

Australian Electoral Commission

# Funding and Disclosure Guide

2010–2011 Financial Year

for Political Parties



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.

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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 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, 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 Political Parties* is designed to assist political parties to understand their financial disclosure obligations under the 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 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;* and
- *Party Registration Guide.*

The *Funding and Disclosure Guide for Political Parties* provides information derived from the Act as well as from the experiences of the AEC in the administration of the funding and disclosure scheme. 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 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.

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 available on the AEC's website at [www.aec.gov.au](http://www.aec.gov.au). The annual and election 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 *Party Registration Guide*.

A party unit of a registered party in a state or territory is the local branch of that party. Accordingly, each party can have many different party units. Party units are required to provide their party with financial disclosure details, which the party includes as part of its return. Examples of party units include:

- campaign committees of candidates endorsed by a registered political party; and
- sub-branches of political parties.

All registered political parties and organised state or territory branches of registered political parties have separate disclosure obligations under the federal scheme. Accordingly, each state or territory branch must have its own party agent. A state or territory branch of a registered political party will be treated as being 'organised' for disclosure purposes if it has a formal structure in the state or territory.

Where there is no party agent, all members of the party's executive committee are responsible for lodging the return.

## eReturns Portal

Political Parties can now prepare and lodge their returns online via the eReturns portal. See Appendix 3 (page 17) for more information.

## Overview

This version of the Funding and Disclosure Guide for Political Parties applies to disclosure returns for the 2010–2011 financial year.

The financial disclosure scheme established under the Act requires that registered political parties and their state and territory branches appoint a party agent.

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

Election funding payments are made to the party agent. If the party or state or territory branch does not have an agent appointed no election funding can be paid. The party agent is also responsible for lodging the annual disclosure return with the AEC.

## Appointment of a party agent

The AEC provides a form for the appointment of political party and state or territory branch agents. The form can be downloaded from [www.aec.gov.au](http://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 a party or state or territory branch 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 of the Act;
- have signed a consent to the appointment; and
- have signed a declaration of eligibility for appointment.

A person may be appointed as the party agent for multiple parties or state or territory branches. However, each appointment must be made separately.

Where a previous party agent leaves and is replaced by a new party agent, it is the responsibility of the relevant political party or its state or territory branch to fill out a new appointment form and notify the AEC of the change.

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

In addition to its obligation to appoint a party agent as outlined above, The Australian Democrats may, by section 288A of the Act, appoint a principal agent for election funding purposes.

## Register of party agents

The AEC keeps a register of party agents showing the name and address of each person appointed as an agent of a political party or of a state or territory branch of a party.

An entry in the register is evidence that the person is an agent for funding and disclosure purposes.

Registration is effective from the time the details are entered in the register and ceases at the time the details are removed.

## Termination of appointment

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

The appointment of an agent may be revoked at any time by written notice to the AEC from the secretary of the party or state or territory branch. The party or state or territory branch must notify the appointment of another person as agent at the same time.

If an agent dies the party or state or territory branch has 28 days in which to notify the AEC and appoint a replacement agent.

An agent who is convicted of an offence against the funding and disclosure provisions of the Act is no longer eligible to hold office. The political party or state or territory branch has 28 days from the conviction or from an unsuccessful appeal in which to make a new appointment.

If a party or state or territory branch does not have an agent:

- all members of the party or branch executive committee assume responsibility for lodging disclosure returns; and
- no payment of election funding can be made.

### The financial disclosure obligation under the Act

The disclosure threshold applying in relation to the 2010–11 disclosure period is for amounts of more than \$11 500. This figure is adjusted annually according to the consumer price index.

The political party annual return requires disclosure of total amounts for receipts, payments and debts. It also requires detailed disclosure, including the full names and addresses of individuals, organisations or other entities from which receipts of money, gifts, gifts-in-kind or loans with a value of more than \$11 500 were received over the 2010–11 financial period. The details of debts greater than \$11 500 must also be disclosed. Individuals, organisations and all other entities that donated more than \$11 500 to a registered political party in the 2010–11 financial period must lodge a donor return.

Correctly completed party returns must be received by the AEC National Office in Canberra by 20 October 2011.

Financial disclosure obligations also affect other people and organisations:

- Third parties, that is, people or organisations other than political parties, candidates and Senate groups, that incur political expenditure of more than \$11 500 – must lodge a return of that expenditure annually as required by the Act.
- Associated entities of political parties have similar disclosure obligations to political parties. They are also required to report political expenditure if it is more than \$11 500.
- Candidates and Senate groups lodge election disclosure returns of gifts and donations received, and amounts spent on certain categories of electoral expenditure.

The disclosure returns are on the public record and parties and their associated entities may be subject to a compliance review by the AEC.

Please note that a number of state and territory jurisdictions have their own disclosure schemes, which are separate to the federal disclosure scheme.

### Annual disclosure returns

The agent of each registered political party and the agent of each state and territory branch must lodge an annual Political Party Disclosure Return with the AEC disclosing the details of its financial transactions for the preceding financial year.

The relevant return form may be downloaded from [www.aec.gov.au](http://www.aec.gov.au). 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 listed below, may be attached as appropriate.

The completed and signed return may be lodged by mail or facsimile or may be scanned and emailed.

Income is reported when received and expenditure is reported when paid.

The AEC will send a reminder to party agents of their financial disclosure obligations following the end of a financial year.

### Reporting period

The disclosure returns operate on a financial year basis, that is 1 July to 30 June.

For a political party that became registered during the financial year, the period commences on the date of registration and ends on 30 June 2011.

Transactions before the political party was registered with the AEC do not need to be disclosed.

### Disclosure threshold

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

- The threshold does not apply to the total amounts of receipts, payments and debts, required at Parts 1, 3 and 4 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.

### Due date for lodging returns

The Political Party Disclosure Return must reach the AEC at its National Office in Canberra by 20 October each year.

The AEC has no legislative discretion to extend this deadline.

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

### Penalties

The Act imposes penalties for failure to properly complete and lodge a return. The AEC provides support, including this guide, to assist compliance.

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

### The return form

The Political Party Disclosure Return consists of five parts. The return requires disclosure of **GST inclusive total amounts**, consisting of the following:

*Part 1* – the total of all amounts received.

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

*Part 2* – 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 2 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 person on the same day and the total amount exceeds the threshold when added together, the total of these receipts must be separately disclosed.

*Part 3* – the total amount of all payments made by or on behalf of the political party as at the end of the financial year.

*Part 4* – the total amount of debts, loans, overdrafts, unpaid accounts etc outstanding as at 30 June 2011.

*Part 5* – 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 5 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.

Details of all transactions of regional branches or divisions, party units, campaign committees and endorsed candidates and all Senate groups must be included in 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 transactions must be reported on the political party disclosure return?

All transactions of the party, including those reported by its local branches, committees and party units must be reported.

- Transactions **between** the federal party and/or state or territory branches are included as these are separate entities for disclosure purposes. For example, money received by a local campaign committee from the federal secretariat is disclosed as a payment by the federal party and as a receipt by the state branch;
- Transactions by a Senate group whose members are endorsed by the party and transactions of the campaign committee of a candidate endorsed by the party must be included in the party or the state or territory branch return; and
- Transactions by persons acting on behalf of the party or state or territory branch, including candidates at federal and state elections must be included in the return.

A 'nil' return should be lodged or a 'nil' entry reported where a party has no transactions or no transactions applicable to a particular part of the return.

Transactions **between** party units within a state or territory are **not** to be included as they are internal transactions. Eliminating these transactions from the return will prevent double counting within the state or territory return.

### Which receipts must be reported?

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

- **Gifts** – 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 party or state or territory branch, with the party's authority or by a third party on behalf of the party.
  - Gifts may also be received by an endorsed candidate, Senate group, campaign committee, or by a broader political supporter.
  - Where two or more political parties are related to each other and at least one is a registered political party, a gift made by a person to any of those parties is treated as a gift to a single registered political party.
  - 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 1 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 (for example, 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 party 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 party);
- 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 (for example, travel, artwork, sports memorabilia or electrical goods) for use in raffles or other fundraising activities.

**Volunteer labour** – Volunteer labour does not need to be disclosed as a receipt on a Political Party 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 volunteer labour** – The distinction between gifts-in-kind and volunteer labour can be 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.
- 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 political party disclosure return?**

Some transactions are not to be reported in the return:

- personal gifts to a candidate which are not used to incur campaign expenditure;
- commercial discounts received in the normal course of business;
- volunteer labour, such as persons handing out how-to-vote cards;
- 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 (i.e. a combination of paid advertising and interviews) should be disclosed consistent with the promotional intention of the activity.

### Total receipts, payments and debts

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

Parts 1, 3 and 4 of the return are for reporting the total value of all receipts, payments and debts of the party or state or territory branch. This includes all party units.

All transactions of the party or state or territory branch must be included in calculating the 'total' figures recorded in these parts, including amounts that are individually less than the disclosure threshold. No category or class of transaction is excluded. For example:

- Membership and affiliation fees, and state and federal election funding are to be included in total receipts.
- State and local government campaign expenses, salaries and wages are to be included in total payments.
- Trading liabilities, for example, accounts outstanding are to be included in total debts.
- 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

Details of all receipts and debts in excess of the disclosure threshold of \$11 500 must be reported, including the monetary value of gifts-in-kind.

### 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;
- 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 sufficient to provide the name and address of a registered industrial organisation.

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 2* 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 2* because each individual receipt is below the threshold, but are included in the calculation of total receipts in *Part 1*.
- Three separate donations of \$5 000 each are received from the same person on the same day. These need to be disclosed in *Part 2* 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.

- 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 2* as it is above the threshold for individual receipts. The \$9 500 is not individually disclosed in *Part 2* 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 5* 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 Political Party 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 party revenue and donations when the returns are made publicly available.

A party or state or territory branch may provide additional clarifying information in situations where disclosure does not provide a clear picture of the underlying transactions. For example, parties or branches 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 of the guide 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 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 i.e., {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 received

Any amount received by loan during the financial year must be included in the totals at *Parts 1* and *4* of the return. All loans of more than \$11 500 accessed during the financial year and outstanding as at 30 June 2011 must be fully disclosed at *Parts 2* and *5*.



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.

Records must be kept of all loans to the value of more than \$11 500 received from a source other than a financial institution.

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

The records of each loan must include the terms and conditions of the loan, 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 organisation, the names and addresses of the members of the executive committee, along with the name and address of the organisation; or
- in other cases, the name and address of the person or organisation.

A summary of the terms and conditions of loans other than those from a financial institution must be provided to the AEC as an attachment to the return form.

### Unlawful donations and loans

Anonymous donations and undocumented loans from non-financial institutions in excess of the disclosure threshold of more than \$11 500 are illegal under the Act.

#### Anonymous donations

Anonymous donations that exceed the disclosure threshold of \$11 500 are not permitted under the Act.

It is illegal for a political party, state or territory branch or any person, organisation or entity acting on their behalf to receive donations totalling more than \$11 500 unless the person receiving the gift knows the name and address of the donor. 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 only 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.

#### Undocumented Loans

It is illegal for a loan of more than \$11 500 to be received from any person, body or entity other than a financial institution unless the terms and conditions of the loan and the details of the lender are submitted with the return.

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

#### Winding-up of a donor company

A company liquidator may take action to recover from a party or state or territory branch any donations that exceed \$11 500 made by a company that is wound up within one year of the donation being made.

#### Incomplete returns

Where a party agent is unable to obtain all the information required to fully complete a Political Party 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.

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

- complete the Political Party Disclosure 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 Political Party Disclosure Return.

The Notice of Incomplete Return 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 the missing information.
- *Section 3* – record:
  - 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.

Lodgement of a Notice of Incomplete Return form does not relieve the party agent of the responsibility of making exhaustive efforts to obtain financial information that belongs to the party. The AEC may assess whether the lodgement of a Notice of Incomplete Return was used by an agent to avoid their responsibilities under the Act.

### 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](http://www.aec.gov.au).

Amendments 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.

## Administration

### 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 are available for inspection on the AEC's website at [www.aec.gov.au](http://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

Parties and their state or territory branches 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 and expenditure transactions;
- the number, experience and training of people likely to be receiving donations, incurring debts, making payments and maintaining the records; and
- the need to consolidate records for reporting purposes.

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

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

- A donation from a chief executive officer may be made personally, or may be made on behalf of the organisation.
- 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.
- Anonymous donations in excess of the disclosure threshold are unlawful.

### Compliance reviews

The AEC conducts regular compliance reviews of registered political parties, their state or territory 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 political party to provide various documents, including but not limited to:

- books of account in electronic format (for example, detailed general ledger, trial balance, computer records, petty cash records);
- financial statements;
- banking records (e.g. deposit books, statements, reconciliations);
- list of party units including inactive party units;
- 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, asset register).

Following analysis conducted at the AEC of the requested information, the political party will be provided with a second notice under subsection 316(2A) listing information required to be produced at an on-site visit to the party. This visit may also include meetings with party unit representatives.

A written report of the review will be issued to the party detailing any findings. This may include an advice to amend the political party's return.

AEC staff will treat the information accessed during a compliance review in the strictest confidence. The details of a compliance review 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 AEC's 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 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:

- Failing to lodge a return by the due date
  - This action is punishable by a fine of up to \$5 000.
  - 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 \$10 000.
- 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

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"> <li>■ is controlled by or operates to a significant extent for the benefit of one or more registered political parties; or</li> <li>■ is a financial member of a registered political party, or on whose behalf another person is such a member; or</li> <li>■ has voting rights in a registered political party, or on whose behalf another person has such voting rights.</li> </ul> <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, un-presented 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 <a href="http://www.aec.gov.au">www.aec.gov.au</a> , 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 Corporations Act 2001 provides that where a body corporate is:</p> <ul style="list-style-type: none"> <li>■ a holding company of another body corporate,</li> <li>■ a subsidiary of another body corporate, or</li> <li>■ a subsidiary of a holding company of another body corporate,</li> <li>■ the first-mentioned body and the other body are 'related' to each other.</li> </ul> <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> <p>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.</p> <p>NOTE: where a donor return from a trust:</p> <ul style="list-style-type: none"> <li>■ does not record any entries in the 'Donations Received' section, and</li> <li>■ has no obvious trading income,</li> <li>■ further enquiries will be made of the trust to determine the source of the donation.</li> </ul> <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 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

## Appendix 3

### Appendix 3 – eReturns

Part XX of the Act deals with election funding and 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 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.