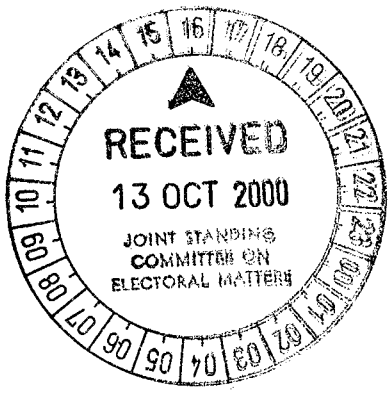

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The Secretary
Joint Standing Committee on Electoral Matters
Parliament House
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In response to your advertisement inviting contributions on the Commonwealth Electoral Funding and Disclosure system (the system) in the newspaper 'The Age' on 9 September 2000, I, as a private citizen, and not in any official role whatsoever, make a submission for the Committee's consideration.

The reason behind my submission is while a very healthy funding scheme has evolved, disclosure demands have been weakened by excuses of "simplified and streamlined requirements" to an extent that the system is fundamentally flawed allowing full disclosure to be easily and legally avoided.

As the Electorate approaches another anniversary of political financial transaction disclosure it would not be unrealistic for the community to expect that the system should operate efficiently and ethically. It is disappointing that the system has not achieved its vision of "minimising the risks of funding political campaigns" as set out in the 1989 report to Parliament *Who pays the piper calls the tune.*

Public funding of elections is a perfect example of how the adversarial system of politics, which is supposed to ensure oppositions keep governments on their toes, breaks down over matters of mutual self interest. We have witnessed a dramatic rate rise for electoral funding with an equally dramatic drop in the incidence of disclosure. I believe it is time to correct this disservice of the Electorate and the Australian people.

By way of history, it is important to understand that one of the visions of public funding was to stop the need for corporate and individual support of parties so that an individual or corporation could not buy undue political influence. This has not happened and there is evidence to suggest that corporate and individual financial support for parties has grown along with public funding. Annual returns show that Australian political party receipts for the 1998/99 financial year (an Election year) totalled $130 million.

In the 1984 election public funding totalled $7.8 million. By 1993 it had doubled to $14.9 million. In 1995 the Parliament changed the rules so much so that the pot increased to $32.2 million for Election '96 and $34.1 million in Election '98. An Election held in the second half of 2001 will see the Australian Electoral Commission (AEC) distribute $40 million of taxpayer money to political parties and independent candidates. With the passing of the Commonwealth Electoral Amendment Bill and the tightening of the rules for the registration of political parties, the major parties have ensured themselves of an increased windfall. What can the Electorate expect to receive for their investment?

It is reported that for the 1998/99 financial year political party receipts amassed $61 million for the ALP, $49 million for the Liberal Party, and $10 million for the Nationals. These receipts are not necessarily donations per se, and give the first indication of the failings of the system for those that do actually comply.

Some years ago the Federal Labor and Liberal party organisations convinced the Legislators that the laws governing donations and spending were an administrative nightmare. The Legislation has now been overhauled to the extent that it is impossible in many instances to identify donations on an annual return. Added to the "administrative nightmare" political parties claimed that party volunteers were intimidated by the Legislation. Today expenditure is listed simply as a gross figure amount and disclosed donations are hidden amongst a plenitude of receipts.

While the AEC strives to improve the integrity of the system as evidenced by the Funding and Disclosure Reports of 1996 & 1998, it should be asked what value is there in tinselling a flawed system? Why put minor controls on a system that can be, and in some instances is completely circumvented?

I believe that reports to Parliament suggesting amendments give the public a false impression that the system is achieving its ideals and goals, and is continually being enhanced. The real situation belies this as little progress has been made with the spirit and vision of the Legislation being continually eroded. It is a fact that some parties will go to great lengths to avoid public disclosure.

There is no correlation between the penalty provisions of the Act and the disservice to the Australian people. The insignificant penalties for breaches of the Act are little deterrent to anyone with something to gain by circumventing the system. The Liberal Party admitted in a recent submission (to the JSCEM) proposing that the disclosure threshold be raised to $10,000 as the budgets of political parties are in the millions. The penalties prescribed in the Act must be made realistic.

While the penalty provisions need to be made more contemporary there is also a need to remove that administrative burden of the AEC in trying to enforce them. A breach can involve expensive and lengthy investigation and legal work. Provision should be made for automatic administrative penalties for blatant breaches of the Act.

Most annual returns are released for public disclosure on the first working day of February each year prior to a compliance check. Compliance checks occur progressively after, and sometimes, as can be expected in the operation of a three year audit cycle, as long as two and a half years after they are placed on the public record.

This system of checking, together with the large number of amendments received after the February public disclosure points to inaccurate annual returns being released for public scrutiny on the first working day of February. Additional to the many amendments received, it can be proved that some parties and some persons have acted outside the spirit, actively seeking to circumvent the Electorate's expectation that political parties have to disclose. Increasing knowledge of loopholes has seen these instances of non-compliance escalate.

The privacy interests of donors must be made subordinate to the obligation that political parties and independents have to the Electorate. What is it that corporate donors think they are buying when they hide behind paper trusts, or just blatantly split donations? As parties become greedier, and more reliant on donations from corporations and other persons, how many tunes can the piper be expected to play? What protection does the Electorate receive against the donation dollar?

The secret political donations scandal in the United States that has embroiled their administration should send a clear message to our Legislators about the need to be transparent. Australia was rated 13th (United States 14th) out of 90 countries on the 2000 Corruption Perceptions Index of Transparency International. The Australian Electorate has a right to know the true source of funding of any persons elected to Parliament.

It is not only political parties that need to disclose, but all persons, as one politician may hold the balance of power and therefore be able to negotiate or obtain Parliamentary endorsement for a particular concession. Some Australians are alarmed at the disquieting alliance between the parties and corporations and large organisations while others are concerned at the control of these parties by privileged minorities. The Legislators have an obligation to ensure transparency in Government.

It can be proved, and the AEC has confirmed in its 1998 Report, that there are continuing instances of donation splitting to avoid disclosure. It can also be proved that some parties, and some persons (acting on behalf of parties) actively seek donations at, or immediately below the threshold of $1,500. What is to stop a donor giving many amounts below the threshold? In a similar vein, the Legislation on anonymous donations only ascribes the limit to an individual transaction. This does not guard against a series of anonymous donations below the threshold from the same entity.

A number of parties submit amendments to annual returns after 1st February. The Electorate remains unaware and misinformed. Do parties submit amendments after the Legislation inspection date to avoid close scrutiny of some of their donors?

History has shown that reforms governing disclosure are only effective for as long as it takes for some accountants, lawyers and and/or political parties to discover ways to circumvent or ignore them. The offences penalties currently scheduled under the Act are no deterrent. It is accepted that there is a deterrent of a perceived threat, or chance, of unfavourable publicity for a political party. Given the restrictive ownership of media in Australia this is a questionable restraint. Penalties need to be legislated that take the option out of any covert activity in the system.

Australia must realistically legislate against political fraud in the system and to ensure continued democracy and enable our elected members to govern unencumbered. Complete disclosure should be made a strict condition for parties and independents receiving public electoral funding. This must be non-negotiable. There should be no argument, the Electorate has a right to know who is funding politics in Australia. The parties and independents need to be accountable for money they receive from the taxpayer.

While expecting political parties, associated entities and individuals to comply within the full letter of the law, much of the information gathered at a compliance investigation may be sensitive, commercial in confidence, or integral to a platform for an upcoming election. Protection for political parties, witnesses and investigators must be assured. All information, or documentation obtained during a compliance investigation should be exempt from being obtained by any other person under the Freedom of Information Act.

In the light of my submission, the following recommendations are made:

1. Independent candidates elected to the Australian Parliament are subject to similar Legislation as political parties, with the requirement to lodge an annual return of income and expenditure for political purposes.

History has shown that independents in the Australian Parliamentary sphere can wield immense power. The Australian Electorate is entitled to know of any influences that an independent member may be under.

2. Political parties, associated entities and independents be required to identify donations separately from other receipts.

If this recommendation is accepted it is important not to revert to the time when disclosure legislation was first introduced and a significant amount of party income was not disclosed, as it was not classified as donations. In fact, it was deemed that money given to parties for administrative purposes did not require disclosure. This loophole allowed money received for non-election related purposes to free up other income to be used for election purposes. So while donations need to be identified, it is important to disclose all receipts.

3. Late or amended annual returns received from political parties, associated entities and/or independents are subject to an AEC media release.

This would involve the AEC informing the media of the receipt of any late or amended return. The information release should include brief details and state that the late or amended return is publicly available. This recommendation will negate any advantage that a political party or associated entity might gain by submitting details after the February date of public examination.

4. An automatic administrative fine of $10,000 is payable by political parties, associated entities and independents who fail to lodge their annual returns by the due date.

Returns lodged after 20 October are in breach of the Act. Late returns frustrate the AECs ability to inspect selected annual returns before the public disclosure day in February. Some major political parties manage to lodge annual returns within the timeframe each year (including election years), others are perennially late. Everyone has 4 months after the end of the financial year to prepare their annual returns and contempt of the Legislation appears the reason why some parties have not been willing to fit into this timetable.

Why should persons who continually lodge late or incomplete returns be able to get away with this breach of the Act, frustrating the AEC schedule of investigation while others comply within the precepts of the Act?

There is no provision, nor should there be, for an extension under the Act. Persons who lodge late or incomplete annual returns should be made accountable for their action.

5. A $1,000 fee is charged to amend an annual return.

This will act as a deterrent for parties that seem to be happy to lodge a return by the due date in the full knowledge that they will amend at a later time. Amendments to returns frustrate the AEC's ability to audit, especially during what should be a critical audit period, October – February each year.

6. For anonymous donations, the Legislation set an aggregate limit of $1,500 above which any excess becomes a debt repayable to the Commonwealth.

The current Legislation on anonymous donations only ascribes the limit to an individual transaction and does not guard against a series of anonymous donations below the threshold from the same (anonymous) entity.

7. Legislation be drawn up to ensure that any de-registered parties and/or defunct associated entities remain subject to a compliance investigation for up to 3 years after their de-registration or cessation of business.

The cycle is 3 years, so that should be the figure. Most annual returns are released for public disclosure on the first working day of February each year prior to a compliance check. Compliance checks occur progressively after, and sometimes, as can be expected in the operation of a three year audit cycle, as long as two and a half years after they are placed on the public record.

8. A party found to be knowingly guilty of avoiding detailed disclosure be de-registered.

Non disclosure is simply the betrayal of trust or confidence that the Australian people should be able to expect from their political leaders. Any party that willingly and knowingly lodges an inaccurate annual return should be removed from the register.

9. Associated Entities guilty of avoiding disclosure be subject to a fine of not less than $100,000. Furthermore, the registered political party, which receives benefits from the associated entity, be asked to show cause why it should not be removed from the Register of Political Parties.

To knowingly lodge an inaccurate return is fraud. Any person guilty of submitting any such return, or found to be an accessory of an intentional breach, should be dealt with by the full impact of the law.

10. Documents obtained, interviews, working papers and reports made by the AEC during a Compliance Investigation under Part XX of the Commonwealth Electoral Act (1918) be exempt from release to a third party under the Freedom Of Information Act.

Under Section 316 of the Act officers of the AEC, and indeed any person having been served a notice to give information and/or produce documents, should be able to confidently and confidentially give information, have such information recorded on working papers, and/or produce/surrender documentation, without fear of any details of the investigation being obtained by another person.

SUMMARY:

Although disclosure is not accepted as a core function of persons involved in politics in Australia, the fact is, to ensure electoral probity, disclosure must become a core responsibility. The Australian Electorate have a right to demand transparency in Government and expect to be able to examine fully detailed political transactions, the political parties and persons involved in Australian politics must be legally bound to provide this, and the Australian Electoral Commission legally empowered to enforce it.

To have Legislation which does not effectively enforce full and accurate disclosure is no better than not having disclosure legislation at all. The bottom line is, does the JSCEM of the 39th Parliament endorse a fraudulent system, or does the JSCEM make some instantly unpopular, but totally ethical decisions to ensure the future democracy of Australia?

Chris Morris
13 October 2000