

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

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

Purpose

To guide the Electoral Commission of Queensland (ECQ) to supervise the preselection process and to conduct random audits of balloting and voting procedures that are used by a registered political party as required under the *Electoral Act 1992* and the Electoral Regulation 2013.

Rationale

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 Parliament's 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.

Guiding Principles

The ECQ conducts free, honest, regular, fair and democratic elections under the *Electoral Act 1992* and the *Local Government Electoral Act 2011* in accordance with these guiding principles:

1. **Protection of the right to vote or to be a candidate.** All those who have the right to vote or to be a candidate must have that right preserved, and all electors must have only one vote.
2. **Preservation of the secret ballot.** No one should be able to ascertain for whom an elector voted.
3. **Freedom from influence.** Electors must be free to cast their votes without coercion or improper influence.
4. **Accurate counting of votes.** Once admitted to the scrutiny, each elector's vote must be counted accurately to the candidate of their choice.
5. **Protection of the rights of candidates.** The rights of candidates to be represented at polling and at the scrutiny, and to disseminate information promoting their candidacy must be protected.
6. **Public confidence in elections must be preserved.** Election procedures should be open and subject to review so that public confidence in the integrity of the electoral system and election outcomes can be maintained.
7. **Prevention of electoral fraud.** All possible steps should be taken to eliminate electoral fraud. Penalties for electoral offences should be set at levels which discourage fraud.
8. **Ongoing review of electoral matters.** Electoral legislation and administrative procedures should be reviewed regularly to ensure that they remain relevant to changing community expectations.

These consistent and complementary guiding principles underpin public confidence and acceptance by ensuring the ECQ works openly, independently, impartially, fairly and in the public interest. In a representative democracy, public confidence that elections are free and fair are vital as elections confer legitimacy on those officials elected and, on the policies, that they implement.

Policy

1. The ECQ's regulation of preselection ballots

The ECQ supervises the preselection process and conducts random audits of balloting and voting procedures conducted by registered political parties. The ECQ's regulation of transparent and accountable processes preserves public confidence in the integrity of the electoral system.

- 1.1. Preselection and the *Human Rights Act 2009*: Part 9 of the *Electoral Act 1992* restricts how a registered political party preselects a candidate for Legislative Assembly or local government elections. This raises issues regarding infringement of the right to freedom of association and the right of citizens to take part in the conduct of public affairs.

Article 22 of the *International Covenant on Civil and Political Rights* (ICCPR) provides:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his [or her] interests.

Article 22 of the ICCPR is a human right that is recognised and is enforceable under Queensland law in section 22 of the *Human Rights Act 2019*:

- (1) Every person has the right of peaceful assembly.
- (2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

Article 22(2) of ICCPR recognises that there may be restriction on the right to freedom of association if they are necessary in a democratic society in the interests of public order. The regulation of political party candidates for Legislative Assembly and local government elections are a justifiable limitation on the right of citizens to take part in aspects of public affairs. Part 9 of the *Electoral Act 1992* is a key lawful measure to maintain the integrity of the electoral process and to diminish the opportunity for any electoral fraud. Accordingly, the lawful restrictions on preselection are justifiable as they help uphold the public interest.

- 1.2. Preselection and the prevention of electoral fraud: the principles for the electoral system include the *prevention of electoral fraud* by use of all possible steps to eliminate electoral fraud including the use of penalties for electoral offences that discourage electoral fraud.

Illegal election practice means any contravention of the *Electoral Act 1992*. Part 9 of the *Electoral Act 1992* contains civil penalties for non-compliance if a registered officer failed to comply with sections 167(1) or 170 – maximum penalty – 40 penalty units. Under an ECQ random audit a registered officer, after receiving notice of an audit, must provide: (a) list of names and addresses of members of the party who voted in the ballot; and (b) certification that, at the time the ballot took place, each member listed was eligible to vote in the ballot under the party's constitution. Non-compliance with section 168(7) of the *Electoral Act 1992* may attract a substantial maximum penalty of 400 penalty units.

The most serious electoral offences, including bribery, forging or uttering electoral papers, giving false or misleading information and voting if not entitled, are criminal offences listed in Chapter 14, Chapter division 3 in the *Criminal Code Act 1899* and aim to eliminate electoral fraud and preserve public confidence in the electoral process.

2. Preselection ballot mandatory requirements

Registered political parties must ensure that preselection ballots are free and fair. A registered political party is free to adopt whatever form of preselection process they wish, provided the rules associated with a preselection process are clearly stated in the political party's constitution.¹

2.1. Preselection ballots: The ECQ regulates the direct voting component of a preselection.

NB. Part 9 of the *Electoral Act 1992* requires the ECQ not to regulate central preselection or endorsement by the executive or a committee of the registered political party. The purpose of a preselection ballot is eligible members of a political party vote in a ballot as members of that party and not because they are members of a selection committee.

2.2. Complying constitution: Political parties are free to adopt whatever form of preselection process they wish, provided the rules are clearly stated in their party's constitution. If a party's constitution provides for preselection ballots to be conducted as part or whole of the preselection process, then Part 9 of the *Electoral Act 1992* applies with the preselection ballot used by the political party being subject to the ECQ's supervision.

2.3. Model procedures for preselection ballots: If a preselection ballot is used to choose a candidate it must comply with the model procedures. The ECQ must provide a copy of the model procedures for the conduct of a preselection ballot, that is prescribed under the Electoral Regulation 2013, to the registered officer of the registered political party.²

3. Inquiry into a preselection ballot

The ECQ may inquire into a preselection ballot at any time before, during or after its conduct and act on its own initiative or on complaint. An ECQ's inquiry into a preselection ballot applies to preselection for the Legislative Assembly and local government elections.³

3.1. Prior notice of a preselection ballot: a registered officer of a political party must give the ECQ at least 7 days written notice of when voting in a preselection ballot is to be held. Non-compliance with prior notice may attract a maximum penalty of 40 penalty units.⁴

Prior to a preselection process the registered officer must provide a candidate in the ballot with a copy of the model procedures i.e. Schedule 1, Electoral Regulation 2013.⁵ The candidate must provide the registered officer of a registered political party with a written acknowledgement of receipt of the model procedures.⁶

3.2. ECQ response to a prior notice: the ECQ must acknowledge receipt of the prior notice of a preselection ballot sent by a registered officer of a political party and provide a copy of the model procedures for preselection ballots in response to the notice of a preselection.

¹ Section 76(1)(e)(ii) of the *Electoral Act 1992* requires a party's constitution to contain the rules for selecting a candidate to be endorsed by the party for an election or an election for a local government.

² Section 166 of the *Electoral Act 1992*.

³ Section 168(1) of the *Electoral Act 1992*.

⁴ Section 167(1) of the *Electoral Act 1992*.

⁵ Section 167(2) of the *Electoral Act 1992*.

⁶ Section 167(3) of the *Electoral Act 1992*.

3.3. Inquiry into preselection ballot: the ECQ may inquire into a preselection ballot of a candidate for election to the Legislative Assembly or an election for a local government –

- (a) on its own initiative; or
- (b) on receiving a complaint from a candidate, or a party member who is eligible to vote, in the preselection ballot that the ballot has not been, or is not to be, conducted in accordance with –
 - i. the model procedures for preselection ballots; and
 - ii. the rules for preselection ballots in the political party's constitution.

Mandatory requirements for a complaint-initiated inquiry

To be a valid complaint by a complainant described in section 3.3(b) the complaint must –

- (a) be made within 30 days after the voting in the ballot takes place; and
- (b) be in writing; and
- (c) state in detail the grounds on which the complaint is made – refer to 3.3(b)(i) and (ii).

Grounds for the ECQ to refuse to investigate a complaint

The ECQ may refuse to investigate a complaint about a preselection ballot:

- if the complainant failed to comply with the mandatory requirements for a complaint under section 168(3) of the *Electoral Act 1992*; or
- if the complainant was not eligible to make the complaint under section 168(1)(b) of the *Electoral Act 1992*.

The ECQ may refuse to investigate under section 169(1) if the complaint: (a) appears to concern a frivolous matter; or (b) the complaint appears to have been made vexatiously. If refusal to investigate are based on a frivolous or vexatious complaint, then the complainant must be sent a notice. The notice must advise the person that if they again make the same or substantially the same complaint to the ECQ the person commits an offence punishable by a fine of 85 penalty units or 1 year's imprisonment or both.⁷

The ECQ may inquire and require certain information from a registered officer

If an inquiry, pursuant to section 168 of the *Electoral Act 1992*, is undertaken the ECQ may require a registered officer of a political party to supply certain information, including:

- (a) a list of names and addresses of the members of the party who voted, or are eligible to vote, in the preselection ballot; and
- (b) certification to the ECQ 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; and

⁷ Section 169(2) and (3) of the *Electoral Act 1992*.

- (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.

The registered officer of the registered political party must comply with a requirement to supply certain information unless the registered officer has a reasonable excuse.

Under section 168(7) of the *Electoral Act 1992*, any non-compliance with a registered officer supplying certain information may attract a maximum penalty of 400 penalty units.

Report the outcome of an inquiry into a preselection ballot

If the ECQ conducts an inquiry into a preselection ballot process, pursuant to section 168 of the *Electoral Act 1992*, then the relevant Minister must be provided with a report:

- (a) the relevant Minister who administers the *Electoral Act 1992*; or
(b) the relevant Minister who administers the *Local Government Electoral Act 2011*.

The inquiry report into a preselection ballot to the relevant Minister must –

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

4. Random audit into a preselection ballot

The 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 an election will be subject to a random audit.⁸

NB. A random audit into a preselection ballot only applies to a preselection ballot by a registered political party to select Legislative Assembly, not local government, candidates.⁹

- 4.1. Post notice of a preselection ballot: a registered officer of a registered political party must notify the ECQ, no later than 30 days after polling day for an election for the Legislative Assembly in which the registered political party endorsed a candidate, by notifying the ECQ whether the prior selection of a candidate had involved a preselection ballot.

Non-compliance with post notification may attract a maximum penalty of 40 penalty units.

- 4.2. Prior preparation for a random audit: the ECQ must determine how many of the total number of preselection ballots of candidates for each registered political party in a candidate's election for the Legislative Assembly will be included in the random audit.¹⁰

⁸ Section 168(1) of the *Electoral Act 1992*.

⁹ Refer to section 171(1) of the *Electoral Act 1992* and the corresponding "Sections 148L – 148N" in the *Explanatory Notes – Electoral and Other Acts Amendment Bill 2002*, Queensland Parliament, page 13.

¹⁰ Section 171(1) of the *Electoral Act 1992*.

The ECQ examines a registered political party's constitution to identify if there is a rule for a preselection ballot to select a candidate to be elected to the Legislative Assembly.¹¹

The ECQ collates and tallies the total number of notices of preselection ballot received from registered officers in their compliance with section 170 of the *Electoral Act 1992*.

- 4.3. Notify political party of the random audit ballot draw: as soon as practicable after the 30th day after the polling day for an election, the ECQ must write to each of the registered political party to advise that preselection ballots processes may be subject to an audit.¹²
- 4.4. Selecting preselection ballots for random audit: the ECQ must, in the presence of at least 2 witnesses, 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*.
- 4.5. Notify the registered officer and request certain information: the ECQ must provide written notice to the registered officer of a registered political party that the preselection ballot candidate drawn under section 171(2)(h) of the *Electoral Act 1992* is to be audited to identify whether the preselection ballot was conducted in accordance with –
 - (a) the model procedures for preselection ballots; and
 - (b) the party's constitution.
- 4.6. Report the outcome of a random audit of preselection ballots: If the ECQ conducts a random audit into preselection ballots, pursuant to section 172 of the *Electoral Act 1992*, then the Minister administering the *Electoral Act 1992* must be provided with a report.

The ECQ must, as soon as practicable, give the Minister an audit report that identifies –

- (a) the preselection ballots examined under section 172 of the *Electoral Act 1992*; and
- (b) any preselection ballot in which someone voted in contravention of –
 - i. the model procedures for preselection ballots; or
 - ii. the party's constitution.

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.

¹¹ Sections 76(1)(e) and (f) and 76(2) of the *Electoral Act 1992*.

¹² Section 171(1) of the *Electoral Act 1992*.

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>

Term	Definition	Reference (if applic.)
Elector	Elector means a person entitled to vote under the <i>Electoral Act 1992</i> .	Section 2, <i>Electoral Act 1992</i>
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	The 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	The general principles of free and democratic elections are applied to a preselection ballot are: (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	Improperly influenced in voting means <i>hindering or interfering with voting conduct</i> which includes: (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. Maximum penalty – 1 year's imprisonment.	Section 100, <i>Criminal Code Act 1899</i>

Term	Definition	Reference (if applic.)
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>
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, <u>only the poll is a preselection ballot.</u></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	Scrutiny is 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.