

PROHIBITED DONORS SCHEME

The *Prohibited Donors Scheme Regulatory Strategy* (Regulatory Strategy) enables the Electoral Commission of Queensland (ECQ) to administer the prohibition on donations from property developers by:

- **Proactive:** taking steps to identify potential breaches or to encourage compliance with the regulatory scheme
- **Reactive:** responding to requests for a determination that a person or an entity is not a prohibited donor or notifications of potential breaches of the law.

The Regulatory Strategy aims to ensure the greatest degree of compliance at the lowest cost to all parties.

PDS measures encourage compliance from public education, by using a range of information materials such as fact sheets, to mandatory regulatory instruments that contain sanctions to enforce compliance and penalise non-compliance, including:

- persuading potential offenders to comply with their obligations through advice and education i.e. awareness raising of the prohibition
- issuing warning letters for minor, first time breaches
- issuing an infringement notice or other statutory notice requiring compliance that includes the recovery of prohibited donations
- taking prosecution action through the Office of the Director of Public Prosecutions, Queensland Police Service, or Crime and Corruption Commission
- revoking an existing privilege or right.

The Regulatory Strategy is underpinned by best practice regulatory principles to administer PDS in a way that is:

- **Effective** – the ECQ achieves the objectives of the prohibition of donations by property developers through the PDS
- **Consistent** – the ECQ fairly and equitably administers and enforces the PDS
- **Transparent** – the ECQ policies, procedures and regulatory strategy to administer the PDS are publicly available and open to scrutiny by decision-makers and those affected by the scheme
- **Accountable** – the ECQ has and adheres consistently to policies and procedures about the way the PDS is to be administered.

The best practice regulatory principles are consistent with the obligation on all accountable officers and statutory bodies under section 61(a) of the Financial Accountability Act 2009 to achieve reasonable value for money by ensuring that the ECQ's operations are carried out efficiently, effectively and economically.

This Regulatory Strategy sets out the different types of regulatory activity that is broken down in 4 simple stages:

1. Stage 1 – Setting the standards that clients and stakeholders must meet to comply with the PDS.
2. Stage 2 – Applying those standards to specific cases by assessing applications for determinations.
3. Stage 3 – Monitoring the performance of activities that have been approved.
4. Stage 4 – Responding to that performance, including taking strong, proportionate and consistent enforcement action.

Stage 1 – How does ECQ set standards that clients and stakeholders must meet to comply with the PDS?

Queensland’s electoral laws in the *Electoral Act 1992* and the *Local Government Electoral Act 2011* outline the standards that clients, stakeholders and the public must meet. The ECQ publishes guidance materials to help its clients, stakeholders and the public engage in relevant activities and meet all the standards for compliance with the PDS.

ECQ responsibility	Client and stakeholder responsibility
<ul style="list-style-type: none"> • Consult applicable clients, stakeholders and the public on regulatory changes • Clearly setting the standards for clients and stakeholders to meet 	<ul style="list-style-type: none"> • Learn and understand obligations to comply with relevant electoral law

Stage 2 – How does ECQ assess an application for determination?

To assess an application for a determination that a person, or another entity, is not a prohibited donor, the ECQ will (1) request information from a person that is required to make a determination that they are not a prohibited donor; and (2) use set criteria to apply to the assessment of each application to determine if the person, or another entity, is not a prohibited donor. Except for obvious errors or omissions, the ECQ will not check the accuracy or sufficiency of information provided. If an applicant is found by the ECQ to have provided false or misleading information then proportionate compliance and enforcement action, including prosecution, may be taken.

ECQ responsibility	Client and stakeholder responsibility
<ul style="list-style-type: none"> • Make clear what information is required from applicants • Ask only for information that is needed to consider an application • Assess and make a determination and then communicate the result 	<ul style="list-style-type: none"> • Read all relevant guidance materials to understand how the PDS works • Provide accurate and complete information to support an application • Seek legal advice if there is uncertainty as to any of their rights or obligations

Stage 3 – How does ECQ monitor the performance of individual activities?

To ascertain whether clients, stakeholders or the public are complying with their legal obligations, the ECQ will monitor compliance with the PDS. Monitoring activities carried out by the ECQ will include desktop audits, identifying risks of legislative noncompliance and responding to concerns or notifications received by the ECQ.

ECQ responsibility	Client and stakeholder responsibility
<ul style="list-style-type: none">• Identify areas of greatest risk of non-compliance and responding accordingly• Communicate compliance focus, actions and any prosecution outcomes	<ul style="list-style-type: none">• Maintain up-to-date knowledge and understanding of PDS lawful obligations• Notify the ECQ of any serious incidents that potentially breach electoral laws

Stage 4 – How does the ECQ respond to performance?

It is the goal of the ECQ to foster a positive culture of proactive compliance with clients, stakeholders and the public. To ensure people comply with the law, the ECQ makes available easy to understand education resources and fact sheets to help Queenslanders to better understand their responsibilities. If the ECQ finds that someone has broken the law, it will take action to bring them back into compliance with their legal obligations which may involve taking action in accordance with compliance and enforcement guidelines.

ECQ responsibility	Client and stakeholder responsibility
<ul style="list-style-type: none">• Take enforcement action quickly, fairly and within compliance and enforcement guidelines• Enable clients, stakeholders and the public to be aware of consequences of breaking the law	<ul style="list-style-type: none">• Cooperate and communicate with ECQ to ensure compliance with the law• Take responsibility for understanding and complying with PDS requirements

What activities will the ECQ implement under the Regulatory Strategy?

To help achieve the prohibition of donations from property developers in Queensland through the Regulatory Strategy the ECQ will:

- develop easy to understand education and information materials for clients, stakeholders, the public and the ECQ's staff, including guidance on making and assessing applications, complying with the ECQ's regulatory expectations and taking appropriate and proportionate enforcement action to remedy compliance matters
- consult with clients, stakeholders, the public and government on PDS regulatory matters that affect them
- introduce performance measures to quantify the continued improvement in application processing and client and stakeholder education requirements
- distribute education materials and compliance alerts, prosecution bulletins and other information to clients, stakeholders and the Queensland community.

How will the ECQ measure whether the Regulatory Strategy is successful?

The ECQ will introduce a suite of performance measures to quantify the effectiveness, efficiency and economy of the Regulatory Strategy including:

- obtaining and responding to feedback and notifications from clients, stakeholders and the public to the quality of guidance information being provided by the ECQ
- monitoring application processing to ensure optimal efficiency can be achieved through the allocation of scarce resources and appropriate staff training
- monitoring compliance activities against key performance indicators in the ECQ Compliance Plan
- monitoring compliance of activities the ECQ regulates
- tracking continuous improvements opportunities to make any necessary improvements to the operation of PDS policies, procedures and processes.

ECQ Review and Compliance

The PDS may form part of the ECQ's compliance reviews that cover matters provided for in Part 11 of the Electoral Act 1992. Under the Electoral Act 1992, such matters may include items reported on disclosure returns including reviews on political donations, electoral expenditure, gifts, loans and other matters as required.