

**Senate Finance and Public Administration Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Finance and Administration Portfolio**

**Department of Finance and Administration**

Estimates Hearings 14-18 February 2005

**Question: F29**

**Outcome: Australian Electoral Commission**

**Topic: Misleading and deceptive conduct**

**Hansard Page: F&PA 90**

**Senator Brandis asked:**

In the AEC's view, would it be a breach of the 'misleading and deceptive conduct' provisions of the *Commonwealth Electoral Act 1918* to represent "we don't take money from developers" if the political party making that representation deliberately and advertently created a structure so that moneys from developers intended for it were to be donated through a third party?

**Answer:**

No. It is the view of the High Court, as expressed in the decisions of *Evans v Crichton-Browne* (1981) 147 CLR 169; *Webster v Deahm* (1993) 116 ALR 222, that s 329 of the *Commonwealth Electoral Act 1918* only applies to matter that is likely to mislead or deceive a voter in relation to the recording of a vote as distinct from forming a judgment as to the person for whom to vote. For example, this provision would apply to the distribution of an advertisement which misleads an elector about marking a ballot paper and depositing it in the ballot box. In coming to its conclusion in *Evans v Crichton-Browne*, the Court indicated that it would be reluctant to find that s 329 has been breached by conduct that is more appropriately covered by the electoral process.