
The Parliament of the Commonwealth of Australia

Review of the AEC analysis of the FWA report on the HSU

Joint Standing Committee on Electoral Matters

September 2012
Canberra

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Foreword

During this inquiry the committee reviewed the Australian Electoral Commission's (AEC) analysis of the Fair Work Australia (FWA) report on the Health Services Union National Office. The committee's focus was on disclosure obligations under the *Commonwealth Electoral Act 1918* (Electoral Act). It was not the committee's role to forensically examine internal HSU authorisation processes, or to adjudicate on alleged contraventions against the *Fair Work (Registered Organisations) Act* or other alleged fraudulent behaviour. A number of other processes are underway to address those matters.

The Special Minister of State also referred a list of 17 possible measures provided by the AEC for consideration. A number of the issues raised in the measures have previously been examined and recommendations made by the committee.

In this report the committee makes 13 recommendations to improve Australia's disclosure arrangements. As it has done in previous reports, the committee made recommendations to:

- reduce the disclosure threshold from more than \$12 100 for the 2012-2013 financial year (i.e. \$10 000 with CPI indexation) to \$1 000 and remove CPI indexation;
- introduce administrative penalties for more straightforward breaches of the Electoral Act, such as a failure to lodge a return by the due date;
- clarify the definition of an 'associated entity' to address some of the current confusion surrounding the application of the term;
- strengthen the penalties for more serious offences under the Electoral Act, including fraud related offences; and

- increase the frequency of disclosure reporting from annually to six-monthly.

In addition, the committee has made recommendations to:

- require returns to be lodged electronically to improve the timeliness and efficiency of lodging and processing returns;
- require that records relevant to disclosure be kept for seven years rather than the current three years;
- insert a new offence in the Electoral Act for failing to create the records needed to enable complete and accurate disclosure;
- extend the disclosure period for new candidates to 12 months prior to their pre-selection or nomination, whichever is earlier;
- clarify, and where needed strengthen, the AEC's coercive powers;
- expand the categories of 'electoral expenditure' to cover additional relevant items including campaign staff, premises, office equipment, vehicles and travel;
- deem registered political parties to be bodies corporate for the purposes of Part XX of the Electoral Act; and
- provide greater clarity of who in an organisation has responsibility for ensuring that the required returns are lodged with the AEC.

Recommendation 12 to deem registered political parties as bodies corporate is a significant reform. It will shift the focus of prosecution and financial responsibility from the individual to the political party. Ultimately, political parties must be responsible for meeting their reporting obligations. It is intended that this will encourage political parties to ensure that the person tasked with lodging its returns is suitably qualified to perform the role, and that effective systems are in place to ensure a complete and accurate return is lodged.

Another gap in the current arrangements is in the current disclosure period for new candidates, which only commences from their pre-selection or nomination. The committee has recommended introducing a requirement for new candidates to disclose relevant donations and gifts received and money spent in the 12 months prior to their pre-selection or nomination.

Effective compliance and enforcement mechanisms are essential if the disclosure arrangements are to serve their purpose of enabling Australian electors to see the flow of money through the political system.

Whether the AEC fully utilised its coercive powers in relation to matters arising in the FWA report was a matter of lengthy discussion during the committee's public hearings for this inquiry. It needs to be made clear what steps the AEC can take to

gather information from individuals and organisations with confirmed, or suspected, reporting obligations under the Electoral Act. This may involve clarifying, or strengthening, coercive powers in the Electoral Act.

The committee did not support some of the possible measures on the AEC's list of matters. The AEC indicated that it was keen to pursue measures 4, 5 and 6:

- introducing a requirement for independent auditing of lodged returns;
- abolishing associated entities; and
- introducing a requirement for dedicated campaign accounts.

The committee acknowledged the problems these possible measures seek to address. However, it concluded that requiring independent audits of all returns lodged and dedicated campaign accounts, would add an unnecessary administrative burden and unduly complicate the disclosure system.

The current definition of associated entities is confusing, and when applied does not work as effectively as it should. The intention of the category is to provide greater transparency of the flow of money of an entity that has close links to a political party. This is in contrast to a third party for which political advocacy and expenditure may only be a small part of its activities.

The committee supports reviewing and improving the clarity of the definition of an associated entity. It would be premature to abolish the category of associated entities and could result in reducing transparency of money in and out of an entity that has close political ties.

On behalf of the committee I thank the organisations and individuals who assisted the committee during the inquiry through submissions or participating at the public hearings in Melbourne and Canberra. I also thank my colleagues on the committee for their work and contribution to this report, and the secretariat for their work on this inquiry.

Daryl Melham MP
Chair

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Chair	Mr Daryl Melham MP	
Deputy Chair	The Hon Alexander Somlyay MP	
Members	The Hon Bronwyn Bishop MP	Senator Simon Birmingham
	The Hon Alan Griffin MP	Senator Carol Brown
	Ms Amanda Rishworth MP	Senator Helen Polley
		Senator Lee Rhiannon
		Senator Scott Ryan

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Samantha Mannette
Research Officers	Ms Zoë Smith
	Ms Siobhan Coughlan
Administrative Officers	Ms Natasha Petrović



Terms of reference

On 16 May 2012 the Special Minister of State, the Hon Gary Gray AO MP, referred the AEC analysis of the FWA report and the list of matters to the Joint Standing Committee on Electoral Matters for its consideration. The letter of referral is at Appendix A.



List of abbreviations

AEC	Australian Electoral Commission
CAN	Court attendance notice
CDPP	Commonwealth Director of Public Prosecutions
CPI	Consumer Price Index
FEC	Federal Election Committee
FWA	Fair Work Australia
HSU	Health Services Union
Electoral Act	<i>Commonwealth Electoral Act 1918</i>
RO Act	<i>Fair Work Australia (Registered Organisations) Act 2009</i>

Executive summary

List of measures provided by the AEC and committee view

No.	Measure	Committee view
Disclosure		
1	Reconsideration of the appropriate level of the disclosure threshold	Supported— Recommendation 1 Reduce the disclosure threshold to \$1 000 and remove CPI indexation
7	Require the electronic lodgement of all returns to the AEC (with the power for the Electoral Commissioner to grant some exceptions)	Supported— Recommendation 4 Require electronic lodgement of returns to improve the transparency and efficiency of the disclosure system
11	Require more frequent reporting of relevant expenditure and receipts	Supported— Recommendation 8 Introduce six-monthly reporting to improve the transparency and timeliness of disclosure
13	Review the 'disclosure period' and the 'election period' in relation to disclosure obligations and new candidates who are seeking pre-selection	Supported— Recommendation 9 Extend the disclosure period for new candidates to 12 months prior to the earlier date of their nomination or pre-selection
15	Expand the categories of 'electoral expenditure' that are to be disclosed to include campaign staff, premises, office equipment, vehicles and travel	Supported— Recommendation 11 Improves transparency of election related spending
Associated entities		
5	Abolish 'associated entities' and establish a third party scheme similar to Canada and the UK	Not supported Recommendation 3 —Clarify the definition of 'associated entities' to improve the effectiveness of the category

No.	Measure	Committee view
Compliance		
2	Introduce administrative penalties for objective failures (such as failing to lodge on time)	Supported— Recommendation 2 Introduce administrative penalties to provide the AEC with greater flexibility to deal with breaches of straightforward offences
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)	Not supported Would add an unnecessary layer of complexity to public funding process
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)	Not supported Potential benefit is disproportionate to the administrative burden on those with reporting obligations
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	Supported— Recommendation 5 It is important to ensure the retention of relevant records
9	Insert a new offence for a person who fails to make records to enable complete and accurate disclosure	Supported— Recommendation 6 It is important to ensure that appropriate records are created in order to meet disclosure obligations
10	Increase relevant criminal penalties that are fraud related (e.g. knowingly providing false and misleading information in a return)	Supported— Recommendation 7 Penalties for 'serious' offences should be strengthened. Fraud related offences should come under this category
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	Supported in part— Recommendation 10 Clarify, and where needed strengthen, the AEC's coercive powers to put beyond question the actions that can be taken to investigate and ensure compliance
16	Deem registered political parties to be bodies corporate for the purposes of Part XX of the Electoral Act	Supported— Recommendation 12 Shifting the focus from the individual to the political party to take greater responsibility for their reporting obligations and the consequences of failures to meet these obligations
17	Introduce provisions with greater certainty about who has the relevant reporting obligation	Supported— Recommendation 13 Identify positions or individuals within political parties, associated entities, or third party organisations, who are responsible for meeting reporting obligations

No.	Measure	Committee view
<i>Campaign administration</i>		
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)	Not supported Potential benefit is disproportionate to administrative burden on those with reporting obligations
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	Not supported Would place an undue burden on campaign volunteers by adding another layer of administration



List of recommendations

3 AEC possible measures for consideration

Recommendation 1

The committee recommends that the disclosure threshold be lowered to \$1 000, and that the CPI indexation be removed. (paragraph 3.20)

Recommendation 2

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to make offences classified as ‘straightforward matters of fact’ subject to administrative penalties issued by the Australian Electoral Commission. The issuance of an administrative penalty should be accompanied by a mechanism for internal review. (paragraph 3.38)

Recommendation 3

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to improve the clarity of the definition of ‘Associated Entity’. Changes could include:

- Defining ‘controlled’ as used in section 287(1)(a) to include the right of a party to appoint a majority of directors, trustees or office bearers;
- Defining ‘to a significant extent’ as used in section 287(1)(b) to include the receipt of a political party of more than 50 per cent of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and

- Defining 'benefit' as used in section 287(1)(b) to include the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit. (paragraph 3.104)

Recommendation 4

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require the electronic lodgement of returns with the Australian Electoral Commission. The Electoral Commissioner should be able to grant exemptions to this requirement in limited circumstances. (paragraph 3.127)

Recommendation 5

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to increase the period for the retention of records in section 317 and related offence in section 315(2)(b) to seven years. (paragraph 3.139)

Recommendation 6

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to insert an offence for a person who fails to make records to enable complete and accurate disclosure. (paragraph 3.147)

Recommendation 7

The committee recommends that the penalties in relation to offences that are classified as more 'serious' should be strengthened along the lines proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. Fraud related offences should be treated as serious offences for the purposes of the *Commonwealth Electoral Act 1918*. (paragraph 3.164)

Recommendation 8

The committee recommends that the Australian Government introduce a six-monthly disclosure reporting timeframe, as outlined in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. (paragraph 3.175)

Recommendation 9

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to extend the disclosure period for new candidates to 12 months prior to pre-selection or nomination, whichever is earlier. (paragraph 3.204)

Recommendation 10

The committee recommends that the Australian Government clarify, and where needed strengthen, the coercive powers of the Australian Electoral Commission to determine the extent of an individual or organisation's disclosure obligations and to investigate whether reporting obligations under Part XX of the *Commonwealth Electoral Act 1918* have been met. (paragraph 3.225)

Recommendation 11

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to expand the categories of 'electoral expenditure' as set out in section 308(1), to cover additional relevant items including campaign staff, premises, office equipment, vehicles and travel. (paragraph 3.234)

Recommendation 12

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that registered political parties be deemed bodies corporate for the purposes of Part XX of the Act. (paragraph 3.249)

Recommendation 13

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to introduce provisions with greater certainty about which position or individual has relevant reporting obligations within political parties, associated entities and third party organisations. (paragraph 3.257)