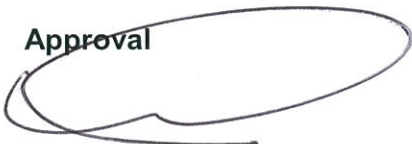


# Procedure – Determination that a Person or an Entity is not a Prohibited Donor

Version 1.0

Approval



Wade Lewis

Director, Elections, Disclosure and Spatial

28 / 9 / 2018

## Version history

Version	Notes	Author	Date of Change
1.0A	Draft	Principal Policy Officer	September 2018
1.0	Issued for use	Director Elections, Disclosure and Spatial	September 2018

## 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.

---

## Purpose

To guide ECQ staff to assess applications for determination and to make recommendations to the Electoral Commissioner under the *Electoral Act 1992* and the *Local Government Electoral Act 2011* consistent with the *Determination that a Person or an Entity is not a prohibited donor* policy.

## Scope

The *Electoral Act 1992* and the *Local Government Electoral Act 2011* regulate political donations throughout Queensland to prohibit property developers and their close associates in order 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.

## Application

This procedure applies to ECQ staff performing the functions relating to processing applications for determination under the *Electoral Act 1992* or the *Local Government electoral Act 2011*.

## Procedure

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

#### 1.1. Who can make an application for a determination?

Any person can apply to ECQ for a determination that the applicant or another entity is not a prohibited donor.

#### 1.2. Who can be the subject of an application?

The subject of the application may be a different person to the person who makes the application. The subject of the application can be an individual or an entity, such as a business or trust. The determination made by the Electoral Commissioner (or delegate) concerns the subject of the application.

#### 1.3. Why make an application for a determination?

There may be a small number of occasions where it is unclear whether a potential donor's employment, investments or relationships with other persons or entities makes them a prohibited donor. If in doubt, it would be prudent for the potential donor or recipient to make an application for a determination before making or accepting a donation. If a determination is made it provides certainty regarding the donations of the subject donor during the period that the determination is in effect and that evidence is publicly available.

---

#### 1.4. How to make an application?

An application for a determination that a person or business is not a prohibited donor must be made on the approved form (available on ECQ's website), and lodged with the ECQ. There is no fee for making an application.

The application form must be completed and supported by enough information to enable the Electoral Commissioner (or delegate) to decide the application. A determination can only be made if the information can satisfy ECQ that the person or business is not a prohibited donor.

ECQ staff may contact the applicant (or the subject entity) to request further or clarifying information in connection with the application after the application is lodged with ECQ.

A determination will not be made if false or misleading information is included in an application. Accordingly, the application must be complete, accurate and provide sufficient information for ECQ to be able to consider making a determination.<sup>1</sup>

One application for a determination must be submitted per person or per entity.

Examples of information to include in an application are:

- the applicant's details;
- the entity in respect of which the determination is sought;
- details of close associates of the subject corporation, such as directors and related bodies corporate (refer to the definition of 'close associates' in Appendix 1);
- information on involvement in making relevant planning applications;
- the purpose of, and business engaged in, by the subject corporation;
- other relevant facts to support the application;
- other activities undertaken by the corporation.

ECQ will not accept and process an anonymous application submitted for a determination.

#### 1.5. How an application is dealt with and processed

ECQ reviews the application for compliance with requirements, political donation laws, and completeness. ECQ also reviews the accuracy of the information contained within the application. Application details are recorded electronically.

ECQ officers assess and review the application then make a recommendation to the Electoral Commissioner (or delegate) as to whether it is possible for a determination to be made.

ECQ may consult the applicant or open source material about relevant planning applications. ECQ liaises directly with government agencies who administer Queensland's planning regime to ascertain a person or a business's involvement to help to verify issues.

---

<sup>1</sup> In accordance with section 277(2) of the *Electoral Act 1992* and section 113D (2) of the *Local Government Electoral Act 2011*.

The Electoral Commissioner (or delegate) may decline to make a determination if:

- the information provided by the applicant does not satisfy the Electoral Commissioner (or delegate) the subject of the application is not a prohibited donor;
- the application is incomplete; or
- the information provided by the applicant is insufficient to satisfy the Electoral Commissioner (or delegate) the person is not a prohibited donor; or
- a determination is in force for the subject of an application; or
- the information provided by the applicant is otherwise inaccurate.

#### 1.5.1 *Timeframes for processing an application for a determination*

There is no statutory timeframe for dealing with an application for a determination. ECQ aims to make a determination within 30 days of receiving a complete application, subject to the following considerations:

- the complexity of different variables to be considered in the application;
- if the application is not made by the subject, whether the subject wishes to be heard on the application;
- election dates and campaign periods;
- information, time and resources available to the ECQ; and
- the principles and objectives of making a determination.

ECQ may use priority processing arrangements during an election period to help to expedite the making of determinations by the Electoral Commissioner (or delegate). Priority processing enables ECQ to consider and finalise recommendations in order of priority that the decision maker may consider a determination within 15 business days.

If there is a delay in making a determination or further information is required from the applicant, ECQ officers will inform the applicant.

#### 1.5.2 *Informing the applicant and subject*

Procedural fairness is about providing a person who might be adversely affected by a decision a 'fair hearing' before the decision is made.

When an application is received, ECQ officers acknowledge receipt of the application. ECQ will also inform any subject of the application, if they are not the applicant, and invite that subject to make a submission as a matter of procedural fairness.

When the Electoral Commissioner (or delegate) makes a decision, as to whether a determination is made, ECQ will notify the applicant. If the applicant is not the subject of the application, ECQ will notify the subject that a determination was made, or conversely, that no determination was made.

If no determination is made, the Electoral Commissioner (or delegate) must provide the applicant with an information notice with the Commissioner's decision that will state:

- a. the decision;
- b. the reasons for it;
- c. a person's internal review rights; and
- d. how to apply for a review.

Note: If the Electoral Commissioner (or delegate) opts not to make a determination, such a decision does not imply that the subject of the application is a prohibited donor.

### 1.5.3 *Compliance matters related to an application*

It is a serious offence to provide false or misleading information to the ECQ in an application, if the applicant knows that the information is false or misleading. If any information in the application is suspected to be false or misleading, the suspected false or misleading information will be subject to an assessment and review in accordance with the ECQ's Compliance and Enforcement Policy and Procedures.

If information in the application shows that a person is likely to be a prohibited donor, and political donations have already been made by and accepted from that donor, the making and/or acceptance of a donation may constitute an offence. Any potential offences are reviewed in accordance with the ECQ's Compliance and Enforcement Policy and Procedures.

### 1.6. How a determination is recorded and published

If the Electoral Commissioner (or delegate) determines that a person is not a prohibited donor, that determination is recorded electronically in ECQ's records management system along with the application details. The details of the determination decision are included on a public register published on ECQ's website.<sup>2</sup>

### 1.7. Revoking a determination and an incorrect determination

The Electoral Commissioner (or delegate) may revoke a determination at any time by notice in writing to the applicant if they are no longer satisfied as to ongoing validity of the determination. If a determination is revoked, the Electoral Commissioner (or delegate) must write to the applicant to notify of the revocation.<sup>3</sup>

The Electoral Commissioner (or delegate) will revoke a determination if it is later found that the application contained false or misleading information in a material particular or if the subject of the determination later makes planning applications. This does not mean that the subject of the determination is a prohibited donor. However, it would mean that there is no valid determination that the person or other entity is not a prohibited donor.

The subject of a revoked determination must lodge a fresh application to once again be properly considered by the Electoral Commissioner as not being a prohibited donor.

## 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.

<sup>2</sup> In accordance with section 279(3) of the *Electoral Act 1992* or section 113F(3) of the *Local Government Electoral Act 2011*.

<sup>3</sup> In accordance with section 278(1) of the *Electoral Act 1992* and section 113E(1) of the *Local Government Electoral Act 2011*.

## Appendix 1 — Definitions

### Definitions

Term	Definition	Reference (if applic.)
<b>Close Associate</b>	<p>Close associate of a corporation means each of the following:</p> <ul style="list-style-type: none"> <li>• a director or officer of the corporation that is a property developer 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.)
<p><b>Political donation</b></p>	<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 load 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>
<p><b>Prohibited donor</b></p>	<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> <ol style="list-style-type: none"> <li>a. 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>b. a person who is a close associate of such a corporation.</li> </ol> <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 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>

---

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

---

## 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.