

Regular reporting of gifts

This fact sheet is accurate as at November 2023

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 gift disclosure outlined within the ACT's *Electoral Act 1992*.

Overview

- Party groupings, non-party MLAs, associated entities, non-party candidate groupings and non-party prospective candidate 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 disclosure period.
- This requirement is for **all gifts** received by the grouping, regardless of what the gift has been, or will be, used for, unless the gift is immediately deposited into a federal election account.
- From 1 July 2024, gift returns must be submitted **within 7 days** after a political entity receives a gift or sum of gifts totalling \$1,000 or more from the same person or organisation. For party groupings, non-party MLAs and associated entities[^], once the threshold has been reached during the financial year, any further gifts, of any value, received from the same person or organisation must be reported within 7 days of receipt of the additional gift.
- Until 1 July 2024, gift returns must be submitted within 7 days of the end of the month in which the gift or sum of gifts totalling \$1,000 or more was received.
- A party's reporting agent is responsible for disclosing gifts received on behalf of a party grouping. Where no reporting agent has been appointed, the party's registered officer is responsible for the submission of gift returns.
- The financial administrator of a party **must** regularly liaise with its MLAs, candidates and prospective candidates to ensure the party grouping does not breach its disclosure obligations.

[^] For non-party candidate groupings and non-party prospective candidate groupings see Glossary definition of *relevant period*

Impact of Commonwealth legislation for parties with 'dual registration'

For ACT registered political parties that also have registration at the federal level (dual registration) or associated entities of political parties with dual registration, the party or associated entity is not obliged to disclose the gift particulars to the ACT Electoral Commission if the gift has immediately been deposited into a federal election account upon receipt.



However, ACT political parties and associated entities must disclose gifts to the ACT Electoral Commission where they keep 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

are required to disclose gifts in compliance with the obligations detailed within this factsheet and other related manuals.

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 consideration, 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.

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 must be submitted within 7 days after the gift is received. If the 7th day falls on a non-working day, the return is due on the next working day.

For non-party candidate groupings and non-party prospective candidate groupings, see Glossary for the relevant period.

When is a gift said to be received?

The date a gift of money is said to be received is the earlier of the date the gift 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.

Amalgamation of gifts

Once the total of gifts received from a person or organisation reaches the \$1,000 threshold, **all previous gifts** received from that same person or organisation within the disclosure period must be disclosed, regardless of value. The disclosure date for these gifts is tied to the gift that reached the \$1,000 threshold.

Additionally, after the threshold has been reached in a financial year, **all future gifts** from the same person or organisation, regardless of value, must be disclosed within 7 days of receipt.

The party’s reporting agent is responsible for disclosing gifts received by the party grouping. Where no reporting agent has been appointed, the party’s registered officer must submit any required gift returns. Accordingly, when an MLA associated with a party grouping receives a gift or gifts, the MLA should provide the gift details to the party’s financial administrator. This will enable the party grouping to identify occurrences where a single donor may have donated multiple gifts which collectively total \$1,000 or more across the party’s MLAs or broader party grouping. Regular liaison between the party’s financial administrator and MLAs will assist in ensuring that the party grouping avoids breaching its legal obligations.

Restrictions on anonymous gifts

Parties, MLAs, non-party candidates or associated entities are not permitted to accept anonymous gifts of \$1,000 or more during the relevant disclosure period. These entities are also not permitted to accept more than \$25,000 in anonymous gifts during the disclosure period.

What information needs to be disclosed?

A gift 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 gift 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 political entity 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 and 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.

Example: person A purchases a ticket to a fundraising dinner for \$250. The value of the dinner is \$100, meaning the value of the gift is \$150.

The 'giver' of the gift is the individual or organisation making the fundraising contribution, not the recipient. Only the amount of consideration given to the giver of the gift can be deducted from the total gift value.

Example: person A buys two tickets to a fundraising event valued at \$250 each and gives one ticket to person B. Both receive a complementary gift bag valued \$40 each. However, only the amount of consideration given to person A (the giver) can be deducted from the \$500 total, even though the second ticket (and gift bag) is intended for person B. The value of the gift is \$460 from person A.

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. For an amount to be attributable to each individual, each purchaser of a ticket must be independently issued a receipt, otherwise the full amount is attributable as a gift by the single purchaser.

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, associated disclosures must be made.

Should all gifts be disclosed within 7-days?

No. Political entities should be aware that some donors may deliberately gift amounts below the \$1,000 reporting threshold so that their details will not be publicly disclosed.

Free facilities use, meaning a gift of the use of a meeting room and any equipment necessary to conduct the meeting, do not need to be disclosed in regular gift returns. Free facilities use must be disclosed in the entity's annual return.

How can returns be submitted?

Gift returns should be submitted electronically using the spreadsheet supplied by Elections ACT. Forms can be found on the [publications and forms](#) section of the Elections ACT website or obtained upon request to Elections ACT.

Once completed, these returns should be lodged with 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.

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.

Glossary

Party grouping

Comprises the party and the party's MLAs, candidates, and prospective candidates.

Relevant period (for non-party candidate grouping and non-party prospective candidate grouping)

for a non-party candidate grouping or non-party prospective candidate grouping—the period—

- (i) if the candidate was a candidate at an election the polling day for which was within 5 years before polling day for the election at which the candidate is a candidate—starting on the 31st day after the polling day for the last election at which the candidate was a candidate; and
- (ii) in any other case—starting on the earlier of—
 - (A) the day when the candidate publicly announced that he or she would be a candidate in the election; and
 - (B) the day when the candidate was nominated as a candidate for the election in accordance with section 105; and
- (iii) ending on the 30th day after polling day for the election.

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		20/07/202	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		30/07/2023	X		\$750		
Smith, John	1 Main St	BELCONNEN	ACT	2617		05/08/2023		X	\$500	6x bottles of wine (auction item)	Market value
Roberts, Jane	10 Sydney St	PHILLIP	ACT	2606		15/08/2023		X	\$220	Painting	Appraisal value
Roberts, Jane	10 Sydney St	PHILLIP	ACT	2606		01/01/2024	X		\$1000		

- In the above example, the first return is due by 7 August 2023. That is, within 7 days of the date in which the total gifts from John Smith reached the \$1,000 reporting threshold is received).
- The second return is due 12 August 2023. That is, within 7 days after the additional gift from John Smith is received.
- The return of both gifts from Jane Roberts is due by 8 January 2024, within 7 days after the date the \$1,000 threshold is reached.