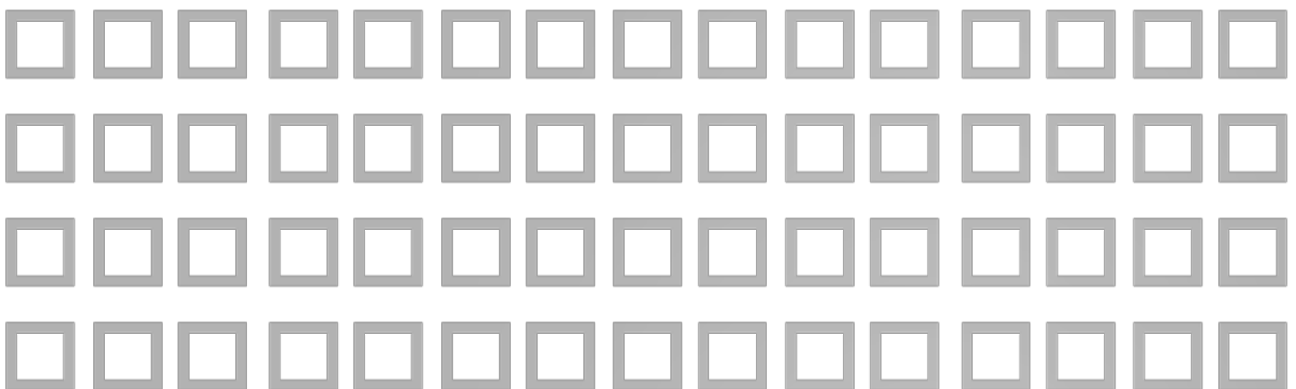


Election funding, expenditure and financial disclosure

2017/2018



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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 and associated entities to submit returns under the election funding, expenditure and financial disclosure provisions of the *Electoral Act 1992* for the 2017/2018 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 **assistance and enquiries** section (see page 3) provides contact details for the ACT Electoral Commissioner and the staff of Elections ACT.

The section on **key features of the ACT election funding, expenditure and financial disclosure scheme** (see page 4) sets out the major features of the scheme and provides background information as to how and why the scheme operates.

The section on **key information for all those with a disclosure obligation** (see page 6) sets out details that are relevant to all those who are required to submit financial disclosure returns.

The section on **reporting agents** (see page 8) is relevant to political parties and MLAs.

The section on **disclosure of gifts received of \$1,000 or more** (see page 11) provides details of the reporting obligations of party groupings, associated entities, non-party MLAs, and non-party candidates who receive gifts totalling \$1,000 or more in the relevant reporting period.

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 15;
- Associated entities – see page 20; and
- Members of the Legislative Assembly – see page 26.

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

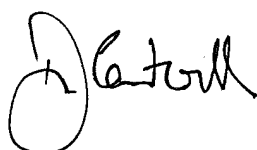
A range of legislative penalties apply for failure to comply with the disclosure requirements. These are set out in the **offences** section (see page 30).

The **glossary of definitions and terms** (see page 33) provides an explanation of language used throughout this handbook and associated forms.

A summarised **description of annual returns** (table 1) can be found at page 43.

This handbook should not be regarded as a final statement of the law on election funding, expenditure and financial 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.

Note that the **due date** for annual returns for parties, MLAs and associated entities for the 2017/2018 financial year is **31 August 2018**.

A handwritten signature in black ink, appearing to read 'D Cantwell', with a large, stylized initial 'D'.

Damian Cantwell AM
ACT Electoral Commissioner

Assistance and enquiries

The ACT's election funding, expenditure 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 the ACT Electoral Commission:

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

Facsimile:

(02) 6205 0382

Email:

ElectionsDisclosure@act.gov.au

Elections ACT website:

www.elections.act.gov.au

Key features of the ACT election funding, expenditure and financial disclosure scheme

This section describes the election funding, expenditure and financial disclosure scheme that operates with respect to ACT Legislative Assembly elections. Major changes to the scheme took effect from 3 March 2015 – see page 5 for a summary.

Why do we have an election funding, expenditure and financial disclosure scheme?

The election funding, expenditure and financial disclosure scheme has three components:

- Public funding of election campaign expenditure;
- Limits on the amount of expenditure that may be incurred; and
- Disclosure of financial transactions by registered political parties, political party groupings, MLAs, associated entities, candidates, third party campaigners, broadcasters and publishers.

An election funding, expenditure and financial 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;
- Providing transparency in the finances of political participants to inform the electorate of the sources of political funding; and
- Providing a fairer campaign environment by capping expenditure on election campaigns.

Major features

Some of the major features of the ACT's election funding, expenditure and financial disclosure scheme are:

- Political parties and non-party 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 at a rate of \$8.00 per vote in 2016 (indexed by CPI for future elections);
- Administrative expenditure funding is paid quarterly to parties with Assembly representation and to non-party MLAs (if any); administrative funding is currently (2018) paid at the rate of \$22,324.64 per calendar year for each MLA; the amount paid is indexed each year; administrative expenditure funding must not be used for electoral expenditure in relation to an ACT, federal, state or local government election;
- Registered parties, MLAs and associated entities are required to lodge annual (financial year) returns disclosing details of receipts, expenditure and debts including any disputed debts;
- Registered parties and MLAs are required to disclose names and addresses of persons or organisations from whom \$1,000 or more has been received;
- Associated entities are required to disclose the names and addresses of persons or organisations from whom the sum of payments is \$1,000 or more has been received, unless the payment is made in the normal course of business for liquor or food, or for the playing of gaming machines;
- For receipts, when calculating if the threshold amount of \$1,000 has been reached, all amounts need to be taken into account;
- Registered parties, MLAs and associated entities are required to disclose names and addresses of persons or organisations who are owed \$1,000 or more;
- For debts including disputed debts, when calculating if the threshold amount of \$1,000 has been reached, all amounts need to be taken into account;
- Registered party groupings, associated entities, non-party MLAs (if any), non-party candidate groupings and third party campaigners are required to submit election returns setting out details of campaign expenditure;
- Party groupings and associated entities are also required to lodge quarterly returns disclosing details of gifts received totalling \$1,000 or more, with more frequent disclosure in election years;
- Limitations on the amount of electoral expenditure that may be incurred by party groupings, non-party MLAs, associated entities, non-party candidate groupings and third party campaigners;
- Registered parties, MLAs and candidates may appoint reporting agents;
- 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 and associated entities need to maintain a minimum standard of record keeping. Records will need to distinguish between receipts and gifts, and should provide details on whether a gift is being made by an individual or by an organisation.

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 must be recorded.

Without proper records, it may not be possible for a party to ensure caps on electoral expenditure have not been breached or to prepare an accurate disclosure return before lodgement. Failure on either of these counts may result in a breach of the Electoral Act leading to a potential financial penalty – see the **offences** section on page 30.

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 election disclosure returns, or that might be relevant to completing an election return (whether disclosed in the return or not), must be retained for a minimum period of 4 years from the polling day in the election to which the returns relate. Similarly, records relating to annual returns must be kept for not less than 4 years from the due date for the return.

In the case of parties, it is in the interest of the party to ensure that all entities within the party grouping, including a party's MLAs, party sub-branches and 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 complete 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.

Annual returns for 2017/2018 must be lodged not later than 31 August 2018.

Public inspection

All annual returns are made available for inspection by 7 September in the year of lodgement.

Election returns are made available for inspection from the beginning of February in the year after polling day.

Returns of regular reporting of gifts of \$1,000 or more will be made available for inspection as soon as practicable after they are received by the Electoral Commissioner. This will generally be within a week.

Returns are available for inspection on the Elections ACT website at:

www.elections.act.gov.au/funding_and_disclosure/financial_disclosure_returns.

Any person may also, 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.

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 compliance reviews 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 political parties and MLAs, generally operates through a system of reporting agents.

Role of reporting agents

The reporting agent of a party is responsible for furnishing regular disclosure of gifts received totalling \$1,000 or more from a single donor, annual returns, and the election return for the party grouping to the Commissioner. The reporting agent of an MLA is responsible for furnishing annual returns for an MLA to the Commissioner.

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.

While the Electoral Act provides that a candidate may appoint a reporting agent, the provisions generally give responsibility for reporting candidates' activity directly to parties in relation to party candidates, and directly to candidates in relation to non-party candidates. Non-party candidates who wish to appoint a reporting agent are asked to contact Elections ACT.

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 appointment of a reporting agent form is available from the office of Elections ACT or via its website www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_forms.

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 will be taken to be the reporting agent.

Register of party and MLA reporting agents

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

The *Electoral Amendment Act 2015* altered the Electoral Act to restrict each political party, MLA and candidate to a single reporting agent. The appointment of a new reporting agent cancels any previous appointment by the entity.

The appointment of a reporting agent takes effect on the entry of the agent's name and address on the register. The appointment ceases to have effect when the name and address of the reporting agent are removed from the register, by way of a new appointment or by the cancellation of the appointment by the Commissioner.

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.

Administrative funding accounts

Administrative funding received by parties with elected MLAs and by non-party MLAs (if any) under the Electoral Act cannot be used for electoral expenditure in relation to an ACT, federal, state or local government elections. Administrative expenditure funding is paid in quarterly instalments at the current (2018) rate of \$22,324.64 per calendar year for each MLA. The amount paid is indexed each year.

Parties and non-party MLAs that receive administrative funding need to maintain an account structure that will enable them to demonstrate that funds received through administrative funding have not been used in relation to an ACT, federal, state or local government election. The simplest way to achieve this may be to establish an account or sub-account that is used only for depositing administrative funding instalments and is not used for electoral expenditure purposes.

Administrative funding payments need to be reported on annual returns by parties and independent MLAs as a receipt.

Quarterly/7 day disclosure of gifts received

This section describes the obligations of the financial representative of a party grouping, a non-party MLA, an associated entity, a non-party candidate grouping or a non-party prospective candidate grouping where that entity receives one or more gifts totalling \$1,000 or more from a single donor.

Obligations

When a party grouping, an associated entity, a non-party MLA, a non-party candidate grouping or a non-party prospective candidate grouping receives a gift or a sum of gifts totalling \$1,000 or more from a single donor, during the **relevant period**, the financial representative of the political entity is required to submit a return to the Electoral Commissioner detailing the **defined particulars** (see the **glossary** at page 33) of the giver of the gift, the amount of the gift and its date of receipt.

This requirement applies when the amount, or amounts, of gifts first reaches \$1,000 and for each increment of \$1,000 thereafter.

The **relevant period** for this purpose is a financial year for a party grouping, a non-party MLA and an associated entity.

For a non-party candidate grouping or non-party prospective candidate grouping the **relevant period** is the period beginning on the 31st day after the previous election, if the candidate contested that election, or the earliest date of either:

- The date the candidate publicly announced he or she would be a candidate; or
- The date the candidate was nominated as a candidate;

and ending on the 30th day after the relevant election.

A non-party prospective candidate grouping is taken to be a non-party candidate grouping once the candidate is declared to be a candidate following the close of nominations.

For the purposes of financial disclosure, a reference to the receipt of a gift, or sum of gifts totalling \$1,000 or more includes the receipt of any gifts-in-kind.

Due date for returns of gifts received

Returns relating to the disclosure of gifts received totalling \$1,000 or more have a submission date dependent upon the period in which the gift or gifts received reaches \$1,000 in a financial year.

- 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, 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.

All disclosures received by the ACT Electoral Commissioner are made public as soon as practicable after they are received.

When is a gift said to be received

The date a gift is said to be received is the earliest of either the date the gift of money is receipted or the date it is 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, and from then on, when the value reaches each increment of \$1,000.

Where an ACT registered party receives membership fees or donations via a related party (for example, where a federal branch acts as the collecting agent for the ACT party branch) the date a gift is said to be received is the date of receipt by the ACT registered party branch.

If the \$1,000 threshold has been reached through the provision of multiple gifts from the same person or organisation, the relevant receipt date is attributed to the date that the gift that pushed the total over the \$1,000 threshold was received.

The reporting requirement for gifts of \$1,000 or more is staged in increments related to the gift that raised the total value of the gifts received over the \$1,000 threshold. For example, if a gift of \$1,200 has been reported as having been received from an individual, the next return submission related to that individual is not required to be submitted until that individual donates a further gift of \$1,000 (or more).

Example

A party receives a gift of \$750 from Person A on 15 November 2017 and receives a further gift of \$750 from Person A on 6 March 2018. As the party has now received a total of over \$1,000 from the same individual (in this example \$1,500) and as the receipt of the gift that pushed the total amount received over the \$1,000 threshold was received in the first quarter, the party is required to submit a return declaring both these gifts no later than 30 April 2018, i.e. within 30 days of the end of the financial quarter in which the second gift was receipted.

Person A then gives another gift of \$750 on 25 May 2018, but this time to an MLA belonging to the same party. The total amount now received by the party grouping is \$2,250, however, as the increment in the gifts received is \$750, i.e. less than \$1,000, no further return is required at this point.

Finally, Person A then gives a gift-in-kind valued at \$500 to the same party on 2 June 2018. The incremental threshold of \$1,000 has now been exceeded and the party is required to provide a return disclosing the gift received on 25 May 2018 and the gift-in-kind received on 2 June 2018. This return is due no later than 30 July 2018, i.e. within **30** days of the end of the financial quarter in which the gift-in-kind (in this example) was receipted.

Completing the return

Returns of gifts received are to be submitted by completing the relevant details of the return in an approved Excel spreadsheet provided by Elections ACT. Instructions to assist with completion are included in the first tab of the spreadsheet. The spreadsheet is to be lodged with the Electoral Commissioner at the following email address:

ElectionsDisclosure@act.gov.au

Gifts totalling \$1,000 or more, received from a PERSON

The worksheet labelled "Gifts received" in the spreadsheet provided by Elections ACT is to be used to record details of gifts totalling \$1,000 or more.

Enter the name and address of the person from whom the gift, or gifts, totalling \$1,000 or more was received.

If any gift that is included is a gift-in-kind, the value of the gift-in-kind should be notionally allocated even though no money has been deposited.

Gifts totalling \$1,000 or more, received from an ORGANISATION

The worksheet labelled "Gifts received" in the spreadsheet provided by Elections ACT is to be used to record details of gifts totalling \$1,000 or more.

Enter the name, ABN and address of the organisation from which the gift, or gifts, totalling \$1,000 or more was received.

Enter the name of the contact person in the organisation (details of the contact person will not be made public).

If any gift that is included is a gift-in-kind, the value of the gift-in-kind should be notionally allocated, even though no money has been deposited.

Gifts totalling \$1,000 or more, received from members of an UNINCORPORATED ASSOCIATION

The worksheet labelled "Gifts received" in the spreadsheet provided by Elections ACT is to be used to record details of gifts totalling \$1,000 or more.

Enter the name of the unincorporated association.

Enter the names and addresses of the members of the executive committee of the association from which the gift, or gifts, totalling \$1,000 or more was received.

If any gift that is included is a gift-in-kind, the value of the gift-in-kind should be notionally allocated, even though no money has been deposited.

Gifts totalling \$1,000 or more, received from a TRUST FUND or FOUNDATION

The worksheet labelled "Gifts received" in the spreadsheet provided by Elections ACT is to be used to record details of gifts totalling \$1,000 or more.

Enter the names and addresses of the trustees of the fund or foundation from which the gift, or gifts, totalling \$1,000 or more was received.

Enter the name, title or description of the trust fund or foundation.

If any gift that is included is a gift-in-kind, the value of the gift-in-kind should be notionally allocated, even though no money has been deposited.

Details to be entered with respect to each gift, or sum of gifts, totalling \$1,000 or more received from a PERSON, ORGANISATION, UNINCORPORATED ASSOCIATION, and TRUST FUND OR FOUNDATION

Enter the following details with respect to each gift received from the person, organisation, unincorporated association, and trust fund or foundation:

- The date the gift was received or, if the \$1,000 reporting threshold was reached by a sum of gifts, the receipt date of each gift that contributed to the total sum being reported;
- If a gift of money (cash, cheque, bank transfer, etc):
 - The total amount of the gift;
- If a gift-in-kind (an item of value for sale, auction or raffle, paid advertising, free facilities use, free or discounted services that is not volunteer labour, etc):
 - The notional value of the gift-in-kind;
 - A description of the gift; and
 - How the gift was valued.

Lodging the return

A convenient way to lodge the return of gifts received is to email the completed spreadsheet at the following email address:

ElectionsDisclosure@act.gov.au

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

If you did not receive acknowledgment receipt in two days from the day of submission, you need to contact Elections ACT to confirm that Electoral Commission received your return.

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

Political party annual returns

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 obligations. Among the obligations is the requirement to submit **annual returns** setting out receipts, loans received, payments and debts including any disputed debts, and to submit **election returns** of electoral expenditure on behalf of the party grouping 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 8) who, once appointed, takes over the responsibility for submitting the annual and election returns.

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

Annual return for an ACT Legislative Assembly election year

Reporting agents of parties lodging annual returns covering a year in which an ACT election has been held should be aware that monies donated to, paid by or owed by or on behalf of 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.

Endorsed candidates who have a campaign committee should ensure that the campaign committee provides full details of gifts, payments or debts including any disputed 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 not later than 31 August after the end of the financial year to which the return relates. 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. The Commissioner has the power to issue penalty notices for failure to lodge a return by the due date.

Annual return form

The return is to be completed using an approved excel spreadsheet provided by Elections ACT. The lodgement of the completed return (excel spreadsheet) should be lodged via email at ElectionsDisclosure@act.gov.au. The Commissioner will provide the approved annual return spreadsheet form for lodgement to reporting agents at the end of each financial year. Forms may also be obtained upon request to Elections ACT.

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.

PAYG withholding and superannuation payable amounts should be reported. However, book entries such as accruals (for example, provisions for long service leave, depreciation, and the like) are not required to be reported.

Any public funding received by a party should be reported as a receipt. Affiliation fees paid to a party, as well as any levies imposed by a party upon its elected representatives, should also be reported as receipts. Refer to the definition of **gift** (see the Glossary on page 36) when determining how to report party membership fees and monies received from fundraising events.

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 \$1,500 with costs of \$1,000 for a profit of \$500 should have the full \$1,500 included in the total receipts (with this further broken down into gifts and other receipts if necessary) and \$1,000 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. However, reporting agents should be aware that some donors may deliberately gift amounts that fall below the reporting threshold of \$1,000 in order to prevent the donor's name and address from being made public when returns are published.

A change to the Electoral Act, which came into effect on 3 March 2015, covering the publishing of a donor's home address, altered the law so that only the donor's suburb, postcode or post office box details are made available for public inspection on the Commission's website. Full details are still made available for public inspection at the office of the Electoral Commissioner.

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.

Anonymous gifts

A party is not permitted to accept anonymous donations of \$1,000 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. Anonymous gifts of up to \$1,000 each may now be received up to a total of \$25,000 per party in a financial year.

If a party accepts anonymous gifts in excess of \$25,000 in a financial year, the party must pay to the Territory an amount equal to the amount received in excess of \$25,000.

Free facilities use

“Free facilities use” means a gift of the use of facilities for a routine meeting of the entity receiving the gift. This includes the use of a room and equipment necessary for conducting a meeting in the room, but does not include food, drink or any other gift associated with the use of the facilities.

The use of free facilities does not need to be included in the regular quarterly reporting of gifts received of more than \$1,000. The value of each provision of free facilities use does not need to be separately recorded in relation to each date of receipt in annual returns.

Completing the annual return form

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 of any amount are to be included in the total.

The total amount of receipts should be divided into gifts and other receipts.

If any receipts totalling \$1,000 or more were received by the party from the same person, organisation or entity, item 5 (on the “receipts” tab of the spreadsheet) must be completed to show the defined particulars of those persons, organisations or entities.

Anonymous gifts

Item 2 on the return

At this item show the total amount of anonymous gifts received.

Payments

Item 3 on the return

The return must show the total amount of payments made during the reporting period.

All transactions of any amount, including those of less than \$1,000, are to be included in the total.

If a payment made by a person on behalf of the party was a gift-in-kind (such as paid advertising), the value of the gift-in-kind should be included in the total payments.

Total outstanding debts at 30 June

Item 4 on the return

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

All outstanding debts, including debts in dispute, are to be disclosed in the party's annual return to the Electoral Commissioner.

All amounts, including those of less than \$1,000, are to be included in the total.

If there are outstanding debts totalling \$1,000 or more owed to the same person, organisation or entity by the party, item 6 (on the "debts" tab of the spreadsheet) must also be completed to show the defined particulars of those persons, organisations or entities.

Receipts totalling \$1,000 or more

Item 5 on the return

Item 5 (on the "receipts" tab of the spreadsheet) is for detailing amounts received from entities totalling \$1,000 or more. Note, there are different details required for each type of entity:

- Enter the name and address of the person from whom the amount, or amounts, totalling \$1,000 or more was received;
- Enter the name, address and ABN of each organisation from which the amount, or amounts, totalling \$1,000 or more was received;
- Enter the name of the unincorporated association and the names and addresses of the members of the executive committee of the association from which the amount, or amounts, totalling \$1,000 or more was received; and
- Enter the name, title or description of the trust fund or foundation, and the names and addresses of the trustees of the fund or foundation from which the amount, or amounts, totalling \$1,000 or more was received.

In each section, enter the following details with respect to each amount that contributed to the total sum of \$1,000 or more received from the person, organisation, unincorporated association, trust fund or foundation named:

- The receipt date; and
- The type of receipt (money, free facilities use, other gift-in-kind or other receipt).

If the gift received was a gift-in-kind (an item of value for sale, auction or raffle, paid advertising, free facilities use, free or discounted services that are not volunteer labour (see definition), etc), the value of the gift-in-kind must be notionally valued and recorded on the return even though no money may have actually been deposited and must also include a description of the gift and information relating to how the gift was valued.

Outstanding debts of \$1,000 or more

Item 6 on the return

The return must also include the name and address of persons, organisations or entities who are owed a total of \$1,000 or more by the party, and the amount owed.

In the case of debts, all amounts must be included to determine if the \$1,000 threshold has been reached.

All outstanding debts, including debts in dispute, are to be disclosed in the party's annual return to the Electoral Commissioner.

Associated entity annual returns

This section describes the annual reporting requirements for associated entities.

“Associated entity” is a term used to describe an organisation that is controlled by one or more parties or MLAs, or that 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) which contribute significant amounts to 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 the functions of the financial controller for the entity is responsible for completing and lodging the return on behalf of the associated entity.

Financial controller

If an associated entity is a company, the financial controller is the secretary of the company. If the entity is the trustee of a trust, the financial controller is the trustee.

In any other case, the financial controller is the person responsible for the maintaining the financial records of the 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 not later than 31 August after the end of the financial year to which the return relates. 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. The Commissioner has the power to issue penalty notices for failure to lodge a return by the due date.

Annual return form

The return is to be completed using an approved excel spreadsheet provided by Elections ACT. The lodgement of the completed return (excel spreadsheet) should be lodged via email at ElectionsDisclosure@act.gov.au

The Commissioner will provide the approved annual return spreadsheet form for lodgement to reporting agents at the end of each financial year. Forms may also be obtained upon request to Elections ACT.

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 approved excel spreadsheet return provided by the ACT Electoral Commissioner must be used.

Transactions to be reported

With some exceptions listed below, the associated entity must include in its return all of its reportable transactions, including those 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 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.

PAYG withholding and superannuation payable amounts should be reported. However, 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 or organisations and amounts received from them need not be separately reported where:

- The associated entity is licensed under the *Liquor Act 2010* 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 \$1,500 with costs of \$1,000 for a profit of \$500 should have the full \$1,500 included in the total receipts (with this further broken down into gifts and other receipts if necessary) and \$1,000 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 outstanding debts above the legislated thresholds, there is nothing to prevent additional information being provided, which may lead to a clearer understanding of the returns.

A change to the Electoral Act, which came into effect on 3 March 2015, covering the publishing of a donor's home address, altered the law so that only the donor's suburb, postcode or post office box details are made available for public inspection on the Commission's website. Full details are still available for public inspection at the office of the Electoral Commissioner.

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.

Anonymous gifts

An associated entity is not permitted to accept anonymous donations in excess of \$1,000 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. Anonymous gifts of up to \$1,000 each may now be received up to a total of \$25,000 per associated entity, in a financial year.

If an associated entity accepts anonymous gifts in excess of \$25,000 in a financial year, the entity must pay to the Territory an amount equal to the amount received in excess of \$25,000.

Completing the annual return 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 of any amount are to be included in the total.

The total amount of receipts should be divided into gifts and other receipts.

If any amount has been received by the associated entity from a person, organisation or entity, item 5 (on the "receipts" tab of the spreadsheet) must be completed to show the defined particulars of those persons, organisations or entities.

Anonymous gifts

Item 2 on the return

At this item show the total amount of anonymous gifts received.

Payments

Item 3 on the return

The return must show the total amount of payments made during the reporting period.

All transactions of any amount, including those of less than \$1,000, are to be included in the total.

If a payment made by a person on behalf of the associated entity was a gift-in-kind (such as paid advertising), the value of the gift-in-kind should be included in the total payments.

Total outstanding debts at 30 June

Item 4 on the return

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

All outstanding debts, including debts in dispute, are to be disclosed in the associated entity's annual return to the Electoral Commissioner.

All amounts, including those of less than \$1,000, are to be included in the total.

If there are outstanding debts totalling \$1,000 or more owed to the same person, organisation or entity by the associated entity, item 6 (on the "debts" tab of the spreadsheet) must also be completed to show the defined particulars of those persons, organisations or entities.

Receipts

Items 5 on the return

Item 5 (on the "receipts" tab of the spreadsheet) is for detailing amounts received from entities of \$1,000 or more. Note, there are different details required for each type of entity:

- Enter the name and address of the person from whom an amount was received;
- Enter the name, address and ABN of each organisation from which an amount was received;
- Enter the name of the unincorporated association and the names and addresses of the members of the executive committee of the association from which an amount was received; and
- Enter the name, title or description of the trust fund or foundation and the names and addresses of the trustees of the fund or foundation from which an amount was received.

An associated entity is not required to disclose the defined particulars of individuals or organisations and amounts received from them where:

- The associated entity is licensed under the *Liquor Act 2010* 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 are 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 must be disclosed.

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.

In each section, enter the following details with respect to each amount received from the person, organisation, unincorporated association, and trust fund or foundation named:

- The receipt date; and
- The type of receipt (money, free facilities use, other gift-in-kind or other receipt).

If the gift received was a gift-in-kind (an item of value for sale, auction or raffle, paid advertising, free facilities use, free or discounted services that are not volunteer labour (see definition), etc), the value of the gift-in-kind must be notionally valued and recorded on the return even though no money may have actually been deposited and must also include a description of the gift and information relating to how the gift was valued.

Outstanding debts of \$1,000 or more

Item 6 on the return

The return must also include the name and address of persons, organisations or entities who are owed a total of \$1,000 or more by the associated entity, and the amount owed.

In the case of debts, all amounts must be included to determine if the \$1,000 threshold has been reached.

All outstanding debts, including debts in dispute, are to be disclosed in the political entity's annual return to the Electoral Commissioner.

Capital

Item 7 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.

Note capital deposits received during the reporting year also need to be disclosed as receipts under item 5.

Capital deposits include monies held in trust.

Members of the Legislative Assembly annual returns

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 8 of this handbook.

The annual return of an MLA sets out details of gifts, payments and debts.

In addition, in an ACT Legislative Assembly election year, if a non-party MLA stands as a candidate for election, then a **non-party candidate election return** of electoral expenditure must be completed after the election and is due to be lodged with the Electoral Commissioner within 60 days of polling day. (For the 2020 ACT election, this date is 16 December 2020).

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 not later than 31 August after the end of the financial year to which the return relates. 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. The Commissioner has the power to issue penalty notices for failure to lodge a return by the due date.

Annual return form

The return is to be completed using an approved excel spreadsheet provided by Elections ACT. The lodgement of the completed return, (excel spreadsheet), should be lodged via email at ElectionsDisclosure@act.gov.au

The Commissioner will provide the approved annual return spreadsheet form for lodgement to reporting agents at the end of each financial year. Forms may also be obtained upon request to Elections ACT.

Transactions to be reported

MLAs are only required to report amounts that are received by the MLA in his or her capacity as an MLA or as a Minister. An MLA is only required to disclose payments and outstanding debts that are made or incurred by the MLA in his or her capacity as an MLA or Minister for a purpose that relates solely or substantially to electoral expenditure.

Any electoral expenditure incurred by MLAs using their communication allowance will be counted toward the expenditure cap of the party grouping, and the MLA is required to disclose this expenditure in the MLA's annual return.

Gifts received by MLAs in their capacity as Ministers must be declared in MLA annual returns.

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

All amounts reported are to be GST inclusive.

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. However, MLAs should be aware that some donors may deliberately gift amounts that fall below the reporting threshold of \$1,000 in order to prevent the donor's name and address from being made public when returns are published.

A change to the Electoral Act, which came into effect on 3 March 2015, covering the publishing of an individual donor's home address, altered the law, so that only the donor's suburb, postcode or post office box details are made available for public inspection on the Commission's website. Full details are still available for public inspection at the office of the Electoral Commissioner.

The MLA, or his or her reporting agent, should ensure all relevant financial transactions of the MLA are included in the return. In cases where the MLA or 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 return.

Anonymous gifts

An MLA is not permitted to accept anonymous donations in excess of \$1,000 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. Anonymous gifts of up to \$1,000 each may now be received up to a total of \$25,000 per MLA in a financial year.

If an MLA accepts anonymous gifts in excess of \$25,000 in a financial year, the MLA must pay to the Territory an amount equal to the amount received in excess of \$25,000.

Completing the annual return form

Gifts

Item 1 on the return

The return must show the total of all gifts received during the financial year by, or on behalf of, the MLA in his or her capacity as an MLA.

Gifts received by MLAs in their capacity as Ministers must be declared in MLA annual returns.

All transactions of any amount are to be included in the total, including the value of any gifts-in-kind.

If any gifts totalling \$1,000 or more were received by the MLA from the same person, organisation or entity, item 5 (on the "gifts" tab of the spreadsheet) must be completed to show the defined particulars of those persons, organisations or entities.

Anonymous gifts

Item 2 on the return

At this item, the return must show the total amount of anonymous gifts received.

Payments

Item 3 on the return

The return must show the total amount of payments made during the reporting period.

All transactions of any amount, including those of less than \$1,000, are to be included in the total.

If a payment made by a person on behalf of the MLA was a gift-in-kind (such as paid advertising), the value of the gift-in-kind should be included in the total payments.

Total Outstanding debts at 30 June

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.

All outstanding debts, including debts in dispute, are to be disclosed in the political entity's annual return to the Electoral Commissioner.

All amounts, including those of less than \$1,000, are to be included in the total.

If there are outstanding debts including disputed debts totalling \$1,000 or more owed to the same person, organisation or entity by the MLA, item 6 (on the "debts" tab of the spreadsheet) must also be completed to show the defined particulars of those persons, organisations or entities.

Gifts totalling \$1,000 or more

Item 5 on the return

Item 5 (on the "gifts" tab of the spreadsheet) is for detailing amounts received from entities totalling \$1,000 or more. Note there are different details required for each type of entity:

- Enter the name and address of the person from whom the amount, or amounts, totalling \$1,000 or more was received;
- Enter the name, address and ABN of each organisation from which the amount, or amounts, totalling \$1,000 or more was received;
- Enter the name of the unincorporated association and the names and addresses of the members of the executive committee of the association from which the amount, or amounts, totalling \$1,000 or more was received; and
- Enter the name, title or description of the trust fund or foundation, and the names and addresses of the trustees of the fund or foundation from which the amount, or amounts, totalling \$1,000 or more was received.

In each section, enter the following details with respect to each amount that contributed to the total sum of \$1,000 or more received from the person, organisation, unincorporated association, trust fund or foundation named:

- The receipt date; and
- The type of receipt (money, free facilities use, other gift-in-kind or other receipt).

If the gift received was a gift-in-kind (an item of value for sale, auction or raffle, paid advertising, free facilities use, free or discounted services that are not volunteer labour (see definition), etc), the value of the gift-in-kind must be notionally valued and recorded on the return even though no money may have actually been deposited and must also include a description of the gift and information relating to how the gift was valued.

Outstanding debts of \$1,000 or more

Item 6 on the return

The return must also include the name and address of persons, organisations or entities who are owed a total of \$1,000 or more by the MLA, and the amount owed.

In the case of debts, all amounts must be included to determine if the \$1,000 threshold has been reached.

All outstanding debts, including debts in dispute, are to be disclosed in the MLA's annual return to the Electoral Commissioner.

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 (as at May 2018) is:

- If the person charged is an individual—\$150; or
- If the person charged is a corporation—\$750.

Failure to lodge disclosure 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. The Commissioner has the power to issue penalty notices for failure to lodge a return by the due date.

Lodging an incomplete disclosure return

It is an offence to lodge an incomplete return.

Penalty: 20 penalty units. The Commissioner has the power to issue penalty notices for failure to lodge a complete return by the due date.

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 keep records

A person commits an offence if the person fails to keep records as required for the purpose of preparing returns under the Electoral Act.

Penalty: 20 penalty units.

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.

Exceeding the expenditure cap

It is an offence for the financial representative of:

- A party grouping;
- An associated entity;
- A non-party MLA;
- A non-party candidate grouping; or
- A third party campaigner;

to incur an amount for electoral expenditure that exceeds the expenditure cap for the entity, during the capped expenditure period. Gifts-in-kind in the form of electoral expenditure incurred on behalf of an entity are included under the entity's expenditure cap.

Penalty: an amount equal to twice the amount by which the electoral expenditure exceeds the \$40,000 expenditure cap is payable to the Territory.

Limit on spending – payments from related parties

A party is not permitted to use payments received of more than \$10,000 in a financial year from one or more related parties, for the purpose of incurring ACT electoral expenditure.

Penalty: an amount of twice the amount by which the spending payment or spending payments exceeds \$10,000 is payable to the Territory.

Misuse of administrative expenditure funding for electoral expenditure

The reporting agent of a party, or a non-party MLA, commits an offence if the amount paid to the party, or non-party MLA, for administrative expenditure funding under the Electoral Act is used for electoral expenditure in relation to an ACT, federal, state or local government election.

Penalty: an amount equal to twice the amount used is payable to the Territory.

Receiving anonymous gifts of \$1,000 or more

A party, MLA, candidate or associated entity is not permitted to accept anonymous donations of \$1,000 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.

Penalty: an amount equal to the amount of the gift is payable to the Territory.

Exceeding the limit on the total amount of anonymous gifts that may be received

An anonymous gift is a gift made anonymously that is less than \$1,000.

A party, MLA or associated entity must not accept anonymous gifts of up to \$1,000 totalling more than \$25,000 in a financial year.

A candidate must not accept anonymous gifts totalling more than \$25,000 in the disclosure period for an election. *Penalty: the amount by which the total of the gifts exceeds \$25,000 is payable to the Territory.*

Glossary of definitions and terms used

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 office 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 gifts

Anonymous gifts 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.

A registered political party, MLA, candidate or associated entity is not permitted to accept anonymous donations in excess of \$1,000 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.

associated entity

An associated entity is an organisation that is controlled by, or operates completely or to a significant extent for the benefit of, 1 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) that contribute significant amounts to 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 commonly relates to 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.

capped expenditure period

For the 2020 ACT election, the capped expenditure period will commence on 1 January in an election year and end on polling day for the election (17 October 2020).

Commission

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.

disclosure period

For a candidate, the disclosure period is the period beginning on the 31st day after the previous election, if the candidate contested that election, or the earlier of the date:

- The candidate was endorsed or pre-selected;
- The candidate publicly announced he or she would be a candidate; or
- The candidate is nominated as a candidate

and ending on the 30th day after the relevant election.

For a third-party campaigner, the disclosure period is the period beginning on the 31st day after the previous election, and ending on the 30th day after the relevant election.

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 expenditure

Electoral expenditure incurred in relation to an election falls within the following categories:

- Broadcasting electoral advertisements (including production costs);
- Publishing electoral advertisements in a news publication, including printed and electronic newspapers or periodicals (including production costs);
- Displaying electoral advertisements at a theatre or other place of entertainment (including production costs);
- Production of printed or electronic electoral matter requiring authorisation (for example, how-to-vote cards, posters, pamphlets and internet advertising);
- Producing, broadcasting, publishing or distributing electoral matter, other than material included above (such as direct mailing, including printing and postage, business cards promoting candidacy, T-shirts, badges, buttons, pens, pencils and balloons);
- Consultant's or advertising agent's fees in respect of services provided or material used relating to the election; and
- Opinion polling and other electoral research undertaken to support the production of electoral matter included in any of the above.

Electoral expenditure does not include:

- Electoral matter paid for by the Territory or the ACT Legislative Assembly; or
- Administrative expenditure, such as the cost of maintaining office accommodation, office supplies, travel and staff.

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.

financial representative

Financial representative means:

- For a party grouping – the reporting agent of the party;
- For a non-party MLA – the MLA;
- For a non-party candidate grouping – the candidate;
- For a non-party prospective candidate grouping – the prospective candidate;
- For an associated entity – the entity's financial controller; or
- For a third party campaigner:
 - If the third party campaigner is an individual – the third party campaigner; or
 - In any other case – the managing director (however described) of the third party campaigner.

fundraising contribution

Fundraising contribution means a payment made by a person or organisation as a contribution, entry fee or other payment to entitle the person or another person to participate in or gain a benefit from a fundraising event, and includes an amount paid for:

- A ticket in a raffle;
- An item at a fundraising auction;
- A meal or beverage; and
- Attending a conference, seminar or similar function.

A fundraising contribution of \$250 or less per fundraising event is not considered a gift. If a fundraising contribution is more than \$250, the amount over \$250 is considered to be a gift.

fundraising event

Fundraising event means an event, however described, where any part of the funds raised are retained by a political party, an MLA, an associated entity, a candidate, or a third party campaigner.

gift

Gift means each of the following:

- A disposition of property made by a person or organisation to someone else, without consideration in money or money's worth or with inadequate consideration;
- 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

- The part of a fundraising contribution that is more than \$250.

A gift does not include:

- A disposition of property under a will;
- An annual subscription paid to a party for membership of the party that is \$250 or less;
- A fundraising contribution of \$250 or less;
- Affiliation fees paid to a party;
- Compulsory levies paid to a party by a party's elected representatives;
- 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;
- Administrative expenditure funding paid by the ACT Electoral Commission; or
- Election funding paid by an electoral commission.

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.

Gifts received by MLAs in their capacity as Ministers must be declared in MLA annual returns.

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.

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 any returns.

MLA

A Member of the ACT Legislative Assembly.

news publication

A newspaper or periodical circulating in the ACT, including an electronic publication of a similar kind, such as a news website.

non-party candidate grouping

This grouping relates to a candidate who is not a party candidate and comprises:

- The candidate; and
- Any other person who has incurred electoral expenditure with the authority of the candidate to support the candidate in contesting the election.

non-party prospective candidate grouping

This grouping relates to a prospective candidate who is not a party candidate or party prospective candidate and comprises:

- The prospective candidate; and
- Any other person who has incurred electoral expenditure with the authority of the prospective candidate to support the prospective candidate in contesting the election.

Once a prospective candidate is declared by the Commissioner to be a candidate, the prospective candidate becomes a candidate, and the grouping becomes a non-party candidate grouping.

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.

party grouping

This grouping relates to a registered political party and comprises:

- The party;
- An MLA for the party;
- A candidate for the party;

- An associated entity of the party;
- An associated entity of an MLA of the party; and
- An associated entity of a candidate of the party.

participant in an election or referendum

A participant in an election means:

- A political party;
- A candidate; or
- A person (other than a party or candidate) by whom, or with the authority of whom, electoral expenditure in relation to an election is incurred.

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 or candidate 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 36 days before polling day and ends on polling day.

prospective candidate

A prospective candidate means a person who is yet to be declared as a candidate for an election by the Commissioner, but has:

- Won pre-selection, or endorsement, to be a candidate for a party for an election;
- Publicly announced that he/she intends to be a candidate for the election; or
- Been nominated with the Commissioner to be a candidate for an election.

A person who was a prospective non-party candidate but who is not subsequently declared to be a candidate following the official declaration of nominations by the Electoral Commissioner does not have any reporting obligations under the Electoral Act.

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 Commission that undertake electoral expenditure are treated as third-party campaigners for disclosure purposes.

The Commission'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.

third-party campaigner

A third-party campaigner is:

- A person or organisation that incurs more than \$1,000 in electoral expenditure in the disclosure expenditure period for an election; but
- Does not include a party, MLA, candidate, party grouping, non-party candidate, broadcaster, publisher of a news publication (except a publication published for, or on behalf of, a party, MLA, candidate, party grouping or non-party candidate), government agency or the ACT Legislative Assembly.

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.

Table 1: Summary of reporting requirements - annual returns 2017/2018

	detail required	due	made public
parties	<ul style="list-style-type: none"> ▪ Total amounts received ▪ Individual details where \$1,000 or more in total received from any person or group (including amounts received or paid less than \$1,000) ▪ Total amounts paid ▪ Total debts 	31 August after the end of the financial year	7 September after the end of the financial year
MLAs	<ul style="list-style-type: none"> ▪ Total amounts received ▪ Individual details where \$1,000 or more in total received from any person or group (including amounts received or paid less than \$1,000) ▪ Total amounts paid ▪ Total debts 	31 August after the end of the financial year	7 September after the end of the financial year
associated entities	<ul style="list-style-type: none"> ▪ Total amounts received ▪ Individual details where \$1,000 or more in total received from any person or group (including amounts received or paid less than \$1,000) ▪ Total amounts paid ▪ Total debts 	31 August after the end of the financial year	7 September after the end of the financial year
candidates	N/A	N/A	N/A
donors	▪ No longer required from 1 July 2012	N/A	N/A
broadcasters and publishers	N/A	N/A	N/A
third-party campaigners	N/A	N/A	N/A

