

Not-for-profit organisations and the Commonwealth Electoral Act

Legal information for not-for-profit community organisations

This fact sheet covers:

- ▶ financial disclosure and registration obligations that may apply to not-for-profit organisations (third parties and significant third parties) under the *Commonwealth Electoral Act 1918 (Cth)*
- ▶ how to make a disclosure as a third party or a significant third party

This fact sheet provides information on the financial disclosure and registration obligations that may apply to not-for-profit organisations under the *Commonwealth Electoral Act 1918 (Cth)*.



Disclaimer

This fact sheet provides information on the *Commonwealth Electoral Act 1918 (Cth)* (**Electoral Act**) and how it might apply to not-for-profit organisations, where those organisations are considered third parties or significant third parties. This information is intended as a guide only, and is not legal advice nor a complete guide on the Electoral Act.

How the Electoral Act applies depends on the circumstances and you may need to get legal advice on your obligations. If you or your not-for-profit organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the [full disclaimer](#) that applies to this fact sheet.

The *Commonwealth Electoral Act 1918 (Cth)* (**Electoral Act**) imposes disclosure obligations on persons and entities that incur 'electoral expenditure'.



What is electoral expenditure?

Electoral expenditure means expenditure incurred for the dominant purpose of creating or communicating 'electoral matter'.

In simple terms, electoral expenditure is expenditure on communications intended to influence voters.

These disclosure obligations can apply to various kinds of entities, including not-for-profit organisations, and can be divided into three levels of disclosure obligations:

Level 1	entities that do not incur electoral expenditure or incur electoral expenditure below the disclosure threshold (\$15,200 for the 2022-23 financial year)	no disclosure required
Level 2	entities that incur electoral expenditure above the disclosure threshold (\$15,200 for the 2022-23 financial year)	basic disclosure obligations (annual filing)
Level 3	entities that incur electoral expenditure above the 'significant third party' threshold (see below for information on the current threshold)	detailed disclosure obligations (annual filing)

**Note**

The disclosure threshold will increase to \$16,300 for the 2023-24 financial year.

Electoral expenditure disclosures are made by submitting an annual return to the Australian Electoral Commission (**AEC**).

**Key concepts covered in this fact sheet:**

- third party
- significant third party (previously called 'political campaigners')
- disclosure threshold
- electoral expenditure and electoral matter
- the Transparency Register



See the [Australian Electoral Commission website](#) for information on third party electoral expenditure, including:

- [financial disclosure](#), and
- [definition of financial disclosure entities](#)

Third parties – disclosing electoral expenditure



What is a third party?

If your not-for-profit organisation incurs electoral expenditure above the disclosure threshold, it may be a third party – unless your organisation is a political entity (which includes state and territory branches of political parties).

Individuals that incur electoral expenditure above the disclosure threshold may also be third parties, except where they are a member of the House of Representatives or the Senate.



Note

A not-for-profit organisation may be a third party. Whether your not-for-profit organisation needs to disclose any electoral expenditure depends on whether the organisation meets the requirements for disclosure explained below.

There are additional rules that apply to significant third parties (also covered below).

Annual returns of electoral expenditure above the disclosure threshold

An organisation must submit an annual return to the AEC for a financial year if the organisation incurs electoral expenditure equal to or more than the disclosure threshold in that financial year.



What is the disclosure threshold?

The disclosure threshold that applies for:

- the 2022-2023 financial year is \$15,200, and
- the 2023-2024 financial year is \$16,300

The disclosure threshold is indexed each year on 1 July to reflect changes in the consumer price index and is published on the AEC website.



What is electoral matter?

Electoral matter is broadly defined and is matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election. This includes influencing voters' preferences when they cast their votes.

For example, a communication that suggests that voters should give their first preference to X, or their last preference to Y, may be electoral matter.

Even a suggestion to vote in a way that results in an informal vote may be electoral matter.

Factors that determine whether particular matter is electoral matter include:

- its **content** – the more explicit the suggestion that voters vote or not vote in a particular way, the more likely it is to be electoral matter, and
- **how close in time it is to a federal election** – the closer in time to a federal election that matter is communicated, the more likely it is to be electoral matter

If your communication promotes or opposes a political entity's policies or positions, or actions of members of Federal Parliament, it's presumed to be electoral matter that has the dominant purpose of influencing the way electors vote in an election. This presumption is rebuttable which means it is up to you to establish that the dominant purpose was not to influence the way voters vote in a federal election. This may capture money spent in creating or communicating material directed to encouraging members of the electorate to lobby federal politicians.

The Electoral Act includes exceptions as to matter that is not electoral matter (and that may set aside the rebuttable presumption), which may be relevant for not-for-profit organisations, such as:

- communications that are part of news reporting, current affairs reporting or genuine editorial content (for instance, the genuine editorial exception may not apply to 'op-ed' pieces and such communications may be electoral matter)
- communications that have a dominant purpose of being satirical, academic, educative or artistic
- private communications between people who know each other (for example, a bulk membership email may not fit into this exception)
- private communications to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration
- communications that are by or to a person who is a Commonwealth public official in that person's capacity as such an official
- communications that take place in the House of Representatives or before a parliamentary committee



Examples of potential electoral expenditure

The following are examples of potential electoral expenditure:

- expenditure on door-knocking activities during an election period – this may involve communicating electoral matter, even if there is no explicit direction on how to vote
- expenditure on election 'scorecards' comparing party policies – these may be electoral matter
- expenditure on staff salaries – this may constitute electoral expenditure, if the staff member's dominant role is to create or communicate electoral matter



The AEC has published a factsheet with some examples of what is and is not electoral matter and electoral expenditure: [Electoral Matter and Electoral Expenditure](#).

It's a good idea to err on the side of caution when trying to decide whether you are communicating electoral matter.

There can only be one dominant purpose for any given communication. For instance, this means a communication that has the dominant purpose of educating an audience on a public policy issue, or raising awareness of, or encouraging debate on, a public policy issue will not be electoral matter, even if it may influence how voters vote.

The test of whether your organisation is communicating electoral matter applies each time the matter is communicated. The test also applies each time the matter is created – in which case, the test depends on

the dominant purpose of the communication at the time of its creation or recreation. For example, a matter that is covered by an exception under the Electoral Act when originally communicated may become electoral matter if recommunicated for the dominant purpose of influencing the way a person votes.

What information do you have to include in your annual return?

If your organisation's electoral expenditure is equal to or above the disclosure threshold, you must submit an annual return to the AEC. Your return must show the total amount of electoral expenditure your organisation incurred.

In working out your total electoral expenditure, your organisation must include electoral expenditure that someone else incurred with your authority, as well as your own expenditure.

Your annual return must also include a statement that your organisation has complied with the rules regarding donations to third parties by foreign donors and the statement must be signed by an officer who has responsibility for ensuring compliance with the Electoral Act (see below).

Annual returns for gifts received and used for electoral expenditure by third parties

As well as an annual return about electoral expenditure, your organisation must also submit information about **gifts** your organisation receives and uses for electoral expenditure. You do not need to disclose gifts or donations unrelated to electoral expenditure.



What is a gift?

A gift is any transfer of property from one person to another, where the recipient does not pay full value for the property.

Examples of gifts include:

- donations
- getting property or services (other than volunteer labour) for free
- getting property or services at a discount, where the discount is a 'special deal' or is more than discounts available under normal commercial arrangements

An annual return is aimed at capturing gifts from Australian donors, as well as gifts from foreign donors (discussed below).

In what circumstances do you have to disclose gifts?

Answer the following questions to work out whether your organisation must disclose gifts:

- Do you need to submit an annual return of your electoral expenditure? (see above)

If not, you do not have to submit an annual return to the AEC for gifts.

- Did you receive any gifts? (see above)

If not, you do not have to submit an annual return to the AEC for gifts.

If you did receive gifts:

- was at least one of the gifts more than (or worth more than) the disclosure threshold, or
- was the total amount or value of all gifts received from an individual person during the financial year more than the disclosure threshold?

If the answer to either of these questions on the value of the gifts is yes, did you use that gift, or part of it, during the relevant financial year to incur the electoral expenditure or to reimburse for that expenditure?

If you did use the gift for an electoral expenditure purpose described above, you must submit an annual return relating to that gift (or gifts) to the AEC as part of your annual return relating to electoral expenditure.



What information about gifts do you have to include in an annual return?

If you received gifts worth more than the disclosure threshold, your annual return must show the details for each gift you received that, on its own, exceeded the threshold.

If you received a number of gifts from an individual person and those gifts in total were worth more than the disclosure threshold, the annual return must show the details of all of the gifts you received from that person, whatever their individual value.

The details to include in the annual return are:

- the date you received the gift
- the full name and address of the person or organisation who gave the gift (see below), and
- the amount of the gift or the value of the gift

The value of a gift may be based on the gift's normal commercial sale value (fair value).

If the gift was received from an unincorporated association (other than a registered organisation), the return must show the name of the association and the name and addresses of all the committee members.

If the gift was received from the fund of a trust or foundation, the return must show the names and addresses of all the trustees of the trust fund or foundation and the title, name or other description of the trust fund or foundation.

If you have disclosed a gift in a previous annual return, you don't have to disclose it again.

Ban on foreign political donations to third parties

Under the Electoral Act, it may be a criminal offence for a third party (such as a not-for-profit organisation) to receive a gift from foreign donors.

Third parties must not receive gifts from foreign donors for the amount or value equal to or above the disclosure threshold, which are then used for:

- the purpose of incurring electoral expenditure, or
- the dominant purpose of creating or communicating electoral matter

In addition, a third party must not receive a gift of an amount or value of \$100 or more from a foreign donor if either of the following applies:

- the third party knows the foreign donor intends the gift to be used to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter, or
- the third party accepted the gift intending to use the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter

A third party may avoid contravening a prohibition against foreign donations where 'acceptable action' is taken within the six week 'acceptable action period' of the gift being made.

Acceptable action can involve:

- an amount equal to the amount or value of the gift being transferred to the Commonwealth, or
- the gift being returned, or an amount equal to the amount or value of the gift being transferred to the donor

In addition to potentially committing a criminal offence, if your not-for-profit organisation contravenes the Electoral Act in respect of foreign donations, your organisation may be liable to pay a civil penalty.

Third parties and the Transparency Register

If your not-for-profit organisation meets the test of a third party, it is not required to register with the AEC (unlike significant third parties, discussed below).

However, a third party will be included on the Transparency Register if it lodges a financial disclosure return for a year (or any of the previous three financial years). Third parties will remain on the Transparency Register for three years following a financial year for which it reports.

Significant third parties – registration and disclosing electoral expenditure

Your not-for-profit organisation may be a ‘significant third party’ (previously called ‘political campaigners’) if your organisation’s electoral expenditure:

- exceeds \$250,000 for a financial year or any one of the previous three financial years
- is at least equal to the disclosure threshold for a financial year, and the electoral expenditure represented at least one-third of the organisation’s revenue for the previous year, or
- during a financial year, the organisation operates for the dominant purpose of fundraising amounts:
 - the aggregate of which is at least equal to the disclosure threshold, and
 - that are for the purpose of incurring electoral expenditure or that are to be gifted to another person or entity for the purpose of incurring electoral expenditure

Your organisation may meet both tests relating to a third party and a significant third party.

If your organisation meets both tests, the third party return is not required to be lodged by a registered significant third party.

Registration of significant third parties

Any person or body who is a significant third party is required to register with and submit annual returns to the AEC.

Once your organisation’s electoral expenditure has reached the threshold for a significant third party (see above), you have **90 days** to register with the AEC. Failing to register within this timeframe may result in a civil penalty.

To register, a significant third party must complete the [application to register as a significant third party form](#).

Details of registered significant third parties are listed on the [Transparency Register](#) established by the AEC.

Annual returns of significant third parties

Significant third parties must submit an annual return within:

- 16 weeks after the end of a financial year, or
- 30 days following that significant party’s registration as a significant third party, for the previous financial year

Significant detail is required in an annual return for significant third parties.

The annual return must include:

- the total amount received by, or on behalf of, the significant third party during the financial year
- the total amount paid by, or on behalf of, the significant third party during the financial year
- the total outstanding amount of all debts incurred by, or on behalf of, the significant third party as at the end of the financial year
- the total amount of electoral expenditure incurred by, or with the authority of, the significant third party
- details of any discretionary benefits received by, or on behalf of, the significant third party from the Commonwealth, a state or a territory during the financial year, and
- the following details in relation to amounts received (including loans) that are more than the disclosure threshold:
 - the full name and address of:
 - a person or organisation who paid an amount
 - an unincorporated association who paid an amount and the association’s committee members

- a trust or foundation who paid an amount and the trust or foundation trustees, and
- if the total of all the amounts received from a single source is more than the disclosure threshold, details of the source (its name and the names and addresses of its executive committee)

Ban on foreign political donations to significant third parties

Under the Electoral Act, it may be a criminal offence for a significant third party to:

- receive a gift from a foreign donor if the amount or value of the gift is at least equal to \$100, and
 - the significant third party knows the donor is a foreign donor, and
 - the significant third party knows that the foreign donor intends the gift to be used to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter
- receive a gift of \$1,000 above the disclosure threshold without obtaining a written affirmation from the donor that the donor is not a foreign donor, and
- receive gifts equal to or above the disclosure threshold without obtaining written affirmation and appropriate information to establish that the donor is not a foreign donor

As with third parties, significant third parties may have an opportunity to address these foreign donation prohibitions where they have taken 'acceptable action' under the Electoral Act, which may involve taking the following action within the six week 'acceptable action period' of the gift being made:

- an amount equal to the amount or value of the gift is transferred to the Commonwealth, or
- the gift is returned, or an amount equal to the amount or value of the gift is transferred to the donor

In addition to potentially committing a criminal offence, if your organisation contravenes the Electoral Act in respect of significant third parties and foreign donations, your organisation may be liable to pay a civil penalty.



See:

- the AEC's [webpage 'disclosure overview of key topics'](#) where the AEC's publication on [Foreign Donations](#) is published
- the AEC's [webpage 'significant parties'](#) where the [Financial Disclosure Guide for Significant Third Parties 2022-2023](#) is published
- the AEC's publication on Foreign Donations for more information on foreign donations

How to submit annual returns

Who is responsible for annual returns?

For **third parties**, the AEC requires a person with appropriate authority and access to financial records to sign the annual return. For example, the AEC suggests a Chief Executive Officer or company secretary. An unincorporated not-for-profit organisation could nominate a person with appropriate authority and access to financial records.

For **significant third parties**, the annual return must be submitted by the nominated financial controller. For companies, financial controller is the secretary of the company. For a trust, this is the trustee. In other cases, the financial controller is the person responsible for maintaining the entity's financial records. Further requirements for the appointment of financial controllers are set out in the Electoral Act.

What form do you use?

An annual return must be lodged using the form produced by the AEC. There are different annual return forms for third parties and significant third parties.

Annual return for third parties

The annual return form for third parties is called the '[Third Party Return of Electoral Expenditure](#)'.

The Third Party Return of Electoral Expenditure form requires:

- details (full legal name and postal address) of the person or organisation who is completing the return, and
- details (name, position, postal address, contact numbers and email address) of the person completing the form on behalf of the person or organisation

The person completing the annual return must certify that:

- the information contained in the return is true and complete
- they have made due and reasonable inquiries of the organisation, and
- they understand it is an offence under the Commonwealth *Criminal Code Act 1995* (Cth) to provide a false or misleading return

The Third Party Return of Electoral Expenditure form includes two parts:

- **Part 1** – for electoral expenditure incurred for that financial year (the specific amount spent must be detailed), and
- **Part 2** – for gifts received for electoral expenditure for that financial year (the specific amount gifted, the date of the gift and the name and address of the donor must be listed)

There is no fee to lodge a Third Party Return of Electoral Expenditure form.



For more information, see the AEC's [webpage 'third parties'](#) where the [Financial Disclosure Guide for Third Parties 2022-2023](#) is published

Annual return for significant third parties

The annual return form for significant third parties is called the '[Significant Third Party Disclosure Return](#)'.

As discussed above, the annual return form for significant third parties requires considerable detail.

The Significant Third Party Disclosure Return is made up of eight parts:

- **Parts 1a to 1c** – business and corporate details of the significant third party (including whether it is a union or part of a group of related bodies corporate)
- **Parts 2a and 2b** – the total amount received by, or on behalf of, the significant third party during the financial year, of all cash, non-cash and gifts
- **Part 3** – details of amounts above the disclosure threshold received in a financial year
- **Part 4** – the total payments made by, or on behalf of, the significant third party for a financial year
- **Parts 5 and 6** – outstanding debts owed by, or on behalf of, the significant third party
- **Part 7** – amounts of electoral expenditure incurred by, or on behalf of, the significant party in the financial year, and
- **Part 8** – discretionary benefits received from the Commonwealth, a state or a territory in a financial year



The financial controller completing the annual return must certify that:

- the information contained in the return is true and complete
- they have made due and reasonable inquiries of the organisation, and
- they understand it is an offence under the Commonwealth *Criminal Code Act 1995* (Cth) to provide a false or misleading return.



To assist in completing this form, the AEC has published a '[Financial Disclosure Guide for Significant Third Parties 2022-2023](#)' on the [webpage 'significant third parties'](#).



Note

The annual return forms and guides are updated each year. Make sure you use the most up-to-date form and guide.

Where do you lodge the annual return?

Annual returns can be lodged either in hard copy and posted to the AEC, or lodged online using the [eReturns portal](#).

Annual return options

- **Hard copy** The AEC publishes hard copy annual return forms for each financial year on the [AEC website](#).
Annual returns can be amended by completing an Amendment form, also on the [AEC website](#).
Forms should be posted to:
Funding and disclosure
Australian Electoral Commission
Locked Bag 4007
Canberra ACT 2601
- **eReturn** The AEC provides for eReturns to be lodged through its [online portal](#).
To lodge a return using the eReturn portal, an eReturn account is required.



Caution

The annual return must **reach** the AEC office by the specified due date, so make sure it's sent with enough time to reach the office.



Tip

Keep records of expenditure relevant to your obligations under the Electoral Act, including, for example:

- tax invoices
- receipts
- salary records
- bank deposit books and cheque butts
- bank account statements
- credit card statements

You must keep records for at least five years.

You don't have to include these records with an annual return, but you may need to verify the information in an annual return.

When must you lodge the annual return?

The Electoral Act requires third parties who are subject to financial disclosure obligations to submit an annual return to the AEC within 20 weeks following the end of the financial year.

Significant third parties must lodge an annual return within 16 weeks following the end of the financial year. However, once registered as a significant third party, a return for the previous financial year must be lodged within 30 days of the significant party becoming registered.

The AEC publishes due dates on its website for [third parties](#) and [significant third parties](#).

What happens if you don't lodge an annual return?

Your organisation may be liable for a civil penalty if it is required to submit an annual return and doesn't do this by the required date. The maximum penalty for third parties may be up to the higher of 60 penalty units (which from 1 July 2023 is an amount of up to \$18,780) or three times the amount not disclosed.

The maximum penalty for significant third parties may be up to the higher of 120 penalty units (which from 1 July 2023 is an amount of up to \$37,560) or three times the amount not disclosed.

Other consequences of failing to comply with the Electoral Act

Failure to comply with the Electoral Act by third parties or significant third parties may result in civil or criminal penalties.

In certain circumstances and in addition to having to pay a criminal or civil penalty, your organisation may be ordered to refund to the Commonwealth amounts wrongfully obtained or made in contravention of the Electoral Act.

The [AEC has published a summary of the circumstances](#) where a failure by a third party or significant third party might result in criminal or civil penalties.

Are annual returns open for public inspection?

Annual returns are published on the first working day of February each year. They can be accessed online on the [Transparency Register](#).

You can also [search the Transparency Register's Annual Returns](#) by name (individual or organisation), electoral expenditure or gifts received. Annual returns are accessible as PDFs.