

Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act

Australian Electoral Commission

© Commonwealth of Australia 2020

ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-579-3 (Print)

ISBN 978-1-76033-580-9 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <https://www.pmc.gov.au/government/its-honour>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Senior Executive Director
Corporate Management Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Or via email:

communication@anao.gov.au.



Canberra ACT
17 September 2020

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian Electoral Commission. The report is titled *Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Email: ag1@anao.gov.au

Auditor-General reports and information about the ANAO are available on our website:
<http://www.anao.gov.au>

Audit team

Joyce Knight
Cherise Reed
David van Schoten
Josh Carruthers
Irena Korenevski
Brian Boyd

Contents

Summary and recommendations.....	7
Background	7
Conclusion	7
Supporting findings.....	8
Recommendations.....	10
Summary of entity response.....	11
Key messages for all Australian Government entities.....	13
Audit findings.....	15
1. Background	16
Introduction	16
Legislative framework.....	18
Responsible administering entity.....	19
Rationale for undertaking the audit	20
Audit approach	20
2. Administration of the financial disclosure scheme	22
Does the Australian Electoral Commission obtain returns from all parties required to submit annual and election returns?.....	23
Is there sufficient evidence that the annual and election returns are accurate and complete?	29
Does the Australian Electoral Commission effectively analyse annual and election returns?.....	32
Does the Australian Electoral Commission effectively identify and manage risks to the financial disclosure scheme?.....	34
3. Compliance monitoring and enforcement.....	37
Has the Australian Electoral Commission sought to learn lessons from how other electoral bodies regulate financial disclosure schemes?.....	37
Does the Australian Electoral Commission apply a risk based approach to planning and conducting compliance activities?	40
Are planned compliance activities implemented in a timely and effective manner?	48
Does the Australian Electoral Commission appropriately act upon identified non-compliance?	57
Appendices	63
Appendix 1 Entity response	64
Appendix 2 Implementation of the McLeod recommendations.....	76
Appendix 3 List of entities that have not submitted a return as at 30 June 2020	79
Appendix 4 Methodology to assess the appropriateness of performance information for the compliance review program	82
Appendix 5 Glossary	83



Audit snapshot

Auditor-General Report No.8 2020–21

Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act



Why did we do this audit?

- ▶ The purpose of the financial disclosure scheme is to preserve the integrity of the electoral system, maintain public confidence in the electoral process, and reduce the potential for undue influence and corruption.



What did we find?

- ▶ The AEC's management of the disclosure scheme is partially effective.
- ▶ Not all required returns have been obtained, there is limited analysis of the returns that are obtained and evidence that some returns are incomplete.
- ▶ The number of compliance reviews, and the resources allocated to them, have declined considerably over time.



Key facts

- ▶ Disclosure returns are required from political parties, associated entities, political campaigners, third parties, donors and election candidates and senate groups.
- ▶ Across the four financial years examined by the ANAO spanning two federal elections and eleven by-elections, 5882 returns have been obtained and 75 returns have not been obtained by the AEC.
- ▶ Since 2015, 97 full scope and 68 limited scope reviews of returns have been planned.



What did we recommend?

- ▶ The Auditor-General made seven recommendations focussed on the AEC obtaining accurate and complete returns from all entities with a disclosure obligation.
- ▶ The AEC agreed to two recommendations, agreed with qualification to four and did not agree to one of the seven recommendations.

\$5.2 bn

in total receipts has been reported by regulated entities between 2015–16 and 2018–19.

78%

of returns reviewed by the AEC across the five year period examined by the ANAO required amendment.

35%

of planned compliance reviews were either not undertaken, or not completed.

Summary and recommendations

Background

1. The financial disclosure scheme was introduced in 1983 to increase overall transparency and inform the public about the financial dealings of political parties, candidates, senate groups and others involved in the electoral process. Regulation of the receipt and public disclosure of campaign funding and expenditure was seen as complementary and a necessary corollary to the introduction of public funding of political parties and candidates.
2. The financial disclosure scheme requires specified participants (entities) in the electoral process that receive funding¹, provide funding², or incur political, now electoral expenditure³ to lodge financial disclosure returns with the Australian Electoral Commission (AEC). Such information assists voters to make judgements knowing who funds political representatives and to what extent.

Rationale for undertaking the audit

3. The administration of the financial disclosure requirements by the AEC was selected for audit because the purpose of the financial disclosure scheme is to preserve the integrity of the electoral system, maintain public confidence in the electoral process and reduce the potential for undue influence and corruption.⁴ The financial disclosure scheme is also a central pillar of the Australian arrangements to provide electors with sufficient information on which to base selection of their political representatives.

Audit objective and criteria

4. The objective of the audit was to examine the effectiveness of the AEC's management of financial disclosures required under Part XX of the *Commonwealth Electoral Act 1918*, including the extent to which the AEC is achieving accurate and complete financial disclosures.
5. To form a conclusion against the audit objective the following high level audit criteria were used:
 - Has the AEC established effective arrangements to administer the financial disclosure scheme?
 - Has the AEC developed and implemented effective compliance monitoring arrangements?

Conclusion

6. The AEC's management of the financial disclosures required under Part XX of the *Commonwealth Electoral Act 1918* is partially effective.

1 Entities in the electoral process that receive funding include registered political parties and the state and territory branches of registered political parties.

2 Entities in the electoral process that provide funding include associated entities, third parties, and donors.

3 Entities in the electoral process that incur electoral expenditure include third parties and political campaigners.

4 See Second reading speech of the Electoral Legislation Amendment Bill in November 1983, p. 58.

7. The arrangements that the AEC has in place to administer the financial disclosure scheme are limited in their effectiveness as:

- (a) across the four year period examined, while the AEC has obtained 5882 annual and election returns, as at 30 June 2020, 75 returns have not been obtained. There have also been delays with the submission of returns to the AEC with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date;
- (b) the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation that have not submitted a return;
- (c) there is insufficient evidence that the returns that have been provided are accurate and complete⁵;
- (d) there is limited analysis undertaken of returns that are obtained; and
- (e) risks to the financial disclosure scheme are not managed in accordance with the risk management framework.

8. Compliance monitoring and enforcement activities are partially effective with the result that the AEC is not well placed to provide assurance that disclosure returns are accurate and complete.

Supporting findings

9. Across the four year period examined by the ANAO the AEC has obtained 5882 annual and election returns, and as at 30 June 2020, has not obtained 75 returns. Compliance with legislated timeframes has also been an issue, with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date. Forty four entities have submitted annual returns on average over 30 days late on two or more occasions, with 12 (27 per cent) having lodged, on two or more occasions, on average over 120 days late. Additionally, the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation and have not submitted a return.

10. There is insufficient evidence that annual and election returns are accurate and complete. While the AEC checks that all fields have been completed and looks for some obvious errors it does not compare the figures disclosed with other data available from internal or external sources, instead relying on its annual compliance review program to provide sufficient evidence that the annual and election returns are accurate and complete.

11. The effectiveness of the analysis undertaken by the AEC is limited. Annual returns submitted by third parties and donors are not analysed. Election returns submitted by candidates, senate groups or election donors are not analysed. The analysis that is undertaken of annual returns submitted by political parties and associated entities is limited as there is no detailed

5 ANAO analysis identified that for the 2016 federal election \$325,340 in funding provided to political parties by the AEC was not disclosed as required in the 2016–17 annual returns lodged by the relevant political party. The under reporting principally related to nine political parties that did not initially disclose the funding as a 'receipt above the threshold'. The oversight was not identified by the AEC until April 2018. Across seven by-elections and the 2019 federal election held in 2018–19, 28 political parties received \$54 million in funding that was required to be disclosed as a 'receipt over the threshold'. The ANAO has examined the amount of electoral funding provided and the returns submitted by all political parties that received funding and identified two that have not disclosed \$73,441 in funding that they received as required.

analysis of the financial information, and effective data analytics and data matching techniques are not employed by the AEC.

12. Risks to the financial disclosure scheme have not been managed in accordance with the AEC's risk management framework. While the risk appetite and tolerance statement of this framework states that the AEC has a low/moderate risk tolerance for risks associated with the disclosure function there is no evidence that risks relating to all entities that have a disclosure obligation have been assessed and are being managed appropriately. Additionally, there is no treatment plan in place for the risk that has been identified by the AEC, being the risk of non-compliance by political parties.

13. While the AEC has identified some lessons that it could learn from other electoral bodies that regulate financial disclosure schemes, there is little evidence of any resulting changes having been made to how the Commonwealth scheme is administered. The AEC has also not taken adequate steps to implement agreed recommendations from a review it commissioned in 2012 of the disclosure compliance function (which concluded that the AEC needed to become more proactive in its approach).

14. The AEC does not apply an appropriate risk based approach to planning and conducting compliance activities.

- While most reviews are planned on the basis of a risk assessment, there are a number of limitations in the risk assessment methodology employed.
- Over the period assessed the AEC did not undertake a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).
- The number of reviews, and the resources allocated to them, have declined considerably across the five year period analysed. These reductions do not reflect an assessment that the risk of non-disclosure or non-compliance has reduced and this situation is also at odds with the significant growth that has occurred in the total value of receipts and other figures included in the financial disclosure returns provided to the AEC.

15. Planned compliance activities are not implemented in a timely and effective manner. Of the 168 reviews that were planned to have been conducted over the five year period examined by the ANAO, 58 (35 per cent) have not been completed. While completion rates have improved in the last two years this is due to the AEC significantly reducing the number of planned reviews, narrowing the scope of planned reviews, and reducing the value of the transactions being tested. There has also been a marked decline in the number of full reviews that are being conducted on large entities with disclosure obligations.

16. The AEC does not appropriately act upon identified non-compliance. It is not making effective use of its enforcement powers and as such has not implemented a graduated approach to managing and acting on identified non-compliance.

Recommendations

Recommendation no.1
Paragraph 2.19 The Australian Electoral Commission improve the extent to which it is obtaining annual and election returns by taking:

- (a) greater steps to identify entities with a reporting obligation, and drawing that obligation to the attention of those entities; and
- (b) more effective action to obtain returns that have not been submitted by an entity with an identified disclosure obligation.

AEC Response: *Agreed with qualification*

Recommendation no.2
Paragraph 2.43 The Australian Electoral Commission 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.

AEC Response: *Agreed with qualification*

Recommendation no.3
Paragraph 2.52 The Australian Electoral Commission identify and develop treatment plans for risks relating to the financial disclosure scheme and manage the scheme in line with its revised risk management framework.

AEC Response: *Agreed*

Recommendation no.4
Paragraph 3.13 The Australian Electoral Commission apply the lessons learned that have been identified through:

- (a) accessing specialist expertise to test the effectiveness of the processes and practices that are in place to identify undisclosed financial transactions; and
- (b) establishing arrangements with other government agencies to share intelligence gathering, data interrogation and risk based sampling techniques.

AEC Response: *Agreed with qualification*

Recommendation no.5 The Australian Electoral Commission adopt a risk based approach to its compliance review program that:

Paragraph 3.39

- (a) assesses the aggregate level of risk to inform decisions about the size and coverage of the program;
- (b) includes all disclosures required under the updated legislative framework; and
- (c) improves the effectiveness of the risk matrix used to select the majority of reviews, and better address risks of non-disclosure and incomplete disclosure.

AEC Response: *Agreed with qualification*

Recommendation no.6 The Australian Electoral Commission establish performance measures for its compliance program that are relevant, reliable and complete.

Paragraph 3.73

AEC Response: *Agreed*

Recommendation no.7 The Australian Electoral Commission implement a graduated approach to addressing non-compliance, including by making better use of its investigatory powers and seeking to have prosecutions undertaken by the Commonwealth Director of Public Prosecutions or civil penalties applied by the courts where serious or repeat non-compliance has been identified.

Paragraph 3.90

AEC Response: *Not agreed*

Summary of entity response

An effective and transparent financial disclosure scheme is a key pillar of Australia's democratic framework, and the outcomes of this audit demonstrate there are aspects of the AEC's administration of the disclosure scheme that would benefit from further enhancements. The AEC acknowledges the audit team's work and notes the observations, which we will address in line with our responses to the recommendations.

However, the ANAO's categorisation of the AEC's management of the disclosure scheme as 'partially effective' is rejected. The proposed report contains some errors of fact and superficial analysis that lead to some flawed observations. It demonstrates a misunderstanding of the AEC's business and the legislation under which it operates. The ANAO's decision to conduct this audit prematurely –before recent legislative changes have had a chance to take effect — is akin to a building inspector assessing a two-storey house after only the first level had been completed. The result is a report that gives the Australian public an unduly negative and misleading impression of the effectiveness of the scheme.

The ANAO's finding that the AEC's management of the disclosure scheme is 'partially effective' runs counter to the extent of disclosure achieved by the AEC (obtaining 98.9% of annual returns and 99.6% of election returns during the four year period examined), the transparency of the current system, and the successful operation of the scheme within existing legislative boundaries.

The AEC view is that the ANAO has misunderstood the intent of the legislation. Over the period the AEC has been administering the requirements of the Electoral Act, the AEC has not detected systemic issues, wilful or large scale non-compliance with the legislation. And nor have others that scrutinise this scheme through our transparent sharing of the data. Our experience is that incomplete or incorrect disclosures are almost entirely caused by administrative mistakes or misunderstanding of disclosure obligations, which participants rectify. As a result, disclosure is achieved in line with the legislation.

The AEC's risk based approach to compliance reviews is the outcome of balancing the competing tensions of natural justice, apprehended bias and prudent use of Commonwealth funds with the preservation of public confidence in the transparency of the financial dealings of political parties and others involved in the electoral process.

Moreover, the AEC disagrees with the ANAO's view that it does not make effective use of its enforcement powers. The ANAO seems to have misinterpreted parliament's intent on this issue. The AEC's view, supported by data, is that the AEC has successfully achieved disclosure through consultation and education. The proposition the AEC should be more heavy-handed in its approach to enforcement is rejected, as prosecutorial action for amendments and other administrative mistakes would be disproportionate.

The AEC believes the ANAO's misunderstanding of the intent of the legislation exaggerates the nature of the recommendations and the perceived risk to electoral integrity.

ANAO comment

17. The core elements of the financial disclosure scheme were introduced in 1983 and required disclosure reporting to the AEC and also provided the AEC with powers to undertake reviews and inquiries to maintain compliance with the disclosure provisions as well as a range of penalties aimed at discouraging non-compliance. Since its introduction, the financial disclosure provisions of the Electoral Act have been subject to four substantial amendments, most recently in 2018. The impact of those recent amendments on the AEC's practices was considered as part of the audit. Reflecting that the key elements of the AEC's responsibilities for administering the scheme are longstanding the audit examined administration of the disclosure scheme across four financial years spanning two federal elections and eleven by-elections.

18. To achieve the purpose of the disclosure scheme, it is important that reports be obtained from all those with a reporting obligation and that the reports obtained be timely, accurate and complete. While almost all returns sought by the AEC were obtained:

- reporting has not been sufficiently timely, with 22 per cent of annual returns and 17 per cent of election returns lodged after the due date with some entities submitting returns late on multiple occasions; and
- 78 per cent of returns reviewed by the AEC required amendment yet, rather than increasing its scrutiny of the reports that have been obtained, the AEC:
 - significantly reduced the number of planned reviews, narrowed the scope of planned reviews, and reduced the value of the transactions being tested;
 - did not undertake or did not complete 35 per cent of planned compliance reviews; and
 - has not undertaken a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).

Key messages for all Australian Government entities

19. Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

Risk management

- Compliance programs should be developed on appropriate risk based priorities that address the full scope of regulatory responsibilities. This assists in providing assurance that regulators are appropriately allocating resources to identified risk areas.
- Agencies should select entities for a compliance review or similar engagement by applying an appropriate risk based approach that is capable of providing assurance that the overall purpose of the compliance review program is being achieved, and assessing the level of compliance of the regulated entities over time.
- Regulators should make appropriate use of their powers to support the objects of the legislative framework by applying a graduated approach to address non-compliance that includes the use of stronger sanctions when required.

Implementation of recommendations

- Where resources are expended to review processes, procedures, activities, and identify opportunities for improvement the agency should ensure that: the outcomes from the engagement are implemented; the intended benefits of the engagement are realised; and value for money is achieved.

Audit findings

1. Background

Introduction

1.1 The financial disclosure scheme was introduced in 1983 to increase overall transparency and inform the public about the financial dealings of political parties, candidates, senate groups and others involved in the electoral process. Regulation of the receipt and public disclosure of campaign funding and expenditure was seen as complementary and a necessary corollary to the introduction of public funding of political parties and candidates.

1.2 The financial disclosure scheme requires specified participants (entities) in the electoral process that receive funding⁶, provide funding⁷, or incur electoral expenditure⁸ to lodge financial disclosure returns with the Australian Electoral Commission (AEC). Such information assists voters to make judgements knowing who funds political representatives and to what extent.

1.3 There are two main types of financial disclosure returns, annual and election returns. Annual financial disclosure returns are to be submitted by: registered political parties and the state and territory branches of registered political parties; associated entities; political campaigners⁹; third parties; and donors. Election returns are to be submitted by candidates, senate groups and donors.¹⁰ The information that is to be disclosed varies depending on the type of entity. The information requirements for each type of return and entity are illustrated in Table 1.1 on the following page. Key terms included in this table are defined in Appendix 5.

6 Entities in the electoral process that receive funding include registered political parties, state and territory branches of registered political parties, and candidates.

7 Entities in the electoral process that provide funding include associated entities, third parties, and donors.

8 Entities in the electoral process that incur electoral expenditure include third parties and political campaigners.

9 Registered political parties and the state and territory branches of registered political parties, associated entities, and political campaigners are required to submit annual financial disclosure returns 16 weeks after the end of each financial year. For 2018–19, the due date for annual financial disclosure returns was 21 October 2019. For third parties and donors annual financial disclosure returns are due 20 weeks after the end of the financial year. For 2018–19 the due date for financial disclosure returns was 18 November 2019.

10 Election returns are required to be submitted 20 weeks after each election event. For the 2019 federal election, election returns were due 2 September 2019.

Table 1.1: Annual and election return information requirements per type of entity

Entity	Type of return	Receipts ^a	Gifts in kind	Payments	Debts ^b	Electoral Expenditure	Discretionary benefits	Capital Contributions
Political party	Annual	✓	✓	✓	✓	✗	✓	✗
Associated entity	Annual	✓	✓	✓	✓	✗	✓	✓
Political campaigner	Annual	✓	✓	✓	✓	✓	✓	✗
Third party	Annual	✓ ^c	✗	✓	✗	✓	✗	✗
Candidate and senate group	Election	✓	✗	✗	✗	✓	✓	✗
Election donors	Election	✓ ^c	✗	✓ ^c	✗	✗	✗	✗
Donors to political parties and political campaigners	Annual	✓ ^c	✗	✓ ^c	✗	✗	✗	✗

Note a: Receipts include all funds received that are over and under the disclosure threshold. Appendix 5 provides a definition for receipts and receipts over the threshold.

Note b: Debts include the total outstanding amount of all debts incurred by, or on behalf of the entity as at the end of the financial year. Where the debt is greater than the disclosure threshold as at the last day of the relevant financial year the details of the debt are to be disclosed.

Note c: Third parties, donors to political parties and political campaigners and election donors do not have to report all funds received — only donations received for the purpose of incurring electoral expenditure or making the donations declared. In addition, donors to political parties and political campaigners, and election donors have to report their donations made.

Source: ANAO analysis of *Commonwealth Electoral Act 1918* and AEC documentation.

Legislative framework

1.4 The legislative framework which applies to the financial disclosure scheme is contained in the *Commonwealth Electoral Act 1918* (Electoral Act). There are no legislative or regulatory instruments in place to provide additional guidance on how the financial disclosure provisions under the Act are to be monitored or how the scheme is to be administered by the AEC.

1.5 Since its introduction in 1983¹¹, the financial disclosure provisions of the Electoral Act have been subject to four substantial amendments. In 1995, the financial disclosure provisions were expanded to include associated entities¹² and to require donors to submit financial disclosure returns. In 1998, the investigatory powers of the AEC were expanded to allow it to conduct an investigation to determine if an entity is, or was, an associated entity. In 2006, the Electoral Act was amended to:

- increase the disclosure threshold¹³ from \$1500 to \$10,000, indexed annually to CPI.
 - for the 2019–20 financial year, the disclosure threshold was \$14,000;
- extend the definition of an ‘associated entity’ to apply to entities that are a financial member of a registered political party, and/or entities that have voting rights in a registered political party;
- extend the application of the financial disclosure provisions to a new category of entity (third parties);
- require donors to disclose the total amount of donations (gifts) made over the threshold;
- require entities that incur political expenditure, now electoral expenditure, over the disclosure threshold to submit a financial return to the (AEC); and
- remove the requirement for publishers and broadcasters to furnish returns on electoral advertisements.¹⁴

1.6 In November 2018¹⁵, the Electoral Act¹⁶ was amended to:

- ban the receipt of foreign donations over \$1000;
 - the onus of ensuring that the limitations on the receipt of funds ‘gifts’ from foreign entities is complied with is the responsibility of the recipient of the gift;
- introduce a new class of entities (political campaigners) that have disclosure obligations;
- require associated entities and political campaigners to register with the AEC;

11 In 1983, the Electoral Act was amended to introduce a new Part, Part XVI — Election Funding and Financial Disclosure. The provisions in this new part of the Electoral Act required political parties, candidates, and groups of candidates to disclose donations (referred to as ‘gifts’) and the amount of electoral expenditure incurred.

12 An associated entity is defined in Section 287H of the Electoral Act.

13 The disclosure threshold is the dollar value of donations that can be made before they are required to be disclosed.

14 The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* also increased the tax deductible threshold for political donations from \$100 to \$1500 per year.

15 For the purposes of the financial disclosure scheme the relevant provisions and associated changes to the Electoral Act that were made in November 2018 came into effect on 1 January 2019.

16 *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act No.147, 2018*.

- revise the election funding model;
- expand the ability of the AEC to undertake compliance reviews on political campaigners, third parties, and donors;
- amend the enforcement provisions from a strict liability to a civil regime to deal with non-disclosure; and
- require the publication of a register (known as the transparency register) that identifies all political parties, associated entities, third parties, political campaigners, organisational and individual donors known to the AEC.
 - the transparency register was released in December 2018 and is intended to allow the public to view all annual and election returns submitted by all the entities that have disclosure obligations under the Electoral Act.

Responsible administering entity

1.7 The AEC is responsible for managing the financial disclosure scheme. The Electoral Act provides enforcement powers, including the authority to undertake compliance reviews and investigations to ensure that entities are complying with their legislated requirements. As such, the AEC has obligations similar to other regulatory bodies (such as the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission, and the Australian Transaction Reports and Analysis Centre) to manage and administer the scheme in such a way that it can provide assurance that entities that are required to submit financial disclosure returns are complying with their obligations.

1.8 In June 2020, the AEC advised the ANAO that its approach to the funding and disclosure regime is one of education to achieve disclosure.

Compliance Review Committee

1.9 The Compliance Review Committee (CRC) was established by the AEC in 2014.¹⁷ It is responsible for approving and monitoring the disclosure schemes' compliance review program. This includes approving the selection of reviews, considering changes to the risk matrix, considering changes to the methodology for conducting reviews, monitoring the progress of the compliance program, and amending the selection of reviews if required.

1.10 The Committee is chaired by the Deputy Electoral Commissioner. The other members of the CRC are the First Assistant Commissioner Capability, and the Assistant Commissioner, Disclosure Assurance and Engagement.

Electoral Integrity Reforms

1.11 In September 2017, the AEC identified that the proposed changes to the Electoral Act would require the AEC to develop and implement new systems (including ICT systems) and processes to facilitate enhanced financial disclosure reporting obligations of affected individuals and organisations, and that its role to administer and enforce the new regime would require additional suitably skilled staff to:

¹⁷ The Compliance Review Committee was established as part of the AEC's efforts to implement Recommendation no.1 and no.2 of the McLeod review (see further information at paragraphs 3.3 to 3.5).

- process an increased number of disclosure returns, including associated reporting;
- perform compliance and assurance functions; and
- administer a new civil penalty regime.

1.12 In December 2017, the AEC was allocated \$56.5 million to implement the Electoral Integrity Reforms. The funding was provided to design and implement the technology and systems and meet additional staffing costs to administer and manage an expanded scheme. Of the \$56.5 million the AEC allocated \$19.5 million to design and deliver a Self-Service Platform (SSP).¹⁸ At the time of this performance audit, the SSP has not been delivered and the additional resources have not been engaged. The AEC advised the ANAO in June 2020 that the SSP is scheduled for delivery in the first quarter of 2020–21 and that recruitment of additional resources is underway. In July 2020, the AEC further advised the ANAO that \$31 million (55 per cent) of the \$56.5 million allocated in December 2017 has been spent.

Rationale for undertaking the audit

1.13 The administration of the financial disclosure requirements by the AEC was selected for audit because the purpose of the financial disclosure scheme is to preserve the integrity of the electoral system, maintain public confidence in the electoral process and reduce the potential for undue influence and corruption.¹⁹ The financial disclosure scheme is also a central pillar of the Australian arrangements to provide electors with sufficient information on which to base selection of their political representatives.

Audit approach

Audit objective, criteria and scope

1.14 The objective of the audit was to examine the effectiveness of the AEC's management of financial disclosures required under Part XX of the *Commonwealth Electoral Act 1918*.

1.15 To form a conclusion against the audit objective the following high level audit criteria were used:

- Has the AEC established effective arrangements to administer the financial disclosure scheme?
- Has the AEC developed and implemented effective compliance monitoring arrangements?

1.16 The audit scope focused on the administration and operations of the financial disclosure scheme since the McLeod review was completed in November 2012 and addresses how the AEC:

- identifies those with disclosure obligations;
- supports compliance with the scheme;
- ensures that financial disclosure returns are accurate and complete;
- selects and conducts reviews of financial disclosure returns;
- conducts investigations into possible contraventions of the financial provisions; and

¹⁸ Module four of this project is intended to deliver a funding and disclosure portal.

¹⁹ See second reading speech of the Electoral Legislation Amendment Bill in November 1983, p. 58.

- addresses non-compliance.

Audit methodology

1.17 The audit has examined records (electronic and hard-copy) held by the AEC, including records stored in group folders, Microsoft SharePoint, and email traffic stored in group mailboxes. All of the financial disclosure returns submitted from 2015–16 through to 2018–19 were tested for accuracy, completeness and timeliness using data extracted from a full back-up copy of the returns management system. All the compliance reviews planned and completed between 2015 and 2019 have also been tested.

1.18 Interviews were held with staff involved in administering the financial disclosure scheme, and undertaking compliance monitoring activities. Interviews were also held with law enforcement agencies. The interviews were conducted to examine to what extent the AEC engages with law enforcement agencies as part of administering the financial disclosure scheme and managing its compliance monitoring program, particularly in relation to implementing the changes made to the Electoral Act in November 2018 that banned political parties from accepting foreign donations.

1.19 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of \$723 000.

1.20 The team members for this audit were Joyce Knight, Cherise Reed, David van Schoten, Josh Carruthers, Irena Korenevski and Brian Boyd.

2. Administration of the financial disclosure scheme

Areas examined

This chapter examines if the Australian Electoral Commission (AEC) has established effective arrangements to administer the financial disclosure scheme.

Conclusion

The arrangements that the AEC has in place to administer the financial disclosure scheme are limited in their effectiveness as:

- across the four year period examined, while the AEC has obtained 5882 annual and election returns, as at 30 June 2020, 75 returns have not been obtained. There have also been delays with the submission of returns to the AEC with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date;
- the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation that have not submitted a return;
- there is insufficient evidence that the returns that have been provided are accurate and complete²⁰;
- there is limited analysis undertaken of returns that are obtained; and
- risks to the financial disclosure scheme are not managed in accordance with the risk management framework.

Recommendations

The ANAO has made three recommendations to improve identification of entities with a reporting obligation and take more effective action when an entity does not meet its reporting obligation; greater use of data analytics and data matching techniques; and improved management of risks to the financial disclosure scheme.

2.1 To examine the AEC's administration of the financial disclosure scheme, the ANAO examined:

- the extent to which the AEC has obtained returns from those with disclosure obligations;
- evidence about whether the returns submitted are accurate and complete;
- the extent to which the AEC analyses the returns it obtains; and
- the identification and management of risks to the scheme.

20 ANAO analysis identified that for the 2016 federal election \$325 340 in funding provided to political parties by the AEC was not disclosed as required in the 2016–17 annual returns lodged by the relevant political party. The under reporting principally related to nine political parties that did not initially disclose the funding as a 'receipt above the threshold'. The oversight was not identified by the AEC until April 2018. Across seven by-elections and the 2019 federal election held in 2018–19, 28 political parties received \$54 million in funding that was required to be disclosed as a 'receipt over the threshold'. The ANAO has examined the amount of electoral funding provided and the returns submitted by all political parties that received funding and identified two parties that have not disclosed \$73 441 in funding that they received as required.

Does the Australian Electoral Commission obtain returns from all parties required to submit annual and election returns?

Across the four year period examined by the ANAO the AEC has obtained 5882 annual and election returns, and as at 30 June 2020, has not obtained 75 returns. Compliance with legislated timeframes has also been an issue, with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date. Forty four entities have submitted annual returns on average over 30 days late on two or more occasions, with 12 (27 per cent) having lodged, on two or more occasions, on average over 120 days late. Additionally, the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation and have not submitted a return.

2.2 The AEC's approach to identifying entities required to submit an annual or election return varies depending on factors such as whether reporting entities are required to be registered.

- Political parties, candidates and senate groups are identified by the AEC from its records of the registration and deregistration process for political parties, and its records of the nominations process for candidates and senate groups.
- Associated entities self-identify, or are identified by the relevant political party. In 2014–15 and 2016–17 the AEC requested each political party provide a list of its associated entities. This was not done for 2015–16, 2017–18 or 2018–19. The AEC advised the ANAO in June 2020 that 'the letters to political parties about identifying associated entities are not a requirement under the Electoral Act. The AEC's experience with this process in the past is that the response has been patchy and we are not convinced of the value of this approach in identifying associated entities.'
- To identify associated entities of political parties the AEC has made some use of media monitoring. The AEC also has the power to investigate if an entity is, or was, an associated entity.²¹ While AEC records indicate that it identified two entities in 2017–18 and 2018–19 that may be associated entities²², its records do not demonstrate that it has contacted or investigated the two entities to establish if a disclosure obligation exists.²³ While the AEC advised the ANAO in June 2020 that it had decided at the time that there was insufficient evidence to warrant writing to the entities as potential associated entities, no record of this decision was made.
- From January 2019, associated entities are required to register with the AEC. The AEC automatically registered all entities that lodged an annual return as an associated entity in 2017–18 as part of establishing the transparency register, see paragraph 1.6. Entities that no longer consider themselves to be an associated entity can apply to deregister. Since January 2019, 11 entities have deregistered.

21 Subsection 316(3A) of the Commonwealth Electoral Act <https://www.legislation.gov.au/Details/C2019C00103> can be invoked where an authorised officer has 'reasonable grounds' to believe that a person is capable of producing documents or other things, or giving evidence, relating to whether another person or an entity is, or was at a particular time, a political campaigner, third party or associated entity.

22 The two entities identified by the AEC that may be associated entities are the Democratic Reform Movement and the Defenders of Self-Funded Retirees.

23 The introduction of this power was intended to enable the AEC to compel an entity to produce evidence in order to draw a conclusion on the operations of that entity, when not available on the public record or provided by the entity upon request.

- Environmental scans and monitoring of the media are also used to identify potential third parties. For example, between 2017–18 and 2018–19 the AEC identified a total of 16 entities that may need to provide a third party return. Of the 16 entities, five submitted a return for 2017–18 or 2018–19 without any action required. One registered as a political campaigner. One of the entities was identified as a result of a complaint received in relation to the communication of electoral matter and subsequently submitted a third party return for 2018–19. For the remaining nine entities there is no evidence that the AEC contacted the entity to advise that a potential third party obligation had been identified. The AEC subsequently advised the ANAO that out of the nine entities one lodged a third party return and a donation from one was included in another entities third party return. For five entities, the entities' websites were reviewed and it was determined that the activity would not have exceeded the disclosure threshold, or was outside disclosure obligations (the same sex marriage postal survey) and as such no further action was undertaken.²⁴ For the remaining two entities, the AEC did not provide a response.²⁵
- Political campaigners were introduced as a new category of reporting entity in November 2018 and are required to be registered with the AEC. In January 2019 and early February 2019, four entities registered as a 'political campaigner'. In mid-February 2019, to identify entities likely to be required to register and provide an annual return as a political campaigner the AEC analysed third party returns submitted in 2015–16, 2016–17 and 2017–18 and identified a further 18 entities that may need to register as a political campaigner. In April 2019, 23 entities had registered. Of the 23 registered political campaigners, 22 submitted a return for 2018–19, one entity de-registered in May 2019 and did not submit a return.²⁶ Additionally, one entity that was not a registered political campaigner also submitted a return.²⁷

2.3 There are opportunities for the AEC to make use of other available data sources to identify entities that may have disclosure obligations (as well as to provide assurance over the completeness of returns that are received). For example:

- Unions are required to register under the *Fair Work Act 2009* with the Registered Organisation Commission (ROC) as a registered organisation and are required to submit financial statements that include disclosure of donations made; and
- the Australian Transaction Reports and Analysis Centre holds financial information for transactions over \$10,000 that the AEC could request access to so as to identify entities that have disclosure obligations as a result of reported transactions.²⁸

24 The five entities are Family Voice, Canberra Declaration, the Real Estate Institute of Australia, the Property Investors Council of Australia, and The Ally Network.

25 The two entities that the AEC did not provide a response for are Unions ACT and Pathology Providers of Australia.

26 Industry Super Australia de-registered as a political campaigner on 7 May 2019.

27 Pesec Limited was not identified by the AEC has a potential political campaigner, was not listed on the transparency register as at January 2020, however submitted an annual return in October 2019.

28 The Australian Transaction Reports and Analysis Centre advised that its information could be accessed by the AEC and used to: support the management of the financial disclosure scheme in relation to the identification of parties with disclosure obligations; identify environmental risks; inform its risk assessment processes used to select entities for a compliance review; and support AEC efforts to investigate and identify potential non-compliant behaviours.

2.4 To advise entities that they have a disclosure obligation the AEC issues legal obligation letters. The letters are tailored for each type of reporting entity. They set out the legislative basis for the disclosure obligation, identify the due date, set out the process for lodging a return and advise of how further information or assistance can be sought.

2.5 Political parties, associated entities and third parties that are known to the AEC are sent legal obligation letters after the end of each financial year. The AEC advised the ANAO in June 2020 that there is no requirement under the Electoral Act for the AEC to issue obligation letters by a set date and its standard practice is to aim to have the legal obligation letters issued before the end of July.

2.6 Reminder letters are to be sent within four weeks of the due date. Where the annual return has not been provided a week after the due date the AEC is to send a failure to lodge letter. The total number of legal obligation, reminder and failure to lodge letters that the AEC has issued over the four year period examined by the ANAO (2015–16 to 2018–19) is detailed below at Table 2.1.

Table 2.1: Number and type of correspondence issued per category of entity

Category of entity	Legal obligation letters	Reminder letters	Failure to lodge letters
Political parties	367	288	31
Associated entities	740	585	47
Third parties	116	135	13
Total	1223	1008	91

Source: ANAO analysis of AEC documentation.

2.7 The ANAO's analysis identified that 92 per cent of reminder letters, and 27 per cent of failure to lodge letters issued to the various categories of reporting entities were issued late.²⁹ For reminder letters the delay was on average 19 days, and 20 days for failure to lodge letters. There have also been a few cases where the AEC has not sent a legal obligation, reminder or failure to lodge letter, see Table 2.2 below.

Table 2.2: Number and type of each entity that had an obligation to disclose where no legal obligation, reminder or failure to lodge letter was sent

Financial Year	Political parties	Associated entities	Third parties
2015–16	0	3	3
2016–17	0	0	0
2017–18	0	3	3
2018–19	0	0	0
Totals	0	6	6

Source: Analysis of AEC returns management system.

²⁹ For example, for 2018–19 the AEC process for political parties was to involve reminder letters being sent on 4 September 2019 where a report had not yet been received. This did not occur. Rather, reminder letters were sent to 191 entities between 1 October and 11 October 2019.

2.8 For donors, legal obligation letters are sent when they are identified by the AEC during the processing of annual returns submitted by political parties and associated entities. As such, there is no set date that legal obligation letters are to be sent to donors.

2.9 For candidates and senate groups, a legal obligation letter is to be issued 30 days from polling day. For candidates that nominate an agent, the legal obligation letter is issued to the agent. Where the candidate does not nominate an agent, the legal obligation letter is to be sent to the candidate. Most candidates are endorsed by a political party, and as such the number of legal obligation letters issued does not match the number of returns due.

2.10 For candidates that nominated for the 2016 and 2019 federal elections, the number of legal obligation letters that were issued per type and the average number of days between the polling date and the date of issue of the letter is detailed at Table 2.3 below.

Table 2.3: Total number of each type of legal obligation letter issued to candidates for the 2016 and 2019 federal elections

Election Event	Type of letter	Number of letters sent	Average number of days between election and issuing of the letter
2016 federal election	Legal obligation	1111	38
	Reminder	679	89
	Failure to lodge	201	134
2019 federal election	Legal obligation	631	36
	Reminder	387	98
	Failure to lodge	147	124

Source: ANAO analysis of the returns management system.

2.11 As illustrated above, the AEC has not met its 30 day target to issue the legal obligation letters, and failure to lodge letters are not (on average) issued until more than 120 days after polling day. Where a failure to lodge letter is not complied with, the AEC attempts to contact the candidate, or the candidate's agent directly.

2.12 The ANAO has identified that the AEC spent, on average, 240 days attempting to contact candidates that had not lodged an election return. When combined with the 120 days on average between polling day and the issuing of a failure to lodge letter it takes, on average, 360 days for the AEC to refer the matter to the Commonwealth Director of Public Prosecutions (CDPP) for potential prosecution. The AEC's approach to managing non-compliance and its enforcement activities where candidates have failed to lodge an election return is discussed in more detail in Chapter 3, paragraph 3.87 and 3.88 of this report.

2.13 Overall, as illustrated in Table 2.4 on the following page, across the four years examined the AEC has obtained a total of 5882 financial disclosure returns (2569 annual returns and 3313 election returns).

Table 2.4: Annual and election returns obtained by the AEC: 2015–16 to 2018–19 as at 30 June 2020

Annual returns	2015–16	2016–17	2017–18	2018–19	Total
Category of entity					
Political parties	92	92	90	103	377
Associated entities	188	188	187	176	739
Third parties	56	34	57	52	199
Political campaigners	N/A	N/A	N/A	24	24
Donors to political parties and political campaigners	400	219	251	360	1230
Election returns	2016	2017	2018	2019	Total
Category of entity					
Candidates	1650	0	87	1518	3255
Senate groups	11	0	0	9	20
Election donors	8	0	0	30	38
Total obtained:					5882

Source: ANAO analysis.

2.14 Most (78 per cent) of the annual returns were obtained in accordance with the legislated timeframes. In a similar manner to the annual returns, 2774 election returns (83 per cent) were obtained within the legislated timeframes. In contrast to the annual returns lodged, the majority (71 per cent) of election returns are nil returns. This is because, where an electoral candidate is endorsed by a political party, the political party is to include the details in its annual return.

2.15 Of the annual returns that were lodged late, 67 per cent were lodged within 30 days of the due date, and 18 per cent were lodged more than 90 days after the due date. As illustrated below at Table 2.5, there were a small number of annual returns submitted more than three months after the due date.

Table 2.5: Number of days late by entity type: 2015–16 to 2018–19

	Political parties	Associated entities	Third parties	Donors
<30 days late	54	87	13	190
>30 days late	1	19	0	35
>60 days late	3	2	3	55
>90 days late	5	16	4	117
Totals	63	124	20	397

Source: ANAO analysis

2.16 While some entities with legislated disclosure obligations have submitted returns late on multiple occasions the AEC's approach to managing repeated late lodgement is passive, with the AEC advising that the first priority is to achieve disclosure.

2.17 Over the four year period assessed there were 50 entities that lodged late in two of the four years analysed, 15 that lodged late in three, and six that lodged late in each of the four years. Of the six entities that lodged late in all four years, one was a political party³⁰, four were associated entities³¹ and one a donor.³² Additionally, 44 entities that were late on two or more occasions, were on average over 30 days late, and of the 44 entities, 12 (27 per cent) that submitted late on more two or more occasions, were on average, over 120 days late. Nevertheless, the AEC has never referred an entity to the CDPP for late lodgement of an annual return.

2.18 Overall, as illustrated by Table 2.6, across the four year period analysed by the ANAO, as at the end of June 2020, it was evident that there are 75 returns that the AEC has not obtained from reporting entities.³³ Further details of the returns that have not been provided are listed in Appendix 3.

Table 2.6: Annual and election returns not obtained by the AEC: 2015–16 to 2018–19 as at 30 June 2020

Annual returns	2015–16	2016–17	2017–18	2018–19	Total
Political parties and registered state and territory branches ^a	9	6	17	1	33
Associated entities	0	0	0	0	0
Third parties	0	0	0	1	1
Political campaigners	N/A	N/A	N/A	1	1
Donors to political parties and political campaigners	0	5	2	19	26
Election returns	2016	2017	2018	2019	Total
Candidates	0	0	0	12	12
Senate groups	2	0	0	0	2
Election donors	0	0	0	0	0
Total not obtained:					75

Note a: Prior to 2018–19, the AEC did not require political parties that deregistered part way through a year to submit an annual return. Between 2015–16 and 2017–18 a total of 32 political parties deregistered part way through a year. The legislation has been amended 'to avoid doubt' that deregistered political parties are required to submit a return and the AEC now seeks returns from deregistered political parties to cover the part of the year for which they were registered.

Source: ANAO analysis of AEC records and AEC website.

30 The Democratic Labour Party — WA Branch.

31 The four associated entities are the CFMMEU — Maritime Union of Australia, the Nepean Club, YLNP No.1 Ltd (James Killen Foundation) and the Chinese Liberals Association.

32 While the AEC's returns management system identified that this entity had donor reporting obligations that were not met on time, in August 2020 the AEC advised the ANAO that 'the entity had no obligation to lodge a donor return in any of the four years. The entity is named on returns as providing 'other receipts' above the threshold and one donation in 2015–16 of \$1,999 which does not require disclosure'.

33 This includes 32 political parties that between 2015–16 and 2017–18 deregistered partway through a financial year, and were not asked by the AEC to submit an annual financial disclosure return. Some later re-registered. For example, the Palmer United Party deregistered in May 2017. The AEC did not send a legal obligation letter seeking a return for the 11 months of the 2016–17 financial year it was registered for and the party did not provide an annual financial disclosure return. In December 2018, the Palmer United Party re-registered under the name United Australia Party, now Clive Palmer's United Australia Party.

Recommendation no.1

2.19 The Australian Electoral Commission improve how it is obtaining annual and election returns by taking:

- (a) greater steps to identify entities with a reporting obligation, and drawing that obligation to the attention of those entities; and
- (b) more effective action to obtain returns that have not been submitted by an entity with an identified disclosure obligation.

AEC response: *Agreed with qualification*

2.20 *The AEC is already effective at discharging its responsibility to obtain required disclosure returns demonstrated by the ANAO findings that during the period of review the AEC obtained 98.9% of annual returns and 99.6% of election returns and will continue to update its program of awareness activities as part of continued improvement.*

2.21 *With the change to a civil penalty regime introduced by legislative reform in January 2019, the AEC is using this to obtain returns that have not been submitted and will assess the effectiveness of the program once the current civil actions are complete.*

ANAO comment:

2.22 *While almost all returns sought by the AEC were obtained, 22 per cent of annual returns and 17 per cent of election returns were lodged after the due date with some entities submitting returns late on multiple occasions.*

Is there sufficient evidence that the annual and election returns are accurate and complete?

There is insufficient evidence that annual and election returns are accurate and complete. While the AEC checks that all fields have been completed and looks for some obvious errors it does not compare the figures disclosed with other data available from internal or external sources, instead relying on its annual compliance review program to provide sufficient evidence that the annual and election returns are accurate and complete.

2.23 As at February 2020, annual and election returns can be lodged electronically through the eReturns portal, sent through the post, faxed or emailed directly to the AEC. For returns that are not submitted via the eReturns portal the AEC manually enters the data into the returns management system.

2.24 As part of processing the returns that are received, the AEC checks whether:

- the right type of return has been lodged³⁴;
- that the return has been signed by the correct signatory³⁵;

34 Associated entities can have a dual reporting obligation where they incur electoral expenditure. Where this occurs an associated entity is to submit an associated entity return and a third party return.

35 For political parties the party agent is the correct signatory, for associated entities, third parties and political campaigners the financial controller is the correct signatory.

- all transactions listed are within the relevant period; and
- all relevant fields are complete and appear to be correct.

2.25 As part of processing the financial disclosure returns, the AEC looks for some obvious errors, for example, where electoral funding provided by the AEC or a state electoral authority has been disclosed as a 'donation' rather than an 'other receipt'.

2.26 There are opportunities for the AEC to undertake further checking of internal data sources to provide an indication of the accuracy and completeness of returns. For example, for political parties, the AEC guidance material does not identify if the amount of electoral funding³⁶ provided by the AEC is to be cross checked with the value of total receipts, as disclosed by the relevant political parties, or identified as a receipt over the threshold.

2.27 For example, after the 2016 federal election, 24 political parties were allocated \$62 million in funding. Three received funding less than the disclosure amount and as such were not required to disclose it as a receipt over the threshold. Of the remaining 21 political parties, twelve (57 per cent) disclosed the correct amount.³⁷ The remaining nine parties (43 per cent) received election funding amounts above the disclosure threshold without disclosing any of this funding in their annual return as a receipt over the threshold. The amounts totalled \$325,340.³⁸

2.28 In April 2018, the AEC identified six³⁹ out of the nine political parties that had received electoral funding and failed to disclose it.⁴⁰ The AEC subsequently wrote to the parties identified and the parties contacted submitted amendments to correct the oversight.

2.29 In addition to not disclosing election funding as receipts above the threshold, it was evident from this analysis that total receipts were also under-reported by some parties. Specifically:

- the Jacqui Lambie Network disclosed total receipts for 2016–17 of \$2750 with the election funding received of \$73,963 clearly not included in the total receipts;
- the Glenn Lazarus Team disclosed \$500 in total receipts (or two per cent of the \$21,435 in electoral funding it received); and

36 After each election, the AEC provides funding to independent candidates or those endorsed by a political party that received at least four per cent of formal first preference votes cast in the electorate contested by that candidate.

37 The twelve political parties are the Liberal Party of Australia, Australian Labor Party, Australian Greens, the National Party of Australia, Pauline Hanson's One Nation Party, Nick Xenophon Team (Centre Alliance), Derryn Hinch's Justice Party, Christian Democratic Party, Family First, Country Liberals (Northern Territory), Katter's Australian Party and Australian Recreational Fishers Party.

38 The nine parties that received electoral funding amounts above the disclosure threshold and did not include it as a receipt over the threshold in their disclosure return were the Rise Up Australia Party, Jacqui Lambie Network, Glenn Lazarus Team, Liberal Democratic Party, Animal Justice Party, Australian Christians, Shooters Fishers and Farmers Party, Bullet Train for Australia and Australian Liberty Alliance.

39 The six parties that the AEC wrote to in April 2018 were the Rise Up Australia Party, Jacqui Lambie Network, Liberal Democratic Party, Animal Justice Party, Australian Christians and Australian Liberty Alliance.

40 The three parties that the AEC did not contact are the Glenn Lazarus Team, Shooters Fishers and Farmers, and Bullet Train for Australia.

- the Bullet Train for Australia Party received \$15,801 in electoral funding. This party deregistered on 23 May 2017. As such the AEC did not send a legal obligation letter to the party and a return was not submitted.⁴¹

2.30 Across seven election events held in 2018–19⁴², 28 political parties have received \$54 million in election funding. Of the 28 political parties, 18 received funding where the individual transactions were less than the disclosure threshold and as such were not required to disclose it. Of the remaining 10 political parties that received funding, eight political parties correctly reported the funds received as an ‘other receipt’ received over the disclosure threshold. Two political parties did not.⁴³

2.31 The AEC does not have processes or systems in place, outside of the compliance review program, to match data in the return with financial data reported elsewhere by the entity. For example financial statements published by organisational donors, financial statements provided by organisations registered with the Australian Charities and Not for profits Commission⁴⁴ or Unions registered with the Fair Work Commission and identified on the ROC register.⁴⁵

2.32 While the AEC’s guidance material states that the AEC undertakes data matching this is a manual process and its effectiveness is limited. The purpose of the data matching that is undertaken is to identify donors that may have a disclosure obligation and have not provided a return as well as to identify errors in amounts reported in donor and recipient returns. While the AEC identifies discrepancies between the recipients and donors of donations over the threshold, the effectiveness of this process is limited due to the varying disclosure requirements that apply to different entities. Political parties are not required to report multiple donations received that are under the disclosure threshold where the total value exceeds the disclosure threshold, whereas donors are required to report multiple donations made where the total value exceeds the disclosure threshold.

2.33 The total number of discrepancies and the value of under and over-disclosures is outlined below at Table 2.7. To try and resolve identified discrepancies the AEC engages with the donor and the political party, a process that can take up to 12 months (if resolution is achieved).

Table 2.7: Number and value of discrepancies identified by the AEC

Financial Year	Number of discrepancies identified	Value of over-disclosures	Total value of under-disclosures
2015–16	266	\$716 000	\$1 517 000
2016–17	156	\$477 000	\$375 000
2017–18	74	\$0	\$457 000

Source: Analysis of donor discrepancies.

41 See note a on Table 2.6.

42 The seven election events were the Braddon, Longman, Mayo, Perth and Fremantle by-elections held in July 2018, the Wentworth by-election in October 2018 and the Federal Election in May 2019.

43 The Liberal Democratic Party has not disclosed \$34 991 and Pauline Hanson’s One Nation Party has not disclosed \$38 450 in funding provided by the AEC.

44 <https://www.acnc.gov.au/charity> [accessed 13 May 2020].

45 <https://roc.gov.au/find-a-registered-organisation> [accessed 13 May 2020].

2.34 In June 2020, the AEC advised the ANAO that of the 496 discrepancies identified between 2015–16 and 2017–18, two for 2015–16, six for 2016–17, and nine for 2017–18 remain unresolved. The AEC further advised that work to identify discrepancies in the 2018–19 annual returns has commenced.

2.35 As such, the AEC is largely reliant on its annual program of compliance reviews on a selection of annual returns submitted by political parties and associated entities to provide sufficient evidence that the annual and election returns are accurate and complete. Chapter 3 examines the design and implementation of the compliance review program. It is worth noting that not all returns have been included in the scope of this program. For example, the program has not examined any:

- return that reported no financial data (a nil-return); or
- election returns submitted by donors.⁴⁶

Does the Australian Electoral Commission effectively analyse annual and election returns?

The effectiveness of the analysis undertaken by the AEC is limited. Annual returns submitted by third parties and donors are not analysed. Election returns submitted by candidates, senate groups or election donors are not analysed. The analysis that is undertaken of annual returns submitted by political parties and associated entities is limited as there is no detailed analysis of the financial information, and effective data analytics and data matching techniques are not employed by the AEC.

2.36 The analysis that the AEC does undertake is limited to annual returns submitted by political parties and associated entities. The AEC builds an annual return profile for each political party and associated entity. In light of the expanded compliance review program, introduced in January 2019, this analysis will need to be expanded to include third parties, political campaigners and donors.

2.37 Annual return profiling forms part of the risk assessment of each political party and associated entity and is used to develop the annual compliance review program (see Chapter 3). The annual return profile for associated entities and political parties tracks the reported value of total receipts, proportion of total receipts comprised of ‘gifts-in-kind’, detailed receipts (receipts over the disclosure threshold), total payments and total debts over a 10 year period. The return profile is comprised of two parts: the first part is an analysis of the information disclosed in the current and previous annual returns that have been submitted⁴⁷; and the second part seeks to identify anomalies.

2.38 While the analysis is intended to identify changes (risks) in established disclosure patterns, and detect anomalies that indicate obvious errors in the return, its effectiveness is limited. For example, the analysis asks if the ratio of detailed receipts to total receipts varies from the parties 10 year average by more than 50 per cent. Where the entity has not previously disclosed any detailed receipts an alert will not be raised. The analysis also asks if the ratio of total gifts in kind

46 Prior to January 2019, subsection 316(2A) of the Electoral Act allowed for compliance reviews to be conducted on the election returns lodged by donors to candidates at federal elections (these donors being the only category of persons captured as ‘prescribed persons’ under subsections 17A(2) and 17(2) of the Electoral Act.

47 For example, the value of the disclosures identified in the annual returns submitted in 2017–18, will be compared with the value of the disclosures identified in the 2016–17 annual return.

varies from the six year average by more than 95 per cent. While an alert will be raised where an entity has disclosed gifts-in-kind for the first time, it will not raise an alert where an entity has not disclosed any gifts-in-kind. As such, the analysis is geared towards identifying the likelihood that the information in the return is incorrect.

2.39 While the same tests are applied to associated entities and political parties, the annual return profiling activity does not take into account the varying sizes and/or complexity of the organisation, applying a one size fits all model. As a result, some of the entities will never trigger the alert as the levels of financial activity are not high enough, for example where the total of receipts, payments or debts disclosed do not exceed \$5 million.⁴⁸ Further, where alerts are raised, a total of four alerts are required to highlight the anomalies as a risk. None of the tests or anomalies are weighted to indicate which anomalies, if any, constitute a higher risk.

2.40 In 2019, the tests to identify changes (risks) in established disclosure patterns, and detect anomalies that indicate obvious errors in the return were modified. The thresholds of the tests to identify changes (risks) in established disclosure patterns were increased, a new test was added (total payments exceed total payments over the previous three years) and one was removed (is the cash balance less than \$0). One of the modifications made was to increase the ratio of detailed receipts to total receipts from the parties 10 year average from 50 per cent to 100 per cent. The analysis also asks if the ratio of total gifts in kind vary from the six year average by more than 95 per cent, this has now been increased to 100 per cent. While the number of tests to identify anomalies was reduced from 11 to seven, the number of alerts required to be triggered was not. As such, a political party or associated entity must now trigger a higher proportion of alerts in order for a flag to be raised. To determine the rationale for the changes the ANAO examined the meeting minutes of the Compliance Review Committee for 2017, 2018 and 2019 and while there is evidence that the committee considered changes to the risk matrix (see paragraphs 3.23 to 3.25), there is no evidence that this included the changes to the annual return profiling activity.

2.41 Additionally, as discussed in paragraphs 2.24 to 2.31, the AEC does not undertake detailed analysis of the financial information that is provided, cross check information with other internal data sources such as the amount of election funding provided or external data sources such as the ACNC and ROC registers. As demonstrated by the analysis at paragraphs 2.27 to 2.30, there are considerable potential benefits to the AEC from greater use of data matching with figures included in disclosure returns. The results of data matching could also be used by the AEC to inform the selection of returns for compliance reviews.

2.42 Annual return profiles are not developed for returns submitted by third parties or donors, and there is no analysis done by the AEC on election returns.

48 The \$5 million dollar threshold was one of the 11, now seven, tests to identify anomalies.

Recommendation no.2

2.43 The Australian Electoral Commission 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.

AEC response: *Agreed with qualification*

2.44 *The AEC will consider opportunities for data analytics to be used to provide greater assurance that the data included in returns can be relied upon. It should be noted that there are inherent difficulties and risks in using other public sources of financial information due to the different requirements of the reporting to the AEC and bodies such as the Registered Organisations Commission and the Australian Charities and Not-for-profit Commission.*

Does the Australian Electoral Commission effectively identify and manage risks to the financial disclosure scheme?

Risks to the financial disclosure scheme have not been managed in accordance with the AEC's risk management framework. While the risk appetite and tolerance statement of this framework states that the AEC has a low/moderate risk tolerance for risks associated with the disclosure function there is no evidence that risks relating to all entities that have a disclosure obligation have been assessed and are being managed appropriately. Additionally, there is no treatment plan in place for the risk that has been identified by the AEC, being the risk of non-compliance by political parties.

2.45 The AEC Corporate Plan identifies five strategic risks:

- the Commonwealth Electoral Act and the AEC's operating model loses relevance;
- the AEC is unable to uphold electoral integrity and transparency;
- the AEC fails to build trusting relationships with electors, political stakeholders and the government;
- the AEC cannot source and maintain a capable and trained APS and temporary workforce; and
- the AEC is not properly positioned for the future, with systems and processes not sustainable, relevant and modern.

2.46 The financial disclosure scheme plays a significant role in managing the risks associated with upholding electoral integrity and transparency, and maintaining the trust of electors, political stakeholders and the government.

2.47 The risk register for the business unit responsible for administering the financial disclosure scheme and conducting compliance reviews identifies a single operational risk — the AEC fails to identify non-compliance by political parties. There is no evidence that risks relating to other entities

that have disclosure obligations have been assessed and are being appropriately managed in line with AEC's risk management framework.⁴⁹

2.48 The risk of non-compliance by political parties was identified as a compliance, governance and integrity risk with seven identified controls:

- the issuing of legal obligation letters, reminders and stakeholder follow up to achieve timely disclosure;
- management of workloads to ensure that returns are uploaded to the AEC's website by the public release date;
- returns are available for inspection and missing or incomplete disclosures come to the attention of the AEC;
- compliance reviews;
- education material provided to political parties and entities to assist entities to understand disclosure obligations;
- selection of entities for a compliance review; and
- work by staff is overseen by other staff members and branch management.

2.49 The AEC has rated the risk as medium and has accepted the risk. This approach does not align with the AEC's approved risk management framework. The approach outlined in the risk management framework states that compliance, governance and integrity risks with a residual risk rating of 'medium' are to have a risk treatment plan developed, are to be escalated to an Assistant Commissioner to be managed and reports provided to the Organisational Health Committee.

2.50 According to the risk register the risk owner is an Assistant Commissioner, however there is no risk treatment plan in place. The risk register does not identify dependencies or identify how the controls will be monitored or tested and there is no reporting to the Organisational Health Committee or the Business Assurance Committee (in the quarterly risk management reports it receives) regarding the operation of the financial disclosure scheme.

2.51 In October 2015, the business unit risk register identified the returns management system as an operational risk to the financial disclosure scheme. As part of the Electoral Integrity Reforms the AEC is to design, develop and implement a Self Service Platform (SSP) to replace the returns management system. In October 2019, the project management plan identified that module four of this project is intended to deliver a funding and disclosure portal by the end of April 2020. An exception report outlining the status and progress of the SSP project was provided to the June 2020 board meeting, where the board was advised that the SSP project cannot deliver to its baseline schedule and an updated exception report will be tabled when revised schedule, costings and resource requirements are confirmed.

49 The AEC's risk management framework identifies that it has a low/moderate tolerance for risks associated with the disclosure function.

Recommendation no.3

2.52 The Australian Electoral Commission identify and develop treatment plans for risks relating to the financial disclosure scheme and manage the scheme in line with its revised risk management framework.

AEC response: *Agreed*

2.53 *Risks related to the financial disclosure scheme have been updated to recognise risks related to all participants and will be reported to the relevant AEC governance committees.*

3. Compliance monitoring and enforcement

Areas examined

This chapter examines if the Australian Electoral Commission (AEC) has developed and implemented effective compliance monitoring and enforcement arrangements.

Conclusion

Compliance monitoring and enforcement activities are partially effective with the result that the AEC is not well placed to provide assurance that disclosure returns are accurate and complete.

Recommendations

The ANAO has made four recommendations to improve the effectiveness of the compliance monitoring and enforcement activities undertaken by the AEC.

3.1 To assess the AEC's compliance monitoring and enforcement activities for the disclosure scheme the ANAO examined:

- whether the AEC has applied lessons learned from how other electoral bodies regulate their schemes;
- the planning and conduct of compliance reviews, which are the key control the AEC relies upon to assure itself that disclosure returns are accurate and complete; and
- the AEC's response to non-compliance where it has been identified.

Has the Australian Electoral Commission sought to learn lessons from how other electoral bodies regulate financial disclosure schemes?

While the AEC has identified some lessons that it could learn from other electoral bodies that regulate financial disclosure schemes, there is little evidence of any resulting changes having been made to how the Commonwealth scheme is administered. The AEC has also not taken adequate steps to implement agreed recommendations from a review it commissioned in 2012 of the disclosure compliance function (which concluded that the AEC needed to become more proactive in its approach).

3.2 In November 2019, the AEC advised the ANAO that:

- it 'maintains an awareness of the financial disclosure frameworks within Australian jurisdictions and, to a lesser extent outside of Australia maintaining links to a number of relevant electoral management organisations';
- 'the array of schemes across Australia and internationally is diverse and the AEC is cognisant of the need for environmental awareness to support its administration of the Funding and Disclosure legislation'; and
- provided the ANAO with a summary of some of the activities it has undertaken in recent years to maintain 'currency in the financial disclosure space'.

Previous reviews

3.3 In August 2012, the Electoral Commissioner initiated a review of the Australian Electoral Commission's disclosure and compliance function, following criticism in the Parliament regarding the compliance review program, the selection of organisations for a compliance review and the AEC's use of its investigatory powers.

3.4 The review was conducted by Ron McLeod AM. It was completed in November 2012 and concluded that the AEC needed to become more proactive in the way that it administers and enforces compliance with the financial disclosure scheme and introduce a better governance and management structure. The review made four recommendations with the AEC accepting all four recommendations. The ANAO's analysis is that implementation action was inadequate across three of the four recommendations (see Appendix 2, Table A.1).

3.5 In 2013, a project team conducted relevant research and analysis of practices of other organisations with the same, or similar responsibilities as part of the AEC's efforts to implement the recommendations from the McLeod report. AEC documentation states that the project team considered the compliance approaches of a number of organisations to update its business model and approach to regulating the financial disclosure scheme. These included the Electoral Commission (UK), Elections Canada, the Federal Election Commission, the New York City Campaign Finance Board, the New South Wales Election Funding Authority, Fair Work Australia, the Australian Taxation Office (ATO), the Australian Crime Commission (ACC), now the Australian Criminal Intelligence Commission, and the Department of Human Services (DHS), now Services Australia. Information obtained from these activities was used to assist the AEC to develop and implement the revised methodology to select entities for a compliance review as recommended by the McLeod review. The revised approach was piloted in 2014, and has been in effect since 2015.

Accessing specialist expertise

3.6 In 2013, the AEC met with the ATO to discuss its processes for identifying transactions that may not be reported in tax returns, and occurring 'off the books'. The ATO advised that this is a very complex area and that its knowledge and experience has developed over many years. Accordingly, the AEC proposed buying in expertise and access to data that the AEC does not currently have. In December 2014, AEC records indicate that the Australian Crime Commission offered AEC opportunities for learning and sharing. The AEC noted that the work is different to the compliance investigations undertaken by the AEC, therefore it considered that the training and learning opportunities would not be relevant. While the AEC stated that it would continue to send its staff to other learning and training opportunities such as with the Institute of Internal Auditors, in July 2020 the AEC advised the ANAO that no staff have attended training with the Institute of Internal Auditors.

3.7 In November 2016, the AEC informed its audit committee that the Commonwealth government procurement panels contain specialists with the necessary expertise that can be accessed by the AEC, and no further action on the relevant McLeod review recommendation was required.

3.8 In October 2019, the AEC proposed that specialist expertise should be engaged to assist with development of an enhanced compliance review program, including exploring options to meet the objectives of the Electoral Integrity Reforms and the associated changes made to the Electoral Act

in November 2018. As a result of these changes, the AEC will need to be able to detect foreign donations and identify potential entities with disclosure obligations. As at June 2020, there is no evidence that the AEC has sought to obtain access to specialist expertise to develop the enhanced compliance program as required. As a result, the AEC has not yet established a framework for how foreign donations will be detected and treated.

Workforce and training requirements

3.9 AEC documentation examined by the ANAO identified that accounting related disciplines are required, with qualifications or experience in investigations desirable to effectively undertake and manage the compliance review program. In January 2018, critical gaps in the workforce were identified by the AEC. As at October 2019, the AEC was in the process of identifying options to engage additional resources necessary to deliver an expanded compliance review program, with a decision made to contract-in an additional 12 resources through a labour hire arrangement. As at May 2020, there is evidence that the AEC has commenced the development of a training needs assessment for the expanded compliance program, and recruitment activities have commenced.

Intelligence gathering, data interrogation and risk based sampling techniques

3.10 In April 2014, the AEC contacted officers from the ACC, the ATO and Fair Work Australia to discuss intelligence gathering, data interrogation and risk based sampling techniques. In late 2014 and 2015 the AEC stated in its internal responses to the McLeod Report that the discussions held around commonalities such as the 'honest complier approach' had been useful but the difference in scope and reach of the other agencies were significant and limited the exchange. In December 2014, these discussions were suspended and no further action has been undertaken.

Use of a tip-off facility

3.11 In 2014, the AEC observed that the ATO and DHS (Services Australia) use information that results from 'tip-offs' in their compliance program work. As such, the AEC established a tip-off facility. The tip-off facility was implemented in 2015 and uses a dedicated mailbox as well as the existing Financial and Disclosure group mailbox to receive tip-offs. The AEC's publicly available information states that it may use tip-offs as part of its compliance work, and outlines how the AEC may use the information it receives. Information about the tip-off facility can be found on the AEC website, including links to the dedicated mailbox and a phone number. In June 2020 the AEC advised the ANAO that over 150 tip-offs have been received.

3.12 The ANAO's analysis of the email traffic in the FAD Tip-Off mailbox identified that 114 discrete matters covering a broad range of topics have been raised with the AEC, with 21 matters categorised as unwanted, unsolicited digital communication (spam) or junk emails. Of the 93 matters remaining, 16 related to funding and disclosure.⁵⁰ Of the 16 matters, one was related to an existing investigation⁵¹, and two were redirected to other agencies as they were considered by the AEC to be outside of its jurisdiction. For the remaining 13 matters, the AEC has not recorded the outcome as part of actioning the matter.

50 Of the 16 matters, 13 are funding and disclosure specific, one is a report of possible electoral corruption, one relates to electoral funding and one to political donations.

51 The information provided was in relation to the use of an aeroplane by Pauline Hanson's One Nation Party in the 2016 federal election and the investigation conducted by the AEC into the matter.

Recommendation no.4

3.13 The Australian Electoral Commission apply the lessons learned that have been identified including through:

- (a) accessing specialist expertise to test the effectiveness of the processes and practices that are in place to identify undisclosed financial transactions; and
- (b) establishing arrangements with other government agencies to share intelligence gathering, data interrogation and risk based sampling techniques.

AEC response: *Agreed with qualification.*

3.14 *The AEC will again review the use of specialist expertise to enhance the effectiveness of the processes and practices that are in place to identify undisclosed financial transactions and consider the use of this expertise against cost and likelihood of the risk of such transactions occurring for entities with disclosure obligations.*

3.15 *The establishment of arrangements with other government agencies will be subject to any legal restrictions in the Electoral Act, privacy regulations or other governing legislation.*

Does the Australian Electoral Commission apply a risk based approach to planning and conducting compliance activities?

The AEC does not apply an appropriate risk based approach to planning and conducting compliance activities.

- While most reviews are planned on the basis of a risk assessment, there are a number of limitations in the risk assessment methodology employed.
- Over the period assessed the AEC did not undertake a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).
- The number of reviews, and the resources allocated to them, have declined considerably across the five year period analysed. These reductions do not reflect an assessment that the risk of non-disclosure or non-compliance has reduced and this situation is also at odds with the significant growth that has occurred in the total value of receipts and other figures included in the financial disclosure returns provided to the AEC.

3.16 The AEC has identified that the number of entities with disclosure obligations means it is unable to examine the accuracy and completeness of all the financial disclosure returns it receives. As such, the AEC has established an annual compliance program in order to provide some assurance that entities with disclosure obligations are meeting them.

3.17 AEC guidance material identifies that its approach to compliance reviews does not presume that selected entities have failed to meet their disclosure obligations. Rather, party agents and financial controllers are:

treated as honest compliers who are conscientiously attempting to discharge their disclosure obligations.⁵²

Approval of the annual compliance review program

Compliance Review Committee

3.18 As discussed at paragraph 1.9, the Compliance Review Committee (CRC) is responsible for approving and monitoring the compliance review program. The role of the CRC is to: approve the selection of reviews; consider changes to the risk matrix; consider changes to the methodology of conducting reviews; monitor the progress of the compliance program; and amend the selection of reviews if required.

3.19 The AEC has advised that it aims to approve the annual compliance program as close as possible to the start of the calendar year.⁵³ The AEC plans to complete compliance reviews by the end of the calendar year to allow for the timely commencement of the new program on an annual basis. AEC documentation demonstrates that the guidance is inconsistent listing December, January and February as the date that the annual compliance review program is to be considered and approved.

3.20 Over the period assessed, the annual compliance review program has been considered and approved by mid-February up until 2017. In 2018 and 2019, approval of the annual program did not occur until March. While the CRC agreed in August 2019 that the 2020 compliance review program would include all 22 political campaigners, as at June 2020, the compliance review program has not been finalised.

Selection of entities for a compliance review

3.21 Prior to 2014, the AEC's planned approach to compliance reviews was to review every political party and its associated entities over a three year electoral cycle, with approximately 60–70 reviews scheduled annually.

3.22 In response to the McLeod recommendations, the AEC established a pilot program in 2014 to select political parties and associated entities for a compliance review based on a revised methodology. The revised methodology was to select entities for a compliance review on the basis of risk, supplemented with selections based on the application of professional judgement and including a random element.

3.23 The AEC adjusted the risk matrix in 2015 and again in 2017. The criteria now consists of 10 risk factors that are grouped into three categories: error risks; materiality; and organisational profile. The AEC has identified four specific risks that are used to determine the error risk, two to

52 The AEC's Compliance Handbook details the AEC's approach to planning and conducting compliance reviews.

53 In March 2020, the AEC advised the ANAO that: 'It has been a long standing practice that as returns are not due until the end of October, following which some discrepancy work is done and late returns followed up, the compliance program aims to begin as close as possible to the start of a calendar year in relation to the previous financial year's returns. Recent compliance programs have had delayed starts for a combination of reasons — delays in completing the work necessary to approve all returns, analysing and making modifications to the risk matrix, staffing.'

determine materiality and four to assess risks related to the organisational profile. Each risk is individually rated using a six point rating scale (0 –5) and weighted to calculate a risk rating.

3.24 In October 2017, the AEC engaged consultants at a cost of \$11,100 to conduct ‘agreed upon procedures’⁵⁴ as to whether the risk matrix provided ‘a robust and defensible methodology that can be efficiently and consistently applied’. The consultants found that the current risk matrix is ‘generally effective’ at selecting a sample of returns that are more likely to show error, and made eight recommendations, to address the following issues:

- some elements that have a higher bearing on the risk of non-compliance in terms of potential for error are not given sufficient weighting;
- returns identified to have errors based on conclusive criteria do not always have these errors resolved prior to the returns being published;
- the nature and weighting of risk matrix elements results in the compliance sample being skewed towards selection of political parties over associated entities; and
- there is some duplication and lack of clarity in some elements which can result in either a skewed compliance sample result or inconsistent application of the risk matrix.

3.25 The AEC agreed to four of the eight recommendations and agreed ‘in principle’ to four. Based on the ANAO’s examination of CRC meeting minutes held in 2018 and 2019, the AEC has not implemented any of the recommendations.

3.26 In addition, the ANAO’s analysis of the risk assessment process has identified a number of limitations.

- The materiality factors do not recognise that a zero dollar figure of total receipts is a risk. If a nil disclosure is lodged against total receipts, the resulting risk rating score is allocated the lowest possible score of zero. It is significant in this respect, as across the five year period examined, the AEC has not undertaken a compliance review of a ‘nil return’.
- The risk matrix only considers the value disclosed against total receipts as a stand-alone risk factor, it does not consider the value of total payments, or total debts. The total receipts figure comprises only one of six parts of the annual disclosure return. There is also no use of data matching (see paragraph 2.31) by the AEC to identify higher risk reports.
- The risk factor ‘number/value of amendments’ allows a limited timeframe for an entity’s risk rating to be adjusted to reflect any amendments that have been made. Only amendments made and lodged between the date that the return was lodged and the date that the risk assessment is completed are captured.⁵⁵
- The late lodgement factor does not take into account how late a financial disclosure return has been lodged, assigning the same rating to a return that is submitted less than 7 days late, to one that is submitted over 60 days late.

54 Under the Australian Auditing Standards, agreed upon procedures involve undertaking procedures agreed by the client (that is, it is not fully independent) and factual findings are to be reported but no conclusion or opinion is to be expressed and no assurance is provided by the practitioner.

55 The compliance review program is generally approved in the first quarter of the new calendar year.

3.27 The below case study illustrates some of the shortcomings with the application of the risk assessment process. During the course of audit the ANAO extracted all of the annual returns from the returns management system and sorted all returns (per year) based on the value of total receipts (lowest to highest). During this process it was identified that the entity in the below case study had reported a total receipts figure of zero. An examination of previously reported values identified that the entity had previously reported a much higher value for total receipts. To determine if this was unusual the ANAO accessed the financial statements lodged by the entity with the ROC, where it was identified that the total receipts amount was incorrect and highlighted the impact of the limitations of the risk assessment processes employed by the AEC that have been identified.

Case study 1. Application of the risk matrix

The Australasian Meat Industry Employees Union SA & WA Branch submitted its annual return for 2015–16 on 27 October 2016. The return was submitted late and did not include a figure for total receipts, or total debts. The only information included in the return was a total payment figure of \$864,564. The ANAO reviewed the annual return profile and risk assessment as well as the 2017 compliance program risk matrix to examine the risk assessment for this entity and identified the following errors and limitations.

- While the annual return profile and risk assessment picked up substantial variations in the total receipts and total debts figures, no anomalies were flagged.
- The annual returns for 2014–15 and 2015–16 were lodged late. The risk factor 'late lodgement' risk score was incorrectly calculated as '20'. In accordance with the risk factor a risk score of '25' should have been calculated.
- The entity had not disclosed any figure against total receipts and as such was given a materiality score of 'zero'.
- An examination of the entity's lodgement of financial statements for the 2015–16 financial year to the ROC identified that the entity should have disclosed approximately \$850 000 in total receipts.

Previous returns lodged with the AEC also demonstrated that the total receipts figure disclosed was incorrect. While the annual return risk profile and analysis identified the change in established pattern, no anomalies were flagged for follow-up action. The error was not identified as part of the returns matching or transaction matching processes and as at August 2020, the AEC has not contacted the entity, and an amended return to correct the error has not been submitted.

3.28 While the risk matrix has not been updated since January 2017, for the 2019 compliance review program the selection of entities on the basis of the risk assessment has been modified to exclude entities that have had a compliance review conducted two or more times within the last three years. This change was made as the AEC noted that several entities were continually getting a high risk score.

3.29 The AEC has noted that undertaking compliance reviews on the basis of random selection provides an opportunity to evaluate the appropriateness and effectiveness of the risk based selection methodology. While two reviews completed in 2017 and 2018 that were selected

randomly found material inaccuracies and non-disclosures, no adjustments were made to the risk assessment methodology in light of the findings of those reviews.

Full versus limited scope reviews

3.30 Compliance reviews may be either a full or limited scope review.

- Full reviews have set criteria for assessing annual disclosure forms and seek to confirm that the reported value of all of the figures included in the return are accurate. For political parties this can include a sample of party units.⁵⁶
- A limited scope review seeks to verify the accuracy of one or more parts of the annual disclosure return. There is no set criteria for limited reviews except for including an examination of receipts above the threshold. The AEC's guidance material does not contain a clear methodology for determining the scope of a limited review, or calculating the number of hours that are to be allocated.

3.31 In 2015 and 2016, the number of hours allocated to a review was generally based on whether the review was a limited or full scope review. A budget of between 20 and 100 hours (68 hours on average) was allocated to conduct a limited review, except for three of the 35 reviews planned.⁵⁷ A budget of up to 250 hours, (111 hours on average) was allocated to conduct a full scope review.⁵⁸

3.32 In 2017, the AEC modified its approach to budgeting the hours required to undertake a compliance review. In 2017, the average number of hours budgeted for a limited review increased from 68 to 120 hours. In 2018 and 2019, the average number of hours budgeted to undertake a limited review increased again from 120 to 178 hours. The change in approach from 2017 is illustrated below at Table 3.1. This table shows that the percentage of limited reviews where the budget allocated was in excess of 100 hours comprised 100 per cent of the limited reviews planned in 2018 and 2019.

Table 3.1: Proportion of limited scope reviews allocated a budget in excess of 100 hours

	2015	2016	2017	2018	2019
Total number of limited reviews planned	17	18	10	12	11
Number of planned limited reviews with a budget in excess of 100 hours	2	1	3	12	11
% of planned limited scope reviews in excess of 100 hours	12%	6%	30%	100%	100%

Source: ANAO analysis of AEC documentation.

3.33 In 2019, 11 full and 11 limited reviews were planned, with a total of 1800 hours budgeted for limited reviews, whereas 1505 hours were budgeted for full reviews. These findings indicate that

56 Political parties may have a decentralised network of party units that account for a portion of their finances. Party units are local branches, campaign committees, and electorate/election committees.

57 In 2015, two limited reviews were allocated a budget of 150 hours and in 2016 one limited review was allocated a budget of 250 hours. The two limited reviews in 2015 allocated a budget in excess of 100 hours were two unions. The Australian Workers Union SA Branch and Construction, Forestry, Mining, Energy Union — ACT. In 2016, one limited review was allocated a budget of 250 hours for the Liberal Party of Australia — N.S.W Division.

58 A total of 65 full scope reviews were planned for 2015 and 2016.

the budgeting of hours now incorporates an assessment of the size, complexity and operations of the entity when determining the scope of the review.

Allocation of resources

3.34 The AEC allocates resources to conduct compliance reviews on the same basis as selecting entities for a review. Of the resources available for compliance reviews, 75 per cent are allocated to compliance reviews selected on the basis of the risk assessment, 15 per cent selected on the basis of professional judgement and 10 per cent selected randomly. The planned and actual resources allocated for compliance reviews has fallen significantly since 2015.

- The reduction in total resources being applied to compliance reviews (the number of hours budgeted for 2019 is 40 per cent less than was budgeted for 2015) does not reflect an assessment that the level of risk has fallen.
- The proportion of reviews selected according the AEC's risk assessment has increased (noting the shortcomings identified at paragraphs 3.23 to 3.26 with the AEC's methodology), while there were no reviews planned or undertaken in 2018 or 2019 on the basis of professional judgment.
- The proportion of budgeted and actual hours no longer aligns with the AEC decision to allocate 75 per cent of hours to risk based reviews, 15 per cent to professional judgement, and 10 per cent to randomly selected compliance reviews.
- There were significant shortfalls in 2016, 2018 and 2019 (to date) in the number of actual hours invested in compliance reviews, compared to those budgeted, see Table 3.2 on the following page.

Table 3.2: Comparison of planned versus actual hours for 2015 through to 2019

	2015 ^a			2016 ^a			2017			2018			2019		
	Budget	Actual	%	Budget	Actual	%	Budget	Actual	%	Budget	Actual	%	Budget	Actual	%
Total hours	5515	4721	85	4044	2989	74	3900	3 660	94	3350	1860	55	3305	1415	43
Risk based	4095	3953	96	3054	2395	78	3050	2 150	70	2950	1730	59	3005	1362	45
Professional judgement ^b	875	312	36	600	364	61	550	880	160	0	0		0	0	
Random	545	456	84	390	231	59	300	630	210	400	130	32	300	53	17

Note a: In 2015 and 2016, the actual hours includes hours on reviews that commenced but were not completed and were subsequently removed from the compliance program.

Note b: In 2018 and 2019 no compliance reviews were planned or completed on the basis of professional judgement.

Source: ANAO analysis.

3.35 Testing of the compliance reviews demonstrates that while the selection of compliance reviews includes a risk based element, the AEC uses a resource driven approach to plan and conduct compliance activities. From 2017, the AEC has reduced the number of reviews that are planned.

3.36 In addition to reducing the number of planned reviews from 2017 onwards, resources to complete compliance reviews have also been re-deployed to other projects such as the implementation of the changes made to the *Commonwealth Electoral Act 1918* (the Electoral Act) in 2018 and the development of a new election funding mechanism throughout 2019.

3.37 The increase in the value of disclosures, the decline in the number of completed reviews, and the declining percentage of the population selected for a compliance review (see Table 3.3), is not supported by an AEC risk assessment demonstrating that the overall risk of non-disclosure, the provision of false and/or misleading information and other non-compliant behaviours has declined. As a result, the AEC is unable to demonstrate that the compliance program, in its current form, is sufficient to provide assurance that the annual financial disclosure returns are meeting legislated requirements.

3.38 Due to legislative changes made to the disclosure scheme that came into effect on 1 January 2019, political campaigner, third party and donor returns for 2018–19 were the first ones able to be included in the compliance review program. As noted at paragraph 3.20, the CRC agreed in August 2019 that the 2020 compliance review program would include all 22 political campaigners. As at June 2020, the 2020 compliance review program has not been finalised.

Recommendation no.5

3.39 The Australian Electoral Commission adopt a risk-based approach to its compliance review program that:

- (a) assesses the aggregate level of risk to inform decisions about the size and coverage of the program;
- (b) includes all disclosures required under the updated legislated framework; and
- (c) improves the effectiveness of the risk matrix used to select the majority of reviews, and better address risks of non-disclosure and incomplete disclosure.

AEC response: *Agreed with qualification*

3.40 *The AEC already adopts a risk based approach to its compliance review program which is considered annually by its compliance review committee and is not of the view that the results of the compliance review programs would justify this.*

3.41 *The 2020 compliance program, which applies to the 2018–19 disclosures, will be the first program to run under the amended legislation introduced in 2019. Following completion of the current program the AEC will consider the approach for including all disclosures as part of the risk matrix, including consideration of the current risk factors and weightings.*

Are planned compliance activities implemented in a timely and effective manner?

Planned compliance activities are not implemented in a timely and effective manner. Of the 168 reviews that were planned to have been conducted over the five year period examined by the ANAO, 58 (35 per cent) have not been completed. While completion rates have improved in the last two years this is due to the AEC significantly reducing the number of planned reviews, narrowing the scope of planned reviews, and reducing the value of the transactions being tested. There has also been a marked decline in the number of full reviews that are being conducted on large entities with disclosure obligations.

Conduct of compliance reviews

3.42 The AEC guidance material states that the AEC is to apply the Australian Auditing Standards to the conduct of compliance reviews. The specific products that the AEC refers to in its guidance material include the compliance plan, risk assessment, gathering of appropriate and sufficient evidence, appropriate analytical procedures, sufficient and appropriate audit documentation and reporting with regard to the financial records examined.

3.43 ANAO examination of the compliance reviews undertaken identified that the AEC's compliance activities do not meet the Australian Auditing Standards.

3.44 As discussed at paragraph 3.18, the CRC approves the annual compliance review schedule. The schedule identifies if the review is to be a 'limited' or 'full' scope review and the number of hours that have been budgeted. For each compliance review, an individual compliance review plan is to be developed. These individual compliance plans identify the basis of the selection, results from preliminary work, the review scope, focus and justification, the methodology and the budgeted hours. They do not record the engagement or operational risks. Additionally, where a change to the scope of a review has occurred the rationale for the change in scope is not consistently documented.

3.45 There are a number of limitations identified in relation to the risk assessment processes employed by the AEC as discussed at paragraphs 3.26 to 3.28 of this report.

3.46 The AEC does not employ appropriate audit procedures to gather sufficient and appropriate evidence.⁵⁹ To obtain evidence the AEC outlines the documentation that it requires in the notice that is issued to the political party and/or associated entity that has been selected for a compliance review, known as a 'section 316(2A) notice'. The notice outlines the information that is required, including: trial balances; bank account listings; cash receipt and cash payment journals; bank deposit slips for all amounts greater than the disclosure threshold; aged creditor listings; and audited financial statements where available. The notice includes a document checklist that entities are to certify and return. Testing undertaken by the ANAO of 40 compliance reviews conducted between 2017 and 2018 identified 16 (40 per cent) did not have a completed and certified documentation checklist on file. Additionally, the AEC does not gather the requested information directly from the systems used to provide the information, and does not observe the entity extracting the requested information from its accounting systems as all reviews are undertaken as

59 The relevant Australian Auditing Standard is ASA 500 — Audit Evidence.

desktop reviews. This approach means the AEC is placing significant reliance on entities to provide it with complete and accurate information.

3.47 Further, the AEC specifically states in its guidance that it does not provide an opinion on the adequacy of the internal controls.

3.48 The AEC has developed standardised testing procedures that it applies to test the information provided as part of conducting a compliance review of the annual return. While these testing procedures are modified to align with the scope of the review and the sections of the annual return that is being examined, there is no evidence to confirm that the testing process is evaluated to confirm that it meets the relevant auditing standard.

3.49 Lastly, at no point throughout the process, does the AEC require its compliance officers to certify that the review has been undertaken in accordance with the Australian Auditing Standards that it has identified are to apply.

Compliance reviews completed

3.50 The AEC has consistently performed poorly in terms of completing its annual program of reviews and has not completed the planned compliance reviews by the end of any of the last five calendar years.

3.51 The percentage of the population being tested has also declined while the total value of receipts, payments, and debts as reported since 2017 has increased, see Table 3.3. This growth is expected to continue as the total value of disclosures for 2018–19, just for political parties and associated entities, has increased from \$2.3 billion in 2015–16 to \$2.8 billion in 2018–19 (24 per cent).

Table 3.3: Comparison of completed compliance reviews to value of disclosures

	2015	2016	2017 ^a	2018	2019
No. of completed reviews	33	22	23	17	15 ^c
% of population tested	12%	8%	8%	6%	6%
Total value of political party disclosures ^b	N/A	N/A	\$429,453,541	\$440,805,632	\$322,809,655
Total value of associated entity disclosures ^b	N/A	N/A	\$1,832,812,035	\$1,862,842,904	\$2,024,241,813
Total value			\$2,262,265,576	\$2,303,648,536	\$2,347,051,468

Note a: Returns submitted for the 2015–16 financial year are reviewed in the compliance review program for the 2017 calendar year, returns submitted for the 2016–17 financial year are reviewed in the compliance program for the 2018 calendar year and returns submitted for the 2017–18 financial year are reviewed in the compliance program for the 2019 calendar year.

Note b: The blank cells are due to the ANAO conducting analysis of aggregate values for 2015–16 onwards.

Note c: As at March 2020, 15 reviews had been completed.

Source: ANAO analysis.

3.52 The number of ‘full reviews’ being conducted on large entities has also decreased over the period assessed. Since 2017, full reviews are primarily conducted on small or medium sized entities, with limited reviews conducted on large entities. In 2018, only one full review was conducted on a

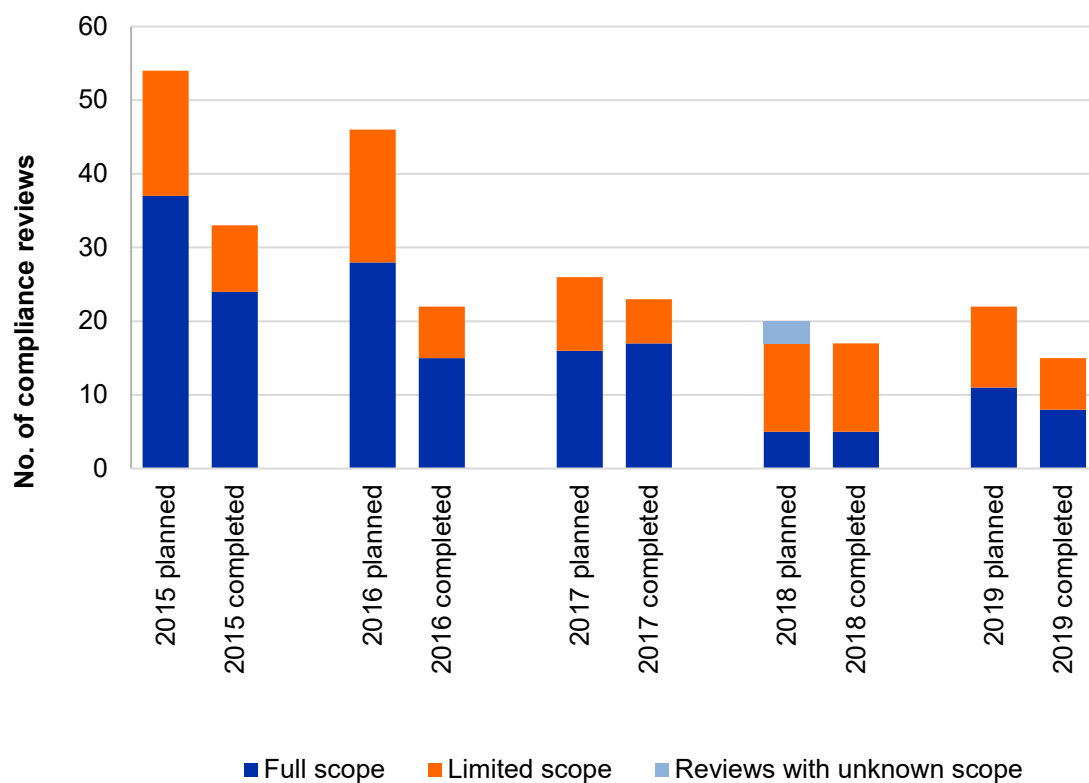
large entity and all full reviews in 2019 were conducted on small or medium sized entities. This is reflected in the reduction in the number of hours it has taken the AEC to complete full scope and limited scope reviews. In 2018 and 2019, the average number of hours to complete a full review decreased from 169 hours to 70 hours across 13 full reviews and for limited scope reviews the average decreased from 132 to 110 hours across 19 limited reviews.

3.53 The parts of the return that are subject to compliance review activity, the value of the transactions tested by the AEC, and the value of the amendments identified by the AEC have all declined, yet there has been no improvement in the error rate, see Table 3.5. As such, the decline in the number of findings (see Table 3.4) and the number and value of amendments does not demonstrate that the AEC is becoming more effective or that compliance rates are improving. Rather, it demonstrates that the AEC has reduced the number, scope and value of the transactions being tested through the compliance review program.

Number of compliance reviews conducted

3.54 The number of planned versus completed compliance reviews is illustrated below at Figure 3.1.

Figure 3.1: Number and scope of compliance reviews planned versus conducted



Note a: The 2019 program is still in progress, with 15 reviews completed as at 31 March 2020.

Note b: In 2018, there were three compliance reviews not completed and their planned scope is unknown.

Note c: In 2017, more full reviews were completed than planned, because four limited scope reviews were expanded to full scope reviews.

Source: ANAO analysis.

3.55 Across the five years examined the ANAO identified that 168 compliance reviews were planned. AEC records identified that there were 97 full scope compliance reviews and 68 limited

scope reviews planned.⁶⁰ Of the 97 full scope reviews planned, 69 (71 per cent) have been completed and 28 (29 per cent) have not been completed. Of the 68 planned limited scope reviews, 41 (60 per cent) have been completed, with 27 (40 per cent) not completed. As at March 2020, 7 (10 per cent) reviews from the 2019 program had not yet been completed.

Review scope

3.56 Figure 3.1 illustrates the fall in the number of compliance reviews that have been planned and completed over the period assessed and also identifies the fall in the number of full scope reviews that have been conducted. Table 3.4 illustrates the impact of narrowing the scope of reviews that are conducted. There has been a reduction in testing along with the reduction in findings, but the proportion of findings has not improved. Across the five year period, all reviews tested receipts above the threshold and the proportion of findings remained stable (between 53 and 65 per cent). The proportion of findings across other parts of the annual returns fluctuated over the five year period. For example, the proportion of findings in total debts increased from 11 of 25 (44 per cent) in 2015 to 10 of 12 (83 per cent) in 2018.

Table 3.4: Compliance reviews — comparison between parts of the financial disclosure return tested and findings of non-compliance: 2015 through to 2019

	2015 program ^a		2016 program ^b		2017 program ^c		2018 program ^d		2019 program ^e	
	Tested	Findings	Tested	Findings	Tested	Findings	Tested	Findings	Tested	Findings
Total receipts	24	18	17	12	20	10	6	4	8	2
Gifts in kind	24	6	16	6	19	6	8	5	11	2
Receipts above the threshold	33	19	22	13	23	13	17	11	15	8
Total payments	24	15	17	13	19	13	5	2	8	1
Total debts	25	11	16	13	19	10	12	10	8	3
Debts above the threshold	25	7	16	12	19	10	13	8	10	1

Note a: In 2015, 24 full scope reviews and 9 limited scope reviews were completed.

Note b: In 2016, 15 full scope reviews and 7 limited scope reviews were completed.

Note c: In 2017, 17 full scope reviews and 6 limited scope reviews were completed.

Note d: In 2018, 5 full scope reviews and 12 limited scope reviews were completed.

Note e: In 2019, as at March 2020, 8 full scope and 7 limited scope reviews have been completed.

Source: ANAO analysis.

⁶⁰ There are three reviews where the planned scope is unknown.

Value of disclosures tested

3.57 The total value of disclosures selected for testing is also declining as detailed at Table 3.5. While the value of amendments is decreasing the error rate does not indicate that overall compliance is improving. Rather, it demonstrates that the AEC has reduced the number, scope and value of the transactions being tested through the compliance review program.

Table 3.5: Compliance reviews completed — analysis of number of amendments per review per scope, the error rate, the value of disclosures and the value of disclosures tested: 2015 to 2019

Year	Scope and No. of completed reviews		No. of amend-ments	Error rate		Total receipts \$ million			Receipts over the threshold \$ million			Total payments \$ million			Total debts \$ million		
				Per type and Aggregate		Return	Test	%	Return	Test	%	Return	Test	%	Return	Test	%
2015	Full	24	20	84%	73%	162	162	100	113	113	100	161	161	100	12	12	100
	Limited	9	4	44%		32	0	0	13	13	100	32	0	0	4	1	24
	Annual-total					194	162	84	126	126	100	193	161	84	17	13	80
2016	Full	15	13	86%	87%	137	137	100	49	49	100	138	138	100	3	3	100
	Limited	7	6	86%		82	25	30	36	36	100	76	22	29	18	0	0
	Annual-total					219	161	74	85	85	100	214	160	75	21	3	15
2017	Full	17	14	82%	74%	135	135	100	41	39	95 ^a	128	128	100	24	24	100
	Limited	6	3	50%		33	7	21	15	15	99 ^b	28	2	6	8	2	21
	Annual-total					168	142	85	56	54	96	156	129	83	32	26	80
2018	Full	5	5	100%	94%	12	12	100	7	7	100	14	14	100	2	2	100
	Limited	12	11	92%		62	10	16	30	30	100	61	0	0	4	1	25
	Annual-total					74	22	30	37	37	100	75	14	18	7	3	51
2019	Full	8	4	50%	67%	4	4	100	2	2	100	3	3	100	15	15	100
	Limited	7	6	86%		31	0	0	20	20	100	26	0	0	15	0	0
	Annual-total					35	4	10	22	22	100	29	3	10	30	15	50
Totals					78%	690	491	71	327	325	99	667	468	70	107	61	56

Note a: In 2017, the full review undertaken on the Australian Labor Party (State of Queensland) did not test the full \$8.4 million of receipts above the threshold that had been disclosed, with \$6.5m (77 per cent) tested. As a result, 100 per cent of receipts over the threshold were not tested.

Note b: In 2017, the limited review undertaken of the National Party of Australia — Victoria was on 10 party units, as such the full amount of the receipts over the threshold was not tested.

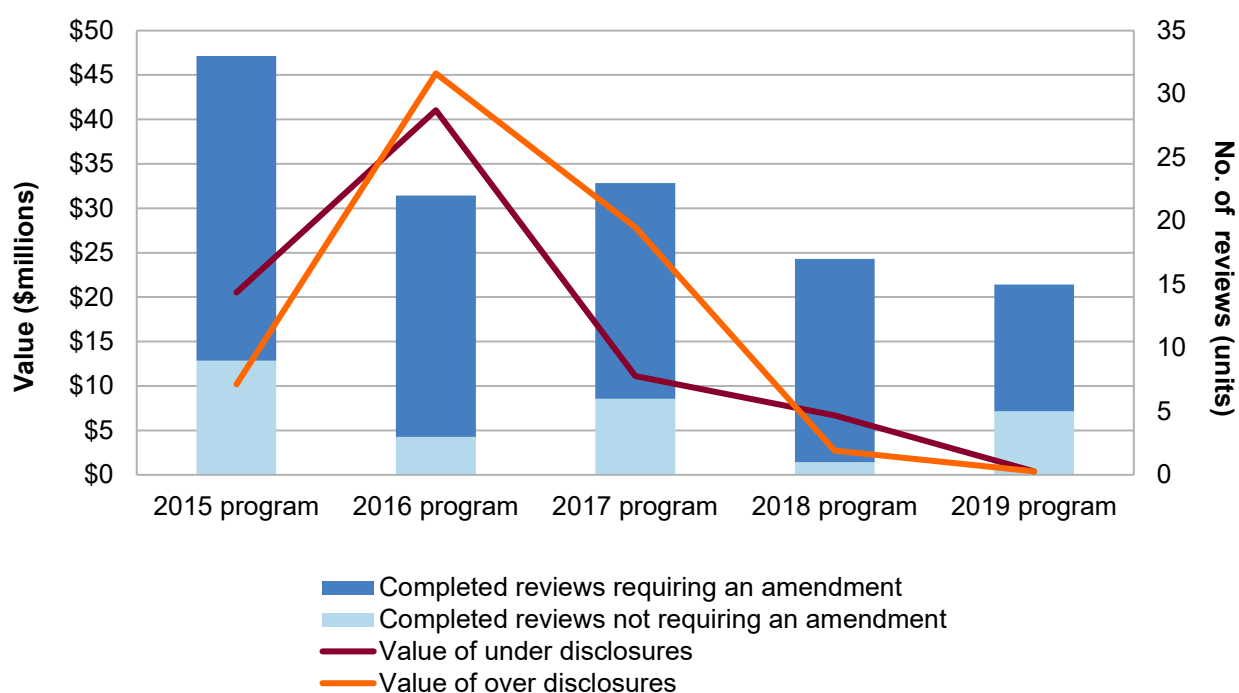
Source: ANAO analysis.

3.58 As illustrated above, in the 2015 and 2017 compliance review programs \$194 million and \$168 million in total receipts respectively was disclosed across all returns selected for a review with \$162 million (84 per cent) and \$142 million (85 per cent) tested. For total payments, \$193 million and \$156 million was disclosed with \$161 million (84 per cent) and \$129 million (83 per cent) tested. In 2019 the total receipts disclosed across all returns selected for a review was \$35 million and total payments was \$29 million. Of the \$35 million in total receipts, \$4 million (10 per cent) has been tested and of the \$29 million in total payments only \$3 million (10 per cent) has been tested. These significant reductions in testing have occurred at the same time that significant growth in the value of disclosures has occurred, see paragraph 3.51 and Table 3.3.

Value of amendments

3.59 Reflecting the reduction in the number, scope and value of transactions being tested, the value of amendments being identified by the AEC has also declined, see Figure 3.2.

Figure 3.2: Compliance reviews — comparison between reviews requiring amendments and the value of under and over disclosures



Source: ANAO analysis.

3.60 The analysis highlights that the value of under-disclosure and over-disclosures that are identified are impacted by the value of the transactions being tested. For instance, the spike in the value of under and over disclosures identified by the AEC in 2016 is due to the selection of a single associated entity, the CFMEU Construction & General Division (WA Branch) for a full compliance review. The CFMEU Construction & General Division (WA Branch) was responsible for \$13.7 million (34 per cent) of the total value of under-disclosures identified and \$38.7 million (84 per cent) of the total value of over-disclosures identified in that year.

Size of entity

3.61 The AEC guidance material states that political parties and associated entities are categorised as either small⁶¹, medium⁶² or large⁶³ on the basis of the total value of receipts.⁶⁴ The ANAO examined the number of full scope versus limited scope compliance reviews that have been conducted since 2015 according to the AEC's categorisation of the size of the entity. As illustrated at Table 3.6, there has been a marked decline in the number of full reviews that are being conducted on large entities. Since 2017, full reviews have focused on small or medium sized entities, with limited reviews conducted on large entities. In 2018, only one full review was conducted on a large entity and all full reviews in 2019 were conducted on small or medium sized entities.

Table 3.6: Size and type of entity selected for a full or limited scope compliance review: 2015 to 2019

		2015		2016		2017		2018		2019	
Type of entity	Size of entity	Number of reviews completed									
		Full	Limited	Full	Limited	Full	Limited	Full	Limited	Full	Limited
Political party	Small	4	0	0	0	1	0	0	0	2	0
	Medium	6	0	4	1	5	3	2	4	2	3
	Large	9	0	4	3	3	3	1	7	0	3
	Sub-Total	19	0	8	4	9	6	3	11	4	6
Associated entity	Small	1	3	2	0	4	0	0	0	2	0
	Medium	2	4	1	0	1	0	2	1	2	1
	Large	2	2	4	3	3	0	0	0	0	0
	Sub-Total	5	9	7	3	8	0	2	1	4	1
Total		24	9	15	7	17	6	5	12	8	7
Total number of reviews completed		33		22		23		17		15	

Source: ANAO analysis.

3.62 Some of the decline can be linked to the AEC undertaking a limited scope compliance review after an initial full scope review has been conducted on a large entity. Testing of compliance reviews conducted between 2015 and 2019 has identified 24 entities that have had multiple compliance reviews conducted across the five years examined. Of the 24 entities, 13 were large entities, (12

61 Small entities are those where the total receipts figure in the disclosure return is no greater than 10 times the disclosure threshold. For example, for the 2016 compliance reviews undertaken on 2014–15 disclosure returns, the disclosure threshold was \$12,800 in 2014–15. Therefore, an entity would be categorised as small in 2014–15 if the total receipts disclosure was equal to or less than \$128,000.

62 Medium entities are those where the total receipts are less than \$2,500,000 but greater than the total receipts figure for small entities.

63 Large entities are defined as those where the total receipts exceed \$2,500,000.

64 The categories were established on the basis of total receipts disclosed by known political parties and associated entities in 2014.

political parties and one associated entity) eight were medium entities (all political parties), with three entities where the size category changed across years due to increases/decreases in the total receipts figures disclosed (two political parties and one associated entity). Of the 13 large entities, all 13 had a full review conducted initially, with a subsequent limited review conducted at a later date for 10 (77 per cent), however there was no consistent duration between the reviews conducted. As discussed at paragraph 3.28, in 2019, the AEC modified the selection process to exclude entities that had been selected on multiple occasions.

Findings from compliance reviews

3.63 Findings from compliance reviews are communicated through the issuing of the draft report to the entity and publication of the final report on the AEC website.⁶⁵ Where the AEC has found instances of non-compliance with the disclosure requirements, the report identifies and explains the rationale for the amendment/s that are recommended. Non-compliance may be in the form of under-disclosure, over-disclosure, or require an administrative change. Over the period examined, the ANAO has not identified a case where the entity has not made the recommended amendment.

3.64 Under-disclosure is when an amount disclosed in the return is less than the correct sum, or an amount has not been disclosed as required. Over-disclosure is when the amount disclosed in the return is greater than the correct sum, or was not required to be disclosed. An administrative change can include an amendment to the details of the financial disclosure return, such as the name, address, and contact details of the party agent and/or financial controller, classification of receipt type, but no change to the amount disclosed.

3.65 Under-disclosure is considered by the AEC to be more concerning as it demonstrates that the disclosures are incomplete and inaccurate. The ANAO has observed, see Figure 3.2, that the value of under and over disclosures identified by the AEC has fallen in line with the reduction in the number and scope of compliance reviews that have been completed.

Monitoring and reporting

Internal monitoring and reporting

3.66 In 2015, the reporting to the CRC was ad-hoc with five reports provided after the compliance schedule was approved. In March, reports were provided to the CRC on the approach to reviewing party units and an evaluation of the risk based methodology. In April, October and December the CRC were provided updates on the progress of the 2015 compliance schedule. In August, the CRC approved a revised approach to conducting compliance investigations, and in December, agreed to institute a more structured reporting framework to occur on a quarterly basis in April, July, October and January of each year. The matters covered by the reports that were provided identified that resourcing issues and delays in receiving requested information were commonly encountered, particularly after an election had been called.

3.67 The ANAO has identified inaccuracies in the reporting provided to the CRC on the outcomes of compliance reviews that was potentially misleading. For example, seven limited reviews, which only tested receipts above the threshold, were reported as having 'accurate' results across all parts of the form including those parts not tested. Further, while the AEC prepared end of year reports

65 The AEC commenced online publishing of the final reports of compliance reviews from the 2017 program onwards.

for the 2014, 2015 and 2016 compliance programs, and prepared spreadsheets detailing the results, the AEC advised the ANAO in June 2020 that these reports were provided to the relevant branch head but not to the CRC.

3.68 A high level outline of progress is also provided to the AEC's Executive Leadership Team. These reports did not include an update on the compliance review program until September 2016 and did not include any information on the findings of individual reviews until August 2017. Since August 2017, the weekly reports include an overview of the progress of the compliance review program, upcoming publication timeframes of reviews, and high level summary comments on the findings of individual reviews.

External monitoring and reporting

3.69 The AEC's corporate plan and portfolio budget statements identify one performance measure that is used to assess the performance of the compliance review program: 'compliance reviews of political parties and entities with disclosure obligations completed and published'. This measure was first included in the AEC's 2018–2022 corporate plan. The ANAO applied the framework outlined in Appendix 4 to analyse the AEC's performance measure.

3.70 The measure is not relevant. The measure is limited to identifying that compliance reviews have been conducted and does not provide any information to enable a user to identify if the purpose of the compliance reviews has been achieved. Namely to provide assurance that the disclosure returns are accurate and complete.

3.71 The measure is partly reliable. While the completion and publishing of compliance reviews is measurable, it does not include a quantitative target that can be used to assess the extent to which the compliance program is meeting its objectives, or determine if the performance of the regulated entities is improving, stable or declining.

3.72 The measure is not complete. The measure has no target, no timeframes, and does not use qualitative and quantitative measures to assess the overall performance of the AEC to undertake the compliance review activities or determine if the program is meeting its objectives.

Recommendation no.6

3.73 The Australian Electoral Commission establish performance measures for its compliance program that comply with the Department of Finance guidance and are relevant, reliable and complete.

AEC response: *Agreed.*

3.74 *The AEC has updated its performance measures in relation to recent changes to the PGPA Act that affect how we set, measure and report on performance.*

Does the Australian Electoral Commission appropriately act upon identified non-compliance?

The AEC does not appropriately act upon identified non-compliance. It is not making effective use of its enforcement powers and as such has not implemented a graduated approach to managing and acting on identified non-compliance.

3.75 To assess the AEC's approach to identified non-compliance, the ANAO identified the range of offences under the Electoral Act, the AEC's policies and procedures outlining its approach to addressing non-compliance, and its use of the legislative powers available to investigate instances of non-compliance and take further action such as referring matters to the Office of the Commonwealth Director of Public Prosecutions (CDPP) for potential prosecution.

Offences

3.76 According to the AEC's enforcement and prosecutions policy the five offences under Part XX of the Electoral Act include:

- failing to furnish a return⁶⁶;
- furnishing an incomplete return;
- failing to retain records;
- providing false or misleading particulars, information or evidence; and
- refusing or failing to comply with a notice.⁶⁷

3.77 The five offences listed in the enforcement and prosecutions policy do not reflect the recent changes that were made to Part XX of the Electoral Act.

3.78 In November 2018, the specific offences outlined were repealed and replaced with references to section 137.1 of the *Criminal Code Act 1995* (the Criminal Code). Section 137.1 of the Criminal Code makes it an offence to provide false or misleading information or documents. In addition to the referral to the Criminal Code, breaches of the Electoral Act are to be enforced using a civil penalty regime. Civil penalties are outlined in the *Regulatory Powers (Standard Provisions) Act 2014*, and require the application of the penalty to be sought through the courts.

Findings from compliance reviews

3.79 At the conclusion of a compliance review a final report is issued and is published on the AEC website. The actions that the AEC undertakes to address non-compliance are limited to seeking an amendment to correct the errors identified within the annual disclosure returns submitted by political parties and associated entities. Even where repeat offenders or comprehensive failures in disclosure have been identified, or where the AEC has not been able to make a conclusion on the completeness and accuracy of a return, the AEC has not taken further action to address the non-compliance (see below case studies).

3.80 Across five years of compliance reviews examined by the ANAO, four political parties have been involved in three compliance reviews where repeated non-compliance was found, Australian Greens (South Australia), the Australian Labor Party (Northern Territory) Branch, the Australian

66 Prior to November 2018, subsection 315(1) of the Electoral Act made it an offence to fail to furnish a return. The offence was categorised as a strict liability offence. A strict liability offence is an offence where there are no fault elements for any of the physical elements of the offence; and the defence of mistake of fact is available. In November 2018, failing to lodge a return is captured in each section of the Electoral Act that relates to a specific electoral participant. Political parties and political campaigners are captured in section 314AB. Associated entities are captured in section 314AEA. Third parties are captured in section 314AEB. A civil penalty regime applies to political parties, political campaigners, associated entities and third parties.

67 Subsection 316(5) of the Electoral Act makes it an offence for a person to refuse to comply with a notice issued under subsection (316(2A), 316(3) or 316(3A)) to the extent that the person is capable of complying with the notice.

Labor Party (Tasmanian Branch) and the Australian Labor Party (Victorian Branch). In each case, the AEC directed the entity to lodge an amendment to correct the non-compliance and did not take any further action such as invoking its investigatory powers under subsection 316(3) of the Electoral Act, or referring the matter to the CDPP.

Case study 2. Repeated non-compliance with disclosure requirements

The disclosure form lodged by the Australian Labor Party (Northern Territory) Branch was reviewed as part of the 2015, 2017 and 2018 compliance review programs. All three compliance reviews found under-disclosures in receipts above the threshold and total debts, and two compliance reviews found under-disclosures in total payments and debts above the threshold. While all three compliance reviews stated that future non-compliance may result in a referral to the CDPP, there is no evidence of the AEC taking any further action.

3.81 Across the five years of compliance review programs examined (2015 through to 2019) the ANAO has identified five cases where the AEC has advised that it was unable to make a conclusion on the accuracy and completeness of an annual return, and one case where control issues were identified.

Case study 3. Cases where the AEC has not been able to provide a conclusion on the accuracy and completeness of an annual return

The cases are the Enterprise Club, the Liberal Party of Australia — Tasmanian Division, the Australian Labor Party (Northern Territory) Branch, the Greens NSW, the Liberal Party of Australia (Victorian Division), and the 500 Club (WA).

For the Enterprise Club, the AEC reserved its opinion on whether the disclosure return was accurate and complete because the entity did not provide bank statements. For the Liberal Party of Australia — Tasmanian Division, the AEC noted that it could not verify the total gifts in kind disclosure as the party was unable to provide supporting documentation. For the Australian Labor Party (Northern Territory) Branch, the AEC could not conclude that the resulting amendment to the disclosure form was accurate because three party units did not provide a report of total receipts and total payments. For the Greens NSW and the Liberal Party of Australia (Victorian Division), the AEC identified discrepancies in total receipts and total payments for party unit figures and could not conclude that amendments following the compliance reviews were fully compliant with disclosure requirements. The AEC identified that there were internal control issues in its review of the 500 Club (WA) but stated that it does not examine the existence or effectiveness of internal controls.⁶⁸

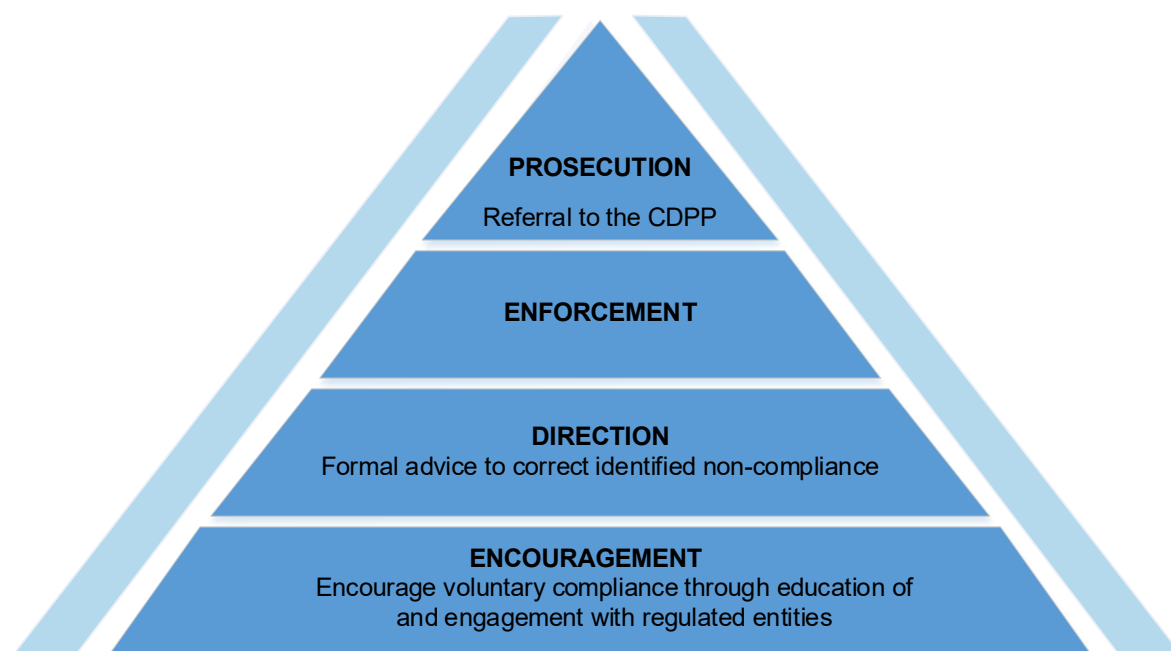
Enforcement and prosecution

3.82 In all of the five cases where the AEC was unable to make a conclusion on the accuracy and completeness of an annual return, there was no evidence that the AEC had considered undertaking an investigation, through invoking its powers under subsection 316(3) of the Electoral Act to identify the cause/s of the non-compliance and determine if the contravention of the financial disclosure

⁶⁸ As stated in paragraph 3.47, the AEC specifically states in its guidance that it does not provide an opinion on the adequacy of the internal controls.

provisions should be referred to the CDPP for potential prosecution. As such, the AEC has not sought to apply a graduated approach to enforcement in line with established best practice, see Figure 3.3.

Figure 3.3: Graduated response to non-compliance



Source: Adapted from ANAO Better Practice Guide — Administering Regulation — June 2014.

3.83 In line with the best practice approach, the first response of the AEC to address non-compliance should be, and is, ‘encouragement’. To do so, the AEC engages with entities and individuals through the issuing of letters and corresponding with entities to encourage voluntary compliance.

3.84 The AEC’s compliance review program enables the AEC to provide directions to entities and individuals that have disclosure obligations. The AEC has limited its use of these directions to requiring entities or individuals to lodge a late return or recommend that an amendment be lodged to correct an error.

3.85 The AEC is able to commence an investigation of contravention or suspected contraventions of the Electoral Act.⁶⁹ Since 2015, the AEC has undertaken two investigations, neither of which were designed to address systemic issues, frequent non-compliances, or matters where the AEC was unable to provide an opinion on the accuracy and completeness of the return, identified through a compliance review. Rather, one investigation was in relation to whether appropriate disclosures were made under Part XX of the Electoral Act in respect of the plane used by Pauline Hanson’s One

⁶⁹ To conduct an investigation the AEC is able to issue a notice to a person or organisation in accordance with subsection 316(3) of the Commonwealth Electoral Act, where the AEC has reasonable grounds to believe that a person or organisation is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of a civil penalty provision [...] relating to matters that are set out in, or required to be set out in, a claim or return [...].

Nation party during the 2016 federal election.⁷⁰ The second was to determine if Get Up Pty Ltd met the definition of an ‘associated entity’.⁷¹

3.86 The AEC does not have the power to apply administrative penalties to address minor non-compliance (such as failure to provide an election return by independent candidates — those not endorsed by a registered political party — that were unsuccessful in achieving four per cent of the vote and therefore not eligible to receive any election funding). By way of comparison, there are legislative instruments that authorise the AEC to apply administrative penalties to individuals who do not vote.

3.87 In the period examined by the ANAO (from 2015–16), the AEC has prepared briefs for the referral of six cases of non-disclosure to the CDPP for potential prosecution. Each of the six related to the 2016 federal election. The AEC has not referred any matters to the CDPP as a result of findings from compliance reviews since 2016.⁷²

3.88 Out of the six cases from the 2016 election, the AEC advised the ANAO in June 2020 that five were referred to the CDPP:

- one was removed from the prosecutions list by the AEC, as the candidate lodged the election return in December 2017, over 12 months late;
- two were withdrawn and/ or discontinued; and
- two proceeded to prosecution, with a total of \$2000 in penalties applied. In both cases, the matter took over 600 days to settle.

3.89 In August 2020, the AEC advised the ANAO that it was taking enforcement action against eleven candidates that did not lodge returns in relation to the 2019 federal election (those returns were due in September 2019).

70 The investigation into Pauline Hanson’s One Nation Party was instigated as a result of a media segment aired on the ABC’s Four Corners program on 3 April 2017.

71 The investigation into Get Up Pty Ltd was instigated as a result of documents tabled at a public hearing of the Joint Standing Committee on Electoral Matters in November 2016, including ‘how-to-vote’ cards distributed by Get Up for the 2016 federal election.

72 The 2016 compliance review program was conducted on 2014–15 annual returns.

Recommendation no.7

3.90 The Australian Electoral Commission implement a graduated approach to addressing non-compliance, including by making greater use of its investigatory powers and seeking to have prosecutions undertaken by the Commonwealth Director of Public Prosecutions or civil penalties applied by the courts where serious or repeat non-compliance has been identified.

AEC Response: Not Agreed

3.91 *The AEC has a graduated approach to addressing non-compliance and makes appropriate use of its investigatory powers when required. Necessary enforcement action is undertaken where appropriate. The AEC's administration of Part XX of the Electoral Act, in line with its interpretation of the intent of that legislation, does not lead to a view that a more heavy handed approach to enforcement is warranted.*



Grant Hehir
Auditor-General

Canberra ACT
17 September 2020

Appendices

Appendix 1 Entity response



Electoral Commissioner

Ref: 4660

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Hehir

ANAO Proposed Report under s.19 of the Auditor-General Act 1997

An effective and transparent financial disclosure scheme is a key pillar of Australia's democratic framework. The discharge of the Australian Electoral Commission's (AEC's) disclosure responsibilities are, quite rightly, already intensely scrutinised by citizens, the media, parties and candidates – long may this continue!

Disclosure scrutiny is further facilitated by the AEC through regular publication of an extraordinary volume and variety of material regarding the financial activity of various participants in the electoral process – and frequent examination of the AEC's activities through a range of parliamentary processes. Further transparency has, since 1 January 2019, been achieved through the AEC's Transparency Register which entails publication of relevant information on our website in an accessible format. Having so much information available enables stakeholders to examine the detail of each other's activities, query discrepancies, and provide ancillary information to the AEC for analysis.

Such is the importance of achieving disclosure that the AEC welcomes all forms of audit and examination of this already transparent, and highly complex, area. A lengthy and detailed inspection, such as this six month audit by the Australian National Audit Office (ANAO), of critical functions in any operational agency would, it is hoped, result in recommendations for improvement. The outcomes of this audit demonstrate there are aspects of our administration of the disclosure scheme where further enhancements are required. The AEC notes those observations, will address those issues, and acknowledges the audit teams' work.

However, there are serious inaccuracies contained within the report. The ANAO's misinterpretation of aspects of the legislation; decision to conduct the audit before a full enforcement cycle was complete; imprecisions in the analysis of the number of outstanding returns; and the lack of understanding of the overall intent and context within which the disclosure scheme operates, combine to render this report significantly less valuable than would otherwise have been the case. Furthermore, these issues have led the ANAO to conclude that the AEC's administration of the disclosure scheme is 'partially effective'. The AEC rejects this categorisation. The decision to use this term runs counter to the extent of disclosure achieved by the AEC; the transparency of the current system; overall levels

50 Marcus Clarke Street, Canberra ACT 2600 P 02 6271 4411 F 02 6215 9999

www.aec.gov.au

of compliance; the lack of evidence of large scale deliberate non-compliance; and the successful operation of the scheme within existing legislative boundaries.^a

This response will focus on what appear to be the report's two major underpinning, and somewhat linked, themes: the AEC's use of 'enforcement' more broadly, and what is presented as inadequacies of the current system to achieve compliance.^b

Enforcement and Compliance

The ANAO's subjective view that the AEC's disclosure activities are 'partially effective' is, in part, underpinned by a recurring theme that the AEC should make greater use of enforcement powers in its administration of the disclosure scheme.^c

The AEC disagrees with this view. We believe the ANAO's position fundamentally misconstrues Parliament's intent with extant legislation, thereby creating a deeply misleading view of the role of the AEC and its overall performance.

The current funding and disclosure regime was added as Part XX of the Electoral Act by the *Commonwealth Electoral Legislation Amendment Act 1983* (Amendment Act). In September 1983 the First Report of the Joint Select Committee of Electoral Reform (JSCER) noted:

10.23 The Committee notes again that the majority of workers in any campaign will be voluntary helpers, some of whom will have expert accounting skills. **However, innocent mistakes may be made. A party official or a candidate's agent should not be held responsible for mistakes of this kind.**

10.24 The Committee recommends that **no penalty be attached to innocent mistakes.** However suitably severe penalties should be attached to the wilful filing of false or incorrect returns.^d

Further, the Committee indicated a preference for obtaining substantive compliance:

10.58 While the Committee **does not believe that any system can ensure full and complete disclosure** on the part of all concerned it believes that **if all involved adhere to the spirit of the scheme the basis for a system that would allow the electorate to be well informed** on major donors to political parties groups and candidates and major expenditure of those involved in an election campaign would have been established.^e

In November 1983, the second reading speech for the Amendment Bill by the then Special Minister of State, Mr Kim Beazley, noted that an overarching principle of the scheme is to ensure transparency in the finances of participants in federal elections¹:

- 'The whole process of political funding needs to be out in the open ... **Australians deserve to know who is giving money to political parties and how much**'.

Since 1983 the AEC's enforcement and prosecution regime has reflected the legislative intent of Part XX: disclosure through transparency. The AEC has consistently maintained this approach (based on the requirements of the legislation) since that time. The AEC has expounded upon this, at length, during various parliamentary committees – including the Joint Standing Committee on Electoral Matters (JSCEM), and numerous Senate Estimates hearings. Our application of this intent has not been corrected by Parliament. It has been largely uncontested by stakeholders that: in line with Parliament's intent, the purpose of the penalties in Part XX has been to encourage transparency by deterring non-compliance and, where necessary, penalising intentional non-compliance. For example the JSCER Report No 2 on the Operation during the 1984 General Election of the 1983–84 Amendments to Commonwealth Electoral Legislation, at paragraph 8.4, noted:

"...the AEC reported that it has adopted an approach of seeking co-operation in the operation of the scheme with those affected by its provisions. It has stressed an **even handed, helpful**

¹ *Second Reading Speech, Commonwealth Electoral Legislation Amendment Bill 1983*, House of Representatives, *Debates*, 2 November 1983, pp. 2213–2216

and pliable approach in its administration based on consultation. In this respect its approach is similar to that adopted by those administering similar schemes in Canada and the USA."

In line with the approach outlined above, returns and amendments to returns have been accepted in accordance with legislative requirements with the ultimate aim of achieving transparency. To be abundantly clear – the Electoral Act enables a person who has made a return under Part XX to make an amendment. Parties and candidates from across the political spectrum frequently submit amendments to returns; the vast majority of which were the result of inadvertent errors, and many relate to relatively small sums of money. Some amendments occur through the party or individual concerned self-correcting, and others as a result of the AEC undertaking checks to support compliance.

The AEC further supports the intent of transparency by making all returns publicly available for download and analysis, and the publication of results of compliance review activity. The publication of those reviews is not statutorily required, but the decision to do so was made by me in 2017 in the interests of improving full transparency.

Figure 3.3 in the report shows the graduated response to non-compliance that the ANAO states is considered best practice. This appears to be modelled on the Ayres and Braithwaite enforcement pyramid and is the approach the AEC takes to its administration of the disclosure scheme. Ayres and Braithwaite argued that most people dealing with regulation are trying to do the right thing and the greatest emphasis should be on **consultation, education and persuasion** – the exact approach adopted by the AEC.

The reforms to Part XX of the Electoral Act enacted on 1 January 2019 changed some of the penalties in the disclosure scheme from criminal to civil penalties. The AEC is in the process of applying the new regime for enforcement against eleven candidates who have not lodged returns in relation to the 2019 federal election. The timing of the ANAO audit has resulted in this action not being reflected in the period examined by the ANAO, and this creates a misleading picture which the content and tone of the report reinforces. ^f

The comment in the report that the 'AEC does not appropriately act upon identified non-compliance' is inaccurate as it ignores all the information above. ^g In all candour, the commentary also represents a reductionist simplification of a complex area of the law and appears to ignore Parliament's legislative intent, resourcing, the huge number of stakeholders, and other critical contextual information. For example, the ANAO report notes that five matters were referred to the Commonwealth Director of Public Prosecutions (CDPP) following the 2016 federal election. Of the five referrals, the CDPP only took two matters forward to prosecution.

The two prosecutions that commenced in 2016 took more than two years to resolve, the investment of a significant amount of staff time and resourcing, with an end result of \$2,000 in penalties being imposed. On any reasonable measure, particularly given the level of compliance already being achieved, it is difficult to justify this as a prudent use of public resources. Up until 2019, the AEC did not have powers to prosecute criminal proceedings in this area, and the AEC was completely reliant on other agencies and the priorities and resources of those agencies aligning to our desire to proceed. ^h

Notwithstanding the change to civil penalties noted above, it remains costly and time-consuming to pursue civil offences in court. ⁱ Whilst not aligned to the original intent of the legislation, it is also not clear what would be gained by pursuing a civil penalty for minor non-compliance, for example against a person or entity who lodged a return late, or who made an amendment to correct their return on realising (or being informed by the AEC) that there was an error in the original return. This is perplexing given the commentary correctly points out that the AEC does not have the legislative power to apply administrative penalties to address minor non-compliance. This reinforces the view that Parliament has not considered it necessary or appropriate to prescribe a graduated enforcement model in the legislation that would punish participants for minor errors, or amendments or for late returns. Therefore, the AEC has achieved accurate and transparent disclosure through – appropriately – consultation, education and compliance.

Similarly, the ANAO report suggests that the AEC is not making sufficient use of its investigation authority under s316 (3) of the Electoral Act to address systemic issues or frequent non-compliance. This authority allows the AEC to compel documents or other evidence from persons where there is a contravention, or possible contravention, of the Electoral Act. This would generally be used by the AEC where there is a suspected omission or error in a return in order to ascertain the facts, i.e. to conduct an investigation. If an entity has lodged late returns or made amendments to its return following review by the AEC, there is nothing to be gained by using the authority of s316 (3) to obtain documents or other evidence. In these cases, the AEC is already working closely with the entities to achieve disclosure. Unless the entity concerned is being deliberately obdurate, a situation which seldom arises, disclosure is still being achieved in line with the intent of the legislation. The use of the s316 (3) authority in such cases could be considered an abuse of process. ⁽ⁱ⁾

The AEC has the utmost confidence in its interpretation of the intent of Part XX of the Electoral Act. The AEC's current approach is in line with Key Performance Indicator 3 *Regulator Performance Framework* ('actions undertaken by regulators are proportionate to the regulatory risk being managed') published by the Department of Prime Minister and Cabinet. To do otherwise would, it is contended, run counter to the legislative intent of Parliament. Additionally, such actions would be unlikely to achieve any further disclosure than is currently the case, and could even be seen to be an irresponsible investment of Commonwealth funds directly counter to the duty in the *Public Governance, Performance and Accountability Act 2013* section 15 (1) & (2) regarding the prudent management of public resources. ^(k)

Accuracy of Returns

In the conclusion and the body of the report is a statement that there is 'insufficient evidence that the returns that have been provided are accurate and complete.' This misleading statement implies the AEC has not effectively administered the scheme, and is sure to be viewed that way by various stakeholders. However, that commentary is based on the ANAO's misinterpretation of the legislation as outlined above.

Obviously not all returns that have been provided 'are accurate and complete'. The findings of the AEC compliance review program and checks on submissions are part of the legislative process (and therefore parliamentary intent) that results in corrections by amendments to returns being made. It is unclear whether the ANAO is suggesting the AEC is being measured against a standard of 100% accuracy of all returns on submission (again, contrary to the intent of the legislation which allows for post submission amendment), or what evidence, reasonably and effectively, could be produced to establish the completeness and accuracy of every aspect of all 5,881 returns, on submission, during the period examined by the ANAO. ^(l)

I also note that this commentary, which could mislead the uninformed reader about the efficacy of the current process, is further reflected in the 'audit snapshot' on page 3 of the report indicating that '78% of returns reviewed by the AEC across the five year period required amendment'. Those amendments are part of the broad process provided for in the legislation and represent the large number of entities involved, the complexity of the process, and the fact that many of the entities have volunteer staff completing the returns with varying degrees of knowledge and experience of these complex requirements: hence the AEC's educative approach. ^(m)

Submission of Returns

During the four years examined, the AEC has received a total of 5,881 financial disclosure returns (2,568 annual returns and 3,313 election returns). The report claims that 76 returns have not been obtained by the AEC – 61 annual returns and 14 election returns. This is flatly incorrect, and the ANAO were informed of this fact during the audit: it is disappointing that they have persisted with this view. Quite apart from the fact that the number in Table 2.6 on page 25 appears to add up to 75, 32 of the 61 annual returns, relate to political parties that de-registered during the financial year. The Electoral Act at that time did not require such entities to lodge a return, and therefore the AEC had no legislative authority to demand a return. ⁽ⁿ⁾

Furthermore, of the 43 returns not obtained, 34 relate to the most recent federal election or financial year. The AEC is in the process of pursuing these returns as is normal practice during an electoral cycle. In any case, the non-lodgment of 29 annual and 14 election returns represents 1.1% and 0.4% of all annual and election returns received by the AEC respectively during the period examined. To be clear, the AEC has obtained 98.9% of annual returns and 99.6% of election returns during the four year period examined. Given a large proportion of election and donor returns are required to be lodged by individuals who have a one-time interaction with the AEC, and therefore often do not fully understand their obligations, this demonstrates the AEC is effective at discharging its responsibility to obtain required disclosures. **o**

Risk matrix and the compliance review program

The report is critical of the AEC's risk based approach to the selection of entities for compliance review, stating it has a 'number of limitations'. Any risk-based approach obviously has 'limitations', and the AEC has attempted to mitigate those issues by developing and refining a risk matrix over time, and taking advice from external parties on better practice. For example, the risk matrix takes into account recommendations made by PricewaterhouseCoopers as part of an earlier review. As the ANAO report notes, the AEC also engaged Charterpoint to undertake a review of the risk matrix in 2017, recognising the value in obtaining external advice on its effectiveness. While it made a number of recommendations for refinement, the review found that the risk matrix is generally effective at selecting a sample of returns. That the AEC has twice engaged external expertise to review the risk matrix is evidence of our desire to ensure it is effective as possible: this is not sufficiently reflected in the report. **p**

The AEC is conscious of the need to ensure broad principles of natural justice, risk mitigation, absence of apprehended bias, substantiality, proportionality, prudent use of Commonwealth funds, general resource management, and a host of other factors in selecting returns and entities for compliance reviews. The risk matrix, and its associated compliance review program, are the outcome of balancing those competing tensions whilst achieving a reasonable outcome. This is neither surprising nor a revelation: all functions, in every public sector agency, are managed within an existing resource framework. The injection of resources into the AEC related to the passage of the legislative amendments in 2019 will, in the future, enable the AEC to further develop this area of its operations. **q**

Internal Review - McLeod

The report opines that three of the four recommendations of the review of the disclosure and compliance function led by Ron McLeod have not been implemented – the inference is that the AEC has been lax in this regard. This internal review, commissioned by the AEC, was conducted in 2012. At that time, and in the many years since that report, the AEC continuously analysed the environment and either undertook activities in support of implementation of the recommendations or adapted our approach to reflect relevant issues including rapid and significant changes to technology, agency resourcing, the external environment, and a plethora of other factors. Such actions were undertaken consciously, and represent a sensible and standard management approach to ensure adequate service delivery. **r**

Like all such reviews, recommendations pertain to the circumstances that existed at the time of its publication. For example, the McLeod Review recommended changes to the ICT system that was in use for compliance and disclosure at the time. Such changes were explored, however with the passage of time and the advancement in IT solutions, and aided by additional funding for electoral integrity reforms, the AEC is, instead, in the process of building a Self-Service Platform using cloud-based technology that aligns with the agency's modernisation journey.

The ANAO commentary on this report is disappointing and somewhat curious. The report creates an impression of wilful inaction by treating the McLeod Review (now nearing a decade-old) as holy writ, and ignores the responsibility of agency management to adapt, develop, and deliver services as circumstances, and the operating environment, change.

Data analytics

The report makes a number of quite reasonable observations about the need for the AEC to make more use of data and overall analysis of returns to assist in identifying areas of non-compliance, and generally improving accuracy and transparency. The AEC broadly agrees with these observations, with some caveats based on legislative scope, and privacy requirements. Our approach to date has been based on available resourcing and necessarily represents a compromise between costs, assurance, and transparency. For reasons previously outlined in this response, the AEC has not yet fully realised the benefit of the additional resources allocated to the agency associated with amendments to the legislation during 2019. Once additional staff have been fully on-boarded, and planned systems implemented, we intend to move in a legislatively appropriate manner further in the direction indicated by the ANAO. ^S

Reduction in activity levels with compliance reviews

The legislation does not mandate the conduct of compliance reviews. They are an additional layer of assurance over the integrity of the funding and disclosure regime. The number of reviews we undertake is, quite properly, informed by the perceived risk and resources available. A key reason for the risk-based approach to the selection of entities for review is to maximise the value that can be extracted from limited resources. The AEC has not detected systemic issues of intentional or large scale non-compliance with the legislation. Amendments are generally the result of inadvertent error or misunderstanding. Accordingly, the AEC continues to marshal its sparse resources to fulfil all of its functions, address key risks, and operate within a tight budgetary framework. ^t

The reforms to the funding and disclosure scheme that were implemented on 1 January 2019 came with welcome additional funding which is enabling the AEC to expand the compliance section to accommodate the new compliance activities.


Factual inaccuracies and/or misleading information

The report contains a number of imprecisions that could mislead readers of the report:

- In the summary section on page 5 it states in its conclusion that '18% of annual returns [were] lodged more than 90 days after the legislated due date'. This is startlingly incorrect and leads to an inaccurate perception of the efficacy of the AEC's approach. Our reading of Table 2.5 shows that only 5.5% of annual returns were lodged more than 90 days after the legislated due date². This, obviously, represents a significantly smaller number, and doesn't highlight that the vast majority of returns (85%³ of annual returns and 83% of election returns) are lodged within published timeframes. This compares favourably with other agencies such as the Australian Taxation Office, which in 2018-19 reported 77% of activity statements and 83.5% of income tax returns lodged on time. ^u
- The summary at page 7 it states that 'the AEC has a long standing practice of accepting amended returns at any time...' This is a fundamentally misleading statement. This is not a 'practice': the Electoral Act requires the Electoral Commissioner to accept an amendment if the Commissioner is satisfied there is an error or omission – this is not a matter of choice but a legislative requirement. I labour this point because the statement indicates, in accordance with the earlier commentary in this report, the ANAO audit team have fundamentally misunderstood the very basis of the system and its legislative underpinnings, which has led them to make some erroneous comments.

² 142 annual returns lodged more than 90 days late divided by 2,568 annual returns (Table 2.4)

³ The ANAO report at para 2.14 states 78% of annual returns were lodged on time. However, Table 2.5 shows 397 returns were lodged late, out of a total of 2,568 (Table 2.4) which equates to 84.5%.

- The report devotes a number of pages to the discussion of the issue of obligation and reminder letters to entities/persons that are required to lodge a return. Page 21 of the report states '...AEC documentation states that legal obligation letters should be produced and sent...on 1 July...'. This is incorrect. The AEC asked the ANAO to provide evidence for this statement and was referred to the AEC's Disclosure Handbook. Nowhere in the Disclosure Handbook does it say that letters are to be produced and sent on 1 July. In any case, it is not clear what point is attempting to be made by the lengthy discussion in the report about reminder letters. There is no statutory requirement for the AEC to issue such letters – we do on our own initiative to inform and assist entities with obligations as a matter of good practice – and this is in addition to the actual obligation letters dispatched in July of the relevant year. Paragraph 2.7 states that 92% of the, optional, reminder letters are issued 'late' (against our own arbitrary timeline), and the delay was, on average, 19 days. The AEC is conscious of the outcome sought and the optional obligation letters and reminder letters are sent well before the due date for a return. In addition, Table 2.1 shows that a total of 2,322 letters were issued over the period examined and Table 2.2 shows a total of 12 entities did not receive any letters for a variety of reasons – representing 0.5% of all letters issued. On any measure, this initiative is functioning well. 
- Paragraph 2.30 states that the purpose of the data matching undertaken by the AEC 'is to identify donors that may have a disclosure obligation and have not provided a return.' This is not the sole purpose of data matching. It also identifies errors in amounts reported in donor and recipient returns, which results in a number of amended returns being submitted each year. It is therefore also aimed at ensuring the accuracy of returns.
- Paragraph 2.49 contains the inference that, whilst the business unit risk register identified the returns management system as an operational risk In October 2015, the AEC only 'allocated funding to design develop and implement a Self-Service Platform (SSP)' in July 2018. This is incorrect: the AEC did not allocate funding for this function. There is simply no way that the AEC has, within its available resource base, anything like the amount of money required for that project, and therefore was not able to fully mitigate this risk within existing resources. Despite this, the risk was effectively managed with no significant issues arising from the previous returns management system. The decision to allocate funding to the SSP was a government budget decision, announced by government at the 2018 budget.

Timing

The timing of this audit by the ANAO has contributed to flawed observations. It was constructively pointed out to the ANAO that major reforms in the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*, applying from 1 January 2019, and the proposed audit commencement date of August 2019, would obviously mean the AEC's disclosure responsibilities, and implementation of the reforms, wouldn't be complete during the audit period. Therefore, it was suggested a comprehensive audit in 2020–2021 would be more appropriate. A later audit, after the AEC had discharged its statutory responsibilities through a complete disclosure cycle, would obviously produce more useful feedback to the agency and other stakeholders, thereby creating a more accurate picture. I note the ANAO's decision to proceed.

Proceeding with the audit at this time has resulted in premature observations: for example, some of the commentary centring on annual returns by third parties and donors. An analogous situation might be the conduct of a final audit of the construction of a two storey house, after the completion of a single storey.

Audit Conduct

AEC management are disappointed that at no stage during the field work and six-month audit process was the Commissioner or the Deputy Commissioner engaged regarding this important

matter. Furthermore, neither the First Assistant Commissioner Capability, nor the Assistant Commissioner of the Disclosure, Assurance and Engagement Branch, both of whom have direct responsibility for our daily activities in this area, were engaged in other than a very few occasions and then in a relatively cursory manner.

I have not made the observation above to be disagreeable. Rather, it is simply a matter of record. Ongoing engagement with the agency executive may have helped further clarify aspects of the relevant legislation and its intent and the AEC's responsibilities. This is particularly the case given the ANAO's own guide to conducting performance audits states 'No surprises – the ANAO seeks to ensure communication throughout the audit such that there are 'no surprises' in the final audit report. This approach provides opportunities for entities and other parties to discuss the audit findings during the course of the audit.'

ANAO liaison with the AEC during the audit was, almost exclusively, conducted at officer level, and mostly related to requests for information. The senior staff mentioned above were not provided with meaningful insight into audit findings, until a meeting with the auditor just prior to the issue of the ANAO's Report Preparation Paper (draft report).^W

Conclusion

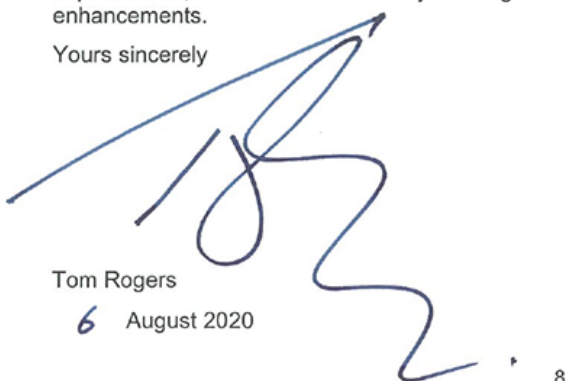
The ANAO correctly observes in its report that the purpose of the disclosure scheme is to preserve the integrity of the electoral system, maintain public confidence in the electoral process and reduce the potential for undue influence and corruption.

An otherwise uninformed reader of the ANAO report may arrive at a view that the AEC's administration of the funding and disclosure function is insufficiently focused and therefore doesn't aid transparency and electoral integrity. The AEC rejects this inference, and believes the ANAO has misinterpreted components of the legislation, and ignores the many other complex factors involved in achieving the very high levels of disclosure attained by the AEC since the scheme's commencement.

Over the history of the AEC's conduct of the administration of the disclosure scheme – including the compliance review program – there have been, absolutely in line with the AEC's legislative obligations, a very large number of amendments to returns. The vast majority of those amendments have generally been caused by mistake, inadvertent error or misunderstanding of the requirements of the legislation: nonetheless, disclosure has been achieved. The AEC has worked, and continues to work, with parties and candidates in a constructive and educative way to ensure the requirements of the legislation are fulfilled. The fact that there is no evidence, at all, of widespread corruption or significant wilful omission or mis-stating of financial information is largely the result of the AEC's efforts and, indeed, the efforts of the other participants in the scheme.

That is not to say there are not instances of wrongdoing or that the compliance program is not needed. Whilst the recommendations vary from useful to benign, the tone of the report, combined with the ANAO's misplaced interpretation of the intent of the legislation, exaggerate the nature of the recommendations and the perceived risk to electoral integrity. Of course, there is always room for improvement, and the AEC is already working on implementing the recommendations and other enhancements.

Yours sincerely



Tom Rogers

6 August 2020

8

ANAO comment on the AEC response

- (a) The ANAO has summarised the legislated disclosure framework (see for example Table 1.1) and has accepted suggestions from the AEC as to where those summaries could be improved. In relation to enforcement cycles, while there has been a considerable delay in the AEC finalising its compliance review program for 2020, the ANAO was able to examine the planning and conduct of reviews over a five-year period spanning 2015 to 2019. The analysis of outstanding returns reflects the ANAO's analysis of evidence obtained from the AEC, noting that the AEC maintains a view that prior to 2018–19 it was not required to obtain disclosures from political parties that had deregistered during the year (the legislation has been amended 'to remove doubt' that deregistered parties do have a reporting obligation).

The criteria and sub-criteria used to form a conclusion against the audit objective are detailed at paragraph 4 and 5 of the report, and were provided to the AEC at the start of the audit. The basis upon which the ANAO has come to the conclusion that the administration of the scheme is partially effective is detailed at paragraphs 9 to 16.

- (b) The AEC comments do not accurately reflect the two audit criteria that underpin the audit conclusion. Those criteria address the AEC's:
- performance in obtaining timely, accurate and complete returns (see Chapter 2 of the audit report); and
 - compliance monitoring and enforcement activities, with a particular focus on the AEC's program of compliance reviews, which are the key control the AEC relies upon to assure itself that disclosure returns are complete and accurate (see Chapter 3 of the audit report).
- (c) Paragraphs 4 and 5 detail the criteria used to make the assessment that the AEC is 'partially effective' and Paragraphs 9 to 16 of the audit report outline the key findings underpinning this assessment. The AEC's approach to using its enforcement powers is one of eight audit sub-criteria. In terms of compliance and enforcement, the more significant audit findings relate to the AEC:
- significantly reducing the number of planned compliance reviews, narrowing the scope of planned reviews, and reducing the value of the transactions being tested;
 - not undertaking or not completing 35 per cent of planned compliance reviews; and
 - not undertaking a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return). In this latter respect, the 2012 review similarly identified that the AEC's approach to compliance reviews did not adequately address the risk of non-disclosure, including the potential for secret donations.
- (d) The ANAO's conclusions in relation to the AEC's compliance and enforcement approach are similar to those of a 2012 review commissioned by the AEC (see paragraph 3.4).
- (e) Chapter 3 of the audit report outlines that the increase in the value of disclosures, the decline in the number of compliance reviews and the declining percentage of the population selected for a compliance review is not supported by an AEC risk assessment demonstrating that the overall risk of non-compliant behaviour has declined. As a result,

- the AEC is unable to demonstrate that the compliance program in its current form is sufficient to provide assurance that the annual financial disclosures are meeting legislated requirements.
- (f) The report has been amended to reflect the advice that it is now taking enforcement action against eleven candidates that did not lodge returns in relation to the 2019 Federal election (those returns were due in September 2019).
 - (g) See paragraph 3.79, 3.80 and 3.81 of the report along with case study No.2 and No.3.
 - (h) See paragraphs 3.79, 3.80 and 3.81 along with case study No.2 and No.3.
 - (i) Paragraphs 3.76 to 3.78 identify the changes made to the penalty regime.
 - (j) See paragraphs 3.80, case study 2, paragraph 3.81 and case study 3 of the report.
 - (k) Chapter 3 of the audit report sets out that the AEC is unable to demonstrate that its compliance review program, in its current form, is sufficient to provide assurance that the annual financial disclosure returns are accurate and complete. Similar concerns were raised in a 2012 review which included a finding that the compliance reviews were 'largely ineffective in identifying apparent deliberate failures to declare significant amounts of money or gifts' and that 'it is reasonable to believe that compliance is not complete'.
 - (l) See paragraphs 2.26 to 2.30 of the report. The AEC does not cross-check the value of total receipts, as disclosed by the relevant political parties, or identified as a receipt over the threshold, with the amount of electoral funding provided.
 - (m) See paragraphs 3.56 to 3.58 and Tables 3.4 and 3.5 where the impact of the reduction in the number, value of transactions and size of entity subject to a review have declined are identified and the error rate across the five year period assessed is analysed.
 - (n) The major component of the returns not obtained relates to political parties that deregistered where the AEC did not seek a disclosure for that part of the year for which the party was registered. As identified in the note to Table 2.6, the legislation has been amended not to introduce a new reporting obligation but 'to avoid doubt' that a deregistered party had a reporting obligation and the AEC now seeks returns from deregistered parties.
 - (o) It is important that the AEC not only obtains disclosure returns but that those returns be timely. Paragraph 2.12 identifies that the AEC spent, on average, 240 days attempting to contact candidates that had not lodged an election return. Paragraph 2.14 identifies that most annual returns (78 per cent) are received in accordance with the legislated timeframes. Paragraph 2.15 and Table 2.5 of the report identify the number of annual returns that have been submitted late, including the number of entities that submitted returns over 90 days late.
 - (p) See paragraphs 3.22 to 3.29.
 - (q) Paragraphs 3.24 and 3.26 of the report outline the limitations of the risk assessment process used to select entities for a compliance review.
 - (r) The ANAO Insights publication of November 2019 sets out the importance of entities implementing recommendations they agree to. The 2012 McLeod Review reached a similar conclusion to that of this ANAO performance audit (it concluded that the AEC should become more proactive in the way that it seeks to administer and enforce compliance with the financial disclosure scheme) and while each of the four McLeod

Review recommendations were agreed to by the AEC it did not proceed to implement three of those recommendations (see Appendix 2 of the audit report).

Similarly:

- paragraph 3.25 sets out that the AEC did not implement agreed recommendations from a 2017 review it commissioned of its risk matrix for compliance reviews; and
 - earlier ANAO audit activity identified that the AEC had not adequately and effectively implemented the earlier ANAO recommendations on the conduct of Federal elections (Auditor-General Report No. 6 of 2015–16, Auditor-General Report No. 4 of 2014–15 and Auditor-General Report No. 31 of 2013–14).
- (s) Obtaining access to specialist expertise was first recommended to the AEC in 2012 (see Appendix 2) and there have been delays in the AEC engaging the additional staff for which it has been provided with additional resources (see paragraphs 3.6 to 3.9).
- (t) The AEC has not implemented previous recommendations it has accepted to improve its approach to compliance reviews, comprising:
- a 2012 review that recommended the AEC use its existing powers to extend the scope and depth of its compliance review program (see Appendix 2); and
 - a 2017 review that included eight recommendations to improve the risk matrix it uses to select entities for compliance reviews (see paragraph 3.24).

In addition, as outlined at paragraphs 3.30 to 3.62, while 78 per cent of returns reviewed by the AEC required amendment the AEC has:

- significantly reduced the number of planned reviews, narrowed the scope of planned reviews, and reduced the value of the transactions being tested;
 - not undertaken or not completed 35 per cent of planned compliance reviews; and
 - not undertaken a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).
- (u) The report has been amended as follows: “Compliance with legislated timeframes has also been an issue, with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date.”
- (v) See paragraph 2.5.
- (w) The audit was conducted in accordance with the ANAO Auditing Standards. Consistent with longstanding ANAO practices various opportunities were afforded to the AEC executive to engage with the audit process:
- at the commencement of the audit, the ANAO informed the Commissioner and Deputy Commissioner of the audit objective, scope as well as the two criteria and sub-criteria being applied. The AEC was invited to provide representations to the ANAO concerning the administration of the financial disclosure scheme in the context of the objective of the audit. The AEC only provided representations in relation to one of the eight sub-criteria.
 - an entry interview was arranged with the AEC. The Commissioner, Deputy Commissioner and First Assistant Commissioner Capability did not attend the entry interview. The Assistant Commissioner of the Disclosure, Assurance and

Engagement Branch was in attendance. At no stage during audit fieldwork did the AEC inform the ANAO that the Commissioner, Deputy Commissioner or First Assistant Commissioner sought direct engagement with the audit team.

- during the conduct of audit fieldwork the ANAO held various discussions with the AEC to understand the disclosure scheme and the AEC's administration of it. This included meeting with the AEC's Chief Legal Officer.
- prior to issuing the Report Preparation Paper (a precursor to the Proposed Report required under s19 of the Auditor-General Act), the ANAO met with the AEC to outline the emerging findings and possible recommendations. The most senior representative present from the AEC was the First Assistant Commissioner Capability.
- after providing the Report Preparation Paper to the AEC, an exit interview was held. The most senior representative present from the AEC was the First Assistant Commissioner Capability. It was open to the Commissioner and Deputy Commissioner to attend the exit interview.

Appendix 2 Implementation of the McLeod recommendations

1. The below table provides an analysis of the extent to which the McLeod recommendations have been implemented by the AEC.

Table A.1: Implementation of McLeod Recommendations

Recommendation	Intention of the recommendation	ANAO analysis of the extent to which the recommendation has been implemented	Status of implementation
Use existing powers under subsection 316(2A) to support an expanded program of compliance reviews aimed at extending their scope and depth.	<p>To expand the scope and depth of the compliance review program to encourage full disclosure and improve the effectiveness of the AEC to identify instances of non-disclosure by:</p> <ul style="list-style-type: none"> • better application of risk management techniques; • more emphasis on intelligence gathering and analysis; • adopting a 'heavier touch' approach to support full disclosure, identify instances of non-disclosure, and appropriately enforce non-compliance. 	<ul style="list-style-type: none"> • While the AEC has implemented a revised approach to select entities for a compliance review on the basis of a risk assessment that takes into account a range of factors, the factors selected have not improved the effectiveness of the AEC to identify instances of non-disclosure, or where false and/or misleading information has been provided. • The quantity of compliance reviews planned and conducted since 2015 has substantially declined. • Where multiple amendments have been required, or the AEC has been unable to make an assessment as to the accuracy of the return the AEC has not invoked its broader investigatory powers as envisaged. • The AEC does not effectively gather and analyse intelligence or use data to build an accurate risk profile of the entities that it is responsible for regulating. • The AEC still adopts a 'light touch' approach that encourages voluntary compliance with legislated obligations, and does not include a proactive and graduated approach to address non-compliance. 	Not implemented

Recommendation	Intention of the recommendation	ANAO analysis of the extent to which the recommendation has been implemented	Status of implementation
Implement a new business model to facilitate broadening the compliance function.	<p>Facilitate an expanded compliance review program through:</p> <ul style="list-style-type: none"> • the use of random 'spot checks'; • greater use of analytical skills; • recruitment of staff with sophisticated financial forensic skills; and • a strategic approach to identifying associated entities of political parties. 	<ul style="list-style-type: none"> • The AEC has implemented a new business model for its compliance program where all returns are checked to identify discrepancies between political party and donor returns. • Staffing and workforce requirements initially identified to support the new business model have not been implemented. • Projects to implement the new business model have not addressed the intent of this recommendation in full and were never finalised. • The AEC has not implemented a strategic approach to identifying associated entities of political parties. 	Not implemented
Establish a new branch to encompass the party registration, political funding, public disclosure and related compliance functions of the Commission.	Provide dedicated leadership and integrate the political party registration, disclosure and processing and compliance review functions into a new branch.	<ul style="list-style-type: none"> • A new branch was established in late 2013 with a dedicated branch head in January 2014. • The new branch completed a work program of review and analysis of existing compliance procedures. While a suite of guidance material was developed, it has not been maintained. • The AEC established a Moderating Committee (now Compliance Review Committee) in June 2014 to oversee the selection, planning and conduct of compliance reviews. 	Implemented

Recommendation	Intention of the recommendation	ANAO analysis of the extent to which the recommendation has been implemented	Status of implementation
Further develop the specific ICT system as an integrated information management system to serve the needs of all of the elements of the Financial, Assurance and Disclosure (FAD) group.	Design, develop and implement an information management system capable of receiving, processing and publishing financial disclosure returns, generating and issuing correspondence, capturing and sharing intelligence and supporting the compliance review function.	<ul style="list-style-type: none"> • The existing ICT system to lodge, process and publish annual and election returns has not been updated since it was established in 2010. • The ICT system does not meet all of the Compliance Team's information management needs. • In December 2016, the Assistant Commissioner Information Technology stated that the significant investment required to redevelop the existing ICT system was not compatible with the AEC's IT Strategic Plan. • At the time of this ANAO performance audit, the AEC was in the process of designing and building a new Self-Service Platform which aims to replace the existing ICT system and address the underlying intent of the recommendation. 	Not implemented

Source: Analysis of AEC documentation

Appendix 3 List of entities that have not submitted a return as at 30 June 2020

Table A.2: Entities that have not submitted a return as at 30 June 2020

ANAO count	Entity	Type of entity	Year of return
1	Australia's First Nations Political Party	Political party	2015–16
2	Australian Independents	Political party	2015–16
3	Australian Sovereignty Party	Political party	2015–16
4	Australian Sports Party	Political party	2015–16
5	Australian Voice Party	Political party	2015–16
6	Coke in the Bubblers	Political party	2015–16
7	Republican Party of Australia	Political party	2015–16
8	The Wikileaks Party	Political party	2015–16
9	Uniting Australia Party	Political party	2015–16
10	Australian Antipaedophile Party	Political party	2016–17
11	Australian Defence Veterans Party	Political party	2016–17
12	Australian Motoring Enthusiast Party	Political party	2016–17
13	Bullet Train for Australia	Political party	2016–17
14	John Madigan's Manufacturing and Farming Party	Political party	2016–17
15	Palmer United Party	Political party	2016–17
16	21 st Century Australia	Political party	2017–18
17	Australian Cyclists Party	Political party	2017–18
18	Australian Equality Party (Marriage)	Political party	2017–18
19	Australian Recreational Fishers Party	Political party	2017–18
20	Australian Sex Party	Political party	2017–18
21	Consumers Rights & No Tolls	Political party	2017–18
22	Country Minded	Political party	2017–18
23	Drug Law Reform Australia	Political party	2017–18
24	Family First Party	Political party	2017–18
25	Family First Party — QLD	Political party	2017–18
26	Family First Party — SA	Political party	2017–18
27	Family First Party — VIC	Political party	2017–18
28	Glenn Lazarus Team	Political party	2017–18
29	Outdoor Recreation Party (Stop The Greens)	Political party	2017–18

ANAO count	Entity	Type of entity	Year of return
30	Renewable Energy Party	Political party	2017–18
31	Smokers Rights Party	Political party	2017–18
32	Renewable Energy Party	Political party	2017–18
33	Fraser Anning's Conservative National Party	Political Party	2018–19
34	Queensland Teachers Union of Employees	Third party	2018–19
35	Industry Super Australia	Political Campaigner	2018–19
36	Coles, Don	Candidate	2019 Federal Election
37	Cox, Henry	Candidate	2019 Federal Election
38	Futter, B.J	Candidate	2019 Federal Election
39	Gaffy, Sean Gordon	Candidate	2019 Federal Election
40	Hearn, Jeremy	Candidate	2019 Federal Election
41	Lazarus, Sandra	Candidate	2019 Federal Election
42	Parker, Jeremy	Candidate	2019 Federal Election
43	Pecora, Tony	Candidate	2019 Federal Election
44	Swanson, Kim	Candidate	2019 Federal Election
45	Turner, John	Candidate	2019 Federal Election
46	Walker, Peter	Candidate	2019 Federal Election
47	Wharton, Wayne	Candidate	2019 Federal Election
48	Marijuana (HEMP) Party/Australian Sex Party	Senate group	2016 Federal Election
49	Unendorsed	Senate group	2016 Federal Election
50	Beljica, Nick	Donor	2016–17
51	Chalmers Legal Studio Pty Ltd	Donor	2016–17
52	Martin & McMillan Family Trust	Donor	2016–17
53	NE Management Group Pty Ltd	Donor	2016–17

ANAO count	Entity	Type of entity	Year of return
54	Yin, Andy	Donor	2016–17
55	DK Capital Pty Ltd	Donor	2017–18
56	McGregor, Alexander	Donor	2017–18
57	Alpha Tax Aid	Donor	2018–19
58	Australians Against Counterfeit and Contraband Products	Donor	2018–19
59	Balwyn Lifestyle Centre	Donor	2018–19
60	Collective Events Pty Ltd T/A Moby Dicks Whale Beach	Donor	2018–19
61	Jack Ta Pty Ltd	Donor	2018–19
62	LK Creative Pty Ltd	Donor	2018–19
63	Sealease Pty Ltd	Donor	2018–19
64	The Australian Workers' Union National Office	Donor	2018–19
65	Zarraffa's Management Pty Ltd	Donor	2018–19
66	Eagle, Miriam	Donor	2018–19
67	Falkiner, Brereton	Donor	2018–19
68	Gunter, Michael	Donor	2018–19
69	Melrose, Ian	Donor	2018–19
70	Molina, D	Donor	2018–19
71	Sittczenko, Anatolu	Donor	2018–19
72	Stefanova, Kristina	Donor	2018–19
73	Strofield, Jonathan	Donor	2018–19
74	Tyndall, Lewis	Donor	2018–19
75	Widin, William	Donor	2018–19

Appendix 4 Methodology to assess the appropriateness of performance information for the compliance review program

Table A.3: Methodology for testing performance measures

Finance guidance	Assessment type	Assessment characteristics	Explanation
Relevant	Individual assessment	Benefit <i>The performance criterion clearly indicates who will benefit and how they will benefit from the entity's activities.</i>	The performance criterion should explain who will benefit from the activity and how the recipient benefitted.
		Focus <i>The performance criterion should address a significant aspect/s of the purpose, via the activities.</i>	The performance criterion should assist significantly in informing whether the purpose is being achieved, and the attribution of the entity's activities to it is clear.
		Understandable <i>The performance criterion should provide sufficient information in a clear and concise manner.</i>	The performance criterion should be stated in plain English and signal the impacts of activities to inform users.
Reliable		Measurable <i>The performance criterion should use and disclose information sources and methodologies that are fit for purpose.</i>	The performance criterion should be capable of being measured to demonstrate the progress of fulfilling the purpose. This includes documenting a basis or baseline for measurement or assessment, for example a target or benchmark.
		Free from Bias <i>The performance criterion should be free from bias and where possible, benchmarked against similar activities.</i>	The performance criterion should allow for clear interpretation of results and provide an objective basis for assessment.
Complete / adequate	Overall assessment	Balanced <i>The performance criteria should provide a balanced examination of the overall performance story.</i>	The performance criteria should reflect a balance of measurement types (effectiveness and efficiency), bases (quantitative and qualitative) and timeframes (short, medium and long-term).
		Collective <i>The performance criteria should collectively address the purpose.</i>	The performance criteria should demonstrate the extent of achievement against the purpose through the activities identified in the corporate plan.

Source: Auditor-General Report No.17 2018–19, *Implementation of the Annual Performance Statements Requirements 2017–18*.

Appendix 5 Glossary

Associated entity	<p>An entity must be registered as an associated entity if it meets the definition of an associated entity as outlined in section 287H of the Electoral Act. Section 287H of the Electoral Act defines an associated entity as an entity that is:</p> <ul style="list-style-type: none">(a) controlled by one or more registered political parties;(b) the entity operates wholly, or to a significant extent, for the benefit of one or more political parties;(c) the entity is a financial member of a registered political party;(d) another person is a financial member of a registered political party on behalf of the entity;(e) the entity has voting rights in a registered political party; or(f) another person has voting rights in a registered political party on behalf of the entity.
Political campaigner	<p>A person or entity (except a political entity, a member of the House of Representatives or Senator) is to register as a political campaigner for the financial year, if:</p> <ul style="list-style-type: none">(a) the amount of electoral expenditure incurred by or with the authority of the person or entity during that or any one of the previous three financial years is \$500,000 or more; or(b) the amount of electoral expenditure incurred by or with the authority of the person or entity:<ul style="list-style-type: none">i during that financial year is \$100,000 or more; andii during the previous financial year was at least two-thirds of the revenue of the person or entity for that year.
Third party	<p>A third party is a person or entity that incurs electoral expenditure more than the disclosure threshold.</p>
Annual return	<p>An annual return is a financial disclosure return that covers activity over a financial year. Annual returns are to be lodged by political parties, associated entities, political campaigners, third parties and donors.</p>
Total receipts	<p>The total value of all funds received from external entities, including, but not limited to, gifts of money (donations), membership subscriptions, loan monies received, returns on investments, proceeds from the sale of assets, public funding provided by the Commonwealth or a State or Territory, and discretionary benefits provided by the Commonwealth or a State or Territory.</p>

Gifts-in-kind	Gifts-in-kind include goods or services received for which no payment (in cash or kind) or inadequate consideration is made. Examples include, but are not limited to free/discounted services such as legal advice, accounting services, use of premises, equipment and facilities, use of a vehicle, fuel and/or maintenance, production services by a broadcaster, advertising, air travel, and printing. The value of the gift-in-kind is to be calculated and disclosed using the fair value method.
Receipts over the threshold	<p>Receipts over the threshold are all (funds received from external entities where the individual transaction is over the disclosure threshold). For each person or entity, the following details must be disclosed:</p> <ul style="list-style-type: none"> (a) full name and address details of the person or organisation from whom the funds or gift-in-kind was received; (b) the sum of amounts received from that person or organisation (details of individual amounts received from the same source that are less than the disclosure threshold <u>are not</u> required to be disclosed); (c) whether the receipt is a 'donation' or 'other receipt'.⁷³
Payments	Payments include, but are not limited to, salaries, administrative expenses, purchase of assets, electoral expenses, loan repayments, bank charges, service fees. The total payments figure is reported as a single line item in the annual return.
Debts	Debts include, but are not limited to, loans, overdrafts, unpaid accounts, and other liabilities including superannuation payable, and GST and PAYG debts payable to the ATO.
Debts above the threshold	The details of all outstanding debts greater than the disclosure threshold owed to a person or entity as at the last day of the relevant financial year. The details required to be disclosed are the full name and address of the person or organisation that the debt is owed to (the creditor), the amount that is owed, and whether the debt is owed to a financial or non-financial institution.
Electoral expenditure	Electoral expenditure is to be reported by political campaigners and third parties in their annual returns and by candidates and senate groups in their election returns. Electoral expenditure means expenditure incurred for the dominant purpose of creating or communicating electoral matter.

73 An 'other receipt' is a receipt that does not meet the definition of a donation ('gift'). A gift is defined at Section 287 of the *Commonwealth Electoral Act 1918* as any disposition of property made by a person to another person, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of services for no consideration or for inadequate consideration.

Electoral matter	Electoral matters means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election.
Discretionary benefits	Discretionary benefits include grants, contracts, payments and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory.
Capital contributions	Capital contributions are amounts paid to or for the benefit of one or more political parties paid out of funds generated from capital of the associated entity.
Election return	Election returns are to be furnished by candidates, senate groups and election donors for an election or by-election. Election returns are to be provided within 15 weeks after the polling day for the relevant election or by-election. For the 2019 federal election this date was 2 September 2019. Election returns cover the period that the person was a candidate or member of a senate group in an election or by-election, commencing the day a person announced or was nominated as a candidate, or the day that members of a group make a request under section 168 of the Electoral Act for their names to be grouped in the ballot papers for an election or by-election, and ceasing 30 days after polling day.
Candidates	A candidate is a person who has been nominated as a candidate in an election or by-election.
Senate groups	Senate groups are a group of two or more candidates nominated for election to the Senate who have their names grouped in the ballot papers in accordance with section 168 of the Electoral Act.
Election donors	A person or entity that made a donation/s to a candidate or member of a Senate group in an election or by-election over the disclosure threshold.

