



**Queensland Government**

Department of Local Government,  
Sport and Recreation

# **Local Government Elections**

## **Disclosure of Election Gifts Publication for Donors**

**November 2007**

## Acknowledgements

This publication is produced by the Department of Local Government, Sport and Recreation (DLGSR).

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## Contents

Acknowledgements.....	2
Copyright	2
Disclaimer	2
1 Introduction .....	4
2 Instructions for completing the disclosure of gifts return - Donors.....	5
FORM 4 - Donor Disclosure of Election Gifts Return.....	6
3 Definitions .....	10
4 Avoiding Offences .....	12

## Introduction

This publication has been developed by the Department of Local Government, Sport and Recreation (DLGSR) to inform *donors* involved in local government elections (i.e. quadrennial, fresh and by elections) of their responsibilities to disclose election gifts made to candidates or groups of candidates under the *Local Government Act 1993* (the Act) sections 413A – s 441.

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LocGovA93.pdf>

The *objective* of this publication is to:

- provide advice and support to *donors* about how to progress the accurate and timely completion of election gift disclosure requirements
- increase public trust and confidence in local government processes and
- improve accountability.

It is important to read this publication thoroughly and to inform yourself as a *donor* to a candidate or group of candidates about your legislative responsibilities.

Under section 436 of the Act, candidates, groups of candidates, third parties and donors involved in local government elections are required to disclose elections gifts, loans and expenditure incurred during the relevant disclosure period before and after a local government election. This information must be provided by each candidate (successful or unsuccessful), third parties and donors, to the Chief Executive Officer of the relevant local government within 15 weeks of the end of the election in the *approved form*.

Please note that where the legislative responsibilities outlined in this publication are not complied with, offences may come into effect.

For further information about avoiding offences please refer to [4 Avoiding Offences](#) in this publication.

For details about the relevant disclosure **form** required – see below table.

### A list of all Disclosure of Election Gifts and Loans FORMS

Gifts / loans received by	Responsible person	FORM	Item	Section
Individual candidate or individual's campaign committee	Individual candidate	FORM 1	Gifts	Section B
			Loans	Section C
Group of candidates, or candidates who are members of a group of candidates	Group Agent	FORM 2	Gifts	Section B
			Loans	Section C
Third Parties	Third Party	FORM 3	Gifts	Section B
			Loans	Section C
Donors	Donors	FORM 4	Gifts	Section B

### More Information

For further information *donors* to candidates or groups of candidates may like to contact:

- Chief Executive Officers (CEOs) of the relevant local government as a starting point for enquiries;
- Local Government Collaboration Division in the Department of Local Government, Sport and Recreation on telephone number (07) 3404 1476; and
- a private legal advisor.

## 2 Instructions for completing the disclosure of gifts return - Donors

[Refer to 3 Definitions.](#) It is important you read the Definitions as they apply to the disclosure of elections gifts from sections 413A-441 of the Act.

<b>Form 4 – Donors</b>	
<b>Disclosure of election gifts return.</b>	
<b>Step 1</b>	<input type="checkbox"/> enter donor's details on front page of form <input type="checkbox"/> enter donor's postal address <input type="checkbox"/> enter name of relevant local government <input type="checkbox"/> enter disclosure period covered by return <input type="checkbox"/> read requirements
<b>Step 2</b>	<b>Section A Donor's certification</b> <input type="checkbox"/> read and tick applicable certification statement <input type="checkbox"/> donor to sign and date
<b>Step 3</b>	<b>Section B – Relevant details of gifts</b> <input type="checkbox"/> enter gift recipient details <input type="checkbox"/> enter name of person receiving gift <input type="checkbox"/> enter address of person receiving gift <input type="checkbox"/> enter date gift made <input type="checkbox"/> enter description of gift <input type="checkbox"/> enter value of each gift <input type="checkbox"/> enter total value of gifts donated
<b>Step 4</b>	<input type="checkbox"/> Read General Information <input type="checkbox"/> Read other relevant information <input type="checkbox"/> Submit to CEO before the end of 15 weeks after conclusion of election.

### NOTE:

- *If you gave a gift to candidates or groups of candidates in more than one local government area, you will be required to submit a form to the CEO for **each** relevant local government.*
- *In some circumstances a donor may **also** need to complete a third party return. Refer to Note 18 in the 'Disclosure of Election Gifts Publication for Third Parties'.*

## FORM 4 Donor

## Disclosure of Election Gifts Return

Disclosure of Election Gifts Form 4  
(DOEGF4—V1—01/08/07)

OFFICE USE ONLY

Date received:

Registered No:

<b>LOCAL GOVERNMENT ACT 1993</b>	<b>FORM 4 - Donor Disclosure of Election Gifts Return</b>
<b>Section 431A of Chapter 5 Part 8, Division 3, Subdivision 2A</b>	

(Further information to assist donors to complete this form is attached)

### Details of person furnishing this return

Name :

---

Postal Address:

---

Name of organisation on whose behalf  
the return is completed (if applicable):

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Relevant Local Government:

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### Disclosure period covered by this return (Note 5)

Contact the candidate or group of candidates to whom the donation / series of donations has been made.

<b>Commencement Date</b> (Refer to Act to calculate commencement date)	/ /
<b>Conclusion Date</b> (30 days after conclusion of the election - the election concludes when the last notice of the result is displayed in the Council's office)	/ /

### Requirements under the *Local Government Act 1993* regarding the completion of this return

This return must be furnished by a person - the **donor** (Note 1) who makes a **gift** (Note 6) or a series of gifts of a total value of \$200 or more to a:

- candidate (Note 2) or
- group of candidates (Note 3)

for an election during the disclosure period (Note 5) in relation to an election.

**Section A – Donor’s Certification**

( *Whichever is applicable*)

I certify that to the best of my knowledge and belief, this return contains the information readily available at the time the return is given and it is correct. I do not expect to make any further gifts during the remainder of the disclosure period. However, should I make any further gifts after the giving of this return I will disclose them by submitting a further return;

**OR**

I certify that to the best of my knowledge and belief, the information provided in this return is correct and complete except to the extent identified below:

Deficiency in return (please identify nature and particulars not able to be obtained).

\_\_\_\_\_  
\_\_\_\_\_

Reason for deficiency (please identify why the particulars were not able to be obtained).

\_\_\_\_\_  
\_\_\_\_\_

Person(s) who can supply missing particulars (please identify name and address of person and the reason for believing the person has the particulars).

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Section B – Required Details of gift (Note 10)**

Refer Section 431A of the Act (If more than one page is needed photocopy this page)

GIFT Recipient Details		Gift / Donation Details (Note 6)		
Name of person receiving gift	Address of person receiving gift	Date gift made	Gift description	\$ value of gift (Note 7)
				<b>Total value of gifts donated</b> \$

## General information

- Donors must submit to the Chief Executive Officer (CEO) of the relevant local government, within 15 weeks after the polling day for the election, a final return of gifts made in the *approved form*.
- The return can be given or posted to the CEO at the address of the local government's public office.
- A donor does *not* include a political party, an associated entity, another candidate for the election or a group of candidates.

## Other relevant information

### Amending a Return

Section 432 of the Act allows a person who has submitted a final return to apply to the CEO of the relevant local government at any time to correct an error or omission in the return.

### Required Information

A person who suspects or believes on reasonable grounds that a final return has an error or omission may inform the CEO of their suspicion or belief. The donor making the return will then be advised and must, within 30 days, establish if the return needs to be amended and apply to do so in accordance with section 432 of the Act.

If unable to supply all information to complete a final return, the donor must state in the certification of their return, where and why the return is deficient and who may be able to supply the missing particulars.

Information relevant to such a return that comes to the attention of the donor within *five years* after the conclusion of the election must also be given to the CEO in accordance with section 438 of the Act. It is an offence not to give the CEO of the local government to whom the return was given a written notice of the information or particulars obtained.

### Inspection

Section 433 of the Act provides that the CEO of the relevant local government must keep a register of all electoral gifts. Section 434 of the Act provides that the local government register of electoral gifts is open to inspection by any person.

## Important Note

Penalties apply for failure to lodge returns or if the contents are false or misleading.

Persons completing disclosure of election gifts forms are strongly advised to familiarise themselves with the definitions and provisions of Chapter 5 Part 8 of the *Local Government Act 1993* and the contents of the Department of Local Government, Sport and Recreation's publications on "Disclosure of Election Gifts".

### 3 Definitions

Definitions as they apply to disclosure of election gifts and loans are found in **sections 413A – 441 of the Act**. This information is issued on the understanding that DLGSR is not, through the issuance of this information, engaging in rendering to you any legal or other professional service. Donors are encouraged to seek independent legal advice if they have any concerns about the following information.

Note	Definition / Example
<b>Note 1</b>	<p><b>Donor</b> A donor is a person, other than</p> <ul style="list-style-type: none"> <li>• a political party</li> <li>• an associated entity</li> <li>• another candidate for the election</li> <li>• or a group of candidates for the election</li> </ul> <p>who makes a gift in relation to the election to a candidate; or a group of candidates for the election of which the candidate is a member.</p>
<b>Note 2</b>	<p><b>Candidate</b> A candidate for an election is a reference to a person who, at noon on the nomination day for the election, is properly nominated for the election.</p>
<b>Note 3</b>	<p><b>Group of Candidates</b> A group of candidates is defined as a group of individuals, each of whom is a candidate for the election, if the group was formed:</p> <ol style="list-style-type: none"> <li>(a) to promote the election of the candidates; or</li> <li>(b) to share the benefits of fundraising for the purposes of promoting the election of the candidates; or</li> <li>(c) for both (a) and (b).</li> </ol> <p>A group of candidates does not however include a political party or an associated entity.</p>
<b>Note 4</b>	<p><b>Advising donors of their obligations to submit a gift return</b> When an individual candidate receives a gift, the candidate must inform the donor that the donor has an obligation to lodge a return in the <i>approved form</i>. In the case of a group of candidates who receive a gift, the group's registered agent must advise the donor that the donor has an obligation to lodge a return in the <i>approved form</i>.</p>
<b>Note 5</b>	<p><b>Disclosure period</b> The disclosure period refers to the period – before and after an election, when all candidates and groups of candidates are required to record for later reporting, all gifts and loans for the election campaign.</p> <p>The disclosure period varies according to the particular circumstances of the individual candidate or group of candidates. Donors should contact the candidate or group of candidates to whom they have made a donation / series of donations to establish the relevant disclosure period for that candidate / group of candidates.</p> <p><b>NOTE:</b> A detailed explanation of the various disclosure periods can be found in the separate publication "Disclosure of Election Gifts for Candidates and Groups of Candidates".</p>
<b>Note 6</b>	<p><b>Gifts</b> The Act uses the term <i>gift</i> rather than the term 'donations', or 'political donations' or 'election donations'. For simplicity, where this publication uses the term donation or political donation or election donation, the reference includes <i>gift</i>, sections 413 – 441 of the Act.</p> <p>Section 414 in the Act defines a <i>gift</i> as the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include:</p> <ol style="list-style-type: none"> <li>(a) transmission of property under a will; or</li> <li>(b) provision of a service by volunteer labour.</li> </ol> <p><b>EXAMPLES</b> of gifts include but are not limited to:</p> <ul style="list-style-type: none"> <li>• cash</li> <li>• provision, free or at a discounted rate, of services normally charged for by a person</li> <li>• rent-free use of commercial premises or where rent charged is less than the normal commercial rate</li> <li>• work undertaken for a candidate by an employee during normal working hours where the employer continues to pay salary or wages (but not if the employee takes paid leave to undertake work for the candidate)</li> <li>• free use of a motor vehicle (unless associated with volunteer labour)</li> <li>• provision of free time or time charged for at less than the normal commercial rate by a broadcaster, except the Australian Broadcasting Corporation (ABC) or Special Broadcasting Service (SBS)</li> <li>• advertising space provided free or at a charge less than the normal commercial rate by a publisher of a journal; and</li> <li>• printing undertaken for no charge or at a cost less than normally charged.</li> </ul> <p>A monetary value must be assigned to a gift since a return must show the total number of donors and total value of all gifts received (whether above or below the prescribed amount). The return must also show:</p> <ul style="list-style-type: none"> <li>• the name and address of a person who made a gift to the value of \$200 or more to a candidate.</li> <li>• the value of a gift that is property is the market value of the property unless a regulation prescribes principles under which the value is to be determined.</li> <li>• the value to be given to a gift that is the provision of a service is the normal commercial rate unless a Regulation prescribes other principles for determining the value.</li> </ul> <p>Valuations placed on gifts will generally be accepted provided there is a sufficient description shown on the return of the property or services donated.</p> <p><b>EXAMPLE:</b> A gift of the free use of a car for campaigning purposes should be valued on the basis of commercial car hire rates.</p>

Note	Definition / Example
<b>Note 7</b>	<p><b>Valuation of gift</b> Under the Act, when completing a disclosure of election gift return, the <i>value</i> for a gift, means:</p> <ul style="list-style-type: none"> <li>(a) if the gift is money – the amount of money; or</li> <li>(b) if the gift is property other than money – the market value of the property; or if a Regulation prescribes principles under which the value of the property is to be determined – the value determined under the principles; or</li> <li>(c) if the gift is the provision of a service – the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or if a Regulation prescribes principles under which the amount that would reasonably be charged for providing the service is to be determined – the amount determined under the principles.</li> </ul>
<b>Note 8</b>	<p><b>Disposition of property</b> disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes:</p> <ul style="list-style-type: none"> <li>(a) the allotment of shares in a corporation; and</li> <li>(b) the creation of a trust in property; and</li> <li>(c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and</li> <li>(d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and</li> <li>(e) the exercise by a person of a general power of appointment of property in favour of someone else; and</li> <li>(f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of someone else's property; and</li> <li>(g) payment for attendance at or participation in a fundraising activity.</li> </ul> <p><b>EXAMPLE:</b> A payment made for admission to a social function, as the highest bidder for an item at an auction or for buying a ticket in a raffle.</p>
<b>Note 9</b>	<p><b>Prescribed amount</b> In section 431A a prescribed amount means an amount prescribed under a Regulation but, until a Regulation is made, for candidates or groups of candidates and donors, a gift or loan of \$200 or more.</p> <p>The donor need not give a return if the total amount or value of all gifts made was less than the prescribed amount.</p>
<b>Note 10</b>	<p><b>Required details</b> Required details of a gift are its amount, or value, the date on which it was made and:</p> <ul style="list-style-type: none"> <li>(a) if the gift was made to an unincorporated association: <ul style="list-style-type: none"> <li>(i) the association's name; and</li> <li>(ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association; or</li> </ul> </li> <li>(b) if the gift was made to a trust fund or paid into the funds of a foundation— <ul style="list-style-type: none"> <li>(i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and</li> <li>(ii) the title or other description of the trust fund or the name of the foundation; or</li> </ul> </li> <li>(c) in any other case—the name and residential or business address of the person to whom the gift was given.</li> </ul>
<b>Note 11</b>	<p><b>Gift exclusions – Items that do NOT need to be disclosed:</b></p> <p><b>Volunteer labour</b> Volunteer labour is any service provided free of charge by a person so long as it is not a service that is normally sold or otherwise charged for by that person or for which the person normally receives payment.</p> <p><b>EXAMPLE:</b> The service provided by a practising lawyer helping with letterbox deliveries is volunteer labour, but if the lawyer gives free legal advice, the advice is a gift.</p> <p><b>Personal gifts</b> A gift that is made to a candidate in a private capacity does not need to be disclosed in the return provided the gift is not used solely or substantially for the purpose of an election.</p> <p><b>EXAMPLE:</b> If Christmas falls during the disclosure period and the candidate is given a case of wine to be consumed at home, this gift would not need to be disclosed. If however, the case of wine were used as a prize in a raffle to raise funds (and the value of the wine exceeded \$200) the gift would have to be disclosed.</p> <p><b>Other items</b> Other items that do not need to be disclosed in the return include:</p> <ul style="list-style-type: none"> <li>(d) an offer by a broadcaster to interview a candidate on a current affairs or news program or any other topical program;</li> <li>(e) time provided by the ABC or SBS for political broadcasts; and</li> <li>(f) interviews and news items relating to a candidate published in a journal.</li> </ul>
<b>Note 12</b>	<p><b>Relevant record</b> A relevant record for an election, is a document or other thing that is or includes a record about a matter required to be stated in a return or evidence that the giver of gift had an intention that a gift was to be used by the receiver to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose. The record must be kept for 5 years after the conclusion of the election.</p>

## 4 Avoiding Offences

This section of the publication supports *donors* to candidates or groups of candidates in understanding and meeting their obligations in relation to the disclosure of gifts by:

- recording gifts and expenditure
- reporting against the disclosure period appropriate to them and
- submitting returns within the required timeline.

Section 436 of the Act requires a person to give the return they are required to give according to disclosure of gifts requirements within the required time frame according to the Act. Returns must be submitted to the CEO of the relevant local government.

Offence / Breach	Definition / Example	Section in the Act
<b>Failure to lodge a return within required time frame</b>	Donors must within 15 weeks after the polling day for the election give the CEO of the local government a return, in the <i>approved form</i> , stating the required details of the gift. This requirement applies to the donor even if at the time the donor made the gift, the donor was not in Queensland. <i>Maximum Penalty: 20 penalty units (\$1500).</i>	s431A
<b>Obtaining information and completing returns</b>	Candidates, groups of candidates, third parties and donors are required to take all reasonable steps to obtain the information to complete the return, or complete to the extent that is possible. <i>Maximum Penalty: 20 penalty units (\$1500).</i>	s438(1)
<b>Obtaining information and completing returns</b>	If at any time within 5 years after the conclusion of an election, a person who has made a statement about the incompleteness of a return obtains information or particulars relevant to the return they are required to give the CEO of the relevant local government a written notice of the information or particulars obtained. <i>Maximum Penalty: 20 penalty units (\$1500).</i>	s438 (4) and 438(5)
<b>Providing false information</b>	Third parties and donors must <i>not</i> provide false or misleading information in a return or to a person completing the return. <i>Maximum Penalty: 100 penalty units (\$7500) where the person is required to give the return as a candidate. Otherwise the penalty is only 50 penalty units.</i>	s436
<b>Access to Registers</b>	A local government's register of electoral gifts is open to public inspection. A person must not knowingly disclose information obtained from the register if it is not a true copy, or fair summary of the particulars in the register. <i>Maximum Penalty: 20 penalty units (\$1500).</i>	s434
<b>Liability</b>	The amendment of a return does not remove the person's liability with respect to any offences related to the return under section 436(2) that were committed before the amendment. <i>Maximum Penalty: 100 penalty units (\$7500).</i>	s432, s436(2)
<b>Elections Bank Account</b>	The candidate must operate an account with a financial institution. All amounts received by the candidate, or the candidate's campaign committee, during the disclosure period for the candidate for the election for the conduct of the candidate's campaign, including all gifts received as loans to the candidate, must be placed in this account. All amounts paid by the candidate, or by the candidate's campaign committee, during the disclosure period for the candidate for the election for the conduct of the candidate's campaign must be paid out of the account. <i>Maximum Penalty: 100 penalty units (\$7500).</i>	s432A
<b>Record keeping</b>	A person who makes or receives a relevant record for an election must keep the record for at least 5 years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else. <i>Maximum penalty: 20 penalty units (\$1500).</i>	s437
<b>Attempts to commit offences</b>	A person who "attempts to commit an offence" in respect of any of the offences identified in the Act for the disclosure of election gifts is liable to:  <i>Half the maximum penalty identified for committing the offence.</i>	s439