

LEGAL AND COMPLIANCE BRANCH BP02**ESTIMATES BRIEF – Back Pocket**

Senate Standing Committee on Finance and Public Administration
Budget Estimates Hearing – May 2013

**SUBJECT: AUSTRALIAN TRADE AND
INDUSTRY ALLIANCE PTY LTD
ACN 151 856 674**

ISSUE: Why does the annual return for this company not show the source of their funds that have been used to incur political expenditure?

SUGGESTED RESPONSE:

- This company lodged a political expenditure return for the 2011-12 financial year which showed that it had incurred political expenditure of nearly \$9.3M campaigning against the Carbon Tax.
- The AEC has contacted this company and received a number of documents which appear to indicate that the company operated on a fee for service arrangement with a number of industry associations and issued invoices for the advertising campaign based on service level agreements.
- The definition of “gift” in subsection 287(1) of the *Commonwealth Electoral Act 1918* (Electoral Act) is limited to the provision of services “for no consideration or for inadequate consideration”.
- As the apparent arrangements for this company were to pass on the full costs (plus unspecified administration costs) for the advertising campaign to those industry associations who agree to participate, the payments would not have amounted to a “gift” and therefore the exact sources of the payments were not required to be disclosed under Part XX of the Electoral Act.

BACKGROUND:

This company was mentioned by Senator Faulkner in the February Senate Estimates hearing. The company expended nearly \$9.3M in 2011-12 on political advertising and information was provided in response to QoNs F40 and F41.

The political expenditure return is on the AEC website at the following link:

<http://periodicdisclosures.aec.gov.au>Returns/49/PWJC8.pdf>

The company is described in 21 July 2011 as being the newly-formed Australian Trade and Industry Alliance which included the Australian Coal Association, Australian Food and

Grocery Council, the Australian Chamber of Commerce and Industry, Australian Logistics Council, the Plastics and Chemicals Industries Association and the Minerals Council of Australia.

They include (but not limited to):

Australian Coal Association - Wesfamers, Xstrata, Peabody, Rio Tinto
Australian Food and Grocery Council - Nestle, Procter & Gamble, Kraft, Unilever, Kimberley-Clark, George Weston Foods, Cadbury, Coca-Cola Amatil, Fosters, Coopers, Colgate, Heinz, Kelloggs, Mars, McCain, Sara Lee, Sanitarium.
Australian Chamber of Commerce and Industry - Master Builders Australia, Victorian Automobile Chamber of Commerce, Oil Industry Industrial Association.
Australian Logistics Council - Coles, Linfox, Woolworths, Toll, Onesteel, Bluescope steel.
Plastics and Chemicals Industries Association - BHP, Dow, Orica, Dulux, Exxon, Shell.
Minerals Council of Australia - Thiess, Rio Tinto, BHP, TRUenergy, BP, Ernst & Young, IBM, International Power (owners of Hazelwood).

The return provided by this company does not list any gifts received and used to incur the \$9.3M of political expenditure.

Section 314AEC requires person who incurred political expenditure to disclose whether they received any gifts that were used to incur political expenditure.

The definition of "gift" in subsection 287(1) of the Electoral Act is:

"gift" means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a payment under Division 3; or
- (b) an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person's membership of the party, branch or division"

Date:	9 May 2013
Cleared by (SES):	Ed Killesteyn
Group/Branch:	Legal and Compliance
Contact Officer:	Paul Pirani
Telephone No:	6271 4474
Consultation:	Nil