

# Election Campaigns Fund Procedures

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## 1. Introduction

The New South Wales Electoral Commission ('the NSWEC') is responsible for keeping an Election Campaigns Fund for State-registered parties and candidates in accordance with the law.

The purpose of the Election Campaigns Fund is to reimburse relevant electoral communication expenditure of eligible political parties and candidates.

The Election Campaigns Fund is administered under Part 5 of the *Election Funding, Expenditure and Disclosures Act 1981* ('the EFED Act').

The overarching principles and aims of the Election Campaigns Fund, along with the NSWEC's functions in managing the fund, are included in the Public Funding Policy.

## 2. Purpose

The purpose of these procedures is to provide a guide as to how the NSWEC meets the principles and objectives stated in the Public Funding Policy in relation to:

- how eligibility for payments from the Election Campaigns Fund is determined;
- different types of payments to parties;
- calculation of payment amounts; and
- the payment claim process (from notification of eligibility to payment).

This document supports the Public Funding Policy by providing specific, factual information about the Election Campaigns Fund.

This document is not a guideline within the meaning of section 24 of the EFED Act.

## 3. Scope

These procedures apply to

- all claims for payment and payments made from the Election Campaigns Fund; and
- officers of the NSW Electoral Commission staff agency ('Electoral Commission agency'), including contractors and third-party consultants, who are involved in the administration of this public funding scheme.

## 4. Eligibility for payments from the Fund

This information summarises general eligibility criteria applying to potential State election parties and candidates. It does not refer to the special criteria for the 2015 State general election.

### 4.1 Eligible parties

A political party is eligible for election campaign funding for a State general election if both conditions in column A, and at least one condition in column B, are met (Note: parties cannot receive payments in respect of State by-elections):

| A   | B  |
|---|--|
| <ol style="list-style-type: none"> <li>1. It is a registered political party on election day for the State election;</li> <li>and</li> <li>2. It endorses candidates who are properly nominated for the State election and the NSWEC is satisfied that the candidates claim to be endorsed by the party.</li> </ol> | <ol style="list-style-type: none"> <li>1. For a Legislative Assembly general election: the total number of first preference votes ('FPVs') received by the party's endorsed candidates at the election is at least 4%, in aggregate, of all FPVs in all electorates in which the endorsed candidates were nominated;</li> <li>or</li> <li>2. For a Legislative Council election: the total number of FPVs received by the party's endorsed candidates (and by all other candidates in the same group) is at least 4% of all FPVs in that election;</li> <li>or</li> <li>3. For either election: at least one of the party's endorsed candidates is elected.</li> </ol> |

### 4.2 Eligible candidates

A candidate is eligible for election campaign funding for a State general or by-election if the relevant conditions in column A (as applicable to the type of election), and at least one condition in column B, are met:

| A   | B  |
|---|--|
| <ol style="list-style-type: none"> <li>1. For a State general election or by-election: the candidate is registered as a candidate in the Register of Candidates for the election on election day;</li> <li>and</li> <li>2. For a Legislative Council election: the candidate is not part of a group, or was part of a group of independent candidates.</li> </ol> | <ol style="list-style-type: none"> <li>1. For a Legislative Assembly general election or by-election: the candidate is elected or the total FPVs received by the candidate is at least 4% of all FPVs in that electorate;</li> <li>or</li> <li>2. For a Legislative Council election: the candidate is elected or the total FPVs received by the candidate (and, if in a group, by all other candidates in the group) is at least 4% of all FPVs in the Legislative Council election.</li> </ol> |

## 5. Payment amounts

The amount payable to an eligible party or candidate is a proportion of the *actual electoral communication expenditure* incurred by the party or candidate during the capped State expenditure period for an election. The proportion is based on the party or candidate's expenditure cap for an election and is calculated using a decreasing sliding scale.

The funding scheme is known as a reimbursement scheme as it reimburses eligible parties and candidates for expenditure incurred for a State election.

Electoral communication expenditure ('ECE'), actual ECE, and the capped State expenditure period are defined in the Definitions section at the end of this document.

### 5.1 Expenditure caps

Electoral communication expenditure incurred by parties, candidates and other electoral participants is capped at State elections.

Expenditure caps are adjusted for inflation every four years after each State general election. The expenditure caps that apply to parties and candidates for the current election cycle (29 March 2015 to 23 March 2019) are as follows:

#### 5.1.1 Party expenditure caps

|  |             |
|--|-------------|
| <b>Assembly Party:</b> a party that endorses more than 10 Legislative Assembly candidates at a State general election.<br>Expenditure cap = \$122,900 multiplied by the number of the party's endorsed candidates in the Legislative Assembly. | \$122,900   |
| <b>Council Party:</b> a party that endorses candidates in a group for election to the Legislative Council and which has 10 or less Legislative Assembly candidates.  | \$1,288,500 |
| Additional cap (within overall cap) for parties that applies to expenditure incurred for a particular electorate.  | \$61,500    |

#### 5.1.2 Candidate expenditure caps

|   |           |
|---|-----------|
| Party endorsed candidate in a Legislative Assembly general election | \$122,900 |
| Independent candidate in a Legislative Assembly general election    | \$184,200 |
| Ungrouped candidate in a Legislative Council election               | \$184,200 |
| Candidate in a Legislative Assembly by-election                     | \$245,600 |

Caps for previous election periods, including expenditure caps for other electoral participants, are available on the NSWEC's [website](#).

## 5.2 Amount to be reimbursed

The amount payable to an eligible party or candidate is calculated depending on the classification of the party or candidate.

### 5.2.1 Classification of parties and candidates

#### Eligible Assembly party

A party that is eligible for payment from the Election Campaigns Fund in respect of a State election and has more than 10 endorsed candidates for election in the Legislative Assembly election (regardless of the number of candidates in the Legislative Council election if any).

### Eligible Council party

A party that is eligible for payment from the Election Campaigns Fund in respect of a State election, endorses candidates in a group for the Legislative Council election and has between zero and 10 endorsed candidates for election in the Legislative Assembly election.

### Eligible Assembly party candidate

A candidate at a Legislative Assembly general election or by-election who is eligible for payment from the Election Campaigns Fund and who was endorsed by a party at the election.

### Eligible Assembly independent candidate

A candidate at a Legislative Assembly general election or by-election who is eligible for payment from the Election Campaigns Fund and who was not endorsed by a party at the election.

### Eligible Council candidate

A candidate at a Legislative Council election who is eligible for payment from the Election Campaigns Fund.

## 5.2.2 Calculation of amount payable

The amount payable to eligible parties and candidates is based on the party or candidate's expenditure cap using a decreasing sliding scale as follows:

### Eligible Assembly party

| Actual ECE within expenditure cap | % of Actual ECE to be reimbursed |
|-----------------------------------|----------------------------------|
| 0-10% of expenditure cap          | 100%                             |
| 10-90% of expenditure cap         | 75%                              |
| 90-100% of expenditure cap        | 50%                              |

### Eligible Council party

| Actual ECE within expenditure cap | % of Actual ECE to be reimbursed |
|-----------------------------------|----------------------------------|
| First third of expenditure cap    | 100%                             |
| Next third of expenditure cap     | 75%                              |
| Final third of expenditure cap    | 50%                              |

### Eligible Assembly party candidate

| Actual ECE within expenditure cap | % of Actual ECE to be reimbursed |
|-----------------------------------|----------------------------------|
| 0-10% of expenditure cap          | 100%                             |
| 10-50% of expenditure cap         | 50%                              |

### Eligible Assembly independent candidate

| Actual ECE within expenditure cap | % of Actual ECE to be reimbursed |
|-----------------------------------|----------------------------------|
| 0-10% of expenditure cap          | 100%                             |
| 10-80% of expenditure cap         | 50%                              |

### Eligible Council candidate

| Actual ECE within expenditure cap | % of Actual ECE to be reimbursed |
|-----------------------------------|----------------------------------|
| First third of expenditure cap    | 100%                             |
| Next third of expenditure cap     | 75%                              |
| Final third of expenditure cap    | 50%                              |

### 5.3 Payment types (parties only)

An eligible party can receive a payable amount by way of up to 3 payments. These payments are:

#### 5.3.1 Advance payment (paid before a State general election)

Advance payments from the Election Campaigns Fund may be available to eligible parties before a State general election. An advance payment to a party:

- is equal to 30% of the amount the party was entitled to be paid in relation to the previous State general election;
- can be paid as a lump sum or in instalments, at any time during the capped State expenditure period for the election; and
- is deducted from the amount paid to the party from the Fund after the election.

*For example, an advance payment to Party X for the 2015 State general election is 30% of the amount Party X was paid from the Election Campaigns Fund for the 2011 State general election. If the amount to the party for the 2011 election was \$1,200,000, an advance payment of \$360,000 for the 2015 State general election can be paid. The payment can be made as a lump sum at any time during the capped State expenditure period for the 2015 State general election. Following the 2015 election, Party X is eligible for a payment from the Fund. The amount of the advance payment is deducted from Party X's total amount payable.*

#### 5.3.2 Preliminary payment (paid after the election)

Preliminary payments are payable to eligible parties after a State general election, if the NSWEC is unable to make a final payment (see 5.3.3 below) within 14 days after the party lodges a claim for payment. A preliminary payment to a party is:

- 70% of the party's estimated payable amount after the election minus any advance payment made for that election;
- payable within 14 days from the day the party lodges a claim for payment; and
- deducted from the party's total payable amount before the final payment is made.

*For example, Party X lodges a claim for payment from the Election Campaigns Fund after the 2015 State general election. The NSWEC will not be able to finalise assessing the expenditure in the claim in order to make a final payment within 14 days. The estimated payable amount to the party is \$1,600,000, and 70% of that estimated amount is \$1,120,000. Party X's advance payment (explained in the previous paragraph) is then deducted from that 70% to reach a preliminary payment amount of \$760,000. This payment is made as a lump sum on the 14th day after Party X lodged the claim for payment.*

#### 5.3.3 Final payment (paid after the election)

A final payment is payable to an eligible party after a State general election, once a validly-lodged claim for payment has been assessed, finalised and approved by the NSWEC. A final payment to a party is the balance of the party's total payable amount after any previous payments (such as an advance payment and/or a preliminary payment, if made) have been deducted.

*For example, the NSWEC's assessment of Party X's claim for payment from the Election Campaigns Fund has been finalised and the total payable amount based on verified expenditure is now \$1,500,000. Party X received an advance payment and a preliminary payment, so the final payment amount is \$380,000, calculated as follows:*

|                                 |                    |
|---------------------------------|--------------------|
| <i>Total payable amount</i>     | <i>\$1,500,000</i> |
| <i>Less advance payment</i>     | <i>(\$360,000)</i> |
| <i>Less preliminary payment</i> | <i>(\$760,000)</i> |
| <i>Final payment amount:</i>    | <i>\$380,000</i>   |

It is possible for a final payment to a party to be made instead of a preliminary payment, if the final payment can be made within 14 days after the claim was lodged. In this case, no preliminary payment is made, and only the advance payment (if made) will be deducted.

*For example, a final payment to Party Y can be made within 14 days after the claim was lodged. Party Y's total payable amount is \$800,000. Party Y received an advance payment of \$210,000 (30% of the party's 2011 payment of \$700,000), so the final payment amount is \$590,000 (\$800,000 - \$210,000).*

## 5.4 Candidate payments

An eligible candidate can receive a payment from the Election Campaigns Fund in relation to a State general election or a State by-election. Eligible candidates are only entitled to a single payment of the total payable amount (that is, they cannot receive an advance payment or preliminary payment). Payment is made after the candidate's valid claim for payment is lodged and assessed after the election.

*For example, candidate A is eligible for a payment from the Election Campaigns Fund after a by-election for the Assembly seat of Electorate Z. Candidate A lodges a claim for payment with the NSWEC after the election and the payable amount is \$30,000. This payment is made as a lump sum once the claim is finalised and approved by the NSWEC.*

## 6. Receiving a payment from the Fund

### 6.1 Identification of eligibility

Officers of the Electoral Commission agency identify the parties and candidates eligible for a payment, according to the following paragraphs. Officers of the Electoral Commission agency then make a record of eligibility against those parties and candidates.

#### 6.1.1 For advance payments to parties

Prior to the capped State expenditure period for a State general election, officers of the Electoral Commission agency notify those parties that are eligible to make a claim for advance payment.

#### 6.1.2 For post-election payments to parties (preliminary and final payments)

Following a State general election, officers of the Electoral Commission agency assess each party's eligibility in accordance with the EFED Act, using reliable sources of information. Relevant to each condition of eligibility, the following sources are checked:

- that a party was a registered party on polling day for the election: check the Register of Parties kept by the NSWEC;
- that the party endorsed candidates who were duly nominated for the election and the candidates claimed to be endorsed by the party: check the election results showing that the party endorsed candidates in that election, and check candidate nomination records held by the NSWEC; and
- that either a candidate endorsed by the party was elected, or the 4% FPV threshold was reached in the relevant election: check the final vote count results from both the Legislative Assembly and Legislative Council elections.

### 6.1.3 For payments to candidates

Following a State general election or by-election, officers of the Electoral Commission agency assess each candidate's eligibility in accordance with the EFED Act, using reliable sources of information. Relevant to each condition of eligibility, the following sources are checked:

- that the candidate is registered as a candidate in the Register of Candidates for the election on election day: check the Register of Candidates kept by the NSWEC for the election;
- for the Legislative Council election only – that the candidate was not part of a group, or was part of a group of independent candidates: check candidate registration and nomination records held by the NSWEC; check election results published on the NSWEC's website; and
- that either the candidate was elected, or the candidate reached the 4% FPV threshold in the relevant electorate or election: check the final vote count results from both the Legislative Assembly and Legislative Council elections.

## 6.2 Notification of eligibility

After a State election, officers of the Electoral Commission agency notify the party agent of each eligible party and official agent of each eligible candidate of the party or candidate's eligibility to receive a payment, and the maximum payable amount (based on the applicable expenditure cap). Forms are provided to each agent to enable them to make a claim for payment.

## 6.3 Claims for payment

To receive a payment from the Election Campaigns Fund, an agent must lodge a claim for payment with the NSWEC. Claims for election campaign funding must be lodged within 120 days after the day for the return of the writs for the election (or the return of the writ for a by-election). The day for the return of the writs for a State election is published on the NSWEC [website](#).

A claim for payment is to be made in the form and manner approved by the NSWEC. The expenditure included in the claim is to be certified by a registered company auditor in accordance with s.65 of the EFED Act. The following documents and information are to accompany the claim for payment:

- the invoices and/or receipts for each item of expenditure included in the claim, and, in the case where a declaration of political donations and electoral expenditure is due to be lodged before the claim (see the Disclosure Policy and Procedures), a copy of the declaration and the supporting documents that accompany the declaration.
- bank details of the nominated account for which payment is to be made.

### 6.3.1 Processing a claim

When a claim is received, officers of the Electoral Commission agency make a record of the claim, and include all information required by Part 5 of the EFED Act in that record.

Officers of the Electoral Commission agency then assess the expenditure for admissibility according to paragraph 4.2 of the Public Funding Policy. A risk-based approach may be used to plan and execute the assessment.

Officers also check whether the party or candidate has any outstanding declarations of political donations and electoral expenditure or, for parties, any outstanding annual financial statements. This is because payments are conditional on the party or candidate complying with those obligations under the EFED Act. That is, a party or candidate is not eligible for payment from the Election Campaigns Fund if they have failed to lodge a declaration of political donations and electoral expenditure or, for parties, annual financial statements for a current or past period.

Officers of the Electoral Commission agency may contact an agent to seek further information about particular items of expenditure, and the reimbursement of those items of expenditure may depend on that information being provided.



The NSWEC may reject items of expenditure for reasons including, there is no supporting documentation of that expenditure; the expenditure is not electoral communication expenditure; the expenditure does not meet the NSWEC's *General Guidelines*; the expenditure was not incurred in the capped State expenditure period or was not incurred by the party or candidate.

Once all expenditure in the claim has been assessed (or for a preliminary payment the amount payable has been estimated), payment of the payable amount is made to the party or candidate's State campaign account if all of the following conditions are met:

- the claim was validly made, according to the requirements outlined in paragraph 6.3 above;
- the NSWEC is satisfied of the party or candidate's eligibility;
- the NSWEC approves the payment; and
- the party or candidate has no outstanding declarations or (for parties) annual financial statements.

## 7. Associated documents

1. Public Funding Policy
2. Disclosure Policy and Procedures

## 8. Definitions

**Actual electoral communication expenditure** means electoral communication expenditure incurred within the capped State expenditure period for a State election (defined below) shown by adequate supporting documentation such as invoices and receipts.

**Candidate**, in relation to a State election, means a person nominated as a candidate at an election in accordance with the *Parliamentary Electorates and Elections Act 1912* and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates kept by the NSWEC for the election.

**Capped State expenditure period** means:

- for a State general election – from 1 October the year before the election, to polling day for the election (inclusive).
- for a State by-election – from the day of the issue of the writ for the by-election, to polling day for the election (inclusive).

**Day for the return of the writ** means the day specified in the writ as the day for the return of the writ. In the case of a State general election, if the days for the return of the writs are different, the day for the return of the writ is the return date for the Legislative Council election.

**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.

**Electoral communication expenditure (ECE)** is a subset of electoral expenditure. It means electoral expenditure on or for:

- advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material;
- the production and distribution of election material;
- the Internet, telecommunications, stationery and postage;
- employing staff engaged in election campaigns;
- office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member);
- travel and travel accommodation for candidates and staff engaged in electoral campaigning; and
- research associated with election campaigns (other than in-house research).

It does not include electoral expenditure incurred in raising funds for an election or in auditing campaign accounts.

Electoral expenditure (and ECE) is *not*:

- expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament;
- expenditure on factual advertising of:
  - meetings to be held for the purpose of selecting persons for nomination as candidates for election;
  - meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties; or
  - any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties.

**First preference votes (FPVs)** means the first preference votes recorded for a candidate that are not rejected as informal at the election.

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

**State election** means a Legislative Assembly general election, a Legislative Council election or a by-election for the Legislative Assembly.

**State By-Election** means a by-election for the Legislative Assembly

**State General Election** means a Legislative Assembly general election and a Legislative Council election held concurrently.

## 9. Document control

### 9.1 Approval authority

The approval authority for this document is the NSWEC.

### 9.2 Branch responsible for content and implementation

Funding, Disclosure and Compliance Branch (FDC) of the Electoral Commission agency.

### 9.3 Review record

| Date       | Version | Revision description |
|------------|---------|----------------------|
| 10/08/2016 | V1.0    | New Procedures       |

### 9.4 Review frequency

This document will be reviewed by the FDC branch every 3 years following the anniversary of the date of approval or as required due to legislative change, whichever is the earliest.