

Australian Electoral Commission

Funding and Disclosure Guide

2010–2011 Financial Year

Third Parties incurring Political Expenditure



AEC

Australian Electoral Commission

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Contents

Introduction	1
The Guide	1
eReturns Portal	1
Overview	2
Indexation	2
Political expenditure	2
Categories of political expenditure	3
Part 1 – Political expenditure incurred	3
Part 2 – Gifts received for political expenditure	3
General information	4
Responsibility for lodging returns	4
Incomplete Returns	4
Amendment of Returns	4
Recordkeeping	4
Public inspection of returns	4
Offences	4
Appendix 1 – Glossary of terms	5
Appendix 2 – Funding and Disclosure Legislative Reference Guide	7
Appendix 3 – eReturns	9

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 parties, candidates and other third parties involved in the electoral process.

Third parties are people or organisations (other than registered political parties, candidates and Federal government agencies) who incur political expenditure under one or more of the five categories defined in the Act.

Third parties that incur political expenditure above the disclosure threshold and under the five categories set out later in this Guide, must lodge an annual return with the Australian Electoral Commission (AEC) disclosing all political expenditure in a financial year.

These disclosure returns are then made available for public inspection on the AEC website.

The Guide

The Funding and Disclosure Guide for Third Parties incurring Political Expenditure is designed to assist third parties understand their obligations under the financial disclosure provisions of Part XX of the Act.

The Australian Electoral Commission (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. The other publications released by the AEC are:

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

The Funding and Disclosure Guide for Third Parties incurring Political Expenditure 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 to the funding and disclosure requirements, it does not address the whole of the Act and should not act as a substitute for specific legal advice on detailed disclosure or 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 financial disclosure scheme is available from the AEC. The AEC's contact details are listed at the front of this Guide.

The Act, all Guides published by the AEC and guidance notes can be accessed from www.aec.gov.au. The annual and election returns are also available for viewing on this site after the public release date.

eReturns Portal

Third Parties can now prepare and lodge their returns online via the eReturns portal. See Appendix 3 (page 9) for more information.

Overview

This Guide applies to returns for the 2010–11 financial year.

The financial disclosure scheme extends to individuals and organisations who make or receive political donations (including indirect donations such as funding political advertising for a candidate or party), or who incur political expenditure. These individuals or organisations are referred to as donors and third parties.

Subject to the 'more than \$11 500' disclosure threshold, donors and third parties must lodge one or more of the following disclosure returns with the AEC:

- **Third Party Political Expenditure Return** – expenditure incurred on political commentary, advertising and research; and donations received and used, in whole or in part, for such expenditure.
- **Donor to Political Party Return** – donations made to a registered political party and donations received and used, in whole or in part, to make such donations.
- **Election Return of Donations Made and Received** – donations made to a candidate or to a member of a Senate group and donations received and used, in whole or in part, to make such donations.

The *Third Party Political Expenditure Return* is addressed in this Guide.

Information to assist donors with their annual or election period return is provided in the *Funding and Disclosure Guide for Donors to Political Parties* and the *Funding and Disclosure Guide for Election Donors*.

Donors and third parties should familiarise themselves with the requirements of the disclosure return forms and maintain sufficient records to complete the returns properly.

Indexation

The disclosure threshold is indexed in July each year based on the All Groups Consumer Price Index as at 31 March.

The disclosure threshold for the 2010–11 annual returns is 'more than \$11 500'.

Political expenditure

Subject to the 'more than \$11 500' disclosure threshold, people or organisations that incur political expenditure must lodge an annual disclosure return with the AEC.

Persons or organisations that receive a gift and use some or all of this to incur or to reimburse political expenditure must also report the gift.

The *Third Party Political Expenditure Return* must be lodged with the AEC in Canberra by 17 November each year. The AEC has no discretion to extend this deadline.

The AEC contacts the people and organisations it identifies (for example, from media advertisements) as possibly having annual disclosure obligations to advise them of their obligations. This does not absolve third parties who are not contacted from completing and submitting returns.

The return form may be downloaded from the AEC's website at www.aec.gov.au.

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

The return requires disclosure of:

- political expenditure (*Part 1*); and
- gifts received for political expenditure (*Part 2*).

Categories of political expenditure

Political expenditure is 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 Commonwealth Parliament by any means;
- public expression of views on an issue in an election by any means;
- printing, production, publication, or distribution of any material that is required by s328 or s328A 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.

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

Any person or organisation (including an associated entity of a political party) that incurs political expenditure in excess of the disclosure threshold must lodge a return.

The exceptions to this requirement are:

- federally registered political parties and their state branches;
- Members of and candidates for the Commonwealth Parliament; and
- Commonwealth government departments and agencies.

Part 1 – Political expenditure incurred

Part 1 of the return applies to a person or organisation other than a federally registered political party or a state or territory branch of such a party, Commonwealth parliamentarians and candidates, and federal agencies, who incurred political expenditure of more than \$11 500 during the 2010–11 financial year.

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

Amounts less than the threshold are to be reported in individual categories if the total amount of political expenditure exceeds the threshold amount.

Expenditure for purposes other than the five categories is not political expenditure and is not reported.

Part 2 – Gifts received for political expenditure

This part of the return applies to a person or organisation required to complete *Part 1* who also received a gift of more than the threshold that was wholly or partially used to:

- incur expenditure reported in *Part 1*; or
- reimburse such expenditure.

Two or more gifts from the same person during a financial year are taken to be a single gift for these purposes.

The gift may have been received at any time, and not necessarily in the financial year in which the expenditure was incurred.

The return requires the name and address of the person who made the gift, and the dates and amounts of the gift.

In the case of gifts 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 know only the name and address of the organisation as members of the executive committee may not be known.

If no gifts for political expenditure were received, *Part 2* of the return should be marked 'nil'.

General information

Responsibility for lodging returns

A third party should sign their own individual return.

Where the third party is an organisation, a person with appropriate authority and access to financial records should sign the return.

In the case of a company this may be the Chief Executive Officer, Company Secretary or Financial Controller.

In the case of a trust it would be the trustee.

Incomplete Returns

Where a third party is unable to fully complete its return due to information not being in its possession and an inability to obtain the information, a 'Notice of Incomplete Return form' must be completed.

Amendment of 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 return form is available at www.aec.gov.au.

The request should show the additions, deletions or variations from the information provided on the original return. Alternatively, the original list of donations may be attached to the request with the changes highlighted.

Record keeping

Third parties should consider the financial recording systems and procedures necessary to enable the return forms to be properly completed.

All transactions should be documented and recorded, and multiple transactions summarised in a donations summary or register that reconciles to bank or similar records. Receipts and invoices should be retained.

The Act requires that records must be kept for a minimum period of three years.

Public inspection of Returns

Annual Returns are made available for public inspection on the first working day in February following the due date for lodgement of the return.

Offences

Section 315 of the Act contains penalty provisions for failure to comply with the funding and disclosure provisions of the Act.

The AEC aims to assist political and electoral participants 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 in response to

AEC	Australian Electoral Commission
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, ■ 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>
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.
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.
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.
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> .
Third party	A term used to describe a person or organisation who incurs political expenditure, other than political parties, candidates, Senate groups and donors.

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 and 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 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

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.

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 chose 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 Commonwealth Electoral Act 1918. 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

By the end of September, a Party Agent, 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.