



INQUIRY INTO THE AEC ANALYSIS OF THE FWA REPORT INTO THE HSU NATIONAL OFFICE

I refer to your email dated 18 July 2012 in which you provided a list of the questions on notice arising from the Joint Standing Committee on Electoral Matters' public hearings on 16 July 2012. I have been asked to reply to your email on behalf of the Australian Electoral Commission (AEC).

Responding to each question in the order that they appear in your email attachment, relating to the Hansard – JSCEM – AEC Analysis of the FWA Report into the HSU, the following further information is provided.

Page 19 – Of the two letters received from the ALP National Office, was the second letter in response to a further query or clarification, or was it instigated by the ALP itself?

The AEC has provided the Committee with copies of several letters relating to the AEC's inquiries into entities that may be an "associated entity" of the ALP. The first letter was a letter from Mr Elias Hallaj of the ALP National Secretariat to the AEC dated 10 March 2009 setting out his understanding of which entities were associated entities of the ALP National Secretariat. The second letter was a letter from the AEC to a number of addressees including the ALP National Secretary dated 18 May 2009 seeking details of associated entities. The third letter was from Mr Elias Hallaj to the AEC dated 27 May 2009 correcting his earlier advice concerning which union bodies were associated entities of the ALP National Secretariat.

Page 19 – Are there any national branches of trade unions that the AEC identified as being an associated entity?

The AEC has searched our records and, for the last period for annual returns, there were no national branches of trade unions (within the scope of section 242(5) of the *Fair Work (Registered Organisations) Act 2009*) that were regarded as being an “associated entity” due to their office bearers having voting rights with a registered political party.

Page 24 – The AECs review of the FWA report had a series of recommendations that had been raised previously. The AEC offered to provide supplementary material which identifies where those recommendations were made in the past.

The AEC was requested by the Special Minister of State to identify possible changes to the Electoral Act that may have helped overcome some of the limitations highlighted in the AEC’s analysis of the FWA Report. In that context, the 17 options presented by the AEC were intended as discussion points and do not necessarily represent formal recommendations for change being advocated by the AEC. Nonetheless, the AEC has previously made recommendations along similar lines to a number of the 17 options listed including:

(ii) Introduce administrative penalties for objective failures (such as failing to lodge on time)

Recommendation 12 of the AEC’s *Funding and Disclosure Report on the 2010 Federal Election* was that ‘(t)he Act be amended to introduce administrative penalties to support compliance with the provisions of the disclosure scheme based on objective tests, for example late lodgement’.

A similar recommendation had previously been made in the *AEC submission no.11 of 26 April 2004 to the JSCEM’s Inquiry into Disclosure of Donations to Political Parties and Candidates*. Recommendation 4 of this report was: ‘that Part XX of the *Commonwealth Electoral Act 1918* be amended to enable the AEC to apply an administrative penalty for failure to lodge a return by the due date, including the capacity to impose further administrative penalties for continued failure to lodge’.

(iv) 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)

Recommendation 6 of the AEC’s *Funding and Disclosure Report on the 1996 Federal Election* was that ‘(p)olitical party annual returns be accompanied by a report from an accredited auditor’.

(vii) Require the electronic lodgement of all returns to the AEC (with the power for the Electoral Commissioner to grant some exceptions)

Recommendation 5 of the AEC's *Funding and Disclosure Report on the 2010 Federal Election* was made in the context of any move to requiring more frequent and detailed disclosures. It recommended that '(i)n the event of electoral reform increasing the frequency of periodic reporting, reducing the disclosure threshold and reducing the timeframe for political parties to lodge periodic returns, and for the AEC to make them publicly available, the Act be amended to require political parties and associated entities to lodge disclosure returns electronically'.

(ix) Insert a new offence for a person who fails to make records to enable complete and accurate disclosure

A series of recommendations has been made in relation to this matter. Recommendation 18 of the AEC's *Funding and Disclosure Report on the 1993 Federal Election* was that: 'persons required to furnish returns under Part XX be required to make and maintain such records as are necessary to enable them to comply with the disclosure requirements of the Act'.

This was followed by Recommendation 5 of the AEC's *Funding and Disclosure Report on the 1998 Federal Election* which was that: '(p)ersons who fail to make or maintain such records as enables them to comply with the disclosure provisions of the Act be subject to the same penalty provisions as apply to persons who fail to retain records'.

Most recently, Recommendation 15 of the AEC's *Funding and Disclosure Report on the 2010 Federal Election* was that '(t)he Act be amended to provide a penalty for a person who fails to make records to enable complete and accurate disclosure'.

The AEC trusts that the above information is of assistance to the Committee.

Yours sincerely

Paul Pirani
Chief Legal Officer

23 July 2012