

OFFENCES AND PENALTIES

This fact sheet relates to candidates, registered political parties, associated entities, third parties and donors involved in State elections and by-elections.

The Electoral Commission of Queensland (ECQ) is responsible for administering and enforcing the Queensland's *Electoral Act 1992* (EA), which apply to election participants, including candidates, registered political parties, associated entities and third parties.

Note that election participants may also be subject to laws enforced by other agencies. This fact sheet is intended to provide information only in relation to the laws and regulations administered by the ECQ.

Who is liable under electoral disclosure laws?

Under the EA, the following people may be subject to fines or prosecution if found to be in breach of the legislation:

- the candidate or the agent of the candidate
- the registered officer, the secretary or the agent of the registered political party
- the financial controller of the associated entity, or
- the agent, an officer or member of the executive committee of the third party.

Any prosecution for an offence will begin within 4 years after the offence was allegedly committed.

This list of offences is not exhaustive and there may be other offences that apply. All election participants should familiarise themselves with the full content of the relevant legislation and seek independent legal advice if required.

EA Section	Offence	Description	Maximum penalty*
215	Failure to keep a State campaign bank account	A participant must use their State campaign bank account until each obligation in Part 11 for the election has ended: <ul style="list-style-type: none"> • electoral expenditure incurred by the election participant. (<i>From July 2022, restrictions on what can be deposited into an account will commence.</i>)	200 penalty units
221A	Failure to use money from the State campaign bank account when electoral expenditure is incurred	If a person knows, or might reasonably know, that an amount is to be paid for electoral expenditure incurred by or for an election participant, the person must ensure it is paid <u>from</u> the State campaign bank account. Note: An offence is not committed if the amount is reimbursed from the State campaign bank account within 6 weeks of the amount being paid.	200 penalty units

More information

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

EA Section	Offence	Description	Maximum penalty*
270(1)	Receiving foreign property	It is unlawful for a registered political party, person acting on behalf of the party, or for a candidate to receive foreign property during the candidacy period. <u>Note:</u> It is not unlawful if the gift is returned within 6 weeks after its receipt.	An amount equal to the amount or value of the gift is payable to the State by the registered political party, registered political party's agent, candidate or candidate's agent.
281G	Exceeding the electoral expenditure cap during the expenditure period by the election participant or a person with authority	A participant in an election, or a person acting with the participant's authority, must not incur electoral expenditure during the capped expenditure period for the election if: <ul style="list-style-type: none"> the amount exceeds the expenditure cap, or the amount incurred cumulatively exceeds the expenditure cap and the participant or person ought reasonably to know the amount would exceed the cap. 	The amount that is equal to twice the amount by which the electoral expenditure exceeds the expenditure cap. AND Maximum penalty - 1,500 penalty units or 10 years imprisonment
281H	Exceeding \$6,000 electoral expenditure cap during the expenditure period by unregistered third party	A third party in an election, or a person acting with the third party's authority, must not incur electoral expenditure during the capped expenditure period for the election if: <ul style="list-style-type: none"> the amount exceeds the \$6,000 cap the amount of expenditure cumulatively exceeds \$6,000, and the third party person ought reasonably to know the amount would exceed the cap. 	Maximum penalty - the greater of the following amounts: the amount that is equal to twice the amount by which the electoral expenditure exceeded \$6,000; or 200 penalty units.
305AB	Failure of election participants to keep records	A record must be made by an election participant or a person authorised by the participant about the following matters and their associated financial transactions and position: <ul style="list-style-type: none"> a gift or loan made to, or for the benefit of, the election participant, including the value of the gift or amount of the loan; a gift, loan or political donation the election participant made to another participant in the election, or electoral expenditure incurred by the election participant or with the participant's authority, including electoral expenditure incurred for, or gifted to, another participant in the election. 	20 penalty units
305A	Failure to record (and give a return to ECQ) for advertisements or other election matter	When electoral expenditure is incurred to print, publish or broadcast an advertisement or other election material the person must make a record of this including: <ul style="list-style-type: none"> a copy of the advertisement or other material a description of the audience details required by regulation if related to an election district the name of the electoral district. 	20 penalty units

EA Section	Offence	Description	Maximum penalty*
305B	Failure of the broadcaster or publisher to keep records	The broadcaster or publisher must keep records to ensure returns can be given to the commission.	20 penalty units
305D	Failure to keep records for 5 years	Any records to be kept by broadcasters or publishers must be kept for 5 years after the day it is made.	20 penalty units
306B	Failure of an election participants agent to comply with obligations	The election participants agent or person authorised to act for the election participant must be aware of, and comply with, the obligations.	200 penalty units
307	Failure to provide true return to the ECQ	<p>A person who fails to give a required return within the time required commits an offence.</p> <p>A person who fails to give a complete return is guilty of an offence.</p> <p>A person who fails to give notice of particulars that the person is required commits an offence.</p> <p>Any person, including the agent, required to lodge a claim or give a return for the political party or candidate must ensure the particulars are not false or misleading.</p> <p>A person must not give to another person responsible for a claim or return false or misleading information.</p> <p>A registered political party which is a corporation, a candidate or an associated entity who receives a gift which is classified as unlawful commits an offence.</p>	<p>A return by an agent of a registered political party - 100 penalty units; otherwise 20 penalty units.</p> <p>Incomplete return - 20 penalty units.</p> <p>Failure to give notice of particulars required - 20 penalty units.</p> <p>False or misleading claims or returns (agent of political party) - 200 penalty units.</p> <p>False or misleading claims or returns (agent of candidate) - 100 penalty units.</p> <p>Any other person requiring to lodge a claim or return - 100 penalty units.</p> <p>False or misleading information to person making claim or return - 20 penalty units.</p> <p>Receipt of unlawful gift - 1 year's imprisonment or 240 penalty units.</p>
307A	Prohibited donations	<p>(1) A person must not do an act or make an omission that is unlawful under section 275 if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section. Maximum penalty— 400 penalty units or 2 years imprisonment. (2) An offence against subsection (1) is a misdemeanour</p>	<p>Maximum penalty— 400 penalty units or 2 years imprisonment.</p> <p>Also considered an integrity offence under schedule 1 of the <i>Local Government Act 2009</i> (LGA) and draws penalties pursuant to section 153(1)(d) of the LGA.</p>

EA Section	Offence	Description	Maximum penalty*
307B	Schemes to circumvent prohibition on particular political donations	A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition about political donations.	Maximum penalty— 1500 penalty units or 10 years imprisonment. Also considered a serious integrity offence under schedule 1 of the <i>Local Government Act 2009</i> (LGA) and draws penalties pursuant to section 153(1)(c) of the LGA.
307C	False or misleading information relating to determinations	A person must not give the commissioner information under section 277 that the person knows is false or misleading in a material particular.	Maximum penalty— 400 penalty units or 2 years imprisonment. Also considered an integrity offence under schedule 1 of the <i>Local Government Act 2009</i> (LGA) and draws penalties pursuant to section 153(1)(d) of the LGA
307AB	Unincorporated bodies acceptance of a political donation or electoral expenditure	An unincorporated body or liable person acting on behalf of the unincorporated body if: <ul style="list-style-type: none"> • a gift or political donation is accepted, or • electoral expenditure is incurred. and is an offence.	Maximum penalty - the penalty for a contravention of the deemed liability provision by an individual.

*As of 1 July 2020, one penalty unit is \$133.45