



## Gifts and loans

### 1. Record keeping

#### *Unlawful to receive certain gifts and loans unless details recorded*

1.1 It is unlawful for the following persons, or a person acting on behalf of the following, to accept a gift of the prescribed amount or more unless the name and address of the donor are known or provided to the recipient (section 197(7)(b) of the [Electoral Act 2004](#) (the Act)):

(a) Relevant entities (registered political party, associated entity, or third party) – prescribed amount \$1,000.

(b) A candidate – prescribed amount \$200.

The recipient must have no grounds to believe that the name and address the donor provided are not true.

1.2 It is unlawful for a registered party or candidate, or a person acting on their behalf, to receive a loan of \$1,500 or more (other than a loan from an authorised deposit-taking institution) unless the name and address of the lender, and the terms and conditions of the loan are recorded (section 190(2) of the Act).

1.3 If the donor or lender is not a natural person, then additional details must be recorded.

(a) For an association, you must also record the names and addresses of the members of the executive committee.

(b) For a trust or foundation, you must also record the names and addresses of the trustees.

(c) For a body corporate, you must also record the names and addresses of the members of the board, and the names of any related body corporate.

(d) For a loan from a registered industrial organisation, you must also record the names and addresses of the members of the executive committee.

#### *Retention of records*

1.4 You must also ensure that you keep records for the required time period. If you have a document that contains information relating to a matter that has been or should be set out in a return lodged with the Electoral Commissioner, you are required to retain those records for at least four years. The four year period starts on the day of the election to which the return relates.

## 2. Disclosure

- 2.1 The disclosure threshold should not be confused with the record-keeping threshold. Gifts and loans are only required to be disclosed in a return if they total more than:
- (a) for a gift to a candidate - \$200; or
  - (b) for a gift to a registered party, an associated entity or a third party campaigner - \$1,500.
- 2.2 Agents are required to notify donors of the requirement to lodge a donor return (sections 193 and 196A of the Act).

### *Gifts and loans to candidate*

- 2.3 Gifts or loans made to a candidate do not need to be disclosed if:
- (a) the gift or loan was made in a private capacity to a candidate for their personal use, and
  - (b) the candidate has not used, and will not use, the gift or loan solely or substantially for a purpose related to an election.
- 2.4 Gifts and loans to candidates are to be aggregated:
- (a) gifts of more than \$200 (excluding private gifts) made by the same person during the disclosure period are to be aggregated and are treated as one gift.
  - (b) loans of more than \$1,000 (excluding private loans) made by the same person during the disclosure period are to be aggregated and are treated as one loan.

## 3. Gifts

### *Definition*

- 3.1 A 'gift' means any disposition of property made by a person to someone else without consideration in money or money's worth or with inadequate consideration, and includes providing a service for no consideration or for inadequate consideration.
- 3.2 Despite subsection (3.1), a gift to a third party campaigner only includes gifts that are:
- (a) specified by the donor to be used for electoral expenditure; or
  - (b) reasonably believed by the campaigner to be intended by the donor to be used for electoral expenditure.
- 3.3 Excluded from the definition of a gift are:
- (a) a disposition of property by will; or
  - (b) an annual subscription paid to a registered party by a person for the person's membership of the party; or
  - (c) volunteer labour that is:
    - (i) conducted outside of normal working hours or while on leave; and
    - (ii) not remunerated.
- 3.4 A gift to a candidate does not include a gift:
- (a) made in a private capacity to the candidate for the candidate's personal use; and
  - (b) that the candidate has not used, and will not use, solely or substantially for a purpose related to an election.

### ***Examples of gifts***

- 3.5 A winning bid for an auction prize that is in excess of how much the prize is actually worth, is considered a gift. For example, a vintage bottle of champagne is worth \$1,000 but the winning bid was \$5,000. The difference between the value and the amount paid for the prize (\$4,000) is treated as a gift from the winning bidder.
- 3.6 Tickets to functions or fundraising events may also be gifts if the price exceeds the value of what the attendee receives.
- 3.7 Membership fees (excluding fees for membership of a political party) may also be considered a gift. Membership fees paid to industrial organisations will not usually be a gift, but substantial membership fees paid to an organisation may be considered a gift, depending on the services the member receives in return. For example, a \$2,000 membership fee where the only benefits to the member are the right to attend two dinners a year would be considered a gift.
- 3.8 Similarly, a sponsorship may also be considered a gift if the value of the sponsorship is not equal to the goods or services provided in return. For example, if an organisation is holding an event and receives a \$20,000 sponsorship and the only benefit the sponsor receives is a banner displayed at the event, this would likely be considered a gift.
- 3.9 The guiding principle for determining whether something is a gift:
  - (a) is the person receiving 'adequate consideration' in return, i.e. is the person receiving something equal in value to the price paid, or the goods or services provided?

## **4. Gifts-in-kind**

### ***Written evidence***

- 4.1 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.
- 4.2 Examples of in-kind donations include:
  - (a) 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).
  - (b) Supply of free or discounted use of commercial premises and/or associated utilities.
  - (c) 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).
  - (d) Free use of a motor vehicle, or provision of free fuel or servicing of a motor vehicle.
  - (e) Free or discounted time or production services by a broadcaster.
  - (f) Free or discounted advertising by a publisher or advertising production service.
  - (g) Free or discounted printing, typesetting or associated services.
- 4.3 The value of a gift-in-kind must be recorded. The value given to a gift-in-kind must be a value that a competent valuer of the property would give based on a fair and reasonable valuation.

### ***Determining the value***

#### 4.4 Methods for determining the value of a gift-in-kind:

- (a) Using the recommended retail price for the gift.
- (b) Using the price of comparative goods or services.
- (c) Using fair market value, i.e. the price that an interested buyer and seller would agree upon given the following:
  - transaction at arms-length
  - neither side is pressured into the transaction, and
  - both sides have reasonable knowledge of the gift.
- (d) Expert valuation.

### ***Examples***

- 4.5 Volunteer labour does not include labour a person performs as part of their profession or trade, or would otherwise be paid for in the ordinary course of their work. For example, a graphic designer might design a candidate's campaign materials for no charge. This service is a gift and the price the designer would normally charge for such work must be recorded as the value of the gift.
- 4.6 Discounts provided in excess of any commercial discount available in the ordinary course of business, are considered gifts. For example, a party receives a 15 per cent discount for a bulk stationery order. The 15 per cent discount is available to anyone who purchases in bulk. That discount is not a gift. On the other hand, if a butcher provides a 50 per cent discount on meat products for a party fundraiser, and no discount is normally available on such purchases, that 50 per cent discount is a gift. The amount of the discount must be recorded as the value of the gift.
- 4.7 Some examples of how the value of a gift-in-kind can be determined:
  - (a) A person gifts a new car to a party. You might check a local dealership's website for the recommended retail price of the same car and record that as the value of the gift.
  - (b) A person provides a party a free two-week stay at their holiday home for the period 9–23 May as an auction prize. You might perform an internet search for prices of comparable holiday rentals in that area for 9–23 May and use a comparative price as the value of the gift. For example, a similar property charges \$500 per night for the same period. You might then record the value of the gift as \$7,000. If the winning auction bid was \$15,000, then \$8,000 must be recorded as a gift from the winning bidder.
  - (c) A person provides a candidate free use of commercial premises for campaign activities. The market rent could be used to determine the value of the gift.
  - (d) An artist gifts one of their works as an auction prize. The artist values this piece at \$3,000 based on sales of their earlier works. You might record the value of the gift as \$3,000. Alternatively, if the artist cannot determine the value of their work, you might need to obtain an expert valuation.

## 5. Loans

- 5.1 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.

### *Terms and conditions*

- 5.2 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
<b>A registered industrial organisation</b>	Name of the organisation and the names and addresses of its executive committee
<b>A trust or foundation</b>	Names and addresses of the trustees and the title or description of the trust or foundation
<b>An unincorporated organisation</b>	Names and addresses of the members of the executive committee and the name of the organisation
<b>Other cases</b>	Name and address of the person or organisation

It is unlawful for a loan of \$1,500 or more to be received from a person or entity 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 \$1,500 or more were received.

## Disclaimer

This information is intended as a general guide only and should not be substituted for the legislation. You are advised to refer to the legislation and seek your own independent advice if necessary.