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Submission No 24

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2 May 2000

Gary Fenlon MLA
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE 4000

Dear Gary

Please find attached the Australian Labor Party's response to your Committee's request of matters relating to political donations and changes to the disclosures legislation.

Yours sincerely

Cameron Milner
STATE SECRETARY

encl

Australian Labor Party

Queensland

Submission to
Legal, Constitutional and Administrative Review Committee

20 April 2000

Overview

The Australian Labor Party maintains a strong commitment to the objectives of the financial disclosure provisions of the *Electoral Act 1992*.[1] The ALP believes that public scrutiny of electoral funding is vital in preventing the corruption of the electoral process.

The Queensland Branch of the ALP firmly supports registered political parties being required to disclose totals of receipts, payments and outstanding loan debts and supports measures to ensure proper disclosure by associated entities. The ALP believes that this requirement is in the public interest and contributes towards ensuring elections in Australia are conducted with fairness with a minimal risk of corruption.

In government, the Queensland Branch of the ALP has demonstrated this commitment through the overhaul in the 1990's of the Queensland electoral system that delivered to the people of Queensland a fair and democratic electoral system.

The opportunity to comment on the operation of the current Queensland electoral system is welcomed by the ALP. The ALP has already taken advantage of a previous invitation to comment in relation to the present inquiry, and appreciates the opportunity to provide further submissions on the topics specified by the Committee.

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[1] *Electoral Act* 1992 (Qld).

1. Annual Returns by Registered Political Parties

A. Form of Expenditure Disclosure

Background

As a result of the 1989 report of the Commonwealth Joint Standing Committee on Electoral Matters, *Who Pays the Piper Calls the Tune*, which addressed the effectiveness of the disclosure provisions of the *Commonwealth Electoral Act*, the JSCEM recommended substantial changes to Commonwealth law to provide for comprehensive disclosure of income and expenditure of political parties and candidates.

These recommendations were legislated by the Commonwealth in 1991[2], with effect from the 1992/93 financial year (which incorporated the 1993 federal election campaign). The provisions were then substantially incorporated into Queensland law in 1994[3] with effect from 1 December that year.

Prior to the enactment of the Queensland scheme, the JSCEM had begun its inquiry into the conduct of the 1993 federal election and quickly established the need to alleviate "the worst of the bureaucratic requirements associated with the annual returns"[4]. The JSCEM had been alerted to the "unintended administrative burden imposed by the new provisions" by all major political parties during submissions.[5]

The Committee tabled an interim report to make early recommendations on the operation of the new disclosure laws. In light of its findings about the operation and efficaciousness of the provisions, the JSCEM urged the government of the day to make recommendations about proposed changes "as soon as possible".[6]

The JSCEM recommendations included a proposed amendment to Division 5A of the *Commonwealth Electoral Act* to provide for political parties to disclose a total amount of expenditure. The Commonwealth government accepted this recommendation and affirmed its commitment to the "essential objective" of minimising the risks of corruption, noting that:

> The Government does not believe ... that this objective is significantly enhanced by the requirement for parties to record and report transactions within set categories ...

The position to be presented by the Queensland Branch of the ALP agrees with findings of the JSCEM's report, and aligns with the support subsequently given by the Commonwealth government of the day to the JSCEM in this regard. The subsequent Commonwealth government then legislated this recommendation by the *Electoral and Referendum Amendment Act (No 1)* to remove the requirement for political parties to report categorised expenditure.

As such, the Queensland Branch of the ALP is also in agreement the submissions made to the JSCEM by federal ALP, and indeed the federal branches of the National Party of Australia and the Liberal Party of Australia, in submitting that the administrative burden loaded onto registered parties by the requirement to provide catergorised expenditure outweighs the public value of disclosure of categorised expenditure.[7]

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[2] *Political Broadcasts and Political Disclosures Act* 1991 (Cth).
[3] *Electoral Amendment Act* 1994 (Qld).
[4] JSCEM, The 1993 Election: Interim Report (Financial Reporting by Political Parties), 1994, p 3.
[5] JSCEM (1994) p 2.
[6] JSCEM (1994) p 3.
7 JSCEM (1994), p 2-3.

The Argument of the Electoral Commissioner

At present the Queensland legislation[8] requires expenditure to be divided into six categories, namely:

- Expenditure on capital assets,
- Expenditure related to the sale of goods or provision of services,
- Expenditure on wages and salaries of staff,
- Expenditure on advertising or public relations,
- Expenditure on affiliations, donations and gifts,
- Expenditure on administration, including expenditure on consultants and opinion polling.

In addition, the sum of all other amounts expended must also be disclosed.

The Queensland Electoral Commissioner suggests that the Commonwealth legislation does not provide the public "with meaningful information relating to ... expenditure incurred".[9] In contrast, the Commissioner supports the retention of categorised reporting of expenditure in Queensland.

The Argument of the ALP

The ALP's submission firstly draws into question the meaningfulness of the information provided by the categorised reporting requirements, and secondly and cumulatively, argues that the resource burden required by the scheme significantly outweighs the ambiguous public benefit to be derived from disclosure of the information.

In our assessment, the public benefit obtained from this artificial breakdown is significantly disproportionate to the bureaucratic effort needed by political parties to comply with the requirements of the legislation.

The ALP submits that this categorisation provides the public with a rudimentary, and somewhat artificial, analysis of expenditure. We would draw into question the meaningfulness of the information distilled by the disclosure process, and – as opposed to the Electoral Commissioner – argue that the information generated by the disclosure provisions may actually significantly mislead the public about the activities of political parties, rather than promote transparency.

The information produced by the categorisation is of questionable usefulness given the significant issues involved in dividing complex arrangements among six basic headings of expenditure. The ALP submits that the categorisation is problematic, with the end result being the provision of categorised totals which do not properly reflect the intent of the schema and are therefore of little public benefit.

To support this argument, the ALP would draw attention to the following issues:

- Consultants engaged to sell a range of goods, for example promotional products commemorating a particular event, and required by the project to conduct a marketing campaign to sell the goods raise the question as to whether the expenditure should be included in the second, third or sixth category.
- To comply fully and accurately with second category – expenditure relating to the provision of services and the sale of goods – political parties would presumably need to implement internal

8 S 314 AB (1) (b) *Electoral Act* 1992 (Qld), s 5 (3) *Electoral Regulation* 1992 (Qld).
9 DJ O'Shea, Letter to Legal, Constitutional and Administrative Review Committee, 25 October 1999.

commercialised business units to separate relevant expenditure from general administrative and staff expenditure.

- An internal management decisions about employing additional full-time staff as opposed to engaging consultants to perform essentially the same functions can distort the information provided between the third category relating to wages and salaries and the sixth category relating to expenditure on consultants.

These situations are by no means the only circumstances that present problematic issues for political parties in their attempts to comply with the disclosure provisions as they stand.

The ALP submits that these resources are expended on preparing information which adds little value to the broad public benefit derived from disclosure of total receipts and expenditure. In making this argument, the ALP notes the comments of the JSCEM about the Commonwealth law on which the Queensland scheme is modelled:

> It is not the intention of the disclosure provisions that unnecessary bureaucracy be created and that political parties be effectively "defunded" – but that is a consequence [of the scheme].[10]

The ALP therefore urges the Committee to consider the administrative burden placed upon political parties by the practical operation of the disclosure provisions in proportion to the public benefit derived from the provision of arbitrary categorised expenditure totals. Any clear assessment of the questionable benefit derived as against the resources required to be expended in efforts to reach compliance results in a conclusion that the law should be amended.

> **In accordance with the spirit of the original legislation and in cognisance of the practical effect of the current scheme, the ALP recommends the legislation be amended to require political parties to provide total expenditure figures in annual disclosure forms.**

B. Threshold Levels

The Queensland Branch of the ALP concurs with the proposal by the Queensland Electoral Commissioner[11] to increase the threshold level for counting individual receipted amounts from individual entities to $1500, in accordance with recent amendments to the Commonwealth legislation.[12]

The ALP believes that the $1500 threshold is a proper community standard, above which receipts should be disclosed.

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[10] JSCEM (1994) 3.
[11] DJ O'Shea (1999) p 8.
[12] *Commonwealth Electoral Act* 1918 (Cth) s 314AC (2).

2. Loans to Parties and Candidates

The Queensland Electoral Commissioner[13] has indicated a preference to leave a decision to government about the replication of recent Commonwealth amendments[14] in relation to loans to political parties.

As a key stakeholder in this legislation, we would take up the opportunity afforded by the invitation of the Queensland Parliamentary Legal Constitutional and Administrative Review Committee to make comment on this issue. The Queensland Branch of the ALP would take the view that in order to maintain the operational efficaciousness of the legislation, the recent Commonwealth amendments in this area should be substantially reproduced in the Queensland legislation. The ALP takes the view that the disclosure provisions of the legislation should ensure that registered political parties are required to properly disclose their financial position, and are not able to artificially structure their affairs so as to circumvent the requirement to provide public disclosure of their funding sources.

The ALP submits that the relevant Commonwealth provisions inserted to prevent registered political parties obtaining non-commercial loan arrangements from favourable entities to disguise what would otherwise be a disclosable donation. For example, without amending the legislation a political party could obtain a loan of, say, $1 000 000 from a favourable entity on terms of 99 years, at interest of $100 per year, with the principal payable at the conclusion of the loan agreement. In substance, of course, such a 'loan' would clearly amount to a donation and should be disclosed as such. The recent Commonwealth amendments ensure that such arrangements are properly disclosed.

Similarly to the provisions regarding other receipts, the ALP agrees with the practicality of applying these provisions to amounts above $1500.[15]

In accordance with the intention of the legislation to ensure registered political parties are obliged to disclose sources of income, the ALP supports the insertion of an amended definition of "Amount" in the Queensland legislation to ensure registered political parties must fully disclose their financial position and are not able to circumvent disclosure provisions through artificial structuring of their affairs.

3. Definition of Associated Entity

The Queensland Branch of the ALP concurs with the proposal by the Queensland Electoral Commissioner[16] to amend the definition of "Associated entity" to reflect recent amendments to the Commonwealth legislation.[17]

The amended Commonwealth legislation defines an entity as an "associated entity" for the purposes of the Act if the nature of their activities operates for the benefit of one or more registered political parties "to a significant extent" as opposed to the previous definition which required proof of an entity acting "wholly or mainly" for the benefit of one or more political parties.

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[13] DJ O'Shea (1999) p 8

[14] *Commonwealth Electoral Act* 1918 (Cth) s 314AA (1), effected by the *Electoral and Referendum Amendment Act (No 1)* 1999 (Cth).

[15] *Commonwealth Electoral Act* 1918 (Cth) s 306A, effected by the *Electoral and Referendum Amendment Act (No 1)* 1999 (Cth).

[16] DJ O'Shea (1999) p 8.

[17] *Commonwealth Electoral Act* 1918 (Cth) s 314AC (2).