

## Fact sheet

# State By-election electoral funding obligations

The following information applies at State by-elections in NSW. A State by-election is held each time a vacancy occurs in the Legislative Assembly of New South Wales. Information in this fact sheet is based on the provisions of the *Electoral Funding Act 2018*. Refer to the legislation for the full requirements and/or be guided by independent legal advice.

### Electoral funding obligations of electoral participants

Political parties, candidates, third-party campaigners, political donors and other electoral participants are responsible for complying with electoral funding laws before, during and after a State by-election is held. Such obligations range from the requirements to register for a by-election to the management and disclosure of political donations and electoral expenditure.

An election calendar which includes relevant dates for each by-election is published on the NSW Electoral Commission [website](#).

### Registration of candidates and third-party campaigners

Candidates must be registered for a by-election before accepting a political donation or making a payment for electoral expenditure for the by-election. It is an offence for a candidate to accept a political donation or make a payment for electoral expenditure without being registered.

A person or entity (not being a party, associated entity, elected member or candidate) who incurs electoral expenditure of more than \$2,000 during the capped state expenditure period is a third-party campaigner. The third-party campaigners must be registered before making payment for that expenditure. It is an offence for a person or entity to make such payments or accept political donations for that purpose without being registered.

A third-party campaigner must appoint an official agent who is responsible for managing the campaigner's political donations and electoral expenditure including operating a campaign account and making disclosures to the NSW Electoral Commission.

Detailed information on the registration of candidates and third-party campaigners and the roles and responsibilities of official agents is available on the NSW Electoral Commission [website](#).

### How and when to register

Candidates can register for a by-election using [Funding and Disclosure Online](#):

1. [Request access](#) to Funding and Disclosure Online (if you don't already have access).
2. [Log in](#) using your username and password.
3. Follow these [instructions](#) to apply to register as a candidate.

If you are unable to use Funding and Disclosure Online [contact us](#) and we will email you a form to complete and submit.

Registrations for a by-election open on a date to be determined by the NSW Electoral Commission, which is no later than the date of the issue of the writ for the by-election, and close 12 noon on nomination day for candidates and on the first business day after the seventh day before Election Day for third-party campaigners (this is usually the Monday before the by-election).

The registered details of candidates, third-party campaigners and official agents are included in registers published on the NSW Electoral Commission [website](#). Candidates, third-party campaigners and their official agents must notify the NSW Electoral Commission of any changes to their registered details within 30 days of the change occurring using [Funding and Disclosure Online](#). If you are unable to use Funding and Disclosure Online [contact us](#) and we will email you a form to complete and submit.

### Candidate nominations

The registration of candidates for a by-election is a separate process to being nominated as a candidate to be included on the ballot paper.

All candidates that have not registered for a by-election are taken to be registered on the day their nomination form is lodged. From this time, all nominated candidates can lawfully accept political donations and make payments for electoral expenditure for the by-election.

A nomination form must be validly lodged with the NSW Electoral Commission during the nomination period to have the candidate's name printed on the ballot paper. Refer to the NSW Electoral Commission [website](#) for more information about how and when to submit a nomination form. Send your nomination enquiries using the [Contact us](#) form on the website or call 1300 022 011 during business hours.

### Who is responsible?

Party agents of registered parties, candidates and third-party campaigners must understand who is responsible for the management and disclosure of political donations and electoral expenditure including the operation of campaign accounts.

Electoral participant	Who is responsible?
Candidate who <b>is</b> a member of a party that is registered for State elections	The party agent of the registered party
Candidate who <b>is not</b> a member of a party that is registered for State elections	The candidate
Third-party campaigner	The official agent of the third-party campaigner
Political party	The party agent

### Political donations

Only people on the electoral roll, entities with an ABN or other recognised business number, or those whose identity has been approved by the NSW Electoral Commission can lawfully make political donations.

It may be an offence to make or accept a political donation that does not comply with the law. Examples of unlawful political donations include anonymous reportable political donations, donations in the form of cash over \$100, and donations from prohibited donors such as property developers, tobacco industry business entities and registered clubs and other liquor and gambling industry business entities.

Political donations are subject to specific caps which are adjusted on 1 July each year and are available on the NSW Electoral Commission [website](#). It is an offence to make or accept a political donation that exceeds the cap.

Political donations made and received must be disclosed to the NSW Electoral Commission by candidates, third-party campaigners, and other electoral participants every six months.

Detailed information on the laws that apply to political donations including unlawful donations, prohibited donors and the donation caps is available on the NSW Electoral Commission [website](#).

## **Electoral expenditure**

Electoral expenditure is expenditure to promote or oppose a political party or the election of a candidate or candidates, or to influence the vote at the by-election.

Electoral expenditure of parties, candidates and third-party campaigners is capped during the capped state expenditure period for a by-election. It is an offence to incur electoral expenditure in connection with a by-election that exceeds the expenditure caps. The capped state expenditure period for a by-election commences on the day the writ is issued for the by-election and ends on Election Day.

Electoral expenditure incurred by (or on behalf of) a party, candidate or a third-party campaigner in connection with a by-election must be disclosed to the NSW Electoral Commission annually.

Detailed information on electoral expenditure, including current cap amounts, is available on the NSW Electoral Commission [website](#).

## **Campaign accounts**

If a candidate is responsible for their own disclosures, the candidate must open a campaign account for the by-election before accepting \$1,000 or more in political donations or incurring \$1,000 or more in electoral expenditure.

The campaign account is to be used to make payments for all electoral expenditure in connection with the by-election and for depositing political donations made to the candidate.

Where a party agent is responsible for a candidate's disclosures, the candidate is not permitted to open a campaign account for the by-election. All political donations and electoral expenditure of the candidate must be paid by the party agent from the State campaign account of the party of which the candidate is a member.

A candidate may make contributions to finance their own election campaign by depositing personal funds into the candidate's campaign account or the party's state campaign account (as applicable).

Each third-party campaigner must keep a campaign account for a by-election. The campaign account must be operated by the official agent and is used to make payments for electoral expenditure and deposit political donations received for the purpose of incurring the electoral expenditure.

Detailed information about campaign accounts including contributions made by candidates to finance their own election campaign is on the NSW Electoral Commission [website](#).

## **Making disclosures to the NSW Electoral Commission**

Political donations and electoral expenditure must be disclosed to the NSW Electoral Commission. Disclosures are made in a declaration form which must be signed and submitted by the deadline by the person responsible.

Disclosures are published on the NSW Electoral Commission [website](#).

There are three types of disclosures that apply to by-elections:

- Political donations made and received must be disclosed within 6 weeks of the end of each half-yearly period ending 31 December and 30 June (i.e. by 11 February and 11 August) (does not apply to major political donors)
- Electoral expenditure incurred must be disclosed within 12 weeks of the end of the annual period ending 30 June (i.e. by 22 September) (does not apply to major political donors)
- Reportable political donations made by major political donors must be disclosed within 6 weeks of the end of the annual period ending 30 June (i.e. by 11 August).

Disclosures can be submitted online using [Funding and Disclosure Online](#). This includes third-party campaigner disclosures. Forms are also available on the NSW Electoral Commission [website](#) and can be submitted by email or post.

Complete and accurate records of political donations and electoral expenditure must be retained for three years. Supporting documents for political donations and electoral expenditure must be submitted with disclosure forms. The NSW Electoral Commission conducts compliance audits of disclosures made by parties, candidates, third-party campaigners and other electoral participants.

It is an offence to fail to submit a disclosure form by the deadline. Penalties, including fines, apply.

Detailed information on the disclosure requirements including the rules for who is responsible for making disclosures on behalf of a candidate or third-party campaigner is available on the NSW Electoral Commission [website](#).

## Public funding for candidates

By-election candidates may be eligible to be reimbursed electoral expenditure incurred in connection with a by-election. To be eligible, a candidate must be elected or receive at least 4% of the first preference votes at the by-election.

The amount an eligible candidate is entitled to receive is the lesser of the following:

- a prescribed number of dollars for each first preference vote received by the candidate, or
- the amount of electoral expenditure incurred by the candidate in the capped State expenditure period.

To receive a payment, the candidate must make a claim following the by-election. The NSW Electoral Commission writes to all eligible candidates to inform them when and how to make a claim for payment.

Detailed information on the public funding of election campaigns is available on the NSW Electoral Commission [website](#).

## Offences under the *Electoral Funding Act 2018*

It is an offence for a candidate, third-party campaigner, agent or other electoral participant to contravene the requirements of the *Electoral Funding Act 2018* in relation to registration requirements, managing, recording and disclosing political donations and electoral expenditure, and operating a campaign account.

The NSW Electoral Commission can issue warnings, penalties or prosecute offences including for the unlawful use of a campaign account, failing to comply with registration requirements, failing to record or disclose political donations and electoral expenditure, and accepting political donations or making payments for electoral expenditure unlawfully.

## More information

The *Electoral Funding Act 2018* is available in full at [legislation.nsw.gov.au](http://legislation.nsw.gov.au).

For further information, contact us on 1300 022 011 or at [fdc@elections.nsw.gov.au](mailto:fdc@elections.nsw.gov.au).