



Financial Disclosure Guide for Candidates and Senate Groups

*2018 Longman, Mayo, Braddon, Fremantle
and Perth by-elections*

The Australian Electoral Commission asserts the right to be recognised as author of the original material in the following manner:



© Commonwealth of Australia 2018.

Unless otherwise noted, the AEC has applied the Creative Commons Attribution 4.0 International Licence (Licence) to this publication with the exception of the Commonwealth Coat of Arms, the AEC's logos, and content supplied by third parties. Use of material subject to the Licence must not assert or imply any connection with, or endorsement by, the AEC unless with express prior written permission.

The Australian Electoral Commission asserts the right of recognition as author of the original material. The publication should be attributed as Financial Disclosure Guide for Associated Entities.

Enquiries regarding the licence and any use of this document are welcome at:

Funding and Disclosure
Australian Electoral Commission
Locked Bag 4007
Canberra ACT 2601

Email: fad@aec.gov.au
Phone: 02 6271 4552

www.aec.gov.au

Published July 2018

Contents

Introduction	4
The Guide	4
Election disclosure	6
Responsibility for lodging returns	6
The financial disclosure obligation under the Electoral Act	6
eReturns: portal to complete and lodge your return	7
Disclosure period	8
Due date for lodging returns	9
Penalties	9
Information to be disclosed in the candidate return and the Senate group return	10
Part 1: Donations received	10
Part 1a: Total of donations received	10
Part 1b: Total number of donors	13
Part 1c: Details of donations received	13
Part 2: Electoral expenditure	14
Important Disclosure Information	16
Unlawful donations	16
Record of loan terms and conditions	17
Incomplete returns	18
Amending candidate or Senate group returns	19
Administration	19
Date for public inspection of election returns	19
Record keeping	20
Retention of records	21
Offences	21
Appendix 1	22
Glossary of terms	22

Appendix 2..... 26
 Disclosure Legislative Reference Guide 26

Appendix 3..... 28
 Appointment and termination of an agent 28

Appendix 4..... 30
 Summary of financial disclosure obligations for candidates and Senate groups 30

Appendix 5..... 33
 Candidate and Senate group decision diagram 33

Appendix 6..... 35
 Penalties relating to the Commonwealth disclosure scheme 35

Introduction

The Commonwealth funding and disclosure scheme (the disclosure scheme) established under Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) deals with the public funding of election campaigns and the disclosure of detailed financial information.

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.

The disclosure scheme requires candidates and Senate groups, federally registered political parties, their State Branches and local branches/sub-party units (referred to collectively as political parties in this guide), their associated entities, donors and other participants in the electoral process to lodge annual or election period financial disclosure returns with the Australian Electoral Commission (AEC).

The disclosure returns are then published on the AEC website.

The Guide

This version of the Financial Disclosure Guide for Candidates and Senate Groups (Guide for Candidates and Senate Groups) applies to election disclosure returns for the following 2018 by-elections:

- Longman, Queensland
- Mayo, South Australia
- Braddon, Tasmania
- Fremantle, Western Australia
- Perth, Western Australia

Please note: while information relating to Senate Group disclosure returns is included in this guide, it is not relevant in relation to the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections.

The AEC releases a series of publications designed to assist political parties, candidates, donors and other persons that may have financial disclosure obligations under the Electoral Act. These publications are:

- Financial Disclosure Guide for Political Parties
- Financial Disclosure Guide for Associated Entities
- Financial Disclosure Guide for Donors to Political Parties
- Financial Disclosure Guide for Third Parties
- Financial Disclosure Guide for Election Donors

The Guide for Candidates and Senate Groups is designed to assist candidates and Senate groups to understand their financial disclosure obligations under Part XX of the Electoral Act.




The Guide for Candidates and Senate Groups provides information derived from the Electoral Act as well as from the experience of the AEC in the administration of the disclosure scheme. While it is intended to be a user-friendly guide to the Commonwealth funding and disclosure requirements it does not address the whole of the Electoral Act. Accordingly, the Guide for Candidates and Senate Groups should not be used as a substitute for specific legal advice on detailed disclosure or compliance issues.

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

Additional information and advice on the disclosure scheme is available from the AEC. The AEC's contact details are listed at the front of this Guide.

The Electoral Act and all guides published by the AEC are available at www.aec.gov.au. The annual and election returns are also available for viewing on this site after the public release date. A searchable database is also provided which allows data to be exported.

The Guide incorporates text boxes to highlight important information. Each text box is prefaced with a symbol. For example:

	<p>A warning symbol indicates information relating to a legal obligation under the Electoral Act.</p>
	<p>An information symbol indicates a useful tip.</p>
	<p>A timing symbol indicates a due date.</p>

Election disclosure

Part XX, Division 4 of the Electoral Act relates to disclosure of donations. However, the actual legislative provisions within Division 4 refer to gifts and 'gift' is defined in section 287(1) of the Electoral Act. In this guide when the word 'donation' appears it has the same meaning as gift as defined in section 287(1).

Responsibility for lodging returns

Responsibility for lodging a Candidate or Senate Group Return relating to an election lies with the agent of each candidate and Senate group. Where a candidate **has not** appointed an agent in relation to an election, section 289(3) of the Electoral Act deems the candidate to be his or her own agent for the purposes of Part XX of the Electoral Act. Likewise, where a Senate group **has not** appointed an agent in relation to an election, section 289(4) deems the candidate whose name is to appear first in the group on the ballot paper to be the agent of that Senate group for the purposes of Part XX of the Electoral Act. The appointment and termination of a Candidate or Senate group agent is explained in Appendix 3 of this guide.

The financial disclosure obligation under the Electoral Act

Sections 304 and 309 of the Electoral Act govern the lodgement of election disclosures by agents of candidates and Senate groups.

The agent of each person (including a member of a group) who was a candidate in an election or by-election must within 15 weeks after the polling day for the election furnish to the AEC a return in the approved form.

The Candidate Return and Senate Group Return require disclosure of the following information covering the disclosure period for the election:

- total of donations received
- total number of donors
- details of donations received
- details of electoral expenditure incurred in relation to the election.

A candidate's or Senate groups' financial disclosure obligation may be different depending upon whether the candidate or Senate group is endorsed by a registered political party.

Note: Candidate disclosure obligations apply to members of a Senate group as well as to House of Representatives candidates.

Appendix 4 sets out a summary of the different financial disclosure obligation scenarios that may apply to a candidate or Senate group.

Election returns are also required from people or organisations that make donations to candidates. A donor who makes a donation, in excess of the disclosure threshold, to a

candidate in an election, rather than to a political party, is required to lodge an Election Donor Return. In such instances please refer to the Disclosure Guide for Election Donors.



The disclosure threshold for the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections is for amounts of more than \$13,500. This figure is indexed annually.

Political parties, associated entities, donors to political parties and 'third parties that incur political expenditure' also have **annual** disclosure obligations.



Please note that a number of state and territory jurisdictions have their own disclosure schemes, which are separate to the Commonwealth disclosure scheme. Links to the websites of State electoral offices are available via the [AEC website](#).

eReturns: portal to complete and lodge your return

The [eReturns portal](#) allows candidates and agents to fulfil their obligations under Part XX of the Electoral Act. This is the easiest way to lodge your return accurately and on time. It is quick, secure, environmentally friendly and allows importing/exporting of files which eliminates transcription errors.

To use the eReturns portal you need an account with a unique username and password. New candidates and agents will have a username and password sent to them with their obligation letter.

For more information about lodging a return online using eReturns please refer to the [eReturns Quick Reference Guides](#), available on the AEC website.

Disclosure period

The disclosure period covered by the Candidate and Senate Group Returns varies for donations received and electoral expenditure, and for new and previous candidates and Senate groups. Section 287 of the Electoral Act outlines the different disclosure periods applicable to Candidate and Senate Group Returns. In summary:

For a candidate—the commencement date of the disclosure period for donations depends upon which of the following four circumstances applies, and in all cases concludes 30 days after polling day:

- If a candidate previously stood in a Federal Election or by-election within the last four years for the House of Representatives or seven years for the Senate, the disclosure period commences on the 31st day after the polling day in that election. The table below lists prior election dates and the corresponding disclosure commencement dates.
- If a candidate did not stand at an election listed in the table below, and is contesting the current election as an endorsed candidate, the disclosure period commences on the date of their endorsement/pre-selection by the political party.
- If a candidate did not stand at an election listed in the table below and is contesting the current election as an unendorsed (independent) candidate, the disclosure period commences on the date that their candidacy was announced or the date the candidate nominated, whichever is earlier.
- If a candidate did not stand at an election listed in the table below, but was appointed to a casual Senate vacancy, the disclosure period commences on the date of that appointment.

Election	Polling Date	Commencement Date
Senate election	7 September 2013	8 October 2013
WA Senate election	5 April 2014	6 May 2014
Canning by-election	19 September 2015	20 October 2015
North Sydney by-election	5 December 2015	5 January 2016
Federal Election	2 July 2016	2 August 2016
New England by-election	2 December 2017	2 January 2018
Bennelong by-election	16 December 2017	16 January 2018
Batman by-election	17 March 2018	17 April 2018

For a Senate group—the disclosure period for donations commences on the date that the group’s claim to be grouped on the ballot paper is made to the AEC and concludes 30 days after polling day.

Appendix 5 provides a decision diagram to assist candidates and Senate groups to determine the relevant disclosure period that applies to them.

In relation to **electoral expenditure**, the disclosure period for both candidates and for Senate groups commences on the issue of the writ (15 June 2018) and ends at close of polling (28 July 2018).

Due date for lodging returns

The AEC will advise agents of their obligation to lodge a return following the conclusion of the disclosure period in relation to an election. Agents should ensure their contact details as recorded by the AEC are up-to-date.



Completed Candidate and Senate Group Returns, including **nil returns** must reach the AEC no later than 15 weeks after polling day.

Candidate returns relating to the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections held on 28 July 2018 are due by 10 November 2018. As 10 November 2018 falls on a Saturday, the return must reach the AEC by the next business day.

The AEC has no legislative discretion to extend this deadline.

Penalties

The Electoral Act imposes penalties for failure to properly complete and lodge a Candidate or Senate Group Return. The AEC provides support, including this guide, to assist candidates/Senate groups and/or their agents to comply with their disclosure obligations.

The AEC deals with non-compliance as appropriate to the circumstances, including possible referral to the Commonwealth Director of Public Prosecutions for commencement of legal action. Refer to Appendix 6 of this guide for information relating to offences under the Electoral Act.


Information to be disclosed in the candidate return and the Senate group return

Part 1: Donations received

Part 1 of the Candidate and the Senate Group Return consists of 3 sub-parts as follows:

- total of donations received
- total number of donors
- details of donations received that require detailed disclosure.

Part 1a: Total of donations received

	<p>Section 304(2) of the Electoral Act requires that the total amount or value of all donations received by a candidate during the disclosure period for an election must be disclosed.</p> <p>Section 304(3) of the Electoral Act requires that the total amount or value of all donations received by the Senate group during the disclosure period for an election must be disclosed.</p> <p>Further, section 304(3A) of the Electoral Act provides that a donation/s received, by members of a Senate group, where all the members of the Senate group are endorsed by the same registered political party or State branch of a registered political party, is required to be disclosed by the registered political party or State branch as part of their annual Political Party Disclosure Return.</p>
---	---

To complete this part of the Candidate or Senate Group Return, the agent must report the total of **all donations, both above and below the disclosure threshold**, received by the candidate or Senate group (as relevant) during the disclosure period for the election.

Donations received include, but are not limited to the following:

- gifts of money
- gifts-in-kind of services or goods
- conditional loans in some circumstances (refer to **Conditional loans** section below for details).

Examples of donations that are required to be included in the calculation of 'Donations received' at Part 1a of the relevant Candidate or Senate Group Return (for each example, the type of return that the example relates is in brackets):

- A donation of \$5,000 cash received from a donor, where the donation was made for the benefit of a candidate and not a registered political party or Senate group (Candidate Return).
- A donation of \$14,000 cash received by a candidate from a donor and the candidate is a member of a Senate group. A member of a Senate group is a candidate and therefore must report such a donation where the **donation received is for their own benefit** (as distinct to the benefit of the Senate group) (Candidate Return).
- A donation of \$5,000 from a family company or trust made directly to a candidate, where the donation is used to incur campaign expenditure (Candidate Return).
- A donation of \$2,000 made to a person who is acting on the candidate's behalf or with their authority, and the donation is for the benefit of the candidate and not a registered political party or Senate group (Candidate Return).
- A donation of \$10,000 received by an unendorsed Senate group, where the donation received is for the benefit of the Senate group (as distinct to the benefit of individual members of the Senate group) (Senate Group Return).
- A donation of printing of stationery that if purchased commercially would have been priced at \$350 (Candidate or Senate Group Return).
- Two separate donations made to a candidate and received from the same person on different days. One amount is \$9,500 and the other is \$35,000.
 - Both the \$9,500 and \$35,000 amounts are included (Candidate Return).
- Two separate donations made to an unendorsed Senate group and received from the same person on different days. One amount is \$3,000 and the other is \$12,000.
 - Both the \$3,000 and \$12,000 amounts are included (Senate Group Return).

Gifts-in-kind may be goods or services received for which no payment (in cash or in kind) or inadequate consideration is made. Inadequate consideration is where the benefits obtained are clearly of a lesser value than the payment made. Inadequate consideration includes discounts provided, that are over and above those that would be offered under normal commercial arrangements.

These gifts are to be disclosed for an amount that reflects the fair value. That is, the normal commercial or sale value of the item or service as evidenced by arms-length transaction or comparative quotations or expert assessment.

Examples of gifts-in-kind include:

- free/discounted services such as legal advice, accounting services or web and IT services
- excessive payments received for goods, services or other benefits 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/discounted use of premises or equipment and facilities
- free use of a motor vehicle, or free fuel or servicing of a motor vehicle
- free/discounted time or production services by a broadcaster (except time provided by the ABC or SBS specifically for political broadcasting)
- free/discounted advertising by a publisher or advertising production service
- free air travel or the free use of a private aircraft
- loans provided interest free, or at rates that are less than those available in the commercial loan market
- free/discounted printing, typesetting or associated services
- free/discounted goods or services (for example, travel, artwork, sports memorabilia or electrical goods) for use in raffles or other fundraising activities.

Which transactions are **not to** be reported in the Candidate or Senate Group Return?

Transactions that do not need to be reported by the agent of a candidate or Senate group as donations received include:

- personal donations to a candidate (including a member of a Senate group) which are not used wholly or in part to fund campaign expenditure
- commercial discounts received in the normal course of business
- loans (except conditional loans in some circumstances—refer to **Conditional loans** section below)
- volunteer labour, such as persons handing out how-to-vote cards
- an offer by a broadcaster to interview a candidate
- interviews and news items published in a newspaper or broadcast in the electronic media
- donations received on behalf of a political party or by the campaign committee of an endorsed candidate (details of these must be passed on to the registered political party as they are required to be disclosed by the party agent in the relevant registered political party's annual Political Party Disclosure Return).

Material presented on an 'advertorial' basis (that is a combination of paid advertising and interviews) should be disclosed consistent with the promotional intention of the activity.

Campaign committees

An endorsed candidate, that is a candidate who is endorsed by a registered political party, may personally receive donations which are required to be included in their Candidate Return. However, if such donations are channelled through a campaign committee they are required to be included in the registered political party's annual Political Party Disclosure Return and **not** the Candidate Return.

Endorsed candidates should determine whether a donation was received **by them** (in which case it is reported in their Candidate Return) **or through** a campaign committee (in which case it is reported in the registered political party annual Political Party Disclosure Return). Deposits and withdrawals made through a candidate's personal account would, prima facie, be made in his or her personal capacity while transactions through the campaign committee account are those of the registered political party.

Candidates **should advise** donors of their election period or annual reporting obligations as appropriate.

Conditional loans

Candidates or a member of a Senate group may receive a 'loan' whose repayment is conditional upon the 4 per cent of formal first preference vote election funding threshold being achieved. If less than 4 per cent of votes are received, the amount becomes a donation; if more than 4 per cent of votes are received the amount is a loan to be repaid.

Section 306A of the Electoral Act requires terms and conditions of loans be documented for the purposes of the Electoral Act.

As election funding payments are finalised well within the 15-week lodgement period for Candidate and Senate Group Returns, the amounts of such 'loans' may be reported as donations if that is appropriate. This reflects the reality that sufficient information would be available to determine the majority of such arrangements within the reporting period applying to Candidate and Senate Group Returns.

Part 1b: Total number of donors

This is the **total number of donors** who made the donations which were included in the calculation of 'total of donations received' at Part 1a.

Part 1c: Details of donations received



Sections 304(2) and (3) of the Electoral Act require where donations, received from a single source that total to more than the disclosure threshold, are made to a candidate or to a Senate group during the disclosure period for an election, the relevant details of those donations must be disclosed.

However, section 304(5)(b)(i) of the Electoral Act provides that where a donation was made in a private capacity to a candidate (including a member of a Senate group) for his or her personal use and the candidate has not used, or will not use, the donation solely or substantially for a purpose related to an election or a by-election the relevant details are **not required** to be disclosed.

The relevant details to be disclosed are:

- full name and address details of the person or organisation from whom the donation was received
- the date each donation was received
- the value or amount of each donation.

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

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

In any other case, the name and address of the person or organisation from whom the donation was received must be disclosed.

It is important to note that when consolidating amounts received from a single source, section 287(6) of the Electoral Act deems related bodies corporate to be the same entity.



Section 307 of the Electoral Act requires that where no donations, in relation to an election, were received by a candidate or a Senate group, **a nil return must be lodged including a statement to the effect that no donations were received** by the candidate or the Senate group.

Part 2: Electoral expenditure



Section 309(2) of the Electoral Act requires that **all electoral expenditure** incurred by or with the authority of a candidate (not being a member of a Senate group) during an election period must be disclosed.

Section 309(3) of the Electoral Act requires that **all electoral expenditure** incurred by or with the authority of the members of a Senate group during an election period must be disclosed.

On 15 March 2018, the *Electoral and Other Legislation Amendment Act 2017* (EOLA Act) commenced, which extended the application of previous authorisation requirements to modern communication channels and methods, including online platforms, bulk text messages and robo-calls. The EOLA Act also changed the definition of expenditure categories that are required to be captured in candidate returns, as set out below.

Expenditure categories

Section 308(1) of the Electoral Act lists categories of expenditure that are considered to be electoral expenditure:

- (a) the broadcasting, during an election period, of an advertisement relating to the election; or
- (b) the publishing in a journal, during the election period, of an advertisement relating to the election; or
- (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election; or
- (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
- (e) the communicating of any electoral matter (not being referred to in paragraph (a), (b) or (c))
 - for which particulars are required to be notified under section 321D; and
 - that is communicated during the election period; or
- (f) the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or
- (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.

Other campaign expenditure, for example the hire of premises or equipment, freight, telephone and travel costs, does not have to be disclosed.

Period covered

The electoral expenditure part of the Candidate or Senate Group Return covers campaign expenses for goods used or services provided during the period from the issue of the writ until the close of polling irrespective of when payment is made.

The total of all expenditure incurred under each specified category of expenditure must be included in the Candidate or Senate Group Return.

The following examples may assist in clarifying the disclosure requirements relating to electoral expenditure:

- In the case of campaign material and direct mailing material, the cost of material used or distributed must be disclosed. The cost of surplus or unused material is not required to be disclosed.
- All advertising and polling or research costs relating to the election must be disclosed. That is, advertising, production and broadcasting costs must be disclosed where an advertisement that was run during the election period was produced prior to the election period irrespective of when payment was made.

Endorsed Senate group expenditure

Section 309(1A) of the Electoral Act provides that electoral expenditure incurred by or with the authority of members of a Senate group, where all the members of the Senate group **are endorsed** by the same registered political party or State branch of a registered political party, the electoral expenditure incurred is required to be disclosed by the registered political party or State branch as part of their annual Political Party Disclosure Return.

Section 309(3) of the Electoral Act provides that where a Senate group:

- **is not endorsed** by a registered political party; or
- contains members that have been **endorsed by more than one** registered political party (a joint Senate group);

all electoral expenditure incurred by or with the authority of the members of the Senate group, individually or collectively, must be disclosed in the Senate Group Return. Candidates who are members of a Senate group **do not** report electoral expenditure on their Candidate Return.

Where electoral expenditure is required to be reported by a registered political party or an agent of a Senate group, candidates need to ensure arrangements are in place to provide the registered political party or Senate group agent with all necessary disclosure information for inclusion into the annual Political Party Disclosure Return or the Senate Group Return.



Section 313 of the Electoral Act requires that where no electoral expenditure in relation to an election was incurred by or with the authority of a particular candidate or members of a Senate group, **a nil return must be lodged including a statement to the effect that no electoral expenditure was incurred** by or with the authority of the candidate or the members of the Senate group.

Important Disclosure Information

Unlawful donations



Section 306(2) of the Electoral Act provides that certain donations made to or for the benefit of the candidate or Senate group are unlawful unless the name and address of the person making the donation are known to the person receiving the donation. Such donations are sometimes referred to as

	'anonymous donations'.
--	------------------------

Examples of where a donation may constitute an unlawful donation under the Electoral Act:

- A donation received by electronic transfer without the name and address details of the donor being provided or obtained.
- A donation received from a donor, where the name and address is incomplete, for example, Mr Smith of Sydney. The name and address needs to be sufficient in detail to allow the person to be contacted.
- A donation received from a trust or foundation and the candidate or Senate group does not know:
 - the title or description of the trust fund or name of the foundation, and
 - the names and addresses of **all** trustees.
- A donation received from an unincorporated association (except for registered industrial organisations) and the candidate or Senate group does not know:
 - the name of the association, and
 - the names and addresses of **all** members of the executive committee of the association.

Record of loan terms and conditions

Section 306A(2) of the Electoral Act provides that it is unlawful for a candidate or a member of a Senate group or a person acting on behalf of a candidate or Senate group to receive a loan of more than the disclosure threshold from a person or entity other than a financial institution unless a record of the loan is kept.

A financial institution is a bank, credit union, building society or a special service provider registered with the Australian Prudential Regulation Authority (APRA). An up to date list is available from the APRA website at www.apra.gov.au.

Section 306A(3) requires that where a candidate or member of a Senate group or a person acting on behalf of a candidate or Senate group receives a loan from a person or entity that is not a financial institution, that is more than \$13,500, the following details must be kept:

- Terms and conditions of the loan, for example, amount of the loan, interest payable on the loan, repayment schedule, any special conditions attached to the loan.
- For a loan from a registered industrial organisation other than a financial institution:
 - the name of the organisation
 - the name and address of each member of the executive committee of the organisation.

- For a loan from an unincorporated association:
 - the name of the association or organisation
 - the name and address of each member of the executive committee of the association or organisation.
- For a loan from a trust fund or out of funds of a foundation:
 - the name and description of the trust or foundation
 - the names and addresses of the trustees.
- For a loan from a person or other organisation:
 - the name and address of the person or organisation.



Section 306A(6) of the Electoral Act provides that where a person receives a loan and the loan is not documented in accordance with the requirements of section 306A(3), the amount of the loan is payable to the Commonwealth.

Incomplete returns

Where a candidate or agent is unable to obtain all the information required to fully complete a Candidate or Senate Group Return, a Notice of Incomplete Return **must be completed** and lodged with the respective Candidate or Senate Group Return.

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

- complete the Candidate or Senate Group Return as fully as possible
- complete the Notice of Incomplete Return
- lodge the Notice of Incomplete Return and the incomplete Candidate or Senate Group Return with the AEC at the same time.

The Notice of Incomplete Return contains three parts:

Part 1 – requires the full details of the information believed to be missing from the return.

Part 2 – requires:

- the reason the particulars listed in Part 1 were unable to be obtained; **and**
- the details of all attempts made to obtain the missing information.

Part 3 – requires:

- the full name/s and address details of the person/s believed to possess the missing particulars; **and**
- the reason why it is believed this person/s possesses the required information.

Lodgement of a Notice of Incomplete Return does not relieve the candidate or agent of the responsibility of making reasonable efforts to obtain the information required to complete the return.

The Electoral Act makes it clear that the lodgement of a Notice of Incomplete Return under section 318(1) is a last option. Section 318 demands diligence from persons completing disclosure returns. Complete and accurate disclosure is a legislative requirement and meeting that responsibility must be treated as an essential activity and accorded the necessary priority.

It is the responsibility of the person seeking to rely upon a Notice of Incomplete Return, to prove that they have been 'unable' to obtain the required information. The AEC needs to be satisfied that all reasonable attempts have been made to obtain the missing information before it accepts a Notice of Incomplete Return.

The AEC may assess whether the lodgement of a Notice of Incomplete Return was used by an agent to avoid their responsibilities under the Electoral Act. In any such case the party agent will be considered to not be able to claim protection under section 318 against prosecution for the offence of having lodged an incomplete return.

Amending candidate or Senate group returns

Section 319A(2) of the Electoral Act provides that a request may be made to the AEC seeking to amend a return that has been lodged and was incomplete or subsequently found to be incomplete or incorrect. In some cases, the AEC may request an amendment be lodged to rectify a problem in a return. If a candidate or Senate group consider they need to make an amendment to their Candidate Return or Senate Group Return the agent of the candidate or Senate group should contact Funding and Disclosure section at fad@aec.gov.au.

Administration

Date for public inspection of election returns

Election returns are made available for public inspection 24 weeks after polling day. For the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections that date is Monday 14 January 2019.

Returns are available for inspection on the AEC's website at www.aec.gov.au and through public access terminals in AEC State Offices located in each state and territory and at the AEC's National Office in Canberra.

Record keeping

Candidates and Senate groups should keep adequate records.

Financial recording systems and procedures must be sufficient to enable the Candidate or Senate Group Return, which will be publicly available, to be properly completed.

All transactions should be supported by source documents recording the details of individual transactions.

Examples of source documents are:

- receipts
- tax invoices
- loan documents
- wages records
- bank deposit books and cheque butts
- bank account statements
- credit card statements.

Source documents contain information required to complete the return, such as the:

- date of the transaction
- name of person and/or organisation from whom a donation was received
- name of person and/or organisation to whom a payment was made
- name and address of organisation that has provided a loan to the candidate
- total payment made or amount received
- amount of goods and services tax (GST)
- merchant fees.

All transactions should be adequately documented and recorded and, where possible, reconciled to bank statements.

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

- The likely number, value and nature of election donations expected to be received and election expenditure payments expected to be made.
 - If donations and political expenditure are through the campaign committee of an endorsing political party then the system will be dictated by the political party's information needs.
- The need to ensure that anonymous donations of \$13,500 or more are not received and loans of \$13,500 or more from sources other than financial institutions are properly documented.
- The number, experience and training of people likely to be receiving donations, making payments and maintaining the records, including over the election period.

Care should be taken to ensure that the details recorded are accurate. For example:

- a donation from a company executive may be made personally, or may be made on behalf of the organisation
- the true donor should be recorded where a transaction is on behalf of someone else, for example, through a solicitor's trust account
- anonymous donations in excess of the disclosure threshold are unlawful.

Retention of records

Section 317 of the Electoral Act provides that all relevant records, whether formal or informal, must be retained for a minimum period of three years from the polling day of the relevant election. Receipt books, bank records, receipts registers, source documents and working papers supporting the completion of the return must be kept for this period.

Offences

Sections 315 and 316 of the Electoral Act contain penalty provisions for offences against the funding and disclosure provisions. Refer to Appendix 6 for details of penalties.

The AEC aims to assist political and electoral participants to fulfil their obligations under the Electoral Act. Where there has been a breach of the Electoral Act, the AEC may refer matters to the Commonwealth Director of Public Prosecutions.

Appendix 1

Glossary of terms

AEC	Australian Electoral Commission
Associated entity	<p>An entity which:</p> <ul style="list-style-type: none"> ■ is controlled by one or more registered political parties; or ■ operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or ■ is a financial member of a registered political party; or ■ on whose behalf another person is a financial member of a registered political party; or ■ has voting rights in a registered political party; or ■ on whose behalf another person has voting rights in a registered political party. <p>It can include companies holding assets for a political party, investment or trust funds, fundraising organisations, groups and clubs, and trade unions or corporate members of political parties.</p>
Campaign committees	A campaign committee, in relation to a candidate or group, means a body of persons appointed or engaged to form a committee to assist the campaign of the candidate or group in an election.
Disclosure threshold	The disclosure threshold for the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections is for amounts of more than \$13,500.
Donor	A person, organisation or other body other than a political party, an associated entity or a candidate in a federal election who is under an obligation to furnish a disclosure

	return because they made a donation.
Election funding	Public funding received by a candidate or Senate group in relation to an election where the candidate or Senate group obtained at least 4% of the first preference vote in the division or the state or territory they contested.
Electoral Act	<i>Commonwealth Electoral Act 1918.</i>
Entitlement relating to election funding	The entitlement to election funding is calculated by multiplying the number of votes obtained by the current election funding rate
General election	A general election of the members of the House of Representatives.
Gifts	Any disposition of property made by a person to another person, otherwise than by will, and without consideration or with inadequate consideration.
Gifts-in-kind	<p>Non-cash donations for example, 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 for an amount that reflects the fair value, that is, normally the commercial or sale value of the item or service.</p> <p>Examples of gifts-in-kind:</p> <ul style="list-style-type: none"> ■ the donation of legal advice by a solicitor ■ the donation of the use of premises to conduct campaign activities.
House of Representatives election	An election of a member of the House of Representatives.

Indexation	The disclosure threshold is indexed to the All Groups Consumer Price Index. A listing of past disclosure thresholds is available on the AEC website.
Joint Senate group	A Senate group endorsed by more than one registered political party.
Party agent	A person appointed by notice in writing to the AEC by a registered political party.
Public inspection	Disclosure returns are available for inspection by the public at www.aec.gov.au , through public access terminals in AEC State Offices located in each state and territory capital city and at the AEC National Office in Canberra. Election returns are made available on the AEC website 24 weeks after polling day.
Registered political party	A political party registered with the AEC or any state or territory branch of a federally registered political party. Registration with a state or territory electoral authority does not confer federal registration.
Related body corporate	<p>Section 50 of the <i>Corporations Act 2001</i> provides that where a body corporate is:</p> <ul style="list-style-type: none"> ■ a holding company of another body corporate, ■ a subsidiary of another body corporate, or ■ a subsidiary of a holding company of another body corporate, ■ the first-mentioned body and the other body are 'related' to each other. <p>Transactions of related body corporates should be consolidated when determining whether the disclosure threshold has been reached.</p>
Senate election	An election of Senators for a State or Territory.

Senate group	Two or more candidates for election to the Senate who made a written request to the AEC with their nominations that their names be grouped on the ballot-paper, or grouped in a specified order.
State branch	A branch or division of a federally registered political party organised on the basis of a state or territory. State branches are treated as separate political parties for funding and disclosure purposes.
Volunteer labour	<p>A service provided free of charge to a candidate by any other person where that service is not one for which that person normally receives payment. Volunteer labour provided to a registered political party does not need to be disclosed as a gift by that person or the registered political party.</p> <p>Example of volunteer labour:</p> <ul style="list-style-type: none">■ A person handing out how-to-vote cards.

Appendix 2

Disclosure Legislative Reference Guide

Part XX of the Electoral Act deals with election funding and financial disclosure. It contains seven divisions:

- Division 1 provides definitions relevant to the part. Note that section 4 of the Electoral Act contains definitions relevant to the Electoral Act as a whole;
- Division 2 deals with the appointment and administration of party agents and candidate agents;
- Division 3 deals with election funding;
- Divisions 4 and 5 deal with the disclosure of election donations and electoral expenditure by candidates and Senate groups and disclosures by donors to political parties and candidates;
- Division 5A deals with the annual returns of registered political parties, associated entities and third parties who incur electoral expenditure and receive any donations for political expenditure; and
- Division 6 deals with offences, compliance reviews, incomplete and amended returns, public inspection and indexation.

The following sections underpin the financial returns disclosure scheme:

Candidate (including Senate group member) election period returns

- election donations—s 304(2)
- electoral expenditure—s 308 and s 309(2)
- nil returns required—s 307(1) and s 313(1)

Senate group election period returns

- election donations—s 304(3)
- electoral expenditure—s 308 and s 309(3)
- returns not required if group endorsed by a single party—s 304(3A) and s 309(1A)
- nil returns required—s 307(2) and s 313(2)

Donor election period returns

- donations to candidates—s 305A(1)
- donations received—s 305A(2)

Donor annual returns

- donations to political parties—s 305B
- donations received—s 305B(3A)

Third party annual returns

- political expenditure—s 314AEB
- gifts received for political expenditure—s 314AEC

Associated entity annual returns

- receipts—s 314AEA(1)(a)
- payments—s 314AEA(1)(b)
- debts—s 314AEA(1)(c)
- capital contributions—s 314AEA(3)

Political party annual returns

- receipts—s 314AB and s 314AC
- payments—s 314AB
- loans—s 314AB and s 314AE

The following sections are also directly relevant to the Commonwealth funding and disclosure scheme:

- Unlawful gifts—s 306
- Unlawful loans—s 306A
- Offences—s 315
- Compliance reviews and investigations—s 316
- Records to be kept—s 317
- Incomplete information—s 318
- Amendment of returns—s 319A
- Public inspection of returns—s 320

Appendix 3

Appointment and termination of an agent

Section 289(1) of the Electoral Act provides that a candidate in an election may appoint a person to be their agent, for the purposes of Part XX, in relation to that election.

Section 289(2) of the Electoral Act provides that the members of a Senate group in an election may appoint a person to be the agent for the group, for the purposes of Part XX, in relation to that election.

Section 289(2A) of the Electoral Act provides that where all the members of a group of candidates in a Senate election have been endorsed by the same registered political party, the agent of the State branch of the party organised on the basis of the State or Territory in which the election is to be held is the agent of the group, for the purposes of Part XX, in relation to the election.

Section 290 of the Electoral Act provides that to be eligible for appointment as an agent, a person must:

- be a natural person and not a corporation
- be at least 18 years of age
- not have been convicted of an offence under the funding and disclosure provisions of the Electoral Act
- have signed a consent to the appointment
- have signed a declaration of eligibility for appointment.

Section 290(1)(b) of the Electoral Act requires that for a appointment of agent under section 289 to have effect a written notice of appointment must be given by the candidate or each member of a Senate group to the Electoral Commission at National Office. Further, the written notice of appointment must set out the name and address of the proposed agent, be signed by the proposed agent and include a declaration that the proposed agent is eligible for appointment.

Section 290(3) requires that the notice of appointment **must** reach the AEC's national office in Canberra by the close of nominations. It is the candidate's responsibility to ensure that the notice of the appointment reaches the AEC's national office within the deadline.

[Appoint Candidate Agent](#) and [Appoint Senate Group Agent](#) forms are available on the AEC's website at www.aec.gov.au.

NOTE: The AEC recommends that a candidate send a notice of appointment directly to the AEC's National office in Canberra rather than handing it to an AEC State or Divisional office. It is sufficient if the notice of appointment is faxed or emailed to the AEC's national office by the close of nominations.

Section 292C of the Electoral Act provides that a candidate or the members of a Senate group may revoke the appointment of a person as the agent of the candidate or Senate group as the case may be by written notice to the Electoral Commission. A notice under section 292C(1) has no effect unless it is signed by the candidate or by each member of the Senate group as the case requires.

An agent may also resign their appointment. Where an agent resigns, or if the agent dies, section 292D requires a candidate or a member of the Senate group provide, without delay, written notice of the resignation or death of the agent to the Electoral Commission.

Appendix 4

Summary of financial disclosure obligations for candidates and Senate groups

Category	Obligations
Unendorsed candidates, including grouped and ungrouped Senate candidates	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or otherwise be their own agent. An agent can only be appointed before close of nominations. ■ The agent, or candidate if there is no appointed agent, must lodge a Candidate Return (including a 'nil' return if appropriate). ■ Any election funding entitlement is paid to the agent, or to the candidate if there is no appointed agent.
Endorsed candidates	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf, or otherwise be their own agent. An agent can only be appointed before close of nominations. ■ The agent, or candidate if there is no appointed agent, must lodge a Candidate Return (including a 'nil' return if appropriate); <ul style="list-style-type: none"> ○ A 'nil' return is required where all transactions were made through a campaign committee or are received on behalf of the registered political party; and there were no other 'personal' campaign gifts or transactions. ■ Details of any donations, expenditure and loans incurred on behalf of the registered political party should be provided to the party agent for inclusion in the registered political party's annual return. ■ The party agent receives any election funding entitlement. ■ The party agent is not the agent of individual endorsed candidates unless separately appointed.

Category	Obligations
Senate group members	<ul style="list-style-type: none"> ■ Individual candidates that are members of a Senate group may appoint an agent to act on their behalf (or may choose to be their own agent). An agent can only be appointed before close of nominations. ■ The candidate agent, or the candidate if there is no appointed agent, must lodge a Candidate Return (including a 'nil' return if that is appropriate). ■ The electoral expenditure part of the Candidate Return is not to be completed, as expenditure details are required to be consolidated on the Senate Group Return. ■ The party agent, or Senate group agent, receives any election funding entitlement. ■ A party or Senate group agent is not the agent of individual Senate group members unless separately appointed.
Senate groups endorsed by a single registered political party	<ul style="list-style-type: none"> ■ Do not appoint an agent – the agent of the State branch of the endorsing party is deemed to be agent for the group. ■ Do not complete a Senate Group Return as all group transactions are included in the registered political party's annual return. ■ Details of donations received and expenditure incurred should be provided to the party agent for inclusion in the registered political party's annual return. ■ The party agent receives any election funding entitlement. ■ Individual group members also have disclosure obligations as discussed under 'Senate group members' shown above.

Category	Obligations
Senate groups endorsed by more than one registered political party	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or alternatively the candidate whose name appears at the top of the ballot paper is deemed to be the agent of the Senate group for funding and disclosure purposes. An agent can only be appointed before close of nominations. ■ The Senate group agent, or the candidate whose name appears at the top of the ballot paper if there is no appointed agent, must lodge a Senate Group Return (including a 'nil' return if that is appropriate). ■ The party agents of the endorsing political parties receive any funding entitlement. ■ Individual Senate group members also have disclosure obligations as discussed under 'Senate group members' shown above.
Unendorsed Senate groups	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or alternatively the candidate whose name appears at the top of the ballot paper is deemed to be the agent of the Senate group for funding and disclosure purposes. An agent can only be appointed before close of nominations. ■ The Senate group agent, or the candidate whose name appears at the top of the ballot paper if there is no appointed agent, receives any funding entitlement, and must lodge a Senate Group Return (including a 'nil' return if appropriate). ■ Individual Senate group members also have disclosure obligations as discussed under 'Senate group members' shown above.

Appendix 5

Candidate and Senate group decision diagram

This decision diagram is to assist candidates to determine their relevant commencement date for disclosure of donations received in relation to the 2018 Longman, Mayo, Braddon, Fremantle and Perth by-elections.

Q.1: Were you a candidate in a Senate election at the 2013 Federal Election?

Yes: Your disclosure period commenced on 8 October 2013.

No: Go to Q.2.

Q.2: Were you a candidate in the WA Senate election held on 5 April 2014?

Yes: Your disclosure period commenced on 6 May 2014.

No: Go to Q.3.

Q.3: Were you a candidate in the Canning by-election held on 19 September 2015?

Yes: Your disclosure period commenced on 20 October 2015.

No: Go to Q.4.

Q.4: Were you a candidate in the North Sydney by-election held on 5 December 2015?

Yes: Your disclosure period commenced on 5 January 2016.

No: Go to Q.5.

Q.5: Were you a candidate in the 2016 federal election held on 2 July 2016?

Yes: Your disclosure period commenced on 2 August 2016.

No: Go to Q.6.

Q.6: Were you a candidate in the 2017 New England by-election held on 2 December 2017?

Yes: Your disclosure period commenced on 2 January 2018.

No: Go to Q.7

Q.7: Were you a candidate in the 2017 Bennelong by-election held on 16 December 2017?

Yes: Your disclosure date commenced on 16 January 2018.

No: Go to Q.8

Q.8: Were you a candidate in the 2018 Batman by-election held on 17 March 2018?

Yes: Your disclosure date commenced on 17 April 2018.

No: Go to Q.9

Q.9: Did you contest the 2018 Longman, Mayo, Braddon, Fremantle or Perth by-election held on 28 July 2018 as an **endorsed** candidate of a political party?

Yes: Your disclosure period commenced on the day that you were endorsed or pre-selected by the political party. Generally a political party will record the decision to endorse/pre-select a candidate. If you are unsure of the date that you were endorsed/pre-selected by the political party you should consult with the political party.

No: Go to Q.10

Q.10: Did you contest the 2018 Longman, Mayo, Braddon, Fremantle or Perth by-election held on 28 July 2018 as an **unendorsed** (independent) candidate?

Yes: Your disclosure period commenced on the day that you announced your candidacy or the day you nominated as a candidate, whichever was the earlier. Generally the date considered to be the day a candidate announces their candidacy is the date the candidate makes some form of public announcement or action (such as receiving donations) to formally communicate their decision to stand for election. This date may often be before nominations are open. Where a candidate has not made any public announcement/action before they nominate, the date that their disclosure period commenced would be the day they nominated as a candidate.

Appendix 6

Penalties relating to the Commonwealth disclosure scheme

Offence	Section of the Electoral Act	Maximum penalty
Failure to lodge a return by the due date	315(1)	Up to 50 penalty units for agent of political party Up to 10 penalty units in any other case ¹
Lodging an incomplete return	315(2)(a)	Up to 10 penalty units
Failure to retain records for three years	315(2)(b) and 317	Up to 10 penalty units
Including false and misleading information in a return	315(3) and (4)	Up to 100 penalty units for agent of political party Up to 50 penalty units any other person
Providing false or misleading information for inclusion in a return	315(7)	10 penalty units
A person convicted of having failed to lodge a return, who continues not to lodge the return	315(8)	Up to 1 penalty unit per day for each day the return is outstanding. The penalty accrues from the day following the day of the initial conviction.
Failure or refusal to comply with a notice relating to a compliance review or investigation	316(5) and (5A)	10 penalty units
Providing false or misleading information during a compliance review or investigation	316(6)	10 penalty units or imprisonment for 6 months, or both
Discriminating against a donor	327(2)	50 penalty units or imprisonment for 2 years or both for an individual 200 penalty units for a body corporate

¹ A candidate return includes both a requirement to disclose gifts under Division 4 and electoral expenditure under Division 5 and therefore a failure to lodge a candidate return could result in two offences each incurring a maximum penalty of 10 penalty units.