

## Important Qualification:

Amendments to the *Commonwealth Electoral Act 1918*, that commenced on 1 December 2020, have had an effect of limiting the operation of the ACT's funding and disclosure scheme, as legislated for by the ACT Legislative Assembly. The impact of the Commonwealth laws mean that, for a gift or gifts that have been provided to an ACT registered political party that also has registration at the federal level (dual registration), and that have been deposited into a federal election account by the political party, the party is not required under Territory law to disclose the gift particulars to the ACT Electoral Commission. Similarly, it also means that for a gift or gifts that have been deposited into a federal account by an associated entity of a political party with dual registration, the associated entity is not required under Territory law to disclose the gift particulars to the ACT Electoral Commission.

In addition, the effect of the *Commonwealth Electoral Act 1918* amendments mean that the ban on donations by property developers, their closes associates or a person on their behalf (collectively known as prohibited donors), giving gifts to a political party with dual registration or an associated entity of an ACT registered political party with dual registration, or their acceptance by those same political entities, do not apply under the ACT's *Electoral Act 1992*:

- to prohibited donors, if the donor expressly gives the donation for a federal purpose; or
- to a political party, or an associated entity of a political party, if the political party, or associated entity of a political party, respectively, deposits the gift of money, in a specifically designated federal account, or, if the gift is not money, keeps the gift for federal purposes and uses it only for federal purposes.

It is however, important that ACT political parties and associated entities continue to comply with the ACT's disclosure scheme, where they keep or identify the gift separately in order for it to be used only for a Territory electoral purpose; it has been donated with the express designation that it be used for Territory electoral purposes; or no designation was made when the gift was donated and it has not been deposited in the federal account or kept separately for federal purposes.

It is the Electoral Commission's view, having reviewed the various pieces of legislation, that:

- all candidates contesting an election;
- ACT registered political parties that do not have registration at the federal level;
- third-party campaigners; and
- associated entities of ACT registered political parties that are not also registered at the federal level

each still have full unimpacted disclosure obligations under the ACT Electoral Act and are required to disclose gifts in compliance with the obligations detailed within this factsheet and other related manuals.

Notwithstanding the effect of the Commonwealth changes as described above, this factsheet is intended to provide ACT political parties and their candidates, non-party candidates, MLAs, associated entities and third-party campaigners, with information on the disclosure requirements outlined within the ACT's Electoral Act.

While this factsheet provides an overview of the regular reporting requirements imposed on political entities in the ACT, it should not be regarded as a substitute for the law on any of the topics addressed. You are advised to obtain a copy of the *Electoral Act 1992* from [www.legislation.act.gov.au](http://www.legislation.act.gov.au) and seek your own legal advice if necessary.

# Regular reporting of gifts

---

## Overview of reporting requirements

- Party groupings must submit a gift return to Elections ACT when a gift, or sum of gifts, totalling \$1,000 or more is received from the same individual or organisation in the relevant disclosure period.
- The disclosure period for party groupings is a financial year.
- This requirement is for all gifts received by the grouping, regardless of what the gift has been, or will be, used for, unless deposited into a federal election account.
- Outside of an election year, returns must be submitted within 7 days of the end of each month of gifts from a person or organisation reaching the \$1,000 reporting threshold. Further, once that threshold is reached in the disclosure period, any further gifts, of any value, received from the same person or organisation must be reported within 7 days of the end of the month in which the further gift or gifts was received.
- A party's reporting agent is responsible for disclosing eligible gifts to Elections ACT. Where no reporting agent has been appointed, the party's registered officer must submit any required gift returns.

## What is a gift?

Under the ACT's electoral funding and disclosure scheme, a **gift** means each of the following:

- A disposition of property, including an amount of money, made by a person or organisation to someone else without adequate compensation;
- The provision of a service, other than volunteer labour, for no consideration or inadequate consideration;
- The part of an annual subscription paid to a party for membership of the party that is more than \$250; and
- Gifts given to MLAs in their capacity as a Minister.

Note that payments made between entities in a party grouping are considered gifts if that payment otherwise meets the definition of a gift.

A **gift-in-kind** is any product or service of value that is provided, without adequate compensation, to a political entity. Examples of gifts-in-kind include free or discounted room hire, free or discounted electoral advertising, or items provided for a fundraising auction. Recipients must assign a monetary value to any gifts-in-kind.

A gift does **not** include:

- A disposition of property under a will;
- An annual subscription for membership of a party of \$250 or less;

- A gift that is given to an individual in a private capacity for the individual's private use and the individual does not use the gift solely or substantially for a purpose related to an election;
- Affiliation fees paid to a party; Compulsory levies paid to a party by the party's elected representatives; or
- Administrative funding paid by the ACT Electoral Commissioner or election funding paid by an electoral commission.

## Restrictions on anonymous gifts

Party groupings should be mindful that:

- Political entities in a party grouping are not permitted to accept anonymous gifts of \$1,000 or more; and
- A party, MLA, non-party candidate or associated entity is not permitted to keep more than \$25,000 received as anonymous gifts of less than \$1,000 in a financial year.

## When must gifts be reported?

A gift return must be submitted to Elections ACT when a gift, or sum of gifts, totalling \$1,000 or more is received from the same organisation or individual in a financial year. The return date is tied to the gift that saw the total gifts received reach the reporting threshold of \$1,000. The return must be submitted:

- In the period from 36 days before polling day until 30 days after the election is declared (the defined period), if the value of the gift or gifts received from a person reaches \$1,000 in the financial year, the declaration must be made to the Electoral Commissioner within 7 days after the total amount received from the person reaches \$1,000. If during this defined period any additional gift is received from the same person of any value, a further declaration must be made within 7 days of its receipt; and
- Outside of the defined period, if the value of the gift or gifts received from a person reaches \$1,000 in the financial year, the declaration must be made to the Electoral Commissioner within 7 days of the end of the month in which the total amount received from the person reached \$1,000. Any additional gift received from the same person of any value, must be declared within 7 days of the end of the month in which it was received.

The date a gift is said to be received is the earlier of the date the gift of money is receipted or banked. If the gift is a "physical" gift-in-kind, the date the gift is received is taken to be the date the gift came into the possession of the receiver. If a gift-in-kind is a service rendered, the date the gift is received is the date on which the value of the service first reaches \$1,000.

As of 1 July 2021, once the total gifts received from the same person reaches the \$1,000 threshold, all further gifts, regardless of their value must be reported within the relevant reporting period. The reporting requirement is no longer staged in increments of \$1,000. This means that if a gift of \$1,000 has been reported as having been received from person A in a month, the next monthly return is required to be submitted when person A donates any amount (even if it is less than \$1,000) in the same disclosure period. Once the disclosure threshold of \$1,000 is reached in a reporting period, all donations from that point must be declared.

## What information needs to be disclosed?

The return must record:

- The name and address of the giver;
- The ABN if the giver is an organisation;
- The amount of **each gift** that contributes to the total sum being reported;
- The date each amount was received;
- Whether the amount was a gift of money or a gift-in-kind; and
- If the gift is a gift-in-kind, the return must provide a description of the gift and describe how the gift was valued.

If a party grouping has recorded details for both an individual and an organisation against a gift's receipt, the return must clearly indicate whether the gift was received from the individual acting on behalf of the organisation, or from the individual acting in a private capacity.

## How are fundraising contributions treated for disclosure purposes?

From 1 July 2021, fundraising contributions made by a person or organisation, including entry fees for a fundraising event or items purchased at an auction, are considered a gift to the beneficiary of the fundraising event. However, the amount of the gift is the amount in excess of the consideration received in return for the fundraising contribution. For example, if a person purchases a ticket to a fundraising dinner for say \$250, the amount of the gift is \$250 less the cost of providing dinner to that person.

If the figure exceeding the consideration for the fundraising contribution made reaches a total of \$1,000 or more, including the cumulative total of other gifts made by the person or organisation in the same financial year, it must be reported to Elections ACT.

**The reporting obligation applies to the individual or organisation making the fundraising contribution, not the recipient.** For example, if person A buys two tickets to a fundraising event valued at \$250 each, only the amount of consideration given to person A can be deducted from the \$500 total, even though the second ticket is intended for another person.

It is not sufficient for record keeping purposes if person A purchases multiple tickets on behalf of other attendees (that is, each attendee has paid person A for the cost of his or her personal ticket) and the party retains a list of these names. Each purchaser of a ticket must be independently issued a receipt.

## Should all gifts be disclosed upon receipt to Elections ACT?

No. Party groupings should be aware that some donors may deliberately gift amounts below the \$1,000 reporting threshold so that their name will not be published on the Elections ACT website.

Furthermore, even if a party reports all gifts received from an individual or organisation in the expectation that the \$1,000 reporting threshold will be reached during the disclosure period, if the party subsequently fails to disclose the 'threshold gift' within the prescribed 7 day period

the party would still be considered to be in breach of the Electoral Act, despite the earlier partial disclosure of the gift total.

Note that political entities must still retain all records relating to each amount received by the entity as additional receipts may need to be recorded on the entity's annual return.

Gifts received as "free facilities use" do not need to be disclosed in the 7 day returns. Such gifts include the use of a room and equipment necessary for conducting a meeting in the room, but do not include any food, drink or other gift associated with the use of the facilities. The total value of free facilities provided by each entity must be disclosed in annual returns.

## How can returns be submitted?

Gift returns should be submitted electronically using an Excel spreadsheet supplied by Elections ACT. You will need to contact Elections ACT to obtain the Excel spreadsheet.

Once completed, these returns should be returned to Elections ACT by email.

## Offences

Under the Electoral Act, it is an offence to lodge a late or incomplete disclosure return.

It is an offence to knowingly provide false or misleading information on a disclosure return.

Reporting agents are encouraged to familiarise themselves with the electoral funding and disclosure compliance policy, available on the Elections ACT website.

## An example of a gift return

Name	Address	Suburb	State/ Territory	Postcode	ABN (if company)	Date received	Type of gift – Gift of money	Type of gift – Gift-in- kind	Amount	Description (if gift-in-kind)	How valued (if gift-in-kind)
Smith, John	1 Main St	BELCONNEN	ACT	2617		20/7/2021	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		30/7/2021	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		24/8/2021		X	\$500	6x bottles of wine (auction item)	Market value

The first return shown above must be submitted by 7/8/2021 (that is, within 7 days of the end of the month in which the gift that saw the total gifts reach the \$1,000 reporting threshold is received).

The second return above must be submitted by 7/9/2021 (that is, within 7 days of the end of the month in which an additional gift is received).