

ALL ELECTION PARTICIPANTS**Gifted electoral expenditure**

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.

A common occurrence during state elections is when election material is created or paid for by someone other than the election participant who benefits from the material. When this happens, determining who incurred the electoral expenditure can be difficult.

Under certain circumstances, electoral expenditure may be 'gifted' to an election participant. It is important for election participants to understand whether they have received gifted electoral expenditure as this may impact their disclosure requirements and caps for the election.

Please refer to [Fact sheet 7 – Definition of electoral expenditure](#) for more information about what is electoral expenditure and when it is incurred.

What is 'gifted' electoral expenditure?

Electoral expenditure is 'gifted' to an election participant if these 3 conditions are met:

1. The expenditure benefits the election participant.
2. The expenditure is incurred with the authority or consent of the participant, or the election material produced is accepted by the participant.
3. The person who originally incurred the expenditure does not receive payment or does not invoice the participant for the amount within 7 days of the events outlined.

Electoral expenditure that is gifted to an election participant under these conditions is taken to be incurred by the election participant.

If the expenditure was incurred through an arrangement with 2 or more election participants, the value of the expenditure is divided by the number of participants to determine the amount of gifted electoral expenditure per participant.

No matter when the expenditure is incurred, the 'gift' of electoral expenditure applies at the completion of the 3 points outlined above.

Gifted electoral expenditure is taken to be incurred by the election participant who benefited from the expenditure.

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More information

If you need more information relating to Funding, Disclosure and Compliance, please contact ECQ on 1300 881 665 or by emailing fad@ecq.qld.gov.au.



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Does gifted electoral expenditure count towards the election caps?

If incurred during the capped expenditure period, gifted electoral expenditure will count towards the electoral expenditure cap of the election participant who benefits from the expenditure.

If the participant is a candidate or registered political party, the gifted electoral expenditure will also count towards their political donation caps. Gifted electoral expenditure is considered a political donation regardless of whether it is accompanied by a donor statement.

Please refer to the relevant fact sheets on the [ECQ's website](#) for more information about state election caps.

How is gifted electoral expenditure disclosed?

Gifted electoral expenditure must be disclosed as **both** a gift received and as electoral expenditure incurred by the election participant who benefits from the expenditure.

The person who gifted the electoral expenditure is also required to disclose it as a gift made to the participant.

Election participants who have received gifted electoral expenditure must take the following steps:

- If the value of the gifted expenditure (along with any other donations made by the donor during the reporting period) is \$1,000 or more –
 - disclose it as a gift-in-kind (political donation) within 7 business days
 - give a receipt within 14 days to the person who gifted the expenditure outlining the political donation caps and the person's requirement to disclose the gift.
- Regardless of the value – disclose the gifted electoral expenditure in their election summary return. (When completing the election summary return, there is an option to identify electoral expenditure as gifted expenditure.)

Please refer to the relevant fact sheets and user guides on the [ECQ's website](#) for more information about disclosing gifts and electoral expenditure.

Gifted electoral expenditure must be disclosed as both a gift (political donation) and as electoral expenditure.

More information on state government elections

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EXAMPLE

Candidate Su has a professional photographer friend who offers to take some photos of her and her family for use in promotional campaign material. The photographer estimates the value of these shots to be \$1,200 and does not invoice Candidate Su for the cost.

This is gifted electoral expenditure. The expenditure is taken to be incurred by Candidate Su.

Candidate Su must disclose the amount as **both** a gift and as electoral expenditure. Because the value of the gift is \$1,000 or more, both Candidate Su and the photographer must disclose the gift within 7 business days of Candidate Su accepting the photographs. The electoral expenditure must be disclosed in Candidate Su's election summary return following the election.

If the photos are used for a campaign purpose during the capped expenditure period, it will count towards Candidate Su's electoral expenditure cap. As gifted electoral expenditure is considered a political donation, the photographer may only give an additional \$4,800 (i.e. up to the cap amount) in political donations to Candidate Su.

What if the election participant doesn't consent to the expenditure?

If the election participant who benefits from the electoral expenditure does not authorise, consent to, or accept the expenditure or any election material resulting from it, the expenditure will be attributed to the person who paid for it and **not** the election participant.

The expenditure will not count towards the election participant's election caps, and they will not need to disclose it in any form.

The expenditure will count towards the electoral expenditure cap of the person who paid for it (if it was incurred during the capped expenditure period). Depending on the value, the person may also need to register as a third party for the election and disclose the expenditure in an election summary return.

For more information about third parties, please refer to [Fact sheet 19 – Funding and disclosure overview for third parties](#).

Electoral expenditure that benefits an election participant but is not authorised, consented to, or accepted by them is taken to be incurred by the person who paid for the expenditure.

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EXAMPLE

A non-profit organisation produces social media content advocating for the Silver Political Party and their endorsed candidates. The non-profit organisation then boosts this content as advertising.

The non-profit organisation did not collaborate with the Silver Party nor their candidates when creating the advertisements and did not seek their consent or assistance.

The electoral expenditure is taken to be incurred by the non-profit organisation and will count towards its electoral expenditure cap. If the non-profit organisation is (or should be) a registered third party, the expenditure must also be disclosed in an election summary return.

What if an election participant incurs electoral expenditure on behalf of another election participant?

There may be circumstances in which one election participant (e.g. a registered political party) incurs electoral expenditure on behalf of another election participant (e.g. a candidate).

Electoral expenditure that is gifted from one election participant to another election participant is taken to be incurred by the first election participant **unless** the following conditions are met:

1. The recipient authorises, consents to or accepts the expenditure.

AND

2. The first election participant invoices the recipient for payment of the expenditure.

If the above steps are taken, the expenditure is taken to be incurred by the recipient. It will count towards the recipient's electoral expenditure cap (if incurred during the capped expenditure period) and will need to be disclosed by the recipient as electoral expenditure in their election summary return.

EXAMPLES

EXAMPLE A

The Silver Party spends \$1,000 on party-branded t-shirts. The Silver Party distributes the t-shirts evenly to 4 of its endorsed candidates. The candidates and their volunteers wear the t-shirts out while campaigning. The Silver Party subsequently invoices each candidate \$250 for the t-shirts.

The electoral expenditure is taken to be incurred by the candidates. It will count towards their electoral expenditure caps (if the shirts were worn during the capped expenditure period) and must be disclosed in their election summary returns.

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 **EXAMPLES CONTINUED****EXAMPLE B**

Registered Third Party A spends \$10,000 on a television advertisement that advocates a vote for Candidate Su in the election. The advertisement is authorised by Candidate Su. Registered Third Party A does not invoice Candidate Su for payment of the advertisement.

The electoral expenditure is taken to be incurred by Registered Third Party A. It will count towards its electoral expenditure cap (if the advertisement was aired during the capped expenditure period) and must be disclosed in its election summary return.

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 reporting requirements. Refer to [Fact sheet 4 – Record keeping requirements](#) for more information.

Compliance

The ECQ is responsible for administering and enforcing the EA, which includes penalties for election participants who breach their disclosure obligations. The compliance framework is available on the ECQ's website.

For further information

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

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 **RELATED FACT SHEETS**

Fact sheet 4 – Record keeping requirements

Fact sheet 5 – Definition of gifts, loans and political donations

Fact sheet 6 – Political donation caps

Fact sheet 7 – Definition of electoral expenditure

Fact sheet 8 – Disclosure of electoral expenditure and election summary returns

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

Fact sheet 14 – Expenditure caps for registered political parties and endorsed candidates

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

Fact sheet 18 – Expenditure caps for independent candidates

Fact sheet 19 - Funding and disclosure overview for third parties

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

Fact sheet 24 – Expenditure caps for third parties

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

More information on state government elections

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