

Funding and Disclosure

HANDBOOK

FOR STATE ELECTIONS AND BY-ELECTIONS



ECQ publications are not intended to substitute for the *Electoral Act 1992* or the *Local Government Electoral Act 2011*. Candidates, agents and others are advised to obtain a copy of the Acts and seek their own independent advice if necessary. The Act is available on the Queensland Legislation website: www.legislation.qld.gov.au

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Introduction

Candidates and registered political parties in Queensland State elections qualify for public funding if they receive 6% of the formal first preference vote.

The amount of funding available for any candidate is calculated by multiplying the number of first preference votes by the election funding amount, currently \$3.14 per vote for registered political parties and \$1.57 per vote for candidates. This amount is adjusted at the start of each financial year according to the CPI for the March quarter preceding it.

The maximum funding for each candidate is equivalent to their spending on goods and services essential to their campaigns. Claims must be lodged within 20 weeks after polling day.

Registered political parties are eligible to receive policy development payments if the party was registered at the last State election, its endorsed candidates received at least 6% of the formal first preference vote and has at least one elected member who is endorsed by the party for the duration of the financial year.

Changes to the Queensland Electoral Act in February 2017 mean any gifts or loans of \$1,000 or more must be reported to ECQ within seven business days of the transaction by the candidate or registered political party receiving them, and by the entity making them. Gifts include any fundraising contribution exceeding \$200.

A special reporting event is created when gifts or fundraising contributions from a single source reach or pass \$100,000. Such events must be reported to ECQ within seven business days.

Agents

Appointing an agent

Agents are responsible for candidates' and registered political parties' election funding and financial disclosure obligations.

Candidates may appoint an agent before nominations close. Otherwise candidates are taken to be their own agent.

All claims and returns for a candidate must be lodged under the agent's signature and agents are the ECQ's first point of contact for funding and disclosure matters.

Agents must be adults appointed in writing on the approved form (Form QFD04 – Notice of Appointment of an Agent by a Candidate). The form requires the agent's name and address and they must sign the form declaring their consent to the appointment and their eligibility for the appointment.



Refer to the Appendix for more information on: *If a candidate's agent has been convicted of an offence; and Restrictions on a candidate's agent.*

Register of agents

ECQ keeps a register containing the names and addresses of every agent. An agent's appointment takes effect when his or her name is entered in the register and ends when their name is removed.

Agents must ensure that ECQ always has their current address and contact details.

Revoking the appointment of an agent

Candidates' agents can be removed from the register only if:

- they resign in writing to ECQ;
- they die;
- they are convicted of a funding and disclosure offence;
- the candidate or their political party notifies ECQ that the nominated person is no longer the candidate's agent.



Refer to the Appendix for more information on: *If a candidate's agent dies or resigns; and If a candidate's agent is convicted of an offence.*

Election funding

Calculating election funding

Candidates and registered political parties qualify to claim election funding when they receive 6% of the formal first preference vote. Maximum entitlements are calculated as formal first preference votes multiplied by the relevant election funding amount, currently \$3.14 for registered political parties and \$1.57 for candidates.

This amount is adjusted at the start of each financial year according to the CPI for the March quarter preceding it.

Candidates and registered political parties must make their claim using the approved form (QFD14 – Claim for Payment of Election Funding). The QFD14 must be accompanied by supporting documentation substantiating the claim.

Electoral expenditure

Electoral expenditure, by a registered political party or a candidate for an election, means expenditure incurred by the political party or candidate for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.

If a registered political party and a candidate endorsed by the registered political party both claim to have incurred the same item of electoral expenditure, the electoral expenditure is taken to be electoral expenditure incurred by the party.

A robust argument for each electoral expenditure item claimed must be made by the claimant through the use of supporting documentation. The claimant must justify why ECQ should make a reimbursement of election funding.

Electoral expenditure, in relation to election funding includes, but is not limited to:

- advertising for the election on radio, television, newspapers, magazines, journals, theatres, the internet or social media, sporting arenas and other places of entertainment;
- production of these items;
- production of any advertisement, handbill, pamphlet or notice for the election;
- production and distribution of election material that is addressed to a particular person or entity for the election;
- postage of material that advocates a vote for a particular candidate or party;
- carrying out opinion polls and research directed mainly at promoting or opposing a candidate or party or influencing voting at the election;
- the wages of a campaign director may be considered electoral expenditure if that person's contract of employment clearly stipulates that they will be responsible for the production and distribution of electoral material as outlined above.

Election Funding

Electoral expenditure, in relation to election funding excludes, but is not limited to:

- candidate nomination deposits;
- costs for preparation and audit of disclosure returns or election funding claims;
- non-campaign factual advertising in relation to registered political party or parliamentary administration (e.g. meetings or conferences), or expenditure incurred by MPs for duties directly related their office; and
- refundable deposits are not claimable whether or not the refund is received.

Record keeping

Candidates and registered political parties need to ensure that everybody incurring expenditure with their written authority keeps proper records. These records support claims for election funding and must be kept for three years after the claim is made.

ECQ will not accept claims for electoral expenditure incurred by anyone who doesn't have the written authority of the party or the candidate.

Clear audit trails are essential to substantiate all financial transactions. As a guide, the following documents/records or their equivalent should be kept:

- receipt books;
- acknowledgment books;
- deposit books;
- cheque books;
- journals;
- bank statements; and
- general ledgers.

These records may be handwritten or electronic.

Supporting documentation

Evidence of electoral expenditure must be invoices from broadcasters, publishers, advertising agencies, printers, and other suppliers that demonstrates that payment has been made and it related to the campaign for the election.

Invoices must clearly identify the goods or services to which they refer and the name of the candidate or person incurring the expenditure.

Invoices for printed materials such as flyers and brochures, and newspaper advertisements must be accompanied by samples.

All original documentation will be returned however, ECQ will retain copies for its records.

Illegible supporting documentation cannot be accepted.

Claiming election funding

Election funding claims must be lodged by the candidate or the agent for the candidate or registered political party within 20 weeks after polling day.

A claim for election funding must state electoral expenditure:

- incurred by the candidate for the election; and
- for which funding is sought.

Candidates and registered political parties must make their claim using the approved form (QFD14 – Claim for Payment of Election Funding). The QFD14 must be accompanied by supporting documentation substantiating the claim.

Payment of election funding

Election funding can be paid by EFT to the candidate's account or the account of their nominating party, if a payment direction is given to ECQ.

The payment can be made by cheque if EFT details are not registered with ECQ.



Refer to the Appendix for more information on: *Reconsideration where a claim is refused; Recovery of overpayments; and Revoking candidate's payment direction.*

Unpaid and disputed accounts

It is unnecessary that an account is paid before it is used to support a claim. However, the candidate or party must have a legal obligation to pay the account.

Where the amount payable is disputed and unlikely to be settled before the claim is lodged with ECQ, the lesser of the amounts in dispute should be included in the claim. ECQ must be alerted to any dispute concerning an item of electoral expenditure claimed for reimbursement. ECQ may determine what amount is accepted.

Policy Development Funding

Policy development funding for political parties

Registered political parties are eligible to receive policy development payments if the party was registered at the last State election, its endorsed candidates received at least 6% of the formal first preference vote and has at least one elected member who is endorsed by the party for the duration of the financial year.

The prescribed policy development payment (PDP) amount is fixed by the Regulation. The current prescribed PDP amount is \$3,000,000, which is divided between eligible registered political parties in proportion to the formal first preference vote received by their relevant candidates.

PDP eligibility and entitlement for a financial year is determined within three weeks after the end of the financial year. Payments are made in two equal instalments on or before 31 July and 31 January.

Registered political parties may ask ECQ to reconsider a decision about:

- whether the party is eligible to receive policy development funding; or
- the amount of policy development payment made to the party.

Requests to reconsider a policy development payment decision must be given to ECQ in writing by 31 August. Reconsiderations require the recalculation of each eligible registered political party's entitlement. Overpayments must be repaid by the registered political party to ECQ.

Agents may advise ECQ in writing that no PDP is to be made to the registered political party. This request remains in effect until withdrawn in writing by the agent.

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Disclosure return

The agent of a candidate must give ECQ a disclosure return through the EDS in real-time (within seven business days from the date the gift was made) and within 15 weeks after polling day (periodic) detailing:

Real-Time (within seven business days from the date the gift was made)

- The names and addresses of individuals or organisations who made gifts, fundraising contributions and gifts in kind to a candidate of \$1,000 or more.
- The names and addresses of individuals or organisations who made loans of \$1,000 or more received by or on behalf of the candidate, other than those from a financial institution.



Uncharged interest is considered a gift, and if that amount and other gifts total \$1,000 or more from a single entity, the lender must disclose the gift.

Periodic (within 15 weeks of polling day)

- Total amount of gifts including fundraising contributions and gifts in kind received by or for the candidate.
- Number of entities or persons who gave gifts including fundraising contributions and gifts in kind received by or on behalf of the candidate.
- Total amount of loans, and the number of entities who made loans.
- Electoral expenditure incurred by the candidate, or with their written authority.



NOTE: ECQ must be notified about all gifts and loans totaling \$1,000 or more from a single donor within seven business days of the gift or loan being made.

Disclosure period

The disclosure period for a candidate who stood for election in the preceding four years starts 30 days after polling day for that election and ends 30 days after polling day for the current election.

All other candidates' disclosure periods end 30 days after polling day and begins when the person:

- is preselected by their party to contest the election;
- announces their candidacy for the election; or
- nominates as a candidate for the election;

whichever is the earliest.

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Timetable for claims and disclosure

Time	Event
30 days after last polling day	Start disclosure period (See Note)
Day after issue of writ	Start election period
Polling day	End election period
30 days after polling day	End disclosure period
15 weeks after polling day	Periodic disclosure returns due
20 weeks after polling day	End election funding claim period

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NOTE: For a candidate who contested an election within the preceding four years, the disclosure period starts 30 days after polling day for that election and ends 30 days after polling day for the current election. For all other candidates, the disclosure period starts the day the person announces their candidacy, is preselected by their party or the day the person nominates as a candidate for the election, whichever is the earliest, and ends 30 days after polling day for the election.

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Third parties

A third party is any entity other than a candidate, registered political party or associated entity of a registered political party.

They can be individuals or organisations, in Queensland or elsewhere.

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Third parties incurring expenditure for a political purpose of \$1,000 or more must disclose any gift received of \$1,000 or more that were used to enable the expenditure. The relevant details of the gift include: the amount or value of the gift, the date the gift was made and the relevant particulars of the entity that made the gift. This information must be disclosed to ECQ via the EDS within seven business days from the date the gift was used to incur expenditure.

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Expenditure for a political purpose refers to:

- publication in any way (including radio or television) of electoral matter; or
- any other ways publicly expressing views on an issue in an election; or
- the making of a gift to a political party; or
- the making of a gift to a candidate in an election.

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Third parties making a gift, including gifts in kind and fundraising contributions to a candidate or political party of \$1,000 or more must disclose via the EDS within seven business days from the date the gift was made.

A candidate or registered political party who receives gifts totaling \$1,000 or more from a third party (single individual or entity) must advise the third party that they are also required to disclose the gift through the ECQ's electronic disclosure system (EDS), available on its website: www.ecq.qld.gov.au.



Gifts include gifts in kind and fundraising contributions.

Identification of real third party making gift

Care must be taken to establish who a gift is really from, especially when gifts are received from firms of solicitors or accountants.

Where the relationship between solicitor or accountant and client is that of agent and principal, money received on their client's behalf is held by them as the client's agent and trustee. As an agent the solicitor or accountant is bound to follow their client's directions in relation to the money. The solicitor or accountant is without the usual powers and discretion of a trustee. A gift of money paid by an agent at the direction of their principal to a candidate is a gift by the principal and not the agent.

The third party who must be disclosed in the candidate's disclosure return is the client. A gift by cheque drawn on a solicitor or accountant's trust account is a gift from an undisclosed principal and not the drawer of the cheque.



Gifts received from undisclosed principals are unlawful and may be recovered by the State.

Gifts and loans

Gifts

ECQ must be notified through the EDS about all gifts totaling \$1,000 or more from an individual or organisation within seven business days of the gift being received.

Candidates and registered political parties receiving gifts must tell the third party that the gifts will be listed in the candidate's disclosure return and available for public viewing through ECQ's electronic disclosure system (EDS).

If the sum of all gifts received from a third party is more than the gift threshold amount, \$1,000, the disclosure return must include details of those gifts. This includes the amount or value, the date/s given, the name and address of the third party and other details required.



Refer to the Appendix for more information on: *Other details required for gifts received.*

Gifts made in a private capacity for a candidate's personal use, and not used for any purpose related to an election, needn't be reported.

A gift in kind is valued at the fair market value on the date given. Fair market value is commonly accepted as the highest price obtainable between a willing and knowledgeable buyer and seller

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in an open and unrestricted market. It may be reasonable to use an independent appraiser to value the gift.

Loans

ECQ must be notified within seven business days about all loans totalling \$1,000 or more, received by candidates or registered political parties from a single entity that is not a financial institution.

For loans greater than the gift threshold amount, ECQ must be advised of:

- the terms and conditions of the loan;
- the date the loan was made;
- the name and address of the lenders; and
- other details required by law.

If the required details are not reported, the state can recover loans of more than the gift threshold amount made by entities that are not financial institutions.



Refer to the Appendix for more information on: *Other details required for loans.*

Rules about particular gifts and loans

Gifts that are returned within six weeks

A gift that's returned within six weeks of when it's received doesn't have to be disclosed, unless it's a gift of foreign property.

Gifts of foreign property

It is unlawful for a candidate or registered political party, or a person acting on behalf of a candidate, to receive a gift of foreign property. The status of property as Australian or foreign is decided by reference to the position of the property immediately before the gift or transfer took place.

Gifts of Australian property acquired in exchange for foreign property remain foreign property. An amount equal to the amount or value of a foreign gift is payable to the State unless the gift is returned within six weeks. In that case the foreign gift must be included in the candidate's disclosure return with a notation that the gift was returned.



Refer to the Appendix for more information on: *Other rules for gifts of foreign property.*

Anonymous gifts

It is unlawful for a candidate, or person acting on behalf of a candidate, to receive gifts equal to or more than \$200, unless:

- the name, address and other required details of the giver are known; and, at the time the gift is made, the person receiving the gift has no grounds to believe the name and address given are not the true name and address of the third party.

It is unlawful for a registered political party, or a person acting for a registered political party, to receive gifts equal to or more than \$1,000, unless:

- the name, address and other required details of the giver are known; and, at the time the gift is made, the person receiving the gift has no grounds to believe the name and address given are not the true name and address of the third party.



Amounts equal to the value of an unlawful gift may be recovered by the State.

Fundraising contributions

A fundraising contribution is an amount of money paid by a person as a contribution, entry fee or other payment which entitles someone to participate in, or benefit from, a fundraising venture or function. It includes raffle tickets or an amount paid for an item at a fundraising auction. Any amount over \$200 paid as a fundraising contribution constitutes a gift. If a single donor or other entity makes contributions that total more than \$1,200, ECQ must be notified within seven business days.

Agents must give and maintain a record of receipts for each fundraising contribution. ECQ looks at the actual payment made; i.e. one receipt to a single contributor paying for 15 attendees at a function is a single payment. Individually paid and receipted contributions are viewed as 15 payments.

Volunteer labour

Disclosure of volunteer labour in a candidate's return is unnecessary.

For party members, any service they provide voluntarily and free of charge is regarded as volunteer labour.

For non-members, anything they do voluntarily that they would not normally be paid for is voluntary labour.

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Auditor certification and investigatory powers

Auditor certification

Candidates' disclosure returns must include a certificate from an auditor unless the requirement is waived by ECQ. The audit certificate format is prescribed by ECQ.

An auditor is defined for funding and disclosure purposes as an individual who holds prescribed qualifications:

- registration as an auditor under the Corporations Act;
- membership of CPA Australia, Institute of Public Accountants or The Institute of Chartered Accountants in Australia, and holds the entitlement to use the relevant credentials.

People who are or have ever been a member of a political party cannot audit a disclosure return.

Auditors who become aware of a matter that is reasonably likely to constitute a contravention of part 11 of the Act (Funding and Disclosure) must give ECQ written notice of that matter within seven business days.

ECQ may waive the audit certificate requirement if it assesses the cost of compliance is unreasonable or the return contains a statement that no gifts or loans were received and no electoral expenditure was incurred. Waiver applications are assessed individually.

Investigatory powers

ECQ is responsible for monitoring compliance with funding and disclosure provisions and can carry out investigations when it believes there may be a breach of those provisions.

Offences and penalties

ECQ will issue infringement notices imposing fines for funding and disclosure offences including:

- failure to give a return;
- giving a false or incomplete return;
- failure to keep proper records.

Unpaid penalties are enforced through the State Penalties Enforcement Registry.

Non-compliance with funding and disclosure provisions will not invalidate an election.

Service of documents

All election funding and financial disclosure notices, claims and returns must be given to ECQ through its electronic disclosure system.

Candidates, registered political parties or donors who are unable to access the internet should contact ECQ's Funding and Disclosure Unit: 1300 881 665, between 9am and 5pm, Monday to Friday.

Public inspection

All claims and returns (including attachments and requests for amendment) given to ECQ are public documents. They will be available for viewing on ECQ's electronic disclosure website.

Amendment of claims and returns

ECQ may amend a claim or return to correct a formal error or remove a formal defect; e.g. showing the date of the last election incorrectly.

An agent who gives ECQ a claim or return may ask permission to make a specified amendment to correct an error or omission. Written requests must be signed by the agent and given to ECQ.

Only the agent can request that an amendment be made. Requests from another person to amend a claim or return will be referred to the agent for confirmation. Liability of a person to be convicted of an offence is unchanged by amendment of a claim or return.

If such a claim is refused, an authorised ECQ officer will give agents the reasons. Agents may request a review of that decision by the Electoral Commissioner, by applying in writing within 28 days.

ECQ may seek further particulars or clarification of matters contained in a return. Agents may be asked to request amendment of a return or claim.

Interim returns are unacceptable; the first return received is taken to be the return given.

Late returns

ECQ encourages candidates and their agents to comply with these regulations and time scales, however ECQ may grant additional time to lodge a return.

Extension applications must be in writing, detailing the reasons for requesting the extension and must be filed before the due date for the return. Applications are assessed on a case by case basis. ECQ may grant an extension provided the party or candidate lodges a return including the information available at the time.

Public records will show the actual date that a return is given.

Appendix

Appendix

Within this appendix are references to sections of the *Electoral Act 1992*, the *Electoral Regulation 2013* and the *Local Government Election Act 2011* from which the subject matter has been taken.

Where appropriate, the reader is referred to the Act for greater context or provided with a summary of the content from the Act or Regulation. The Act and Regulation are available on the Queensland Legislation website: www.legislation.qld.gov.au

If a candidate's agent has been convicted of an offence

An agent convicted of an offence against part 11 of the Act is ineligible to hold office as an agent for any election.

Restrictions on a candidate's agent

There are no restrictions on endorsed candidates appointing a political party's agent to be their agent.

A person appointed as an agent must be an adult and a natural person. Bodies corporate cannot be appointed as agents.

If a candidate's agent dies or resigns

Candidates whose agent dies or resigns must advise ECQ in writing immediately.

Reconsideration where a claim is refused

Please refer to section 233, 234, 235 and 238 of the Act.

Recovery of overpayments

If a payment is made and the recipient is not entitled to receive the whole or a part of the amount paid, whether because of a false statement in a claim or otherwise, the amount or the part of the amount may be recovered by the State.

Unlawful gifts and loans may be recovered by the State.

Revoking candidate's payment direction

A candidate's payment direction can be revoked by the candidate's agent, by written notice to ECQ, with the consent of the agent of the registered political party.

Other details required for gifts received

Section 261 of the Act prescribes details required when gifts are received from:

- an unincorporated association, other than a registered industrial organisation;
- a trust fund or out of the funds of a foundation; or
- a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift.

Other details required for loans received

Section 262 of the Act outlines details required for loans received from:

- an unincorporated association; or
- a trust fund or out of the funds of a foundation.

Other rules for gifts of foreign property

Please refer to section 267, 268, 269 and 270 of the Act.

Relevant particulars for gifts more than the gift threshold amount

Section 197 of the Act prescribes relevant particulars for gifts received of more than the gift threshold amount.

Glossary

Act means the *Electoral Act 1992*.

Agent means an agent of a candidate or registered political party.

Approved Form means forms approved by ECQ and where required, must be used when lodging claims and returns.

Auditor means an individual who has the qualifications or experience prescribed for this definition and is not, nor has ever been a member of a political party.

Broadcaster means the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation, the holder of a licence under the *Broadcasting Services Act 1992*, or the provider of a broadcasting service under a class licence under the *Broadcasting Services Act 1992*.

Candidate in relation to funding and disclosure means an elected member or other person who has announced or otherwise indicated an intention to be a candidate in the election.

ECQ means the Electoral Commission of Queensland.

CPI means the relevant Consumer Price Index published by the Australian Statistician.

Disclosure Period for candidates who had previously been a candidate for an election in the preceding four years starts 30 days after polling day for that election and ends 30 days after polling day for the current election. For all other candidates, the disclosure period starts the day the person announces their candidacy for this election or the day the person nominates as a candidate for this election (whichever is earlier), and ends 30 days after polling day for the election.

Disclosure Return means a return lodged by an electoral participant disclosing the relevant financial activity.

EFT means electronic funds transfer.

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Electoral Committee means a committee established by a registered political party to help elect an endorsed candidate in an electorate.

Election Period for an election means the period beginning on the day after the writ for the election is issued and ending at 6pm on the polling day for the election.

Fundraising Contribution means an amount paid by a person as a contribution, entry fee or other payment to entitle that person or another person to participate in, or otherwise obtain a benefit from, a fundraising venture or function. Includes an amount paid for a ticket in a raffle and an amount paid for an item at a fundraising auction.

Gift means a disposition of property made by a person to someone else, other than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration. Please refer to section 201 of the Act for the complete definition.

Gift In Kind means a gift of any good or service other than money.

Gift Threshold Amount, for the amount or value of a gift or loan, is \$1,000.

Independent Member means a member of parliament who was not an endorsed candidate of any political party at the last general election and is not a member of a political party.

Polling Day in relation to an election means the day so described in the writ for the election.

Regulation means the *Electoral Regulation 2013*.

Registered Political Party means an organisation whose object is the promotion of candidates for election to the Legislative Assembly and which is registered in the Queensland Register of Political Parties.

Third Party means an entity other than a registered political party, an associated entity or a candidate.

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