



# Australian Electoral Commission

## Election Funding Guide

2016 Federal Election

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# Introduction

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

The two arms of the funding and disclosure scheme were introduced together in 1984 as complementary initiatives to address concerns over the potential influence of private money in the electoral process. The objective of the funding and disclosure scheme was to increase overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process while also establishing a base of public funding for political parties and candidates contesting Federal Elections.

## The Guide

This version of the Election Funding Guide applies to the 2016 Federal Election.

Additionally, 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 Act. These publications are:

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

The Election Funding Guide provides information about the public funding of Federal Election campaigns. It should be noted that in the interpretation and application of the provisions in Part XX of the Act relating to election funding, other legislation and other sections of the Act, together with legal precedents, may be relevant.

While it is intended to be a user-friendly guide to the Commonwealth funding requirements it does not address the whole of the Act. Accordingly, the Election Funding Guide should not be used as a substitute for specific legal advice.

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

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

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

The Act and all guides published by the AEC are available at [www.aec.gov.au](http://www.aec.gov.au).

# Election funding

## Qualifying for election funding

Division 3 of Part XX of the Act deals with election funding. To be entitled to election funding a candidate must receive a least 4% of the formal first preference votes in an election in which the candidate stands. For a Senate group, the group as a whole must receive at least 4% of the formal first preference votes in the Senate election in that state or territory.

## Amount of election funding

Sections 294(1) and (2) of the Act specify the amount payable for each first preference vote given for a candidate in a House of Representatives or for a candidate or group in a Senate election respectively. Further, section 321 provides for these amounts to be indexed each six months in accordance with increases in the All Groups Consumer Price Index.

To determine the election funding entitlement that a candidate or Senate group will be paid, the number of formal first preference votes is multiplied by the indexed election funding rate applicable at the time of the election. The current rate of election funding is published on the [AEC's website](#).

The election funding rate applied to the 2016 Federal Election is **\$2.62784**.

## Payment of election funding

Section 299(5D) provides that the AEC is required to pay at least 95% of the election funding entitlement calculated on the basis of the votes counted as at the 20<sup>th</sup> day after the polling day in the election. This payment must be made as soon as possible after that 20<sup>th</sup> day, which normally sees payments processed in the fourth week after polling day. The balance must be paid as soon as possible after the amount of the full entitlement is known, in other words, upon the finalisation of the vote count.

Section 299(1)(d) of the Act provides that payment of an election funding entitlement in respect of a candidate or candidates endorsed by a registered political party be made to the agent of the State branch of the party in the State or Territory in which the candidate or candidates stood for election.

Section 299A(1) of the Act provides that these payments of election funding entitlements must be made either:

- electronically into a bank account nominated by the party for the purpose; or
- by cheque payable to the registered political party.

Section 299(2) of the Act provides that payment of an election funding entitlement in respect of an unendorsed candidate (for example, an 'independent' candidate) be made to the agent of the candidate. Section 299(3) provides that payment of an election funding entitlement in respect of a Senate group be made to the agent of the group. Where no agent is formally appointed, payment will be made to the candidate or, in the case of a Senate group, to the first-listed candidate in the group. Appendix 3 of this guide provides advice on appointing a candidate or Senate group agent.

Payments of election funding entitlements to unendorsed candidates or Senate groups or where no agent has been appointed will be made by cheque direct to the candidate or lead candidate in the Senate group.

### Direct deposit into party bank account

Section 299A(2) provides that a bank account nominated by a party for the purpose of payment of election funding entitlements must satisfy the following conditions:

- the account must be maintained by the party
- the account must be with a bank or other authorised deposit-taking institution, a full list of which is available at: <http://www.apra.gov.au/ADI/ADIList.cfm>
- the account must be kept in Australia
- the account name must consist of, or include:
  - I. if the account is maintained by a registered political party—the name of the party as it appears in the Register of Political Parties; or
  - II. if the account is held by a State branch of a political party, and the branch is not a registered political party—the name of the State branch.

The AEC may require evidence that the nominated account meets the above mentioned conditions, for example an original account statement.

Where an account is not nominated, payment is made by cheque made out to the registered political party or State branch of the political party, and posted to the relevant party agent.

Section 299A(4) of the Act allows the AEC to approve special abbreviations of registered political parties' names to be used for the purpose of clearly identifying the payee on cheques issued.

## Redirection of payments

Section 299 of the Act contains a number of provisions that allow the election funding entitlements due to one party to be paid to another party.

### By agreement

Section 299(5A) provides that a political party may elect to have their payment of election funding entitlements diverted to another party or branch at the request of the agents of the parties or branches involved. Section 299(5B) provides that a notice requesting to have the payment of election funding entitlements diverted must be made to the AEC before polling day in an election, and it:

- must be signed by the agent of each registered political party or State branch of the party specified in the notice; and
- remains current for all elections until revoked by written consent of the agents of the parties involved.

### Designated federal party

Section 287B(2) of the Act provides that a registered officer of a registered political party that has 2 or more State branches may give written notice to the AEC that the party chooses to be treated as a designated federal party. A choice under section 287B(2) may be revoked by the registered officer by providing written notice to the AEC. A choice under section 287B(2) must not be revoked during the period:

- beginning at the start of the polling day for an election; and
- ending on the 14<sup>th</sup> day after the day on which the writ for that election is returned.

Section 299(1)(bb) of the Act provides that where a party has chosen to be treated as a designated federal party, the election funding entitlements of the party and of all its State branches will be paid to the designated federal party. Section 299(5H) of the Act allows the registered officer of that party to give written notice to the AEC specifying percentages of payments to be apportioned between the registered political party and its State branches. A notice under section 299(5H) is required to be lodged before polling day for an election.

### Special provisions

Various sub-sections of 299 of the Act outline the arrangements relating to the payment of election funding entitlements to the Liberal Party and its State branches. The sub-sections that apply to the Liberal Party and its State branches are similar in operation to those sub-sections that govern designated federal parties.



Section 288A of the Act provides the Australian Democrats with the option to appoint a principal agent and, where a principal agent is appointed, section 299(1)(c) requires all election funding entitlements to be paid to that principal agent.

### Joint Senate groups

Sections 299(4)(ac)(i), (ad)(i), (ae)(i), (af)(i) and (b)(i) provide that a joint Senate group (a group that includes candidates endorsed by different political parties) may agree to split election funding entitlements between the endorsing parties. To be effective, section 299(5) provides that such agreements must be:

- signed by the agent of each party involved in running the joint Senate ticket; and
- lodged with the AEC before the 20<sup>th</sup> day after polling day.

If no agreement is lodged, the AEC will determine the division of the election funding entitlement.

### Death of a candidate

Section 300 of the Act provides that an election funding entitlement may still be paid even if a candidate dies during the course of the election. For endorsed candidates, payment will continue to be made to the registered political party. For unendorsed candidates, payment is made to the candidate's agent or, if they had not appointed an agent, to their legal personal representative.

### Death of member of Senate group

Section 301 of the Act provides that election funding entitlement may still be paid, to a Senate group even if a member of the group dies during the course of the election.

In the case of an unendorsed Senate group without an appointed agent, where the lead candidate dies payment is made to the next listed member of the group.

### Overpayments and payments in error

Section 299(6) provides that where a payment of election funding is made and a person, registered political party or State branch of the party is not entitled to receive the amount paid, that part of the payment to which they were not entitled is recoverable by the Commonwealth.

# Appendix 1

## Glossary of terms

|                      |   |
|----------------------|---|
| AEC                  | Australian Electoral Commission   |
| Associated entity    | <p>An organisation which:</p> <ul style="list-style-type: none"> <li>■ is controlled by or operates to a significant extent for the benefit of one or more registered political parties; or</li> <li>■ is a financial member of a registered political party, or on whose behalf another person is such a member; or</li> <li>■ has voting rights in a registered political party, or on whose behalf another person has such voting rights.</li> </ul> <p>It can include companies holding assets for a political party, investment or trust funds, fundraising organisations, groups and clubs, and trade unions or corporate members of political parties.</p> |
| Campaign committees  | A campaign committee, in relation to a candidate or group, means a body of persons appointed or engaged to form a committee to assist the campaign of the candidate or group in an election.  |
| Disclosure threshold | The disclosure threshold for the 2016 Federal Election is for amounts of more than \$13 200.  |
| Donor                | A person, organisation or other body other than a political party, an associated entity or a candidate in a Federal Election who is under an obligation to furnish a disclosure return because they made a donation.  |

|  |   |
|--|---|
| Election funding                         | Public funding received by a candidate or Senate group in relation to an election where the candidate or Senate group obtained at least 4% of the first preference vote in the division or the state or territory they contested.   |
| Entitlement relating to election funding | The entitlement to election funding is calculated by multiplying the number of votes obtained by the current election funding rate  |
| General election                         | A general election of the members of the House of Representatives.  |
| Gifts                                    | Any disposition of property made by a person to another person, otherwise than by will, and without consideration or with inadequate consideration.   |
| Gifts-in-kind                            | <p>Non-cash donations for example, receipt of an asset or service, discounts other than in the normal course of business and non-commercial or excessive payment for goods or services (including membership). Gifts-in-kind must be disclosed for an amount that reflects the fair value, that is, normally the commercial or sale value of the item or service.</p> <p>Examples of gifts-in-kind:</p> <ul style="list-style-type: none"> <li>■ The donation of legal advice by a solicitor.</li> <li>■ The donation of the use of premises to conduct campaign activities.</li> </ul> |
| House of Representatives election        | An election of a member of the House of Representatives.  |
| Indexation                               | The disclosure threshold is indexed to the All Groups Consumer Price Index. A listing of disclosure thresholds is available on the AEC website at <a href="http://www.aec.gov.au">www.aec.gov.au</a> .  |
| Joint Senate group                       | A Senate group endorsed by more than one registered political party.  |

|                            |  |
|----------------------------|--|
| Party agent                | A person appointed by notice in writing to the AEC by a registered political party.  |
| Public inspection          | Disclosure returns are available for inspection by the public at <a href="http://www.aec.gov.au">www.aec.gov.au</a> , 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 Corporations Act 2001 provides that where a body corporate is:</p> <ul style="list-style-type: none"> <li>■ a holding company of another body corporate,</li> <li>■ a subsidiary of another body corporate, or</li> <li>■ a subsidiary of a holding company of another body corporate,</li> <li>■ the first-mentioned body and the other body are ‘related’ to each other.</li> </ul> <p>Transactions of related body corporates should be consolidated when determining whether the disclosure threshold has been reached.</p> |
| Senate election            | An election of Senators for a State or Territory.  |
| Senate group               | Two or more candidates for election to the Senate who made a written request to the AEC with their nominations that their names be grouped on the ballot-paper, or grouped in a specified order.   |
| State branch               | A branch or division of a federally registered political party organised on the basis of a state or territory. State   |

|                  |   |
|------------------|---|
|                  | branches are treated as separate political parties for funding and disclosure purposes.   |
| The Act          | The <i>Commonwealth Electoral Act 1918</i> .  |
| 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>Examples of volunteer labour:</p> <ul style="list-style-type: none"> <li>■ A person handing out how-to-vote cards.</li> </ul> |

## Appendix 2

### Disclosure Legislative Reference Guide

Part XX of the 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 Act contains definitions relevant to the Act as a whole;
- Division 2 deals with the appointment and administration of party agents and candidate agents;
- Division 3 deals with election funding;
- Divisions 4 and 5 deal with the disclosure of 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 or donations for political expenditure; and
- Division 6 deals with offences, compliance reviews, incomplete and amended returns, public inspection and indexation.

The following sections underpin the financial returns disclosure scheme:

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

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

#### **Senate group election period returns**

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

#### **Donor election period returns**

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

#### **Donor annual returns**

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

**Third party annual returns**

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

**Associated entity annual returns**

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

**Political party annual returns**

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

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

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

## Appendix 3

### Appointment and termination of an agent

Section 289(1) of the 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 Act provides that the members of a Senate group of candidates 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 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 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 Act
- have signed a consent to the appointment
- have signed a declaration of eligibility for appointment.

Section 290(1)(b) of the Act requires that for an 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 AEC. 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](#) and [Appoint Senate Group Agent](#) forms are available on the AEC's website at [www.aec.gov.au](http://www.aec.gov.au).

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

**NOTE:** The AEC recommends that a candidate send a notice of appointment directly to the AEC's National office in Canberra rather than handing it to an AEC State or Divisional



office. It is sufficient if the notice of appointment is faxed or emailed to the AEC's national office by the close of nominations.

Section 292C of the 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 AEC. A notice under section 291C(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 AEC.