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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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JOINT COMMITTEE ON ELECTORAL MATTERS

Tuesday, 25 September 2001

Members: Mr Pyne (*Chair*), Mr Melham (*Deputy Chair*), Senators Bartlett, Faulkner, Ferris, Mason and Murray and Mr Danby, Mr Jull and Mr St Clair

Senators and members in attendance: Senators Faulkner and Murray and Mr Danby and Mr Pyne

Terms of reference for the inquiry:

The Minister has referred the Australian Electoral Commission's *Funding and Disclosure Report, Election 98* to the Committee for consideration (see Attachment A). The Minister has asked the Committee to examine the recommendations contained therein together with those recommendations of the AEC's 1996 *Funding and Disclosure Report* still to be addressed, and 'report back on the desirability of their incorporation into the existing legislation'.

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Committee met at 12.51 p.m.

CHAIR—Welcome to the Joint Standing Committee on Electoral Matters inquiry into electoral funding and disclosure. Today we will be hearing from the AEC, the organisation charged with managing the electoral funding and disclosure scheme. The commission has already made it clear to the committee that it considers there are significant problems with the funding and disclosure scheme and that it is unable to effectively administer the scheme because of legal loopholes.

In its most recent submission to the inquiry, the commission recommended what amounts to a thorough overhaul of the scheme to meet community expectations. Amongst other things the commission has recommended a blanket ban on all disclosure avoidance and minimisation mechanisms and is proposing to make political parties more accountable for inaccuracies in their returns. I anticipate that within this broad framework the commission and the committee will have a great deal to discuss. The hearings of this committee are public and open to all. A *Hansard* transcript of the proceedings is being made. The transcript will be available in hard copy from the committee secretariat or via the Parliament House Internet home page.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others necessary for the discharge of its functions without obstruction and without fear of persecution. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or her before the committee is treated as a breach of privilege.

While the committee prefers to hear all evidence in public, the committee may accede to a request to take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Senate. The Senate also has the power to order production and or publication of such evidence. I should add that any decision regarding publication of in camera evidence or confidential submissions would not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

I would like to welcome the Australian Electoral Commission to today's public hearing and you, Mr Becker. You would be aware that the evidence that you give at the public hearing today is considered to be part of the proceedings of parliament and that any attempt to mislead the committee could amount to a contempt of the parliament. The committee has received two submissions from you, numbered Nos 7 and 15. They have been accepted and authorised for publication. You might like to indicate if there are any corrections or amendments that you wish to make to your submissions and also if you would like to make an opening statement you would be welcome to do so too.

[12.53 p.m.]

BECKER, Mr Andrew, Electoral Commissioner, Australian Electoral Commission

DAVIS, Ms Barbara, Acting First Assistant Commissioner, Business Support, Australian Electoral Commission

EDGMAN, Mr Bradley, Director, Australian Electoral Commission

MITCHELL, Ms Kathy, Director, Funding and Disclosure Section, Australian Electoral Commission

PICKERING, Mr Tim, Acting Deputy Electoral Commissioner, Australian Electoral Commission

Mr Becker—You have covered a couple of things that perhaps I would have otherwise covered, but I might as well just go through it. I do not know whether you have got copies of it as yet.

CHAIR—I do not think so.

Mr Becker—Would you prefer to have those copies before I start?

CHAIR—Why don't you give us the copies and you can also give the statement?

Mr Becker—Okay. I would like to thank the committee for allowing the AEC to appear before it at each end of its inquiry. It gave us the opportunity to set the scene as we know it and to review others' views before making final comment. I am happy to say that nothing that was raised in the intervening period gives me any cause to resile from the views expressed in our earlier submissions and at the public hearing. At our last hearing after my introductory remarks you said:

... this is really saying that there is a problem here that needs to be fixed.

I am more than happy to accept that synopsis. In a very recent publication edited by Dr Marian Sawyer, *Elections: Full, Free and Fair*, at page 229 James Jupp and Marion Sawyer have this to say:

Campaign costs continue to sky rocket, and with them the suspicion that corporate interests are buying political influence and hiding this influence behind political foundations and trusts.

The AEC can only use the tools that it is given by the parliament. Without those tools we have to rely on the will of people and parties to comply with the intent of the legislation. Having seen the other submissions and read *Hansard* it is obvious that my views got up some others' noses. More than most, the AEC understands the problems that parties must confront in trying to comply with the law. We are not out to hang small sub-branches out to dry. In fact, I will go so far as to say that if some parties spent as much time with their people as we do, teaching them

how to maintain a cashbook et cetera, we would have a much more compliant system. So there is no point in standing on one's dignity when the facts are clearly that avoidance of disclosure is a reality. Let us face it: we would not be here today if everyone were behaving in accordance with the intent of parliament. Shooting the messenger in this case would be farcical.

It has been suggested that funding and disclosure be removed from the auspices of the AEC. This would be an utterly pointless exercise without appropriate legislation and I would urge the committee to leave that red herring until another time, concentrating instead on figuring out ways to close loopholes and encouraging others to accept the spirit behind such legislation. Full transparency is an essential attribute of a democracy of our maturity and I look forward to the day when we will hear, as a matter of course, 'I cannot accept your generous offer unless you'll agree to being named as the donor.'

In closing, I draw attention to the fact that whilst most of this inquiry has been focused on the disclosure provisions, there are matters to be addressed on party registration. The AEC has made a number of recommendations that we would like the committee to consider.

CHAIR—Thank you, Mr Becker. A couple of members have indicated that they may have to leave early. This is a funny week, as you would understand. It is most likely to be the last week before the election but we cannot say that with any great certainty.

Senator MURRAY—Thank you for those remarks, Mr Becker. I assume that when you were talking about the proposition of separating out the policing function, if you like, of the funding and disclosure and other areas of regulation, you were referring to the remarks—which he made in his personal capacity, as I understand it—of Lynton Crosby, the head of the Liberal national office.

Mr Becker—That is true. Do you want me to comment on that?

Senator MURRAY—No, I just wanted to be sure who you were referring to. I want to talk to you, first, about retrospectivity. Events have overtaken this committee, firstly because another inquiry intervened when the funding and disclosure inquiry should have proceeded; and secondly because we are now facing an election period. It is possible that the new committee will complete this inquiry such that the next government could make a decision on legislation before the end of this financial year. In some of these areas there is a strong feeling from some members of the committee that there needs to be very significant improvements in funding and disclosure along the lines that you have outlined; plus they have their own ideas. How damaging or difficult or wrong would it be if legislation was produced next year and backdated to 1 July this year to implement numbers of the disclosure elements you have outlined which are capable of being so done?

Mr Becker—We would have a problem, I would imagine. Most people do not like retrospective legislation anyway, but there would be a difficulty if something that was legal today were to be made illegal six months down the track and then applied retrospectively. It would largely depend on the issue involved. If we use as an example the Markson Sparks issue, where part of that organisation does act as an associated entity, and if you could quarantine that part of Markson Sparks and that were done, say, in six months time, its being retrospective

probably would not have much of an effect, because much of what they have disclosed to us would be covered by that retrospective legislation.

Senator MURRAY—I am thinking of items being made public which exist, but which otherwise would be confidential. Let us assume that we want to know who the beneficiaries were behind a trust or a foundation, or how their books were constituted. They exist; nobody has to make any changes. It is merely a question of whether the AEC would have the powers of access and examination—I just use that as an example—and disclosure.

Mr Becker—Of course, we would only have the powers of access, were we to be given those, in that retrospective capacity. We have got powers of access now, but it would largely depend on what is happening in the future as to how that is going to affect the present.

Senator MURRAY—I am not going to ask you to do any work because I think that would be unfair, but I signal through the chair that if I remain a member of this committee and the inquiry is reconstituted, I would ask the AEC to examine whether any of its recommendations would qualify to be dealt with retrospectively without prejudicing natural justice. That is one area I wanted to cover.

The second area is the area you alluded to, and that is the quality of the systems provided, particularly by minor parties and independents, I would think—that volunteers are often not acquainted with cashbooks and so on. We have discovered through the implementation of the new tax system that the provision of pro forma disks and styles of doing things to get people onto a common system is desirable. Would the AEC have any interest in developing software and packages to enable those who are not otherwise well equipped to do the job at least to get up to a basic standard which is common and acceptable to yourselves? That would obviously follow on to an electronic transfer of information to yourselves.

Mr Becker—Very much so. In fact, we were discussing similar sorts of things yesterday—whether or not we could coat-tail on things like the tax side of things. Maybe we cannot do that, but certainly we would be interested in trying to develop something which would be of use to the smaller branches and perhaps to those that have not got the same sort of level of expertise that the major parties and head offices have.

Senator MURRAY—Political parties are now having to report on the BAS reporting periods and so on, and I assume you would wish to coincide your reporting periods with those as well, if that were found in consultation to be to the benefit of political parties as well as yourselves.

Mr Becker—Yes, if that were to be the case, that would probably be better than what we have now, but we would probably want to go for continuous reporting, if that were possible. It is a long time between drinks when you only have to report on the 12-monthly issue, so I think that it would be adding to the transparency of the whole matter if we were on a continuous reporting basis.

Senator MURRAY—My understanding is that political parties, because of their quarterly BAS reporting and so on, would probably not be averse to at least moving to that framework, because they have to do the work anyway, for their BAS reporting. Particularly where volunteers are concerned, it is much better to get all the paperwork over with at once, because

you do not have a proper office structure and so on. I wonder whether you are talking to, observing or monitoring the tax office in terms of how they are getting on and whether you can piggyback on their systems and their approach.

Mr Becker—We aren't, but we are very interested in doing so. It is just a question of whether or not we would be able to do so with the current tax regime. The quarterly BAS statement would be better than the annual one that we have to do now, but we would be prepared to continue it. But I think it is worth following up.

Senator MURRAY—The nature of your recommendations were strong and you have indicated in your opening statement that you do not resile from any of them; you have maintained your views. The question of audits is one which has raised some concerns. Would you under any circumstances consider outsourcing or delegating audits to a political party's auditor where you might want them to fulfil a kind of monitoring role—I do not mean a special audit—rather than having to expand your own resources to cover all grounds?

Mr Becker—Certainly, I think the major problem has been a resourcing one—is that my understanding of the issue?

Senator MURRAY—Yes.

Mr Becker—Of course, that is one for us, as with all these things.

Ms Mitchell—In our 1996 post election funding and disclosure report, we did recommend that one of the things that might be considered is that political parties' annual returns be accompanied by an accredited auditor's report. I would expect that in the normal course of events it would usually be the auditor that the party uses for other purposes. So in terms of assisting the AEC in doing its job, but particularly in terms of assisting the public to have some sort of certainty about the annual returns at the time that they are made public—which is before the AEC has an opportunity to conduct its compliance audits—the AEC would be happy to go to a situation where what we were receiving were audited annual returns.

Senator MURRAY—I have probably expressed myself imprecisely. Really I think the question is whether you would be requiring the auditor—and I presume the word 'accredited' simply means that they are properly appointed through the constitution and that they have the qualifications to be determined as an auditor—to do work over and above that which they normally would do: certify that the accounts were true and fair. Maybe over and above that they would have to certify to you that certain things had occurred in the manner that you would like them to.

Ms Mitchell—I think that we would want them to have a level of certainty about the information that they were giving us, other than just a standard audit: that they had actually checked the books, and that the information which appeared on the books was that which appeared on the returns. I think that there would have to be a level of certainty that the information was complete, that they were happy that the information was complete and that it fulfilled the requirements of the legislation. So I think there is an extra step in there than you would normally get from an auditor who was doing the end-of-year auditing of your books.

Senator MURRAY—And would you determine that by law or by regulation? In other words, would the law give you permission to do that and then you, by regulation, would say what you wanted? Or would you spell it out—

Ms Mitchell—I would think that the legislation would be the basis for it, and that what you might have in the regulations is the wording of the certification that the auditor might be giving.

Ms Davis—Senator, could I just clarify that what you are saying is that such internal certification would be a replacement for the role that the AEC currently has?

Senator MURRAY—In some circumstances, you do not audit—in the full sense of that word—political parties every year or even in a full cycle. I have always assumed that your recommendation was directed towards getting at least a minimum assurance from an independent qualified person that what you expected to happen through the law was happening, over and above the certification by the political party itself. I assumed that was the inference, but there is a cost attached to that. If you ask an auditor to do that, it will add to the cost to the political party. That is why I was looking for a more specific answer from you.

Ms Davis—There would no doubt continue to be occasions where additional inquiries may have to be made about something that does not appear in the then audited returns or the returns certified by the party's auditor. Something may come to the notice of the AEC that we would then have to make further inquiries about. So there would still be a need for some sort of checking resource capability internal to the AEC, as well as that certified auditor capacity that might come from the party.

Senator MURRAY—One of the main questions before this committee concerns improving disclosure practices and giving the powers to exercise or evaluate those disclosures over time, but in some respects there are past matters over which there has been some heat and political sensitivity. I would like to ask whether you feel equipped or able to evaluate these. For instance, there are allegations concerning the Greenfields Foundation and what has gone on there in the past. If in future disclosure related to associated entities were to be improved, would you be seeking to draw a line and assess it from there on, or if the disclosure implied or stated that past practices would no longer be acceptable in the future, would you want to go back and clean up what had gone before? That produces all sorts of difficulties. There is an allegation before the committee—the committee is still exploring whether to take it further—that donations were made improperly in 1985 in Western Australia. They are allegations about Markson Sparks activities. There is a number of these before the committee, which you may be aware of. Clearing them up, to some extent, clears up muddied waters which people have been concerned about in the past. What would you intend to do? Would you wish to get the powers to go back or would you simply draw a line and go forward from here?

Mr Becker—That is a resourcing issue, too. You might have to draw a line. I suppose you would go as far as you could, and might then have to say, 'We haven't got the resources to investigate this any further. It is just going to muddy the waters and the waters are far too muddied now,' and you would have to let it go. As far as the AEC is concerned, the main thing would be to say, 'Okay, we have legislation in place now which we had to bring in because of the lack of understanding of what sorts of things one would probably try to do to avoid disclosure, and then say, 'Okay, now we've cleaned that up, the legislation is in and we will

worry about where we go from hereon in. We will certainly have the transparency that we desire hereafter.'

Senator MURRAY—What I am after is that difficult legal situation you get to when, once disclosure is allowed, you then discover that what is actually disclosed shows that what has been done in the past was illegal or might be illegal. Now that is the difficulty you would face.

Mr Becker—It is only illegal if, in the event, there is retrospective action. You really could not make that action illegal with prospective legislation.

Senator MURRAY—No, but it might have been illegal then.

Mr Becker—Oh, I see.

Senator MURRAY—It was simply not known. It is by virtue of you being able to get into people's books that you can establish that—

Ms Mitchell—One of the issues that we would have at the moment is that, under the legislation, people are only required to keep their records for three years, so that if we were going to be doing retrospective investigation there would be a problem with finding records if we were to go back, for instance, to 1985. The records just would not be there for us to look at to determine whether or not there had been a possible breach or something untoward happening.

Senator MURRAY—I see.

Ms Mitchell—So, if we were going to have retrospective legislation, we would have to keep in mind the fact that people may not necessarily have the records for us to look at.

Senator MURRAY—But something like the Greenfields Foundation, in terms of Corporations Law at least, would be required to keep them for seven years, which is the tax requirement.

Ms Mitchell—Yes, for tax purposes.

Senator MURRAY—I am not familiar—I do not know if anyone else is—with what incorporated associations have to do; I assume it is seven years for them as well from the point of view of tax. Really you are saying to me that, even if disclosure showed something was illegal—you just did not know about it—the furthest you could go back is seven years; you could not go back to 1985, for instance, in the case of one allegation before us.

Mr Becker—You would have to consider the import of the case, wouldn't you? Let us take the Greenfields Foundation. We say it is an associated entity; Greenfields say, 'No, it is not.' Nevertheless, it complies. So whilst we believe there is a possibility that that loophole has been created and it is possible for the parliament to close that loophole, the illegality as such does not appear to exist at this stage, because we really have not defined what would have been illegal about it. We have people coming out and saying, 'This is where the money came from.'

Admittedly we have to take that at face value, because we do not know where else it would have come from.

I just do not know how far you could go. I think you could possibly go back as far as you could until the waters get muddy and then you would have to stop. But then again, it would be a resources thing. I would be more inclined to think that we would look at the present and the future, rather than go too far into the past.

When we started off at this compliance work, we considered the resources required for it were two people. It was just a nonsense; we cannot cope, really, with the resources we have. We get around very slowly.

Senator MURRAY—And the fact is that you are not equipped, are you, in terms of the laws that were available in 1985 or in the later years when the Greenfields Foundation or any other organisation was constituted, to go back further than you were able to by the law that applied at the time with regard to the Electoral Act or by the laws which govern the keeping of information for taxation purposes?

Mr Becker—Yes.

Senator MURRAY—That is essentially it, isn't it?

Mr Becker—That is right.

Senator FAULKNER—I have just a couple of questions. An issue was placed before the AEC about whether the McKell Foundation was an associated entity. Has that been determined yet?

Ms Mitchell—We were looking into that matter, but when you issued a press release and the McKell Foundation agreed they were going to lodge a return, we did not go any further with determining whether or not they were an associated entity. On the basis of the information that we had received to date the indication was that they probably were, but we did not make a definitive decision on that.

Senator FAULKNER—Do you know yet when any material will be lodged from the McKell Foundation?

Ms Mitchell—We are having an ongoing dialogue with the foundation at the moment. There are a number of questions. They are first-timers at completing returns, so there are a number of questions. I expect we will be able to resolve the issue soon.

Senator FAULKNER—When is the next financial year return due?

Ms Mitchell—On 20 October.

Senator FAULKNER—Yes, I knew it was reasonably soon. Do you have a commitment that they will be voluntarily lodging a return?

Ms Mitchell—Yes, we have.

Senator FAULKNER—By 20 October?

Ms Mitchell—Yes.

Senator FAULKNER—Thank you. In your submission you have canvassed a number of entities: the Greenfields Foundation, the McKell Foundation, Markson Sparks and Emily's List. One of the issues that arises here is obviously definitional. You would appreciate, Mr Becker, whether these entities are properly defined as associated entities under the act or not. Obviously it is competent for political parties or others to lodge complaints if they feel a particular organisation ought to be viewed as an associated entity. That is a fairly common practice, isn't it? That has happened on a number of occasions, hasn't it?

Mr Becker—Yes.

Senator FAULKNER—On this question of the corporate fundraising technique that has become more common of late—and I am thinking of the Markson Sparks organisation, but there may well be other examples, I do not know—there does appear to be a growing trend of political parties using corporate fundraisers to raise moneys on their behalf. Is that a fair comment to make?

Mr Becker—It seems to be. It is still relatively small.

Senator FAULKNER—But growing.

Mr Becker—It seems to be growing.

Senator FAULKNER—Is there anything wrong with that?

Mr Becker—No. We are not saying there is anything wrong with any of this. We are just saying that we want it to be out in the open.

Senator FAULKNER—I accept that; I agree with you completely. We have debated the terminology 'loopholes' or 'weaknesses' in the act regarding an organisation like Markson Sparks. In this circumstance there is a serious definitional issue because currently there is no obligation for moneys raised on a party's behalf to be disclosed by a corporate fundraiser. That is it, in a nutshell. I am cutting a few corners, but it is a fair summary, isn't it?

Mr Becker—Yes.

Senator FAULKNER—Markson Sparks have indicated—and I made an announcement publicly at some point—that they would lodge a return voluntarily. Is there any alternative for an organisation like that to make disclosure, given this loophole or weakness—whatever terminology you care to use—in the act? Can you think of any other way they could go about this?

Mr Becker—The only thing we have thought of is that we could quarantine that part of their organisation and treat that part as an associated entity. Markson Sparks have given us, as far as I am concerned, because I have not heard otherwise, information that would satisfy our questioning. But everything is going to be a matter of degree. You have donations of \$3, \$5 or \$10, but then you have donations of \$30,000 and so on. It just depends on which area or category you fall into. It is a very subjective area. We are trying to say that we need people in that receiving arena to have the will to disclose where they are getting their money from and not necessarily to look for loopholes. I can understand why a person wants to use a Markson Sparks. Firstly, they are professionals and, secondly, they take something that you then do not have to worry about as a party. That is perfectly legitimate, and I do not have a problem with that. It is just that if it is used, and it can be used, to launder money then that is where we have a problem.

Senator FAULKNER—Is ‘launder’ money the appropriate word to use? They are basically fundraising vehicles.

Mr Becker—We are not in the slightest bit concerned about the fundraising side of it, so long as we can see where the money has come from.

Senator FAULKNER—Do you think they are laundering money, or do you think they are raising money?

Mr Becker—That is the term that has been used in the committee.

Senator FAULKNER—Yes, but it is a pejorative term, isn’t it?

Mr Becker—Yes. Of course, you can launder money with these sorts of mechanisms, but I am not suggesting that that necessarily happens—perhaps it was a bit too loose to use that word.

CHAIR—Mr Becker, there is this ability: rather than give a donation to the Labor Party of, say, \$10,000 through the normal channels, it is possible to turn up to an 85th birthday party for, say, Gough Whitlam, and buy a Bradman bat for \$10,000 and the money sluices into the funds of the party and would never, necessarily, be declared using Markson Sparks. That is what you mean, I assume?

Mr Becker—That is part of it.

CHAIR—It is not laundering money so much as covering donations that would otherwise be declared.

Mr Becker—I used the word ‘laundering’, but it is not a nice term. The point is this: you may wish to not have your name associated with giving money to the Labor Party—

Senator FAULKNER—Your point is surely this: the AEC believes that those donors should be disclosed. Is that not the fundamental point?

Mr Becker—Yes, that is the fundamental point.

Senator FAULKNER—I agree with you.

Mr Becker—Or do not take the money. That is my point.

Senator FAULKNER—Exactly. Currently there is a weakness or a loophole in the act that means that those moneys do not have to be disclosed. That is right, isn't it?

Mr Becker—Yes.

Senator FAULKNER—What is happening now with this Markson Sparks corporate fundraiser acting on behalf of the New South Wales Labor Party is that donations are being voluntarily disclosed. But that is not good enough, is it? I do not think it is good enough. In advance of changing the law there is not much else you can do, is there?

Mr Becker—No, there is not, but I also think it is rather nice to believe that, in this day and age, we have a culture where people are prepared to do that and not stand on their digs and say, 'No, you show me the law and I will disclose.' That is really what we have to work on, that is, that we do not have a culture of bribery, coercion or any of these sorts of things. As I said, we have a very mature democracy and we have to make everything transparent. That is cultural.

Senator FAULKNER—I agree with that. The fundamental point is, however, that the act needs to cover these sorts of circumstances. It does not cover these sorts of circumstances. Do you know why it does not cover corporate fundraisers?

Mr Becker—A lot of things are not covered because we had not thought of them.

Senator FAULKNER—Yes, I agree. It is a new fundraising technique. Reading your submission, it seems to me that the AEC is, in almost all areas, saying that the disclosure provisions of the act should be tightened in a raft of areas. I have not picked up many areas where you think the provisions should be weakened. Is that a fair summary of the thrust of the AEC's position?

Mr Becker—That is pretty fair, certainly. It is human nature that it is always going to be that way. We are always going to be behind the game.

Senator FAULKNER—You have, for example, a proposal from one of the political parties to massively increase the disclosure threshold. You do not support increasing the disclosure threshold?

Mr Becker—Not to that level. The public can probably rest assured that nothing much is going to happen with donations of up to \$10,000 to the major parties because the major parties do not worry about a donation of \$10,000. They are more interested in \$1 million or \$100,000. But if you are on the cross benches as an Independent, \$10,000 is pretty significant. It can influence the parliament's decision.

Senator FAULKNER—I want to be clear on this: do you support increasing any of the disclosure thresholds? If you do, I did not pick that up from your submission.

Mr Becker—We did not address this issue specifically.

Senator FAULKNER—But you have in the past.

Mr Edgman—We have made a couple of suggestions for minor increases in the thresholds. For example, the disclosure threshold for candidates at elections is set at \$200, which is where it was set when the legislation was brought in in 1984. We believe that \$200 is now probably too low. The general thrust of our recommendations is that disclosure thresholds need to be kept quite modest to ensure full disclosure.

Senator FAULKNER—I have to leave, but I do want to ask you one more question. It may be a difficult one to answer, I do not know. In terms of amendment, change, modernisation and tightening of the Electoral Act, if the AEC had to say to this committee what it saw as its priority—and I am going to give you two options—the general area of enrolment or the general area of the disclosure provisions, would you be able to prioritise those and say what the key priority of the AEC is? You may not be able to, but I would be interested in your response.

Mr Becker—One is ‘look and feel’ and the other is fundamental to the running of the system—the enrolment side. We have spent a lot of money recently changing our approach to enrolment, with our continuous roll update approach, and we have some people working flat out at the moment in case the regulations get up before the election. The transparency side is the look and feel of our democracy. They are equally important but for different reasons. As you might recall, we were a bit concerned that you were going to drop this inquiry to focus on the enrolment.

CHAIR—But we didn’t.

Mr Becker—We are very happy about that, but we do consider them as both being very important issues.

CHAIR—It has been admitted that a candidate in the last election, Rita Hunt of the No GST Party, had her campaign funded by the Shop, Distributive and Allied Employees Association and yet she made a return to the AEC showing that she had ‘nil’ donations and ‘nil’ number of donors on 15 January 1999. This got some coverage in the newspapers in South Australia in January 2001. Don Farrell of the shoppies union admitted to funding her campaign. Firstly, how could she make a return that showed ‘nil’ donations and ‘nil’ number of donors and it not be uncovered? What methods are there to uncover obviously false returns? Secondly, I understand that the AEC referred it to the Federal Police and I am wondering what response the Federal Police have given, since it has been some time.

Ms Mitchell—In relation to how she lodged a return that said ‘nil’, when candidates are endorsed by political parties it is usual for candidates to put in ‘nil’ returns and for the political party to incorporate the funds that were received by the candidate in the party’s annual return. It may well have been that Ms Hunt assumed that the party would include her fundraising in its return, although I think that at the time the party was not registered as the No GST Party, but I am not sure of the exact timing of issues. In relation to the AFP, that was something Peta was dealing with. I am not sure on that.

Mr Becker—I do not know what the outcome is either.

Ms Mitchell—I cannot answer the second half of your question because I am not sure. We can get back to you.

CHAIR—It would be good if you could get back to us because it has hung around for a fair while—almost 10 months—and I would have hoped that the AFP would have come back by now with some sort of report.

Mr Becker—I am certainly unaware of it, if they have come back.

Ms Davis—In relation to the general issue about what methods are used to uncover false returns, this is where the audit program can be very effective in looking at all receipts as well as anything that might be labelled a donation or otherwise. Whether all moneys received are in the receipt books is something that, I suppose, we will always be up against. Perhaps the issues that Senator Murray was referring to before about having accredited returns by the parties' or the candidates' accredited auditors might assist.

CHAIR—Have these sorts of examples of the No GST Party and Rita Hunt's return caused the AEC to have a heightened awareness of the need to pursue small parties or independent candidates to ensure that their returns are correct? You can be fairly sure that the major parties and the Democrats and so on are doing their level best to give responsible returns, but perhaps many of the small independents or these ghost parties like the No GST Party might not actually understand their responsibilities correctly.

Mr Becker—There is a fair bit of hand holding, but I do not know the specifics about, for example, the No GST Party.

Ms Mitchell—We actually do not have the power under the legislation to audit individual candidates. We only have the power to audit political parties and associated entities, so if we did want to look at what had happened with candidates we could not. Certainly, when we are doing audits of political parties we cover the issue of whether all the information to be incorporated in the annual return has come to them from their various party units or from their candidates that they endorsed during the election. We would get records, for instance, of how many party units have information that is outstanding, and a party might lodge an amended return at the point in time that that information that is outstanding is given to them.

CHAIR—Given that the shoppies union is allied to the Australian Labor Party and is, in fact, one of the donor unions to the ALP, and obviously funded this No GST candidate Rita Hunt in the 1998 election, do you think it is important that this be resolved before the federal election coming up so that the message is sent that groups like the shoppies union cannot put up front candidates for election, give them donations and then not have them properly accounted for to the AEC? Therefore, would you follow-up the AFP in the next few days about resolving this matter before the federal election? Because otherwise people are going to get the impression that we can break the law or bend the rules or not account properly and it might never actually come to a conclusion. Do you know what I mean?

Mr Becker—We will certainly follow it up. I think it is important to find out what the score is full stop, and in as timely a manner as possible, regardless of whether or not there is an election around the corner. Given that a lot of water has gone under the bridge since, I would have thought that the investigation would have had time to conclude.

CHAIR—Sure.

Mr Becker—I am unaware, if it has not concluded, of where it is. If it has not concluded then it probably means it has not started, and that would be another difficulty.

CHAIR—If it has not started, then you would wonder whether the AFP is really dragging its heels—

Mr Becker—They have resource problems too—the same as we have. As you know, with our follow-up on a lot of the stuff around election time, we cannot demand the AFP to do certain things. We work with them, and our coverage varies from state to state depending on the resources they can bring to bear.

CHAIR—But this has been hanging around—

Mr Becker—I know.

CHAIR—since January 1999 and in a public sense since January 2001. If the AFP do not investigate these sorts of matters, one wonders whether their priority system, which we heard about in the last inquiry, is in fact working. Anyway, we have probably done that issue to death.

Mr Becker—We will certainly check for you.

CHAIR—If you could check and let us know I would be very grateful, and if we could publicise it before the election I think it would be a useful thing so that other people do not to the same thing.

Another potentially operational matter is this \$25,000 donation to the Labor Party in New South Wales, which I asked Lynton Crosby about last week. I was advised by the Labor Party that it would be better to ask you, the AEC, about it because you would know. You might remember that the *Sydney Morning Herald* reported on 22 June that the New South Wales Labor Party had received a \$25,000 donation—so nothing to sneeze at—from a Philippines lawyer who indicated that he had paid the money on behalf of an unidentified group of business clients. It was an anonymous donation and an illegal donation. The man, Mr Benito Salazar, said:

I don't have that kind of money ... They're foreigners. They are not from the Philippines, that's all I can say. Perhaps I will tell them about it and they can decide whether to come out.

The AEC said that they were in consultation with the Australian Labor Party in New South Wales about this particular donation, and I am wondering whether you can inform the committee as to what status it has at this stage?

Mr Becker—Certainly.

Ms Mitchell—Mr Chairman, the AEC does not discuss details of matters that are under consideration. I can tell you that the matter is under consideration. I can also tell you that we have addressed the issue of overseas donations in our recommendation because it is problematic for the AEC in that the legislation does not go overseas. If there is an issue in relation to any donation that a party received from overseas, the AEC does not have the power to follow up on whether there is an issue in relation to those donations.

CHAIR—But the AEC has the power to follow up on anonymous donations, and this is an anonymous donation.

Ms Mitchell—And the AEC is considering the issue that has been raised, yes.

CHAIR—So it is really not a matter that would be hamstrung because it came from overseas so much as it is a matter for the AEC because it is anonymous, it is \$25,000 and it is illegal.

Ms Mitchell—There may be an aspect of the issue that the AEC cannot follow up on in that it cannot pursue Mr Salazar in the Philippines.

CHAIR—But it can pursue the ALP in New South Wales about a \$25,000-odd donation. In your submission you have recommended that anonymous donations be returned in full to the AEC.

Ms Mitchell—And we are considering that matter inasmuch as we have power to consider that matter.

Mr DANBY—At the time the donation was made to the New South Wales ALP, is it your understanding that they believed the donor was Mr Benito Salazar?

Ms Mitchell—We do not have a definitive position on the issue at the moment. So I cannot answer questions in more detail.

Mr DANBY—Okay. It is my understanding from the media reports that this was declared by the Labor Party to the AEC in good faith at the time.

Ms Mitchell—It certainly appears in their annual return, yes.

Mr DANBY—So it appeared in the Labor Party's annual return?

Ms Mitchell—Yes.

Mr DANBY—They openly and publicly declared this money came, they thought, from Benito Salazar. Do you know when that was?

Ms Mitchell—That the actual donation was made: I cannot remember.

Mr DANBY—No, when the declaration was made?

Ms Mitchell—It appears in their 1999-2000 annual return as a donation from Benito Salazar and gives an address in the Philippines.

Mr DANBY—The *Sydney Morning Herald* report that was on the front page, which I remember at the time, appeared years later—Mr Salazar saying that this was an anonymous donation and therefore an illegal donation.

Ms Mitchell—Certainly, that is what the reporter reported in the article.

Mr DANBY—And that there was some suggestion that Mr Salazar's subsequent murder of someone was somehow linked to this donation. When it made its open and transparent declaration to the AEC some 18 months prior to this media report, it would have been difficult for the New South Wales ALP to know that Mr Salazar would subsequently be involved in a murder investigation in the Philippines.

Ms Mitchell—I think that is a fair enough comment.

CHAIR—I do not think anybody at this committee made the allegation that Mr Salazar, being an alleged murderer, had anything to do with the donation to the New South Wales Labor Party.

Mr DANBY—The allegation on the front page of the *Sydney Morning Herald* was that it was somehow connected and they should have known what Salazar would do in six months or 18 months after the allegation. My point was that they simply did the right thing as far as the AEC is concerned and declared the donation. Mr Salazar subsequently, in the course of a murder investigation, has made allegations that it is anonymous and was given on behalf of other people. The *Sydney Morning Herald* has then made alleged it was somehow related to this murder inquiry. All of these things regarding him may be true, but as far as the New South Wales Labor Party is concerned, my understanding is what you have said, that they declared it came from him at the time when they got it, and that is what they knew.

Ms Mitchell—That is what appears in the annual return.

CHAIR—The Labor Party has said in their public statements that they would release the names of donors—just to take some examples—at the 85th birthday party of Gough Whitlam, which was organised by Markson Sparks; the names of people who had donated to the McKell Foundation, which appears to pay for overseas travel for the shadow minister for foreign affairs; and the names of those people who donated to the Clinton fundraising function in the last 10 days in Sydney.

Mr DANBY—Was that the one organised by Ann Peacock?

CHAIR—No, that was in Melbourne and that was not a fundraiser for the Labor Party. The one in Sydney was a fundraiser for the Labor Party and that is the one the Labor Party said they would reveal the names of. Have they actually revealed any of the names of donors from any of these functions or has this just been a one-day story and now disappeared into the ether?

Mr Becker—I have not seen anything.

Ms Mitchell—As I advised Senator Faulkner earlier in relation to the McKell Foundation where we are still assisting and discussing with them the lodgment of annual returns by them, until we have those returns I cannot say what they contain. With the Clinton dinner it would not be due until 20 October next year and then publicly available the following February.

CHAIR—Is that February 2003?

Ms Mitchell—Yes, and in relation to the other fundraising activity that has been undertaken by Markson Sparks on behalf of the New South Wales ALP we are still in discussions with them in relation to confirming the information that is contained in annual returns.

CHAIR—Let me just get this right. The Labor Party made an announcement in June that they will be releasing the names and details of donors to various dubious fundraising activities.

Mr DANBY—A pejorative word.

CHAIR—We can remove the word ‘dubious’. You now tell us today in almost October that you are still in discussion with the ALP about releasing the names of donors to these fundraising functions. In fact, in one case—the case of the Clinton fundraiser not last week but the week before—those names would not be released, if the Labor Party did not wish it to be, until February 2003. Am I right in thinking that is the situation?

Ms Mitchell—I think in relation to the annual returns that they have already lodged it may well be that all the information is contained there but as part—

CHAIR—They have said that that is not the case.

Ms Mitchell—Then in that case that is part of the discussions that we are still involved in. And, yes, it would be correct that in relation to the Clinton dinner the information may not be publicly available until February 2003.

CHAIR—So in fact the ALP is doing no more by making the claim that they will release the names than the law requires?

Ms Mitchell—I suppose that could be said, yes.

CHAIR—Yes, that is exactly the position. Do you have any questions, Michael?

Mr DANBY—Yes, I do. Can I just come to your submission No. 7, recommendation 2. We have been discussing with both Senator Faulkner and Mr Pyne. It says:

That all payments at fundraisers be deemed by the Electoral Act to be donations.

What is the process that you would like to work in that? Would it be the same as straight out donations to political parties—that is, \$100 or \$1,500 or all of the various limits you have already got? How would you see it working?

Mr Edgman—That is right. The \$1,500 threshold would apply for those donors, those attendees at fundraising organisations.

Mr DANBY—Recommendation 12 says:

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 under that commitment.

In the 1999-2000 returns of the Citizens Electoral Councils they paid more than \$900,000 to an entity in Leesburg, Virginia. Under that recommendation would that money have been forfeited to the Commonwealth?

Mr Edgman—The recommendation is that the loans either be prohibited or forfeited if they are not fully disclosed. If the second part of that recommendation is picked up, then as long as they fully disclose the source of the loan, the debt that they show on their return, they would not have to forfeit it. The recommendation is that it is either prohibited or forfeited if it is not fully disclosed.

Mr DANBY—But you are not prohibiting it altogether?

Mr Edgman—The recommendation is in two parts. It is offering an alternative to the committee that either it be prohibited or forfeited if not fully disclosed. It is one or the other.

Mr DANBY—It does seem a very curious thing to raise hundreds of thousands of dollars in Australia from Australian taxpayers, and for all of the individual donors be declared, and then remit nearly \$1 million dollars in one year to this entity in Leesburg, Virginia.

Mr Edgman—As I understand it, they have a large debt with the organisation in Virginia.

Mr DANBY—What is the debt for? Is it for services rendered in Australia or for services rendered overseas? What is the payment for? What are fundraisers for these people paid for? What has this debt been incurred for?

Mr Edgman—I understand it is funding to the Citizens Electoral Council in Australia from an affiliated organisation in the United States. It is working capital, I suppose, as is the nature of most loans. They would appear to be in the process of repaying that loan as they are able to.

Mr DANBY—So at some stage earlier they spent nearly \$1 million dollars that this organisation put into Australia to operate this satellite organisation or related entity. Then they raised all this money here and it has been remitted to the United States.

Mr Edgman—That is my understanding of their operations.

Mr DANBY—Would large parts of that money have been tax deductible?

Mr Edgman—I could not answer that question.

Mr DANBY—Donations up to \$100 are tax deductible.

Mr Edgman—Donations up to \$100 by individuals are tax deductible.

Mr DANBY—If there were lots of small donations from individuals who have participated in being rung by the phone banks of this organisation to contribute to this thing, they would have all been tax deductible only up to that \$100. If they have collected \$500 on one occasion and \$500 on another occasion, if it were within the one financial year, they would have only been able to claim it for tax deductibility at \$100 once.

Mr Edgman—That is right. The tax threshold is \$100 per financial year per natural person.

Mr DANBY—Thanks. Recommendation 19 requires copies of membership applications for 500 members. I think that is a very good idea. I was not aware that it is not the situation at the moment. Do they have to provide them on request but they just do not have to provide that with their submission?

Ms Mitchell—We do ask them to provide membership forms and mostly they cooperate. It is just that we would like it confirmed in legislation.

Mr DANBY—I understand you received a letter from Labor Party asking you to examine whether there was any cross-current of membership in the Curtin Labor Alliance and the Citizens Electoral Council in those two entities. Have you been able to discover anything about that.

Ms Mitchell—Both organisations have provided us with membership information. We have checked the information provided by both.

Mr DANBY—What did you discover? Were they the same people or were they completely different two sets of 500 people?

Ms Mitchell—They were two completely separate sets of 500 people.

Mr DANBY—Were the people in the Curtin Labor Alliance aware that they were members of a political party?

Ms Mitchell—We conduct a random sample of members when we receive an application. We phone that random sample of members to confirm that they are members of the particular party. The Curtin Labor Alliance membership check passed that random sample.

Mr DANBY—How many people were in the random sample?

Ms Mitchell—There were 20.

Mr DANBY—There were 20 out of 500?

Ms Mitchell—That is a figure that we worked out with the Australian Bureau of Statistics. They advised us on what was a statistically sound sampling method. They have advised us that, whether you were sampling 500 or 1,000 members, you would not achieve any better result by contacting more than 20 members.

Mr DANBY—I was not being critical. I know you have a limit to your resources. I just was trying to discover the bottom line of all of this. The Labor Party also objected to what it regarded as the misuse of former Prime Minister John Curtin's name and also the Labor Party? Has the Australian Electoral Commission had a chance to examine that?

Ms Mitchell—Those matters are still under consideration. As part of the objection process, we receive objections, provide those objections to the applicant party and give them an opportunity to respond to the objections before we submit them to the commission for decision. They are still in the response period.

Mr DANBY—Does this have a timeline? Are you the final arbiters?

Ms Mitchell—We are the final arbiters, although there is provision for appeal to the Administrative Appeals Tribunal. Originally, appeals are considered by the Electoral Commissioner, Mr Becker, as the delegate of the commission. Then you can appeal to the full commission for reconsideration of the Electoral Commissioner's decision and then there is appeal to the AAT from there.

Mr DANBY—The last quick question is on witnessing provisions and the imbroglio that is going on in the Senate at the moment. What kind of strain is that placing on your resources with this anticipated change? You do not know whether it will get through.

CHAIR—What has that got to do with the funding and disclosure inquiry, Mr Danby?

Mr Becker—Significant strain, I will just say that.

CHAIR—You just tried to sneak that one in.

Mr DANBY—I got the answer that I expected.

Resolved (on motion by **Mr Danby**, seconded by **Mr Pyne**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at the public hearing this day.

CHAIR—I thank the AEC, not just for appearing today but for all the support you have provided to the committee in this parliament. It is fair to say that this will probably be the last meeting of the committee in the 39th Parliament. I am sure that my predecessor Gary Nairn and the other members of the committee—it has been quite a fluid, changing membership in this last three years—would join me in thanking the AEC for their very patient and generous attention to our requests over the last three years. I thank you for the good relationship that the committee has with the AEC. I hope it continues well into the future.

Mr Becker—Thank you. As you know, the AEC values our relationship with this committee and we hope it will always continue.

Mr DANBY—With opposition chairs, I assume.

CHAIR—We look forward to the next parliament and to the conclusion of this inquiry.

Committee adjourned at 1.57 p.m.