

# Assessing Requests for Audit Certificate Waiver Policy and Procedure

Version 4.0

**Approval**



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**Electoral Commissioner**

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## Version history

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1.0	Issued for use	Director, Elections, Disclosure and Spatial	February 2017
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## Review

This Policy & Procedure will be reviewed **every two years** from the approval date, or if the relevant regulatory frameworks change.

## Purpose

To provide guidance to the Electoral Commission of Queensland's (ECQ) staff in managing requests received from agents of registered political parties (RPPs) and financial controllers of associated entities (AEs) to waive the requirement to provide an audit certificate with their periodic or election summary returns.

## Rationale

An audit certificate must be provided with a periodic and/or election summary return for a RPP and/or an associated entity.<sup>1</sup> The ECQ may waive compliance with the requirement to give an audit certificate if the ECQ considers the cost of compliance with the requirement would be unreasonable.<sup>2</sup>

Audit certificates provide a high level of assurance to both the ECQ and the public regarding the compliance of certain political entities with their disclosure obligations under the *Electoral Act 1992* (the Act). At the same time, granting a waiver of the requirement to provide an audit certificate can also serve the public interest by encouraging RPPs and AEs with limited financial capacity to participate in the electoral process, in the appropriate circumstances.

## Guiding Principles

1. **Prevention of electoral fraud.** All possible steps should be taken to eliminate electoral fraud.
2. **Recognition of political parties.** Political parties play an important part in the election process, and their place in the electoral system should be recognised.
3. **Public confidence in elections must be preserved.** Election procedures should be open and subject to review to ensure public confidence in the integrity of the election system and election outcomes is maintained.
4. **Neutrality of election officials.** The conduct and administration of elections should not be influenced by political considerations. Persons responsible for conducting elections, including enabling activities, should be politically neutral in their dealing with all electoral participants.
5. **Right to review other decisions made by the ECQ.** Judicial and administrative review procedures are available to all registered political parties (within the relevant district or division) who wish to query or review a decision made by the ECQ that affects them.

A Human Rights Impact Assessment, in accordance with section 58(5) of the *Human Rights Act 2019*, has been conducted to identify any human rights that may be affected by the actions recommended in this policy. This Policy and Procedure only directly impacts on organisations (being RPPs and AEs) but may indirectly affect individual members of such organisations by determining when the obligation for their organisation to provide an audit certificate might be waived. The human rights that such a decision may limit are recognition and equality before the law and the right to take part in public life.

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<sup>1</sup> Section 310(1) of the *Electoral Act 1992*

<sup>2</sup> Section 310(3) of the *Electoral Act 1992*

This Policy and Procedure merely establishes the framework under which individual decisions can be made, and does not, in itself, make any decisions regarding the restriction or limitation of human rights. When individual decisions are made, regard will be given to:

- the nature of the human right/s affected by the decision (e.g. the right to take part in public life and the right to equality before the law),
- the nature and relationship between the human rights being limited, and the purpose of the limitation (i.e. is the decision to restrict a human right reasonable given the purpose of the limitation),
- whether there are any less restrictive and reasonably available alternatives (in this case, there is no other effective way of ensuring the probity of declarations made under the Act, though the waiver acknowledges that are cases where it is not cost effective to require the certificate), and
- weigh the balance between the importance of the purpose or imposing the limitation against the importance of preserving the human right/s.

# Policy

## 1. Requesting a waiver

The ECQ will only consider waiving the audit certificate requirement if the agent or financial controller makes a written request for such consideration.

Requests for a waiver will generally be made as part of lodging the corresponding return via the Electronic Disclosure System (EDS), however they can also be made by other means if necessary.

Once submitted, a request for an audit waiver should be assessed against this Policy and Procedure within 10 business days.

## 2. Assessing the waiver request

The ECQ may only waive the requirement for an audit certificate if it is satisfied that the cost of compliance would be unreasonable.<sup>3</sup> Audit waiver requests must be assessed on a case-by-case basis, taking all relevant circumstances into account.

The specific factors to be considered will differ depending on whether the assessment is being carried out in relation to a periodic or election summary return. Separate considerations are necessary, as each return type is required to contain different information, meaning auditors are required to verify different information. Furthermore, the question of whether 'the cost of compliance with the requirement would be unreasonable' must be considered in the context of each particular requirement.

### 2.1 Election summary return

When assessing a request to waive an audit certificate requirement for an election summary return, the following factors are to be considered:

1. The total value of electoral expenditure incurred by the RPP or AE,<sup>4</sup>
2. The total value of gifted electoral expenditure received by the RPP or AE,<sup>5</sup>
3. The total number of individual transactions in the return,<sup>6</sup>
4. Whether the RPP (or the RPP to which an AE is associated) is entitled to election funding, or a nomination deposit refund, for the election for which the return relates,<sup>7</sup>

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<sup>3</sup> Section 310(3) of the *Electoral Act 1992*

<sup>4</sup> This is relevant to an assessment of cost reasonableness as it speaks to a RPP's/AE's financial capacity to pay the costs associated with obtaining an audit certificate.

<sup>5</sup> This is relevant to an assessment of cost reasonableness as a RPP/AE which receives gifted electoral expenditure received financial assistance with their election campaign (in that they received electoral expenditure for no cost), creating available funds can now be redirected towards obtaining an audit certificate.

<sup>6</sup> This is relevant to an assessment of cost reasonableness as it speaks to the volume of transactions under consideration. A high number of transactions increases the risk of inadvertent or accidental errors by the RPP/AE, which justifies the cost of an auditor to verify the disclosed data.

<sup>7</sup> This is relevant to an assessment of cost reasonableness as a RPP which obtains election funding or a refund of nomination deposits is being provided with additional financial means through which to pay for the audit certificate.

5. Whether the RPP (or the RPP to which an AE is associated) is entitled to other public funding (under the Act),<sup>8</sup>
6. How close the RPP and/or AE came to meeting or exceeding the expenditure cap for the election (including consideration of those entities which are aggregated in relation to expenditure caps under the Act),<sup>9</sup>
7. Whether the information in the ESR is likely to be covered by a single audit of a periodic return,<sup>10</sup> and
8. Any other contextual information which the decision-maker considers relevant to an assessment about the financial reasonableness of the requirement.

Each of these factors will attract a particular weighting, either for or against waiver (as indicated in the table below) which will contribute to an overall reasonableness assessment. This assessment will answer the question “is the cost of obtaining an audit certificate unreasonable, given the circumstances evident in the disclosure return?”

The following table outlines generally how each of the above circumstances contributes to the reasonableness assessment:

<b>Factor</b>	<b>Reasonable to grant waiver</b>	<b>Unreasonable to grant waiver</b>	<b>Weighting<sup>11</sup></b>
<b>Total value of electoral expenditure incurred?</b>	For a general election – Less than \$100,000 For a by-election – Less than \$10,000	For a general election - \$100,000 or more For a by-election - \$10,000 or more	15%
<b>Total value of gifted electoral expenditure received?</b>	For a general election or by-election – Less than \$1,000	For a general election or by-election – \$1,000 or more	10%
<b>Total number of individual transactions</b>	30 or less	More than 30	10%
<b>The RPP is not entitled to election funding, or nomination deposit refund.</b>	Yes	No	20%
<b>The RPP is not entitled to other public funding under the <i>Electoral Act 1992</i>?</b>	Yes	No	20%
<b>How close was the RPP to meeting or exceeding the electoral expenditure cap?</b>	There is a difference of over 20%	The RPP is within 20% of meeting the electoral expenditure cap.	20%

<sup>8</sup> This is relevant to an assessment of cost reasonableness as a RPP which obtains other public funding is being provided with additional financial means through which to pay for the audit certificate.

<sup>9</sup> This is relevant to an assessment of cost reasonableness as a RPP should reasonably expect to have to pay a cost to receive an audit certificate to ensure it is compliant with electoral laws, noting that the financial penalties they may otherwise be liable for are not insignificant.

<sup>10</sup> This is relevant to an assessment of cost reasonableness as a RPP may need to incur the costs of two audits, where one may suffice.

<sup>11</sup> Note that the weightings in this table are a guide only. There may be circumstances for each RPP or associated entity which necessitate a change in weighting for that audit waiver request.

Factor	Reasonable to grant waiver	Unreasonable to grant waiver	Weighting <sup>11</sup>
<b>The ESR information will not be duplicated by a single periodic return.</b>	No	Yes	5%

If an estimated cost for obtaining the audit certificate has been provided, then this must also be considered in the context of the above factors. If any additional contextual information not in the above table is considered, this must be documented. A Human Rights Impact Assessment must also be considered in making the decision.

## 2.2 Periodic return

When assessing a request to waive an audit certificate requirement for a periodic return, the following factors are to be considered:

1. Total value of all receipts during the reporting period,<sup>12</sup>
2. Total value of all amounts paid during the reporting period,<sup>13</sup>
3. Total value of all debts outstanding as at the end of the reporting period,<sup>14</sup>
4. The total number of individual transactions there are to be audited,<sup>15</sup>
5. Whether obtaining an audit certificate for the periodic return will save the RPP or AE money by also auditing the information in an election summary return,<sup>16</sup>
6. Whether the RPP (or the RPP to which an AE is associated) received any form of public funding under the Act, which could be used to pay for the costs of an audit certificate,<sup>17</sup>
7. When the RPP or AE last obtained an audit certificate for a periodic return,<sup>18</sup> and
8. Any other contextual information which the decision-maker considers relevant to an assessment about the financial reasonableness of the requirement.

Each of these factors will contribute to an overall reasonableness assessment. This assessment will answer the question “is the cost of obtaining an audit certificate unreasonable, given the circumstances evident in the disclosure return?”

<sup>12</sup> This is relevant to an assessment of cost reasonableness as it speaks to a RPP’s/AE’s financial capacity to pay the costs associated with obtaining an audit certificate.

<sup>13</sup> This is relevant to an assessment of cost reasonableness as it speaks to a RPP’s/AE’s financial capacity to pay the costs associated with obtaining an audit certificate.

<sup>14</sup> This is relevant to an assessment of cost reasonableness as it speaks to a RPP’s/AE’s financial capacity to pay the costs associated with obtaining an audit certificate.

<sup>15</sup> This is relevant to an assessment of cost reasonableness as it speaks to the volume of transactions under consideration. A high number of transactions increases the risk of inadvertent or accidental errors by a RPP/AE, which justifies the cost of an auditor to verify the disclosed data.

<sup>16</sup> This is relevant to an assessment of cost reasonableness as being able to save money on one audit certificate will increase the reasonableness of imposing a cost for another.

<sup>17</sup> This is relevant to an assessment of cost reasonableness as a RPP which obtains other public funding is being provided with additional financial means through which to pay for the audit certificate.

<sup>18</sup> This is relevant to an assessment of cost reasonableness as being able to save money on one audit certificate will increase the reasonableness of imposing a cost for another.

The following table outlines generally how each of the above circumstances contributes to the reasonableness assessment:

Factor	Reasonable to grant waiver	Unreasonable to grant waiver	Weighting <sup>19</sup>
<b>Total value of all receipts</b>	Less than \$20,000	\$20,000 or more	25%
<b>Total value of all amounts paid</b>	Less than \$30,000	\$30,000 or more	15%
<b>Total value of all debts outstanding</b>	Less than \$30,000	\$30,000 or more	10%
<b>Total number of individual transactions</b>	30 or less	More than 30	10%
<b>An audit certificate for the periodic return will not audit information disclosed in an ESR</b>	Yes	No	10%
<b>The RPP did not receive public funding during the reporting period.</b>	Yes	No	25%
<b>When was the last audit certificate for a periodic return obtained?</b>	Within the previous 4 reporting periods.	Not for the previous 4 reporting periods.	5%

If an estimated cost for obtaining the audit certificate has been provided, then this must also be considered in the context of the above factors. If any additional contextual information not in the above table is considered, this must be documented. A Human Rights Impact Assessment must also be considered in making the decision.

### 2.3 Requesting additional information

If additional information is required to enable a full assessment to occur, the information may be requested and be provided within 5 business days of the request (the due date must be stated on the request for additional information). Note that the requirement under this Policy and Procedure to make a decision within 10 business days of the request being made does not include any period where the ECQ is waiting for the RPP to provide additional information.

If a response is not provided by the stated due date (and no extensions have been granted), the ECQ may decide the request based on the information it has available at that time.

## **3. Deciding the request**

An officer allocated to assess the request must complete an assessment matrix, which outlines each of the factors in the above tables, and the weightings applied for the assessment. This matrix will then be provided to the relevant decision-maker (as per the Delegations in this Policy and Procedure), to make the decision.

The matrix will indicate whether the assessment is reasonable, uncertain, or unreasonable.

<sup>19</sup> Note that the weightings in this table are a guide only. There may be circumstances for each RPP or associated entity which necessitate a change in weighting for that particular audit waiver request.



If the assessment results in a 'reasonable' conclusion, the ECQ will generally grant the audit waiver request. The relevant officer (as per the Delegations in this Policy and Procedure) may make another decision on a case-by-case basis.

If the assessment results in a 'uncertain' conclusion, the matter will need to be considered on a case-by-case basis.

If the assessment results in a 'unreasonable' conclusion, the ECQ will generally refuse the audit waiver request. The relevant officer (as per the Delegations in this Policy and Procedure) may make another decision on a case-by-case basis.

#### **4. Advising the decision**

Once decided, the audit waiver applicant must be advised of the decision via formal letter, signed by the decision-maker. The letter must advise each of the factors considered in making the decision, as well as any additional information considered. The letter must also advise that the applicant may apply to the ECQ for an internal review of the decision within 28 days of the letter.

If a request is refused, the applicant has 28 days to obtain the audit certificate for the return.

#### **5. Review of decision**

Requests for internal review must be made in writing and may be emailed to [fad@ecq.qld.gov.au](mailto:fad@ecq.qld.gov.au). Any internal review must be conducted by an ECQ officer of greater seniority than the officer who made, or was otherwise involved in, the original decision.

Generally, internal reviews may take up to 28 working days to complete. If it appears that a longer period may be required, the applicant must be advised, along with an updated timeframe.

The audit waiver applicant will be advised of the outcome of the internal review in writing.

#### **6. Other matters relating to audit certificates**

##### **6.1 Audit certificate deferrals**

Returns which are given (lodged) without an audit certificate are taken to not have been lodged until such time as an audit certificate is provided.<sup>20</sup>

The EDS allows agents and financial controllers to "defer" the requirement to provide an audit certificate for 14 days. Using the deferral functionality does not, on its own, constitute an extension to the due date for the lodgement. A return which is subject to a deferral will not be considered lodged until the audit certificate is provided. If the audit certificate is only provided after the due date for the return, the ECQ may still pursue enforcement action (such as issuing a Penalty Infringement Notice) against the agent or financial controller.

If the deferral functionality is used, the ECQ will monitor compliance to ensure that an audit certificate is provided within that timeframe.

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<sup>20</sup> Section 310(4) of the *Electoral Act 1992*

## 6.2 Publishing returns

The EDS will treat returns in different ways, depending on the status of the audit certificate, in accordance with the following:

- If the agent or financial controller has requested a waiver of the audit certificate requirement – the corresponding return will not be viewable to the public;
- If the agent or financial controller has had a request for a waiver rejected – the corresponding return will not be viewable to the public, until such time as an audit certificate is provided. If the certificate is not provided, without reasonable explanation, within the 28 day period required by this Policy and Procedure, the ECQ may undertake to publish the return.
- If the agent or financial controller has requested a deferral of the audit certificate requirement, the return will not be published until such time as the certificate is provided. If the certificate is not provided, without reasonable explanation, within the 14 day deferral period, the ECQ may undertake to publish the return.

It is the ECQ's intention to review all these functionalities and make changes where appropriate.

## Delegations

1. If the assessment matrix returns a result of reasonable (using the weightings outlined in this Policy and Procedure), and the decision being made is to grant the audit certificate waiver, the matter may be decided by the Manager, FDC (or another position responsible for oversight of FDC, such as the Director, FDC, Assistant Electoral Commissioner, or Electoral Commissioner).
2. If the assessment matrix returns a result of uncertain, the request may be decided by the Director, Funding, Disclosure & Compliance (or another position responsible for oversight of FDC, such as the Assistant Electoral Commissioner, or Electoral Commissioner).
3. If the assessment matrix returns a result of unreasonable, or a decision is being made which is contrary to the assessment matrix, or using different weightings than those outlined in this Policy and Procedure, the request may be decided by the Director, Funding, Disclosure & Compliance (or another position responsible for oversight of FDC, such as the Assistant Electoral Commissioner, or Electoral Commissioner)

## Appendix 1 — Definitions

### Definitions

Term	Definition
<b>Audit certificate</b>	<p>A certificate from an auditor stating:</p> <ul style="list-style-type: none"> <li>• that the auditor was given full and free access at all reasonable times to the records related to a matter required to be disclosed in the return; and</li> <li>• the auditor examined the accounts and documents mentioned above that the auditor considered material for giving the certificate; and</li> <li>• the auditor received all the information and explanations the auditor asked for in relation to any matter required to be stated in the certificate, subject to the qualifications, if any, stated in the certificate; and</li> <li>• the auditor has no reason to think any statement in the declaration is not correct.</li> </ul>
<b>Audit waiver</b>	A waiver of the requirement to give an audit certificate with a periodic or election summary return.
<b>Auditor</b>	<p>An auditor who provides an audit certificate for a return must not be, nor have ever been, a member of a political party (under section 197 of the Act) and must have any of the following qualifications:</p> <ul style="list-style-type: none"> <li>• registration as an auditor under the Corporations Act;</li> <li>• membership of CPA Australia Ltd ACN 008 392 452 and an entitlement to use the letters 'CPA' or 'FCPA';</li> <li>• membership of the Institute of Public Accountants Ltd ACN 004 130 643 and an entitlement to use the letters 'MPA' or 'FIPA';</li> <li>• membership of Chartered Accountants Australia and New Zealand ARBN 084 642 571 and an entitlement to use the letters 'CA' or 'FCA'.</li> </ul>
<b>Election summary return</b>	A disclosure return that is required to be given within a specified timeframe after a State election or by-election.
<b>Periodic return</b>	A disclosure return that is required to be given within a specified timeframe after the end of a calendar-based reporting period.

## Appendix 2 — Regulatory Framework

- *Electoral Act 1992,*
- *Electoral Regulation 2013, and*
- *Human Rights Act 2019.*