

Fact sheet

Organisations not registered as parties that are supporting candidates in the 2023 NSW State election

This fact sheet is for political participants at the 2023 NSW State election and provides information about whether a body or organisation supporting a candidate at the State election is a political party or a third-party campaigner (TPC) under the *Electoral Funding Act 2018*. Information in this fact sheet is based on the provisions of the *Electoral Act 2017* and the *Electoral Funding Act 2018*, available in full on the NSW Legislation website.

Different rules apply to political parties and third-party campaigners

A body or organisation's status determines its compliance obligations for the State election, including:

- requirements for registration with the NSW Electoral Commission
- applicable caps on electoral expenditure, and
- disclosures of political donations and electoral expenditure.

The NSW Electoral Commission monitors compliance with electoral legislation and takes enforcement action where appropriate. Criminal penalties apply for certain offences and the NSW Electoral Commission may also take action to recover unlawful political donations.

What is a political “party” under NSW electoral funding laws?

The concept of a “party” is not limited to bodies or organisations registered as “parties” by the Electoral Commissioner under the *Electoral Act 2017*. A body or organisation may also be recognised as an “unregistered party” under the *Electoral Funding Act 2018* and may have electoral funding obligations.

A body or organisation will be a party for the purposes of the *Electoral Funding Act 2018* if it meets the following conditions:

- its objects or activities include endorsing one or more candidates to stand as a representative of that body or organisation;
- it has identifiable members; and
- there is one or more persons fulfilling a role that could be characterised as an “officeholder”.

Although a body or organisation must have identifiable members to be a party, the candidate(s) endorsed by the body or organisation do not necessarily need to be members of that body or organisation.

For a candidate to be endorsed to stand as a representative of a body or organisation, the candidate must:

- indicate publicly that they accept the body or organisation’s endorsement; and
- communicate publicly that, if elected, they will represent that body or organisation in the performance of their parliamentary functions.

If a candidate receives significant financial and “in-kind” support for their campaign from a body or organisation, but does not communicate to the voting public that, if elected, they will represent that body or organisation in the performance of their parliamentary functions, then it is unlikely that the candidate could be said to have accepted endorsement from that body or organisation. Such a candidate would likely be an “independent” for the purposes of the *Electoral Funding Act 2018*.

If a body or organisation that is supporting candidates in the election does not meet the above conditions of a party, but incurs more than \$2,000 in [electoral expenditure](#) during the capped expenditure period for the election, it must register as a third-party campaigner.

Expenditure caps for candidates, parties and third-party campaigners

The table below shows the expenditure caps that apply for participants at the 2023 NSW State election. A full list of the caps is on the Electoral Commission’s [website](#).

Type of participant	Expenditure Cap for 2023 State election
Candidate endorsed by a party (including an unregistered one)	\$132,600
Candidate who is not endorsed by any party (independent)	\$198,700
Statewide cap for a party (including an unregistered one) endorsing more than 10 candidates in the Legislative Assembly	\$132,600 multiplied by the number of candidates endorsed.
Statewide cap for a party (including an unregistered one) endorsing a Legislative Council group and none or no more than 10 candidates in the Legislative Assembly	\$1,389,900
Statewide cap for a third-party campaigner registered before 1 October 2022	\$1,288,500
Statewide cap for a third-party campaigner registered from 1 October 2022	\$644, 300
Per district cap for a party (including unregistered parties)	\$66,400
Per district cap for a third-party campaigner	\$26,700

Specific governance and accounting obligations for parties compared to third-party campaigners

All **parties**, including unregistered parties, have legal obligations that are different to the obligations that apply to third-party campaigners, including:

- Appointing a person who is a senior office holder of the party as the party agent for that party. The party agent is responsible for the disclosure of the party’s political donations and electoral expenditure.

- Keeping a State campaign account for payments for electoral expenditure for State election campaigns and/or a local government campaign account for payments for electoral expenditure for local government elections (as applicable).
- Keeping complete and accurate accounting records in New South Wales of the party's political donations and electoral expenditure.

Registered parties have more obligations and entitlements than unregistered parties

Registered parties have more regulatory obligations than unregistered parties. Read more about registered political parties on our [website](#).

Registered parties also have some entitlements that are not available to unregistered parties, such as public funding entitlements and nominating candidates for election.

The “12 months rule” for new parties obtaining registration entitlements

A party cannot receive some of the entitlements that flow from registration, including eligibility for public funding for State election campaigns or the right to nominate candidates, until they have been registered for 12 months.

Any party that applies for registration now will not be eligible to receive such benefits in time for the 2023 NSW State election.

Read the [Party Registration Policy](#) and [Procedures for party registration](#) documents on our website for more information.

Other key differences between parties and third-party campaigners

Third-party campaigners do not have access to public funding for campaigns but do have legal obligations, such as disclosing electoral expenditure and complying with caps on political donations and electoral expenditure. More information about third-party campaigners is available on our [website](#).

If a body or organisation is, in accordance with the guidance set out above, characterised as a party, it should not seek to register as a third-party campaigner. If a body or organisation is already registered as a third-party campaigner but determines that it is in fact a party, the body or organisation should apply to cancel its registration as a third-party campaigner to ensure the correct expenditure caps are complied with.

A body or organisation **cannot** be both a party and a third-party campaigner. Following the cancellation of a third-party campaigner registration, a body or organisation which is in fact a party, can appoint as the party agent, the person who was the third-party campaigner official agent.

More information

More information about funding and disclosure requirements is available on our [website](#).

For further information, contact us on 1300 022 011 or at fdc@elections.nsw.gov.au.

The NSW Electoral Commission can provide general guidance to electoral participants, however if you are in doubt about the law as it applies to your organisation's particular circumstances, you should seek independent legal advice.