

Financial Disclosure Guide for Candidates and Senate Groups

2020 Eden-Monaro by-election

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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 2020 Eden-Monaro by-election.

Please note: while information relating to Senate Group disclosure returns is included in this guide, it is not relevant in relation to the 2020 Eden-Monaro by-election.

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 Political Campaigners
- Financial Disclosure Guide for Donors to Political Parties and Political Campaigners
- Financial Disclosure Guide for Third Parties
- Financial Disclosure Guide for Election Donors.

This 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:

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

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 the Candidate Return (the return)

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 [Appoint Candidate Agent](#) form is available on the AEC website.



Section [289](#) of the Electoral Act provides for the appointment of agents by candidates and groups.

Section [292F](#) of the Electoral Act lists the requirements for appointment as an agent.

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
- discretionary benefits.


A candidate's or Senate group's 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 3](#) 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 that is more than 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.

Disclosure threshold

	The disclosure threshold for the 2020 Eden-Monaro by-election is for amounts of more than \$14,000 . This figure is indexed annually.
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Political parties, political campaigners, 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.
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Due date for lodging the return

The AEC will advise agents of their obligation to lodge the return. Agents should ensure their contact details recorded with 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 2020 Eden-Monaro by-election on 4 July 2020 are **due by 19 October 2020**.

The AEC has no discretion to extend this legislative deadline.

Lodging your return – eReturns Portal

Candidates and agents can prepare and lodge their returns online via the eReturns portal. The eReturns portal can be accessed from <https://ereturns.aec.gov.au>. The easiest way to lodge your return accurately and on time is to use the eReturns portal; it is quick, secure and allows importing/exporting of files which eliminates transcription errors.

To use the eReturns portal candidates and agents will be issued a username and password 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.

Penalties

The Electoral Act imposes civil penalties and in some cases criminal penalties if a person or entity contravenes the requirements of the Electoral Act. The AEC provides support, including this guide, to assist agents of candidates and Senate groups to comply with their disclosure obligations.

The AEC deals with non-compliance as appropriate to the circumstances, including possible legal action. Refer to Appendix 2 of this guide for information relating to offences under the Electoral Act.

Important Information

Definition of a donation

A donation has the same meaning as a gift under the Electoral Act. A gift is defined as any disposition of property made by a person to another person, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include:

- (a) a payment under Division 3; or
- (b) an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person's membership of the party, branch or division; or
- (c) any visit, experience or activity provided for the purposes of a political exchange program.

A gift also includes a **'gift-in-kind'** such as the provision of a service (other than volunteer labour) for no consideration (see [Part 1a](#) for examples).



Section [287\(1\)](#) of the Electoral Act provides the meaning of a gift.

Foreign donations

Candidates and Senate groups are restricted:

- from receiving gifts of \$100 or more where:
 - the recipient knows the donor is a foreign donor; and
 - the recipient knows that the foreign donor intends the gift to be used to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter and
- from receiving gifts of \$1,000 to the disclosure threshold without obtaining a written affirmation that the donor is not a foreign donor; and
- from receiving gifts equal to or above the disclosure threshold without obtaining written affirmation and appropriate information to establish that the donor is not a foreign donor.

A foreign donor is a person or entity who does not have a connection with Australia, such as a person who is not an Australian citizen or an entity that does not have significant business presence in Australia. The [Factsheet on Foreign Donations](#) available on the AEC website contains further information.



Section [287AA](#) of the Electoral Act provides the meaning of a foreign donor.

Sections [302D](#) and [302F](#) of the Electoral Act place restrictions on candidates, Senate groups and registered political parties from receiving gifts from foreign donors.

Anti-avoidance provisions

The Electoral Act prevents schemes that are established to knowingly avoid foreign donations restrictions. The anti-avoidance provisions prohibit schemes for channelling foreign donations to political entities, political campaigners or third parties via a relevant person or entity (including associated entities).

It is an offence under section 302H to establish arrangements to avoid the foreign donations restrictions. The Electoral Commissioner can issue a written notice if:

- A relevant person or entity (alone or with others) enters into, begins to carry out or carries out a scheme
- There are reasonable grounds to conclude the relevant person did so for the sole or dominant purpose of avoiding foreign donation restrictions
- The scheme avoids the application of a foreign donation restriction, and
- The scheme involved donation splitting, conduit corporations or any other unspecified avoidance scheme.

A person or entity who commits an offence may be subject to civil or criminal penalties.



Section [302H](#) of the Electoral Act prohibits anti-avoidance arrangements for donations.

Electoral matter and electoral expenditure

Electoral expenditure is expenditure incurred for the dominant purpose of creating or communicating electoral matter. Electoral matter is matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election. Further information can be found in [the Factsheet on Electoral Matter and Electoral Expenditure](#) available on the AEC website.



Section [287AB](#) of the Electoral Act provides the meaning of electoral expenditure, and section [4AA](#) of the Electoral Act provides the meaning of electoral matter.

The return

A candidate or Senate group in an election must disclose the following information in the return:

- donations received—see [Part 1](#)
- electoral expenditure—see [Part 2](#)
- discretionary benefits—see [Part 3](#)



Sections [304](#), [307](#), [309](#) and [313](#) of the Electoral Act govern the lodgement of election disclosures by agents of candidates and Senate groups.

Endorsed candidates

Disclosure obligations may differ if candidates or Senate groups are endorsed by a registered political party. For example, where all transactions are made through a campaign committee (see below).

Note: an endorsed candidate or Senate group may personally receive donations for use in an election campaign, but they must be disclosed in their candidate or Senate group returns.

Campaign committee

A campaign committee in relation to a candidate or Senate 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.

If donations to endorsed candidates or Senate groups are channelled through a campaign committee, the donations must be included in the registered political party's annual disclosure return and **not** the candidate or Senate group return. However, the candidate or Senate group still has an obligation to lodge a **nil** return with the AEC.

Endorsed candidates and Senate groups should determine whether a donation was received by them or through a campaign committee. If the donation was received by them, then they must disclose the donation in their candidate or Senate group return. If the donation was received through a campaign committee, then the donation must be reported in the annual political party return.

[Appendix 3](#) presents a summary of the different disclosure scenarios that may apply to a candidate or Senate group.



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

Part 1: Donations received

Part 1 of the return requires disclosure of:

- total donations received—see [Part 1a](#)
- total number of donors—see [Part 1b](#)
- details of donations above the disclosure threshold—see [Part 1c](#).



Section [304](#) of the Electoral Act provides for the disclosure of gifts by the agent of a candidate or Senate group.

Note: A person or organisation that makes a donation to a candidate or group in an election is required to lodge an Election Donor Return. A [Financial Disclosure Guide for Election Donors](#) is available on the AEC website.

Donations made in a private capacity

Where a donation is made in a private capacity to a candidate or member of a Senate group for his or her **personal use**, and the donation has not, and will not be used solely or substantially for a purpose related to an election, the relevant details are **not required** to be disclosed in the return.



Section [304\(5\)\(b\)](#) of the Electoral Act provides for gifts made in a private capacity.

Nil donations received

Where no donations in relation to an election are received by a candidate or Senate group, **a return must still be lodged**, indicating nil donations received.



Section [307](#) of the Electoral Act requires a nil return to be lodged.

Period within which donations received must be disclosed

Candidates and Senate groups must report donations received for the period commencing from the earlier of the following:

- for a candidate:
 - the day the person announced their candidacy; or

- the day the person nominated as a candidate in an election
 - for a group:
 - the day the members of a group make a request under section 168 of the Electoral Act for their names to be grouped in the ballot papers for an election
- and ending 30 days after polling day (3 August 2020).



Section [287\(9\)](#) of the Electoral Act provides for when a person is a candidate or part of a group.

Part 1a: Total of donations received

In this part, the agent must report the **total value** of **all** donations (including gifts-in-kind) received during the period that the person was a candidate or member of a group in an election. This includes donations above and below the disclosure threshold (\$14,000 in 2019-20).

Donations received may include, but are not limited to:

- gifts of money
- gifts-in-kind of services or goods
- conditional loans in some circumstances.

Examples – gifts of money

Below are examples of donations to be included in Part 1a of the return (the type of return that the example relates to 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).
- 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).

Examples – gifts-in-kind of services or goods

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 to be included in Part 1a of the return include (but are not limited to):

- 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 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—see 'Example - conditional loans' 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 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.

Example – 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.

Note: a candidate or member of a Senate group **cannot** receive loans of more than the disclosure threshold (\$14,000 in 2019-20) from a person or entity other than a financial institution unless a record of the terms and conditions of the loan and the particulars (for example, name(s), title(s) and contact details) of the person or entity providing the loan are retained.

Note: 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](#).



Section [306A](#) of the Electoral Act provides for certain loans not to be received.

Section [306A](#) of the Electoral Act makes it unlawful for loans to be received from a person or entity other than a financial institution unless certain records are kept.

As the determination of whether 4 per cent of the formal first preference vote was received will be 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 appropriate. This reflects the reality that sufficient information would be available to determine the majority of such arrangements within the reporting period applying to candidates and Senate groups.

Part 1b: Total number of donors

This part requires disclosure of the **total number of donors** who made the donations included in [Part 1a: Total of donations received](#).

Part 1c: Details of donations received

Part 1c requires disclosure of the **details** of donations received greater than the disclosure threshold (\$14,000 in 2019-20) during the period that the person was a candidate or member of a group in an election. Where a candidate or Senate group receives donations from a single source that total to more than the disclosure threshold the relevant details of all those donations must 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.

Amounts received from unincorporated associations, trusts or foundations

Where an amount has been received from an unincorporated association (other than a registered industrial organisation), the name of the association and the names and addresses of all members of the executive committee of the association must be disclosed.

Where an amount has been received from a trust fund or foundation fund, the name and description of the trust or foundation and the names and addresses of all trustees must be disclosed.

Part 2: Electoral expenditure

Part 2 of the return requires disclosure of the **total amount of electoral expenditure** incurred by or with the authority of the candidate or Senate group in relation to an election.



Section [309](#) of the Electoral Act provides for the disclosure of electoral expenditure incurred by candidates and groups.

Note: *Candidates who are members of a Senate group **do not** report electoral expenditure in their individual candidate returns. All electoral expenditure incurred by or with the authority of the members of the Senate group, individually or collectively, must be disclosed in a consolidated **Senate Group Return** (see ‘Senate group electoral expenditure’ below).*

Period within which electoral expenditure must be disclosed

Total electoral expenditure incurred, by or with the authority of a candidate or Senate group, in relation to the election must be disclosed. The physical expenditure can be incurred outside the period that the person was a candidate or member of a group.

Examples – electoral matter and electoral expenditure

In general, any expenditure incurred by a candidate or Senate group in relation to an election will be electoral expenditure.

Examples of electoral matter and electoral expenditure include (but are not limited to):

- Amal is a candidate in an upcoming election. She holds a ‘meet the candidate’ street party for all the neighbours in her street, to try to convince them to vote for her, 50 neighbours attend. Amal only knew five of them beforehand, but gets to know the rest at the event. Amal’s communications at the event are considered electoral matter as these are not exclusively private communications to people Amal knows.
- Amal and Jenny are next door neighbours, and know each other well. Jenny is the conductor of a local choir and writes down phone numbers for 50 choristers so that Amal can call them seeking their votes. Even though Amal tells each person on the phone list that Jenny is a mutual friend, the communication is considered electoral matter as Amal had no prior relationship with these individuals.
- A candidate engages an advertising agency to develop a campaign containing electoral matter. The expenditure incurred by the advertising agency in creating electoral matter is not electoral expenditure because the agency was engaged on a commercial basis. However, the cost of engaging the advertising agency is electoral matter incurred by the candidate.

- Anne owns several office blocks and leases the spaces to a number of corporate clients. One of the office spaces is leased to an independent candidate in an upcoming election who uses the space to run a call centre to communicate electoral matter. Any expenditure incurred by Anne in relation to her tenants, including the candidate, is not electoral expenditure because her dominant purpose is commercial (profiting from her investment in her office blocks). However, the rent paid by the candidate is electoral expenditure.

What is not electoral matter?

Matter is not electoral matter if the communication or intended communication of the matter is:

- editorial content (forms part of the news or presentation of current affairs)
- satirical, academic, educative or artistic
- private communication between persons known to each other
- by, or would be by or to a person who is a Commonwealth public official in that person's capacity as such an official
- private communication to a political entity (who is not a Commonwealth official) in relation to public policy or public administration
- occurs, or would occur in the House of Representatives or Senate, or is or would be to a parliamentary committee.

Examples of what is not electoral matter or electoral expenditure include (but are not limited to):

- As part of her campaign, Amal hosts a 'meet the candidate' dinner party with 50 of her friends including a mixture of people from work, her sports team and her old university residence. Discussions at Amal's dinner party are not considered electoral matter as it involves private communication to people she knows.
- A registered political party invites its members to a book club night to discuss recent political biographies. As the dinner is a 'social club' activity of the party and unrelated to an election, the cost of the dinner is not electoral expenditure.

Nil electoral expenditure

If no electoral expenditure was incurred by or with the authority of a candidate or the members of a group in an election, a return **must still be lodged** indicating that no electoral expenditure was incurred.



Section [313](#) of the Electoral Act requires a nil return to be lodged by candidates and Senate groups when no electoral expenditure is incurred.

Part 3: Discretionary Benefits

Part 3 of the return requires disclosure of the **details** of **any discretionary benefits** (however described) received by or on behalf of the candidate or any members of a group from the Commonwealth, a state or territory in an election during the period of 12 months before polling day in an election.



Section [309\(4\)](#) of the Electoral Act provides for the disclosure of details of discretionary benefits received.

What are discretionary benefits?

Discretionary benefits include:

- grants
- contracts
- payments
- other benefits requiring the exercise of discretion by the Commonwealth or state or territory.

Note: discretionary benefits are different to statutory entitlements, which are provided automatically if specified criteria are met, such as election funding.

Period within which discretionary benefits must be disclosed

Details of discretionary benefits received during the **12 months before polling day** (4 July 2019 to 4 July 2020) must be disclosed.

Discretionary benefit details

Discretionary benefit details to be disclosed in the return include the:

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

Incomplete returns

Where a donor is unable to obtain all the information required to fully complete the return, a Notice of Incomplete Return **must be completed** and lodged with the incomplete return.

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

- complete the donor return as fully as possible
- complete the Notice of Incomplete Return
- lodge the Notice of Incomplete Return and the incomplete return with the AEC at the same time.

Note: lodgement of a Notice of Incomplete Return does not relieve the donor of the responsibility of making reasonable efforts to obtain the information required to complete the 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.



Section [318](#) of the Electoral Act provides for when a person who is required to furnish a return is unable to do so.

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
- details of all attempts made to obtain the missing information.

Part 3 – requires:

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

Amending returns

A request may be made to, or by the AEC seeking amendment of a return that has been lodged and subsequently found to be incomplete or incorrect.



Section [319A](#) of the Electoral Act provides for the amendment of returns.

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 the Disclosure and Compliance 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 2020 Eden-Monaro by-election that date is **Monday 21 December 2020**. Returns are available for inspection on the AEC's website at www.aec.gov.au.

Record keeping

Candidates and Senate groups like all other persons or entities 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.

Retention of records

Relevant records, whether formal or informal, must be retained a minimum of 5 years following the end of the reporting period.

A record must also be kept in accordance with any other requirements as determined by the Electoral Commissioner.

A person or entity who fails to comply with these requirements will be subject to civil penalties.



Section [317](#) of the Electoral Act provides for the retention of records.

Compliance Reviews

The AEC conducts compliance reviews of election returns lodged by agents of candidates and Senate groups to verify the accuracy and completeness of disclosures.

Compliance reviews are undertaken 'off-site', however officers of the AEC may still attend agent premises to inspect original documentation and to hold an exit interview to discuss the review.

A written report will be issued detailing any findings. This may include advice to amend the candidate or Senate group return.



Section [316\(2A\)](#) of the Electoral Act provides for the conduct of compliance reviews.

Further information on the conduct of compliance reviews can be found at [Compliance Reviews](#) on the AEC website.

Offences

Sections 315 and 316 of the Electoral Act contain penalty provisions for offences against the funding and disclosure provisions. Refer to [Appendix 2](#) 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 pursue legal action.

Appendix 1 – Glossary of terms

AEC	Australian Electoral Commission
Anti-avoidance scheme	<p>Donation splitting: a foreign donor avoiding a disclosure threshold by giving multiple gifts below the disclosure threshold.</p> <p>Conduit corporations: a foreign donor forming or participating in the formation of a body corporate in Australia in order to channel gifts through an allowable donor.</p> <p>Unspecified avoidance scheme: facilitates a foreign donor making a prohibited gift, that is not donation splitting or a conduit corporation.</p>
Campaign committee	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	Detailed disclosure must be made of receipts totalling more than \$14,000 and debts totalling more than \$14,000 at 30 June 2020. This threshold is indexed annually.
Discretionary benefits	Grants, contracts, payments and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory.
Donor	A person, organisation or other body other than a political party, an associated entity or a candidate in an electoral event who is under an obligation to furnish a disclosure return because they made a donation.
Electoral Act	<i>Commonwealth Electoral Act 1918</i>
Electoral expenditure	<p>Expenditure incurred for the dominant purpose of creating or communicating electoral matter.</p> <p>The Factsheet on Electoral Matter and electoral expenditure on the AEC website contains further information.</p>
Electoral matter	Matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election.
Foreign donation	A donation or gift to a political entity, political campaigner or third party from a foreign donor.

The [Factsheet on Foreign Donations](#) available on the AEC website contains further information.

Foreign donor A person who does not have a connection with Australia, such as a person who is not an Australian Citizen or an entity that does not have significant business presence in Australia.

Gift-in-kind 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.

Examples of gifts-in-kind:

- the donation of legal advice by a solicitor
- the donation of the use of premises to conduct campaign activities.

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.

Penalty Unit See [subsection 4AA\(1A\)](#) of the *Crimes Act 1914* for penalty unit information.

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 group	<p>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.</p>
State branch	<p>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.</p>
Transparency Register	<p>A register established and maintained by the AEC that contains information about registered political parties, associated entities, third parties, political campaigners, candidates and Senate groups.</p>
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>An example of volunteer labour would be a person handing out how-to-vote cards.</p>

Appendix 2 – Penalties relating to the Commonwealth funding and disclosure regulations for candidate and Senate groups

In addition to the penalties below section 137.1 of the *Criminal Code Act 1995* also applies for providing false or misleading information. 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 12 months.

Note: a political entity includes registered political parties, candidates and Senate groups.

Foreign donations restrictions

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure of political entity or political campaigner to take acceptable action in regards to a foreign donation	302D(1)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller 	Whichever is higher of: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of the value of the gift (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302D(3)) 	200 penalty units (s302D(2))
Failure to take acceptable action in regards to a foreign gift	302F(1)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller ■ Third party 	For contravention of s302F(1) by a third party: <ul style="list-style-type: none"> ■ 100 penalty units (s302F(5)) For contravention of s302F(1) by a person or entity other than a third	For contravention of s302F(1) by a third party: <ul style="list-style-type: none"> ■ 50 penalty units (s302F(3))

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
			<p>party, whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of the value of the gift (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302F(5)) <p>For contravention of s302F(2) whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of the value of the gift (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302F(5)) 	<p>For contravention of s302F(1) by a person or entity other than a third party:</p> <ul style="list-style-type: none"> ■ 100 penalty units (s302F(3)) <p>For contravention of s302F(2):</p> <ul style="list-style-type: none"> ■ 100 penalty units (s302F(3))
Knowingly providing a false affirmation or information that a donor is not a foreign donor	302G(1)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller ■ Third party ■ Donor 	<p>Whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of the value of the gift (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302G(4)) 	100 penalty units (s302G(2))

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Establishing a scheme to avoid sections 302D, 302E or 302F	302H	<ul style="list-style-type: none"> ■ Political entity ■ Political campaigner ■ Third party ■ Donor 	Whichever is higher: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of the value of the gift (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302H(5)) 	200 penalty units (s302H(3))

Disclosure of donations

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure to provide a return disclosing the value of gifts received	304	Candidate (including members of a group who were candidates) or the candidate agent	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount of the value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gifts not disclosed) (s304(2)) 	Not applicable

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure to provide a return disclosing the value of gifts received	304	Agent of a group whose members were candidates	Whichever is higher of: <ul style="list-style-type: none"> 60 penalty units, or three times the amount of the value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gifts not disclosed) (s304(3)) 	Not applicable
Failure to provide a return disclosing gifts valued at more than the disclosure threshold	305A	Donor who is not a political entity or an associated entity	Whichever is higher: <ul style="list-style-type: none"> 60 penalty units, or three times the amount of the value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gifts not disclosed) (s305A(2)) 	Not applicable
Failure to disclose gifts totalling more than the disclosure threshold in a financial year	305B	Donor who is not a political entity or an associated entity	Whichever is higher of: <ul style="list-style-type: none"> 60 penalty units, or three times the amount of the value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the value of the gifts not disclosed) (s305B(1)) 	Not applicable

Disclosure of electoral expenditure

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure by the agent of a person who was a candidate to provide a return disclosing the amount of electoral expenditure	309	Candidate (but not a candidate who was the member of a group) or the candidate's agent	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount of the value of the electoral expenditure not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the electoral expenditure not disclosed) (s309(2)) 	Not applicable
Failure by the agent of a group to provide a return disclosing the amount of electoral expenditure	309	Agent of a group whose members were candidates	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount of the value of the electoral expenditure not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the electoral expenditure not disclosed) (s309(3)) 	Not applicable

AEC investigations

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Refusal or failure to comply with a notice relating to a compliance review or investigation	316(5)-(5A)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller ■ Associated entity or its financial controller ■ Third party ■ Donor ■ Prescribed person under s17(2A) 	Not applicable	<p>For a refusal to comply with a notice under s316(2A), (3) or (3A):</p> <ul style="list-style-type: none"> ■ 10 penalty units (s316(5)) <p>For a failure to comply with a notice under s316(2A), (3) or (3A):</p> <ul style="list-style-type: none"> ■ 10 penalty units (s316(5A))
Providing false or misleading information during a compliance review or investigation	316(6)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller ■ Associated entity or its financial controller ■ Third party ■ Donor ■ Prescribed person under s17(2A) 	Not applicable	Imprisonment for 6 months, or 10 penalty units, or both (s316(6))

Keeping records

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure to keep records	317(2)-(4)	<ul style="list-style-type: none"> ■ Political entity or its agent ■ Political campaigner or its financial controller ■ Associated entity or its financial controller ■ Third party ■ Donor ■ Prescribed person under s17(2A) 	200 penalty units (s317(1))	Not applicable

Appendix 3 – Summary of disclosure scenarios for different categories of candidates

Category	Obligation
Candidates endorsed by a registered political party	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or be their own agent. ■ The agent must lodge a Candidate Return (including a 'nil' return if appropriate). <ul style="list-style-type: none"> - A 'nil' return is required when all transactions are made through a campaign committee, or all transactions are received on behalf of the registered political party, and there were no other 'personal' campaign gifts or transactions. ■ Details of any donations, expenditure, loans incurred and any discretionary benefits received on behalf of the registered political party should be provided to the party agent for inclusion in the registered political party's annual return. ■ See Election Funding Guide for payment arrangements. ■ The party agent is not the agent of individual endorsed candidates unless separately appointed.
Unendorsed candidates, including grouped and ungrouped Senate candidates	<ul style="list-style-type: none"> ■ May appoint an agent to act on their behalf or be their own agent. ■ The agent must lodge a Candidate Return (including a 'nil' return if appropriate). ■ See Election Funding Guide for payment arrangements.

Appendix 4 – Agents

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.

[Appoint Candidate Agent](http://www.aec.gov.au) forms are available on the AEC's website at www.aec.gov.au.

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 5 – Summary of financial disclosure obligations for candidates and Senate groups

Category	Obligations
Unendorsed candidates, including grouped and ungrouped Senate candidates	<p>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.</p> <p>The agent, or candidate if there is no appointed agent, must lodge a Candidate Return (including a 'nil' return if appropriate).</p> <p>Any election funding entitlement is paid to the agent, or to the candidate if there is no appointed agent.</p>