Senate Estimates 23 May 2012

Opening Statement

Australian Electoral Commission

On 16 May the AEC released its analysis of the implications of the Fair Work Australia (FWA) report into the HSU National Office, for obligations arising under the disclosure provisions of Part XX of the Commonwealth Electoral Act.

The AEC report was released as quickly as possible due to the continued public interest involved and to give time for Senators to digest the complex analysis contained in the report ahead of Estimates this week.

What the AEC report seeks to do is to examine each item of expenditure described by the FWA report as assisting Mr Thomson in his election bid during the 2007 election, and make an assessment on whether that item of expenditure was, firstly, disclosable under the Electoral Act, secondly, who had the disclosure obligation and thirdly, whether that item of expenditure was actually disclosed in one of the political expenditure or donation returns lodged over the 2006 to 2008 period.

Our report does nothing more. As important as our report is in determining compliance with the disclosure provisions of the Electoral Act, I caution making anything more of our report. Importantly, the AEC report points out that the AEC is not making comment on, nor can it be taken to have made comment on, the question of whether the payments and donations made were, or were not, properly authorised by the various entities in which Mr Thomson was involved over the period leading up to the 2007 election. That is not the role of the AEC. Nor does the AEC report carry any implications for the veracity or otherwise of the findings of the FWA report in terms of the charter that FWA has to carry out. All the payments identified in the FWA report have been taken at face value and simply assessed against the provisions of the Electoral Act in terms of an obligation for disclosure.

The disclosure provisions of the Electoral Act are detailed and specific as to whether disclosure is required. Notwithstanding that a series of payments may have the same essential character, or seek a particular electoral outcome, or be made over an extended period, the Act determines that disclosure is affected by the precise point in time at which a person becomes a candidate and when an election is called, the nature of the payment and the disclosure threshold that applies from time to time. Indeed, in prescribing what should be disclosed, the Act also implicitly sets out what does not need to be disclosed. So, from the perspective of a candidate, disclosure of donations received is not required for any gifts received prior to a new candidate becoming the formally endorsed candidate for an election; and disclosure of expenditure is not required for expenditure incurred and the benefit derived before the issue of a writ for an election, and then only for expenditure in the nature of general advertising.

Moreover, the Electoral Act provides for reporting to be made, in the case of a candidate for an election, by an agent of that person, and for campaign expenses incurred by each campaign committee in each contested federal seat to be rolled-up into a single political party expenditure return. It is common practice for the

candidate agents to lodge NIL returns as provided for by the Electoral Act. This often makes it difficult for any observer to conclude what has actually been spent in any federally contested seat.

The Electoral Act is also quite specific on whom the obligation for disclosure falls. Notwithstanding again that there may be a common participant in the payments or donations, the disclosure obligation falls on the entity from whose resources the payments or donations are made.

The AEC report concludes that all but $17000 of disclosable payments had been disclosed in the various expenditure and donation returns of the HSU National Office that were lodged by Ms Kathy Jackson on 13 October 2009. As a consequence of the provisions of s314AC, which provides that amounts below the disclosure threshold need only be counted in the total of amounts disclosed without particulars, the AEC has been unable to conclude whether 4 payments making up that $17000 had in fact been disclosed. Further inquiries were made of the HSU NO, through their legal representatives Slater and Gordon, and the NSW Branch of the ALP.

The ALP NSW Branch advised that the payments were not included in their disclosure returns and that they were not aware of the expenditure.

The response from Slater and Gordon is pending.

At the request of the Special Minister of State the AEC has provided to the Minister a list of possible amendments to the disclosure provisions that the circumstances of this case suggest are worth considering in the interests of improved disclosure. The Minister has referred the list to the Joint Standing Committee on Electoral Matters for consideration.

Finally I would like to table a document which sets out in detailed chronological order the actions taken by the AEC to pursue this matter since it was first raised in the media in April 2009. In summary:

- The AEC is charged with administering the existing requirements of Part XX of the Electoral Act concerning the obligations to report payments and gifts made for political purposes. Whether the funds to make those payments and gifts have been obtained illegally or improperly is a matter for the police or other appropriate authorities;

- The AEC's investigative powers under the Electoral Act depend on there being "reasonable grounds" for belief that the Act has been infringed – that is facts sufficient to induce that state of mind in a reasonable person. Various court decisions make it clear that this is not a broad power of inquiry; and

- The AEC has actively pursued this matter since it was first raised by an article in the *Sydney Morning Herald* (SMH) in April 2009.