

ALL ELECTION PARTICIPANTS

Definition of gifts, loans and political donations

Unless otherwise stated, all references to legislation are to the *Electoral Act 1992* (EA). The information in this fact sheet does not replace legislation. If you are concerned about your circumstances, you should seek independent legal advice.

This fact sheet relates to candidates, registered political parties, associated entities, third parties and donors who make or receive gifts or loans.

Generally, any gifts or loans made to or by these election participants must be disclosed.

It is important for election participants (including donors) to familiarise themselves with the definitions of gifts, loans and political donations to ensure they comply with disclosure laws and donation caps.

There is a difference between an ordinary gift or loan and a political donation. Disclosure obligations apply to all three: gifts, loans and political donations.

What is a gift?

A **gift** is a transfer of money, property or a service given without receiving something of equal or adequate value in return.

A **non-monetary gift** (or gift-in-kind) is a gift of any goods or services other than money.

A gift includes:

- money given to an election participant
- services provided at no or below cost
- electoral expenditure gifted to an election participant
- uncharged interest or an amount forgiven on a loan
- the part of a fundraising contribution that exceeds \$200
- an amount (other than a commercial loan) given to a registered political party by a federal or interstate branch or division or by a related political party
- an amount paid or service provided to a registered political party under a sponsorship arrangement.

A gift does **not** include:

- property transferred under a will
- a fundraising contribution of \$200 or less, or the first \$200 of a larger fundraising contribution
- membership fees paid to a registered political party
- an amount transferred from an individual's own funds (e.g. from a personal bank account) to the individual's own state campaign bank account

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- an amount contributed from an account an individual holds jointly with their spouse (this does **not** include amounts given to the spouse by a prohibited donor) to the individual's own state campaign bank account
- volunteer labour or incidental or ancillary use of a volunteer's vehicle or equipment
- gifts made in a private capacity for an individual's personal use, unless the gift is used for an electoral purpose.

What is a fundraising contribution?

A fundraising contribution is an amount paid as an entry fee or other payment entitling someone to participate in or benefit from a fundraising venture or function.

An example of a fundraising contribution includes a raffle ticket or an amount paid for an item at a fundraising auction.

The first \$200 of a fundraising contribution from a single donor may be deposited into a state campaign bank account.

If the same donor makes a fundraising contribution of more than \$200, the excess amount must not be placed in a campaign bank account unless a donor statement (defined below) is obtained.

What is gifted electoral expenditure?

Please see [Fact sheet 34](#) for the definition of gifted electoral expenditure.

Volunteer labour

Volunteer labour is generally not considered a gift. Even so, if a person provides a service that they normally provide on a commercial basis at a reduced or no cost, that would be considered a gift.

EXAMPLE

A campaign volunteer who also operates a printing business prints 100 flyers and gives them to a candidate at no cost. The flyers are a gift and could also be a political donation.

Gifts given in a private capacity

Gifts made in a private capacity for an individual's personal use are not gifts for electoral purposes unless any part of the gift is used for an electoral purpose. The part used for an electoral purpose would be considered a gift.

Sponsorship arrangements

Sponsorship arrangements are defined in section 200A of the EA. The arrangement is between a person (the sponsor) and a registered political party.

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A sponsorship arrangement:

- establishes a relationship of sponsorship, approval or association between the sponsor and the party (whether or not for commercial gain)

or

- confers a right on the part of the sponsor to associate the sponsor or the sponsor's goods or services with one or more of the following
 - the party
 - a fundraising or other venture or event of the party
 - a program or event associated with a venture or event of the party.

Under the arrangement, it does not matter whether the sponsor is entitled to:

- be acknowledged as a sponsor
- advertising or marketing rights
- supply the sponsor's goods or services
- another benefit (such as entry to a particular event or function).

Funds from a joint bank account

A candidate or third party individual may pay an amount from their personal funds into their own state campaign bank account. This is considered **self-funding** (i.e., not a gift), and there is no limit on the amount that can be transferred from personal funds. These amounts do not require disclosure as gifts.

Amounts transferred from a **joint bank account** held by an individual and their spouse (which includes a de facto or civil partner) into the individual's own state campaign bank account are not considered to be gifts and do not require disclosure.

Self-funding and joint funds cannot be used to conceal gifts that are otherwise not permitted (e.g., prohibited gifts from property developers or amounts that would be subject to caps).

Significant penalties apply for circumventing electoral laws.

What is a loan?

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:

- 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
- another transaction that is in effect a loan of money.

If a loan's terms do not include an interest rate of at least the Reserve Bank of Australia's cash rate plus 3%, the difference would be considered a gift-in-kind and may require disclosure.

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What is a political donation?

A political donation is any gift or non-commercial loan given to a registered political party or candidate that is accompanied by a donor statement.

A donor statement is a written document which must:

- be completed by the donor of the gift or loan
- name the election participant (the registered political party or candidate) given the gift or loan
- state the gift or loan is intended to be used for an electoral purpose
- detail the relevant particulars of the donor of the gift or loan
- be given to the recipient with the gift or loan or **within 14 days** after the gift or loan is made.

A non-commercial loan is a loan given either with no interest or with an interest rate that is less than the Reserve Bank of Australia's cash rate plus 3%.

All gifted electoral expenditure is a political donation even if there is no donor statement.

Political donations are the only gifts that can be deposited into a candidate's or registered political party's state campaign bank account and used to pay for electoral expenditure.

Caps are imposed on political donations. You can refer to [Fact sheet 6 – Political donation caps](#) for more information.

What are relevant particulars?

The relevant particulars of an entity are:

- if the entity is an **unincorporated association** – the names and addresses of the members of the executive committee (however described) of the association
- if the entity is a **trust fund or foundation** – the names and addresses of the trustees of the fund or foundation, or the title or other description of the trust fund or the name of the foundation
- **otherwise** – the name and address of the entity.

Regulations about particular gifts

ANONYMOUS GIFTS

It is unlawful for a candidate to receive anonymous gifts totalling \$200 or more. This includes gifts where the name, address or other required details of the donor are not known to the candidate.

It is also unlawful for a registered political party to receive anonymous gifts totalling \$1,000 or more.

If an anonymous gift is received, an amount equal to the amount, or value, of the gift(s) is payable to the State.

GIFTS OF FOREIGN PROPERTY

It is unlawful for a candidate or registered political party to receive a gift of foreign property.

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The location of the property immediately before the gift or transfer took place determines whether it is Australian or foreign property. 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 6 weeks of receipt.

GIFTS FROM PROHIBITED DONORS

Property developers and industry organisations representing property developers are prohibited from making a gift, loan, or political donation to or for the benefit of a political party, candidate or other entity in an election.

Significant penalties apply for anyone who makes or receives these prohibited donations. Penalties could include fines, prosecution and/or the recovery of those amounts as a debt to the State.

See the [ECQ website](#) for further information about prohibited donors.

Disclosure of gifts and loans

Election participants may be required to disclose the details of gifts, loans and political donations they receive.

Details about disclosure obligations can be found in:

- [Fact sheet 12 – Real-time disclosure of gifts and loans by registered political parties](#)
- [Fact sheet 17 – Real-time disclosure of gifts and loans by candidates](#)
- [Fact sheet 22 – Real-time disclosure of gifts and loans received by third parties](#)
- [Fact sheet 23 – Disclosure of gifts made to registered political parties and state election candidates](#)

Record keeping

All election participants must keep records for 5 years. This is required to demonstrate compliance in relation to all electoral expenditure, disclosure and state campaign bank account requirements. Refer to [Fact sheet 4 – Record keeping requirements](#).

For further information

This fact sheet mainly refers to part 11 of the EA. The Act is available in full at legislation.qld.gov.au. Participants in the electoral process should ensure they understand their obligations under the EA.

More information on state government elections

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 **RELATED FACT SHEETS**

Fact sheet 4 – Record keeping requirements

Fact sheet 6 – Political donation caps

Fact sheet 7 – Definition of electoral expenditure

Fact sheet 12 – Real-time disclosure of gifts, loans and political donations by registered political parties

Fact sheet 17 – Real-time disclosure of gifts, loans and political donations by candidates

Fact sheet 22 – Real-time disclosure of gifts received by third parties

Fact sheet 23 – Disclosure of gifts made to registered political parties and state election candidates

Fact sheet 34 – Gifted electoral expenditure

Fact sheets can be found on the [ECQ website](#).

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