

Regular reporting of gifts

Important qualification

Amendments to the *Commonwealth Electoral Act 1918*, that commenced on 1 January 2019, have had the effect of limiting, to a significant extent, the operation of the ACT's funding and disclosure scheme, as legislated for by the ACT Legislative Assembly. While the ACT's *Electoral Act 1992* funding and disclosure provisions remain unchanged, the commencement of the Commonwealth laws means that, for a gift or gifts that have been provided to an ACT registered political party that also has registration at the federal level, **without** the express designation by the donor that it be used for a Territory electoral purpose, or it has not been kept or identified separately by the political party for a Territory electoral purpose, the registered political party is not required under Territory law to disclose the gift particulars to the ACT Electoral Commission. It is however, important that ACT political parties **continue to comply** with the ACT's disclosure scheme, where the gift recipient keeps or identifies the gift separately in order for it to be used only for a Territory electoral purpose, or it is used within the relevant disclosure period for Territory electoral purposes, or it has been donated with the express designation that it be used for Territory electoral purposes.

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

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

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

Notwithstanding the effect of the Commonwealth changes upon ACT registered political parties that also have registration at the federal level, this fact sheet is intended to provide ACT political parties, party grouping candidates, MLAs, non-party 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 and seek your own legal advice if necessary.

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.
- Outside of an election year, returns must be submitted within 30 days of the end of each quarter of gifts reaching the \$1,000 reporting threshold. More frequent reporting requirements apply in an election year.
- 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;
- The part of a fundraising contribution that is more than \$250 (see the fundraising question below for more information); 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 fundraising contribution 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 an election year, if the value of the gift or gifts received from a person reaches \$1,000 in the financial year between 1 April and 30 June, the declaration must be made to the Electoral Commissioner by 7 July;
- In an election year, when the capped electoral expenditure period is applicable, if the value of the gift or gifts received from a person reaches \$1,000 in the financial year after 30 June and before the end of polling day, the declaration must be made to the Electoral Commissioner 7 days after the total amount received from the person reaches \$1,000; and
- In a non-election year, or in the first quarter (1 January until 31 March) of an election year, 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 30 days of the end of the financial quarter in which the total amount received from the person reached \$1,000.

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.

The reporting requirement is staged in increments of \$1,000. This means that if a gift of \$1,200 has been reported as having been received from person A in a quarter, the next quarterly return is not required to be submitted until person A donates a further \$1,000 in the same disclosure period (making for a total of at least \$2,200).

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?

Fundraising contributions made by a person or organisation, including entry fees for a fundraising event or items purchased at an auction, are not considered a gift if the total amount is \$250 or less per fundraising event. Any amount that exceeds \$250 is considered a gift to the beneficiary of the fundraising event.

If the figure exceeding the \$250 cap 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 \$250 threshold 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 \$250 of the \$500 total is exempt from classification as a gift 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 30/7 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 quarterly or election year 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		02/07/2019	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		10/10/2019	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		24/12/2019		X	\$500	6x bottles of wine (auction item)	Market value

This return must be submitted by 30/1/2020 (that is, within 30 days of the end of the quarter in which the gift that saw the total gifts reach the \$1,000 reporting threshold is received).