

NSW Electoral Commission

**Report to the
NSW Parliament**

2020–21

The Hon. Matthew Ryan Mason-Cox MLC
President, Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

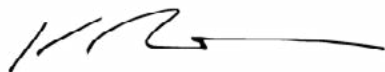
The Hon. Jonathan O'Dea MP
Speaker Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr President and Mr Speaker

In accordance with section 154 of the *Electoral Funding Act 2018* (EF Act), I am pleased to present the *Report of the NSW Electoral Commission* (Electoral Commission) in respect to its work and activities under the Act for the year 2020–21, including statistical information on the use of enforcement powers.

I recommend that the Report be laid before the Council and the Assembly as soon as practicable.

Yours sincerely,



The Hon Keith Mason, AC QC
Chairperson, NSW Electoral Commission

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From the Chairperson of the Electoral Commission

I am pleased to provide a report on the work and activities of the Electoral Commission for 2020–21. This report has been prepared in accordance with section 154 of the *Electoral Funding Act 2018* and includes statistical information on the use of enforcement powers.

It is the first time that the Electoral Commission has tabled a report under section 154 about its work and activities separately from the agency's annual report. This is a decision that was taken by the Electoral Commission both to meet the statutory deadline for tabling the section 154 report (which does not align precisely to deadlines for tabling agency annual reports), as well as to highlight the independent role of the Electoral Commission in regulating participants in NSW electoral and political processes.

The Electoral Commission has continued to meet regularly during the year despite the challenges of the COVID-19 pandemic. At each meeting the Electoral Commission reviewed current activities, monitored the progress of compliance matters and made decisions as required. The Electoral Commission has continued to adapt its processes and planning during the year to meet the additional demands arising from COVID-19, including the shifting date of the Local Government elections and regulation of the funding and disclosure obligations remotely. I congratulate the NSW Electoral Commission's dedicated staff for their hard work in the diligent and skilful management of the ongoing challenges. I also thank my fellow members Len Scanlan and John Schmidt, as well as my Deputy as Chairperson, the Hon Joseph Campbell QC, for their commitment, support and effort in ensuring that the Electoral Commission continues to deliver trusted and independent systems, processes, oversight and engagement that support democracy in New South Wales.

While the disruptions of the COVID-19 pandemic have created a demanding environment in which to operate, the Electoral Commission's achievements across the year have included the completion of projects that place us in an excellent position to perform our functions better, as well as facilitate closer engagement with elections and electoral regulation stakeholders. Most significantly, a secure, accessible portal – Funding and Disclosure Online – was launched in June 2021 with extended functionality proposed for next year. The launch of the portal is the exciting culmination of many years of reviews and planning about how to improve transparency of the democratic process in NSW utilising the benefits of technology. The Funding and Disclosure Online portal responds, for example, to recommendations of the Joint Standing Commission on Electoral Matters (JSCEM) made in the

2020 Final Report – *Administration of the 2019 NSW State Election* and in its 2016 Final Report of the Expert Panel – *Political Donations*.

The Electoral Commission's expectation is that Funding and Disclosure Online more effectively meets the transparency objectives of NSW electoral funding laws, including by improving compliance with registration, disclosure, and other legal obligations. To help it to achieve this goal, the Electoral Commission conducted stakeholder consultation in 2020 to guide the development of a system that is both intuitive and capable of capturing information and then disclosing it more accurately than paper form equivalents. We also conducted extensive communication and training for internal and external users of Funding and Disclosure Online and continue to provide political participants with one-to-one assistance as they switch to using the portal. Funding and Disclosure Online moves to the next phase of development in 2021–22 with the portal's functions to be expanded across the next year.

Education and awareness-raising remained a key priority, with the Electoral Commission expanding its education and awareness activities this year, with particular attention on Funding and Disclosure Online and the new local government expenditure caps, as well as registration, nomination, campaign accounts, the cash donation ban and electoral material. We have used webinars, bulletins, social media, the website, surveys and videos, including animated videos for local government elections, to guide political participants and other stakeholders in New South Wales. We have also developed an online training program for Members of Parliament in collaboration with staff of the NSW Parliament which outlines the electoral funding obligations of Members, as well as the political parties to which many of them belong.

During the year a new model for determining the electoral expenditure caps for each local government area and ward was also implemented for the 2021 Local Government elections. There are now eight levels of caps depending on the number of enrolled electors in an area or ward. Communicating the new rules to candidates in the lead-up to the 2021 Local Government elections has been an important focus for the Electoral Commission.

Enforcement of electoral and lobbying laws is also the primary responsibility of the Electoral Commission in NSW. In addition to its regular compliance activities, in 2021 the Electoral Commission conducted a compliance operation for the Upper Hunter State by-election in May that included having a team active during the beginning of the early voting period, another team active at the close of the early voting period and both teams active on election day. A total of

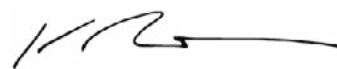
26 voting centres were attended by a compliance team, including 20 on election day. The compliance operation responded to both specific issues identified by our own investigators as well as complaints by parties and other stakeholders. The Electoral Commission is not funded, however, to stand-up these types of field operations for general elections at scale across NSW. A by-election provides an opportunity, therefore, for our Investigations team to identify opportunities to focus our available compliance resources most effectively. At this by-election, the importance of campaign activities on social media and in the online environment more generally was again highlighted. The challenges for all electoral commissions of regulating online electoral material are the subject of ongoing consideration by the Electoral Council of Australian and New Zealand (ECANZ), of which the NSW Electoral Commissioner is the current chair. I am pleased that ECANZ will continue in its efforts next year to develop a protocol with social media platforms in Australia for the adoption of standard procedures for collaborating with electoral commissions in relation to breaches of electoral laws.

During the year the Electoral Commissioner has also continued to raise concerns regarding the sustainability and suitability of the current funding model for the Electoral Commission, which includes the Public Service staff agency and information technology systems that support its work. The Electoral Commissioner is an ex officio member of the Electoral Commission and separately responsible for conducting elections within NSW and managing the staff agency that supports both functions. The Electoral Commissioner has forcefully argued that the existing funding model creates significant risks to the effective performance of both his and our legislative functions. He has also sought additional funding under the current model for critical cyber-security and election system enhancements and rectifications prior to the 2023 State general election. This funding is yet to be approved. The capacity to deliver and regulate elections according to the law, and in accordance with high public expectations of transparency and accountability, is undermined by inadequate investment in human and technology resources over time. This in turn creates the risk of undermining public trust in an institution that is essential to the stable operation of the democratic system. I am hopeful that the important work of the NSW Auditor-General and committees of the NSW Parliament during the past year, which has led to recommendations for more transparent and sustainable ways to fund the people and critical information technology systems of a number of independent statutory offices, will be a catalyst for positive change in the year to come.

November 2021 sees the end of my term as Chairperson of the Electoral Commission. It has been a rewarding appointment, but I believe there is more to be done to improve the regulation of political participants in NSW. During recent times, for example, I have advocated for the Electoral Commission to be conferred with additional legislative authority to disclose more detailed information about its compliance and enforcement activities, as a means of bringing to light the complexities of the legislation and to act as an important deterrence to those who may act unlawfully. Under the current legislative framework, the Electoral Commission is constrained from disclosing details about its compliance and enforcement activities where that information could identify individuals.

I appreciate that the administration of any framework for regulating participants in electoral processes must not of itself introduce unfairness or bias into that process. There is a real risk, for example, that the publication of investigation details around the time of an election could be misused, manipulated or misinterpreted. The confirmation by the Electoral Commission of an investigation being undertaken may alone, in some circumstances, damage the electoral prospects of a candidate, even if the allegations under investigation turn out to be unfounded. It must be acknowledged that in politics, allegations of electoral breaches are sometimes made by political opponents. Even so, it is now anachronistic that the Electoral Commission in NSW remains unable to disclose at least the outcome of matters to complainants and is unable to communicate about its important work to the same degree as electoral regulators in some other Australian jurisdictions and around the world, such as in the United Kingdom. As I depart from this role, I hope that the Electoral Commission can play a more effective role in enhancing transparency and integrity in NSW democracy in the future, through a clear mandate to make more detailed information available about its compliance and enforcement work.

I am proud to have been the Chairperson of the Electoral Commission since the Commission was constituted in 2014 and I wish the Electoral Commission well in this vital work in the years ahead.



The Hon Keith Mason, AC QC
Chairperson

Constitution and members of the Electoral Commission

The Electoral Commission was constituted on 1 December 2014 under the Electoral Act as a statutory body representing the Crown.

The Electoral Commission consists of three members:

- a former Judge appointed by the NSW Governor as Chairperson
- the Electoral Commissioner for NSW
- a person appointed by the NSW Governor who has financial or audit skills and qualifications relevant to the functions of the Electoral Commission.

The members of the Electoral Commission are:

- Hon. Keith Mason AC QC, as Chairperson
- John Schmidt, Electoral Commissioner for NSW
- Len Scanlan, as member.

The Hon. Joseph Campbell QC is appointed as deputy Chairperson of the Electoral Commission.

The appointed members and deputy member of the Electoral Commission are appointed for a seven-year term which is due to expire 30 November 2021.



Hon. Keith Mason AC QC **Chairperson**

Keith Mason was admitted to the NSW Bar in 1972 and appointed a Queen’s Counsel in 1981. From 1985 to 1987 he was Chairman of the NSW Law Reform Commission, and again from 1989 to 1990. He was Solicitor-General of NSW from 1987–1997, until his appointment as President of the NSW Court of Appeal in 1997. He was appointed a Companion of the Order of Australia in 2003 for service to the law and legal scholarship, to the judicial system in New South Wales, to the Anglican Church, and to the community. Keith retired from the NSW Court of Appeal in 2008 and is currently an Adjunct Professor at the University of New South Wales.



John Schmidt **Electoral Commissioner for NSW**

John Schmidt was appointed Electoral Commissioner for NSW by the Governor of NSW and began his term on 8 August 2016. From 2009 to 2014 he was the Chief Executive Officer of the Australian Transactions Reports & Analysis Centre (AUSTRAC), after serving in senior NSW Government positions within the Department of Premier & Cabinet and the Department of Fair Trading. John holds a Bachelor’s degree in Laws, and a Master’s degree in Arts.

Photograph: Jason McCormack/The LSJ.



Len Scanlan
Member

Len Scanlan was Auditor-General of Queensland from 1997 until 2004, during which time he was also the Chief Executive Officer of the Queensland Audit Office. Len has since pursued a successful career as an independent consultant which has included service on audit committees, as a Non-Executive Director and general consulting work. Len is a Fellow of the Institute of Public Administration Australia.



Hon. Joseph Campbell QC
Deputy Chairperson

The Hon. Joseph Campbell was admitted to the NSW Bar in 1975 and appointed a Queen's Counsel in 1988. He was a judge of the Supreme Court of NSW from 2001 until his retirement in 2012 which included six years as a judge of the Court of Appeal. In 2013 he was elected as a Fellow of the Australian Academy of Law and became an Adjunct Professor at the University of Sydney Law School. Joe has also acted as an Independent Legal Arbiter on questions of privilege for the Legislative Council of NSW.

Meetings of the NSW Electoral Commission

The Electoral Commission meets on the second Wednesday of every second month and at any other time as agreed by the members. The quorum for a meeting of the Electoral Commission is two members (one of whom is the Chairperson or the deputy of the Chairperson).

The Chairperson (or, in the absence of the Chairperson, the deputy of the Chairperson) presides at each meeting of the Electoral Commission. The presiding member of each meeting has a vote and, in the event of an equality of votes, has a second or casting vote.

A decision of the Electoral Commission is one that is supported by a majority of the votes cast at a meeting of the Electoral Commission at which a quorum is present.

During 2020–21, the Electoral Commission met at the following scheduled times.

Between scheduled meetings, matters that required more urgent attention by the Electoral Commission were dealt with out-of-session by circulating the relevant papers electronically. Votes on decisions are cast by email, are recorded, and are then noted at the following scheduled meeting. Out-of-session decisions are generally in relation to public funding payments more than a delegated amount that have a statutory deadline.

From time to time the Electoral Commission will schedule an ad hoc meeting to address an urgent matter.

Table 1. Scheduled meetings of the Electoral Commission during 2020–21

Date	Attendees
Wednesday, 12 August 2020	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt
Wednesday, 14 October 2020	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt
Wednesday, 9 December 2020	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt
Wednesday, 10 February 2021	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt
Wednesday, 14 April 2021	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt
Wednesday, 9 June 2021	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt

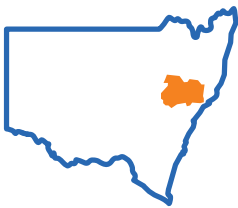
Table 2. Ad hoc meetings of the Electoral Commission during 2020–21

Date	Attendees
Wednesday, 9 September 2020	Keith Mason, Joe Campbell, Len Scanlan, John Schmidt

Highlights from 2020–21



Funding and Disclosure Online launched



Compliance operation at the Upper Hunter by-election



5,000
disclosures published

785



candidates, groups, and third-party campaigners registered for elections

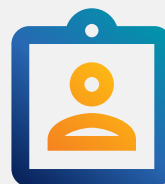
8,500



compliance audits completed

\$14.5

million paid in public funding



12%

increase in third-party lobbyists registered

Functions of the Electoral Commission

The functions of the Electoral Commission are set out in the Electoral Act. The Electoral Commission has a duty to exercise its functions in a way that is not unfairly biased against or in favour of any party, group, candidate or other person, body, or organisation.

Staff employed in the Electoral Commission Public Service agency support the Electoral Commission in the exercise of its functions, in particular those that are exercised as part of the day-to-day operations of the agency.

The Electoral Commission has the functions conferred or imposed on it under several acts, including the:

- *Electoral Act 2017*
- *Electoral Funding Act 2018*
- *Lobbying of Government Officials Act 2011*
- electoral provisions of the *Local Government Act 1993*.

In addition, functions of the Electoral Commission include:

- instituting proceedings for offences under NSW electoral and lobbying laws
- assisting the Electoral Commissioner with the conduct of elections
- conducting, promoting, and publishing research into electoral and other matters that relate to its functions
- promoting public awareness of electoral matters that are in the public interest by means of education and information programs.

Delegations

The Electoral Commission is authorised under the Electoral Act to delegate any of its functions to:

- the Electoral Commissioner
- a member of staff of the Electoral Commission Public Service agency
- an officer or member of staff of an electoral commission or electoral office of the Commonwealth or of a State or Territory
- any person, or any class of persons, authorised by the Electoral Regulation.

The Electoral Commission has delegated several of its functions to the Electoral Commissioner and members of staff of the Electoral Commission Public Service agency. Delegations exercised by the Executive Director, Funding, Disclosure, Compliance and General Counsel under the LOGO Act and EF Act are reported to the Electoral Commission at every scheduled meeting. Delegations made by the Electoral Commission are in accordance with the Delegations Policy on the Electoral Commission's [website](#).

Guidelines

The Electoral Commission is authorised under the Electoral Funding Act to determine and issue guidelines, consistent with the Act and regulations, for or in relation to any matters dealt with under the Act. The Electoral Commission is required to have regard to its guidelines in the operation, application and enforcement of the Act including dealing with any applications, claims or disclosures.

During 2020–21, the Electoral Commission updated two existing guidelines:

- **Guideline 13** was updated to reflect the current indirect campaign contribution threshold amounts. This is used to quantify the value of indirect campaign contributions by way of electoral expenditure for advertising that is shared between more than one party, elected member, candidate, or group of candidates.
- **Guideline 15** was updated following a periodic review of the generally prevailing interest rate for loans. This is used to quantify the value of political donations in the form of uncharged interest on loans.

The guidelines are published on the [website](#).

Extensions of time

The Electoral Commission is authorised under the Electoral Funding Act to, in any particular case, extend the time for doing anything under the Act, if satisfied that proper reasons exist justifying the extension. The provision does not apply to extending the due date for the making of a disclosure as there is a separate provision under the Act for this (see [How are disclosures made](#)).

During 2020–21, the Electoral Commission extended the time in relation to matters listed in Table 3.

Table 3. Exercise of the general extension power under section 153 of the Electoral Funding Act

Provision	Description	Extensions granted
s.73(1)	The time by which a claim for payment from the Election Campaigns Fund must be made	1
s.94(2)(c)	The time by which a claim for quarterly payment from the Administration Fund must be made	4
s.94(2)(d)	The time by which a claim for annual payment from the New Parties Fund must be made	1
s.97(1)	The time by which a registered party must provide a copy of its audited annual financial statements	2

Policies

The Electoral Commission has policies and procedures that set out frameworks for how the various administrative and enforcement functions are carried out in accordance with the relevant legislation. The policies are reviewed and updated every three years and as required.

During 2020–21 the Electoral Commission did not publish any new policies and did not update any existing policies. The Electoral Commission’s policies are set out below and can also be found on the [website](#):

- Administration fund procedures
- Compliance audit policy
- Compliance and enforcement policy
- Compliance and enforcement procedures
- Compliance and enforcement publication policy and procedures
- Disclosure policy and procedures
- Election campaigns fund procedures
- Delegations policy and procedures
- New parties fund procedures
- Non-prohibited donor determinations policy and procedures
- Penalty notice and caution procedures
- Prosecution policy
- Public funding policy
- Public interest disclosures policy
- Registration of electoral participants policy.

Inquiries, reports and reviews

During 2020–21, the Electoral Commissioner participated, via formal submissions and appearances in person, in three major external reviews, namely:

- the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the *Administration of the 2019 NSW State Election*
- the Public Accountability Committee's inquiry into the *Budget process for independent oversight bodies and the Parliament of New South Wales*
- the Auditor General's examination *The effectiveness of the financial arrangements and management practices in four integrity agencies*, including the Electoral Commission.

The Electoral Commissioner also appeared before the NSW Parliament's Portfolio Committee No. 1 – Premier and Finance (Budget Estimates).

As noted in the Electoral Commissioner's evidence, the Electoral Commission continues to face a resourcing crisis with a funding model that has failed to keep pace with maintaining both our current operations and our expanding remit.

On behalf of the Electoral Commission, the Electoral Commissioner has advocated for the establishment of a more sustainable and independent funding model for the agency. In this context a number of issues have been highlighted, including:

- The importance of the Electoral Commission being funded in a way that supports its independence.
- The unsustainable basis of the current funding model. The Electoral Commission is still largely funded to deliver major election events, which does not reflect the scope of its ongoing regulatory responsibilities and operations, nor its responsibility for implementing sound public sector governance practices and safeguarding the electoral process from information security, including cyber, threats.
- The inadequacy of the annual State budget process for the Electoral Commission. The Electoral Commissioner has highlighted the limited capacity of the Electoral Commission to have input into, and visibility of, funding decisions made during the annual State budget process; and the impact of whole-of-government savings measures and efficiency dividends on small agencies.

- The fragility of both our workforce and information technology systems. An externally commissioned review commented that this fragility as it applies to staffing...

"...[it] drives inefficiencies: in salaries and wages spend, in work and initiative discontinuities, in hiring and engagement processes and in the lack of investment in training and upskilling. This fragility presents a risk management issue for the NSW Electoral Commission and calls into question the sustainability of the organisation over the longer term."

With regard to the JSCEM inquiry, the *Administration of the 2019 NSW State Election*, the Electoral Commission's ability to implement the recommendations for the 2023 State election contained in the JSCEM's final report is contingent on adequate resources being available. The Electoral Commissioner has also noted that the ability to implement recommendations will now be constrained by the shortened period between the 2021 Local Government elections and the 2023 State election. (The Local Government elections were postponed from 12 September 2020 to 4 September 2021 and again to 4 December 2021 in response to the COVID-19 pandemic). This shortened runway for planning and development significantly limits changes that can be safely made to the Electoral Commission's highly bespoke and aging information technology systems, even if additional funding were to be made available.

The Electoral Commission is continuing to seek approval from government for urgent and major investments in information technology and human resources to address the immediate risks that have been identified. For the longer term, however, the Electoral Commission remains supportive of a new model that will deliver transparent and sustainable investment in the administration of the NSW electoral system. The recent inquiries and reviews have provided many worthwhile suggestions for consideration. The Public Accountability Committee's final report into the *Budget process for independent oversight bodies and the Parliament of NSW*, tabled in NSW Parliament on 5 February 2021, for example, made the following recommendation with regard to our ongoing funding:

“That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.”

The report also reiterated the risk to the delivery and regulation of democratic processes through continued budget shortfalls as detailed in the NSW Auditor-General's special report into *The effectiveness of the financial arrangements and management practices of four integrity agencies*:

“The Electoral Commission has not received the full funding amount it has requested in recent years. The conduct of elections is a key element of the democratic system and underfunding this function could have serious consequences.”

The Auditor-General's report also found that:

“...the current approach to determining and administering annual funding for the integrity agencies [including the NSW Electoral Commission] presents threats to their independent status... Specific mechanisms that present threats to the independence of the integrity agencies include the absence of transparency in decisions about funding for the integrity agencies, the means of applying efficiency dividends and budget savings and reform measures, the process of providing additional funding from the Department of Premier and Cabinet (DPC) to the integrity agencies, and requests for the integrity agencies to report to DPC on their activities and outcomes.”

We look forward to working with the NSW Parliament and the NSW Government to develop a more sustainable and appropriate funding regime going forward; and new budget processes that are designed to strengthen the integrity of the public administration.

All Committee and Government response reports are available on the [NSW Parliament's website](#).

Education and research activities

The Electoral Act provides that the Electoral Commission may promote public awareness of electoral matters through education and information campaigns. The Electoral Funding Act provides similarly that the Electoral Commission may undertake education and information programs to inform parties, elected members, candidates, groups, third-party campaigners, party agents, official agents, donors, and associated entities of their obligations under the Act. The Electoral Commission undertook a range of educational and public awareness activities during 2020–21 in accordance with these provisions.

Raising awareness of political donation laws

During the year we developed and implemented a communications campaign to increase awareness of political donation laws in New South Wales. The campaign aims to educate voters, political parties and existing donors of changes that came into effect on 1 January 2020. These changes mean that cash donations above \$100 cannot be made or accepted in New South Wales.

The Electoral Commission undertook stakeholder and market research to benchmark the understanding of the rules governing donations and the main barriers to improving that understanding.

Important rules apply to being a political donor in NSW



All voters and businesses within New South Wales are potential donors. The research showed that many have limited understanding of what constitutes a donation and their responsibility to disclose.

Six video animations were created to explain the different types of political donations, the laws that govern these donations and what these laws mean.

The animations were then used as the creative basis for the roll-out of a media campaign that incorporated digital, social media, print and radio to effectively reach audiences across the State. The campaign has so far run two tranches, strategically placed to coincide with half-yearly and yearly disclosure periods.

The communications campaign also engaged members of culturally and linguistically diverse communities, which built upon learnings from the market research. As part of this, the animations have been translated in seven key languages: Arabic, Cantonese, Mandarin, Greek, Italian, Vietnamese and Korean. The advertising campaign also targeted these communities with in-language content.

Based on post-campaign metrics provided by our media buying agency, the campaign had more than seven million views to June 2021 across New South Wales, with additional advertising planned for 2021–22.

Although the videos have been promoted ahead of the 2021 Local Government elections, their content is applicable to local government and state elections, making them a useful resource for all political participants.

2021 NSW Local Government elections Election Bulletins

The publication of Bulletins by the Electoral Commissioner for the 2021 Local Government elections continued during the year to educate electoral participants and raise awareness of electoral funding requirements and election processes. The Bulletins also provided regular updates on news, information and deadlines. Seven Bulletins were issued to political participants and four were issued to the general managers of local councils.

The Bulletins included a range of information about the conduct of the elections, key dates, and electoral processes. They also informed and reminded recipients of their electoral funding obligations, for example, the requirement to register for electoral funding purposes, to submit political donation and electoral expenditure disclosures and the commencement of the capped expenditure period. The Bulletins also contained regular updates on the postponement of the elections due to the COVID-19 pandemic and how the agency was managing the changing circumstances to ensure the safe and successful delivery of the elections.

Candidate information webinars

A series of webinars was conducted during the year by staff of the Electoral Commission Public Service agency. The webinars covered a range of topics including general information on the conduct of the elections, electoral funding and disclosure requirements and more specifically the electoral funding laws that apply at the 2021 Local Government elections.

Webinars included an interactive function enabling participants to submit questions which the presenter could answer throughout the webinar. The webinars were open to all electoral participants and members of the public, and were promoted through the Election Bulletin, on our website and through our social media platforms, as well as through direct email communication to registered electoral participants. The webinars were recorded and made available soon after each webinar on our YouTube channel for those who were not able to attend.

Several questions were asked by webinar participants about the registration requirements for candidates and groups, the laws that apply to political donations and electoral expenditure and the operation of campaign accounts. In particular, the questions highlighted the complexity of the campaign account requirements for local government elections.

Local government ordinary elections are complex in that some local government areas have wards and others do not; some local government areas have a mayoral election and others don't. There are many instances where a candidate may be in a group and also be a candidate for the mayoral election. The campaign account requirements are such that a candidate must open a campaign account before \$1,000 or more in political donations are accepted or \$1,000 or more in electoral expenditure is incurred. This applies to all candidates even those who are in a group and where the group has a campaign account and applies equally to candidates for a mayoral election even if they are part of the group for the councillor election and the group has a campaign account.

In some cases, groups of candidates across wards in a local government area may share electoral expenditure and may hold joint fundraisers. Some candidates indicated through the webinar, and following the webinar through enquiries, that it is a challenge for them to understand and comply with the campaign account requirements and to structure their campaigns to comply with the laws.

Electoral expenditure caps

In September 2020, electoral expenditure cap amounts for each local government area and ward were re-determined as a result of the elections being postponed in June 2020. Each registered candidate, group of candidates and third-party campaigner was notified in writing of the expenditure cap amount that would apply to them during the capped expenditure period for the election. New candidates, groups, and third-party campaigners were informed of their expenditure cap at the time of registration. All registered electoral participants were notified in June 2021 of the start of the capped expenditure period on 1 July 2021.

Several enquiries were received from electoral participants about the operation of the caps on electoral expenditure. Electoral participants were interested to know if they could reuse electoral material that was produced for a previous election, and if so, would the expenditure to produce that material be subject to their expenditure cap for the 2021 Local Government elections.

The Electoral Commission considered this question as the Electoral Funding Act does not expressly provide for the reuse of electoral material and whether it would be subject to an expenditure cap for a current election.

The Electoral Commission resolved that electoral material produced for a previous election may be reused for the 2021 Local Government elections, however, expenditure incurred to produce the portion of the electoral material that is reused is subject to an applicable expenditure cap if distributed during the capped expenditure period for the elections. The decision was on the basis that section 34 of the Electoral Funding Act provides for when electoral expenditure is taken to be incurred for the purpose of the expenditure caps. Electoral expenditure is taken to be incurred on the production and distribution of electoral material when the material is distributed.

In addition, such expenditure would not need to be re-disclosed, however, those responsible for disclosing electoral expenditure would be required to indicate when making the disclosure whether electoral material was reused during a capped expenditure period that occurred during the annual period to which the disclosure relates. The disclosure of the reuse of electoral material supports the Electoral Commission's compliance audit functions.

Registered electoral participants were notified of the Electoral Commission's view on the reuse of electoral material. The Electoral Commission's [website](#) was updated accordingly.

Education and research activities

continued

Website updates

The Electoral Commission's [website](#) was progressively updated to include information about the elections, key dates, as well as detailed content on specific topics for voters, electoral participants, as well as those interested in working at the elections. Educational material published on the website included a candidate handbook, two new fact sheets, and frequently asked questions for candidates and groups.

Social media

The elections were promoted on our social media platforms with messages about registering as a candidate or group for electoral funding purposes, the expenditure caps, and the start of the capped expenditure period.

Upper Hunter State by-election

For the Upper Hunter State by-election we published series of Election Bulletins to educate electoral participants about the applicable electoral funding laws. The Electoral Commission's [website](#) was progressively updated to provide key information including key dates and information for electoral participants. Social media was also used to promote the registration and other electoral funding requirements for parties, candidates, and third-party campaigners. Information about the disclosure requirements for political donors was also included in the elector brochure that was sent to all Upper Hunter enrolled electors.

Professional development training for members of Parliament

A collaborative project with staff of the NSW Parliament saw the development of four online educational modules for members of Parliament. The modules cover the following four electoral funding topics and a targeted specifically to the laws as they apply to elected members of the NSW Parliament:

- The role and responsibilities of the person responsible for making disclosures
- The laws that apply to political donations
- The laws that apply to electoral expenditure
- The disclosure requirements for political donations and electoral expenditure.

The content was developed as part of a professional development program of the NSW Parliament. The Electoral Commission was pleased to contribute to the program through the development of the electoral funding modules. Members can access the modules through an App on their smartphone or similar device.

Political donation and electoral expenditure disclosures

We promoted awareness and compliance with the disclosure obligation requirements in a range of ways prior to, during, and following each of the disclosure lodgement periods.

Email and SMS reminders

Emails were sent to elected members, candidates, lead candidates of groups, party agents, third-party campaigners, associated entities, and major political donors to remind them of their disclosure obligations. These emails informed political participants about when and how to submit their disclosures and where to find more information and assistance. The emails were sent prior to and at the beginning of each disclosure lodgement period. Follow-up emails and SMS messages were sent to stakeholders who were late submitting their disclosures.

Website updates

The website was updated in the lead-up to each disclosure lodgement period to promote the disclosure requirements. These updates included notifications on the website as well as publication of the forms and fact sheets to assist stakeholders to understand their disclosure obligations, and how and when to comply. The following fact sheets were published on the Electoral Commission's [website](#):

- Disclosing political donations (Half-yearly period 1 January to 30 June 2020)
- Disclosing electoral expenditure 2019–20
- Disclosing political donations (Half-yearly period 1 July to 31 December 2020)
- Disclosures by major political donors 2019–20
- Timeline: Disclosure reporting periods and due dates 2019–20 and 2020–21.

Social media

The disclosure lodgement periods were promoted more broadly on our social media platforms prior to and during each disclosure lodgement period.

Legislative change

In June 2021, the *Electoral Legislation Amendment (Local Government Elections) Act 2021* amended the *Electoral Funding Act 2018* to allow the party agent of a registered party to decide to be the person responsible for disclosing the political donations and electoral expenditure of a local government mayor or councillor, candidate or group of candidates who are members of that party. The *Electoral Funding Act 2018* previously required those elected members, candidates and groups to be responsible for their own disclosures unless the party agent agreed to be responsible.

In such cases, the party agent is required to notify the Electoral Commission of such a decision and notify the effected mayor, councillor, candidate, or group of candidates. A party agent may withdraw such a decision at any time and give notice of the withdrawal to the Electoral Commission and the effected mayor, councillor, candidate or group of candidates.

The amendment came into effect 1 July 2021. Implementation of the amendment will be reported on in the Electoral Commission's report for 2021–22.

Funding and Disclosure Online

Funding and Disclosure Online was launched on 21 June 2021 enabling political participants to meet their electoral funding and obligations on a secure online portal rather than by using paper forms and following manual processes. The Electoral Commission developed Funding and Disclosure Online in response to the Joint Standing Commission on Electoral Matters (JSCEM) October 2020 Recommendation 53 of the Final Report – *Administration of the 2019 NSW State Election* that, as a matter of priority, the NSW Electoral Commission implement an online system that allows the electronic lodgement and management of: disclosures of electoral expenditure and political donations as required under the *Electoral Funding Act 2018*, and funding claims made pursuant to the *Electoral Funding Act 2018*. This expanded on Recommendation 23 of the June 2016 JSCEM *Final Report of the Expert Panel – Political Donations*, that the NSW Electoral Commission replace paper-based disclosures with an online disclosure system as soon as possible.

Disclosures could be lodged online for the first time in July 2021. Candidates and groups can register for the 2021 Local Government elections online to commence campaigning. Additional functionality to support other electoral funding entitlements and obligations will be released as the project moves through its next phase during 2021–22.

Funding and Disclosure Online makes it easier for registered parties and their senior officers, candidates, elected members, donors, and other political participants to disclose information to the Electoral Commission and manage their regulatory obligations. We piloted the portal with a small volunteer group of political participants before promoting the portal more broadly to all political participants.

Users are offered support to set up their secure access, use the portal's functionality and complete transactions and forms online.

Funding and Disclosure Online addresses many of the constraints of the current paper-based forms by:

- enabling electronic signatures, thus removing the need for printing and scanning documents
- facilitating data entry and upload of supporting documentation throughout the disclosure period
- providing support to complete the online forms
- managing registered particulars and contact details
- tracking the status and progress of online forms.

Key goals of the Funding and Disclosure Online project are to:

- simplify and reduce the effort required for political participants to comply with their disclosure obligations:
 - the portal provides clear information to each political participant, guiding them through the 'what, how, when, who' of the legislation
- reduce the likelihood of non-compliance and ensure timely compliance with obligations:
 - the portal provides online forms and notifications, and users can track the status of forms lodged
- reduce the support required to understand and meet obligations:
 - the portal was developed using human-centred design, with input from staff and political participants, to be intuitive, responsive and reduce the complexity of processes
- improve the quality and timeliness of the information the Electoral Commission receives, processes and publishes:
 - the online lodgement capabilities reduce manual data entry and processing by the Electoral Commission, supporting effective and efficient regulation
- provide for a responsive and adaptive regulatory technology that supports the current framework and changes to electoral funding legislation in the future.

A dedicated project team including subject matter experts, worked with a commercial supplier – RXP Services, now part of Capgemini – to design and build the digital capabilities and enhance existing systems. Political participants and frontline regulatory staff were consulted as part of a human-centred design process and engaged throughout the development phase. The change and training program produced instructional videos, user guides and training demonstrations to support the transition to the new system and its successful adoption.

Initial feedback from users of the system has provided valuable insights into the support needs of stakeholders and a range of enhancements to be considered.

The introduction of the online solution addresses the recommendations from a number of reviews including those conducted by The Panel of Experts on Political Donations (Expert Panel) and the NSW Parliament Joint Standing Committee on Electoral Matters (JSCEM). The Parliamentary committee hearings into the conduct of the 2019 State general election reaffirmed the need for an online registration and disclosure system to reduce the compliance burden on electoral participants and political parties, while maintaining transparency and accountability in the regulation of electoral funding in NSW.

Registration of electoral participants

Candidates, groups, and third-party campaigners are registered for a state or local government election under the Electoral Funding Act. Registration enables a candidate, group or third-party campaigner to accept political donations and pay for electoral expenditure for the election in which they are registered. Associated entities, party agents and official agents are also registered under the Electoral Funding Act.

Candidates, groups of candidates, third-party campaigners and associated entities are registered following the Electoral Commission receiving an application for registration. Party agents and official agents are registered following the Electoral Commission being notified of an agent's appointment.

The Electoral Commission maintains registers for each type of electoral participant and information contained in the registers is published on the Electoral Commission's [website](#).

Candidate, group, third-party campaigner, associated entity, party agent and official agent registrations

Candidates — a person must be registered as a candidate before accepting a gift or making a payment for electoral expenditure for their proposed candidacy at a future election. A person nominated as a candidate for the purpose of having their name included on the ballot paper is deemed to be registered as a candidate from the time of nomination.

Group of candidates — two or more individuals must be registered as a group of candidates before accepting a gift or making a payment for electoral expenditure for the proposed candidacy of the individuals at a future election. Nominated candidates who comprise a group for the purpose of a ballot paper are deemed to be registered as a group of candidates from the time of nomination.

Third-party campaigners — an entity or person must be registered as a third-party campaigner before paying for more than \$2,000 in electoral expenditure incurred in the capped expenditure period for an election.

Associated entities — a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members must be registered as an associated entity.

Party agents and official agents — each party must appoint a party agent and each third-party campaigner and associated entity must appoint an official agent. Agents are responsible for disclosing political donations and electoral expenditure on behalf of parties, third-party campaigners, and associated entities, and in certain cases, candidates, groups, and elected members.

During 2020–21, the Electoral Commission registered candidates, groups of candidates and third-party campaigners for the 2021 Upper Hunter State by-election, the 2021 Local Government elections, the deferred Central Coast Council and Wingecarribee Shire Council elections expected to be held in 2022 and the 2023 NSW State election.

Of the 15 candidates registered for the 2021 Upper Hunter State by-election, six were deemed to be registered upon nomination.

The registrations of two candidates and one third-party campaigner were cancelled for the 2021 NSW Local Government elections at the request of the candidates and third-party campaigner as shown in Table 4.

The Electoral Commission registered seven party agents and cancelled the registration of three party agents following notification of the resignation of those agents.

As of 30 June 2021, all but one party had a registered party agent.

Thirteen official agents of third-party campaigners were registered no official agents of associated entities were registered during the year. If, at any time, a third-party campaigner or associated entity does not have an appointed official agent the Electoral Commission may designate a person as official agent. The Electoral Commission did not designate any person to be an official agent. The registrations of no official agents were cancelled.

There were no new associated entities registered. As of 30 June 2020, there were four registered associated entities. Each of the four associated entities were registered prior to 1 July 2020. Each registered associated entity had a registered official agent.

Registration of electoral participants

continued

Table 4. Candidate, group and third-party campaigner registered during 2020–21

Election event	Candidates	Groups of candidates	Third-party campaigners	Registrations cancelled
2021 Upper Hunter State by-election	15	N/A	12	0
2021 NSW Local Government elections	625	109	1	12
2022 Central Coast Council election	1	0	0	0
2022 Wingecarribee Shire Council election	32	1	0	0
2023 NSW State election	2	0	0	0
Total	675	110	13	12

To be eligible to be appointed as a party agent or official agent a person must satisfy several criteria including successfully completing an online agent training program provided by the Electoral Commission. Individuals who have certain accounting qualifications are not required to complete the agent training program. Fifteen people successfully completed the online agent training program during 2020–21.

Notification of party agent consents

At local government elections each candidate is responsible for the management and disclosure of their political donations and electoral expenditure. The lead candidate of each group is responsible for the management and disclosure of the group's political donations and electoral expenditure. Each local government elected member is responsible for the management and disclosure of their political donations and electoral expenditure.

If a candidate or elected member is a member of a registered party, or group members are members of a registered party, the candidate, group or elected member can enter into an agreement with the party agent of the party for the party agent to be responsible for the management and disclosure of the candidate, group

or elected member's political donations and electoral expenditure. Such an agreement is only in effect if the Electoral Commission has been notified that the party agent has consented to such an agreement.

The Electoral Commission was not notified that any party agent had consented to agree to be responsible for the management and disclosure of political donations and electoral expenditure on behalf of a local government elected member, candidate or group of candidates.

Note: on 1 July 2021, the Electoral Funding Act was amended to provide for a party agent to notify the Electoral Commission of a decision to be responsible for the disclosures of local government elected members, candidates and groups who are members of the party. Refer to the Legislative change section of this report for more details.

Registration of third-party lobbyists

Third-party lobbyists and individuals engaged to undertake lobbying on behalf of a third-party lobbyist must be registered in the Lobbyist Register, which is kept and maintained by the Electoral Commission under the Lobbying of Government Officials Act. The Lobbyist Register is published on the Electoral Commission's [website](#).

Thirty-one new third-party lobbyists were registered during 2020–21. As of 30 June 2021, 157 third-party lobbyists were registered.

Each registered third-party lobbyist is required to appoint a person as the officer responsible for the lobbyist's compliance with NSW lobbying laws. Such officers are responsible for completing the Electoral Commission's online training on an annual basis.

Registered third-party lobbyists are responsible for updating the Lobbyist Register within 10 days of any change to the information on the register including the details of their clients and details of foreign principals whose interests the lobbyist is representing.

Registered third-party lobbyists are also required to provide to the Electoral Commission, on 31 January, 31 May and 30 September each year, confirmation that their registered details are up to date.

Failure to comply with the requirements of the Lobbying of Government Officials Act or the Lobbyists Code of Conduct can result in the suspension or cancellation of a lobbyist's registration. Decisions made by the Electoral Commission to suspend or cancel a third-party lobbyist's registration or to issue a warning are detailed in the Compliance and enforcement section of this report.

The Electoral Commission cancelled the registration of 12 third-party lobbyists at their request as they were no longer carrying on the business of lobbying. The registration of six lobbyists was suspended and six cancelled for failure to confirm their details when required.

Details of the decisions made by the Electoral Commission in relation to the registration of third-party lobbyists and the reasons for those decisions are published on the Electoral Commission's [website](#).

Adjustment for inflation of monetary amounts

The Electoral Funding Act requires the caps on political donations, indirect campaign contributions, electoral expenditure, and public funding amounts to be adjusted for inflation periodically. The Electoral Commission is required to publish notice of adjusted amounts on its website and on the NSW legislation website.

Political donations and indirect campaign contributions

Political donations and indirect campaign contributions are subject to caps. The caps on political donations apply to:

- political parties (registered and unregistered)
- groups of candidates
- candidates
- elected members
- third-party campaigners
- associated entities.

The caps on indirect campaign contributions apply to:

- political parties (registered and unregistered)
- groups of candidates
- candidates
- elected members.

The caps on political donations and indirect campaign contributions were adjusted for inflation for the 2021–22 financial year and are published on the Electoral Commission's [website](#).

Table 5. Caps on political donations and indirect campaign contributions 2021–22

Political participant type	Donation cap
Registered political parties	\$6,700
Unregistered political parties	\$3,100
Groups of candidates	\$6,700
Candidates	\$3,100
Elected members	\$3,100
Third-party campaigners	\$3,100
Associated entities	\$3,100

There are exemptions to the caps on political donations that apply to donations made in the financial year in which a NSW state general election is held. These amounts were also adjusted for inflation for the 2021–22 financial year.

Table 6. Exemptions to the donation caps 2021–22

Category	Exemption
Donations made to a party by a candidate in a Legislative Council election who is a member of the party	\$53,400
Donations made to a group of candidates by a candidate in Legislative Council election who is a member of the group but is not a member of a party	\$53,400

Electoral expenditure

Electoral expenditure is subject to caps at state and local government elections. At state elections the caps on electoral expenditure apply to:

- political parties (registered and unregistered)
- independent groups for a Legislative Council election
- candidates
- third-party campaigners.

Expenditure caps applicable at state elections are adjusted for inflation every four years after each NSW state general election so were not adjusted for inflation during 2020–21. The expenditure caps applied at the 2021 Upper Hunter State by-election are listed in Table 7.

Table 7. Caps on electoral expenditure incurred for the 2021 Upper Hunter State by-election

Political participant	Applicable expenditure cap
Candidate in a Legislative Assembly by-election	\$265,000
Third-party campaigner at a state by-election	\$21,600

The caps for state elections are published on the Electoral Commission's [website](#).

At local government elections the expenditure caps apply to:

- political parties (registered and unregistered)
- groups of candidates
- ungrouped candidates
- third-party campaigners.

Expenditure caps applicable at local government elections are adjusted for inflation after each local government ordinary election. The expenditure caps applicable to each local government area and ward are based on the number of enrolled electors in each local government area or ward as determined by the Electoral Commissioner as at 12 months before the next local government ordinary elections.

In June 2020, the local government general elections were postponed to 4 September 2021 due to the impacts of the COVID-19 pandemic. As a result, caps on electoral expenditure were not adjusted during 2020–21. The caps applicable at local government elections are published on the Electoral Commission's [website](#).

Due to the postponement of the local government elections the number of enrolled electors in each local government area and ward were redetermined by the Electoral Commissioner based on the number of enrolled electors as of 4 September 2020.

Public funding

The caps applicable to payments from the Administration Fund and New Parties Fund are adjusted each calendar year and are published on the Electoral Commission's [website](#).

The maximum amount an eligible party or elected member can receive from the Administration Fund in relation to a quarterly period is the lesser amount of the party or elected member's applicable cap or the amount of administrative and operating expenditure incurred in a quarterly period. The applicable caps for the Administration Fund for the 2021 calendar year are listed in Table 8.

Table 8. Caps applicable to payments from the Administration Fund for expenditure incurred in 2021

Category	Amount
If a Parliamentary party has one endorsed elected member	\$91,100
If a Parliamentary party has two endorsed elected members	\$156,000
If a Parliamentary party has three endorsed elected members	\$194,900
If a Parliamentary party has more than three endorsed elected members	\$194,900 + \$31,200 for each additional elected member up to 22 elected members
An independent elected member	\$58,800

The annual amount payable to an eligible party from the New Parties Fund is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the relevant maximum amount applicable to the party. The relevant maximum amounts for the New Parties Fund for the 2021 calendar year are shown in Table 9.

Table 9. Relevant maximum amounts payable from the New Parties Fund for expenditure incurred in 2021

Category	Amount
Per first preference vote received by each endorsed candidate of the party at the previous state general election	\$0.68
Maximum amount for a party that is registered less than eight years	\$12,900

Disclosures of political donations and electoral expenditure

The Electoral Funding Act requires political donations and electoral expenditure to be disclosed to the Electoral Commission by:

- political parties
- elected members of the NSW Parliament and local councils
- associated entities of registered parties and elected members
- candidates, groups and third-party campaigners for NSW state and local government elections
- political donors who make reportable political donations.

The Electoral Commission is responsible for publishing the disclosures of political donations and electoral expenditure on its [website](#) and for enforcing the laws that apply to political donations and electoral expenditure.

Disclosures required to be made

Political donations made or received by, or on behalf of, political parties, elected members, candidates, groups of candidates and associated entities must be disclosed every six months.

Reportable political donations received by, or on behalf of, third-party campaigners for the purpose of incurring electoral expenditure in the capped expenditure period for an election must be disclosed every six months.

The half-yearly disclosure periods for the disclosure of political donations are 1 July to 31 December and 1 January to 30 June, with half-yearly disclosures due by 28 January and 28 July respectively.

Political donors that make reportable political donations, known as major political donors, must disclose those donations annually. Political donors include third-party campaigners that make reportable political donations. The annual disclosure period is 1 July to 30 June with disclosures due by 28 July.

Electoral expenditure incurred by, or on behalf of, political parties, associated entities, elected members, candidates, groups, and third-party campaigners must be disclosed annually. The annual disclosure period is 1 July to 30 June with disclosures due by 22 September. Third-party campaigners are only required to disclose electoral expenditure incurred in the capped expenditure period for an election.

Who is responsible for making disclosures?

The Electoral Funding Act sets out the rules that determine the person responsible for making disclosures that were due to be submitted to the Electoral Commission during 2020–21 as set out in Table 10.

Table 10. Person responsible to submit disclosures due during 2020–21

Category	Person responsible
Political party	Party agent
Member of Parliament	Party agent, if the member of Parliament is a member of a party that is registered for state elections, or Member of Parliament, in all other cases
State election candidate	Party agent, if the candidate is a member of a party that is registered for state elections, or Candidate, in all other cases
State election group of candidates	Party agent of the party of which the lead candidate is a member, where the lead candidate and at least one other group member is a member of a party that is registered for state elections, or Lead candidate, in all other cases
Local government councillor or mayor	Councillor or mayor, or Party agent of a registered party where the councillor or mayor is a member of the party and the party agent has consented to be the person responsible and has notified the Electoral Commission
Local government election candidate	Candidate, or Party agent of a registered party where the candidate is a member of the party and the party agent has consented to be the person responsible and has notified the Electoral Commission
Local government election group of candidates	Lead candidate, or Party agent of a registered party where the lead candidate is a member of the party and the party agent has consented to be the person responsible and has notified the Electoral Commission

Category	Person responsible
Third-party campaigner	Official agent appointed by the third-party campaigner or designated by the Electoral Commission
Associated entity	Official agent appointed by the associated entity or designated by the Electoral Commission
Major political donor	The donor

How are disclosures made?

Disclosures due during 2020–21 were required to be made using the forms published on the Electoral Commission’s [website](#). The forms for a disclosure period are published on the website on the first day of the disclosure lodgement period and are removed prior to the end of the next disclosure lodgement period. Those people responsible for submitting a disclosure are notified when the forms are available for use and provided with information on how and when to disclose.

On 21 June 2021, the Electoral Commission launched Funding and Disclosure Online, an online disclosure system. The system was available to prepare and submit disclosures for the disclosure lodgement period ending 30 June 2021 which were due to be received from 1 July 2021. Funding and Disclosure Online was also available for amended disclosures to be submitted for disclosure lodgement periods 31 December 2018 onwards. During 2020–21, no amended disclosures were received through Funding and Disclosure Online.

Fact sheets were published on the Electoral Commission’s website to help people comply with the disclosure requirements. The disclosure requirements are promoted on the Electoral Commission’s website at the time disclosures are due to be submitted. The Electoral Commission aims to increase awareness of the disclosure requirements more broadly by promoting the disclosure requirements on social media platforms.

The disclosure forms include a declaration that must be made by the person responsible for making the disclosure. The declaration is to the effect that all that is required to be disclosed has been disclosed. Each disclosure received is checked to make sure the person who is lawfully required to submit the disclosure has signed the declaration and used the approved form.

Political parties are provided with a worksheet to populate the information required to be disclosed in lieu of using the tables in the disclosure forms. A disclosure form must be signed and submitted even if a worksheet has been used.

If a person responsible for making a disclosure is not able to lodge the disclosure form on time, they can request an extension. The request must be made before the due date for submitting the disclosure and the Electoral Commission can only approve an extension if proper reasons exist to justify the extension. The Electoral Commission can grant a conditional extension where the person is asked to disclose what they can by the due date and then disclose the remaining information by the extended due date.

If a disclosure has not been submitted in the form and manner approved by the Electoral Commission or in accordance with the Electoral Funding Act the disclosure is taken to be ‘invalidly’ submitted. An invalid disclosure generally occurs where:

- the approved form is not used
- the declaration was not made by the person responsible.

In such cases, the person responsible for submitting the disclosure is notified and advised how to validly submit the disclosure.

An ‘incomplete’ disclosure form is one where the information submitted is not complete. When an ‘incomplete’ disclosure form is received the person responsible for making the disclosure is notified and is given an opportunity to provide the information to be disclosed.

The Electoral Funding Act provides that a person who submitted a disclosure (or that person’s successor as the agent of the party, elected member, group, candidate, third-party campaigner or associated entity concerned) may amend the disclosure by submitting an amended disclosure with the Electoral Commission. An amended disclosure must be in the manner and form approved by the Electoral Commission. An amended disclosure can alter, omit, add or substitute information disclosed.

The Electoral Commission is authorised under the Electoral Funding Act to audit disclosures that are received and to enforce breaches of the disclosure requirements. Detailed information about the audit activities of the Electoral Commission is set out in the Compliance and enforcement section of this report.

Disclosures of political donations and electoral expenditure continued

Disclosures received during 2020–21

During 2020–21, 5,039 disclosures were expected to be received for the disclosure periods listed in Table 11. The number of disclosures submitted on time was 3,548 representing an overall 'on-time' lodgement rate of approximately 70 per cent. There were 1,265 disclosure submitted after the due date. Amended disclosures were also received and several disclosures and amended disclosures were also received for prior periods.

The Electoral Commission is required to publish, as soon as practicable, disclosures of reportable political donations and electoral expenditure and any other information it considers relevant. During 2020–21 we published 5,063 disclosures that were received. These included disclosures and amended disclosures received for prior periods.

Detailed information about prior period can be found in annual reports on the Electoral Commission's [website](#).

On-time lodgement rates

A comparison of 'on-time' lodgement rates in Table 12 shows a decline in the level of compliance by several political participants. This may be partly explained by the COVID-19 pandemic impacting the capacity of people to disclose on time if they were working from home and did not have ready access to political donation and electoral expenditure records. In addition, the Electoral Commission did not hold email addresses for several major political donors, so those donors were not reminded directly of their disclosure obligation. Previous years' data,

however, shows a steady decline from a low compliance baseline in the first year of the current Electoral Commission's operations. The 'on-time' lodgement rate by donors will also change once the Electoral Commission is made aware of major political donors through the disclosures made by political parties and other political participants, and contacts those donors who have not made a disclosure.

The decline in compliance from major political donors suggests there is still a significant lack of awareness by donors of their disclosure obligations. That will be the focus of awareness-raising activities – including the recipients of such donations – in the future.

Second half-yearly political donation disclosures 2019-20

Political donation disclosures for the second half-yearly period ending 30 June 2020 were due to be submitted between 1 July and 28 July 2020. No elections were held in the second half-yearly period, so this was not a major period for disclosure.

We expected to receive 1,547 half-yearly disclosures. We received 1,038 by the due date, taking into account that the due date was extended in a number of cases mainly due to COVID-19 impacts; 448 disclosures were received in 2020–21 after the due date and 61 were not received when due.

Table 11. Disclosures received and relevant disclosure periods 2020–21

Disclosure period	Disclosure period	First date of lodgement	Disclosures due
Second-half yearly political donation 2019–20	1 January 2020 to 30 June 2020	1 July 2020	28 July 2020
Annual electoral expenditure 2019–20	1 July 2019 to 30 June 2020	1 July 2020	22 September 2020
Annual reportable political donations by donors 2019–20	1 July 2019 to 30 June 2020	1 July 2020	28 July 2020
First-half period political donation 2020–21	1 July 2020 to 31 December 2020	1 January 2021	28 January 2021

Table 12. On-time lodgement rates for disclosures received since 2014-15

Political participant	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Political parties	81%	78%	64%	72%	76%	76%	72%
Elected members	83%	76%	67%	74%	76%	70%	75%
Candidates	63%	71%	64%	60%	78%	78%	56%
Groups of candidates	71%	67%	65%	58%	75%	68%	53%
Third-party campaigners	85%	N/A	54%	47%	98%	80%	100%
Associated entities	N/A	N/A	N/A	N/A	100%	67%	100%
Donors	52%	57%	50%	47%	43%	43%	31%

Note: Where "N/A" is shown, the political participant category was not required to submit disclosures or there were no political participants of that category for that year.

Table 13. Disclosure obligations and disclosures received second half-yearly period 2019-20

Political participant	Disclosure obligations	Received on time	Received late	Not received	On time lodgement
Political parties	47	31	16	0	66%
Elected members	1,421	968	399	54	68%
Candidates	69	32	30	7	46%
Groups of candidates	5	2	3	0	40%
Third-party campaigners	1	1	0	0	100%
Associated entities	4	4	0	0	100%
Total	1,547	1,038	449	61	67%

The due date was extended in 52 cases with respect to disclosures to be made by or on behalf of three political parties and 49 elected members.

In addition to disclosures lodged there were 14 amended disclosures lodged by or on behalf of two political parties, 10 elected members and one candidate.

There were 81 disclosures that were not validly lodged. In 76 cases a valid disclosure form was subsequently lodged. The most common reasons for a disclosure form not being validly lodged were that the wrong disclosure form was used or that the declaration made on the form did not comply (for example, was not signed or was signed by the wrong person).

Disclosures of political donations and electoral expenditure continued

There were 1,028, or 69 per cent of disclosures received that were nil disclosures. A nil disclosure is one where no political donations were disclosed. Table 14 shows the nil disclosures received.

Table 14. Nil disclosures received for the second half-yearly period 2019-20

Political participant	Number of nil disclosures received	Nil disclosures as a percentage of all disclosures received by political participant
Political parties	24	51%
Elected members	942	69%
Candidates	52	84%
Groups of candidates	5	71%
Third-party campaigners	1	100%
Associated entities	4	100%
Total	1,028	69%

Based on the disclosures and amended disclosures received in 2020-21, a total of \$5,446,417.01 in political donations and reportable loans were received in the half-yearly period, as shown in Table 15.

Table 15. Political donations and loans received second half-yearly period 2019-20

Political participant	Small political donations received	Reportable political donations received	Membership and affiliation fees received	Reportable loans received	Total donations and loans received
Political parties	\$1,521,159.04	\$1,215,324.45	\$1,341,309.87	\$836,334.47	\$4,914,127.83
Elected members	\$23,680.18	\$26,792.00	N/A	\$480,000.00	\$530,472.18
Candidates	\$1,817.00	\$0	N/A	\$0	\$1,817.00
Groups	\$0	\$0	N/A	\$0	\$0
Third-party campaigners	N/A	\$0	N/A	\$0	\$0
Associated entities	\$0	\$0	N/A	\$0	\$0
Total	\$1,546,656.22	\$1,242,116.45	\$1,341,309.87	\$1,316,334.47	\$5,446,417.01

Note: N/A means the political participant category is not required to disclose the category of political donations.

Based on the disclosures and amended disclosures received 2020–21, a total of \$607,446.22 in political donations were made by political participants in the half-yearly period as shown in Table 16.

Table 16. Political donations made second half-yearly period 2019–20

Political participant	Small political donations made	Reportable political donations made	Total
Political parties	\$517.00	\$1,250.00	\$1,767.00
Elected members	\$72,352.14	\$529,554.68	\$601,906.82
Candidates	\$295.00	\$3,477.40	\$3,772.40
Groups	\$0	\$0	\$0
Third-party campaigners	N/A	\$0	\$0
Associated entities	\$0	\$0	\$0
Total	\$73,164.14	\$534,282.08	\$607,446.22

*Third-party campaigners can disclose reportable political donations made in a third-party campaigner disclosure form or in an annual major political donor form.

The disclosures and amended disclosures received also included the net or gross proceeds from fundraising ventures and functions. The amounts disclosed are listed in Table 17.

Table 17. Net or gross proceeds from fundraising ventures and functions second half-yearly period 2019–20

Political participant	Net or gross proceeds from fundraising ventures and functions
Political parties	\$96,780.80
Elected members	\$25,264.12
Candidates	\$0
Groups	\$0
Third-party campaigners	\$0
Associated entities	\$0
Total	\$122,044.92

The disclosures and amended disclosures received also included the payments made by candidates, elected members and groups of candidates into a campaign account. The amounts disclosed are listed in Table 18.

Table 18. Payments made by candidates, groups, and elected members into a campaign account second half-yearly period 2018–19

Political participant	Payments made into a campaign account
Elected members	\$44,458.07
Candidates	\$0
Groups	\$0
Total	\$44,458.07

Note: the disclosure of payments into a campaign account only applies where a party agent is not the person responsible to disclose on behalf of an elected member, candidate or group.

Disclosures of political donations and electoral expenditure continued

Financial records of political parties

Political parties are required to lodge copies of their financial records with their second half-yearly disclosure. The financial records covered the 2019–20 financial year. These records are used as part of the audits of political party disclosures. Table 19 shows the number of parties that complied with this requirement.

Table 19. Lodgement of financial records by parties second half-yearly disclosure 2019–20

Document	Lodged	Not available/ not lodged	Total
Audited financial statements (only for parties registered for state elections)	14	2	16
Financial records	14	33	47
Chart of accounts	12	35	47
Trial balance	13	34	47
Bank statements	25	22	47

Annual electoral expenditure disclosures 2019–20

Electoral expenditure disclosures for the annual period ending 30 June 2020 were due to be lodged between 1 July and 22 September 2020. The annual period did not include any elections so was not a major period for electoral expenditure disclosures.

We expected to receive 1,547 electoral expenditure disclosures. We received 1,207 by the due date; 297 disclosures were received during 2020–21 after the due date and 43 were not received by the end of the disclosure period.

Table 20. Disclosure obligations and disclosures received annual electoral expenditure period 2019–20

Political participant	Disclosure obligations	Received on time	Received late	Not received	On-time lodgement rate
Political parties	47	39	8	0	83%
Elected members	1,421	1,118	268	35	79%
Candidates	69	43	19	7	62%
Groups of candidates	5	2	2	1	40%
Third-party campaigners	1	1	0	0	100%
Associated entities	4	4	0	0	100%
Total	1,547	1,207	297	43	78%

In no cases was the due date extended.

In addition to disclosures lodged there were two amended disclosures lodged by or on behalf of one political party and one elected member.

There were 56 disclosures that were not validly lodged. In 53 cases a valid disclosure was subsequently lodged. The most common reasons for a disclosure form not being validly lodged were that the wrong disclosure form was used or that the declaration made on the form did not comply (for example, was not signed or was signed by the wrong person).

During 2020–21, 1,427, or 95 per cent of disclosures received were nil disclosures. A nil disclosure is one where no electoral expenditure was disclosed. Table 21 shows the nil disclosures by each category of political participant.

Table 21. Nil disclosures lodged annual electoral expenditure period 2019–20

Political participant	Number of nil disclosures received	Nil disclosures as a percentage of all disclosures received
Political parties	33	70%
Elected members	1,330	96%
Candidates	55	89%
Groups of candidates	4	100%
Third-party campaigners	1	100%
Associated entities	4	100%
Total	1,427	95%

Based on the disclosures and amended disclosures received in 2020–21, a total of \$806,173.79 in electoral expenditure was incurred in the annual period as shown in Table 22.

Table 22. Electoral expenditure incurred annual period 2019–20

Political participant	Political parties	Elected members	Candidates	Groups	Third-party campaigners	Associated entities	Total
Advertising	61,454.71	35,465.79	1,674.80	0	0	0	98,595.30
Production and distribution of electoral material	42,323.78	13,692.29	3,689.82	0	0	0	59,705.89
Internet, telecommunications, stationery, and postage	32,311.11	22,966.01	972.09	0	0	0	56,249.21
Employing staff engaged in election campaigns	53,867.02	71.49	0	0	0	0	53,938.51
Office accommodation for staff and candidates	4,131.78	608.40	0	0	0	0	4,740.18
Travel and travel accommodation for staff and candidates	3,663.88	67.30	0	0	0	0	3,731.18
Election campaign research	14,780.00	0	8,800.00	0	0	0	23,580
Fundraising and audit expenses	480,261.62	25,299.23	72.67	0	0	0	505,633.52
Total	692,793.90	98,170.51	15,209.38	0	0	0	806,173.79

Disclosures of political donations and electoral expenditure continued

Annual major political donor disclosures 2019–20

Major political donor disclosures for the annual period ending 30 June 2020 were due to be received between 1 July and 28 July 2020. As there were no elections, this was not a major period for major political donor disclosures.

We expected to receive approximately 393 major political donor disclosures. We received 120 by the due date, representing an 'on-time' lodgement rate of 31 per cent; 190 disclosures were received during 2020–21 after the due date and 83 were not received during 2020–21.

In no case was the due date extended. In addition to disclosures received, there were six amended disclosures received during 2020–21.

There were 23 disclosure forms that were not validly lodged. In 17 cases a valid disclosure form was subsequently received. The most common reasons for a disclosure form not being validly lodged were that the wrong disclosure form was used or that the declaration made on the form did not comply (for example, was not signed or was signed by the wrong person).

Based on the disclosures and amended disclosures received during 2020–21, a total of \$2,460,791.17 in reportable political donations were disclosed by major political donors as having been made during the annual period ending 30 June 2020.

First half-yearly political donation disclosures 2020–2021

Political donation disclosures for the first half-yearly period ending 31 December 2020 were due to be received between 1 January and 28 January 2021.

There were no elections held in the half-yearly period, so it was not a major disclosure period, however there were a number of candidates, groups and third-party campaigners registered for the 2021 Local Government elections and therefore were required to submit disclosures for this period.

We expected to receive 1,552 half-yearly disclosures. We received 1,183 by the due date, taking into account that the due date was extended in a number of cases; 330 disclosures were received during 2020–21 after the due date and 39 were not received during 2020–21.

The due date was extended in four cases with respect to disclosures to be made by or on behalf of four elected members. In addition to disclosures lodged there were seven amended disclosures lodged by or on behalf of two political parties and five elected members.

Table 23. Disclosure obligations and disclosures received first half-yearly period 2020–21

Political participant	Disclosure obligations	Received on time	Received late	Not received	On-time lodgement rate
Political parties	51	41	7	3	80%
Elected members	1,392	1,075	288	29	77%
Candidates	96	57	32	7	59%
Groups of candidates	9	6	3	0	67%
Third-party campaigners	0	0	0	0	N/A
Associated entities	4	4	0	0	100%
Total	1,552	1,183	330	39	76%

There were 92 disclosure forms that were not validly lodged. In 88 cases a valid disclosure form was subsequently received. The most common reasons for a disclosure form not being validly lodged were that the wrong disclosure form was used or that the declaration made on the form did not comply (for example, was not signed or was signed by the wrong person).

There were 1,132 nil disclosures lodged. A nil disclosure is one where no political donations were disclosed. Table 24 shows the nil disclosures by political participant.

Table 24. Nil disclosures lodged first half-yearly period 2019–20

Political participant	Number of nil disclosures lodged	Nil disclosures as a percentage of all disclosures lodged
Political parties	29	60%
Elected members	1,014	74%
Candidates	78	88%
Groups of candidates	7	78%
Third-party campaigners	N/A	N/A
Associated entities	4	100%
Total	1,132	75%

Note: No third-party campaigner disclosures were expected to be received and none were received.

Based on the disclosures and amended disclosures received during 2020–21, a total of \$4,793,864.65 in political donations and reportable loans were received in the half-yearly period as shown in Table 25.

Table 25. Political donations and loans received first half-yearly period 2020–21

Political participant	Small political donations received	Reportable political donations received	Membership and affiliation fees received	Reportable loans received	Total donations and loans received
Political parties	\$576,098.96	\$2,455,835.45	\$942,899.68	\$799,830.94	\$4,774,665.03
Elected members	\$7,717.32	\$8,540.00	N/A	\$0	\$16,257.32
Candidates	\$372.30	\$0	N/A	\$0	\$372.30
Groups	\$570.00	\$2,000.00	N/A	\$0	\$2,570.00
Third-party campaigners	N/A	\$0	N/A	\$0	\$0
Associated entities	\$0	\$0	N/A	\$0	\$0
Total	\$584,758.58	\$2,466,375.45	\$942,899.68	\$799,830.94	\$4,793,864.65

Disclosures of political donations and electoral expenditure continued

Based on the disclosures and amended disclosures received during 2020–21, a total of \$502,081.24 in political donations were made in the half-yearly period as shown in Table 26.

Table 26. Political donations made first half-yearly period 2020–21

Political Participant	Small political donations made	Reportable political donations made	Total
Political parties	\$100.00	\$0	\$100.00
Elected members	\$64,745.77	\$436,739.29	\$501,081.24
Candidates	\$496.18	\$0	\$496.18
Groups	\$0	\$0	\$0
Third-party campaigners*	N/A	\$0	\$0
Associated entities	\$0	\$0	\$0
Total	\$65,341.95	\$436,739.29	\$502,081.24

* Third-party campaigners can disclose reportable political donations made in their third-party campaigner disclosure form or in an annual major political donor form.

The disclosures and amended disclosures lodged also included the net or gross proceeds from fundraising ventures and functions. The amounts disclosed are listed in Table 27.

Table 27. Net or gross proceeds from fundraising ventures and functions first half-yearly period 2020-2021

Political participant	Net or gross proceeds from fundraising ventures and functions
Political parties	\$161,383.02
Elected members	\$4,868.40
Candidates	\$180.00
Groups	\$1,785.00
Third-party campaigners	\$0
Associated entities	\$0
Total	\$168,216.42

The disclosures and amended disclosures received also included the payments made by candidates, elected members, and groups of candidates into a campaign account. The amounts disclosed are listed in Table 28.

Table 28. Payments made by candidates, groups, and elected members into a campaign account first half-yearly period 2020–21

Political participant	Payments made into a campaign account
Elected members	\$31,492
Candidates	\$8,000
Groups	\$0
Total	\$39,492

Note: the disclosure of payments into a campaign accounts only applies where a party agent is not the person responsible to disclose on behalf of an elected member, candidate, or group.

Disclosures received for past periods

During 2020–21, several disclosures and amended disclosures were received for prior disclosure periods as shown in Table 29. Disclosures that are received past the due date are dealt with in accordance with the Electoral Commission’s Compliance and Enforcement Policy. Amended disclosures are generally received because of findings through a compliance audit.

Table 29. Disclosures and amended disclosures received during 2020–21 for past disclosure periods

Political participant	1st half-yearly period 2019–20	2019 NSW State election pre-election period	2018–19 annual period	2nd half-yearly period 2018–19	1st half-yearly period 2018–19	2017–18 annual period	2016–17 annual period	2015–16 annual period	2013–14 annual period
Political parties	1	2	4	11	6	2		1	
		5							
Elected members	8		3	1	1	2		1	1
	6			17	8				
Candidates		6	33	21	1	25	1		
Groups			1			8			
Third-party campaigners		1	1						
Associated entities									
Major political donors			6			3			
			27						

1 = Number of disclosures

1 = Number of amended disclosures

Note: disclosures and amended disclosures received for disclosure periods 30 June 2018 and prior were submitted according to the now repealed *Election Funding, Expenditure and Disclosures Act 1981*. Under that Act disclosures were lodged annually.

Obligations of registered parties and senior office holders

The Electoral Funding Act imposes certain governance and accountability requirements on registered parties.

Audited annual financial statements of registered parties

The Electoral Funding Act requires parties that are registered for state elections to provide the Electoral Commission with copies of the parties' audited annual financial statements. The annual financial statements must be prepared in accordance with the Australian Auditing Standards.

The annual financial statements are used as part of the audit and compliance program to ensure parties are complying with the disclosure and public funding requirements of the Electoral Funding Act.

A registered party is not entitled to receive public funding payments if the latest copy of the party's audited annual financial statements has not been lodged. The Electoral Commission is authorised to waive this requirement for parties that are not eligible to receive public funding or where the cost of compliance is unreasonable. The Electoral Commission has waived this requirement for parties that were not entitled to receive public funding payments during the financial year to which the financial statements relate.

During 2020–21, the audited annual financial statements were due to be received by 20 October 2020. Of the 16 parties registered for state elections at that time, 14 provide copies of the audited annual financial statements. The 'waiver' applied in two cases and those parties did not provide copies of the statements.

Senior office holders of registered parties

A senior office holder of a party is a person involved in the management or control of the party or the operations of the party. Senior office holders have a duty under the Electoral Funding Act to report to the Electoral Commission any conduct in connection with the party that the office holder knows or reasonably believes constitutes a contravention of the Act. This applies to senior office holders of parties registered for state elections and parties registered for local government elections.

The Electoral Funding Act states that a registered party is not eligible to receive public funding payments unless it provides the Electoral Commission with a list of senior office holders, their roles, and responsibilities. The NSW Electoral Commission must be notified as and when senior office holders change or the roles and responsibilities of a senior office holder changes.

During 2020–21 the registered parties that received public funding payments had all provided a list of senior office holders. The lists are published on the Electoral Commission's website. The Electoral Commission was notified on 20 occasions of changes to senior office holder lists. No public funding payments were withheld or delayed due to a party not providing a list or not notifying the Electoral Commission of changes to a list.

Public funding

The Electoral Funding Act provides for three schemes where public funds may be approved by the Electoral Commission for payment to eligible political parties, candidates and members of the NSW Parliament. Information about public funding claims is published and updated on the Electoral Commission's website, in accordance with the legislation.

The three schemes are:

- the Election Campaigns Fund provides payments to eligible parties and candidates for electoral expenditure incurred at a state election,
- the Administration Fund provides payments to eligible parties and independent members of the NSW Parliament for administrative expenditure incurred, and
- the New Parties Fund provides payments to eligible parties for policy development expenditure incurred.

Each scheme sets out criteria that determines eligibility to receive payments, the way claims for funding must be made and the rules for assessing the amount a claimant is entitled to receive.

One of the objects of the Electoral Funding Act is to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose. To support this objective the Electoral Commission audits claims, and claimants are required to respond to requests for information and provide documents to support the audit process.

A risk-based audit is undertaken for each claim. A risk-based audit may include auditing a sample of expenditure included in a claim. A risk profile is determined for each claimant based on the likelihood and consequence of potential incidents of including unauthorised expenditure in a claim.

Each scheme reimburses claimants for expenditure incurred. In some cases, payments are made in advance where claimants subsequently provide evidence of expenditure incurred. Any excess amounts paid to claimants are payable back to New South Wales consolidated revenue.

The Electoral Commission is authorised under the legislation to withhold payments where a claimant has not met the disclosure requirements for political donations or electoral expenditure or where a party has not provided the Electoral Commission with a copy of its audited annual financial statements or an up-to-date list of senior office holders.

The Electoral Commission is authorised under the legislation to disallow items of expenditure included in a claim under certain circumstances including if expenditure is not eligible to be included in a claim.

Election Campaigns Fund

The purpose of the Election Campaigns Fund is to reimburse eligible political parties and candidates for electoral expenditure incurred in connection with a state election. Electoral expenditure is expenditure that promotes or opposes a party or candidate or influences the vote at an election. Electoral expenditure is capped in the lead-up to a state election, which means parties and candidates can only spend within the applicable cap amount.

Parties and candidates must meet the criteria to be eligible to receive payments from the fund. This includes that a party or candidate is registered for a NSW state general election or by-election and a candidate is elected, or an endorsed candidate of the party is elected, or receives at least four per cent of the first preference vote.

The expenditure that can be included in a claim is actual electoral expenditure incurred by the eligible party or candidate during the capped expenditure period for the election. In the case of a state general election expenditure incurred in the three months prior to the start of the capped expenditure period can also be included in a claim. The claim must list the expenditure incurred and the expenditure must be supported by evidence including invoices or receipts.

An eligible party or candidate is entitled to receive the lesser amount of the following:

- a certain dollar amount for each first preference vote received or
- the amount of electoral expenditure incurred in the claimable period that is within the expenditure cap of the party or candidate.

During 2020–21, the Electoral Commission made payments from the Election Campaigns Fund to one eligible candidate for the 2019 NSW State election and one eligible candidate for the 2021 Upper Hunter State by-election.

The total amount paid from the Election Campaigns Fund during 2020–21 was \$43,108.08.

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Following a state election, we advise all eligible parties and candidates of the maximum amount payable and the process and deadline for making a claim. The maximum amount payable is based on the number of first preference votes received by the eligible party or candidate. The maximum entitlement of eligible parties and candidates can be found on the Electoral Commission's [website](#) and the '[dollar per vote](#)' amounts.

The due date for lodging a claim can be extended on a case-by-case basis if the Electoral Commission is satisfied that proper reason exists to justify an extension.

2019 NSW State election

During 2019–20, a candidate made a claim for payment after the due date of 2 September 2019. The Electoral Commission accepted the claim and extended the due date with respect to the candidate. While the claim was received during 2019–20, payment was made during 2020–21.

2021 Upper Hunter State by-election

The Upper Hunter state by-election was held 22 May 2021. Thirteen candidates registered under the *Electoral Funding Act 2018* were duly nominated for election. Six of those candidates received at least four per cent of the first preference votes at the by-election and were therefore eligible to make a claim from the Election Campaigns Fund. The due date for making a claim is 28 September 2021. The eligible candidates are:

1. DRAYTON, Jeff
2. GILROY, Sue
3. LAYZELL, Dave
4. McNAMARA, Dale
5. NORMAN, Tracey
6. O'CONNELL, Kirsty

Parties are not eligible to make claims with respect to a by-election. During 2020–21, one candidate made a claim for payment and a payment was made.

Table 30. Payments made with respect to the 2019 NSW State election

Candidate name	Electoral District	Party Affiliation	Maximum amount payable	Payment amount	Payment date
Saud Abu-Samen	Bankstown		\$16,657.92	\$16,657.92	25/08/2020

Table 31. Payments made with respect to the Upper Hunter State by-election

Candidate name	Party affiliation	Maximum amount payable	Payment amount	Payment date
Sue Gilroy	Shooters, Fishers & Farmers Party (NSW) Incorporated	\$26,450.16	\$26,450.16	30/06/2021

Administration Fund

The purpose of the Administration Fund is to reimburse eligible political parties and independent members of the NSW Parliament for administrative and operating expenditure incurred. Administrative and operating expenditure includes:

- expenditure on the administration or management of the activities of the eligible party or elected member
- expenditure for conferences, seminars, meetings, or similar functions at which the policies of the eligible party or elected member are discussed or formulated
- expenditure on providing information to the public or a section of the public about the eligible party or elected member
- expenditure on providing information to members and supporters of the eligible party or elected member
- expenditure in respect of the audit of the financial accounts of the eligible party or elected member
- expenditure on equipment and training to ensure compliance by the eligible party, elected members or endorsed candidates of the eligible party with the obligations under the *Electoral Funding Act 2018*
- expenditure on the reasonable remuneration of staff engaged in the above activities for the eligible party or elected member (being the proportion of that remuneration that relates to the time spent on those activities)
- reasonable expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities)
- expenditure on office accommodation for the above staff and equipment
- expenditure on interest payments on loans.

Administrative and operating expenditure does not include:

- electoral expenditure
- expenditure for which a member may claim a parliamentary allowance as a member
- expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament
- expenditure prescribed by the Electoral Funding Regulation.

Parties and elected members must meet the criteria to be eligible to receive payments from the fund. This includes that a party is registered for state elections and members of Parliament are endorsed by the party. A Member of Parliament is eligible to receive payments from the fund only if the elected member was not endorsed by a party at the election in which the elected member was last elected and continues not to be endorsed by a party.

The fund operates on a calendar-year basis where eligible parties and elected members have a maximum amount payable each quarter and a claim for quarterly payment may be made following the end of a quarter.

A claim for quarterly payment can only include actual administrative or operating expenditure incurred by or on behalf of the party or elected member in the relevant quarter. Eligible parties and elected members are not entitled to be reimbursed more than the amount of administrative and operating expenditure incurred and the amount payable is subject to the maximum amount payable.

The maximum amount payable to an eligible party is based on the number of endorsed elected members of the party. The maximum amounts payable are adjusted for inflation each calendar year. If an eligible party or elected member claims expenditure more than the maximum amount payable, the amount payable to the eligible party or elected member cannot exceed the maximum amount payable. Excess amounts of expenditure can be carried over to the following quarter in the calendar year.

During 2020–21, payments were made with respect to expenditure incurred during the 2020 and 2021 calendar years. The maximum amounts payable for expenditure incurred in the 2020 calendar year are published on the Electoral Commission's [website](#). The maximum amounts payable for expenditure incurred in the 2021 calendar year are in Table 8 of this report.

Eligible parties and elected members are entitled to claim an advance payment at the beginning of each quarter. A quarterly advance payment is equal to 50 per cent of what the eligible party or elected member would be entitled to claim in relation to the quarter once the quarter has ended. Quarterly advance payments are made on the first business day of each quarter.

To make a quarterly advance payment it is presumed the eligible party or elected member will continue to be eligible for payments at the end of the quarter. After a quarter has ended an eligible party or elected member is entitled to claim a quarterly payment for that quarter. Expenditure incurred in the quarter can be included in a quarterly claim and any expenditure from a previous

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quarter in the calendar year that has been carried over. Claims for quarterly payment must be made within three months of the end of a quarter.

Quarterly payments must be made by the Electoral Commission within 30 days of receiving a claim for payment, declaration of expenditure and the required supporting documentation in relation to the expenditure included in the claim. An advance payment made to a party or elected member is deducted from the quarterly amount payable.

If a party or elected member receives by way of an advance payment or quarterly payment more than the amount the party or elected member is entitled to receive the excess amount must be repaid.

The Electoral Commission paid over \$14.4 million from the Administration Fund to nine eligible parties and three eligible independent elected members during 2020–21. Copies of claims for payment received and payments and repayments made are published on the Electoral Commission's [website](#).

Payments made with respect to expenditure incurred in the 2020 calendar year are shown in Table 32.

Table 32. Amounts paid during 2020–21 for administrative expenditure incurred during 2020

Name of party or MP	Quarterly maximum amount*	Payment type	Status	Amount	Date of payment/ Repayment
Alexander Greenwich	\$58,600.00	2nd quarterly payment	Paid	\$13,852.66	6/08/2020
	\$58,600.00	3rd quarterly advance	Paid	\$29,300.00	1/07/2020
		3rd quarterly payment	Paid	\$14,661.21	17/12/2020
	\$58,600.00	4th quarterly advance	Paid	\$29,300.00	1/10/2020
		4th quarterly payment	Paid	\$17,507.47	31/03/2021
Animal Justice Party	\$155,500.00	1st quarterly payment	Paid	\$77,750.00	23/07/2020
	\$155,500.00	2nd quarterly payment	Paid	\$77,750.00	1/10/2020
	\$155,500.00	3rd quarterly advance	Paid	\$77,750.00	1/07/2020
		3rd quarterly payment	Paid	\$77,750.00	22/01/2021
	\$155,500.00	4th quarterly advance	Paid	\$77,750.00	1/10/2020
		4th quarterly payment	Paid	\$77,750.00	31/03/2021
Australian Labor Party (NSW Branch)	\$878,500.00	2nd quarterly payment	Paid	\$439,250.00	1/10/2020
	\$878,500.00	3rd quarterly advance	Paid	\$439,250.00	1/07/2020
		3rd quarterly payment	Paid	\$439,250.00	22/12/2020
	\$878,500.00	4th quarterly advance	Paid	\$439,250.00	1/10/2020
		4th quarterly payment	Paid	\$439,250.00	28/04/2021
Christian Democratic Party (Fred Nile Group)	\$90,800.00	2nd quarterly payment	Paid	\$45,400.00	4/08/2020
	\$90,800.00	3rd quarterly advance	Paid	\$45,400.00	1/07/2020
		3rd quarterly payment	Paid	\$45,400.00	17/12/2020
	\$90,800.00	4th quarterly advance	Paid	\$45,400.00	1/10/2020
		4th quarterly payment	Paid	\$45,400.00	11/03/2021

Name of party or MP	Quarterly maximum amount*	Payment type	Status	Amount	Date of payment/Repayment
Country Labor Party/ Australian Labor Party (NSW Branch)	\$287,600.00	2nd quarterly payment	Paid	\$143,800.00	1/10/2020
	\$287,600.00	3rd quarterly advance	Paid	\$143,800.00	1/07/2020
		3rd quarterly payment	Paid	\$143,800.00	22/12/2020
	\$287,600.00	4th quarterly advance	Paid	\$143,800.00	1/10/2020
Gregory Piper	\$58,600.00	2nd quarterly payment	Paid	\$1,543.90	30/07/2020
	\$58,600.00	3rd quarterly advance	Paid	\$29,300.00	1/07/2020
		3rd quarterly payment	Repaid	\$3,860.44	17/03/2021
	\$58,600.00	4th quarterly advance	Paid	\$29,300.00	1/10/2020
		4th quarterly payment	Repaid	\$5,949.66	17/03/2021
Joseph McGirr	\$58,600.00	1st quarterly payment	Repaid	\$7,911.93	20/07/2020
		1st quarterly payment**	Paid	\$5,196.50	29/09/2020
	\$58,600.00	2nd quarterly payment	Paid	\$17,503.34	18/09/2020
	\$58,600.00	3rd quarterly advance	Paid	\$29,300.00	1/07/2020
		3rd quarterly payment	Repaid	\$2,763.40	3/11/2020
	\$58,600.00	4th quarterly advance	Paid	\$29,300.00	1/10/2020
4th quarterly payment		Repaid	\$6,877.08	8/04/2021	
The Liberal Party of Australia, NSW Division	\$878,500.00	2nd quarterly payment	Paid	\$439,250.00	17/09/2020
	\$878,500.00	3rd quarterly advance	Paid	\$439,250.00	1/07/2020
		3rd quarterly payment	Paid	\$439,250.00	14/01/2021
	\$878,500.00	4th quarterly advance	Paid	\$439,250.00	1/10/2020
		4th quarterly payment	Paid	\$439,250.00	18/03/2021

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Name of party or MP	Quarterly maximum amount*	Payment type	Status	Amount	Date of payment/ Repayment
National Party of Australia – NSW	\$691,900.00	1st quarterly payment	Paid	\$345,950.00	23/07/2020
	\$691,900.00	2nd quarterly payment	Paid	\$345,950.00	27/10/2020
	\$660,800.00	3rd quarterly advance	Paid	\$345,950.00	1/07/2020
		3rd quarterly payment	Paid	\$314,850.00	14/01/2021
	\$660,800.00	4th quarterly advance	Paid	\$330,400.00	1/10/2020
		4th quarterly payment	Paid	\$330,400.00	28/04/2021
Pauline Hanson's One Nation	\$155,500.00	1st quarterly payment	Repaid	\$6,745.00	8/09/2020
	\$155,500.00	2nd quarterly payment	Paid	\$16,662.35	4/01/2021
	\$155,500.00	3rd quarterly advance	Paid	\$77,750.00	1/07/2020
		3rd quarterly payment	Paid	\$9,719.31	22/01/2021
	\$155,500.00	4th quarterly advance	Paid	\$77,750.00	1/10/2020
		4th quarterly payment	Paid	\$23,265.26	15/04/2021
Shooters, Fishers and Farmers Party (NSW) Incorporated	\$256,500.00	2nd quarterly payment	Paid	\$128,250.00	13/08/2020
	\$256,500.00	3rd quarterly advance	Paid	\$128,250.00	1/07/2020
		3rd quarterly payment	Paid	\$128,250.00	12/11/2020
	\$256,500.00	4th quarterly advance	Paid	\$128,250.00	1/10/2020
4th quarterly payment		Paid	\$128,250.00	11/02/2021	
The Greens NSW	\$287,600.00	1st quarterly payment	Paid	\$121,660.95	23/07/2020
	\$287,600.00	2nd quarterly payment	Paid	\$143,800.00	22/10/2020
	\$287,600.00	3rd quarterly advance	Paid	\$143,800.00	1/07/2020
		3rd quarterly payment	Paid	\$143,800.00	18/02/2021
	\$287,600.00	4th quarterly advance	Paid	\$143,800.00	1/10/2020
		4th quarterly payment	Paid	\$143,800.00	28/04/2021
Total of all payments:				\$9,641,930.46	

* Maximum amount payable for a quarter may be different when the entitlement for payment is determined.

** Supplementary payment following amended claim.

Payments made with respect to expenditure incurred in the 2021 calendar year are shown in Table 33.

Table 33. Amounts paid during 2020–21 for administrative expenditure incurred during 2021

Name of party or elected member	Quarterly maximum amount*	Payment type	Status	Amount	Date of payment/repayment
Alexander Greenwich	\$58,800.00	1st quarterly advance	Paid	\$29,400.00	4/01/2021
		1st quarterly payment	Paid	\$19,605.36	17/06/2021
	\$58,800.00	2nd quarterly advance	Paid	\$29,400.00	1/04/2021
Animal Justice Party	\$156,000.00	1st quarterly advance	Paid	\$78,000.00	4/01/2021
		2nd quarterly advance	Paid	\$78,000.00	1/04/2021
Australian Labor Party (NSW Branch)	\$881,300.00	1st quarterly advance	Paid	\$440,650.00	4/01/2021
		1st quarterly payment	Paid	\$440,650.00	30/06/2021
	\$881,300.00	2nd quarterly advance	Paid	\$440,650.00	1/04/2021
Christian Democratic Party (Fred Nile Group)	\$91,100.00	1st quarterly advance	Paid	\$45,550.00	4/01/2021
		1st quarterly payment	Paid	\$45,550.00	29/04/2021
	\$91,100.00	2nd quarterly advance	Paid	\$45,550.00	1/04/2021
Country Labor Party/ Australian Labor Party (NSW Branch)	\$288,500.00	1st quarterly advance	Paid	\$144,250.00	4/01/2021
Gregory Piper	\$58,800.00	1st quarterly advance	Paid	\$29,400.00	4/01/2021
	\$58,800.00	2nd quarterly advance	Paid	\$29,400.00	1/04/2021
Joseph McGirr	\$58,800.00	1st quarterly advance	Paid	\$29,400.00	4/01/2021
		1st quarterly payment	Repaid	\$20,841.45	1/06/2021
	\$58,800.00	2nd quarterly advance	Paid	\$29,400.00	1/04/2021
The Liberal Party of Australia, NSW Division	\$881,300.00	1st quarterly advance	Paid	\$440,650.00	4/01/2021
		1st quarterly payment	Paid	\$440,650.00	15/06/2021
	\$881,300.00	2nd quarterly advance	Paid	\$440,650.00	1/04/2021
National Party of Australia – NSW	\$631,700.00	1st quarterly advance	Paid	\$331,450.00	4/01/2021
	\$662,900.00	2nd quarterly advance	Paid	\$331,450.00	1/04/2021
Pauline Hanson’s One Nation	\$156,000.00	1st quarterly payment	Paid	\$153,905.16	17/06/2021
	\$156,000.00	2nd quarterly advance	Paid	\$78,000.00	1/04/2021
Shooters, Fishers and Farmers Party (NSW) Incorporated	\$257,300.00	1st quarterly advance	Paid	\$128,650.00	4/01/2021
		1st quarterly payment	Paid	\$128,650.00	17/05/2021
	\$257,300.00	2nd quarterly advance	Paid	\$128,650.00	1/04/2021
The Greens NSW	\$288,500.00	1st quarterly advance	Paid	\$144,250.00	4/01/2021
	\$288,500.00	2nd quarterly advance	Paid	\$144,250.00	1/04/2021
Total of all payments:				\$4,866,901.97	

* Maximum amount payable for a quarter may be different when the entitlement for payment is determined.

Public funding continued

New Parties Fund

The purpose of the New Parties Fund is to reimburse eligible political parties for policy development expenditure incurred. Policy development expenditure includes:

- expenditure on providing information to the public or a section of the public about the eligible party
- expenditure for conferences, seminars, meetings, or similar functions at which the policies of the eligible party are discussed or formulated
- expenditure on providing information to members and supporters of the eligible party
- expenditure in respect of the audit of the financial accounts of the eligible party
- expenditure on the reasonable remuneration of staff engaged in the above activities for the eligible party (being the proportion of that remuneration that relates to the time spent on those activities)
- reasonable expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities)
- expenditure on office accommodation for the above staff and equipment
- expenditure on interest payments on loans.

Policy development expenditure does not include:

- electoral expenditure incurred outside the capped expenditure period for a state election
- expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament
- expenditure prescribed by the Electoral Funding Regulation.

Parties must meet criteria to be eligible to receive payments from the fund. This includes that a party is registered for state elections, the Electoral Commission is satisfied the party operates as a genuine party and the party is not eligible to receive payments from the Administration Fund.

The fund operates on a calendar-year basis where eligible parties are each entitled to make a claim for payment from the fund in the six months following the end of the calendar year.

A claim for payment can only include actual policy development expenditure incurred by a party in the relevant calendar year. Eligible parties are not entitled to be reimbursed more than the amount of policy development expenditure incurred and the amount payable is subject to a cap called a 'maximum amount payable'.

The maximum amounts payable to an eligible party are based on the number of first preference votes received by the party's endorsed candidates at the previous NSW State general election. The maximum amounts payable are adjusted for inflation each calendar year. If an eligible party claims expenditure more than the maximum amount payable, the amount payable to the eligible party cannot exceed the maximum amount payable.

The maximum amounts payable for the 2020 calendar year are published on the Electoral Commission's [website](#).

After a calendar year has ended an eligible party is entitled to claim a payment for expenditure incurred in that year. Claims for payment must be made within six months of the end of a calendar year. Payments must be made by the Electoral Commission within 30 days of receiving a claim for payment, declaration of expenditure and the required supporting documentation in relation to the expenditure included in the claim.

The Electoral Commission paid \$41,789.91 from the New Parties Fund to two eligible parties during 2020–21. The payments were made in relation to expenditure incurred by the parties in the 2020 calendar year. Copies of claims for payment received and payments made are published on the Electoral Commission's website. Five eligible parties did not lodge a claim for payment for expenditure incurred in 2020.

Table 34. Amounts paid during 2020–21 for expenditure incurred in calendar 2020

Name of party	Maximum entitlement	Status	Payment made	Date of payment
Flux NSW	\$12,800.00			
Liberal Democratic Party	\$72,044.43			
Open Party	\$100,891.28			
Reason Party NSW	\$31,470.57	Paid	\$31,470.57	22/03/2021
Socialist Alliance	\$10,319.34	Paid	\$10,319.34	15/02/2021
Sustainable Australia (NSW)	\$90,405.11			
The Small Business Party	\$22,621.88			
Total amount paid:	\$340,552.61		\$41,789.91	

Public funding payments not made

If, at the time a payment is due to be made, a party, elected member or candidate has any outstanding disclosures of political donations or electoral expenditure, or, in the case of a party, the party has not provided us with copies of its audited annual financial statements, they are ineligible to receive public funding payments.

During 2020–21, no party, elected member or candidate that made a claim for payment was ineligible for payment due to any outstanding disclosure or audited financial statement.

Repayments of public funding

The Electoral Commission is authorised to recover any excess public funding amounts paid to a party, candidate, or elected member. This generally occurs where the amount of expenditure actually incurred by an elected member or a party in a period is less than the amount paid in advance.

There were eight repayments of public funding during 2020–21 totalling \$134,278.33. Three repayments were in relation to payments made during 2019–20 and five were in relation to payments made during 2020–21.

Table 35. Repayments of public funding

Fund	Party, elected member or candidate	Amount repaid	Repayment date
Administration Fund	Gregory Piper	\$3,860.44	17/03/2021
Administration Fund	Gregory Piper	\$5,949.66	17/03/2021
Administration Fund	Joseph McGirr	\$7,911.93	20/07/2020
Administration Fund	Joseph McGirr	\$2,763.40	3/11/2020
Administration Fund	Joseph McGirr	\$6,877.08	8/04/2021
Administration Fund	Joseph McGirr	\$20,841.45	1/06/2021
Administration Fund	Pauline Hanson's One Nation	\$6,745.00	8/09/2020
Election Campaigns Fund	The Greens	\$79,329.37	14/06/2021
Total amount repaid		\$134,278.33	

Compliance and enforcement

The Electoral Commission is responsible for the monitoring and enforcement of compliance with New South Wales electoral and lobbying laws.

The Electoral Commission is required to report statistical information about the use of its enforcement powers. These include issuing statutory notices to require the provision of documents or information or require a person to attend an interview and to undertake an inspection.

During 2020–21, the Electoral Commission continued to regulate and enforce the Electoral Act and the Electoral Funding Act and, the now repealed, *Parliamentary Electorates and Elections Act 1912* and the *Election Funding, Expenditure and Disclosures Act 1981*, for breaches of the legislation that occurred before 1 July 2018.

Additionally, the Electoral Commission regulated and enforced matters under the Local Government Act (electoral provisions only) and the Lobbying of Government Officials Act.

In relation to the above legislation, the Electoral Commission seeks to detect, review and investigate potential non-compliance, initiating enforcement actions as appropriate and operate in accordance with key policies and procedures including the following that are published on the Electoral Commission's [website](#).

- Compliance Audit Policy
- Compliance and Enforcement Policy
- Compliance and Enforcement Procedures
- Prosecution Policy.

Limits on authority to disclose compliance and enforcement information

The Electoral Commission is not authorised under its statutory framework to publish or otherwise disclose information about the existence or outcomes of specific investigations and enforcement actions taken, unless expressly authorised by legislation, or with the agreement of the individuals concerned or where there has been a public enforcement action (for example, court proceedings).

During 2020–21, the Chair of the Electoral Commission did not issue any statements in relation to its enforcement of the legislation for which the Electoral Commission is responsible. Previous statements made by the Chair can be found on the Electoral Commission's [website](#).

Under the Lobbying of Government Officials Act, the Electoral Commission is required to publish on its [website](#) any decisions to refuse to register a third-party lobbyist, suspend or cancel the registration of a third-party lobbyist, place a third-party lobbyist or other lobbyist on the Lobbyist Watch List and determine that a third-party lobbyist is ineligible to be registered.

ICAC inquiry into lobbying regulation in NSW

During the reporting year, the ICAC finalised its inquiry into lobbying regulation in NSW: Operation Eclipse. Although the Electoral Commission could not assist the inquiry by providing detailed information about specific compliance activities, it was able to suggest some potential legislative changes that may enhance the transparency and operational effectiveness of the existing scheme. These included a suggestion to expand the reporting and investigation powers of the Electoral Commission, particularly so it had a similar suite of compliance tools as comparable agencies.

The ICAC's final report into Operation Eclipse was released on 22 June 2021. The Electoral Commission notes that the ICAC has recommended significant structural reforms and a new scheme for the regulation of lobbying in NSW, including the creation of a dedicated lobbying regulator.

The Electoral Commission will continue to administer its lobbying regulation responsibilities under the existing scheme, noting the recommendations of the ICAC for reform are a matter for the NSW Government and the NSW Parliament.

Compliance structure

The Electoral Commission's compliance framework is structured around core audit and investigation capabilities with the work, processes and procedures supported by ongoing compliance and intelligence functions.

The Electoral Commission receives allegations of breaches of electoral and lobbying laws directly from members of the public, the media, political stakeholders and other government agencies. Non-compliance with electoral funding and lobbying laws are also identified through compliance audits and other operational processes.

The Electoral Commission conducts compliance audits of parties, elected members, candidates, groups, third-party campaigners and associated entities to determine compliance with the requirements for political donations and electoral expenditure. Compliance reviews are undertaken of disclosures lodged by major political donors.

As part of the compliance audits the Electoral Commission audits disclosures of political donations and electoral expenditure. The Electoral Commission may appoint a registered company auditor to undertake an audit of a disclosure on its behalf. During 2020–21, the Electoral Commission did not appoint any registered company auditors.

A political party, elected member, group of candidates, candidate, third-party campaigner or associated entity must assist the Electoral Commission with the audit of a disclosure by complying with reasonable requests for information, explanations, financial and other records.

A compliance audit includes assessing compliance with all aspects of the laws that apply to political donations and electoral expenditure including the use and operation of campaign accounts and the registration of electoral participants for the purposes of accepting political donations and making payments for electoral expenditure.

Using a risk-based approach, the validity and completeness of disclosures is determined and supporting documentation such as financial records, invoices and receipts are verified.

Table 36 shows a summary of the compliance audits on disclosures received that were commenced or finalised during 2020–21.

Where compliance issues including financial or factual anomalies are identified through a compliance audit, or review, enforcement action may be taken including issuing warnings, cautions or penalty notices.

Compliance reviews are also conducted on registered third-party lobbyists and the Electoral Commission may issue warnings or suspend or cancel the registration of third-party lobbyist where there is a failure to comply with the Lobbying of Government Officials Act or the Lobbyists Code of Conduct.

In certain cases, a compliance matter may be referred to another NSW government agency. This may occur where the matter is not within the Electoral Commission's remit or the Electoral Commission is required by law to refer a matter in the case of referrals to the Independent Commission Against Corruption.

Table 36. Compliance audits and reviews finalised and commenced for disclosures received during 2020–21

Political participant	Audits finalised for the 12-month disclosure period ending 30 June 2019	Audits finalised for the 12-month disclosure period ending 30 June 2020	Audits commenced for the 12-month disclosure period ending 30 June 2020	Audits to be started for the 12-month disclosure period ending 30 June 2020
Political parties	240	3	0	136
Elected members	4,146	391	85	3,661
Candidates	2,046	0	0	137
Groups	35	0	0	10
Third-party campaigners	70	0	0	3
Associated entities	12	-	-	12
Major political donors	1,323	155	3	154
Total	7,972	539	88	4,113

Compliance and enforcement continued

Information management and case recording

All compliance and enforcement work undertaken by the Electoral Commission is recorded using the systems of the agency.

A customer relationship platform has been highly customised to support the Electoral Commission's Funding and Disclosure Management System (FADMS). FADMS is used to record and manage the audit of disclosures. FADMS platform contains disclosure data inputted through the lodgement of disclosures and published to the Electoral Commission's website.

Another matter management platform has been customised to support the Electoral Commission's Investigations Matter Management System (IMMS). IMMS

is used to manage compliance reviews and investigations. IMMS ensures that cases can be easily tracked with workflows of actions, activities, and milestones.

Both FADMS and IMMS also store audit, high volume non-compliance, and investigation and intelligence data securely in the agency's records management system.

Audit and compliance activities

Compliance operations for the 2021 Upper Hunter State by-election

Compliance operations were conducted during the election period to support the fair and transparent conduct of the election. Investigators were on the ground in the Upper Hunter during the early voting period and on election day to identify any potential unlawful conduct and/or electoral material and worked with electoral participants to remedy non-compliance at the time it occurred.

Table 37. Potential offences under the Electoral Act

Reference	Offence	Maximum penalty
S.121	Conduct of scrutineers	\$5,500 or 6 months imprisonment or both
S.123(2)	Conduct at a voting centre	\$1,100
S.183	Printing, publishing and distributing non-complying electoral material	Corporation: \$11,000 Other: \$2,200 or 6 months imprisonment or both.
S.184(2)	Display of posters	Corporation: \$1,375 Other: \$275
S.186	Name and address on electoral material	Corporation: \$11,000 Other: \$2,200 or 6 months imprisonment or both
S.198	Canvassing on election days	\$2,200
S.208	Obstructing access to a voting centre	\$1,100
S.209	Bribery, treating and selling of votes	\$22,000 or 3 years imprisonment or both
S.210	Interference with right to vote	\$22,000 or 3 years imprisonment or both
S.212	Multiple voting	\$22,000 or 3 years imprisonment or both
S.215	Display, publish or distribute material falsely appearing to be made by Electoral Commission	\$22,000 or 2 years imprisonment

Table 38. Potential offences under the Electoral Funding Act

Reference	Offence	Maximum penalty
s42 s145(1)	Third-party campaigner – failure to register and appoint an agent	\$44,000 or 2 years imprisonment or both

The compliance operation commenced from the opening of the early voting period on Monday, 10 May and concluded on election day Saturday, 22 May 2021. Five investigators from the Electoral Commission participated in the operation. In addition to their functions as inspectors under the Electoral Funding Act, the investigators were also appointed to the role of election official under the Electoral Act so that they could exercise functions under that Act throughout the operation.

Investigators attended early voting centres for the opening and closing of early voting. Each early voting centre in the Upper Hunter district was visited at least once during the early voting period.

On election day, investigators inspected voting centres and engaged with various stakeholders, including the election manager, voting centre manager, candidates, campaigners, and volunteers. The presence of the investigators served the dual purpose of educating stakeholders on their obligations under the Electoral Act and the Electoral Funding Act as well as acting as a deterrent for non-compliant behaviour. On election day, 20 voting centres were visited, with priority given to those voting centres with an expected high voter turnout.

There were 15 matters reviewed regarding alleged breaches of legislation, including some online activities on websites and social media. All allegations were reviewed in accordance with the Electoral Commission's Compliance and Enforcement Policy, with priority given to educating political participants, sometimes with the assistance of online providers, so they could remediate non-compliance where possible. All allegations were acknowledged in writing within 24 hours of receipt of the allegation.

Focused reviews following compliance audits of disclosures

During 2020–21, the audit team identified 95 matters arising from its compliance audits where further review was warranted. These mostly related to suspected failures to:

- maintain a campaign account
- pay for electoral expenditure from the campaign account
- disclose reportable political donations or ensure donors are on the electoral roll
- provide required vouching to support the disclosure of political donations or electoral expenditure
- disclose electoral expenditure
- identify donations in breach of the donation caps
- provide receipts for donations, which include statements regarding the obligation of a donors to disclose.

In relation to the above matters, warnings were issued as shown in Table 39. A warning is issued to the person who was responsible for complying with the disclosure requirements. References to an official agent of an elected member, candidate or group refer to matters prior to 1 July 2018 when elected members, candidates and groups were required to have an official agent.

Table 39. Warnings issued because of compliance audit referrals to the investigations team

Political participant	Warnings issued
Party agents	0
Official agents of elected members	0
Official agents of candidates	3
Official agents of groups of candidates	4
Official agents of third-party campaigners	0
Official agents of associated entities	0
Major political donors	0
Total warnings issued from compliance audits and reviews	7

Failure to lodge disclosures

It is an offence to fail to submit a disclosure by the due date. The Electoral Commission may issue penalties or prosecute a person who commits an offence in relation to a disclosure. The Investigations team of the Electoral Commission Public Service agency manages, in accordance with an approved protocol, a measured process to encourage timely lodgement and penalise non-compliant behaviour. As an initial step, a 'first-level warning' is issued to a person or entity who failed to lodge a disclosure, after the due date has passed, giving them an opportunity to submit the disclosure.

Final enforcement decisions consider responses to the 'first-level warning' and any aggravating or mitigating circumstance around the alleged breach.

Compliance and enforcement continued

During 2020–21, the Investigations team worked on examining those who lodged a disclosure past the due date, or who had failed to lodge a disclosure. The following disclosure periods were examined:

- half-yearly political donation disclosures for the period 1 January 2020 to 30 June 2020, due 28 July 2020
- annual expenditure disclosures for the period 1 July 2019 to 30 June 2020, due 22 September 2020
- annual disclosures of reportable political donations by major political donors for the period 1 July 2019 to 30 June 2020, due 28 July 2020
- half-yearly political donation disclosures for the period 1 July 2020 to 31 December 2020, due 28 January 2020.

Table 40 shows the number of ‘first-level warnings’ issued through to enforcement actions taken in response to disclosures not lodged or not lodged by the due date. In these cases, the enforcement action is taken against the person responsible for submitting the disclosure.

Table 40. Enforcement actions in response to a failure to submit a disclosure by the due date

Enforcement action	2 nd half-yearly disclosures 2019–20	Annual expenditure disclosures 2019–20	Annual major political donor disclosures 2019–20	1 st half-yearly disclosures 2020–21	Total
Warning	266	183	236	184	869
Caution	59	27	60	39	185
Penalty Notice	27	34	1	17	79
Recommendation to prosecute	3	4	0	7	14

The Electoral Commission continues to exercise its discretion in some matters to issue a caution where it may have otherwise considered taking different enforcement action, such as issuing a penalty notice or prosecuting, in cases where the COVID-19 pandemic was having a significant impact on a stakeholder’s ability to comply with the legislative requirements.



Investigations

Reviews and investigations

During 2020–21, the Investigations team considered 131 new matters of non-compliance and potential breaches under the legislation for which the Electoral Commission has authority to enforce. The team consists of investigators who are appointed by the Electoral Commission to exercise the Electoral Commission's enforcement and investigation functions.

Election Funding, Expenditure and Disclosures Act and Electoral Funding Act

During 2020–21, 34 new matters were reviewed relating to potential breaches of the now repealed Election Funding, Expenditure and Disclosures Act¹ and Electoral Funding Act. The breaches related mainly to the acceptance of unlawful political donations.

Electoral Act

The majority of potential breaches under the Electoral Act during the 2020–21 period related to the Upper Hunter State by-election held on 22 May 2021, with the exception of failure to vote matters that related to the 2019 NSW State election. A review or investigation into a failure to vote matter is only conducted if the matter is not resolved by a separate penalty notice process and is expected to be heard by a court.

Local Government Act

During 2020–21 there were 15 new matters reviewed relating to potential breaches of the electoral provisions of the Local Government Act. Except for failure to vote matters that were for past elections, most of these matters related to electoral material for the 2021 Local Government elections but fell outside the regulated period for enforcement. A review or investigation into a failure to vote matter is only conducted if the matter is not resolved by a separate penalty notice process and is expected to be heard by a court.

Table 41. Outcomes of reviews and investigations conducted into breaches of the Election Funding, Expenditure and Disclosures Act

Activity	Total	No further action	Warnings	Cautions	Recovery of unlawful political donations	Prosecution	Ongoing
Review/ Investigation	6	3	0	2	0	0	1

Table 42. Outcomes of reviews and investigations conducted into breaches of the Electoral Funding Act

Activity	Total	No further action	Warnings	Cautions	Recovery of unlawful political donations	Prosecution	Ongoing
Review/ Investigation	28	13	0	9	3	0	5

Table 43. Outcomes of reviews and investigations conducted into breaches of the Electoral Act

Activity	Total	No further action	Warnings	Cautions	Prosecution	Ongoing	Failure to vote
Review/ Investigation	77	8	8	0	0	2	59

Table 44. Outcomes of reviews and investigations conducted into breaches of the Local Government Act

Activity	Total	No further action	Warnings	Cautions	Prosecution	Ongoing	Failure to vote
Review/ Investigation	15	8	0	0	0	1	6

¹ The *Parliamentary Electorates and Elections Act 1912* was repealed by the *Electoral Act 2017* on 1 July 2018. The *Electoral Act 2017* gives authority to the NSW Electoral Commission to continue to enforce breaches of the *Parliamentary Electorates and Elections Act 1912* that occurred prior to 1 July 2018.

Lobbying of Government Officials Act

During 2020–21 there was one new matter reviewed relating to potential breaches of the provisions of the Lobbying of Government Officials Act, other than in relation to not updating registered details.

Where breaches of the Lobbying of Government Officials Act occur the registration of a third-party lobbyist may be suspended or cancelled, or the third-party lobbyist can be placed on Watch List.

Reviews are conducted following 31 January, 31 May, and 30 September to identify where a registered third-party lobbyist has not complied with the requirement to confirm the lobbyist's registered details are up to date.

Reviews are also undertaken where a registered third-party lobbyist has not appointed a responsible officer or where the responsible officer of a registered third-party lobbyist has not complied with the requirement to undertake the annual online training provided by the Electoral Commission.

During 2020–21 the registrations of 12 third-party lobbyists were suspended or cancelled, and several registered third-party lobbyists received a warning for a breach of the Act or the Lobbyists Code of Conduct. There were no third-party lobbyists placed on the Watch List.

Table 46 shows the number of warnings issued and third-party lobbyist registrations that were suspended or cancelled during 2020–21 due to breaches of the Lobbying of Government Officials Act or Lobbyists Code of Conduct. The registrations of six third-party lobbyists were suspended and the registrations of six third-party lobbyists were cancelled. One request was received to review the decision to cancel the registration of a third-party lobbyist. A review was conducted and the original decision to cancel the registration was upheld.

Details of the decisions made by the Electoral Commission in relation to the suspension or cancellation of registrations of third-party lobbyists and the reasons for those decisions are published on the Electoral Commission's [website](#).

Table 45. Outcomes of reviews and investigations conducted into breaches of the Lobbying of Government Officials Act

Activity	Total	No further action	Warnings	Cautions	Prosecution	Ongoing
Review/ Investigation	1	0	0	0	0	1

Table 46. Suspensions and cancellations of third-party lobbyist registrations for breaches of the Act or the Lobbyists Code of Conduct 2020–21

Reason	Warnings issued	Suspension of registration	Cancellation of registration
Failure to appoint a person responsible for ensuring the lobbyist's compliance	0	0	0
Failure to ensure the responsible officer undertakes annual training	0	0	0
Failure to update the register within 10 days of a change in registered details	0	0	0
Failure to confirm registered details are up to date	73	6	6

Investigations continued

Use of enforcement powers

The Electoral Funding Act gives the Electoral Commission, and any person appointed by the Electoral Commission as an inspector, to issue notices that require the provision of information, documents, or attendance to answer questions.

These powers enable inspectors within the Investigations team to conduct investigations.

The Electoral Commission's enforcement powers can also be used to investigate potential breaches of the Electoral Act, the Lobbying of Government Officials Act, electoral provisions of the Local Government Act as well as matters under the now repealed Parliamentary Electorates and Elections Act and Election Funding, Expenditure and Disclosures Act.

The Electoral Funding Act also provides that an inspector appointed by the Electoral Commission may enter a premises to inspect documents for the purposes of ascertaining whether the Electoral Funding Act is being, or has been, contravened. During 2020–21 no inspections were undertaken.

Table 47 shows the number of notices issued under section 138 of the Electoral Funding Act.

Table 47. Notices issued

Notice type	Purpose	Number issued
s.138(a) Electoral Funding Act	Require information	14
s.138(b) Electoral Funding Act	Require the provision of documents	8
s.138(c) Electoral Funding Act	Answer questions	0
s.138(d) Electoral Funding Act	Attend interview	11
Total		43

Table 48. Recovery of unlawful political donations

Political participant	Number	Total value
Political parties	3	\$21,950
Candidates	1	\$200
Third-party campaigners	1	\$49,257
Total	5	\$71,407

Recovery of unlawful political donations and electoral expenditure incurred in excess of an applicable expenditure cap

The Electoral Commission is authorised under the Electoral Funding Act to recover the value of unlawful political donations and electoral expenditure incurred in excess of an applicable expenditure cap and pay these amounts to the State.

During 2020–21 there were five matters that resulted in the recovery of unlawful political donations to the value of \$71,407, including two matters that were initiated in prior years. The political donations were unlawful due to the donor not being on the electoral roll or the donation was in excess of an applicable political donation cap. The value of the political donations was recovered voluntarily from those who accepted the unlawful donations.

There were no compliance cases where the value of electoral expenditure in excess of an expenditure cap was recovered.

Compliance agreements

Compliance agreements are a tool for remedying and/or avoiding breaches of electoral funding laws by way of a set of agreed actions between a duty-holder and the Electoral Commission. During 2020–21 one new agreement was entered into and the Electoral Commission continued to monitor, as required, compliance with agreements entered into in previous years.

Penalty notices issued in accordance with the Fines Act and internal review of decisions

During the year, 79 penalty notices were issued by authorised officers of the Electoral Commission for breaches of the Electoral Funding Act.

Table 49. Penalty notices issued for apparent breaches of the Electoral Funding Act

Breach	Penalty Amount	Number of penalty notices issued
Failure to lodge a disclosure by a party agent – s.141(1)	\$2,750	1
Failure to lodge a disclosure by anyone other than a party agent – s.141(1)	\$1,100	78
Total		79

In accordance with the Fines Act a person can apply for a review of the decision to issue a penalty notice. Reviews of penalty notice decisions issued under the Electoral Funding Act are conducted by authorised officers of the Electoral Commission. The Electoral Commission received 35 applications to conduct an internal review of our decision to issue a penalty notice. In 26 instances the outcome of the review was for penalty to stand, eight penalty notices were withdrawn, and cautions were issued, and one penalty notice was withdrawn with no further action taken.

Litigation

Failure to vote proceedings

One failure to vote prosecution brought forward from 2019–20 concluded in October 2020. The prosecution concerned an elector who failed to vote at the 2019 NSW State election. The elector was found guilty and fined \$110.

During 2020–21, the Electoral Commission commenced proceedings in relation to 34 electors who failed to vote at the 2019 NSW State election. Twenty of the 34 matters were concluded in 2020–21, with outcomes ranging from a conviction and imposition of the maximum penalty (fine of \$110) to an order dismissing the charge in accordance with section 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999*. The remaining matters will continue to be dealt with in 2021–22.

The Electoral Commission also commenced proceedings in relation to four electors who failed to vote at local government by-elections held in 2018, one each relating to the respective Hills Shire and City of Wollongong by-elections and two relating to the City of Penrith by-elections. Two of these matters were concluded, with one matter relating to the City of Wollongong and the other relating to the City of Penrith remaining on foot.

Failure to lodge disclosure proceedings

Two prosecutions were carried over from 2019–20 for the offence of failure to lodge a declaration under the former Election Funding, Expenditure and Disclosures Act which was repealed by the Electoral Funding Act on 1 July 2018. Both prosecutions resulted in convictions as follows:

- August 2020 – defendant convicted of failing to lodge a declaration as a candidate for the 2017 Murray River Council elections for the 2017–18 relevant disclosure period. A fine of \$2,500 was imposed by the court.
- November 2020 – defendant convicted of failing to lodge a declaration as a candidate for the 2016 Singleton Shire Council elections for the 2017–18 relevant disclosure period. A fine of \$2,000 was imposed by the court.

Other Election Funding, Expenditure and Disclosures Act proceedings

In August 2020 the Electoral Commission commenced proceedings against a member of Orange City Council for offences under the Election Funding, Expenditure and Disclosures Act. The defendant in the proceedings stood as an independent candidate for the November 2016 State by-election for Orange. The defendant was charged with offences under the Election Funding, Expenditure and Disclosures Act relating to their actions concerning monies received for his election campaign, as follows:

- Section 96H(3) Election Funding, Expenditure and Disclosures Act – giving information to their official agent knowing it would result in the making of a false statement in a disclosure required to be made under the Election Funding, Expenditure and Disclosures Act, and
- Section 96I(1) read with 96C(1) Election Funding, Expenditure and Disclosures Act – accepting a reportable political donation being aware that a record of the donation has not been made or a receipt provided.

It was alleged that the defendant had received a reportable political donation but had instead told their official agent that the money deposited into their campaign account was “self-funding”, resulting in the amount being incorrectly disclosed in their candidate disclosure for the 2016–17 relevant disclosure period. Further, that they were aware at the time that they accepted the money that it was a reportable political donation requiring a receipt to be provided and that no such receipt was provided.

The defendant pleaded not guilty to both offences. The matter was listed for hearing at Orange Local Court and was heard over three days: 18–20 May 2021.

The defendant was found guilty of both offences and the matter has been listed for sentencing.

Table 50. Prosecutions commenced 2019–20 and 2020–21

Act	Matter	Number of matters in 2019–20	Number of matters in 2020–21
Election Funding, Expenditure and Disclosures Act	Failure to lodge a declaration of disclosure of political donations and electoral expenditure	2	0
Election Funding, Expenditure and Disclosures Act	Candidate gave false information to official agent knowing it would result in the making of a false statement in a disclosure	0	1
Election Funding, Expenditure and Disclosures Act	Accepting a reportable political donation being aware that a record has not been made or receipt not provided	0	1
Local Government Act	Failure to vote	0	4
Electoral Act	Failure to vote	2	34

Civil proceedings

There have been no civil proceedings in 2020–21 relating to the statutory functions of the Electoral Commission.

Looking forward to 2021-22



Registration of electoral participants for the 2021 Local Government elections, State by-elections and 2023 State General election

New member appointments to the Electoral Commission



Compliance operations for the 2021 Local Government elections and State by-elections



Delivery of enhancements to Funding and Disclosure Online



Planning and preparations for the 2023 NSW State election

Publication of political donation disclosures for the 2021 Local Government elections and State by-elections



Glossary

Refer also to the Glossary on the Electoral Commission's [website](#).

Name/Title	Definition
Associated entity	A corporation or another entity that operates solely for the benefit of one or more parties registered for State elections or members of the NSW Parliament.
Candidate	<p>A person who is nominated in accordance with the Electoral Act or Local Government Act for election to the NSW Parliament or to civic office and whose nomination has been accepted by the Electoral Commissioner or Returning Officer. Only duly nominated candidates have their names included on a ballot paper.</p> <p>Under the Electoral Funding Act, a candidate includes a person registered as a candidate under the Electoral Funding Act for the purpose of accepting political donations and electoral expenditure.</p> <p>A candidate under the Electoral Funding Act also includes an unregistered candidate who has accepted a political donation or made a payment for electoral expenditure for the election.</p>
Cap on electoral expenditure	Electoral expenditure incurred by parties, groups, candidates, and third-party campaigners is capped during the capped expenditure period of a state election and the capped local government expenditure period of a local government election. There are different caps applicable to parties, groups, candidates, and third-party campaigners.
Cap on political donations	Political donations made to registered political parties, unregistered parties, elected members, groups, candidates, associated entities, and third-party campaigners are subject to caps. There are different caps applicable to registered political parties, unregistered parties, elected members, groups, candidates, associated entities, and third-party campaigners.
Capped expenditure period	The period during which the electoral expenditure of parties, groups, candidates, and third-party campaigners is capped for a state or local government election.
Disclosure	The disclosure of political donations and electoral expenditure by a party, elected member, candidate, group, third-party campaigner, associated entity, or major political donor to the Electoral Commission.
Donor	A person or entity who makes a political donation to a party, elected member, candidate, group or other person or entity (including a third-party campaigner or associated entity). See also: Major political donor.
Elector	A person eligible to vote at an election.
Electoral expenditure	Electoral expenditure is money or its equivalent spent: directly or indirectly promoting or opposing a political party or candidate or directly or indirectly influencing the voting at an election.
Electoral Act	<i>Electoral Act 2017</i>
Electoral Regulation	<i>Electoral Regulation 2018</i>
Electoral Funding Act	<i>Electoral Funding Act 2018</i>
Electoral Funding Regulation	<i>Electoral Funding Regulation 2018</i>
Endorsed	Endorsed, in relation to a party, means endorsed, selected, or otherwise accredited to stand as a representative of the party in an election.

Glossary continued

Name/Title	Definition
Fines Act	<i>Fines Act 1996</i>
Independent	An independent is a candidate for election/member of Parliament who is not endorsed by a political party.
Legislative Assembly	The lower house of the NSW Parliament in NSW. It has 93 members each representing an electoral district. All 93 members are elected at a State general election, every four years.
Legislative Council	The upper house of the NSW Parliament of NSW consisting of 42 members elected for an eight-year term, half of whom (that is, 21) are elected at each State general election every four years.
Lobbying of Government Officials Act	<i>Lobbying of Government Officials Act 2011</i>
Lobbyist/Third-party lobbyist	A third-party lobbyist is an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying government officials on behalf of another individual or body.
Local Government Act	<i>Local Government Act 1993</i>
Local Government Regulation	<i>Local Government (General) Regulation 2021</i>
Major political donor	A person or entity (other than a party, elected member, group or candidate) who makes a reportable political donation. See also: donor.
Political donation	A political donation is a gift made to, or for the benefit of, a party, elected member, group, candidate or other person or entity as defined in section 5 of the Electoral Funding Act.
Political participant	Individuals and groups actively involved in electoral or political processes. Political participants include: <ul style="list-style-type: none"> • candidates and groups • political parties • members of Parliament and councillors • party agents and official agents • associated entities • third-party campaigners • political donors • third-party lobbyists.
Registered party	A political party on the Register of Parties kept by the Electoral Commissioner under the Electoral Act or Local Government Act.
Registration	In relation to a candidate, group of candidates or third-party campaigner for an election, means being registered under the Electoral Funding Act for the purposes of accepting political donations and making payments for electoral expenditure.
Reportable political donation	A political donation of \$1,000 or more made to or for the benefit of a party, elected member, group, candidate, associated entity or third-party campaigner.

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