

May 2024

Financial Disclosure and Election Funding Compliance Framework

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Published 1 May 2024.

Contents

| | |
|---|----|
| Introduction..... | 4 |
| Scope | 4 |
| Background | 5 |
| Audience | 5 |
| Further Information | 6 |
| Administration of financial disclosure and election funding..... | 6 |
| Compliance..... | 7 |
| Individuals and entities with a disclosure obligation | 8 |
| Eligibility to lodge a claim for election funding | 9 |
| Voluntary compliance with disclosure obligations | 9 |
| Compliance assessment on disclosure returns and claims for election funding | 11 |
| Disclosure returns | 12 |
| Election Funding | 17 |
| Investigations..... | 18 |
| Gifts of \$25,000 or more..... | 18 |
| Contravention Investigations | 18 |
| Significant third party, third party or associated entity investigations | 19 |
| Investigation outcomes..... | 20 |
| Foreign Donations | 20 |
| Definition of Foreign Donor | 21 |
| Obtaining information about foreign donor status | 22 |
| Foreign campaigners and electoral expenditure | 22 |
| Anti-avoidance..... | 22 |
| Tip-off in relation to possible breach of the disclosure provisions..... | 23 |
| Reporting suspected breaches of the disclosure provisions | 23 |
| What information should be provided? | 23 |
| How will a tip-off be dealt with? | 24 |
| Frequently asked questions..... | 24 |
| Penalties..... | 25 |
| Reporting..... | 25 |
| Associated documents..... | 25 |

Introduction

The [Commonwealth Electoral Act 1918](#) (Electoral Act) and the [Referendum \(Machinery Provisions\) Act 1984](#) (Referendum Act) contain provisions which set in place a scheme for the disclosure of certain financial information by participants in the electoral or referendum process and for the administration of election funding.

The Commonwealth financial disclosure scheme requires the following participants to lodge financial disclosure returns with the Australian Electoral Commission (AEC) within a specified timeframe and for those returns to be made publicly available:

- registered political parties and state and territory branches of registered political parties
- significant third parties
- associated entities
- Members of the House of Representatives
- Senators
- annual donors to political parties or significant third parties
- annual donors to Members of the House of Representatives or Senators
- third parties that incur electoral expenditure
- candidates and Senate groups
- election donors
- referendum entities
- referendum donors.

After a federal election, by-election or referendum, eligible political parties, candidates and Senate groups who wish to access election funding greater than the automatic payment must lodge a claim with the AEC setting out electoral expenditure incurred. The automatic payment amount is indexed every six months and its current value can be found on the [election funding rates](#) page. The determination of whether to accept a claim for election funding, (in whole or in part) is published as soon as practicable after payment on the [Transparency Register](#) on the AEC website.

Scope

The scope of this Framework pertains solely to the Commonwealth election funding and financial disclosure schemes set out in Part XX of the Electoral Act and Part VIIIA of the Referendum Act.

The Financial Disclosure and Election Funding Compliance Framework (the Framework) has been developed to provide information on the approach the AEC takes in ensuring that those required to make financial disclosures meet their obligations, and those that lodge claims for election funding meet the criteria for the acceptance and payment of election funding.

Background

The AEC performs a role in providing the public with information which can assist them in participating in the electoral process. As outlined by the Electoral Act and Referendum Act, the AEC is required to publish certain financial information from participants in the electoral process on the Transparency Register. Such information increases overall transparency and informs the public about the financial dealings of political parties, candidates, senate groups and others involved in the electoral process.

To this end, the important components of disclosure are:

- identity – the name and address of the true participants in a transaction, such as the source and recipient of a donation, are clearly identified
- value – the true value is accorded to a transaction
- date – a precise date can be important information for the public (e.g. if donations from an entity precede or coincide with the making of a decision).

The aim of promoting openness and transparency in the political financial activity of electoral participants can be undermined by failure in any one of these components.

Although claims for election funding are not accessible to the public, details related to the determination of election funding, including the recipient's name, the amount of the election funding payment and the date of determination are published on the [Transparency Register](#) on the AEC website.

Audience

The target audience for this document includes:

- staff of the Australian Electoral Commission
- registered political parties and their state/territory branches
- significant third parties
- associated entities
- Members of the House of Representatives
- Senators
- annual donors to political parties or significant third parties
- annual donors to Members of the House of Representatives and/or Senators
- third parties that incur electoral expenditure
- referendum entities
- referendum donors
- candidates and senate groups
- election donors
- Joint Standing Committee on Electoral Matters
- voters
- the media
- academia

Further Information

Further information about [financial disclosure](#) and [election funding](#) can be found on the [AEC website](#). User guides are available for each type of return that is required to be lodged under the Electoral Act and Referendum Act, and for eligible candidates and Senate groups who wish to lodge a claim for election funding:

- [Financial Disclosure Guide for Political Parties](#)
- [Financial Disclosure Guide for Significant Third Parties](#)
- [Financial Disclosure Guide for Associated Entities](#)
- [Financial Disclosure Guide for Members of the House of Representatives and Senators](#)
- [Financial Disclosure Guide for Annual Donors](#)
- [Financial Disclosure Guide for Third Parties](#)
- [Financial Disclosure Guide for Candidates and Senate Groups](#)
- [Financial Disclosure Guide for Election Donors](#)
- [Election Funding Guide for Political Parties, Candidates and Senate Groups](#).
- [Foreign Donations Fact Sheet](#)
- [Referendum Donations](#)

This Framework and associated user guides are not intended to serve as a replacement for the law. The AEC does not provide legal advice and it is recommended that individuals or entities seek their own legal advice for any ambiguities.

Administration of financial disclosure and election funding

The AEC has established a section which is responsible for the administration of Part XX of the Electoral Act and Part VIIIA of the Referendum Act. This work includes:

- managing the receipt, processing and publication of financial disclosure returns
- reviewing a sample of financial disclosure returns to determine whether they are accurate and complete
- conducting investigations of contraventions, or possible contraventions, of the financial disclosure provisions
- conducting investigations of entities to determine whether they are associated entities, significant third parties or third parties and therefore have disclosure obligations
- administering the automatic payment of election funding to eligible candidates and Senate groups
- managing the receipt, assessment, determination and payment of claims for election funding greater than the automatic payment
- reviewing election funding claims to ensure that the criteria for the acceptance and payment of election funding has been met.

The AEC has been given authority to undertake investigations concerning compliance with the disclosure obligations and the requirements for election funding contained in Part XX of the Electoral

Act and Part VIIIA of the Referendum Act. This authority was provided to the AEC so that the public (i) may have some assurance that those with disclosure obligations are meeting the requirements; and (ii) those that receive election funding are being reimbursed for legitimate electoral expenses.

The elements necessary for disclosures to meet the legislative objectives are:

- timeliness – the lodgement date and the public release date must be met to achieve timeliness; and
- completeness and accuracy – a return should be a complete and accurate representation of the required information.

The elements necessary for claims for election funding to meet legislative objectives include:

- timeliness – the claim is submitted no earlier than twenty (20) days after polling day; and no later than six (6) months after polling day
- completeness and accuracy – a claim should completely and accurately detail expenses incurred in relation to an election, and must meet the criteria for acceptance and payment of election funding in section [298C\(2\)](#) of the Electoral Act, namely:
 - (a) whether expenditure claimed is electoral expenditure; and
 - (b) if expenditure claimed is electoral expenditure—both:
 - (i) whether the electoral expenditure was incurred; and
 - (ii) whether the electoral expenditure has been specified in a claim made by another agent.

Compliance

To ensure compliance with the financial disclosure provisions of the Electoral Act and the Referendum Act, the AEC:

- provides information on the Commonwealth financial disclosure schemes
- identifies those with disclosure obligations
- reminds those who are known to have disclosure obligations of the need to meet them
- checks returns on receipt to see if they appear complete
- conducts compliance reviews of returns
- where appropriate, enforces the penalty provisions contained within the relevant sections of the legislation.

To ensure compliance with the election funding provisions of the Electoral Act, the AEC:

- provides information on the election funding claim process and legislative requirements
- identifies those eligible for an automatic payment of election funding and those eligible to lodge a claim for election funding greater than the automatic payment
- reminds those who are eligible to lodge a claim for election funding that if they intend to lodge a claim they must do so by the due date

- investigates whether correct claim forms are lodged and all parts are completed prior to being submitted for assessment
- reviews claim assessments and prepares determinations for payment of election funding
- conducts compliance reviews of election funding claims as soon as practicable following the end of the claim submission period
- manages the recovery process in circumstances where the AEC, as a result of an election funding compliance review, is satisfied that there has been an overpayment of election funding
- where appropriate, enforces the penalty provisions contained within the relevant sections of the Electoral Act.

Individuals and entities with a disclosure obligation

The following individuals and entities may have an obligation to lodge a disclosure return with the AEC:

- registered political parties and their state and territory branches
- significant third parties
- associated entities
- Members of the House of Representatives
- Senators
- donors to political parties or significant third parties
- donors to Members of the House of Representatives and Senators
- third parties that incur electoral expenditure
- candidates and senate groups
- election donors
- referendum entities
- referendum donors.

The AEC, within its powers, actively works to identify and notify those with disclosure obligations. They are identified through various means as described in the following paragraphs.

Registered political parties

Registered political parties, state and territory branches of registered political parties, candidates and Senate groups are known to the AEC either through a process of registering (political parties) or nominating as a candidate or Senate group for a federal election.

Significant third parties and associated entities

The AEC becomes aware of significant third parties and associated entities through various means, including self-identification, identification by a registered political party or another individual, or through enquiries, assessments, or investigations conducted by the AEC to determine if an entity meets the requirements to be registered as a significant third party or associated entity.

Donors

Donors to political parties, significant third parties, Members of the House of Representatives, Senators, candidates, Senate groups and referendum entities may either self-identify or are identified by the AEC examining the disclosure returns submitted by the recipients of their donation, or through compliance review activities.

Third parties & referendum entities

Third parties and referendum entities (in the event of a referendum) are required to self-identify. In addition, the AEC actively monitors third party activities, state/territory financial disclosure websites, and the media to identify third parties that may have incurred electoral expenditure that is required to be disclosed. In the event of a referendum, the AEC actively monitors the media (digital and print) to identify referendum entities that may have incurred referendum expenditure that is required to be disclosed.

Eligibility to lodge a claim for election funding

A candidate or group who receives at least four (4) per cent of the total first preference votes in an election is (i) eligible for an automatic payment of election funding; and (ii) may lodge a claim for election funding for greater than the automatic payment. The automatic payment amount is indexed every six (6) months and its current value can be found on the election funding rates page.

Candidates or groups that are deemed eligible for the automatic payment of election funding are contacted to advise that they will need to lodge a claim for election funding setting out electoral expenditure incurred if they wish to receive election funding greater than the automatic payment.

Voluntary compliance with disclosure obligations

The AEC seeks voluntary compliance from those with disclosure obligations. A key mechanism for achieving this is the provision of information. Examples include the [guides](#) (available on the AEC website), and sending out information to candidate agents, newly registered political parties, significant third parties and associated entities about their financial disclosure obligations. The AEC also sends out obligation and reminder letters advising known clients of their obligations and the deadlines for lodging returns. The AEC may, at times, use other means (such as email) to remind those who have disclosure obligations.

The AEC has a secure online return lodgement system (eReturns) to enable easy lodgement of returns, which is supported by the option of using hard copy returns if required.

However, the Electoral Act and the Referendum Act do not place a responsibility on the AEC to contact persons about their obligation(s); and failure to receive any advice from the AEC does not absolve a person from their responsibility to lodge a return.

Set out below is the current standard reminder process the AEC follows:

- Political parties
 - an obligation letter after the end of the financial year
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date, where applicable
- Significant third parties (those which are known to the AEC)
 - an obligation letter after the end of the financial year
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date, where applicable
- Associated entities (those which are known to the AEC)
 - an obligation letter after the end of the financial year
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date, where applicable

- Members of the House of Representatives and Senators
 - an obligation letter after the end of the financial year
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
- Annual donors (those known to the AEC)
 - an obligation letter as soon as the donor is identified on a political party, significant third party, associated entity, Member of the House of Representatives or Senator return
 - a reminder letter as soon as reasonable after the obligation letter. That is, a period of time is allowed after the obligation letter for the donor to lodge their return before a reminder is sent
 - a failure to lodge letter as soon as possible after the due date
- Third parties that incur electoral expenditure (those known to the AEC)
 - an obligation letter after the end of the financial year
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date
- Candidates and Senate groups
 - an obligation letter after the candidate or Senate group ceases to be a candidate or Senate group in an election, that is, at the end of thirty (30) days after polling day
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date
- Election donors (those known to the AEC)
 - an obligation letter as soon as the donor is identified on a candidate or Senate group return
 - a reminder letter as soon as reasonable after the obligation letter. That is, a period of time is allowed after the obligation letter for the donor to lodge their return before a reminder is sent.
 - a failure to lodge letter as soon as possible after the due date.
- Referendum entities that incur referendum expenditure, and referendum donors (those known to the AEC)
 - an obligation letter at the end of the referendum expenditure period
 - a reminder letter within the last four (4) weeks of the due date for lodging the return
 - a failure to lodge letter in the week following the due date.

For convenience, letters are emailed to recipients where email addresses are known.

Assistance

A help desk is provided to assist stakeholders with meeting their obligations, including how to complete their disclosure return. [Step-by-step disclosure guides](#) are also provided on the AEC website. If a stakeholder seeks further assistance or if the AEC identifies a need, relevant funding and disclosure staff may provide specific information or training on the disclosure scheme and how stakeholders might meet their obligation.

Where a known stakeholder has failed to meet their disclosure deadline and the AEC has contact details (phone or email), the AEC will endeavour to contact the person to see if they need any assistance to lodge their return.

Preparing and lodging returns

Stakeholders can prepare and lodge their returns electronically via the eReturns portal. The eReturns account is populated with data that the AEC already has in relation to the stakeholder. The import function allows stakeholders to upload data which eliminates the need to transcribe and re-key data and ensures that returns are reported as lodged when published on the Transparency website. To assist with completing a return online, the AEC provides eReturns guides which are available on the AEC website.

On receipt, disclosure returns are checked to ensure that all required sections have been completed. If information appears to be missing, the AEC will contact the person responsible for completing the return to determine whether a corrected return needs to be lodged.

Errors or omissions in returns

Also, as part of its compliance review activity, the AEC may identify errors or omissions in returns. The person responsible for completing the return will be advised of these and provided an opportunity to correct the return or discuss whether an error or omission has actually occurred before the AEC considers the need to exercise enforcement powers.

The Electoral Act and the Referendum Act also allow for a person who has lodged a return to request an amendment. This provides them the opportunity to correct lodged returns where they have identified an error or omission.

Compliance assessment on disclosure returns and claims for election funding

The Electoral Act and the Referendum Act provide for the AEC to conduct formal compliance reviews of disclosure returns of:

- political parties
- significant third parties
- associated entities
- members of the House of Representatives
- senators
- third parties
- Candidates
- Senate groups and election donors
- referendum entities and referendum donors
- claims for election funding lodged with the AEC.

Authority and purpose

Section [316\(2A\)](#) of the Electoral Act provides an authorised officer with the authority to find out whether:

- a person to whom section 305B of the Electoral Act (gifts to political parties and significant third parties) or section 306 of the Electoral Act (gifts to members of the House of Representatives or Senators) applies or may apply; or
- a member of the House of Representatives or a Senator, or
- a prescribed person; or
- the agent of a registered political party, candidate or group; or

- the financial controller of a significant third party or associated entity; or
- a third party;

has complied with their obligations under Part XX of the Electoral Act, or the *Criminal Code* to the extent that it relates to Part XX of the Electoral Act.

Section 109N of the referendum Act provides an authorised officer with the authority to find out whether a referendum entity or referendum donor has complied with their obligations under Part VIIIA of the Referendum Act, or the *Criminal Code* to the extent that it relates to Part VIIIA of the Referendum Act.

Authorised officers

An 'authorised officer' is a person who has been formally authorised by an instrument, signed by the Electoral Commissioner on behalf of the Electoral Commission, as provided by section 316(2) of the Electoral Act.

Section 316 of the Electoral Act and section 109N of the Referendum Act provides an authorised officer the authority to issue notices requiring the production of documents or other things within the time specified or to appear before the authorised officer at a time and place specified in the notice. The notice can be served personally or by post. These powers enable an authorised officer to undertake compliance reviews and investigations under section 316 of the Electoral Act and section 109N of the Referendum Act.

An authorised officer may require evidence to be given under an oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.

A person is guilty of an offence if they fail or refuse to comply with a notice issued under section(s) 316(2A), (3) or (3A) of the Electoral Act and section 109N(5) of the Referendum Act. Strict liability applies to such offences.¹

Timeframes

Pursuant to section 316(2AB) of the Electoral Act, the period specified in a notice to produce documents must be no longer than thirty (30) days after the date of the notice. Therefore, the AEC sets a reasonable time limit for parties/entities to provide records for a review.

Section 109N(2)(b) of the Referendum Act requires a section 109N notice to specify a time period for compliance of the Notice. There is no specified time period within the legislation, however, the AEC will set a reasonable time limit for referendum entities and referendum donors to produce documents.

The AEC is mindful of the need to balance the conduct of an effective review against imposing an excessive regulatory burden on the person on whom a notice has been issued.

Disclosure returns

Initial assessment

The initial compliance assessment is to ensure that all expected returns have been lodged and that they appear to have been fully and correctly completed. Follow up action will be taken in relation to returns not received by the due date, or those that do not appear to contain all the required

¹ For 'strict liability', see section 6.1 of the *Criminal Code*

information. Returns will be subject to risk analysis to identify any areas that may require closer assessment.

Review process

A compliance review of a disclosure return under the Electoral Act is conducted in three (3) stages.

1. The first stage involves issuing a section 316(2A) notice(s), receiving and checking documents.

An authorised officer will issue a notice to the:

- agent of a political party
- financial controller or any officer of a significant third party or associated entity
- Member of House of Representatives or Senator
- agent of a candidate or group
- person responsible or any officer of the third party for completing a third party return
- a prescribed person mentioned in subsection 17(2A) for completing an election donor return

to provide certain documents to allow the AEC to conduct the review and provide a due date in the notice. A period of two (2) to four (4) weeks is normally allowed for the records to be collated and delivered to the AEC, depending on (i) the quantity of information requested, (ii) the accounting system used by the party/entity; and (iii) other considerations. This is to ensure compliance with the notice can be easily met with a minimum of disruption to ongoing responsibilities.

Where political parties operate a network of party units, a second section 316(2A) notice may be issued requesting documents and information to be provided on the operations of a sample of those party units. The agent is an intermediary between the AEC and local treasurers, although, after the receipt of those records, the AEC may nevertheless need to contact a party unit treasurer directly seeking clarifications or explanations.

2. The second stage of the compliance review involves the examination and testing of the records. A compliance review officer will examine the documents requested in the notice to determine whether financial disclosures made in returns are complete and accurate. Compliance reviews are largely performed at the AEC's National Office. However, where appropriate, compliance review officers can make site visits to the office of the organisation and review other material that may assist in verifying the completeness and accuracy of disclosures.
3. The final stage is the preparation of a draft report and may involve an exit interview with a party agent, financial controller, candidate or group agent or person responsible for completing a third party return at either their premises or the AEC's offices. The party/entity is then provided with an opportunity to comment on the draft report before it is finalised.

A compliance review of a disclosure return under the Referendum Act is conducted in a similar manner, that is, three (3) stages.

1. The first stage involves issuing a section 109N(2) notice(s), receiving and checking documents. An authorised officer will issue a notice to the person that the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to assessing compliance with Part VIIIA of the Referendum Act.

The notice to provide certain documents will allow the AEC to conduct the review. A due date will be provided in the notice. A period of two (2) to four (4) weeks is normally allowed for the records to be collated and delivered to the AEC, depending on (i) the quantity of information requested, (ii) the accounting system used by the entity or individual; and (iii) other considerations. This is to ensure compliance with the notice can be easily met with a minimum of disruption to ongoing responsibilities.

2. The second stage of the compliance review involves the examination and testing of the records. A compliance review officer will examine the documents requested in the notice to determine whether financial disclosures made in returns are complete and accurate. Compliance reviews are largely performed at the AEC's National Office. However, where appropriate, compliance review officers can make site visits to review other material that may assist in verifying the completeness and accuracy of disclosures.
3. The final stage is the preparation of a draft report and may involve an exit interview with the lodging officer or person responsible for completing a referendum return at either their premises or the AEC's offices. The entity is then provided with an opportunity to comment on the draft report before it is finalised.

Selection of entities for review

The AEC's compliance review program is not able to include a review of every disclosure return. Disclosure returns selected for review are based on a risk assessment, professional judgement and/or random selection.

Scope of review

Reviews will have either limited coverage (limited scope) or full coverage (full scope) of all disclosures in a return or election funding claim.

In considering which returns are to undergo a limited scope or full scope review, a risk based assessment of the likelihood of the return not meeting the legislative requirements is made.

Limited scope review

A limited scope review focuses on a specific criteria or aspect of the financial disclosure, for example, receipts above the threshold or movements in debt from previous years. However, in circumstances where the results of the limited scope review indicate material misstatements or raise general concerns about the reliability of the other disclosed amounts in the return, it will then be considered for expansion to a full scope review.

Full scope review

A full scope review involves an examination of all disclosures in the return using the full criteria for assessment and where applicable incorporates an examination of a sample of party units operating on behalf of a political party.

Party units

Where the AEC reviews a party that has party units (sometimes called sub-branches or electorate committees), it also reviews the records of a selection of those party units. During the review the AEC seeks to verify the disclosures of the selected party units that are included in the party's annual disclosure return.

Accounting system(s) or financial operations

The AEC may discuss aspects of a party's/entity's accounting system or financial operations with party/entity officials, with a view to understanding what record and reports from the party's/entity's accounting system have been used by the party/entity in collating its return and what records will assist the AEC with its review; however the AEC does not review other aspects of the party's/entity's accounting system or financial operations (such as internal controls) during a compliance review.

Documents examined

When issuing a section 316(2A) notice and/or a section 109N notice, the authorised officer will require the person to whom the notice is issued to produce 'documents or other things'. These may include:

- trial balances
- general ledger extracts
- bank statements, bank reconciliations, deposit listings
- details of gifts in kind
- financial statements
- terms and conditions of all loans outstanding as at 30 June
- creditor listings
- the working documents used by the party/entity in collating the disclosure return or election funding claim which clearly demonstrate how the disclosures were derived.
- receipts issued or received for donations
- minutes of meetings and AGMs.

Where a sample of party units is to be reviewed, the financial records of the party units will be sought.

The above list does not necessarily constitute a final, exhaustive list of the records required for the conduct of the compliance review and further records may be requested. Additional records may be requested if specific issues are identified during the compliance review.

Wherever a party/entity uses accounting software or otherwise maintains or possesses financial records electronically, the AEC will require those records to be provided in an appropriate electronic format, not hardcopy. It is also essential to the efficacy of a compliance review that the integrity of the records provided can be assured.

Review of disclosure returns

If, during a review of a disclosure return, there is any evidence uncovered or an authorised officer has reason to believe that there may have been a material breach of the disclosure provisions, the authorised officer may:

- undertake further compliance review activities to obtain additional information relating to the breach;
- progress the matter to an investigation; or

- enforce civil penalty provisions contained within the relevant provisions of the Electoral Act.

Draft report

Once a draft report is prepared it is sent to the agent, financial controller, an officer of the third party or person responsible for completing the return. If the compliance review identified that an amendment to a return is required, the draft report provides a period of up to two weeks for the party/entity to make comments on the report and for an amendment to be lodged (if required). If an amendment is received along with any comments on the draft report these will be considered in the preparation of the final report.

Final report

The final report is generally prepared following the lodgement of any amendment arising because of the compliance review. Where applicable, the final report will incorporate any comments from the party or entity on the draft report. The final reports of compliance reviews of 2015-16 annual returns and onwards, are published on the AEC's website.

Failure to amend a disclosure return

If attempts to seek an amendment to a disclosure return that was identified through a compliance review have failed, the details about the alleged breach of the disclosure provisions will be included in the final report. The AEC will then determine whether to:

- do nothing. That is, there may not be any public interest in pursuing a minor amendment to a return
- undertake an investigation under s 316(3) of the Electoral Act of the alleged breach; or
- enforce civil penalty provisions contained within the relevant provisions of the Electoral Act.

Election Funding

All claims for election funding undergo an initial review before being submitted for assessment. The initial review involves checking whether the correct form has been submitted within the timeframe, whether it is complete with accurate details and totals.

Review Process

A compliance review of an election funding claim is also conducted in three (3) stages.

1. The first stage involves issuing a section 316(2A) notice(s) and receiving and checking documents. An authorised officer will issue a notice to the agent of a political party/candidate or Senate group responsible for submitting a claim for election funding to provide certain documents required for the conduct of the review to the AEC by the deadline provided in the notice. Depending on the quantity of information requested, the accounting system used by the party/entity, and other considerations, a period of two (2) to four (4) weeks is normally allowed for the records to be collated and delivered to the AEC ensuring compliance with the notice can be easily met with a minimum of disruption to ongoing responsibilities.
2. The second stage of the review involves the examination and testing of the records. A compliance review officer will examine the documents requested in the notice to determine whether the electoral expenses claimed meet the criteria for the acceptance and payment of election funding in section [298C\(2\)](#) of the Electoral Act. The reviews are largely performed at the AEC's National Office. However, where appropriate, compliance review officers may make site visits to the office of an organisation to review other material that may assist with completing the review.
3. The third stage of the review involves the preparation of a letter advising of the outcome of the election funding review.

Selection of entities for review

Compliance reviews of claims for federal election funding normally include the review of a sample of electoral expenses listed in all claims lodged on behalf of political parties, candidates and Senate groups (see also scope discussion below).

Scope of review

Reviews will have either limited coverage (limited scope) or full coverage (full scope) of election funding claims.

Limited scope review

A limited scope review of an election funding claim involves the review of a sample of electoral expenses listed in a final claim.

Full scope review

An election funding review may become full scope if a level of misstatement is found in the sample.

Documents examined

When issuing a section 316(2A) notice, the authorised officer will require the person to whom the notice is issued to produce 'documents and evidence' for the purpose of finding out whether the election funding claim complied with the requirements in Part XX of the Electoral Act.

Additional records may be requested if specific issues are identified during the compliance review.

Reviews of election funding claims

If, during a review of an election funding claim, the AEC finds that there was an overpayment of election funding, the AEC may vary the claim decision in accordance with section 301(1) of the Electoral Act. If such a decision is made, the excess funds paid may be recovered as a debt to the Commonwealth under section [299](#) of the Electoral Act (see also 'Reconsideration of decision to vary election funding claim' below).

Final report

A letter advising of the outcome of an election funding review is provided to the agent of the party, candidate or Senate group that submitted the claim.

Reconsideration of decision to vary an election funding claim

Section [298G](#) of the Electoral Act provides for the agent of a registered political party, candidate or Senate group to apply, within twenty-eight (28) days of receiving a notice of refusal, to the Electoral Commission for reconsideration of the decision to vary an election funding claim.

Investigations

Gifts of \$25,000 or more

Section [316\(2D\)](#) of the Electoral Act provides that where there has been a gift of \$25,000 or more to a registered political party or candidate, an authorised officer must conduct an investigation of that gift.

The investigation of gifts of \$25,000 or more is initially undertaken on data that is available to the AEC from candidates, political parties and their associated entities, and donors. Where it appears that there has been a failure to disclose or correctly disclose the transaction, the AEC seeks to obtain voluntary compliance by contacting the relevant person.

If the AEC's attempts to seek voluntary compliance have failed, the civil penalty provisions contained within the Electoral Act may be enforced.

Gifts of \$25,000 or more are also investigated as part of the routine compliance reviews of political parties, significant third parties, associated entities and third parties, to ensure that all receipts above the threshold have been included in the returns and that the true source of the funds has been disclosed.

Contravention Investigations

Section [316\(3\)](#) of the Electoral Act provides the AEC with the authority to undertake investigations of contraventions, or possible contraventions of a civil penalty provision in Part XX of the Electoral Act.

An investigation under s 316(3) cannot commence unless the AEC has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention of a civil penalty provision in Part XX, or relating to matters that are set out in, or are required to be set out in a claim or return under Part XX. In practical terms, that means the AEC requires some credible evidence in support of an allegation before it can mount an investigation. Allegations, including those made in the media or in Parliament, need to be supported with some evidence rather than hearsay before they can be investigated by the AEC under the authority of s 316(3).

The authority under s 316(3) is broader than the authority provided under s 316(2A) for the conduct of compliance reviews, including allowing the AEC to demand evidence from any person who may have evidence relating to a contravention, or possible contravention, of a civil penalty provision under Part XX.

The AEC undertakes a preliminary assessment of all potential contraventions that come to its attention, whether directly or via other avenues such as media reports, using information from the source of a complaint, and routine inquiries to determine whether an investigation is warranted.

When the outcome of an investigation has been advised to the person/s involved, the AEC may publish its outcomes on its website and include the details of the investigation in its report to the Minister provided after each federal election (this report is required by section [17\(2\)](#) of the Electoral Act).

When the AEC receives an allegation of a breach of the disclosure provisions from an external source, an assessment of the materiality of the allegation is made separately from, and only after, an assessment has been made of the evidence provided in support of the allegation.

Where the AEC receives allegations of breaches that are not considered to be material, it will not divert resources to conduct a special investigation under section 316(3). However, the allegations may be investigated as part of the normal compliance review process if the allegation involves a person or entity that is subject to a section 316(2A) compliance review. If a section 316(2A) compliance review of the relevant entity is not scheduled within the next twelve (12) months, a revised risk profile, factoring in the allegation, will be considered during the selection of parties/entities for future review.

Significant third party, third party or associated entity investigations

Section 316(3A) provides that an authorised officer can serve a notice, on a person who is or was at a particular time the financial controller or an officer of the significant third party, associated entity or third party requiring that person to produce documents or other things, or give evidence in relation to whether another person or an entity is, or was at a particular time, a significant third party, associated entity or third party. However, the authorised officer can only do this if there are reasonable grounds to believe both that an entity is or was a significant third party, associated entity or third party and that a person is capable of producing documents or other things, or of giving evidence relating to whether an entity is or was a significant third party, associated entity or third party.

In order to identify significant third parties, associated entities and third parties the AEC will, on an annual basis:

- seek a list of current associated entities from each political party
- review party returns lodged to make an assessment as to whether a listed entity may be an associated entity, and make further enquiries
- examine political party receipts, debts and other relevant information and documents, to make an assessment as to whether an entity interacting with a party could be an associated entity
- make enquiries and review associated entities and their relationship with the party they are associated with
- review third party returns lodged to make an assessment as to whether the entity may be a significant third party
- analyse other information, such as media reports or complaints, which may come to its attention that indicate that an entity is a significant third party, associated entity or third party.

If an authorised officer has a reason to believe that an entity is a significant third party, associated entity or third party and that entity has not lodged one or more disclosure returns such, a failure may become the subject of an investigation or subject to the civil penalty provisions under Part XX of the Electoral Act.

If an authorised officer has issued a notice under section 316(3A) to a person to produce documents or other things or to appear before the authorised officer at a time and place specified in the notice, the person may seek a review of the decision by writing to the Electoral Commission within fourteen (14) days of receipt of the notice.

If a written request is received by the Electoral Commission, it must review the decision as soon as practicable and either affirm, vary or set aside the decision. The Electoral Commission will then notify the person of its decision.

Investigation outcomes

For operational reasons the AEC does not provide any ongoing commentary, including to the source of the allegation, on inquiries and investigations it may be undertaking to protect against compromising the investigation. The AEC will, however, provide advice of the outcome of an investigation to parties or entities involved. It may also publish the outcome of the investigation on the AEC website.

Foreign Donations

The Electoral Act and Referendum Act contain provisions which restrict donations from foreign sources.

Gifts from a foreign source of \$1,000 or more must not be made to:

- a member of the House of Representatives
- Senators
- political entities (registered political parties, candidates and senate groups)
- significant third parties
- associated entities.

Third parties must not accept donations from a foreign source if:

- the value of the gift is at least equal to the disclosure threshold; and
- the gift is used to incur electoral expenditure or for the dominant purpose of communicating electoral matter.

The Electoral Act further restricts gifts from foreign sources where:

- the value of the gift is \$100 or more; and
- the recipient is aware the donor is foreign; and
 - the donor intends that their gift to be used to incur electoral expenditure; or
 - the recipient accepted the gift intending to use it to incur electoral expenditure.

The Referendum Act restricts gifts from foreign sources where:

- the value of the gift is \$100 or more; and
- the recipient is aware the donor is foreign; and
 - the donor intends that their gift to be used to incur referendum expenditure or for the dominant purpose of creating or communicating referendum matter; or
 - the recipient accepted the gift intending to use it to incur referendum expenditure or for the dominant purpose of creating or communicating referendum matter.

It is an offence to contravene these restrictions.

Definition of Foreign Donor

Section 287AA of the Electoral Act defines a foreign donor to be:

- a body politic of a foreign country;
- a body politic of a part of a foreign country;
- a part of a body politic mentioned above;
- a foreign public enterprise;
- an entity (whether or not incorporated) that does not meet any of the following conditions:
 - the entity is incorporated in Australia;
 - the entity's head office is in Australia;
 - the entity's principal place of activity is, or is in, Australia;
- an individual who is none of the following:
 - an elector;
 - an Australian citizen;
 - an Australian resident;
 - a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the Migration Act 1958 (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).

Foreign donor under the Referendum Act has the same meaning given by the Electoral Act.

Obtaining information about foreign donor status

Having controls in place to establish foreign donor status is not compulsory. However, if it transpires that a political entity, MP, Senator, significant third party, associated entity or third party has received a foreign donation in breach of the legislation, evidence of having undertaken certain specified actions can provide a defence to any legal action.

Foreign campaigners and electoral expenditure

The Electoral Act contains provisions which prohibit electoral expenditure and/or fundraising for electoral expenditure by foreign campaigners.

A foreign campaigner under the Electoral Act means a person or entity referred to in a paragraph of section 287AA.

Electoral expenditure incurred by or with the authority of a foreign campaigner must not total \$1,000 or more in a financial year. Amounts fundraised for that purpose must not total \$1,000 or more in a financial year.

Foreign campaigner under the Referendum Act has the same meaning given by the Electoral Act.

The Referendum Act contains provisions which prohibit referendum expenditure and/or fundraising for referendum expenditure by foreign campaigners.

Referendum expenditure incurred by or with the authority of a foreign campaigner must not total \$1,000 or more in a financial year. Amounts fundraised for that purpose must not total \$1,000 or more in a financial year.

Anti-avoidance

Where the AEC has reasonable grounds to conclude that a scheme has been entered into or carried out with the dominant purpose of avoiding:

- an obligation to register as a Significant Third Party or Associated Entity
- foreign donation restrictions
- foreign campaigner prohibitions
- referendum disclosure obligations

The AEC may issue a notice (anti-avoidance) requiring:

- registration as a Significant Third Party or Associated Entity (as the case may be)
- the scheme not be entered into or continued.

Under s 316(2A) of the Electoral Act or section 109N(1) of the Referendum Act, the AEC may, for the purpose of determining whether to give an anti-avoidance notice, require the production of documents or other things.

Tip-off in relation to possible breach of the disclosure provisions

To ensure full transparency of the financial disclosure provisions (disclosure provisions) the AEC must ensure that full disclosure is achieved. To assist the AEC in identifying possible breaches of the disclosure provisions a person can contact the AEC if they are aware of a person or entity that:

- has not lodged a return
- has lodged an incomplete return
- has lodged a return but has included false and misleading information in the return
- has provided false or misleading information for inclusion in a return
- provided false or misleading information during a compliance review.

Reporting suspected breaches of the disclosure provisions

If a person has any knowledge of an activity that might constitute a suspected breach of the disclosure provisions of the Electoral Act or the Referendum Act, the AEC needs that information because it may help to achieve full compliance. To report any suspected breach a person can:

- call the AEC's disclosure tip-off line on: 02 6271 4799
- email: fadtipoff@aec.gov.au
- mail:
Tip-off Facility
Funding and Disclosure
AEC National Office
Locked Bag 4007
Canberra ACT 2601

What information should be provided?

The AEC needs as much information as the person making the tip-off has in relation to the alleged breach of the disclosure provisions. The type of information that will assist the AEC with inquiries is:

- the name of the person or entity
 - full name, position, location, party, entity, donor, candidate or third party
- details of the suspected breach
 - failure to lodge a return
 - lodged an incomplete return (e.g. failed to include a transaction in the return)
 - has included false or misleading information in their return
 - provided false or misleading information for inclusion in a return
 - provided false or misleading information during a compliance investigation
- details about the alleged breach (such as dates, transactions, documentation etc)
- the suspect's contact details
 - fixed line, mobile number, email address or postal/residential address
- How you became aware of this matter

- Your name (it is preferable that you provide your name – the AEC will not disclose your details and it will assist us if we need further information)
- Your contact details
 - fixed line, mobile number and email address

How will a tip-off be dealt with?

The AEC will assess all information it receives in relation to a possible breach of the disclosure provisions as set out in Part XX of the Electoral Act or Part VIIIA of the Referendum Act. The action the AEC will take will depend on whether there is sufficient evidence of a breach having occurred. The AEC may monitor the party, entity or person's ongoing compliance with their disclosure obligations, request information from the party, entity or person who appears to be in breach or a third party who may be able to provide assistance, evidence or information to assist the AEC inquiries.

The AEC will not provide any details of inquiries or investigation that it undertakes in relation to a possible breach of the disclosure so as not to prejudice any possible outcomes. If, however, the AEC conducts a formal investigation the results of the investigation may be made available on the AEC's website at the conclusion of the investigation.

Frequently asked questions

What is the purpose of the disclosure laws?

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

Will the AEC conduct an investigation?

The AEC will only conduct an investigation if there appears to be a breach of the disclosure provisions and has not been able to seek voluntary compliance.

Will details of a person who provides a Tip-Off be protected?

See the AEC's [Privacy Policy](#) on the AEC website. The AEC is bound by the provisions of the *Privacy Act 1988*, (Privacy Act) including the Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for how the AEC handles and maintains personal information. The policy provides a protection of the personal details of any person who provides information in relation to a breach or possible breach of the disclosure provisions.

Can a person make an anonymous report?

Yes. However this may limit the AEC's ability to investigate the matter, particularly where the AEC needs to seek further clarification or information and cannot do so.

What is the benefit of reporting a breach of the disclosure provisions?

The disclosure scheme is aimed at providing transparency about where a political party, significant third party, associated entity, candidate, third party (a person or entity that incurs electoral expenditure) or donor receives their funding. Any information the AEC receives assists in ensuring that any person who with an obligation to disclose financial transactions meets their obligations. If the AEC is not able to achieve voluntary compliance, information or evidence received by the AEC may assist in any enforcement action required to achieve compliance.

Penalties

Civil and criminal penalties are in the relevant provisions of Part XX of the Electoral Act and Part VIIIA of the Referendum Act. In addition to these penalties, it is an offence to provide false or misleading information under section [137.1](#) of the *Criminal Code Act 1995*.

A person contravenes this section if they knowingly give information to the Commonwealth that is false or misleading or omits any matter which would make the information misleading. The penalty is a criminal penalty of imprisonment for twelve (12) months. An overview of the penalties relating to funding and disclosure regulations is available on the [AEC website](#).

Reporting

The AEC publishes information about its compliance function in its annual report which it furnishes to the Minister each year.

A report to the Minister is furnished after each election in accordance with section 17(2) of the Electoral Act which includes details about the operation of the funding, disclosure and compliance provisions in relation to that election.

A report to the Minister is furnished after each referendum in accordance with section 109Y of the Referendum Act which includes details about the operation of the disclosure and compliance provisions in relation to that referendum.

The final reports of compliance reviews of 2015-16 annual returns and onwards, are published on the AEC's website.

Further general information about the [funding and disclosure provisions](#) of the Electoral Act and the Referendum Act [disclosure provisions](#), including the AEC's administration of those provisions can be found on the AEC website.

Associated documents

This document refers to the [Guides to the Commonwealth Financial Disclosure Scheme](#), and the [Commonwealth Electoral Act 1918](#). Further references have been made to [the Referendum Disclosure Scheme](#) and the [Referendum \(Machinery Provisions\) Act 1984](#). Electronic copies of these documents can be accessed via the internet by clicking on the document titles.