

Committee Secretary
Joint Standing Committee on Electoral Matters
Department of House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

**Supplementary Submission on behalf of
the Australian Labor Party**

Dear Committee Secretary

Please find attached a supplementary submission from the ALP for the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto being conducted by the Joint Standing Committee on Electoral Matters.

Regards



Tim Gartrell
National Secretary

Joint Standing Committee on Electoral Matters Inquiry into the 2004 Federal Election Supplementary Submission from the Australian Labor Party

Introduction

At the 8 August 2005 public hearings of the Joint Standing Committee on Electoral Matters, Inquiry into the 2004 Election, the ALP was asked to provide further information on a number of points. This short supplementary submission addresses these issues.

Misleading campaigning in Melbourne Ports

At the public hearing Mr Tim Gartrell, National Secretary of the ALP, signalled that he would provide further information supporting submission number 155, regarding campaigning techniques in Melbourne Ports. The actions of the Liberal Party in Melbourne Ports on polling day are a concern to the ALP. As submission number 155 details, how to votes cards were distributed by the Liberal Party which were designed to mislead voters interested in voting for the Australian Greens into voting for the Liberal Party candidate.

These cards, which were in the same vertical format and the same colour as the Australian Greens card, and quite different to the official Liberal Party card, were distributed by teams of young people wearing green tee-shirts and green baseball caps. The cards were authorised by Mr Julian Scheezel, state director of the Liberal Party. Photos have been attached to this submission demonstrating this, as have reproductions of the how to vote cards.

The distribution of this card needs to be seen in its proper context. I have been informed that the card was handed to intending voters by the canvassers in green tee-shirts, who were saying to voters as they approached phrases like "Green?" and "Voting Green?". Sworn statutory declarations to this effect are attached.

It is highly likely that *some* voters were deceived, and indeed the statutory declarations presented show that some voters *were* deceived. If the result in Melbourne Ports had been very close, only a very small number of votes directed to Mr Southwick that the voters *intended* to be directed to the Greens and then possibly to the ALP as preferences might have been decisive.

The ALP believes that the AEC should take into account not just whether the card has been correctly authorised, but also the totality of the circumstances in which cards of this type are distributed. This is exactly the position taken by Senator Brandis, in an earlier hearing, in relation to his allegations against the group 'Liberals for Forests' in the Division of Richmond.

As the committee has already heard Mr Paul Dacey of the Australian Electoral Commission (AEC) has stated that in his opinion the card does not contravene the *Electoral Act* because it is correctly authorised and because Mr Southwick is identified on it as the Liberal candidate in Melbourne Ports. It is not in dispute that the how to vote card was correctly authorised. The ALP believe however, that the methods used in distributing this card were designed to deceive and mislead voters in Melbourne Ports into thinking they were voting for a candidate from the Australian Greens. We believe that this action may be covered by section 329 of the *Electoral Act*, however, should the distribution of material in a misleading fashion not be covered by this provision, we urge the Committee to investigate possible amendments to the Act to address this abuse.

Overseas donations

Under the current disclosure arrangements contained in the *Electoral Act*, it would be possible for unscrupulous political parties to channel money through untraceable overseas bodies and sources. Even though there must be disclosure of any donation above the threshold limit, there is no requirement for overseas donors to disclose, making it impossible to determine whether they are the real source of the donation. There is also no way to enforce adequate and accurate disclosure of information from overseas entities under domestic law.

We note that the AEC has previously supported a tightening of the law to address the issue, recognising that overseas donations provide “an obvious and easily exploitable vehicle for hiding the identity of donors through arrangements that narrowly observe the letter of the Australian law with a view to avoiding the intention of full public disclosure”.¹

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

¹ AEC Submission JSCEM, 2001.

Misleading and deceptive statements in election materials

At the 8 August 2005 hearing of the Inquiry Senator Murray asked the ALP National Secretary to provide some additional commentary on his proposal for a 'honesty in political advertising clause' in the *Electoral Act 1918*, similar to the one that appears in South Australian legislation.

As members are aware from the original submission from the ALP, we remain concerned that the Liberal Party distributed materials during the 2004 election campaign which carried quotations attributed to the Reserve Bank of Australia and the Australian Bureau of Statistics, even though no quote from these organisations existed.

The relevant section which Senator Murray has referred to is section 113(4) of the *South Australian Electoral Act 1985*. It reads:

Misleading advertising

113. (1) This section applies to advertisements published by any means (including radio or television).

(2) A person who authorises, causes or permits the publication of an electoral advertisement (an "**advertiser**") is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

Maximum penalty:

If the offender is a natural person-\$1 250;

If the offender is a body corporate-\$10 000.

(3) However, it is a defence to a charge of an offence against subsection (2) to establish that the defendant-

(a) took no part in determining the content of the advertisement; and

(b) could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.

(4) If the Electoral Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the advertiser to do one or more of the following:

(a) withdraw the advertisement from further publication;

(b) publish a retraction in specified terms and a specified manner and form,

(and in proceedings for an offence against subsection (2) arising from the advertisement, the advertiser's response to a request under this subsection will be taken into account in assessing any penalty to which the advertiser may be liable).

(5) If the Supreme Court is satisfied beyond reasonable doubt on application by the Electoral Commissioner that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Court may order the advertiser to do one or more of the following:

(a) withdraw the advertisement from further publication;

(b) publish a retraction in specified terms and a specified manner and form.

The ALP recognises that Senator Murray has long campaigned for reform of the *Electoral Act*, based on the South Australian Provisions.

The ALP believes that these provisions have been tested constitutionally in the South Australian jurisdiction, and do not infringe on any implied rights. Similar provisions were introduced to the Commonwealth Parliament in 1995, but lapsed with the federal election of 1996. The current federal government has not sought to reintroduce any legislation in this area. The ALP believes that regulation of electoral advertising is viable, provided that the AEC is resourced to carry out any additional duties. Regulation could take the form of either regulation through guidelines or regulation through legislation.

We believe that if there is to be regulation of this area then it should be through legislation.

The ALP is willing, as a general principle, to consider proposals which would prevent the publication of misleading and deceptive materials, which carry incorrect third party endorsements, subject to scrutiny by our governing bodies and parliamentary party.

How to vote for David Southwick and our environment

HOUSE OF REPRESENTATIVES

(green coloured ballot paper)

- 3 CAMERON, L
- 1** **SOUTHWICK, David** (Liberal)
- 4 BEALE, C
- 7 DANBY, M
- 2 JACKEL, G
- 8 ISHERWOOD, A
- 5 HORIN, L
- 6 LEWIS, J

Number every box from 1 to 8 as shown.

DO NOT use ticks or crosses.

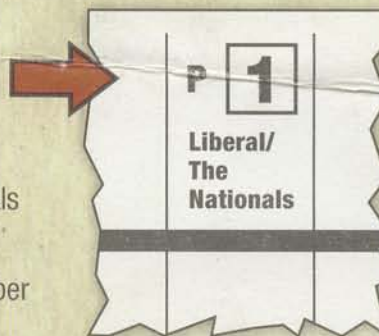
If you make a mistake, please ask for a new ballot paper.

SENATE

(white ballot paper)

Simply place number **1** in the Liberal/The Nationals box above the line.

There is no need to number any other box.






Printed on Recycled Paper

Authorised by Julian Sheezel, (Liberal Party of Australia) 104 Exhibition Street, Melbourne 3000. Printed by Value Printing Solutions, 1/270 Bamba Road, Caulfield South 3162

Vote for David Southwick and our environment



SOME OF THE ENVIRONMENTAL ACHIEVEMENTS OF THE LIBERALS INCLUDE:

-  Acting immediately to ensure that **over 1 million hectares of old growth forest in Tasmania will now be protected** from logging.
-  **Added over 2.8 million hectares to forest reserves, significantly increasing the protection of old-growth forests.**
-  Invested **\$3 billion in the Natural Heritage Trust** to improve the health of our land and waterways, and provided **\$1.4 billion for the National Action Plan for Salinity and Water quality.**
-  **Rezoned the Great Barrier Reef Marine Park** providing for the greatest protected stretch of ocean.
-  **Cutting greenhouse gas emissions.**
-  Phased out leaded petrol, **set and lifted national fuel quality standards** - resulting in cleaner air in our cities.

PLEASE TURN OVER FOR **HOW TO VOTE** DETAILS



I, PAUL H. RUSSELL

of 10 JUPITER ST SOUTH CAULFIELD

in the State of Victoria

do solemnly and

sincerely declare

THAT I WAS BOOTH CAPTAIN AT BIRCH ST SCOUT HALL CAULFIELD STH ON THE 9TH OCTOBER 2004. IN ATTENDANCE 6-15AM - 8-30PM I HAVE WORKED FOR THE LABOUR PARTY FOR TWENTY FIVE YEARS AT BOOTHS FEDERAL AND STATE LEVEL DURING THE DURATION OF THE DAY A FEMALE LIBERAL WORKER WHO WAS DRESSED IN A GREEN TOP AND GREEN CAP WAS HANDING OUT GREEN COLOURED HOW TO VOTE CARDS AND SAYING THE WORDS 'THE GREEN ALTERNATIVE' THIS APPROACH WAS FALSE AND MISLEADING.

THIS FEMALE LIBERAL (GREEN DRESSED) WAS HARASSING VOTERS AND ON TWO OCCASIONS WHEN VOTERS REJECTED HER DECEITFULL CARDS AND LIES THIS LIBERAL FEMALE (GREEN DRESSED) SWORE AT THE VOTERS USING SHOCKING EXPRETTIVES.

I PUT IN SEVERAL COMPLAINTS TO THE CONTROLLING ELECTROL OFFICER ON BEHALE OF FIVE DISGAINTED VOTERS WHO SAID THEY WERE DISCUSDED BY THE LIBERALS DISCEPTION, ATTITUDE, AND BULLYING-TATICS.

FURTHER TO THAT I LODGED ANOTHER NINE COMPLAINTS TO THE ELECTROL OFFICERS ABOUT THE FACT THAT THESE LIBERAL WORKERS WERE ENCRACHING THE BOOTH WAY OF SIX METRES, THEY IN FACT WERE HANDING OUT VOTE CARDS MOST OF THE DAY ABOUT TWO METRES FROM THE DOOR OF THE POLLING BOOTH.

ELEVEN TIMES THEY WERE WARNED TO STAY BEHIND THE LEGAL LINE OF SIX METRES ON THREE OTHER OCCASIONS VOTERS WERE ENGAGED IN VERY VERBAL CONFRONTATIONS WITH THE LIBERAL WORKERS.

WHEN THE SITTING MEMBER MELB PORT 'ARRIVED MR DANBY HE WAS VERBALLY ATTACKED BY TWO LIBERALS THE FEMALE (GREEN DRESSED) AND ANOTHER KNOWN TO ME AS ALEX LEW LIB BOOTH CAPTAIN, THE UNREST, DISCOMFORT, AND DISCUSING MANNER THAT THESE LIBERAL WORKERS DISPLAYED WAS THE WORST DISPLAY I/E EVER SEEN AT A POLLING BOOTH IN TWENTY FIVE YEARS ABSOLUTLY NEGATIVE AND VERY UNPROFESSIONAL.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at St. Kilda in the State of Victoria this 13th day of October in the year of 2004

X Paul Russell

Before me

SOLLY LEW PHARMACEUTICAL CHEMIST 11 MITCHELL STREET, ST KILDA 3189 Telephone: 534 8084

I, DAVID LITTLEWOOD

of 74 PARK ROAD, MIDDLE PARK

in the State of Victoria

do solemnly and

sincerely declare

THAT

On the day of the Federal Election on 9 October 2004 I was handing out How to Vote cards ~~for the~~ from 8 - 10.30 am and 11.30 - 12.30 pm. at the Polling Booth on the corner of Ferraro Place and Park Street, South Melbourne.

During this time a girl wearing a green T-shirt and green baseball cap was handing out green How to vote cards with directions for casting a vote for the Liberal Party. In size, colour and shape these cards were markedly different from the cards being offered by other Liberal Party representatives. They more closely resembled the Greens Party card in appearance.

As the young woman handed out cards she was saying "Vote for the Environment". Several voters to whom I subsequently offered a Greens card said that they already had one. They were clearly misled by the green Liberal Party card.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at Albert Park in the
State of Victoria this 17th
day of October
in the year of 2004

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Before me


Pharmacist

