



Electoral Commissioner

REF: IQ21-000001

Mr Joel Bateman
Committee Secretary
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600

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Dear Mr Bateman

Written questions on notice

Further to the Joint Committee of Public Accounts and Audit public hearing on 4 March 2021, please find enclosed responses to written questions on notice conveyed to the Australian Electoral Commission (AEC) on 12 March 2021. We trust this information assists the Committee's inquiry into Auditor-General's Reports 33, 47, 48 (2019-20) and 5 and 8 (2020-21).

Question 1: The audit recommended the AEC improve how it obtains annual and election returns from entities with a reporting obligation, with a particular emphasis on timeliness. How is AEC addressing this recommendation, and what is the implementation timeframe?

Answer: The AEC takes an educative approach to assist political participants with disclosure obligations to understand and meet those obligations.

The AEC currently provides a range of forms and guides, an online portal and a helpdesk to support stakeholders. The AEC issues obligation letters to known stakeholders, and to those who may come to the attention of the AEC through means such as other returns, compliance reviews and media reports.

The AEC is currently preparing a suite of new financial disclosure education tools to complement existing information, which is due to be released in July 2021.

The Australian National Audit Office (ANAO) analysis – conducted over a four year period – reported 22 per cent of annual returns were lodged after the due date. While the ANAO report focussed on the number of entities that lodged late on two or more occasions, it does not highlight that over the four year period only 10 per cent of a total of 2,569 returns obtained were lodged more than 30 days late. For the 2019-20 disclosure period (which was outside of the ANAO's review period), 12.2 per cent of annual returns were lodged late with only 5.9 per cent (28 returns) lodged more than 30 days late. The AEC makes concerted efforts with stakeholders to obtain disclosure returns in a timely manner and considers the recent lodgement pattern reflects these efforts.

Question 2: The audit noted that the AEC does not review disclosure returns that report no financial data (i.e. nil-returns) (p. 32). Is the AEC satisfied that there is no non-compliance associated with such returns, and if so, how did it reach that conclusion, given that they are not subject to compliance review?

Answer: The AEC adopts a risk-based approach to the selection of entities for inclusion in its compliance review program, which is considered annually by the Electoral Integrity Committee (EIC) (formerly the Compliance Review Committee).

This approach provides for the AEC to focus its limited compliance resources on entities that present the highest level of risk in terms of influence on political process and overall impact on transparency of financial information to the public.

Multiple risk factors are considered in conjunction with annual return profiling during the risk assessment and selection process. All entities that lodge a disclosure return, including those that lodge nil returns (that is, no financial information disclosed in all part of a return) are individually assessed against all risk factors and are ranked according to overall risk score.

In conducting these individual assessments, the AEC has found that entities that lodge nil returns tend to be small, relatively unknown parties with low overall risk scores. Although their low overall risk score has meant that nil returns have not been subject to a compliance review to date, the AEC is reasonably satisfied that any risk of an inaccurate and incomplete return from these entities is sufficiently mitigated by their low level of influence on political process and overall impact on transparency of financial information to the public.

Question 3: The audit report recommended that the AEC use data analytics and data matching techniques to provide greater assurance over whether data included in returns can be relied upon, and as an indicator of returns that may require investigation (p. 34). The AEC agreed to 'consider opportunities' for the use of data analytics. Could you update the Committee on your implementation of the recommendation? Would the AEC like to see changes to reporting requirements to make data analytics and data matching easier?

Answer:

Implementation of recommendation 2

The AEC is working with the Australian Transaction Reports and Analysis Centre (AUSTRAC) to establish a Memorandum of Understanding and Instrument of Authorisation to enable AEC access to AUSTRAC's online information systems.

Once it is established what information can be obtained through AUSTRAC's systems, subject to any legal restrictions of the *Commonwealth Electoral Act 1918* (Electoral Act), privacy regulations and other governing legislation, the AEC will explore what data analysis tools and data matching techniques could be used to provide greater assurance as to the accuracy and completeness of returns, assist in identifying persons or entities with disclosure obligations and in detecting foreign donations.

The AEC is also in the process of assessing the feasibility of reviewing reports lodged with the Australian Charities and Not-for-profits Commission and Registered Organisation Commission to assist with assessing the accuracy and completeness of returns and the identification of entities with disclosure obligations.

Changes to reporting requirements

The AEC introduced in its submission to the Joint Standing Committee on Electoral Matters (JSCEM) in February 2017, four key principles common to disclosure schemes globally, namely:

- Transparency
- Clarity
- Timeliness
- Enforceability

The AEC also communicated in that submission that it is a matter for Parliament to test the existing legislation and proposals for change against these four principles to ensure that Australia's disclosure scheme meets community expectations. Accordingly, the AEC considers that any changes to the reporting requirements established under Part XX the Electoral Act are a matter for Parliament to decide in consideration of the four principles.

Question 4: The AEC said in its entity response that it regards compliance action through the courts as 'costly and time-consuming' (p. 66). That being the case, does the AEC see any merit in additional administrative penalty powers (i.e. the ability to issue fines) to assist in encouraging greater compliance with return timeliness and accuracy requirements, especially with respect to repeat offenders?

Answer: The AEC maintains the view that it has a graduated approach to addressing non-compliance, makes appropriate use of its investigative powers and undertakes enforcement action where necessary. While administering the disclosure scheme the AEC has found that inaccuracies are generally administrative errors or misunderstanding of the legislation. The AEC considers there may be merit in administrative penalty powers as an additional tool in the suite of enforcement options available, particularly for straightforward matters such as late lodgement of a return.

Any changes to legislation would likely necessitate changes to AEC's administrative process and systems which would have financial implications for the AEC. Additionally, as noted above, any change to the legislation is a matter for Parliament to decide.

Question 5: Recommendation 5 advocated a risk-based approach to the AEC's compliance program, and the AEC responded that it would consider the recommendation in light of the outcomes from its 2020 compliance program. Could you update the Committee on outcomes of the 2020 compliance program, and your progress implementing this recommendation?

Answer:

2020 compliance program

The 2020 compliance program examines disclosure returns lodged for the 2018-19 financial year, which was the first year that the changes of *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (FAD Reform Act) took effect. The FAD Reform Act, amongst other things, introduced a new category of political actor 'political campaigner' and expanded the investigative powers to include all persons or entities that lodge a disclosure return or claim for election funding.

Accordingly, the 2020 compliance program is an expanded program that includes for the first time the review of all political campaigner returns and a sample of third party returns, as well as a sample of political party and associated entity returns (37 in total).

The 2020 compliance program has been delayed for a number of reasons including the impacts of COVID-19, and the inclusion in the 2019 compliance program of all 51 final 2019 federal election funding claims.

To date, six reviews in the 2020 program have been completed, four of which required amendments to returns due to administrative error. All four entities lodged the required amendments with the AEC in a timely manner.

Implementation of recommendation 5

As noted in the response to question 2 above, the AEC already employs a risk-based approach to the selection of political parties and associated entities for review. The AEC will adopt a similar approach to the selection of political campaigners, third parties and donors for future compliance programs, but will better placed to identify the risk factors relevant to these entities following completion of the 2020 compliance program.

Yours sincerely



Tom Rogers

17 March 2021

