

Shining light on political finance for the next federal election

Briefing paper

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Summary

Recently-released data from the Australian Electoral Commission (**AEC**) for the 2019/20 financial year reveal that \$49,550,000 – or 29.47% – of political parties' declared income over the period is of unexplained origin ('hidden money'). This brings the total hidden money identified over the period 1998/99 - 2019/20 to almost \$1.5 billion: this equates to 34.16% of total party income, calling into question the integrity – both real and perceived – of Australia's electoral system.

In order to enhance accountability and transparency and promote public trust in the lead-up to Election 2021, the causes of this integrity crisis must be urgently addressed. These causes include the current high threshold of \$14,300 for the disclosure of donations, the fact that individual donations are not required to be aggregated for disclosure purposes, and the fact that the definition of 'gift' under the *Commonwealth Electoral Act 1918* (Cth) (**the Act**) is unjustifiably circumscribed. They also include what the Australian National Audit Office (**ANAO**) has described as the partial effectiveness of the AEC in administering the financial disclosure scheme established under Part XX the Act: as one of Australia's key accountability institutions, the AEC requires adequate resourcing and powers in order to fulfil its mandate.

Hidden money

Figure 1 shows the total income disclosed to have been received by political parties in the 2019/20 financial year.¹

Figure 1: Total party income 2019/20

Party Income \$m	Donations \$m	Other Receipts \$m	Public Funding \$m	Subscriptions & Unspecified \$m	Loans, Capital transfers & Intra-party transfers \$m	Unexplained ('Hidden money') \$m
168.11	14.6	38.96	58.22	0	6.78	49.55

¹ All amounts reported in this paper are in real dollars.

Figure 2 shows that over the period 1998/99 - 2019/20, Australian political parties disclosed over \$4 billion in income.² Of this, the source of almost \$1.5 billion – or 34.16% – is unexplained.

Figure 2: Total party income over the period 1998/99 – 2019/20

Party Income \$m	Donations \$m	Other Receipts \$m	Public Funding \$m	Subscriptions & Unspecified \$m	Loans, Capital transfers & Intra-party transfers \$m	Unexplained ('Hidden money') \$m
4244.51	780.05	673.21	932.76	71.95	336.61	1449.94

There is a substantial difference in unexplained income disclosed by the major parties: some 39.22% of the almost \$2 billion reported as income by the Coalition is of unexplained origin (Figure 3), whereas of the almost \$1.7 billion received by the ALP, the source of 27.69% is unexplained (Figure 4).

Figure 3: Coalition reported income over the period 1998/99-2019/20

Party Income \$m	Donations \$m	Other Receipts \$m	Public Funding \$m	Subscriptions & Unspecified \$m	Loans, Capital transfers & Intra-party transfers \$m	Unexplained ('Hidden money') \$m
1996.98	329.99	269.38	427.51	16.91	170.02	783.16

Figure 4: ALP reported income over the period 1998/99-2019/20

Party Income \$m	Donations \$m	Other Receipts \$m	Public Funding \$m	Subscriptions & Unspecified \$m	Loans, Capital transfers & Intra-party transfers \$m	Unexplained ('Hidden money') \$m
1678	280.01	364.88	385.03	52.01	131.5	464.57

Hidden election funding

Political fundraising increases in the lead up to elections, as does the amount of hidden money. Figure 5 shows the total party income in election years, and the unexplained or hidden amount. The 2019 election had the highest party income of elections in the past 20 years, including record individual donations from Clive Palmer and Sugalena. The source of over \$114 million in party income was hidden from public view, meaning that voters were unaware of who funded the 2019 federal election campaign.

Figure 5: Party income and hidden money in elections years 1998/99-2019/20

Election year	Party income \$m	Hidden money \$m
2001-02	147.26	34.09
2004-05	159.76	30.99
2007-08	215.00	61.50
2010-11	228.13	67.87
2013-14	278.88	89.23
2015-16	189.36	91.18
2018-19	434.64	114.20

Why is political finance opaque?

The causes of the opacity of political finance in Australia are manifold. In part, it is attributable to limitations in the *Commonwealth Electoral Act 1918* (Cth) (**the Act**): these include the high disclosure threshold for donations; the fact that donations are not required to be aggregated for the purposes of disclosure (meaning multiple donations of under-threshold amounts can be made without disclosure); and the fact that donations made through attendance at party fundraisers, priced at \$10,000-20,000 per person, are currently not categorised as gifts under the Act. It may also be partially attributable to limitations in the effectiveness of the AEC in administering the Act, as the 2020 performance audit of the Australian Electoral Commission (**AEC**) by the Australian National Audit Office (**ANAO**) identified.³

The ANAO's 2020 performance audit of the AEC

The ANAO's recent performance audit of the AEC was undertaken with the objective of examining the effectiveness of the AEC's management of the financial disclosure scheme established under Part XX of the Act (including the extent to which the AEC is achieving accurate and complete financial disclosures).

In its rationale for undertaking the audit, the ANAO described the purpose of the financial disclosure scheme as including the preservation of the electoral system's integrity, the maintenance of public confidence in the electoral process, and the reduction of the

³ Australian National Audit Office, "Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act", 17 September 2020 < <https://www.anao.gov.au/work/performance-audit/administration-financial-disclosure-requirements-under-the-commonwealth-electoral-act> > accessed 9 February 2021.

potential for undue influence and corruption; it also acknowledged that "The financial disclosure scheme is [...] a central pillar of the Australian arrangements to provide electors with sufficient information on which to base selection of their political representatives".⁴

The ANAO concluded that the AEC's management of the financial disclosures required under Part XX of the Act is "partially effective" for a multitude of reasons, some of which include that:

- the AEC fails to use available data sources effectively in order to identify entities that have not submitted a return but may have disclosure obligations; and
- there is insufficient evidence that returns are accurate and complete, with limited analysis of returns that are obtained. According to the ANAO, there is no detailed analysis of the financial information contained within annual or election returns, and the AEC does not use effective data analytics and data matching techniques.⁵

In respect of the AEC's compliance monitoring and enforcement activities, the ANAO concluded that these too are partially effective, "with the result that the AEC is not well placed to provide assurance that disclosure returns are accurate and complete".⁶ According to the ANAO, the AEC does not implement planned compliance activities in a timely and effective manner, and 35% of the 168 reviews planned to have been conducted over the period examined by the ANAO were not completed; while completion rates have recently improved, the ANAO attributes this to the AEC "significantly reducing the number of planned reviews, narrowing the scope of planned reviews, and reducing the value of the transactions being tested".⁷ Furthermore, the ANAO found that the AEC is not making effective use of its enforcement powers.⁸

AEC powers and resourcing

The AEC's response to the ANAO's report appears to suggest that resourcing and powers are some of the reasons for the ANAO's conclusion that the AEC does not appropriately act upon identified non-compliance.⁹ To the extent that the problems identified by the ANAO in the AEC's administration of the financial disclosure scheme are in fact owing to limitations in the AEC's powers and resourcing, these require urgent rectification: as one of Australia's key accountability institutions, the AEC requires sufficient resources and powers to fulfil its mandate.

One area requiring attention is the fact that, as the ANAO points out, the AEC has no power under the Act to apply administrative penalties in order to address minor non-

⁴ Ibid at 3.

⁵ Ibid at 2.43.

⁶ Ibid at 3.

⁷ Ibid at p 48.

⁸ The AEC in its response to the ANAO reported that of the five matters referred to the Commonwealth Director of Public Prosecutions after the 2016 federal election, only two were taken forward to prosecution; these two matters took more than two years to resolve, and resulted in only \$2,000 in penalties being imposed. The AEC has also noted that it was only in 2019 that powers to prosecute criminal proceedings in respect of Part XX were conferred upon it.

⁹ Appendix 1 – Entity response, in Australian National Audit Office, "Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act", 17 September 2020 <<https://www.anao.gov.au/work/performance-audit/administration-financial-disclosure-requirements-under-the-commonwealth-electoral-act>> accessed 9 February 2021.

compliance; in contrast, it has power to apply administrative penalties to individuals who do not vote.¹⁰ The power to apply administrative penalties in response to minor non-compliance has the potential to be a positive addition to the Act, insofar as the cost and time involved in the issuing of such penalties is low but their imposition may aid in demonstrating the seriousness of non-compliance, and deterring it. Such a modification has previously been recommended by the Joint Standing Committee on Electoral Matters, in respect of offences classified as 'straightforward matters of fact'.¹¹

In addition, if the AEC is not using data analysis and data matching techniques in order to perform detailed analysis of the financial information contained within annual or election returns, it should be appropriately resourced to undertake such analysis as part of its monitoring and compliance activities.

Finally, the AEC also needs to be appropriately resourced in order for the civil penalty provisions introduced into the Act by the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* (Cth) to be meaningful (insofar as enforcement powers entail expenditure of time and resources, if they are actually utilised). Instead, in 2017/18 (the last budget spend which fell prior to the introduction of the civil penalty provisions and was not affected by an election year) the estimated annual spend was \$ 192,588,000; for the financial year 2019/20, it was \$170,272,000.¹²

Transparency reforms needed

Beyond reinforcement of the AEC's powers and resources, further reform of our regulatory system is required to promote transparency and accountability of political finance. Specifically, these reforms include:

- A reduction in the reporting threshold for donations, with individual donations over \$1,000 and aggregated donations of \$3,000 over 3 years to political parties, candidates, associated entities, third parties and political campaigners being required to be disclosed;
- A broadening of the definition of 'donation' to include income from party fundraisers, corporate sponsorship of business forums, membership fees over \$2,000 per year, and any gift that is spent on electoral expenditure (see section 5 of the *Electoral Funding Act 2018* (NSW));
- Real time disclosure of donations, plus quarterly reports providing categorisation and aggregates of donations;
- A single dedicated campaign account to facilitate auditing and enforcement;
- Related companies to be categorised accordingly, and aggregated for any donation or expenditure caps (see for example section 9(8) and section 24(6) of the *Electoral Funding Act 2018* (NSW)); and
- Enforcement through a strengthened and appropriately resourced enforcement division within the Australia Electoral Commission, and serious or systemic breaches to be investigated by an independent National Integrity Commission.

¹⁰ Above n 4 at 3.86.

¹¹ Joint Standing Committee on Electoral Matters, "Inquiry into the AEC analysis of the FWA report on the HSU" https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=em/fundingdisclosure/report/chapter3.htm accessed 9 February 2021.

¹² Department of Finance, Portfolio Budget Statements.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.