



**Elections** ACT

ACT ELECTORAL COMMISSION OFFICERS  
OF THE ACT LEGISLATIVE ASSEMBLY



# Election funding, expenditure and financial disclosure

## Compliance review policy

February 2024



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Produced by the  
ACT Electoral Commission  
PO Box 272, Civic Square ACT 2608.  
Phone: 02 6205 0033  
Web: [www.elections.act.gov.au](http://www.elections.act.gov.au)  
Email: [elections@act.gov.au](mailto:elections@act.gov.au)

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## Overview

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The ACT Electoral Commissioner is responsible for the administration and enforcement of the ACT's electoral funding, expenditure and financial disclosure scheme as prescribed by Part 14 of the Electoral Act 1992.

As defined by the Electoral Act, this scheme includes the following components:

- Limits on the amount of electoral expenditure that may be incurred;
- Limits on the amount of anonymous gifts that may be received;
- A ban on the giving of gifts from property developers, their close associates, foreign entities and persons acting on their behalf to political entities in the ACT;
- A ban on the acceptance of gifts by political entities from prohibited donors; and
- Disclosure of the financial transactions of registered political parties, political party groupings, MLAs, associated entities, candidates, third party campaigners and broadcasters and publishers.

This Compliance review policy assists with planning and conducting routine compliance assessments of financial disclosure made in relation to ACT Legislative Assembly elections.

This policy should be read in conjunction with the Compliance enforcement policy.

## Purpose of policy

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The Commissioner considers that a regulatory system such as the disclosure scheme for ACT Legislative Assembly elections requires regular compliance reviews to ensure that disclosures are being made in accordance with the law and gifts from banned persons and organisations are not being given to, or accepted by, political entities. As provided for under sections 237 and 237A of the Electoral Act, the Commissioner therefore conducts regular compliance reviews of financial disclosures made by political entities operating in the ACT. This policy document provides the process framework for such reviews.

The Commissioner considers that compliance reviews must be conducted by politically neutral bodies in order to be successful. Furthermore, compliance reviews must be both standardised and comprehensive to ensure impartiality, fairness and consistency in the review of disclosures and their findings.

Users of this policy should note that the disclosure requirements outlined in this document are intended as a summary only and should not be regarded as a final statement of law. Individuals and organisations are encouraged to obtain a copy of the Electoral Act 1992 and to seek their own legal advice if necessary.

## Objectives

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Through compliance reviews, Elections ACT aims to:

- Maintain the integrity of the funding and disclosure regime;
- Further increase transparency of funding and disclosure by key stakeholders;

- Assess the accuracy, completeness and reliability of information disclosures in a timely manner;
- Identify any instances of failure to comply with the requirements of the Electoral Act;
- Identify issues experienced by electoral participants which are able to be used by Elections ACT to provide targeted guidance to entities; and
- Identify issues experienced by electoral participants which are able to be used for legislative review and change.

## Process

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Under sections 237 and 237A of the Electoral Act, the Commissioner is authorised to issue an Investigation Notice to an entity's financial representative requiring the financial representative to produce documents or other evidence at a set time and place. The time prescribed in such notices must be no earlier than 28 days after the notice is given.<sup>1</sup>

## Scope

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Compliance reviews may be conducted of the following entities in the ACT:

- Registered political parties and political party groupings;
- MLAs;
- Non-party MLA groupings;
- Associated entities;
- Non-party candidate groupings;
- Third party campaigners; and
- Broadcasters and publishers.

The following sections of the policy explain in detail the events for which compliance reviews may be carried out on behalf of the Commissioner.

## Restrictions imposed on electoral expenditure

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Some of the electoral expenditure restrictions imposed on political entities regarding are:

- A party must not spend more than \$10,000 on electoral expenditure in relation to an election, from payments received by a ACT registered party from a related party;<sup>2</sup> and

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<sup>1</sup> Section 237(5) of the *Electoral Act 1992*

<sup>2</sup> Section 205K of the *Electoral Act 1992*

- Administrative funding payments cannot be used to incur expenditure for any ACT, federal, state or local government election.<sup>3</sup>
- The electoral expenditure on ACT election campaigns must not exceed the electoral expenditure cap during the capped expenditure period.

Any compliance review conducted of all financial records held by a political entity to ensure that these electoral expenditure restrictions have not been breached.

## **Administrative funding payments**

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Administrative funding payments are made quarterly to parties with representation in the ACT Legislative Assembly and to non-party MLAs.<sup>4</sup> These payments cannot be used to incur expenditure for any ACT, federal, state or local election.

Compliance reviews may be conducted of all financial accounts held by a political entity to ensure that administrative funding payments are not used to incur electoral expenditure.

## **Annual returns**

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Registered political parties, MLAs and associated entities that have operated as a political entity for any part of the financial year are required to lodge an annual return with the Commissioner, no later than 31 August after the end of the relevant financial year.<sup>5</sup>

Compliance reviews conducted of annual returns will be mainly focused on, but not limited to, the following aspects:

- Examination and analysis of the total receipts, payments and outstanding debts recorded by the entity on their annual return;
- Crosschecking submitted amounts against the financial and accounting records of the entity;
- Determining that the \$25,000 cap on anonymous gifts has not been breached and that no entity has accepted an anonymous payment exceeding \$1,000 or more;<sup>6</sup>
- The defined details of all receipts of \$1,000 or more as reported by parties and MLAs and the defined details of all receipts as reported by associated entities;<sup>7</sup> and
- The defined details of all outstanding debts of \$1,000 or more as reported by the entity.<sup>8</sup>

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<sup>3</sup> Section 215G of the *Electoral Act 1992*

<sup>4</sup> Division 14.3A of the *Electoral Act 1992*

<sup>5</sup> Section 230 and 231B of the *Electoral Act 1992*

<sup>6</sup> Section 222 of the *Electoral Act 1992*

<sup>7</sup> Section 232 of the *Electoral Act 1992*

<sup>8</sup> Section 234 of the *Electoral Act 1992*

## Ban on gifts from prohibited donors

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From 1 July 2021, gifts may not be made by a property developer, or a close associate of a property developer, or a person acting on behalf of a property developer to, or be accepted by, a political entity registered in the ACT.<sup>9</sup>

From 29 November 2023, 'foreign entities' was added to the list of individuals or organisations prohibited from giving gifts to, or accepted by, a political entity registered in the ACT.<sup>10</sup>

Property developers, their close associates, foreign entities, and persons acting on behalf of a property developer, close associate or foreign entity, are collectively referred to as 'prohibited donors'.

Compliance reviews conducted against political entity records will be primarily focused on, but not limited to, the following aspects:

- Examination and analysis of receipts to ensure gifts have not been received from prohibited donors, unless deposited in a federal account as soon as reasonably practicable after receipt, or for a non-monetary gift, has been designated and kept for federal purposes;<sup>11</sup>
- Examination and analysis of expenditure to ensure that gifts received from prohibited donors and deposited into a federal account, or non-monetary gifts from prohibited donors and designated and kept only for a federal purpose, have not been used for a purpose other than a federal purpose; and
- Examination and analysis of general accounts to ensure that gifts received from prohibited donors and deposited into a federal account have not been transferred from the federal account to a non-federal account.

## Regular reporting of gifts of \$1,000 or more

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Party groupings, non-party MLAs and non-party candidate groupings are required to disclose to the Commissioner the receipt of any gifts totalling \$1,000 or more that are received during the entity's respective disclosure period. The return must be submitted:

- **Before 1 July 2024**, 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.
- **After 1 July 2024**, returns must be submitted **within 7 days** after the total amount received from the same person or organisation reaches \$1,000.<sup>12</sup>

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<sup>9</sup> Division 14.4A of the *Electoral Act 1992*

<sup>10</sup> Division 14.4B of the *Electoral Act 1992*

<sup>11</sup> Section 222A(2) of the *Electoral Act 1992*

<sup>12</sup> Section 216A(4) of the *Electoral Act 1992*



Compliance reviews conducted of gift disclosures will be mainly focused on, but not limited to, the following aspects:

- Examination and analysis of the defined details listed for each gift;<sup>13</sup>
- Examination of the appropriate valuation of gifts-in-kind; and
- The reporting of gifts to the Commissioner within the prescribed timeframe.

## **Election returns**

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Party groupings, associated entities, non-party MLA groupings, non-party candidate groupings and third-party campaigners must submit an election return to the Commissioner within 60 days after the polling day for an election.<sup>14</sup> Broadcasters and publishers who broadcast or publish electoral advertisements during the pre-election period must submit an election return to the Commissioner within 8 weeks of polling day.

Compliance reviews conducted of election returns will be mainly focused on, but not limited to, the following aspects:

- Examination and analysis of the electoral expenditure listed on the return, including confirmation that the entity did not exceed the cap on electoral expenditure;<sup>15</sup>
- Administrative funding payments cannot be used to incur expenditure for any ACT, federal, state or local government election;
- Crosschecking submitted amounts against the financial and accounting records of the entity; and
- Crosschecking of an entity's electoral advertising expenditure against the returns submitted by broadcasters and publishers.

## **Gift disclosure returns from non-party candidates and third party campaigners**

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In addition to election returns, non-party candidates are required to lodge a return within the same 60-day timeframe listing the total amount of gifts received during their respective disclosure period, as well as the defined details of any gifts totalling \$1,000 or more.<sup>16</sup> Third party campaigners must submit a gift return where gifts totalling \$1,000 or more have been received during the disclosure period and have been used wholly or partially to incur electoral expenditure.<sup>17</sup>

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<sup>13</sup> Section 216A(2) of the *Electoral Act 1992*

<sup>14</sup> Section 224 of the *Electoral Act 1992*

<sup>15</sup> Section 205F and section 205G of the *Electoral Act 1992*

<sup>16</sup> Section 217 of the *Electoral Act 1992*

<sup>17</sup> Section 220 of the *Electoral Act 1992*

Any compliance reviews conducted of the above gift returns will follow similar review measures to the compliance reviews conducted of regular gift disclosures made by party groupings, associated entities, non-party MLAs and non-party candidates.

## **Compliance review outcomes**

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After reviewing the information provided, the Commissioner or his or her representative may contact the financial representative of the entity to seek clarification or additional information regarding the disclosure, or request for an amendment to be provided, before the compliance review is completed.

A compliance assessment with no request for remedial action will be sent to the financial representative where the Commissioner is satisfied that the disclosure is presented fairly and truly in conformance with the legislation and the guidelines published by Elections ACT.

If aspects of the disclosure result in the Commissioner being unable to form an opinion, or if the Commissioner is of the opinion that the disclosure does not comply with the legislation, then the matter is to be dealt with in accordance with the Compliance enforcement policy.

A generalised report of review outcomes will be published annually. For more information, consult the **Publication policy** section of the Compliance enforcement policy.

## **Review of policies and procedures**

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This policy is subject to ongoing revisions to reflect legislation amendments and to adopt the best review and assessment practices. The policy is to be published on the Elections ACT official website. The online policy is considered to be the current version.