

Identification of Potential Political Donors Policy and Procedures

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1. Abbreviations and definitions

Abbreviations

Electoral Act	<i>Electoral Act 2017 (NSW)</i>
Electoral Commission	New South Wales Electoral Commission (three-member statutory authority)
EF Act	<i>Electoral Funding Act 2018 (NSW)</i>
EF Regulation	Electoral Funding Regulation 2018 (NSW)
LG Act	<i>Local Government Act 1993 (NSW)</i>

Definitions

Associated Entity – means a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members.

Candidate – in relation to an election, means a person nominated as a candidate at the election in accordance with the EF Act, or in accordance with the LG Act (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. For the purposes of Part 2 of the EF Act, a candidate includes an individual who accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future election.

Council – the Legislative Council of New South Wales.

Disposition of property – means any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property (including money), and includes:

- the allotment of shares in a company
- the creation of a trust in property
- the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property
- the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property
- the exercise by a person of a general power of appointment of property in favour of any other person, and
- any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person.

Elected member – means a member of Parliament, or a councillor (including the mayor) of the council of a local government area, and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.

Election – means a State election or a local government election in New South Wales.

Electoral expenditure – means expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election, as defined in section 7 of the EF Act.

Entity – means an incorporated or unincorporated body or the trustee of a trust.

Expenditure period – means, in the case of a State election – the period from and including 1 October in the year before which the election is to be held to the end of polling day for the election; in the case of a State by-election – the period from and including the day of the issue of the writ or writs for the election to the end of polling day for the election; in the case of a local government general election – the period from and including 1 July in that year to the end of polling day for the election; and for another other local government election – the period from and including the day on which the date of the election is publicly notified by the person conducting the election to the end of polling day for the election.

Gift – means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration. A gift does not include the provision of voluntary professional services to a party by an officer or an elected member of a party.

Group – in relation to State elections means a group of candidates, or part of a group of candidates, for a Legislative Council election, or in relation to local government elections means a group of candidates, or part of a group of candidates, for a local government election. For the purposes of Part 2 of the EF Act, a group includes individuals who accept a gift for use solely or substantially for a purpose related to the proposed candidacy of the individuals at a future election.

Local government election – means an election under the LG Act for the office of councillor or mayor under that Act (other than an election of mayor by councillors).

Party – means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the NSW Parliament or a local Council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

Political Donor – means a person who makes a gift.

Political donation – means a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales, as defined in section 5 of the [EF Act](#).

Registered party – means a party registered in accordance with Part 6 of the Electoral Act, or in accordance with Chapter 10 Part 7 of the LG Act.

Third-party campaigner – in the case of a State election – means an entity or other person (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure during the capped expenditure period for a State or local government election (as defined in Part 2 of the EF Act) that exceeds \$2,000 in total and includes an individual or entity that is registered as a third-party campaigner in accordance with Part 7 of the EF Act.

2. Introduction

- 2.1. The Electoral Commission is responsible for regulating political donations in New South Wales to ensure a fair and transparent electoral funding, expenditure, and disclosure scheme, to facilitate public awareness of political donations, and to help prevent corruption and undue influence in the government of New South Wales.
- 2.2. A political donation is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales. The precise meaning of political donation can be found in section 5 of the EF Act.
- 2.3. A gift includes money, a non-monetary item, and the provision of a service (other than volunteer labour), given for free or in return for something of inadequate value.
- 2.4. Political donations include monetary and non-monetary donations, such as free or discounted services and uncharged interest on loans. In New South Wales, political donations can only be accepted if the donor is an individual who is enrolled to vote at State elections within the meaning of the Electoral Act, or on the roll of electors for federal or NSW local government elections, or an entity with a business number. Individuals and entities that wish to make a political donation but do not satisfy those requirements must supply acceptable identification documents to the Electoral Commission by submitting a form to the Electoral Commission prior to making a donation.
- 2.5. The Electoral Commission agency undertakes the work for the Electoral Commission in relation to the acceptance and approval of identification from potential donors.
- 2.6. This policy and procedure acts as a guide in setting out the requirements that a potential donor must satisfy before a political donation can be accepted from that donor. It also provides examples of acceptable forms of identification of potential donors who are either not enrolled or who do not have a relevant business number.
- 2.7. Political donations are regulated and enforced under Part 3 of the EF Act and EF Regulations.

3. Purpose

Objective

- 3.1. The purpose of this policy is to:
 - state the legislative requirements for the identification of potential donors that are not enrolled or do not have a relevant business number
 - summarise the principles underlying the requirement and acceptance of identification
 - provide a guide as to the responsibilities of donation recipients, potential donors, and the Electoral Commission
 - set out a process for potential donors to make an application to the NSW Electoral Commission to have their identification accepted, and
 - provide examples of suitable forms of identification.
- 3.2. This document is not a guideline within the meaning of section 152 of the EF Act.

4. Scope

4.1. This document applies to:

- political donations accepted by parties, candidates, groups of candidates, elected members, third-party campaigners and associated entities
 - the Electoral Commission
 - staff members of the Electoral Commission agency, including contractors and third-party consultants, who are involved in entering or reviewing political donations, or investigating the circumstances surrounding the making or receiving of political donations.
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5. Requirements

Individuals not on the electoral roll

5.1. When an individual wants to make a political donation and that individual is not enrolled to vote at NSW State elections (within the meaning of the Electoral Act), or is not on the roll of electors for federal elections or NSW local government elections, they must supply acceptable identification to the Electoral Commission showing their full name and Australian residential address.

Entities without an ABN or ACN

5.2. Similarly, when an entity wants to make a political donation and does not have an ABN or other number allocated or recognised by the Australian Securities and Investments Commission, a principal or executive officer of that entity must supply acceptable identification to the Electoral Commission showing the principal or officer's full name and Australian residential address.

6. Objectives of identification requirements

6.1. As stated in section 46 of the EF Act, the objectives underlying the identification requirements are to:

- create certainty about who is making a political donation, by requiring the donor to be properly identified
- remove a perception that certain foreign donors could influence the Australian political process, by requiring a donor to have a legitimate link with Australia, either through residence of the donor or its officer, or by being registered in Australia.

6.2. These objectives relate to the following objects of the electoral funding, expenditure and disclosure scheme as stated in section 3 of the EF Act:

- to establish a fair and transparent electoral funding, expenditure, and disclosure scheme
- to facilitate public awareness of political donations
- to help prevent corruption and undue influence in the government of the State or in local government
- to promote compliance by parties, elected members, candidates, groups, agents, associated entities, third-party campaigners and donors with the requirements of the electoral funding, expenditure and disclosure scheme.

7. Identification process

Responsibilities

Donation recipients

- 7.1. It is the responsibility of parties, elected members, groups, candidates, associated entities and third-party campaigners and their agents to:
- a) refuse to accept a political donation from a person who is not enrolled for State, federal or local government elections, or from an entity that does not have a relevant business number, unless the person or entity has, before making a donation, supplied acceptable identification to the Electoral Commission
 - b) ensure that all donations accepted are lawful in accordance with Part 3 of the EF Act.

Potential donors

- 7.2. If a potential donor is not enrolled for State, federal or local government elections or does not have a relevant business number it is the potential donor's responsibility to:
- a) make an application to the Electoral Commission to have their identification accepted
 - b) provide evidence to a party, elected member, group, candidate, associated entity or third-party campaigner of the Electoral Commission's acceptance of their identification prior to, or when the donation is made.
- 7.3. It is the responsibility of all potential donors to ensure that all donations are lawfully made in accordance with Part 3 of the EF Act .

The Electoral Commission

- 7.4. In response to an application, the Electoral Commission will:
- a) accept or reject the identification of the potential donor that is provided to the Electoral Commission, and
 - b) provide written confirmation to a potential donor about whether their identification has been accepted or rejected.
- 7.5. The Electoral Commission will, within five business days after receipt of a properly lodged application, advise the potential donor in writing as to whether the donor's identification has been accepted or rejected.

Application process to have identification accepted by the Electoral Commission

- 7.6. To make an application to the Electoral Commission, a potential donor is required to use the Electoral Commission's approved form available on the [Electoral Commission's website](#).
- 7.7. The form must be completed and signed by the person who is a potential donor, that is:
- a) in the case of an individual, the individual
 - b) in the case of an entity, a principal or executive officer of the entity.
- 7.8. Attached to the form is to be one or more forms of identification of the potential donor, as follows:
- a) in the case of a donor who is an individual, one form of identification from Category A below is required which identifies the full name and Australian residential address of the potential donor
 - b) in the case of a potential donor which is an entity, at least two forms of identification are required as set out in category B below: one which identifies the name and Australian residential address of the principal or executive officer of the entity and the other which identifies the requisite position of the principal or executive within the entity.

- 7.9. The form and accompanying documentation must be lodged with the Electoral Commission by personal delivery, mail, email, or fax.
- 7.10. Applications are dealt with by the Electoral Commission based on the facts of each case.
- 7.11. When a potential donor's identification has been accepted by the Electoral Commission, the acceptance of that identification is valid for six months from the date of the Electoral Commission's decision to accept the identification. A record of the acceptance of that identification will be made against the applicant.
- 7.12. If an application is deficient, the Electoral Commission agency will correspond with the potential donor and invite the donor to rectify any deficiencies in the application or provide the appropriate identification required.
- 7.13. If an application is rejected, a record of the rejection of that application will be made against the applicant. An application may be rejected for a number of reasons, including but not limited to:
 - a) evidence that an individual named in the application is not a resident in Australia, or
 - b) evidence that a form of identification submitted with an application is expired.

Examples of suitable forms of identification

- 7.14. The identification of a potential donor is required to include the name and Australian residential address of the individual, or in case of a potential donor which is an entity, the name and Australian residential address of the principal or executive officer of the entity.
- 7.15. The principal or executive officer of an entity is the head or highest-ranking person of the entity, or the officer responsible for the management and administration of the entity's affairs (respectively), and evidence of this person's position within the entity is required.
- 7.16. Identification of a potential donor which is acceptable to the Electoral Commission includes, but is not limited to:

Category A – Individuals	Category B – entities
<ul style="list-style-type: none"> • a certified copy of a current Australian Driver's License • a certified copy of a current Proof of Age card or Photo ID card issued by a State government agency within Australia • a certified copy of a current rates notice, tenancy or lease agreement, or utility account which is less than six months old • a certified copy of a tax assessment notice, government benefits notice or motor vehicle registration (less than twelve months old) 	<ul style="list-style-type: none"> • a certified copy of the entity's constitution or other internal governance rules, business name registration or registration documents of the entity, or trust instrument, evidencing the principal or executive officer's requisite position within the entity • a statutory declaration declaring the requisite position of the individual within the entity <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> • a form of identification as listed under "Category A- individuals"



8. Roles and responsibilities

Who	How
NSW Electoral Commission	Approve this policy and associated documents
Executive Director and Directors Funding, Disclosure and Compliance & General Counsel	<ul style="list-style-type: none">• participate in the consultation process• determine policy instrument content and compliance with electoral funding laws• communicate policy development and revision with Legal and Governance and the Policy Coordinator
Policy Coordinator (Governance)	<ul style="list-style-type: none">• coordinates administration of the policy development and review process• manages the publication, amendment or archiving of approved policy instruments in the Policy Library
Senior Advisor Regulatory Education and Policy	<ul style="list-style-type: none">• develops or amends policy instruments as required• forwards approved policy instruments to the Policy Coordinator for registration and publication• forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation

9. Monitoring, evaluation, and review

- 9.1. The EP MO and Governance Unit monitors the administration of this policy instrument and related documents. The documents are to be evaluated and reviewed every three years or as required.

10. Associated documents

- 10.1. Compliance and enforcement policy
- 10.2. Compliance and enforcement procedures
- 10.3. Disclosure policy and procedures
- 10.4. Compliance audit policy
- 10.5. Penalty notice and caution procedures
- 10.6. Prosecution policy

11. Relevant legislation

- *Electoral Act 2017*
 - Electoral Regulation 2018
 - *Electoral Funding Act 2018*
 - Electoral Funding Regulation 2018
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12. Document control

Document management

Approved by:	Signature:
The NSW Electoral Commission	Date approved: 9 August 2023
Executive Director Review:	Signature:
Rachel McCallum Executive Director, Funding, Disclosure and Compliance, and General Counsel	
Director Review:	Signature:
Emma Keene Director, Client Experience Regulatory Services	

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Revision record

Date	Version	Revision description
01 December 2014	V 1.0	Legislative change – Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014
29 June 2016	V 1.1	Periodic Review
01 October 2017	V 1.2	Legislative change – Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017
12 December 2018	V 1.3	Legislative change – <i>Electoral Act 2017, Electoral Funding Act 2018</i>
12 April 2023	V 1.4	Periodic Review
9 August 2023	V 1.5	Approved by The NSW Electoral Commission