



Financial Disclosure Guide for Third Parties incurring Political Expenditure

2017–18 financial year

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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 federal 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, 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 an annual or election period financial disclosure return 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 Third Parties incurring Political Expenditure (Guide for third parties incurring political expenditure) applies to returns for the 2017–18 financial year.

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

- Financial Disclosure Guide for Political Parties
- Financial Disclosure Guide for Associated Entities
- Financial Disclosure Guide for Donors to Political Parties
- Financial Disclosure Guide for Election Donors
- Financial Disclosure Guide for Candidates and Senate Groups

The Guide for third parties incurring political expenditure is designed to assist third parties to understand their financial disclosure obligations under Part XX of the Electoral Act.


The Guide for third parties incurring political expenditure provides information derived from the Electoral Act as well as from the experiences of the AEC in the administration of the disclosure scheme. While it is a user-friendly guide to Commonwealth funding and disclosure requirements it does not address the whole of the Electoral Act. The Guide for third parties incurring political expenditure 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 provided which allows data to be exported.

The Guide for third parties incurring political expenditure 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.
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	A timing symbol indicates a due date.
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Annual disclosure

Responsibility for lodging returns

Responsibility for lodging returns lies with the person that incurred political expenditure for the purposes defined in section 314AEB(1)(a) of the Electoral Act.

A person who incurred political expenditure, by or with his or her own authority must sign their return.

Where the third party is an organisation, a person with appropriate authority and access to financial records must sign the return.

In the case of a company this may be the CEO, company secretary or financial controller. In the case of a trust it would be the trustee.

A return of political expenditure is not required to be lodged by a:

- registered political party
- Commonwealth Government Department or Agency
- member of the Commonwealth Parliament
- candidate in a House of Representatives or Senate election.

Financial disclosure obligations under the Electoral Act

Sections 314AEB and 314AEC of the Electoral Act govern lodgement of annual disclosures by third parties.

Section 314AEB provides that a person:

- who incurs political expenditure during the 2017–18 financial year; and
- the amount of the political expenditure was more than the disclosure threshold

must within 20 weeks after the end of the financial year furnish to the AEC a return in the approved form.

On 15 March 2018, the *Electoral and Other Legislation Amendment Act 2017* (EOLA Act) commenced which extended the application of previous authorisation requirements to modern communication channels and methods, including online platforms, bulk text messages and robo-calls. For the 2017-18 financial year there will be a requirement to report expenditure under section 314AEB(1)(iii) for both the previous and new authorisation section of the Electoral Act.

The Third Party Return of Electoral Expenditure Disclosure Return (the return) requires disclosure of the following information covering the financial year from 1 July to 30 June:

- political expenditure incurred for one or more of the following five specified purposes listed in section 314AEB(1)(a):

1. public expression of views on a political party, candidate in an election or member of the Commonwealth Parliament by any means;
2. public expression of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election) by any means;
3. **For period 1 July 2017 to 14 March 2018:**
printing, production, publication, or distribution of any material that is required under s 328, s 328A or s 328B of the Electoral Act to include a name, address or place of business;
For period 15 March 2018 to 30 June 2018:
the communication of any electoral matter (other than that at item 1 or item 2) that is required by section 321D to be authorised;
4. broadcast of political matter (other than that at item 3) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*;
5. opinion polling and other research relating to an election (whether or not a writ has been issued for the election) or the voting intentions of electors.

What do sections 328, 328A and 328B do? (Sections 328,328A and 328B repealed and replaced from 15 March 2018)

- Section 328 of the Electoral Act requires all electoral advertisements to include the name and address of the person who authorised the advertisement and, except in the case of newspapers, the name and place of business of the printer at the end.
- Section 328A of the Electoral Act imposes a similar requirement on electoral advertisements on the internet.
- Section 328B of the Electoral Act imposes a similar requirement in relation to how-to-vote cards.
- Electoral advertisements must be authorised at all times, not just during an election period.

What does section 321D do?

- From 15 March 2018, the authorisation requirement in Part XXA of the Electoral Act applies to a wide range of communications containing ‘electoral matter’ including all publicly communicated material. This includes printed material, social media, voice calls (including robocalls) and text messaging (for example, bulk text messaging).
- Section 321D(5) sets out the new authorisation requirements that apply to the communication of ‘electoral matter’ and ‘political matter’.
- Information regarding the new electoral advertising authorisation can be found in the [Electoral Backgrounder: Electoral communications and authorisation requirements](#) on the AEC website.

What is captured by the term ‘political expenditure’?

In regards to the assessment of what issues are before electors, the following needs to be considered:

1. Section 314AEB is interpreted in a way that confines its operation to situations where the primary or dominant purpose of the particular expenditure is one of the categories listed in subsection 314AEB(1).
2. Incidental expenditure or expenditure for a variety of purposes, of which only a minor aspect falls within one of the specified purposes, will not be considered political expenditure for the purpose of disclosure obligations.
3. The expression of views does not cover the presentation of merely factual information.
4. There is a distinction between an issue before electors in an election and other public issues. Merely because a person raises an issue in the public domain does not result in that being an issue before electors in an election.
5. In the absence of an actual election being called, to determine whether or not a matter is likely to be before electors involves assessment of how topical the issue is and the difference, if any, between the policy platforms of each party.
6. An assessment is required to ascertain the subjective purposes behind a specific public expression of the relevant issue.
7. The nearer in time the public expression to the possible date for holding an election, the more likely that the views will meet the subjective intention of placing an issue before electors in an election.

The above guidance should not be used as a substitute for specific legal advice on what does or does not constitute political expenditure for the purpose of the Electoral Act. Users of this guide are urged to seek their own independent advice where necessary.

Gifts received for the purpose of political expenditure

Section 314 of the Electoral Act requires disclosure of details of any gifts received within or outside the financial year from the same person/entity totalling more than the disclosure threshold, which the person then used (either wholly or partly), to incur or reimburse their political expenditure.



The disclosure threshold for the 2017–18 financial year is for amounts of more than \$13,500. This figure is indexed annually.


eReturns: portal to complete and lodge your return

Third Parties 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 assist with completing a return online, the eReturns Third Party Quick Reference Guide, a step-by-step guide is available on the [AEC website](#). See Appendix 4 for more information.

Reporting period

The return covers the financial year 1 July 2017 to 30 June 2018. The AEC contacts the people and organisations it identifies (for example, from media advertisements) as possibly having annual disclosure obligations to advise them of their obligations. This **does not** absolve third parties who are not contacted by the AEC from completing and submitting returns.

Due date for lodging returns

	Completed returns must be lodged by 17 November each year. Where 17 November falls on a Saturday, Sunday or public holiday, the return must be lodged by the next business day.
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The AEC has no legislative discretion to extend this deadline.

Returns are published on the AEC website on the first working day of February.

Penalties

The Electoral Act imposes penalties for failure to properly complete and lodge a return. The AEC provides support, including this guide, to assist third parties to comply with their disclosure obligations.

The AEC deals with non-compliance as appropriate to the circumstances, including possible referral to the Commonwealth Director of Public Prosecutions. Refer to Appendix 3 of this guide for information relating to offences under the Electoral Act.

Information to be disclosed in the third party return of political expenditure

Part 1: Political expenditure for financial year 1 July 2017 to 30 June 2018



Section 314AEB(1) of the Electoral Act requires that **political expenditure** incurred during the 2017–18 financial year for one or more of the five specified purposes and totalling more than the disclosure threshold must be disclosed.

Amounts less than the disclosure threshold are to be disclosed for each individual purpose if the total amount for **all** five purposes exceeds the disclosure threshold.

Expenditure for purposes other than the five categories listed is not political expenditure and is not required to be disclosed.

Part 2: Gifts received for political expenditure for financial year 1 July 2017 to 30 June 2018



Section 314AEC(2) of the Electoral Act requires that where a person receives a gift or gifts from the same person/entity totalling more than \$13,500, and the person then uses the gift/s (either wholly or partly) to incur political expenditure or reimburse such expenditure, each such gift must be disclosed.

This part of the return applies to a third party:

- who is required to complete the 'Political expenditure for financial year 1 July 2017 to 30 June 2018 part of the return
- who (whether within the 2017–18 financial year or not), received gifts/donations totalling more than \$13,500; **and** used that gift/donation, or part of it, to incur political expenditure reported in Part 1; or reimburse such expenditure.

These gifts/donations may have been received at any time, and not necessarily in the 2017–18 financial year.

Where a gift/donation of more than \$13,500 was received and used, in whole or in part, to incur political expenditure or reimburse such expenditure the following details must be disclosed in the return:

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

In the case of gifts/donations received from or on behalf of members of an unincorporated association (other than a registered industrial organisation), the name of the association and the name and address of **all** members of the executive committee of the association must be disclosed.

In the case of gifts/donations received from a trust or foundation, the title or description of the trust or foundation, along with the names and addresses of **all** trustees must be disclosed.

In any other case, the name and address of the person or organisation that made the gift/donation must be disclosed.

If no gifts/donations for political expenditure were received, Part 2 of the return should be marked 'nil'.

Period covered

Unlike the disclosure of political expenditure which is limited to the 2017–18 financial year, gifts/donations used to fund that expenditure must be disclosed even where they were received prior to 1 July 2017.

The following example may assist in clarifying the disclosure requirements when political expenditure is made in the 2017–18 financial year using gifts/donations that have been received in prior years:

- a third party received a gift of \$15,000 in the 2016–17 financial year
- in the 2017–18 financial year the third party incurred political expenditure of \$13,500.

As the third party has incurred political expenditure that is more than the disclosure threshold, the third party is required to disclose the expenditure in 'Part 1–Political expenditure for financial year 1 July 2017 to 30 June 2018' of the return.

- To make the political expenditure of \$13,500 in the 2017–18 financial year, the third party used part of the \$15,000 gift received in the 2016–17 financial year.

As the third party has used a gift – received in a previous financial year and which was more than \$13,500 – to make political expenditure in the 2017–18 financial year, the third party is required to disclose the gift in Part 2 of the return.

If in a subsequent financial year to the 2017–18 financial year, the third party used the remaining part (\$12,000) of the \$15,000 gift received in the 2016–17 financial year together with another gift to make political expenditure, and the political expenditure is

greater than the disclosure threshold for that financial year, the third party will be required to disclose the \$15,000 as a gift received in the subsequent financial year's return. In this situation, the third party should include an explanatory note on the subsequent financial year's return that the gift has been disclosed previously.

Incomplete returns

Where a third party is unable to obtain all the information required to fully complete a return, a Notice of Incomplete Return **must be completed** and lodged with the Third Party Return of Political Expenditure.

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

- complete the Third Party Return of Political Expenditure as fully as possible
- complete the Notice of Incomplete Return
- lodge the Notice of Incomplete Return and the incomplete Third Party Return of Political Expenditure with the AEC at the same time.

The Notice of Incomplete Return contains three parts:

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

Part 2 – requires:

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

Part 3 – requires:

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

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

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

It is the responsibility of the person seeking to rely upon a Notice of Incomplete Return, to prove that they have been 'unable' to obtain the required information. The AEC needs to

be satisfied that all reasonable attempts have been made to obtain the missing information before it accepts a Notice of Incomplete Return.

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

Amending 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. Amendments are processed through eReturns.

The Request for Amendment – Third Party Return of Political Expenditure should show the additions, deletions or variations from the information provided on the original return.

In order to avoid confusion or ambiguity when completing a Request for Amendment – Third Party Return of Political Expenditure, the record/s being changed should be clearly identified.

Administration

Date for public inspection of annual returns

Annual returns are made available for public inspection on the first working day of February each year.

Returns can be viewed:

- at <http://periodicdisclosures.aec.gov.au/>
- through public access terminals in AEC State Offices located in each state and territory capital city
- through public access terminals at the AEC National Office in Canberra.

Record keeping

Third parties 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.

Examples of source documents are could be:

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

A third party should also ensure they have complied with the requirements of sections 328, 328A and 328B (repealed 14 March 2018) and section 321D (from 15 March 2018) of the Electoral Act and subclause 4(2) of Schedule 2 of the *Broadcasting Services Act 1992*.

For the purposes of disclosure as described in Part XX of the Electoral Act, relevant records, whether formal or informal, should be retained for a minimum of three years. Receipt books, bank records, receipts registers, source documents and working papers supporting the completion of the return should be kept for this period.

Offences

Sections 315 and 316 of the Electoral Act contain penalty provisions for offences against the funding and disclosure provisions. Refer to Appendix 3 for details of penalties.

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

Appendix 1

Glossary of terms

AEC	Australian Electoral Commission
Associated entity	<p>An entity which:</p> <ul style="list-style-type: none"> ■ is controlled by one or more registered political parties; or ■ operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or ■ is a financial member of a registered political party; or ■ on whose behalf another person is a financial member of a registered political party; or ■ has voting rights in a registered political party; or ■ on whose behalf another person has voting rights in a registered political party. <p>It can include companies holding assets for a political party, investment or trust funds, fundraising organisations, groups and clubs, and trade unions or corporate members of political parties.</p>
Campaign committees	A campaign committee, in relation to a candidate or group, means a body of persons appointed or engaged to form a committee to assist the campaign of the candidate or group in an election.
Debt	Debt is any sum for which a legal obligation to pay exists as at the end of the financial year. It includes loans, mortgages, leases, unpaid invoices and goods and services received but not yet paid for.
Disclosure threshold	Detailed disclosure must be made of receipts totalling more than \$13,500 and debts totalling more than \$13,500 at 30 June 2018. This threshold is indexed annually.
Donor	A person, organisation or other body other than a political party, an associated entity or a candidate in a federal election who is under an obligation to furnish a disclosure return because they made a donation.
Gift or donation	Any disposition of property made by a person to another person, otherwise than by will, and without consideration or with inadequate consideration.

Gifts-in-kind	<p>Non-cash donations. For example, receipt of an asset or service, discounts other than in the normal course of business and non-commercial or excessive payment for goods or services (including membership). Gifts-in-kind must be disclosed for an amount that reflects the fair value, that is, normally the commercial or sale value of the item or service.</p> <p>Examples of gifts-in-kind:</p> <ul style="list-style-type: none"> ■ the donation of legal advice by a solicitor ■ the donation of the use of premises to conduct campaign activities.
Indexation	<p>The disclosure threshold is indexed to the All Groups Consumer Price Index. A listing of past disclosure thresholds is available on the AEC website.</p>
Joint Senate group	<p>A Senate group endorsed by more than one political party.</p>
Party unit	<p>A party unit, 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. Sometimes known as campaign committees.</p>
Period of disclosure	<p>Annual returns cover a financial year that is, the period from 1 July to 30 June.</p>
Public inspection	<p>Disclosure thresholds are available for inspection by the public at http://periodicdisclosures.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. Annual returns are available from the first working day in February each year.</p>
Registered political party	<p>For the purpose of this guide, this terms means 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 office does not confer federal registration.</p>

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 <p>the first-mentioned body and the other body are ‘related’ to each other.</p> <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>
The Electoral Act	<p>The <i>Commonwealth Electoral Act 1918</i>.</p>
Third party	<p>Third party is a generic term used to describe a person or organisation other than a political party, candidate, senate group or donor, who incurs political expenditure or who received gifts to make such expenditure.</p> <p>An example of an organisation which may have an obligation to complete a Third Party Return of Political Expenditure might be an organisation such as GetUp! (which has the broad aim of ‘increasing democratic participation’, but which is not officially linked to one political party).</p>

Volunteer labour

A service provided free of charge to a party by an office holder of the party or a party member, or 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.

Examples of volunteer labour could include:

- the donation of legal advice by a solicitor who is a party member
- a person handing out how-to-vote cards.

Appendix 2

Disclosure Legislative Reference Guide

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

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

The following sections underpin the financial returns disclosure scheme:

Candidate (including Senate group member) election period returns

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

Senate group election period returns

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

Donor election period returns

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

Donor annual returns

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

Third party annual returns

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

Associated entity annual returns

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

Political party annual returns

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

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

- Unlawful gifts—s 306
- Unlawful loans—s 306A
- Offences—s 315
- Compliance investigations—s 316
- Incomplete information—s 318
- Amendment of returns—s 319A
- Public inspection of returns—s 320

Appendix 3

Penalties relating to the Commonwealth disclosure scheme

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

Appendix 4

eReturns

The [eReturns portal](#) allows political parties, associated entities, donors and third parties to fulfil their obligations under Part XX of the Electoral Act. By preparing and lodging disclosure returns electronically the need to re-key data is eliminated and ensures that information is accurately reported on the AEC website when returns are made publically available.

To use the eReturns portal you need an account with a unique username and password. Third parties receive their username and password with their obligation letter as they are identified. Third parties can register online before they receive an 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.