

**AEC**

Australian Electoral Commission

Electoral Commissioner

Our ref: 15/488

Ms Rebecca Gordon
Inquiry Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Ms Gordon

Submission to the inquiry into political donations

Thank you for the invitation to provide a submission to the Joint Standing Committee on Electoral Matters inquiry into political donations.

The Australian Electoral Commission's submission discusses the current political funding and disclosure scheme and provides responses to the issues raised in the terms of reference for this inquiry.

I am happy to provide further information as required.

Yours sincerely

Tom Rogers

 March 2016

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Overview

On 15 October 2015, the Senate referred an inquiry into political donations to the Joint Standing Committee on Electoral Matters (JSCEM). The terms of reference for the inquiry relate (in part) to the JSCEM's recommendations made in its 2011 *Report on the funding of political parties and election campaigns*.

On 4 February 2016, the JSCEM requested that the Australian Electoral Commission (AEC) provide a written submission on the issues raised in the terms of reference.

This submission is structured in three parts.

Part A provides background on the history of the funding and disclosure provisions in the *Commonwealth Electoral Act 1918* (the Electoral Act), and outlines recent legislative changes to the funding and disclosure regime,

Part B responds to the inquiry terms of reference, and

Part C provides a list of 17 possible measures for reforming the Electoral Act initially identified in the AEC's primary submission to the 2012 *JSCEM inquiry on the AEC analysis of the FWA report on the HSU*.

Part A - Background

Funding and Disclosure system

Disclosure

The Commonwealth funding and disclosure scheme (the scheme) was established in 1983 under Part XX of the Electoral Act and deals with the public funding of federal election campaigns and the disclosure of detailed financial information. The scheme was introduced to increase overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process.

The scheme requires candidates, registered political parties, their State Branches, their associated entities, donors and other participants in the electoral process to lodge annual or election period financial disclosure returns with the AEC.

- Annual financial disclosure returns are published on the AEC website on the first working day in February.
- Candidate and Senate group returns of donations received and electoral expenditure, and returns by persons who have made donations to candidates that total above the disclosure threshold, must be disclosed before the expiration of 15 weeks after polling day and are released to public inspection 24 weeks after polling day.

Annual returns for political parties and associated entities must contain figures in relation to all receipts, payments and debts. Political parties are required to provide details of all individual monetary and non-monetary receipts that are of a greater value than the disclosure threshold (\$13 000 for 2015-16).

The Act does not place any restrictions on the receipt or payment of funds by political parties or candidates – it simply requires accurate disclosure.

Public funding

Under the Electoral Act, a candidate or Senate group is eligible for election funding if they obtain at least four per cent of the first preference vote in the division or the state or territory they contested. The amount to be paid is calculated by multiplying the number of votes obtained by the current election funding rate. This rate is indexed every six months to increases in the Consumer Price Index (CPI). For the period 1 January to 30 June 2016 the rate is 262.259 cents per first preference vote.

The Act requires that at least 95 per cent of election funding entitlements, calculated on the basis of votes counted as at the 20th day after polling day, be paid as soon as possible. The balance of entitlements must be paid when the counting of votes is finalised.

In 2015 \$357 270.72 in election funding was paid to four separate parties and one individual candidate across two by-elections.

- \$193 970.09 for the Canning by-election (19 September 2016)
- \$163 300.63 for the North Sydney by-election (5 December 2016).

Key legislative changes

Since its introduction in 1984, the scheme has been amended a number of times. This is due to incremental changes to ongoing requirements rather than fundamental shifts in overall objectives. The key legislative changes to the scheme include:

- In 1996 the existing reimbursement system requiring parties to lodge returns of electoral expenditure with the AEC was repealed. It was replaced by the legislative requirement for political parties to lodge more comprehensive annual returns and the provision of automatic payments that distributed full entitlements by the AEC without any need for parties and candidates to claim these funds or substantiate expenditure.
- In 2006 *The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* enacted changes to raise the minimum threshold requirement for donations to be made public to \$10 000 for candidates, groups and political parties and for the threshold to be indexed annually to the CPI. It had previously been \$200 for candidates, \$1 000 for groups, and \$1 500 for political parties.
- The *Tax Laws Amendment (Political Contributions and Gifts) Act 2010*, removed provisions allowing businesses to claim a tax deduction for donations to political parties. This applied retrospectively from 1 July 2008. Provisions still allow tax deductions up to \$1 500 for gifts and contributions to political parties and Independent candidates and members by individual taxpayers.

Recent JSCem inquiries into political funding and disclosure

In the past five years the JSCem has conducted two inquiries into political funding and disclosure: the 2011 inquiry into the funding of political parties and election campaigns, and the 2012 inquiry into the AEC analysis of the Fair Work Australia (FWA) report on the Health Services Union (HSU).

2011 Inquiry into the funding of political parties and election campaigns

On 11 May 2011 the Senate referred to the JSCem for inquiry the following matters relating to funding of political parties and election campaigns:

- a) issues raised in the Government's Electoral Reform Green Paper – Donations, Funding and Expenditure, released in December 2008;
- b) the role of third parties in the electoral process;
- c) the transparency and accountability of the funding regime;
- d) limiting the escalating cost of elections;
- e) any relevant measures at the state and territory level and implications for the Commonwealth; and
- f) the international practices for the funding of political parties and election campaigns, including in Canada, the United Kingdom, New Zealand and the United States of America.

The AEC provided five submissions to the 2011 Inquiry that included a comprehensive overview of the funding and disclosure framework. In addition, the AEC appeared at three public hearing for the inquiry on 8 August, 21 September and 1 November 2011. For reference the AEC submissions are available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/political_funding/subs.htm

In November 2011, the JSCem published its *Report on the funding of political parties and election campaigns* which included 30 recommendations.

There was no formal government response to the Report during the course of the 43rd Parliament. On the 3 December 2015, the Government advised in the tabled Speakers Schedule that 'since 2014, the Government has advised that given the passage of time and the change of government, the Government does not intend to respond to the report'.¹

¹ The speakers schedule of outstanding government responses to reports of House of Representatives and Joint Committees, 3 December 2015.

2012 JSCem inquiry into the AEC analysis of the FWA report on the HSU

On the 28 March 2012, Fair Work Australia published its report *Investigation into the National Office of the Health Services Union under Section 331 of the Fair Work (Registered Organisations) Act 2009* (the FWA Report).

On the 8 May 2012, the then Special Minister of State (SMOS), the Hon. Gary Gray AO MP, asked the AEC for advice on whether or not there had been any failures to comply with the provisions of the Electoral Act as disclosed by the information in the FWA Report. The correspondence also requested advice on any issues concerning the operation of the Electoral Act which could be considered for possible remedy.

On the 16 May 2012, the AEC published an analysis of possible disclosure obligations arising out of information detailed in the FWA Report and included 17 measures for consideration about the operation of the Electoral Act. A list of these measures is provided at [Part C](#) of this submission.

On the same day, the SMOS referred the AEC analysis and 17 measures for consideration to the JSCem for inquiry.

The AEC provided five submissions to the inquiry into the AEC analysis of the FWA report on the HSU. These submissions are available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/fundingdisclosure/subs/sub001aec.pdf.

The JSCem considered the AEC's 17 measures for consideration and tabled 13 recommendations in its 20 September 2012 report titled *Review of the AEC analysis of the FWA report on the HSU*. There was no government response to the Report during the 43rd Parliament. On the 3 December 2015, the Government advised in the tabled Speakers Schedule that 'since 2014, the Government has advised that given the passage of time and the change of government, the Government does not intend to respond to the report'.²

Legislation currently before the Commonwealth Parliament for consideration

The *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2016*, sponsored by Senator Rhiannon was introduced to the Parliament on 2 March 2016. The Bill has been referred to the Senate Finance and Public Administration Legislation Committee with a reporting date of 17 June 2016. This Bill's amendments significantly change the current provisions under Part XX of the *Commonwealth Electoral Act 1918*.

² The speakers schedule of outstanding government responses to reports of House of Representatives and Joint Committees, 3 December 2015.

Implementation of amendments concerning the lowering of the disclosure threshold and the introduction of six monthly reporting would have significant resourcing implications for the AEC. There would also be flow on implications for the existing supporting IT infrastructure. The supporting systems would require substantial enhancements to enable six monthly reporting. These arrangements would need to be in place for the first six monthly reporting instalment for the 2016-17 financial returns by 1 January 2017.

Part B – AEC response to the inquiry terms of reference

On 15 October 2015, the Senate referred an inquiry into political donations to the JSCEM. The terms of reference for this inquiry relate (in part) to the Committee's recommendations made in its 2011 Report on the funding of political parties and election campaigns and are provided below along with an AEC response to each item:

Item 1

How many of the recommendations made by the Joint Standing Committee on Electoral Matters in its 2011 report (the report) on its inquiry into the funding of political parties and election campaigns were accepted by Government and how many have been implemented?

AEC response

On 3 December 2015, the current Government indicated that it would not be providing a formal response to the Report in the tabling of the Speakers Schedule that stated "...since 2014 the Government has advised that given the passage of time and the change of government, the Government does not intend to respond to the report".

The AEC notes that no new legislation relating to political donations and funding has been enacted by Parliament since 2008.

Item 2

What factors, if any, are contributing to any delays in implementing the accepted recommendations of the report?

AEC response

Implementation of the Report's recommendations would require legislative amendments to the relevant Sections of the Electoral Act.

As the introduction of legislation to Parliament is a matter for the Government the AEC is unable to comment, but notes that no new legislation relating to political donations and funding has been enacted since 2008.

Item 3

How much was spent on the last election by:

- political parties or associated entities,
- third parties,
- candidates, and
- Senate groups.

AEC response

The AEC is unable to provide itemised information on election expenditure as current disclosure legislation does not require registered political parties, associated entities, donors and third parties to lodge returns of electoral expenditure with the AEC. Between 1984 and 1996 political parties were required to lodge expenditure returns with the AEC.³ This requirement was repealed after the 1996 federal election in favour of more comprehensive annual disclosure requirements.

Under current legislation, registered political parties, associated entities, donors and third parties incurring political expenditure are required to lodge annual or election period financial disclosure returns with the AEC. Returns are published on the AEC's website <http://periodicdisclosures.aec.gov.au/>.

Item 4

What proportion of the expenditure at the last election was provided by private sources, including:

- what amounts were acquired from each source;
- the circumstances of the donation or contribution;
- whether third parties were involved in the donations or contributions;
- what influence those sources had on the political process?

AEC response

As noted above, the AEC is unable to provide itemised information on election expenditure as current legislation does not require registered political parties, associated entities and donors to political parties, and third parties to lodge returns of electoral expenditure with the AEC.

Item 5

What is the current level of public funding provided to:

- political parties or associated entities,
- third parties,
- candidates, and
- Senate groups?

AEC response

A candidate or senate group is eligible for election funding if they obtain at least four per cent of the first preference vote in the division or the state or territory they contested.

³ To view of the Electoral Expenditure of the ALP and the Liberal Party – 1984-1996 please see table 1, of the *Electoral Reform Green Paper: Donations, funding and expenditure* (December 2008) p. 10.

The amount to be paid is calculated by multiplying the number of votes obtained by the current election funding rate.

Sections 294(1) and (2) of the Electoral Act specify the amount payable for each first preference vote given for a candidate in a House of Representatives election, or for a candidate or group in a Senate election, respectively. Further, Section 321 provides for these amounts to be indexed each six months in accordance with increases in the All Groups Consumer Price Index. The current election funding rate is 262.259 cents per first preference vote (1 January 2016 to 30 June 2016). The AEC publishes the amount of election funding after each election and by-election on our website and in the Election Pocketbook.

Item 6

How public funds are allocated to electoral activities and whether the current levels of such funds should be increased or decreased or allocated differently?

AEC response

The role of the AEC is to administer provisions in the Electoral Act which currently does not specify how political parties and candidates should allocate public funds for electoral activities.

Any change to the current levels of public funding would require enabling legislation to amend the relevant Sections in the Electoral Act.

Item 7

Whether the status of the political donations as tax deductions should be maintained?

AEC response

The AEC does not administer legislation taxation and has no comment on this Item.

Item 8

Whether any comparable democracies:

- regulate electoral contributions from private donors, or particular classes of private donors, or
- have absolute limits on private funding on electoral activities, and if so, what policy objectives underlie the regulation and whether those objectives are achieved?

AEC response

Differing legislative and political systems make it problematic to provide an international comparison of political funding. However, the following material outlines some of the differences in disclosure schemes:

- The International Institute for Democracy and Electoral Assistance (IDEA) has published two reports which discuss political finance: *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (2014) and *Political Finance Regulations around the World: An Overview of the International IDEA Database* (2012). Both publications are available on the IDEA website <http://www.idea.int/political-finance/>.
- JSCEMs November 2011 *Report on the funding of political parties and election campaigns* provides a detailed comparison at Appendix D of Commonwealth, State and Territory schemes and at Appendix E a Comparison of international political finance schemes. These are available at: [http://www.aph.gov.au/Parliamentary_Business/Committees/House of Representatives_Committees?url=em/political%20funding/report.htm#chapters](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/political%20funding/report.htm#chapters)
- The AECs supplementary submission 1.1 to the *JSCEM Inquiry on the AEC analysis of the FWA report on the HSU* also provides a comparison of disclosure schemes in other Australian jurisdictions.

Item 9

How the regulation of electoral funding is achieved in comparative democracies and whether it is applicable in the Commonwealth sphere?

AEC response

Please see the above response.

Item 10

Any other related matter?

AEC response

Nil

Part C - AEC's measures for consideration – *Inquiry into the AEC analysis of the FWA report on the HSU*

The AEC's primary submission to the 2012 *JSCEM Inquiry on the AEC analysis of the FWA report on the HSU* identified 17 possible measures for reforming the Electoral Act.

1. Reconsideration of the appropriate level of the disclosure threshold.
2. Introduce administrative penalties for objective failures (such as failing to lodge on time).
3. Provide that financial penalties be offset against public funding entitlements (perhaps combined with the AEC withholding a small percentage of such entitlements for a period of 12 months following an election).
4. Require the compulsory and timely auditing of all records held by registered parties (and party units), candidates, third parties etc., by independent auditors (do not include donors).
5. Abolish 'associated entities' and establish a third party scheme similar to Canada and the UK.
6. Establish the requirement that electoral expenditure can only come from specific and dedicated campaign accounts into which all donations must be deposited that have been nominated to the AEC and which can be "trawled" by the Australian Transaction Reports and Analysis Centre (AUSTRAC).
7. Require the electronic lodgement of all returns to the AEC (with the power for the Electoral Commissioner to grant some exceptions).
8. Require the period for the retention of records in Section 317 and related offence in Section 315(2)(b) be increased to 7 years.
9. Insert a new offence for a person who fails to make records to enable complete and accurate disclosure.
10. Increase relevant criminal penalties that are fraud related (e.g. knowingly providing false and misleading information in a return).

11. Require more frequent reporting of relevant expenditure and receipts.
12. Reintroduce requirements that campaign committee expenditure is to be reported separately from the state party unit and specifically covers the election period for each division.
13. Review the 'disclosure period' and the 'election period' in relation to disclosure obligations and new candidates who are seeking pre-selection.
14. Increase the coercive powers of the AEC to enable it to act as a regulator in relation to matters under Part XX of the Electoral Act.
15. Expand the categories of 'electoral expenditure' that are to be disclosed to include campaign staff, premises, office equipment, vehicles and travel.
16. Deem registered political parties to be bodies corporate for the purposes of Part XX of the Electoral Act.
17. Introduce provisions with greater certainty about who has the relevant reporting obligation.