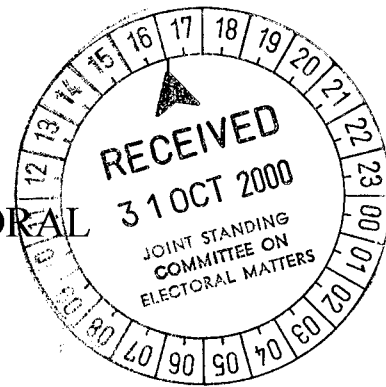


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PARLIAMENT OF AUSTRALIA
JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS

FUNDING AND DISCLOSURE INQUIRY

**Australian Democrats Submission
October 2000**

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1 AEC RECOMMENDATIONS: 1996 and 1998

The Democrats have reviewed the AEC's recommendations on funding and disclosure, and our comments are recorded below.

The Australian Electoral Commission makes 18 recommendations in its 1996 *Funding and Disclosure Report* and 16 recommendations in its 1998 *Funding and Disclosure Report*, 34 recommendations in total.

AEC 1996 FUNDING AND DISCLOSURE REPORT

Recommendations previously addressed

Of the 18 recommendations in the AEC's 1996 *Funding and Disclosure Report* recommendations **10, 11, 13, 14 and 15** have been addressed as follows:

- Recommendation 10 [96-10] (empowering the AEC to ascertain the status of an organisation in terms of disclosure obligations) has been incorporated into the Act¹;
- Recommendation 11 [96-11] of the AEC's 1996 Report (restricting MPs to lending their names to only a single political party for registration purposes) is included as an option in Recommendation 15 [98-15] of the AEC's 1998 Report;
- Recommendation 13 [96-13] (proposing the payment of a \$500 fee for registration and change of details by political parties) is addressed by Recommendation 51 of the JSCEM's 1998 Federal Election Report²;
- Recommendation 14 [96-14] (proposing restricting the use of registered abbreviations of political parties) is addressed by Recommendation 53 of the JSCEM's 1998 Federal Election Report³; and

¹ Section 316(3A), *Commonwealth Electoral Act 1918*.

² Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 51, p. 137.

³ Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 53, p. 139.

- Recommendation 15 [96-15] of the AEC's 1996 Report (streamlining deregistration procedures by making the procedures for deregistering a parliamentary party the same as for a non-parliamentary party) may become redundant if Recommendation 15 [98-15] of the AEC's 1998 Report is accepted.

Recommendations requiring consideration

The recommendations of the AEC's 1996 *Funding and Disclosure Report* that require consideration are:

- [96-1] Recommendation 1 (election funding payments to be made in the registered name of the party).

The Democrats **support** AEC funding cheques being made out to the registered political party, and not to individual officers of the party. Further AEC cheques should not be made out to corporations if such corporations are not authorised by all the members of a political party by resolution to receive that funding.

- [96-2] Recommendation 2 (extending the deadline for appointment of candidate and Senate group agents).

The Democrats **suggest** that instead of nomination of agents being automatically extended from the close of nominations to the close of polls, that it may be preferable to still encourage early nomination of agents, but give the AEC discretion to receive nominations up until the close of polls.

- [96-3] Recommendation 3 (disclosure threshold for donations to candidates be raised to \$1000).

At present the disclosure level is \$200 for individual candidates and \$1000 for Senate groups. The Democrats **believe** that the disclosure level (whatever that may be) for individual candidates and groups should be the same.

- [96-4] Recommendation 4 (disclosure threshold for electoral expenditure by third parties be raised to \$1000).

The Democrats believe that third parties should be treated as we have **suggested** for recommendation 3.

- [96-5] Recommendation 5 (donations to be identified separately from other receipts in the annual returns of political parties).

The Democrats **agree** that political party income should be separately identified from donations to political parties, but that both categories should have disclosures required within them as deemed necessary.

- [96-6] Recommendation 6 (political party annual returns be accompanied by an accredited auditor's report).

The Democrats have **sympathy** with this recommendation, but would prefer that the AEC conduct audit or require an audit to be conducted when they believe it necessary or appropriate.

- [96-7] Recommendation 7 (failure to lodge a disclosure return within 12 months of its due date to lead to possible deregistration of that party).

The Democrats have **sympathy** with this recommendation, subject to sufficient notice having been provided by the AEC to comply with the lodgement of returns. Since deregistration means that a political party may not re-register until after the next general election, it may be better to consider a minimum period for which registration is suspended and not ended.

- [96-8] Recommendation 8 (thresholds for recovering anonymous donations be identical to the disclosure thresholds).

The Democrats **support** this recommendation.

- [96-9] Recommendation 9 (revising the definition of an anonymous donation to name and address not being known at the time of disclosure).

The Democrats **support** this recommendation.

- [96-12] Recommendation 12 (preventing multiple party registrations by restricting a person to holding only one appointment as a Registered Officer at any one time).

The Democrats **support** this recommendation.

- [96-16] Recommendation 16 (tightening voluntary deregistration procedures by requiring the secretary of the party to be one of the three applicants for deregistration of a non-parliamentary party).

The Democrats **support** this recommendation, but **suggest** that for secretary be substituted more than one alternative, such as the National President or the Registered Officer.

- [96-17] Recommendation 17 (allowing the AAT to review all AEC deregistration decisions).

The Democrats **support** this recommendation.

- [96-18] Recommendation 18 (allowing the AEC to continue its administrative process in relation to party registration during an election period).

The Democrats **support** this recommendation.

AEC 1998 FUNDING AND DISCLOSURE REPORT

Recommendations previously addressed

Of the 16 recommendations in the AEC's 1998 *Funding and Disclosure Report* recommendations 13, 14, 15 and 16 have been addressed as follows:

- Recommendation 13 [98-13] (authorising the AEC to conduct reviews of the continuing eligibility of registered political parties) is addressed by Recommendation 54 of the JSCEM's 1998 Federal Election Report ⁴;
- Recommendation 14 [98-14] (expanding the definition of a party member) is addressed by Recommendation 50 of the JSCEM's 1998 Federal Election Report ⁵;
- Recommendation 15 [98-15] (revising the eligibility criterion for registration of political parties) is addressed by Recommendation 49 of the JSCEM's 1998 Federal Election Report ⁶; and
- Recommendation 16 [98-16] (provide the AEC with the authority to set standard, minimum rules for political parties) is addressed by Recommendation 6.8 of Senator Bartlett's and Senator Murray's *Minority Report* of the JSCEM's 1998 Federal Election Report ⁷.

⁴ Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 54, p. 140.

⁵ Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 50, p. 136.

⁶ Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 49, p. 136.

⁷ Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Recommendation 6.8 of Senator Bartlett's and Senator Murray's Minority Report, pp. 177-8.

Recommendations requiring consideration

The recommendations of the AEC's 1998 *Funding and Disclosure Report* that require consideration are:

- [98-1] Recommendation 1 (requiring disclosure by donors to Senate groups with a threshold of \$1000).

The Democrats **believe** that the disclosure level (whatever that may be) for individual candidates and groups should be the same.

- [98-2] Recommendation 2 (amending the requirement for disclosure by third parties).

The Democrats **support** this recommendation.

- [98-3] Recommendation 3 (abolishing disclosure by broadcasters and publishers).

The Democrats **support** this recommendation.

- [98-4] Recommendation 4 (requiring final disclosure returns by deregistered parties).

The Democrats **support** this recommendation.

- [98-5] Recommendation 5 (introducing penalties to improve record keeping standards).

The Democrats **support** this recommendation.

- [98-6] Recommendation 6 (clarifying the definition of associated entity).

The Democrats **support** dot points one and three of this recommendation but **believe** that dot point two is too generous.

- [98-7] Recommendation 7 (prohibiting receipt of anonymous donations by associated entities).

The Democrats **support** this recommendation.

- [98-8] Recommendation 8 (payment of a guarantee to be deemed a gift).

The Democrats **support** this recommendation.

- [98-9] Recommendation 9 (increasing the threshold for disclosure of gifts received by donors to political parties in making their donations)⁸.

The Democrats **support** this recommendation.

- [98-10] Recommendation 10 (two or more gifts from the same source which together exceed the threshold to be included in the threshold at which donors are required to disclose).

The Democrats **support** this recommendation.

- [98-11] Recommendation 11 (compliance audits of donors above a predetermined threshold).

The Democrats **support** this recommendation but believe that an auditors certificate could be accepted at the AEC's discretion rather than having to do an audit themselves.

- [98-12] Recommendation 12 (contingent liabilities to be treated the same as current debts for disclosure purposes).

The Democrats **support** this recommendation.

⁸ See also recommendations 44 and 45 of the Joint Standing Committee on Electoral Matters *Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, pp. 128-9

2 DEMOCRAT RECOMMENDATIONS: JSCEM 1998 REPORT

For ease of reference we repeat some of the Democrats' recommendations on funding and disclosure from the JSCEM Report into the 1998 election.⁹

Chapter 5: Other issues

Funding and disclosure

Disclosure

We dealt with funding and disclosure issues at length in our Minority Report on the 1996 election. These remarks are additional to much of those, but are continuous.

Even although tightened disclosure regulations were introduced under the 1984 *Commonwealth Electoral Legislation Amendment Act*, stricter measures have been required because of continuing concern about the unethical problems arising from ongoing disclosure avoidance. It sometimes seems as if reforms governing disclosure are only effective for the amount of time it takes for some accountants, some lawyers and some political parties to discover ways to circumvent or ignore them.

It is essential that we have a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure. The recommendations in the Main Report do little to address this. The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in the formulation or execution of public policy. But the side benefits of such accountability are a revival of faith in the integrity of the political system amongst the wider public, and the protection of politicians from the undue influence of donors.

Some political parties, in seeking to preserve the secrecy surrounding some of their funding, claim that confidentiality is essential for donors who do not wish to be publicly identified with a particular party. But the privacy considerations for donors, although in some cases perhaps understandable, must be made subordinate to the wider public interest of an open and accountable system of government. Further, if donors have no intention of influencing policy directions of political parties, they would not be dissuaded by such a transparent scheme.

Recommendation 6.1

Additional disclosure requirements to apply to Political Parties and Candidates: Any donation of over \$10000 to a political party should be disclosed within a short period to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return.

⁹ Pages 173-176.

One of the key screening devices for hiding the true source of donations is the use of Trusts. The AEC¹⁰ has dealt with some of these matters in Recommendations 6-8 concerning associated entities. The Labor Party¹¹ has given in-principle support to some of the AEC's recommendations, which the Democrats welcome.

The Democrats continue to recommend strong disclosure provisions for trusts.

Recommendation 6.2

Additional disclosure requirements to apply to Donors: Political parties that receive donations from Trusts or Foundations should be obliged to return the money unless the following is fully disclosed:

- a declaration of beneficial and ultimate control of the trust estate, including the trustees;
- a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;
- details of any relationships with other entities;
- the percentage distribution of income within the trust;
- any changes during the donations year in relation to the information provided above.

Another key screening device for hiding the true source of donations are certain 'clubs'. Such clubs are simply devices for aggregating large donations, so that the true identity of big donors is not disclosed to the public:

Recommendation 6.3

Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.

One more contentious issue regarding arms-length donations is the question of political parties receiving large amounts of money from foreign-owned companies. A tight disclosure regime has the potential to promote the establishment of overseas holding companies to which donations could be made from Australia. These monies

¹⁰ AEC Funding and Disclosure Report Election 98

¹¹ Media Release 2 June 2000

could then be donated by the overseas company back to Australia as a means of masking the actual Australian origins of its income.

Recommendation 6.4

That the JSCEM and the AEC give closer scrutiny to donations from overseas.

Section 17(2) of the Act results in invaluable reports being provided to the public by the AEC on funding and disclosure issues.¹² In 1996 and 1998 the AEC made 18 and 16 recommendations respectively. These offer considerable improvements to funding and disclosure.

Recommendation 6.5

As we did following the AEC's 1996 Funding and Disclosure Report, the Democrats will move amendments to the Act of those recommendations that are relevant to higher standards, if the Government's response to the AEC's recommendations proves inadequate.

Ultimately, to minimise the public perception of corruptibility associated with political donations, a good donations policy should forbid a political party from receiving inordinately large donations.

Recommendation 6.6

A ceiling should be placed on the amount of money any corporation or organisation can donate to a political party.

In most cases, donors appear to make donations to political parties for broadly altruistic purposes, in that the donor supports the party and its policies, and is willing to donate to ensure the party's candidates and policies are represented in parliament. Nevertheless, there is a perception (and probably a reality), that some donors specifically tie large donations to the pursuit of specific policies they want achieved in their self-interest. This is corruption.

Recommendation 6.7

The Act should specifically prohibit donations which have 'strings attached.'

¹² Such as AEC Funding and Disclosure Reports Election 96 and 98.

In sum, although in any democracy some political parties will always have more money than others, money and the exercise of influence should not be inevitably connected in the public's perception.