

# Policy – Determination that a Person or an Entity is not a Prohibited Donor

Version 1.0

Approval



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**Electoral Commissioner**

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## Version history

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## Review

This document will be reviewed by ECQ every 3 years following the anniversary of the date of approval or as required due to changes by the Legislative Assembly, whichever is the earliest.

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## Purpose

To define the objectives, principles and processes to determine that a person is not a prohibited donor and to guide the Electoral Commission of Queensland's approach to assess determination applications under the *Electoral Act 1992* and the *Local Government Electoral Act 2011*.

## Rationale

The Electoral Commissioner (the Commissioner) of Queensland makes a determination that an entity is not a prohibited donor under Part 11, Division 8, Subdivision 4 of the *Electoral Act 1992* and Part 6, Division 1A of the *Local Government Electoral Act 2011*, which set out the prohibition on political donations, and include the relevant definitions for the prohibition.

The rationale to regulate political donations in Queensland is to minimise corruption risks, reduce the perception of corruption in the community and increase integrity measures through transparency and accountability of candidates and elected officials to State and local government.

The *Electoral Act 1992* and *Local Government Electoral Act 2011* regulate political donations to:

- administer a fair and transparent election funding, expenditure and disclosure scheme, by validating lawful donors through a regulated donation process
- facilitate public awareness of political donations, by publishing guidance materials, real time donation disclosures and a register of determinations
- help to minimise the corruption risk and to prevent undue influence in government, by identifying potential prohibited donors; and
- promote compliance by donors and all political donation recipients with the requirements of the law, to administer and enforce the political donation and determination processes.

## Guiding Principles

The Electoral Commission of Queensland ensures all administrative actions and any compliance decisions relating to the regulation of political donations will accord with these key principles:

1. **Effectiveness:** achieve the objectives of the *Electoral Act 1992* and the *Local Government Electoral Act 2011* through the effective administration of political donation processes.
2. **Consistency:** fairly and equitably enforce the prohibition on certain political donations.
3. **Transparency** – administer political donation laws, policies and procedures to ensure open and accountable decisions and actions.
4. **Accountable:** administer statutory authority by clarifying the responsibilities through policies

## Policy

The Crime and Corruption Commission's Operation Belcarra aimed to determine if candidates committed offences under the *Local Government Electoral Act 2011* that could constitute corrupt conduct, and to identify practices that may give rise to actual or perceived corruption, and recommend reforms to help prevent or decrease corruption risks and increase public confidence. In October 2017, the CCC published its final report that found widespread non-compliance with legislative obligations relating to local government and political donations. The CCC made 31 recommendations and among others, the Queensland Government supported recommendation

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20, to prohibit property developers from making political donations, and extended the prohibition to both State and local governments.

The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* amended the *Electoral Act 1992* and *Local Government Electoral Act 2011* to prohibit political donations and is retrospective from 12 October 2017.

The policy objectives to regulate prohibited donors enshrine the equity, transparency, integrity and accountability principles in Queensland State and local government electoral laws to:

- reinforce integrity and minimise corruption risk that political donations from property developers has potential to cause at both a State and local government level; and
- improve transparency and accountability in State and local government.

By prohibiting property developers making political donations, the public is able to have more confidence in State and local government electoral processes.

ECQ is the regulator to ensure compliance with electoral funding and financial disclosure laws and will prosecute prohibited donors who make unlawful donations. Maximum penalties can range from 400 penalty units or 2 years imprisonment to 1,500 penalty units or 10 years imprisonment, if the person is knowingly participating in a scheme to circumvent the prohibition.

For the meaning of key terms including property developer, political donation and close associates – refer to Appendix 1 – Definitions and related fact sheets.

When the prohibition was passed by the Queensland Parliament it had retrospective operation. Therefore, the law applies to political donations made in Queensland from 12 October 2017.

In circumstances where uncertainty exists as to whether a potential donor is a prohibited donor, a person may apply to ECQ for a determination that the person or entity is not a prohibited donor.

ECQ can make a determination that a person or entity is not a prohibited donor if satisfied the person is not a prohibited donor based on the information provided by the applicant.

If ECQ makes a determination that a person is not a prohibited donor the determination is published on a register of determinations available on ECQ's website. If a determination cannot be made by ECQ then the ECQ decides not to make a determination and the subject of the application is provided with an Information Notice.

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## 1. Determination that a person is not a prohibited donor

### 1.1. Who are prohibited donors?

A prohibited donor is defined as:

- a. a property developer; or
- b. an industry representative organisation if the majority of its members are property developers.

In Queensland it is unlawful for:

- a prohibited donor to make a political donation
- a person to make a political donation on behalf of a prohibited donor
- a person to accept a political donation that was made (wholly or partly) by a prohibited donor or by a person on their behalf
- a prohibited donor to solicit another person to make a political donation; or
- a person to solicit another person on behalf of a prohibited donor to make a political donation.

Depending on the circumstances, a range of penalties can be imposed if a prohibited donor makes an unlawful donation. Penalties range from the state recovering the donation from the recipient to prosecution with a maximum sentence of 10 years in prison.

### 1.2. Basis of determination

A person (being an individual or an entity) may apply to ECQ for a determination that they or another person is not a prohibited donor. The Commissioner (or delegate) make a determination a person is not a prohibited donor if they are satisfied the person is not a prohibited donor. The Commissioner (or delegate) makes a determination based on the information provided by the applicant. Determinations are decided on a case-by-case basis, that is, each decision is made according to the relevant facts of the particular situation.

Information submitted together with the application for determination can include –

- Information about any relevant planning applications made by them or an entity they have an interest in;
- Information about the nature of the person's or entity's business activities, interests, sources of income and revenue
- Any trusts a person or entity owns or is the beneficiary of
- Any director and officer positions held by the person
- The business interests, activities and positions held by a person's spouse, to the extent that the person's spouse is a director or other officer of a corporation that is a property developer, or a person with more than 20% of the voting power in such a corporation or a related body corporate.

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### 1.3. Publication of determination

If the Commissioner (or delegate) makes a determination that a person is not a prohibited donor, the determination is published on a register of determinations on ECQ's website.

### 1.4. Duration of determination

A determination remains in force for 12 months after it is made, unless it is revoked by the Commissioner (or delegate). The Commissioner (or delegate) can revoke a determination at any time by notice in writing to the applicant.

A determination has effect for a person if it is in force at the time the person makes or accepts a political donation, even if the determination is later set aside or revoked. However, a determination that has been made does not have effect for a person who makes or accepts a political donation, if the person knew or ought reasonably to have known (at the time of making or accepting the donation) that the information provided to or used by the Commissioner (or delegate) was false or misleading in a material way.

## Delegations

1. Only the Electoral Commissioner or Assistant Commissioner or Director – Elections, Disclosure and Spatial make decisions on determinations under ss 277, 278 and 279 of the *Electoral Act 1992* and ss 113D, 113E and 113F of the *Local Government Electoral Act 2011*.
2. The Instrument of Delegation details the delegations made by the Electoral Commissioner.

## Appendix 1 — Definitions

### Definitions

Term	Definition	Reference (if applic.)
<b>Close Associate</b>	<p>Close associate of a corporation that is a property developer means each of the following:</p> <ul style="list-style-type: none"> <li>• a director or officer of the corporation or the spouse of such a director or officer;</li> <li>• a related body corporate of the corporation;</li> <li>• a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person;</li> <li>• if the corporation or a related body corporate of the corporation is a stapled entity in a stapled security - the other stapled entity in relation to that stapled security; and</li> <li>• if the corporation is a trustee, manager or responsible entity in relation to a trust-a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).</li> </ul>	<p>s273(5) of EA 1992 s113(4) of LGEA 2011</p>

Term	Definition	Reference (if applic.)
<b>Director</b>	<p>Director, of a corporation, see the <i>Corporations Act 2001</i> (Cwlth), section 9.</p> <p>Director of a company or other body means:</p> <p>(a) a person who:</p> <p>(i) is appointed to the position of a director; or</p> <p>(ii) is appointed to the position of an alternate director and is acting in that capacity;</p> <p>regardless of the name that is given to their position; and</p> <p>(b) unless the contrary intention appears, a person who is not validly appointed as a director if:</p> <p>(i) they act in the position of a director; or</p> <p>(ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.</p> <p>Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.</p> <p>Note: Paragraph (b)--Contrary intention--Examples of provisions for which a person referred to in paragraph (b) would not be included in the term "director" are:</p> <ul style="list-style-type: none"> <li>• section 249C (power to call meetings of a company's members)</li> <li>• subsection 251A(3) (signing minutes of meetings)</li> <li>• section 205B (notice to ASIC of change of address).</li> </ul>	<p>s9 of <i>Corporations Act 2001</i> (Cwlth)</p> <p>s273(5) of EA 1992</p> <p>s133 (4) of LGEA 2011</p>



Term	Definition	Reference (if applic.)
<b>Officer</b>	<p>Officer has the same meaning as in section 9 of the <i>Corporations Act 2001</i> (Cwlth):</p> <ul style="list-style-type: none"> <li>• a director or secretary of the corporation; or</li> <li>• a person: <ul style="list-style-type: none"> <li>• who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or</li> <li>• who has the capacity to affect significantly the corporation’s financial standing; or</li> <li>• in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation); or</li> </ul> </li> <li>• a receiver, or receiver and manager, of the property of the corporation; or</li> <li>• an administrator of the corporation; or</li> <li>• an administrator of a deed of company arrangement executed by the corporation; or</li> <li>• a liquidator of the corporation; or</li> <li>• a trustee or other person administering a compromise or arrangement made between the corporation and someone else.</li> </ul>	<p>s9 of <i>Corporations Act 2001</i> (Cwlth)</p> <p>s273(5) of EA 1992</p> <p>s133 (4) of LGEA 2011</p>

Term	Definition	Reference (if applic.)
<b>Political donation</b>	<p>Political donation means:</p> <p>a. a gift made to or for the benefit of – for the <i>Electoral Act 1992</i>:</p> <ul style="list-style-type: none"> <li>(i) a political party; or</li> <li>(ii) an elected member; or</li> <li>(iii) a candidate in an election.</li> </ul> <p>for the <i>Local Government Electoral Act 2011</i>:</p> <ul style="list-style-type: none"> <li>(i) a political party; or</li> <li>(ii) a councillor of a local government; or</li> <li>(iii) a candidate or group of candidates in an election;</li> </ul> <p>b. a gift made to or for the benefit of another entity –</p> <ul style="list-style-type: none"> <li>(i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or</li> <li>(ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;</li> </ul> <p>c. a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).</p> <p>Refer to related fact sheet for treatment of private gifts, and fundraising contributions and political party membership subscriptions.</p>	<p>s274 of EA 1992 s113A of LGEA 2011</p>
<b>Prohibited donor</b>	<p>Prohibited donor means:</p> <ul style="list-style-type: none"> <li>• a property developer; or</li> <li>• any industry representative organisation if the majority of its members are property developers.</li> </ul>	<p>s273(1) of EA 1992 s133(4) of LGEA 2011</p>

Term	Definition	Reference (if applic.)
<b>Property developer</b>	<p>Property developer includes:</p> <ul style="list-style-type: none"> <li>a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; or</li> <li>a person who is a close associate of such a corporation.</li> </ul> <p>Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate of the corporation will carry on business is disregarded for the purpose to determine if it is a property developer unless that business involves the sale or leasing of a substantial part of the premises.</p>	<p>s273(2) of EA 1992 s133(2) of LGEA 2011</p>
<b>Regularly</b>	<p>Regularly means the frequent or the recurring making of relevant planning applications within the context of a person being a property developer.</p>	<p>s273(2) of EA 1992 s133(2) of LGEA 2011</p>
<b>Related body corporate</b>	<p>Related body corporate has the same meaning as in the <i>Corporations Act 2001</i> (Cwlth). Sections 9 and 50 of that Act define a related body corporate as a body corporate that is related to another body corporate because it is one of the following:</p> <ul style="list-style-type: none"> <li>a holding company of the other body corporate;</li> <li>a subsidiary of the other body corporate; or</li> <li>a subsidiary of a holding company of the other body corporate.</li> </ul>	<p>s9 of <i>Corporations Act 2001</i> (Cwlth) s273(5) of EA 1992 s133 (4) of LGEA 2011</p>
<b>Relevant planning application</b>	<p>Relevant planning application takes into account a person's activities that relate to making applications to an agency that administers planning and development laws under the:</p> <ul style="list-style-type: none"> <li><i>Planning Act 2016</i> or the former <i>Sustainable Planning Act 2009</i>; or</li> <li><i>State Development and Public Works Organisation Act 1971</i>; or</li> <li><i>Economic Development Act 2012</i>.</li> </ul>	<p>s273(5) of EA 1992 s133 (4) of LGEA 2011</p>
<b>Spouse</b>	<p>Spouse of a person includes a de facto partner or civil partner of that person.</p>	<p>Schedule 1 of the <i>Acts Interpretation Act 1954</i></p>

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Term	Definition	Reference (if applic.)
<b>Stapled entity</b>	Stapled entity means (a) an entity the interests in which are traded along with the interests in another entity as stapled securities and (b) in the case of a stapled entity that is a trust, includes any trustee, manager or responsible entity in relation to the trust.	s273(5) of EA 1992 s133 (4) of LGEA 2011

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## Appendix 2 — Regulatory Framework

### Regulatory framework

Regulatory frameworks identify, and treat differently, the various types of participants in the political-process. The [Electoral Act 1992](#) is the primary legislation that regulates political financing for participants in state government elections in Queensland. The private funding of participants in Queensland local government election is governed primarily by the [Local Government Electoral Act 2011](#). Elected members of both the Queensland Parliament’s Legislative Assembly and a local government have disclosure obligations associated with registers of interest – [Parliament of Queensland Act 2001](#) and [Local Government Regulation 2012](#) respectively.

- *Electoral Act 1992* ss 273 to 279
- *Local Government Electoral Act 2011* ss 113 to 113G.