

Australian Electoral Commission

Funding and Disclosure Guide

Version 2 | July 2010

for Candidates and Senate Groups



AEC

Australian Electoral Commission

This reference guide is provided for the convenience of users of this Guide, who should note that other legislation and other sections of the *Commonwealth Electoral Act 1918*, together with legal precedents, may be relevant to the interpretation and application of Part XX.

Users should therefore seek professional legal advice on compliance and other issues that may arise.

The AEC is able to provide guidance on its approach to the administration of the funding and disclosure provisions but is not able to provide legal advice generally. Information about how to obtain a copy of the Act, or to contact the AEC, is provided in the introduction to this Guide.

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Introduction

The funding and disclosure scheme established under Part XX of the *Commonwealth Electoral Act 1918* (the Act) deals with the public funding of election campaigns and the disclosure of information relating to political donations and electoral expenditure.

The scheme was introduced to increase overall transparency and inform the public about the financial dealings of parties, candidates and others involved in the electoral process.

The Commonwealth funding and disclosure scheme requires candidates and Senate groups, registered political parties and their associated entities, and donors and third parties to lodge annual or election period financial disclosure returns with the Australian Electoral Commission (AEC).

These disclosure returns are made available for public inspection.

The Guide

The *Funding and Disclosure Guide for Candidates and Senate Groups* is designed to assist candidates and Senate groups to understand their election funding and financial disclosure obligations under Part XX of the Act.

The AEC releases a series of publications designed to assist political parties, candidates, donors and other persons that may have financial disclosure obligations under the Act. These additional publications include:

- *Funding and Disclosure Guide for Political Parties;*
- *Funding and Disclosure Guide for Associated Entities;*
- *Funding and Disclosure Guide for Donors to Political Parties;*
- *Funding and Disclosure Guide for Election Donors;*
- *Funding and Disclosure Guide for Third Parties incurring Political Expenditure;*
- *Federal Registration of Political Parties Guide*

The *Funding and Disclosure Guide for Candidates and Senate Groups* provides information derived from the Act, as well as from the experience of the AEC in the administration of the funding and disclosure scheme. The Guide attempts to simplify and explain diverse and complex legislative provisions. While it is intended to be a user-friendly guide, it does not address the whole of the Act and should not be used as a substitute for specific legal advice on detailed disclosure and compliance issues.

Users are urged to read and familiarise themselves with the relevant parts of the Act and to seek their own independent advice where necessary.

Additional information and advice on the Commonwealth funding and disclosure scheme is available from the AEC. The AEC's contact details are listed at the front of this Guide. The Act and all guides published by the AEC are freely available on the AEC's website at www.aec.gov.au. The election disclosure returns are also available for viewing on this site after the public release date.

Registered political parties

A registered political party is one registered with the AEC under Part XI of the Act. Registration with a state or territory electoral authority does not confer federal registration.

Federal registration requirements and obligations are addressed separately in the *Federal Registration of Political Parties Guide*.

Registered political parties, and their state or territory branches, **must** appoint an agent for election funding and financial disclosure purposes.

Important:

- The party agent is **not** the agent of candidates endorsed by the party, or of jointly endorsed Senate groups, **unless separately appointed as such.**
- The party agent is deemed to be the agent of a Senate group endorsed by a single party.
- The election funding entitlements of endorsed candidates and Senate groups are paid to the party agent.

Overview

This version of the Funding and Disclosure Guide for Candidates and Senate Groups applies to election disclosure returns for the 2010 federal election.

Candidates, Senate group members and Senate groups other than groups endorsed by a single party may appoint an agent to act on their behalf for financial disclosure purposes at an election. The political party or state or territory branch agent is not the agent of individual candidates in Senate groups endorsed by the party, unless the appointment has been made separately.

Key features of the funding and disclosure scheme in relation to elections are:

- **Election funding** – Candidates or Senate groups who receive 4% or more of the formal first preference votes in a Federal election or by-election are entitled to a public election funding payment to assist to recoup campaign costs. This is paid to the party in the case of endorsed candidates and Senate groups.
- **Candidate and Senate group returns** – Candidates and groups (other than groups endorsed by a single party) **must** lodge financial disclosure returns with the AEC after an election, providing details of donations received and electoral expenditure incurred.
 - The total number and amount of gifts or donations must be disclosed.
 - Specific details of gifts or donations totalling \$11 500 or more must be disclosed.
 - Electoral expenditure (expenditure on advertising, campaign material, mail-outs, polling and research) must be disclosed.
 - A 'nil' return is required if no reportable donations were received or electoral expenditure incurred.
- **Donor returns** – People or organisations who donate \$11 500 or more to a candidate **must** lodge a disclosure return with the AEC, including details of the candidate/s to whom they made the donations. For further information refer to the *Funding and Disclosure Guide for Election Donors*.

Other features are:

- Donations to and expenditure of the campaign committee of an endorsed candidate or Senate group are treated as transactions of the endorsing party to be included in the annual return of the party and the annual return of the donor involved. These transactions are not shown in the candidate's return.
- Anonymous donations of \$11 500 or more to a candidate, Senate group or political party are unlawful and must be forfeit to the Commonwealth. Loans of \$11 500 or more from people or organisations other than financial institutions must be properly documented.

Candidates and Senate group members should familiarise themselves with the requirements of the disclosure return forms and maintain adequate financial records to enable these to be properly completed.

There are no caps or limits imposed on donations received or campaign expenditure.

Appointment of a candidate or Senate group agent

Division 2 of Part XX of the Act deals with candidate, Senate group and party agents.

Candidates (including Senate group members) and Senate groups (other than Groups endorsed by a single party), may appoint an agent to act on their behalf on election funding and financial disclosure matters.

The agent is responsible for lodging financial disclosure returns with the AEC. In the case of an unendorsed candidate or Senate group, the agent is also the person to whom election funding is paid.

The candidate agent is separate to and distinct from the party agent appointed by a party, or by a state or territory branch of a party.

Written notice of the appointment of a candidate (including a member of a Senate group) agent should be given to the AEC's national office in Canberra as soon as practicable after the candidate has announced his or her candidacy. In any case, the written notice must be lodged at the AEC's national office in Canberra by the close of nominations in the election concerned.

For a Senate group, written notice of the appointment of an agent for the group can be given to the AEC's national office in Canberra any time after the issue of the writ, but no later than the close of nominations for the election for which they are to act. Completed appointment forms can be scanned and emailed or faxed to the AEC's National Office. Email and fax details are at the front of this Guide.

Agents should familiarise themselves with the financial disclosure return forms that must be lodged after an election. Systems and procedures for recording financial transactions should be maintained. Supporting documentation is required by law to be retained for three years.

The Act provides offences for failure to properly complete and lodge a return. The AEC provides guidance such as this Guide to assist compliance. It deals with non-compliance as appropriate to the circumstances, including by prosecution.

The AEC provides forms for the *Appointment of Candidate Agent and the Appointment of Senate Group Agent*. The forms can be downloaded from www.aec.gov.au. The appointment form includes a statement of consent to the appointment and a declaration of eligibility for appointment.

To be eligible for appointment as an agent a person must:

- be a natural person and not a corporation;
- be at least 18 years of age;
- not have been convicted of an offence under the funding and disclosure provisions while appointed as an agent;
- have signed a consent to the appointment; and
- have signed a declaration of eligibility for appointment.

A person may accept multiple appointments as agent but each appointment must be made separately.

Where a candidate or Senate group agent leaves and is replaced by a new candidate or Senate group agent it is the responsibility of the candidate or Senate group to provide written notice of the new appointment to the National Office of the AEC. Any new appointment must be received by the AEC before the close of nominations to be effective.

Where the contact or other details of a candidate or Senate group agent change, it is the responsibility of the agent to contact the AEC to obtain the relevant form to allow the change in details to be registered.

The appointment is valid for a single election or by-election only.

Termination of appointment or death of an agent

Agents may resign their appointment at any time by written notice to the AEC.

An appointment as agent may be revoked at any time by written notice to the AEC signed by the candidate or, in the case of a Senate group agent, by each member of the group.

The candidate, or a member of the Senate group, must promptly advise the AEC in writing of the death or resignation of their agent.

Where an appointment is revoked, or the agent resigns or dies and a new agent is not appointed by the close of nominations, the candidate or the group member whose name appears first on the ballot paper is taken to be the agent.

The election disclosure obligation under the Act

The funding and disclosure scheme affects candidates and Senate groups differently depending upon whether the candidate or group is endorsed by a registered political party or unendorsed.

Note that the candidate disclosure obligations apply to members of a Senate group as well as to House of Representatives candidates.

■ Candidate and Senate group members

- A candidate, whether endorsed by a party or not, may appoint an agent for funding and disclosure purposes;
- Candidates include individual members of a Senate group, and ungrouped Senate candidates;
- Candidates who do not appoint an agent are deemed to be their own agent.

■ Senate groups

- **Unendorsed Senate groups** may appoint an agent for the group for funding and disclosure purposes.

- If no appointment is made, the person whose name appears first on the ballot paper is deemed to be the agent for the group.
- Senate groups endorsed by more than one party may also appoint an agent for the group for funding and disclosure purposes.
- If no appointment is made, the person whose name appears first on the ballot paper is deemed to be the agent for the group.
- Senate groups endorsed by a single party cannot appoint an agent for the group as the party agent of the state or territory branch of their party is deemed to be the group agent. Such endorsed Senate groups do not lodge disclosure returns separately from the party.
- A Senate group agent, or party agent, is not the agent of the individual members of the group unless separately appointed as such.

The following summary provides a convenient checklist:

Category	Obligations
Unendorsed candidates, including ungrouped Senate candidates	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or may choose to be their own agent. An agent can only be appointed before close of nominations. ■ The agent, or candidate if there is no appointed agent, must lodge a candidate return (including a 'nil' return if appropriate). ■ Any election funding entitlement is paid to the agent, or to the candidate if there is no appointed agent.
Endorsed candidates	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf, or may choose to be their own agent. An agent can only be appointed before close of nominations. ■ The agent, or candidate if there is no appointed agent, must lodge a candidate return (including a 'nil' return if appropriate); <ul style="list-style-type: none"> – A 'nil' return is required where all transactions are made through a campaign committee or are received on behalf of the party; and there are no other 'personal' campaign gifts or transactions. ■ Details of any donations, expenditure and loans incurred on behalf of the party should be provided to the party agent for inclusion in the party's annual return. ■ The party agent receives any election funding entitlement. ■ The party agent is not the agent of individual endorsed candidates unless separately appointed.
Senate groups endorsed by a single party	<ul style="list-style-type: none"> ■ Do not appoint an agent – the agent of the State branch of the endorsing party is deemed to be agent for the group. ■ Do not complete disclosure returns as all group transactions are included in the annual party return. ■ Details of donations received and expenditure incurred should be provided to the party agent for inclusion in the party's annual return. ■ The party agent receives any election funding entitlement. ■ Individual group members also have disclosure obligations as discussed under 'Senate group members' below.

Senate groups endorsed by more than one party	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or alternatively the candidate whose name appears at the top of the ballot paper is deemed to be the agent of the group for funding and disclosure purposes. An agent can only be appointed before close of nominations. ■ The Senate group agent, or the candidate whose name first appears on the ballot paper if there is no appointed agent, must lodge a Senate group return (including a 'nil' return if that is appropriate). ■ The party agents of the endorsing parties receive any funding entitlement. ■ Individual Senate group members also have disclosure obligations as discussed under 'Senate group members' below.
Unendorsed Senate groups	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or alternatively the candidate whose name appears at the top of the ballot paper is deemed to be the agent of the group for funding and disclosure purposes. An agent can only be appointed before close of nominations. ■ The Senate group agent, or the candidate whose name first appears on the ballot paper if there is no appointed agent, receives any funding entitlement due, and must lodge a Senate group return (including a 'nil' return if appropriate). ■ Individual Senate group members also have disclosure obligations as discussed under 'Senate group members' below.
Senate group members	<ul style="list-style-type: none"> ■ Individual candidates that are members of a Senate group may appoint an agent to act on their behalf (or may choose to be their own agent). An agent can only be appointed before close of nominations. ■ The candidate agent, or the candidate if there is no appointed agent, must lodge a candidate return (including a 'nil' return if that is appropriate). ■ The electoral expenditure part of the candidate return is not to be completed, as expenditure details are required to be consolidated on the group return. ■ The party agent, or Senate group agent, receives any election funding entitlement. ■ A party or Senate group agent is not the agent of individual Senate group members unless separately appointed.

Election returns

Following an election, candidate and Senate group agents must lodge financial disclosure returns with the AEC. If an agent is not appointed, the candidate or the Senate group member whose name appears first on the ballot paper must lodge the return.

The returns require information about election donations and electoral expenditure.

The relevant return form may be downloaded from www.aec.gov.au for completion 'on screen' and may be saved to a file or printed as appropriate. Additional data sheets, such as MYOB or Excel reports, that are in a similar format to the tables in the return form and which contain all required information, may be attached if required.

The completed return may be lodged by mail or facsimile or may be scanned and emailed. Please ensure the declaration on the front page is signed.

Returns are due 15 weeks after polling day and are made publicly available on the AEC website 24 weeks following polling day. Completed by-election returns are not currently displayed on the AEC website, but copies can be requested from the AEC's National Office in Canberra 24 weeks following polling day.

Reporting period

The period covered by the returns varies for election donations and electoral expenditure, for new and previous candidates and Senate groups.

For a candidate – the commencement date of the reporting period for donations depends upon which of the following four circumstances apply, and in all cases concludes 30 days after polling day:

- If a candidate previously stood in a Federal election or by-election within the last four years for the House of Representatives or seven years for the Senate, the reporting period commences on the 31st day after the last election was contested;
 - The prior election dates, and disclosure commencement dates, are printed on the candidate return form.

- If a candidate did not stand at an election listed on the return form, and is contesting the current election as an endorsed candidate, the reporting period commences on the date of their endorsement by the party.
- If a candidate did not stand at an election listed on the return form, and is contesting the current election as an unendorsed candidate, the reporting period commences on the date that their candidacy was announced.
- If a candidate did not stand at an election listed on the return form, but was appointed to a casual Senate vacancy, the reporting period commences on the date of that appointment.

The candidate return form requires the applicable commencement date to be included.

For a Senate group – the reporting period commences on the date that the group's claim to be grouped on the ballot paper is made to the AEC and concludes 30 days after polling day.

The reporting period for donations received by candidates and Senate groups ends 30 days after polling day.

In relation to electoral expenditure, the reporting period for both candidates and for Senate groups commences on the issue of the writ and ends at close of polling.

Disclosure threshold

The disclosure threshold for an election between 1 July 2010 and 30 June 2011.

The following details must be provided for persons or bodies from whom gifts or donations totalling more than \$11 500 were received:

- full name;
- full address details;
- date of the donation; and
- value of the donation.

The name and address details provided must be sufficient to enable the donor to be contacted by the AEC in relation to possible election disclosure obligations.

- If a gift was from an unincorporated association (other than a registered industrial organisation), the name of the association and the names and addresses of the committee members are required.
- If a gift was from a trust, the name of the trust and the names and addresses of the trustees are required.

Where a number of gifts or donations received from a donor exceed the threshold of more than \$11 500 the name, address, date and value of **each** donation must be provided.

Due date for lodging returns

Return forms are distributed by the AEC to agents approximately four weeks after polling day, when they will also be available on the AEC website.

Returns, including nil returns, must be lodged with the AEC National Office in Canberra no later than 15 weeks after polling day. The AEC has no discretion to extend this deadline.

Penalties

There are a number of offences in relation to lodging candidate and Senate group returns, which are discussed in detail in the 'Administration' section of this Guide. The Act imposes penalties, such as fines or imprisonment, for failure to properly complete and lodge a return. Additionally, people convicted of these offences are banned from being appointed as agents in the future.

Where a candidate or Senate group has appointed an agent, the agent is liable to prosecution. Where no agent is appointed, the candidate (or for Senate groups the first candidate in the group) may be prosecuted.

The return form - candidates

In general, the disclosure returns of candidates require:

- The number and total amount of donations received. These include donations below the disclosure threshold.
- The names and addresses of those people or organisations from whom donations totalling more than \$11 500 were received, with the dates the donations were received.
- The amounts spent on certain categories of electoral expenditure (e.g. electoral advertisements, campaign material, direct mailing and opinion polling).

Senate group members must lodge a candidate disclosure return separately to the Senate group disclosure return.

Specifically:

Endorsed candidates – must report personal donations or expenditure to their own political benefit:

- Donations received or expenditure incurred on behalf of, or with the authority of, the party are disclosed by the party (or State branch) and not by the candidate.
- Donations and expenditure of a campaign committee are included in the party (or State branch) annual disclosure return.

Endorsed candidates must ensure that details of donations received and expenditure incurred by their campaign committee are provided to the party agent for disclosure. A 'nil' candidate return must be lodged if relevant.

Independent candidates – unendorsed or independent candidates must complete and lodge a return of the donations and expenditure of their campaign.

A 'nil' return is required where the candidate has no reportable transactions.

The return form - Senate groups

In general, the disclosure returns of Senate groups require:

- The number and total amount of donations received. These include donations under the disclosure threshold;
- The names and addresses of those people or organisations from whom donations totalling more than \$11 500 were received, with the dates the donations were received; and
- The amounts spent on certain categories of electoral expenditure (e.g. electoral advertisements, campaign material, direct mailing and opinion polling).

Specifically:

Unendorsed and jointly endorsed groups – must complete and lodge a return. The return must include gifts or donations received by the group and all electoral expenditure incurred by the group, or its members.

A group member may personally receive (and report) gifts or donations but the group itself must report all electoral expenditure incurred by the group and its members.

Unendorsed or jointly endorsed groups must lodge 'nil' returns if they have no reportable transactions.

Endorsed groups (other than jointly endorsed groups) – a Senate group endorsed by a single registered political party does **not** complete a return.

The party agent must include the donations and expenditure of an endorsed group in the party annual return. The group should ensure that details of donations received and expenditure incurred are provided to the party agent for disclosure.

Members of a Senate group

Each member of a Senate group is a candidate for disclosure purposes. Candidates who are members of a Senate group only complete the election donations part of the return as their expenditure is included in the return lodged by the group.

Campaign committees

An endorsed candidate may personally receive gifts or donations which would need to be included in the candidate return. However, if these are channelled through a campaign committee they are to be included in the political party's annual return.

Under section 287A of the Act, gifts or donations received through the campaign committee are treated as being made to the state or territory branch of the party (or direct to the registered party if there are no such branches). These gifts are consolidated into the branch or party annual return and are subject to the party and donor disclosure requirements applicable to those returns.

Endorsed candidates should determine whether a donation was received by them (in which case it is reported in the candidate election returns) or through a campaign committee (in which case it is reported in the party annual returns). Deposits and expenditure made through a candidate's account would, prima facie, be made in his or her personal capacity while transactions through the campaign committee account are those of the party.

Candidates should advise donors of their election period or annual reporting obligations as appropriate.

Incomplete returns

Where a candidate or agent is unable to obtain all the information required to fully complete a candidate or Senate group election disclosure return and is able to identify who is in possession of the information, a Notice of Incomplete Return form must be completed and submitted with the return. The Notice of Incomplete Return form can be obtained by contacting the AEC's National Office in Canberra.

Where it is necessary to submit a Notice of Incomplete Return:

- Complete the Election Return as fully as possible;
- Complete the Notice of Incomplete Return form; and
- Lodge the Notice of Incomplete Return form with the AEC at the same time as the incomplete Election Return.

The Notice of Incomplete Return form is to be completed by the person who is required to complete the disclosure return.

The Notice of Incomplete Return form contains three sections

- **Section 1** – requires the full details of the information believed to be missing from the disclosure return.
- **Section 2** – requires:
 - The reason the particulars listed in section 1 were unable to be obtained; and
 - The details of all attempts made to obtain this information.
- **Section 3** – record:
 - The full name and address details of the persons believed to possess the missing particulars; and
 - The reason this person/s possesses the required information.

Amending returns

A request may be made to or by the AEC seeking amendment of a return that has been lodged and subsequently found to be incomplete or incorrect. An amendment return form is available at www.aec.gov.au.

Amendment forms require that the previously submitted amount for total receipts, total payments and total debts be provided together with the amended amount/s.

Changes to details of receipts or debts should be separated into:

- Additional information not previously provided; and
- Amendment of information previously provided.

In order to avoid confusion or ambiguity when completing an amendment, the record/s being changed should be **clearly** identified.

Election donations

Division 4 of Part XX of the Act deals with election donations. Section s 287 and 287A are also relevant.

Which transactions must be reported on the election returns for candidates and Senate groups?

The return must show:

- The total value of all donations received during the reporting period;
- The total number of persons who made gifts or donations;
- Subject to the disclosure threshold, for gifts or donations (including gifts-in-kind) received from an individual or organisation, the name and address of the donor along with the date and value of each donation;
- In the case of donations received from a trust or foundation, the names and addresses of the trustees must be disclosed along with the title or description of the trust or foundation;
- In the case of an unincorporated association (except for a registered industrial organisation) the names and addresses of the members of the executive committee must be disclosed along with the name of the organisation;
- It is sufficient to provide the name and address of a registered industrial organisation.

A member of a Senate group is a candidate who must report donations received for their own benefit (as distinct to the benefit of the group), including a 'nil' return if this is appropriate.

If the space on the return form is insufficient then additional schedules may be attached.

If you are uncertain whether a particular good or service should be reported as a donation or gift-in-kind, you may contact the AEC for further information at the address in the introduction of this guide. Where necessary you should seek your own legal advice as to your disclosure obligations.

Gifts and donations

Gifts are broadly defined to include any transfer or disposition of property or services for which no payment, or an inadequate payment, is received. Political donations come within the scope of this definition.

Donations may be in cash, credit card transactions, cheque, or 'gifts-in-kind'. They may be received directly by the candidate, Senate group or agent, or received by some third party acting on their behalf, or with their authority.

Gifts-in-kind

Gifts-in-kind are goods, assets or services for which no payment (in cash or kind) or a payment less than true value is made.

These donations are to be disclosed at their proper value. Gifts-in-kind are normally disclosed at the commercial or sale value of the item or service as evidenced by arms-length quotations, comparative advertisements or expert assessment.

Examples of 'gifts-in-kind' include:

- Free services or services provided at a discount to the commercial rates normally charged by the service provider (e.g. for legal advice, accounting services or web and IT services);
- Supply of free or discounted use of commercial premises, utilities or office and IT equipment;
- Wages or salaries (including on-costs) incurred by an employer whose employee works for a candidate during normal working hours while continuing to receive salary or wages from the employer (but not if the employee takes paid leave to work for the candidate);
- Free or discounted use of a motor vehicle, or provision of free fuel or servicing of a motor vehicle;
- Free or discounted time or production services by a broadcaster (except time provided by the ABC or SBS specifically for political broadcasting);
- Free or discounted advertising by a publisher or advertising production service;
- Free or discounted printing, typesetting or associated services; or

- Free or discounted goods or services (e.g. travel, artwork, sports memorabilia or electrical goods) for use in raffles or other fund raising activities.

Volunteer labour

Volunteer labour does not need to be disclosed as a donation as it is specifically excluded from the definition of 'gift' in the Act.

The donation of unpaid time by a person is considered to be volunteer labour where it is provided by:

- an office-holder of a party or a party member; or
- any other person where that service is not one for which that person normally receives payment.

The distinction between gifts-in-kind and volunteer labour is seen in the following examples:

- The donation of legal advice by a solicitor who is a party member is volunteer labour because the solicitor is a party member;
- The donation of legal advice by a solicitor who is not a party member is a gift-in-kind that must be disclosed because this is a service for which that person normally charges;
- A solicitor who is not a party member handing out how-to-vote cards is volunteer labour because this is not a professional service for which that person normally charges; or
- The donation of legal advice on behalf of a firm of solicitors is a gift-in-kind that must be disclosed because volunteer labour may only be provided by natural persons and not by organisations.

Which transactions are not to be reported in the election returns for candidates and Senate groups?

Transactions that do not need to be reported by candidates as donations include:

- personal gifts to a candidate which are not used to incur campaign expenditure;
- commercial discounts received in the normal course of business;
- loans;

- volunteer labour, such as persons handing out how-to-vote cards;
- an offer by a broadcaster to interview a candidate;
- interviews and news items published in a newspaper or broadcast in the electronic media;
- gifts received on behalf of a political party or by the campaign committee of an endorsed candidate (details of these must be passed on to the party as they are required to be disclosed by the party agent).

Advertising

While donations of advertising must be disclosed, interviews granted in the normal course of political activity do not need to be disclosed. This gives rise to questions as to what constitutes an advertisement and what constitutes an interview or news item.

Material presented on an 'advertorial' basis (i.e. a combination of paid advertising and interviews) should be disclosed consistent with the promotional intent of the activity.

Personal donations

Personal donations made by a candidate to his or her own campaign, whether by cash deposit, use of own car, personal payment of bills, etc. do not normally need to be disclosed. However:

- donations from a family company or trust are not personal donations and do need to be reported;
- personal donations by an endorsed candidate to their campaign committee must be disclosed by the party in its annual return as a donation received from the candidate.

Anonymous donations

It is illegal for a candidate or Senate group to receive donations totalling more than \$11 500 unless the person receiving the gift has a record of the name and the address of the donor when the gift was made:

- In the case of a trust or foundation, the names and addresses of the trustees, along with the title or description of the trust or foundation, must be retained.

- In the case of an unincorporated association (other than a registered industrial organisation) the name and address of each member of the executive committee must be known. It is sufficient to know the name and address of a registered industrial organisation.

Anonymous donations are recoverable by the Commonwealth.

Multiple donations

Multiple donations from a single donor that exceed the disclosure threshold must be disclosed.

Loans received

Section 306A of the Act deals with unlawful loans. A loan is broadly defined to include advances, credit, or amounts with an obligation to repay and transactions having the effect of a loan of money. For example, a credit card debt which exceeds \$11 500 is considered an individual loan for these purposes.

Candidates, including members of Senate groups, or people acting on their behalf, must keep records of any loan to the value of more than \$11 500 received from a source other than a financial institution.

For these purposes:

- A financial institution is a bank, credit union, building society or special service provider registered with the Australian Prudential Regulation Authority.

The records of each loan must include the terms and conditions of the loan and details of the lender. These include things such as loan documentation and schedules, including the amount, interest rate and repayment terms, as well as the details of the lender.

The lender details to be kept are:

- In the case of a loan from a registered industrial organisation, the name of the organisation and the names and addresses of its executive committee.
- In the case of a loan from a trust or foundation, the names and addresses of the trustees, along with the title or description of the trust or foundation.
- In the case of a loan from an unincorporated association, the names and addresses of the members of the executive committee, along with the name of the organisation.
- In other cases, the name and address of the person or organisation.

If such loans are received and not properly documented, the amount of the loan is payable to the Commonwealth.

Conditional loans – Some candidates receive ‘loans’ whose repayment is conditional upon the 4% of formal first preference votes election funding threshold being achieved. If less than 4% of votes are received, the amount becomes a donation; if more than 4% of votes are received the amount is a loan to be repaid.

Such ‘loans’ must be documented for the purposes of the Act.

As election funding payments are finalised well within the 15-week lodgement period for candidate returns, the amounts of such ‘loans’ may be reported as donations if that is appropriate. This reflects the reality that sufficient information would be available to determine the majority of such arrangements within the reporting period applying to candidate returns.

Political party disclosure obligations

Endorsed candidates and Senate groups should be aware of the disclosure obligations of registered political parties and their state or territory branches. In particular, they will need to ensure that financial disclosure information is passed to the party agent for inclusion in the party annual return:

- A registered political party **must nominate a party agent**. The agent is responsible for party election funding and financial disclosure matters, including in respect of state or territory branches where the party undertakes activities but is not formally organised.
- A state or territory branch of a registered political party **must appoint an agent** if the party is organised (e.g. maintains bank accounts and has a formal organisation structure) in that state or territory. This agent is responsible for financial disclosure matters for that state or territory.
- A campaign committee assisting an endorsed candidate or Senate group is treated as part of a state or territory branch of the party for financial disclosure purposes. Gifts or donations received, and expenditure incurred, through or by the campaign committee of an endorsed candidate are transactions of the state or territory branch of the party (or of the registered party if there are no such branches).
- The party agent **must lodge a political party annual return** covering the transactions of the party, including party units and campaign committees.
- The party agent receives any election funding entitlement of endorsed candidates and Senate groups.
- The party agent is not the agent of individual endorsed candidates or Senate group members unless separately appointed as such.
- The party agent includes financial details of a Senate group endorsed by the party in the party's annual return, except in the case of a jointly endorsed group.

The *Funding and Disclosure Guide for Political Parties* addresses the responsibility of political parties in more detail.

A reference to a party agent in this guide is a reference to the party agent in the state or territory in which the candidate stood for election unless otherwise noted.

Donor disclosure obligations

People or organisations who make donations to candidates, Senate groups or political parties may be required to lodge financial disclosure returns.

Subject to the minimum disclosure threshold, donors must lodge one or more of the following disclosure returns with the AEC:

- **Donor Annual Return** – covering donations to a registered political party and donations received and used, in whole or in part, to make such donations (subject to the minimum disclosure threshold);
- **Election Donor Return** – covering donations made to a candidate or member of a Senate group and donations received and used, in whole or in part, to make such donations (subject to the minimum disclosure threshold).

These returns are made available on the AEC website.

Gifts or donations received through the campaign committee of an endorsed candidate are treated as being made to the state or territory branch of the party (or direct to the registered party if there are no such branches). These are consolidated into the branch or party annual return.

As all returns are made publicly available, the public, including the media, may compare returns (e.g. candidate or party returns with donor returns) for consistency.

Electoral expenditure

Sections 308, 309 and 313 of the Act deal with disclosure of electoral expenditure. Sections 287 and 287A are also relevant.

The total of all expenditure incurred under each specified category of expenditure below must be included on the return.

Additional details are not required but supporting documentation must be retained for 3 years.

Nil entries should be provided where appropriate. A nil return must be provided where there is no reportable expenditure.

Expenditure categories

Reportable electoral expenditure is that incurred on:

- broadcasting advertisements (including production costs);
- publishing advertisements (including production costs);
- displaying advertisements at a theatre or other place of entertainment (including production costs);
- costs of campaign material where the name and address of the author, or the authorising person, is required (e.g. how-to-vote cards, pamphlets, posters);
- direct mailing;
- opinion polling or other research relating to the election.

In the case of campaign material and direct mailing material, the cost of material used or distributed is to be reported i.e. the cost of surplus or unused material is not required to be reported.

All advertising and polling or research costs relating to the election must be reported.

Other campaign expenditure (e.g. hire of premises or equipment, freight, telephone and travel costs) does not have to be reported in the candidate return.

Authorised expenditure

The general principle is that expenditure incurred with the authority of a political party or branch is reported by the party or branch, and not by the candidate.

The following more specific points apply:

- Candidates who were members of a Senate group do not report campaign expenditure on their candidate return, as this is included in the party's annual return if endorsed by a single party. Otherwise it is included in the Senate group return (s309(3)).

Where expenditure is required to be reported by a party or Senate group, arrangements should be put in place to ensure that the party or group is provided with all necessary information.

Period covered

The electoral expenditure part of the return covers campaign expenses for goods used or services provided during the period from the issue of writ until the close of polling, irrespective of when payment is made.

For example, advertising production and broadcasting costs must be included where an advertisement that was run during the election period was produced prior to the period and paid for subsequent to the period.

Election funding

Division 3 of Part XX of the Act deals with election funding.

Candidates who receive 4% or more of the formal first preference votes in a federal election or by-election are entitled to receive public funding.

For Senate groups, the group as a whole must win at least 4% of the formal first preference votes in their state or territory in order to be eligible for public funding.

Entitlement

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

- The funding rate is reviewed each six months in line with increases in the consumer price index.
- The current election funding rate is available at www.aec.gov.au.

Payment

Endorsed candidates and endorsed Senate groups

– payments are made by the AEC direct to the state or territory agent of the endorsing party.

Independent candidates and unendorsed groups

– payment is made to the candidate or Senate group agent, or deemed agent in those cases where no agent is appointed. The deemed agent is the candidate or, in the case of a Senate group, the person whose name appears first on the ballot paper.

At least 95% of the entitlement is paid on the basis of votes counted as at the 20th day after polling day. The balance is paid when the count is finalised and verified, and the full entitlement is known.

More detailed information about the payment arrangements for parties endorsing candidates or Senate groups is provided in the Election Funding Guide.

Death of candidate or group member

Election funding payment arrangements remain in place should a candidate or Senate group member die. Where the candidate was their own agent, payment is made to their legal personal representative. If the deceased was the agent of a Senate group, payment will be made to another member of the group.

Payments in error

Payments made to a person, Senate group, party or branch that is not entitled to the money are recoverable by the Commonwealth.

Administration

Date for public inspection of election returns

Election returns are made available for public inspection 24 weeks after polling day.

Returns are available for inspection on the AEC's website at www.aec.gov.au and through public access terminals in AEC State Offices located in each state and territory and at the AEC's National Office in Canberra.

Record keeping

Candidates and Senate groups must give consideration to the financial recording systems and procedures that are appropriate to their needs and circumstances.

Financial recording systems and procedures must be sufficient to enable the return form, which will be publicly available, to be properly completed. Penalties apply for lodging incomplete returns.

Issues that are relevant to the determination of an appropriate record keeping system include:

- The likely number, value and nature of election donations expected to be received and election expenditure payments expected to be made;
 - If donations and expenditure are through the campaign committee of an endorsing party then the system will be dictated by the party's information needs.
- The need to ensure that anonymous donations of \$11 500 or more are not received and loans of \$11 500 or more from sources other than financial institutions are properly documented.
- The number, experience and training of people likely to be receiving donations, making payments and maintaining the records, including over the election period.
- All transactions should be adequately documented and recorded and, where possible, reconciled to bank statements.

Care should be taken to ensure that the details recorded are accurate. For example:

- a donation from a company executive may be made personally, or may be made on behalf of the organisation;
- the true donor should be recorded where a transaction is on behalf of someone else e.g. through a solicitor's trust account;
- anonymous donations in excess of the threshold are unlawful.

All relevant records, whether formal or informal, must be retained for a minimum period of three years. Receipt books, bank records, receipts registers, source documents and working papers must be kept for this period.

Compliance reviews

The AEC conducts regular compliance reviews of the annual disclosures made by registered political parties. Coverage by these reviews can extend to the financial records of campaign committees, including the cash book, bank statements, receipts, bank deposit slips, invoices and cheque butts. The review may also involve a visit by AEC staff to the location where those financial records are held. More detailed information about the compliance review process is available in the *Funding and Disclosure Guide for Political Parties*.

Offences

Section 315 of the Act contains penalty provisions for offences against the funding and disclosure provisions.

The AEC aims to assist agents to fulfil their obligations under the Act. The AEC may, however, refer matters to the Director of Public Prosecutions for offences against the disclosure provisions when no response or an unsatisfactory response to resolve non-compliance needs to be escalated.

The offences include:

- **Failure to lodge a return by the due date**
 - A person convicted for failing to lodge a disclosure return by the due date may be fined up to \$1,000.
 - A person who has been convicted for failing to lodge a return who continues not to lodge the return may be fined up to \$100 per day for each day that the return is outstanding after the initial conviction.
- **Lodging an incomplete return**
 - A person convicted for lodging an incomplete return may be fined up to \$1,000.

The Election Returns chapter of this Guide provides advice for the situation where information required to complete a return cannot be obtained.

- **Including false or misleading information in a return**
 - A person convicted for knowingly lodging a return containing false or misleading information may be fined up to \$5,000.
- **Knowingly providing false or misleading information for inclusion in a return**
 - A person convicted for knowingly providing another person with false or misleading information for inclusion in a return may be fined up to \$1,000.
- **Failure to retain records for 3 years**
 - Failure to retain records containing information that could be required to be included in a return for 3 years may result in a fine of up to \$1,000.

- **Failure to comply with a notice authorising a compliance review or investigation**
 - A person convicted for refusing or failing to comply with a notice authorising a compliance review or investigation by the AEC may be fined up to \$1,000.
- **False or misleading information or documents**
 - A person who knowingly provides false or misleading information (including by omission), or documents to a Commonwealth officer, is subject to 12 months imprisonment under s137.1 and s137.2 of the Criminal Code.

Appendix 1

Appendix 1 – Glossary of terms

AEC	Australian Electoral Commission
Anonymous donations	Gifts where the person receiving the gift did not know the donor's name or address at the time the gift was made. Anonymous gifts of more than \$11,500 will be forfeited to the Commonwealth.
Campaign committees	A campaign committee, in relation to a candidate or group, means a body of persons appointed or engaged to form a committee to assist the campaign of the candidate or group in an election.
Candidate agent	A person appointed by a candidate or a Senate group to assume funding and disclosure responsibilities. If no appointment is made by the close of nominations, candidates are deemed to be their own agents or, for Senate groups, the candidate whose name appears first on the ballot paper is deemed to be the group agent.
Disclosure threshold	Detailed disclosure must be made of gifts totalling more than \$11 500.
Donation	A disposition of property or the provision of a service for which no payment, or an inadequate payment, is made. The term includes cash and non-cash (gifts-in-kind) transactions, but does not include commercial transactions or volunteer labour (used interchangeably with 'gift').
Election funding entitlement	The amount of public election funding payable based on the number (at least 4%) of formal first preference votes obtained by a candidate or Senate group at a federal election.
Electoral expenditure	<p>Disclosure is required of the following categories of campaign expenditure incurred on goods or services used during the period from the issue of the writ to the close of polling:</p> <ul style="list-style-type: none"> • Broadcasting, publishing or displaying advertisements • Production of campaign material, including direct mailing • Opinion polling and election research.
Endorsed candidate	A candidate endorsed by a single political party.
Endorsed senate group	A senate group can be endorsed by a single party, or can be endorsed by more than one party.

Financial institution	A bank, a credit union, building society or entity registered as a special service provider by the Australian Prudential Regulation Authority.
Gifts	Any disposition of property made by a person to another person, otherwise than by will, and without consideration or with inadequate consideration (used interchangeably with 'donation').
Gifts-in-kind	Non-cash donations such as receipt of an asset or service, discounts other than in the normal course of business and non-commercial or excessive payment for goods or services (including membership). Gifts-in-kind must be disclosed at the appropriate value – normally the commercial or sale value of the item or service.
Indexation	<p>The disclosure threshold is indexed to the All Groups Consumer Price Index. The indexed threshold applying to the 2010-2011 financial year is \$11 500.</p> <p>The rate of election funding payable per vote is indexed every 6 months to increases in the CPI.</p>
Jointly Endorsed Group	A Senate Group in which two or more political parties have endorsed candidates.
Public inspection	Election disclosure returns are available for inspection by the public at www.aec.gov.au and through public access terminals in AEC State Offices located in each state and territory capital city and at the AEC's National Office in Canberra. By-election returns are not available on the AEC website. Copies of by-election returns can be requested from the AEC's National Office.
Registered political party	A political party registered with the AEC (registration with a state or territory electoral commission does not confer federal registration). State or territory branches of a registered political party are treated as separate parties for the purposes of the funding and disclosure provisions of the Act.
Senate Group	Two or more candidates grouped together so that an 'above the line' vote can be cast for the group.
Volunteer labour	A service provided free of charge to a party by an office-holder of the party or a party member, or any other person where that service is not one for which that person normally receives payment. Volunteer labour provided to a registered political party does not need to be disclosed as a donation by that person or the party.

Appendix 2

Appendix 2 - Funding and Disclosure Legislative Reference Guide

Part XX of the Act deals with election funding and financial disclosure. It contains 7 Divisions:

- **Division 1** provides definitions relevant to the part. Note that section 4 of the Act contains definitions relevant to the Act as a whole;
- **Division 2** deals with the appointment and administration of party agents and candidate agents;
- **Division 3** deals with election funding;
- **Divisions 4 and 5** deal with the disclosure of donations and electoral expenditure by candidates, Senate groups and donors in relation to an election;
- **Division 5A** deals with the annual returns of registered political parties, associated entities and third parties who incur electoral expenditure and /or receive gifts or donations for political expenditure; and
- **Division 6** deals with offences, compliance reviews, amended returns, etc.

The following sections underpin the financial returns disclosure scheme:

Candidate (including Senate group member) election period returns

- election donations – s304(2)
- electoral expenditure – s308 and s309(2)
- nil returns required – s307(1) and s313(1)

Senate group election period returns

- election donations – s304(3)
- electoral expenditure – s308 and s309(3)
- returns not required if group endorsed by a single party – s304(3A) and s309(1A)
- nil returns required s307(2) and s313(2)

Donor election period returns

- donations to candidates – s305A(1)
- donations received – s305A(2)

Donor annual returns

- donations to political parties – s305B
- donations received – s305B(3A)

Third party annual returns

- political expenditure – s314AEB
- gifts received for political expenditure – s314AEC

Associated entity annual returns

- receipts – s314AEA(1)(a)
- payments – s314AEA(1)(b)
- debts – s314AEA(1)(c)
- capital contributions – s314AEA(3)

Political party annual returns

- receipts – s314AB and s314AC
- payments – s314AB
- loans – s314AB and s314AE

The following sections are also directly relevant to the financial disclosure scheme:

- Unlawful gifts – s306
- Unlawful loans – s306A
- Offences – s315
- Compliance reviews and investigations – s316
- Records to be kept – s317
- Incomplete information – s318
- Amendment of returns – s319A
- Public inspection of returns – s320

This reference guide is provided for the convenience of users of this guide, who should note that other legislation and other sections of the Act, together with legal precedents, may be relevant to the interpretation and application of Part XX.

Users should therefore seek professional legal advice on specific compliance and other issues that may arise.

The AEC is able to provide guidance on its approach to the administration of the funding and disclosure provisions but is not able to provide legal advice generally. Information about how to obtain a copy of the Act, or to contact the AEC, is provided in the introduction to this guide.