

DEFINITION OF GIFTS AND LOANS

This fact sheet relates to candidates, registered political parties, associated entities, third parties and donors who make or receive gifts or loans, or incur electoral expenditure, towards a State election or by-election.

What is a gift?

Under section 201, **gift** is the disposition of property, or provision of a service, by a person to another person, for no consideration or inadequate consideration. A **non-monetary gift** (or gift-in-kind) is a gift of any goods or service other than money.

A gift includes:

- an amount given to an election participant including registered political parties, candidates, other third parties or associated entities
- an amount of electoral expenditure gifted to a participant in an election
- an amount (other than a loan) paid to or for the benefit of a registered political party by a federal or interstate branch or division of the other entity or a related political party (this includes gifted electoral expenditure)
- an amount of uncharged interest, or an amount forgiven, on a loan
- the part of a fundraising contribution that exceeds \$200; and
- an amount paid, or service provided, by a person to a registered political party under a sponsorship arrangement, or
- an amount given to a third party or another donor to enable them to make a gift in support of a candidate or a registered political party.

A gift does not include:

- disposition of property under a will
- fundraising contributions of \$200 or less, or the first \$200 of a fundraising contribution that exceeds \$200

- amounts paid for a person's membership or affiliation with a registered political party
- a compulsory levy imposed on elected members under their political party's constitution
- an amount transferred to an individual from funds held jointly by that individual and their spouse, or
- provision of volunteer labour or use of a volunteer's vehicle or equipment.

What is a loan?

Under section 197, a **loan** is any of the following provided by a person or entity, other than a financial institution or by use of a credit card. It may be:

- an advance of money
- provision of credit or another form of financial accommodation
- payment of an amount for, on behalf of, or at the request of, an entity, if there is an express or implied obligation to repay the amount, or
- another transaction that is in effect a loan of money.

A loan is considered a gift when it is made for no consideration or inadequate consideration.

Original source of an indirect gift or loan

Under section 205A, the original source of a gift or loan is the person or entity that gives the gift or loan for the main purpose of enabling (directly or indirectly) the *first* recipient (donor), to make a gift or loan to another person, the *ultimate* recipient.

The relevant particulars of the original source of the gift or loan, as well as those of the donor, must be disclosed in returns to the ECQ:

- For an unincorporated association: the names and addresses of the members of the executive committee (however described) of the association; or
- For a trust fund or foundation: the names and addresses of the trustees of the fund or the foundation, or the title or other description of the trust fund or the name of the foundation, or
- Otherwise: the name and address of the entity.

Volunteer labour

The volunteer labour of campaign workers, or use of a volunteer's vehicle or equipment, is not considered a political donation or gift. However, if a person provides a service that they are normally engaged in on a commercial basis at a reduced or no cost, that would be considered a gift and must be disclosed.

Example: A campaign volunteer, who also operates a printing business, prints 100 flyers in support of the campaign and gives them to a candidate at no cost. The 100 flyers is a gift that must be included in a disclosure return and must state the normal commercial value of the service provided.

Gifts given in a private capacity

Gifts made in a private capacity for a candidate's personal use are not considered to be political donations. Should any part of the gift be used at some later time for an electoral purpose, that part will be considered a political donation that was accepted at that later time and must be disclosed in the EDS.

The person who made the gift is not required to provide the ECQ with a return about the gift; however, the recipient of the gift must provide details about the gift in their disclosure return.

Transfer of funds from a joint bank account

A candidate may pay an amount from their own personal funds into a State campaign account for use in their election campaign. This is considered **self-funding** and there is no limit on the amount that can be transferred from personal funds.

Amounts transferred from a **joint bank account** held by a candidate and their spouse (which includes a de facto or civil partner) are taken to be amounts contributed from the candidate's own funds and are not considered a gift. These amounts are not required to be disclosed in the EDS and they will not be subject to donation caps (once donation caps commence on 1 July 2022).

Note: Self-funding and joint funds cannot be used as a way to conceal gifts that are otherwise not permitted, e.g. gifts from property developers, or amounts that would otherwise be subject to caps. Significant penalties apply for circumventing electoral laws.

Anonymous gifts

Under section 271, it is unlawful for a candidate, or person acting on behalf of a candidate, to receive gifts equal to or more than \$200, unless:

- the name, address and other required details of the giver are known; or
- at the time the gift is made, the person receiving the gift has no grounds to believe the name and address given are not the true name and address of the third party.

It is unlawful for a registered political party, or a person acting for a registered political party, to receive gifts equal to or more than \$1,000, unless:

- the name, address and other required details of the giver are known; or,
- at the time the gift is made, the person receiving the gift has no grounds to believe the name and address given are not the true name and address of the third party.

An amount equal to the amount or value of an anonymous gift is payable to the State.

Gifts of foreign property

Under section 270, it is unlawful for a candidate or registered political party, or a person acting on their behalf, to receive a gift of foreign property.

The status of property as Australian or foreign is decided by reference to the position of the property immediately before the gift or transfer took place. Gifts of Australian property acquired in exchange for foreign property remain foreign property.

An amount equal to the amount or value of a foreign gift is payable to the State unless the gift is returned within six weeks; in which case, the foreign gift must be included in the candidate's disclosure return with a notation that the gift was returned.

Prohibited donors

Under part 11, division 8, subdivision 4, it is prohibited in Queensland for a property developer, or an industry organisation representing property developers, to make a political donation or gift for the benefit of a political party, an elected member or councillor, a candidate in an election or another entity.

A political donation or gift can be monetary or non-monetary, or a service provided at no or below cost. This includes, but is not limited to, broadcasting an advertisement, publishing a journal, publishing an advertisement on the internet, displaying an advertisement, or the cost of producing of an advertisement or material, and distributing material.

All candidates, political parties, associated entities, third parties and donors should remain aware of what constitutes a gift or political donation from a prohibited donor and ensure that they are not a conduit for unlawful political donations or gifts. Significant penalties apply for donors and recipients of unlawful political donations, including fines, prosecution and recovery of amounts as a debt to the State.

More information on the Prohibited Donors Scheme (PDS) is available on the [ECQ website](#).

Disclosure of gifts and loans

All gifts and loans have disclosure obligations for donors and recipients. Donors and recipients of gifts and loans should familiarise themselves with these definitions and requirements and must ensure their donors are made aware of their obligations.

For more information about the disclosure requirements, refer to [Fact sheet 3 - Disclosure of gifts and loans](#).