

The Hon John Mansfield AM QC

Commissioner

Political Donations Inquiry

GPO Box 4396

DARWIN NT 0801

Dear Commissioner

Please find attached our initial submission to the Inquiry into Political Donations established under section 4A of the Inquiries Act NT.

The primary focus of this submission is on the activities of Foundation 51, related breaches of the Northern Territory Electoral Act and the Foundation's relationship with the Northern Territory Government and the Country Liberal Party.

The relevant matters are generally covered by the Inquiry's Terms of Reference (TOR) number 8.

The activities of Foundation 51 have undermined the community's confidence in the Territory's democratic institutions and there is a reasonable public expectation that TOR 8 will be examined in depth by the Commission.

Matters mentioned in our submission concerning donation disclosures by the Australian First Nations Political Party and related issues are covered by TOR number 7.

Given the breadth of the Inquiry's Terms of Reference and the very substantial volume of relevant information and documentation available for consideration, it is likely that we will make further submissions to the Inquiry in due course.

Yours sincerely

Kent Rowe

Secretary

Australian Labor Party Northern Territory Branch

27 September 2017



List of Attachments

1. Email of 26 November 2012 from Graeme Lewis to CLP Executive Members.
2. NT News article of 3 April 2016 and related documentation.
3. Foundation 51 and the CLP – various media reports, Hansard extracts and documentation.
4. Email exchanges between Adam Giles and Graeme Lewis and related media reports.
5. F51 and Crosby Textor – article in Saturday Paper, 14 February 2015.
6. F51 and Crosby Textor – ABC report, 2 February 2015.
7. Donations from Norm McCleary – media reports, emails and related annual disclosure returns.
8. Australian First Nations Political Party - media report and related disclosure returns.

Northern Territory Political Donations Inquiry Submission from the Australian Labor Party – NT Branch

There is a substantial body of information, facts and evidence on the public record that confirms the relationship between Foundation 51 (F51) and the Country Liberal Party (CLP) and breaches of the Northern Territory Electoral Act (NTEA) by both entities.

Whilst not exhaustive, the attachments to this submission point to the extent of the relationship between F51 and the CLP and related breaches of the political donations provisions enumerated in the NTEA.

Foundation 51

Both the CLP and F51 have committed clear and indisputable breaches of the law by failing to disclose donations and in kind support consistent with the requirements of Part 10 of the NTEA.

These breaches of the law are not the occasional omissions and administrative mistakes made by all organisations from time to time.

Rather, they are part of an orchestrated, systemic and endemic strategy to circumvent the disclosure provisions in the NTEA.

Leaked documents, Parliamentary debates and extensive media coverage confirm ongoing activity by F51 and the CLP to cover up the extent of their relationship and related breaches of donation disclosure laws.

A seminal document in exposing these transgressions is a leaked email of 26 November 2012 from then F51 Director, Graeme Lewis to Members of the CLP executive committee and then CLP Chief Minister Terry Mills (Attachment 1).

The Inquiry will note the email sets out substantial financial and in kind support provided by F51 to the CLP over many years commencing in 2008/09.

Much of this financial support was never declared by the CLP or F51 within the mandated timeframes for disclosure returns to be lodged with the Northern Territory Electoral Commission (NTEC)*.

It is instructive, in this context, that Mr Lewis's email of 26 November 2012 states, inter alia:

"Like you, I will be mortified if this information becomes widely known. It must be closely held for obvious reasons."

This begs at least two obvious questions – why was Mr Lewis so frightened about public disclosure of F51's very substantial financial support for the CLP's election activities? What did Mr Lewis have to hide?

The Lewis email indicates expenditure of \$216,573 in 2011/12 on activities associated with the 2012 NT general election.

It also states:

"In the months to 31 August (2012) another \$200,000 was received, spent on polling \$110,000, consultants re the debt strategies and policies, concept development \$34,160, plus travel, McGrath outgoings etc. Once again, the contributors were clearly aware, and did generalily stipulate that the funds raised would be devoted to NT elections in 2012 or thereafter."

All of the above is prima facie evidence of a systematic scheme to circumvent the donation disclosure provisions in the NTEA.

None of these breaches of the Act would ever have been exposed but for the leaking of the Lewis email of 26 November 2012.

Whilst the modus operandi of the Inquiry is entirely a matter for the Commissioner, it is arguable, in the public interest, that Mr Lewis and the recipients of the email should be asked why the full extent of F51's support for CLP election campaigns was not disclosed as required by the NTEA.

Over a protracted period, to justify post facto its financial support to the CLP, F51 denied that it was an associated entity under the NTEA. This denial was always inconsistent with the relevant legislative provisions.

Under the pressure of media exposure of its activities and investigation of complaints by the Northern Territory Electoral Commission (NTEC), F51 capitulated and lodged late disclosure returns with the Commission.

But it remains to be determined whether these returns accurately reflect the full extent of F51's financial support for the CLP. The public interest would be served if the Commission could expose the full extent of the financial support provided to the CLP by F51 since its inception in 2009.

The NTEC, NT Police and the DPP (NT) hold information that the Inquiry may wish to access to confirm some of Foundation 51's clear breaches of the political donation disclosure provisions set out in the NTEA.

(*All the returns lodged are on the public record and are therefore not incorporated in this submission)

The Country Liberal Party

As mentioned above, the Lewis email of 26 November 2012 (Attachment 1) sets out unambiguously F51's support for CLP election campaigns. Relevant examples include:

- Polling and associated research for the August Election \$195,050
- Concept Development for August Election \$21,523

- Polling for August Election \$110,000
- Consultants re debt strategies and policies \$34,000
- Concept Development \$34,160

It is inconceivable that members of the CLP Management Committee and the then Opposition Leader were not aware of election related activities funded by F51 prior to the August 2012 general election.

From 26 November 2012 onwards, (the date of the Lewis email), they were clearly aware of the scope and value of the support provided to the CLP by Foundation 51. But this financial support for election campaigns was never reported by the CLP within the timeframes mandated by the NTEA.

In this context, it would be open to the Inquiry to assess the veracity of the claims made by CLP Executive Committee Members in the four letters at Attachment 2 to this submission and any related declarations to the NTEC.

It would also serve the public interest if the itemised details of the payments above and the names of the recipient consultants were made available to the Inquiry to determine whether they constitute financial or in kind support to the CLP that should have been declared to the NTEC.

Conflicts of Interest

When he was appointed as Chair of the Land Development Corporation (LDC) Advisory Committee Board by the CLP Cabinet in February 2013 it was known that Mr Lewis was a Director of F51 and Member of the CLP Management Committee.

The position as LDC Chair was not advertised and the clear conflicts of interest inherent in the appointment were disregarded by the Chief Minister and his CLP Cabinet.

In an article by Amos Aikman in The Australian on 29 October 2014 (Attachment 3) with respect to his roles as CLP Treasurer, Chair of the LDC Board and F51 Director Mr Lewis is quoted in the following terms:

....."I would probably have to say there was a conflict of interest."

The article also confirms that F51 undertook lobbying on behalf of business.

The media report and emails at Attachment 4 to this submission indicate the close relationship between F51 and the Government in May 2014, some fifteen months after Mr Lewis' initial appointment as LDC Advisory Board Chair. But they also confirm a change in attitude by the Chief Minister about the conflict of interest issues involving Mr Lewis' dual roles as Director of F51 and Chair of the LDC Advisory Board.

In his email of 26 May 2014 to Mr Lewis, the then Chief Minister stated "...I want to ensure there is no real or perceived conflict of interest with any dealings you may or may not have...."

The details of Adam Giles' concerns and their source are not identified in the emails. It is also unclear what was conveyed by CLP President Ross Connolly to Mr Lewis in relation to Mr Giles' concerns or whether the foreshadowed meeting between the then Chief Minister and the F51 Director ever occurred.

These email exchanges were subsequently referred by Adam Giles to his Chief of Staff, Ron Kelly "for discussion". The content and outcome of those discussions are also unknown.

With respect to the draft press release referred by Mr Lewis to Mr Giles and his advisers for consideration the following is also relevant to the Inquiry's terms of reference:

- Deletion of the words "Foundation 51 has progressed from its original structure....which envisaged...a close working alliance with the Country Liberals Party."
- Mr Lewis' statement in his email of 11 May 2014 to Ms Trish Brick and Adam Giles that "Trish Brick has the (F51) letterhead etc and I will stay in touch with her."

Ms Brick is a member of the Darwin Waterfront Corporation Board. Her tenure coincided with Mr Lewis's tenure as paid chair of the DWCB.

Relationship between Foundation 51 and Crosby Textor

A disclosure return submitted to the AEC by F51 in 2013/14 indicates receipt of \$33,000 from Kormilda College - a Darwin based non- Government school.

But an article in the Saturday Paper on 14 February 2015 (Attachment 5) confirms the consultancy paid for by the college was actually undertaken by Crosby Textor - long standing researchers and political advisers to conservative political parties federally and in the States and Territories.

A notice subsequently placed on the schools website indicated that the consultancy was undertaken by Crosby Textor and "that the Board was never aware that Foundation 51 had any involvement in the process."

When contacted by the Saturday Paper Mr Lewis stated that he subcontracted some of the work to Crosby Textor and that F51 paid Crosby Textor for its work but he could not recall how much was paid.

Similar issues were raised in an ABC report on 2 February 2015 (Attachment 6).

The opaque relationship between F51 and Crosby Textor is characteristic of the Foundation's general method of operation and lack of accountability.

The Crosby Textor survey includes focus group ratings of Territory and Federal politicians.

The following attribution to Mr Lewis in the Saturday paper article also confirms the direct relationship between Mr Lewis (as Director of Foundation 51) and Terry Mills and F51's involvement in CLP election campaigns:

"My problem was that, as Director of Foundation 51, I was coming into information....that then in my spare time I went and helped Terry Mills set up his election campaign."

Should it be inclined to do so, it would be open to the Commission to examine the relationship between Mr Mills and Mr Lewis within its Terms of reference and in the public interest.

Mr Mills is also yet to explain his full knowledge of and involvement in the creation and operation of Foundation 51 including the funding of CLP election campaigns.

Donation from Norman Sydney McCleary

The media reports and documentation at Attachment 7 call into question the veracity and timing of disclosure declarations in relation to donations to the CLP totalling \$10,000.

The Inquiry may wish to consider whether these matters involve any breaches of the disclosure provisions set out in the NTEA or other NT statutes.

Australian First Nations Political Party (AFNPP) - Donation Disclosure Returns and Related Matters

The media report and related documentation at Attachment 8 to this submission call into question the veracity of the AFNPP's disclosure return lodged with the NTEC on 3 December 2013.

The December 2013 NTEC return for 2012/13 declares a donation of \$40,000 from Mr Maurie Ryan to the AFNPP.

A separate return to the Australian Electoral Commission (AEC) for 2013/14 lodged on 29 October 2015 indicates a donation of \$50,000 from Mr Ryan to the AFNPP.

In the NT News report Mr Ryan is quoted as saying that only one payment of \$50,000 was made.

The NT News report also raises serious allegations with respect to the possible payment for printing costs incurred by the AFNPP offered in return for the allocation of preferences to CLP candidates.

Both matters are covered by the Inquiry's TORs and the public interest demands full disclosure of the true facts and any related breaches of Territory law.

Amendments to the NTEA Political Disclosure Provisions

The matters outlined above give rise to consideration of possible amendments to the NTEA:

- Does the definition of "associated entity" (and related provisions) require clarification and enhancement or is enforcement of the Act better served by the broad approach captured by the current definition?
- Should the current limitation of dates to initiate prosecutions for breaches of the donation disclosure provisions be extended?
- Should the penalties for breaches of the donation disclosure provisions and any related false declarations be substantially increased?
- Would more frequent reporting of political donations enhance transparency and accountability in the public interest?

Kent Rowe

Secretary

Australian Labor Party Northern Territory Branch

27 September 2017