



Appendix A – Ministerial reference and AEC matters for consideration



HON GARY GRAY AO MP

Special Minister of State
Minister for the Public Service and Integrity

Mr Daryl Melham MP
Chair
Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT 2600

Dear Mr Melham,

As the Committee may have noted, I wrote to the Electoral Commissioner on 8 May 2012 seeking his advice on whether or not there had been any failures to comply with the provisions of the *Commonwealth Electoral Act 1918* (Electoral Act) as disclosed by the information in recently published Fair Work Australia Report into the Health Services Union National Office (FWA Report). The Commissioner has developed a detailed analysis of the FWA report and this advice is now publicly available from the Australian Electoral Commission.

At the time, I also sought advice from the Electoral Commissioner on any issues concerning the operation of the Electoral Act which could be considered for possible remedy.

I refer the Electoral Commissioner's analysis and the list of matters to the Joint Standing Committee on Electoral Matters for its consideration.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized 'G' followed by a long horizontal stroke that tapers to a point.

GARY GRAY

16 MAY 2012

Attachment B

Possible measures

- (i) Reconsideration of the appropriate level of the disclosure threshold;
- (ii) Introduce administrative penalties for objective failures (such as failing to lodge on time);
- (iii) 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);
- (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);
- (v) Abolish “associated entities” and establish a third party scheme similar to Canada and the UK;
- (vi) 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 AUSTRAC – also amend the *Financial Transactions and Report Act 1988* to include these campaign accounts;
- (vii) Require the electronic lodgement of all returns to the AEC (with the power for the Electoral Commissioner to grant some exceptions);
- (viii) Require the period for the retention of records in section 317 and the related offence in section 315(2)(b) be increased to 7 years;
- (ix) Insert a new offence for a person who fails to make records to enable complete and accurate disclosure;
- (x) Increase relevant criminal penalties that are fraud related (eg knowingly providing false and misleading information in a return);
- (xi) Require more frequent reporting of relevant expenditure and receipts;
- (xii) 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;
- (xiii) Review the “disclosure period” and the “election period” in relation to disclosure obligations and new candidates who are seeking pre-selection;

- (xiv) 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;
- (xv) Expand the categories of "electoral expenditure" that are to be disclosed to include campaign staff, premises, office equipment, vehicles and travel;
- (xvi) Deem registered political parties to be bodies corporate for the purposes of Part XX of the Electoral Act;
- (xvii) Introduce provisions with greater certainty about who has the relevant reporting obligation.



Electoral Commissioner

The Hon Gary Gray AO MP
Special Minister of State
Parliament House
CANBERRA ACT 2601

Dear Minister

I refer to your letter dated 8 May 2012 (your reference C12/1387) in which you asked for my advice on whether or not there have been any failures to comply with the provisions of the *Commonwealth Electoral Act 1918* (Electoral Act) as disclosed by the information in the recently published Fair Work Australia Report into the Health Services Union National Office (FWA Report). In your letter you have also asked for my advice on any issues concerning the operation of the Electoral Act which could be considered for possible remedy.

Please find attached (Attachment A) a copy of a document that contains the AEC's consideration of the FWA Report. The AEC document was made available publicly today. In summary, the document concludes that most of the expenditure described in the FWA Report has been disclosed by relevant entities under the Electoral Act, with queries surrounding four payments totalling \$17,014.88. Given that each of the four payments fell under the reporting threshold, the AEC is seeking further information on whether these four payments have been included in the total amount reported by the relevant entities.

In relation to limitations contained in the Electoral Act which have been highlighted by the circumstances of this matter, Attachment B is an initial list of possible matters that could be considered. The AEC notes that some of these matters have been considered previously by the Joint Standing Committee on Electoral Matters without being adopted.

I trust that the above is of assistance.

Yours sincerely



Ed Killesteyn

16 May 2012