



DISCLOSURE HANDBOOK

for

CANDIDATES

NT ELECTORAL COMMISSION OFFICES

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NTEC – Summary of disclosure provisions as at March 2016

As at March 2016 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
Candidates	<ul style="list-style-type: none"> • Details of each gift ≥\$200 • All persons/organisations making gifts • Loans of ≥\$1500 • Details of all expenditures by category 	<p><i>Independent candidate</i> – commences day candidature announced or day nominated, whichever is the earlier <i>Newly endorsed party candidate</i> – commences from the date of endorsement <i>Candidate from the previous election nominating again</i> – commences 30 days after the previous polling day Ends 30 days after polling day</p> <p>Due date - within 15 weeks of polling day</p>
Registered political parties	<ul style="list-style-type: none"> • Total amounts received and paid during year • Loans by individual persons or parties of ≥\$1500 • In-kind gifts of goods, assets and services <p>Anonymous donations of ≥\$1000 & loans ≥\$1500 are illegal</p>	<p>Due date - 16 weeks after financial year end</p> <p>Public inspection is available from 1 March following the due date at NTEC office/on website</p>
Associated entities	<ul style="list-style-type: none"> • Total amounts received and paid during year. • From whom or on whose behalf payments of ≥\$1500 were received • From whom or on whose behalf liabilities totalling ≥\$1500 were incurred <p>Organisation/individual contributing capital and the amount</p>	<p>Reporting is by financial year (July – June)</p> <p>Due date - 16 weeks after end financial year</p> <p>Public inspection is available from 1 March following the due date at NTEC office/on website</p>
Donors to parties and candidates	<p>Donations outside elections:</p> <ul style="list-style-type: none"> • Direct or indirect donations of ≥\$1500 • Donations of ≥\$1000 used in whole or part to make party donations of ≥\$1500 <p>Donations during the election period:</p> <ul style="list-style-type: none"> • Donations totalling ≥\$200 to a candidate or ≥\$1000 to parties and other organisations. 	<p>Annual returns – lodged within 20 weeks after the end of the financial year where total donations are \$1500 or more.</p> <p>Election returns - by 15 weeks after polling day</p>
Broadcasters and Publishers	<ul style="list-style-type: none"> • Details of all electoral advertisement broadcast and published • Free/below-market rate ads are classified as donations requiring separate reporting if valued at >\$1000. 	<p>8 weeks after polling day</p>

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

1 INTRODUCTION

1.1 Purpose

The purpose of this handbook is to assist candidates at Northern Territory Legislative Assembly elections to comply with the financial disclosure provisions of Part 10 of the *Electoral Act*.

1.2 Publications

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. The other publications are:

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

1.3 Information from the Electoral Act

This handbook provides information derived from the Act, and from the experience of other jurisdictions, such as the Australian Electoral Commission (AEC), 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.

1.4 Advice

Information and advice may be available from the NTEC:

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

Note: The NTEC does not offer legal advice. If you have any doubts concerning compliance issues, it is recommended that you obtain private legal advice.

2 BACKGROUND

2.1 Electoral Act

The *Electoral Act* Part 10 deals with 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 was originally modelled on Part XX of the *Commonwealth Electoral Act 1918*. However since 2006 the alignment in disclosure provisions between the federal and NT legislation changed when the disclosure thresholds were significantly increased in the Commonwealth Act.

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

Each political party must and an independent candidate may nominate an agent who is responsible (together with their principal/s) for compliance with the disclosure provisions of the Act.

2.2 Overview

The disclosure issues affecting candidates that are addressed more fully in this handbook are:

- **Agents** - candidates may appoint an agent to act on their behalf on election disclosure matters.
- **Donations** - candidates must report total donations received, with details of persons or organisations that donated \$200 or more to a candidate. Anonymous donations of these amounts or more are illegal.
- **Loans** – candidates' returns include details of loans of \$1500 or more, for which record-keeping requirements must be satisfied in order for the loans to be legal.
- **Expenditure** – candidates must report details of certain categories of election expenditure.
- **Administration** – information about the NTEC's approach to the administration of the disclosure provisions, agent record keeping, audits and offences.

While the NT Act does not impose any limits on donations received or campaign expenditure, there are significant penalties for non-compliance with the disclosure requirements.

People or organisations donating \$200 or more to a candidate must also lodge disclosure returns with the NTEC. A separate *Disclosure Handbook for Donors* addresses the issues affecting donors.

The onus is on candidates to familiarise themselves with the disclosure requirements and to maintain records sufficient to enable returns to be properly completed. Donors are required to include the names and address of candidates to whom they make donations in their returns, and cross checks may be made by the NTEC, members of the public, and the media.

2.3 Summary of reporting obligations for candidates

<p>What is reported?</p> <p>A candidate must report in an election return:</p> <ul style="list-style-type: none"> • Total gifts with details of each person or organisation donating \$200 or more • Total number of persons and organisations who made gifts • In-kind gifting of goods, assets and services that were free or below true market value – except volunteer work • Details of loans of \$1500 or more • Details of all expenditure according to categories (broadcasting, publishing display advertising, campaign material, direct mailing, opinion polling/research). 	
<p>Reporting period/due date for lodgement</p>	
<p><i>Independent candidate</i></p>	<p>Commences day candidature announced or day nominated, whichever is the earlier</p>
<p><i>Newly endorsed party candidate</i></p>	<p>Commences from the date of endorsement</p>
<p><i>Candidate from the previous election nominating again</i></p>	<p>Commences 31 days after the previous polling day</p>
<p>Ends 30 days after polling day</p> <p>Return must be lodged within 15 weeks of polling day.</p>	
<p>NOTES:</p> <p>A candidate must:</p> <ul style="list-style-type: none"> • Appoint an agent to report OR undertake to report him/herself • Submit a nil return even if no expenditure has been incurred <p>If endorsed, donations and expenditure made to the party are not reported by the candidate but by the party</p> <p>It is illegal to accept anonymous donations of \$200 or more.</p> <p>There is no limit on donations or expenditure</p> <p>Returns are available for public inspection at NTEC offices and summaries on the NTEC website.</p>	

3 AGENTS

Sections 184 and 188 of the Electoral Act apply.

Candidates may appoint an agent, if they wish, to act on their behalf on disclosure matters.

3.1 Responsibilities

The agent is responsible for lodging donation and expenditure disclosure returns with the NTEC

Agents should familiarize themselves with the donations and expenditure return forms that must be lodged after the election and with the penalty provisions for failure to properly do so. Systems and procedures for recording transactions should be maintained, and supporting documentation retained.

3.2 Candidates

A candidate, whether independent or endorsed by a party, may appoint an agent for disclosure purposes. **Candidates who do not appoint an agent are deemed to be their own agent.**

3.3 Registered political parties

Registered political parties must appoint an agent for disclosure purposes.

The party agent is not the agent of candidates endorsed by the party, unless separately appointed as such.

3.4 Appointment of an agent

A request to appoint an agent must be made by the candidate and lodged with the NTEC in Darwin. Faxed or scanned and e-mailed notices of appointment are accepted.

The NTEC has forms for the *Appointment of Agents* that can be downloaded from the NTEC website.

To be eligible for appointment as agent a person must:

- be at least 18 years of age
- not have been convicted of an offence under the disclosure provisions
- have signed a declaration of eligibility and consent to the appointment.

A person may accept multiple appointments as agent but each appointment must be made separately. Only natural persons, and not corporations, may be appointed as an agent.

3.5 Duration of appointment

The appointment of an agent for a candidate continues to have effect until:

- the agent gives the Commission written notice that the person has
 - resigned the appointment or
 - ceased to be the reporting agent or the candidate appoints another reporting agent;
- the candidate does not contest the next Legislative Assembly General Election.

3.6 Advice of death, resignation or termination of agent

The candidate must promptly advise the NTEC in writing of the death, resignation or termination of the candidate's agent. The candidate is taken to be the agent unless or until another agent is appointed.

4 ELECTION RETURNS

Part 10, Division 3 of the Act applies.

This division deals with the disclosure of donations and electoral expenditure. *Returns of Election Donations Received and Electoral Expenditure Incurred* must be lodged by or on behalf of candidates.

4.1 Timing

Returns, including nil returns, must be lodged with the NTEC in Darwin within 15 weeks of polling day.

4.2 Candidate return

Unendorsed or independent candidates - must complete and lodge a return.

Endorsed candidates - donations received or expenditure incurred by an endorsed candidate on behalf of, or with the authority of, the registered political party are to be disclosed by the party and not by the candidate. Similarly, donations and expenditure of a campaign committee are included in the party return.

Endorsed candidates must ensure that full details of donations received and expenditure incurred that are not disclosed in their own return are provided to the party agent for disclosure. They should lodge a 'nil' return if relevant.

4.3 Responsibility for lodging returns

The agent is responsible for lodging the return by the due date. The agent must declare that the information in the returns and any attachment is true and complete.

4.4 Incomplete returns

Agents are responsible for lodging complete and accurate returns.

Note: Even if there are no donations, loans or expenditure to report, a 'Nil' return MUST be lodged

Where the agent is unable to obtain all the necessary information, the return should be lodged together with a statement of:

- what information may be missing
- what attempts were made to gain that information
- why it could not be obtained and
- the name, address and phone number of each person who it is believed holds that information.

The NTEC will then follow up the outstanding information.

4.5 Public inspection of returns

The returns are available for public inspection at the NTEC's Darwin office 25 weeks following polling day. Copies of returns are also available on the Commission's website at www.ntec.nt.gov.au.

Copies of returns are also available from the NTEC's Darwin office on payment of a fee determined by the Commission.

4.6 Amendment of returns

The NTEC, or the person who lodged a return, may rectify errors or omissions in the return. Division 7 of Part 10 of the Act sets out the formal processes for this to happen.

5 ELECTION DONATIONS

Part 10 Division 3 of the Act applies.

Election donations of \$200 or more must be reported.

5.1 Donations

Donations are widely defined to include any transfer or gift of property or service for which no payment, or an inadequate payment, is received. Donations may be in cash (eg money or cheque), or 'gifts-in-kind'.

They may be received directly by the candidate or received by some third party acting on their behalf, or with their authority.

5.2 Gifts-in-kind

These are goods, assets or services for which no payment (in cash or kind) or a payment less than true value is made. These donations need to be disclosed at their proper 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 (eg for legal advice, accounting services or web/IT services)
- supply of free or discounted use of commercial premises and/or associated utilities
- wages or salaries (including on-costs) incurred by an employer whose employee works for a 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 candidate)
- free use of a motor vehicle, or provision of free fuel or servicing of a motor vehicle
- free or discounted time or production services by a broadcaster
- free or discounted advertising by a publisher or advertising production service
- free or discounted printing, typesetting or associated services.

5.3 Volunteer labour

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 may only be provided by natural persons, not organisations.

5.4 Excluded items

Transactions that do **NOT** need to be reported as donations include:

- personal gifts which are not used to incur campaign expenditure
- commercial discounts received in the normal course of business
- loans (so long as they are evidenced as loans)
- volunteer labour, such as persons handing out how-to-vote cards
- an offer by a broadcaster to interview a candidate
- interviews and news items published in a newspaper or broadcast in the electronic media and
- gifts received on behalf of a political party or by the campaign committee of an endorsed candidate (these should be disclosed to the party as they are required to be disclosed by the party agent).

5.5 Personal donations

A candidate's personal donations made to the candidate's own campaign, whether by direct cash deposit, use of the candidate's own car, the candidate's personal payment of bills, etc. do not normally need to be disclosed. However:

- donations from a family company or trust are not the candidate's personal donations and do need to be reported
- a candidate's personal donations to the candidate's campaign committee must be disclosed by the party as a donation received by it from the candidate.

5.6 Anonymous donations

It is illegal for a candidate to receive donations totalling \$200 or more, unless the person receiving the gift knows the name and the address of the donor when the gift is made.

Donation source	Donor details to be disclosed
Trust or foundation	Names and addresses of the trustees and the title or description of the trust or foundation
An unincorporated organisation (except for registered industrial organisations)	Names and addresses of the members of the executive committee and the name of the organisation
A registered industrial organisation	Name and address

Anonymous donations are payable to, and recoverable by, the Territory.

5.7 Period covered

The commencement date will depend upon which of the following three instances apply and, in all cases, concludes 30 days after polling day.

- if a candidate stood previously in a Legislative Assembly election or by-election within the last four years, the disclosure period commences on the 31st day after the last election contested
- **Independent candidate** – if a candidate has not stood previously at a Legislative Assembly election or by-election within the last four years, the disclosure period commences on the date that the candidacy was announced or when the candidate nominated, whichever was the earliest
- **Endorsed candidate** - if a candidate has not stood previously at a Legislative Assembly election or by-election within the last four years the disclosure period commences on the date of endorsement by the party.

5.8 Completing the return

The return must show:

- the total value of all donations received during the disclosure period
- the total number of persons who made gifts
- where donations from an individual or organisation total \$200 or more to a candidate, the name and address of the donor along with the date and value of each donation they made.

In the case of donations received from a trust or foundation, the names and addresses of the trustees must be disclosed along with the title or description of the trust or foundation. Similarly with an unincorporated organisation (except for registered industrial organisations), the names and addresses of the members of the executive committee must be disclosed along with the name of the organisation. It is sufficient to provide the name and address of a registered industrial organisation.

If you are uncertain whether particular goods or services should be reported as a donation or gift-in-kind, you may contact the NTEC for advice at the address in the introduction to this handbook.

6 LOANS

Section 190 of the Act applies.

6.1 Records

Candidates, or people acting on their behalf, must keep records of any loan to the value of \$1500 or more received from a source other than a financial institution. Details of such loans are to be included in the candidate's return.

A financial institution is a bank, credit union, building society or a 'special service provider' such as a friendly society registered under the Australian Financial Institutions Commission Codes.

A loan is broadly defined to include advances, credit, financial accommodation, amounts with an obligation to repay, and transactions with the effect of a loan of money. Each credit card transaction is an individual loan for these purposes.

The records to be kept are the terms and conditions of the loan and details of the lender.

6.2 Terms and conditions

The terms and conditions that must be recorded are not defined in the Act, but would include matters such as the loan documentation, including the amount, interest rate and repayment terms.

The loan provider details to be kept are defined:

Loan source	Details to be disclosed
A registered industrial organisation	Name of the organisation and the names and addresses of its executive committee
A trust or foundation	Names and addresses of the trustees and the title or description of the trust or foundation
An unincorporated organisation	Names and addresses of the members of the executive committee and the name of the organisation
Other cases	Name and address of the person or organisation

It is unlawful for a loan of \$1500 or more to be received from other than a financial institution if these records are not kept. If the records are not kept, the amount of the loan is recoverable by the Territory.

The disclosure return requires details of the persons and organisations from whom loans of \$1500 or more were received.

7 ELECTION EXPENDITURE

Part 10 Division 4 of the Act applies.

The total amount of electoral or campaign expenditure by a candidate in each of the following categories must be reported by the candidate or the endorsing political party.

7.1 Expenditure categories

Reportable electoral expenditure includes all advertising, polling or research costs relating to the election.

- broadcasting advertisements, including production costs
- publishing advertisements, including production costs
- displaying advertisements at a theatre or other place of entertainment, including production costs
- costs of campaign material where the name and address of the author, or the authorizing person, is required - eg how-to-vote cards, pamphlets, posters*
- direct mailing* and
- opinion polling or other research relating to the election.

** Include the cost of material used or distributed.*

You are not required to report on:

- campaign expenditure, eg the hire of premises or equipment, freight, telephone and travel costs
- the cost of surplus (unused) material.

7.2 Authorised expenditure

The general principle is that expenditure incurred with the authority of a political party or branch is reported by the party or branch and not by the candidate.

The following more specific points apply:

- election expenditure incurred with the authority of a party is expenditure to be reported by that party
- election expenditure incurred by a campaign committee of an endorsed candidate is expenditure of the party.

Where expenditure is required to be reported by a party, arrangements should be put in place to ensure that the party is provided with all necessary information.

7.3 Period covered

The return covers campaign expenses for goods used or services provided during the period from the issue of writ until its return, irrespective of when payment is made. For example, include advertising production and broadcasting costs where the advertisement was produced before the election period and paid for after the election period.

7.4 Completing the return

Include on the return the total of all expenditure incurred under each specified category of expenditure. Additional details are not required but supporting documentation must be retained for four years and may need to be produced for NTEC audit purposes.

Nil returns

Provide nil entries where appropriate. **Provide a nil return where there is no expenditure to be reported.**

8 ADMINISTRATION

8.1 NTEC's approach

The NTEC is responsible for the administration of the Act, including the disclosure provisions.

The Commission's approach is to work with the community, candidates, political parties and others in order to achieve a successful electoral outcome and to facilitate compliance with the disclosure and other requirements.

Please direct enquiries and requests for guidance and assistance to the NTEC.

8.2 Candidate record keeping

The disclosure requirements imposed on agents by the Act are such that candidates must consider the financial recording systems and procedures, which are appropriate to their needs and circumstances.

The recording systems and procedures must be sufficient to enable the return form, which will be publicly available, to be properly completed, and to satisfy both NTEC and public review requirements.

The need for a record keeping system will vary from candidate to candidate. For example:

- if few donations or expenses are expected then a simple listing may suffice
- if multiple transactions are envisaged then a more sophisticated cashbook, spreadsheet or information system is warranted
- if all donations and expenditure are through a party, then the need for a system will be dictated by the party's information needs.

Some issues that may be relevant to the determination of an appropriate record keeping system include:

- the likely number, quantum and nature of election donations expected to be received and election expenditure payments expected to be made
- the need to ensure that anonymous donations of \$200 or more are not received and the need to ensure that loans of \$1500 or more are properly documented
- the number, experience and training of people likely to be receiving donations, making payments and maintaining the records
- ethical considerations such as the need to separate personal and donated moneys, including the operation of separate bank accounts
- the need for the system to be able to be accurately maintained in the face of competing priorities over the peak election period
- the level of assistance and guidance that might be expected from the endorsing party (if any).

All transactions should be adequately documented and recorded:

- Issue receipts for each donation or gift received, with details of these summarized in a receipts register such as a cash book, spread sheet or accounting package
- Clearly identify or describe transactions by way of barter or gifts-in-kind (and include in the receipts register) in order to provide a basis for accurate valuation
- Retain documentation in support of valuations eg commercial quotations for comparable services
- Record the names and address of donors, and the names and office holders of any unincorporated associations, trusts or foundations making donations
- Include in documentation in support of loans of \$1500 or more details of the terms and conditions of the loan, and the names and addresses of the lenders
- Maintain details of expenditure that is required to be included in the return and ensure that source records such as invoices, accounts and receipts are retained and included in an expenses register.

The Act requires that the records, formal and informal, be retained for a minimum period of three years, including the various receipt books, bank records, receipts registers, source documents and working papers.

Take care to ensure that the details recorded are accurate. For example, where a donation is received from the chief executive of an organisation, establish whether it was from the chief executive personally, or on behalf of the organisation. Similarly, where a person is acting on behalf of someone else, such as through a solicitor's trust account, make sure it is the true donor who is recorded.

8.3 Audits

Division 6 of Part 10 of the Act provides for the NTEC to conduct investigations to ensure compliance with the disclosure provisions.

9 Offences

Section 215 of the Act contains penalty provisions for offences against the disclosure provisions. These are available to the NTEC where other reasonable avenues to resolve matters have been exhausted. The offences include:

Offence	Penalties	
	Natural person	Body corporate
Failure to lodge a disclosure return by the due date	200 penalty units or 12 months imprisonment	1000 penalty units
Lodging an incomplete disclosure return		
Including false or misleading information in a disclosure return		
Providing false or misleading information to an agent for inclusion in a disclosure return		
Failure to retain records, including records containing information which could be required to be included in a disclosure return, for 3 years		
Failure to comply with a notice authorizing a NTEC investigation		
Knowingly providing false or misleading information during a NTEC investigation		

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

GLOSSARY

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

Term	Description
Agent	<p>A person appointed by a candidate to assume disclosure responsibilities If no appointment is made candidates are deemed to be their own agents A party agent is not automatically the agent for candidates of the party</p>
Anonymous donations	<p>Gifts received where the person receiving the gift when the gift is made does not know the name or the address of the donor It is illegal for a candidate to receive anonymous donations from the same source totalling \$200 or more</p>
Donation	<p>A disposition of property or the provision of a service for which no payment, or an inadequate payment, is made. The term includes cash and non-cash (gifts-in-kind) transactions, but does not include commercial transactions or volunteer labour.</p>
Electoral expenditure	<p>The following categories of campaign expenditure incurred on goods or services used during the period from the issue of the writ to its return:</p> <ul style="list-style-type: none"> • Broadcasting advertisements • Publishing advertisements • Display advertisements • Production of campaign material • Direct mailing • Opinion polling and election research. <p>Electoral expenditure must be disclosed in a return to the NTEC following each election or by-election .</p>
Endorsed candidate	<p>A candidate endorsed by a registered political party</p>
Financial institution	<p>A bank, building society, credit union or financial services provider regulated by the Australian Prudential Regulatory Authority (APRA).</p>
Gifts-in-kind	<p>Non-cash transactions, such as receipt of a free asset or service, discounts received other than in the normal course of business or excessive payment for goods or services provided are treated as cash donations for disclosure purposes.</p> <p>Gifts-in-kind must be disclosed at the appropriate value - normally the commercial or sale value of the item or service.</p>

Term	Description
Party agent	A person appointed as agent by a registered political party, or a State or Territory branch of a registered political party. A party agent does not automatically become the agent for candidates endorsed by the party.
Public inspection	Copies of all disclosure returns become available for inspection by the public at the NTEC in Darwin. Election returns are available from 25 weeks after polling day.
Registered political party	A political party registered with the NTEC.
The Act	The NT <i>Electoral Act</i> .
Third party	A generic term used to describe a person or organisation other than a registered political party, candidate, associated entity, broadcaster or publisher who is under an obligation to furnish a disclosure return. For example, donors of \$200 or more to a candidate and lobby groups during an election campaign.
Unendorsed	A candidate who has not been endorsed at the election by a registered political party.
Volunteer labour	Volunteer labour is a service provided free of charge by any person where the service is not one for which that person normally receives payment. Volunteer labour provided to a candidate does not need to be disclosed as a donation.