AUSTRALIAN ELECTORAL COMMISSION

SUBMISSION TO

THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

INQUIRY INTO

ELECTORAL FUNDING AND DISCLOSURE

Submission No 15 of 3 August 2001

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1. INTRODUCTION

1.1 This supplementary submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its call for submissions to the "Inquiry into Electoral Funding of Political Parties", as advertised on 7 July 2001.

1.2 On 17 October 2000, the AEC filed submission No 7, which urged the JSCEM to progress a series of recommendations for legislative reform made in the AEC Funding and Disclosure (FAD) Reports on the 1996 and 1998 Federal Elections. However, the JSCEM then indefinitely suspended proceedings on the FAD inquiry in order to progress the parallel JSCEM inquiry into the Integrity of the Electoral Roll. Following the tabling of the Roll Integrity Report on 18 June 2001, the JSCEM announced the resumption of the FAD inquiry, and the intention of the JSCEM to conclude these proceedings and report to the Parliament before the next federal election.

1.2 This AEC supplementary submission has become necessary in order to address difficulties with the law governing electoral funding and disclosure that have arisen in the intervening nine months since the first AEC submission was filed. Legislative clarification of these issues is now urgently required to address certain problems with the legislative framework that have attracted public comment in recent times. The AEC has been unable to effectively administer the law because of these anomalies.

1.3 The recommendations made in the 1996 and 1998 FAD Reports to the Parliament did not exhaustively address every legislative flaw that might have existed in the funding, disclosure and party registration provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act). The recommendations made in the AEC FAD Reports to the Parliament and in the first AEC submission to this JSCEM inquiry addressed only the most pressing problems that require legislative attention. The AEC emphasises that adoption of these original recommendations only will not now deliver a watertight disclosure system.

1.4 Loopholes persist in Part XX of the Electoral Act that allow financial arrangements to be contrived for the purpose of avoiding disclosure. In the view of the AEC, if the disclosure provisions in the Electoral Act are to deliver transparency in the financial relationships of political parties, candidates and others associated with them, then a comprehensive review of the legislation and the principles underpinning the legislation is required. There is a need to move beyond the pattern of the last 18 years since the legislation was introduced of "ad hoc" amendments as individual deficiencies are identified.

1.5 In this supplementary submission, the following disclosure issues, that have emerged in recent times, are addressed:

- a range of allegations of preference deals after the making of donations/payments by one candidate to another (or one party to another);
- a range of allegations concerning donations made in return for various considerations/favourable treatment by parties;
- access to Members of Parliament in return for contributions to parties;
- donation of free time by a consultant in relation to a party leadership ballot;
- whether certain organisations are associated entities;
- payments for attendance at fundraising events and the amounts paid for auction items;
- true source of donations/anonymous donations;
- overseas donations;
- overseas debts;
- donations to parties from companies which subsequently go into liquidation or have other potential legal issues surrounding them; and
- possible incomplete annual returns.

1.6 In this supplementary submission, the following party registration issues, that have emerged in recent times, are addressed:

- problems with administering changes made to the Electoral Act in October 2000;
- a need to limit the period of time in which the AEC is unable to take action in relation to applications for registration and changes to the register;
- a need for members used by parties for registration purposes to actually be enrolled;
- a need for the AEC to be able to specify the range and quality of information needed for it to be satisfied that parties should be registered or remain registered;
- matters relating to the names under which parties can be registered;
- matters relating to the organisation and operation of parties; and
- registration of multiple parties by single persons or groups.

1.7 The AEC has made a number recommendations for administrative improvements and legislative reform, as listed in part 5, but it is important to note that the implementation of the full range of recommendations made in these AEC submissions and in the FAD Reports will have resource implications for the AEC that it might not be able to absorb.

1.8 Major changes made to the legislation since 1983, including the introduction of annual returns and compliance audits of associated entities, along with increases in expectations of audit coverage and investigations of apparent anomalies, and greater access for the public to data through the AEC's website, have significantly increased workloads. The AEC is not in a position to allocate additional resources to FAD administration without detriment to other areas of electoral administration, and will be seeking to address resource shortfalls in the course of forthcoming budget rounds.

2. FUNDING AND DISCLOSURE MATTERS

2.1 Legislative Reform

2.1.1 The value of disclosure legislation depends upon the true source of support provided to political parties and candidates being publicly disclosed. The deficiencies in the current legislation primarily revolve around loopholes that can allow the true source of donations to go undisclosed. In the introduction to the 1998 FAD Report to the Parliament, the AEC expressed its concern that financial arrangements can be contrived to avoid full disclosure by means that nevertheless meet the letter of the law. Compliance with the clear intent of the disclosure provisions is being abandoned in some instances, denying the public its right to know who is funding political parties. This is the reason that the AEC repeatedly suggests greater prescription and rigidity in the legislation.

2.1.2 Inevitably the legislation trails behind in dealing with specific deficiencies. The attempts by the AEC to pre-empt the exploitation of loopholes in the legislation are often ignored or seen by political parties as unwarranted and unnecessary intrusions. For instance, only selected recommendations from the 1996 and 1998 FAD Reports to the Parliament have been considered and adopted. It often takes a current, prominent exploitation of an 'open' part of the legislation for Parliament to recognise the importance of dealing with a particular issue.

2.1.3 Broad questions are arising over the adequacy of the current disclosure provisions. Much of this has been canvassed in the media. Two examples illustrate how the requirements of the law do not necessarily match the expectations of some in the community.

2.1.4 Firstly, there was the case raised in late 2000 of a "donation" allegedly made by Mr Wayne Swan of the ALP to an Australian Democrats candidate. The sum involved was variously stated to be either $500 or $1,400. In this case there was no disclosure to the AEC required under the current law because of the quantum of the donation made. Nevertheless, because this matter raised the possible offence of electoral bribery by Mr Swan, it was referred by the AEC for investigation by the Australian Federal Police. Although the AFP found no evidence of either bribery or disclosure breaches by Mr Swan or the Democrat candidate, this case demonstrates that there is a public expectation that such donations will be disclosed.

2.1.5 Secondly, there was a donation of free time made to Senator Natasha Stott Despoja by a public relations consultant during the Australian Democrats party leadership ballot. Such a donation was not made in Senator Stott Despoja's capacity as a candidate, so there would likely be no requirement for her to disclose. The company that made the donation may also not have a disclosure obligation for the same reason. Even should any disclosures be required, they would not be made until after the next election contested by Senator Stott Despoja. This raises the issues of both what transactions should be disclosed and the timeliness of those disclosures.

2.1.6 In both cases the legislation does not demand "full" disclosure as is the case for political parties. The situation that exists with candidates remains virtually unchanged from the time when disclosure was restricted to transactions specific to federal election campaigns (the way the disclosure legislation was originally written in 1983). Donations received by a member of Parliament are only required to be disclosed if they relate to their election campaign. Donations made for other purposes would not necessarily be required to be disclosed. A legislative response, however, would need to be carefully thought through. Simply widening the current election based disclosures required of candidates and Members of Parliament may prove similarly ineffective. Unlike political parties, upon which it is not unreasonable to impose a requirement to disclose all their transactions, individuals have separate, personal financial affairs. Hence, "full" disclosure could not ever be achieved without a gross and probably unnecessary intrusion into their, and their immediate family's, personal financial affairs.

2.1.7 Even in instances such as The McKell Foundation, Markson Sparks! P/L, The Greenfields Foundation and Emily's List, reaching a position as to what disclosure is required is often a matter of interpretation of the legislation. Because it can be a matter of interpretation, persons and organisations are not always clear as to their obligations. Other situations also sit in, at best, a grey area. For example: a trust set up to gather donations to fund the campaign in a council election by a candidate who may be endorsed by, a member of, or associated with a registered political party.

2.1.8 Other issues that have been raised in the media include:

- suggestions that access to federal MPs is being "bought" by attendees at fundraising events;
- the amount of money paid to attend fundraising events and the amount of money for auction items at such events;
- the issue of individuals and companies found or suspected to be operating inappropriately making donations to political parties;
- suggestions that, as a result of making a donations to political parties, organisations are being allowed to continue to operate inappropriately.

2.1.9 The debate surrounding these issues indicates the high expectations held for disclosure under the Electoral Act.

2.1.10 This JSCEM inquiry represents an appropriate opportunity for the JSCEM to consider the extent and timeliness of disclosures that it expects under the Electoral Act. To fully address community expectations, such considerations would need to involve wide ranging consultation with all stakeholders. Whilst the results of any such review might be more complex administrative processes for the AEC, parties, candidates and others, this would need to be weighed up against the benefits of introducing a framework for legislative amendment which meets modern community expectations.

2.1.11 It might also be appropriate for such a review to consider relevant State and Territory legislation to see if any uniformity could be achieved which might lessen confusion for parties, donors, and other stakeholders.

Recommendation 1: that the JSCEM specifies the breadth of coverage of disclosure believed necessary under the Electoral Act, from which the existing legislation can be reviewed and, as necessary, redrafted.

2.1.12 Dealing in an *ad hoc* way with only specific instances that render the disclosure provisions ineffectual is inadequate in ensuring full public disclosure. Without the in-depth consideration of what is now required of disclosure, the recommendations made in the AEC submissions to this inquiry and in the 1996 and 1998 FAD Reports to Parliament, if adopted, will only close down loopholes apparent at the time they were written.

2.1.13 A sufficient motivation to legally avoid a legislative responsibility may well see further arrangements being contrived in the future that are not prevented by even amended legislation. It will always be difficult, if not impossible, to propose specific legislation that would prove effective in closing down all possible future disclosure loopholes. The disclosure legislation, if it is to be able to deal with future avoidance schemes as they arise, needs a general provision outlawing arrangements contrived with a purpose of circumventing disclosure.

2.1.14 The disclosure provisions of the Electoral Act can, in some way, be equated to the Income Tax Assessment Act in terms of avoidance. Part 4A of the Tax Act provides for arrangements that are deemed to be contrived for the purpose of avoiding tax to be treated as if they do not exist. A similar provision should be considered as part of the disclosure provisions of the Electoral Act to allow unforeseen anti-disclosure schemes to be dealt with as they arise.

2.1.15 Where an arrangement has been entered into which has the effect of avoiding financial disclosures that would otherwise be required under Part XX of the Electoral Act, that arrangement should be treated as if it did not exist. That is to say, disclosures should be made as if the arrangement had never been entered in to. As discussed in the context of Section 305B(2) (at paragraph 2.2.6) donors to political parties, for disclosure to operate effectively the disclosures made must be complete and correct at the time they are released to the public. For that same reason arrangements and transactions that have been deliberately contrived with a purpose of avoiding disclosure should be punishable by a fine that is sufficient to act as a deterrent.

Recommendation 2: that, where an arrangement has been entered into which has the effect of reducing or negating a disclosure obligation under Part XX, disclosure is to be made as if that arrangement had not been entered into.

Recommendation 3: that all those involved in an arrangement found to have been contrived to avoid disclosure should be subject to a financial penalty sufficient to act as a deterrent to engaging in such arrangements.

2.2 Disclosure Responsibilities

2.2.1 Disclosure returns are released to public inspection without any independent assurance of their completeness or accuracy. The AEC has no power to audit election returns and does not have the resources to undertake audits of annual returns between the date of lodgement and the date of public release. It is for these reasons that the AEC, in its 1996 FAD Report to the Parliament, recommended that the annual returns of political parties (and associated entities) be lodged with an accompanying report from an accredited auditor.

2.2.2 In the case of donors to political parties, there is not even an assurance that all returns have indeed been lodged. This is because the AEC can only identify these donors from party and associated entity returns and these returns do not distinguish between donations and other receipts (the AEC recommended that donations be required to be separately disclosed in annual returns in its 1996 election FAD Report). With such indeterminate information, any cases where a return is not lodged by a possible donor has to be viewed as an implied statement that the transaction was not a donation.

2.2.3 The important issue here is that if full, accurate disclosure is not achieved by the date of public release then the information is unlikely to ever be widely reported or known to the general public. This is because the major conduit for informing the public is the media, and their comprehensive interest generally does not extend beyond the first few days after the release of disclosure returns. Of course, there will still be specific issues that the media are interested in after this time.

2.2.4 It is impossible for the AEC to ensure the integrity of the information released to the public, so this responsibility must, and properly should, fall to those compiling and submitting returns if the public interest is to be served. Currently the Electoral Act deals only with clearly deliberate failures in disclosure. To this extent, there is no effective requirement that due care be exercised in discharging these responsibilities. In other words, ignorance or incompetence in compiling information to be disclosed is accepted by the Electoral Act.

2.2.5 This opens up a number of significant opportunities to effectively avoid full public disclosure, whether deliberately or inadvertently. The simplest would be omitting a donation and then requesting a correction to the return shortly after its public release. The late reporting of a donation, even if of a significant value, means that it is likely never to be extensively reported ie. the public is unlikely to become aware of the donation having been made. Even if deliberate, the AEC would have a most difficult time proving that such action was not the result of a genuine mistake.

2.2.6 Other opportunities exist for the deliberate or inadvertent delaying of full disclosure until after initial public release. The obvious example is with donors who have provided a benefit to a political party indirectly. (Subsection 305B(2) of the Electoral Act deems that a person who makes a donation to another person with the intention of benefiting a political party is taken to have made that donation direct to the political party.) The political party, however, may not report the 'real' donor as it did not receive any donation directly from that person. Therefore, unless the donor knows of and accepts their responsibility to lodge a return without first being approached to do so by the AEC, there is a significant chance that their donation would not be disclosed come public inspection day. The AEC will not necessarily have a trail that allows it to identify and advise that donor of their need to lodge a return and it cannot be expected that all such donors will know of their disclosure obligation. But, in most instances where a donation is made that sees a disclosure responsibility arise under subsection 305B(2), the political party would be aware of the donation or easily able to apprise itself of the donation. Such donations are primarily made through associated entities of a party or through other organisations or arrangements that the party is fully aware of, such as fundraising organisations operating on their behalf or with their knowledge.

2.2.7 One further example is the practice of receiving 'split' donations where an individual person/entity breaks down a single donation into a number of smaller donations each of which falls below the disclosure threshold. In the case of corporations, the Electoral Act specifically deems related bodies corporate to be the one entity and therefore, transactions must be consolidated for the group when determining whether the disclosure threshold has been reached. The AEC's observations, however, are that split donations appear to only rarely be checked by parties prior to disclosure. This is despite the fact that split donations inevitably are received together, making obvious the potential for under-disclosure. It is left to the AEC as part of its audit function to perform these checks and, where necessary, require an amendment to the lodged return.

2.2.8 For the disclosure provisions of the Electoral Act to be effective, the responsibility for ensuring full and accurate disclosure as at the date of public release must be recognised as resting with those who contribute to, compile and lodge the return forms. Ignorance, feigned or real, and negligence (eg failure to institute appropriate administrative procedures) can be vehicles for effectively suppressing disclosure. This responsibility has not been voluntarily shouldered in all instances and, therefore, needs to be formalised under the legislation. If not, disclosure will, for all intents and purposes, remain a voluntary code.

2.2.9 Any material failure of disclosure, including disclosure made after the date for public inspection, should be viewed with the same seriousness as the receipt of anonymous donations. As with anonymous donations, the appropriate legislative response would be the forfeiture of amounts equivalent to the value of receipts or debts not fully disclosed at the time of public release of the information.

2.2.10 This is not to suggest that there are not genuine cases where an agent is unable to complete a return. Such situations are recognised under section 318 of the Electoral Act, allowing an agent to lodge an incomplete return where they have been unable to obtain all necessary information by identifying those particulars and the contact details of the person/s believed to be in possession of that information.

2.2.11 This provision can, however, also be used to frustrate disclosure either deliberately or through inadequate or incompetent attempts to obtain all necessary details. Section 318 should be further strengthened to detail some of the minimum steps believed reasonable to expect an agent to have taken to gather all disclosable information before they can be considered to be in the position of being "unable" to lodge a complete disclosure return.

Recommendation 4: that where a receipt 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, then a sum equivalent to that receipt should be forfeited to the Commonwealth.

Recommendation 5: that where an outstanding debt of $1,500 or more has been omitted from a disclosure return or the details of that debt included on such a disclosure return do not clearly identify the true source and value of the debt, then a sum equivalent to that debt should be forfeited to the Commonwealth.

Recommendation 6: that section 318 be amended to strengthen the test for an agent to be allowed to lodge an incomplete disclosure return by specifying certain minimum steps required to have been taken before they can be considered to be unable to obtain all necessary particulars. These steps should not, however, be considered an exhaustive test as to what should be considered reasonable attempts. Such steps must have been taken before the due date for lodgement of the return. The section should contain a penalty provision for deliberate inaction or the provision of inaccurate information.

2.2.12 Even with the adoption of the above recommendations, the AEC believes that issue of continued failure to correct and/or complete a disclosure return would not necessarily be effectively dealt with. It can be the case that a disclosure return is not corrected and finalised until many months or even years after the disclosure was placed on the public record. Timeliness of disclosure is as important as correct disclosure. As disclosure is an obligation that is accepted when a political party becomes federally registered, a continued failure to properly discharge that obligation should be grounds to cancel registration.

Recommendation 7: that the Electoral Act be amended to require that a political party be deregistered for continued failure (two or more years running) to lodge an annual return or a properly completed annual return.

2.3 Political Party Groupings

2.3.1 A major element in the evolution of the legislation has been an attempt to ensure the disclosure of all transactions that may have the potential to lead to undue influence and political corruption. When political parties disclose they must consolidate transactions throughout the entire party structure. Entities closely associated with parties now must also lodge comprehensive disclosure returns.

2.3.2 One area that has not been specifically addressed is that of party groupings and factions, including the parliamentary grouping of politicians (the 'parliamentary party') as distinct from the political party organisation registered with the AEC. Such groupings are not always constituent parts of a political party and while they can exercise influence over the internal operations of a party, and, in the case of the parliamentary grouping, heavily influence the political fortunes of the party, they do not necessarily fit the definition of being an associated entity. Hence, their transactions are not always subject to public disclosure. Nevertheless, there is a compelling case that it is in the public interest that such disclosures be made.

2.3.3 Corruption can potentially occur at any stage of the political process, including winning faction support, reaching senior positions in the party structure or within a faction, and contesting preselections. The 'parliamentary party' and individual parliamentarians would be obvious targets for someone wishing to seek preferential treatment through the making of donations.

2.3.4 In normal operations, such groupings could be expected to have very limited financial transactions. The importance of making these transactions transparent on the public record greatly outweighs what would be a relatively minor exercise in compliance for these groupings by also being included under the Electoral Act's disclosure provisions.

Recommendation 8: that all entities and groupings whose membership or existence is significantly linked to or dependent upon the existence of a registered political party be treated as associated entities for disclosure purposes.

2.4 Receipts and Donations

2.4.1 Division 5A of Part XX of the Electoral Act requires annual returns to be lodged by registered political parties and associated entities. Registered political parties are required to lodge a return with the AEC, within sixteen weeks of the end of the financial year, setting out the total amount received, the total amount paid and the total outstanding amount of all debts incurred by, or on behalf of, the party. A similar requirement is made of associated entities.

2.4.2 There is a requirement for the AEC to make the various disclosure returns publicly available for inspection. To facilitate this process, the AEC now makes annual disclosure returns available on its website. These details are being increasingly accessed by the public, particularly the media. However, given the constructions that have been placed on the information contained in these returns and the manner in which the AEC website functions, there appears to be some lack of understanding of the information being viewed. There is, however, an explanation on this website about how it functions. For example, in Australian Financial Review articles in April 2001 much was made of supposed system glitches and anomalies. What was reported as system glitches was, in fact, advanced flexibility in searching power that increases the website user's ability to find particular individuals or organisations (ie a user only has to put in part of a word or name and the website will bring up a list of all names containing the letters typed in).

2.4.3 There seems to be little misunderstanding about what is meant by "the total amount paid" and "the total outstanding amount of all debts incurred". However, there does appear to be some confusion in relation to what is meant by "the total amount received", particularly in the media. Many interpret "the total amount received" to mean only donations and therefore, expect to see donor returns matching the amounts each party has listed in its receipts valued over $1,500.

2.4.4 The term "gift" (ie donation) is defined in section 287 of the Electoral Act. Whilst donations and receipts are both monies incoming to parties or associated entities, for example, donations will form only part of their receipts and so, the total of donations cannot be expected to match the total of receipts. "Receipts" include donations but will also include other income such as membership fees, bank interest, rent on property owned, etc.

2.4.5 Given that the point of making these returns public is to combat political corruption by making the financing and support of political parties and others as transparent as possible, it would be of major benefit for anyone looking at these returns to be able to readily identify what is a receipt and what is a donation.

2.4.6 Further, recent media commentary has brought to the fore an issue raised previously by the AEC in its first submission to the JSCEM. That is, the issue of organisations or groups which do not meet the current definition of associated entity yet are the channel for, what might often be a considerable amount of, funds to the party. There is a range of organisations or groups which may fulfil this role but the ones most recently reported by the media have been both internal and external fundraising organisations/groups.

2.4.7 Sometimes these organisations or groups do not have to lodge a separate return with the AEC as they do not meet the definition of associated entities. Attendees at the fundraising functions these organisations and groups run would be required to lodge a donor return if the money they paid at the function was a donation intended to benefit a political party. However, many attendees are not aware of their disclosure obligations, if they have them, and so may not lodge returns. One of the important tools that the public has to ensure that the disclosure requirements of the Electoral Act are being properly met by political parties, is to be able to cross-check the information in political party returns with the information in donor and associated entity returns. This cannot be done if all returns are not being lodged.

2.4.8 Discussion of such fundraising organisations and bodies also raises the issue of the sorts of activities they undertake eg. dinners and auctions. There has been considerable media commentary on the amounts paid for dinners and for items at auction and whether these are reasonable amounts (ie market value) or simply an easy way to avoid the disclosure provisions of the Electoral Act as they relate to donors and donations.

2.4.9 These issues have been previously raised by the AEC: recommendation 5 of the 1996 FAD Report called for the separate disclosure of donations from general receipts; recommendation 6 of the 1998 FAD Report called for a further defining of “associated entity”; recommendation 1 of the first AEC submission to this JSCEM inquiry proposed extending associated entity disclosure in a limited form where organisations external to political parties conduct transactions on their behalf; and recommendation 2 of the same submission suggested all payments in relation to a fundraising event be deemed to be donations for the purposes of disclosure. The JSCEM should be aware of the continuing disquiet in regard to these matters and the need to consider remedies.

2.4.10 In regard to recommendation 6 of the 1998 FAD Report further defining “associated entity”, this continues to be a difficult area in the legislation, and perhaps is responsible for the greatest number of concerns being publicly voiced about the comprehensiveness of disclosure. Uncertainty about the disclosure obligations of possible associated entities can arise where it is the members, or certain members, of a political party as distinct from the political party itself that are the beneficiaries of the operations of an organisation. Although this begs the question what is a party if it is not its members?

2.4.11 It is therefore proposed that the definition of associated entity be expanded to cover instances where members of political parties are in receipt of the benefit provided by an organisation.

Recommendation 9: that the term 'benefit' currently used in the definition of 'associated entity' be further clarified by inserting the following interpretation: that 'benefit' include instances where the benefit is enjoyed by members of a registered political party on the basis of that membership.

2.5 Anonymous Donations

2.5.1 The AEC made a number of recommendations on anonymous donations in the 1996 and 1998 FAD Reports. This is a fundamental issue because, clearly, anonymity undermines disclosure. Although anonymous donations are already addressed in the Electoral Act, the AEC believes that this provision demands greater rigour.

2.5.2 The Electoral Act makes illegal the receipt of donations unless the name and address of the donor are known (or reasonably believed to be known) where that sum equals or exceeds $200 for candidates and $1,000 for political parties and Senate groups. In applying these thresholds, multiple donations from the same source are to be counted together.

2.5.3 An obvious flaw in this provision as it currently stands is that it can often be impossible to establish whether two or more donations have come from the same source when the name and address of the donor are unknown. The only manner in which this accumulation provision could operate effectively is if it applied irrespective of the source of the funds.

Recommendation 10: that the cumulative thresholds outlawing the acceptance of anonymous donations apply irrespective of the source of the gift.

2.6 Overseas Donations

2.6.1 There are no restrictions placed upon political parties or others by the Electoral Act on either the size or source of donations. The system seeks full public disclosure of all such transactions rather than any prohibition. Unlike some other countries, therefore, Australia allows political donations to be received from overseas sources, although they have been relatively rare. But donations sourced from overseas can pose problems for disclosure.

2.6.2 Australian law generally has limited jurisdiction outside our shores and hence the trail of disclosure can be broken once it heads overseas. This provides 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. 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.

2.6.3 Indeed there was a widely reported case in the 1990s where a donation 'travelled' from Australia to a company based overseas which then passed that donation on to a political party back in Australia. The true donor was not originally disclosed in that instance, but no disclosure law had been broken. Full disclosure had been legally avoided.

2.6.4 The AEC sees 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. Based on disclosed histories, prohibition would also have negligible impact upon the donation receipts of political parties or candidates. 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. This second option places an obligation upon overseas donors to comply with Australian disclosure laws, but it can reasonably be expected that legitimate overseas donors would familiarise themselves with Australian law and not make a donation without accepting their obligation. It should also be a reasonable expectation that a political party or candidate with a commitment to public disclosure would ensure that all donors, including overseas donors, were aware of the disclosure laws. This second option also does nothing to resolve the problem of trying to track and prosecute donors who are overseas.

2.6.5 Whatever action is taken must be extended to donations received from overseas by third parties or associated entities which are then passed on to a political party or candidate or used to their benefit.

Recommendation 11: that donations received from outside Australia either be either 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.

2.7 Overseas Loans/Debts

2.7.1 Loans and debts have the same potential for exercising political influence as donations. The threat of calling in a major debt, for instance, could be more harmful to a political party than the withholding of a donation of an equivalent value.

2.7.2 The identification of the true source of a loan or debt, not just the entity to whom the sum is owed as at the reporting date of 30 June, is as important to disclosure as the true identity of donors. The same problems presented to disclosure by donations sourced from outside Australia equally apply to loans or debts owed overseas.

2.7.3 For that reason, the AEC believes that any legislative measure introduced to ensure full disclosure of donations sourced from overseas must also be equivalently applied to the disclosure of overseas debts.

2.7.4 As with donations sourced from overseas, debts owed by political parties to overseas concerns have received some prominence in the media since the last submission lodged by the AEC, particularly given that debts can be outstanding for some years.

> **Recommendation 12: 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.**

2.8 'Shell' Political Parties

2.8.1 Associated entity provisions are designed to ensure full disclosure of the transactions of political parties even where transactions are undertaken on their behalf by a separate legal entity. However, these provisions do not cover all arrangements. One such instance is the use of 'shell' political parties.

2.8.2 The Australian Shooters' Party (ASP) serves as an example of what is meant by a 'shell' party. The ASP is registered federally while a separate party, The Shooters' Party, is registered in New South Wales. The ASP undertakes limited fundraising in its own right and is effectively only functional during federal election campaigns. The bulk of the funding that the ASP received for the last two federal election came as a lump sum donation from The Shooters Party. The two parties have separate constitutions and membership and there is no apparent legal connection between them. Notwithstanding this legal separation, the ASP is, for all practical purposes, the federal arm of The Shooter's Party. The suspension of the ASP's operations between federal elections and its reliance upon The Shooters' Party for its financial viability, suggest that it is a 'shell' party through which The Shooters' Party contests federal elections.

2.8.3 The arrangement has the effect of limiting the disclosure required of those funding the electoral campaign of the ASP. As a political party registered in New South Wales, The Shooters Party has only limited disclosure responsibilities in conjunction with contesting New South Wales state elections and is only required to disclose as a donor to a political party under the Commonwealth Electoral Act. The Shooters Party does not meet the definition of an associated entity due to it's dominant role in the relationship.

2.8.4 Arrangements similar to that which exists between The Shooters Party and the ASP could be entered into for the express purpose of avoiding public disclosure. An extension of the associated entity disclosure provisions as previously recommended in the first AEC submission to this inquiry may overcome this loophole, however, legislation would need to be carefully drafted to ensure that full disclosure is achieved. In the cases of State registered political parties, any significant relationship with a federally registered party, administrative or financial, direct or indirect, should oblige that State registered party to assume the disclosure obligations of a federally registered political party. Consequently, organisations that have a relationship with that party, if it were a federally registered party, would assume federal disclosure responsibilities (ie as a donor to the party or as an associated entity).

Recommendation 13: that entities that operate through 'shell' political parties be required to assume full disclosure responsibilities under the Electoral Act such that the true source of funds used by that party are made public.

2.9 Forfeiture of Funds to the Commonwealth

2.9.1 Under the Electoral Act the penalty for accepting anonymous donations or certain loans is a sum equivalent to the sum received, and is forfeited to the Commonwealth. Indeed, the acceptance of sums under these circumstances is deemed illegal under the Electoral Act. This submission makes a further recommendation for extending this forfeiture provision.

2.9.2 The current penalty is only a moderate deterrent at very best. The penalty does no more than return the party (or candidate) 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.

Recommendation 14: that the amount to be forfeited to the Commonwealth where a sum deemed to be illegal under the disclosure provisions has been received, be increased to double the value of the sum received.

3. Party Registration Matters

3.1 Procedural Delays in Registering Political Parties

3.1.1 The *Commonwealth Electoral Amendment Act (No.1) 2000* included changes to the political party registration provisions of the Electoral Act designed to prevent the registration of multiple parties by one person or group without a proven level of community support. These changes commenced on 3 October 2000 and included:

- altered the definition of parliamentary party (previously a parliamentary party could be registered by a member of any Australian Parliament, now one can only be registered by a federal parliamentarian);
- added the requirement that a list of 500 members be included with an application for registration by a non-parliamentary party;
- added the requirement that a fee of $500 accompany an application for registration and for certain changes to a party's registered details;
- added the requirement that a member cannot be relied upon by more than one party for the purposes of registration.

3.1.2 The biggest impact that these amendments had on the processing of applications for registration is that there is now a requirement to cross-check membership lists, including for parliamentary parties, to ensure that no member is being relied upon by more than one party for the purposes of registration.

3.1.3 To enable the AEC to carry out this task, it was first necessary for the AEC to review all currently registered political parties to determine:

- in the case of parliamentary parties, which member(s) of the Commonwealth Parliament the party was relying upon for the purposes of registration
- in the case of non-parliamentary parties, the names and details of the 500 members the party was relying upon for the purposes of registration.

3.1.4 The AEC wrote to all currently registered political parties on 7 December 2000 requesting that they provide the necessary membership information. Deregistration action was taken where parties did not reply, refused to provide the information or requested voluntary deregistration. However, the Democratic Labor Party (DLP) sought, in the Federal Court, an injunction against the AEC and a review of the decision to deregister it. As a result of legal advice that the AEC did not have the power to deregister the DLP, the AEC agreed, and the Federal Court so ordered, to discontinue that particular deregistration action.

3.1.5 Although court action had been taken only by the DLP, the AEC also ceased deregistration action against other parties which were to be deregistered on the same grounds as the DLP.

3.1.6 The *Electoral and Referendum Amendment Act (No.1) 2001* was proclaimed on 16 July 2001, and amended the Electoral Act to provide a specific power for the AEC to review the eligibility of parties to remain on the Register of Political Parties, and take deregistration action where appropriate. A recommendation for such an amendment had been made by the AEC in its 1998 FAD Report to the Parliament.

3.1.7 The AEC expects that these amendments will resolve the problems that it had encountered in its proposed deregistration of the DLP but ultimately this could be tested in the courts. The amendments contain a prohibition on the AEC undertaking a review of political parties between the issue of a writ for an election and the return of the writ. That is, the AEC was not able to (re)commence its review of currently registered political parties until after 27 July 2001, the date of the return of the writ for the Aston by-election.

3.1.8 Further, there are minimum time periods set by both these amendments, and the existing deregistration provisions in the Electoral Act, which mean that it would take a minimum of 3 months to deregister any party failing to reply to a request for eligibility information from the AEC or refusing to supply the information requested.

3.1.9 If the AEC cannot finalise the basis for registration of currently registered parties, it may not be possible to finalise processing of new applications for registration. There is a real risk, therefore, that applications currently on hand or received in the lead up to the next federal election will not be processed prior to the election and those parties will not be registered. The situation has already received criticism from some applicant parties, the media and members of the public.

3.1.10 Since the last AEC submission to this inquiry, there have also been two federal by-elections. The Electoral Act prohibits the AEC from taking any action in relation to applications for registration of political parties in the period from the issue of a writ for an election and the return of that writ. Thus, processing of applications has also been delayed by the Ryan and Aston by-elections.

3.1.11 In contrast to the existing legislative provisions, the AEC does not see any impact on the election process of progressing applications for registration up to, but not including, the point where it would make a decision about whether the party should be registered.

3.1.12 The AEC has previously covered this issue at Recommendation 18 in the 1996 FAD Report to the Parliament. The AEC reiterates its recommendation that only the actual decision of the Commission in relation to registration, deregistration and changes to the Register of Political Parties (other than changes to registered officer and deputy registered officer details) be suspended. That recommendation suggested that the suspension period be from issue to return of writ for an election. However, processing of applications for registration can be further streamlined by specifying that the period of suspension only be from issue of writ to polling day, since changes to the Register after polling day could not impact on the election.

Recommendation 15: that the suspension of party registration activity under section 127 of the Electoral Act cover the period from the issue of the writ for an election until polling day in that election.

3.2 Political Party Names

3.2.1 The issue of the name under which political parties can be registered has received continuing attention. Perhaps the most prominent instance recently concerned the application for registration from the political party, liberals for forests.

3.2.2 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.

3.2.3 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.

3.2.4 The AEC notes that both the Liberal Party of Australia and liberals for forests nominated candidates at the recent Aston by-election. The percentage of the vote received by each of those candidates could be taken as an indicator that the voters of Aston were not confused by the names of those two parties, and suggests that there is no legislative response required.

3.2.5 However, there is an issue of political parties registering with names identical or close to the names of recognised organisations. This is an issue that received media coverage at the last New South Wales State election and has been raised in the federal parliament by Senator Bartlett. The AEC recognises that affected organisations have a legitimate concern that a party which has no association with the organisation is not precluded from using the organisation's name as the party's name.

3.2.6 To deal with this concern, section 129 of the Electoral Act should be amended to include the fact that parties cannot be registered using the name of a recognised organisation (ie a name which is generally recognised within the community), or a name so similar as to cause confusion. The AEC is not, of course, in a position to be able to be aware of the names of all recognised organisations, so it would need to be the responsibility of the relevant organisation, or someone on its behalf, to lodge an objection, during the objection period, to the use of its name by a party applying for registration.

Recommendation 16: that section 129 of the Electoral Act be amended to require that the AEC will refuse an application for registration if the proposed name of the party is the same as, or so closely resembles as to cause confusion, the name of a recognised (as defined) organisation where that organisation has advised the AEC that it does not agree to the use of the name by the party.

3.2.7 Another issue is the use of a person's name/s in the registered name or abbreviation of a political party. While there is no particular problem with the name of a prominent member of a party being included in a party's name, it is another matter altogether where a person's name is used by a political party without their consent. The unauthorised use of a person's name may be designed to trade off their reputation or to garner a protest vote against an individual (eg Unity – Say No to Hanson).

3.2.8 The AEC does not see obtaining a person's consent to have their name used in the registered name of a political party as a solution. There are numerous examples of persons contesting elections who have legally changed their names or who happen to have names similar or identical to prominent persons. The prohibition of the use of a person's name, living or dead, in the name of a political party would be the only effective solution to the problem.

Recommendation 17: that section 129 of the Electoral Act be amended to require that the AEC will refuse an application for registration if the proposed name of the party contains the name of a person.

3.3 Membership for Registration Purposes

3.3.1 Subsection 123(3) of the Electoral Act defines a member of a political party as a person who is both:

a) a member of the political party or a related political party; and
b) entitled to enrolment under this Act.

3.3.2 The AEC has discussed the need to amend this definition in its 1998 FAD Report at recommendation 14. However, the amendments to the registration provisions of the Electoral Act effected in October 2000 and public discussion surrounding the recent JSCEM Inquiry into the Integrity of the Electoral Roll have raised further issues.

3.3.3 Non-parliamentary parties must provide a list of 500 members with their application for registration. One of the most obvious ways for the AEC to check the bona fides of the names provided on such lists is to check them against the electoral roll. However, given that subsection 123(3) of the Electoral Act only requires members of parties to be entitled to enrolment, not actually enrolled, the AEC is unable to reject an application for registration if this check of the membership list against the electoral roll shows a large number of discrepancies (ie members not enrolled or nor correctly enrolled). If any check of membership against the roll showed that some members were not enrolled, the AEC having to confirm the eligibility for enrolment of those members prior to finalising the processing of the application would unduly delay finalisation.

3.3.4 Given that enrolment is compulsory, it would not be an unreasonable expectation that members of political parties actually be enrolled. The AEC, of course, understands that there will be some discrepancy between the membership lists it currently receives and the electoral roll given that there is a 1 month period before electors become eligible to enrol for their address and there is a further 3 weeks for electors to lodge enrolment forms. However, the AEC still sees it as readily possible for parties to supply lists of 500 members, all of whom are correctly enrolled. For example, at the time a member completes the necessary membership application form they could also be advised by the party to update their enrolment. By the time the application for registration is received by the AEC in Canberra, the enrolment form should have been received and processed by the relevant DRO. The AEC would also be able to provide feedback to the party on those members who were not correctly enrolled so that the party could advise members of the need to update their enrolment.

3.3.5 This matter was raised by the AEC in recommendation 23 of the 1993 FAD Report.

Recommendation 18: that paragraph 123(3)(b) be amended to require that members must be correctly enrolled.

3.3.6 A further relevant issue is the provision of membership forms with applications for registration of political parties. The AEC currently requires applicant parties to provide to it copies (or originals, which are returned) of the application for membership forms for the 500 members who are being used to support the registration of the party. This requirement is not specifically formalised in the Electoral Act but has been adopted by the AEC as it is a necessary part of the checking process so that the AEC can be satisfied that the application meets the registration requirements.

3.3.7 The AEC provides a sample form for a party's use in its Registration of Political Parties handbook. In particular, this sample form includes a declaration by the member that information in the form is true and complete, that the member is eligible for enrolment and that the member consents to the form being forwarded to the AEC in support of the party's application for registration. The AEC believes that it would simplify matters for parties if the requirement to provide copies of membership forms, which must meet certain minimum requirements, were formalised in the Electoral Act.

Recommendation 19: that section 126 of the Electoral Act be amended to require that copies of the membership application forms for the 500 members supporting the application for registration be provided with the application, and that the membership application forms meet certain minimum requirements (the form could be included in Schedule 1 of the Electoral Act).

3.4 Process Issues

3.4.1 There are a number of other matters of concern relating to the registration of parties that have also come to the attention of the AEC, either as a result of day to day administration by the AEC, or by media comment. These matters should be clarified in the legislation so that both parties and the AEC are in no doubt about responsibilities and requirements.

3.4.2 The AEC currently has no power to require parties to formally advise the appointment of party office-holders (such as President, Secretary, etc.) and so, has no way of checking whether a person purporting to act on behalf of a party is the person they claim to be and does represent the party. This is particularly important in relation to the appointment of party agents who may be receiving considerable amounts of election funding on behalf of the party. However, because of the requirements of the legislation, the AEC does have on record the names and signatures of registered officers (and deputy registered officers) and so is able to verify requests received from those officers. Therefore, the AEC believes that party agents should be appointed by the registered officer (the AEC understands that this person is often also the party secretary). This is already a requirement in section 288A dealing with the appointment of a principal agent by the Australian Democrats.

Recommendation 20: that the Electoral Act be amended to require that a party agent is to be appointed by the registered officer.

3.4.3 The amendments to the Electoral Act effected in October 2000 added a requirement that (paragraph 126(2)(ca)) a list of names of 500 members accompany an application for registration by a non-Parliamentary party. However, more information is needed by the AEC if it is to be able to carry out the checks necessary for it to be satisfied that the party meets the requirements for registration. As the legislation currently stands a party may refuse to provide the additional information that the AEC needs, making it impossible for the AEC to be satisfied that the party meets the registration requirements.

Recommendation 21: that section 126 of the Electoral Act be amended to require that certain member details are to be included in the list of members supplied to the AEC, not just names. Details to include current residential address, date of birth, contact phone number. The list should also be exempted from public access for privacy reasons.

3.4.4 The AEC also sees problems with processing applications for registration from parties with constitutions which do not meet certain minimum standards and takes this opportunity to reiterate its recommendation 16 of the 1998 election FAD report. In order for a party to obtain registration as a political party for federal elections, it should have a constitution which clearly indicates that it is a political party, that it intends to participate in the federal electoral process and certain minimum requirements in relation to its operations.

Recommendation 22: that the Electoral Act be amended to clearly set out minimum requirements for a party's constitution, such as it must:

- **be written;**
- **include the aims of the party (one of which must be the endorsement of candidates to contest federal elections);**
- **set out the requirements to become a member, maintain membership and cease membership;**
- **set out the process for selection of officer-holders, including registered officer and party agent, the Executive and any committees;**
- **detail the party structure;**
- **detail the procedure for amending the constitution;**
- **detail the procedures for winding up the party.**

3.4.5 Section 44 of the Constitution disqualifies any person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer, from being chosen or sitting as a Senator or Member of the House of Representatives. Section 93 of the Electoral Act disqualifies any person who is serving a sentence of 5 years or longer for an offence against the law of the Commonwealth or of a State or Territory from eligibility to enrol. Section 292 of the Electoral Act disqualifies a person from being appointed as a party agent if the person has been convicted of an offence against Part XX. Given the recent attention that has been paid to the integrity of electoral processes, it might further enhance the public perception of integrity if similar disqualifications applied to registered officers, deputy registered officers and party agents.

Recommendation 23: that the Electoral Act be amended to provide that a person who is serving a sentence of one year or longer for any offence against the law of the Commonwealth or of a State or Territory is ineligible to be chosen as, or to continue to hold the position of, registered officer, deputy registered officer or party agent.

3.4.6 Section 131 of the Electoral Act provides that where, after initial consideration, the Commission is of the opinion that it is required to refuse an application for registration, it may write to the applicant/s giving them an opportunity to vary the application in such a way that would allow it to meet the requirements for registration. However, there is no requirement for the applicant/s to respond to such an opportunity within a particular time period. The AEC then does not take any further action in relation to the application until a response is received.

3.4.7 It is therefore possible for months, perhaps years, to pass without the applicant/s responding to the opportunity to vary the application and so, effectively reserve that party name without ever actually registering the party. This would not appear to be the intent of this section of the legislation which the AEC has taken to be intended to prevent applications from being refused because of some minor technical flaw in the application. The AEC believes that section 131 needs to be amended to provide a response period.

Recommendation 24: that section 131 be amended to require that applicant/s must reply to a notice issued under that section within two months of receipt of the notice. Failure to reply to such a notice will be treated as a withdrawal of the application. Applicants may respond to such a notice advising that they wish to withdraw the application.

3.5 Registration of Related Political Parties

3.5.1 The Electoral Act currently allows for the registration of related political parties, which means that the members of one party are treated as also being members of any other related party. Hence, to remain registered, it is sufficient for two or more related political parties to have sufficient members between them (ie sufficient multiples of 500 members or members of the federal parliament), rather than each needing discrete qualifying memberships.

3.5.2 Concerns have been expressed that the current system of party registration can be manipulated through these related party provisions. In an article that appeared in the *Sydney Morning Herald* on 29 September 2000, Mike Seccombe wrote:

> The major political parties are preparing to change the Electoral Act to prevent the registration of "phantom" parties, but will leave open a loophole allowing them to use such parties themselves. That loophole allows the registration of multiple "related entities" to an existing party. Thus the Labor or Liberal parties could, if they wished, put up multiple candidates under multiple party names, to feed preferences back to them.

3.5.3 The AEC does not see any need for the Electoral Act to continue with the recognition of related political parties. Parties should be required to qualify for registration independently. While a formal relationship with other parties may exist, this relationship would not be recognised for the purposes of registration. It should be understood that the removal of related party status would not prevent parties from having branches formally recognised under the Electoral Act in States or Territories where they do not meet membership requirements. It would, however, prevent them from separately registering parties in States and Territories where they do not qualify on membership grounds.

3.5.4 It should be recognised that a number of parties have chosen to register in this manner. The Australian Democrats is an example, having only its national body formally registered with the AEC but nevertheless having its various State and Territory branches recognised.

> **Recommendation 25: that the Electoral Act be amended to remove "related party" status.**

4. OPERATION OF THE AEC FAD SECTION

4.1 The AEC Funding and Disclosure (FAD) Section has three main functions:

- maintain the Register of Political Parties,
- ensure compliance with the disclosure provisions of the Electoral Act, and
- pay public funding.

4.2 As with all federal agencies, the AEC has to carry out its functions within the limitations of available resources (mainly time, money and staff). Further, like other federal agencies, the AEC has to contend with the expectations of the Government, the Parliament and the public in relation to the performance of its functions.

4.3 As the funding and disclosure provisions of the Electoral Act are aimed at ensuring that federal elections are free from the taint of corruption, this is an area of the work of the AEC which receives a high level of public attention, including outside election periods. In addition, this area of the work of the AEC receives a considerable amount of attention from the media, political parties and the Parliament.

4.4 As the JSCEM is aware, the AEC conducts compliance audits of political party and associated entity returns. These audits involve visits to the offices of the parties and associated entities and are conducted so that the AEC, and ultimately the public, can have some degree of confidence in the accuracy of the returns lodged.

4.5 Given that there is a requirement to responsibly use allocated resources, the AEC has to make critical decisions on the way in which it performs its functions. For example, the FAD section has determined that it should take a risk management approach in carrying out its compliance audits of political party and associated entity returns. Such an approach sees audit coverage targeted on those areas where it is believed that the greatest value to the public can be served. It means that not all parties and associated entities will be audited every year but that all parties and associated entities should be visited at least once in any given cycle of 3 years.

4.6 Further because of the volume of paperwork held by some parties, the AEC is only able to examine a random sample of that paperwork during the conduct of compliance audits.

4.7 Therefore, it is quite possible that the AEC will not pick up a problem in any given annual return during its compliance audits. This needs to be made clear as there is a perception that the AEC will be able to detect any problems with returns, and a reliance on that happening.

4.8 The AEC was originally only resourced for two staff to carry out these compliance audits but given the increasing volume of work, the AEC has had to allocate further staff to the task. However, whilst carrying out compliance audits they cannot carry out the tasks they were originally meant to do. Of course, this sort of juggling of resources is the same issue that is faced by other federal agencies and the AEC understands that it is not alone in having this problem.

4.9 However, the AEC believes that the major responsibility for ensuring a return's correctness lies with the person/s or organisation completing the return. The AEC refers the JSCEM back to recommendation 6 of the 1996 FAD Report suggesting that annual returns be accompanied by a report from an accredited auditor attesting to the correctness of the return.

4.10 The AEC sees the following two issues as among those that would need to be addressed as part of dealing with such a recommendation:

- the standard of some parties record keeping,
- the ability of the AEC to fulfil a greater educative role.

4.11 The AEC has noticed during its conduct of compliance audits that the standard of record keeping by parties can vary greatly. The standard of some parties record has made it extremely difficult to have confidence in the returns lodged by some parties and for the AEC to come to any clear conclusions as a result of its compliance audits. However, the AEC expects that, should it have the necessary resources, it would be able to fill a greater educative role with these parties (for example, develop a package which contained some simple advice in relation to, and basic examples of, appropriate record keeping, as well as present information sessions on this).

4.12 However, the AEC wishes to emphasise that there is a clear distinction between the AEC's responsibilities and parties' responsibilities and that ultimately it is up to parties to ensure that they have the necessary information and record keeping systems (including forwarding of information from candidates, party units, etc.) in place to ensure that the returns they lodge are accurate and complete. The same would apply to associated entities returns and all other returns required to be lodged under the disclosure provisions of the Electoral Act.

4.13 The amount of work involved in processing applications for registration has also increased as a result of the changes to the Electoral Act made in October 2000. There is a considerable amount of work involved in analysing the results of the cross-checking of the lists of 500 names to ensure that matches are true matches not, for example two generations of the same family, and that possible matches are examined thoroughly.

4.14 The placement of certain disclosure returns on the AEC's website has also generated extra work. The website has made the returns much more accessible to the public, particularly the media and facilitated research and cross matching of returns. This has resulted in a range of queries being raised with the AEC and an expectation that the AEC will be able to resolve any perceived discrepancies sooner. Given that the AEC conducts its compliance audits over an 8 month period after the returns become publicly available, it is unrealistic to expect that all the possible discrepancies will be resolved within a short period of time after the returns become publicly available.

4.15 The AEC makes no recommendation in relation to this matter at this time. It is merely flagging the matter with the JSCEM. The AEC will revisit this matter in the FAD Report to the Parliament after the forthcoming election, at which time it may be clearer what recommendations would be appropriate. However, the AEC will also be seeking to address resource shortfalls in the course of forthcoming budget rounds.

5. LIST OF RECOMMENDATIONS

Recommendation 1: that the JSCEM specifies the breadth of coverage of disclosure believed necessary under the Electoral Act, from which the existing legislation can be reviewed and, as necessary, redrafted.

Recommendation 2: that, where an arrangement has been entered into which has the effect of reducing or negating a disclosure obligation under Part XX, disclosure is to be made as if that arrangement had not been entered into.

Recommendation 3: that all those involved in an arrangement found to have been contrived to avoid disclosure should be subject to a financial penalty sufficient to act as a deterrent to engaging in such arrangements.

Recommendation 4: that where a receipt 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, then a sum equivalent to that receipt should be forfeited to the Commonwealth.

Recommendation 5: that where an outstanding debt of $1,500 or more has been omitted from a disclosure return or the details of that debt included on such a disclosure return do not clearly identify the true source and value of the debt, then a sum equivalent to that debt should be forfeited to the Commonwealth.

Recommendation 6: that section 318 be amended to strengthen the test for an agent to be allowed to lodge an incomplete disclosure return by specifying certain minimum steps required to have been taken before they can be considered to be unable to obtain all necessary particulars. These steps should not, however, be considered an exhaustive test as to what should be considered reasonable attempts. Such steps must have been taken before the due date for lodgement of the return. The section should contain a penalty provision for deliberate inaction or the provision of inaccurate information.

Recommendation 7: that the Electoral Act be amended to require that a political party be deregistered for continued failure (two or more years running) to lodge an annual return or a properly completed annual return.

Recommendation 8: that all entities and groupings whose membership or existence is significantly linked to or dependent upon the existence of a registered political party be treated as associated entities for disclosure purposes.

Recommendation 9: that the term ‘benefit’ currently used in the definition of ‘associated entity’ be further clarified by inserting the following interpretation: that ‘benefit’ include instances where the benefit is enjoyed by members of a registered political party on the basis of that membership.

Recommendation 10: that the cumulative thresholds outlawing the acceptance of anonymous donations apply irrespective of the source of the gift.

Recommendation 11: that donations received from outside Australia either be either 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.

Recommendation 12: 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.

Recommendation 13: that entities that operate through 'shell' political parties be required to assume full disclosure responsibilities under the Electoral Act such that the true source of funds used by that party are made public.

Recommendation 14: that the amount to be forfeited to the Commonwealth where a sum deemed to be illegal under the disclosure provisions has been received, be increased to double the value of the sum received.

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Recommendation 19: that section 126 of the Electoral Act be amended to require that copies of the membership application forms for the 500 members supporting the application for registration be provided with the application, and that the membership application forms meet certain minimum requirements (the form could be included in Schedule 1 of the Electoral Act).

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- set out the requirements to become a member, maintain membership and cease membership;
- set out the process for selection of officer-holders, including registered officer and party agent, the Executive and any committees;
- detail the party structure;
- detail the procedure for amending the constitution;
- detail the procedures for winding up the party.

Recommendation 23: that the Electoral Act be amended to provide that a person who is serving a sentence of one year or longer for any offence against the law of the Commonwealth or of a State or Territory is ineligible to be chosen as, or to continue to hold the position of, registered officer, deputy registered officer or party agent.

Recommendation 24: that section 131 be amended to require that applicant/s must reply to a notice issued under that section within 2 months of receipt of the notice. Failure to reply to such a notice will be treated as a withdrawal of the application. Applicants may respond to such a notice advising that they wish to withdraw the application.

Recommendation 25: that the Electoral Act be amended to remove "related party" status.