political parties.

16 ALP (Submission No. 8 to Funding and Disclosure Inquiry, 40th Parliament), p. 2.

17 See AEC, *Funding and Disclosure Report following the Federal Election held on 3 October 1998*, p. 13.

The other provision relating to anonymous donations which, in the ALP committee members' view, requires substantial amendment concerns penalties.

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 has consistently argued that 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. In line with the previous recommendation, the rules should be extended to cover anonymous donations received by associated entities.

Recommendation 6

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.

It is noteworthy that this recommendation was endorsed by the Committee when it considered the 2001 Federal Election, a recommendation that the Government later did not support.¹⁸

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 be 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 that 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.

¹⁸ See Government Response to the JSCEM 2001 Federal Election Report, tabled 16 October 2003, p. 13. The Government noted that 'there was nothing to suggest that the penalties currently in place are ineffective.'

In 2004-05 Kingson Investments Ltd, which resides in China, donated almost \$50,000 to the NSW branch of the Liberal Party. This group has not filed a return with the AEC, and the AEC has no way of ensuring the group complies with Australian law given it is based overseas.¹⁹

Also of concern is the fact that the Federal Liberal Party received a \$1 million donation from Lord Michael Ashcroft of the United Kingdom. While Lord Ashcroft filed a return with the AEC in 2004-05, there is no way the AEC could effectively investigate the authenticity of the information provided in that return had it wished to do so, given that Lord Ashcroft lists a foreign address on his return.

We note that the AEC has previously supported a tightening of the law to address the issue, recognising that overseas donations provide 'an obvious and easily exploitable vehicle for hiding the identity of donors through arrangements that narrowly observe the letter of the Australian law with a view to avoiding the intention of full public disclosure.'²⁰

The ALP committee members believe that this threat must be addressed by urgent amendment to the Electoral Act. We believe that the Joint Standing Committee on Electoral Matters should fully canvass the issue, and produce constructive commentary on possible regulation of the area. We agree with the AEC that there are two options open to the Federal Government. First, that overseas donations be banned entirely or secondly, that they be re-payable if their true source is not adequately disclosed or the entity fails a compliance audit. The ALP committee members believe that there may be a strong case for investigating tighter disclosure laws in the first instance, and banning donations if this is demonstrated to have failed.

These concerns are particularly pressing given the size of the donations received by the Liberal Party from overseas in 2004-05.

Recommendation 7

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.

19 AEC, Annual Returns 2004-05, Liberal Party of Australia, NSW Division, <http://fadar.aec.gov.au/>, accessed 17 March 2006.

20 AEC (Submission No. 11 to Funding and Disclosure Inquiry, 40th Parliament), p. 25.

Recommendation 8

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.

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 and its feasibility should be investigated.

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.

This was first advocated by the AEC in its 1998 Funding and Disclosure Report (see Recommendation 11) and is supported by the ALP committee members.

Recommendation 9

That donors giving more than \$25,000 to political parties be subjected to compliance audits by the AEC.

Increase the AEC's powers and resources

The ALP is proud to have been the principal driver behind the establishment of an independent statutory authority governing Australia's electoral system. Yet it is clear that the AEC requires further authoritative powers and commensurate funding if it is to adequately meet the needs of a more comprehensive, transparent and accountable funding and disclosure scheme. It is ALP Platform that the AEC be empowered with such resources.

Recommendation 10

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.

Recommendation 11

That the AEC's resources be increased so it can properly enforce the rules governing funding and disclosure.

Conclusion

The ALP committee members appreciate these recommendations would, if enacted, necessitate an overhaul of Part XX of the *Commonwealth Electoral Act 1918*, however the scale of the problem dictates strong and targeted reforms are necessary to maintain the integrity of the democratic process.

The perception money can buy public policy is highly corrosive to democratic government.

Reform of Part XX of the Commonwealth Electoral Act is now long overdue. The changes proposed in the Government's Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 will make the disclosure scheme less transparent and allow political parties to receive large donations without adequate public scrutiny.

The ALP remains strongly committed to ensuring there is a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties.

Mr Michael Danby MP

Senator Kim Carr

Mr Alan Griffin MP

Senator John Hogg