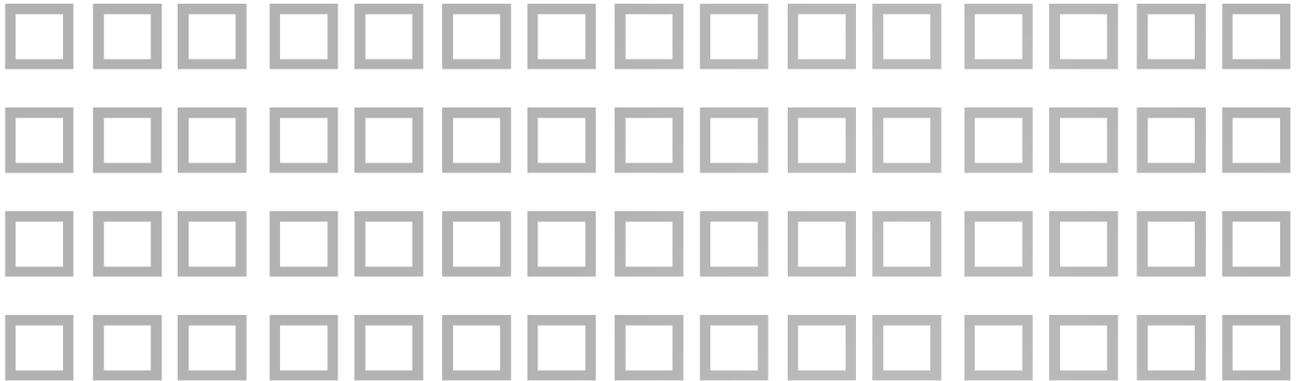


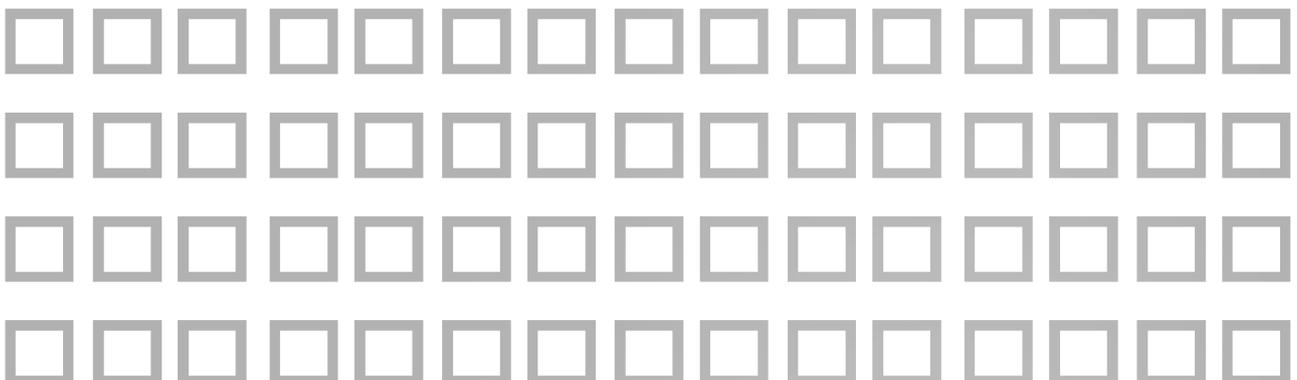
Elections ACT

ACT ELECTORAL COMMISSION OFFICERS
OF THE ACT LEGISLATIVE ASSEMBLY



Election funding, expenditure and financial disclosure

2020 Election



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ACT Electoral Commission
PO Box 272, Civic Square ACT 2608.
Phone: 02 6205 0033
Web: www.elections.act.gov.au
Email: elections@act.gov.au

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Introduction

How to use this handbook

This handbook details the entitlements and obligations in the ACT of registered political party groupings, Members of the ACT Legislative Assembly (MLA's), associated entities, non-party candidates, third-party campaigners, broadcasters and publishers under the election funding, expenditure and financial disclosure provisions of the *Electoral Act 1992* (Electoral Act), for the 2020 ACT Legislative Assembly election.

The handbook is divided into general sections of interest to all those required to submit election 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 'important qualification' section (see page 4) summarises the effect of the amendments of the Commonwealth *Electoral Act 1918 (Cth)* that commenced on 1 January 2019. These Commonwealth amendments, to a significant extent, effect the operation of the ACT's funding and disclosure scheme, with particular impact on the disclosure of gifts.

The section on **key features of the ACT election funding, expenditure and financial disclosure scheme** (see page 5) sets out the major features of the scheme and provides background information as to how and why the scheme operates.

The section on **restrictions on electoral expenditure and on gifts received** (see page 13) details the limits on expenditure that may be incurred and the limits on the amount of gifts that may be received.

The section on **key information for all those with a disclosure obligation** (see page 8) sets out details that are relevant to all those who are required to submit an election disclosure return.

The section on **reporting agents** (see page 11) is relevant to political parties and MLAs.

The section on **election funding** (see page 15) describes the entitlement of eligible candidates and registered political parties to receive election funding.

The section on **administrative expenditure funding** (see page 16) describes the entitlement to administrative expenditure funding by parties and non-party MLAs.

The section on **disclosure of gifts received of \$1,000 or more** (see page 17) provides details of the reporting requirements for party groupings, associated entities, non-party MLAs, non-party candidates and prospective candidates who receive gifts totalling \$1,000 or more.

Different **election returns** are required to be submitted by the following election participants. Separate sections of this handbook detail the obligations of:

- Political party groupings – see page 21;
- Associated entities – see page 25;
- Non-party candidate groupings – see page 29;

- Third-party campaigners – see page 35;
- Broadcasters – see page 41; and
- Publishers – see on page 45.

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

A range of legislative penalties apply to failure to comply with the disclosure requirements. These are set in the **offences** section (see page 49).

The **glossary of definitions and terms used** (see page 52) provides an explanation of terms used throughout this handbook and associated forms.

A summarised description of the different types of returns can be found on pages 46 and 47 as follows:

- Annual returns for 2019-2020 (table 1),
- 2020 election returns (table 2),
- Annual returns for 2020-2021 (table 1), and
- A table outlining the deadlines that apply to the various returns.

The requirements for annual reporting by registered political parties, MLAs and associated entities are detailed in the *2019-2020* and *2020-2021 Election funding, expenditure and financial disclosure handbooks*. Both publications are available at www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_handbooks

The handbooks 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.

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
Level 6, 221 London Circuit
CANBERRA CITY ACT 2601

Postal address:

ACT Electoral Commission
PO Box 272
CIVIC SQUARE ACT 2608

Phone:

(02) 6205 0033

Email:

ElectionsDisclosure@act.gov.au

elections@act.gov.au

Elections ACT website:

www.elections.act.gov.au

Important qualification

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

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

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

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

Notwithstanding the effect of the Commonwealth changes upon ACT registered political parties that also have registration at the federal level, this manual is intended to provide ACT political parties, party grouping candidates, MLAs, non-party MLAs, associated entities, and third-party campaigners with information on the disclosure requirements outlined within the ACT's Electoral Act.

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 under the *Electoral Act 1992*.

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 per vote. For the 2020 election, the election funding rate is 862.105 cents per eligible vote (indexed by CPI);
- Administrative expenditure funding is paid quarterly to parties with Assembly representation and to non-party MLAs (if any); administrative funding is currently (2020) paid at the rate of \$23,126.24 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 including gifts and gifts-in-kind, 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 including gifts and gifts-in-kind, 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, non-party MLAs (if any), prospective non-party candidates and non-party candidates, and associated entities are also required to lodge quarterly returns disclosing details of gifts received totalling \$1,000 or more, with more frequent disclosure (within 7 days of the sum of gifts reaching the \$1,000 threshold) after 30 June and before the end of election day, in an election year;
- Non-party candidates and Third-party campaigners are required to complete a return showing gifts received totalling \$1,000 or more, within 60 days after election day in an election;

- 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

Each of the entities within party groupings (registered political parties, party MLAs and party candidates), as well as non-party MLAs, non-party candidates, prospective candidate groupings, associated entities, third-party campaigners, broadcasters and publishers, all need to maintain a minimum standard of record keeping.

Without proper records, it may not be possible for an entity 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 49**Error! Bookmark not defined..**

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 grouping or non-party candidate, 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.

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 election day in the election to which the returns relate. Similarly, records relating to annual returns must be kept for no less than 4 years from the due date for the return.

In the case of party groupings, it is in the interest of the party to ensure that all entities within the 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.

The reporting agent of a party grouping, a non-party MLA, a non-party candidate grouping, and an associated entity, must lodge election expenditure returns within 60 days of election day (for the 2020 election, this date is 16 December 2020).

If electoral expenditure of more than \$1,000 is incurred, a third-party campaigner is required to lodge an election expenditure return within 60 days after election day (for the 2020 election, this date is 16 December 2020).

Third-party campaigners must also lodge a return listing any gift or sum of gifts received from a person or organisation totalling \$1,000 or more, where such gifts are used to incur electoral expenditure in the disclosure period. The return must list the name, address and ABN (if any) of the giver, the amount received and the date of receipt.

Broadcasters and publishers must lodge election returns, within 8 weeks of election day, disclosing information regarding electoral advertisements broadcast or published by their organisation during the pre-election period (for the 2020 election, this date is 14 December 2020).

Public inspection

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

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

Returns related to the 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 is generally within a week of lodgement.

Returns are available for inspection on the Elections ACT website www.elections.act.gov.au/funding_and_disclosure/financial_disclosure_returns.

Any person may also, on request, examine returns at the Elections ACT office during business hours. A person may also, on payment of a fee, obtain a copy of any return.

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 audits 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 party groupings 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 returns for the party grouping to the Commissioner. The reporting agent of an MLA is responsible for furnishing an annual return 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 a party agent; or
- By the MLA for appointment as an MLA's agent.

The person appointed must have consented in writing to the appointment.

The notice of appointment 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.

Restrictions on electoral expenditure

This section sets out details of restrictions on electoral expenditure.

Unless otherwise stated, these requirements apply to party groupings, non-party MLAs, non-party candidate groupings, prospective non-party candidate groupings, associated entities and third-party campaigners.

Electoral expenditure is defined in the Glossary at page 52.

Gift and **gifts-in-kind** are defined in the Glossary at page 52.

Caps on electoral expenditure

An expenditure cap is a limit on the amount of money that can be spent on an election campaign for an ACT Legislative Assembly election.

An electoral expenditure cap only applies to electoral expenditure incurred in relation to an ACT Legislative Assembly election during the capped expenditure period. The capped expenditure period for the 2020 election is the period from 1 January 2020 until the end of election day (17 October 2020).

Where gifts-in-kind, or the realised value of the gifts-in-kind are used for purposes related to ACT electoral expenditure, the value of those gifts-in-kind is included in the calculation of the amount of electoral expenditure incurred for the purpose of determining whether the cap on electoral expenditure has been reached.

Electoral expenditure is deemed to have been incurred when the service or product to which the expenditure relates is provided or delivered. For example, the cost of production of an electoral advertisement is incurred when the advertisement is broadcast, regardless of when the payment for the production of the advertisement was made. Similarly, electoral expenditure on printed pamphlets is said to be incurred when the pamphlets are distributed, not on the date that the payment for the production of the pamphlets is finalised.

The expenditure caps for the 2020 election are:

- For a party grouping - \$42,750 per party candidate to a maximum of 25 candidates (5 candidates for each of the 5 electorates), allowing for \$1,068,750 total expenditure for a party that fields five candidates in each of the five electorates (25 candidates);
- For an associated entity - \$42,750;
- For a non-party candidate - \$42,750; and
- For a third-party campaigner - \$42,750.

A penalty applies for breaching the cap on electoral expenditure. The penalty is equal to twice the amount by which the expenditure cap is breached, payable to the Territory.

A spreadsheet tool has been developed by Elections ACT to assist party groupings and prospective non-party candidate groupings to record and track electoral expenditure and gift records at a candidate level. For party groupings, this spreadsheet can be disseminated to and used by their prospective candidates to record expenditure and gifts details; amalgamating each candidate's figures for election return reporting at the conclusion of the

election. The tool is provided for assistance purposes and does not form part of an entity's disclosure obligations and completed tools should not be lodged with the Commission. The tool can be found at

https://www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_forms

It should be noted that if an entity purchased goods, for example corflute advertising signs, during a previous election campaign, and reuses those goods during the 2020 election capped expenditure period, then the costs incurred for the production and publication etc of those goods, must again be included in the entity's electoral expenditure cap and reported as part of the election return for the 2020 election.

Anonymous gifts

Party groupings, non-party MLAs, non-party candidate groupings, non-party prospective candidate groupings and associated entities are not permitted to accept an anonymous gift 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. However, anonymous gifts of less than \$1,000 each may now be received up to a total of \$25,000 per entity, in a financial year.

If an 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.

Election Funding

This section describes the entitlement of eligible candidates and registered political parties to receive election funding.

There is no direct relationship between election funding, expenditure and financial disclosure. Election expenditure returns and annual returns must be lodged by candidates and parties whether or not they qualify for election funding.

Eligibility

To qualify for election funding, a political party must be registered in the register of political parties. Elections ACT's *How to Register a Political Party for ACT Legislative Assembly Elections* information booklet is available from its website www.elections.act.gov.au/political_parties/how_to_register_a_political_party_for_act_legislative_assembly_elections.

A registered political party is eligible to receive election funding if the votes obtained by its endorsed candidates for an electorate amounted to at least 4% of the total number of formal first preference votes cast in an electorate.

A candidate who is not endorsed by a registered political party (a non-party candidate) is eligible for election funding if he or she gained at least 4% of the total number of formal first preference votes cast in the electorate he or she contested.

Entitlement

Entitlement to electoral funding for party candidates is calculated by multiplying the number of formal first preference votes obtained for that electorate, by candidates of the relevant political party, by the rate of election funding applicable for that election.

Entitlement for a non-party candidate is calculated by multiplying the number of formal first preference votes obtained by the candidate by the rate of election funding applicable for that election.

Rate of election funding

The election funding rate for 2020 is set at 862.105 cents per first preference vote received.

Payment of entitlement

Election funding is a direct payment scheme. There is no requirement for any eligible political party or ungrouped candidate to lodge a claim for their election funding entitlement. The Commission will automatically pay those eligible their entitlement once voting figures are finalised.

There is no obligation on a party or candidate to accept public funding.

Administrative expenditure funding

This section describes the entitlement to administrative expenditure funding received by parties with elected MLAs and by non-party MLAs (if any).

There is no direct relationship between administrative expenditure funding, and election funding and disclosure. Election expenditure returns and annual returns must be lodged by candidates and parties whether or not they qualify for election or administrative expenditure funding.

Eligibility, entitlement and payment

Political parties with elected MLAs and non-party MLAs (if any) are entitled to receive quarterly administrative funding payments from the ACT Electoral Commission. These payments are intended to help parties and non-party MLAs meet the administrative cost of running their offices and complying with the disclosure requirements of the ACT's Electoral Act.

Administrative expenditure funding is paid in quarterly instalments at the current (2020) rate of \$23,126.24 per calendar year for each MLA. The amount paid is indexed each year.

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

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

Administrative expenditure payments cannot be used for electoral expenditure

Administrative funding received by parties with elected MLAs and by non-party MLAs under the Electoral Act cannot be used for electoral expenditure in relation to an ACT, federal, state or local government election.

If this requirement is contravened, the party or MLA is liable to pay a penalty to the Territory equal to twice the amount used.

Quarterly/7 day disclosure of gifts received

Notwithstanding the effect of the Commonwealth changes described under the 'important qualification' section (see page 4), this section is intended to provide ACT political entities with information on the disclosure requirements outlined within the ACT's Electoral Act for gifts received totalling \$1,000 or more.

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.

Of important note for non-party candidates, in addition to the quarterly reporting of gifts received, the Electoral Act also requires the disclosure of these same gift details, amalgamated across the relevant non-party candidate grouping applicable period, to be included in the non-party candidate grouping's election return. (See definition of non-party candidate grouping in the **glossary** at page 52)

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 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 details** (see the **glossary** at page 52) 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 a 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 election 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 1 April 2020 and receives a further gift of \$750 from Person A on 16 June 2020. 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 an election year between 1 April and 30 June**, the party is required to submit a return declaring both these gifts’ defined details by **7 July 2020**, i.e. within 7 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 July 2020, 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 August 2020. The incremental threshold of \$1,000 has now been exceeded and was received **within an election year after 30 June and before the end of election day**. In this case the party grouping is required to provide a return disclosing the gift (received on 25 July 2020) and the gift-in-kind (received on 2 August 2020). This return must be declared to the Electoral Commissioner by 9 August 2020, i.e. within 7 days of the date in which the gift-in-kind (in this example) was received.

Completing the gifts disclosure 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 email address:

ElectionsDisclosure@act.gov.au

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

If you do not receive an acknowledgment receipt within two working days from the date of lodgement, it is recommended that you contact Elections ACT for confirmation of receipt.

It also recommended that you keep copies of all lodged returns and any associated attachments.

Political party groupings – election returns

This section describes the election reporting requirements for registered political party groupings. See also the section on **Quarterly/7days disclosure of gifts receipts** on page 17.

A party grouping includes:

- A party;
- An MLA for the party;
- A candidate for the party; and
- A prospective candidate for the party.

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 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 11) who, once appointed, takes over the responsibility for submitting the annual and election returns, and returns of gifts received.

The requirements for annual reporting by registered political parties are detailed in the *2019-2020 and the 2020-2021 Election funding, expenditure and financial disclosure handbooks*.

The reporting agent of a registered political party is also required to lodge an election return of electoral expenditure after each ACT Legislative Assembly election.

Nil returns

Where no relevant amounts apply in the disclosure period for the election covered by the return, the Electoral Act still requires the reporting agent to lodge a “nil” return.

Period covered by the election return

The return covers campaign expenditure involving goods or services **used** during the capped expenditure period. If the expenditure was not made during the capped expenditure period but **the goods and services were used during that period**, then those amounts must be included.

The capped expenditure period for the 2020 election is the period starting on 1 January 2020 and ending at the end of election day (17 October 2020).

It should be noted that if an entity purchased goods, for example corflute advertising signs, during a previous election campaign, and reuses those goods during the 2020 election capped expenditure period, then the costs incurred for the production and publication etc of those goods,

must again be included in the entity's electoral expenditure cap and reported as part of the election return for the 2020 election.

Due date

Election returns are required to be lodged with the Commissioner within 60 days of election day. For the 2020 election the due date is 16 December 2020. 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.

Election return form

The election return must be completed using an approved excel spreadsheet provided by Elections ACT. Lodgement of the completed return (excel spreadsheet) should be lodged via email at:

ElectionsDisclosure@act.gov.au

Reporting agents will be provided with the approved election return form prior to election day. Forms may also be obtained from the Elections ACT website or by contacting the Elections ACT office. A spreadsheet tool has been developed by Elections ACT to assist party groupings and prospective non-party candidate groupings to record and track electoral expenditure and gift records at a candidate level. For party groupings, this spreadsheet can be disseminated to and used by candidates to record expenditure and gifts details; amalgamating each candidate's figures for election return reporting at the conclusion of the election. The tool is provided for assistance purposes and does not form part of an entity's disclosure obligations and completed tools should not be lodged with the Commission. The tool can be found at https://www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_forms

Transactions to be reported

Only actual transactions that take place during the gifts received disclosure period are to be reported.

For reporting purposes the date a gift is received is the earlier of the date the gift of money is receipted or banked. If the gift is a "physical" gift-in-kind, the date the gift is received is taken to be the date the gift came into the possession of the receiver. If a gift-in-kind is a service rendered, the date the gift is received is the date on which the service is rendered.

In relation to expenditure, a transaction is treated as having taken place at the time at which the expenditure is incurred. A transaction is treated as having been incurred at the time at which the service or product to which the expenditure relates is provided or delivered.

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

All amounts to be reported are to be gross and GST inclusive.

Gifts include any non-cash transactions (for example, gifts-in-kind). These transactions should be appropriately valued.

Information to be provided is to include a breakdown of relevant transactions into type of gifts (for example, gift of money, gifts-in-kind or free facilities use).

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, party groupings should keep in mind that some donors may intentionally gift amounts that fall below the reporting threshold of \$1,000 in order to ensure that their name and address is not made public when returns are published.

While the prescribed details of donors are required to be disclosed by the party grouping in disclosure returns, the law prescribes that only the donor's suburb, postcode or post office box details are published on the Commission's website. Full details are still be available for public inspection in hardcopy at the office of the Electoral Commissioner.

Party groupings should ensure all relevant financial transactions of the grouping are included in the return. In cases where a party grouping 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

"Anonymous gift" is defined to mean a gift made anonymously that is less than \$1,000.

Party groupings are not permitted to accept an anonymous gift 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. Party groupings may accept anonymous gifts of less than \$1,000, up to a total of \$25,000 per party grouping, during the disclosure period.

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

Completing the election return

The return should contain the party grouping's total campaign expenditure in relation to goods or services used during the capped expenditure period in each of 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 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.

The reporting agent should ensure all relevant financial transactions of the party grouping, including all party branches and candidates, 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.

All amounts shown are to be gross and be GST inclusive.

The total of electoral expenditure should be included.

Where a gift-in-kind has been received by a political party grouping that consists of a service or product that would be electoral expenditure if paid for by the receiver, an amount equal to the value of the service or product is included in the calculation of the total amount of electoral expenditure incurred by the party grouping.

If a party affiliated MLA uses funds provided to them for the purpose of communicating with his or her constituency ('communication allowance'), to produce and/or disseminate electoral matter, the amount incurred by the MLA must be included in the expenditure cap of the party grouping.

Associated entity – election returns

This section describes the election reporting requirements for an associated entity. See also the section on **Quarterly/7days disclosure of gifts receipts** on page 17.

An associated entity is an entity that:

- Is controlled by one or more parties or MLAs; or
- Operates, completely or to a significant extent, for the benefit of one or more parties of MLAs.

Obligations

In addition to the obligation of an associated entity to submit a regular return of gifts received of \$,1000 or more and an annual return, the financial controller of an associated entity is also required to lodge an **election return** after each ACT Legislative Assembly election.

The person who performs the functions of a financial controller for the entity is responsible for completing and lodging the return on behalf of the associated entity.

The requirements for annual reporting by an associated entity are detailed in the *2019-2020 and the 2020-2021 Election funding, expenditure and financial disclosure handbooks*.

Nil returns

Where no relevant amounts apply in the disclosure period for the election covered by the return, the Electoral Act still requires the reporting agent to lodge a “nil” return.

Period covered by the election return

The return covers campaign expenditure involving goods or services **used** during the capped expenditure period. If the expenditure was incurred outside of the capped expenditure period but **the goods and services were used during the period**, then the amounts must be included in the return.

The capped expenditure period for the 2020 election is the period starting on 1 January 2020 and ending at the end of election day (17 October 2020).

If an associated entity purchased goods during a previous election campaign and reuses those goods during the 2020 election capped expenditure period, then the costs incurred for the production and publication etc of those goods, must again be included in the entity’s electoral expenditure cap and reported as part of the election return for the 2020 election.

Due date

Election returns are required to be lodged with the Commissioner within 60 days of election day. For the 2020 election the due date is 16 December 2020. 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.

Election return form

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

Transactions to be reported

Only actual transactions that take place during the gifts received disclosure period are to be reported.

For reporting purposes the date a gift is received is the earlier of the date the gift of money is receipted or banked. If the gift is a "physical" gift-in-kind, the date the gift is received is taken to be the date the gift came into the possession of the receiver. If a gift-in-kind is a service rendered, the date the gift is received is the date on which the service is rendered.

In relation to expenditure, a transaction is treated as having taken place at the time at which the expenditure is incurred. A transaction is treated as having been incurred at the time at which the service or product to which the expenditure relates is provided or delivered.

All amounts to be reported are to be gross and GST inclusive.

Gifts include any non-cash transactions (for example, gifts-in-kind) and should be appropriately valued.

Information to be provided is to include a breakdown of relevant transactions into type of gifts (for example, gift of money, gifts-in-kind or free facilities use).

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, associated entities should keep in mind that some donors may intentionally gift amounts that fall below the reporting threshold of \$1,000 in order to ensure that their name and address is not made public when returns are published.

While the prescribed details of donors are required to be disclosed by the associated entity in disclosure returns, the law prescribes that only the donor's suburb, postcode or post office box details are published on the Commission's website. Full details are still be available for public inspection in hardcopy at the office of the Electoral Commissioner.

Anonymous gifts

"Anonymous gift" is defined to mean a gift made anonymously that is less than \$1,000.

Associated entities are not permitted to accept an anonymous gift 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 entities may accept anonymous gifts of less than \$1,000, up to a total of \$25,000 per associated entity, during the disclosure period.

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

Completing the election return

The return should contain the associated entity's total campaign expenditure in relation to goods or services used during the capped expenditure period in each of 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 above.

Electoral expenditure does not include:

- Administrative expenditure, such as the cost of maintaining office accommodation, office supplies, travel and staff.

The financial controller should ensure all relevant financial transactions relating to electoral expenditure 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 persons who may have such information should accompany the return.

All amounts shown are to be gross and be GST inclusive.

The total of electoral expenditure should be included.

Where a gift-in-kind has been received by an associated entity that consists of a service or product that would be electoral expenditure if paid for by the receiver, an amount equal to the value of the service or product is included in the calculation of the total amount of electoral expenditure incurred by the associated entity.

Non-party MLAs– election returns

Obligations

If a non-party MLA incurs electoral expenditure in relation to an election, the non-party MLA is required to submit an **election return** setting out electoral expenditure incurred during the capped expenditure period by the MLA.

As at January 2020, there were no non-party MLAs sitting in the ACT Legislative Assembly. This handbook will be updated should this circumstance change.

Non-party candidate groupings – election returns

This section describes the election reporting requirements for non-party candidate groupings.

Non-party candidate groupings include:

- 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.

For the purposes of this section, a reference to a non-party candidate includes a reference to a **prospective non-party candidate** in relation to activity undertaken before the official declaration of nominations by the Electoral Commissioner. 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 does not have any reporting obligations under the Electoral Act.

Obligations

All non-party candidates are required to submit an **election return** setting out gifts received by the non-party candidate grouping during the disclosure period for the election, and electoral expenditure incurred by the non-party candidate grouping during the capped expenditure period.

Appropriate records must be maintained by each element of the non-party candidate grouping.

Each non-party candidate is responsible for lodging his or her own non-party candidate grouping's return.

While the Electoral Act provides that a candidate may appoint a reporting agent, the provisions generally give responsibility for reporting candidates' activity 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.

A non-party candidate is not permitted to accept an anonymous donation 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.

A non-party candidate is not permitted to accept anonymous gifts in excess of \$25,000 in total during the disclosure period for an election. If such gifts are received, the amount received that exceeds \$25,000 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.

Nil returns

Where no relevant amounts apply in the disclosure period for a non-party candidate grouping, the Electoral Act still requires the candidate to lodge a "nil" return.

Disclosure period for non-party candidate grouping returns

The date of commencement of the disclosure period covered by the return depends on whether the candidate contested the previous ACT Legislative Assembly election.

If a non-party candidate for the 2020 election was a candidate (whether a non-party candidate or party candidate) in the general election on 15 October 2016, the disclosure period commenced on 15 November 2016.

If a non-party candidate was not a candidate in the previous election, the disclosure period begins on 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.

For all candidates, the disclosure period ends 30 days after election day in the election. For the 2020 election this will be 16 November 2020.

Due date

The return is to be lodged with the Commissioner within 60 days after election day. For the 2020 election the due date is 16 December 2020.

Extensions to the deadline for submitting returns are not permitted under the *Electoral Act*, therefore all returns must be completed and submitted to the Commissioner by the deadline. The Commissioner has authority to issue penalty notices for failure to lodge a return by the due date.

Election return form

The election return must be completed using an approved excel spreadsheet provided by Elections ACT. Lodgement of the completed return (excel spreadsheet) should be lodged via email at:

ElectionsDisclosure@act.gov.au

Reporting agents will be provided with the approved election return form prior to election day. Forms may also be obtained from the Elections ACT website or by contacting the Elections ACT office.

A spreadsheet tool has been developed by Elections ACT to assist prospective non-party candidate groupings to record and track electoral expenditure and gift records. The tool is provided for assistance purposes and does not form part of a non-party candidate grouping's disclosure obligations and completed tools should not be lodged with the Commission. The tool can be found at https://www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_forms

Transactions to be reported

Only actual transactions that take place during the gifts received disclosure period are to be reported.

For reporting purposes the date a gift is received is the earlier of the date the gift of money is received 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 service is rendered.

In relation to expenditure, a transaction is treated as having taken place at the time at which the expenditure is incurred. A transaction is treated as having been incurred at the time at which the service or product to which the expenditure relates is provided or delivered.

All amounts to be reported are to be gross and GST inclusive.

Gifts include any non-cash transactions (for example, gifts-in-kind). These transactions should be appropriately valued.

Information to be provided is to include a breakdown of relevant transactions into type of gifts (for example, gift of money, gifts-in-kind or free facilities use).

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, non-party candidate groupings should keep in mind that some donors may intentionally gift amounts that fall below the reporting threshold of \$1,000 in order to ensure that their name and address is not made public when returns are published. While the prescribed details of donors are required to be disclosed by the non-party candidate grouping in disclosure returns, the law prescribes that only the donor's suburb, postcode or post office box details are published on the Commission's website. Full details are still be available for public inspection in hardcopy at the office of the Electoral Commissioner.

Non-party candidate groupings should ensure all relevant financial transactions of the non-party candidate groupings are included in the return. In cases where the non-party candidate groupings 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

"Anonymous gift" is defined to mean a gift made anonymously that is less than \$1,000.

Non-party candidate groupings are not permitted to accept an anonymous gift 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. Non-party candidate groupings may accept anonymous gifts of less than \$1,000, up to a total of \$25,000 per non-party candidate grouping, during the disclosure period.

If a non-party candidate grouping 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 election return

All amounts reported are to be gross and GST inclusive.

Section 1 – Gifts Received

Item 1.1 on the return

The section of the return dealing with gifts received must show the appropriate disclosure period covered for the return, as defined above.

Item 1.2 on the return

Each candidate's return must show a total of all gifts received during the disclosure period. Volunteer labour, personal gifts and election funding payments do not need to be disclosed. All gift amounts are to be included in the total, including the value of any gifts-in-kind.

Item 1.3 on the return

Each candidate's return must show the number of persons or organisations who made gifts.

Item 1.4 on the return

Each candidate's return must indicate whether gifts totalling \$1,000 or more were received from the same person or organisation.

Item 1.5 on the return

Each candidate's return must show the total amount of anonymous gifts received during the disclosure period (See page 31 for the definition of anonymous gifts.)

Section 2 – Gifts totalling \$1,000 or more

Section 2 (on the "gift" tab of the spreadsheet) is for detailing amounts of gifts received by the non-party candidate groupings from the same person, organisation or entity totalling \$1,000 or more. Note there are different details required for each type of entity.

An indication must be made whether the gift was received from a person, organisation, unincorporated association, trust fund or foundation.

Details required of the entity

- If the gift was received from a **person**, enter the name and address of the person.
- If the gift was received from an **organisation**, enter the name, address and ABN of the organisation.
- If the gift was received from an **unincorporated association**, enter the names and addresses of the members of the executive committee of the association.
- If the gift was received from a **trust fund or foundation**, enter the names and addresses of the trustees of the fund or foundation.

Details of the gifts

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

- The date the gift was received; and
- The type of gift (money, free facilities use, other gift-in-kind).

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), 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.

Section 3 - Electoral expenditure

Period covered by this section of the return

The section of the return dealing with electoral expenditure covers campaign expenditure incurred by the non-party candidate grouping involving goods or services used during the capped expenditure period.

The capped expenditure period for the 2020 election is the period from 1 January 2020 until the end of election day (17 October 2020).

If the expenditure was not paid during the capped expenditure period, but the goods and services were used during that period, then those amounts must be included in the return. For example, pamphlets which were printed a year before the election but were used during the capped expenditure period, must have their cost shown in the return.

Broadcasting and publishing services should not be included in the electoral returns during the expenditure cap period. However, the same advertisements broadcast or published during the capped expenditure period must have the costs associated with broadcasting and publishing, as well as the costs for production, included in the return.

If only part of an item was used during the capped expenditure period, the cost relating to that part or proportion of the item used during the capped expenditure period must be shown on the return. For example, if 10,000 pamphlets were printed but only 4,000 were used during the capped expenditure period then 4/10 of the production cost must be shown on the return.

Categories of electoral expenditure on the return

The return should contain the total election (campaign) expenditure incurred by the non-party candidate grouping in relation to the election in each of 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 above.

Electoral expenditure does not include:

- Administrative expenditure, such as the cost of maintaining office accommodation, office supplies, travel and staff.

The candidate should ensure all relevant financial transactions of the candidate, and those of any other person who has incurred electoral expenditure with the authority of the candidate, to support the candidate in contesting the election, are included in the return. In cases where the candidate 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.

All amounts shown are to be gross and be GST inclusive.

The total of electoral expenditure should be included.

Where a gift-in-kind has been received by a non-party candidate grouping that consists of a service or product that would be electoral expenditure if paid for by the receiver, an amount equal to the value of the service or product must be disclosed as electoral expenditure undertaken by the non-party candidate grouping.

Electoral expenditure incurred on the items listed above without the written authority of a candidate is not required to be included in the return. Any person who incurs electoral expenditure without the written authority of a candidate will be required to lodge a separate return with the Commissioner (see the section on **Third-party campaigners – election returns** on page 35).

Third-party campaigners – election returns

This section describes the election reporting requirements of “third-party campaigners”.

A third-party campaigner is:

- A person or organisation that incurs more than \$1,000 in electoral expenditure in the disclosure 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.

Most typically, a third-party campaigner is a person or organisation that has placed an electoral advertisement.

Third-party campaigners who may be required to furnish returns include individuals, unregistered political parties (which may include parties registered in another state or territory), bodies corporate, members of an unincorporated association, the trustees of a trust, groupings of individuals with a shared interest or concern in relation to the ACT election and registered industrial organisations.

The changes to the Electoral Act that took effect from 3 March 2015, **removed the prohibition on a third-party campaigner to act ‘in concert’** with another entity where the expenditure is greater than the expenditure cap. Third-party campaigners are now able to work in association with another third-party campaigner as long as the electoral expenditure incurred by each entity is not greater than \$42,750 for 2020 election.

Disclosure period

For the 2020 election the disclosure period for a Third-party campaigner is from 15 November 2016 to 16 November 2020.

Obligations

Electoral expenditure

By definition, a third-party campaigner must have incurred more than \$1,000 in electoral expenditure in relation to an election. Each third-party campaigner must complete an election return showing details of its electoral expenditure.

Gifts received

A third-party campaigner may also be required to complete the section in the election return showing details of gifts received.

This obligation to submit details of gifts received arises if:

- The third-party campaigner received from someone else one or more gifts totalling \$1,000 or more, all or part of which was used to:
 - Enable the third-party campaigner to incur electoral expenditure during the disclosure period; or

- Reimburse the third-party campaigner for electoral expenditure incurred during the disclosure period; and
- The amount or value of any gift thus applied was \$1,000 or more.

Electoral expenditure

The part of the return relating to electoral expenditure covers the capped expenditure period.

The capped expenditure period for the 2020 election, is the period from 1 January 2020 until the end of election day (17 October 2020).

Gifts received

The part of the return relating to gifts received covers the period commencing on the 31st day after election day for the previous election and ends 30 days after election day in the current election.

For the 2020 election the disclosure period is from 15 November 2016 to 16 November 2020.

A third-party campaigner is not required to complete the quarterly/7 days reporting of gifts. Gifts received by a third-party campaigner are to be reported in the gifts received section of the third-party campaigner election return.

Due date

Election returns are required to be lodged with the Commissioner within 60 days after election day. For the 2020 election the due date is 16 December 2020.

Extensions to the deadline for submitting returns are not permitted under the Electoral Act. Failure to furnish the return by the due date is a breach of the Electoral Act. The Commissioner has authority to issue penalty notices for failure to lodge a return by the due date.

Election return form

The election return must be completed using an approved excel spreadsheet provided by Elections ACT. Lodgement of the completed return (excel spreadsheet) should be lodged via email at:

ElectionsDisclosure@act.gov.au

Reporting agents will be provided with the approved election return form prior to election day. Forms may also be obtained from the Elections ACT website or by contacting the Elections ACT office.

A spreadsheet tool has been developed by Elections ACT to assist third-party campaigners to record and track electoral expenditure and gift records within their organisation. The tool can be disseminated to individuals who may incur electoral expenditure or receive gifts; amalgamating data from each spreadsheet to assist in the completion of the election return at the conclusion of the election. The tool is provided for assistance purposes and does not form part of a third-party campaigner's disclosure obligations and completed tools should not be lodged with the Commission. The tool can be found at

https://www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_forms

Completing the election return

All amounts reported are to be gross and GST inclusive.

Transactions to be reported

Only actual transactions that take place during the gifts received disclosure period are to be reported.

For reporting purposes the date a gift is received is the earlier of the date the gift of money is receipted or banked. If the gift is a "physical" gift-in-kind, the date the gift is received is taken to be the date the gift came into the possession of the receiver. If a gift-in-kind is a service rendered, the date the gift is received is the date on which the service is rendered.

In relation to expenditure, a transaction is treated as having taken place at the time at which the expenditure is incurred. A transaction is treated as having been incurred at the time at which the service or product to which the expenditure relates is provided or delivered.

All amounts to be reported are to be gross and GST inclusive.

Gifts include any non-cash transactions (for example, gifts-in-kind) should be appropriately valued. These transactions should be appropriately valued.

Information to be provided is to include a breakdown of relevant transactions into type of gifts (for example, gift of money, gifts-in-kind or free facilities use).

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, third-party campaigners should keep in mind that some donors may intentionally gift amounts that fall below the reporting threshold of \$1,000 in order to ensure that their name and address is not made public when returns are published. While the prescribed details of donors are required to be disclosed by the third-party campaigner in disclosure returns, the law prescribes that only the donor's suburb, postcode or post office box details are published on the Commission's website. Full details are still be available for public inspection in hardcopy at the office of the Electoral Commissioner.

Third-party campaigners should ensure all relevant financial transactions of the third-party campaigner are included in the return. In cases where the third-party campaigner 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.

Completing the election return

All amounts reported are to be gross and GST inclusive.

Section 1 – Gifts Received

Item 1.1 on the return

The section of the return dealing with gifts received must show the appropriate disclosure period covered for the return, as defined above.

Item 1.2 on the return

Each third-party campaigner's return must show a total of all gifts received during the disclosure period.

Volunteer labour, personal gifts and election funding payments do not need to be disclosed.

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

Item 1.3 on the return

Each third-party campaigner's return must show the number of persons or organisations who made gifts.

Item 1.4 on the return

Each third-party campaigner's return must indicate whether gifts totalling \$1,000 or more were received from the same person or organisation.

Item 1.5 on the return

Each third-party campaigner's return must show the total amount of anonymous gifts received during the disclosure period (See page 31 for the definition of anonymous gifts.)

Section 2 – Gifts totalling \$1,000 or more

Section 2 (on the "gift" tab of the spreadsheet) is for detailing amounts of gifts received by third-party campaigner's from the same person, organisation or entity totalling \$1,000 or more. Note there are different details required for each type of entity.

An indication must be made whether the gift was received from a person, organisation, unincorporated association, trust fund or foundation.

Details required of the entity

- If the gift was received from a **person**, enter the name and address of the person.
- If the gift was received from an **organisation**, enter the name, address and ABN of the organisation.
- If the gift was received from an **unincorporated association**, enter the names and addresses of the members of the executive committee of the association.
- If the gift was received from a **trust fund or foundation**, enter the names and addresses of the trustees of the fund or foundation.

Details of the gifts

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

- The date the gift was received; and
- The type of gift (money, free facilities use, other gift-in-kind).

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), 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.

Electoral expenditure

Period covered by this section of the return

The section of the return dealing with electoral expenditure covers campaign expenditure incurred by the third-party campaigner involving goods or services used during the capped expenditure period.

The capped expenditure period for the 2020 election is the period from 1 January 2020 until the end of election day (17 October 2020). If the expenditure was not incurred during the capped expenditure period, but the goods and services were used during that period, then those amounts must be included in the return. For example, pamphlets which were printed a year before the election but were used during the capped expenditure period, must have their cost shown in the return.

Similarly, election advertisements broadcast or published during the week before the capped expenditure period should not have the costs of broadcast or publishing included in the return, but the same advertisements broadcast or published during the capped expenditure period must have the costs associated with broadcasting and publishing, as well as the costs for production, included in the return.

If only part of an item was used during the capped expenditure period, the cost relating to that part or proportion of the item used during the capped expenditure period must be shown on the return. For example, if 10,000 pamphlets were printed but only 4,000 were used during the capped expenditure period then 4/10 of the production cost must be shown on the return.

Categories of electoral expenditure

The return should contain the total election (campaign) expenditure incurred by the third-party campaigner in relation to the election in each of 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 above.

Electoral expenditure does not include:

- Administrative expenditure, such as the cost of maintaining office accommodation, office supplies, travel and staff.

The third-party campaigner should ensure all relevant financial transactions are included in the return. In cases where the third-party campaigner 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.

All amounts shown are to be gross and be GST inclusive.

The total of electoral expenditure should be included.

Where a gift-in-kind has been received by a third-party campaigner that consists of a service or product that would be electoral expenditure if paid for by the receiver, an amount equal to the value of the service or product must be disclosed as electoral expenditure undertaken by the third-party campaigner.

In-house journals

If, during the capped expenditure period, a journal or newsletter published by an organisation contains electoral matter, a proportion of the costs of production of that journal or newsletter should be included in the return. The proportion of costs to be shown in the return corresponds to the amount of electoral matter contained. For example, an organisation publishing a monthly newsletter for distribution to members may, during the capped expenditure period, devote 50 per cent of the newsletter to electoral matter (as defined in the glossary from page 52). In this case, the cost to be shown in the return is 50 per cent.

Broadcasters returns

This section describes the election reporting requirements for broadcasters.

Obligations

A broadcaster is required to submit a return after each ACT Legislative Assembly election or referendum if an electoral advertisement was broadcast during the pre-election period with the authority of a participant, or participants, in the election or referendum.

Broadcast includes broadcast by radio or television. Broadcaster means the:

- Australian Broadcasting Corporation;
- Special Broadcasting Service Corporation;
- Holder of a licence under the *Broadcasting Services Act 1992* of the Commonwealth; or
- Provider of a broadcasting service under a class licence under that Act.

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.

The term "*participant in an election or referendum*" is defined in the glossary on page 52.

Broadcasters should ensure that electoral advertisements placed on behalf of special interest groups (such as third-party campaigners) as well as those on behalf of political parties, MLAs, candidates and referendum participants are included in the return.

Pre-election period

The pre-election period commences 36 days before election day and ends on election day. For the 2020 election the period is from 11 September 2020 to 17 October 2020.

Nil returns

If no electoral advertisements were broadcast, or were only broadcast as part of a re-broadcasting or re-transmission license, no return needs to be lodged. In such instances, the Commissioner would nevertheless appreciate advice that the station does not have any outstanding disclosure obligation.

Policy speeches, meeting announcements and constituency broadcasts

Broadcasting of a policy speech for which a charge is made is considered to be an advertisement relating to the election or referendum that should be included in the return.

If no charge is made for broadcast of a policy speech (whether broadcast in full or as an edited report), it need not be included in the return. Broadcasting of policy speeches free of charge is not considered to be a gift.

An announcement of an election or referendum meeting on a community service program during the disclosure period is regarded as advertisements for the purpose of reporting. A constituency-broadcast by an MLA during the disclosure period is regarded as an advertisement for the purpose of reporting. If these advertisements were broadcast for no charge or for a charge less than the normal commercial rate they are considered to be gifts-in-kind.

Items that need not be included in the return

In addition to free of charge broadcasts of policy speeches, the following items are not required to be included in a return by a broadcaster:

- Statements made in reports or interviews used in news or current affairs broadcasts;
- Any matter over which editorial control of the broadcaster was or could be exercised; and
- Advertisements placed by the Electoral Commissioner (relating to, for example, enrolment, nominations, formal voting and location of polling places).

For the purpose of returns under the Act, programs produced under the editorial control of the broadcaster are those programs over which the broadcaster retains control as to format and participants, and where the broadcaster directly intervenes in the production process, as a moderator or otherwise.

Free time and time charged at less than normal commercial rate

If broadcast time for which no charge, or a charge less than the normal commercial rate, is made to a party, MLA, candidate or other election or referendum participant, the difference between the normal commercial rate and the discounted rate is considered to be a gift. (Noting broadcasting of policy speeches free of charge is not considered to be a gift.)

This gift should be reported by the recipient in their election or annual return as a gift received. The gift must also be reported in the broadcaster's return. A broadcaster must show in the return whether or not a charge was made and whether a charge made was less than the normal commercial rate.

Rate cards

A broadcaster may attach a rate card to the return to help identification of various normal commercial rates. Rate cards, if attached, must relate to the period during which the advertisements referred to in the return were broadcast.

Separate returns for individual stations

A separate return form must be completed for each television and radio station owned by the business. A consolidated return for the broadcasting group as a whole cannot be accepted. Where charges for advertisements are made on a group basis, these must be apportioned to each station within the group.

Overlapping Commonwealth and State/Territory election periods

Where the pre-election period for an ACT Legislative Assembly election or referendum overlaps with another election or referendum, only an advertisement which relates solely to the ACT

election or referendum, or to both the ACT and another election or referendum, should be included in the return.

Due date

Broadcaster and publisher returns are to be lodged with the Commissioner within 8 weeks after election day. For the 2020 election the due date is 14 December 2020. There is no provision in the Electoral Act to extend the deadline. Failure to lodge the return by the due date is a breach of the Electoral Act. The Commissioner has the authority to issue penalty notices for failure to lodge a return by the due date.

Election return form

The election return must be completed using an approved excel spreadsheet provided by Elections ACT. Lodgement of the completed return (excel spreadsheet) should be lodged via email at:

ElectionsDisclosure@act.gov.au

Elections ACT will provide copies of the approved election return form prior to election day. Forms may also be obtained from the Elections ACT website or by contacting the Elections ACT office.

Completing the election return

All amounts reported are to be GST inclusive.

The details to be shown in the return for each advertisement broadcast are as follows:

Column 1

The name and address of the person requesting (lodging) the advertisement. This would generally be an advertising agency, but may be the candidate, a campaign worker or a party official.

Column 2

The name and address of the participant in the election or referendum on whose authority the advertisement was broadcast. This column must show the political party, candidate or other participant.

Column 3

The identification number of the advertisement must be inserted if the optional reporting method is used (see below), otherwise, this column may be left blank.

Column 4

The date on which, or dates between which, the advertisement was broadcast. If the advertisement was broadcast over a period, the first and last dates of its broadcast should be shown.

This column need not be completed if the optional reporting method is used.

Column 5

The time periods during which the advertisement was broadcast. Where the advertisement was broadcast randomly throughout the station's transmission time insert "24hr". Where the advertisement was broadcast during specific time periods, show each time period during which it was broadcast, for example, 9am–noon, 4pm–6pm.

This column need not be completed if the optional reporting method is used.

Column 6

The amount (if any) charged for the advertisement. This may be shown as the total cost for broadcasting the advertisement or the cost for one broadcast, in which case the total number of times the advertisement was broadcast should be shown (for example, either \$2840 or \$142 x 20).

This column need not be completed if the optional reporting method is used.

Column 7

Whether the normal commercial rate was charged, having regard to the length of the advertisement, the day or days on which, and the times between which, the advertisement was broadcast.

Where less than the normal commercial rate was charged, a statement showing the difference between the normal commercial rate and the rate actually charged must be attached to the return.

Optional reporting method

A broadcaster may choose to provide time sheets/schedules (incorporating the above detail) as attachments to the return.

If this option is chosen, complete columns 1, 2, 3, and 7, and attach, via the online portal, a legible copy of the time sheets/schedules (documents used to support invoices) to the return. The attachment will be regarded as part of the return for public inspection purposes.

The time sheets/schedules and return forms must have sufficient correlation for Elections ACT staff to identify and note the details of each advertisement broadcast.

Publishers return

This section describes the election reporting requirements for publishers of a news publication.

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

Obligations

A publisher of a news publication is required to submit a return after each ACT Legislative Assembly election or referendum if electoral advertisements were published during the pre-election period with the authority of a participant, or participants, in the election or referendum and for which the total amount of charges made was more than \$1,000.

For example, if 3 electoral advertisements were published in a news publication during the pre-election period at a charge of \$300 each, no return is required for that news publication, but if the 5 advertisements were published at a charge of \$300 each, a return is required. The return must contain details of all electoral advertisements published.

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 of the advertisement.

The term “*participant in an election or referendum*” is defined in the glossary on page 52.

Publishers should ensure that electoral or referendum advertisements published on behalf of special interest groups (including third-party campaigners) as well as those published on behalf of political parties, candidates and referendum participants are included in their return.

Pre-election period

The pre-election period commences 36 days before election day and ends on election day. For the 2020 election the period is from 11 September 2020 to 17 October 2020.

Nil returns

A return does not need to be lodged if charges for electoral advertisements by a publication totalled less than \$1,000. In such instances, the Commissioner would nevertheless appreciate advice that the publication does not have any outstanding disclosure obligation.

Policy speeches

Publishing of a policy speech for which a charge is made is considered to be an advertisement relating to the election or referendum that should be included in the return.

If no charge is made for publication of a policy speech (whether published in full or as a condensed, edited report), it does not need to be included in the return. Publishing of a policy speech free of charge is not considered to be a gift.

Items that do not need to be included in the return

In addition to the free of charge publication of policy speeches, the following items are not required to be included in a return by a publisher:

- A feature article on a candidate;
- A report of a speech by a candidate or referendum participant for which no charge is, or is to be, made;
- Any similar matter over which the editorial control of the publisher was or could be exercised; and
- Advertisements placed by the ACT Electoral Commission (relating to, for example, enrolment, nominations, formal voting and location of polling places).

For the purpose of returns under the Act, items under the editorial control of a publisher are those over which the publisher retains control as to form and content. An advertisement over which the publisher's only form of control is to publish or not publish cannot be considered as under the editorial control of the publisher.

Advertisements published for no charge or for less than normal commercial rate

If an advertisement published on behalf of a party, candidate or other election or referendum participant for which no charge or a charge less than the normal commercial rate was made, the difference between the normal commercial rate and the discounted rate is considered to be a gift-in-kind. (Noting that publishing of a policy speech free of charge is not considered to be a gift.)

This gift should be reported by the recipient in their election or annual return as a gift received. The gift must also be reported in the publisher's return. A publisher must show in the return whether or not a charge was made and whether a charge made was less than the normal commercial rate.

Rate cards

A publisher may attach a rate card to the return to help identification of various normal commercial rates. Rate cards, if attached, must relate to the period during which the advertisements referred to in the return were published.

Separate returns for individual publications

A separate return form must be completed for each newspaper, magazine, and journal owned by the business. A consolidated return for the publishing group as a whole cannot be accepted. Where charges for advertisements are made on a group basis, these must be apportioned to each publication within the group.

Overlapping Commonwealth and State/Territory election periods

Where the pre-election period for an ACT Legislative Assembly election or referendum overlaps with another election or referendum, only an advertisement which relates solely to the ACT election or referendum, or to both the ACT and another election or referendum, should be included in the return.

Due date

Broadcaster and publisher returns are to be lodged with the Commissioner within 8 weeks after election day. For the 2020 election the due date is 14 December 2020.

There is no provision in the Electoral Act to extend the deadline. Failure to lodge the return by the due date is a breach of the Electoral Act. The Commissioner has the authority to issue penalty notices for failure to lodge a return by the due date.

Election return form

The election return must be completed using an approved excel spreadsheet provided by Elections ACT. Lodgement of the completed return (excel spreadsheet) should be lodged via email at:

ElectionsDisclosure@act.gov.au

Elections ACT will provide copies of the approved election return form prior to election day. Forms may also be obtained from the Elections ACT website or by contacting the Elections ACT office.

Completing the election return

All amounts reported are to be GST inclusive.

The details to be shown in the return for each advertisement published are as follows:

Column 1

The name and address of the person requesting (lodging) the advertisement. This would generally be an advertising agency, but may be the candidate, a campaign worker or a party official.

Column 2

The name and address of the participant in the election or referendum on whose authority the advertisement was published. This column must show the political party, candidate or other participant.

Column 3

The date on which the advertisement was published. If the advertisement was published more than once, each publication date must be shown.

Column 4

The page/folio number in the journal on which the advertisement was published. This must be shown for each date of publication.

Column 5

The space occupied by the advertisement. This need not be repeated where multiple publications of the advertisement are the same size. However, if the advertisement is published as, for example, full-page one day and half page on another, the space occupied must be shown for each date.

Column 6

The amount (if any) charged for publication of the advertisement. This may be shown as the total cost for publishing the advertisement over a period or the cost for each time it was published (for example, either \$2840 or \$142 x 20).

Column 7

Whether the normal commercial rate was charged having regard to the space in the journal occupied by the advertisement and the nature of the journal.

Where less than the normal commercial rate was charged, a statement showing the difference between the normal commercial rate and the rate actually charged must be attached to the return

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 10 January 2020) is:

- If the person charged is an individual—\$160; or
- If the person charged is a corporation—\$810.

Failure to lodge annual/election 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 of twice the amount exceeded the expenditure cap is payable to the Territory.

Limit on payments within 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.

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

associated entity

An associated entity is an organisation that is controlled by, or operates completely or to a 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) 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.

Candidate

A person who has been nominated for election

capped expenditure period

For the 2020 ACT election, the capped expenditure period commenced on 1 January 2020 and ends on election day, 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 (ACT).

Electorate

An area represented by one or more members of parliament. Also known as a seat, division or a constituency. For ACT Legislative Assembly elections there are five electorates: Brindabella, Ginninderra, Murrumbidgee, Kurrajong and Yerrabi.

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 (including social media));
- 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.

electoral return

A document detailing information on the receipts and expenditure of participants in the political process.

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 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.

funding and disclosure

Public funding of election campaigns and disclosure of certain financial details by candidates, political parties and others.

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 representative;
- 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, third-party campaigner or associated entity, the person shall be taken to have made that gift directly to that candidate, party, MLA, third-party campaigner or associated entity.

Changes to the Electoral Act that took effect from 3 March 2015 clarified that 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.

Government

The political party or coalition of parties which is led by the Chief Minister.

Legislative Assembly

The lower house of some parliaments and the only house in the ACT. A total of 25 Members are elected from five electorates to represent the citizens of the ACT and make decisions on their behalf.

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.

Minority government

A government formed by a party or a coalition of parties (two or more parties) when they don't have a parliamentary majority.

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; and
- A prospective candidate for 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.

Election day

The fixed date for the election.

pre-election period

The pre-election period commences 36 days before election day and ends on election 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 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 2019/2020 to 2020/2021

	Detail required	Due	Made public
parties	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	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	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

Table 2: Summary of reporting requirements – 2020 election returns

	Detail required	Due	Made public
party grouping	<ul style="list-style-type: none"> All expenditure on advertising, electoral matter, consultants fees, opinion polls 	60 days after polling day (16 December 2020)	February after polling day
non-party MLAs	<ul style="list-style-type: none"> All expenditure on advertising, electoral matter, consultants fees, opinion polls 	60 days after polling day (16 December 2020)	February after polling day
associated entities	All expenditure on advertising, electoral matter, consultants fees, opinion polls	60 days after polling day (16 December 2020)	February after polling day
Non-party candidates	<ul style="list-style-type: none"> All expenditure on advertising, electoral matter, consultants fees, opinion polls 	60 days after polling day (16 December 2020)	February after polling day
donors	N/A	N/A	N/A
broadcasters and publishers	<ul style="list-style-type: none"> \$1,000 expenditure or more in total by advertisers on advertising, electoral matter, consultants fees, opinion polls 	8 weeks after polling day (14 December 2020)	February after polling day
third-party campaigners	<ul style="list-style-type: none"> \$1,000 expenditure or more in total on advertising, electoral matter, consultants fees, opinion polls Individual gifts received during the period 15/11/2016 to 16/11/2020 totalling \$1,000 or more if all or part used on electoral expenditure 	60 days after polling day (16 December 2020)	February after polling day