

# Election Funding Claims Policy

Version 4.0

**Approval**



Pat Vidgen

**Electoral Commissioner**

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## Version history

Version	Notes	Author	Date of Change
1.0A	Draft	Manager, Funding, Disclosure & Compliance	July 2020
1.0A	Review	Director Funding, Disclosure & Compliance	July 2020
1.0	Issued for use	Electoral Commissioner	September 2020
2.0	Update resulting from <i>Smeltz v ECQ</i>	Electoral Commissioner	October 2020
3.0A	Reviewed to account for new definition of 'electoral expenditure'	A/ Director, Funding, Disclosure & Compliance	June 2021
3.0	Issued for use	Electoral Commissioner	June 2021
4.0A	Minor updates to clarify delegations	A/ Director, Funding, Disclosure & Compliance	November 2021
4.0	Issued for use	Electoral Commissioner	November 2021

## Review

This policy will be reviewed **every second year** from the approval date, or if the relevant regulatory frameworks change in a way that means this policy is no longer contemporary for the ECQ.

## Purpose

To guide and provide transparency about how the Electoral Commission of Queensland (ECQ) administers the election funding provisions of the *Electoral Act 1992* (the Act).

## Rationale

Part 11, Division 4 of the Act sets out how a registered political party or a candidate who incurred electoral expenditure for the purposes of a campaign for an election are entitled to election funding, the election funding amounts, the process used to claim election funding, electoral expenditure that can be claimed, and the making of payments of election funding.

## Guiding Principles

Public funding of election campaigns, which involves subsidising registered political parties and candidates for the cost of contesting state elections, is an important part of the electoral system.<sup>1</sup> The ECQ conducts free, honest, regular, fair and democratic elections under the Act in accordance with these guiding principles:

1. **Efficiency of administrative procedures.** Administrative mechanisms and procedures, including administrative paperwork, should be efficient and economical.
2. **Public confidence in elections.** Election procedures should be open and subject to review so that public confidence in the integrity of the electoral system and election outcomes can be maintained.
3. **Neutrality of election officials.** The conduct and administration of elections should not be influenced by political considerations. Persons responsible for conducting elections should be politically neutral in their dealings with others.
4. **Collection of personal information.** Ensure collection, storage, use and disclosure of personal information aligns with Information Privacy Principles.
5. **Ongoing review of electoral matters.** Electoral law and administrative procedures should be reviewed regularly to ensure that they remain relevant to changing community expectations.

A Human Rights Impact Assessment, in accordance with section 58(5) of the *Human Rights Act 2019*, was conducted to identify human rights that may be affected by the subject matter of this policy. It has been identified that a number of human rights, including the recognition and equality of persons before the law, freedom of thought and conscience, freedom of expression, and taking part in public life are relevant to this policy, but are not detrimentally impacted.

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<sup>1</sup> Public funding for elections eliminates the potential for corrupt practices linked with donations, especially where practices connected with giving donations has led to a perception that government administration may have been inappropriately influenced by them – *Electoral Amendment Bill 1994* – Explanatory Note.

## Policy

### 1. Entitlements to election funding

- 1.1. Registered political parties and state election candidates are entitled to election funding for a State election (including a by-election) if they receive at least 6% (from 1 July 2022, this is expected to decrease to 4%) of the formal first preference vote. The amount of election funding to which a party or candidate is entitled is the lesser of –
- a. The amount worked out by applying the “dollar-per-vote” value to the number of formal first preference votes given to the candidate or party; and
  - b. the amount of electoral expenditure –
    - i. claimed by the party or candidate in relation to an election; and
    - ii. accepted by the ECQ.<sup>2</sup>
- 1.2. The ECQ calculates the “dollar-per-vote” amount in accordance with section 225 of the Act. This amount is subject to annual CPI calculations.

### 2. Claims for election funding

- 2.1. A claim for election funding may be made to the ECQ, within 20 weeks of polling day for an election, by:
- a. a candidate (including a candidate’s agent); or
  - b. the agent of a registered political party.<sup>3</sup>
- 2.2. All claims must be submitted on the approved form and state all electoral expenditure for which election funding is sought. As part of the approved form, a statutory declaration must be completed attesting to the accuracy of the claim.<sup>4</sup>
- 2.3. The ECQ can, before the due date, set a longer period for a candidate or party to lodge their claim. However, the ECQ can only do so if it is satisfied that a longer period is justified in the circumstances. Generally, the ECQ will not set a longer period unless there are extenuating circumstances applicable to a candidate or party. A candidate’s or party’s failure to adequately prepare documentation and ensure timely lodgement before the due date is not sufficient justification.
- 2.4. A candidate (or the candidate’s agent) who has been endorsed by a registered political party may give the ECQ a written payment direction requiring the ECQ to pay the claim amount to the registered political party that endorsed them.<sup>5</sup> A payment direction may be

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<sup>2</sup> Refer to section 223(2) of the *Electoral Act 1992*.

<sup>3</sup> Refer to section 226(1)(a) and (b) of the *Electoral Act 1992*.

<sup>4</sup> Refer to section 226(2) and section 229(1) of the *Electoral Act 1992*.

<sup>5</sup> Refer to section 227(1) and (2)(a) of the *Electoral Act 1992*.

revoked in writing by the candidate or the candidate's agent, with the written consent of the agent of the registered political party.<sup>6</sup>

2.5. 'Electoral expenditure' is defined in section 199 of the Act to include following costs, if they were incurred for campaign purpose:

- a. the cost of designing, producing, printing, broadcasting, or publishing material for an election (e.g. advertisements for radio or television, cinema, internet, email, newspapers, letters, or SMS);
- b. the cost of distributing material for an election (e.g. the cost of postage, sending SMS message or couriers);
- c. the cost of carrying out an opinion poll or research; or
- d. the cost of contract services relating to an activity mentioned above (e.g. fees for consultants, graphic designers who are not employees, photographers, etc.).

2.6. Expenditure is incurred for a 'campaign purpose' if it is incurred to:<sup>7</sup>

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

2.7. Acceptable electoral expenditure: Electoral expenditure must be for a campaign purpose. The following are non-exhaustive indicative examples of the types of electoral expenditure which will likely be accepted, so long as it can be demonstrated that the expenditure was for a campaign purpose:

- a. broadcast advertisements: television, radio, cinema, and internet.
- b. candidate promotions: T-shirts, caps, photos, business cards, stickers, and magnets, vehicle wrapping.
- c. electoral materials: how-to-vote-cards, billboards, banners, corflutes, flyers, posters, pamphlets, signage, newspaper advertisements, and delivery costs like letter box drop or postal services.
- d. professional services (who are not employees): consulting, graphic design consultants, photographers, opinion polls, research, marketing, and public relations.

2.7.1. Claiming vehicle expenses: In some instances, a party or candidate may attach advertising to a vehicle (e.g. car wrapping, car magnets etc.). In such instances, the cost of fuel will be considered costs associated with "distributing material for an election". If a party or candidate wishes to claim such expenses, they must be able

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<sup>6</sup> Refer to section 227(2)(b) of the *Electoral Act 1992*.

<sup>7</sup> Refer to section 199A of the *Electoral Act 1992*.

to substantiate their claim by providing an invoice about when they obtained the wrapping/magnet (or the like), and provide a photograph (or other acceptable evidence) of the wrapping/magnet on the vehicle. Only fuel costs which are dated after that invoice will be accepted.

2.8. Excluded expenditure: Where a registered political party or candidate incurs expenditure unrelated to an election, the expenditure cannot be claimed. For example, expenses linked to a registered political party's financial management, such as investment costs are not electoral expenditure and cannot be claimed. Wages for campaign staff (including those staff employed expressly for a campaign purpose), are not claimable.<sup>8</sup>

2.8.1. Examples of expenditure which will generally not be claimable include:

- a. purchase of IT equipment which will continue to be used by the claimant after the election: televisions, computers, laptops, printers, hard drives, radio, microphone, mobile phone, headset, projector, lighting system, camera, drone, multimedia, video, speakers, console.
- b. capital expenditure: building, motor vehicle, trailer, bike includes upkeep or repairs.
- c. fees and charges: candidate nomination fee, political party memberships, fines or penalties, subscriptions, legal expenses, bank fees, dry cleaning, lease PO Box.
- d. furniture and fixtures: desks, tables, chairs, storage, and office accessories.
- e. miscellaneous: newspapers, magazines, thank you cards to constituents.

2.9. GST and election funding claims: On 27 October 2020, the Supreme Court of Queensland ruled that the ECQ should not accept GST as electoral expenditure for the purposes of election funding claims, if the person or entity which purchased the goods or services were registered with the Australian Taxation Office (ATO) for GST purposes.<sup>9</sup> This is because that person or entity will instead be able to claim GST input tax credits as part of their usual tax arrangements. To give effect to this ruling, claimants will be required to declare to the ECQ whether they are registered for GST. If they are registered, the ECQ will not accept GST expenses as electoral expenditure for election funding purposes.

2.10. Claims cannot be made by a claimant for electoral expenditure relating to other elections (such as local government elections).

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<sup>8</sup> Refer to section 199(4)(c) of the *Electoral Act 1992*

<sup>9</sup> *Smeltz v Electoral Commission of Queensland*

### 3. Assessing claims of election funding

3.1. The ECQ must, after receiving a claim:

- a. decide whether to accept or refuse the claim, in whole or in part; and
- b. to the extent the ECQ accepts the claim, pay the amount required by section 232 of the Act.<sup>10</sup>

3.2. In assessing whether to either accept or to refuse a claim for election funding in whole or in part, the ECQ must only consider:

- a. whether expenditure claimed is electoral expenditure; and
- b. if the expenditure claimed is electoral expenditure –
  - i. whether the electoral expenditure was incurred for the election; and
  - ii. whether the claimant is entitled under the Act to the amount claimed.<sup>11</sup>

3.3. The ECQ may, by written notice, require the claimant to provide further information about the claim. If a response to a written notice is not provided by the due date, the ECQ may finalise the matter based on the information provided in the original claim.<sup>12</sup>

3.4. Given the high volume of claims after an election, the ECQ will generally prioritise assessments based on the order of receipt. However, the ECQ will deprioritise consideration of a claim if:

- a. the claimant has not lodged an election summary return (as required by sections 261, 262, and 283 of the Act); or
- b. records in support of a claim are unclear, illegible, or provide uncertainty about the nature of the expenditure.

3.5. If accepting a claim, the ECQ will give the claimant a notice which confirms the amount being paid.

3.6. If refusing a claim, in whole or in part, the ECQ will give the claimant a notice which states the reasons for the refusal.<sup>13</sup>

### 4. Reconsideration of election funding claim decision

4.1. If a claim was refused, in whole or in part, the claimant may apply to the ECQ for a reconsideration of the decision. An application for reconsideration must be in writing and set out the basis upon which the claimant believes the decision should be reconsidered.<sup>14</sup>

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<sup>10</sup> Section 231(1)(a) and (b) of the *Electoral Act 1992*.

<sup>11</sup> Section 231(2) of the *Electoral Act 1992*.

<sup>12</sup> Section 231(3) of the *Electoral Act 1992*.

<sup>13</sup> Section 233 of the *Electoral Act 1992*.

- 4.2. The application must be made within 28 days after the day on which the claimant was notified of the refusal.
- 4.3. The ECQ can extend the period by which an application for consideration has to be made, but only before the original 28-day deadline passes. The ECQ will generally only allow for a longer period if justified in the circumstances.<sup>15</sup>
- 4.4. On receiving an application for reconsideration the ECQ will reconsider the decision and either:
- a. affirm the original decision to refuse; or
  - b. vary the original decision to refuse; or
  - c. set aside the original decision to refuse and make another decision.<sup>16</sup>
- 4.5. The ECQ will give the claimant who made the application a notice stating the decision (and reasons) on the reconsideration.<sup>17</sup> If, because of the reconsideration decision, an additional amount is payable to the claimant, the ECQ will pay the amount within 20 days of the reconsideration decision being made.<sup>18</sup>
- 4.6. The ECQ may vary a decision to accept a claim of electoral expenditure if the ECQ is satisfied –
- a. the amount of electoral expenditure should not have been accepted; or
  - b. only a lesser amount of electoral expenditure should have been accepted.<sup>19</sup>
- 4.7. If the ECQ varies an earlier decision, the claimant affected may apply to the ECQ for a reconsideration of the matter, as outlined above.<sup>20</sup>
- 4.8. If the ECQ makes a variation decision, and the total amount of election funding originally paid exceeds the amount payable under the new decision,
- a. the amount of the excess is deemed an overpayment to the claimant; and
  - b. the overpayment may be recovered by the ECQ as a debt due to the State.
- 4.9. The ECQ may seek to recover an amount of election funding where the evidence suggests that recovery action is warranted in the public interest.<sup>21</sup>

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<sup>14</sup> Section 234(1) and (2) of the *Electoral Act 1992*.

<sup>15</sup> Section 234(3) of the *Electoral Act 1992*.

<sup>16</sup> Section 235(1) of the *Electoral Act 1992*.

<sup>17</sup> Section 235(2) of the *Electoral Act 1992*.

<sup>18</sup> Section 235(3) of the *Electoral Act 1992*.

<sup>19</sup> Section 238(1)(a) and (b) of the *Electoral Act 1992*.

<sup>20</sup> Section 238(2) of the *Electoral Act 1992*.

<sup>21</sup> Section 238(3) of the *Electoral Act 1992*.



## 5. Deduction of amount owing from election funding

- 5.1. If a candidate or registered political party exceeds their expenditure cap for an election, the candidate (or their agent), or the agent of the registered political party, is liable to pay double the amount in excess of the cap, as a debt due to the State.<sup>22</sup>
- 5.2. The ECQ is empowered to deduct any amounts which may be payable to the State from any amount the ECQ owes to the person, including (for example) a claim for election funding.<sup>23</sup>
- 5.3. As outlined above, the ECQ will deprioritise funding claims which relate to a claimant who has not lodged their election summary return. This will allow the ECQ to conduct a preliminary assessment of a claimant's level of compliance with expenditure cap laws before disbursing public funds.
- 5.4. The ECQ may deduct an amount of election funding where there is sufficient evidence to indicate non-compliance with expenditure cap amounts, and the ECQ considers a deduction to be warranted in the public interest.
- 5.5. Claimants will be advised of any deductions in writing, at the same time they are advised of the outcome of their funding claim.

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<sup>22</sup> Section 281J of the *Electoral Act 1992*

<sup>23</sup> Section 308 of the *Electoral Act 1992*

## Delegations

1. The delegations to decide election funding claims are set in the ECQ's Financial Instrument of Delegation.
2. The Director, Funding, Disclosure & Compliance may approve Procedures to implement this Policy.

## Appendix 1 — Definitions

Term	Definition	Reference (if applic.)
Agent	Agent means an agent of a registered political party or candidate appointed under Part 11, Division 2 of the <i>Electoral Act 1992</i> .	Section 197, <i>Electoral Act 1992</i>
Claim decision	Claim decision means a decision made under section 231 of the <i>Electoral Act 1992</i> to accept an amount of electoral expenditure stated in a claim.	Section 238, <i>Electoral Act 1992</i>
CPI	CPI means all groups consumer price index for Brisbane issued by Australian Bureau of Statistics.	Schedule 1, <i>Electoral Act 1992</i>
Election summary return	The disclosure return required to be lodged within 15 weeks after election.	Sections 283, 261 and 262, <i>Electoral Act 1992</i>
GST	Goods and Services Tax	
Payment direction	(1) A candidate or the candidate's agent may, at any time, give the commission a direction (a payment direction) that election funding to which the candidate is, or may be, entitled for an election should be paid to a registered political party that endorsed the candidate in the election.  (2) A payment direction— (a) must be in writing; and (b) may be revoked by the candidate or agent, by written notice given to the commission, with the consent of the agent of the registered political party.	Section 227, <i>Electoral Act 1992</i>
Registered political party	Registered political party means a political party that is registered in the register of political parties.	Schedule 1, <i>Electoral Act 1992</i>

## **Appendix 2 — Regulatory Framework**

### **Legislation**

- *Electoral Act 1992*, Part 11, Division 4

### **Other documents**

- ECQ's Financial Instrument of Delegation