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Financial Disclosure Compliance Framework

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# Introduction

The *Commonwealth Electoral Act 1918* (the Electoral Act) contains provisions which set in place a scheme requiring disclosure of certain financial information by participants in the electoral process.

The Commonwealth financial disclosure scheme requires the following participants to lodge financial disclosure returns with the Australian Electoral Commission (AEC) within a specified timeframe and for those returns to be made publicly available:

* registered political parties and state and territory branches of registered political parties
* associated entities
* donors to political parties
* donors to candidates
* third parties that incur political expenditure
* candidates and Senate groups

## This document

The Financial Disclosure Compliance Framework has been developed to provide information on the approach the AEC takes in ensuring that those required to make financial disclosures meet their obligations.

## Audience

The target audience for this document includes:

* staff of the Australian Electoral Commission
* registered political parties and their state/territory branches
* associated entities
* donors to political parties
* third parties that incur political expenditure
* candidates and senate groups
* donors to candidates
* The Special Minister of State
* The Joint Standing Committee on Electoral Matters
* senators and members of the House of Representatives
* voters
* the media
* academia
* The Commonwealth Director of Public Prosecutions

## Further Information

Further information can be found on the AEC’s website: <http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm>

This includes guides for each type of return that is required to be lodged under Part XX of the Electoral Act. The user guides provide detailed information about the legislative requirements relating to the disclosure provisions and how a person who is required to lodge a return can meet that obligation.

The following user guides are available:

* 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 Election Donors
* Funding and Disclosure Guide for Candidates and Senate Groups

Readers should note that neither this Framework nor the disclosure guides can be taken as a substitute for the law. The AEC does not provide legal advice. If anyone is in doubt about the interpretation of the law in a particular circumstance, they should seek their own legal advice.

# Background

The AEC performs a role in providing the public with information which can assist them in participating in the electoral process. As provided by the Electoral Act, the AEC also has the role of making publicly available certain financial information from participants in the electoral process. Such information allows voters to make judgements knowing who funds political parties and to what extent.

To this end, the important components of disclosure as required by Part XX of the Electoral Act are:

* identity – the name and address of the true participants in a transaction, such as the source and recipient of a donation, are clearly identified;
* value – the true value is accorded to a transaction;
* date – a precise date can be important information for the public (e.g. if donations from an entity precede or coincide with the making of a decision).

The aim of openness and transparency in the political financial activity of electoral participants can be undermined by failure in any one of these components.

# Scope

This Framework relates only to the Commonwealth Financial Disclosure Scheme set out in Part XX of the Electoral Act.

# Administering financial disclosure

The AEC has established a section that has the administration of Part XX of the Electoral Act as one of its primary responsibilities. This work includes:

* managing the receipt, processing and publication of financial disclosure returns;
* reviewing a sample of financial disclosure returns to determine whether they are accurate and complete;
* conducting investigations of contraventions, or possible contraventions, of the financial disclosure provisions; and
* conducting investigations of entities to determine whether they are associated entities and therefore have disclosure obligations.

The AEC has been given authority to undertake investigations concerning compliance with the disclosure obligations contained in Part XX of the Electoral Act. This authority was provided to the AEC so that the public may have some assurance that those with disclosure obligations are meeting them.

The elements necessary for disclosures to meet the legislative objectives are:

* timeliness – the lodgement date and the public release date must be met to achieve timeliness; and
* completeness and accuracy – a return should be a complete and accurate representation of the required information.

# Compliance

There are various steps in the AEC seeking to ensure compliance with the financial disclosure provisions of the Electoral Act:

* providing information on the Commonwealth financial disclosure scheme
* identifying those with disclosure obligations
* reminding those who are known to have disclosure obligations of the need to meet them
* checking returns on receipt to see if they appear complete
* conducting compliance reviews of returns
* where appropriate, referring for prosecution those who have not met their obligations.

## Identifying those with disclosure obligations

The following have an obligation to lodge a disclosure return with the AEC:

* registered political parties and their state and territory branches
* associated entities
* candidates and senate groups
* donors to candidates and senate groups
* donors to political parties
* third parties that incur political expenditure.

The AEC, within its powers, actively works to identify and notify those with disclosure obligations. They are identified through various means as described in the following paragraphs.

Registered political parties, state and territory braches of registered political parties, candidates and senate groups are known to the AEC either through a process of registering (political parties) or nominating as a candidate or senate group for a federal election.

Associated entities become known to the AEC through self-identification, identification by a registered political party or another person, or by the AEC making enquiries and or conducting an assessment or investigation of an entity to establish whether it is an associated entity.

Donors to political parties and candidates either self-identify or are identified by the AEC examining the disclosure returns of the recipients of their donation, or through compliance review activity.

Third parties may self-identify. Also, the AEC actively monitors third party activities, state/territory financial disclosure websites, and the media to identify third parties that may have incurred political expenditure required to be disclosed.

## Voluntary compliance

The AEC seeks to achieve voluntary compliance from those with disclosure obligations. A key mechanism for achieving this is the provision of information. Examples include the guides (available on the AEC website), and sending out information to candidate agents and newly registered political parties about their financial disclosure obligations. The AEC also sends out obligation and reminder letters advising known clients of their obligations and the deadlines for lodging returns. The AEC may, at times, use other means (such as email) of reminding those who have disclosure obligations.

The AEC has a secure online return lodgement system (eReturns) to enable easy lodgement of returns, which is supported by the option of using hard copy returns if required. Support and training in the use of the online system is provided.

However, the Electoral Act does not place a responsibility on the AEC to contact persons about their obligation and failure to receive any advice from the AEC does not absolve a person from their responsibility to lodge a return.

Set out below is the current standard reminder process the AEC follows:

* Political Parties
	+ an obligation letter after the end of the financial year
	+ a reminder letter within the last four weeks of the due date for lodging the return
	+ a Failure to Lodge letter in the week following the due date, where applicable
* Associated Entities (those which are known to the AEC)
	+ an obligation letter after the end of the financial year
	+ a reminder letter within the last four weeks of the due date for lodging the return
	+ a Failure to Lodge letter in the week following the due date, where applicable
* Election Donors (those known to the AEC)
	+ an obligation letter as soon as the donor is identified on a candidate or Senate group return
	+ a reminder letter as soon as reasonable after the obligation letter. That is, a period of time is allowed after the obligation letter for the donor to lodge their return before a reminder is sent. A reminder letter will not be sent if the donor is identified within 10 business days of the due date.
	+ a Failure to Lodge letter as soon as possible after the due date
* Annual Donors (those known to the AEC)
	+ an obligation letter as soon as the donor is identified on a political party or associated entity return
	+ a reminder letter as soon as reasonable after the obligation letter. That is, a period of time is allowed after the obligation letter for the donor to lodge their return before a reminder is sent
	+ a Failure to Lodge letter as soon as possible after the due date
* Third Parties that incur Political Expenditure (those known to the AEC)
	+ an obligation letter after the end of the financial year
	+ a reminder letter within the last four weeks of the due date for lodging the return
	+ a Failure to Lodge letter in the week following the due date
* Candidates and Senate Groups
	+ an obligation letter after the end of the gifts received disclosure period, that is, after 30 days from polling day
	+ a reminder letter within the last four weeks of the due date for lodging the return
	+ a Failure to Lodge letter in the week following the due date

For convenience, letters are emailed to recipients where email addresses are known.

A help desk is provided to assist stakeholders with meeting their obligations, including how to complete their disclosure return. If a stakeholder seeks further assistance or if the AEC identifies a need, relevant funding and disclosure staff may provide specific information or training on the disclosure scheme and how stakeholders might meet their obligation.

Where a known stakeholder has failed to meet their disclosure deadline and the AEC has contact details (phone or email), the AEC will endeavour to contact the person to see if they need any assistance to lodge their return.

The AEC also provides eReturns to assist stakeholders to lodge their disclosure return online. This facility prepopulates data that the AEC already has in relation to the stakeholder and allows them to upload data extracted in specific formats from a financial package. This reduces the amount of detail to be entered. Using the eReturns portal eliminates the need to transcribe and re-key data and ensures that returns are reported as lodged on the AEC website when the returns are made publicly available.

On receipt, disclosure returns are checked to see if all required sections have been completed. If information appears to be missing, the person responsible for completing the return will be contacted by the AEC to determine whether a corrected return needs to be lodged.

Also, as part of its compliance review activity, the AEC may identify errors or omissions in returns. The person responsible for completing the return will be advised of these. Opportunity is then provided to the person to correct the return or discuss whether an error or omission has actually occurred before the AEC considers the need to exercise enforcement powers.

The Electoral Act also provides for a person who has lodged a return to request an amendment. This provides them the opportunity to correct lodged returns where they have identified an error or omission.

## Initial compliance assessment

The initial compliance assessment is to check that all the returns expected to be lodged have been lodged and that those returns appear to have been fully and correctly completed. Follow up action will be taken in relation to those returns not received by the due date or which do not appear to contain all the requisite information. Also, returns will be subject to risk analysis to identify any areas that may require closer assessment.

## Formal compliance reviews

The Electoral Act also provides for the AEC to conduct formal compliance reviews on annual political party and associated entity returns lodged with the AEC.

### Authority and purpose

Section 316(2A) of the Electoral Act provides an authorised officer with the authority to find out whether a prescribed person, the agent of a political party, or the financial controller of an associated entity has complied with their obligations under Part XX of the Electoral Act.

### Authorised officers

An ‘authorised officer’ is a person who has been formally authorised by an instrument, signed by the Electoral Commissioner on behalf of the Electoral Commission, as provided by s 316(2).

Section 316 of the Electoral Act provides an authorised officer the authority to issue notices requiring the production of documents or other things within the time specified or to appear before the authorised officer at a time and place specified in the notice. The notice can be served personally or by post. These powers enable an authorised officer to undertake compliance reviews and investigations under s 316 of the Electoral Act.

An authorised officer may require evidence to be given under an oath or affirmation and for that purpose the authorised officer may administer an oath or affirmation.

A person is guilty of an offence if they fail to comply with a notice issued under section 316(2A), (3) or (3A) of the Electoral Act. Strict liability applies to such offences.[[1]](#footnote-1)

### Review process

A compliance review is conducted in a number of stages. The first stage involves issuing a s 316(2A) notice(s) and receiving and checking documents. An authorised officer will issue a notice, to the agent of a political party or the financial controller of an associated entity, to provide certain documents required for the conduct of a compliance review to the AEC by the deadline provided in the notice. Depending on the quantity of information requested, the accounting system used by the party/entity, and other considerations, a period of up to four weeks is normally allowed for the records to be collated and delivered to the AEC ensuring compliance with the notice can be easily met with a minimum of disruption to ongoing responsibilities.

Where political parties operate a network of party units, a second s 316(2A) notice may be issued requesting documents and information to be provided on the operations of a sample of those party units. The agent is an intermediary between the AEC and local treasurers, although, after the receipt of those records, the AEC may nevertheless need to contact a party unit treasurer directly seeking clarifications or explanations.

The second stage of the compliance review involves the examination and testing of the records. A compliance review officer will examine the documents requested in the notice to determine whether financial disclosures made in returns are complete and accurate. Compliance reviews are largely performed at the AEC’s National Office. However, where appropriate, compliance review officers can make site visits to the office of the organisation and review other material that may assist in verifying the completeness and accuracy of disclosures.

The final stage is the preparation of a draft report and may involve an exit interview with a party agent or financial controller at either their premises or the AEC’s offices. The party/entity is then provided with an opportunity to comment on the draft report before it is finalised.

### Selection of parties and entities for review

The AEC’s program of compliance reviews is not able to include a review of every political party or associated entity each year. Therefore parties and entities are selected for review based on a risk assessment, professional judgement or random selection.

A risk matrix is used to assess parties and entities across a range of criteria (for example parliamentary representation, size of the entity, results of previous reviews) to determine the relative risk of non‑compliance with disclosure obligations.

A small number of returns are selected based on professional judgement. This category is to ensure that there is a full coverage across different political parties and associated entities. Selections under this category will include:

* those not selected under the risk-based or random selections - selected to achieve a comprehensive and balanced coverage across the range of entity types and party groups;
* linked parties and entities where the financial interrelationship is such that a comprehensive understanding of one return is more effectively achieved by examining the other; and
* parties or entities that have attracted significant public attention via the media or other avenues.

A random sample of returns, not included in the risk matrix selection, will also be identified for inclusion in the compliance review program as a means of authenticating the effectiveness of the risk-based selection methodology. It will also ensure that the entire population of disclosure returns is in scope for a potential compliance review.

### Review “Scope”

Reviews will have either limited coverage (limited scope) or full coverage (full scope) of all disclosures in the return. In considering which returns are to undergo a limited scope or full scope review, a risk based assessment of the likelihood of the return not meeting the legislative requirements is made.

A limited scope review focuses on a specific criteria or aspect of the financial disclosure, for example, receipts above the threshold or movements in debt from previous years. However, in circumstances where the results of the limited scope review indicate material misstatements, or raise general concerns about the reliability of the other disclosed amounts in the return, it will then be considered for expansion to a full scope review.

A full scope compliance review involves an examination of all disclosures in the return using the full criteria for assessment and where applicable incorporates an examination of a sample of party units operating on behalf of a political party.

Where the AEC reviews a party that has party units (sometimes called sub-branches or electorate committees), it also reviews the records of a selection of those party units. During the review the AEC seeks to verify the disclosures of the selected party units that are included in the party’s annual disclosure return.

The AEC may discuss aspects of a party’s accounting system or financial operations with party/entity officials, with a view to understanding what record and reports from the party’s accounting system have been used by the party/entity in collating its return and what records will assist the AEC with its review; however the AEC does not review other aspects of the party’s/entity’s accounting system or financial operations (such as internal controls) during a compliance review.

### Documents examined

When issuing a s 316(2A) notice, the authorised officer will require the person to whom the notice is issued to produce ‘documents or other things’. These may include:

* trial balances
* general ledger extracts
* bank statements, bank reconciliations, deposit listings
* details of gifts in kind
* financial statements
* terms and conditions of all loans outstanding as at 30 June
* creditor listings
* The working documents used by the party/entity in collating the disclosure return which clearly demonstrate how the disclosures were derived.

Where a sample of party units is to be reviewed, the financial records of the party units will be sought.

The above list does not necessarily constitute a final, exhaustive list of the records required for the conduct of the compliance review and further records may be requested. Additional records may be requested if specific issues are identified in the course of the compliance review.

Wherever a political party or associated entity uses computerised accounting software or otherwise maintains or possesses financial records electronically, the AEC will require those records to be provided in an appropriate electronic format, not hardcopy. It is also essential to the efficacy of a compliance review that the integrity of the records provided can be assured.

If, during a compliance review, there is any evidence uncovered or an authorised officer has reason to believe that there may have been a material breach of the disclosure provisions, the authorised officer may:

* undertake further compliance review activities to obtain additional information relating to the breach;
* progress the matter to an investigation; or
* seek assistance from the Commonwealth Director of Public Prosecutions (CDPP) to pursue a prosecution.

**Timeframes**

The AEC sets a reasonable time limit for the party/entity to provide records for a review.

The AEC is mindful of the need to balance the conduct of an effective review against imposing an excessive regulatory burden on the person on whom a notice has been issued.

**Draft compliance review report**

Once the draft report is prepared it is sent to the agent or financial controller. If the compliance review identified that an amendment to a return is required, the draft report provides a period of up to two weeks for the party / entity to make comments on the report and for an amendment to be lodged (if required). If an amendment is received along with any comments on the draft report these will be considered in the preparation of the final report.

### Final report

The final report is generally prepared following the lodgement of any amendment arising as a result of the compliance review. Where applicable, the final report will incorporate any comments from the party or entity on the draft report.

The final reports of compliance reviews of 2015-16 annual returns and onwards, are published on the AEC’s website.

### Failure to amend

If attempts to seek an amendment to a return that was identified through a compliance review have failed, the details about the alleged breach of the disclosure provisions will be included in the final report. The AEC will then determine whether to:

* do nothing. That is, there may not be any public interest in pursuing a minor amendment to a return
* undertake an investigation under s 316(3) of the Electoral Act of the alleged breach; or
* prepare a brief to refer the matter to the Commonwealth Director of Public Prosecutions.

## Investigation of gifts of $25,000 or more

Section 316(2D) of the Electoral Act provides that where there has been a gift of $25,000 or more to a registered political party or candidate, an authorised officer must conduct an investigation of that gift.

The investigation of gifts of $25,000 or more is initially undertaken on data that is available to the AEC from candidates, political parties and their associated entities, and donors. Where it appears that there has been a failure to disclose or correctly disclose the transaction, the AEC seeks to obtain voluntary compliance by contacting the relevant person.

If the AEC’s attempts to seek voluntary compliance have failed, the matter may be referred to the CDPP for prosecution action.

Gifts of $25,000 or more are also investigated as part of routine compliance reviews of political parties and associated entities. This is because part of the testing undertaken during a compliance review is to ensure that all receipts above the threshold have been included in the returns and that the true source of the funds has been disclosed.

## Investigations

Section 316(3) of the Electoral Act provides the AEC with the authority to undertake investigations of contraventions, or possible contraventions, of an offence of the disclosure provisions as set out in s 315 of the Electoral Act.

An investigation under s 316(3) cannot commence unless the AEC has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to matters that are in a return or should be in a return, or a contravention or possible contravention of an offence under s 315 of the Electoral Act. In practical terms, that means the AEC requires some credible evidence in support of an allegation before it can mount an investigation. Allegations, including those made in the media or in Parliament, need to be supported with some evidence rather than hearsay before they can be investigated by the AEC under the authority of s 316(3).

The authority under s 316(3) is broader than the authority provided under s 316(2A) for the conduct of compliance reviews, including allowing the AEC to demand evidence from third parties. Section 316(3) allows the AEC to demand evidence from anyone who has completed a return or is required to complete a return or any other person who may have evidence in relation to a return or offence under s 315.

The AEC undertakes a preliminary assessment of all potential contraventions that come to its attention, whether directly or via other avenues such as media reports, using information from the source of a complaint, and routine inquiries to determine whether an investigation is warranted.

When the outcome of an investigation has been advised to the person/s involved, the AEC may publish its outcomes on its website and include the details of the investigation in its report to the Minister provided after each Federal election (this report is required by s 17(2) of the Electoral Act).

When the AEC receives an allegation of a breach of the disclosure provisions from an external source, an assessment of the materiality of the allegation is made separately from, and only after, an assessment has been made of the evidence provided in support of the allegation.

Where the AEC receives allegations of breaches that are not considered to be material, it will not divert resources to conduct a special investigation under s 316(3). However, the allegations may be investigated as part of the normal compliance review process if the allegation involves a person or entity that is subject to a s 316(2A) compliance review. If a s 316(2A) compliance review of the relevant entity is not scheduled within the next 12 months, a revised risk profile, factoring in the allegation, will be considered during the selection of parties/entities for future review.

## Investigation of entities to determine if they are an associated entity

Section 316(3A) provides that an authorised officer can serve a notice, on a person who is or was at a particular time the financial controller or an officer of the entity, requiring that person to produce documents or other things, or give evidence in relation to whether or not the entity is or was at a particular time an associated entity. However, the authorised officer can only do this where he/she has reasonable grounds to believe both that an entity is or was an associated entity and that a person is capable of producing documents or other things, or of giving evidence relating to whether an entity is or was an associated entity.

In order to identify associated entities, the AEC will, on an annual basis:

* seek a list of current associated entities from each political party;
* review party returns lodged to make an assessment as to whether a listed entity may be an associated entity, and make further enquiries;
* examine political party receipts, debts and other relevant information and documents, to make an assessment as to whether an entity interacting with a party could be an associated entity;
* make enquiries and review associated entities and their relationship with the party they are associated with; and
* analyse other information, such as media reports or complaints, which may come to its attention that indicate that an entity is an associated entity.
* If an authorised officer has a reason to believe that an entity is an associated entity and that entity has not lodged one or more disclosure returns such, a failure may become the subject of an investigation or may be referred to the CDPP for prosecution action.

If an authorised officer has a reason to believe that an entity is an associated entity and that entity has not lodged one or more disclosure returns such, a failure may become the subject of an investigation or may be referred to the CDPP for prosecution action.

If an authorised officer has issued a notice under s 316(3A) to a person to produce documents or other things or to appear before the authorised officer at a time and place specified in the notice, the person may seek a review of the decision by writing to the Electoral Commission within 14 days of receipt of the notice.

If a written request is received by the Electoral Commission it must review the decision as soon as practicable and either affirm, vary or set aside the decision. The Electoral Commission will then notify the person of its decision.

## Public availability

For operational reasons the AEC does not provide any ongoing commentary, including to the source of the allegation, on inquiries and investigations it may be undertaking so as to protect against compromising the investigation. The AEC will, however, provide advice of the outcome of an investigation to parties or entities involved. It may also publish the outcome of the investigation on the AEC website.

# Tip-Off in relation to possible breach of the disclosure provisions

To ensure full transparency of the financial disclosure provisions (disclosure provisions) the AEC must ensure that full disclosure is achieved. To assist the AEC in identifying possible breaches of the disclosure provisions a person can contact the AEC if they are aware of a person or entity that:

* has not lodged a return
* has lodged an incomplete return
* has lodged a return but has included false and misleading information in the return
* has provided false or misleading information for inclusion in a return
* provided false or misleading information during a compliance review.

## Reporting suspected breaches of the disclosure provisions

If a person has any knowledge of an activity that might constitute a suspected breach of the disclosure provisions of the Electoral Act, the AEC needs that information because it may help to achieve full compliance. To report any suspected breach a person can:

* call the AEC's disclosure tip-off line on: 02 6271 4799
* email: fadtipoff@aec.gov.au
* mail:
Tip-off Facility
Funding and Disclosure
AEC National Office
Locked Bag 4007
Canberra ACT 2601

## What information should be provided?

The AEC needs as much information as the person making the tip-off has in relation to the alleged breach of the disclosure provisions. The type of information that will assist the AEC with inquiries is:

* The name of the person or entity?
	+ full name, position, location, party, entity, donor, candidate or third party
* Details of the suspected breach?
	+ failure to lodge a return
	+ lodged an incomplete return (e.g. failed to include a transaction in the return)
	+ has included false or misleading information in their return
	+ provided false or misleading information for inclusion in a return
	+ provided false or misleading information during a compliance investigation
* Details about the alleged breach (such as dates, transactions, documentation etc)
* What are the suspect's contact details?
	+ fixed line, mobile number, email address or postal/residential address
* How you became aware of this matter
* Your name (it is preferable that you provide your name – the AEC will not disclose your details and it will assist us if we need further information)
* Your contact details
	+ fixed line, mobile number and email address

## How will a tip-off be dealt with?

The AEC will assess all information it receives in relation to a possible breach of the disclosure provisions as set out in Part XX of the Electoral Act. The action the AEC will take will depend on whether there is sufficient evidence of a breach having occurred. The AEC may monitor the party, entity or person's ongoing compliance with their disclosure obligations, request information from the party, entity or person who appears to be in breach or a third party who may be able to provide assistance, evidence or information to assist the AEC inquiries.

The AEC will not provide any details of inquiries or investigation that it undertakes in relation to a possible breach of the disclosure so as not to prejudice any possible outcomes. If, however, the AEC conducts a formal investigation the results of the investigation may be made available on the AEC's website at the conclusion of the investigation.

## Frequently asked questions

**What is the purpose of the disclosure laws?**

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.

**Will the AEC conduct an investigation?**

The AEC will only conduct an investigation if there appears to be a breach of the disclosure provisions and has not been able to seek voluntary compliance.

**Will details of a person who provides a Tip-Off be protected?**

See the AEC's [Privacy Policy](http://www.aec.gov.au/footer/Privacy.htm) on the AEC website. The AEC is bound by the provisions of the Privacy Act 1988, (Privacy Act) including the Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for how the AEC handles and maintains personal information. The policy provides a protection of the personal details of any person who provides information in relation to a breach or possible breach of the disclosure provisions.

**Can a person make an anonymous report?**

Yes. However this may limit the AEC’s ability to investigate the matter, particularly where the AEC needs to seek further clarification or information and cannot do so.

**What is the benefit of reporting a breach of the disclosure provisions?**

The disclosure scheme is aimed at providing transparency about where a political party, candidate or third party (a person or entity that incurs political expenditure) receives their funding. Any information the AEC receives assists in ensuring that any person who with an obligation to disclose financial transactions meets their obligations. If the AEC is not able to achieve voluntary compliance, information or evidence received by the AEC may assist in any enforcement action required to achieve compliance.

# Prosecution

Generally prosecutions for summary offences against Commonwealth legislation must commence within 12 months of the offence being committed. However, s 315(11) of the Electoral Act allows for a period of 3 years within which to commence such action for offences set out in s 315.

Any decision about whether a breach or possible breach of the disclosure provisions will be referred to the CDPP will depend on when the breach occurred. That is, if the offence or possible offence is identified as being more than three years old the offence cannot be referred to the CDPP as such a referral would not comply with the Commonwealth Prosecutions Policy.

A further consideration is that s 317 of the Electoral Act provides that a document or other thing that relates to information that is required to be included in a return relating to an election must only be retained for a period of three years from the date of the election day in that election.

The prosecutions policy of the Commonwealth takes into account a range of factors in determining whether a matter should be brought before the courts. While this is a judgement made by the CDPP according to its guidelines, referral by the AEC of matters for possible prosecution will also be guided by the criteria governing the decision to prosecute set out in the Commonwealth Prosecutions Policy. This policy requires the CDPP to consider matters such as:

* whether there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender; and
* whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued.

If the AEC considers that the CDPP would not proceed to prosecute a matter because it failed these tests, the AEC may decide not to refer the matter.

Other factors, such as materiality, may influence an AEC decision on whether to refer a matter for prosecution.

# Penalties

Sections 315 and 316 of the Electoral Act set out the offences and the relevant penalties that relate to Part XX of the Electoral Act. A table summarising these penalties is provided at Appendix 1.

# Recovery of anonymous donations

Section 306 of the Electoral Act makes it unlawful for a political party, a person acting on behalf of a political party, a candidate, a member of a Senate group or a person acting on behalf of a candidate or member of a Senate group to accept a gift/donation that exceeds the disclosure threshold unless the name and address of the person making the gift/donation are known to the person receiving the gift/donation at the time it is made. The person receiving the gift/donation must believe that the name and address of the person making the gift/donation is correct. Where an ‘anonymous’ gift/donation is received, the equivalent amount becomes a debt payable to the Commonwealth.

If the AEC identifies an apparent anonymous gift/donation, the AEC will write to the party, candidate or senate group seeking reasons why the gift/donation should not be considered unlawful.

Where the AEC is not satisfied with the response or if no response is received within two weeks of the letter, the Electoral Commissioner will pursue the recovery of the gift/donation through the courts in accordance with s 315A of the Electoral Act.

# Reporting

The AEC publishes information about its compliance function in its annual report which it furnishes to the Minister each year. It also furnishes a report to the Minister after each election in accordance with s 17(2) of the Electoral Act which includes details about the operation of the funding, disclosure and compliance provisions in relation to that election.

Further general information about the funding and disclosure provisions of the Electoral Act including the AEC’s administration of those provisions can be found on the AEC’s website: <http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm>

# Associated documents

This document refers to the [Guides to the Commonwealth Financial Disclosure Scheme](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm), [Prosecution Policy of the Commonwealth](https://www.cdpp.gov.au/prosecution-process/prosecution-policy) and the [*Commonwealth Electoral Act 1918*](http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/). Electronic copies of these documents can be accessed via the internet by clicking on the document titles.

## Appendix 1: Penalties relating to the Commonwealth disclosure scheme

| Penalties relating to the Commonwealth financial disclosure scheme are: |
| --- |
| **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 partyUp to 10 penalty units in any other case |
| Lodging an incomplete return | 315(2) | 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 partyUp to 50 penalty units for any other person |
| Knowingly providing false or misleading information for inclusion in a return | 315(6A) and (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 one 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 to comply with a notice relating to a compliance review or investigation | 316(5) and (5A) | 10 penalty units |
| Providing false or misleading information during a compliance review or investigation | 316(6) | Imprisonment for 6 months, or 10 penalty units, or both |

A penalty unit is currently valued at $210.

1. For ‘strict liability’, see section 6.1 of the *Criminal Code* [↑](#footnote-ref-1)