

# Financial Disclosure Guide for Members of the House of Representatives and Senators

*2020-21 financial year*

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# Introduction

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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 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, significant third parties, donors, members of the House of Representatives (MPs) and Senators and other participants in the electoral process to lodge annual or election period financial disclosure returns with the Australian Electoral Commission (AEC). These disclosure returns are then published on the [AEC website](#).

## The Guide

This version of the Financial Disclosure Guide for Members of House of Representatives and Senators (the guide) applies to returns for the 2020-21 financial year. While the guide is intended to assist MPs and Senators with meeting their disclosure requirements, it does not address the whole of the Electoral Act. Users should familiarise themselves with the relevant part of the Electoral Act and seek independent legal advice where necessary.

The Electoral Act and all guides published by the AEC are available at [www.aec.gov.au](http://www.aec.gov.au). Annual and election returns are also available for viewing on the [Transparency Register](#) after the public release date. A searchable database is 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.

# Annual disclosure

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## Responsibility for lodging the return

The MPs or Senator is responsible for lodging the Member of the House of Representatives or Senator disclosure return (the return). An MPs or Senator is taken to have provided a return if the MPs or Senator causes another person to provide the return on their behalf.

	<p>Section 314AED of the Electoral Act provides for the lodgement of an annual return.</p> <p>Section 314AED(6) of the Electoral Act provides for the lodgement on behalf of an MPs or Senator .</p>
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## Reporting period

The return covers the **financial year 1 July 2020 to 30 June 2021**. If a person becomes or ceases to be an MPs or Senator during the financial year, the annual return must be provided in relation to the whole financial year.

## Disclosure threshold

	<p>Where an MP or Senator did not receive any gifts during the financial year that were made for federal purposes, a return <b>does not</b> need to be provided.</p>
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	<p>The disclosure threshold for the 2020-21 financial year is for amounts of more than <b>\$14,300</b>. This figure is indexed annually.</p>
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## Lodging your return

As MP or Senator who is required to lodge a 2020-21 annual return will need to use the relevant form:

- [2020-21 Member of the House of Representatives Disclosure Return](#)
- [2020-21 Senator Disclosure Return](#).

If a person becomes or ceases to be an MP or Senator during the financial year, the annual return must be provided in relation to the whole financial year.

The 2020-21 form can be lodged by email at [fad@aec.gov.au](mailto:fad@aec.gov.au) (or by fax or post).

## Due date for lodging returns

MPs and Senators that are required to lodge a 2020-21 return will need to lodge a return within 30 days of commencement of the *Electoral Legislation Amendment (Annual Disclosure Equality) Act 2021*.

The Annual Disclosure Equality Act commenced on 14 December 2021 and **2020-21 returns are due 12 January 2022**.

Returns are ordinarily published on the [Transparency Register](#) on the first working day of February. However, in accordance with the Annual Disclosure Equality Act, the 2020-21 financial year returns will be published on **1 March 2022**.

## 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 MPs and Senators to comply with their disclosure obligations.

[Appendix 2](#) of this guide contains a list of civil and criminal penalties that may apply to a MPs or Senator under the Electoral Act.

For more information on compliance and enforcement, see the [Financial Disclosure Compliance and Enforcement Policy](#).

## Important information

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### Definition of federal purpose

A federal purpose means the purpose of incurring electoral expenditure, or creating or communicating electoral matter.



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

### 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.

### 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

MPs and Senators 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 MPs and Senators.

## 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 MPs, Senators, political entities, significant third parties, associated entities or third parties via a relevant person or entity.

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.

# The return

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An MP or Senator must disclose the following information in the return:

- total donations received for a federal purpose – see **Part 1**
- total number of donors – see **Part 2**
- details of donations above the disclosure threshold used for federal purposes – see **Part 3**



Section 314AED of the Electoral Act governs the lodgement of annual returns by MPs and Senators.

## Donations made in a private capacity

Where a donation is made in a private capacity to an MP or Senator for his or her **personal use**, and the donation is not used for the purpose of incurring electoral expenditure, or creating or communicating electoral matter, the donations are **not required** to be disclosed in the return.

## Donations made as a candidate or a political party

Where a donation is made and is included in a candidate return or an annual return by a registered political party or significant third party, the donations are **not required** to be disclosed in the return.



Section 314AED(4) of the Electoral Act does not require the disclosure of the donations included in a return under section 304 or 314AB.

## Part 1: Total donations received for financial year 1 July 2020 to 30 June 2021

This part of the return requires disclosure of the total of all amounts (cash and gifts-in-kind) received by an MP or Senator that were made for federal purposes.



Section 314AED(2)(a) of the Electoral Act provides for the disclosure of **total donations received** by the MP or Senator during the financial year.

## Nil donations received

Where an MP or Senator did not receive any gifts during the financial year that were made for federal purposes, **a return does not need to be lodged.**



Section 314AED (Note 2) of the Electoral Act provides that a nil return does not need to be lodged.

## Part 2: Total number of donors

This part requires disclosure of the **total number of donors** who made the donations included in **Part 1: Total of donations received.**



Section 314AED(2)(b) of the Electoral Act provides for the disclosure of the **total number of donors.**

## Part 3: Details of donations received

This part requires disclosure of the **details** of donations greater than the disclosure threshold (\$14,300 in 2020-21) received for federal purposes during the 2020-21 financial year.

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.

## Amending returns

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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.

## Administration

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### Date for public inspection of annual returns

Annual returns are ordinarily made available for public inspection on the first working day of February each year. However, in accordance with the Annual Disclosure Equality Act, the 2020-21 financial year returns will be published on **1 March 2022**.

Returns are available for inspection on the [Transparency Register](#).

### Record keeping

MPs and Senators like all other entities and organisations should keep adequate records.

Financial recording systems and procedures must be sufficient to enable the return, which will be publicly available, to be properly completed. All transactions should be supported by source documents recording the details of individual transactions.

### Retention of records

Relevant records, whether formal or informal, must be retained for 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 is subject to civil penalties.



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

# Compliance reviews

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The AEC conducts an annual compliance program which can review annual returns lodged by MPs and Senators to verify the accuracy and completeness of disclosures.

A written report will be issued detailing any findings. This may include advice to amend the 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.

# Appendix 1 – Glossary of terms

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<b>AEC</b>	Australian Electoral Commission
<b>Anti-avoidance scheme</b>	<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>
<b>Disclosure threshold</b>	Detailed disclosure must be made of receipts totalling more than \$14,300. This threshold is indexed annually.
<b>Donor</b>	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.
<b>Electoral Act</b>	<i>Commonwealth Electoral Act 1918</i>
<b>Electoral expenditure</b>	<p>Expenditure incurred for the dominant purpose of creating or communicating electoral matter.</p> <p>The <a href="#">Factsheet on Electoral Matter and electoral expenditure</a> on the AEC website contains further information.</p>
<b>Electoral matter</b>	Matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election.
<b>Federal purpose</b>	The purpose of incurring electoral expenditure, or creating or communicating electoral matter.
<b>Foreign donation</b>	<p>A donation or gift to a political entity, significant third party, associated entity or third party from a foreign donor.</p> <p>The <a href="#">Factsheet on Foreign Donations</a> available on the AEC website contains further information.</p>

<b>Foreign donor</b>	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.
<b>Gift-in-kind</b>	<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"> <li>■ the donation of legal advice by a solicitor</li> <li>■ the donation of the use of premises to conduct campaign activities.</li> </ul>
<b>Indexation</b>	The disclosure threshold is indexed to the All Groups Consumer Price Index. A listing of past <a href="#">disclosure thresholds</a> is available on the AEC website.
<b>Penalty Unit</b>	See <a href="#">subsection 4AA(1A)</a> of the <i>Crimes Act 1914</i> for penalty unit information.
<b>Public inspection</b>	Disclosure returns are available for inspection by the public at <a href="http://www.aec.gov.au">www.aec.gov.au</a> . Annual returns are made available from the first working day in February each year.
<b>Registered political party</b>	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.
<b>Transparency Register</b>	A <a href="#">register</a> established and maintained by the AEC that contains information about registered political parties, associated entities, significant third parties, third parties, candidates and Senate groups.

## Appendix 2 – Penalties relating to the Commonwealth funding and disclosure regulations for MPs and Senators

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 MPs and Senators, political entity or significant third party to take acceptable action in regards to a foreign donation	302D(1)	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> </ul>	Whichever is higher of: <ul style="list-style-type: none"> <li>■ 200 penalty units, or</li> <li>■ 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))</li> </ul>	200 penalty units (s302D(2))
Failure to take acceptable action in regards to a foreign donation	302F(1)	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> </ul>	For contravention of s302F(1) by a third party: <ul style="list-style-type: none"> <li>■ 100 penalty units (s302F(5))</li> </ul>	For contravention of s302F(1) by a third party:

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
		<ul style="list-style-type: none"> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> <li>■ Third party</li> </ul>	<p>For contravention of s302F(1) by a person or entity other than a third party, whichever is higher of:</p> <ul style="list-style-type: none"> <li>■ 200 penalty units, or</li> <li>■ 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))</li> </ul> <p>For contravention of s302F(2) whichever is higher of:</p> <ul style="list-style-type: none"> <li>■ 200 penalty units, or</li> <li>■ 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))</li> </ul>	<ul style="list-style-type: none"> <li>■ 50 penalty units (s302F(3))</li> </ul> <p>For contravention of s302F(1) by a person or entity other than a third party:</p> <ul style="list-style-type: none"> <li>■ 100 penalty units (s302F(3))</li> </ul> <p>For contravention of s302F(2):</p> <ul style="list-style-type: none"> <li>■ 100 penalty units (s302F(3))</li> </ul>
Knowingly providing a false affirmation or information that a	302G(1)	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> </ul>	<p>Whichever is higher of:</p> <ul style="list-style-type: none"> <li>■ 200 penalty units, or</li> <li>■ three times the amount of the value of the gift (if there is sufficient</li> </ul>	100 penalty units (s302G(2))

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
donor is not a foreign donor		<ul style="list-style-type: none"> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> <li>■ Third party</li> <li>■ Donor</li> </ul>	evidence for the court to determine the amount, or an estimate of the amount, of the value of the gift) (s302G(4))	
Establishing a scheme to avoid sections 302D, 302E or 302F	302H	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> <li>■ Political entity</li> <li>■ Significant third party</li> <li>■ Third party</li> <li>■ Donor</li> </ul>	Whichever is higher: <ul style="list-style-type: none"> <li>■ 200 penalty units, or</li> <li>■ 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))</li> </ul>	200 penalty units (s302H(3))

## Annual returns

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure of an MP or Senator to provide an annual return	314AED	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> </ul>	Whichever is higher of: <ul style="list-style-type: none"> <li>■ 60 penalty units, or</li> <li>■ three times the value of the amount not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed) (s314AED(1))</li> </ul>	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"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> <li>■ Associated entity or its financial controller</li> <li>■ Third party</li> <li>■ Donor</li> <li>■ Prescribed person under s17(2A)</li> </ul>	Not applicable	<p>For a refusal to comply with a notice under s316(2A), (3) or (3A):</p> <ul style="list-style-type: none"> <li>■ 10 penalty units (s316(5))</li> </ul> <p>For a failure to comply with a notice under s316(2A), (3) or (3A):</p> <ul style="list-style-type: none"> <li>■ 10 penalty units (s316(5A))</li> </ul>
Providing false or misleading information during a compliance review or investigation	316(6)	<ul style="list-style-type: none"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> <li>■ Associated entity or its financial controller</li> <li>■ Third party</li> <li>■ Donor</li> <li>■ Prescribed person under s17(2A)</li> </ul>	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"> <li>■ Member of the House of Representatives</li> <li>■ Senator</li> <li>■ Political entity or its agent</li> <li>■ Significant third party or its financial controller</li> <li>■ Associated entity or its financial controller</li> <li>■ Third party</li> <li>■ Donor</li> <li>■ Prescribed person under s17(2A)</li> </ul>	200 penalty units (s317(1))	Not applicable