

Australian Electoral Commission
**Financial Disclosure Guide
for Third Parties incurring
Political Expenditure**

2014–15 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* (the 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 annual or election period financial disclosure returns with the Australian Electoral Commission (AEC).

The disclosure returns are then made available for public inspection.

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 2014–15 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 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 Act.

The Guide for third parties incurring political expenditure provides information derived from the Act as well as from the experiences 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 Act. Accordingly, 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 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 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 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 Act.
	An information symbol indicates a useful tip.
	A timing symbol indicates a due date.

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 Act.

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

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

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

The financial disclosure obligation under the Act

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


Section 314AEB provides that:

- a person who incurs political expenditure for any of the purposes listed in section 314AEB(1)(a)(i) through to (v) during the 2014–15 financial year by or with his or her own authority; and
- the amount of the political expenditure was more than the disclosure threshold; and
- at the time the person gave the authority the person was not:
 - a political party; or
 - a Commonwealth Government Department or Agency; or
 - member of the Commonwealth Parliament; or
 - a candidate in an election; or
 - a member of a group;
- the person must within 20 weeks after the end of the financial year furnish to the AEC a return in the approved form.

Section 314AEC provides that:

- if a person is required to provide a return for the 2014–15 financial year under section 314AEB: and
- the person received at any time a gift or gifts from the same person/entity totalling more than the disclosure threshold, which the person then used (either wholly or partly), to incur or reimburse political expenditure for the purposes listed in section 314AEB(1)(a) during the 2014–15 financial year;

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

	<p>The disclosure threshold for the 2014–15 financial year is for amounts of more than \$12 800. This figure is indexed annually.</p>
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The Third Party Return of Political Expenditure requires disclosure of the following:

- political expenditure incurred for one or more of the five specified purposes listed in **section 314AEB(1)(a)**
- gifts received, that were used to incur such political expenditure.

Purpose of political expenditure

Section 314AEB(1)(a) lists five categories of political expenditure:

- public expression of views on a political party, candidate in an election or member of the Commonwealth Parliament by any means,
- public expression of views on an issue in an election by any means,
- printing, production, publication, or distribution of any material that is required under s328¹, s328A² or s328B³ of the Act to include a name, address or place of business,
- broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992,
- opinion polling and other research relating to an election or the voting intentions of electors.

¹ Section 328 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 of the advertisement.

² Section 328A imposes a similar requirement on electoral advertisements on the internet.

³ Section 328B requires all how-to-vote cards to include the name and address of the person who authorised the how-to-vote card and if the how-to-vote card is authorised by or on behalf of a registered political party or candidate endorsed by a registered political party—the name of the registered political party. Where the how-to-vote card is authorised by or on behalf of a candidate who is not endorsed by a registered political party—the candidate's name, and the word 'candidate' is required to be included on the how-to-vote card.

eReturns portal and where return forms can be accessed

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, environmentally friendly 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's website at www.aec.gov.au. See Appendix 4 for more information.

If a third party is unable to lodge a return online via the eReturns portal the relevant forms may be downloaded from www.aec.gov.au.

Alternatively, third parties can contact the Funding and Disclosure team at fad@aec.gov.au and forms can be emailed, faxed or mailed.

Reports extracted from the third parties accounting system that are in a similar format to the tables in the return and which contain all required information listed below, may be attached to the return as an alternative to transcribing that information onto the return.

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

Reporting period

The return covers the financial year 1 July 2014 to 30 June 2015. 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 from completing and submitting returns.

Due date for lodging returns



Completed returns must reach the AEC National Office in Canberra by 17 November each year. Where 17 November falls on a Saturday, Sunday or public holiday, the return must reach the AEC National Office in Canberra by the next business day.

The AEC has no legislative discretion to extend this deadline.

Returns are made publicly available on the AEC's website on the first working day of February each year.

Penalties

The 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 Director of Public Prosecutions for commencement of legal action. Refer to Appendix 3 of this guide for information relating to offences under the Act.

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

Part 1: Political expenditure for financial year 1 July 2014 to 30 June 2015



Section 314AEB(1) of the Act requires that **political expenditure** incurred during the 2014–2015 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 2014 to 30 June 2015



Section 314AEC(2) of the Act requires that where a person receives a gift or gifts from the same person/entity totalling more than \$12 800, 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 2014 to 30 June 2015' part of the return,
- who (whether within the 2014–15 financial year or not), received a gift/donation of more than \$12 800; **and**
- used that gift/donation, or part of it, to incur political expenditure reported in Part 1; or reimburse such expenditure.

Two or more gifts/donations from the same person during a financial year are taken to be a single gift/donation for these purposes.

The gift/donation may have been received at any time, and not necessarily in the 2014–15 financial year.

Where a gift/donation of more than \$12 800 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 each member 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 the 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

Disclosure of gifts/donations received is not limited to those received during the current reporting period, that is, the 2014–15 financial year. The gifts/donations may also have been received in any financial year prior to the 2014–15 financial year and then used to make gifts/donations in the 2014–15 financial year. This is in contrast to the 'Political expenditure for financial year 1 July 2014 to 30 June 2015' part of the return, where only political expenditure made within the 2014–15 financial year is required to be disclosed.

The following example may assist in clarifying the disclosure requirements when political expenditure is made in the 2014–15 financial year using gifts/donations that have been received in prior years:

Example

- A third party received a gift of \$15 000 in the 2013–14 financial year.
- In the 2014–15 financial year the third party incurred political expenditure of \$13 000.

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 2014 to 30 June 2015' of the return.

- To make the political expenditure of \$13 000 in the 2014–15 financial year, the third party used part of the \$15 000 gift received in the 2013–14 financial year.

As the third party has used a gift—received in a previous financial year and which was more than \$12 800—to make political expenditure in the 2014–15 financial year, the third party is required to disclose the gift in 'Part 2—Gifts received for political expenditure for financial year 1 July 2014 to 30 June 2015' of the return.

If in a subsequent financial year to the 2014–15 financial year, the third party used the remaining part (\$2 000) of the \$15 000 gift received in the 2013–14 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 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 Act is strongly worded, making 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, in fact, 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 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 was incomplete or subsequently found to be incomplete or incorrect. In some cases, the AEC may request that an amendment be lodged to rectify a problem in a return. A Request for Amendment–Third Party Return of Political Expenditure is available at www.aec.gov.au.

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 seen at:

- www.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 should consider the financial recording systems and procedures that are appropriate to their needs and circumstances.

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.

A third party should also ensure they have complied with the requirements of sections 328, 328A and 328B of the Act and subclause 4(2) of Schedule 2 of the *Broadcasting Services Act 1992*.

Retention of records

All 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 must be kept for this period.

Offences

Sections 315 and 316 of the 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 Act. Where there has been a breach of the Act, the AEC may refer matters to the Director of Public Prosecutions.

Appendix 1

Glossary of terms

AEC	Australian Electoral Commission
Associated entity	<p>An organisation which:</p> <ul style="list-style-type: none"> ■ is controlled by or operates 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 such a member; or ■ has voting rights in a registered political party, or on whose behalf another person has such voting rights. <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 \$12 800 and debts totalling more than \$12 800 at 30 June 2015. This threshold is indexed each year.
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	The disclosure threshold is indexed to the All Groups Consumer Price Index. A listing of disclosure thresholds is available on the AEC website at www.aec.gov.au .
Joint Senate group	A Senate group endorsed by more than one political party.
Period of disclosure	Annual returns cover a financial year that is, the period from 1 July to 30 June.
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. Annual returns are available from the first working day in February each year.
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 office 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"> ■ 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	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> .
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:

- 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 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/donations for political expenditure; and
- 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
- Records to be kept—s.317
- 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 Act	Maximum penalty
Failure to lodge a return by the due date	315(1)	Up to \$5 000 for agent of political party Up to \$1 000 in any other case
Lodging an incomplete return	315(2)(a)	Up to \$1 000
Failure to retain records for three years	315(2)(b) and 317	Up to \$1 000
Including false and misleading information in a return	315(3) and (4)	Up to \$10 000 for agent of political party Up to \$5 000 any other person
Providing false or misleading information for inclusion in a return	315(7)	\$1 000
A person convicted of having failed to lodge a return, who continues not to lodge the return	315(8)	Up to \$100 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)	\$1 000
Providing false or misleading information during a compliance investigation	316(6)	\$1 000 or imprisonment for 6 months, or both
Discriminating against a donor	327(2)	\$5 000 or imprisonment for 2 years or both for an individual \$20 000 for a body corporate

Appendix 4

eReturns

The eReturns portal is a website built to allow political parties, associated entities, donors and third parties to fulfil their obligations under Part XX of the Act by allowing them to prepare and lodge their disclosure returns online. By lodging using the eReturns portal the need to transcribe and 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. Party agents of political parties and the financial controllers of associated entities will have a username and password sent to them as part of their obligation letter. Obligation letters to political parties and associated entities are sent out soon after the end of the disclosure period. Donors and third parties will receive their username and password with their obligation letter as they are identified. Alternatively, donors and third parties can register online before they receive 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's website at www.aec.gov.au.

Visit the eReturns Portal

Go to <https://ereturns.aec.gov.au> to start using the eReturns Portal.