

Inquiry or a random audit of a preselection ballot conducted by a registered political party procedure

Version 1.0

Approval



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Electoral Commissioner

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Version history

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1.0A	Draft	Principal Policy Officer	February 2020
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Review

This procedure will be reviewed **every two years** from the approval date in conjunction with the policy, or if the relevant regulatory frameworks change in a way that means this procedure is no longer contemporary for the ECQ.

Purpose

To guide the Electoral Commission of Queensland (ECQ) on procedural requirements for an inquiry or a random audit pursuant to Part 9 of the *Electoral Act 1992* and in accordance with the *Inquiry or a random audit of a preselection ballot conducted by a registered political party policy*.

Scope

Part 9 of the *Electoral Act 1992* sets out the regulatory controls that govern a preselection ballot to ensure transparency and accountability in the preselection process. Schedule 1 'Model procedures for preselection ballots' in the Electoral Regulation 2013 detail the requirements a registered political party must comply with in a preselection ballot process to select a candidate. Under section 168 of the *Electoral Act 1992* the ECQ may inquire into a preselection ballot of a candidate for the Queensland Legislative Assembly or local government elections. Under sections 171 and 172 of the *Electoral Act 1992* the ECQ selects preselection ballots for random audits to audit compliance with the model procedures and the party's constitution.

Application

These procedures apply to all ECQ officers that perform the regulatory functions to supervise the preselection processes along with the conduct of random audits of balloting and voting procedures which are used by registered political parties to select Legislative Assembly or local government candidates under the *Electoral Act 1992* or the *Local Government Electoral Act 2011*.

Procedure

1. Inquiry into a preselection ballot

An inquiry into a preselection ballot applies to a candidate for the Legislative Assembly, under the *Electoral Act 1992*, and local government elections under the *Local Government Electoral Act 2011*.

- 1.1. Preliminary preparation for an inquiry: examine the registered political party's constitution and notes the matters that relate to the conduct of a preselection ballot. At a minimum a registered political party's complying constitution must first satisfy the *general principles of free and democratic elections* as they apply to a preselection ballot and must include:
 - (a) only members of the party who are electors may vote;
 - (b) only members of the party who are eligible to vote in the ballot under the party's constitution may vote;
 - (c) each member has only 1 vote;
 - (d) voting must be done by secret ballot;
 - (e) a member must not be improperly influenced in voting;
 - (f) a member's ballot paper must be counted if the member's intention is clear;
 - (g) members' votes must be accurately counted;

(h) each person who is seeking selection may be present personally or may be represented by another person, at the ballot and for the scrutiny, and counting, of votes.¹

Action: List each of the relevant requirements and check against the party's constitution if the rules require a preselection ballot under section 76(1)(f) of the *Electoral Act 1992*, and if so, the rules must comply with the principles in section 76(2) of the *Electoral Act 1992*.

1.2. Prior notice of preselection: if a political party used a preselection ballot to select a candidate the registered officer must have provided a written notice to ECQ at least 7 days prior to voting in the ballot in compliance with section 167(1) of the *Electoral Act 1992*.

Action: Check for evidence of a written notice provided to the ECQ for a preselection ballot conducted by the registered political party to select a candidate for an election. The written notice must have been submitted by the registered officer of the political party.

1.3. Copy of model procedures for preselection ballot: the registered officer must give a candidate in the ballot a copy of the model procedures.² The candidate must give the registered officer written acknowledgement of receipt of the model procedures.³

Action: Check for evidence that written acknowledgement was provided by the candidate to the registered officer proving receipt of the model procedures for preselection ballots.

1.4. Inquiry into a preselection ballot: if an inquiry is undertaken the ECQ may require a registered officer of a registered political party to supply certain pertinent information.

Action: write to the registered officer of the political party to advise which preselection ballot(s) will be subject to an inquiry under section 168(1)(a) of the *Electoral Act 1992*. Inform the registered officer of the ECQ's role in the supervision of preselection ballots and the need for certain information to be provided to ECQ within one month, including:

- (a) the list of names and addresses of the members of the party in the preselection roll who voted, or are eligible to vote, in the preselection ballot⁴ as required to comply with Schedule 1, section 14(1) of the Electoral Regulation 2013; and
- (b) certification in writing that each member listed was, at the time of the ballot, or is, eligible to vote in the preselection ballot under the party's constitution;⁵ and
- (c) provide copies of the records of the party that are reasonably necessary for the ECQ to ensure the information given by the registered officer is accurate, including:
 - details of the returning officer for the preselection ballot, including the method of appointment as per Schedule 1, section 3 of the Electoral Regulation 2013
 - copy of advertisements used to call for the nomination of candidates and details of each publication under Schedule 1, section 5 of the Electoral Regulation 2013
 - matters that must be stated in the advertisement that calls for nominations as per Schedule 1, section 6 (a) to (h) of the Electoral Regulation 2013

¹ Section 76(1)(f) and 76(2) (a) to (h) of the *Electoral Act 1992*.

² Section 167(2) of the *Electoral Act 1992*.

³ Section 167(3) of the *Electoral Act 1992*.

⁴ Section 168(5)(a) of the *Electoral Act 1992*.

⁵ Section 168(5)(b) of the *Electoral Act 1992*.

- candidate's written acknowledgement of receipt of a copy of the model procedures for preselection ballots under section 167(3) of the *Electoral Act 1992*
- copies of the completed nomination forms for the preselection ballot under Schedule 1, section 7(a) to (d) of the Electoral Regulation 2013
- copies of records that prove each nomination was received by the close of nominations date and that nominations complied with the party's constitution as per Schedule 1, section 7(e) and (f) of the Electoral Regulation 2013
- copies of notices issued to candidates by the returning officer containing relevant details as per Schedule 1, section 13(1)(a) to (g) of the Electoral Regulation 2013
- political party membership records relating to the preselection branch(es)
- copy of the marked preselection roll of eligible voters in compliance with requirements set out in Schedule 1, section 14 of the Electoral Regulation 2013
- the registered officer's certification of eligibility to vote in the preselection ballot in compliance with Schedule 1, section 14(5) of the Electoral Regulation 2013
- copy of the ballot papers that were used in the preselection ballot process(es) as per requirements in Schedule 1, section 16(2) of the Electoral Regulation 2013
- details of the polling in the preselection ballot:
 - if attendance ballot, ballot paper is initialled by returning officer or issuing officer with records of attendance and any identification procedures as per Schedule 1, sections 19 and 23 of the Electoral Regulation 2013
 - if postal ballot, number of ballot papers returned by due date, security and identification procedures (including sample of a declaration envelope) as per Schedule 1, sections 20 to 22 of the Electoral Regulation 2013
- number of ballot papers for the preselection admitted to the count
- number of ballot papers not admitted to counting with reasons for non-admittance as per Schedule 1, section 17(3), 22 and 23 of the Electoral Regulation 2013
- names and addresses of scrutineers and copies of their appointment forms in compliance with Schedule 1, section 26(4) of the Electoral Regulation 2013
- publication of the results of the preselection ballot including reconciliation of ballot papers as per Schedule 1, section 28 of the Electoral Regulation 2013
- any document required by the ECQ to conduct an inquiry into a preselection ballot as per Schedule 1, section 29 of the Electoral Regulation 2013.

1.5. Report to the Minister on the inquiry into the preselection ballot: as soon as practicable, at the conclusion of the inquiry, the relevant Minister must be provided with a report that:

- (a) identifies the preselection ballot reviewed under section 168 of the *Electoral Act 1992*; and
- (b) states whether the preselection ballot was conducted in accordance with:
 - i. the model procedures for preselection ballots; and
 - ii. the rules in the registered political party's complying constitution.

Action: the inquiry report must contain a title page and the report contain mandatory headings of reasons for inquiry; details of the preselection ballot reviewed; conduct of the inquiry; findings and recommendations and be submitted by the Electoral Commissioner.

2. Random audit into a preselection ballot

A random audit applies to a preselection ballot by a registered political party to select Legislative Assembly, not local government, candidates under sections 171 and 172 of the *Electoral Act 1992*.

2.1. Post Legislative Assembly election: ECQ must, as soon as practicable after the 30th day after the polling day for an election to the Legislative Assembly, decide how many of the total number of preselection ballots of candidates for each registered political party in the election will be subject to a random audit under section 171(1) of the *Electoral Act 1992*.

Action: ECQ must determine what proportion of the total number of preselection ballots for candidates that were used by a registered political party in the election. ECQ may select, where possible, a sample of preselection ballots from around the Brisbane urban area and similar proportion from different regional areas from across Queensland. For example, the ECQ may select a total of 2 and 4 ballots respectively for each registered political party based on the total number of preselection ballot used by those parties.

If a rule in the political party's constitution indicates a preselection ballot was needed to select a candidate, then ECQ writes to the registered officer of the political party to obtain written confirmation of any preselection ballots used for the candidates in the election.

The ECQ must reconcile if a registered officer of a registered political party had notified the ECQ of a candidates' selection was the result of a preselection ballot⁶ or was the result of a decision made by the registered political party's executive or a committee.

2.2. Notification to registered political party of inclusion in the random audit: ECQ must write to a registered political party to advise of preselection ballots subject to a random audit.⁷

Action: The letter to the political party must advise ECQ records indicate that preselection ballots were used to choose candidate(s) for the election and the letter must state:

- the total number of preselection ballots to be included in the random audit; and
- the date, time and place at which random selection of preselection ballots to be audited will take place by a random selection ballot draw; and
- invite a political party's candidate, or representative of a candidate, to be present at the ballot draw and, if so, ECQ will require prior notice of the person attending.⁸

2.3. Selecting preselection ballots for the random audit: the ECQ, in the presence of at least 2 witnesses, must undertake a draw to select the preselection ballot for the random audit in accordance with mandatory requirements in section 171(2) of the *Electoral Act 1992*.

Action: ECQ staff must draw the predetermined number of lots to identify those selected for audit. Staff conducting the ballot draw must allow a candidate or their representative to be present when drawing the preselection number to be subject to the random audit.⁹

⁶ Section 167(1) of the *Electoral Act 1992* required prior notice of a preselection ballot to the ECQ.

⁷ Section 171(1) of the *Electoral Act 1992*.

⁸ Section 171(3) of the *Electoral Act 1992*.

2.4. Notification of random audit draw and request for certain information: the ECQ provides the registered officer of a registered political party with a written notice that advises of the outcomes of the ballots drawn under section 171(2)(h) of the *Electoral Act 1992*.

Action: the written notice to the registered political party identifies the preselection ballot processes that are to be audited and the audit will seek to ensure their compliance with:

- the model procedures for preselection ballots; and
- rules in the party's constitution.

Pursuant to sections 172(2) and (3) of the *Electoral Act 1992* the written notice sets out the information the registered officer must provide the ECQ for the audit, including:

- details of the returning officer for the preselection ballot, including the method of appointment as per Schedule 1, section 3 of the Electoral Regulation 2013
- copy of advertisements used to call for the nomination of candidates and details of each publication under Schedule 1, section 5 of the Electoral Regulation 2013
- matters that must be stated in the advertisement that calls for nominations as per Schedule 1, section 6 (a) to (h) of the Electoral Regulation 2013
- candidate's written acknowledgement of receipt of a copy of the model procedures for preselection ballots under section 167(3) of the *Electoral Act 1992*
- copies of the completed nomination forms for the preselection ballot under Schedule 1, section 7(a) to (d) of the Electoral Regulation 2013
- copies of records that prove each nomination was received by the close of nominations date and that nominations complied with the party's constitution as per Schedule 1, section 7(e) and (f) of the Electoral Regulation 2013
- copies of notices issued to candidates by the returning officer containing relevant details as per Schedule 1, section 13(1)(a) to (g) of the Electoral Regulation 2013
- political party membership records relating to the preselection branch(es)
- copy of the marked preselection roll of eligible voters in compliance with requirements set out in Schedule 1, section 14 of the Electoral Regulation 2013
- the registered officer's certification of eligibility to vote in the preselection ballot in compliance with Schedule 1, section 14(5) of the Electoral Regulation 2013
- copy of the ballot papers that were used in the preselection ballot process(es) as per requirements in Schedule 1, section 16(2) of the Electoral Regulation 2013
- details of the polling in the preselection ballot:
 - if attendance ballot, ballot paper is initialled by returning officer or issuing officer with records of attendance and any identification procedures as per Schedule 1, sections 19 and 23 of the Electoral Regulation 2013
 - if postal ballot, number of ballot papers returned by due date, security and identification procedures (including sample of a declaration envelope) as per Schedule 1, sections 20 to 22 of the Electoral Regulation 2013
- number of ballot papers for the preselection admitted to the count
- number of ballot papers not admitted to counting with reasons for non-admittance as per Schedule 1, section 17(3), 22 and 23 of the Electoral Regulation 2013

⁹ Section 171(3) of the *Electoral Act 1992*.

- names and addresses of scrutineers and copies of their appointment forms in compliance with Schedule 1, section 26(4) of the Electoral Regulation 2013
- publication of the results of the preselection ballot including reconciliation of ballot papers as per Schedule 1, section 28 of the Electoral Regulation 2013
- documents required by the ECQ to conduct the random audit into preselection ballot processes as per Schedule 1, section 29 of the Electoral Regulation 2013.

2.5. Report to the Minister on the audit into preselection ballots: as soon as practicable, at the conclusion of the random audit, the relevant Minister must be provided with a report that:

- (a) identifies the preselection ballots reviewed under section 172 of the *Electoral Act 1992*; and
- (b) states whether the preselection ballot was conducted in accordance with:
 - i. the model procedures for preselection ballots; and
 - ii. the rules in the registered political party's complying constitution.

Action: the random audit report must contain a title page and the report contain mandatory headings of purpose of the audit; details of the preselection ballot reviewed; conduct of audit; findings and recommendations and be submitted by the Electoral Commissioner.

Delegations

1. Only the Electoral Commissioner may approve and distribute a report to a Minister that results from an inquiry or a random audit of a preselection ballot by a registered political party.

Appendix 1 — Definitions

Definitions

Term	Definition	Reference (if applic.)
Bribery	<p>Bribery is a misdemeanour under the <i>Criminal Code Act 1899</i> and applies as an electoral offence when:</p> <p>(1) A person who –</p> <ul style="list-style-type: none"> (a) asks for or receives; or (b) offers, or agrees, to ask for or receive; <p>a benefit where for the person or for another person, on the understanding that the person's election conduct will be influenced or affected commits a misdemeanour.</p> <p>Maximum penalty – 1 year's imprisonment.</p> <p>(2) A person who, in order to influence or affect the election conduct of another person (the affected person), gives a benefit to any person (whether or not the affected person) commits a misdemeanour.</p> <p>Maximum penalty – 1 year's imprisonment.</p>	Section 101, <i>Criminal Code Act 1899</i>
Complying constitution	A complying constitution is a political party's constitution if it contains the statutory requirements set out in section 76 of the <i>Electoral Act 1992</i> .	Section 76, <i>Electoral Act 1992</i>
Disqualifying electoral offence	<p>Disqualifying electoral offence means an offence, of which an offender is convicted after the commencement of the <i>Electoral and Other Acts Amendment Act 2002</i>, section 5 –</p> <p>(a) that relates to –</p> <ul style="list-style-type: none"> (i) an election of a member of an Australian parliament; or (ii) an election to the office of chairperson, mayor, president, councillor or member of a local government, or to an equivalent office in another State; or (iii) a referendum conducted under a law of the State, another State or the Commonwealth; or (iv) the enrolment of a person on an electoral roll; and <p>(b) for which the penalty imposed included a sentence of imprisonment, other than a sentence of imprisonment for non-payment of a fine, restitution or other amount.</p>	Section 2, <i>Electoral Act 1992</i>
Elector	Elector means a person entitled to vote under the <i>Electoral Act 1992</i> .	Section 2, <i>Electoral Act 1992</i>

Term	Definition	Reference (if applic.)
Electoral fraud	Electoral fraud means anything that threatens the integrity of the electoral system – as defined in <i>The prevention of electoral fraud: Interim report</i> .	Legal, Constitutional and Administrative Review Committee, Report No. 28 (November 2000)
Electoral system	Electoral system provides an electoral process which includes voter qualification, candidate eligibility, apportionment of seats, rules for the conduct of elections, and laws which govern the mechanics of converting votes into seats – as defined in <i>Report on the Queensland Legislative Assembly electoral system</i> .	Electoral and Administrative Review Commission (November 1990)
General principles of free and democratic elections	<p>The general principles of free and democratic elections are applied to a preselection ballot are:</p> <ul style="list-style-type: none"> (a) only members of the party who are electors may vote; (b) only members of the party who are eligible to vote in the ballot under the party's constitution may vote; (c) each member has only 1 vote; (d) voting must be done by secret ballot; (e) a member must not be improperly influenced in voting; (f) a member's ballot paper must be counted if the member's intention is clear; (g) members' votes must be accurately counted; (h) each person who is seeking selection may be present personally, or may be represented by another person, at the ballot and for the scrutiny, and counting, of the votes. 	Section 76(2), <i>Electoral Act 1992</i>
Illegal election practice	An illegal election practice means any contravention of the <i>Electoral Act 1992</i> .	Section 2, <i>Electoral Act 1992</i>
Improperly influenced in voting	<p>Improperly influenced in voting means <i>hindering or interfering with voting conduct</i> which includes:</p> <ul style="list-style-type: none"> (a) acting fraudulently; or (b) using or threatening to use force against any person; or (c) causing or threatening to cause a detriment to any person. <p>Maximum penalty – 1 year's imprisonment.</p>	Section 100, <i>Criminal Code Act 1899</i>
Political party	Political party means an organisation whose object, or 1 of whose objects, is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it or by a body or organisation of which it forms a party.	Section 2, <i>Electoral Act 1992</i>

Term	Definition	Reference (if applic.)
Preselection ballot	<p>Preselection ballot –</p> <p>(a) means the process, or that part of the process, of selecting a candidate to be endorsed by a political party for an election, or an election for a local government, in which a member of the party votes in a ballot in his or her capacity as a member of the party, rather than as a member of a committee (however called) of the party, for the candidate; and</p> <p>(b) includes matters preparatory to the ballot and the scrutiny and counting of votes in the ballot.</p> <p>Example –</p> <p>If the selection of a candidate involves a poll of the party members and the endorsement of the poll result by a party committee, only the poll is a preselection ballot.</p>	Section 2, <i>Electoral Act 1992</i>
Registered Officer	A registered officer of a political party means the person shown in the register of political parties as the party's registered officer, and includes a person nominated under section 74 of the <i>Electoral Act 1992</i> as deputy of a party's registered officer.	Section 2, <i>Electoral Act 1992</i>
Registered Political Party	A registered political party means a political party that is registered in the register of political parties.	Section 2, <i>Electoral Act 1992</i>
Register of political parties	Register of political parties means the register kept under section 70 of the <i>Electoral Act 1992</i> .	Section 2, <i>Electoral Act 1992</i>
Scrutineer	Scrutineer is a person who observes the polling and counting procedures who may be appointed by a candidate to act on their behalf during an election.	Section 26(3), Electoral Regulation 2013
Scrutiny	The process following close of polling to determine the acceptability of votes for the count and the result of the election.	
Secret ballot	A vote made in such a way that no other person will know how the elector has voted. Secret ballot guarantees the free expression of an elector's will.	

Appendix 2 — Regulatory Framework

Regulatory framework

- *Criminal Code Act 1899*, sections 98H to 114
- *Electoral Act 1992*, sections 2, 76(1)(e) and (f), 76(2), 77(2), sections 166 to 173
- Electoral Regulation 2013, section 5 and Schedule 1, sections 1 to 29
- *Human Rights Act 2019*, sections 22 and 23
- *International Covenant on Civil and Political Rights*, Article 22

Relevant electoral case(s)

- *Galt & Anor v Flegg & Anor* [2003] QSC 290
- *Re Ithaca Election Petition, Webb v Hanlon* [1939] St R Qld 90

Background information

- *Electoral and Other Acts Amendment Bill 2002 – Explanatory Notes* which were tabled in the Queensland Parliament on 6 March 2002.
- *Restoring Integrity – The Beattie Good Government Plan for Queensland* which was tabled in the Queensland Parliament on 2 May 2001.
- The *Shepherdson Inquiry: An Investigation into Electoral Fraud* which was tabled in the Queensland Parliament on 1 May 2001.
- *The prevention of electoral fraud: Interim report*, Legal, Constitutional and Administrative Review Committee, Legislative Assembly of Queensland, Report No. 28, November 2000.