



Political finance disclosure under current and proposed thresholds

Proposed amendments to the *Commonwealth Electoral Act 1918* currently before parliament raise the thresholds for political finance disclosure from \$1500 to 'more than \$10 000', raise the limit on anonymous donations from \$1000 to 'exceeds \$10 000', increase the tax deduction for donations, broaden the definition of associated entity and widen the annual reporting requirement to include third parties.¹ The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 also provides for the indexation of the disclosure thresholds and the tax deduction using the Consumer Price Index.

Proposals to increase the disclosure thresholds are not new. In its majority reports into federal elections, the Joint Standing Committee on Electoral Matters has recommended that the thresholds increase to \$5000 (1996), \$3000 (1998) and 'amounts over \$10 000' (2004). The Liberal Party's submissions to these successive inquiries have argued for a \$10 000 threshold. However, these proposals have not gone unchallenged. The Australian Labor Party and Australian Democrats minority reports have opposed the increase. Bills raising the thresholds to \$5000 (1999) and \$3000 (2004) were passed in the House of Representatives, but not in the Senate. This Research Note examines political finance disclosures under the current and proposed thresholds, using the annual returns of the major parties (the Liberal Party, The Nationals and the ALP) for the financial years 1998–99 to 2003–04. This information is available on the [Australian Electoral Commission web site](#).² The Note does not examine the tax deductibility or third-party reporting amendments.

The Note first sets the context for the figures, outlining the disclosure requirements for political parties and the current difficulties with the classification of receipts. It then examines the proportion of a party's total receipts for which details are disclosed under the current threshold and recalculates this figure based on an increase in the threshold to 'more than \$10 000'.³ The Note then explains how donors are able to make multiple payments to parties without triggering the disclosure requirements. It concludes that, should the amendments succeed in encouraging more people to make smaller donations to political parties, the proportion of total receipts for which details are given could decrease.

Disclosure requirements

Under s. 314AB of the *Commonwealth Electoral Act* (CEA), all registered political parties, as well their state and territory branches, must file an annual return to the Australian Electoral Commission (AEC) within 16 weeks of the end of each financial year. This means that a political party's annual

receipts are not contained in a single return; rather, they are divided across the separate returns for the national secretariat and the state/territory branches. As this Note looks to the macro level of the disclosures rather than the micro level, the figures discussed are calculated by adding the figures for each associated party branch to give a total for what the AEC calls a 'related party grouping'.⁴

The return for each party branch must show the total amounts received and paid in the financial year, as well as the total outstanding debt as at 30 June. It must also give details or 'particulars' (that is, names and addresses) for any amount of \$1500 or more that is received or owed.

Classification issues

It is important to note that the 'total receipts' listed in a return is not the total for 'donations' to a party because parties have to disclose all amounts received in a financial year (and supply the details for those above the current \$1500 threshold), irrespective of whether or not the amount is a donation. The CEA uses the term 'gift', rather than 'donation', and s. 287 defines a 'gift' as:

any disposition of property made by a person to another person ... being a disposition made without adequate consideration in money or money's worth.

This means that cash and non-cash (gifts-in-kind) receipts may count as donations, but commercial transactions (such as returns on investments) do not. The Act (s. 287) notes that an 'annual subscription' to a party (for example, a membership fee) is not a donation, nor is public funding.

The CEA does not require parties to distinguish donations from other types of receipts. However, the AEC suggests in its guidelines for political parties that they 'may wish' to provide 'additional clarifying information in those situations where disclosure does not provide a clear picture of the underlying transactions'.⁵

The annual return form includes a 'details' column in which parties can add such information, and the AEC suggests using the classifications 'donations' and 'other receipts'. The latter category includes membership fees, interest on investments, rents and share dividends. It also includes, for example, any amount that the party receives as a refund from a company to which it has paid for services in advance. (That is, if a party pays for its electricity in advance, but pays more than it has to, then the refund is an 'other receipt'.)

Although the AEC asks parties to distinguish between 'donations' and 'other receipts', some party branches do not do so or they do not do so for all receipts, in which case the AEC enters the term 'unspecified' in the 'type of receipt'

field. A difficulty in calculating the total ‘donations’ for a ‘related party grouping’ arises in many of the years under review because some branches of the same party may make the distinction between types of receipt while other branches may not. That said, the amount that is classified as ‘unspecified’ has declined—from a high of \$18.4 million (or 17.9 per cent of the total itemised receipts) in 2001–02 to \$31 288 (or 0.03 per cent of the total itemised receipts) in 2004–05, which suggests that more branches are choosing to categorise their receipts.

An additional problem with calculating the total ‘donations’ is that the categories are open to interpretation and each party—and separate branches of the same party—may interpret the categories differently. That is, what one party (or branch) lists as a ‘donation’, another may list as an ‘other receipt’. For example, some branches may interpret the payment to attend a fund-raising dinner as a ‘donation’, while others may not.

Two other categories appear in the annual returns: ‘public funding’ and ‘subscriptions’. ‘Public funding’ includes Commonwealth election funding and state election funding.⁶ Since 2002–03, branches of the ALP have categorised some receipts as ‘subscriptions’, covering such payments as membership fees, parliamentary levies and affiliation fees.

Interpretation and indistinct categories

To an extent, it does not matter how parties categorise their receipts because they are required to give the details for all amounts of \$1500 or more, irrespective of whether the amount is a ‘donation’. Thus, the system ensures a degree of transparency in that sources of all receipts above the threshold are disclosed to the public.

However, the lack of clarity in the categorisation of receipts limits the information that can be drawn from the returns. An obvious difficulty is that it is impossible to know the exact relationship between the source of an amount and the party. Given that some commentators appear not to understand the distinctions and discuss the itemised receipts as though all are ‘donations’, it may be that incorrect conclusions about the relationship are drawn. For example, when the 2004–05 returns were made public, media reports highlighted the ‘donations’ of, among others, wheat exporter AWB, Robert Gerard and his companies, and tobacco giants British American Tobacco and Philip Morris. Yet analysis of the returns shows that the ‘donations’ totals are not as simple as was reported. In some articles, ‘donations’ and ‘other receipts’ appear to have been conflated to give a total for what is termed ‘donations’, despite the parties having classified some of the payments as ‘other receipts’.⁷ The problem is that the returns provide insufficient information for the public and the media to know the basis for the distinction and therefore the nature of the relationship between the source and the party.

The lack of clarity in the categorisation of receipts also makes it impossible to say with certainty that raising the threshold to \$10 000 ‘would not impact significantly on the dollar amount of donations publicly disclosed’.⁸ Such a claim cannot be made because the current classifications may not correctly categorise donations. That is, some donations may not be

included in the ‘donations’ category because they have been classified as ‘other receipts’ or they have not been identified at all, in which case they are counted in the ‘unspecified’ category.

Raising the threshold

It is important to note the caveats over the categorisations outlined in the previous section when interpreting the data in this section. Table 1 gives the combined disclosure figures for the major parties (including the Northern Territory Country Liberal Party) over the seven financial years from 1998–99 to 2004–05, separated into the various disclosure categories noted above. The table also gives an annual average based on the data for the seven financial years.

Table 1 (opposite page) shows that, in 2004–05:

- the major parties declared total receipts of \$143.7 million
- under the current disclosure threshold of \$1500, they provided details for \$117.8 million (or 81.9 per cent) of the \$143.7 million
- of the \$117.8 million in receipts for which they gave details, they classified \$33.1 million (or 28.1 per cent) as ‘donations’
- if the ‘more than \$10 000’ threshold had applied in 2004–05, the parties would have provided details for \$100.7 million (or 70.0 per cent) of the declared total receipts of \$143.7 million
- of the receipts for which they gave details under the higher threshold, they would have classified \$25.2 million as ‘donations’, which is 25.1 per cent of the total for which they gave details (\$100.7 million) or 17.6 per cent (less than one-fifth) of the total declared receipts of \$143.7 million
- the \$25.2 million classified as ‘donations’ under the ‘more than \$10 000’ threshold represents 76.2 per cent of the \$33.1 million they identified as ‘donations’ under the \$1500 threshold.

The last column of Table 1 gives the average for the parties (based on the seven financial years). It shows that:

- under the \$1500 threshold, details were given for an average 74.7 per cent of the total declared receipts (\$73.5 million of \$98.4 million)
- of the receipts for which details were given, \$23.6 million (32.1 per cent) was classified as ‘donations’
- under the proposed ‘more than \$10 000’ threshold, details for 64.1 per cent of the total declared receipts (\$63.0 million of \$98.4 million) would be given
- of the receipts for which details would be given, \$19.1 million (30.3 per cent) would be classified as ‘donations’ (this \$19.1 million is 19.4 per cent of the total declared receipts of \$98.4 million)
- the latter figure (\$19.1 million) represents 81.2 per cent of the ‘donations’ listed under the \$1500 threshold.

Thus, under the proposed increase in the threshold for disclosure, the average proportion of receipts for which the Coalition and the ALP would disclose details would drop from three-quarters of their total declared receipts (74.7 per cent) to about two-thirds (64.1 per cent).

Table 2 shows the percentages of the receipts that the parties classified as ‘donations’ under the \$1500 threshold that they would disclose under the new threshold.

Table 2. ‘Donations’ disclosed, 2004–05

	\$1500 threshold	> \$10 000	> \$10 000 as percentage of \$1500
ALP	13 930 195	10 974 470	78.8
Liberals	16 438 982	12 212 460	74.3
Nationals*	2 767 970	2 051 251	74.1
Coalition	19 206 952	14 263 711	74.3
ALP/Liberals	30 369 177	23 186 930	76.4

Multiple donations and disclosure

According to s. 305B of the Electoral Act:

(1) If, in a financial year, a person makes gifts totalling \$1,500 or more to:

- (a) the same registered political party; or
 - (b) the same State branch of a registered political party;
- the person must furnish a return to the Electoral Commission within 20 weeks after the end of the financial year, covering all the gifts that the person made to that political party or branch during the financial year.

However, as noted above, the CEA counts the separate branches of a political party—state, territory and national secretariat—as individual entities. For the purposes of the disclosure provisions of the CEA, donations from the same donor to the individual branches of a party are understood to be donations to separate political entities. That is:

- multiple donations to the *same* branch of a political party *are cumulative* for the financial year
- multiple donations where each donation is made to *separate* branches of a political party *are not cumulative*

for the financial year.

Under the current disclosure regime a donor who makes nine donations of \$1499 to the *same* branch of a party is required to lodge a disclosure because the total donation for the financial year to that branch of the party is \$13 491, which is more than the \$1500 threshold. The branch of the party receiving the multiple donations would not have to disclose the details of any of the donations because each is under the \$1500 threshold. (Under s. 314AC of the Act, a party does not have to take amounts of less than \$1500 into account when calculating the total donation of an individual or organisation in a financial year. If a donor makes three donations of \$1499 and two donations of \$4497 to the same branch of the party, the donor has to disclose the total \$13 491, but the party has to disclose the details only of the two donations of \$4497; that is, the donations above the \$1500 threshold.)

A donor who makes a donation of \$1499 to *each* of the nine ALP branches and the eight Liberal branches—a total of \$13 491 for the ALP and \$11 992 for the Liberals—is *not* required to lodge a disclosure because the donations are *not cumulative* across the individual entities and each donation is less than the \$1500 threshold. The individual branch does not have to give the details of the donation because it is below the \$1500 threshold.

In addition, the CEA makes no reference to ‘family grouping’ in terms of disclosure, which means that, whereas for corporations the calculation of donations is on a ‘corporate grouping’ (meaning that the separate divisions of a corporation count as one), the calculation for families is individual. Thus, a husband and wife could each give multiple donations of \$1499 to the branches of a political party and the ‘family’ would not have to lodge a return.

Multiple donations under the higher threshold

Under the proposed ‘amounts above \$10 000’ threshold, a

Table 1. Disclosure figures for the major parties, 1998–99 to 2004–05*

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05	Annual average
Declared total receipts (\$)	124 087 757	56 296 338	62 024 550	132 454 296	85 338 737	84 624 286	143 708 550	98 362 073
Current regime: itemise \$1500 and over								
Donations	37 481 392	14 834 962	17 457 804	25 045 240	15 233 831	21 727 854	33 137 147	23 559 747
Other receipts	25 456 031	17 652 726	20 758 991	26 297 000	27 369 182	35 159 958	43 860 708	28 079 228
Subscriptions					187 632	2 275 731	997 546	494 416
Unspecified		4 171 794	806 876	18 405 512	13 351 212	256 295	31 288	5 288 997
Public funding	32 825 589	1 471 564	26 513	33 359 664	2 902 398	2 174 702	39 730 653	16 070 155
Total of itemised entries	95 763 012	38 131 046	39 050 185	103 107 416	59 044 256	61 594 541	117 757 342	73 492 543
Percentage of declared total receipts which are itemised	77.2	67.7	63.0	77.8	69.2	72.8	81.9	74.7
Percentage of itemised entries classified as donations	39.1	38.9	44.7	24.3	25.8	35.3	28.1	32.1
Proposed regime: itemise over \$10 000								
Donations	31 695 331	13 068 914	13 878 015	20 992 207	11 326 402	17 636 693	25 238 181	19 119 392
Other receipts	23 047 798	14 187 579	17 447 039	23 900 826	23 387 847	27 949 747	34 769 709	23 527 221
Subscriptions					187 632	1 761 320	898 286	406 748
Unspecified		2 756 115	576 711	14 243 498	9 777 834	52 000	17 500	3 917 665
Public funding	32 817 189	1 459 888	22 000	33 335 864	2 902 398	2 168 852	39 720 153	16 060 906
Total of itemised entries	87 560 318	31 472 496	31 923 765	92 472 396	47 582 114	49 568 613	100 643 829	63 031 933
Percentage of declared total receipts which are itemised	70.6	55.9	51.5	69.8	55.8	58.6	70.0	64.1
Percentage of itemised entries classified as donations	36.2	41.5	43.5	22.7	23.8	35.6	25.1	30.3
Percentage of \$1500 donations declared in new regime	84.6	88.1	79.5	83.8	74.4	81.2	76.2	81.2

* Includes Northern Territory Country Liberal Party.

donor could donate the following amounts to the major parties without triggering the disclosure requirements:

- ALP: \$10 000 x 9 branches = \$90 000
- Liberals: \$10 000 x 8 = \$80 000
- The Nationals: \$10 000 x 6 branches = \$60 000.⁹

The amendments proposed in the Bill link the \$10 000 to the Consumer Price Index, which means that, over time, these figures will be larger. As noted above, there is no reference to 'family grouping', which means that a husband and wife could give \$180 000 to the ALP and a combined \$280 000 to the Liberals and The Nationals without having to lodge a disclosure and without the various party branches having to disclose the individual donations.

In addition, the proposed amendment raises the amount in s. 314AC to 'more than \$10 000', which means that parties would not have to disclose individual amounts of \$10 000 or less, even where the cumulative total for a donor is above this amount. Thus, under the proposed change to s. 314AC, a donor who gives the same branch of a party two donations of \$10 000 and two donations of \$20 000 is required to lodge a disclosure for the total \$60 000, but the branch's disclosure would show only the two donations of \$20 000 (a total of \$40 000). Such anomalies in the returns may confuse observers and could limit the capacity of the AEC to cross-check between donor and party returns.

Conclusion

Based on the average for the past seven financial years, the major parties would disclose the details of about two-thirds (64.1 per cent) of their total declared receipts if the threshold were increased to 'more than \$10 000'. Under the current threshold, they disclose the details for three-quarters of their total receipts (74.7 per cent).

However, past figures may not be a useful guide to disclosure under the higher threshold. A higher threshold may encourage existing donors to change their behaviour; they may choose to split their current contributions, thereby negating the need to lodge a return. If all else remained the same, the proportion of receipts for which details are given would decline.

The Joint Standing Committee on Electoral Matters argues in its report into the 2004 federal election that a higher threshold would encourage more individuals and small businesses to make donations to all candidates and parties because it would:

- alleviate the burden of filling in a disclosure for relatively small donations
- ensure privacy for those who wanted to support the party of their choice, but who were afraid of repercussions if their support were made public.¹⁰

The committee also supported the proposition that a higher tax deduction would act as an incentive for more individuals and small businesses to make donations.

If more people were to make donations of \$10 000 or less, then the proportions given in Table 1 would change. If (say) an additional \$10 million were given in this way, then the percentage of total receipts for which details would be given would drop to 58.2 per cent, or just over half.

On the surface, such a change would require 1000 donors to make a donation of \$10 000. However, many of the current rules relating to financial contributions to political parties remain the same. Thus, a donor could give multiple amounts of \$10 000 to separate party branches without having to lodge a disclosure and without each branch having to give the donor's details. Given that the Bill proposes raising the limit on anonymous donations from \$1000 to 'exceeds \$10 000', the branch would not even have to know the details of the donor. Knowing that their details would not be known or disclosed may encourage more donors to make anonymous multiple donations. This scenario suggests that only a few hundred donors would need to make such donations, or to change their behaviour, and the percentage of receipts for which details were disclosed could decrease significantly.

1. The wording for the higher thresholds thus excludes amounts of exactly \$10 000, but captures everything above this figure.
2. The data used in this Note were accessed between 19 January and 2 February 2006.
3. In this calculation, the Note excludes all amounts of \$10 000 and includes any amount above \$10 000.
4. The AEC defines a 'related party grouping' as: 'A group of Parties that have registered with the Australian Electoral Commission as being structurally related to each other.'
5. Australian Electoral Commission, *Funding and Disclosure Handbook for Political Parties*, Commonwealth of Australia, Canberra, 2004, p. 21.
6. *Commonwealth election funding* is an amount paid per vote to those independent candidates, Senate groups and political parties that receive at least 4 per cent of the formal first-preference vote in the division or territory they contested. *State election funding* schemes are in place in New South Wales, Queensland and Victoria, but not in South Australia, Western Australia, the ACT or the Northern Territory.
7. See, for example, D. Crowe, 'Gerard's generosity increased', *Australian Financial Review*, 2 February 2006, p. 4; M. Schubert, 'Party incomes hit record high as donors dig deep', *The Age*, 2 February 2006, p. 8; and S. Burrell, 'Digging deep: the backers who came to the party', *Sydney Morning Herald*, 2 February 2006, p. 4. For comment on the difficulties of interpreting the returns, see E. Sexton, 'Attempt at transparency leaves flow of funds decidedly muddy', *Sydney Morning Herald*, 2 February 2006, p. 4.
8. Senator Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.
9. Adding the Northern Territory Country Liberal Party to The Nationals equation increases the total by \$10 000.
10. Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, Commonwealth of Australia, Canberra, 2005, pp. 47–49.

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