

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Budget Estimates Hearing – May 2009

Australian Electoral Commission

Finance and Deregulation Portfolio

Outcome: General, Program: General

Topic: Donation to the ALP

Question reference number: F59

Type of Question: Hansard F&PA 52, 28 May 2009

Date set by the committee for the return of answer: 10 July 2009

Number of Pages: 3

Senator Ronaldson asked:

Senator RONALDSON—Are you aware that, according to the *Age*, it was stated that this large union donation to the ALP's election war chest was explicitly contingent upon a promise from the Prime Minister to eliminate the ABCC?

Mr Pirani—I am aware that was stated in that media report, yes.

Senator RONALDSON—Did you investigate that?

Mr Pirani—I was not aware that there was any allegation of a breach of the Electoral Act that would have given me grounds to investigate it.

...

Mr Pirani—Can I take that on notice, and I will reread the article. I can advise you that at this stage I have not conducted an investigation into that issue.

Answer:

The Australian Electoral Commission (AEC) has advised that it was aware of the article in *The Age* newspaper of 2 May 2009. The article is by Professor Allan Fels and Fred Brenchley entitled "Unions feel buying Rudd's grace, favour easy as ABCC".

The article stated, in part, that:

"The state secretary of the Electrical Trades Union, Dean Mighell, and the state secretary of the Construction, Forestry, Mining and Energy Union, Bill Oliver, exposed an ugly side of union-ALP relations when they went public on how they handed over union donations of about \$500,000 to the ALP before the 2007 election.

They claim they bought a policy promise — the end of the ABCC — but Rudd has failed to deliver. "We decided we wouldn't actually hand over the money until we had assurances that the horrible Building and Construction Commission, that imposes such terrible laws on Australian construction workers, was abolished, and that was the trigger and the money was handed over," Mighell said on the ABC's *World Today*. The CFMEU is now threatening to stop support for Rudd at the next election."

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Section 326 of the the *Commonwealth Electoral Act 1918* (the Electoral Act) provides as follows:

- “(1) A person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind, whether for the same or any other person, on an understanding that:
- (a) any vote of the first-mentioned person;
 - (b) any candidature of the first-mentioned person;
 - (c) any support of, or opposition to, a candidate, a group of candidates or a political party by the first-mentioned person;
 - (d) the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector; or
 - (e) the order in which the names of candidates nominated for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper;
- will, in any manner, be influenced or affected.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) A person shall not, with the intention of influencing or affecting:
- (a) any vote of another person;
 - (b) any candidature of another person; or
 - (c) any support of, or opposition to, a candidate, a group of candidates or a political party by another person;
 - (d) the doing of any act or thing by another person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector; or
 - (e) the order in which the names of candidates for election to the Senate whose names are included in a group in accordance with section 168 appear on a ballot paper;

give or confer, or promise or offer to give or confer, any property or benefit of any kind to that other person or to a third person.

Penalty: \$5,000 or imprisonment for 2 years, or both.

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- (3) This section does not apply in relation to a declaration of public policy or a promise of public action.”

The AEC has examined this matter and advised that it has formed the view that there is no prima facie evidence of any breach of the requirements of section 326 of the Electoral Act. The AEC notes that the material contained in the article would not be admissible in a criminal court. However, even if the material in the article was capable of disclosing that the matters in subsection (1)(a) to (e) would be influenced or affected or an intention of influencing or affecting any of the matters in subsections 2(a) to (e), there would also need be consideration of whether this matter falls within subsection (3), ie that the matter is in relation to a declaration of public policy or a promise of public action. From the limited information in the article it appears that the policy announcement referred to in the article is likely to fall within subsection (3). The AEC’s view has also been confirmed in preliminary advice from the office of the Commonwealth Director of Public Prosecutions.