



# **FUNDING AND DISCLOSURE HANDBOOK**

*for*

# **POLITICAL PARTIES**

2007 edition

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## INTRODUCTION

The purpose of this handbook is to assist political parties to understand the requirements of the election funding and financial disclosure provisions of Part XX of the *Commonwealth Electoral Act 1918* (the Act).

This handbook has regard to the amendments made to the financial disclosure scheme by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.

It is one of a series of publications prepared by the Australian Electoral Commission (AEC) to help parties, candidates, donors and other affected persons better understand the funding and disclosure provisions of the Act. These other publications are:

- *Funding and Disclosure Handbook for Candidates;*
- *Funding and Disclosure Handbook for Associated Entities;*
- *Funding and Disclosure Handbook for Donors;*
- *Funding and Disclosure Handbook for Third Parties.*

The *Federal Registration of Political Parties Handbook* may also be relevant.

The *Funding and Disclosure Handbook for Political Parties* provides information derived from the Act, and from the experience of the AEC in the administration of the funding and disclosure provisions. It attempts to simplify and explain what are, in some cases, complex legislative provisions. While it is intended as a user-friendly guide to the funding and disclosure requirements, it does not address the whole of the Act nor does it substitute for specific legal advice on detailed compliance issues.

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

Additional information and advice is available from the AEC, whose contact details are at the front of this Handbook.

The Act, handbooks, guidance notes and returns are freely available at [www.aec.gov.au](http://www.aec.gov.au).

## **BACKGROUND**

The funding and disclosure scheme established under Part XX of the Act deals with the public funding of election campaigns and the disclosure of information about political donations and expenditure.

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

It requires candidates, registered political parties and their associated entities, donors and certain other people to lodge annual or election period financial disclosure returns with the AEC.

These disclosure returns are available for public inspection.

### **Overview**

This handbook applies to returns for the 2006-07 financial year.

The financial disclosure scheme as it applies to registered political parties and their State or Territory branches or divisions requires parties and their branches to appoint a party agent. Election funding payments are made to the agent, and the agent is responsible for the party annual disclosure return.

The party annual return requires disclosure of total revenue, expenditure and debts. It also requires disclosure of the names and addresses of persons or organisations that made payments (including loans) of more than \$10,300 to the party. People or organisations that donate more than \$10,300 to the party must lodge a donor annual return.

Other features of the financial disclosure scheme are:

- People or organisations who incur political expenditure in excess \$10,300 must lodge an annual return of that expenditure;
- Associated entities of political parties have similar disclosure obligations to political parties. They are also required to report political expenditure if they incur this in excess of the disclosure threshold;
- Candidates and Senate groups lodge election period returns of gifts or donations received and, subject to the disclosure threshold, details of these. Their donors similarly report details of gifts and donations;
- Anonymous donations of more than \$10,300 are illegal and loans of more than \$10,300 from other than recognised financial institutions must be properly documented; and
- The disclosure returns are on the public record and parties and their associated entities may be subject to compliance review by the AEC.

A number of State and Territory jurisdictions have their own disclosure schemes. These are separate to the federal disclosure scheme discussed in this Handbook.

### **Disclosure Threshold**

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

The minimum disclosure threshold applying to the 2006-07 annual returns is 'more than \$10,300'.

### **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

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

For the purposes of the funding and disclosure provisions, organised State or Territory branches of registered political parties are treated as entities separate to the registered party and must meet their own disclosure obligations.

The effect is that they must each appoint an agent and lodge disclosure returns:

- A party that is organised in more than one place (e.g. in several States or Territories, or as a Federal secretariat and State branches) must have an agent in each of those places. For these purposes, a party is organised if it has a formal structure in the State or Territory;
- The campaign committee of an endorsed candidate is a part of the party, or of the State or Territory branch, for disclosure purposes;
- An endorsed Senate group is part of the party, or of the State or Territory branch, for disclosure purposes.

## APPOINTMENT OF AGENTS

Registered political parties and their organised branches must appoint a party agent for funding and disclosure purposes

Registered political parties, and their organised State or Territory branches, must appoint a party agent to act on their behalf on funding and disclosure matters.

Candidates, Senate group members and Senate groups (others than groups endorsed by a single party) may also appoint an agent to act on their behalf for these purposes.

The State or Territory branch appoints the agent for a State or Territory branch. The agent:

- Receives public election funding for endorsed candidates and Senate groups; and
- Lodges financial disclosure returns for the party or branch.

### Candidates and Senate groups

The party or branch agent is not the agent of candidates or Senate groups endorsed by the party unless they have been separately appointed as such.

The appointment and responsibilities of candidate and Senate group agents are separately addressed in the *Funding and Disclosure Handbook for Candidates*.

### Appointment of party agent

The AEC has a form for the appointment of party and branch agents. The form is available at [www.aec.gov.au](http://www.aec.gov.au) under 'Parties & Representatives' and 'Party Registration'.

To be eligible for appointment as agent a person must:

- 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.

The appointment form includes a statement of consent to the appointment and a declaration of eligibility for appointment.

Only natural persons, and not corporations, may be appointed as an agent. A person may accept multiple appointments but each appointment must be made separately.

The Australian Democrats may, by s 288A of the Act, appoint a principal agent for election funding purposes. That party is also required to appoint party agents as discussed in this chapter.

### **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 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 party or branch. The party or branch must notify the appointment of another person as agent at the same time.

If an agent dies, the party or branch has 28 days in which to notify the AEC, and advise 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 party or branch has 28 days from the conviction, or from an unsuccessful appeal, in which to make a new appointment.

If a party or 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.

## ELECTION FUNDING

Election funding is payable in respect of candidates and Senate groups who receive more than 4% of the vote

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

Senate groups who receive at least 4% of votes in a Senate election are entitled to public election funding.

In the case of endorsed candidates and Senate groups, funding is normally paid to the party agent of the endorsing party or parties. In the case of independent candidates or Senate groups, payment is normally made to the agent of the candidate or group.

### Entitlement

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

The funding rate is reviewed each six months in line with increases in the consumer price index. The current amount is available at [www.aec.gov.au](http://www.aec.gov.au).

For the period 1 January to 30 June 2007 the funding rate was 210.027 cents per eligible vote.

### Payment

At least 95% of the entitlement is paid automatically in the 4th week after polling day, on the basis of votes counted as at the 20th day after polling day.

The balance is paid when the full entitlement is known.

Payment is normally made:

- To the party agent in the State or Territory in which the candidate stood, or direct to the party if there is no such branch; or
- To the agent of independent candidates or Senate groups where they have such agents; or
- Direct to an independent candidate who has no agent, or to the person whose name appears first on the ballot paper in the case of a Senate group who has no agent.

### Diversion of payments

Payments may be diverted to another party or branch at the request of the agents of the parties or branches involved.

The request to the AEC must be signed by the agents of the parties or branches, and remains current until it is revoked with the written consent of those parties.

Payments may also be split between a party and its branches. To do this, registered parties with two or more branches may elect to be a designated Federal party and lodge funding agreements:

- The registered officer of the party may notify the AEC that the party wishes to be a designated Federal party for funding agreement purposes. This notification must be made before polling day and remains current for all elections until revoked. It cannot be revoked between polling day and 14 days after the return of the writs.
- A designated Federal party may then lodge a funding agreement with the AEC before polling day specifying the percentages of payments payable to the party and to some or all of its State branches. In the absence of this, payment is made to the agent of the designated Federal party.

It is open to parties to notify separate arrangements for particular States or Territories.

There are two exceptions to this rule; The Liberal Party of Australia and the Australian Democrats.

**Liberal Party of Australia** - the agent of the Liberal Party may lodge a funding agreement with the AEC before polling day specifying the percentages of payments payable to the Federal Secretariat of the party and to some or all of its State branches. In the absence of this notification, all payments go to the Federal Secretariat.

**Australian Democrats** – the Australian Democrats’ entitlement must be paid to the person nominated as principal agent of that party. In the absence of such a person, the Australian Democrats’ payment is made to the agent in the State or Territory where the candidate or Senate group stood.

### **Joint Senate groups**

Payments for jointly endorsed Senate groups (those groups endorsed by more than one party) are normally made to the agents of the relevant State branches of the parties in accordance with their endorsement agreement.

The AEC must be given a copy of the agreement, signed by the agents of the parties or branches involved, within the 20 days following polling day. If this is not received, the AEC will determine the division of the funding payment.

Each party or branches’ share will be paid to the relevant branch, or otherwise in accordance with any funding agreement or diversion notice lodged with the AEC.

**Bank accounts**

A party or branch may nominate a bank account for the electronic transfer of election funding payments.

The account should be with a bank, building society or credit union in Australia and include the registered party name, or the name of the State or Territory branch, in its name.

Where an account is not nominated, payment is made by cheque to the party or branch, and addressed to the relevant agent.

The AEC will provide a form for the nomination of a bank account on request.

**Payments in error**

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

**Advice to parties**

The AEC advises parties of these various options for payment of election funding prior to an election.

Enquiries about payments should be made to the AEC at the address in the introduction to this Handbook.

## ANNUAL RETURN

A party agent must lodge a political party annual return for the preceding financial year with the AEC by 20 October each year

Following the end of a financial year, the agent of each registered political party and the agent of their State or Territory branches must lodge an annual return with the AEC.

The annual return must be lodged by 20 October 2007 (or the next working day as this is a Saturday).

The form may be downloaded from [www.aec.gov.au](http://www.aec.gov.au) (under 'Parties & Representatives' and 'Political Disclosures') for completion 'on screen'. Additional data sheets (e.g. MYOB or Excel reports) in a similar format to the tables in the return form may be attached as appropriate.

The return may be lodged by mail, facsimile or email. Electronic copies of the return lodged on disk or by email are preferred to assist AEC processing and to reduce the possibility of data-entry errors.

The return requires disclosure of total:

- Receipts by or on behalf of the party or branch during the financial year (*Part 1*);
- Expenses paid by or on behalf of the party or branch during the financial year (*Part 3*); and
- Outstanding debts incurred by or on behalf of the party or branch as at the end of the financial year (*Part 4*).

It requires details (name, address, date and amount) of:

- Amounts of more than \$10,300 received during the financial year (*Part 2*).

For *Part 2* of the return, the threshold applies only to individual payments of more than \$10,300. It is not necessary to disclose any payment less than the threshold.

- Debts of more than \$10,300 incurred during the financial year and outstanding as at 30 June 2007 (*Part 5*).

For *Part 5* of the return the threshold applies to the total of debts. This means that *Part 5* must be completed if the total of your debts or loans from a given source exceed the threshold. Multiple smaller debts that sum to more than the threshold must be disclosed.

The AEC reminds party agents of their financial disclosure obligations following the end of a financial year.

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.

### **Period covered**

The return covers the financial year 1 July to 30 June.

For a party that is newly registered, the period commences on the date of registration and ends on 30 June.

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

### **Due date for lodging returns**

The return must reach the AEC at its National Office in Canberra by 20 October, or the next working day if 20 October is a weekend or public holiday.

The AEC has no discretion to extend this time.

### **Responsibility for returns**

Responsibility for lodging the return lies with the party agent registered with the AEC.

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

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

### **Scope of return**

The return covers transactions of, or on behalf of, the party. It includes cash and non-cash transactions

Transactions of regional branches or divisions, party units, campaign committees and endorsed candidates or Senate groups must be included in the return.

The Guidance Note *Gifts Received by Endorsed Candidates and Senate Groups* will assist to determine whether particular gifts or donations are reported by the endorsed candidate or by the party.

## General principles

The following principles apply to completion of the return.

- The return is prepared on a cash rather than an accruals basis. Only completed transactions are disclosed e.g. a cheque payment is reported when the cheque is presented (and the underlying money has changed hands) rather than when the cheque is written. Accounting ‘book entries’ such as depreciation, provisions and valuation adjustments are not reported;
  - It will assist any subsequent AEC compliance review if a reconciliation of the return to the party or branch accounts is included in the working papers retained by the party or branch;
- Transactions of all sections of the party or State branch, including local branches, committees and party units must be included;
  - Transactions between party units within a State or Territory are not included to avoid double counting within the State or Territory return;
- Transactions between the Federal party and/or State or Territory branches are included as these are separate entities for disclosure purposes e.g. money received by a local campaign committee from the Federal secretariat is disclosed as a payment of the Federal party and 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 branch return; and
- Transactions by persons acting on behalf of the party or branch, including candidates at Federal and State elections, must be included in the return.

**Gross reporting** - The return is completed on a gross basis, without netting-off of expenses e.g. a fundraiser taking \$4,000 with costs of \$2,750 and a net profit of \$1,250 is reported as \$4,000 receipts and \$2,750 payments, rather than the net \$1,250.

The return is prepared on a GST inclusive basis.

**Disclosure threshold** – Parliament increased the disclosure threshold from ‘amounts of \$1,500 or more’ to ‘amounts of more than \$10,000’ with effect from 8 December 2005. This \$10,000 threshold is indexed in July each year based on the All Groups Consumer Price index at 31 March. The indexed amounts are available at [www.aec.gov.au](http://www.aec.gov.au) and on return forms.

The disclosure threshold applying for the 2006-07 financial year is \$10,300 and for the 2007-08 financial year it is \$10,500. The threshold does not apply to reporting total receipts, payments or debts.

The threshold for reporting details of receipts ignores individual amounts less than the threshold (i.e. only receipts of more than the threshold are disclosed). Multiple payments received on the same day from the same source are considered to be a single payment.

The threshold for reporting debts aggregates individual amounts of less than the threshold.

**Related bodies corporate** - Simplistically, 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.

Transactions of related entities should be included when determining whether the disclosure threshold has been reached.

**Amounts received** - Receipts to be reported include donations or gifts received as well as membership subscriptions, public election funding, income from investments, borrowed money and other revenue.

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 (e.g. money or cheque), or 'gifts-in-kind'.

They may be received directly by the party or branch, or by a third party on their behalf, or with their authority. They may be received by an endorsed candidate, Senate group, campaign committee, or by a broader political supporter.

**Gifts-in-Kind** - Receipts include gifts-in-kind, which must be appropriately valued. Gifts-in-kind are things such as goods, assets or services for which no payment (in cash or in kind), or a payment less than 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 quotations, comparative advertisements or expert assessment.

Examples of in-kind donations include:

- Free services or services provided at a discount to the commercial rates normally charged by the service provider (e.g. for legal advice, accounting services or web and IT services);
- 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 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 fund raising activities.

**Volunteer labour** does not need to be disclosed as a receipt as 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 of the party or by a party member, or by any other person where that service is not one for which that person normally receives payment.

**Gifts-in-kind and volunteer labour distinguished** - the distinction between gifts-in-kind and volunteer labour is seen in the following examples:

- The donation of legal advice by a solicitor who is a party member is volunteer labour because the solicitor is a party member;
- The donation of legal advice by a solicitor who is not a party member is a gift-in-kind that must be disclosed because this is a service for which that person normally charges;
- A solicitor who is not a party member handing out how-to-vote cards is volunteer labour because this is not a professional service for which that person normally charges; and
- 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.

### **Excluded items**

Transactions that do **not** need to be reported as receipts include:

- 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.

There may be tension between the requirement to disclose donated advertising and the exclusion of interviews granted in the normal course of political activity. 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, and debts outstanding at the end of the financial year, 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 branch, including its party units:

- All transactions of the party or branch must be included regardless of the amount (i.e. receipts, payments and debts of less than the threshold are included);
- No category or class of transaction is excluded e.g.;
  - Membership and affiliation fees, and State and Federal election funding are included in total receipts;
  - State and local government campaign expenses, salaries and wages are included in total payments; and
  - Trading liabilities e.g. accounts outstanding are included in total debts;
- Receipts to be reported are not limited to gifts or donations but include all revenue regardless of why it was received e.g. membership subscriptions, public election funding, return on investments, fundraising etc.
- Gifts-in-kind (e.g. advertising paid by someone other than the party) are included as revenue.
- Debts are amounts owing where there is certainty as to amount and timing. Thus accrual provisions such as depreciation and long service leave are not debts whereas accounts received but unpaid are debts.

## DETAILS OF RECEIPTS AND DEBTS

Details of all receipts and debts in excess of the disclosure threshold must be reported

Subject to the disclosure threshold, *Parts 2* and *5* of the return require disclosure of details of persons or organisations from whom the party or branch received, or to whom it owes, money (or moneys worth in the case of ‘gifts-in-kind’).

The full name and address, and the total value of transactions for each person who has reached the disclosure threshold, are disclosed.

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.

### Agency

An amount may be received from a person or organization acting as agent of another person or organization (the principal). The AEC’s approach is to require the identity of the principal rather than the identity of the agent 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 of 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 agent for the employee, disclosure of the employee (and 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 an indicative guide only. The application of the law to the facts of a particular case would need to be determined on a case-by-case basis.

### Disclosure threshold

In *Part 2* of the return only individual receipts of more than \$10,300 are taken into account in calculating whether a person or organisation has reached the threshold for amounts received. Receipts of less than the threshold may be ignored.

All receipts must be included, not merely those from gifts or donations.

In *Part 5* of the return, all debts and unpaid accounts, regardless of the amount, must be included when calculating whether the threshold for disclosure of details of debts has been reached. Individual amounts less than the threshold must be included in the calculation.

The following examples may assist:

- Three separate payments of \$4,000 are received from a person. These are not disclosed in *Part 2* as each is below the threshold of individual receipts of more than \$10,300.
- Two separate payments of \$10,300 and \$10,301 are received from a person. The \$10,301 is disclosed in *Part 2* as it is above the threshold for individual receipts of more than \$10,300. The \$10,300 is not disclosed at part 2 as it is below the threshold.
- An outstanding debt of \$12,000, comprising two amounts of \$6,000 to the same person or organisation must be disclosed as it is a debt of more than \$10,300.

These revenue amounts are included in total receipts at *Part 1* of the return and the debt is included in total debts at *Part 4* of the return.

If the amount received is a gift or donation, the donor must also lodge a disclosure return. As the donor return threshold is on the basis of amounts totalling the threshold the donor would provide details of all of the above payments.

### **Identification of revenue items**

The return includes a column to enable a party to indicate whether a revenue amount is a 'donation' or 'other receipt'.

This information is used by the AEC to contact donors to ensure that they are aware of their disclosure obligations. It also helps inform any debate about party revenue and donations when the returns are made publicly available.

It is open to a party or branch to provide additional clarifying information in those 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 or fundraisers.

The Act makes clear that membership lists do not need to be provided

## LOANS RECEIVED

A summary of the terms and conditions of loans other than those from a financial institution should be included as an attachment to the annual return

As noted above, disclosure is required of details of debts or loans of \$10,300 or more incurred during the financial year and outstanding as at 30 June.

In addition, records must be kept of all loans to the value of more than \$10,300 received from a source other than a financial institution:

- A financial institution is a bank, credit union, building society or a special service provider<sup>1</sup> registered with the Australian Prudential Regulation Authority;
- A loan is broadly defined to include advances, credit, financial accommodations, amounts with an obligation to repay, and transactions having the effect of a loan of money;
- Each credit card transaction is an individual loan for these purposes.

The records to be kept are the terms and conditions of the loan and details of the lender. These include things such as loan documentation and schedules, including the amount, interest rate and repayment terms.

The provider details to be kept are defined:

- 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 of the organisation;
- 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 should be included as an attachment to the return form.

Subject to the disclosure threshold, it is unlawful for a loan to be received from other than a financial institution if these records are not kept. If the records are not kept, the amount of the loan may be recovered as a debt to the Commonwealth.

The 'more than \$10,300' threshold is indexed.

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<sup>1</sup> A special service provider such as Australian Settlements Limited, Cuscal Limited or Indue Ltd provides services such as payment clearing facilities to building societies and credit unions.

## OTHER RETURNS

Donors to parties and to candidates, people or organisations incurring political expenditure, associated entities, candidates and Senate groups have separate reporting obligations

**Donors** – Subject to the disclosure threshold, people and organisations making donations (directly or indirectly) to political parties are required to lodge an annual disclosure return.

They must:

- Disclose donations made to a party, or to other people or organisations which are intended to benefit a political party, where the total is more than \$10,300;
- Count all donations, including those less than the disclosure threshold, when determining whether the threshold has been met; and
- Disclose donations they have received totalling \$10,300 or more that they used to make donations of \$10,300 or more to political parties.

Subject to the disclosure threshold, people or organisations who make donations to a candidate or to a member of a Senate group during an election period are also required to lodge an election return.

These requirements are explained more completely in the *Funding and Disclosure Handbook for Donors* available at [www.aec.gov.au](http://www.aec.gov.au).

The Guidance Note ‘*Gifts Received by endorsed candidates and Senate groups*’ considers when a party reports a gift made to an endorsed candidate and when the candidate reports the gift. The principles in that guidance note apply equally to the question whether a person or organisation that donates to an endorsed candidate lodges an annual return or an election period return.

**Third parties** – from the 2006-07 financial year and subject to the disclosure threshold, people or organisations incurring political expenditure are required to lodge an annual disclosure return.

Political expenditure includes the public expression of views on parties, candidates, members of Parliament, election issues, advertising material required to be authorized under the Act and election or voter related research. It does not include other costs e.g. travel.

Disclosure will also be required, subject to the disclosure threshold, of gifts received at any time that were wholly or partially used to incur political expenditure during the financial year.

These requirements are explained more completely in the *Funding and Disclosure Handbook for Third Parties* available at [www.aec.gov.au](http://www.aec.gov.au).

**Associated entities** - Associated entities are organisations controlled by, or operating to a significant extent for the benefit of, political parties, or who are financial members of a party or have voting rights in a party.

They are required to lodge annual returns with the same details as parties, and also to disclose the sources of capital used to generate funds to finance payments to a party or branch.

The definition of an associated entity and the disclosure requirements are explained more completely in the *Funding and Disclosure Handbook for Associated Entities* available at [www.aec.gov.au](http://www.aec.gov.au).

Parties and branches should provide the AEC with contact details for associated entities of the party.

**Candidates** - Candidates and Senate groups (other than groups endorsed by a single party) must report after each election total donations received, and details of persons or organisations that donated more than \$10,300 to the candidate or group.

Candidates and Senate groups must also report certain categories of their electoral expenditure.

These requirements are explained more completely in the *Funding and Disclosure Handbook for Candidates* available at [www.aec.gov.au](http://www.aec.gov.au).

The Guidance Note '*Gifts Received by endorsed candidates and Senate groups*' considers when a party reports a gift made to an endorsed candidate and when the candidate reports the gift. The principles in that guidance note apply equally to the question whether a person or organisation that donates to an endorsed candidate lodges an annual return or an election period return.

## UNLAWFUL DONATIONS AND LOANS

Anonymous donations and undocumented loans in excess of the disclosure threshold are illegal

### **Anonymous donations**

It is illegal for a political party, branch, or person acting on their behalf to receive donations totalling more than \$10,300 unless the person receiving the gift knows the name and the address of the donor:

- In the case of donations received from a trust or foundation, the names and addresses of the trustees must be known, 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 known, along with the name of the organisation;
  - It is sufficient to know the name and address of a registered industrial organisation (i.e. members of the executive committee may not be known).

If illegal donations are received, they are payable to, and recoverable by, the Commonwealth.

### **Undocumented loans**

It is illegal for a loan of more than \$10,300 to be received from other than a financial institution unless the terms and conditions of the loan, and the details of the lender are recorded.

If such loans are received, the amount of the loan is payable to, and recoverable by, the Commonwealth.

Loans totalling more than \$10,300 must be disclosed in the annual return.

The information and reporting requirements are discussed in more detail in the 'annual returns' section of this handbook.

### **Winding-up of a donor company**

A company liquidator may take action to recover from a party or branch any donations of more than \$10,300 made by a company that is wound up within one year of the donation being made.

## **ADMINISTRATION**

### **Incomplete returns**

In cases where the party agent is unable to obtain all necessary information for inclusion in the return, a statement should be attached setting out:

- What information may be missing;
- What attempts were made to gain that information;
- Why it could not be obtained; and
- The name, address and phone number of each person who the agent believes holds that information.

The AEC will then follow-up the information directly.

Where a satisfactory response is not received from an inactive party unit, and it is believed that no material transactions have been omitted from the return as a result, there is no need to report this.

### **Amendment of returns**

A separate return form is used to amend a return that has been lodged and subsequently found to be incomplete or incorrect.

This requires, for total receipts, total payments and total debts that the previously submitted amount 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.

An item being changed should be clearly identified e.g. by restating the original item and noting the changes, or by resubmitting the original part of the return with the item highlighted and cross-referenced to the change detailed on the amending return.

The amendment form is available at [www.aec.gov.au](http://www.aec.gov.au).

### **Date for public inspection of annual returns**

Annual returns become available for public inspection on the first working day in February following the due date for lodgement of the return.

The returns may be viewed at [www.aec.gov.au](http://www.aec.gov.au) or at AEC offices by arrangement.

## **Record keeping**

Parties and their branches must give consideration to the financial recording systems and procedures that are appropriate to their needs and circumstances.

The 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.

An AEC compliance review team may request access to the books and records of the party for the period under review, including but not limited to:

- Books of account (e.g. detailed general ledger, trial balance, computer records, petty cash records);
- Banking records (e.g. deposit books, cheque stubs, statements, reconciliations);
- Receipts and expenditure records (e.g. receipt books, invoices, accounts, and income and expenditure register);
- Audited financial statements;
- A list of party units, (including inactive party units) and a list of functions held during the year;
- Other documents (e.g. minutes of meetings, loan agreements, asset register).

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;
- The identity of the true donor should be recorded where a transaction is on behalf of someone else e.g. through a solicitor's trust account:
  - Anonymous donations in excess of the disclosure threshold are unlawful.

## **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 registered political parties, their branches, and other people or organisations subject to the disclosure regime to verify the accuracy and completeness of disclosure returns.

The reviews:

- Ensure compliance with the disclosure requirements of the Act; and
- Provide an opportunity for advice and guidance to be provided by AEC officers.

The reviews are intended to check whether a party, associated entity or donor has met its disclosure obligations.

The process involves:

- Advisory letter notifying an intended compliance review visit. This advises the sorts of records and information that will need to be accessed for the review;
  - Section 316 of the Act gives the AEC power to access information relating to matters that should be included in an annual financial disclosure return;
  - Access to all records may be required to give confidence in the overall accuracy of the return.
  - Records and information should not be altered or obliterated.
- An entrance interview will be followed by a review of the records relevant to the annual return, and an exit interview during which the preliminary results of the review are discussed;
- A written report of the visit is subsequently provided;
  - This will note any issues raised by the review, and may involve a request for an amended return where errors or omissions are detected;
  - There are penalty provisions for failing to lodge a return, failing to properly complete a return or failure to lodge an amendment 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.

The records of local party units, including the campaign committees of candidates and Senate groups, may be inspected. The party or branch agent or their nominee can be present.

The Act requires that individual gifts of \$25,000 or more to a candidate or party must be reviewed.

## **Offences**

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

The AEC's aim is to assist agents to fulfil their obligations under the Act. It may, however, initiate prosecutions for offences against the disclosure provisions after other reasonable avenues to resolve matters have been exhausted.

Offences include:

**Failure to lodge a return by the due date** - A person who fails to lodge a disclosure return by the due date is punishable by a fine of up to \$5,000 for a party agent, or up to \$1,000 for any other person.

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** - A person who lodges an incomplete return is punishable by a fine of up to \$1,000.

The Administration chapter of this Handbook provides advice for the situation where information cannot be obtained.

**Including false or misleading information in a return** - A person who knowingly lodges a return containing false or misleading information is punishable by a fine of up to \$10,000 for a party agent, or up to \$5,000 for any other person.

**Knowingly providing false or misleading information for inclusion in a return** - A person who knowingly provides a party agent with false or misleading information for inclusion in a return is punishable by a fine of up to \$1,000.

**Failure to retain records for 3 years** - Failure to retain records containing information that could be required to be included in a return for 3 years is punishable by a fine of up to \$1,000.

**Failure to comply with a notice authorising a compliance review or investigation**

- A person who refuses or fails to comply with a notice authorising a compliance review or investigation by the AEC is punishable by a fine of up to \$1,000.

**Providing false or misleading information during a compliance review or**

**investigation** - A person who knowingly provides false or misleading information during a compliance review or investigation by the AEC is punishable by a fine of \$1,000, or imprisonment for six months, or both.

## APPENDIX 1

**GLOSSARY**

<b>AEC</b>	Australian Electoral Commission.
<b>Anonymous donations</b>	Gifts where the person receiving the gift when the gift was made did not know the donor's name or address. Anonymous gifts of more than \$10,300 may be forfeited to the Commonwealth.
<b>Associated entity</b>	<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>
<b>Campaign committees</b>	Annual returns of the party must include the transactions of campaign committees of endorsed candidates.
<b>Detailed disclosure</b>	The full name, address and the total value of transactions for each person who has reached the disclosure threshold for receipts or debts.
<b>Disclosure threshold</b>	Detailed disclosure must be made of receipts totaling more than \$10,300 and debts totaling more than \$10,300 at 30 June. This threshold is indexed, increasing to \$10,500 for 2007-08.
<b>Donor</b>	A person or organisation other than a registered political party, an associated entity, a candidate or Senate group who is under an obligation to furnish a disclosure return because they made a donation.
<b>Election funding entitlement</b>	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.
<b>Gifts-in-kind</b>	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.
<b>Indexation</b>	The disclosure threshold is indexed to the All Groups Consumer Price Index. The indexed threshold applying to the 2006-07 reporting period

is \$10,300. The threshold for 2007-08 is \$10,500.

<b>Internal party transactions</b>	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.
<b>Joint Senate group</b>	A Senate group endorsed by more than one political party.
<b>Party agent</b>	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.
<b>Party unit</b>	A generic term used to describe all sections of a political party including local branches and campaign committees.
<b>Period of disclosure</b>	Annual returns cover a financial year i.e. the period from 1 July to 30 June.
<b>Public inspection</b>	Annual disclosure returns are available for inspection by the public at <a href="http://www.aec.gov.au">www.aec.gov.au</a> , at the AEC Central Office in Canberra, and by appointment in AEC State Head Offices, from the 1 <sup>st</sup> working day in February each year.
<b>Registered officer</b>	The person registered with the AEC who has the authority to nominate candidates. The nominated registered officer does not change until the AEC is formally notified of a replacement.
<b>Registered political party</b>	A political party registered with the AEC. (Registration with a State 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.
<b>Related bodies corporate</b>	Related bodies corporate are deemed to be the one entity for disclosure purposes. Related status is determined under the <i>Corporations Law</i> .
<b>Senate group</b>	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 in the ballot-paper, or grouped in a specified order.
<b>The Act</b>	<i>Commonwealth Electoral Act 1918</i> .
<b>State branch</b>	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.
<b>Third party</b>	A term used to describe those who have a disclosure obligation, other than political parties, candidates, Senate groups and donors.

**Volunteer labour**

Volunteer labour provided to a registered political party does not need to be disclosed as a donation by that person or the party. Volunteer labour is 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.

## 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, and 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, and broadcasters and publishers;
- Division 5A deals with the annual returns of registered political parties and associated entities;
- 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 handbook, 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 handbook.