

SELECT COMMITTEE ON ELECTORAL AND POLITICAL PARTY FUNDING

QUESTIONS ON NOTICE

Page 9

The Hon. DON HARWIN: I think this is what the Chair is getting at. If the national office of a political party said, "Yes, the money is coming out of our bank account", and it goes into the bank account of the State branch or division, does that not entirely satisfy what you have just said?

Mr BARRY: We might have to take that question on notice and get back to you on it. I think the question is: If a political party that is operating in New South Wales and at a national level, if the national body provides an amount of money to the State part of the party—

The Hon. DON HARWIN: And signs the donor declaration you are talking about.

Mr BARRY: —How is that accounted for? Can we take that on notice?

CHAIR: Yes. Apparently this has been happening for some time. Whether you have ever questioned the national donor, asking them to supply the origin of the money, where it came from in the first place, whether it was from one person or six people. Will you take that on notice?

Mr BARRY: We will.

The Hon. AMANDA FAZIO: That also raises the issue of third-party donations and how you track the donors involved. Do you have any comments to make on that, or would you like to answer that on notice also?

Mr BARRY: When you say third-party donations, what is often very helpful is to give us an example of what you mean. Is this the question: If an organisation XYZ collects money and donates a sum of money to a registered party, where did XYZ get that money from?

The Hon. AMANDA FAZIO: Yes. There are organisations related to political parties whose primary aim is to fundraise for those parties. Yet, if the donation comes from that fundraising body, how do you know who put that money in?

Mr BARRY: I think we need to take the question on notice and get back to you about how all of that works.

Response

- Persons or organisations who make a donation to a party, group or candidate are required to lodge a declaration (Declaration by a political donor) with the Election Funding Authority. Should this person or organisation have received contributions of \$1,000 or more from others in order to make their donation to a

party, group or candidate then they must declare the receipt of these on the same declaration. The form for this declaration is provided on the EFA website www.efa.nsw.gov.au

- The EFA treat national offices of a political party no different to any other organisation receiving or distributing funds to a candidate. For instance if the state branch declare receipt of funds from the central office, we would expect the central office to make a declaration that they had contributed funds to the State branch of the party.
- On the question of tracking third party donors, apart from the 'Declaration by a Political Donor' of the 'fund-raising entity' the EFA receives no other declaration. The EFA Act does not require the original donor to submit a declaration. This is due to the fact that donor is not contributing to a party, group or candidate, but contributing to an entity not described by the EFA Act.

Page 13

The Hon. AMANDA FAZIO: I know in a lot of international jurisdictions, including the United Kingdom and the United States, they actually have bans on people from overseas, on foreign donations going into election campaigns. Can you tell us what the extent is of foreign donations—because they are not banned here—to the New South Wales election campaigns?

Mr FOLLETT: I do not have the exact numbers here. However, it is in the order of around \$400,000 that we have declarations from overseas entities or persons.

The Hon. AMANDA FAZIO: Would you be able to take that on notice and get that information for the Committee?

Mr FOLLETT: Yes.

Response

- The EFA received declarations from 4 overseas donors totalling amounts declared as political contributions of \$462,385. Parties and candidates declared receiving \$337,935 from 13 overseas addresses.

Page 20

The Hon. AMANDA FAZIO: I found it valuable that you put forward three recommendations in your submission and you highlighted those again in your power point presentation you gave at the commencement of today's hearing in relation to basically matters that would cut across both State elections and local government elections. The Chair said we would revisit the issue of what potential reforms might be available to assist in ensuring transparency and compliance in relation to local government donations. I was wondering if you might take that issue on notice and perhaps before we hear from you again if you might be able to get back to us with some ideas so that we can frame our questions around those. I am sure that for all the major

parties that run candidates or whose members run as Independents the whole issue of managing donations in local government is one that the public has great concern about at the moment and it is one that I would not like to see slip by us in this inquiry.

Mr BARRY: Yes.

Response

- We made three recommendations and are happy to expand on these. There are some minor items that could be addressed for instance recognising the impact of GST on reporting expectations.

Pages 21-22

The Hon. DON HARWIN: Do you have knowledge of what level of resourcing the Australian Electoral Commission has for its auditing role?

Response

- The AEC's powers to audit participants in the political process is governed by section 316 of the *Commonwealth Electoral Act 1918* (the Act).
- Subsection 316(2A) permits an authorised officer to require the production of documents or the giving of evidence for the purposes of finding out whether a registered political party or an associated entity has complied with the disclosure requirements in the Act. This power is used to conduct regular compliance reviews of political parties and associated entities.
- Compliance reviews are similar to audits (although not the same).
- Compliance reviews examine the quality of political party and associated entity returns using financial and other data from political parties and associated entities.
- The AEC uses a risk assessment to determine which political parties and associated entities will be subject to compliance review. The risk assessment enables the AEC to develop a compliance review program for each calendar year. The AEC conducts about 50 compliance reviews a year.
- Subsection 316(3) permits an authorised officer to require a person to produce documents or give evidence where the officer has reasonable grounds to believe that the person is capable of producing documents or giving evidence relating to a contravention of the disclosure requirements.
- This subsection is used to carry out specific investigations into possible contraventions of the disclosure requirements. Alleged contraventions come to light either through AEC compliance reviews or through the media and other interested sources.

- The number and range of such investigations varies a great deal. Most are resolved quickly through informal contact with the persons concerned, but some can involve extensive formal investigations.

The Hon. DON HARWIN: Do you believe that the Election Funding Authority should have that role?

Mr BARRY: First of all, what I think I need to do is, with your agreement, find out exactly what they do, and I can make a further submission to you on the pros and cons of that. I think one of the things that – you might recall from the beginning I said I think there needs to be a national solution to funding and disclosure. Part of the reason for that, you might remember I drew to your attention the fact that by and largely my organisation is an electoral commission. We are an event manager. If you are going to get into things like desktop auditing, delving into the finances, investigating, then that is a different world of operation and I think that it requires specialist expertise.

I will make some inquiries of the Australian Electoral Commission about its staffing, how much money it spends on funding and disclosure, and I will draw to your attention some differences in the legislative obligations of the two organisation. But I would have to say from my point of view I do not favour a regime where the Election Funding Authority, in the absence of a national solution, is a compliance investigator. I mean, we do not have the resources. We do not have the expertise. It is an interesting issue about the Election Funding Authority. The truth of the matter is that in my view whilst it is under the chair of the Electoral Commissioner, to some extent it could equally be under the chair of the Auditor General because all we really do is process returns, approve allocation of funds and check compliance on returns.

The Hon. DON HARWIN: Thank you for that offer. That would be very helpful. There is just one other area where I would like to explore the differences between the mode of operation of the Australian Electoral Commission and you, and it is largely again as a result of the different legislative provisions. There are different definitions, for example, the definition of a political contribution is different at the State and Federal levels. In terms of the disclosure threshold, there is transaction-based reporting at the Federal level where it is done on a different basis at a State level.

I wonder if you could also – obviously you will need to take this on notice at this stage of the hearing – areas where our Act, which predated the federal legislation by a few years – where our Act is in fact perhaps not as good as the Federal provisions, whether you could offer a view on perhaps whether there is a better approach at a Federal level that we as a Committee should be looking at on some of those sorts of issues in terms of technical matters but important matters which drive the stakeholders in the process absolutely up the wall because they are sometimes required to disclose on a totally different basis at the State and Federal levels and is not just the four-year period or the one-year period that causes the difficulties.

Mr BARRY: I think I understand your question, and I wonder if I could put it back to the Committee in this way. To some extent what you are asking me is to draw to your attention some of the inconsistencies, differences between the Federal provisions and the State provisions in how they affect a party. To some extent, I do not know that

because I do not administer both. I actually think that, for the Committee's benefit, you might get better information out of political parties than you would out of me because I only see one side of the coin.

The Hon. DON HARWIN: Are you asking us for a list of areas which we find difficult and suggesting—

Mr BARRY: I do not know that I need the list. I think it is probably the Committee—

The Hon. DON HARWIN: We have a list of areas which I think need to be addressed. Would it be helpful or would you be able to comment on the relevant provisions at the State and Federal levels and provide a view on which you think work well and which do not?

Mr BARRY: If you give me the list and the differences, if the question is can I respond to the Committee with what I think would be the preferable outcome—

The Hon. DON HARWIN: Yes.

Mr BARRY: Yes, I am happy to do that.

Response

How much is spent on this area and what amount of the overall budget is it?

- The budget for the Funding and Disclosure section for the 2007/08 financial year was \$1.93m (note that this includes the costs of party registration, which is also administered by the section). The budget for the Australian Electoral Commission as a whole for the same year was \$232.1m. These figures were obtained from the AEC's Portfolio Budget Statements (http://www.finance.gov.au/publications/docs/pbs/2007-08_FinanceAdminPortfolio_PBS_04_AEC.pdf).
- The Funding and Disclosure Section's budget has not significantly changed for a number of years.

How many staff are involved?

- The Funding and Disclosure Section employs 12 staff at present (although it has in recent memory employed as many as 15 and as few as 6, depending on the Section's ability to fill vacancies). The staff structure is as follows:
 - EL2 level - 2 staff;
 - EL1 level - 4 staff;
 - APS 6 level - 6 staff.
- A sense of the level of these staff in comparison to NSW public service pay scales can be ascertained from the AEC's collective agreement (http://www.aec.gov.au/pdf/employment/ca_doc.pdf). The pay scales are at Section K of the agreement.

What are their powers?

- All staff in the section are authorised officers for the purposes of section 316 of the Act.

How vigorously are matters pursued?

- Matters are pursued as vigorously as possible within the limitations of resources and the powers under section 316 of the Act.

What sort of outcomes do you get?

- By and large, the result of investigations under both subsection 316(2A) and 316(3) is either a new or amended return from the relevant political party, associated entity or donor.
- Returns for each financial year are made public in February the following year. Most of the new or amended returns made after the public release date are the result of AEC investigative activity. Details of new or amended returns can be obtained from the AEC's Annual Returns Locator Service (<http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=8>) by selecting the relevant financial year from the drop down menu on the left of the screen and then selecting 'Updates' from the left of the screen.
- The date of each new or amended return is specified. Generally, those updates that post date 1 February are the result of AEC investigative activity.