

Introduction

Background to the review

- 1.1 On 28 March 2012 Fair Work Australia (FWA) completed its report into the investigation of the National Office of the Health Services Union (HSU). The *Report of the Delegate to the General Manager of Fair Work Australia: Investigation into the National Office of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009* will be referred to as the FWA report.
- 1.2 A copy of the FWA report was provided to the Senate Standing Committee on Education, Employment and Workplace Relations. On 7 May 2012 the Senate committee published the report, excluding the annexures.¹
- 1.3 The FWA report examined the administration and expenditure of the HSU National Office. In particular, the FWA report examined and made adverse findings about Mr Craig Thomson MP, who was the National Secretary of the HSU before being elected to the Federal Parliament in 2007.
- 1.4 Chapter 7 of the FWA report examined expenditure of National Office funds for the purpose of assisting Mr Thomson's election to parliament for the seat of Dobell. Chapter 20 of the report detailed contraventions in relation to matters raised in Chapter 7.

1 The Fair Work Australia report table of contents lists Annexures A to M. Annexure J covered the *Report on suspected irregularities in the expenditure of the National Office of the Health Services Union 2002-2007*, which contained the findings of an independent investigation undertaken by Slater & Gordon Lawyers and Accountants' BDO Kendalls.

- 1.5 On 16 May 2012 the Australian Electoral Commission (AEC) responded to a request from the Special Minister of State, the Hon Gary Gray AO MP. The Electoral Commissioner noted in his letter that he had been asked to advise the Special Minister of State 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’.²
- 1.6 The AEC response included a 22 page document entitled *Reporting obligations under the Commonwealth Electoral Act 1918 and the Report of the Delegate to the General Manager of Fair Work Australia* (AEC analysis). It is reproduced in Appendix B. The Electoral Commissioner stated:
- 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 \$17 014.88.³
- 1.7 In addition to responding to issues in the FWA report, the AEC also provided a ‘list of matters’ for consideration. In his letter, the Electoral Commissioner stated:
- 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.⁴
- 1.8 On 16 May 2012 the Special Minister of State referred the AEC analysis of the FWA report and the ‘list of matters’ to the committee for its consideration. The Special Minister of State’s letter of referral, the AEC’s letter to the Minister and its ‘list of matters’ are in Appendix A.
- 1.9 This inquiry focuses on matters relating to political funding and disclosure obligations, as defined by the Electoral Act, and the AEC analysis of the FWA report.
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2 Letter from the Electoral Commissioner, Mr Ed Killesteyn, to the Special Minister of State, the Hon Gary Gray AO MP, dated 16 May 2012.

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FWA report on the HSU and AEC analysis

- 1.10 The FWA investigation into the HSU took more than three years to complete and the report comprises over 1100 pages. Chapter 7 of the report covered the following areas:
- the Dobell campaign;
 - Ms Criselee Stevens;
 - Coastal Voice;
 - Mr Matthew Burke;
 - Central Coast Rugby League;
 - Dads in Education Fathers Day Breakfast;
 - Golden Years Collectables;
 - Central Coast Convoy for Kids; and
 - The requirements of section 237 of Schedule 1 to the *Workplace Relations Act 1996* in relation to donations. This issue has not been reviewed by either the AEC or the committee.
- 1.11 The FWA report concluded that Mr Thomson expended \$71 300.23 of HSU funds on the Dobell campaign.⁵ In relation to this expenditure, the HSU stated:

Mr Thomson contravened Sub-rule 32(n) and Sub-rule 36(b) by incurring and purporting to authorise each item of expenditure of National Office funds listed in the table at paragraph 197 of chapter 7 totalling \$71,300.23 for a purpose which was not the business of the HSU in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.⁶

5 Fair Work Australia, *Report of the Delegate to the General Manager of Fair Work Australia – Investigation into the National Office of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009*, 28 March 2012, p. 651.

6 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, pp. 1079-1080.

- 1.12 On 21 May 2012 Mr Thomson made a statement in parliament responding to the findings in the FWA report. In that statement Mr Thomson claimed that ‘since these allegations were first raised I have consistently and on many occasions made it clear that I have done nothing wrong’.⁷
- 1.13 The AEC examined the FWA report against the overlay of the reporting and disclosure obligations contained in the Electoral Act. In relation to the \$71 300.23, the AEC advised that it was seeking further information about four items of expenditure which total \$17 014.88.⁸
- 1.14 The AEC drew attention to two key aspects of electoral law in its analysis of HSU funds used in relation to Mr Thomson’s election to parliament. First, is the question of whether Mr Thomson (or his candidate agent) ‘had an actual disclosure obligation in relation to the items of expenditure that have been identified in the FWA report, particularly those contained in Chapter 7’.⁹
- 1.15 The AEC commented that ‘it should also be noted the Electoral Act does not apply to the pre-selection of new candidates or expenditure that they have incurred before they are actually endorsed by a registered political party’.¹⁰ The AEC stated:
- ... as Mr Thomson was not a “candidate” in the 2007 election until after he was endorsed by the ALP on 13 April 2007, the expenditure of HSU National Office funds for the benefit of Mr Thomson that have been identified by the FWA report which occurred before this date could not have given rise to any donor reporting obligation under section 305A of the Electoral Act as he was not a candidate in the election.¹¹
- 1.16 The second key point made by the AEC relates to the statute of limitations for prosecution set out in the Electoral Act. Subsection 315(11) of the Electoral Act provides that:
- A prosecution in respect of an offence against a provision of this section (being an offence committed on or after the commencement of this subsection) may be started at any time within 3 years after the offence was committed.*
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7 Mr Craig Thomson MP, *House of Representatives Hansard*, 21 May 2012, pp. 4715-4716.

8 Australian Electoral Commission, *Reporting obligations under the Commonwealth Electoral Act 1918 and the Report of the Delegate to the General Manager of Fair Work Australia*, May 2012, p. 15.

9 AEC analysis of the FWA report, p. 3.

10 AEC analysis of the FWA report, p. 3.

11 AEC analysis of the FWA report, p. 4.

1.17 The AEC stated:

As the three disclosure returns completed by Ms Jackson were received by the AEC on 13 October 2009, the three year limitation period in subsection 315(11) of the Electoral Act has not expired. However, in relation to the return lodged by the candidate agent for Mr Thomson and the ALP NSW Branch returns, the three year period to commence any prosecution has expired.¹²

1.18 In its submission to the inquiry, the AEC has provided an addendum to its analysis. The addendum contains an update on the four items of expenditure, totalling \$17 014.88. When considering the FWA report it was unclear to the AEC whether these amounts had been disclosed by the ALP and HSU. Full details are available in Annex 3 of the AEC's submission, and in Appendix C of this report.¹³

1.19 The AEC found that the HSU had seemingly failed to report three items of expenditure in the 2006-2007 and 2008-2009 returns. The AEC also noted that the HSU had included other items in returns that 'probably were not electoral expenditure'.¹⁴

1.20 The AEC asserted that 'the HSU National Office made reasonable attempts to disclose all electoral expenditure that they were able to identify from the incomplete records that were available to them in 2009'.¹⁵ The AEC concluded that given the difficulties with availability and accuracy of records, it has 'been unable to identify any public interest that could result in action being now initiated against the HSU National Secretary, Ms Kathy Jackson, in relation to the apparent failure to fully disclose three items of expenditure'.¹⁶ On 13 September 2012 the AEC provided a further update to its analysis, following the review of additional material. It is attached at Appendix F.

Objectives and scope of the inquiry

1.21 The committee's objective was to examine the AEC analysis of the FWA report and the 17 possible measures for improving the Electoral Act that were contained in the list of matters provided by the AEC. Where deemed

12 AEC analysis of the FWA report, p. 18.

13 AEC, *Submission 1*, Annex 3, pp. 62-65.

14 AEC, *Submission 1*, Annex 3, p. 65.

15 AEC, *Submission 1*, Annex 3, p. 64.

16 AEC, *Submission 1*, Annex 3, p. 65.

necessary, the committee makes recommendations to strengthen parts of the Electoral Act, particularly in relation to funding and disclosure requirements.

- 1.22 The FWA report covers a range of matters relating to requirements under the *Fair Work Australia (Registered Organisations) Act 2009* (RO Act). This included, but was not limited to, disclosure obligations for donations and political expenditure. The AEC analysis of the FWA report focused on who incurred a reporting obligation under the Electoral Act and whether the required expenditure was disclosed.
- 1.23 On 21 May 2012 the Member for Dobell, Mr Craig Thomson MP, made a parliamentary statement responding to the findings in the FWA report.¹⁷ In that statement Mr Thomson disputed some of the findings in the FWA report and claimed that the Delegate who undertook the investigation was ‘selective and biased’.¹⁸ In evidence to the committee the Delegate denied this characterisation.¹⁹
- 1.24 In the context of this inquiry it was not the role of the committee to forensically examine internal HSU authorisation processes or adjudicate on these matters. Any alleged contraventions against the *Fair Work (Registered Organisations) Act* (RO Act) and rules, or suspected fraudulent behaviour, are not matters for this committee. There are a number of other processes underway to deal with those matters.

Conduct of the inquiry

- 1.25 On 16 May 2012 the Special Minister of State, the Hon Gary Gray AO MP, asked the committee to review the AEC analysis of the FWA report and the ‘list of matters’ for strengthening the Electoral Act.
- 1.26 On 23 May 2012 the Committee Chair, Mr Daryl Melham MP, issued a media release to announce the inquiry and call for submissions. Six submissions and three exhibits were received.
- 1.27 Public hearings were conducted in Melbourne on 3 July 2012 and in Canberra on 6 and 16 July, and 22 August 2012. Witnesses are listed at Appendix E. Submissions and transcripts of evidence are available from the committee’s website at: www.aph.gov.au/em.

17 Mr Craig Thomson MP, *House of Representatives Hansard*, 21 May 2012, pp. 4715-4728.

18 Mr Craig Thomson MP, *House of Representatives Hansard*, 21 May 2012, p. 4719.

19 Mr Terry Nassios, FWA, *Committee Hansard*, 16 July 2012, Canberra, p. 4.

Structure of the report

- 1.28 Chapter 2 examines the issues raised in Chapter 7 of the FWA report and overlays this with the AEC analysis of each matter.
- 1.29 Chapter 3 examines the 17 possible measures proposed by the Electoral Commissioner for addressing limitations in the Electoral Act. The committee's previous deliberations on certain matters are provided and recommendations made, where appropriate.