

# A tale of two charitable foundations, and a flood of donations to the Liberals

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The battle between the NSW Electoral Commission and the Free Enterprise Foundation – and a similar battle involving the Greenfields Foundation more than a decade ago – reveal a well-worn loophole in disclosure laws



*Arthur Sinodinos and Malcolm Turnbull. The NSW Electoral Commission is withholding \$4.38m from the NSW Liberal party over its failure to declare some donations at a state level. Photograph: Dan Himbrechts/AAP*

This is a story of two charitable foundations with strong urges to be generous to the Liberal party. One – the Free Enterprise Foundation – is in the news and is causing the NSW Liberal party enormous strife. The other – The Greenfields Foundation – is not. And therein lies the problem.

The reason the NSW Electoral Commission has been able to take on the NSW Liberal party for “washing” illegal donations through the Free Enterprise Foundation is the evidence provided to the Independent Commission Against Corruption (ICAC).

Deliberately and forensically, as only a body with those kind of powers can be, ICAC assembled a wall of verbal and documentary evidence in 2014 that shows the NSW party

sending donations from property developers to the FEF and arranging to have them funnelled back, despite the fact that state law had banned donations from property developers from January 2010.

There was sworn testimony that the idea of routing the donations through the FEF was openly discussed at meetings of party officials and cheery emails from the NSW party's chief fundraiser to the chairman of the FEF, Canberra accountant Tony Bandle, attaching cheques and informing him the generous donors "would like the trustees to consider donating their contribution to the Liberal Party of Australia (NSW division)" and asking the FEF to send the donor a receipt. And it received as evidence the list of the almost \$700,000 in donations channelled back to the NSW party, mostly from property developer companies, which resurfaced this week as the stand-off between the commission and the NSW party continued.

The donations are not, as has been widely misreported, entirely "secret" or "hidden". Those above the federal threshold for donations (about \$13,000) have been disclosed by the federal party under federal laws. In fact, my clever colleague Nick Evershed graphically documented their intra-party flows in 2014.

But the NSW Electoral Commission insists the party is obliged to declare the donations at a state level also, and it is withholding \$4.38m from the NSW Liberal party – money the party needs to fight the imminent federal election – to focus the party's mind on that question. And it is standing its ground against the party and former party office holders, including the now Cabinet secretary Arthur Sinodinos.

In making its legal case, the Electoral Commission is finally puncturing an obvious lie, the fiction that foundations such as the FEF are set up with some kind of broad charitable purpose and just happen to feel overcome with the need to make regular political donations to the Coalition.

It was always obvious they were set up to give political donors anonymity and to get around electoral disclosure laws, and even after they were forced under federal law, in the 1990s, to declare the donations they receive as "associated entities" they still gave donors a less direct means of donating to the conservative parties and provided a way to circumvent some state laws. (The SMH revealed that in 2013 the former Liberal party federal director Brian Loughnane advised television producer Reg Grundy to send a \$200,000 donation via the FEF to "maintain his privacy") And you may not be surprised to learn that when the Liberal's former chief fundraiser Paul Nicolaou wrote those nice notes to Tony Bandle asking that he donate the money back to NSW, the FEF almost always did.

The ICAC received the trust deed by which the FEF was set up in 1981 as a charitable trust, in which its “prescribed purposes” are “promoting the principle of free enterprise”. The FEF has donated \$3.8m to the Liberal party in just the past five years, but when ICAC asked Bandle when he had made a charitable donation he said: “Oh, that was ah, 18 months ago um, certainly there’s been another one recently. I’ve got a plaque in my office from Open Family in Canberra which looks after street children in Canberra um, where we gave a substantial donation, it was something like \$10,000 and that was, that was many years ago though, yes.”

Many years ago Bandle also featured in a controversy over another foundation, but that concerned federal laws, and there was no federal ICAC or other organisation to force answers. So in the end nothing happened, and the Australian Electoral Commission’s recommendations to try to make sure the problem never happened again were ignored.

That controversy concerned the Greenfields Foundation, which I came across in the 1990s in the Liberal party’s annual disclosures of financial information. The foundation had lent the Liberal party \$4.75m, which allowed it to pay off a large debt incurred for the 1993 election campaign. Its postal address was the same as the Free Enterprise Foundation. Its trustees were the very same Mr Bandle and a former federal Liberal party president. But Bandle insisted he could not disclose who had lent the money through the foundation.

“Unfortunately, it’s a private foundation ... I can’t comment at all except to say it will make fairly significant contributions to charity,” he said at the time. “The Greenfields Foundation will make substantial contributions to organisations such as those that look after blind children.”

The AEC began investigating, and, after a lot of public pressure the then party treasurer Ron Walker insisted he had lent the money himself. He’s clearly a patient lender. According to the Liberal party’s latest return, almost 20 years on the Liberal party still owes the foundation \$3.45m.

Back in 2000 then Labor Senator John Faulkner assessed Walker’s involvement in Greenfields during a Senate debate.

“It all began back in 1994-95. We had a situation where the national office of the Liberal party was in financial trouble ... The National Australia Bank requested the title to Menzies House (the Liberal party’s Canberra headquarters) as security for the Liberal party’s substantial overdraft. They had run up quite a debt in the 1993 federal election. The treasurer of the Liberal Party at the time, one Mr Ron Walker, was given the task of remedying the situation ... What occurred was that, at least by Mr Walker’s own admission – we have no proof of it – he came up with \$4.7m himself in the form of a guarantee over the debt ... and

then apparently assigned his debt to the mysterious Greenfields Foundation, a so-called 'charitable foundation', some time in mid-1996.



*Ron Walker, a former Liberal party treasurer, and the self-confessed source of a \$4.7m debt guarantee. Photograph: Joe Castro/AAP*

“You have to ask yourself: why would Ron Walker want to avoid disclosure? Surely if he is putting \$4.6m you would think he would be proud of it. You would think he would be a hero in the Liberal Party. But, no, the official Liberal party’s treasurer ... hid his light under a bushel.”

In Faulkner’s assessment, it was all a “cover-up” and “the Greenfields Foundation was just the Liberal Party’s old fundraising arm, the old Free Enterprise Foundation, reborn in a new impenetrable form. So up until 1995, the Free Enterprise Foundation donated huge sums to the Coalition but was not required to reveal the donations it received. The then Labor government closed the loophole in the Electoral Act. The Liberal party, it seems, felt that it had to find another way to conceal its fundraising. Enter the Greenfields Foundation.”

The AEC tried its best to get to the bottom of the Greenfields story, and, as Faulkner told the Senate, “in January 1999 ... served Greenfields with a notice under section 316 of the Electoral Act to produce documents. That was a serious step for the AEC to take. Failure to comply with such a notice is a criminal offence and the fine is hefty. In June 1999, such was the concern at the AEC over its Greenfields investigation that the AEC briefed senior counsel to advise it on the Liberal party’s use of the Greenfields loophole and its apparent failure to disclose. At around this time, the AEC also started closely consulting the Director of Public Prosecutions in relation to Greenfields.”

But the AEC never did unravel the mystery, and, despite years of effort, nor did Labor.

In a 1998 report on Greenfields, after a lengthy investigation, the AEC noted that “it is apparent that a person, or in certain circumstances a corporation, who wished to avoid full and open disclosure could do so by a series of transactions based on the Greenfields model.”

And it recommended that “the simplest and most effective way to close this loophole is for the Act to deem the payment of a guarantee to be a donation.”

But nothing was ever done about that either.

The difference between what happened after the revelations concerning the two foundations appears to be entirely due to the powers that ICAC has to force the disclosure of documents and information, and the lack of anything similar at a federal level.

It is possible the NSW Electoral Commission’s stance will force change to all such trusts and foundations, if the NSW party has to concede that the FEF is not actually an independent freedom-minded charitable donor. It has already highlighted, yet again, the need for a federal anti-corruption body.

And that just happens to be exactly what the Senate crossbench is demanding be considered before it will allow the re-establishment of the building and construction industry corruption watchdog – a goal Malcolm Turnbull says is so important that if the Senate refuses it necessitates taking the whole nation to a double-dissolution election.

I came across this word the other day. Zemblanity. It was coined by novelist William Boyd to be an antonym for serendipity. With the NSW Electoral Commission donations stand-off and the Senate stand-off reaching a crescendo at about the same time, I think it’s kind of fitting.

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