

## DEFINITION OF ELECTORAL EXPENDITURE

This fact sheet relates to candidates, registered political parties, associated entities, third parties and donors involved in State elections and by-elections.

Under Queensland's *Electoral Act 1992*, the term 'electoral expenditure' has a specific meaning for State elections and by-elections. Electoral expenditure refers to costs that candidates, registered political parties, associated entities and third parties may incur towards an election campaign and must record and disclose to the ECQ.

### What is electoral expenditure?

Under section 199, electoral expenditure includes any of the following costs relating to a **campaign purpose**:

- expenditure for designing, producing, printing, broadcasting or publishing any kind of material for an election, including (but not limited to) an advertisement:
  - for broadcast on radio or television, cinema, using the internet, email or SMS;
  - for publication in newspapers or magazines, on billboards, or as brochures, flyers, signs, how-to-vote cards or information sheets; or
  - material for distribution in letters.
- expenditure for the cost of distributing material for an election, including, for example, the cost of postage, sending SMS messages or couriers; or
- expenditure for carrying out an opinion poll or research; or
- expenditure for contracted services related to an activity e.g. fees for consultants or the provision of data; or
- expenditure incurred to design, produce, print or distribute the goods for which electoral expenditure is incurred.

Electoral expenditure is any cost of the type identified above, which is incurred for a **campaign purpose**.

Under section 199A, expenditure is incurred for a **campaign purpose** if the expenditure is incurred to:

- promote or oppose a political party in relation to an election; or
- promote or oppose the election of a candidate; or
- otherwise influence voting at an election.

More specifically, expenditure is incurred for one of these purposes if material produced as a result of the expenditure does any of the following in relation to an election:

- expressly promotes or opposes:
  - political parties or candidates who advocate, or do not advocate, a particular policy or issue; or
  - political parties or candidates who have, or do not have, a particular position on a policy or issue; or
  - candidates who express a particular opinion, or
- expressly or impliedly comments about a political party, elected member or candidate in the election or in relation to an electoral district, or
- expresses a particular position on a policy, issue or opinion, if the position is publicly associated with a political party or candidate and whether or not, in expressing the position, the party or candidate is mentioned.

## What is not considered electoral expenditure?

Under section 199(4) electoral expenditure does not include:

- expenditure incurred employing staff for a campaign purpose (however, the engagement of consultants may be considered electoral expenditure),
- expenditure incurred substantially for or related to the election of members of the Parliament of another State or the Commonwealth, councillors of a local government of the State or another State,
- expenditure on factual advertising about a matter that relates mainly to the administration of a registered political party (e.g. a branch meeting) for an organisational purpose or selecting a candidate to nominate for election, or
- expenditure that an elected member is entitled to receive as an allowance or entitlement.

### Electoral expenditure incurred by third parties

Under section 199(5) and (6), expenditure incurred by a third party is electoral expenditure if the **dominant purpose** for which the expenditure is incurred is a **campaign purpose**. However, expenditure incurred by a third party is not **electoral expenditure** if the dominant purpose for which the expenditure is incurred is another purpose (e.g. to educate or raise awareness about an issue of public policy), even if the expenditure is also incurred for, or achieves, a campaign purpose.

Under section 283, third parties who incur more than \$6,000 (cumulative) in electoral expenditure for an election must disclose all of their electoral expenditure in an **election summary return** within 15 weeks after the election.

Should a third party incur more than \$6,000 in electoral expenditure for an election, they are required to formally register as a third party with the ECQ under section 297. Registration requirements include operating a dedicated State campaign bank account and appointing an agent (if they are an organisation).

## When is electoral expenditure incurred?

Under section 281, electoral expenditure is incurred when the goods or services, for which the expenditure is incurred, are supplied or provided, regardless of when the amount of the expenditure is invoiced or paid. For example:

- expenditure on advertising is incurred when the advertisement is broadcast or published;
- expenditure on the production and distribution of election material is incurred when the material is distributed;

However, if:

- electoral expenditure is incurred to obtain goods; and
- the goods are obtained for the dominant purpose of being used for a campaign purpose in relation to 1 or more elections; and
- the goods are supplied **before** the **capped expenditure period** starts,

then the electoral expenditure is taken to have been incurred when the goods are **first used for a campaign purpose** during a **capped expenditure period**, regardless of when the amount of the expenditure is invoiced or paid.

That is, in the event that the goods are:

- **reused** in subsequent capped expenditure periods, they will only count towards the **first** capped expenditure period in which they are used;
- **paid for after** the expenditure cap period, their date of their **first use** during the expenditure cap period for the election will be considered the date the expenditure was incurred;
- In the event that the goods are procured but **never used or distributed** (e.g. due to withdrawal from the election or goods become

obsolete), the expenditure is taken to not have been incurred and will not count towards the expenditure cap.

Election participants who incur electoral expenditure or receive **electoral expenditure as a gift** (see ***Gifted Electoral Expenditure*** section) are required to keep detailed records about their electoral expenditure to ensure that they can demonstrate to the ECQ when electoral expenditure is incurred.

Records should include dates relating to the ordering, delivery, invoicing, payment, publication, broadcast, distribution or first use of item.

For more information and record keeping tools and templates, refer to [Fact sheet 15 - Record keeping requirements](#).

#### **Transitional arrangement for the 2020 State general election**

Under section 444 of the *Electoral Act 1992*, electoral expenditure that is incurred to obtain goods that are first used for a campaign purpose during the 2020 State election capped expenditure period is **not** counted towards an election participant's expenditure cap if the contract for supply of the goods was entered into before 17 June 2020.

#### **Incurring electoral expenditure for another participant**

Under section 281A, if a participant in an election incurs electoral expenditure (the first participant) that benefits another election participant (the recipient), the electoral expenditure is taken to be incurred by the first participant.

However, the receiving participant is taken to have incurred the electoral expenditure if:

- the expenditure is incurred with the recipient's authority or consent; and
- the recipient accepts election material that results from the expenditure; and
- the first election participant invoices the recipient for payment for the amount of the expenditure.

Under section 280A, if an item of electoral expenditure originally incurred by a person is 'gifted' to a participant in an election, the amount is taken to have been actually incurred by the participant (see **gifted electoral expenditure** below).

#### **'Gifted' electoral expenditure**

Under section 200B, an amount of **electoral expenditure** (as defined above) incurred by a *person* is considered to be 'gifted' to an *electoral participant* if the expenditure benefits the recipient participant, and any of the following applies:

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

Under section 200B(2), if the electoral expenditure incurred above was incurred under an arrangement with 2 or more election participants, the amount gifted to any one of them is taken to be the amount equal to the total amount, divided by the number of participants that are part of the arrangement.

Under section 200B(3), a donation of 'gifted' electoral expenditure is considered to have been 'made' at the end of the 7-day period identified above, regardless of when the expenditure is incurred.

Under section 281A, for the purposes of electoral expenditure caps, if one electoral participant incurs electoral expenditure which is then gifted to another electoral participant, the costs of the expenditure will count towards the cap of the first participant, unless the following applies (in which case it will count towards the recipient's cap):

- the recipient participant authorised or consented to the costs being incurred; or

- accepts the material resulted from the expenditure; or
- the first participant invoices the recipient for payment of the amount, then it will count towards the recipient's cap.

## Disclosure obligations for electoral expenditure

Under section 283, candidates, registered political parties, associated entities, registered third parties (including those who should have been registered) must disclose electoral expenditure in an **election summary return within 15 weeks after the election**.

All electoral expenditure must be disclosed to the ECQ, whether it was incurred within the capped expenditure period or not. Election summary returns should be lodged via the [Electronic Disclosure System](#) (EDS). Refer to [Fact sheet 6 - Disclosure of electoral expenditure](#) for more information.

## Disclosure of gifted electoral expenditure

Where a person incurs **electoral expenditure** (as defined above) which is then 'gifted' to an electoral participant, both the person who gifted the expenditure and the person who received the expenditure have disclosure obligations. (see **Disclosure obligations for electoral expenditure** section).

Gifted electoral expenditure must be disclosed in the [Electronic Disclosure System](#) (EDS):

- as a gift made by the donor,
- as a gift received by the electoral participant, and
- as an item of electoral expenditure incurred by the recipient electoral participant (s 280A).

## Electoral expenditure relating to an electoral district

- Electoral expenditure incurred by a registered political party or a third party relates to an election for an electoral

district if the expenditure is for advertising or other election material for the election that is communicated to electors in the electoral district; and is not mainly communicated to electors outside the electoral district.

- However, electoral expenditure does not relate to an electoral district if the expenditure is for carrying out an opinion poll or research.

## Examples

- A candidate makes an order for t-shirts, badges and posters. The order is made in June, the goods are delivered in July and the invoice paid in August. The candidate distributes these while campaigning in September. As the goods were delivered prior to the commencement of the expenditure cap period, this amount of electoral expenditure is taken to have been incurred in September, at the time that the goods are first used for a campaign purpose during the expenditure cap period for the election.
- A candidate makes a radio advertisement for their campaign in May and books a number of timeslots for the ads to be broadcast during September and October. The expenditure for the production of the ad, and the cost of the radio broadcast of the ad, are both taken to incurred on the date that the ads are first used for a campaign purpose during an expenditure cap period, which is when they are broadcast to the public. This is regardless of when the invoice is paid for the production or the radio broadcast of the ad.
- A donor, who owns a printing company, offers to provide a candidate with 50 printed corflutes at no cost to the candidate - which the candidate accepts. This is considered gifted electoral expenditure (a gift). It must be disclosed in the EDS as a gift received by the candidate and will count towards the candidate's expenditure cap. It must also be disclosed by the donor as a gift made. The value of this

gift must be disclosed as the normal commercial value of these printed products. In the disclosure return for this electoral expenditure (incurred by the donor), the date the expenditure is incurred would be at the time that the corflutes are supplied or delivered. If they were supplied or delivered prior to 1 August.

## Expenditure caps for State elections and by-elections

Under part 11, division 9, electoral expenditure towards a State election is subject to **caps** or limits during a period leading up to the election or by-election. This is called the **expenditure cap period**.

For a general election, the expenditure cap period starts on the first business day after the last Saturday in March that year; and ends at 6 pm on the polling day for the election.

For a by-election or an extraordinary general election, the expenditure cap period starts the day the writ for the election is issued; and ends at 6pm on the polling day for the election.

**For the 2020 State general election, the expenditure cap period runs from 1 August 2020 to 6pm on 31 October 2020.**

## Recovery of amounts over the expenditure cap

Under section 281J, non-compliance with the caps during a capped expenditure period for an election is an offence with substantial penalties. In addition to potential prosecution, the ECQ may recover amounts above the permitted caps as a debt to the State.

The amount which may be recovered as a debt due to the State is double the value of the expenditure that exceeded the cap.

## Who is liable for recovery or penalty when an expenditure cap is exceeded?

If a registered political party incurs unlawful electoral expenditure, double the amount of unlawful electoral expenditure may be payable to the State by the registered party, the party's agent or, if there is no agent, each member of the executive committee of the registered political party.

## More information

For more information on expenditure caps, refer to the relevant fact sheet:

- [Fact sheet 7 - Expenditure caps for registered political parties and endorsed candidates](#)
- [Fact sheet 8 - Expenditure caps for independent candidates](#)
- [Fact sheet 9 - Expenditure caps for third parties.](#)