

[The following is an extract from the Senate Committee Hansard for the Finance & Public Administration Committee Estimates (Additional Estimates Hearings, Tuesday 14 February 2006) pp.88-94.]

Tuesday, 14 February 2006 Senate—*Legislation F&PA*
FINANCE AND PUBLIC ADMINISTRATION

Senator JOYCE—I am aware of what a political party is under the Electoral Act: it is for the purpose of promoting a candidate to the Senate or the House of Representatives. How would you actually perceive what a political party is in its ordinary operations in the electorate? Just give me a brief rundown of how you would perceive that in operation?

Mr Campbell—What you mean by ‘perceive’?

Senator JOYCE—What would be its actions? I imagine that a group of people operating under one name would be a fair indication that they are acting as a political party—possibly joint press releases; a singular organisation. What would you see as the key indicators?

Mr Campbell—Ms Mitchell is getting the act to give you the relevant definition that is in the act.

Ms Mitchell—‘Political party’ is defined in the Electoral Act as:
... an organization the object or activity, or one of the objects or activities, of which is the promotion of the election to the Senate or to the House of Representatives of a candidate or candidates endorsed by it.

Senator JOYCE—There is nothing necessarily in there to say that they will have to vote along the same line. They can vote in any way they want, can’t they?

Ms Mitchell—There is nothing in the Electoral Act that dictates internal party policy.

Senator JOYCE—I am sure you are aware of it, but I bring your attention to the launch of the Independent Candidate Advisory Network—ICAN—which obviously utilises the member for Kennedy, the member for Calare and the member for New England, who issue joint press releases, pool resources and have a common objective, as they have stated quite clearly, which is to get members elected to the Senate. I draw your attention to the member for Calare’s description of ICAN in his media release dated 11 October 2005.

He says:

The Independent Candidate Advisory Network is best described as a resource centre, providing advice and support for those seriously considering running as independent candidates at future elections ...

His more recent comment is that ‘ICAN is looking at the Senate as well as Reps seats and hopes to have people make a transition from local to state and federal governments’. That was with Charles Wooley in *Across Australia*. Keeping in mind that the definition of a ‘political party’ in the Commonwealth act is just as you have described, would you say that was a fair indication that, even though they use the word ‘independent’, they may as well use the word ‘pumpkin’ or ‘aeroplane’? They are obviously acting as a political party—would that be a fair statement?

Mr Campbell—I will answer the question in a slightly different way. They have approached us and we have been giving them advice. Indeed, they had a workshop here on the weekend before last, I think, and three of our staff went along. We are giving them advice about the provisions of the act, about party registration and how Senate rules can work. So in this situation I think it is best to say that we are giving them advice about what the statute says and they are taking that advice on. We have not gone any further than that at this stage.

Senator JOYCE—For all intents and purposes, people out there would be perceiving them as working as a group. They certainly have the same colour in the way they portray themselves. Due to the fact that ICAN are stating their intentions to support, resource and endorse candidates, could it be argued that ICAN's activities could be interpreted as those of a political party?

Mr Campbell—I will go back one step. People do not have to register as political parties. People can be involved in the political activities of this country and not be registered as a political party under the Commonwealth Electoral Act. Ms Mitchell read out earlier the definitions that organisations have to actually meet for us to agree to register them as a political party under the CEA. But my understanding at the moment of the ICAN organisation is that they are a group of Independents who are talking and working together. As I said, we have been giving them some very factual information on the provisions of the act and how things like Senate nomination et cetera work. We have not gone into the situation about whether they might actually be more appropriately called a party. I do not think that is up to us to do at this stage.

Mr Dacey—I do not think the group, from my knowledge, itself is at this stage calling itself or referring to itself as a party. It is still a group of Independents. I think you read out the words 'resource group' or something for that group.

Senator JOYCE—What are their disclosure requirements? Do they have any differences in disclosure requirements from what other bodies would have?

Ms Mitchell—They would not have the financial disclosure obligations that a registered political party would have. The candidates still have financial disclosure obligations under the legislation and any candidate who stands in a federal election has those disclosure obligations. Any organisation, be it an unregistered political party or an association of people who might donate to a candidate, would have disclosure obligations as a donor, but, in relation to the organisation itself, unless it registers as a political party it would not have the disclosure obligations of a political party.

Senator JOYCE—So, in regard to this website, obviously it has been set up in conjunction—it is not really attached to any, it is attached to all. I can see on there the names of the member for Kennedy, the member for Calare and the member for New England. How would you describe ICAN?

Ms Mitchell—I would not. What we are concerned with is what the provisions of the legislation are. I would not describe an organisation that was outside the provisions of the legislation.

Senator JOYCE—So if I were to know someone—and I do not—who wanted to give \$500,000 to help out the ICAN website, what would that \$500,000 contribution be called? It is apparently not a political donation because ICAN is not a political party.

Ms Mitchell—It would not be disclosed under the provisions of the act as a donation to ICAN. It would depend on the way the donation was made and used.

Senator JOYCE—So you would not be concerned by that? I do not mean personally concerned but that in your role it would not concern you.

Ms Mitchell—We would have to look at the effect of the donation.

Senator JOYCE—To help them with their website.

Ms Mitchell—There might be some issues to do with whether what you had effectively done was to donate to the candidate and then there might be some disclosure obligations.

Senator JOYCE—Quite obviously, if there is a website to help promote candidates you are effectively donating to the candidate.

Ms Mitchell—I do not know that under the provisions of the legislation that is the way that it would work out. It is difficult to judge on a hypothetical. You really need to assess on the specifics of the situation.

Senator JOYCE—It seems like an interesting way for other political parties to get around it. We could just have a website and call it the ‘I feel like being a conservative member of parliament’ website and get someone to donate half a million dollars to it. Because it is not a political party—it just has an ethos to promote people who are of a conservative ilk—it would not be a political donation. That sounds like a great idea.

Ms Mitchell—That is the potential under the legislation. All I can tell you is what the requirements are under the act.

Senator JOYCE—It is quite obvious what they want to do—they want to promote independent candidates.

They say it is to promote people who want to consider running as independent candidates at future elections.

You cannot get anything more explicit than their intention. I know that you did not write the act, but apparently under the current act that is not considered a political party. I think it should be fair for all political parties. I am sure Senator Faulkner would want to have a website for those who feel that socialism is the way forward for Australia but who are not part of a political party.

Senator FAULKNER—I might feel like that, but websites and me do not mix, even if socialism and me does.

Mr Campbell—I think that it is the associated entity provisions of the act that might come into play here, but we would need to look at those very closely.

Senator JOYCE—Thank you for that, Mr Campbell. That is my next question. Would you consider ICAN to be an associated entity under the act? The EMILY’s List official website, under the heading ‘What We Do’, states:

EMILY’s List supports candidates in three key ways:

- Mentoring
- Training
- Money

I believe that under the act EMILY’s List is an associated entity. Is that correct?

Ms Mitchell—It is.

Dr Watt—There is a bit more explanation about some of your initial questions that you might find useful.

Ms Mitchell—I think that perhaps what I was not necessarily clear on was that there is potentially a disclosure obligation through the money that goes to the website in donor disclosure obligations.

Senator JOYCE—Who would have to make that disclosure?

Ms Mitchell—The people who gave the money to the website, potentially.

Senator JOYCE—Suppose I am going to give the money to ICAN but I do not want them to know it is me. Is ICAN, or a political website, home free if some lord from England decides that he wants to help out independent candidates and puts forward \$1 million to help build the website?

Ms Mitchell—Anonymous donations can be recoverable by the Commonwealth—

Senator JOYCE—But it is not actually a donation to a political party, is it?

Ms Mitchell—You cannot make an anonymous donation to a candidate either.

Senator JOYCE—But we are not making it to a candidate; we are making it to this construction.

Ms Mitchell—It depends on the effect of the donation. Like I said, the particular circumstances need to be looked at.

Senator JOYCE—The argument is circular. We have determined that ICAN currently is not a quasi-political party or a political party of any form. I know it has not been deemed to be an associated entity.

Therefore, a person can make as much of a donation as they possibly would like for the construction purposes of that website. However, there are no disclosure requirements on them.

Ms Mitchell—Not necessarily, Senator. There are requirements under the Electoral Act for third parties to make disclosures in certain circumstances. So potentially people who donated to the maintaining or the working of the website might have third-party disclosure obligations.

Senator JOYCE—You are saying ICAN has third-party disclosure obligations?

Ms Mitchell—I am not saying it at this stage in time. We would have to look at the specifics of the situation. What I am saying is that there are third-party disclosure requirements and that they might be captured by those provisions.

Senator JOYCE—They might be?

Ms Mitchell—I cannot tell you the exact nature of things at this stage in time.

Senator JOYCE—But at this point in time, the way it stands currently, ICAN is not either a political party or an associated entity, therefore it has really no disclosure requirements. It has managed to slip outside the act.

Ms Mitchell—No. What I said earlier on was that if the activities of ICAN in effect end up being a donation to a candidate then they have got a disclosure obligation there.

Senator JOYCE—They quite obviously are. They are by their own statement:

“The Independent Candidate Advisory Network is best described as a resource centre, providing advice and support for those seriously considering running as independent candidates at future elections,” ...

And this has been underwritten by three candidates, the member for Kennedy, the member for Calare and the member for New England, who sit next to each other in parliament and work jointly and call

themselves Independents. If they call themselves Independent that does not counter the argument that they are working together because, quite apparently, they are. They organise together. They have joint press releases. They run under a joint name. If they are not a political party then what are they? A freak of nature that happened to collide in the corridor one day. No, there is much more forethought that goes into that process.

Ms Mitchell—And they may have disclosure obligations as a result of that, but I cannot give you a definitive answer at this stage in time. We would need to look at the issue more closely.

Senator JOYCE—But you have been working with them.

Mr Campbell—No, Senator, we have given them some information. They asked about nomination for the Senate. They asked about—

Senator JOYCE—What would they nominate for the Senate as?

Mr Campbell—No, they just asked about the electoral process of how to nominate. They also asked questions about the process for redistributions.

Senator JOYCE—That fascinates me, Mr Campbell. They asked you a question about nominating— they?

Mr Campbell—Just how the process of Senate nomination can occur.

Senator JOYCE—Who is ‘they’?

Mr Campbell—I am sorry, one of the three Independent members of the House of Representatives asked us that question.

Senator JOYCE—Then it would be ‘he’ asked me, not they.

Mr Campbell—I am sorry: he asked me. Also he asked me—

Senator JOYCE—Was he representing others?

Mr Campbell—No, he just asked the questions. He also asked me the process that would follow for the redistributions that are currently being undertaken in both Queensland and New South Wales for the House of Representatives.

Senator JOYCE—He as a candidate had an interest in other seats that he was not involved in?

Mr Campbell—No, he asked the process for redistributions and I gave him exactly the same information I have given to all parties—that is, the indicative timetable, and the process, which is publicly available on our web and which we have given to all parties. I gave him exactly the same information.

Senator JOYCE—So we have a candidate who is fascinated in getting a senator up somewhere.

Mr Campbell—No, I did not say that, Senator. I just said that was one of the questions he asked.

Senator JOYCE—Well, he must have had interest in it. He was interested just in his own personal regard?

He—I can imagine the members for Kennedy, Calare and New England, and it is not too hard to guess—has an interest in having a senator up but for no purpose, just as a flight of fancy and an amusement?

Mr Campbell—I think those questions can be asked in the way they were asked—which was late last year, not long after the press release you are referring to was issued—in the sense of just asking for detail on what provisions there are. By way of being helpful, the commission tries to give people information so that they act in the knowledge of what the act says rather than in ignorance of what the act says.

Senator JOYCE—So they do not stumble over and all of a sudden morph into a political party—which quite obviously they are—and be encompassed and caught by the operation of the act.

Mr Campbell—Senator, while sometimes the wheels might turn somewhat slowly I can assure you that there are a number of issues that we will be watching in this regard.

Senator JOYCE—And I am querying the act, not you personally, as you understand.

Mr Campbell—I understand what you mean.

Senator BRANDIS—I have a couple of questions. ...

[The committee moved to a discussion of how-to-vote cards and then Senator Joyce tabled a release in relation to ICAN]

Senator JOYCE—I do not know if this is of any use or whether you want it tabled, but I have here a media release about ICAN. It is a freak of nature. It managed to be put out consecutively by Bob Katter, Tony Windsor and Peter Andren. Their names are on the bottom, and for any further information they have a coordinator, but apparently it is not a political party.

CHAIR—There being no objections, Senator Joyce has tabled that document.