ALL ELECTION PARTICIPANTS



Definition of electoral expenditure

Unless otherwise stated, all references to legislation are to the *Local Government Electoral Act 2011* (LGEA). The information in this fact sheet does not replace legislation. If you are concerned about your obligations, you should seek independent legal advice.

This fact sheet relates to candidates, groups of candidates, registered political parties, associated entities and third parties participating in local elections and by-elections.

The term 'electoral expenditure' has a specific meaning for local elections and by-elections. Electoral participants must disclose all electoral expenditure and ensure they do not exceed their caps on electoral expenditure.

Not all campaign expenses are electoral expenditure. It is important to consider whether a particular campaign expense is electoral expenditure or not.

See Fact sheets 18 and 34 for information about disclosure of electoral expenditure.

See Fact sheets 19, 24, 29 and 36 for information about electoral expenditure caps.

What is electoral expenditure?

Under section 109A of the LGEA, electoral expenditure is expenditure incurred for a campaign purpose and includes GST. It includes:

- costs of designing, producing, printing, broadcasting, or publishing any kind of material for an election including (but not limited to):
 - o advertisements broadcast at a cinema, on radio or television or on the internet,
 - o direct marketing through the post office or email
 - o flyers, billboards, brochures, signs, or how-to-vote cards
- distribution costs for election material such as the cost of postage, couriers, or sending SMS messages
- costs of opinion polling or research
- fees for contracted services related to an activity mentioned above (e.g., payments for experts or consultants, the provision of data, etc.).

Expenditure is incurred for a campaign purpose if it:

- promotes or opposes a political party or group of candidates for an election
- promotes or opposes the election of a candidate
- otherwise influences voting at an election.

For example, expenditure is incurred for one of the above purposes if, in relation to an election, the material produced:

- expressly promotes or opposes:
 - political parties, groups of candidates, or candidates who advocate, or do not advocate, a particular policy or issue
 - political parties, groups of candidates, or candidates who have, or do not have, a specific position on a policy or an issue
 - o candidates who express a particular opinion

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- expressly or implicitly comments on a political party, a candidate, or a group of candidates participating in the election
- comments on an election in relation to a local government's area or a division of a local government's area
- expresses a particular position on a policy, issue or opinion if the position is publicly associated with a political party, group of candidates or candidate. This applies even if the party, group or candidate is not mentioned.

Expressly urging electors to vote for or against a candidate, group or party is not the sole defining feature of electoral expenditure. Election material using images, branding, slogans or identifying a person as a candidate can serve a campaign purpose and therefore represent electoral expenditure.

The purpose of the election material is the primary concern: does the material promote a candidate, group of candidates or registered political party in relation to a local government election? If the answer is yes, the election material is electoral expenditure.

Incidental expenses for minor consumables such as screws/nails, zip ties, washers, etc. are not considered electoral expenditure. Larger items, such as stakes (for displaying signs on roads, etc.) are considered electoral expenditure and must be disclosed under the election participant's disclosure requirements.

What is not electoral expenditure?

Electoral expenditure does not include:

- employing staff for a campaign purpose (excluding consultants depending upon their role)
- campaign materials for the election of members of Parliament (in Queensland or any other jurisdiction) or the election of councillors of a local government in another State
- factual advertising that relates mainly to the administration of a registered political party—for organisational purposes or to select candidates for nomination
- expenses for which a sitting councillor receives (or is entitled to receive) an allowance or entitlement.

When a councillor receives (or is entitled to receive) an allowance or entitlement to produce councillor newsletters, the newsletter produced will not be electoral expenditure if it complies with the council's newsletter requirements.

In any other instance, if the newsletter is for a campaign purpose, it may be electoral expenditure.

How is electoral expenditure determined?

Sometimes the ECQ may need to determine if a particular piece of election material is the product of electoral expenditure. In addition to the criteria laid out above, the following factors may be considered in these situations:

- Organiser's intent when producing the materials
- Words and images used
- Timing and placement of the material
- Colours, slogans, logos, etc. used in the material

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- Whether the material was required to be authorised under the LGEA
- Any external information which may provide additional context (such as correspondence or contracts between the supplier of the goods and the electoral participant)
- Any other relevant factors

Electoral expenditure incurred by third parties

Monies spent by a third party are electoral expenditure if the dominant purpose for that spending is a campaign purpose.

Third party expenditure is not considered electoral expenditure if the dominant purpose of the expenditure is another purpose, such as educating or raising awareness about a public policy issue. This is true even if the expenditure also (and incidentally) achieves a campaign purpose.

Third parties that spend, or are planning to spend, more than \$6,000 in electoral expenditure have additional obligations and must register with the ECQ.

See <u>Fact sheet 31</u> for more information about third parties and electoral expenditure.

When is electoral expenditure incurred?

Electoral expenditure is incurred when the relevant goods are first used for a campaign purpose during a capped expenditure period for an election.

The date the expenditure is invoiced or paid does not matter.

Under section 109E, electoral expenditure is incurred when the relevant goods or services are supplied or provided. **It does not matter when the expenditure is invoiced or paid.**

For example:

- Expenditure on advertising is incurred when the advertisement is broadcast or published.
- Expenditure on production and distribution of election material, such as flyers, is incurred when the material is distributed.

If electoral expenditure is used to obtain goods for the dominant purpose of being used for a campaign purpose in one or more elections, the electoral expenditure is taken to have been incurred when the goods are first used for a campaign purpose during a capped expenditure period.

If election material was first used for a campaign purpose during a capped expenditure period (e.g. during the 2024 local government elections or later), re-using the goods during a later election's capped expenditure period will not incur electoral expenditure a second time.

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EXAMPLES

Example A

A potential candidate orders and pays for the design and production of 50 corflutes in May 2023. The corflutes are supplied in July 2023, and the candidate's team puts them up around the council division starting on 10 September 2023. The electoral expenditure is incurred on 10 September 2023.

Example B

In April 2023, a potential candidate commissions the design of flyers to hand out while going door-to-door. The flyers are delivered and paid for in September 2023, but by then, the potential candidate has decided not to contest the election and destroys the flyers. No electoral expenditure has been incurred.

Example C

Jim has campaigned in several local government elections. He is planning to re-use the signs and corflutes made in 2024 for a by-election in 2025.

Jim disclosed the electoral expenditure when it was incurred on 14 February 2024. When he re-uses the signs and corflutes in the by-election, no electoral expenditure has been incurred.

Example D

In early 2023, Councillor Jane approves the design of new corflutes and orders 25 of them for her upcoming campaign. The corflutes are delivered and paid for in November 2023.

On 15 February 2024, Councillor Jane and her volunteers put up 12 corflutes around her local government division. The electoral expenditure is incurred on 15 February 2024 when the corflutes are first used for a campaign purpose during the capped expenditure period for the election.

However, because only 12 corflutes were used for a campaign purpose, the amount of electoral expenditure incurred in February 2024 is the value of 12 corflutes.

Councillor Jane decides to use all 25 corflutes during her campaign for the 2028 local government elections. When she and her volunteers put up all 25 corflutes in February 2028, electoral expenditure will be incurred for only the 13 corflutes that were not used during a previous capped expenditure period.

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Incurring electoral expenditure on behalf of another participant

If an election participant (the first participant) incurs electoral expenditure that benefits a second election participant (the recipient), the electoral expenditure is assigned to the first participant.

However, the recipient incurs the electoral expenditure if both the following are satisfied:

- The expenditure is made with the recipient's authority or consent, or if the material produced by the expenditure is accepted by the recipient; and
- The first participant invoices the recipient for payment of the expenditure.

'Gifted' electoral expenditure

If goods or services produced by electoral expenditure are 'gifted' to an election participant, the expenditure is considered to have been incurred by the recipient of the gift.

Electoral expenditure is 'gifted' to an election participant if these 3 conditions are met:

- The expenditure benefits the election participant
- The expenditure is incurred with the authority or consent of the recipient, or the election material produced is accepted by the recipient
- The person who originally incurred the expenditure does not receive payment or does not invoice the participant for the amount within 7 days of the events outlined above.

If the electoral expenditure discussed above was incurred through an arrangement with 2 or more election participants, the value of the expenditure is divided by the number of participants to determine the amount of gifted electoral expenditure per participant.

No matter when the expenditure is incurred, the 'gift' of electoral expenditure applies at the completion of the 3 outlined points above.

'Gifted' electoral expenditure must be disclosed by the recipient both as a gift and as electoral expenditure. The donor of the gift is also required to disclose the gift in real-time and in an election summary return.

👼 EXAMPLE

Example

In October 2023, Candidate Hal has a professional photographer friend who offers to take some photos of him for use in promotional campaign material. The photographer estimates the value of these shots to be \$600 and does not invoice Candidate Hal for the cost.

Candidate Hal must disclose this gifted electoral expenditure as **both** a gift **and** electoral expenditure. Because the value of the gift is more than \$500, Candidate Hal must disclose the gift within 7 business days of accepting the photographs. Once the photos are used for a campaign purpose, the electoral expenditure is incurred and must be disclosed within 7 business days.

The photographer also needs to disclose their gift to Candidate Hal both in real-time and in an election summary return.

Electoral expenditure relating to a local government area

If money is spent by a registered political party or a registered third party for advertising or producing other election material that is solely directed at electors in a single local government area, the electoral expenditure is incurred by the registered political party or third party solely in that area.

However, if the advertising or other election material is communicated to electors in multiple local government areas, the electoral expenditure is incurred by the registered political party or third party in each of the local government areas.

If the advertising is communicated to electors in multiple local government areas and the registered political party has only endorsed candidates in one of those local government areas, then the expenditure is incurred by the registered political party only in that local government area.

Record keeping

All election participants must keep records for 5 years. This is required to demonstrate compliance in relation to all electoral expenditure, disclosure, and dedicated campaign bank account requirements. Refer to <u>Fact Sheet 8</u> for more information about record keeping requirements.

Compliance

The ECQ is responsible for administering and enforcing the LGEA, which includes penalties for election participants who breach their disclosure obligations.

The compliance framework is available on the ECQ's website.

More information

For further information

This fact sheet mainly refers to part 6, division 4 of the LGEA. The Act is available in full at <u>legislation.qld.gov.au</u>. Participants in the electoral process should ensure they understand their obligations under the LGEA.

RELATED FACT SHEETS

Fact sheet 8 – Record keeping requirements
Fact sheet 18 – Real-time disclosure of electoral expenditure for candidates, groups and registered political parties
Fact sheet 19 – Expenditure caps for candidates
Fact sheet 24 – Expenditure caps for groups of candidates
Fact sheet 29 – Expenditure caps for registered political parties and endorsed candidates
Fact sheet 31 – Funding and disclosure overview for third parties
Fact sheet 34 – Real-time disclosure of electoral expenditure by third parties
Fact sheet 36 – Expenditure caps for third parties

Fact sheets can be found on the ECQ website.

More information