

Australian Electoral Commission

Funding and Disclosure Guide

2010–2011 Financial Year

for Associated Entities



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 Act, 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.

© Commonwealth of Australia 2011

This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at www.ag.gov.au/cca

Contact us:
Funding and Disclosure
Australian Electoral Commission

In person:
West Block Offices Queen Victoria Terrace
Parkes ACT 2600

By mail:
PO Box 6172 Kingston ACT 2604
Ph: 02 6271 4552
Fax: 02 6271 4555

Email: fad@aec.gov.au
Web: www.aec.gov.au

Contents

Introduction	1	Unlawful donations and loans	8
■ The Guide	1	■ Anonymous donations	8
■ What is an associated entity?	1	■ Winding-up of a donor company	9
■ eReturns Portal	2		
Overview	2	Third party political expenditure return	9
		■ Political expenditure	9
Annual disclosure returns	2	Incomplete returns	9
■ Reporting period	2	Amending returns	10
■ Disclosure threshold	2	Administration	10
■ Due date for lodging returns	3	■ Additional ‘discretionary’ disclosures	10
■ Responsibility for lodging returns	3	■ Date for public inspection of annual returns	10
■ Penalties	3	■ Record keeping	10
■ The return form	3	■ Retention of records	11
■ How should the transactions be reported?	4	■ Compliance reviews	11
■ Which receipts must be reported?	4		
■ Which transactions are not to be reported in the Associated Entity Disclosure Return?	5	Offences	11
■ General guidance on completing the return	5		
Total receipts, payments and debts	6	Appendix 1 – Glossary of terms	13
Details of receipts and debts	6	Appendix 2 – Funding and disclosure legislative reference guide	16
■ How and when to disclose receipts, debts and loans above the threshold	6	Appendix 3 – eReturns	17
■ Classification of receipts that exceed the threshold	7		
■ Receipts and debts from a representative or a person acting on behalf of a principal	7		
Loans	8		
Capital contributions	8		

Introduction

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

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

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

These disclosure returns are then made available for public inspection.

The Guide

The *Funding and Disclosure Guide for Associated Entities* is designed to assist associated entities to understand their obligations under the disclosure provisions of 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 publications include:

- *Funding and Disclosure Guide for Candidates and Senate Groups;*
- *Funding and Disclosure Guide for Political Parties;*
- *Funding and Disclosure Guide for Donors to Political Parties;*
- *Funding and Disclosure Guide for Election Donors; and*
- *Funding and Disclosure Guide for Third Parties.*

The *Funding and Disclosure Guide for Associated Entities* provides information derived from the Act as well as from the experiences of the AEC in the administration of the funding and disclosure provisions of the Act. The guide attempts to simplify and explain a range of diverse and complex legislative provisions. While it is intended to

be a user-friendly guide in relation to the funding and disclosure requirements, it does not address the whole of the Act and should not be used as a substitute for specific legal advice on detailed disclosure or compliance issues.

In addition to lodging an Associated Entity Disclosure Return, some associated entities may also have an obligation to lodge a Third Party Return of Political Expenditure. Accordingly, it is recommended associated entities also familiarise themselves with the disclosure obligations of third parties.

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

Additional information and advice on the Commonwealth financial 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 available from www.aec.gov.au. The annual and election returns are also available for viewing on this site after the public release date.

What is an associated entity?

An associated entity is defined in section 287 of the Act as an entity that:

- is controlled by one or more registered political parties, or
- operates wholly or to a significant extent for the benefit of one or more registered political parties, or
- is a financial member of a registered political party, or on whose behalf another person is such a member, or
- has voting rights in a registered political party, or on whose behalf another person has such voting rights.

Examples of associated entities include '500 clubs', 'think tanks', registered clubs, service companies, affiliated trade unions and corporate party members.

Associated entities operating wholly, or to a significant extent, for the benefit of political parties may include:

- companies or incorporated associations,
- trusts, including charitable foundations, and
- unincorporated associations, societies, groups or clubs.

These may actively participate in business, industrial or fundraising activities, or passively hold assets (including intellectual property) or liabilities.

eReturns Portal

Associated Entities can now prepare and lodge their returns online via the eReturns portal. See Appendix 3 (page 16) for more information.

Overview

The associated entity provisions seek financial disclosure from organisations that are closely associated with registered political parties.

The Associated Entity Disclosure Returns must reach the AEC's National Office by 20 October each year. The following information is disclosed:

- total receipts and payments for the financial year, and total debts as at 30 June each year;
- details of amounts of more than \$11 500 received during the reporting period;
- details of debts of more than \$11 500 outstanding as at 30 June; and
- details of capital contributions (deposits) from which payments to a political party were generated.

Those associated entities who incur political expenditure in excess of \$11 500 are also required to lodge a Third Party Return of Political Expenditure.

The disclosure threshold for the 2010–2011 financial year is more than \$11 500. This figure is indexed annually.

Registered political parties and their state or territory branches, donors and 'third parties' which incur political expenditure also have reporting obligations.

Election returns are required from candidates, Senate groups and people or organisations that make donations to candidates or Senate groups.

Annual disclosure returns

Following the end of a financial year, the financial controller of an associated entity of a registered political party must lodge a completed disclosure return with the AEC by 20 October.

The relevant form can be downloaded from www.aec.gov.au. Additional data sheets (e.g. MYOB or Excel reports) in a similar format to the tables in the return form that provide all the necessary information should be attached as appropriate.

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

For annual disclosure reporting, financial information included in annual returns should be reported on a cash basis and all entries **must** be GST inclusive.

Reporting period

The return covers the financial year 1 July to 30 June. This reporting period applies regardless of the normal financial year used by the associated entity.

If an entity is or becomes an associated entity at any time during a financial year, it must lodge a return covering the whole of that financial year.

Disclosure threshold

The disclosure threshold for the 2010–2011 financial year is more than \$11 500.

- The threshold does not apply to the reporting the **total** amounts of receipts, payments or debts, required at Parts 2, 4 and 5 of the return.
- Detailed disclosure (i.e. name, address, amount and classification as a 'donation' or 'other receipt') is necessary for amounts greater than \$11 500.
- Individual amounts received from the same source on separate days that are individually less than \$11 500 only need to be disclosed as part of the total receipts.

- Multiple receipts received on the same day from the same source are considered to be a single receipt and should be reported separately if their sum exceeds the threshold.
- The threshold for reporting debts is the combined total of individual amounts, including those that are less than the threshold.
- Transactions of related entities should be consolidated before determining whether the disclosure threshold has been reached, and one return lodged on behalf of all those entities.
- The return should be notated to indicate which associated entities are included in the disclosure.

Due date for lodging returns

The completed Associated Entity Disclosure Return must reach the AEC's National Office in Canberra by 20 October.

The AEC has no legislative discretion to extend this deadline.

The names of all associated entities that fail to submit a return by the due date will be published on the AEC's website and/or in the AEC's report to Parliament.

Responsibility for lodging returns

Responsibility for lodging returns lies with the financial controller of the associated entity.

- The financial controller is defined by the Act as:
- the company secretary if the entity is a company; or
- the trustee if the entity is a trust; or
- in other cases, the person responsible for maintaining the financial records.

Penalties

The Act imposes penalties for failure to properly complete and lodge a return. The AEC provides support, including this guide, to assist associated entities to comply with their disclosure obligations.

The AEC deals with non-compliance as appropriate to the circumstances, including referral to the Director of Public Prosecutions to initiate legal action. Refer to the Offences section of this guide for additional information.

The return form

Returns must be prepared on a cash basis rather than an accruals basis. Only completed transactions are disclosed. For example, a cheque payment is disclosed as expenditure only when the cheque has been cashed, not when it is written, i.e. when money actually changed hands.

Part 1 – the associated entity must list any other names under which it conducts business. Where a form is being submitted for a union, any other subsidiaries or branches on behalf of whom the return is being lodged must be listed.

The return requires disclosure of the **GST inclusive total amounts** in *Parts 2–6*.

Part 2 – the total of all receipts received. This is the gross amount (including GST) of all cash and non-cash benefits received by, or on behalf of, the associated entity including all gifts of money, services or goods, membership subscriptions, loans, returns on investments and any other amounts received.

- The amount included in the total receipts, calculated as the value of gifts-in-kind, must be listed separately.

Part 3 – the details of individual amounts of more than \$11 500 received during the financial year.

- Each receipt listed must include the full name of the person, organisation or other body from whom the money or gift-in-kind was received, full address details, and the amount.
- Receipts should be recorded as either a 'donation' or 'other receipt'.
- When completing Part 3 of the return, the threshold applies only to individual payments of more than \$11 500. It is not necessary to disclose any payment less than the threshold.
- However, where two or more amounts below the threshold are received from the same source on the same day and the total amount exceeds the threshold when added together, the total of these receipts must be separately disclosed.

Part 4 – the total amount of all payments made by, or on behalf of, the entity during the financial year.

Part 5 – the total amount of debts, loans, overdrafts, unpaid accounts, etc. outstanding as at 30 June 2011.

Part 6 – individual debts and loans of more than \$11 500 as at 30 June 2011. Each entry requires full details (name, address and amount).

- The \$11 500 threshold applies to the total amount of the debt. This means that *Part 6* must be completed if the **total** of debts or loans from a given source exceeds the threshold.
- Multiple smaller debts owed to the same person or organisation that sum to an amount greater than the threshold **must** be disclosed.

Part 7 – contributions or deposits to the capital of the entity. Capital contributions or deposits are reported only if money was paid to, or for the benefit of, one or more political parties from funds generated from the capital during the financial year.

The AEC will send a reminder to financial controllers of known associated entities of their disclosure obligations following the end of the financial year.

A return form should still be lodged with a 'nil' entry reported if an associated entity has no transactions, or no transactions applicable to a particular part of the return.

How should the transactions be reported?

Gross reporting – the return is completed on a gross (GST inclusive) basis.

For example, a fundraiser taking \$14 000 with costs of \$12 750 and a net profit of \$1 250 is reported as \$14 000 receipts and \$12 750 payments, rather than the net profit alone of \$1 250.

- Where a gift or donation greater than the disclosure threshold is received and then returned or refunded, the amount must be recorded:
 - as a donation (a receipt), AND
 - also as a payment.
 if both transactions occurred in the same reporting period.

Which receipts must be reported?

Receipts to be reported include donations or gifts received, membership subscriptions, income from investments, borrowed money and all other revenue. The following information may be of assistance.

- **Gifts** – are broadly defined to include any transfer or gift of property or services for which no payment, or an inadequate payment, is received. These may be in cash or cheque or may be 'gifts-in-kind'.
 - Gifts may be received directly by the associated entity or by a third party on their behalf or with their authority.
 - If a gift is returned or the amount or value of the gift is paid to the Commonwealth, any return that includes the amount or value of the gift must also include a statement to the effect that the gift was returned or that the amount or value of the gift was paid to the Commonwealth.
- **Gifts-in-kind** – the component of the 'total receipts' amount at Part 2 of the return that is made up of 'gifts-in-kind' must also be listed in the relevant section if their value is in excess of the disclosure threshold.

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

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

Examples of gifts-in-kind donations include:

- free services or services provided at a discount to the commercial rates normally charged by the service provider (e.g. legal advice, accounting services or web and IT services);
- excessive payments received for goods or services provided (including excessive membership fees);

- wages or salaries (including on-costs) incurred by an employer whose employee works for the associated entity 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 entity);
- free use of a motor vehicle, or 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 air travel;
- free or discounted printing, typesetting or associated services; and
- free or discounted goods or services (e.g. travel, artwork, sports memorabilia or electrical goods) for use in raffles or other fundraising activities.

- **Volunteer labour** – does not need to be disclosed as a receipt on an Associated Entity Disclosure Return. The definition of ‘gift’ in the Act excludes volunteer labour.

The donation of unpaid time by a person is volunteer labour where it is provided by an office-holder, party member or by any other person where the service is not one for which that person normally receives payment.

- **Distinction between gifts-in-kind and voluntary labour** – is seen in the following examples:
 - The donation of legal advice by a solicitor who is a party member of a party with which the entity is associated is volunteer labour because the solicitor is a party member
 - The donation of legal advice by a solicitor who is not a party member of a party with which the entity is associated 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 of a party with which the entity is associated helping at a fundraiser is volunteer labour because this is not a professional service for which that person normally charges.
- 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 Associated Entity Disclosure Return?

Some transactions are not to be reported in the return:

- commercial discounts received in the normal course of business;
- volunteer labour, such as persons helping at a fundraiser; and
- interviews and news items published in a newspaper or broadcast in the electronic media.

The difference between the requirement to disclose donated advertising and the exclusion of interviews granted in the normal course of political activity requires further explanation.

Material presented on an ‘advertorial’ basis (e.g. a combination of paid advertising and interviews) should be disclosed consistent with the promotional intention of the activity.

General guidance on completing the return

The following principles apply to completion of the Return:

- **All** transactions of the associated entity must be reported, including those that are not to the benefit of a registered political party.
- Inter-entity transactions, e.g. transfers between the associated entity and a political party must also be included in the return.
- Any AEC compliance review will be assisted if a reconciliation of the return to the accounts of the entity is included in the working papers retained by the entity.

- **Related bodies corporate** – transactions by related bodies corporate of the associated entity (as determined under the Corporations Act 2001) should be included in the return.
 - In general, related bodies corporate are entities at least 50% owned or controlled by another entity, or entities over which that other entity is able to exert control.
- **Trusts** – when an associated entity is a trust, trustees have the reporting obligation.
 - Where a transfer of assets or funds takes place between an associated entity and a party, inevitably, these transactions will be ‘double counted’.
 - Where funds or assets are received from a trustee, it should be disclosed as ‘ABC as trustee for XYZ Trust’, not just one or the other.
 - Trustees should not list transactions involving their own trusts in their own return.
- Where a donor return from a trust:
 - does not list any entries in the ‘Donations Received’ section, and
 - has no obvious trading income,
 further enquiries will be made of the trust to determine the source of the donation.
- State and local government campaign expenses, salaries and wages are to be included in total payments.
- Trading liabilities such as outstanding accounts are to be included in total debts.
- A new loan is a receipt, and the repayment of a loan is a payment.
- A capital contribution is a receipt and a repayment of capital is a payment.
- The cash value of gifts-in-kind, such as free travel, must be recorded. Please see the Which Receipts Must be Reported section of this guide for further information on gifts-in-kind.

Details of receipts and debts

Part 3 of the return requires disclosure of details of those people or organisations from whom an associated entity has received more than \$11 500.

Part 6 requires the full disclosure of details in relation to people, organisations and any other bodies to whom the associated entity owes money.

How and when to disclose receipts, debts and loans above the threshold

The following details must be provided in relation to receipts and debts of more than \$11 500:

- full name and address details of the person, organisation or entity from whom the money or gift-in-kind was received or the debt is owed,
- the amount that was received or the debt that is owed, and
- whether the receipt is a ‘donation’ or ‘other receipt’.

In the case of a trust or foundation, the names and addresses of the trustees, along with the name and description of the trust or foundation must be disclosed.

In the case of an unincorporated organisation (other than a registered industrial organisation), the name and address of each member of the executive committee must be disclosed, along with the name and address of the organisation.

It is enough to provide the name and address of a registered industrial organisation.

Where investigations of trusts are undertaken, a copy of the trust deed will be requested as a matter of course in order to allow the AEC to readily determine the relevant features of the trust.

Total receipts, payments and debts

The total amount of receipts and payments for the financial year, as well as all debts or amounts owing as at 30 June 2011, are to be reported.

Parts 2, 4 and 5 of the return are for reporting the total value of all receipts, payments and debts of the associated entity.

All transactions must be included in calculating the ‘total’ figures to be recorded in these parts, including those amounts that are individually less than the disclosure threshold. No category or class of transaction is excluded. For example:

Separate receipts or debts from the same person, organisation or other entity that exceed the threshold must be listed separately in the return.

In *Part 3* of the return, only **individual receipts of more than \$11 500 AND multiple receipts received on the same day from the same source where the sum exceeds the threshold** are taken into account in calculating whether amount/s received from a person, organisation or other entity have exceeded the threshold.

- Individual receipts below \$11 500 are not required to be separately disclosed in this section, although they should be taken into account when calculating the 'total' figures on the return.
- All receipts above the threshold must be recorded, not merely those from gifts or donations.

The following examples are designed to assist in understanding the manner in which the legislative threshold operates:

- Three separate donations of \$8 000 each are received from a person on different days. These are not disclosed in *Part 3* because each individual receipt is below the threshold, but are included in the calculation of total receipts in *Part 2*;
- Three separate donations of \$5 000 each are received from the same person on the same day. These need to be disclosed in *Part 3* because separate receipts received from the same person on the same day that exceed the threshold when added together are treated as a single receipt; and
- Two separate donations are received from a person on different days. One amount is \$9 500 and the other is \$35 000. The \$35 000 is disclosed in *Part 3* as it is above the threshold for individual receipts. The \$9 500 is not individually disclosed in *Part 3* as it is below the threshold.
- If the amount received is a gift or donation, the donor may have an obligation to lodge a Donor to Political Party Disclosure Return. The obligation for a donor is determined when the amount or value of one or more donation/s

reaches or exceeds the threshold, regardless of whether payments were made on the same or different days during the reporting period.

In *Part 6* of the return, all debts and unpaid accounts owed to an individual or organisation regardless of the amount must be considered in order to determine if the total debt to that person or organisation exceeds the disclosure threshold. For example:

- Individual amounts less than the threshold must be included in the calculation.
- An outstanding debt of \$12 000, comprising two amounts of \$6 000 to the same person, organisation or entity must be disclosed as it is a total debt of more than the threshold when aggregated.

Classification of receipts that exceed the threshold

The Associated Entity Disclosure Return includes a column to indicate whether a revenue amount is a 'donation' or 'other receipt.'

The AEC contacts all people, organisations and other entities whose entries are classified as 'donations' to ensure they are aware of their disclosure obligations under the Act.

The classification also informs any debate about revenue and donations when the returns are made publicly available.

Associated entities may provide additional clarifying information in situations where disclosure does not provide a clear picture of the underlying transactions. For example, associated entities may wish to separately identify receipts such as membership fees, subscriptions or fundraisers.

Receipts and debts from a representative or a person acting on behalf of a principal

This section provides advice in relation to the disclosure of debts and receipts where one person, organisation or other entity has acted as a representative (i.e. carried out transactions, etc.) for or on behalf of another (the latter is referred to as a principal).

An amount may be received from a person or organisation acting as a legal representative of another person or organisation (the principal). The identity of the principal itself, rather than the identity of the agent is to be disclosed, where the amount received from the principal exceeds the disclosure threshold. For example:

- In the case of a payment from a solicitor's trust account, disclosure should be made in relation to the person on whose behalf the payment is made e.g. {name of trust account} on behalf of {name of principal}.
- In the case of an employer passing employee contributions or levies to a party or associated entity as the agent for the employee, disclosure of the employee, not the employer, must be made.
- In the case of a levy or contribution imposed by a political party on its parliamentary members and collected by way of payroll deductions, disclosure of the member as payee must be made.

These examples are provided as an indicative guide only. The concept of principal and agent is different to situations where someone makes donations to a political party from donations that they have themselves collected, or for which they are later reimbursed.

In these situations, the person handing over the donation would be disclosed and would, in turn, disclose those persons that they had received donations from.

Loans

A loan is broadly defined to include advances, credit, 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.

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

The disclosure of details of all loans more than \$11 500 **outstanding** as at 30 June is required under Part XX of the Act. For example:

- Where a loan for an amount exceeding the disclosure threshold was established in a previous year, e.g. the loan was obtained in 2002 but has not been repaid as at 30 June 2010, the full amount must be disclosed as a debt.
 - Similarly, where a loan was obtained in a previous year and has been partially paid off as at 30 June 2011, the remaining amount must be disclosed in the 'debts' section.
- Where a loan exceeding the disclosure threshold was established in the 2010–2011 financial year, its details must be disclosed in the 'receipts' section at Part 3 and in the debts section at *Part 6*.

Capital contributions

If income from capital contributions (including amounts held on deposit) is used to benefit a political party, it must be disclosed at Part 7 of the associated entity return.

Associated entities may accumulate capital through various means, often through the receipt of deposits of funds.

Where the capital of an associated entity:

- is used to generate earnings (for instance, through investments); and
- any part of those earnings are paid to, or for the benefit of, a registered political party, including by way of appropriations;

the associated entity must disclose deposits of capital received since 16 June 1995, or since the last disclosure of capital in a disclosure return (whichever is later).

Unlawful donations and loans

Anonymous donations

It is illegal for a political party, branch, or person (such as an associated entity) acting on their behalf to receive donations totalling more than \$11 500 (indexed) unless the name and address details of the donor are provided.

In the following cases, if the details listed below are not retained, the donation may constitute an ‘anonymous donation’ under the Act.

- 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 organisation (except for registered industrial organisations) the names and addresses of the members of the executive committee must be disclosed, along with the name of the organisation.
- For registered industrial organisations it is sufficient to disclose as the name and address of the organisation as members of the executive committee may not be known.

Anonymous donations in excess of the threshold are payable to the Commonwealth.

Winding-up of a donor company

A company liquidator may take action to recover from an associated entity any donations that exceed \$11 500 made to it by a company that is wound up within one year of the donation being made.

Third party political expenditure return

Associated entities will also need to complete and lodge a Third Party Political Expenditure Return where political expenditure in excess of the disclosure threshold has been incurred. The return form also requires details of gifts received in excess of the disclosure threshold and used (wholly or partially) to incur or to reimburse political expenditure.

The Third Party Political Expenditure Return is separate to the Associated Entity Disclosure Return and is due on 17 November each year.

Political expenditure

Political expenditure is defined in the Act to include expenditure incurred by a person or organisation, or with their authority, on:

- public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means;

- public expression of views on an issue in a federal election by any means;
- printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business;
- broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the *Broadcasting Services Act 1992*; and
- opinion polling and other research relating to an election or the voting intention of voters.

Political expenditure totalling more than the threshold amount during a financial year must be reported under one or more of the five specified categories of expenditure.

Other expenditure (e.g. on administration or travel) is not political expenditure for reporting purposes.

Gifts and donations received to incur political expenditure at any time (i.e. not necessarily within the financial year) must be disclosed on the third party return. Two or more gifts from the same person during a financial year are taken to be a single gift for these purposes.

Incomplete returns

Where a financial controller is unable to obtain all the information required to fully complete an Associated Entity Disclosure Return and is able to identify who is in possession of the information, a Notice of Incomplete Return must be completed and submitted with the return.

The Notice of Incomplete Return is to be completed by the person who is required to complete the disclosure return. Where it is necessary to do so:

- complete the Associated Entity Disclosure Return as fully as possible;
- complete the Notice of Incomplete Return; and
- lodge the Notice of Incomplete Return with the AEC at the same time as the incomplete Associated Entity 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 following details:
 - the reason the particulars listed in Section 1 were unable to be obtained; and
 - the details of all attempts made to obtain the missing information.
- *Section 3* – requires:
 - the full name/s and address details of the person/s believed to possess the missing particulars; and

the reason this person/s possesses the required information.

The lodgement of a Notice of Incomplete Return does not relieve the financial controller from the responsibility of making exhaustive efforts to obtain financial information that belongs to the associated entity.

The AEC will assess whether the lodgement of a Notice of Incomplete Return was used by a financial controller to avoid their responsibilities under the Act.

Amending returns

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

Amendments require that the previously submitted amount for total receipts, total payments and total debts be provided together with the new amount.

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

- addition of information previously omitted; and
- amendment of information previously submitted.

In order to avoid confusion or ambiguity when processing an amendment, the records being changed should be clearly identified.

Administration

Additional ‘discretionary’ disclosures

An associated entity may provide additional clarifying information in those situations where disclosure does not provide a clear picture of the underlying transactions. For example, entities may wish to identify receipts such as donations, membership fees or other receipts.

This assists the AEC in processing the returns and prevents unnecessary contact with individuals, organisations and other bodies listed on the return.

A column is provided on the return form in which to classify each receipt.

Date for public inspection of annual returns

Annual returns are made available for public inspection on the first working day of February each year.

Returns can be seen at www.aec.gov.au, 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.

Record keeping

Associated entities 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 annual return form, which will be publicly available, to be properly completed.

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

- the likely number, value and nature of receipts, liabilities, expenditure and capital transactions;
- the number, experience and training of people likely to be receiving donations, incurring liabilities, making payments and maintaining the records; and
- the need to consolidate records for reporting purposes.

All transactions should be adequately documented, recorded and, where possible, reconciled to external banking records.

Care should be taken to ensure that records are accurate. For example:

- a donation from a chief executive officer may be made personally, or may be made on behalf of the organisation; and
- the identity of the true donor should be recorded where a transaction is on behalf of someone else such as through a solicitor's trust account.

Retention of records

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

Compliance reviews

The AEC conducts regular compliance reviews of associated entities, their branches, and other people or organisations subject to the disclosure regime to verify the accuracy and completeness of disclosure returns. The reviews are also an opportunity for advice and guidance to be provided by AEC officers.

A compliance review commences with the issuing of a notice under subsection 316(2A) of the Act, which gives the AEC power to access information relating to matters that should be included in the annual return. The notice requests the associated entity to provide various documents, including but not limited to:

- books of account in electronic format (e.g. detailed general ledger, trial balance, computer records, petty cash records);
- financial statements;
- banking records (e.g. deposit books, statements, reconciliations);
- working papers used to arrive at the total figures disclosed in the annual return; and
- other documents (e.g. minutes of meetings, loan agreements, chart of accounts).

Following analysis conducted at the AEC of the requested information, the associated entity will be provided with a second notice under subsection 316(2A) of the Act listing information required to be produced at an on-site visit to the entity.

A written report of the review will be issued to the entity detailing any findings. This may include a request to amend the entity's return.

AEC staff will treat the information accessed during a compliance review in the strictest confidence.

The details of a compliance reviews are not discussed with anyone other than the organisation concerned without prior agreement or unless otherwise required by law. However, a summary of the findings may be included in the AECs report to Parliament and included on the AEC website.

Offences

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

The AEC aims to assist associated entities 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:

- Failing to lodge a return by the due date
 - This action is punishable by a fine of up to \$1 000.
 - A person convicted of having failed to lodge a return who continues not to lodge the return is punishable by a fine of up to \$100 per day for each day that the return is outstanding after the initial conviction.
- Lodging an incomplete return
 - This action is punishable by a fine of up to \$1 000.

The Administration 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
 - This action is punishable by a fine of up to \$5 000.

- Knowingly providing false or misleading information for inclusion in a return
 - This action is punishable by a fine of up to \$1 000.
- Failure to retain records for three years
 - This action is punishable by a fine of up to \$1 000.
- Failure to comply with a notice authorising a compliance review or investigation
 - This action is punishable by a fine of up to \$1 000.
- Providing false or misleading information during a compliance review or investigation
 - This action is punishable by a fine of \$1 000, or imprisonment for six months, or both

Appendix 1

Appendix 1 – Glossary of terms (responsibilities)

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.
Associated entity	<p>An organisation which:</p> <ul style="list-style-type: none"> ■ is controlled by or operates to a significant extent for the benefit of one or more registered political parties; or ■ is a financial member of a registered political party, or on whose behalf another person is such a member; or ■ has voting rights in a registered political party, or on whose behalf another person has such voting rights. <p>It can include companies holding assets for a political party, investment or trust funds, fundraising organisations, groups and clubs, and trade unions or corporate members of political parties.</p>
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.
Debt	Debt is any sum for which a legal obligation to pay exists as at the end of the financial year. It includes loans, mortgages, leases, unpaid invoices and goods and services received but not yet paid for. As disclosure returns are reported on a cash basis, unpresented cheques as at 30 June must be reported as debt, not as expenditure.
Detailed disclosure	The full name, address and the total value of transactions for each person who has reached the disclosure threshold for receipts or debts.
Disclosure threshold	Detailed disclosure must be made of receipts totalling more than \$11 500 and debts totalling more than \$11 500 at 30 June 2011. This threshold is indexed.
Donor	A person, organisation or other body other than a registered political party, an associated entity who is under an obligation to furnish a disclosure return because they made a donation.

Election funding entitlement	The amount of public election funding payable to a political party based on the number (at least 4%) of formal first preference votes obtained by a candidate or Senate group at a federal election or by-election.
Gifts	Any disposition of property made by a person to another person, otherwise than by will, and without consideration or with inadequate consideration.
Gifts-in-kind	Non-cash donations e.g. 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	The disclosure threshold is indexed to the All Groups Consumer Price Index. The indexed threshold applying to the 2010–11 reporting period is \$11 500.
Internal party transactions	Transactions between party units within a state branch of a political party. Internal party transactions are not disclosed. Transactions with a party unit from another state branch of the same party are not internal party transactions and must be disclosed.
Joint Senate group	A Senate group endorsed by more than one political party.
Party agent	A person appointed by notice in writing to the AEC by the relevant branch of the party. A party agent is not automatically the agent for candidates of the party.
Party unit	A generic term used to describe all sections of a political party including local branches and campaign committees.
Period of disclosure	Annual returns cover a financial year i.e. the period from 1 July to 30 June.
Public inspection	Annual disclosure returns are available for inspection by the public at www.aec.gov.au , 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.
Registered political party	A political party registered with the AEC (registration with a state or territory electoral office 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.
Related bodies corporate	<p>Section 50 of the <i>Corporations Act 2001</i> provides that where a body corporate is:</p> <ul style="list-style-type: none"> ■ a holding company of another body corporate, ■ a subsidiary of another body corporate, or ■ a subsidiary of a holding company of another body corporate, <p>the first-mentioned body and the other body are 'related' to each other.</p> <p>Transactions of related bodies corporate should be included when determining whether the disclosure threshold has been reached.</p>

Senate group	Two or more candidates for election to the Senate who made a written request to the AEC with their nominations that their names be grouped on the ballot-paper, or grouped in a specified order.
The Act	The <i>Commonwealth Electoral Act 1918</i> .
State branch	A branch or division of a registered political party organised on the basis of a state or territory. State branches are treated as separate parties for funding and disclosure purposes.
Third party	A term used to describe a person or organisation who incurs political expenditure, other than political parties, candidates, Senate groups and donors.
Trusts	<p>Where a transfer of assets or funds takes place between an associated entity and a party, these transactions will inevitably be ‘double counted’.</p> <ul style="list-style-type: none"> ■ Where funds or assets are received from a trustee, it should be disclosed as ‘ABC as trustee for XYZ Trust’, not just one or the other. ■ NOTE: where a donor return from a trust: <ul style="list-style-type: none"> – does not record any entries in the ‘Donations Received’ section, and – has no obvious trading income, <p>further enquiries will be made of the trust to determine the source of the donation.</p> <p>Where an investigation of a trust is undertaken, a copy of the trust deed will be requested in order to allow the AEC to readily determine the relevant features of the trust.</p>
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 seven 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 and Senate groups, donors and third parties 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
- **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 309(2)
- nil returns required – s 307(1) and 313(1)
- Senate group election period returns
- election donations – s304(3)
- electoral expenditure – s308 and 309(3)
- returns not required if group endorsed by a single party – s304(3A) and s309(1A)
- nil returns required – s307(2) and 313(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 – s 314AEB
- 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.

Appendix 3

Appendix 3 – eReturns

The eReturns portal is a website built to allow Political Parties, Associated Entities, Donors and Third Parties to prepare and lodge their annual disclosure returns online, eliminating the need to transcribe and re-key data. Lodging an electronic return will ensure that your information is accurately reported on the AEC website when returns are made publicly available.

To use the eReturns portal, you need an account with a unique username and password. Party Agents and the Financial Controllers of Associated Entities will have accounts created for them by the AEC and a username and password sent by registered mail. Donors and Third Parties will also receive a username and password with their obligation letter, but have the option to create their own eReturns accounts from the login page, if they choose to lodge a return before receiving an obligation letter from the AEC.

The eReturns portal uses a wizard-style interface to collect the information required under Part XX of the Act. At the end of the wizard, the system generates a PDF document, identical in appearance to a paper return form. The user has an opportunity to review the completed return and either go back and make changes, or certify and lodge the return. Upon lodgement, copies of the return are sent both to the AEC and to the user's email address. The user also has the option to save a copy of the lodged return to their computer.

Features

- Next and Back buttons allow you to navigate to any part of the return wizard.
- Your data is saved automatically as you progress through the return, ensuring that any loss of data is limited to the current screen if the internet connection is lost.
- Users can leave a partially completed return and come back to it later.

- The Annotation button allows you to add an explanatory note to any transaction or amount on the return. Annotations appear as numbered footnotes on the final return.
- Clicking the Help button at any section of the wizard will display additional information.
- The View Returns function allows you to see a history of returns prepared through the eReturns portal, including both lodged returns, and returns still in progress.
- All transactions are protected with the same internet security used by online banking, as shown by the padlock symbol in the browser's address bar.

Sub-Accounts

The Financial Controller or primary account-holder will be able to create a sub-account, with a separate username and password, to allow another person to work on preparing the content of a disclosure return. However, only the primary account-holder will be able to approve and lodge the completed return.

Candidate, Senate Group and Election Donor Returns

Election Candidates, Senate Groups and Donors are also able to lodge their returns through eReturns.

Visit the eReturns Portal

Go to <https://ereturns.aec.gov.au> to start using the eReturns Portal.