

Election Funding and Disclosure Report

Federal Election 2010



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Key terms

Key terms	
AEC	Australian Electoral Commission
CDPP	Commonwealth Director of Public Prosecutions
CPI	Consumer Price Index
Disclosure threshold	The disclosure threshold applied to the 2010–2011 financial year and the 2010 federal election is amounts of “more than \$11 500”
DRO	Divisional Returning Officer
Endorsed candidate or Senate group	A candidate or Senate group that was endorsed by a registered political party
FAD	Funding and Disclosure. A descriptor for the election funding and disclosure provisions of Part XX of the Act. Also the name of the business area within the AEC responsible for administering Parts XX and XI of the Act.
Independent candidate or Senate group	A candidate or Senate group that was not endorsed by a registered political party
JSCEM	Joint Standing Committee on Electoral Matters
The Act	The <i>Commonwealth Electoral Act 1918</i>
The Bill	The <i>Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010</i>
The Register	The Register of Political Parties

Introduction

Polling day for the last federal election was Saturday 21 August 2010.

This report is in accordance with ss.17(2) of the *Commonwealth Electoral Act 1918* (the Act), which requires the Australian Electoral Commission (AEC) to prepare a report, on the operation of Part XX (Election Funding and Financial Disclosure) of the Act, in regard to that election.

Additional information has been included on the operation of Part XI of the Act (Registration of political parties) due to the close relationship between party registration, election funding and financial disclosure.

A number of recommendations for legislative change have also been included throughout this report. The recommendations aim to clarify and support existing legislation as well as suggest new provisions to enhance the transparency and administration of the funding and disclosure scheme.

This report is presented for tabling in the Commonwealth of Australia Parliament. Copies are available free of charge from the AEC's National Office in Canberra or in electronic format from the AEC website at www.aec.gov.au

Data used to collate this report is current at 30 June 2011.

Election funding

Election funding

Part XX of the Act appropriates money for payment of election funding for eligible Senate groups and candidates who contest federal elections.

An additional payment in the amount of \$17 713.85 was approved by the Special Minister of State for an ex gratia payment to be made following the investigation into mishandling of ballot papers by polling officials at two polling places in Queensland and one in South Australia. Following scrutiny of first preferences indicated on the mishandled ballot papers, those first preferences were added to the formal first preference votes already counted for each candidate and Senate group. It was concluded that the addition of the mishandled ballot papers did not affect the outcome of who would have been entitled to payment of election funding. Following the outcome of these investigations the AEC paid the additional funding in June 2011.

Eligibility

House of Representatives candidates who receive at least 4% of the formal first preference votes in an election are entitled to election funding.

Senate candidates and Senate groups who receive at least 4% of the formal first preference votes in a Senate election are also entitled to election funding.

Entitlement

The election funding entitlement is calculated by multiplying the number of formal first preference votes received by the funding rate.

For the period July to December 2010, and therefore for the 2010 election, the funding rate was 231.191 cents per eligible vote. This is a 10.08% increase in the rate of 210.027 cents per eligible vote that applied for the 2007 election.

The rate of election funding is reviewed and adjusted each six months on 1 January and 1 July in line with the consumer price index (CPI). Election funding rates are published on the AEC website.

All parties with an entitlement to election funding for the 2010 election were registered to receive the funding.

The Liberal Party of Australia and the National Party of Australia ran joint Senate groups in New South Wales and Victoria and therefore shared the funding entitlement of those groups in agreed proportions.

A total of \$53 163 385.36 in election funding was paid to registered political parties and independent candidates following the 2010 election.

Payments

Election funding for independent candidates or groups is paid to the agent of the candidate or group. Where no agent is appointed the candidate is deemed to be their own agent. Where no agent is appointed for a Senate group the candidate listed first on the ballot paper is deemed to be the agent. Election funding for candidates and groups endorsed by a registered political party is paid to the party agent. Where no agent is appointed, no payment of election funding can be made.

Under the previous reimbursement scheme it was possible for a political party or candidate not to receive election funding by not submitting a claim for payment. In accordance with ss.126(2)(d) a registered political party may elect not to receive election funding. However, there is no corresponding provision in the Act for the AEC **not** to pay election funding to an eligible registered political party or candidate.

A summary of the election funding payments is provided at Table 1.

A summary of election funding entitlements for registered parties by state and territory is provided at Table 2.

The Act requires that at least 95% of the funding entitlement, calculated on the basis of votes counted as at the 20th day after polling day, is paid as soon as possible after that day, and the remainder when the count is finalised and verified. The AEC chose to pay 99% of the funding entitlement, on the basis that any overpayment that could possibly be withheld from the second payment would be less than 1% of the amount paid.

The AEC withheld a base sum of \$200 from the first round of payments. In some cases this represented more than one per cent of the final funding entitlement.

The first payment, totalling \$52 411 291.12, was based on the count as at 10 September 2010. The final payment of \$752 094.24 was made following verification of final polling figures.

The last election writ was returned on 17 September 2010.

Table 1 – Summary of total election funding payments by party, including independent candidates

Parties	Interim Payment	Final Payment	Total Payment
Australian Labor Party	\$20 935 323.18	\$290 546.78	\$21 225 869.96
Liberal Party of Australia	\$20 819 820.08	\$278 040.16	\$21 097 860.24
Australian Greens	\$7 086 053.13	\$126 870.25	\$7 212 923.38
National Party of Australia	\$2 441 843.88	\$43 856.28	\$2 485 700.16
Family First Party	\$403 122.45	\$4 145.92	\$407 268.37
Country Liberals (Northern Territory)	\$177 617.04	\$1 794.11	\$179 411.15
Christian Democratic Party (Fred Nile Group)	\$17 407.51	\$202.31	\$17 609.82
Australian Sex Party	\$11 197.72	\$200.00	\$11 397.72
Liberal Democratic Party	\$11 116.80	\$200.00	\$11 316.80
Shooters and Fishers Party	\$10 527.26	\$200.00	\$10 727.26
Independent candidates			
Tony Windsor (New England, NSW)	\$129 099.25	\$1 327.15	\$130 426.40
Robert Oakeshott (Lyne, NSW)	\$91 691.26	\$926.17	\$92 617.43
Bob Katter (Kennedy, Qld)	\$87 383.75	\$861.85	\$88 245.60
Andrew Wilkie (Denison, Tas)	\$31 557.85	\$318.77	\$31 876.62
Louise Burge (Farrer, NSW)	\$21 400.20	\$216.16	\$21 616.36
John Clements (Parkes, NSW)	\$20 933.28	\$211.45	\$21 144.73
John Arkan (Cowper, NSW)	\$19 326.39	\$200.00	\$19 526.39
Michael Johnson (Ryan, Qld)	\$17 284.98	\$200.00	\$17 484.98
Matthew Hogg (Riverina, NSW)	\$11 710.96	\$190.75	\$11 901.71
Alan Lappin (Indi, Vic)	\$11 239.33	\$193.06	\$11 432.39
James Purcell (Wannon, Vic)	\$10 564.25	\$190.76	\$10 755.01
Charles Nason (Maranoa, Qld)	\$10 427.85	\$200.00	\$10 627.85
Paul Blanch (Calare, NSW)	\$9 364.37	\$200.00	\$9 564.37
Katrina Rainsford (Wannon, Vic)	\$9 200.23	\$200.00	\$9 400.23
Bradley King (Blair, Qld)	\$7 353.01	\$200.00	\$7 553.01
Deidre Finter (Lingiari, NT)	\$4 511.67	\$200.00	\$4 711.67
Kenneth Lechleitner (Lingiari, NT)	\$4 213.44	\$202.31	\$4 415.75
Total	\$52 411 291.12	\$752 094.24	\$53 163 385.36

Table 2 – Summary of election funding entitlements for registered political parties by state or territory

	Votes		Election funding		Total
	House	Senate	House	Senate	
Australian Labor Party					
New South Wales	1 401 529	1 517 382	\$3 240 208.91	\$3 508 050.62	\$6 748 259.53
Victoria	1 361 416	1 215 213	\$3 147 471.26	\$2 809 463.09	\$5 956 934.35
Queensland	800 712	720 182	\$1 851 174.08	\$1 664 995.97	\$3 516 170.05
Western Australia	375 381	366 580	\$867 847.09	\$847 499.97	\$1 715 347.06
South Australia	399 279	386 577	\$923 097.11	\$893 731.23	\$1 816 828.34
Tasmania	143 796	136 908	\$332 443.41	\$316 518.97	\$648 962.38
ACT	100 700	93 639	\$232 809.34	\$216 484.94	\$449 294.28
Northern Territory	35 589	33 253	\$82 278.56	\$76 877.94	\$159 156.50
Country Labor	92 961	N/A	\$214 917.47	N/A	\$214 917.47
TOTAL	4 711 363	4 469 734	\$10 892 247.23	\$10 333 622.73	\$21 225 869.96
Liberal Party of Australia					
New South Wales	1 470 146	1 617 418	\$3 398 845.24	\$2 804 493.64	\$6 203 338.88
Victoria	1 159 301	1 107 522	\$2 680 199.57	\$2 073 997.86	\$4 754 197.43
Queensland	1 130 525	1 015 062	\$2 613 672.05	\$2 346 731.99	\$4 960 404.04
Western Australia	566 145	530 583	\$1 308 876.29	\$1 226 660.14	\$2 535 536.43
South Australia	394 003	376 532	\$910 899.48	\$870 508.10	\$1 781 407.58
Tasmania	109 908	109 023	\$254 097.40	\$252 051.36	\$506 148.76
ACT	77 880	76 463	\$180 051.55	\$176 775.57	\$356 827.12
TOTAL	4 907 908	4 832 603	\$11 346 641.58	\$9 751 218.66	\$21 097 860.24
Australian Greens					
New South Wales	407 153	443 913	\$941 301.09	\$1 026 286.90	\$1 967 587.99
Victoria	402 482	471 317	\$930 502.16	\$1 089 642.49	\$2 020 144.65
Queensland	257 308	312 804	\$594 872.94	\$723 174.70	\$1 318 047.64
Western Australia	158 117	172 327	\$365 552.27	\$398 404.51	\$763 956.78
South Australia	117 364	134 287	\$271 335.01	\$310 459.46	\$581 794.47
Tasmania	55 042	67 016	\$127 252.15	\$154 934.96	\$282 187.11
ACT	42 942	52 546	\$99 278.04	\$121 481.62	\$220 759.66

Table 2 – Continued Summary of election funding entitlements for registered political parties by state or territory

	Votes		Election funding		Total
	House	Senate	House	Senate	
Northern Territory	12 175	13 105	\$28 147.50	\$30 297.58	\$58 445.08
TOTAL	1 452 583	1 667 315	\$3 358 241.16	\$3 854 682.22	\$7 212 923.38
National Party of Australia					
New South Wales	317 867	1 617 418	\$734 879.90	\$934 831.21	\$1 669 711.11
Victoria	101 419	1 107 522	\$234 471.60	\$486 493.33	\$720 964.93
Western Australia	41 102	0	\$95 024.12	\$0.00	\$95 024.12
TOTAL	460 388	2 724 940	\$1 064 375.62	\$1 421 324.54	\$2 485 700.16
Family First Party					
Victoria	38 737	0	\$89 556.46	\$0.00	\$89 556.46
Queensland	57 488	0	\$132 907.08	\$0.00	\$132 907.08
South Australia	38 709	41 227	\$89 491.72	\$95 313.11	\$184 804.83
TOTAL	134 934	41 227	\$311 955.26	\$95 313.11	\$407 268.37
Country Liberals (Northern Territory)					
Northern Territory	38 335	39 268	\$88 627.07	\$90 784.08	\$179 411.15
Christian Democratic Party (Fred Nile Group)					
New South Wales	7 617	0	\$17 609.82	\$0.00	\$17 609.82
Australian Sex Party					
Northern Territory	N/A	4 930	N/A	\$11 397.72	\$11 397.72
Liberal Democratic Party					
Victoria	4 895	0	\$11 316.80	\$0.00	\$11 316.80
Shooters and Fishers Party					
Northern Territory	N/A	4 640	N/A	\$10 727.26	\$10 727.26

Distribution of election funding

An analysis of the distribution of election funding following the 2007 and 2010 elections is provided at Table 3.

Party	2007 election		2010 election		% change share
	\$ 000	% share	\$ 000	% share	
Australian Labor Party	22 030	44.96	21 226	39.93	-5.03
Liberal Party of Australia *	18 134	37.01	21 098	39.68	2.68
Australian Greens **	4 371	8.92	7 213	13.57	4.65
National Party of Australia ***	3 240	6.61	2 486	4.68	-1.94
Family First Party	141	0.29	407	0.77	0.48
Northern Territory Country Liberal Party	169	0.34	179	0.34	0.00
Christian Democratic Party (Fred Nile Group)	0	0.00	18	0.03	0.03
Australian Sex Party	0	0.00	11	0.02	0.02
Liberal Democratic Party	0	0.00	11	0.02	0.02
Shooters and Fishers Party	0	0.00	11	0.02	0.02
Pauline's United Australia Party	213	0.43	0	0.00	-0.43
Independent Candidates	705	1.44	503	0.95	-0.49
TOTAL	49 003	100	53 163	100	

* Includes the Liberal National Party of Queensland.

** Includes all related parties.

*** The National Party Queensland was deregistered on 15 May 2009 following the registration of the Liberal National Party of Queensland.

As outlined in Table 3, political parties received 99.05% of the total amount of election funding paid following the 2010 federal election. This is a slight increase from almost 98.56% paid following the 2007 election.

Comparative funding data

Table 4 shows comparative voting, candidate and funding data for the 2004, 2007 and 2010 elections. Analysis of the share change in the total number of formal first preference votes indicates that there was an overall decrease of 1.44 per cent of formal first preference votes funded for the 2010 election compared to the 2007 election. This could be attributed to an increase in the number of informal votes cast in 2010 compared to 2007.

Table 4 – Comparative funding data			
	2004 election	2007 election	2010 election
Votes			
Number of formal 1st preference Senate and House of Representatives votes	23.669m	25.077m	25.125m
Number of votes funded (House of Representatives and Senate)	21.567m	23.332m	22.995m
Percentage of votes funded (House of Representatives and Senate)	91.10	93.30	91.50
House of Representatives Candidates			
Number of House of Representatives candidates	1 091	1 054	849
House of Representatives candidates with at least 4% of the 1st preference vote	482	580	504
Percentage of House candidates funded	44.20	55.00	59.40
Senate Groups			
Number of Senate groups	119	136	136
Senate groups with at least 4% of the 1st preference vote	27	26	26
Percentage of Senate groups funded	22.70	19.10	19.10

Payment arrangements

Election funding of independent candidates and Senate groups is paid to the agent of the candidate or group. Where no agent is appointed the candidate is deemed to be their own agent. Where no agent is appointed for a Senate group the candidate listed first on the ballot paper is deemed to be the agent of the group.

Election funding of endorsed candidates and Senate groups is normally paid to the agent of the state or territory branch of the party that endorsed the candidate or Senate group. However, state and territory branches may re-direct funding entitlements to the national body of the party pursuant to arrangements provided for under the Act (s.299) and lodged with the AEC.

Funding redirections from the Liberal Party of Australia, Australian Labor Party and Family First saw consolidated entitlements paid only to the party federal secretariats following the 2010 election. The funding entitlement of the Liberal National Party of Queensland was also redirected to the Liberal Party of Australia federal secretariat because they are recognised as a state branch of that party.

Arrangements were also put in place for payment for joint Senate tickets to be apportioned on a basis agreed by the parties, and advised to the AEC, for the NSW and Victorian branches of the Liberal Party of Australia and the National Party of Australia.

Twelve registered political parties received their election funding by direct deposit. Seven parties and 17 candidates received their election funding payments by cheque. All payments were made in accordance with s.299A of the Act. Section 299A of the Act sets out that the method of payment for political parties can be made by direct credit if the party has nominated an account otherwise it must be by cheque. No problems with payment or receipt of election funding were reported.

As part of an application for registration a political party may seek not to receive election funding. However, there is no corresponding provision in the Act for the AEC not to pay election funding to an eligible registered political party or a candidate once the entitlement has been established under Part XX of the Act.

RECOMMENDATION 1

The Act be amended to allow the AEC to withhold payment of election funding if a registered political party or candidate specifically indicates that they do not wish to receive election funding.

Election funding payments made to unendorsed candidates and Senate groups must be made by cheque because there is currently no provision in the Act similar to the political party provisions in s.299A for these payments to be made by direct deposit.

RECOMMENDATION 2

The Act be amended to include provision for the payment of election funding to eligible unendorsed candidates and Senate groups into an Australian bank account held in the name of the candidate or, in the case of a Senate group, the candidate whose name is listed first on the ballot paper, by direct deposit.

Election funding provisions

The election funding payment provisions in s.299 of the Act have been amended a number of times since the introduction of the scheme in 1984, and it currently has four separate complex provisions which essentially provide the same outcome.

Since the commencement of election funding the Act has provided that election funding of endorsed candidates and Senate groups is paid to the agent of the state or territory branch of the party that endorsed the candidate or Senate group. In 1995, a provision was introduced to permit such payments, or a proportion of them, to be re-directed (for example, from a state branch of the party to its federal secretariat which would otherwise not receive any payment of election funding directly from the AEC). Provisions were also introduced in 1995 to permit the Australian Democrats to appoint a principal agent to ensure all election funding payments were paid directly to the federal secretariat of the party.

In 2002, provisions were inserted to ensure that payments of election funding to the Liberal Party of Australia are paid to the federal secretariat unless a specific agreement between the state or territory branch and the federal secretariat of the Liberal Party is in force. At the same time, provisions were inserted to permit a registered officer to notify the AEC that their party is a designated federal party, which would ensure that almost identical arrangements for the payment of election funding would apply to those parties as applies to the Liberal Party.

The AEC is of the view that the distribution of election funding is a matter properly left to the internal arrangements of each party.

RECOMMENDATION 3

The Act be amended to reduce the four separate provisions to a single provision that meets the requirements of all parties in order to rationalise and simplify provisions for payment of public funding to political parties.

In 1990, ss.287(4A) was inserted into the Act to cater for political parties which operate in only one state. However, the combination of ss.287(4A) with s.299 puts a question mark over the ability to pay election funding entitlements to a party that carries on activities in more than one, but not all, states.

For example, the Family First Party is formally recognised by the AEC as having state branches organised on the basis of Victoria, Queensland and South Australia.

Formal recognition is required to identify:

- branches of registered political parties with an obligation to lodge their own financial disclosure returns under ss.314AB(1) and be paid election funding,
- entitlement to elector information which is made available to a registered political party under s.90B, and
- entitlement to electronic lists of postal vote applications which are made available to a registered political party under s.189A.

At the 2010 federal election, the Family First Party endorsed candidates in New South Wales, Western Australia and Tasmania as well as the three states in which the party's branches are formally recognised. If the Family First Party was entitled to receive election funding in any state where the party is not recognised as having a branch established there is some doubt as to whether the AEC could pay election funding to the party for that state due to the operation of ss.299(1)(d) of the Act. The Democratic Labor Party (DLP) of Australia also endorsed candidates in a state where they are not formally recognised and therefore could also have been affected in regard to election funding entitlements for its endorsed candidates in that state. An amendment to the Act would be needed to correct this anomaly.

RECOMMENDATION 4

The Act be amended to ensure the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party whether or not the party is organised on the basis of a particular state or territory.

Funding history

From its introduction in 1984 until 1995, federal election funding operated as a reimbursement of expenditure scheme. The Act was amended in 1995 to operate on an entitlement basis and to bring the payment entitlement for Senate and House of Representatives votes into line, and to increase the base rate of payment.

The election funding payment rates and amounts, since the base rate of payment (\$1.50 prior to indexing) was set by Parliament in 1995, are outlined in Table 5.

Table 5 – Election funding payment rates and payments since 1996

Election	Funding Rate per vote	Total Payments	Change %
1996	\$1.57594	32.15	N/A
1998	\$1.62210	33.92	5.51%
2001	\$1.79026	38.56	13.68%
2004	\$1.94397	41.93	8.74%
2007	\$2.10027	49.00	16.86%
2010	\$2.31191	53.16	8.49%

Financial disclosure

Financial disclosure

Established under Part XX of the Act, the financial disclosure scheme deals with disclosure of information relating to political donations and expenditure. The scheme was introduced in 1984 to increase overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the political process.

The funding and disclosure scheme requires various participants in the political process to lodge disclosure returns with the AEC. Returns are required to be submitted annually by political parties, associated entities, donors to political parties and third parties who incur political expenditure. Disclosure returns are also required following each federal election and by-election from candidates, Senate groups and donors to candidates. Current provisions of the Act do not require political parties to lodge election returns. Instead, they include election related receipts and expenditure in their annual returns.

Disclosure returns are made publicly available on the AEC website.

The information disclosed varies between each type of return. However more detailed information on amounts received by parties, outstanding debts and loans at the end of each financial year is required when the amount is above the minimum disclosure threshold, which was \$11 500 for the 2009–10 financial year. A list of disclosure thresholds applicable since the implementation of the current financial disclosure scheme is provided later in this report.

An overview of the financial disclosure scheme and timetable in effect for the 2010 federal election is provided at *Appendix 1*.

Lodging a disclosure return

An online lodgement facility – eReturns – for election and annual returns, was made available by the AEC in July 2010. The eReturns system provides the option for clients to lodge returns using a secure online lodgement facility on the AEC website. The eReturns system allows clients to log on, complete and submit their disclosure returns using a wizard style interface. At the end of the process the system generates a PDF document identical in appearance to a paper return. The user has the opportunity to review their return, re-access the return and make amendments, or certify and lodge the return.

Clients can log on to their eReturns account at any time during the financial year and regularly record details of disclosable transactions before lodging their completed return. They can also attach spread sheets and other documents to support their return.

Return data is stored on a secure server until the completed return is lodged by the client, at which time it then becomes available to the AEC to process.

The eReturns system eliminates the need for FAD staff to data-enter the return as they have done in the past when processing hardcopy returns. Instead, AEC staff undertake a data quality check using the information input by the client. Inbuilt system quality control rules also improve the quality of the data recorded by clients.

Since the release of the eReturns portal more than 40 per cent of clients submitted their 2009–2010 annual returns and 2010 federal election returns electronically. For those that prefer to lodge a paper return, hardcopy returns are available from the AEC website. Hardcopy returns can be downloaded and completed, and then either scanned and emailed, faxed or posted to the AEC's National Office in Canberra for processing.

Political parties and associated entities with disclosure obligations currently have 16 weeks from the end of the financial year to lodge annual disclosure returns. Donors and third parties who incur electoral expenditure have 20 weeks following the end of the financial year to lodge their disclosure returns. Candidates, Senate groups and election donors have 15 weeks to lodge election returns.

With the current disclosure threshold and annual reporting requirements, political party returns often contain hundreds of records that need to be manually processed by the AEC.

If electoral reform should eventuate that reduces the disclosure threshold, requires more frequent reporting and/or significantly reduces reporting and disclosure periods the AEC is of the view that political parties should be required to lodge returns electronically.

The AEC has the authority to demand records electronically under the provisions of s.316 for the purposes of investigation, but there are currently no provisions to demand returns to be submitted electronically.

Electronic lodgement would facilitate timely processing and publication of returns. The AEC acknowledges that political parties may need the relevant tools to assist them to achieve these reduced reporting deadlines. The AEC's eReturns system, in its current form, will go a considerable way to achieving this. However, some additional functionality may be required to enhance the system to fully meet the needs of political parties.

RECOMMENDATION 5

In the event of electoral reform increasing the frequency of periodic reporting, reducing the disclosure threshold and reducing the timeframe for political parties to lodge periodic returns, and for the AEC to make them publicly available, the Act be amended to require political parties and associated entities to lodge disclosure returns electronically.

Public disclosure of returns

Completed annual returns for the preceding financial year are made publicly available on the AEC website on the first working day in February each year. Annual returns since the 1998–99 financial year are currently still available on the website.

Election returns are made publicly available on the AEC website 24 weeks after an election. All by-election returns since the scheme was introduced in 1984 and all election returns since the 1996 federal election are available on the website.

The website includes a search and analysis facility for annual returns and is updated as late and amended returns are received. Scanned copies of paper returns and returns lodged using the eReturns system are available, with the search and analysis facility based on data extracted from the returns.

The financial disclosure information included in this report is, in large part, extracted from the AEC website. Because the website is regularly updated it may contain data not included in this report and may update data reported previously.

Disclosure thresholds

Disclosure of detailed information, such as the source of donations, is subject to a minimum disclosure threshold.

The financial disclosure scheme was amended with effect from 8 December 2005 to increase the disclosure threshold to 'more than \$10 000'. This amount is indexed with effect from 1 July each year based on increases in the Consumer Price Index (CPI).

Disclosure threshold amounts since implementation of the scheme are as follows:

- 8 December 2005 to 30 June 2006 – \$10 000
- 1 July 2006 to 30 June 2007 – \$10 300
- 1 July 2007 to 30 June 2008 – \$10 500
- 1 July 2008 to 30 June 2009 – \$10 900
- 1 July 2009 to 30 June 2010 – \$11 200
- 1 July 2010 to 30 June 2011 – \$11 500
- 1 July 2011 to 30 June 2012 – \$11 900

Threshold amounts for each financial year are calculated after the release of the CPI information and published on the AEC website.

Correcting formal errors and defects

The AEC often finds errors when processing disclosure returns.

Subsection 319A provides that where the Electoral Commissioner is satisfied that a return contains a formal error or is subject to a formal defect, the Commissioner may amend the return to correct the error or remove the defect.

Current AEC practice is that an error which does not alter the substance of a return can be classified as a 'formal error' and corrected by FAD staff. For example, these types of corrections may remove an ambiguity, correct spelling or grammar, complete a missing or partial date, or correct an incorrect reference to an organisation or person. Following consultation with the lodging client, FAD staff will correct the error and notate the return accordingly.

Correction of a major error or omission, such as an undeclared donation or an incorrect money amount, requires the lodging client to submit an amendment to their return to correct the defect or omission. This provides a clearer record of the original error and the correction. However, in the case of errors discovered after the return is published, it may also delay the publication of the correction and allow an error to remain in the public records while an official amendment is sought and processed.

Without a definition in the Act for 'formal error' and 'formal defect' it is not clear what the AEC can correct on a return. If offences are to be created for failure to amend a return, clarification is required which clearly indicates those corrections the AEC can make and which corrections are the responsibility of those lodging returns.

RECOMMENDATION 6

Division 6 of Part XX of the Act be amended to insert definitions for 'formal error' and 'formal defect' with guidance from Parliamentary Counsel on appropriate wording.

Periodic returns

Periodic returns

The financial disclosure scheme requires returns to be lodged annually with the AEC by:

- **Political parties** – registered under Part XI of the Act and their organised state or territory branches are required to report total receipts, payments and debts, and specific details of amounts received and debts incurred in excess of the disclosure threshold. These are treated as separate disclosure obligations under the federal scheme, and accordingly each organised state or territory branch must have its own party agent. Returns are required to be lodged by the appointed party agent of a political party.
- **Associated entities** – defined under s.287 of the Act as an organisation that is controlled by one or more registered political parties, operates wholly or to a significant extent for the benefit of one or more political parties, is a financial member of a registered political party, or is an entity which has membership or voting rights in a registered political party. Associated entities report the same information as detailed above for political parties with the addition of capital contributions received. Associated entities may also be required to report political expenditure as discussed below. They do not report donations to parties.
- **Donors** – people, organisations or any other bodies (apart from registered political parties, associated entities and candidates) that donate more than the disclosure threshold in money or gifts-in-kind directly to political parties (or indirectly for the benefit of political parties) are considered to be political donors. They are obligated under the Act to report specific details of those gifts, and report donations received above the disclosure threshold used in whole or part to make donations to parties.
- **Third parties** – people or organisations (other than registered political parties, candidates and federal government agencies) who incur political expenditure under any of five categories listed in the Act must lodge an annual return disclosing all political expenditure in a financial year. The categories are explained in greater detail later in this report.

The annual disclosure cycle leads to delayed reporting of information in respect of key events such as the 2010 federal election. Annual returns for the financial year 2010–2011, which includes the conduct of the 2010 federal election, will not be made publicly available until 1 February 2012. Accordingly, the details of electoral expenditure incurred by political parties will not be publicly available until that time.

The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (the Bill) makes provision for a reduction in the disclosure threshold and a reduction in the times to lodge and disclose periodic and election returns, and for disclosure to occur on a biannual basis.

From the commencement of the disclosure scheme in 1984 until 1992, political parties were only required to submit election returns. Following the passage of the *Commonwealth Electoral Amendment Act 1992*, the election returns were replaced by a requirement to disclose all receipts, payments and debts on an annual basis.

Table 6 provides details of the number of annual returns lodged with the AEC between the 2007–08 financial year (the year in which the 2007 federal election was conducted) and the 2009–10 financial year (the financial year ending before the 2010 federal election).

Table 6 – Summary of annual returns by type

Return type	2007–08	2008–09	2009–10
Political Party	73	74	62
Political Party – amendment	43	36	11
Associated Entity	248	201	190
Associated Entity – amendment	29	21	6
Donor	411	268	192
Donor – amendment	50	18	0
Political expenditure	76	38	34
Political expenditure – amendment	1	0	0

The number of party returns decreased in 2009–10 compared to 2008–09. This can be attributed to a reduction in the number of registered political parties following a review of the Register of Political Parties conducted by the AEC.

Table 7 outlines the decline in receipts and payment following the 2007–08 financial year. This is largely due to a natural decline from an election year, where receipts also include the payment of election funding. Following this logic, it could be anticipated that there may be an increase in income and expenditure reported in the 2010–11 disclosure period as a result of the 2010 federal election. However, this data will not be made publicly available until February 2012.

Table 7 – Comparison of receipts, payments and debts

Annual return summary	Federal election year 2007–08 (\$m)	Non-federal election year 2008–09 (\$m)	Non-federal election year 2009–10 (\$m)
Political parties			
Receipts	214.9	98.7	91.8
Payments	212.6	95.9	81.6
Debts	26.9	25.7	26.5
Associated Entities			
Receipts	718.2	723.0	668.6
Payments	676.6	661.6	653.8
Debts	112.0	101.0	109.3
Donors	26.5	12.4	12.1
Political Expenditure	51.4	6.7	27.9

The comparison data is a national aggregate and may include receipts and payments applicable to state and territory elections.

Political party returns

Political party periodic returns are due on 20 October each year. Returns are made publicly available on the AEC website on 1 February the following year. Any returns or amendments received after the public release date are made available on the website once processing has been completed, usually within 48 hours of receipt.

The summary of annual returns by type, provided at Table 6, highlights the number of amended returns lodged by registered political parties (and their organised state or territory branches and their associated entities). The number of amended returns includes multiple amendments for some parties and branches. The number of amendments for 2009–10 is likely to increase because the AEC has not yet finalised the 2009–10 compliance review program.

Amended returns occur as a result of deficiencies in the original returns identified by the party, by the AEC undertaking analysis of discrepancies (that is, between party returns and donor returns) and through identification of issues through the AEC compliance review activity.

A summary of amended political party returns received for the 2007–08, 2008–09 and 2009–10 reporting periods is provided at Table 8. Six parties, the Australian Labor Party (Victorian Branch), Australian Labor Party (Western Australia), Liberal Party (WA Division) Inc, Liberal Party of Australia (Victorian Division), Liberal Party of Australia NSW Division and The Greens (WA) Inc lodged amendments to their returns in three successive years. Twelve parties or branches lodged multiple amendments for at least one reporting period over this three year period.

The amendments to political party returns appear to mainly focus on three categories of changes:

- major changes to total receipts, payments and debts (for the purpose of this, a major change was considered to be one where the previous figures were altered by more than 10 per cent)
- adjustments to detailed receipts (including donations), debts and total gifts-in-kind. This also includes the addition or removal of any of these detailed entries, except donations
- the addition of previously undisclosed donations

Table 8 – Summary of amended political party returns

Party	Number of amendments received		
	2007–08	2008–09	2009–10
Australian Democrats	n/a	1	n/a
Australian Greens (South Australia)	1	2	n/a
Australian Greens (Australian Capital Territory)	1	n/a	n/a
Australian Greens Tasmanian Branch	1	n/a	n/a
Australian Labor Party (ALP)	2	2	n/a
Australian Labor Party (ACT Branch)	n/a	1	n/a
Australian Labor Party (NSW Branch)	3	1	n/a
Australian Labor Party (Northern Territory)	1	1	n/a
Australian Labor Party (State of Queensland)	1	n/a	n/a
Australian Labor Party (Tasmanian Branch)	2	n/a	n/a
Australian Labor Party (Victorian Branch)	3	2	1
Australian Labor Party (Western Australian)	1	3	1
Christian Democratic Party (Fred Nile Group) WA	n/a	1	n/a
Citizens Electoral Council	1	2	n/a
Country Liberals (Northern Territory)	1	2	n/a
Democratic Labor Party (DLP) of Australia SA	n/a	n/a	1
Environmentalists for Nuclear Energy Australia	1	n/a	n/a
Family First Party	1	1	n/a
Family First Party – VIC	1	n/a	n/a
Family First Party – WA	1	n/a	n/a
Liberal Party of Australia	n/a	n/a	1
Liberal Party (WA Division) Inc	5	2	1
Liberal Party of Australia – ACT Division	1	n/a	n/a
Liberal Party of Australia – Queensland Division	1	n/a	n/a
Liberal Party of Australia – Tasmanian Division	n/a	1	1
Liberal Party of Australia – (SA Division)	1	1	n/a

Table 8 – Continued Summary of amended political party returns

Party	Number of amendments received		
	2007-08	2008-09	2009-10
Liberal Party of Australia (Victorian Division)	1	4	2
Liberal Party of Australia NSW Division	4	1	1
National Party of Australia	1	n/a	n/a
National Party of Australia NSW	n/a	1	n/a
National Party of Australia – Victoria	n/a	1	n/a
National Party of Australia (WA) Inc	1	n/a	n/a
One Nation Queensland	1	1	n/a
One Nation Victoria	1	n/a	n/a
Pauline's United Australia Party	1	n/a	n/a
Socialist Alliance	1	n/a	n/a
Socialist Equality Party	n/a	1	1
The Australian Greens – Victoria	1	n/a	n/a
The Greens (WA) Inc	1	3	1
The Greens NSW	n/a	1	n/a
TOTAL	43	36	11

An analysis of amendments made to political party returns is provided at Table 9. The figures relate to the number of returns which contained each category, not the total number of adjustments, new donations or changes of more than 10 per cent. It should also be noted that because 10 per cent is a relative measurement, parties with very large expenditure and receipts often weren't captured in these figures as adjustments of as much as \$1 million were less than 10 per cent of total receipts which sometimes are as much as \$60 million.

Table 9 – Analysis of amendments to political party returns

	2007-08		2008-09		2009-10	
No. of amendments lodged	43		36		11	
Changes >10%	18	42%	14	39%	6	55%
Adjustments	21	49%	21	58%	3	27%
Additional donations	15	35%	8	22%	3	27%

Before 30 June 2011 there were a total of 11 amendments received from 10 political parties for the 2009-10 financial year. Of these, eight amendments were received after the date of public disclosure. However, additional amendments may result following completion of the 2009-10 compliance review program.

The most significant amendment from 2009-10 was to a party return in which total receipts doubled from \$779 819 to \$1 560 858, total payments rose from \$895 071 to \$1 167 953, and six additional donations totalling \$187 000 were detailed.

Thirty six amendments received were from 23 political parties for the 2008–09 financial year. Of these, 22 amendments were received after the date of public disclosure.

The most significant amendment from 2008–09 was to a return which listed a new donation of \$2million from an associated entity as a result of a forgiven loan.

Forty three amendments were received from 30 political parties for the 2007–08 financial year. Of these, 33 amendments were received after the date of public disclosure.

The most significant amendment from 2007–08 was to a return in which almost \$2 million of debt was added to the total debts. An additional \$200 000 of detailed donations was also disclosed, including three receipts previously recorded as ‘subscriptions’ being amended to ‘donations’.

The distribution of political party revenue, provided at Table 10, shows that the majority of registered political parties and their branches report receiving less than \$1 million in total revenue.

Table 10 – Distribution of party revenue

Revenue range	Number of party returns		
	2007–08	2008–09	2009–10
\$10m or more	6	2	0
\$1m to \$10m	19	16	20
\$100 000 to \$1m	18	16	17
Less than \$100 000	30	40	25
Number of parties	73	74	62

Party fundraisers or sponsorships

The receipt of monies through party fundraisers or sponsorships is a constant source of confusion in party, associated entity and donor disclosure returns. That is, there is a high level of uncertainty as to the types of receipts that should be disclosed as ‘donations’ on financial disclosure returns when a transaction relates to either fundraisers or sponsorships. The NSW disclosure scheme has already included these in the definition of ‘gift’ in their legislative provisions.

RECOMMENDATION 7

The Act be amended to include total monies received at fundraising events in the definition of ‘gift’ for disclosure purposes.

Payment of financial guarantees

A further source of confusion in the context of political party, associated entity and donor disclosure returns is the payment of financial guarantees.

Financial guarantee arrangements generally include situations where a ‘guarantor’ enters an agreement to provide payment on a bond, loan or other liability in the event that the person who incurs the debt is unable to make the payments.

The AEC is of the view that these arrangements should be included in the definition of 'gift' to eliminate confusion in the records disclosed on party and associated entity returns and give greater transparency to a political party or associated entity's revenue and expenditure records.

RECOMMENDATION 8

The Act be amended to include 'financial guarantees' in the definition of 'gift'.

Issues

Credit card administration fee included in a receipt

In October 2010 a party agent lodged a return that recorded a donation of \$11 220, that is, just over the disclosure threshold. A replacement return was lodged later on the same day with the same transaction, but instead of being recorded as a donation it was recorded as an 'other receipt'.

On enquiry the AEC was advised that the donor had indeed made a payment to the party but, because that payment was made by credit card and the donor had included the cost of the credit card administration fee in the donation, the party only received the benefit of the lesser amount which was under the disclosure threshold.

As the replacement return received recorded the amount received as an 'other receipt' an obligation letter was not sent to donor.

RECOMMENDATION 9

The Act be amended to clarify that receipts should not be "netted off" for disclosure purposes.

Use of parliamentary allowances for electoral expenditure

A number of enquiries were received during the year regarding the permitted use of parliamentary allowances for the production of election material.

Enquirers were advised that the AEC has no jurisdiction over the approved use/s of parliamentary allowances. However, any expenditure that was incurred and that was required to be disclosed under the provisions of s.308 of the Act must be disclosed in accordance with Part XX of the Act.

Party agent

Subsection 288(1) of the Act provides that a political party shall have an agent for the purposes of Part XX of the Act.

Subsection 292(2) of the Act provides that a person shall not be removed from the register of party agents unless the person gives written notice to the AEC that they have resigned their appointment as agent, and the party or state branch gives notice that that person has ceased to be the agent of that party. The party is also required to give notice under ss.290(1) of the appointment of another person as agent.

The AEC considers the provision of ss.292(2) to be an administrative hindrance in that the requirement for the outgoing agent to resign before the party can appoint a new agent is unnecessary and inefficient and has been the cause of significant delays in the new appointment process in the past.

RECOMMENDATION 10

Subsection 292(2) of the Act be amended to automatically revoke the appointment of a party agent when a new party agent is appointed.

Section 290 of the Act provides the prerequisites of a person to be appointed as a party agent. Subsection 290(2) refers specifically to the agent of a political party, candidate or Senate group who is convicted of an offence against Part XX of the Act in relation to a particular election being ineligible to be appointed or hold office as an agent.

This subsection was not amended to remove the reference to 'a particular election' when the requirement for political party election returns was replaced with annual returns.

RECOMMENDATION 11

Subsection 290(2) of the Act be amended to remove reference to 'a particular election'.

Penalties

Section 315 of the Act gives effect to penalties in regard to a number of funding and disclosure provisions. However, penalties have remained unchanged since 1984.

Where a penalty is to be applied for a breach of the Act the AEC provides a brief to the Commonwealth Director of Public Prosecutions (CDPP) with a request to pursue prosecution action on behalf of the AEC. This is a time consuming and costly process that may be better managed with the introduction of administrative penalties for offences such as late lodgement of a return without a valid and sufficient reason (such as a notification of inability to complete a return in accordance with s.318). The application of administrative penalties is also discussed in the *Electoral Reform Green Paper – Donations, Funding and Expenditure December 2008* as being "...more appropriate than criminal penalties for dealing with offences such as failure to lodge a disclosure return by the due date."

The addition of administrative penalties would assist the AEC to enforce compliance requirements without the necessity of referring all matters to the CDPP. It is expected that this would result in more timely compliance with disclosure provisions without creating an additional burden on CDPP resources.

RECOMMENDATION 12

The Act be amended to introduce administrative penalties to support compliance with the provisions of the disclosure scheme based on objective tests, for example late lodgement.

Large political parties often rely on several hundred party-units to furnish information in order for the party to complete their disclosure return. Where a party unit is unable, or refuses, to provide this information the party may lodge an incomplete return under the provisions of s.318 of the Act. Subsection 318(1) requires that the party also provide the AEC with details of the missing information, the reason why they are unable to provide the missing information and the details of the person they believe can provide that information.

The AEC may then issue a notice requesting that the missing information is provided within a specified period. However, in the past the AEC has had difficulty encouraging some people to provide the information required to finalise an incomplete disclosure.

The AEC is of the view that the application of an administrative penalty for failure to provide missing details within a set timeframe, to either the person completing the return or the AEC, would support a notice issued under the provisions of s.318.

RECOMMENDATION 13

The Act be amended to provide a penalty similar to the penalty for failure to furnish a return provided under s.315 of the Act, for individuals that do not cooperate with a notice issued under s.318(1) requesting information required to complete a return.

Retention of records

Section 317 of the Act makes reference to particulars that are, or could be, required to be set out in a claim or return relating to an election being retained for a period of at least 3 years. However, s.317 was not updated when periodic disclosures were introduced a number of years ago and there is no specific retention period for records relating to annual returns.

RECOMMENDATION 14

Section 317 of the Act be amended to recognise periodic disclosures.

Subsection 315(2)(b) makes provision for a penalty to apply where a person fails to retain records in accordance with s.317. However, there is no penalty that applies to a person who fails to make a record.

Persons who fail to make or maintain such records to enable compliance with the disclosure provisions of the Act should be subject to the same penalty provisions as those which apply to persons who fail to retain records.

RECOMMENDATION 15

The Act be amended to provide a penalty for a person who fails to make records to enable complete and accurate disclosure.

Section 320 of the Act requires that the AEC shall keep, at its principal office in Canberra, copies of claims for public funding and copies of disclosure returns. Subsection 320(2A) provides that the AEC will make a copy of these claims and returns available, on request, for inspection at the AEC's principal office in each state and Darwin.

Copies of disclosure returns dating back to the 1998–99 disclosure period are available on the AEC website, as well as through public access terminals located in state/territory offices in each capital city and at the AEC's National Office in Canberra.

Since changes to the payment of public funding provisions in 1995, political parties are no longer required to lodge claims for public funding.

There is no timeframe specified in the Act for retention of claims and returns.

The AEC has not received any requests to access older returns that are not available from the AEC website. However, the Act requires the AEC to keep copies of claims made under Division 3 and returns made under Divisions 4, 5 and 5A at its principal office in Canberra indefinitely.

If the intention of this provision is now fulfilled by making all recent returns available electronically, the AEC does not see any advantages in retaining these documents indefinitely.

RECOMMENDATION 16

Section 320 of the Act be amended to reflect the ability to publish returns on the internet and include a requirement to retain copies of claims and returns for a period of at least 10 years.

Associated entity returns

Table 6 shows a steady decline in the number of associated entity returns lodged since the 2007–08 financial year, which was an election year, compared to 2008–09 and 2009–10. This can be partly attributed to the decline in activity of smaller associated entities in non-election years. Returns for 2010–11 are yet to be received.

The significant decline in numbers between 2007–08 and 2008–09 may also be partly explained by a change in the membership structure of the National Party of Australia, which saw individual farming businesses ceasing to be treated as associated entities.

As part of its regular reviews of the continued eligibility of political parties, the AEC seeks assistance from political parties to identify their known associated entities. However, there is no legal requirement for parties to provide this information.

Consistent with the stated policy behind the transparency of the disclosure scheme there is an argument that parties should have an obligation to provide the AEC with the details of their associated entities to address the test on s.287(1) of 'associated entities'. This would assist the AEC to identify those associated entities that have a disclosure obligation.

RECOMMENDATION 17

The Act be amended to include a provision that requires political parties to provide to the AEC details of their known associated entities, including a penalty for failure to comply.

Political parties and associated entities mark receipts declared on returns as 'donations' or 'other receipts' even though this is not required under the Act. This assists the AEC in identifying people and organisations that may have an obligation to lodge a donor return.

In the case of associated entities, however, a receipt considered by the entity to be a 'donation' may not have been a donation for the benefit of a political party. For example, during the 2009–2010 financial year some associated entities raised money for bushfire and flood appeals. People making donations to these appeals would not be considered donors to political parties under the Act. If the requirement to distinguish between

donations which go to benefit political parties and all other receipts was formalised in the Act, this confusion could be avoided, providing a clearer disclosure of funding of political parties. This would also assist the AEC to more effectively identify persons who have legitimate disclosure obligations.

RECOMMENDATION 18

The Act be amended to formalise the requirement for political parties and associated entities to distinguish between donations which go to benefit a registered political party and all other receipts on disclosure returns.

Associated entities that are idle or inactive for a period should still be obliged to lodge disclosure returns. Only when their operations change and they no longer meet the definition of an associated entity under the Act, should they cease to have an obligation to lodge disclosure returns. This would add clarity and end the confusion created where no disclosure returns are lodged because of either the suspension or cessation of operations.

Associated entities should be required to lodge a final disclosure return if they cease to operate.

RECOMMENDATION 19

The Act be amended to impose an obligation on inactive associated entities to lodge a disclosure return until such time as they lodge a final disclosure return with the AEC after cessation of their association.

Definition of associated entity

There is significant confusion in relation to the meaning of 'associated entity' as provided in s.287 of the Act. There are competing interpretations of the meaning of operating to a '... significant extent' for the benefit of one or more registered political parties (ss.287(b)), even within the AEC. Further clarification is required to provide a clearer definition that enables the AEC to administer the provisions containing an objective test that can be measured.

RECOMMENDATION 20

The Act be amended to clarify the definition of 'Associated Entity' by extending the definitions of:

- 'controlled' – define as the right of a party to appoint a majority of directors, trustees or office bearers,
- 'to a significant extent' – define as the receipt by a political party of more than 50% of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year, and
- 'benefit' – define as the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.

Donor returns

Annual returns of donations to political parties lodged between the 2006–07 and 2009–10 financial years are shown in Table 11.

Similar to associated entity returns, the number of donors and the value of donations made decreased significantly in 2008–09 and 2009–10 compared to the 2006–07 and 2007–08 financial years. The number of donations reported during an election year is historically higher than those in non-election years, which is reflected in the 2007–08 data. However, the data also indicates that the number and total value of donations has significantly decreased in the lead up to the 2010 federal election. That is, the 2009–10 total number of donations decreased by 599 and the total value decreased by \$5.51 million compared to 2006–07

Details of donations made in the 2010–11 financial year, the year in which the 2010 federal election was held, will not be made publicly available until February 2012.

Table 11 – Donor return summary

Donation Size	Number and % of donations		Amount and % of donations	
Donor summary return 2006–07		%		%
Less than \$10 300	1 883	82	\$4.95m	27
\$10 300 to \$24 999	238	10	\$3.79m	21
\$25 000 or more	182	8	\$9.34m	52
TOTAL	2 303	100	\$18.08m	100
Donor return summary 2007–08		%		%
Less than \$10 500	2 058	78	\$5.87m	22
\$10 501 to \$24 999	333	13	\$5.13m	19
\$25 000 or more	249	9	\$15.46m	59
TOTAL	2 640	100	\$26.46m	100
Donor return summary 2008–09		%		%
Less than \$10 900	1 422	82	\$3.49m	28
\$10 901 to \$24 999	202	11	\$3.22m	26
\$25 000 or more	117	7	\$5.65m	46
TOTAL	1 741	100	\$12.36m	100
Donor return summary 2009–10		%		%
Less than \$11 200	1 473	86	\$3.46m	28
\$11 201 to \$24 999	118	7	\$1.93m	15
\$25 000 or more	113	7	\$7.18m	57
TOTAL	1 704	100	\$12.57m	100

Donor returns often provide a valuable source of information for the AEC to test the compliance of political party returns. For example, a donor will sometimes disclose a donation they have made to a party, but the party might not include the transaction in their detailed receipts or they may report the transaction as an 'other receipt' rather than as a donation.

Third party political expenditure returns

Third parties are people or organisations (other than registered political parties, candidates and federal government agencies) who incur political expenditure as defined in the Act.

Subsection 314AEB(1)(a) of the Act provides that political expenditure is expenditure incurred by a person or organisation, or with their authority, on:

- i. the public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate by any means,
- ii. the public expression of views on an issue in an election by any means,
- iii. the printing, production, publication or distribution of any material (not being material referred to in subparagraph (i) or (ii)) that is required under s.328 or 328A to include a name, address or place of business,
- iv. the broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*, and
- v. the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors.

Table 12 reports on the aggregated political expenditure reported in returns received for the 2007–08, 2008–09 and 2009–10 reporting periods.

Third party expenditure is currently required to be disclosed on an annual basis. This makes reference to 'an issue in an election' in s.314AEB of the Act problematic in the context of assessing whether there is a disclosure obligation when the 'issues' for the next election may not be known or clear at the time the third party return is lodged.

The AEC often receives enquiries in relation to the interpretation of this requirement and, in particular, the broadness of ss.314AEB(1)(i) and (ii). One of the issues often raised is "what is considered to be an issue in an election?".

The current definition of 'political expenditure' in s.314AEB of the Act would be assisted with further clarification. The AEC is of the opinion that suitable clarification of the definition of political expenditure would provide clearer guidance on who has a reporting obligation.

For example, a person lobbying on a particular issue may believe that the issue should be an issue for the next election, but this belief may not be reflected in the election platform or material put forward by any party or candidate. This could be clarified by amending the Act to change the reference to “the public expression of views on an issue in an election by any means” to “the public expression of views on a political matter by any means” which would capture any matter that is intended to promote or oppose, directly or indirectly, a party, group or candidate, or has the purpose of influencing, directly or indirectly, the vote at an election.

The following aspects of the definition in s.314AEB(1)(a)(v) are also problematic:

- ‘carrying out an opinion poll’ – this results in a number of groups that carry out opinion polling as a ‘conduit’ for political groups, for example academic institutions, potentially being required to lodge disclosure returns. Such a requirement places an obligation on some entities that are carrying out their day to day business rather than actively participating in political activity.
- ‘or other research’ – this results in people who discuss and analyse the political process, but are not actors as such, being potentially captured by the definition. This requirement could potentially catch university students, political scientists, etc. and be extremely difficult to administer with no clear benefits to the financial disclosure scheme.

Given that the current definition could be argued not to add to the overall aims of the disclosure scheme and therefore places an unnecessary burden on groups of people that are not legitimately partaking in political ‘campaigns’, the AEC is of the view that these groups should be excluded by removing these two parts of the definition.

RECOMMENDATION 21

Subsection 314AEB(1)(a)(ii) of the Act be deleted.

RECOMMENDATION 22

The Act be amended to delete ss.314AEB(1)(a)(v).

Table 12 – Periodic returns relating to political expenditure

Category	2007–08	2008–09	2009–10
Public expression of views on a political party, candidate or member of the Federal Parliament by any means	\$2 698 432	\$1 499 894	\$1 489 476
Public expression of views on an issue in an election by any means	\$13 872 229	\$1 540 256	\$2 112 579
Advertisements requiring authorisation under s.328, s.328A or s.328B of the Act	\$5 964 882	\$1 501 791	\$8 839 441
Advertisements requiring authorisation under subclause 4(2) of schedule 2 to the <i>Broadcasting Services Act 1992</i>	\$26 759 087	\$1 601 347	\$14 699 652
Opinion polling and other research relating to an election or the voting intention of voters	\$2 152 595	\$523 670	\$803 214

Expenditure in the area of broadcasting and advertisements requiring authorisation rose dramatically in 2009–10 compared to 2008–09. The likely timing of the federal election in August 2010 would appear to have been responsible for this, as a significant amount of advertising by third parties took place in the first half of 2010 leading up to the election, particularly expenditure by the mining industry in Western Australia.

The highest third party expenditure in 2009–10 came from major advertising campaigns run by the Minerals Council of Australia who reported electoral expenditure of \$17 184 924.

Similar amounts of electoral expenditure were reported in 2007–08 by the Australian Council of Trade Unions (\$15 834 139) and the National Business Action Fund (\$13 227 897).

These large political expenditure campaigns can be attributed to advertising conducted in relation to industrial relations issues in 2007 and proposed mining taxes in 2010.

Election returns

Election returns

The financial disclosure scheme requires election disclosure returns to be lodged with the AEC after each federal election and by-election by:

- **Candidates** – all candidates must lodge a return of donations received and electoral expenditure (the electoral expenditure of members of Senate groups is included in the return of the Senate group as a whole rather than in individual candidate returns). In the majority of cases, candidates endorsed by a registered political party lodge a ‘nil’ return as their transactions are included in the party annual return.
- **Senate groups** – independent and jointly endorsed Senate groups must lodge a return substantially similar to candidate returns. Information in respect of groups endorsed by a single party (the majority of Senate groups) is incorporated into the annual return of the endorsing party.
- **Election donors** – people and organisations (excluding registered political parties, associated entities, a candidate or member of a Senate group) that make donations of amounts in excess of the disclosure threshold to candidates and Senate groups must report specific details of those donations. They are also required to report donations received above the threshold used in whole or in part to make donations to parties or candidates.

Financial disclosure returns are prepared on a cash accounting and GST inclusive basis.

Candidate and Senate group returns

Candidates and Senate groups (other than groups endorsed by a single party) must lodge returns setting out the total amount and number of donations received, details of donations received of more than the disclosure threshold and total payments made across certain categories of ‘electoral expenditure’.

There were 1 198 candidates at the 2010 federal election, comprised of 849 House of Representatives candidates and 349 Senate candidates. There were 136 Senate groups of which 24 were independent or jointly endorsed groups, and therefore required to lodge election disclosure returns. Two unendorsed Senate groups – one in NSW and one in Queensland – had not submitted their disclosure returns as at 30 June 2011.

If no donations are received or expenditure incurred, candidates (or their agents) are still required to lodge a ‘nil’ return. The majority of endorsed candidates lodge ‘nil’ returns as all donations received and expenditure incurred by campaign committees for endorsed candidates are reported by their endorsing political party in their annual return.

Candidate and Senate group returns must be lodged within 15 weeks after polling day. The AEC has no discretion within the provisions of the Act to extend this deadline. However, returns received after this date are duly processed and made available for public inspection on the AEC website.

Information about candidate and Senate group disclosure obligations is included in the Funding and Disclosure Guide for Candidates and Senate Groups which was made available to candidates as they nominated for the election. The guide is also available on the AEC website.

Prior to the close of nominations, the AEC emailed or wrote to all known candidates who had not lodged candidate agent appointment forms to remind them of the deadline for appointing an agent and of their disclosure obligations.

A letter was sent to each candidate and independent or jointly endorsed Senate group (and their agents where appointed) on 1 October 2010, advising them of their disclosure obligations and reporting deadlines.

Candidates with outstanding returns were sent reminder letters on 19 November 2010, more than two weeks before returns were due on 6 December 2010. Candidates who had not lodged returns by the due date were sent notification of their failure to lodge on 14 December 2010.

Candidates who have not lodged returns to date continue to be investigated. Investigations into three candidates have been finalised and briefs of these cases for failure to lodge a return have been referred to the CDDP for consideration of legal action.

A list of those candidates who had not lodged a disclosure return as at 30 June 2011, along with the name of their endorsing party (where applicable), is provided at Appendix 4.

Table 13 provides a summary of the number of election returns received, including 'nil' returns.

Table 13 – Summary of election returns				
Candidate returns	2007 federal election		2010 federal election	
	Number	%	Number	%
Number of candidates	1 421		1 198	
Number of returns received	1 399	98	1 184	99
Number of outstanding returns	22	2	14	1
Number of 'nil' returns	1 083	77	914	77
Number of non-'nil' returns	316	23	270	23
Senate Group returns				
Number of groups	136		136	
Number of groups required to lodge	24		24	
Number of returns received	24	100	20	83
Number of outstanding returns	0	0	4	17
Other returns received				
Returns of donations made	5		6	
Returns of donations received	0		0	
TOTAL ELECTION RETURNS	1 428		1 214	

As can be seen at Table 13, fewer candidates contested the federal election in 2010 compared to 2007. However, a similar percentage of election returns were lodged following both events.

Total donations

Table 14 provides a summary of the total number and total amount of donations reported by candidates at the 2007 and 2010 federal elections.

Table 14 – Total donations received		
	2007 federal election	2010 federal election
Candidate returns		
Total number of donations reported	3 088	1 324
Total amount of donations reported	\$1 489 461	\$686 598
Number of individually declared donations	36	18
Percentage of number of donations individually declared	1.17%	1.36%
Total of individually declared donations	\$606 425	\$138 224
Percentage of amount of donations individually declared	40.71%	20.13%
Senate Group returns		
Total number of donations reported	537	58
Total amount of donations reported	\$236 831	\$69 477
Number of individually declared donations	1	1
Percentage of number of donations individually declared	0.19%	1.72%
Total of individually declared donations	\$40 000	\$38 584
Percentage of amount of donations individually declared	16.89%	55.53%

The threshold for the 2007 federal election was amounts of more than \$10 500, while for 2010 it was amounts of more than \$11 500.

The number and value of donations reported following the 2010 federal election was significantly lower than what was reported for the 2007 election. This can be attributed to the 2007 figures including a number of endorsed candidates who reported significant expenditure and receipts separate to what would be included in the party annual return whereas this did not occur in 2010.

As indicated earlier in this report, the majority of endorsed candidates lodge 'nil' returns as all donations received and expenditure incurred by the candidate's campaign committee is reported by their endorsing political party.

Table 15 provides an aggregation of the electoral expenditure disclosed by candidates and Senate groups.

Table 15 – Candidate and Senate group electoral expenditure				
Category	Candidates (\$)		Senate groups (\$)	
	2007	2010	2007	2010
Broadcast advertisements	697 536	399 346	107 020	4 566
Published advertisements	689 857	371 149	87 925	57 071
Displayed advertisements	12 704	13 007	0	0
Production of campaign material	394 522	197 347	11 669	728
Direct mailing	697 042	525 071	113 863	16 107
Polling & Research	48 517	4 786	5 454	1 766

This is not a complete picture of expenditure as items such as travel and office accommodation are not included and expenditure by endorsed candidates is generally incorporated into party annual returns.

Following disclosure of election returns the AEC often receives requests from the media and other interested parties for information on receipts and expenditure by candidates and parties on a divisional basis. Enquirers are generally frustrated when advised that transactions for endorsed candidates are very rarely reported outside the grouped information contained in the party's annual return.

Candidate agents

Section 167 of the Act provides for nominations for the House of Representatives to be made to the Divisional Returning Officer (DRO) for the division in which the candidate is standing for election; for nominations for the Senate to be made to the Australian Electoral Officer (AEO) for the state or territory in which the candidate is standing for election; and for bulk House of Representatives and Senate nominations to be made to the AEO for the state or territory in which the candidates are standing for election.

With the exception of a Senate group endorsed by a single party, candidates and Senate groups who wish to appoint a candidate agent must lodge the candidate agent appointment form with the principal office of the AEC in Canberra. Agent appointment forms must be received at the AEC's principal office by the close of nominations in the state or territory in which the election is being held.

Where no agent appointment is in force, the candidate is deemed to be their own agent. In the case of an unendorsed or jointly endorsed Senate group, if no agent appointment is in place the candidate whose name appears first on the ballot paper is deemed to be the group agent.

It is the responsibility of the candidate or Senate group agent to lodge the election return on behalf of the candidate or Senate group.

Subsection 287(2) of the Act requires all returns, notices and appointment of agent forms to be lodged at the AEC's principal office in Canberra. However, while the AEC makes a considerable effort to inform candidates and Senate groups of the requirement to lodge agent appointment forms with the AEC's principal office before the close of nominations, the majority of these forms are handed to the division or state office with the nomination form. This places an extra workload on that office to send the appointment form to the AEC's principal office before the close of nominations, otherwise the appointment of the agent is not valid.

In many cases the party agent will be appointed as the candidate or Senate group agent so the separate appointment is considered to be an additional administrative measure that appears to cause confusion in some parties.

RECOMMENDATION 23

The Act be amended to allow for the appointment of Senate group agents to be lodged at the state or territory office of the AEC in which the Senate group is standing for election.

RECOMMENDATION 24

The Act be amended to allow for the appointment of candidate agents to be lodged at the state or territory office, or the divisional office, where the candidate nomination was lodged.

RECOMMENDATION 25

The Act be amended to deem the party agent of an endorsed candidate to be the candidate agent unless a different agent is appointed by that candidate.

RECOMMENDATION 26

Nomination forms described at s.166 and in Schedule 1 of the Act be amended to include the ability to appoint candidate and Senate group agents.

Election donor returns

Persons and organisations who make donations totalling more than the disclosure threshold to individual candidates or to a member of a Senate group are required to lodge a disclosure return providing details of the donation. The return also requires disclosure of donations received in excess of the threshold used in whole or in part to make such donations.

As required by s.17(2A) of the Act, the names of the persons who in the opinion of the AEC were required to furnish an election donor return are listed at Appendix 5.

All known election donors who had an obligation to furnish an election return have done so. The returns were required to be lodged within 15 weeks after polling day. Any donor who also made a donation to a political party may also be required to lodge a separate annual return, due by 17 November 2011.

Table 16 provides an analysis of donations to candidates as reported in candidate returns.

Table 16 – Analysis of detailed disclosures

Donation amount	Number and percentage of donations		Amount and percentage of donations	
		%	\$	%
Federal election 2007				
Less than \$10 500	26	72	21 033	3
\$10 501 to \$24 999	7	20	112 697	19
\$25 000 or more	3	8	472 695	78
TOTAL	36	100	606 425	100
Federal election 2010				
Less than \$11 500	13	72	46 185	33
\$11 501 to \$24 999	4	22	62 039	45
\$25 000 or more	1	6	30 000	22
TOTAL	18	100	138 224	100

Unlawful loans and donations

Loans of \$11 500 or more from people or organisations other than financial institutions must be properly documented. Anonymous donations of \$11 500 or more made to a candidate, Senate group or political party are unlawful and must be forfeited to the Commonwealth. Advice to this effect is included in the candidate return and other material provided to candidates.

No unlawful loans or anonymous donations have been identified.

Media and public information

Media and public information

For a number of years the AEC has implemented media activities to support the release of annual and election financial disclosure returns. The activities for 2011 were similar to those developed for the 2007 federal election returns release in 2008, and the annual returns releases in 2008, 2009 and 2010.

Information training sessions

The media approach prior to the public disclosure of 2009–10 included the conduct of an information training session for parliamentary press gallery journalists. The session covered general information about annual and election return requirements and training in the navigation of the annual and election returns locator services available on the AEC website.

In addition to providing guidance on the annual returns and election returns locator services on the AEC website, the intention of the media training session was to proactively address some of the immediate demand for media enquiries anticipated on 1 February 2011 (annual returns disclosure) and 7 February (election returns disclosure), and to continue to increase the level of knowledge within the media of the financial disclosure system.

While the training sessions for journalists were not well attended it is important to note that the workshop represents an opportunity for the AEC to engage with media stakeholders. Invitations containing key disclosure dates and general funding and disclosure information were distributed widely to the federal parliamentary press gallery which alone increases awareness amongst the media of the annual and election returns schemes. The distribution of this information also allows the AEC to proactively promote the availability of the returns on the AEC website and who to contact for further information on the disclosure scheme.

Media releases

Three media releases were issued to inform stakeholders about the publication of the annual and election financial disclosure returns:

1. *2009–10 annual financial disclosure returns and 2010 federal election returns* (issued on Friday 28 January 2011) promoted the dates for the publication of annual returns and election returns and informed stakeholders about how to access information on the AEC website. The media release also served to provide a brief overview of the reporting obligations of those involved in political activities.
2. *Summary of 2009–10 annual financial disclosure returns* (issued on Tuesday 1 February 2011) provided a summary of the 2009–10 annual financial disclosure returns, including the number of returns received, total political party expenditure, total associated entity receipts and the total third party political expenditure.

3. AEC released disclosure returns for 2010 federal election (issued on Monday 7 February 2011) provided a summary of the 2010 federal election financial disclosure returns. The release explained disclosure requirements for candidates, Senate groups and donors and included the number of 'nil' returns received.

All media releases were issued to national metropolitan, suburban and regional press and broadcast media outlets, the federal press gallery and federal MPs and Senators.

Media enquiries

Annual returns

The AEC Media Unit in National Office received numerous media enquiries in the lead up to, and following, the public release of 2009–10 annual returns on 1 February 2011. Calls prior to the release were general enquiries seeking information about when the returns would be made publicly available, the information that would be available and where it could be found on the AEC website.

The majority of calls following the release of the data were in relation to apparent discrepancies in disclosure between returns lodged by political parties and those lodged by donors. In many instances, this was due to different reporting requirements, but in some cases was as a result of late lodgement of returns.

Returns lodged after the public release date are made available on the AEC website as soon as possible after they have been processed.

Election returns

The majority of calls received for the release of election returns resulted because the AEC experienced a minor delay in publishing the data due to technical difficulties. As the data was not made available until 11am on Monday 7 February 2011, several media outlets called between 9am and 11am to check when the information would be made available. Following the release of the data, a small number of media requests were received seeking clarification on disclosure obligations with regard to the high number of 'nil' returns listed on the election returns system.

The AEC often receives enquiries from the media and other parties interested in determining the amount of revenue and expenditure on a divisional (or electorate) basis. As this information is reported on a state basis through a party's annual return there is no way for the AEC to extrapolate this data from the state or territory totals.

National coverage

A total of 162 media items regarding annual (146) and election (16) disclosure returns were reported between 1 January and 15 February 2011. This included 97 press items, 54 broadcast items and 11 online items.

The majority of coverage focused on analysis of disclosure data, with particular metropolitan and national media interest in the contributions made by the mining industry to the Coalition in the lead-up to the 2010 federal election. A number of articles also focused on calls for reforms to political donation legislation.

Financial compliance

Financial compliance

All financial compliance activities have a strong focus on educating and informing those who have financial disclosure obligations, with the aim of improving the timing and quality of disclosure for those reviewed, and their respective donors.

The AEC has a number of powers to investigate compliance. It utilises these powers in two ways, the compliance review program and Special Matters investigations.

Subsection 316(2A) of the Act gives the AEC authority to investigate whether persons with specified financial disclosure obligations have met those obligations. Subsection 17(2C) of the Act requires the AEC to include particulars of the operation of ss.316(2A) in this report.

The compliance review program utilises ss.316(2A) to check whether financial disclosure returns comply with the statutory disclosure obligations in Part XX for political parties and associated entities. Compliance reviews are routine in nature, not being initiated by suggestion of any breach of disclosure obligations, and in general terms can be seen as being similar to financial statement audits.

The aim of compliance is to review annual disclosure returns lodged by political parties. Due to resource limitations, some political parties will have each year's return reviewed while others will receive less frequent coverage, although every party can expect to receive at least one compliance review in the course of a three year electoral cycle. It is usual practice to review returns of associated entities in conjunction with a review of their related political party.

Special Matters investigations are carried out under ss.316(3) of the Act to determine if an offence may have been committed under s.315, or issue a notice under ss.316(3A) to establish whether an organisation is an associated entity or was an associated entity at a particular time.

There is currently no provision in the Act empowering the AEC to undertake compliance reviews on donors, candidates, Senate groups or third parties who incur political expenditure. However, changes contained in the Bill would enable the AEC to conduct compliance reviews of all participants in the disclosure scheme. With the importance of independents in the current parliament a compliance review of their return would be an important element of the disclosure schemes aims.

Compliance review program

Highlights of the compliance review program between 2007 and 2011 include:

- better identification and reporting of gifts-in-kind,
- improvement in parties' internal reporting and record keeping,
- increased use of electronic records to undertake reviews of political party financial records.

Compliance reviews begin with a request to a political party or associated entity to supply relevant documents against which the furnished disclosure return can be verified, such as their accounting records, bank statements, and other financial documents. This request is accompanied by a notice under ss.316(2A) which requires the agent of a political party or financial controller of an associated entity to produce the required documents in the manner specified.

The review process uses audit procedures and techniques to verify the annual returns of political parties and associated entities by reference to underlying financial and other records and systems. The review process also considers whether the records and systems capture all relevant information, including 'in-kind' transactions.

During 2009 and 2010 the AEC requested records electronically, where they existed, and undertook increasing amounts of analysis electronically on a dedicated secure network at the AEC's National Office in Canberra. From 2011 the AEC will undertake all reviews electronically where such records exist (almost all parties and associated entities use electronic accounting packages). Electronic records allow for compliance reviews to be undertaken at the AEC's premises, with less disruption to the political parties and associated entities, resulting in more comprehensive, efficient and cost effective reviews.

The review of a political party's financial records may include some or all of the underlying party units (for example, branches, clubs and committees) and associated entities. As a major party may have more than 500 party units, these are examined on a sample basis.

The review may also entail a visit to the office of the party or associated entity to view supporting documents and records. During such a visit, the review findings will be discussed in detail with the party.

During the period between 2007–2010 the AEC did not use its powers under ss.316(2A)(c) to require persons to appear and give evidence. Neither did the AEC prosecute any person for failing to provide the required documents in this period.

The majority of compliance reviews result in amended returns being lodged.

There is a legal obligation to comply with a notice issued under ss.316(2A) of the Act with ss.316(5A) making it an offence for failing to comply, but only where a person has not done so to the extent that they are capable. However, the AEC is of the view that the current penalties that apply for failure to comply with a s.316 notice are not substantial enough to dissuade noncompliance, and should be increased.

Refusal or failure to comply with a s.316 notice should trigger an administrative penalty. There should also be an equivalent to the accumulating penalty for each day that compliance remains outstanding.

RECOMMENDATION 27

The Act be amended to increase penalties for failure to comply with a s.316 notice, with an equivalent to the accumulating penalty for each day that compliance remains outstanding.

Special matters

The AEC considers matters that come to its attention to determine whether disclosure obligations have been met or whether a disclosure obligation exists.

Matters which come to the attention of the AEC are the subject of a preliminary assessment, using the information which has come to notice and routine enquiries, as to whether further investigation is warranted. Where appropriate the AEC will utilise its powers to investigate under ss.316(3) of the Act.

Special matter enquiries undertaken between the 2007 and 2010 elections include the following matters:

Free flights accepted by Mr L Springborg MP – this special matter was raised as a result of allegations made in The Australian newspaper about Mr Springborg accepting free flights. The AEC's enquires determined that Mr Springborg had accepted free flights, but they were either appropriately disclosed or accepted by Mr Springborg in his capacity as a Queensland MP and therefore no disclosure obligation existed.

Alcoa Allsite Operators – this special matter was raised as part of the AEC's ongoing donor discrepancy identification. When a donor return could not be obtained an investigation was initiated which identified the donor and resulted in a donor return being lodged.

Provision of a ute to Member for Griffith (the Hon Kevin Rudd MP) – this matter was identified in an interview with ABC online with the then Prime Minister Kevin Rudd, regarding a vehicle he had the use of as a mobile office. The AEC investigation determined that Mr Rudd had received the vehicle in his capacity as a Member of Parliament and therefore no disclosure obligation to the AEC existed.

GetUp Limited – the AEC examined the status of GetUp Limited following requests from Opposition Senators in September and October 2010, to determine whether it is an associated entity. The AEC had previously investigated the status of GetUp Limited in 2005.

The AEC reviewed the information in its possession along with additional information that has come into the public domain since 2006 including company and internet searches and media reports. Following an investigation it was determined that there is still no information or available evidence that indicates that GetUp meets any of the six grounds set out in the definition of "associated entity" as provided in s.287(1) of the Act, and therefore no disclosure obligation as an associated entity exists.

Health Services Union (HSU) – this matter was raised as a result of allegations made in the Sydney Morning Herald regarding HSU expenditure that was authorised by Mr Craig Thomson that had not been disclosed. The tests applied by the AEC concluded that, while returns from the HSU were lodged late, there was no public interest at stake in pursuing further action in relation to late lodgement of the returns. This is because the principle aim of the Act is to secure their lodgement and make them available for public inspection.

Coastal Voice – this matter was raised by the request of an Opposition Senator in August 2010 to determine whether the Coastal Voice Community Group Incorporated (Coastal Voice) was an associated entity of the Australian Labor Party. After examining information provided with the request, along with other publicly available information from ASIC, media reports and the internet, the AEC concluded that there was no available evidence to show that Coastal Voice operates wholly, or to a significant extent for the benefit of the ALP, or that it meets any of the six grounds set out in the definition of “associated entity” as provided in s.287(1) of the Act.

Prosecutions

No disclosure matter has been prosecuted since the 2007 election. Eight cases for failure to lodge a disclosure return were referred to the CDPP on 14 May 2010. On 28 July 2010, correspondence was received from the CDPP advising that there was insufficient evidence to commence prosecutions in all eight matters.

No further action was taken in these matters.

Party registration

Party registration

Part XI of the Act provides for the registration of political parties and the maintenance of a public Register of Political Parties (the Register).

While it is not a statutory requirement for this report to include information on the operation of party registration, it is included because of its intricate relationship with the funding and disclosure of political parties and because it is one of the functions undertaken by the Funding and Disclosure Section of the AEC.

The party registration scheme has remained mostly unaltered since its commencement in 1984. Some changes have been made to the prohibition of certain party names in s.129 of the Act and changes have been made to strengthen the AEC's power to review parties' eligibility for continuing registration.

Party registration is not compulsory. However, it does provide political parties with the following benefits:

- Party affiliation (party name or abbreviation) may be shown next to the names of endorsed candidates and Senate groups on ballot papers.
- The party's registered officer (or a deputy registered officer) can:
 - nominate the party's candidates without need for the signatures of 50 electors entitled to vote in the particular election being contested,
 - nominate all the party's endorsed House of Representatives candidates at a single office instead of directly to each DRO.
- Access to information, for each state and territory on the basis of which the party has a branch organised, including:
 - enrolment information on a regular basis in electronic format,
 - a list of postal vote applicants,
 - other voting information.
- Election funding for endorsed candidates and Senate groups is paid to the party, rather than to each candidate.

Registered political parties and their state and territory branches and associated entities have financial disclosure obligations as outlined earlier in this report.

Registration criteria

The key requirements to be established by a party seeking registration are that it:

- is an organisation established on the basis of a written constitution that sets out the aims of the party. The constitution must be lodged with the application,
- has an objective or activity of endorsing candidates for Senate or House of Representatives elections,
- has a name (and optional abbreviation) that is not prohibited under the Act,
- proposes a person to be the registered officer of the party,
- satisfies membership requirements either as:
 - a parliamentary party with at least one member who is a member of the Commonwealth Parliament, or
 - a non-parliamentary party with at least 500 members entitled to enrolment on the Commonwealth electoral roll. A detailed list of 500 members must be provided to the AEC.
- pays an application fee of \$500.

The party name and abbreviation prohibition relates to names that are:

- too long,
- obscene,
- likely to be confused with or suggest a relationship with another (unrelated) party, or
- use the word 'independent' in a prohibited manner.

All applications must be advertised in the national press and are subject to a one month period during which public objections may be lodged.

The AEC is required to publish its reasons for a decision when it has rejected any of the following:

- an application for registration of a political party,
- an application for a change of registered party name or abbreviation,
- an application to enter a party abbreviation in the Register.

The AEC has published its reasons for all significant decisions relating to the Register on its website since early 2007.

No action can be taken on an application for the registration of a political party during an election period from the issue of the writ to the return of the writ.

Writs for the 2010 federal election were issued on Monday 19 July 2010, at which time the AEC was processing seven applications for party registration. The AEC wrote to each party and advised it that progress on their application would be suspended until the return of the election writs.

Four of the seven suspended applications were received during the eight weeks prior to the issue of the writs. This was too late for the AEC to undertake the necessary testing of the applications and permit the statutory requirements for registration to be completed before the issue of the writs.

Processing on three applications received more than eight weeks before the issue of the writs was also suspended when the writs were issued. These applications were incomplete because they were either lacking the necessary signatures or did not have sufficient members to support the application.

Of the seven party applications held over for the election, four parties were later registered successfully and three were refused registration as the deficiencies in the applications were not remedied by the parties.

Section 4 of the Act requires a political party to be an organisation. Section 123 of the Act requires an eligible political party to be a political party established on the basis of a written constitution (however described) that sets out the aims of the party.

Most states and territories have legislation specifying minimum standards for constitutions or rules for registered associations, generally administered by their consumer affairs or fair trading arms. Model association rules or constitutions are published on government websites for easy adoption by new organisations with minor amendments to the model. The sort of items mandated for these constitutions under state and territory legislation include:

- the name of the organisation
- the objects or purpose of the organisation, their primary activities
- the powers of the organisation, who exercises them and in what manner
- the rules about membership, including:
 - membership qualifications
 - types of membership
 - procedures to admit new members
 - subscriptions
 - resignations
 - expulsions
 - register of members
- dispute resolution
- who manages the organisation's funds and property
- how fundraising and/or shares will be handled
- the powers, duties and manner of appointment of the managing committee, including:
 - composition of the committee
 - terms of office of committee members
 - notice of proposed appointments/elections of committee members
 - filling of casual vacancies on the committee
 - disqualifications of committee members

- meeting procedures, including:
 - annual general meetings
 - special general meetings
 - notice of meetings
 - proceedings at meetings
 - voting at meetings
 - polling at meetings
 - special and ordinary resolutions
 - possible proxy voting
 - possible postal voting
- appointment of an auditor
- the manner in which these rules may be altered

One of the regular concerns of political parties in development and intending to apply for registration is the amount of details that the AEC requires in their constitutions. Sometimes the new political party is seeking an absolute minimum. More often the party is seeking guidance on a constitution suitable for registration and appropriate for the party's purposes.

The Electoral Commission of Queensland (ECQ) is required to publish the constitutions of its registered political parties on its website and enquiring parties can be directed there for examples to follow. The party constitutions on the ECQ website range from 20 pages to 88 pages and most are more complex than would be required for a newly developing political party.

The AEC considers that the adoption of a model constitution to show the minimum requirements of a constitution for a political party would be of benefit to people endeavouring to form a new political party intending to contest federal elections. Such a minimum model constitution would also assist the AEC when complex internal party disputes about the proper election of new officers occur (such as the petition lodged in the Senate in August 2011 against the election of Senator Madigan). It also assists the AEC if the party constitution has detailed provisions concerning the election or appointment of new officers or a new committee. The AEC can then make an informed decision when faced with competing claims to be party secretary or registered officer.

A model constitution for political parties could be based on the mandatory model constitutions already published on government websites at state or territory level for incorporated or registered organisations.

RECOMMENDATION 28

The Act be amended to provide for the adoption of a prescribed model political party constitution, all the elements of which would need to be included in the mandatory constitution currently required under s.123 of the Act.

Party registration applications

The AEC determined 23 applications for registration between the 2007 and 2010 federal elections, resulting in 18 successful registrations. The AEC also determined eight applications to change a party name and/or party abbreviation on the Register.

Five applications for registration were refused:

- The Australian Alliance for Climate Protection – the party did not submit comprehensive membership details, finally withdrawing its application and joining an already registered party.
- The Cheaper Petrol Party – insufficient party members confirmed their membership and the AEC could not be satisfied that the party had 500 members.
- The Help End Marijuana Prohibition (HEMP) Party – insufficient party members confirmed their membership and the AEC could not be satisfied that the party had 500 members. This party applied again for registration in 2010 and was successful.
- The Progressive Labour Party – insufficient party members confirmed their membership and the AEC could not be satisfied that the party had 500 members.
- The Republican Party of Australia – insufficient party members confirmed their membership and the AEC could not be satisfied that the party had 500 members.

The Northern Territory Country Liberal Party applied for a change of name to the Country Liberals. The AEC refused this application on the basis the name might be confused with a division of the Liberal Party of Australia set up to service country areas of Australia. The party reapplied to change its name to the Country Liberals (Northern Territory).

Both the Young National Party of Australia and the Peter Andren Independent Group requested voluntary deregistration following contact from the AEC.

Party membership

Subsection 123(3) of the Act currently provides that a member of a political party is a person who is “entitled to enrolment” under the Act.

Subsection 126(2)(ca) requires an application for party registration to include a list of the names of the 500 members of the party to be relied on for the purposes of registration.

Subsection 126(2A) provides that two or more parties cannot rely on the same member for the purpose of qualifying or continuing to qualify as an eligible political party.

In comparison, to nominate as a candidate in an election ss.166(1)(b)(i) of the Act requires that a nomination form be signed by not less than 50 persons “entitled to vote” at the election. By data-matching the details of the nominators on a candidate’s nomination form against the electoral roll it is easy to determine whether a nominator is eligible to vote at the election by way of their being on the electoral roll or not. However, in the case of determining the eligibility of a member of a political party this process is made more complicated as it can be difficult to determine a person’s entitlement to enrolment from the details provided on party membership lists.

The AEC uses electoral roll data to check eligibility for enrolment to ensure parties meet the minimum party membership requirement. This process relies on parties providing sufficient details of their members in order to undertake a thorough data-matching exercise. However, there is no provision in the Act that requires a party to provide sufficient information for this purpose. This limits the AEC's ability to identify those members who are not entitled to enrolment, or those members who are members of more than one party.

To facilitate this process the AEC proposes that party members should be on the electoral roll and that party membership lists include dates of birth and residential addresses of members. This will facilitate quicker and more accurate decision making when matching party membership lists against electoral roll data and assist to identify members who have supported another party's registration.

RECOMMENDATION 29

Subsection 123(3) of the Act be amended to change the requirement for registration of a political party from having 500 members 'entitled to enrolment under this Act' to having 500 members 'entitled to vote in General elections'.

RECOMMENDATION 30

The Act be amended to require political parties to provide the residential address and date of birth details of members.

The most common source of dispute between the AEC and parties applying for registration, or being reviewed to establish continuing eligibility for registration, is the status of their members. Under current legislation non-parliamentary parties are required to provide a list of at least 500 members entitled to electoral enrolment. None of those members can be also listed as supporting the registration of another political party.

The Act does not provide any guidance on what an application for party membership actually means or requires. Some new parties assume membership by a method more akin to getting people to sign a form in support of a cause, even though the form used can be headed with information about the party. The AEC checks for evidence of entitlement to electoral enrolment, that none of the members are already recorded as supporting the registration of another party and tests a sample of the members to ensure they can confirm their membership of the party. Some people contacted during membership testing stated that they remember signing a petition but don't remember joining a political party.

The AEC also reviews each party's continuing eligibility for registration once in the life of each parliament. The review process effectively operates as a 're registration' mechanism. A party must submit all materials required for an initial application for registration (except for the application form). The AEC assesses the party constitution and conducts the approved test of the party membership list to determine whether the party still meets all legislative requirements for registration

It might be more relevant to establishing a party's eligibility if the Act required more detail and more currency in party membership. For example, each member should be formally accepted under the party's constitution or rules, each member used to support registration should have joined or renewed their membership in the previous 12 months and each member should pay a minimum annual membership fee to demonstrate their active membership of the party.

RECOMMENDATION 31

The Act be amended to expand requirements for membership so that a member being used to support a party's registration must have:

- (a) been formally accepted as a member according to the party's written rules,
- (b) joined the party or renewed their membership within the previous 12 months prior to a list of members being lodged with the AEC, and
- (c) paid a minimum annual membership fee in the last 12 months.

The Bill proposes increased penalties for failure to furnish a return, for furnishing an incomplete return and for furnishing a return that is false or misleading under Divisions 4, 5 and 5A of the Act. These increases reflect the significance of complete and transparent disclosure. Given the important role that political parties play in this process failure to comply with Part XX of the Act could be a factor the AEC could consider when conducting reviews of a party's continued entitlement to remain registered.

Failure to lodge, or continued failure to lodge, a disclosure return by the due date could also be grounds for review or forfeiture of party registration if a return is not lodged or not amended within 30 days, but with the avenue to review the decision. For associated entities, a penalty could be the forfeiture of the equivalent sum of funding provided to the related political party.

RECOMMENDATION 32

The Act be amended to include failure to lodge, and continued failure to lodge, by a political party by the due date for returns as grounds for forfeiture of party registration.

Parties registered for the 2010 federal election

There were 25 unrelated registered political parties at the 2010 federal election, plus a further 24 separately registered branches from the Australian Greens, Australian Labor Party (ALP), Liberal Party of Australia and National Party of Australia, giving a total of 49 entries in the Register.

A list of parties registered at the time of the 2010 federal election is provided at Table 17.

All 25 unrelated registered political parties endorsed candidates or Senate groups at the 2010 federal election. While six of the 49 parties entered in the Register did not endorse candidates, in each case other related branches of the same party endorsed candidates at the election.

Table 17 – Political parties registered at the 2010 federal election

Name	Abbreviation
Australia First Party (NSW) Incorporated	Australia First Party
Australian Democrats	Democrats
Australian Fishing and Lifestyle Party	AFLP
Australian Greens	The Greens
The Greens NSW	The Greens
The Australian Greens – Victoria	Australian Greens
Queensland Greens	The Greens
The Greens (WA) Inc	The Greens (WA)
Australian Labor Party (ALP)	A.L.P.
Australian Labor Party (N.S.W. Branch)	Labor
Country Labor Party	Country Labor
Australian Labor Party (Victorian Branch)	Australian Labor Party
Australian Labor Party (State of Queensland)	Australian Labor Party
Australian Labor Party (Western Australian Branch)	Australian Labor Party
Australian Labor Party (South Australian Branch)	Australian Labor Party
Australian Labor Party (Tasmanian Branch)	Australian Labor Party
Australian Labor Party (ACT Branch)	Australian Labor Party
Australian Labor Party (Northern Territory) Branch	A.L.P.
Australian Sex Party	Sex Party
Building Australia Party	Building Australia
Carers Alliance	Carers
Christian Democratic Party (Fred Nile Group)	Christian Democratic Party
Citizens Electoral Council of Australia	Citizens Electoral Council
Communist Alliance	Communist
Country Liberals (Northern Territory)	Country Liberals (NT)
Democratic Labor Party (DLP) of Australia	D.L.P. – Democratic Labor Party
Family First Party	Family First
Liberal Democratic Party	Liberal Democrats (LDP)
Liberal Party of Australia	Liberal
Liberal Party of Australia, NSW Division	Liberal
Liberal Party of Australia (Victorian Division)	Liberal
Liberal National Party of Queensland	LNP
Liberal Party (W.A. Division) Inc.	Liberal

Table 17 – Continued Political parties registered at the 2010 federal election

Name	Abbreviation
Liberal Party of Australia (S.A. Division)	Liberal
Liberal Party of Australia – Tasmanian Division	Liberal
Liberal Party of Australia – ACT Division	Liberal
National Party of Australia	The Nationals
National Party of Australia – N.S.W.	Nationals
National Party of Australia – Victoria	The Nationals
National Party of Australia (WA) Inc	The Nationals
National Party of Australia (S.A.) Inc.	National Party
Non-Custodial Parents Party (Equal Parenting)	
One Nation	ON
Secular Party of Australia	
Senator On-Line	SOL
Shooters and Fishers Party	Shooters and Fishers
Socialist Alliance	
Socialist Equality Party	
The Climate Sceptics	T.C.S.

At the 2007 federal election there were 27 unrelated registered political parties, plus a further 26 branches of those parties, giving a total of 53 entries in the Register. Forty six of those 53 parties endorsed candidates at the 2007 election.

Related political parties and registration of state branches

Political parties are able to register different levels of the party. This has resulted in ten registrations for different parts of the Australian Labor Party, eight for the Liberal Party of Australia, five for the National Party of Australia and four for the Australian Greens. Generally the additional registrations are for state or territory branches of those parties which are already separately registered with the relevant state or territory electoral commission to contest elections in that state or territory. There have been other examples where parties have sought to widen the choice of names available for use on ballot papers, such as the Country Labor Party and the Young National Party of Australia.

If the main purpose of party registration is to use party names on ballot papers for federal elections, consideration could be given to whether there is a continuing need to have multiple levels of parties registered. That is, there appears to be little, if any, benefit in having a federal body and a state and territory body of the same party registered. The deputy registered officer can perform the same functions as the registered officer and the provisions are simple to administer and do not require the formal process to amend a registered officer. The public funding of political parties and the requirement to appoint an agent and lodge disclosure returns is based on whether the party is organised in respect of a state or territory and does not rely on the registration of the state or territory branch. The AEC is of the view that having a single registration for each party would be much clearer for voters, parties, the media and the AEC.

RECOMMENDATION 33

The Act be amended to limit the registration of political parties to one registration for each party. That is, no separate registrations for additional state or territory branches or other levels of the party.

Incorporation of political parties

Parties are required under the definition of 'political party' in s.4 of the Act to be an organisation before they can be eligible for registration. Particularly where a new political party is being formed, it may be difficult for them to show that they are an organisation at the time they apply for registration. It is equally difficult for the AEC to assess whether the new group is an organisation or simply a person with an idea, a written constitution and some supporters. Parties also report to the AEC that they have difficulty opening party bank accounts, party post office boxes and party telephone accounts before there is independent evidence that they are a bona fide organisation registered with state or federal authorities.

There are provisions in other Acts that deem organisations to have legal standing without going through the process of becoming an incorporated association under state law. For example, organisations registered under the *Fair Work (Registered Organisations) Act 2009* become incorporated upon registration.

The AEC considers it reasonable to include a similar provision in the Act, deeming registered political parties to be incorporated associations by virtue of their inclusion in the Register of Political Parties. There would be additional benefits in that political parties would then have clearer legal status in the cases of:

- incorrect payment of election funding being recovered. Currently, overpaid funds are recoverable from the party agent even though the party receives the election funding, and
- recovery of any unlawful gift or loan under s.306 or s.306A of the Act.

This step would also assist with prosecution, penalties and recovery of funds.

RECOMMENDATION 34

The Act be amended to deem registered political parties to be incorporated associations.

Reviews of registered parties continuing entitlement

Section 138A(1) of the Act confers upon the AEC the power to determine whether one or more of the parties included in the Register is eligible to remain registered.

The AEC's practice is to review each registered political party once in the life of each federal parliament. The Funding and Disclosure Section commenced a review of the eligibility of all registered political parties to remain on the Register in August 2009. As a result of the review seven political parties were deregistered.

Two parties were deregistered for failing to respond to a Notice of Review issued under ss.138A(3) and a Notice of Intention to Deregister issued under ss.137(1) of the Act:

- The Fishing Party
- What Women Want (Australia)

One party was deregistered for failing to satisfy the AEC that it continued to have the requisite 500 members to remain on the federal register:

- 4Change

One party applied for voluntary deregistration upon receipt of a Notice of Review under ss.138A(3):

- Nuclear Disarmament Party

Three parties applied for voluntary deregistration upon receipt of a Notice of Intention to Deregister:

- Hear Our Voice
- Environmentalists for Nuclear Energy
- Pauline's United Australia Party

Party names

In order to avoid confusing or misleading voters, the AEC is of the view that political party names should not closely resemble the names of recognised organisations (which could be defined in legislation). The AEC is also of the view that the use of the name of an individual in a political party name can cause confusion in some circumstances.

For example, Pauline Hanson was elected to the House of Representatives at the 1996 election and registered Pauline Hanson's One Nation political party before the 1998 election. Some years later, Ms Hanson left the party and contested the 2004 election for Queensland Senators as the lead candidate in an unendorsed Senate group. At that same election, Pauline Hanson's One Nation endorsed candidates for the election of Senators in Queensland and other states. There was no effective way to remove Ms Hanson's name from the political party name even though Ms Hanson had not been a member of the party for some time. It took until mid-2007 before Ms Hanson was able to negotiate with the party and have them remove her name from the party name. It is likely there were voters at the 2004 election in various states mistakenly thinking they were voting for a party led by Pauline Hanson when they voted for Pauline Hanson's One Nation candidates.

Similarly, where a political party is established using an individual's name and that person dies, it should be compulsory that the party name is changed to remove that individual's name.

If a party wants to be registered with a name that includes or closely resembles the name of an organisation, the application should be required to include some form of consent from the organisation. The consent could be in the form of a letter, on company letterhead, signed by someone in a position of authority within the organisation. The organisation should have the ability to withdraw the consent to the continued use of the name if the relationship with the party changes.

If a party wants to be registered using the name of an individual, the application should be required to include some form of consent from that person confirming their consent to the use of their name in the name of a political party. The person should have the ability to withdraw their consent to the continued use of the name if the relationship with the party changes.

If an organisation or individual objects to a party name based on the resemblance to the name of that organisation or person, legislation must make it clear that the onus is on the recognised organisation or individual to lodge an objection, rather than the AEC having the task of determining which organisations or people are 'recognised' or not.

Organisations and individuals should have the ability to appeal the decision, including following registration, as they may not see the initial party registration advertisement.

RECOMMENDATION 35

The Act be amended to prevent political parties from registering or maintaining registration in the name, abbreviation or acronym of a prominent organisation without the written approval of that organisation.

RECOMMENDATION 36

The Act be amended to prevent political parties from registering or maintaining registration in the name of an individual without the written approval of that individual.

Similarly, the Order of Australia objected to the registration of the One Australia Movement because their abbreviation OAM is the honorific for the Order of Australia Medal. The objection was unsuccessful as the Act does not provide protection in these situations. However it does highlight a need for the Act to be amended to restrict the use of certain words or acronyms such as Anzac and OAM when deciding an application for registration or change of party name. For example, the *Protection of the Word 'Anzac' Regulations* made under the *War Precautions Act Repeal Act 1920* prohibits the use of the word 'Anzac' under certain circumstances, but it is not clear that it would prohibit the word Anzac from being used in the name of a registered political party.

RECOMMENDATION 37

The Act be amended to prevent the name, abbreviation or acronym of certain special words (for example, Anzac, OAM) from being used in the name or abbreviation of a registered political party.

Party deregistration

In accordance with s.138A of the Act the AEC may review the Register of Political Parties to determine the continuing eligibility of one or more parties or to determine if one or more parties should be deregistered. To do this, the AEC may give written notice to the registered officer of a party, requesting specific information on the party's eligibility. The AEC must give at least two months for the information to be provided.

However, it is currently the party secretary who is responsible for the administration and correspondence of the party, including:

- Parliamentary party – the secretary may sign applications dealing with the Register of Political Parties including registration, deregistration and change of name of the registered officer.
- Non-parliamentary party – the secretary must be one of the 10 signatories for an application to register a party.

Section 135 of the Act currently permits any three members of a registered non-parliamentary political party to make an application for voluntary deregistration. In the case of a parliamentary party, the secretary alone can make an application for voluntary deregistration.

AEC procedures require that evidence is provided that the deregistration is in accordance with the rules and constitution of the party, including a formal and legal resolution to deregister which has been voted on by party members.

The AEC considers that requirements for an application to deregister a parliamentary party should be similar to those that currently exist for a non-parliamentary party. That is, an application made to the AEC to deregister a party should be made by three members of the party, one of which is the party secretary.

RECOMMENDATION 38

The Act be amended to provide that an application to deregister a parliamentary party must be submitted by three members of the party, with the party secretary being one of those members.

If a party is deregistered as a result of an application for voluntary deregistration the Act does not currently provide for a review of that decision. That is, if a party is deregistered under s.135 of the Act it is not a reviewable decision under s.141. If these decisions were made reviewable decisions it would provide a faction in a political party the opportunity to seek a review of a surprise successful application made by another faction in the party to voluntarily deregister the party.

The AEC is of the view that a decision under s.137 to deregister a party for failing to respond to a notice of review under s.138A, issued by pre-paid post in accordance with ss.140(1), could be included as a reviewable decision under s.141. The AEC has had a complaint from a party that was deregistered for failing to respond to formal review notices which the party claims not to have received. Review notices are issued to the registered officer. If, for some reason, the registered officer does not respond to such a notice and the AEC deregisters the party for failing to respond to the review notice the Act does not provide an opportunity to seek a review of the decision.

RECOMMENDATION 39

Section 141 of the Act be amended to provide a right of review of decisions to approve an application for voluntary deregistration under s.135 or decisions to deregister a party under ss.137(1)(cb) where a registered officer has failed to respond to a notice of review issued under s.138A.

Review of party registration decisions

Six reviews of party registration decisions made by an AEC delegate were determined between the 2007 and 2010 federal elections by the AEC Commissioners. Two of those review decisions were further appealed to the Administrative Appeals Tribunal (AAT) and one review decision made before the 2007 election was later appealed to the AAT. Brief summaries of the reviews are provided below and detailed statements of reasons for each of the AEC decisions are published on the AEC website.

Australian Fishing and Lifestyle Party

The delegate's decision to register the Australian Fishing and Lifestyle Party (AFLP) in August 2007 was upheld in September 2007 following an application for review by The Fishing Party.

The Fishing Party further appealed to the AAT which confirmed the AEC Commissioners' review decision on 17 March 2009. The AAT considered whether the application documentation lodged by the AFLP was in order, whether members of The Fishing Party were improperly used by the AFLP to support its application and whether the similarity of names should prevent the registration of the AFLP.

Help End Marijuana Prohibition (HEMP) Party

The HEMP Party sought a review of a delegate's decision to refuse registration because the AEC could not be satisfied that HEMP had at least 500 members. The application for review was made on the basis that the testing conducted by AEC officers to assess whether HEMP had the required 500 members was inappropriate.

The AEC Commissioners considered HEMP's appeal on 5 November 2008 and asked AEC officers to do more exhaustive testing of 40 HEMP members selected at random. The result of that testing was 14 confirmations of membership, 11 denials of membership and the remainder were unable to be contacted by phone or post.

On 19 February 2009 the AEC Commissioners upheld the delegate's view that the AEC could not be satisfied that HEMP was eligible for registration on the basis of the membership list supplied.

Liberal Democratic Party

The Liberal Party of Australia, the Liberal National Party of Queensland and the Australian Democrats (ACT Division) all appealed against the July 2008 decision of the AEC delegate to approve a change of name and abbreviation for the Liberty and Democracy Party (abbreviation LDP) to the Liberal Democratic Party (abbreviation Liberal Democrats (LDP)).

On 18 February 2010, the AEC Commissioners upheld the delegate's decision, following an extensive delay while the Liberal Party successfully appealed to the AAT against an AEC decision to refuse a freedom of information request. The request was for a copy of the relevant legal advice under which the AEC was acting in considering similarity of political party names.

The freedom of information request was successful and the legal advice was then provided to the Liberal Party and published on the AEC website. The AEC Commissioners also considered two previous AAT decisions on the application of the restrictions set out in s.129 of the Act regarding similar party names.

Australian Sex Party

On 18 February 2010, the AEC Commissioners upheld an August 2009 delegate's decision to register the Australian Sex Party. An application for review of the decision was lodged on the basis that the party name was obscene and that proper membership testing was not carried out, indicating that the party might not have the required membership.

This was the first time that the AEC Commissioners had considered whether a party name might be prohibited because it was obscene.

Communist Alliance

A further review was determined by the AEC Commissioners on 18 February 2010 of an August 2009 decision by an AEC delegate to register the Communist Alliance. The basis for the applications for review was the similarity of names between the Communist Alliance (abbreviation Communist) and The Community Alliance Party (ACT) (abbreviation Community Alliance) registered under Australian Capital Territory (ACT) legislation to contest elections for the ACT Legislative Assembly. The AEC Commissioners considered confusion for electors casting a vote was unlikely because the words "communist" and "community" were distinct and known to most people and the two parties were not registered to contest the same elections.

This decision has been further appealed to the AAT and a hearing was scheduled for 28 June 2011, but was subsequently adjourned indefinitely with the AEC to provide further information by 30 September 2011 regarding a new application by the Communist Alliance to change its name to The Communists.

Democratic Labor Party (DLP) of Australia

On 28 May 2010 the AEC Commissioners upheld a January 2010 decision of the AEC delegate to replace the former registered officer of the Democratic Labor Party (DLP) of Australia, Mr John Mulholland, with Mr Anthony Zegenhagen. Mr Mulholland disputed that the provisions of the party's constitution were properly followed in the election of office bearers in the DLP and that the persons applying to change the party's registered officer were not entitled to do so.

Mr Mulholland has further appealed to the AAT and a hearing was scheduled for June 2011. That hearing was adjourned until a date yet to be advised.

The Fishing Party

On 28 May 2010 the AEC Commissioners upheld an AEC delegate's March 2010 decision to deregister The Fishing Party for failure to respond to a notice issued under s.137 of the Act. The notice was issued because the party failed to respond to a notice of review of the party's eligibility for continued registration.

The applicant sought review of the decision on the basis that the party had not received some of the correspondence sent from the AEC. The Commissioners noted that the delegate of the AEC followed the relevant provisions of the Act before reaching the decision to deregister the party and that the party had a responsibility to promptly deal with correspondence.

Political party constitution

Political parties are required to satisfy the AEC that they are an organisation with at least one of their objectives or activities being the promotion of the election to the Senate or the House of Representatives of a candidate or candidates endorsed by them (s.4 of the Act). They are also required to satisfy the AEC that they are established on the basis of a written constitution that sets out the aims of the party (s.123 of the Act).

The AEC uses the detail of a political party's constitution as one element in assessing whether the party is an organisation rather than a loose association of like-minded people, or one person with an idea and a group of supporters. Parties are not legislatively required to include a base set of rules or provisions into their constitution, but if significant items are missing the AEC may seek further evidence to be satisfied that the party is an organisation and meets the requirements of the Act.

There has been discussion in the JSCEM over a number of years on a *further role for the AEC in overseeing the internal operations of political parties*. The AEC does not seek an increased role here, but part of a submission in response to the Government's December 2008 *Electoral Reform Green Paper – Donations, Funding and Expenditure* lodged by former Senator Andrew Murray raised the following:

To bring political parties under the type of accountability regime that befits their role in our system of government, the following reforms are needed:

- The *Commonwealth Electoral Act* should be amended to require standard items be set out in a political party's constitution to gain registration, similar to the requirements under Corporations Law for the constitution of companies.
- Party constitutions should specify the conditions and rules of party membership; how office bearers are preselected and selected; how pre-selection of candidates is conducted; the processes for the resolution of disputes and conflicts of interest; the processes for changing the constitution; and processes for administration and management.
- Party constitutions should also provide for the rights of members in specified classes of membership to: take part in the conduct of party affairs, either directly or through freely chosen representatives; to freely express choices about party matters, including the choice of candidates for elections; and to exercise a vote of equal value with the vote of any other members in the same class of membership.
- Party constitutions should be open to public scrutiny and updated on the public register at least once every electoral cycle.
- The AEC should be empowered to oversee all important ballots within political parties. At the very least, the law should permit them to do so at the request of a registered political party.
- The AEC should also be empowered to investigate any allegations of a serious breach of a party constitution, and be able to apply an administrative penalty.

The JSCEM has not made any recommendations to expand the AEC's role regarding party constitutions or internal operations.

Appointment of party agent

While there is no requirement in the current provisions of the Act, the AEC considers there would be administrative advantages in including an appointment of a party agent with the application for party registration in a similar way that the proposed registered officer is required.

Political parties should be aware of the responsibilities of the office of party agent and by nominating a designated office bearer to take effect at the time of registration of the party, it becomes an appointment which is given due consideration by prospective political parties.

An appointment of a party agent at the outset of the registration of the party would ensure that an officer has been identified to maintain records in accordance with s.317 of the Act, and be responsible for the reporting requirements of Part XX of the Act.

Section 292B of the Act imposes the obligations of a party agent with the executive committee of the party or branch where no party agent is appointed or if the position is vacant. However, this provision is deemed to be inconsistent and unworkable by the AEC as there is no requirement for the party to advise the details of members of the executive committee and no way for the AEC to confirm the bona fides of the committee members.

Given the importance of the role of party agent the AEC is of the opinion that penalties need to be considered for political parties where no agent is appointed for a designated period of time.

RECOMMENDATION 40

The Act be amended to require the nomination of a party agent as part of the registration of a political party.

The Act provides that a political party “shall have an agent”.

The Act currently has no penalty provision to apply to registered political parties for failure to appoint a party agent. The AEC has had difficulty trying to get some parties to replace agents that have left, died or resigned, or new parties to appoint an agent. The AEC is of the view that deregistration should be an option for political parties where no agent appointment is in force for a designated period of time.

The AEC currently has no authority to require a party to appoint an agent, which makes it difficult to enforce the disclosure obligation of the party. The AEC considers that the application of a penalty would be appropriate for failing to have an appointment of an agent in effect. A penalty could be in the form of the AEC issuing a notice of intention to deregister the party if there is no agent appointment in force and the position has been vacant for more than 28 days of the revocation, resignation or death of the previous party agent.

RECOMMENDATION 41

The Act be amended to empower the AEC to serve a Notice of Intention to Deregister to political parties who fail to appoint an agent for a period of 28 days on the revocation of appointment, resignation or death of the previously appointed party agent.

Legislative review

Legislative review

The *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010* (the Bill) was introduced into the House of Representatives on 20 October 2010. The Bill was passed by the House of Representatives on 17 November 2010 and was introduced to the Senate on the same day.

Key measures in the Bill propose to:

- reduce the disclosure threshold to \$1 000,
- reduce the deadline for lodging disclosures from 15 weeks to eight weeks,
- change annual financial disclosures to be made biannual, with lodgment required each six month period ending on 30 June and 31 December,
- ensure that for the purposes of the disclosure threshold and the disclosure of gifts, related political parties are treated as one entity,
- prohibit the receipt of a gift of foreign property and certain anonymous gifts by registered political parties, candidates and members of a Senate group,
- subjecting donors to political parties above a predetermined threshold to compliance audits, with the AEC empowered to serve investigation notices on donors,
- permitting compliance reviews of third parties, such as donors, candidates or Senate groups (anyone with a disclosure obligation),
- include penalties for parties and associated entities in the form of forfeiture of receipts or donations not included on a disclosure return or not submitted by the due lodgment date,
- provide that public funding of election campaigning is limited to the lesser amount of either the actual electoral expenditure or the amount awarded per vote where the four per cent threshold is satisfied.

It should also be noted that New South Wales and Queensland governments have recently amended their funding and disclosure schemes.

The AEC tabled its submission to the Joint Standing Committee on Electoral Matters (JSCEM) on the conduct of the 2010 federal election on 21 February 2011. The submission made, among other things, two recommendations on the administration of political party registration:

- compulsory enrolment for party members supporting an application for registration of a political party, and
- checking enrolment details of members supporting an application for party registration.

The JSCEM is conducting an inquiry into the funding of political parties and election campaigns. The terms of reference for this inquiry are:

- a) issues raised in the Government's *Electoral Reform Green Paper – Donations, Funding and Expenditure* released in December 2008,
- b) the role of third parties in the electoral process,
- c) the transparency and accountability of the funding regime,
- d) limiting the escalating cost of elections,
- e) any relevant measures at the state and territory level and implications for the Commonwealth,
- f) the international practices for the funding of political parties and election campaigns, including in Canada, the United Kingdom, New Zealand and the United States of America.

The report on this inquiry is due by 1 December 2011.

Appendices

Appendix 1 – Overview of the financial disclosure scheme in effect as at the 2010 federal election

Annual returns	Disclosure requirements
Political parties	
	Total receipts, payments and debts
	Details of amount received of more than \$11 500
	Details of debts incurred of more than \$ 11 500
Associated entities	
	Total receipts, payments and debts
	Details of amount received of more than \$11 500
	Details of debts incurred of more than \$11 500
	Details of capital contributions received
Donors	
	Details of donations made to parties totalling more than \$11 500
	Details of donations received of more than \$11 500 applied to donations made to political parties
Political expenditure	
	Political expenditure incurred if expenditure was spent in excess of certain categories in excess of \$11 500
	Details of donations received of more than \$11 500 used partly or wholly to incur the political expenditure
Election returns	
Candidates	
	Number and amount of donations received
	Details of donations received of more than \$11 500
	Amounts of electoral expenditure spent on certain categories
Senate groups	
	Number and amount of donations received
	Details of donations received of more than \$11 500
	Amounts of electoral expenditure spent on certain categories
	Endorsed groups (other than jointly endorsed groups) transactions are included on the party's annual return

Appendix 1 – Continued Overview of the financial disclosure scheme in effect as at the 2010 federal election

Annual returns	Disclosure requirements
Donors	
	Details of donations totalling more than \$11 500 made to candidates
	Details of donations received of more than \$11 500 applies to donations made to candidates

Note: Returns are prepared on a GST exclusive basis. Revenue and donations are reported on a cash accounting basis. Electoral and political expenditure is reported on an ‘incurred’ (accruals) basis.

Financial disclosure timetable in effect as at the 2010 federal election

Return	Lodgement date		Period covered	Public release
	Annual returns	Election returns		
Political parties and associated entities	20 October 2011 (16 weeks after the end of the financial year)	N/A	1 July 2010 to 30 June 2011	1 February 2011 (1st working day in February)
Donors and third parties (electoral expenditure)	17 November 2011 (20 weeks after the end of the financial year)	N/A	1 July 2010 to 30 June 2011	1 February 2011 (1st working day in February)
Donors to candidates	N/A	6 December 2010 (15 weeks after election day)	31 days after the 2007 election to 30 days after the 2010 election	7 February 2011 (24 weeks after election day)
Candidates	N/A	6 December 2010 (15 weeks after election day)	31 days after the last election contested within 4 years (House of Reps), or 7 years (Senate), or from the commencement of candidacy, or from the date of appointment to the Senate vacancy, to 30 days after the 2010 election	7 February 2011 (24 weeks after election day)

Continued Financial disclosure timetable in effect as at the 2010 federal election				
Return	Lodgement date		Period covered	Public release
	Annual returns	Election returns		
Senate groups	N/A	15 weeks after election day	From request to the AEC to be grouped until 30 days after the 2010 election	7 February 2011 (24 weeks after election day)

Note: The AEC has no authority to vary lodgement and public release dates.

The 2010 federal election was held on Saturday 21 August 2010.

Appendix 2 – Political parties who did not lodge annual returns by the public release date

2009–10

Date return rec'd	Party name
14/2/2011	Secular Party of Australia

2008–09

Date return rec'd	Party name
26/3/2010	Christian Democratic Party (Fred Nile Group)

2007–08

Date return rec'd	Party name
2/2/2009	Young National Party of Australia
3/2/2009	Australian Democrats NSW Division
14/5/2009	4Change (formerly Climate Change Coalition)

Appendix 3 – 2010 Federal election candidates who lodged election returns on or after the date of public disclosure but before 30 June 2011

Date return rec'd	Candidate	Date return rec'd	Candidate
07/02/2011	JOHNSON, Michael Andrew	18/04/2011	MOCKLER, Mary Louise
22/02/2011	McCAFFREY, Simon Thomas	18/04/2011	JEREMIJENKO, Peter Simon
30/03/2011	SNOWDON, Warren Edward	19/04/2011	GALLAGHER, Michael Patrick
30/03/2011	HALE, Damian Francis	20/04/2011	MONTEAGLE, Christopher
31/03/2011	ALDRIDGE, Mark Marshall	20/04/2011	McNEILL, Dawn Elaine
31/03/2011	GEMMELL, Suzanne	20/04/2011	NARDIZZI, Joseph Michael A
01/04/2011	STIRLING, Jennifer	22/04/2011	COLEMAN, Mark Peter
01/04/2011	ANDREW, Susan Helena	27/04/2011	BUTLER, Gregory William
05/04/2011	CAMMARERI, Domenico	27/04/2011	CARMAN, Chris
06/04/2011	CARTER, Marylou	29/04/2011	GRAHAM, Matthew David
06/04/2011	RE, Elizabeth	02/05/2011	BARR, Angelique Maree
07/04/2011	FITZGIBBON, Jenny	03/05/2011	RAINSFORD, Katrina Ann
07/04/2011	RYAN, Maurie Japarta	10/05/2011	EVANS, Rodney Andrew
11/04/2011	GODDARD, Anne	10/05/2011	NELSON, Ian John
12/04/2011	GRADWELL, Howard Tom	16/05/2011	IRELAND, Bede
13/04/2011	SHEA, Glenn	16/05/2011	THOMPSON, Lenka Mai
13/04/2011	STEFANAC, Jennifer Susan	18/05/2011	DIMOZANTOS, Kimberly Louise
13/04/2011	McDONALD, Ewan Angus	23/05/2011	MACKAY, Marianne
14/04/2011	DEAN, Duncan Robert	23/05/2011	O'CONNOR, Jennifer Rose
14/04/2011	DRUERY, Glenn William	24/05/2011	CHAVURA, Stephen Alexander
14/04/2011	MELLAND, Julia Anne Charlotte	24/05/2011	CHANDRA, Felly
14/04/2011	COOLEY, Tucky Tania	02/06/2011	HUDSON, Deborah
14/04/2011	BAIADA, John Michael	06/06/2011	GIBSON, Desiree Lee
14/04/2011	HIBBINS, Samuel	06/06/2011	RUDD, Van Thanh
14/04/2011	WILLIAMS, Peter	07/06/2011	CRAIGIE, Lynette Suzanne
15/04/2011	FAULKNER, Nicolas de Bray	14/06/2011	COLLESS, Michael Jarrod
15/04/2011	COLLYER, David James	17/06/2011	WESTGARTH, Ricky Lindsay
15/04/2011	ECKFORD, Michael John	27/06/2011	FERRANDO, Carolyn Maree
18/04/2011	HUTTON, Paulene Stephanie		

Appendix 4 – 2010 Federal election candidates who did not lodge an election return by 30 June 2011

Candidate name	Party
BATZKE, Yohan Wilma	Independent
BEIGER, Nicole Louise	Liberal Democrats
JEFFERY, Steven Alan	Secular Party
LAMBERT, Veronica	Family First
MARSH, Allan Gregory	Independent
McMAHON, John Francis Gerard	DLP
PEACOCK, Wendy	Carers Alliance
POLAIN, Aileen Trica	Carers Alliance
ROBERTON, Paul Richard	Democrats
ROMANO, Karen Ann	Independent
STRANG, Graeme Edwin	Independent
WILLIAMS, Warren Hedley	Greens
WINDOLF, Karina May	Family First

Appendix 5 – Persons who were required to lodge a 2010 federal election donor return

Donor Name	Return Status
Executive Administrative Group Pty Ltd	Return received
Stable Population Party of Australia	Return received
Graham Turner	Return received
CFMEU – Construction & General Division, National Office	Return received

Note: The application to register the Stable Population Party of Australia was suspended at the issue of the writs for the 2010 election therefore they were treated as a donor for the purposes of public disclosure.

Summary of recommendations

RECOMMENDATION 1

The Act be amended to allow the AEC to withhold payment of election funding if a registered political party or candidate specifically indicates that they do not wish to receive election funding.

RECOMMENDATION 2

The Act be amended to include provision for the payment of election funding to eligible unendorsed candidates and Senate groups into an Australian bank account held in the name of the candidate or, in the case of a Senate group, the candidate whose name is listed first on the ballot paper, by direct deposit.

RECOMMENDATION 3

The Act be amended to reduce the four separate provisions to a single provision that meets the requirements of all parties in order to rationalise and simplify provisions for payment of public funding to political parties.

RECOMMENDATION 4

The Act be amended to ensure the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party whether or not the party is organised on the basis of a particular state or territory.

RECOMMENDATION 5

In the event of electoral reform increasing the frequency of periodic reporting, reducing the disclosure threshold and reducing the timeframe for political parties to lodge periodic returns, and for the AEC to make them publicly available, the Act be amended to require political parties and associated entities to lodge disclosure returns electronically.

RECOMMENDATION 6

Division 6 of Part XX of the Act be amended to insert definitions for 'formal error' and 'formal defect' with guidance from Parliamentary Counsel on appropriate wording.

RECOMMENDATION 7

The Act be amended to include total monies received at fundraising events in the definition of 'gift' for disclosure purposes.

RECOMMENDATION 8

The Act be amended to include 'financial guarantees' in the definition of 'gift'.

RECOMMENDATION 9

The Act be amended to clarify that receipts should not be "netted off" for disclosure purposes.

RECOMMENDATION 10

Subsection 292(2) of the Act be amended to automatically revoke the appointment of a party agent when a new party agent is appointed.

RECOMMENDATION 11

Subsection 290(2) of the Act be amended to remove reference to 'a particular election'.

RECOMMENDATION 12

The Act be amended to introduce administrative penalties to support compliance with the provisions of the disclosure scheme based on objective tests, for example late lodgement.

RECOMMENDATION 13

The Act be amended to provide a penalty similar to the penalty for failure to furnish a return provided under s.315 of the Act, for individuals that do not cooperate with a notice issued under s.318(1) requesting information required to complete a return.

RECOMMENDATION 14

Section 317 of the Act be amended to recognise periodic disclosures.

RECOMMENDATION 15

The Act be amended to provide a penalty for a person who fails to make records to enable complete and accurate disclosure.

RECOMMENDATION 16

Section 320 of the Act be amended to reflect the ability to publish returns on the internet and include a requirement to retain copies of claims and returns for a period of at least 10 years.

RECOMMENDATION 17

The Act be amended to include a provision that requires political parties to provide to the AEC details of their known associated entities, including a penalty for failure to comply.

RECOMMENDATION 18

The Act be amended to formalise the requirement for political parties and associated entities to distinguish between donations which go to benefit a registered political party and all other receipts on disclosure returns.

RECOMMENDATION 19

The Act be amended to impose an obligation on inactive associated entities to lodge a disclosure return until such time as they lodge a final disclosure return with the AEC after cessation of their association.

RECOMMENDATION 20

The Act be amended to clarify the definition of 'Associated Entity' by extending the definitions of:

- 'controlled' – define as the right of a party to appoint a majority of directors, trustees or office bearers,
- 'to a significant extent' – define as the receipt by a political party of more than 50% of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year, and
- 'benefit' – define as the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.

RECOMMENDATION 21

Subsection 314AEB(1)(a)(ii) of the Act be deleted.

RECOMMENDATION 22

The Act be amended to delete ss.314AEB(1)(a)(v).

RECOMMENDATION 23

The Act be amended to allow for the appointment of Senate group agents to be lodged at the state or territory office of the AEC in which the Senate group is standing for election.

RECOMMENDATION 24

The Act be amended to allow for the appointment of candidate agents to be lodged at the state or territory office, or the divisional office, where the candidate nomination was lodged.

RECOMMENDATION 25

The Act be amended to deem the party agent of an endorsed candidate to be the candidate agent unless a different agent is appointed by that candidate.

RECOMMENDATION 26

Nomination forms described at s.166 and in Schedule 1 of the Act be amended to include the ability to appoint candidate and Senate group agents.

RECOMMENDATION 27

The Act be amended to increase penalties for failure to comply with a s.316 notice, with an equivalent to the accumulating penalty for each day that compliance remains outstanding.

RECOMMENDATION 28

The Act be amended to provide for the adoption of a prescribed model political party constitution, all the elements of which would need to be included in the mandatory constitution currently required under s.123 of the Act.

RECOMMENDATION 29

Subsection 123(3) of the Act be amended to change the requirement for registration of a political party from having 500 members 'entitled to enrolment under this Act' to having 500 members 'entitled to vote in General elections'.

RECOMMENDATION 30

The Act be amended to require political parties to provide the residential address and date of birth details of members.

RECOMMENDATION 31

The Act be amended to expand requirements for membership so that a member being used to support a party's registration must have:

- (a) been formally accepted as a member according to the party's written rules,
- (b) joined the party or renewed their membership within the previous 12 months prior to a list of members being lodged with the AEC, and
- (c) paid a minimum annual membership fee in the last 12 months.

RECOMMENDATION 32

The Act be amended to include failure to lodge, and continued failure to lodge, by a political party by the due date for returns as grounds for forfeiture of party registration.

RECOMMENDATION 33

The Act be amended to limit the registration of political parties to one registration for each party. That is, no separate registrations for additional state or territory branches or other levels of the party.

RECOMMENDATION 34

The Act be amended to deem registered political parties to be incorporated associations.

RECOMMENDATION 35

The Act be amended to prevent political parties from registering or maintaining registration in the name, abbreviation or acronym of a prominent organisation without the written approval of that organisation.

RECOMMENDATION 36

The Act be amended to prevent political parties from registering or maintaining registration in the name of an individual without the written approval of that individual.

RECOMMENDATION 37

The Act be amended to prevent the name, abbreviation or acronym of certain special words (for example, Anzac, OAM) from being used in the name or abbreviation of a registered political party.

RECOMMENDATION 38

The Act be amended to provide that an application to deregister a parliamentary party must be submitted by three members of the party, with the party secretary being one of those members.

RECOMMENDATION 39

Section 141 of the Act be amended to provide a right of review of decisions to approve an application for voluntary deregistration under s.135 or decisions to deregister a party under ss.137(1)(cb) where a registered officer has failed to respond to a notice of review issued under s.138A.

RECOMMENDATION 40

The Act be amended to require the nomination of a party agent as part of the registration of a political party.

RECOMMENDATION 41

The Act be amended to empower the AEC to serve a Notice of Intention to Deregister to political parties who fail to appoint an agent for a period of 28 days on the revocation of appointment, resignation or death of the previously appointed party agent.



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