

AUSTRALIAN ELECTORAL COMMISSION

MINUTE

Ref: Fad 4021

Deputy Electoral Commissioner, [redacted]

Through: Director Funding and Disclosure [redacted]
Assistant Commissioner Elections [redacted]
First Assistant Commissioner Electoral Operations [redacted]

14/02/05

Recommendation supported.

FAD 'SPECIAL MATTERS' POSSIBLE ASSOCIATED ENTITIES

Purpose

To report on the investigation of a number of possible associated entities of the National Party of Australia in Victoria and NSW, and to seek approval for the publication of the conclusion.

Background

2. The question whether certain entities from which the two National Party branches receive money are associated entities has been raised in Senate Estimates hearings, by research undertaken by the Greens and in press articles (e.g. *The Australian* of 3 February 2004). The AEC has acknowledged to Estimates, and to the Greens, that it would investigate the matter.

3. **NPA – Vic** - Doogary Proprietary Limited and Pilliwinks Pty. Ltd are trustees of the National Party Foundation and NPA Vic Settlement respectively. These trustee companies and trusts are aligned to the National Party of Australia – Victoria, a registered political party whose 2003-04 disclosure returns show receipts of \$155 750.00 from Doogary, and \$45 750.00 from Pilliwinks, for management fees, redemption of short-term loans and reimbursements.

4. **NPA – NSW** - Comserv (No 2092) Pty Ltd is trustee of the National Building Foundation, Green and Gold Foundation and the Supporters Foundation. Natpar Pty Ltd is trustee for the National Free Enterprise Foundation. These trustee companies and trusts are aligned to the National Party of Australia – NSW, a registered political party whose 2003-04 annual returns show:

- Receipts of \$123 196.21 from the National Building Foundation for debtors, loans, management fees and donations from beneficiaries, and a total of \$256 472.75 owing to the National Building Foundation;
- Receipts of \$207 279.68 from the National Free Enterprise Foundation for debtors, loans, management fees and donations from beneficiaries, and a total of \$1 738 752.45 owing to the National Free Enterprise Foundation;
- Receipts of \$121 963.30 from the Green and Gold Foundation for debtors, loans, management fees and donations from beneficiaries, and a total of \$40 088.65 owing to the Green and Gold Foundation;

- No transactions for the Supporters Foundation;
- The annual return also reveals receipts of \$70 999.71 for investments, loans and management fees from a Natpar trust (Centralised Trustee Foundation) not previously identified as a possible associated entity.

5. The companies and trusts (other than Centralised Trustee Foundation) have been raised by the AEC with the parties as possible associated entities over a number of years. The parties consistently and emphatically deny that the trustee companies and trusts are associated entities, and associated entity returns are not lodged. The National Free Enterprise Foundation, National Building Foundation and Green and Gold Foundation lodged 2003-04 donor returns; prima-facie the other foundations or trustees are not required to lodge donor returns as it appears from the party returns that donations were not made..

Analysis

6. Comprehensive information and documentation about the Victorian trustee companies and trusts was voluntarily provided by NPA – Vic during routine compliance reviews and by letter. Information was also provided by NPA – NSW in similar circumstances.

7. This information is to the effect that the trustee companies are owned by individuals (who may well be members of the party). The trustee companies and trusts hold assets or otherwise conduct business activities providing a return to the beneficiaries. Some or all of the beneficiaries of the trusts are members of the parties who are actively encouraged to, and do, donate to the parties the moneys due to them from the trusts. The donor returns received reflect the payment by the entities of money (less than \$10 each member) forgone by members.

Legal advice

8. Based on this information, advice was sought in August 2004 from the Australian Government Solicitor as to whether the trustee companies, and the underlying trusts, are associated entities as defined by the *Commonwealth Electoral Act 1918*. The advice is that they are not associated entities.

9. For the purposes of the Act, an associated entity is an entity controlled by one or more registered political party or operating wholly or to a significant extent for the benefit of one or more registered political party. Such an entity may be an incorporated or unincorporated body, or the trustee of a trust.

10. The advice is that as the parties do not exercise voting power in the trustee companies it is highly likely that they are not controlled by the parties for the purposes of the definition. AGS notes that trust arrangements having members of an unincorporated association (the party members) as their sole beneficiaries could constitute voluntary associations operating to the benefit of the parties but concludes that statutory recognition of political parties takes them beyond the ambit of mere voluntary associations.

11. The advice is that the moneys involved are the members' to do with as they please, and their donation of money to the parties does not come within the ambit of the definition of associated entity.

12. A further issue (on which advice was not taken) is whether some of the entities, in providing services to the parties, may in fact operate to the benefit of the

parties in providing those services. As the transactions are commercial, or have a measure of commerciality (e.g. interest is charged on loans and services are provided for management fees charged), it is unlikely that the activities are in themselves indicative of the entities operating to the benefit of the parties. This contrasts with the Greenfields Foundation situation where the arrangement was not commercially based and so the entity was an associated entity.

Discussion

13. These NPA 'special matters' arrangements involve questions of form and substance in the context of a statutory disclosure scheme that seeks to make the public aware of major sources of political funding of possible influence. The legal form of the arrangements is that the entities are not associated entities. The substantive effect of the arrangements is that the entities seem to be in the nature of associated entities with the parties being the ultimate beneficiaries of funds (which may or may not be significant), and the recipients of services provided. Discussions with DPP indicate that a substance over form argument is not sustainable in law.

14. The trust activities (which pre-date the associated entity provisions of the Act) appear to be more to do with the administration of the parties (and transfer of tax liability from the parties to members) than with provision of funding of possible influence.

15. In the light of the legal advice received, and the AEC does not have reasonable grounds to undertake further investigation (e.g. through the use of section 316(3A) of the Act).

Recommendation

16. Based on the information available to the AEC, the trustee companies and trusts are not associated entities and are not required to lodge associated entity disclosure returns under section 314AEA of the Act.

17. It is recommended:

- (a) That you approve this conclusion; and
- (b) That you approve the attached advice document for publication on the AEC website.

4 [Redacted signature]

Don Gruber
Assistant Director
Funding and Disclosure

11 February 2005

(a) approved/not approved

(b) approved/not approved

4 [Redacted signature]

Deputy Electoral Commissioner

Date 14/02/05.

AEC ADVICE – FINANCIAL DISCLOSURE MATTERS

This advice sets out the AEC’s conclusion in relation to the matters described below:

- THE MATTERS: Whether certain trustee companies and trusts are associated entities of the National Party of Australia – Victoria and the National Party of Australia – NSW.

The trustee companies and trusts are Doogary Proprietary Limited, National Party Foundation, Pilliwinks Pty. Ltd., NPA Vic Settlement, Natpar Pty Ltd, National Free Enterprise Foundation, Centralised Trustee Foundation, Comserv (No 2092) Pty Ltd, National Building Foundation, Green and Gold Foundation and Supporters Foundation.
- WHEN RAISED: An ongoing issue, including being raised directly with the AEC by the Greens in 2002 and again in 2004.
- HOW RAISED: AEC compliance reviews, Senate Estimates hearings, research by the Australian Greens, press reports.
- LEGISLATION: Part XX of the *Commonwealth Electoral Act 1918*.
- AEC PROCESS: The AEC obtained information about the trustee companies and trusts, including details of their operation and structure, and reviewed disclosure returns lodged by the parties and certain of the foundations. The AEC took legal advice as to whether the trustee companies and trusts are associated entities for the purposes of the Act.
- AEC CONCLUSION: After reviewing the information obtained about the trustee companies and trusts, and legal advice, the AEC has concluded that the trustee companies and trusts do not meet the definition of associated entity under the Act and are not required to lodge associated entity financial disclosure returns.

Date: February 2005

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Business information (Bank Account details) redacted.
- 14 Business information (Billing Account details) redacted.
- 15 Legal Professional Communication redacted.
- 16 Deliberative material redacted.
- 17 Irrelevant material redacted.