

FUNDING AND DISCLOSURE GUIDE

Political Donors

2009

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PART A:

OVERVIEW

1. INTRODUCTION

The purpose of this guide is to assist political donors to better understand the requirements of the *Election Funding and Disclosures Act* 1981 (the Act) and Election Funding Regulation 2004 (the Regulation).

This guide provides information based on the processes and procedures adopted and carried out by the Election Funding Authority of New South Wales (the Authority) in the administration of the Act. It provides an explanation of legislation and should be used as a guide. It is not a substitute for the requirements of the Act and Regulation. The guide may not address every particular instance or circumstance. The Authority will provide assistance but not legal advice on specific compliance issues.

Any enquiries should be emailed to enquiries@efa.nsw.gov.au or telephone 1300 135 736.

This publication is one in a series issued by the Authority to assist political donors, political parties, elected members, candidates, groups and other interested persons to understand the provisions of the Act. The series includes:

- *Funding and Disclosure Guide for Parties and Party Agents*
- *Funding and Disclosure Guide for Elected Members and Official Agents*
- *Funding and Disclosure Guide for Political Donors*
- *Funding and Disclosure Guide for Local Government Candidates, Groups and Official Agents*
- *Funding and Disclosure Guide for State Government Candidates, Groups and Official Agents*

All forms and guides are available for download from the Authority's website (www.efa.nsw.gov.au). A list of forms to be used by political donors is located in the Appendix of this guide.

The Act and Regulation are available for viewing on the NSW Government legislation website (www.legislation.nsw.gov.au).

2. RESPONSIBILITIES OF THE ELECTION FUNDING AUTHORITY

The Authority is responsible for:

- administering the provisions of the *Election Funding and Disclosures Act 1981* and Election Funding Regulation 2004;
- the registration of candidates, groups of candidates, official agents and party agents for elections;
- receiving and processing claims for payment for parliamentary election campaigns;
- receiving and processing declarations of political donations and electoral expenditure lodged by or on behalf of political parties, elected members, candidates, groups and political donors;
- receiving and processing declarations of expenditure and claims for payment from the political education fund;
- publishing the declarations of political donations and electoral expenditure on the Authority's website;
- making declarations of political donations and electoral expenditure available for public inspection for up to 6 years after the period in which a declaration was made; and
- conducting random audits of declarations.

Copies of declarations lodged by political donors are published on the Authority's website (www.efa.nsw.gov.au) and are available for inspection by appointment only at the Authority's office in Sydney.

3. CONTACT US

Postal Address:

The Secretary

Election Funding Authority of New South Wales

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Sydney NSW 2001

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Please address all enquiries to the Election Funding Authority, Level 25, 201 Kent Street, Sydney 2000

4. GLOSSARY

ABN	Australian Business Number.
AREA	A local government area for the election of a councillor to a local council.
AUTHORITY	Election Funding Authority of New South Wales.
BY-ELECTION	<p>In relation to state elections – a by-election for the Legislative Assembly in NSW.</p> <p>In relation to local government elections – a by-election for a councillor (including the mayor) of a council of a local government area in NSW.</p>
CANDIDATE	<p>A person nominated as a candidate at a state or local government election, and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for a state or local government election in NSW.</p> <p>With respect to the disclosure of political donations and electoral expenditure, a candidate includes any individual who is given political donations for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future state or local government election in NSW.</p>
DISPOSITION OF PROPERTY	Includes any transaction that diminishes the value of a person's own property and increases the value of the property of another person. Property includes money.
ELECTED MEMBER	A member of the NSW parliament, or a councillor (including the mayor) of a local government area in NSW.
ELECTION	A state or local government election in New South Wales.
ELECTION DAY	The day when electors go to the polling place to vote. Sometimes referred to as polling day.
ELECTORAL EXPENDITURE	Expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election in NSW.
ENDORSED	Endorsed, selected or otherwise accredited to stand as a representative of a political party.
ENTITY	An incorporated or unincorporated body, or a trustee of a trust.
EXPENDITURE	Includes any disposition of property.
GENERAL ELECTION	<p>In relation to State elections – a general election of the Legislative Assembly and a Legislative Council election held concurrently in NSW.</p> <p>In relation to local government elections – a local government election in NSW other than a by-election.</p>

GIFT	Any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.
GROUP	In relation to State elections – a group of candidates for a Legislative Council election in NSW. In relation to local government elections – a group of candidates entered as a group on the ballot paper for a local government area or ward in NSW.
LOCAL GOVERNMENT ELECTION	An election under the NSW <i>Local Government Act</i> 1993 for the office of councillor or mayor under that Act (other than an election of mayor by councillors).
NOMINATION DAY	In relation to an election, means the day by which all candidate nominations in the election must be made.
PARTY	Also known as a political party, a party is a body or organisation having as one of its objects or activities to promote a candidate or a group of candidates for election to the NSW Parliament or a local council.
PERSON	Includes an individual, a corporation and a body corporate or a political organisation.
POLITICAL DONATION	A gift made to or for the benefit of a party, elected member, group or candidate.
POLITICAL DONOR	A person or entity who gives a gift to a party, elected member, candidate or group of candidates or who incurs electoral expenditure.
STATE ELECTION	A Legislative Assembly general election, a Legislative Council election or a by-election for the Legislative Assembly in NSW.

5. OVERVIEW OF THE ACT

One of the main purposes of the *Election Funding and Disclosures Act 1981* is to provide for the compulsory disclosure of the source of gifts (political donations) received by political parties, elected members, candidates groups and political donors and expenditure incurred for election campaigns.

The provisions for the compulsory disclosure of political donations and electoral expenditure were introduced to provide transparency in election campaigning. The Act ensures that the public is made aware of the source of political donations and what use is made of such donations throughout an election campaign.

The Act requires political parties, elected members, candidates, groups and major political donors to lodge a declaration of political donations and electoral expenditure with the Election Funding Authority following the end of each six month reporting period.

A general overview and features of the Act as it applies to political donors includes the following:

5.1 DISCLOSURE REQUIREMENTS

- The disclosure provisions of the Act were amended by the NSW Parliament in 2008. The new provisions provide a transitional reporting period for political donors. This transitional reporting period covers the period from the last declaration lodged by the donor to 31 December 2008.
- Following the period ending 31 December, the reporting periods for political donors are each six month period ending 30 June and 31 December.
- Following each reporting period ending 30 June and 31 December persons and entities that made reportable political donations during the reporting period to a political party, elected member, candidate or group must lodge with the Election Funding Authority a declaration of political donations and electoral expenditure.
- Declarations must show all the details of all reportable political donations made to political parties, elected members, candidates and groups in NSW during the reporting period and any electoral expenditure incurred by the political donor during the reporting period.
- Political donations made to political parties, elected members, candidates and groups include donations of money or a gift, the provision of a service and the purchase of tickets or other items in relation to a fundraising event.
- Electoral expenditure is any expenditure incurred by the political donor that promotes or opposes a party, candidate or group of candidates or has the purpose of influencing the vote at an election in NSW.
- The declaration is also required to show the details of any political donations received by the political donor that were used by the donor to make political donations or incur electoral expenditure.

5.2 OTHER

- Political parties, elected members, candidates and groups are required to issue political donors with a receipt if the donor makes a reportable political donation. The receipt is required to include a statement to advise political donors they are required to disclose political donations to the Authority.
- Declarations lodged by parties, elected members, candidates, groups and political donors are public documents. Declarations are published on the Authority's website and are made available for public inspection by appointment only at the Authority's office in Sydney.
- Penalties apply for breaching the provisions of the Act and/or Regulation and making false statements in a declaration.

PART B:

UNDERSTANDING POLITICAL DONATIONS AND ELECTORAL EXPENDITURE

6. EXPLANATION OF TERMS

6.1 POLITICAL DONORS

Political donors are persons and entities (other than political parties, elected members, candidates and groups of candidates) that make one or more political donations to, or for the benefit of, a NSW political party, elected member, candidate or group of candidates.

Political donors also include persons and entities that incur electoral expenditure. Political donors incur electoral expenditure when the expenditure has the purpose of promoting or opposing a NSW political party, elected member, candidate or group of candidates or has the purpose of influencing the vote at an election.

By incurring electoral expenditure or making political donations, political donors show support for, or opposition to, a NSW political party, elected member, candidate or group of candidates.

Political donors who make reportable political donations or who incur electoral expenditure of \$1,000 or more during a reporting period are required to lodge a declaration with the Authority following that reporting period.

6.2 MAJOR POLITICAL DONORS

Major political donors are persons and entities (other than NSW political parties, elected members, candidates and groups of candidates) that during a reporting period:

- made a reportable political donation of \$1,000 or more to, or for the benefit of, a political party, elected member, candidate or group of candidates in NSW, or
- incurred electoral expenditure of \$1,000 or more.

6.3 POLITICAL DONATIONS

A political donation is a gift made by a political donor to or for the benefit of a political party, elected member, candidate or group of candidates in NSW.

A political donation includes:

- a donation of money to a political party, elected member, candidate or group of candidates in NSW,
- a donation of a gift to a political party, elected member, candidate or group of candidates in NSW,

- a service provided at no charge or at a discounted charge to a political party, elected member, candidate or group of candidates in NSW,
- the purchase of a ticket or other item relating to a fundraising event held by a political party, elected member, candidate or group of candidates in NSW.

Political donations made to a political party include any donations made to a political party in NSW regardless of the purpose of the donation or how the donation is used by the party.

A political donation also includes a gift made to a person or entity (not including a political party, elected member, candidate or group in NSW) which was used by that person or entity to make a political donation or to incur electoral expenditure or to reimburse the person or entity for making a political donation or incurring electoral expenditure.

Some examples of where a gift is made to a political donor include:

- A person or organisation purchases ten tickets for a fundraising event held by a political party at \$1,000 per ticket. The person or organisation receives \$1,000 from each of the ten persons who attend the fundraising event. The amounts paid to the person or organisation from those ten persons constitutes gifts made to the person or organisation.
- A person or organisation holds a fundraising event where the proceeds of the event are donated to a political party, elected member, candidate or group in NSW. The amounts received by the person or organisation from those who purchased tickets for the event constitute gifts made to the person or organisation.
- A person purchases a ticket to attend a fundraising event held by a political party. The person then puts in an expense claim with their employer to be reimbursed for the purchase of the ticket. The amount paid by the employer to the employee constitutes a gift made to the employee.

6.4 REPORTABLE POLITICAL DONATIONS

A reportable political donation is a single political donation of \$1,000 or more made to or for the benefit of a political party, an elected member, a candidate or a group of candidates in NSW.

A political donation of less than \$1,000 is to be treated as a reportable political donation if multiple donations are made by the political donor during a financial year to the same political party, elected member, candidate or group of candidates which in aggregate equal or exceed \$1,000.

For example, if a political donor makes a \$500 donation to a political party in July 2009 the donation is not a reportable political donation. If the same donor purchases tickets for a fundraising event held by the same political party for \$800 in February 2010 it is a reportable political donation because the total amount paid by the donor to the party in the financial year exceeds \$1,000. All other subsequent donations made to the political party by the donor in that financial year are reportable political donations regardless of their value.

A reportable political donation also includes a political donation of \$1,000 or more made by a person or entity to a political donor:

- to enable the donor to make a political donation to or for the benefit of a political party, an elected member, a candidate or a group of candidates in NSW, or
- to reimburse a political donor for making a political donation to or for the benefit of a political party, an elected member, a candidate or a group of candidates in NSW.

6.5 UNLAWFUL POLITICAL DONATIONS

PROHIBITION ON MAKING CERTAIN INDIRECT CAMPAIGN CONTRIBUTIONS

It is unlawful for a person or entity to make any of the following indirect campaign contributions to a political party, elected member, candidate or group of candidates in NSW if the value of the gift exceeds \$1,000 or the total value of the things provided or done by the same person over the same financial year exceeds \$1,000:

- The provision of office accommodation, vehicles, computers or other equipment at no charge or at a charge less than the value of the goods for use solely or substantially for election campaign purposes;
- Making a full or part payment of electoral expenditure for advertising or other purposes that was incurred or is to be incurred by a political party, elected member, candidate or group of candidates (or an agreement to make such a payment); and
- Waiving all or part of a payment of electoral expenditure for advertising that was incurred or is to be incurred by a political party, elected member, candidate or group.

Electoral expenditure for advertising is taken to be incurred by a political party, elected member, candidate or group of candidates if the advertising is authorised by the political party, elected member, candidate or group of candidates.

Indirect campaign contributions that are prohibited do not include providing volunteer labour to a political party, elected member, candidate or group of candidates.

The penalty for making a prohibited indirect campaign contribution to a political party, elected member, candidate or group is a fine of \$11,000.

PROHIBITION ON DONATIONS FROM ENTITIES WITHOUT AN ABN

Political donors are not permitted to accept any reportable political donations from entities without an Australian Business Number (ABN).

If you are an entity without an ABN, political parties, elected members, candidates and groups of candidates are not permitted to accept reportable political donations from you.

The penalty for political donors who accept reportable political donations from entities without an ABN is a fine of \$11,000.

PROHIBITION ON ANONYMOUS DONATIONS

Political donors, political parties, elected members, candidates and groups of candidates are not permitted to accept reportable political donations unless:

- The name and address of the person or entity making the donation is known to the person accepting the donation; or
- When the donation is made, the person or entity making the donation gives to the person accepting the donation his or her name and address; and
- The person accepting the donation has no grounds to believe that the name and address given is not the true name and address of the person who made the donation.

The penalty for accepting an anonymous reportable political donation is a fine of \$11,000.

6.6 ELECTORAL EXPENDITURE

Electoral expenditure is any expenditure incurred by a political donor that has the purpose of directly or indirectly promoting or opposing a political party, candidate or group of candidates in NSW. Electoral expenditure is also any expenditure that has the purpose of directly or indirectly influencing the vote at an election.

Electoral expenditure incurred by a political donor includes but is not limited to:

- Advertising in radio, television, cinemas, newspapers, the Internet, periodicals, billboards to promote or oppose a party, candidate or group of candidates.
- Printing posters, brochures, how to vote material or any other printed election material to promote or oppose a party, candidate or group of candidates.
- Distributing election material that promotes or opposes a party, candidate or group of candidates.
- Holding an election rally which promotes or oppose a party, candidate or group of candidates.
- Paying the costs of travel or accommodation of a candidate.
- Conducting electoral research.

PART C:

DISCLOSING POLITICAL DONATIONS AND ELECTORAL EXPENDITURE

7. DISCLOSURE OBLIGATIONS

A political donor is required to lodge a declaration following the end of a reporting period if during the reporting period:

- A reportable political donation was made by the political donor to a party, elected member, candidate or group of candidates in NSW. That is, a single donation of \$1,000 or more or multiple donations less than \$1,000 each to the same party, elected member, candidate or group of candidates in NSW that are made during a financial year and in total equal \$1,000 or more.
- The total amount of electoral expenditure incurred by the donor is \$1,000 or more.

If there is a reporting period where the political donor has not made reportable political donations or incurred electoral expenditure of \$1,000 they are not required to lodge a declaration with the Authority.

7.1 WHAT ARE THE REPORTING PERIODS

Declarations are required to be lodged for the reporting periods ending 30 June and 31 December each year.

If you are a political donor who lodged a declaration with the Authority following the 2007 state election in NSW your reporting period commenced 24 April 2007 and ended 31 December 2008. In this case, political donors are not obliged to re-disclose any political donations or electoral expenditure they have already disclosed to the Authority.

If you are a political donor who did not lodge a declaration with the Authority following the 2007 state election in NSW your reporting period commenced 27 April 2004 and ended 31 December 2008.

From the reporting period ending 30 June 2009 onwards all reporting periods will be the six month period 1 January to 30 June and the six month period 1 July to 31 December each year.

8. COMPLETING A DECLARATION

8.1 HOW AND WHEN TO LODGE A DECLARATION

Political donors who are required to disclose reportable political donations and electoral expenditure must lodge a declaration by completing the **Declaration of Political Donations and Electoral Expenditure by a Political Donor (EF.680)**.

The declaration is available for download from the Election Funding Authority's website (www.efa.nsw.gov.au) or by contacting the Election Funding Authority.

The Authority produces a new declaration form for each reporting period. Please ensure you always obtain the form relevant to the reporting period in which you are disclosing.

Declarations must be lodged by the due date following the end of a reporting period.

The due date for lodging a declaration following the reporting period ending 30 June is 25 August.

The due date for lodging a declaration following the reporting period ending 31 December is 25 February.

8.2 WHO IS THE PERSON RESPONSIBLE FOR LODGING A DECLARATION

If you are a person who made reportable political donations or who incurred electoral expenditure of \$1,000 or more during the reporting period you are the person who is responsible for lodging the declaration.

If you are an entity who made reportable political donations or who incurred electoral expenditure of \$1,000 or more during the reporting period the person who is responsible for lodging the declaration is:

- the Company Secretary, in the case of a corporation;
- the Trustee, in the case of a Trust;
- the public officer, in the case of an unincorporated association;
- the Secretary, in the case of an organisation.

8.3 HOW TO COMPLETE A DECLARATION

PAGE 1

1. "Name of Political Donor" - If you are a political donor who is a person write your full name. If you are a political donor who is an entity write the full name of the entity.

2. "Address and Australian Business Number of Political Donor" - if you are a political donor who is a person write your full residential address (PO Boxes etc are not permitted). If you are a political donor who is an entity write the full registered or official address of the entity. Entities are also required to write their ABN.

3. "Political donor contact details" - Write your daytime phone number and/or email address to enable the Authority to contact you in an event we need further clarification regarding your declaration.

4. "Declaration" - the person lodging the declaration is required to write their full name, the date and their signature. If you are lodging the declaration on behalf of an entity indicate in what capacity are you lodging the declaration (e.g. if you are the Company Secretary of a corporation write 'Company Secretary').

PAGE 2

Part A – Reportable Political Donations made by the Political Donor

If you made one or more reportable political donations to a political party, elected member, candidate or group of candidates in NSW during the reporting period write:

- The date each donation was made;
- The full name of the political party, elected member, candidate or group of candidates who received each donation, and
- The amount or value of each donation (inc GST).

PAGE 3

Part B – Electoral Expenditure Incurred by the Political Donor

If you incurred electoral expenditure totalling \$1,000 or more during the reporting period write the total amount of electoral expenditure you incurred (inc GST) next to each of the expenditure categories.

Part C – Reportable Political Donations Received by the Political Donor

If, during the reporting period, you received a political donation of \$1,000 or more from another person or entity which you used to make reportable political donation/s to a political party, elected member, candidate or group of candidates or that you used to incur electoral expenditure write:

- The date each political donation was received by you,
- The full name and address of the person or entity who gave the donation to you, and
- The amount or value of each political contribution.

8.4 HOW TO AMEND A DECLARATION

Political donors may amend the details of their declaration. An amendment may include an addition, an alteration, an omission or a substitution.

To lodge an amendment to a declaration political donors are required to complete and lodge with the Authority a **Notice of Amendment to a Political Donor Declaration (EF.693)**.

8.5 REQUESTING AN EXTENSION OF TIME TO LODGE A DECLARATION

If you are unable to lodge a declaration by the due date you may request an extension of time to lodge the declaration.

All requests for an extension must be made by the political donor before the due date for lodgement.

The due date for lodging a declaration cannot be extended by more than 8 weeks passed the original due date for lodgement.

Requests for extension are to be made in writing to the Authority and must include the reason why the extension is requested and a proposed extended due date for lodgement of the declaration.

The Authority will advise the political donor whether or not the extension has been granted and the new date for lodgement.

8.6 PUBLIC ACCESS

Declarations lodged with the Authority are public documents. Declarations may be viewed by appointment only at the Authority's office in Sydney.

In addition, copies of political donor declarations are published on the Authority's website following the due date for lodgement.

8.7 RECORD KEEPING

The Authority advises political donors to keep full and accurate records of all political donations and electoral expenditure to ensure full and accurate disclosure is made.

Corporations that are related to each other (as determined by the *Corporations Act 2001*) are taken to be a single corporation for the purposes of disclosure. Proper records of political donations and electoral expenditure are to be kept to ensure a declaration lodged on behalf of the corporation includes all donations and expenditure pertaining to its related entities.

8.8 FALSE STATEMENTS

A person who makes a statement in a declaration or in a request for an extension of time to lodge a declaration that the person knows is false or that the person does not reasonably believe is true is guilty of an offence.

The maximum penalty is a fine of \$22,000 or 12 months imprisonment, or both.

8.9 FAILURE TO LODGE A DECLARATION

A person who is required to lodge a declaration but who fails to do so by the due date is guilty of an offence.

The maximum penalty is a fine of \$22,000.