



Ms Christine McDonald
Committee Secretary
Senate Standing Committees on Finance and Public Administration
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Original by email: fpa.sen@aph.gov.au

Dear Ms McDonald

Correction of evidence

I am writing to correct my response to a question asked during the Budget Estimates Hearing of the Senate Finance and Public Administration Committee, on Tuesday 14 February 2012.

During the hearing Senator Ryan sought advice concerning the contents of a "Donor to Political Party Disclosure Return – Individuals" signed by Mr Graeme Wood on 3 November 2011 for the 2010 – 2011 financial year. In particular, Senator Ryan sought advice on the source of the annotations that appeared at page 2 of this return which split up the amount of the donation made by Mr Wood to the Australian Greens as follows:

14/07/2010	\$1,469,619.00
11/08/2010	99,000.00
16/11/2010	112,176.00

I advised the Committee that the above information and the annotation was contained on this Donor Return when it was received by the Australian Electoral Commission (AEC) and that this had been done by Mr Wood. I had specifically checked this aspect of the Donor Return prior to the Committee hearing and this was the basis for the evidence that I provided on 14 February 2012.

I have since ascertained that the information I provided to the Committee was incorrect and, accordingly, I wish to correct the advice that I gave to the Committee. It now transpires that this annotation was made by a former AEC officer on 21 November 2011 following a telephone conversation with Mr Wood.

I became aware of this matter on the evening of 15 February 2011 and caused Mr Wood to be contacted to verify the new advice that I was given. Mr Wood responded in an email dated 16 February 2011 in which he verified that the contents of the annotations contained on the Donor Return that has been published by the AEC are accurate and were based on information that

he provided during a telephone call with the former AEC officer on 21 November 2011.

I apologise to the Committee for the incorrect advice given.

To explain what took place on 21 November 2011 it is necessary to provide the Committee with details of the processes contained in Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) and the systems within the AEC that deal with the receipt and lodgement of Donor Returns.

In relation to Donor Returns, subsection 305B(3) of the Electoral Act requires that the return must set out certain specific details including "the amount of the gift" and "the date on which it is made".

The Donor Return that was received from Mr Wood set out the total amount of the "gift" being the amount of \$1,680,795.00. However in relation to the date on which the "gift" was made, the Donor Return only included the timeframe of "July – Nov 2010".

The systems that operate in the AEC for the lodging and receipt of Donor Returns include an examination of each Return to see that the information is internally consistent and contains the requisite information for each "gift" as set out in section 305B of the Electoral Act. The AEC systems also contain the facility to record the contact that is made with each person who has an obligation to lodge a Return so that there is a contemporaneous record of each contact that can be used, if necessary, in enforcement proceedings under section 315 of the Electoral Act.

The Donor Return from Mr Wood was received by the AEC on 8 November 2011 prior to the due date of 17 November 2011. The Donor Return from Mr Wood was processed on 21 November 2011 at which time it was identified as being deficient in relation to the issue of the date of each "gift" not being specified.

Subsection 319A(1) of the Electoral Act contains the power for a delegate of the Electoral Commissioner to amend a Return to correct a "formal error" or a "formal defect". General guidance is provided in the exercise of this power based on an assessment of whether the error or defect is minor or major. Minor defects include such matters as defects in relation to addresses and phone numbers, in addition to errors such as spelling mistakes and incorrect company names. Major defects include matters such as missing donations, donation amounts being incorrectly recorded, and other defects of a material nature given the policy behind the disclosure scheme contained in Part XX of the Electoral Act. The issue of incomplete dates is not addressed in the existing general guidance to delegates.

In relation to the Donor Return lodged by Mr Wood, the AEC officer processing the Return apparently formed the opinion that the failure to specify the specific dates on which each "gift" was made and to merely include a date range amounted to a "formal defect" which could be addressed by the

exercise of the power contained in subsection 319A(1) of the Electoral Act. I have used the word "apparently" as the former AEC officer failed to record the details of the contact with Mr Wood in the AEC systems (as is required by standing AEC instructions) so that there is no contemporaneous record of the actual contact made on 21 November 2011. The email from Mr Wood dated 16 February 2012 which verified that contact has now been entered into the AEC systems to provide the necessary audit trail.

This incident has led to a review of the processes within the AEC for dealing with Donor Returns. In particular, the delegations made by the Electoral Commissioner under subsection 319A(1) of the Electoral Act have been reviewed to ensure that this power is only exercised by experienced and senior officers at Executive Level 2 and above. In addition, a formal review will also be undertaken of our internal general guidance to delegates of the Electoral Commissioner concerning the circumstances where it may be appropriate to exercise the power in subsection 319A(1) as opposed to requiring the person to lodge an amended Donor Return.

I trust that the above information is of assistance to the Committee and once again apologise for the incorrect advice that I gave about this Donor Return on 14 February 2012.

Yours sincerely

Paul Pirani
Chief Legal Officer

17 February 2012