

Australian Electoral Commission

# Funding and Disclosure Guide

Version 2 | July 2010

## For Election Donors



**AEC**

Australian Electoral Commission

This reference guide is provided for the convenience of users of this Guide, who should note that other legislation and other sections of the *Commonwealth Electoral Act 1918*, together with legal precedents, may be relevant to the interpretation and application of Part XX.

Users should therefore seek professional legal advice on compliance and other issues that may arise.

The AEC is able to provide guidance on its approach to the administration of the funding and disclosure provisions but is not able to provide legal advice generally. Information about how to obtain a copy of the Act, or to contact the AEC, is provided in the introduction to this Guide.

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## Introduction

The *Funding and Disclosure Guide for Election Donors* aims to assist election donors to meet their financial disclosure obligations under the requirements of Part XX of the *Commonwealth Electoral Act 1918* (the Act).

If you have made a donation to a political party or parties rather than an individual candidate or Senate group in an election, please refer to the *Funding and Disclosure Guide for Donors to Political Parties* for further information and guidance on your disclosure obligations under the Act.

People, organisations or any other body (apart from registered political parties, associated entities and candidates) that make donations to political parties, associated entities, candidates or Senate groups are considered to be donors. Their actions give rise to annual and election cycle disclosure obligations under Part XX of the Act.

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

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

The *Funding and Disclosure Guide for Election Donors* consolidates information derived from the Act. It was also developed with regard to the specific experiences of the AEC in the administration of the funding and disclosure provisions of the Act.

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 Act. Accordingly, the Guide should not act as a substitute for specific legal advice on detailed disclosure or compliance issues.

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

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

The Act, Guides and return forms are freely available at [www.aec.gov.au](http://www.aec.gov.au).

Annual and Election returns are also available for viewing on this site after the public release date.

## Overview

The funding and disclosure scheme established in Part XX of the Act addresses the public funding of federal election campaigns and the disclosure of information regarding political donations and electoral expenditure.

The scheme was introduced to increase the overall transparency of the flow of money into and within the Australian political system and to inform the public about the financial dealings of parties, candidates and others involved in the electoral process.

Central to the federal funding and disclosure regime in Part XX of the Act is the requirement imposed on political parties, candidates and Senate groups, associated entities, donors and third parties to lodge annual and election cycle returns, as relevant to each. These returns must be lodged with the AEC on the approved forms.

## Issues to note before completing the election return

**Important:** Financial disclosure obligations under the federal funding and disclosure scheme are distinct from any obligations under state or territory funding and disclosure legislation. Correspondence from the AEC relates to the federal scheme and will be clearly marked with the AEC's letterhead and the contact details will be in Canberra.

The following information may clarify some further common terms.

## Disclosure threshold

- The disclosure threshold is indexed in July each year based on the All Groups Consumer Price Index at 31 March.
- The minimum disclosure threshold applying to election returns in 2010-11 is 'more than \$11 500'.
- All amounts disclosed must be GST inclusive.

## Annual return or election return?

Subject to a minimum disclosure threshold, donors must lodge one or both of the following disclosure returns with the AEC:

- **Donor to Political Party Return** – the following must be disclosed in the donor to political party return:
  - donations in excess of the threshold made to a registered political party, including donations made through a campaign committee; and
  - donations in excess of the threshold received and used, in whole or in part, to make such donations.
- **Election Donor Return** – the following information must be disclosed in the election donor return:
  - donations in excess of the threshold made directly to a candidate or to a member of a Senate group; and
  - donations in excess of the threshold received and used, in whole or in part, to make such donations

The *Election Donor Return* is addressed in this Guide.

### Third parties and donors distinguished

- 'Third party' is a generic term used to describe a person or organisation other than a political party, candidate, Senate group or donor who has undertaken an activity that gives rise to a disclosure obligation. In comparison, a donor is someone who gives money directly to one or more political parties, candidates or a member of a Senate group.
  - An example of a body which may have an obligation to complete a Third Party Return might be an organisation such as GetUp! (which has the broad aim of 'increasing democratic participation', and spends money on its own advertising).
- Third parties are required to complete and lodge with the AEC an annual Third Party Return of Political Expenditure. Further information regarding the obligations of third parties can be found in the Funding and Disclosure Guide for Third Parties.

### Anonymous donations

- A political party, state or territory branch, Senate group or candidate must not receive a gift of more than \$11 500 unless the name and address of the donor is known.
- The value of any such anonymous donation may be payable to the Commonwealth.

### Election returns from related companies

- Under the Act, a parent company should submit a single return that includes donations and payments made by all its subsidiaries.
- Where a parent company is submitting a return, all other business names, related organisations or businesses must be clearly listed in Part 1.

### Gifts and donations

- Section 287 of the Act defines 'gift' to include any transfer or disposition of property or services for which no payment, or an inadequate payment, is received. Political donations fall within the scope of this definition.
- Donations may be in cash, or may be 'gifts-in-kind'.

### Gifts-in-kind

- Gifts-in-kind are goods, assets or services for which no payment (in cash or in kind) or a payment of less than true value is made.
- Gifts-in-kind are normally disclosed at the commercial or sale value of the item or service as evidenced by arms-length quotations, comparative advertisements or expert assessment.
- Examples of 'in-kind' donations include:
  - free services, or services provided at a discount to the commercial rates normally charged by a service provider (such as legal advice, accounting services or web and IT services);
  - free or discounted use of commercial premises, utilities or office and IT equipment;
  - wages or salaries (including on-costs) incurred by an employer whose employee works for a party or candidate during normal working hours while receiving remuneration from the employer (but not if the employee takes paid leave to work for the party or candidate);
  - free or discounted use of a motor vehicle, or provision of free fuel or servicing of a motor vehicle;
  - free or discounted time or production services by a broadcaster (except time provided by the ABC or SBS specifically for political broadcasting);
  - free or discounted advertising by a publisher or advertising production service;
  - free or discounted printing, typesetting or associated services; and
  - free or discounted goods or services (such as for travel, artwork, sports memorabilia or electrical goods) for use in raffles or other fund raising activities.

### Volunteer labour

The donation of unpaid time by a person is volunteer labour where it is provided by:

- an office-holder of the party, or a party member; or
- any other person where that service is not one for which that person normally receives payment.

Volunteer labour need not be disclosed as a donation as it is excluded from the definition of 'gift' in section 287 of the Act.

### Gifts-in-kind and volunteer labour distinguished

The distinction between gifts-in-kind and volunteer labour is seen in the following examples:

- the donation of legal advice by a solicitor who is a party member is volunteer **labour** because the solicitor is a party member;
- the donation of legal advice by a solicitor who is not a party member is a **gift-in-kind** that must be disclosed because this is a service for which that person normally charges;
- a solicitor who is not a party member handing out how-to-vote cards is **volunteer labour** because this is not a professional service for which that person normally charges; and
- the donation of legal advice on behalf of a firm of solicitors is a **gift-in-kind** that must be disclosed because volunteer labour may only be provided by natural persons and not by organisations.

### Donations to campaign committees

A donation given to the campaign committee of a candidate who has been endorsed by a registered political party is considered to be a donation to the party and not to the candidate. These donations should be disclosed on a Donor to Political Party return. See the *Donor to Political Parties Guide* for more information.

### Election donor return

Individuals, organisations and any other body, other than:

- political parties, their state branches;
- associated entities; and
- candidates or members of a Senate group,

that make donations to a candidate or member of a Senate group totalling more than the \$11 500 threshold during the period from 31 days after the previous federal election until 30 days after the current election must lodge an *Election Donor Return* with the AEC.

The AEC contacts people and organisations identified on candidate and/or Senate group election returns to advise them of their financial disclosure obligations under the Act. This does not absolve donors who are not contacted from completing and submitting returns.

All donors should familiarise themselves with the requirements under the legislation and the information that must be provided on the disclosure return form. Donors should also ensure that they maintain sufficient records to enable the return forms to be properly completed, with all necessary details provided. For donations above the disclosure threshold, the following information will be necessary:

- the name of the candidate, e.g. John Smith;
- the full address details of the candidate;
- the date on which the donation was made, ensuring that only donations made within the period commencing 31 days after the previous federal election until 30 days after the current federal election are included; and
- the value of the donation.

Election donor returns are due 15 weeks after polling day and are made publicly available on the AEC website 24 weeks following polling day. By-election returns are not currently available from the AEC website. Copies of by-election returns can be requested from the AEC's National Office in Canberra 24 weeks following polling day.

Failure to properly complete and lodge a return is an offence under the Act. The AEC assesses how to deal with non-compliance according to individual circumstances, which could include possible referral to the Director of Public Prosecutions for commencement of legal action.

The return form may be downloaded from the AEC's website at [www.aec.gov.au](http://www.aec.gov.au), completed 'on screen' and saved to file or printed as appropriate. Additional data sheets (e.g. MYOB or Excel reports) in a similar format to the tables in the return form that provide all the necessary information may be attached if required.

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

### Threshold

The applicable disclosure threshold for election donor returns is the threshold that was in operation on polling day for the election. The disclosure threshold for an election or by-election held between 1 July 2010 and 30 June 2011 is \$11 500

### Completing the Return

Each return should clearly identify the person or organisation which made the donation/s.

The name of the person completing the return should also be provided as the person to be contacted in the event of any enquiry or follow-up by the AEC.

Where a parent company is submitting a return, please ensure that it is clearly indicated on the front of the return which company is the parent and which are the subsidiaries. This rule applies for all related companies, bodies or organisations where one return is being submitted on behalf of a number of others.

### Period Covered

The return covers donations made during the period from 31 days after the previous federal election to 30 days after polling day for the current election.

## Election return part 1 – donations made

In *Part 1* of the election return the threshold applies to the total value of all gifts or donations.

This means that *Part 1* must be completed if the **total** value of all gifts or donations to a candidate or member of a Senate group exceeds \$11 500. All donations, regardless of their value, must then be disclosed.

- For example, a donor made four separate donations of \$5 000 to candidate John Smith, thus making a total of \$20 000 in donations to this candidate.
  - Even though the donations were individually below the threshold, because their sum exceeds the threshold, the details must be individually disclosed in *Part 1* of the election return. The details that must be disclosed are discussed below.

Cash donations, together with gifts-in-kind, must be reported.

### Donation Details

The following details of donations in excess of \$11 500 made to candidates or members of a Senate group must be disclosed:

- name and address of the candidate;
- date each donation was made; and
- value of each donation at the time it was made.

The objective is to identify the candidate or member of a Senate group to whom the donation was made, and details of the donation.

### Multiple Donations

Where donations have been made to two or more persons, these may be listed on the one return. A separate return does not need to be completed for each.

## Special issues

### Attendance at functions

The issue of whether a payment to attend a function constitutes a donation requiring disclosure under the Commonwealth scheme is not clearly prescribed in the Act.

As a guideline, a payment for attendance at a function or conference is considered a donation if the person making the payment did not receive services or adequate services equal to the value of the payment. These types of payments should be disclosed on the election donor return.

### Donations 'indirectly' made to a candidate

A gift or donation to a person or to an entity that is not a candidate or member of a Senate group, but with the intention of benefiting a candidate or member of a Senate group must be disclosed as if it was a donation made direct to the candidate or Senate group.

Examples of 'indirect' donations to a candidate or member of a Senate group include:

- payments to a person or organisation on the understanding that the money or benefit will be passed to a candidate or member of a Senate group or will be used to help the activities of a candidate or member of a Senate group; and
- payments to a person or organisation on the understanding that the money will be used to pay a debt of a candidate or member of a Senate group.

A payment made for services to the benefit of a candidate or member of a Senate group (such as political advertising, legal costs or repayment of a loan) is a donation to that candidate or member of a Senate group.

- A payment for services must be disclosed if the disclosure threshold is exceeded by this and any other donations made to the candidate during the reporting period.

Items that do **not** need to be reported as donations include:

- commercial discounts in the normal course of business;
- volunteer labour, such as handing out how-to-vote cards; and
- interviews and news items published in a newspaper or broadcast in the electronic media.

### Advertising

While donations of advertising must be disclosed, interviews granted in the normal course of political activity do not need to be disclosed.

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.

## Election return part 2 – donations received

This part of the return applies to:

- a donor who is required to complete the 'Donations made' part of the election return;
- who received a donation of more than \$11 500; and
- used that donation, or part of it, to make donations totalling more than \$11 500 to a candidate or member of a Senate group.

For this part of the return, the threshold applies only to individual gifts or donations received. It is not necessary to disclose any receipts less than the threshold.

- NOTE: the AEC considers multiple donations received from the same person to be a single donation for the purposes of this threshold.

Cash donations, together with 'gifts-in-kind' must be disclosed.

If reportable donations were made but no reportable donations were received, this part of the return should be marked 'nil'.

Subject to the disclosure threshold, the following details of donations received and used, in whole or in part, to make donations to a registered political party must be included in the return form:

- Name and full address details of each person or organisation from whom donations were received;
- Date each donation was received; and
- Value and amount of each donation.

In the case of donations received from a trust or foundation, the names and addresses of the trustees must be provided, along with the title or description of the trust or foundation.

In the case of an unincorporated organisation (except for registered industrial organisations) the names and addresses of the members of the executive committee must be provided, along with the name of the organisation.

For registered industrial organisations it is sufficient to provide the name and address of the organisation as members of the executive committee may not be known.

### Period covered

Disclosure of donations received is not limited to those received during the current reporting period. The donations may have been received at any time and used to make donations during the period covered by the return. This is in contrast to the 'Donations made' section of the return, where only donations made during the period from 31 days after the previous federal election to 30 days after polling day for the current election must be disclosed.

### Illustrative example

A person has donated more than \$11 500 to a candidate or a Senate group if, for example, they received a donation exceeding the current threshold several years ago and used it to help fund a donation in the 2007 election as well as in the current election. The amount received should be disclosed in both returns. In these situations, donors should include an explanatory note on the return stating that the gift has previously been disclosed to minimise confusion.

## General information

### Responsibility for lodging returns

Individual donors should sign their own return.

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

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

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

The Act provides offences for failure to properly complete and lodge a return.

### Incomplete returns

Where a donor is unable to fully complete their return due to information not being in their possession and an inability to obtain the information, a Notice of Incomplete Return form must be completed. The Notice of Incomplete Return form can be obtained by contacting the AEC's National Office in Canberra.

The lodgment of a Notice of Incomplete Return does not relieve a political donor of the responsibility of making exhaustive efforts to obtain financial information held by the party.

### Amendment of returns

A request may be made to the AEC seeking to amend a return that has been lodged and subsequently found to be incomplete or incorrect. In some cases, the AEC itself may request that an amendment form be submitted to rectify a problem. An amendment return form is available at [www.aec.gov.au](http://www.aec.gov.au).

Amendment forms require that the previously submitted amounts and details (where relevant) for 'Donations made' and 'Donations received' be provided together with the amended amounts.

Changes to details of Donations Made or Donations Received should be separated into:

- Additional information not previously provided; and
- Amendment of information previously provided.

In order to avoid confusion or ambiguity when completing an amendment, the record/s being changed should be **clearly** identified.

### Recordkeeping

Donors should consider the financial recording systems and procedures necessary to enable the return forms to be properly completed and submitted by the due date.

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

### Public inspection of returns

**Election returns** are made available for public inspection 24 weeks following polling day.

Returns may be viewed at [www.aec.gov.au](http://www.aec.gov.au). By-election returns are not currently available from the AEC's website. Copies of by-election returns can be requested from the AEC's National Office in Canberra 24 weeks following polling day.

## OFFENCES

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

The AEC aims to assist political and electoral participants to fulfil their obligations under the Act. The AEC may, however, refer matters to the Director of Public Prosecutions for offences against the disclosure provisions when no response or an unsatisfactory response to resolve non-compliance needs to be escalated.

Offences include:

- **Failure to lodge a return by the due date**
  - This action is punishable by a fine of up to \$1 000.
  - A person convicted of having failed to lodge a return who continues not to lodge the return is punishable by a fine of up to \$100 per day for each day that the return is outstanding after the initial conviction.
- **Lodging an incomplete return**
  - This action is punishable by a fine of up to \$1 000.
  - The 'General Information' chapter of this Guide provides advice for the situation where information required to complete a return cannot be obtained.
- **Including false or misleading information in a return**
  - This action is punishable by a fine up to \$5 000.
- **Knowingly providing false or misleading information for inclusion in a return**
  - This action is punishable by a fine of up to \$1 000.
- **Failure to retain records for 3 years**
  - This action is punishable by a fine of up to \$1 000.
- **Failure to comply with a notice authorising a compliance review or investigation**
  - This action is punishable by a fine of up to \$1 000.
- **Providing false or misleading information during a compliance review or investigation**
  - This action is punishable by a fine of \$1 000, or imprisonment for six months, or both.

**APPENDIX 1 - GLOSSARY**

<b>AEC</b>	Australian Electoral Commission.
<b>Anonymous donations</b>	Gifts received where the donor's name and address were not known to the person receiving the gift when it was made. Anonymous donations of more than \$11 500 may be forfeited to the Commonwealth.
<b>Associated entity</b>	An organisation which: <ul style="list-style-type: none"> <li>■ is controlled by or operates to a significant extent for the benefit of one or more registered political parties; or</li> <li>■ is a financial member of a registered political party, or on whose behalf another person is such a member; or</li> <li>■ has voting rights in a registered political party, or on whose behalf another person has such voting rights.</li> </ul> <p>It can include companies holding assets for a political party, investment or trust funds, fundraising organisations, groups and clubs, and trade unions or corporate members of political parties.</p>
<b>Campaign committees</b>	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.
<b>Detailed disclosure</b>	The full name, address and the total value of transactions for each person who has reached the disclosure threshold for receipts or debts.
<b>Disclosure threshold</b>	For the period between 1 July 2010 and 30 June 2011 is \$11 500.
<b>Donation</b>	A disposition of property or the provision of a service for which no payment, or an inadequate payment, is made. The term includes cash and non-cash (gifts-in-kind) transactions, but does not include commercial transactions or volunteer labour (used interchangeably with 'gift').
<b>Donor</b>	A person or organisation other than a registered political party, an associated entity, a candidate or Senate group who is under an obligation to furnish a disclosure return because they made a donation.
<b>Gifts</b>	Any disposition of property made by a person to another person without consideration or with inadequate consideration.
<b>Gifts-in-kind</b>	Non-cash donations, such as 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).
<b>Indexation</b>	The disclosure threshold is indexed to the All Groups Consumer Price Index.
<b>Public inspection</b>	Election donor returns are due 15 weeks after polling day and are made publicly available on the AEC's website 24 weeks following polling day. <p>Copies of by-election returns can be requested from the AEC's National Office in Canberra 24 weeks following polling day. By-election returns are not available on the AEC website.</p>

<b>Registered political party</b>	A political party registered with the AEC. (registration with a state electoral commission does not confer federal registration). State or territory branches of a registered political party are treated as separate parties for the purposes of the funding and disclosure provisions of the Act.
<b>Related bodies corporate</b>	Related bodies corporate are deemed to be the one entity for disclosure purposes. Related status is determined under the <i>Corporations Law</i> .
<b>Senate group</b>	Two or more candidates for election to the Senate who made a written request to the AEC with their nominations that their names be grouped on the ballot-paper, or grouped in a specified order.
<b>The Act</b>	<i>The Commonwealth Electoral Act 1918.</i>
<b>State branch</b>	A branch or division of a registered political party organised on the basis of a state or territory. State branches are treated as separate parties for funding and disclosure purposes.
<b>Third party</b>	A term used to describe those who have a disclosure obligation, other than political parties, candidates, Senate groups and donors.
<b>Volunteer labour</b>	A service provided free of charge to a party, candidate or a member of a Senate group by a person where that service is not one for which that person normally receives payment. Volunteer labour does not need to be disclosed as a donation.

## APPENDIX 2 - Funding and Disclosure Legislative Reference Guide

Part XX of the Act deals with election funding and financial disclosure. It contains 7 Divisions:

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

The following sections underpin the financial returns disclosure scheme:

### Candidate (including Senate group member) election period returns

- election donations – s304(2)
- electoral expenditure – s308 and s309(2)
- nil returns required – s 307(1) and s313(1)

### Senate group election period returns

- election donations – s304(3)
- electoral expenditure – s308 and s309(3)
- returns not required if group endorsed by a single party – s304(3A) and s309(1A)
- nil returns required s307(2) and s313(2)

### Donor election period returns

- donations to candidates – s305A(1)
- donations received – s305A(2)

### Donor annual returns

- donations to political parties – s305B
- donations received – s305B(3A)

### Third party annual returns

- political expenditure – s 314AEB
- gifts received for political expenditure – s314AEC

### Associated entity annual returns

- receipts – s314AEA(1)(a)
- payments – s314AEA(1)(b)
- debts – s314AEA(1)(c)
- capital contributions – s314AEA(3)

### Political party annual returns

- receipts – s314AB and s314AC
- payments – s314AB
- loans – s314AB and s314AE

The following sections are also directly relevant to the financial disclosure scheme:

- Unlawful gifts – s306
- Unlawful loans – s306A
- Offences – s315
- Compliance reviews and investigations – s316
- Records to be kept – s317
- Incomplete information – s318
- Amendment of returns – s319A
- Public inspection of returns – s320

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Users should therefore seek professional legal advice on compliance and other issues that may arise.

The AEC is able to provide guidance on its approach to the administration of the funding and disclosure provisions but is not able to provide legal advice generally. Information about how to obtain a copy of the Act, or to contact the AEC, is provided in the introduction to this guide.