

# Assessing Applications for Determination about Prohibited Donor Status Policy and Procedure

Version 2.0

**Approval**



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**Electoral Commissioner**

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## Version history

Version	Notes	Author	Date of Change
1.0A	Draft	Director Elections, Disclosure and Spatial	September 2018
1.0	Issued for use	Director Elections, Disclosure and Spatial	September 2018
1.1	Updated to comply with the <i>Human Rights Act 2019</i> and to reflect the ECQ's corporate identity requirements	Director, Funding, Disclosure and Compliance	January 2020
2.0A	Draft policy and procedure refresh	Director, Funding, Disclosure and Compliance	August 2022
2.0	Policy and procedure refresh	Director, Funding, Disclosure and Compliance	December 2022

## Review

This policy has been considered to ensure compatibility with the 23 protected rights under the *Human Rights Act 2019* and is deemed compatible.

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

## Guiding Principles

1. **Efficiency** – applications for determination will be processed as efficiently as possible, while balancing the need to obtain all relevant information.
2. **Consistency** – decisions regarding applications for determination (including the interpretation and application of legislation) will be consistent.
3. **Transparency** – the ECQ’s administration of the prohibited donor laws will be transparent, including through the provision of clear explanations for decisions made.
4. **Procedural fairness** – procedural fairness applies to any decision affecting the rights, interests, or reasonable expectations of a person in a direct or immediate way. Procedural fairness obligations are not regarded as a burden or impediment to an investigation as they provide a means of checking facts and identifying issues, as well as expose any potential weaknesses in evidence that has been collected.

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. This Policy and Procedure merely establishes the framework under which individual decisions can be made and does not make any decisions regarding the restriction or limitation of human rights. The human rights that any individual decision may limit are recognition and equality before the law and the right to take part in public life.

When individual decisions are made, regard will be given to:

- the nature of the human right/s affected by the decision,
- 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, and
- weigh the balance between the importance of the purpose of imposing the limitation, against the importance of preserving the human right/s.

## Purpose

To provide guidance to the Electoral Commission of Queensland’s (ECQ) staff in managing applications for determination about a person’s status under the prohibited donor provisions of the *Electoral Act 1992* (the Act) and the *Local Government Electoral Act 2011* (the LGEA).

## Legislative Framework

A person may apply to the Electoral Commissioner for a determination that a person (being either the applicant themselves, or another entity) is not a prohibited donor.<sup>1</sup> Applications must be in writing and be supported by enough information to enable the Electoral Commissioner to make a decision about the application.<sup>2</sup> The Electoral Commissioner may delegate the power to decide such applications to staff of the ECQ.<sup>3</sup>

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<sup>1</sup> Section 277(1) of the *Electoral Act 1992*, Section 113D(1) of the *Local Government Electoral Act 2011*

<sup>2</sup> Section 277(2) of the *Electoral Act 1992*, Section 113D(2) of the *Local Government Electoral Act 2011*

<sup>3</sup> Section 17(4) of the *Electoral Act 1992*

In this Policy and Procedure, applications for determinations are referred to as a “PD Determination Application”, while applications for internal review are referred to as a “Internal Review Application”.

Once a PD Determination Application is received, the decision-maker may decide to:<sup>4</sup>

- make a determination that the person is not a prohibited donor, or
- not make a determination.

To make a determination, the decision-maker must be satisfied the person about which a PD Determination is being sought is not a prohibited donor.<sup>5</sup> Decisions about whether to make a PD Determination are decided on a case-by-case basis, based on the relevant facts and circumstances. If a PD Determination is made, the determination remains in effect for one year, unless revoked earlier.<sup>6</sup>

If a decision is made to not make a determination, the applicant must be provided with an information notice about the decision.<sup>7</sup>

The Electoral Commissioner (or delegate) may revoke a determination by giving a written notice of revocation to the entity about which the determination relates (as well as the applicant, if the applicant is a different person).<sup>8</sup> Such a revocation must include or be accompanied by an information notice about the revocation decision.<sup>9</sup>

The Electoral Commissioner must maintain a register of determinations made, including any revocations made (the Register of Determinations).<sup>10</sup>

A person who has been given an information notice (i.e. a person who has been informed that a decision-maker has decided to not make a PD Determination, or has had a PD Determination revoked), may apply for an internal review about the decision.<sup>11</sup> Internal Review Applications must be made within 20 business days after the person is given the information notice about the decision.<sup>12</sup>

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<sup>4</sup> Sections 277(3) and (4) of the *Electoral Act 1992*, sections 113D(3) and (4) of the *Local Government Electoral Act 2011*

<sup>5</sup> Section 277(3) of the *Electoral Act 1992*, section 113D(3) of the *Local Government Electoral Act 2011*

<sup>6</sup> Section 277(5) of the *Electoral Act 1992*, section 113D(5) of the *Local Government Electoral Act 2011*

<sup>7</sup> Section 277(4)(b) of the *Electoral Act 1992*, section 113D(4)(b) of the *Local Government Electoral Act 2011*

<sup>8</sup> Section 278 of the *Electoral Act 1992*, section 113E(2) of the *Local Government Electoral Act 2011*

<sup>9</sup> Section 278(2) of the *Electoral Act 1992*, section 113E(2) of the *Local Government Electoral Act 2011*

<sup>10</sup> Section 279 of the *Electoral Act 1992*, section 113F of the *Local Government Electoral Act 2011*

<sup>11</sup> Sections 374 and 375 of the *Electoral Act 1992*, section 113G of the *Local Government Electoral Act 2011*

<sup>12</sup> Section 376(2) of the *Electoral Act 1992*. In the unlikely event a person is not given an information notice (when they are entitled to receive one), the person has 20 business days to make an Internal Review Application from the day they otherwise become aware of the decision.

# Policy

## 1. Interpreting the definition of ‘prohibited donor’

A ‘prohibited donor’ means any of the following:<sup>13</sup>

- A property developer, and
- An industry representative organisation, a majority of whose members are property developers.

A ‘property developer’ is ‘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, and with the ultimate for purpose of sale or lease of the land for profit.’<sup>14</sup>

The ECQ’s view as to the interpretation and application of this definition is outlined in the below table:

Element of definition	The ECQ’s approach to interpretation
<b>Corporation</b>	The following elements apply for determining whether a corporation is itself a property developer.
A corporation	Only corporations are captured by the definition of ‘property developer’ in the first instance. Individuals, other entity types, or other corporations (i.e. corporations who do not engage in a business, or make any relevant planning applications) may be captured through the definition of ‘close associate’, or as an ‘industry representative organisation’.
engaged in a business that regularly involves the making of	<p>Consideration must be given to the character of the business in which the corporation (which is the subject of the PD Determination Application) is engaged. Consideration must be given to more than just the actual number of transactions (i.e. relevant planning applications) made.<sup>15</sup> The question about whether a business involves “regularly making” relevant planning applications is a question of fact dependent upon matters other than the mere number of applications actually made.<sup>16</sup></p> <p>In other words, as long as the making of relevant planning applications can be considered an ordinary component of the business being engaged in by the corporation (in the abstract), it is not necessary to examine whether there are in fact “regular” relevant planning applications being made.</p>

<sup>13</sup> Section 273 of the *Electoral Act 1992*, section 113 of the *Local Government Electoral Act 2011*

<sup>14</sup> Section 273(2) of the *Electoral Act 1992*, section 113(2) of the *Local Government Electoral Act 2011*

<sup>15</sup> *Forge Group Power Pty Ltd v General Electric International Inc* (2016) 305 FLR 101, cited with approval in *Electoral Commission of Queensland v Palmer Leisure Australia Pty Ltd* [2022] QSC 169, 35-38

<sup>16</sup> *Electoral Commission of Queensland v Palmer Leisure Australia Pty Ltd* [2022] QSC 169, 38

	<p>The ECQ will consider the holistic nature of the business activities being engaged in by the corporation when deciding a PD Determination Application.</p> <p>A corporation will continue to be a property developer for any period of time it continues to engage in such a business as a going concern. A corporation/business which has previously made relevant planning applications, but has no intention of doing so in future, may still be considered to be “engaged in” such a business.</p> <p>Persons who are seeking a PD Determination in this situation will need to demonstrate to the ECQ that the nature of the business has transformed in such a way as to be considered a business which would not, in the ordinary course, require relevant planning applications to be made.</p>
relevant planning applications	The definition of what is a ‘relevant planning application’ is outlined in section 273(5) of the Act, and section 113(5) of the LGEA.
by or on behalf of the corporation	<p>When determining whether a relevant development application has been made “by or on behalf of” a corporation, the ECQ will consider the nature of the relationship between the person who submitted the development application, and the corporation for which a PD Determination is being sought.</p> <p>Generally, if the relevant planning application is made by an individual who is a director or other office holder, or shareholder of a corporation, the ECQ will take the application to be made “on behalf of” the corporation, unless it can be demonstrated otherwise.</p> <p>Where one corporation is making a relevant planning application, and the land being developed is owned by another corporation with some commonalities (e.g. same or similar directors / shareholders, same corporate group, etc.), the ECQ will take the application as being made “on behalf of” the corporation which owns the land. The extent to which these commonalities are determinative will be decided on a case-by-case basis.</p> <p>Development applications made by professional service providers (e.g. town planners, consultants, engineers, etc.) on behalf of their clients will be taken to be made “by or on behalf” of their client, and not the town planner / consultant themselves.</p>
in connection with the residential or commercial development of land	The ECQ will determine the nature of the development, taking into account the holistic nature of the development applications.

with the ultimate purpose of the sale or lease of the land for profit	<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 its business is to be disregarded, unless the business involves the sale or lease of a substantial part of the premises.<sup>17</sup></p> <p>In this context, “substantial part of the premises” means a ‘material’ or ‘considerable’ portion of the premises. The ECQ does not adopt a strictly mathematical approach when determining such matters.</p> <p>But for this exemption, the ECQ will generally take all relevant development applications to be “for the ultimate purpose” of the sale or lease of the land for profit, unless it can be demonstrated otherwise.</p>
<b>Close associate</b>	The following elements apply for determining whether a person/entity is a close associate of a corporation.
Related body corporate of the corporation.	When determining whether one body corporate is related to another body corporate, the ECQ must apply the test in section 50 of the <i>Corporations Act 2001</i> (Cth) (the Corps Act). <sup>18</sup> Sections 46-50AA of the Corps Act may also be applicable, to the extent they assist in understanding and applying section 50.
Director or other office holder of the corporation.	<p>When determining whether a person is a director or other office holder of a corporation, the ECQ must apply the test in section 9 of the Corps Act.<sup>19</sup> Only individuals can be directors or officer holders of a corporation. Shareholders are not considered officers of a corporation.</p> <p>All directors and secretaries who are registered with the Australian Securities and Investments Commission will be close associates of the corporation to which they are appointed.</p> <p>If the ECQ believes that other persons may be acting as directors or other officers of a corporation, and such a matter is relevant to the PD Determination Application, the ECQ may seek further information.</p>
A person with more than 20% of the voting power in the corporation or a related body corporate of the corporation.	<p>When determining whether a person has more than 20% voting power in a corporation, the ECQ must apply the test in section 610 of the Corps Act.<sup>20</sup></p> <p>The provision applies to all persons and entities, not just individuals.</p>

<sup>17</sup> Section 273(3) of the *Electoral Act 1992*, section 113(3) of the *Local Government Electoral Act 2011*

<sup>18</sup> Section 273(5) of the *Electoral Act 1992* and section 113(4) of the *Local Government Electoral Act 2011* require consideration of section 9 of the *Corporations Act 2001* (Cth), which then refers to section 50 the *Corporations Act 2001* (Cth).

<sup>19</sup> Section 273(5) of the *Electoral Act 1992* and section 113(4) of the *Local Government Electoral Act 2011*

<sup>20</sup> Section 273(5) of the *Electoral Act 1992* and section 113(4) of the *Local Government Electoral Act 2011*



A spouse of any of the above.	<p>The term 'spouse' is defined in the <i>Acts Interpretation Act 1951</i> (the AIA) to include "de facto partner and civil partner".<sup>21</sup> A de facto partner is "either 1 of 2 persons who are living together as a couple on a genuine domestic basis but who are not married to each other or related by family."<sup>22</sup> A civil partner means "a person who is a party to a civil partnership", which in turn is a "civil partnership registered under the <i>Civil Partnerships Act 2011</i>".<sup>23</sup></p> <p>If the status of a relationship between two individuals is relevant to a PD Determination Application, the ECQ will examine the nature of the relationship.</p>
If the corporation (or a related body corporate of the corporation) is a stapled entity in relation to a stapled security – the other stapled entity in relation to the stapled security.	A stapled structure is an arrangement where two or more entities that are commonly owned (at least one of which is a trust) are bound together, such that they cannot be bought or sold separately. <sup>24</sup>
If the corporation is a trustee, manager or responsible entity in relation to a unit trust – a person who holds more than 20% of the units in the trust.	This provision applies to all persons and entities, not just individuals.
If the corporation is a trustee, manager or responsible entity in relation to a discretionary trust – a beneficiary of the trust.	This provision applies to all persons and entities, not just individuals.
<b>Industry representative organisation</b>	The following elements apply for determining whether a person/entity is an industry representative organisation.
Industry representative organisation	The term 'industry representative organisation' is not defined in either the Act or the LGEA. The ECQ will apply the term based on its ordinary and commonly understood meaning, being organisations established and funded by businesses that operate in a specific industry. Unions will generally not be captured by this definition but may fall within the definition of 'property developer' or 'close associate'.

<sup>21</sup> Schedule 1 of the *Acts Interpretation Act 1954*

<sup>22</sup> Section 32DA of the *Acts Interpretation Act 1954*

<sup>23</sup> Schedule 1 of the *Acts Interpretation Act 1954*

<sup>24</sup> [https://treasury.gov.au/sites/default/files/2019-03/FINAL\\_Stapled\\_Structures\\_Integrity\\_Package.pdf](https://treasury.gov.au/sites/default/files/2019-03/FINAL_Stapled_Structures_Integrity_Package.pdf)



In some instances, it may be necessary to make a decision in instances where a corporation has historically engaged in a business which involves the regular making of relevant planning applications but is not expected to do so in future.

Generally, the ECQ may distinguish between the 'application or development' phase of a business, and the 'leasing' phase of a business, particularly where the corporation intends on engaging in long-term leasing of the land it develops. However, such a difference will only be relevant to a decision on the PD Determination Application where there is no real prospect the corporation (the subject of the PD Determination Application) will repeat or otherwise re-engage the application/development phase of its business. Applicants have the burden of demonstrating that it meets these criteria.

However, the ECQ considers that a corporation engaged in a business which involves the regular making of relevant planning applications is still engaged in that business while selling (or attempting to sell) the property it developed.

## **2. Making a PD Determination Application**

Any person may make a PD Determination Application about their own, or another person's prohibited donor status at any time. The ECQ strongly prefers that the applications are made on the ECQ-supplied form, available on the ECQ's website. Completing the ECQ's form (and providing the supporting documentation referenced in the form) increases the likelihood of the ECQ obtaining all relevant information and documentation in the first instance and will expedite the determination process.

The ECQ aims to have PD Determination Applications finalised within 30 days (excluding any days for which the ECQ is waiting for information from the applicant). The ECQ cannot guarantee that PD Determination Applications made in the lead-up to an election will be finalised in time to allow for donations to be made before election day.

Where a PD Determination Application does not contain complete information, or requires clarification in some other way, the ECQ will contact the applicant and seek the additional information or documentation. This request will include a due date. Should the applicant not respond by that due date (and an extension has not been granted), a decision on the PD Determination Application may be made without further consultation.

If a person has submitted a PD Determination Application in respect of another entity (to which they are not related or acting on behalf of), the ECQ will notify that other entity and invite submissions about that entity's status. In some situations, it may not be possible to obtain enough information to allow a PD Determination to be made, without that entity's cooperation and assistance.

## **3. Subsequent PD Determination Applications**

Once the decision-maker makes a PD Determination, the applicant or the entity the subject of the Determination may seek to have a new Determination made before the original Determination expires. To facilitate this, the ECQ maintains a streamlined subsequent PD Determination process. This is accessed via use of the Application for a Subsequent Determination that a Person is not a Prohibited Donor form.

Access to this streamlined process must be balanced against the integrity of the prohibited donor framework, and the need for the ECQ to ensure that decisions are appropriate and based on the best information available. As such, to be eligible for the streamlined subsequent determination process:

- the applicant must be the entity who has had a previous PD Determination made (or related to that entity),
- the subsequent application must be made before the previous PD Determination expires, and
- the entity for which a PD Determination is being sought must not have utilised the streamlined process more than twice in the previous three years.

Persons who wish to have a PD Determination made that are not eligible for the streamlined subsequent process must submit a PD Determination Application form.

#### **4. Assessing a PD Determination Application**

The ECQ will generally conduct its own checks with third party sources to ensure the accuracy of the information in the PD Determination Application, and to ensure the ECQ has a full understanding of the person's circumstances. Where conflicting or incomplete information is identified, the ECQ will offer the applicant (or other interested parties) the opportunity to comment on such findings before a decision is made.

Should a person fail to respond to such an opportunity, a decision on the PD Determination Application may be made without further consultation.

#### **5. Maintaining the Register of Determinations**

The ECQ maintains the Register of Determinations on the ECQ's website. The information contained in the Register includes:

- a reference number,
- the date the PD Determination was made,
- the date the PD Determination expires (one year from the date of PD Determination, unless revoked earlier),
- the name of the entity for which a PD Determination was made, and
- the name of the person who actually made the PD Determination Application (referred to as the contact person on the PD Application form).

#### **6. Internal reviews**

Internal Review Applications must be made in the approved form within 20 business days after the applicant has received the information notice about the decision and be supported by enough information to enable the Electoral Commissioner (or delegate) to decide the Application.<sup>25</sup> The Electoral Commissioner has the discretion to extend the period for applying for an internal review.<sup>26</sup> However, such requests will generally only be granted if justified in the circumstances.

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<sup>25</sup> Section 376(1) of the *Electoral Act 1992*

<sup>26</sup> Section 376(3) of the *Electoral Act 1992*

Internal reviews will not be decided by the original decision-maker, or any other officer of less seniority than the original decision-maker.<sup>27</sup> The decision-maker for the internal review may decide to:<sup>28</sup>

- confirm the original decision,
- amend the original decision (e.g. confirm the original outcome, with more detailed explanations or justifications), or
- substitute another decision for the original decision.

A decision on the Internal Review Application must be made within 30 business days of the ECQ receiving the Application.<sup>29</sup> To finalise the internal review process, the decision-maker must give the applicant a notice about the review decision (a Review Notice).<sup>30</sup> If the decision-maker's decision is not the decision being sought by the applicant, the Review Notice must state:<sup>31</sup>

- the day the notice is given to the applicant,
- the reasons for the decision,
- the applicant may appeal against the decision with 28 days of the above date,
- how to appeal, and
- the applicant may apply to the court for a stay of the decision.

## Procedure

### 1. Receiving and acknowledging PD Determination Applications

- 1.1. Form of Application: Persons may lodge their PD Determination Application in writing via email to [fad@ecq.qld.gov.au](mailto:fad@ecq.qld.gov.au), or via post. Anonymous PD Determination Applications will not be accepted.
- 1.2. Acknowledgement of receipt: PD Determination Applications submitted via email will receive an auto-reply confirming receipt, while Applications submitted via post will be sent an acknowledgement of receipt by email (if available), or post if required.
- 1.3. Allocation of Applications: PD Determination Applications will be allocated to an officer within the Funding and Disclosure (FAD) team by the Manager, Funding, Disclosure, and Compliance (FDC).
- 1.4. Record-keeping: The FAD officer must ensure all records pertaining to the PD Determination Application, including the application documents and any subsequent correspondence, are stored in the appropriate location (digitally or physically).

### 2. Reviewing the PD Determination Application

- 2.1. Contact with the subject: If the PD Determination Application is being made by someone who is not associated with the entity for which they would like a Determination, the ECQ will contact the subject entity and invite them to complete their own PD Determination

<sup>27</sup> Section 376(4) of the *Electoral Act 1992*

<sup>28</sup> Section 378(1)(b) of the *Electoral Act 1992*

<sup>29</sup> Section 378(1) of the *Electoral Act 1992*

<sup>30</sup> Section 378(1)(c) of the *Electoral Act 1992*

<sup>31</sup> Section 378(2) of the *Electoral Act 1992*

Application, or at least confirm the accuracy of the information contained within the PD Determination Application. This is necessary to ensure that the person who is most knowledgeable about an entity's activities has an opportunity to provide information relevant to the application process.

2.1.1. Deciding a PD Determination Application: If the subject entity does not wish to submit a PD Determination Application, or otherwise attest to the accuracy or completeness of the information in the original PD Determination Application, the decision-maker may decide to finalise the matter at this point. Such a decision must only be considered if there is doubt about the accuracy or completeness of the information in the PD Determination Application, and it cannot be verified or completed by other means. All decisions must be recommended and made on a case-by-case basis.

2.2. Verify with third party information: Once a PD Determination Application has been allocated, the FAD officer is to verify certain information with third parties, as appropriate. This may include:

- Director, office holder, and shareholder information,
- Landholding information,
- Planning application information, and/or
- Any other information which can be verified from third parties which is relevant to the decision to be made.

2.2.1. Collecting information: While the ECQ will attempt to collect as much relevant information as possible through online portals, etc., in some instances it may be necessary to directly contact individual agencies. If this is necessary, additional time may be required to finalise the PD Determination Application.

2.3. Collect information from the applicant: If it is identified that additional or clarifying information is required, the applicant is to be given the opportunity to review their PD Determination Application and submit additional information in writing. This request must contain a due date and advise the applicant that if a response is not provided by that due date, the decision-maker may finalise the PD Determination Application process.

2.3.1. This step should be repeated as required until all necessary information is collected, and the decision-maker has sufficient information to make a decision, or the applicant has been given sufficient opportunity to provide the necessary information.

### **3. Recommending a decision**

3.1. Recommendation: Once all information has been obtained, the FAD officer will collate all information in a Briefing Note to the decision-maker. This Briefing Note must set out the following:

- A recommendation as to whether the decision-maker can be satisfied that the subject entity is not a prohibited donor.

- The original PD Determination Application (as an attachment), including any other subsequent correspondence which contains information relevant to supporting the recommended decision.
- A brief history of previous PD Determinations and decisions about the subject entity.
- The table of legislative elements (refer to Pages 3 – 6 of this Policy and Procedure), with the second column replaced with the particular circumstances of the subject entity.
- An outline of historical gifts in the Electronic Disclosure System (EDS), including the value of any unreconciled gifts.<sup>32</sup>
- If the recommendation is for the decision-maker to make a PD Determination – a letter (to be signed by the decision-maker) to the applicant (and the subject entity, if necessary) advising of the decision.
- If the recommendation is for the decision-maker to refuse to make a PD Determination – a letter (to be signed by the decision-maker) to the applicant (and the subject entity, if necessary), advising of the decision and including the information necessary to constitute an information notice.<sup>33</sup>

**3.2. Letter to applicant (and subject entity) if a PD Determination is recommended:** The letter to the applicant and subject entity should state:

- a determination has been made that the person is not a prohibited donor under the Act and the LGEA,
- the determination was made on the basis the information provided during the application process was true and correct,
- the application remains in force for one year (from the date of the letter), unless revoked earlier,
- should the person's/entity's circumstances change in a way that could reasonably be expected to cause the Electoral Commissioner (or delegate) to cease being satisfied that they are not a prohibited donor, that they should notify the ECQ as soon as possible,<sup>34</sup> and
- the determination will be published on the Register of Determinations on the ECQ's website.

**3.3. Information notice:** If a recommendation to not make a PD Determination is being made, the letter which accompanies the Briefing Note must:

- confirm that the Electoral Commissioner (or delegate) has decided to not make a PD Determination,
- identify the legislative head of power being exercised, including section numbers as appropriate,
- clearly state the facts upon which the decision is based,

<sup>32</sup> This is for informational purposes only. The existence or otherwise of disclosed gifts is not relevant to the decision about whether a PD Determination should be made.

<sup>33</sup> Refer section 197 of the *Electoral Act 1992* and section 106 of the *Local Government Electoral Act 2011*, and paragraph 3.3 of this Policy and Procedure.

<sup>34</sup> At a minimum, this should be a generic statement for all applicants. However, if there are any specific matters which the ECQ should be notified of, this should be expressly stated.

- clearly state that the decision is based on the facts outlined above, including any extra commentary or context for the decision,
- include a statement that the letter constitutes the information notice required to be given under section 277 of the Act and section 113D of the LGEA,
- that the person (who is to receive the notice) may apply to the Electoral Commissioner for a review of the decision within 20 business days after the date the notice is given, and
- how to make such an application.

3.4. Notification of outcome: Once the decision-maker makes a decision, the FAD officer will be notified and provided with a copy of the executed Briefing Note to be stored with the other records. The applicant will be provided with a signed copy of the letter advising the outcome.

#### **4. Updating the Register of Determinations**

4.1. If the decision-maker makes a PD Determination, the FAD officer who made the recommendation must ensure the Register of Determinations is updated (as soon as practicable) on the ECQ's website. The information to be included in the Register of Determinations is the information in Paragraph 5 of the above Policy.

#### **5. Expiration and revocation of PD Determinations**

5.1. Notification of expiration: The ECQ will notify a entity which is the subject of a Determination that their determination will expire within 45 days before the legislated expiration date.

5.2. Revocation of determination: If information becomes available which suggests that a PD Determination should be revoked, such a recommendation will be made to the decision-maker.

5.2.1. If the information did not originate from the entity the subject of the PD Determination, then the entity should be given the opportunity to respond before a recommendation is made. However, if there is reason to believe that an urgent revocation is necessary, then such a recommendation should be made as soon as possible, irrespective of whether the entity has been given an opportunity to respond.

5.3. Revocations and the Register of Determinations: If a revocation is made, this will be reflected in the Register of Determinations by the expiry date (i.e. the expiry date of the PD Determination will be amended to reflect the date of revocation).

#### **6. Subsequent PD Determination applications**

6.1. Assessing eligibility: If a subsequent PD Determination Application is received, the ECQ may assess the eligibility of a person to access the streamlined determination process. If

eligibility is not confirmed, the ECQ will invite the applicant to submit a more comprehensive application.

- 6.2. Scope: If an eligible subsequent PD Determination Application is received, all provisions of this Policy and Procedure will apply. However, the ECQ will only be required to examine the information necessary to establish whether there have been any material changes to the entity's status since the previous Determination was made.<sup>35</sup>

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<sup>35</sup> In this context, 'material changes' means any changes which may be relevant to whether a new PD Determination can be made.



## Delegations

1. The Assistant Commissioner may make a decision in respect of a PD Determination Application. This includes a decision to refuse to issue a PD Determination, and a decision to issue a PD Determination.
2. The Director, Funding, Disclosure and Compliance may also make a decision in respect of a PD Determination Application, but only in instances where the Assistant Commissioner is unable to do so (e.g. due to unavailability, conflict of interest, etc.), or has delegated decision-making authority in writing.
3. The Electoral Commissioner may make a decision to extend a deadline for application for internal review.
4. The Assistant Electoral Commissioner may decide to revoke a previously made PD Determination.
5. The Manager, Funding, Disclosure and Compliance (including higher-level officers with oversight of Funding, Disclosure and Compliance) may make decisions in respect of progressing a PD Determination Application.

## Appendix 1 — Regulatory Framework

- *Acts Interpretation Act 1954*, section 32DA
- *Corporations Act 2001* (Cth)
- *Electoral Act 1992*, Part 11, Division 8, Subdivision 4
- *Local Government Electoral Act 2011*, Part 6, Division 1A