



# **DISCLOSURE HANDBOOK**

**for**

# **DONORS**

# NT ELECTORAL COMMISSION SITES

## DARWIN

Level 3, TCG Centre  
80 Mitchell Street  
DARWIN NT 0800

GPO Box 2419  
DARWIN NT 0801

Phone: (08) 8999 5000  
1800 **MYVOTE**

Fax: (08) 8999 7630

Website: [www.ntec.nt.gov.au](http://www.ntec.nt.gov.au)

## ALICE SPRINGS

MyVote Central  
Yeperenye Centre  
Hartley St  
ALICE SPRINGS NT 0870

PO Box 2304  
ALICE SPRINGS NT 0871

Phone: (08) 8951 5971  
1800 **MYVOTE**

Fax: (08) 8952 6727

E-mail: [ntec@nt.gov.au](mailto:ntec@nt.gov.au)

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## NTEC – Summary of disclosure provisions as at March 2016

As at June 2012 no political funding is provided for in the NT. Certain groups and individuals must disclose as outlined below.

**Note: disclosure amounts are inclusive of GST. The onus is on the person disclosing to get it right.**

Who reports?	What is reported?	Reporting period/due date for lodgment
<b>Candidates</b>	<ul style="list-style-type: none"> <li>• Details of each gift <b>≥\$200</b></li> <li>• All persons/organisations making gifts</li> <li>• Loans of <b>≥\$1500</b></li> <li>• Details of all expenditures by category</li> </ul>	<p><i>Independent candidate</i> – commences day candidature announced or day nominated, whichever is the earlier</p> <p><i>Newly endorsed party candidate</i> – commences from the date of endorsement</p> <p><i>Candidate from the previous election nominating again</i> – commences 30 days after the previous polling day</p> <p>Ends 30 days after polling day</p> <p>Due date - within <b>15 weeks</b> of polling day</p>
<b>Registered political parties</b>	<ul style="list-style-type: none"> <li>• Total amounts received and paid during year</li> <li>• Loans by individual persons or parties of <b>≥\$1500</b></li> <li>• In-kind gifts of goods, assets and services</li> </ul> <p>Anonymous donations of <b>≥\$1000</b> &amp; loans <b>≥\$1500</b> are illegal</p>	<p>Due date - <b>16 weeks</b> after financial year end</p> <p>Public inspection is available from 1 March following the due date at NTEC office/on website</p>
<b>Associated entities</b>	<ul style="list-style-type: none"> <li>• Total amounts received and paid during year.</li> <li>• From whom or on whose behalf payments of <b>≥\$1500</b> were received</li> <li>• From whom or on whose behalf liabilities totalling <b>≥\$1500</b> were incurred</li> </ul> <p>Organisation/individual contributing capital and the amount</p>	<p>Reporting is by financial year (July – June)</p> <p>Due date - <b>16 weeks</b> after end financial year</p> <p>Public inspection is available from 1 March following the due date at NTEC office/on website</p>
<b>Donors to parties and candidates</b>	<p>Donations outside elections:</p> <ul style="list-style-type: none"> <li>• Direct or indirect donations of <b>≥\$1500</b></li> <li>• Donations of <b>≥\$1000</b> used in whole or part to make party donations of <b>≥\$1500</b></li> </ul> <p>Donations during the election period:</p> <ul style="list-style-type: none"> <li>• Donations totalling <b>≥\$200</b> to a candidate or <b>≥\$1000</b> to parties and other organisations.</li> </ul>	<p>Annual returns – <b>lodged within 20 weeks</b> after the end of the financial year where total donations are \$1500 or more.</p> <p>Election returns - by <b>15 weeks</b> after polling day</p>
<b>Broadcasters and Publishers</b>	<ul style="list-style-type: none"> <li>• Details of all electoral advertisement broadcast and published</li> <li>• Free/below-market rate ads are classified as donations requiring separate reporting if valued at <b>&gt;\$1000</b>.</li> </ul>	<p><b>8 weeks</b> after polling day</p>

*Note: Forms and handbooks are available on the NTEC website. For advice phone 8999 5000*

# 1 INTRODUCTION

The purpose of this handbook is to assist people or organisations making donations to political parties or candidates at Northern Territory Legislative Assembly Elections to comply with the financial disclosure provisions of Part 10 of the *Electoral Act*.

It is one of a series of publications prepared by the Northern Territory Electoral Commission (NTEC) to assist parties, candidates, donors and other affected persons to comply with the disclosure provisions of the Act. These other publications are:

- Disclosure Handbook for Registered Political Parties
- Disclosure Handbook for Associated Entities
- Disclosure Handbook for Candidates
- Disclosure Handbook for Broadcasters and Publishers.

This handbook provides information derived from the Act, and from the experience of other jurisdictions, such as the Australian Electoral Commission, in the administration of its disclosure provisions. It attempts to simplify and explain the legislative provisions. While it is intended as a user-friendly guide to the disclosure requirements, it does not address the whole of the Act nor does it substitute for specific legal advice on detailed compliance issues.

Users are urged to seek their own independent advice where necessary.

Additional information and advice may be available from the NTEC.

Written enquiries:

Northern Territory Electoral Commission  
GPO Box 2419  
Darwin NT 0801

Phone enquiries: (08)8999 5000  
Fax enquiries: (08)8999 7630  
E-mail enquiries: [ntec@ntec.gov.au](mailto:ntec@ntec.gov.au)

## 2 BACKGROUND

Part 10 of the NT *Electoral Act* applies to the disclosure of information about political contributions and electoral expenditure. It requires candidates, registered political parties and their associated entities, broadcasters and publishers, and certain donors, to lodge disclosure returns with the NTEC. Part 10 of the Act is modelled on Part XX of the *Commonwealth Electoral Act 1918*. Note that as at June 2012 there are some differences in disclosure provisions between the federal and NT legislation.

Disclosure returns are available for inspection in order to inform the public about the financial dealings of candidates, parties and others involved in the election process. The aim is to prevent political corruption by making the financing of political candidates and parties as transparent as possible.

The disclosure scheme applies to individuals and organisations making political donations, including indirect donations such as the placement of political advertising on behalf of a candidate.

It requires lodgement of the following information by donors:

- **annual returns** relating to:
  - direct or indirect donations to a registered political party where these total \$1500 or more
  - donations of \$1000 or more received and used, in whole or part, to make party donations of \$1500 or more
- **election return** where \$200 or more of electoral expenditure is incurred
- **election returns** relating to:
  - donations totalling \$200 or more made to a candidate, or \$1000 or more made to an organisation specified by the NTEC in the *Gazette*; and

Donors should familiarise themselves with the requirements of the various return forms and maintain financial records which will enable the returns to be properly completed. Candidates and parties are required to include the name and address of donors in their returns, and cross checks may be made by the NTEC or members of the public, including the media.

## Summary of reporting obligations by donors to parties and candidates

### What is reported?

#### Donors must make annual returns of:

- Direct or indirect donations to a registered political party of \$1500 or more
- Donations of \$1000 or more received and used in whole or part to make party donations of \$1500 or more.

#### Donors must make election returns of:

- Donations totaling \$200 or more to a candidate or \$1000 or more to parties and other organisations as Gazetted by NTEC.

### Reporting period/ due date for lodgement

**Annual returns** must be lodged with NTEC within 20 weeks after the end of the financial year where total donations are \$1500 or more.

**Election returns** must be lodged by 15 weeks after polling day.

#### NOTE: Donations include:

- Donations of cash and gifts-in-kind
- Payment for attendance at events including fundraisers that for strictly commercial reasons would not be a donation
- Payment for access to government ministers and senior party officials
- Indirect payments to an organisation for passing on to a party including payments made in previous years.

Donations to more than one party can be reported together in the one return.

## 3 ANNUAL RETURN REQUIRED FROM DONOR

Section 194 of the *Electoral Act* applies.

### 3.1 Donations made to political parties

Part 4 of the annual return applies to a person or organisation - not a registered political party, an associated entity of a party or a candidate – making donations totalling \$1500 or more to a registered political party during a financial year.

Note: Persons who received donations totalling \$1000 or more which are in turn included in donations of \$1500 or more made to a party must also complete Part 5 of the return.

#### Registered political party

A registered political party is a party registered by the NTEC.

Note:

- a political party registered by the Australian Electoral Commission or another State or Territory Commission is not necessarily also registered with the NTEC
- other State or Territory branches of a Northern Territory registered political party are treated as separate entities and not included for the purposes of the Northern Territory disclosure provisions
- the campaign committee of an endorsed candidate is treated as part of a registered political party
- donations to associated entities of political parties are usually deemed to be to those political parties
  - An associated entity is an organisation controlled by, or operating wholly or to a significant extent for the benefit of a registered political party (or parties). The disclosure obligations of associated entities are addressed in the *Funding and Disclosure Handbook for Associated Entities*.

#### Donations

For disclosure purposes, donations include cash and 'gifts-in-kind'.

**Gifts-in-kind** are goods, assets or services for which no payment (in cash or kind) or a payment less than the true value is made. These donations are to be disclosed at their true value – normally, the commercial or sale value of the item or service as evidenced by arms-length quotations, comparative advertisements or expert assessment.

Examples of in-kind donations include:

- free services, or services provided at a discount to the commercial rates normally charged by the service provider (e.g. for legal advice, accounting services or web/IT services)
- supply of free or discounted use of commercial premises and/or the associated utilities
- wages or salaries (including on-costs) incurred by an employer whose employee works for a party or candidate during normal working hours while continuing to receive salary or wages from the employer (but not if the employee takes paid leave to work for the party or candidate)
- free or discounted
  - use of a motor vehicle, or provision of free fuel or servicing of a motor vehicle;
  - time or production services by a broadcaster (except time provided by the ABC or SBS specifically for political broadcasting);
  - advertising by a publisher or advertising production service;
  - printing, typesetting or associated services.

**Volunteer labour** does not need to be disclosed as a donation. The donation of unpaid time by a person is considered volunteer labour where it is provided by:

- an office-holder of the party or a party member; or
- any other person where that service is not one for which that person normally receives payment.

The distinction between gifts-in-kind and volunteer labour is seen in the following examples:

- the donation of legal advice by a solicitor who is a party member is volunteer labour because the solicitor is a party member
- the donation of legal advice by a solicitor who is not a party member is a gift-in-kind that must be disclosed because this is a service for which that person normally charges
- a solicitor who is not a party member handing out how-to-vote cards is volunteer labour because this is not a service for which that person normally charges
- the donation of legal advice on behalf of a firm of solicitors is a gift-in-kind that must be disclosed because volunteer labour can only be provided by natural persons, not organisations.

## Attendance at party functions

Payment for a party function or conference may be a donation that should be disclosed.

- Payment for attendance at an event for strictly commercial reasons would not be a donation
- Payment for the function with the intention of contributing to the political party, or where the function is primarily a fundraiser, or the amount paid is in excess of the value of the function, is a donation
- For the purposes of assessing the value of a function, the party involved may be able to advise the value they consider reasonable for gaining access to government ministers or to senior party officials.

## Donations indirectly made to a political party

A donation made to a person, or to an entity that is not a political party, which is intended to benefit a particular political party is to be disclosed as if it were a donation made direct to that party.

Examples of 'indirect' donations deemed to be made direct to the political party are:

- a person making a donation to an organisation on the understanding that the money or benefit will be passed on to a political party.
- a person making a donation to an organisation on the understanding that the money or benefit would be used to help fund the electioneering of a political party.
- a person making a donation to another person on the understanding that the money would be used to pay off debt of a political party.

A payment made for services to the benefit of the party (e.g. a payment for political advertising, legal costs or repayment of a loan) is a donation to the party which must be disclosed where the \$1500 overall donation threshold is exceeded.

Items that do **not** need to be reported as donations include:

- personal gifts which are not used to incur campaign expenditure
- commercial discounts in the normal course of business
- loans (provided they are evidenced as such)
- volunteer labour, such as handing out how-to-vote cards
- interviews and news items published in a newspaper or broadcast in the electronic media.

## **Donations to several parties**

Where donations of \$1500 or more have been made to two or more political parties, the donations can be listed on the one form i.e. a separate form does not need to be completed for each party.

Multiple donation examples include:

- Where a person makes separate donations during a financial year of \$1000, \$300 and \$300 to ABC party and \$1000 and \$400 to XYZ party, that person must list the name and address of ABC party and the date and value of each of those three donations. There is no requirement to disclose the donations to XYZ party because they total less than \$1500.
- Where a person makes separate donations during a financial year of \$1000, \$300 and \$300 to ABC party and \$1,000 and \$500 to XYZ party, that person must list the name and address and the date and value of the donations made to both ABC and XYZ parties because in each case the total of donations have reached the \$1500 threshold
- Where a person makes a donation during a financial year of \$1000 direct to ABC party and \$750 to another organisation on the understanding that that donation would be used to benefit the ABC party, that person must list the name and address of the ABC party and the date and value of both donations as the \$1500 threshold for donations to the party is exceeded.

## **Completing the return**

A sample of the annual return form follows this part of the handbook.

The following details of donations made to registered political parties (where donations to the party total \$1500 or more) must be disclosed at Part 4 of the return form:

- name and address of the political party
- date each donation was made and
- value of each donation.

If you are uncertain whether particular goods or services should be treated as a donation, the NT Electoral Commission may be contacted for advice at the address listed at the front of this handbook.

## **Period covered**

All donations totalling \$1500 or more to a political party during a financial year ending 30 June must be reported.

## 3.2 Donations received

This part of the return applies to a person or organisation required to complete Part 5 of the Annual Return, who at any time, receives a donation of \$1000 or more from a person or organisation and uses that donation, or part of it, in making donations totalling \$1500 or more during a financial year to a registered political party.

Cash donations, together with 'gifts-in-kind' as discussed above, must be disclosed. A 'Nil' return should be provided where reportable donations have been made but no reportable donations have been received.

### Period covered

Disclosure of donations received is not limited to those received during a particular financial year. The donations may have been received in any financial year and used to make donations in the financial year of the return.

### Completing the return

The following details of donations of \$1000 or more received at any time that they were used, in whole or in part to make donations during a financial year totalling \$1500 or more to a registered political party, must be disclosed at Part 5 of the return:

- name and address of each person or organisation from whom donations of \$1000 or more were received
- date each donation was made and
- full value of each donation.

Source of Donation	Disclosure Requirement
<b>Trust or foundation</b>	Names and addresses of trustees title/description of the Trust or foundation
<b>Unincorporated organisation</b> <i>(except for registered industrial organisations)</i>	Names and addresses of members of the executive committee Name of the organisation
<b>Registered industrial organisation</b>	Name and address

In the following examples, Mr Jones donates \$2500 to a registered party in the course of the 2011-12 financial year:

- Where Mr Jones received a \$2000 donation from another person on 1 December 2011 and used that donation to help fund his own donation to the party in the following financial year, the details of the donation from that other person must be disclosed on the 2012-13 annual return form, even though the donation was received earlier than 1 July 2012
- Where Mr Jones received a \$1000 donation from another person on 1 August 2012 but only used \$500 of that donation to help fund his own donation to the party, the details of that donation must be disclosed on the 2012-13 annual return form even though the final amount of the original donation that was passed onto the party was less than \$1000.

If Mr Jones received a \$500 donation and applied this to a donation totalling \$1000, no disclosure is required.

### **Lodgement deadline**

The annual return must be lodged with the NTEC's Darwin office within **20 weeks** after the end of the financial year.

## 4 ELECTION RETURN

### 4.1 Donations to candidates and others

Section 193 of the *Electoral Act* applies.

This return applies to a person or organisation - not a political party, associated entity or a candidate – making donations totalling \$200 or more to a candidate or who made donations totalling \$1000 or more to a person or organisation gazetted by the NTEC.

Cash donations, together with gifts-in-kind must be reported. The general explanatory discussion about donations, including gifts-in-kind, under annual returns in Section 3 of this handbook applies equally to election returns.

#### Period covered

The return covers donations made during the period from 31 days after the last Legislative Assembly election until 30 days after the subsequent election.

#### Completing the return

The following details of donations made to candidates or Gazetted bodies must be disclosed:

- name and address of the candidate or Gazetted body
- date each donation was made and
- value of each donation at the time it was made.

Source of Donation	Disclosure Requirement
<b>Trust or foundation</b>	Names and addresses of trustees Title/description of the trust or foundation
<b>Unincorporated organisation</b> <i>(except for registered industrial organisations)</i>	Names and addresses of members of the executive committee Name of the organisation
<b>Registered industrial organisation</b>	Name and address

Where donations have been made to two or more persons, the donations may all be listed on the one form i.e. a separate form does not need to be completed for each.

The \$200 and \$1000 thresholds are considered separately in determining whether they need to be reported:

- If \$200 or more is donated to a candidate, and less than \$1000 is donated to a *Gazetted* body, the amount less than \$1000 does not need to be disclosed
- If \$1000 or more is donated to a *Gazetted* body, and less than \$200 is donated to a candidate, the amount less than \$200 does not need to be disclosed.

## 4.2 Electoral expenditure

Section 200 (2) of the *Electoral Act* applies.

This part applies to a person or organisation - not a political party or a candidate - incurring electoral expenditure of \$200 or more, or authorising someone else to incur such expenditure without the written authority of a political party or a candidate.

### Electoral expenditure

Electoral expenditure is defined as:

- publishing an electoral advertisement during an election period in a journal
- broadcasting an electoral advertisement during an election period
- displaying an electoral advertisement at a theatre or other places of entertainment during an election period
- producing an electoral advertisement for the above purposes
- costs of producing campaign material issued in the election period (e.g. how-to-vote cards, pamphlets, posters)
- direct mailing of election material during an election period and
- opinion polling or other research during the election period and relating to the election.

Election related expenditure falling outside of these specific categories (e.g. hiring a hall for a public meeting) does not need to be disclosed.

Election expenditure incurred with the written authority of a party or a candidate is reported by the authorising person or organisation.

### Period covered

The return covers electoral expenditure incurred on goods used or services provided for the election irrespective of when the purchase was made or payment was made.

**Note:** A return is also required for by-election expenditure.

## **Completing the return**

The return lists the categories of campaign expenditure to be reported. The total of all expenditure incurred under each category must be included. Details of expenditure (e.g. the identity of persons with whom the expense was incurred) are not required.

The following should be kept in mind when completing the return:

- Both the production cost and broadcast cost of an election advertisement must be included even where that advertisement was produced prior to the election period and
- Pamphlets printed prior to an election but distributed during the election period must have their cost included in the return.

A sample of the form follows this part of the handbook.

## **Due date for lodging the return**

The return must reach the NTEC's Darwin office within **15 weeks** after polling day.

## **5 GENERAL INFORMATION**

### **Responsibility for lodging returns**

A donor should normally sign his or her own return.

Where the donor is an organisation, a person with appropriate authority and access to financial records should sign the return. In the case of a company this would normally be the financial controller. In the case of a trust fund it would be the Trustee.

### **Incomplete returns**

Each return requires the person completing it to sign and date a declaration that the information disclosed in the return and any attachment to it is true and complete.

In cases where, after reasonable attempts (including personal or telephone contact), the person completing the return is unable to obtain all the necessary information, the return should be lodged with a statement:

- that the return is incomplete because certain information is unable to be obtained
- outlining
  - the particulars of the information that are unable to be obtained
  - the reasons why the information could not be obtained and
- that if it is reasonable to believe another person can give the missing particulars and the reasons for that belief, then the name, address of that person.

### **Amendment of returns**

The NTEC, or the person who lodged a return, may rectify errors or omissions in the return. Section 223 sets out the formal process for this.

Separate return forms have been developed for lodgement of amending information.

The donor annual return amendment form is in substantially the same format as the annual return. The donor election return amendment form covers amendments to the election return.

The election return amendment form requires, for changes to election expenditure amounts, that the previously submitted amounts must be provided together with the new amount. The effect is that both amounts become part of the public record.

The annual return amendment form, and the parts of the election return amendment form dealing with donations made and received, require changes to be separated into three areas:

- the return is incomplete because certain information is unable to be obtained
- information previously omitted and
- amendment of information previously submitted, where the item being changed should be clearly identified e.g. by restating the original item and noting the changes, or by resubmitting the original part of the return with the item highlighted and the change detailed on the amending return.

The amendment forms follow this section.

## **Record Keeping**

The disclosure provisions imposed by the Act require donors to give consideration to the financial recording systems and procedures that will be appropriate to their needs and circumstances. The recording systems and procedures must be sufficient to enable the return, which will be publicly available, to be properly completed, and to satisfy the NTEC and public review requirements.

In particular:

- All transactions should be documented and recorded e.g. receipts and invoices should be retained, and multiple transactions summarized in a donations summary or register that reconciles to bank or similar records
- Cash transactions that are not otherwise documented should be included in the transaction summary or register
- Transactions by way of barter or gift-in-kind must have the item or service clearly identified to provide a basis for accurate valuation. Documentation supporting valuations should be obtained and retained e.g. commercial quotations for comparable services.

The Act requires that these records must be kept for a minimum period of four years from:

- polling day for a return relating to an election return and
- the date of the last day for lodgement of the annual return relating to the record.

## **Public inspection of returns, including availability on the NTEC website**

**Annual returns** become available for public inspection at the NTEC's Darwin office on 1 March in the year following the due date for that return (or the next working day if 1 March falls on a weekend or public holiday).

**Election returns** become available for public inspection at the NTEC's Darwin office from the start of the 25th week following polling day.

Photocopies of returns may be inspected at the NTEC's Darwin office.

Copies of returns are available from the NTEC's Darwin office upon payment of the fee determined by the Commission. Please check to confirm current pricing and availability.

## 6 OFFENCES

The Act contains penalty provisions for offences against the disclosure provisions. These penalties are available (through the courts) to the NTEC where other reasonable avenues to resolve matters have been exhausted. The offences include:

Offence	Penalties	
	Natural person	Body corporate
<b>Failure to lodge a disclosure return by the due date</b>	<b>200 penalty units or 12 months imprisonment</b>	<b>1000 penalty units</b>
<b>Lodging an incomplete disclosure return</b>		
<b>Including false or misleading information in a disclosure return</b>		
<b>Providing false or misleading information to an agent for inclusion in a disclosure return</b>		
<b>Failure to retain records, including records of information, which should be included in a disclosure return, for 4 years from polling day (election returns) or from last day for lodgement of return (annual returns)</b>		
<b>Failure to comply with a notice authorizing a NTEC investigation</b>		
<b>Knowingly providing false or misleading information during a NTEC investigation</b>		

**Note:** There is an annual review of the monetary value of the penalty unit – *Penalty Units Act 2009* refers.

## 7 GLOSSARY

The description of the following terms used in this glossary may differ from the formal meaning given to those terms in the Act.

Term	Description
<b>Associated entity</b>	<p>An organisation that is either controlled by or operates wholly or to a significant extent for the benefit of one or more registered political parties. This includes organisations that are independent of, but nevertheless benefit, a party.</p> <p>Organisations falling within this definition may include companies or trusts holding assets for a political party, fundraising organisations, groups and clubs.</p> <p>The disclosure obligations of associated entities are separately addressed in the <i>Funding and Disclosure Handbook for Associated Entities</i>.</p>
<b>Donation</b>	<p>A disposition of property or provision of a service for which no payment, or an inadequate payment, is received. The term includes cash and non-cash (gift-in-kind) transactions, but does not include commercial transactions or volunteer labour.</p>
<b>Donor</b>	<p>A person or organisation other than a registered political party, candidate, associated entity, broadcaster or publisher who is under an obligation to lodge a disclosure return.</p>
<b>Electoral expenditure</b>	<p>The following categories of campaign expenditure incurred on goods or services:</p> <ul style="list-style-type: none"> <li>• broadcasting electoral advertisements</li> <li>• publishing electoral advertisements</li> <li>• displaying electoral advertisements</li> <li>• production of campaign material</li> <li>• direct mailing</li> <li>• opinion polling and election research.</li> </ul> <p>Where electoral expenditure totals \$200 or more, it must be disclosed in a return following each election or by-election.</p>
<b>Gazetted body</b>	<p>A person or body specified by the NTEC in the <i>Northern Territory Government Gazette</i>. Donations to a gazetted body may need to be disclosed in a return to the Commission.</p>

Term	Description
<b>Gifts-in-kind</b>	<p>Non-cash donations, such as the donation of an asset or service, discounts given other than in the normal course of business and non-commercial payments made for goods or services are treated the same as cash donations for disclosure purposes. Gifts-in-kind must be disclosed at the appropriate value - normally this would be the commercial or sale value of the item or service.</p> <p>Examples of gifts-in-kind include free or discounted legal advice given by a law firm, providing rent-free office accommodation and the donation of items or services as raffle prizes. Volunteer labour does not need to be disclosed as a donation.</p>
<b>Public inspection</b>	<p>Copies of all disclosure returns become available for inspection by the public at the NTEC's Darwin office</p> <ul style="list-style-type: none"> <li>• Annual returns are available from 1 March</li> <li>• Election returns are available at the start of the 25th week after polling day.</li> </ul>
<b>Registered political party</b>	<p>A political party registered with the NTEC. Political parties not registered with the NTEC are treated as donors for disclosure purposes.</p>
<b>Volunteer labour</b>	<p>Volunteer labour does not need to be disclosed as a donation. The donation of unpaid time by a person is considered volunteer labour where it is provided by an office-holder of the party or a party member, or any other person where that service is not one for which that person normally receives payment.</p>