

2010/2011



Elections ACT

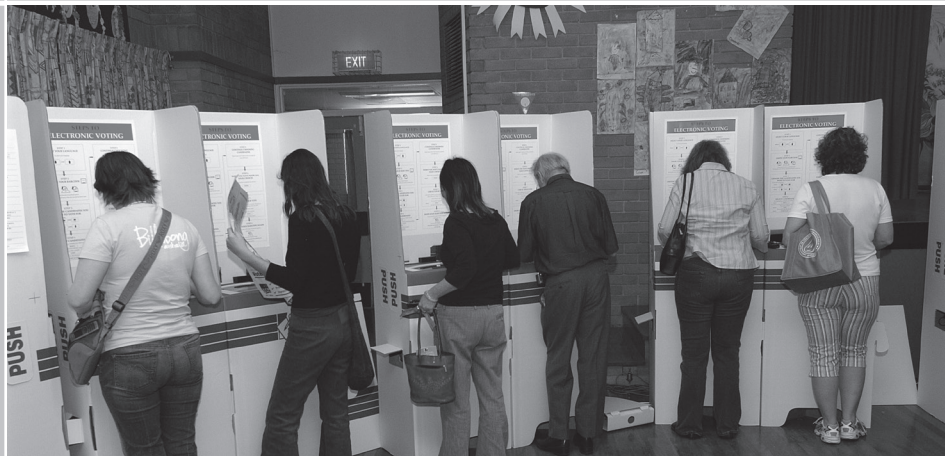


Funding and disclosure handbook for annual returns

2010/2011



Elections ACT



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Introduction

How to use this handbook

This handbook details the obligations in the Australian Capital Territory of registered political parties, Members of the ACT Legislative Assembly, associated entities and third parties to submit annual returns under the electoral financial disclosure provisions of the *Electoral Act 1992* for the 2010/2011 financial year.

The handbook is divided into general sections of interest to all those required to submit annual returns under the ACT's disclosure scheme, with detailed sections dealing with the specific requirements relating to each class of disclosure returns.

The general description of the electoral funding and financial disclosure scheme (see page 3), sets out the major features of the scheme and provides background information as to how and why the scheme operates.

The section on important matters for all those with a disclosure obligation (see page 5) sets out details that are relevant to all those who are required to submit an annual disclosure return.

The section on **reporting agents** (see page 7) is relevant to political parties and MLAs.

Different annual returns are required to be submitted by the following electoral participants. Separate sections of this handbook detail the obligations of:

- ◇ Registered political parties – see page 9;
- ◇ Members of the Legislative Assembly – see page 16;
- ◇ Associated entities – see page 12; and
- ◇ Third parties – see page 19.

Each of these sections details how the disclosure obligations are to be met, how the relevant disclosure return form should be completed and when the return is due for lodgement.

A range of legislative penalties apply to failure to comply with the disclosure requirements. These are set out in the offences section (see page 21).

The glossary section (see page 25) provides an explanation of terms used throughout this handbook and in the forms to be completed.

A summarised description of the different types of returns, including both annual returns (table 1) and election returns (table 2), and a description of the deadlines that apply to the various returns, can be found at pages 21 and 22.

A second handbook - the *Funding and Financial Disclosure Handbook – 2012 Election Returns*, details the obligations of registered political parties, candidates, third parties, broadcasters and publishers with respect to the 2012 ACT Legislative Assembly election.

The handbooks should not be regarded as a final statement of the law on election funding and disclosure. Individuals and organisations are advised to obtain a copy of the Electoral Act from www.legislation.act.gov.au and seek their own legal advice if necessary.

Assistance and enquiries

The ACT's election funding and financial disclosure scheme is administered by the ACT Electoral Commissioner and the staff of Elections ACT.

Assistance on any aspect of the election funding and financial disclosure scheme may be obtained from the staff of Elections ACT.

Enquiries and requests for copies of handbooks should be directed to Elections ACT:

Locality address:

ACT Electoral Commission
Ground Floor, North Building
London Circuit, Civic Square
CANBERRA CITY ACT 2601

Postal address:

ACT Electoral Commission
PO Box 272
CIVIC SQUARE ACT 2608

Phone:

(02) 6205 0033

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(02) 6205 0382

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elections@act.gov.au

Elections ACT Homepage:

www.elections.act.gov.au

What is the funding and disclosure scheme?

This section describes the funding and financial disclosure scheme that operates with respect to ACT Legislative Assembly elections.

Why do we have a funding and financial disclosure scheme?

The funding and financial disclosure scheme has two components — public funding of election campaign expenditure and disclosure of financial transactions by registered political parties, MLAs, associated entities, candidates, third parties, broadcasters and publishers.

A funding and disclosure scheme can facilitate the conduct of free and fair elections by:

- ◇ Enabling parties and candidates to present their policies to the electorate through the provision of public funding;
- ◇ Preventing corruption and undue influence by reducing parties' reliance on private funding through the provision of public funding;
- ◇ Preventing corruption and undue influence through disclosure of the sources of private funding; and
- ◇ Providing transparency in the finances of political participants to inform the electorate of the sources of political funding.

Major features

Some of the major features of the ACT's funding and disclosure scheme are:

- ◇ political parties and candidates qualify for election funding on receiving 4% of the formal first preference votes in an electorate;
- ◇ election funding is paid in proportion to the number of formal first preference votes received;
- ◇ registered parties, MLAs and associated entities are required to lodge annual (financial year) returns disclosing the total amount of receipts, expenditure and debts;
- ◇ registered parties and MLAs are required to disclose names and addresses of persons or organisations from whom \$1000 or more has been received;
- ◇ associated entities are required to disclose the names and addresses of all persons or organisations from whom a payment of any value has been received, unless the payment is for membership fees where the fee is less than \$50 per year;
- ◇ for receipts, in calculating if the threshold amount of \$1000 has been reached, registered parties and MLAs need only take into account receipts of \$1000 or more;
- ◇ registered parties, MLAs and associated entities are required to disclose names and addresses of persons or organisations who are owed \$1000 or more;
- ◇ for debts, in calculating if the threshold amount of \$1000 has been reached, all amounts need to be taken into account;
- ◇ registered parties are also required to submit election returns setting out details of campaign expenditure;
- ◇ registered parties, MLAs and candidates may appoint reporting agents;

- ◇ individuals or organisations who donate \$1000 or more in a year to a registered party, an MLA or an associated entity are required to lodge annual returns detailing donations;
- ◇ individuals or organisations who receive donations of \$1000 or more in a year from a single donor, and who use that donation or donations to make a donation(s) of \$1000 or more to a registered party, an MLA or an associated entity, are required to lodge annual returns detailing the donations received;
- ◇ registered parties, MLAs and associated entities are required to advise donors that they are obliged to submit an annual return to the Electoral Commission;
- ◇ all returns become public documents and are placed on the Commission's website; and
- ◇ the Electoral Commissioner has powers to conduct compliance investigations.

Key information for all those with a disclosure obligation

This section sets out key information for those who are required to complete disclosure returns.

Record keeping

Registered political parties, MLAs, associated entities and third parties need to maintain a minimum standard of record keeping. Without proper records, the ability to prepare an accurate disclosure return may not be possible, and consequently a breach of the Electoral Act may result.

As some returns require that every transaction be disclosed, all transactions should be recorded. Transactions involving gifts-in-kind should have the item or service identified with sufficient detail to provide a basis for a reliable valuation.

The Electoral Act requires that records, formal and informal, used to complete annual disclosure returns, or that might be relevant to completing an annual return (whether disclosed in the return or not) must be retained for a minimum period of 4 years from the time that the return must be provided to the Commissioner.

Accurate recording of information is essential. For example, where the chief executive officer of an organisation makes a donation to a party it must be clearly established at the time on whose behalf the donation is being made – the chief executive officer personally or the organisation – and that the correct details are recorded and subsequently disclosed. Similarly, where a person is merely acting on behalf of someone else, such as through a solicitor's trust account, it is the actual donor whose details should be recorded.

In the case of registered parties, it is in the interest of the party to make all reasonable attempts to ensure that all sections of the party, including candidates, keep adequate financial records.

Inability to complete a return

Where a person cannot obtain all the details needed to complete a return, that person should fill out as many details as possible and give written notice to the Commissioner specifying the details that have not been obtained, the reason the details could not be obtained, the name and address of the person believed to have these details and the reason for that belief.

Lodging returns

All returns must be lodged with the Electoral Commissioner.

The Commissioner will acknowledge receipt of all returns to the address shown on the return.

It is recommended that you keep copies of all returns (and any attachments) submitted.

Public inspection

All annual returns are made available for inspection at the beginning of February in the year following lodgement.

Election returns are made available for inspection from the 25th week after polling day.

Any person may, on request, examine such returns at the Elections ACT office during business hours. A person may also, on payment of a fee, obtain a copy of any such returns.

Returns are also available for inspection on the Elections ACT web site.

Amendments to returns

The Electoral Commissioner may amend a return to the extent necessary to correct a formal error or remove a formal defect.

A person who has submitted a return may request the permission of the Electoral Commissioner to make a specified amendment to the return to correct an error or an omission. The request must be in writing, signed by the person making the request and be lodged with the Commissioner.

If the Commissioner refuses a request to amend a return, the person will be advised by written notice of the reasons for the refusal. The person may request a review of the decision by notice in writing lodged with the ACT Electoral Commission within 28 days after the notice of refusal was given.

Amendment of a return does not affect the liability of a person to be convicted of an offence for submitting an incomplete return, failure to retain records or knowingly submitting false or misleading information in a return.

Compliance investigations

The Commissioner is empowered to conduct investigations into compliance with the financial disclosure provisions of the Electoral Act. In most cases, such investigations take the form of routine audits of financial statements. Reporting agents or their nominees have the right to be present at these investigations.

The Commissioner has the authority to issue an investigation notice requiring the production, within the period and manner specified, of any article referred to in the notice or the appearance of the person to give evidence.

The Commissioner may also apply to a magistrate for a search warrant to enter, search and seize relevant articles.

Reporting agents

This section applies to registered political parties and MLAs.

The ACT's financial disclosure scheme, so far as it affects registered political parties, MLAs and candidates, operates through a system of reporting agents.

Role of reporting agents

The reporting agent of a party or MLA is responsible for furnishing an annual return and certain election returns to the Commission.

The duties of the reporting agent of a party should not be confused with that of the party's "registered officer". A registered officer is primarily responsible for nominating a party's candidates for an election. The reporting agent's responsibility is to furnish financial disclosure returns.

Multiple appointments

A person may hold several appointments as reporting agent. For example, in addition to being the reporting agent of a registered party, the same person may also be the reporting agent for one or more candidates. However, each appointment must be made separately.

Requisites for appointment

A person appointed as a reporting agent must be a natural person at least 18 years of age. Bodies corporate cannot be appointed as agents.

For appointment as an agent, a written notice of appointment setting out the agent's name, address and date of birth may be given to the Commissioner:

- ◇ by the secretary (however described) of the party for appointment as the party agent; or
- ◇ by the MLA for appointment as the MLA's agent.

The person appointed must have consented in writing to the appointment.

The notice of appointment form is available from the Elections ACT website or by contacting its office.

If a reporting agent is not appointed

If a party does not appoint a reporting agent, its registered officer will be taken to be the reporting agent.

If an MLA does not appoint a reporting agent, the MLA is responsible for furnishing their own return.

Register of party and MLA reporting agents

The Commissioner is required to maintain a register of party and MLA reporting agents.

The appointment of a reporting agent takes effect on the entry of the agent's name and address in the register. The appointment ceases to have effect when the name and address of the reporting agent are removed from the register.

The Commissioner will cancel the appointment of a reporting agent if:

- ◇ the person gives to the Commissioner written notice that he or she has resigned the appointment as reporting agent;
- ◇ the secretary of the party informs the Commissioner in writing that the person has ceased to be the reporting agent for the party;
- ◇ the MLA who appointed the agent informs the Commissioner in writing that the person has ceased to be their reporting agent; or
- ◇ it comes to the notice of the Commissioner that the person is no longer able to undertake the duties of a reporting agent.

Change of address

A reporting agent should notify the Commissioner of any change of postal address that occurs after the agent has been registered.

Political party disclosure

This section describes the annual reporting requirements for registered political parties.

Obligations

Registration as a political party under the Electoral Act provides certain rights (such as having the name of the party on ballot papers) but also imposes certain obligations. Among the obligations is the requirement to submit **annual returns** setting out receipts, loans received, payments and debts, and to submit **election returns** of electoral expenditure after each ACT Legislative Assembly election.

Parties **must** appoint a registered officer who is responsible for the submission of the returns. However, a party **may** appoint a reporting agent (see page 7) who, once appointed, takes over the responsibility for submitting the annual and election returns.

The requirements for election reporting by registered political parties are detailed in the *Funding and Financial Disclosure Handbook – 2012 Election Returns*.

The reporting agent of a registered political party is required to lodge an annual return with the ACT Electoral Commissioner setting out receipts, loans received, payments and debts.

Nil returns

Where no relevant amounts apply in a financial year, the Electoral Act still requires the reporting agent to lodge a “nil” return.

Period covered by the return

The annual return covers the financial year from 1 July to 30 June.

However, for those parties that are entered in or removed from the register of political parties during the year the disclosure period will commence from the date the party was registered or end when the party ceased to be registered.

Annual Return for an ACT Legislative Assembly election year

Reporting agents of parties lodging annual returns covering a financial year in which an ACT election has been held should be aware that monies donated to, paid by or owed by a campaign committee for a candidate endorsed by the party are deemed to be made to, paid by or owed by the party, and should be reported in the party’s annual return. If money raised, spent or owed is reported in this way, then the candidate is not required to disclose these amounts in their candidate’s election return (although they must complete a nil return).

Endorsed candidates who have a campaign committee should ensure that the campaign committee provides full details of gifts, payments or debts to the party for reporting in the party’s annual return.

A campaign committee is a body of persons appointed, or engaged, to form a committee to assist the campaign of a registered political party candidate.

Due date

Annual returns are required to be lodged within 16 weeks after the end of the financial year. The Electoral Act does not provide for any extension to the deadline. Failure to furnish the return by the due date is a breach of the Electoral Act.

Return form

The return is to be completed on a form prepared by the Commissioner. The Commissioner will send the forms to the reporting agents at the end of the financial year. Additional forms may also be obtained from the Elections ACT website or by contacting its office.

Alternatively, the party may provide a copy of the audited accounts of the party in a form that has been approved beforehand by the Commissioner.

A political party registered at both the Commonwealth and ACT levels cannot meet its ACT reporting obligation by submitting to the ACT Electoral Commissioner a copy of its Commonwealth return or audited financial statement. All parties registered in the ACT must complete the return provided by the ACT Electoral Commissioner.

Transactions to be reported

Only actual transactions that take place during the financial year are to be reported.

All amounts reported are to be GST inclusive.

Book entries such as accruals (for example, provisions for long service leave, depreciation, and the like) are not required to be reported.

Payments made by cheque should only be reported if they have been presented. Parties operating cheque accounts should undertake a bank reconciliation before completing the return to ensure that only those payments actually made are included.

Gross figures must be used (for example, a fundraising event that took \$1500 with costs of \$1000 for a profit of \$500 should have the full \$1500 included in the total receipts and \$1000 included in the total payments.)

Non-cash transactions must also be included (for example gifts-in-kind). These transactions should be appropriately valued.

While returns require disclosure of transactions above the legislated thresholds, there is nothing to prevent additional information being provided, which may lead to a clearer understanding of the returns.

The reporting agent should ensure all relevant financial transactions of the party, including all party branches, are included in the return. In cases where the reporting agent is unable to obtain all the information required, after reasonable attempts have been made, a statement of what information may be missing and the details of persons who may have such information should accompany the return.

A party is not permitted to accept anonymous donations of \$1000 or more. If such a donation is received, it is payable by the recipient to the Territory. If it is not paid to the Territory, it may be recovered as a debt to the Territory.

Completing the annual return

Receipts

Item 1 on the return

The return must show the total of all receipts received by, or on behalf of, the party during the financial year.

All transactions, including those of less than \$1000, are to be included in the total.

Item 2 on the return

The return must also include the defined particulars of persons, organisations or entities from whom an amount of \$1000 or more was received by the party.

In determining whether the \$1000 disclosure threshold has been reached for amounts received by the party, amounts of less than \$1000 need not be counted.

A loan from a financial institution to the value of \$1000 or more must be disclosed as a receipt from that financial institution. Loans include advances of money, provisions of credit and other transactions or arrangements that in substance amount to a loan of money.

Each transaction on a credit card is to be treated as an individual loan when deciding whether disclosure is required.

Where a loan has been received from a source other than a financial institution, the name and address of the person or organisation from whom the loan was received and details of the terms and conditions of that loan must be disclosed. Such terms and conditions would include the interest rate being charged and the period of the loan.

In the case of a loan received from a registered industrial organisation or an unincorporated association, the name and address of each of the members of the executive committee must be disclosed along with that of the organisation. In the case of a trust or foundation, the names and addresses of the trustees must be disclosed along with the title or description of the trust or foundation.

Where a record of such information is not kept, an amount equivalent to the value of the loan is forfeited to the Territory.

Although not mandatory, a notation to indicate whether each amount received was a gift or other receipt would assist the Commissioner in administering the disclosure scheme.

Payments

Item 3 on the return

The return must state the total amount paid during the financial year, by, or on behalf of, the party.

All transactions, including those of less than \$1000, are to be included in the total.

Debts

Item 4 on the return

The return must show the outstanding amount, at the end of the financial year, of debts incurred by, or on behalf of the party.

All amounts, including those of less than \$1000, are to be included in the total.

Item 5 on the return

The return must also include defined particulars of persons, organisations or entities who are owed a total of \$1000 or more by the party.

In the case of debts, all amounts must be included to determine if the \$1000 threshold has been reached.

Parties must inform donors of reporting requirements

If, in a financial year, a party receives gifts totalling \$1000 or more from the same person, the party must, before 1 August after that financial year, inform that person in writing that the person is required to submit a donor's annual return to the Commissioner.

This requirement may be met by routinely informing donors of the obligation to submit annual returns through the normal receipting process. Where gifts are received but receipts are not issued, such as at fundraising events, parties should take steps to ensure that any donors who donate above the thresholds are notified in writing of the requirements to submit returns.

Associated entity disclosure

This section describes the annual reporting requirements for associated entities.

“Associated entities” is a term used to describe an organisation that is controlled by one or more parties or MLAs; or operates completely or to significant extent for the benefit of one or more registered political parties or MLAs.

Organisations that commonly fall within this definition include:

- ◇ companies that hold assets for a political party or MLA;
- ◇ trust funds or fundraising organisations; and
- ◇ certain groups (or clubs) of which the majority of distributed funds are received by a party, or MLA.

Obligations

The obligation of an associated entity is the requirement to submit **annual returns** setting out receipts, loans received, payments, capital and debts.

The person who performs functions equivalent to the financial controller for the organisation is responsible for completing and lodging the return on behalf of the associated entity.

The financial controller is the person with overall responsibility for the finances of the associated entity — this would normally be the finance executive, accountant or treasurer.

Period covered by the return

The annual return covers the financial year 1 July to 30 June.

Where an organisation fits the criteria of an associated entity for a period less than the full 12 months, it is only required to lodge a return covering that lesser period.

Due date

This return is required to be lodged within 16 weeks after the end of the financial year. The Electoral Act does not provide for any extension to the deadline. Failure to furnish the return by the due date is a breach of the Electoral Act.

Return form

The return is to be completed on a form available from the Elections ACT website or by contacting its office.

An associated entity that has submitted a return to the Australian Electoral Commission cannot meet their ACT reporting obligation by submitting a copy of that return to the ACT Electoral Commissioner. The return provided by the ACT Electoral Commissioner must be used.

Transactions to be reported

With some exceptions listed below, **all transactions** of the associated entity must be included in the return, including any that are not directly associated with a registered political party or MLA (that is, normal business transactions are included, not just transactions which are for or on behalf of a party or MLA). Transactions of any size must be reported as there is no threshold applying to associated entities below which details are not required.

Transactions by subsidiaries of the associated entity (as per the definition of related bodies corporate under the Companies Act) must be included in the return.

Only actual transactions that take place during the financial year are to be reported.

All amounts reported are to be GST inclusive.

Book entries such as accruals (for example, provisions for long service leave, depreciation, and the like) are not required to be reported.

Details of the names of individuals and amounts received from them need not be separately reported where:

- ◇ amounts received from a person or organisation are for membership of the entity, and the sum of the amounts paid for the membership is less than \$50 in a financial year;
- ◇ the associated entity is licensed under the *Liquor Act 1975* and the amount received is for the supply of liquor or food in accordance with the license, and it is not more than reasonable consideration for the supply; or
- ◇ the associated entity is licensed under the *Gaming Machine Act 2004* and the amount received is for the playing of gaming machines in accordance with the license.

Note that amounts received from the above individuals will still need to be included in the **total** amount received.

Payments made by cheque should only be reported if they have been presented. Associated entities operating cheque accounts should undertake a bank reconciliation before completing the return to ensure that only those payments actually made are included.

Gross figures only must be used (for example, a fundraising event that took \$1500 with costs of \$1000 for a profit of \$500 should have the full \$1500 included in the total receipts and \$1000 included in the total payments.)

Non-cash transactions must also be included (for example gifts-in-kind). These transactions should be appropriately valued.

While returns require disclosure of transactions above the legislated thresholds, there is nothing to prevent additional information being provided, which may lead to a clearer understanding of the returns.

The financial controller should ensure all relevant financial transactions of the associated entity are included in the return. In cases where the financial controller is unable to obtain all the information required, after reasonable attempts have been made, a statement of what information may be missing and the details of the person or persons who may have such information should accompany the form.

An associated entity is not permitted to accept anonymous donations of \$1000 or more. If such a donation is received, it is payable by the recipient to the Territory. If it is not paid to the Territory, it may be recovered as a debt to the Territory.

Completing the form

Receipts

Item 1 on the return

The return must show the total of all receipts received by, or on behalf of, the associated entity during the financial year.

All transactions are to be included in the total.

Item 2 on the return

The return must also include defined particulars of persons, organisations or entities who pay or loan any amount to the associated entity.

However, the defined particulars are not required where:

- ◇ amounts received from a person or organisation are for membership of the entity, and the sum of the amounts paid for the membership is less than \$50 in a financial year;
- ◇ the associated entity is licensed under the *Liquor Act 1975* and the amount received is for the supply of liquor or food in accordance with the license, and it is not more than reasonable consideration for the supply; or
- ◇ the associated entity is licensed under the *Gaming Machine Act 2004* and the amount received is for the playing of gaming machines in accordance with the license.

All loans from a financial institution must be disclosed as a receipt from that financial institution. Loans include advances of money, provisions of credit and other transactions or arrangements that in substance is a loan of money.

Each transaction on a credit card is to be treated as an individual loan when deciding whether disclosure is required.

Where a loan has been received from a source other than a financial institution, the name and address of the person or organisation from whom the loan was received and details of the terms and conditions of that loan must be disclosed. Such terms and conditions would include the interest rate being charged and the period of the loan.

In the case of a loan received from a registered industrial organisation or an unincorporated association, the name and address of each of the members of the executive committee must be disclosed along with that of the organisation. In the case of a trust or foundation, the names and addresses of the trustees must be disclosed along with the title or description of the trust or foundation.

Where a record of such information is not kept an amount equivalent to the value of the loan is forfeited to the Territory.

Payments

Item 3 on the return

The return must state the total amount paid during the financial year, by, or on behalf of, the associated entity.

All transactions, including those of less than \$1000, are to be included in the total.

Capital

Item 4 on the return

Where any payment during the reporting period was made to, or for the benefit of, a registered political party or MLA, out of funds generated from capital of the associated entity, details of all persons or organisations who made capital deposits to the associated entity must be disclosed. This is the case whether or not those deposits directly generated the funds used to make that payment.

If the associated entity has not previously disclosed capital, it must disclose all capital deposits made since 29 November 1996. If capital deposits have been disclosed in a previous return, only subsequent capital deposits need to be disclosed. That is, only capital deposits made after 30 June in the financial year that capital deposits were last disclosed.

Capital deposits include monies held in trust.

Debts

Item 5 on the return

The return must show the outstanding amount, at the end of the financial year, of debts incurred by, or on behalf of the associated entity.

All amounts, including those of less than \$1000, are to be included in the total.

Item 6 on the return

The return must also include defined particulars of persons, organisations or entities who are owed a total of \$1000 or more by the associated entity.

In the case of debts, all amounts must be included to determine if the \$1000 threshold has been reached.

Associated entities must inform donors of reporting requirements

If, in a financial year, an associated entity receives gifts totalling \$1000 or more from the same person, the associated entity must, before 1 August after that financial year, inform that person in writing that the person is required to submit a donor's annual return to the Commissioner.

This requirement may be met by routinely informing donors of the obligation to submit annual returns through the normal receipting process. Where gifts are received but receipts are not issued, such as at fundraising events, associated entities should take steps to ensure that any donors who donate above the thresholds are notified in writing of the requirements to submit returns.

Members of the Legislative Assembly

This section describes the annual reporting requirements for MLAs.

Obligations

Under the Electoral Act the reporting agent of each MLA is required to lodge an **annual return** with the Electoral Commissioner. Where there is no reporting agent appointed by the MLA, the MLA is deemed to be the reporting agent. For appointment of reporting agents refer to page 7 of this handbook.

The annual return of an MLA sets out details of receipts, including loans received, payments and debts.

In addition, in an ACT Legislative Assembly election year, if an MLA stands as a candidate for election, then a **candidate election return** of electoral expenditure must be completed after the election. See the Candidates section of the *Funding and Financial Disclosure Handbook – 2012 Election Returns* for further information.

The reporting agent should ensure all relevant financial transactions of the MLA are included in the return. In cases where the reporting agent is unable to obtain all the information required, after reasonable attempts have been made, a statement of what information may be missing and the details of the person or persons who may have such information should accompany the form.

Nil returns

Where no relevant amounts apply in a financial year, the Electoral Act still requires the reporting agent for an MLA to lodge a “nil” return.

Period covered by the annual return

The annual return covers the financial year from 1 July to 30 June.

The only exception will be for those MLAs who become, or cease to be, MLAs during the year. In such cases the disclosure period will commence from the date the MLA becomes an MLA or end when the MLA ceases to be an MLA.

To calculate start and end dates in an election year:

- ◇ those MLAs who were MLAs before polling day, and are re-elected, are taken to have continued to be MLAs between polling day and the declaration of the poll;
- ◇ the term of office of each new MLA begins at the end of the day on which the election of the MLA is declared; and
- ◇ MLAs who do not contest the election, or who stand for election but are not re-elected, cease to be MLAs on polling day.

Due date

Annual returns are required to be lodged within 16 weeks after the end of the financial year. The Electoral Act does not provide for any extension to the deadline. Failure to furnish the return by the due date is a breach of the Electoral Act.

Return form

The return is to be completed on a form provided by the Commission. The Commission will send the forms to MLAs or their reporting agent after the end of the financial year. Additional forms may also be obtained from the Elections ACT website or by contacting its office.

Alternatively, the MLA may provide a copy of his or her audited accounts in a form that has been approved beforehand by the Commissioner.

Transactions to be reported

Only actual transactions that take place during the financial year are to be reported.

All amounts reported are to be GST inclusive.

Book entries such as accruals (for example, provisions for long service leave, depreciation, and the like) are not required to be reported.

Payments made by cheque should only be reported if they have been presented. MLAs operating cheque accounts should undertake a bank reconciliation before completing the return to ensure that only those payments actually made are included.

Non-cash transactions must also be included (for example gifts-in-kind). These transactions should be appropriately valued.

While returns require disclosure of transactions above the legislated thresholds, there is nothing to prevent additional information being provided, which may lead to a clearer understanding of the returns.

The reporting agent should ensure all relevant financial transactions of the MLA are included in the return. In cases where the agent is unable to obtain all the information required, after reasonable attempts have been made, a statement of what information may be missing and the details of the person or persons who may have such information should accompany the form.

An MLA is not permitted to accept anonymous donations of \$1000 or more. If such a donation is received, it is payable by the recipient to the Territory. If it is not paid to the Territory, it may be recovered as a debt to the Territory.

Completing the form

Gifts

Item 1 on the return

The return must show the total of all gifts received by, or on behalf of, an MLA in his or her capacity as an MLA. The return is not to show receipts of a personal nature. For example, income, salary and personal gifts for private use are not to be included.

Complimentary theatre tickets and the like constitute gifts-in-kind and their monetary value should be included in the total amount of gifts. The monetary value of gifts received by an MLA in his or her official capacity from visiting delegations should also be included in the total amount shown on the return.

Dinners or conferences attended by MLAs in their official capacity where a meal is provided do not constitute a gift-in-kind, but are a consequence of attendance at the function as an MLA, and should not be included in the total of gifts received on the return.

All transactions, including those of less than \$1000, are to be included in the total.

Item 2 on the return

The return must also include defined particulars of persons, organisations or entities that pay or loan a total of \$1000 or more to an MLA.

In determining whether the \$1000 disclosure threshold has been reached for amounts received by the MLA, amounts of less than \$1000 need not be counted.

Payments

Item 3 on the return

The return must state the total amount paid during the financial year, by, or on behalf of, the MLA, in his or her capacity as an MLA. This does not include amounts paid by or on behalf of an MLA using funds provided by the Legislative Assembly to assist the MLA in exercising his or her functions as an MLA.

In calculating the total, only payments under the categories of electoral expenditure defined in the glossary on page 25 should be taken into consideration.

All transactions, including those of less than \$1000, are to be included in the total.

Debts

Item 4 on the return

The return must show the outstanding amount, at the end of the financial year, of debts incurred by, or on behalf of the MLA, in his or her capacity as an MLA.

In calculating the amount of debt, only debts incurred under the categories of electoral expenditure defined in the glossary should be taken into consideration.

All amounts, including those of less than \$1000, are to be included in the total.

Item 5 on the return

The return must also include defined particulars of persons, organisations or entities who are owed a total of \$1000 by an MLA.

In the case of debts, all amounts must be included to determine if the \$1000 threshold has been reached.

MLAs must inform donors of reporting requirements

If, in a financial year, an MLA receives gifts totalling \$1000 or more from the same person, the MLA must, before 1 August after that financial year, inform that person in writing that the person is required to submit a donor's annual return to the Commission.

This requirement may be met by routinely informing donors of the obligation to submit annual returns through the normal receipting process. Where gifts are received but receipts are not issued, such as at fundraising events, MLAs should take steps to ensure that any donors who donate above the thresholds are notified in writing of the requirements to submit returns.

Third parties - disclosure of gifts to political parties, MLAs or associated entities, and of gifts received

This section applies to “third parties”, a term used to describe a person or organisation under an obligation to lodge a disclosure return because of indirect involvement in an ACT Legislative Assembly election.

Most typically, a third party in this context is a person or organisation that has made a political donation or placed an electoral advertisement.

Third parties who may be required to furnish returns include individuals, unregistered political parties, bodies corporate, members of an unincorporated association, the trustees of a trust and registered industrial organisations.

Obligations

At the end of each financial year, donors to registered political parties, MLAs and associated entities are required to complete an annual return of gifts where they have donated a total of \$1000 or more to the same party, MLA or associated entity.

Where the donor receives one or more gifts that total \$1,000 or more, and the donor uses all or part of the gift or gifts to make one or more gifts of \$1,000 or more to a party, MLA or associated entity, the return must also include all these gifts received.

Where a donor is an organisation that is controlled by, or operates completely or to a significant extent, for the benefit of one or more registered political parties or MLAs, that donor is taken to be an “associated entity”. Associated entities have more detailed disclosure obligations than those applying to third parties. See the section relating to Associated Entities at page 12.

Due date

Annual returns are required to be lodged within 20 weeks after the end of the financial year. However, when the end of the financial year is in an election year, the lodgement deadline is 24 weeks after the end of the financial year. As 2011 is not an election year, the return for 2010/2011 must be lodged by Thursday 17 November 2011.

The Electoral Act does not provide for any extension to the deadline. Failure to furnish the return by the due date is a breach of the Electoral Act.

Disclosure period

The disclosure period for gifts to political parties, MLAs and associated entities is the standard financial year from 1 July to 30 June.

Return form

A return must be in the form approved by the Commissioner and may be obtained from the Elections ACT website or from its office.

Completing the return

Gifts to political parties

Item 1 on the return

Where a donor has made a gift or gifts totalling \$1000 or more to the same political party, MLA or associated entity during the financial year, show in the table the name and address of the political party, MLA and/or associated entity, together with the date each gift was made and its value.

In determining whether a donor has given gifts over the \$1000 threshold, all gifts of all amounts must be counted, including gifts given at fund-raising events.

Gifts received

Item 2 on the return

Where a gift or gifts totalling \$1000 or more has been received during the financial year, and some or all of the gift(s) was used to make a gift or gifts totalling \$1000 or more to a political party, MLA or associated entity, show at this item the name and address of the person or organisation who made the gift or gifts, together with the date each gift was received and its value.

Note: All amounts reported are to be GST inclusive.

Offences

Introduction

The Electoral Act provides for a range of financial disclosure offences. The penalties may be described in terms of penalty units where the value of the penalty unit for the offence is—

- ◇ if the person charged is an individual—\$110; or
- ◇ if the person charged is a corporation—\$550.

Failure to lodge annual/election returns

It is an offence to fail to lodge a disclosure return by the due date. Penalty: 50 penalty units for a party return, 20 penalty units for any other return.

Lodging an incomplete disclosure return

It is an offence to lodge an incomplete return. Penalty: 20 penalty units.

Reporting false or misleading information in a disclosure return

It is an offence to knowingly lodge a disclosure return that contains false or misleading information. Penalty: 50 penalty units or 6 months imprisonment or both.

Providing false or misleading information

It is an offence to knowingly provide false or misleading information which is to be included in a disclosure return by another person. Penalty: 50 penalty units or 6 months imprisonment or both.

Failure to retain records

It is an offence to fail to retain records, containing information that could be required to be included in a disclosure return, for 4 years. Penalty: 20 penalty units.

Failure to comply with a notice authorising an audit or investigation

It is an offence to contravene an investigation notice given by the Commissioner without reasonable excuse. Penalty: 50 penalty units or 6 months imprisonment or both.

Providing false or misleading information in response to an investigation notice

It is an offence to knowingly provide false or misleading information in response to an investigation notice. Penalty: 50 penalty units or 6 months imprisonment or both.

Failure to advise donors of the need to lodge annual returns

It is an offence if a registered party, MLA or associated entity fails to notify a donor of the need to lodge an annual return where the party, MLA or associated entity receives gifts totalling \$1000 from the donor in a financial year. Penalty: 50 penalty units.

Table 1: Funding and disclosure - reporting requirements - annual returns

	parties	MLAs	associated entities	donors
detail required	total amounts received	total amounts received	total amounts received	gifts made: \$1000 or more in total to a party, MLA or associated entity
	individual details where \$1000 or more in total received from any person or group (ignoring amounts received or paid less than \$1000)total amounts paid	individual details where \$1000 or more in total received from any person or group (ignoring amounts received or paid less than \$1000)	total amounts paid	gifts received: individual gifts received totalling \$1000 or more if all or part used to make a gift(s) of \$1000 or more in total to a party MLA or associated entity
	total debts	total amounts paid total debts	total debts individual details of any person or organisation paid, received or owed a sum or amount	
due	16 weeks after end of financial year	16 weeks after end of financial year	16 weeks after end of financial year	20 weeks after end of financial year, except in an election year, when it is 24 weeks
made public	Beginning of February in following year	Beginning of February in following year	Beginning of February in following year	Beginning of February in following year

Table 2: Funding and Disclosure - reporting requirements - election returns for the 2012 election

	Parties	Candidates	Donors	Broadcasters and publishers	Political participants
Detail required	all expenditure on advertising, electoral matter, consultants fees, opinion polls	all expenditure on advertising, electoral matter, consultants fees, opinion polls	gifts made to candidates or a specified body totalling \$1000 or more during the period 18/11/08 to 19/11/12	\$1000 expenditure or more in total by advertisers on electoral advertising	\$1000 expenditure or more in total on advertising, electoral matter, consultants fees, opinion polls
		total of gifts received	\$1000 expenditure or more in total on advertising, electoral matter, consultant fees, opinion polls		individual gifts received totalling \$1000 or more if all or part used on expenditure of \$1000 or more in total
		individual details of gifts received from any person or group of \$1000 or more during the period 18/11/08 to 19/11/12	individual gifts received totalling \$1000 or more if all or part used on expenditure of \$1000 or more in total		
Due	15 weeks after polling day	15 weeks after polling day	15 weeks after polling day	8 weeks after polling day	15 weeks after polling day
Made public	25 weeks after polling day	25 weeks after polling day	25 weeks after polling day	25 weeks after polling day	25 weeks after polling day

Glossary

ACT Electoral Commission	The 3-member statutory body comprising a Chairperson, the ACT Electoral Commissioner and a third Member. Also described as the Commission.
ACT Electoral Commissioner	The person, also described as the Commissioner, who is appointed as a statutory officer holder, to carry-out electoral administration for the ACT. The Commissioner and the staff employed to assist the Commissioner is collectively known as Elections ACT.
advertisements relating to an election	An advertisement relates to an election or referendum if it contains electoral or referendum matter, whether or not consideration (payment) was given for the publication or broadcasting of the advertisement.
anonymous donations	<p>Anonymous donations are gifts where the defined particulars of a donor are not known to the person receiving the gift on behalf of a registered political party, MLA, candidate or associated entity at the time the gift is made.</p> <p>A registered political party, MLA, candidate or associated entity is not permitted to accept anonymous donations of \$1000 or more. If such a donation is received, it is payable by the recipient to the Territory. If it is not paid to the Territory, it may be recovered as a debt to the Territory.</p>
associated entity	<p>An organisation that is controlled by, or operates, completely or to a significant extent for the benefit of, one or more registered political parties or MLA.</p> <p>Organisations that commonly fall within this definition include:</p> <ul style="list-style-type: none">◇ companies that hold assets for a political party or MLA;◇ trust funds or fundraising organisations; and◇ certain groups (or clubs) of which the majority of distributed funds are received by a party, or MLA.
authorisation statement	Electoral matter (whether in printed or electronic form) that is printed, published, distributed, produced or broadcast must (with some exceptions) include an authorisation statement. This usually relates to the electoral advertisements. Further details on authorisation of electoral matter can be found in the Elections ACT Factsheet "authorising electoral material" on its website www.elections.act.gov.au under publications.
Commission	The ACT Electoral Commission.

defined particulars In relation to a sum or amount, means:

- ◇ if the sum was received from, paid, or owed to an unincorporated association, other than a registered industrial organisation:
 - the name of the association; and
 - the names and addresses of the members of the executive committee (however described) of the association;
- ◇ if the sum or amount was paid out of or into or incurred as a debt to a trust fund or the funds of a foundation:
 - the names and addresses of the trustees of the fund or foundation; and
 - the name, title or description of the trust fund or foundation; or
- ◇ In any other case, the name and address of the person or organisation that paid, received or is owed the sum or amount.

Elections ACT The office of the ACT Electoral Commissioner and the staff assisting the Commissioner

Electoral Act *Electoral Act 1992* of the Australian Capital Territory.

electoral matter Electoral matter is matter that is intended to affect or is likely to affect voting in an election for the ACT Legislative Assembly. It is taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on:

- ◇ the election;
- ◇ the performance of the Government, the Opposition, a previous Government or a previous Opposition of the ACT Legislative Assembly;
- ◇ the performance of an MLA or former MLA;
- ◇ the performance of a political party, candidate or a group of candidates in an election; or
- ◇ an issue submitted to, or otherwise before, the electors in connection with an election.

financial institution Financial institution is defined as a bank, a credit union, a building society or an entity prescribed under the regulations.

gifts The definition of gift includes cash or gifts-in-kind, but specifically excludes:

- ◇ a personal gift;
- ◇ volunteer labour;
- ◇ a disposition of property under a will;
- ◇ a payment under the election funding scheme; and
- ◇ an annual subscription paid to a party by a person in relation to the person's membership of the party.

Where a gift is made by a client through a solicitor's or an accountant's trust account, the return must include the name and address of the client who made the donation. The relationship between solicitor/accountant and client is that of agent and principal. For the purposes of the disclosure provisions, a gift paid by an agent at the direction of his/her principal is a gift made by the principal and not the agent.

If a person makes a gift to any person or body with the intention of benefiting a particular candidate, party, MLA or associated entity, the person shall be taken to have made that gift directly to that candidate, party, MLA or associated entity.

A gift made to, or received by, a candidate for the benefit of a party, of which the candidate is a member, is considered to be a gift to the party.

A gift made to a campaign committee of a candidate endorsed by a political party is considered to be a gift to the party.

The matter of whether a payment to attend a political party function or event (including dinners) constitutes a gift requiring disclosure is not clearly prescribed. As a guide:

- ◇ If a payment for attendance at a function or event is considered a gift, that is, the person making the payment did not receive services or adequate services equal to the value of the payment, the payment should be disclosed on the donor disclosure return.
- ◇ Payment for attendance at a function or event with the intention of contributing to the party (that is, where the function or event is primarily a fundraiser), or where the amount paid is in excess of the value of the function or event, is a gift and must be disclosed, if it is over the disclosure threshold.

gifts-in-kind Non-cash gifts are to be treated as cash gifts for disclosure purposes.

The definition of gifts-in-kind includes:

- ◇ any disposition of property for no payment, in cash or kind, or where the payment made, in cash or kind, is less than the value of the property; or
- ◇ provision of a service free of charge or for a charge less than the normal commercial rate.

Some examples are:

- ◇ rent free use of commercial premises;
- ◇ free use of a motor vehicle (unless associated with volunteer labour);
- ◇ free legal advice given by a law firm;
- ◇ the donation of items or services as raffle prizes;
- ◇ printing undertaken for no charge or at a cost less than normally charged; and
- ◇ work undertaken for a candidate by an employee during normal working hours where the employer continues to pay salary or wages (but not if the employee takes paid leave to undertake work for the candidate).

Broadcasters (other than the ABC) or publishers providing a service (including community service announcements) for no charge, or for less than the normal commercial rate, are considered to be making a gift. However, interviews, news items, or political speeches broadcast on a current affairs program, a news program, or any other topical program, or published in a journal, are not considered to be gifts.

A monetary value should be assigned to any gift-in-kind and shown in a disclosure return where appropriate. A gift-in-kind should be valued at the normal commercial rate. For example, a gift of free use of a car should be valued on the basis of commercial car hire rates.

Valuations placed on gifts-in-kind will generally be accepted provided there is sufficient description shown on the return of the goods or services donated. This enables Commission officers to assess the value attributed. It is recommended that a value be placed on a gift-in-kind when they are received to avoid the onerous task of trying to assign values during preparation of the return.

loan A loan may be any of the following:

- ◇ an advance of money;
- ◇ a provision of credit or any other form of financial accommodation;
- ◇ a payment of an amount for, on account of, on behalf of or at the request of the receiver, if there is an express or implied obligation to repay the amount; or
- ◇ a transaction (whatever its terms or form) that is, in substance, a loan of money.

Where a loan has been received from a source other than a financial institution, the name and address of the person or organisation from whom the loan was received and details of the terms and conditions of that loan must be recorded by the candidate. Such terms and conditions would include the interest rate being charged and the period of the loan.

In the case of a loan received from a registered industrial organisation or an unincorporated association, the name and address of each of the members of the executive committee must be recorded along with that of the organisation. In the case of a trust or foundation, the names and addresses of the trustees must be recorded along with the title or description of the trust or foundation.

Where a record of such information is not kept, an amount equivalent to the value of the loan is forfeited to the Territory.

Details of loans must be recorded by the person receiving it. These details do not need to be included in the return.

MLA A Member of the ACT Legislative Assembly.

normal commercial rate The normal commercial rate is considered to be the rate that is generally charged for similar broadcasting time or space in a publication.

Where a special rate is allowed to all purchasers of a set amount of advertising time or space, the special rate is considered to be the normal commercial rate.

Where a discounted rate is struck specifically for one particular party, candidate, referendum participant or special interest group, and is not available to other advertisers, the difference between the normal rate and the discounted rate is considered to be a gift to the party, candidate, or other election or referendum participant.

participant in an election or referendum A participant in an election means:

- ◇ a political party;
- ◇ a candidate; or
- ◇ a third party.

A participant in a referendum is a person who incurs expenditure for the purposes of a referendum.

An advertising agency is not a participant in an election or a referendum unless it incurs or gives authority to incur electoral expenditure on its own behalf.

personal gifts A gift made in a private capacity to an MLA, candidate or specified body who is a natural person, for his or her personal use, being a gift that the receiver has not used, and will not use, solely or substantially for a purpose related to an election or referendum.

The transfer or loan of funds from an account containing gifts received in a personal capacity to an account from which election or referendum-related expenses were paid is considered to be a use of those funds for election or referendum purposes. This could render disclosable all gifts in that account.

political party See registered political party.

pre-election period The pre-election period commences on the Friday 36 days before polling day and ends on polling day.

referendum matter Referendum matter is matter that is intended or likely to affect voting in a referendum held under an enactment of the ACT Legislative Assembly and includes any matter that contains an express or implied reference to a referendum or to any of the matters on which electors are required to vote in a referendum.

registered officer The person identified in the register of political parties, who has the authority to nominate and verify the endorsed candidates of the party.

The registered officer is deemed to be the reporting agent if the party does not have an appointed agent.

The registered officer cannot be replaced except by a formal written application made under the Electoral Act.

A deputy registered officer may be appointed who also has authority to nominate and verify the endorsed candidates of the party. However, a deputy registered officer has no authority to act on behalf of the registered officer or the party with respect to the lodging of financial disclosure returns.

registered political party A political party registered with the Commission under the Electoral Act. Political parties not registered with the Commissioner are treated as third parties for disclosure purposes.

The Commissioner's "*How to Register a Political Party for ACT Legislative Assembly Elections*" brochure, which sets out the requirements for registration, is available from the Elections ACT website or from its office.

volunteer labour Volunteer labour does not need to be disclosed. The donation of time by a member of a party is volunteer labour. The donation of time by a person who is not a party member is only considered volunteer labour where it does not constitute a service for which that person normally charges.

For example, the donation of legal advice by a solicitor who is a party member is volunteer labour, but the donation of legal advice by a solicitor who is not a party member is a gift-in-kind. If, however, a solicitor who is not a party member delivers voting material, then that constitutes volunteer labour because it is not a service for which that person normally charges.