



15 March 2012

Our Ref: LAC11/104

Mr Colin Barry  
Chairperson  
Electoral Funding Authority of NSW  
Level 25, 201 Kent Street  
Sydney NSW 2000

Dear Mr Barry

**Electoral Funding Authority of NSW auditing processes -  
Claims for public funding in relation to the 2011 NSW election**

At its meeting on 22 February the Committee discussed concerns that members had with the Electoral Funding Authority's auditing processes in relation to claims for public funding for the 2011 NSW election.

The Committee resolved to write to you with the following questions regarding these processes:

1. What auditing guidelines are used when reviewing claims for electoral funding?
2. On what basis are these guidelines in place (e.g. legislative provision)?
3. What auditing standards (Australian or international) does the Authority conform with and do these accord with internationally accepted best practice and procedure?
4. If none are conformed with or used as guidelines, why not?
5. How much discretion does the Authority have in reviewing claims for electoral funding?

I would be grateful for your consideration of this matter and look forward to hearing from you in due course.

Yours sincerely



The Hon. Trevor Khan MLC  
Chair

10 April 2012

The Hon Trevor Khan MLC  
Chair  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Khan

**Election Funding Authority of NSW auditing processes – Claims for public funding in relation to the 2011 NSW Election**

I write regarding your letter dated 16 March 2012 and attach responses to the questions raised by the Committee on Electoral Matters.

If you have any queries I can be contacted on 9290 5910.

Yours sincerely

  
Colin Barry  
Electoral Commissioner



## **Election Funding Authority of NSW Auditing Processes Claims for Public Funding in relation to the 2011 NSW Election**

### **1. What auditing guidelines are used when reviewing claims for electoral funding?**

The Audit Policy approved by the Authority at its meeting of 15 June 2011 provides the underlying framework and principles for the compliance audit scheme developed and implemented for the review of claims for public funding and the accompanying disclosure of political donations and electoral expenditure. (A copy of the Audit Policy is attached.)

A system of procedures and processes has been put in place to enable the implementation and application of the policy. Work flow diagrams are attached in respect to audits of claims for payment and disclosures for both political parties and other stakeholders (candidates, elected members and others).

Additional information for political parties and party agents is included in the Authority's *Funding and Disclosure Guide for Political Parties and Party Agents*. (A copy of the Guide is attached.)

### **2. On what basis are these guidelines in place (e.g. legislative provision)?**

#### **2.1 Claims for Payment and Disclosure of Political Donations Received and Electoral Expenditure Incurred**

##### Claims for Payment

Section 64 of the *Election Funding, Expenditure and Disclosures Act 1981* (the Act) provides that a claim for payment must be lodged with the Election Funding Authority (the Authority) before the expiration of 120 days after the day for the return of the writs for the election.

Section 66 of the Act provides that a claim for payment is not validly lodged with the Authority unless all expenditure specified in the claim is vouched for in the manner prescribed in the Regulations.

Clause 6 of the Election Funding, Expenditure and Disclosures Regulation 2009 (the Regulation) provides that (for the purposes of Section 66 of the Act) the prescribed manner of vouching for expenditure specified in a claim for payment is by attaching (to the claim) the disclosure of political donations received and electoral expenditure incurred for the relevant disclosure period.

##### Disclosure of Political Donations Received and Electoral Expenditure Incurred

Section 91(6) of the Act provides that a disclosure of political donations received and electoral expenditure incurred must be vouched for in the manner prescribed by the Regulations.

Clause 10 of the Regulations provides that (for the purposes of Section 91(6) of the Act) the prescribed manner of vouching for electoral communication expenditure is by attaching (to the disclosure of political donations received and electoral expenditure incurred):

- a. copies of either accounts or receipts in respect of the expenditure; and
- b. copies of any advertising material to which any portion of the expenditure relates.

## 2.2 Compliance Audits

Clause 33 of the Regulations provides that the Authority may conduct a compliance audit of compliance with the requirements of Part 6 of the Act by a party, elected member, group or candidate.

Part 6 of the Act captures sections 83 to 97 and deals primarily with political donations, electoral expenditure, electoral communication expenditure, disclosures, caps on donations and electoral communication expenditure, campaign accounts, prohibited donations and loans.

### **3. What auditing standards (Australian or international) does the Authority conform with and do these accord with internationally accepted best practice and procedure?**

#### **3.1 Audit of Claim for Payment and Disclosure of Political Donations Received and Electoral Expenditure Incurred**

Section 65 of the Act provides that a claim for payment under Part 5 of the Act is not validly lodged with the Authority unless it is accompanied by a certificate of a registered company auditor within the meaning of the Corporations Act 2001.

Similarly, Section 96K of the Act provides that a disclosure (other than a disclosure lodged by a major political donor) is not duly lodged with the Authority unless it is accompanied by a certificate of a registered company auditor within the meaning of the Corporations Act 2001.

The requirements for the certificate of an auditor in respect to both the claim for payment and the disclosure have been provided for in the Act since its introduction in 1981. The Act presently provides that the auditor is a registered company auditor and, in the original construction of the Act in 1981, a person registered under the *Public Accountants Registration Act 1945*.

The considered view is that the audits undertaken by those qualified auditors was intended, and accepted as, the audits of the claim and disclosure having regard to the requirements of prevailing Australian and/or international auditing standards. This is still the current view.

Nonetheless, a recent issue has arisen with respect to the wording of the certification required by sections 65 and 96K of the Act by the auditor and this has been raised with the Joint Standing Committee on Electoral Matters in its report titled "Public Funding of Election Campaigns" dated March 2010.

It was identified to the Committee that the certification required by the auditor constitutes an audit "review" rather than an audit "certificate" at least in terms of current Australian auditing standards. (However, it is likely that this may not have been the case when the wording was constructed for inclusion the Act in 1981.)

An audit "review" consists of the auditor inquiring of the client in order to verify the financial records. Unless deemed necessary, the auditor is not required to obtain any independent corroboration to substantiate those records. In contrast, where an audit "certificate" is to be issued, the auditor must obtain independent evidence to substantiate the assertions made by the client.

A review does not require the auditor to formulate an "opinion" as to the financial records as is required under standard rules for a certified audit.

The Authority holds the view that it is not empowered (and it was not intended), either under the guise of a compliance audit or by any other provision in the Act, to conduct an audit which would equate to that presently provided for (or intended) by the Act which is required to be undertaken by a registered company auditor in terms of Australian (or international) auditing standards. In any case, it is considered that the Act does not support the Authority having full and free access to the accounting and administrative records of stakeholders (a fundamental condition of an audit) and the Authority is not entitled to issue any audit opinion as is the case for an assurance audit undertaken by a qualified auditor.

This matter was considered by the Joint Standing Committee on Electoral Matters in its report titled "Public Funding of Local Government Elections" dated December 2010.

### 3.2 Compliance Audits

As a consequence of amendments to the Regulation, the entitlement of the Authority to conduct compliance audits took effect from 10 July 2008. Funding to resource this function was not made available until the commencement of 2011 and the Authority was required to implement a regime ready to manage the next round of disclosures for period ending 30 June 2011 and which were due to be lodged on and from 1 July 2011. Those disclosures captured the 2011 NSW State general election.

The Authority has not been able to identify any Australian or International auditing standard directly related to compliance audits of the type provided for in the Regulation.

As a consequence, the Authority took the approach of constructing a compliance audit scheme based on identifiable best practice. This included:

- previous practice within the Election Funding Authority
- as part of the engagement of a business analyst to review the 2010 amendments to the Act, a review of the compliance audit function including:
  - identify modifications to existing business processes, new business processes and their integration required to support the legislation
  - review current technology and identify issues faced by the Authority
  - identify high level system functional requirements and options to support future business operations
  - prepare an implementation plan and preliminary business case for submission to Treasury for capital funding
  - validation of proposed organisation structure to confirm if it can support future business practises
- examination of arrangements in place by the Australian Electoral Commission for compliance reviews conducted under the authority of section 316(2A) of the *Commonwealth Electoral Act 1918*
- knowledge and experience available to the Authority of the compliance review regime undertaken by Elections Ontario pursuant to the *Elections Finances Act 1990*

Whilst the Authority is endeavouring to achieve best practice the Authority acknowledges that this is not possible without appropriate support from computerised applications. To this point in time, no capital

funds have been made available for the development of computerised applications to support the Authority's administration and management of the Act and, in particular, compliance audits.

It is relevant to recognise that with New South Wales being a leader in funding and disclosure reform in Australia, the regime in New South Wales (apart from very recent reforms in Queensland) is unique and the opportunity for learning is very limited. Some limited opportunity has been taken to discuss particular aspects of the administration and management of the current legislation with overseas jurisdictions, most particularly in the area of compliance audits, but no extensive research and investigation has been possible due to the lack of opportunity for face-to-face interaction.

The Authority has recently engaged an independent auditor to review the compliance audit function, structure, processes and methodology. The final audit report is due in the very near future and the Authority would be pleased to make that report available to the Committee on request.

**4. If none are conformed with or used as guidelines, why not?**

See the answer to Question. 3.

**5. How much discretion does the Authority have in reviewing claims for electoral funding?**

Section 55(2) of the Act provides that the decision of the Authority as to whether any expenditure is or is not electoral communication expenditure in accordance with this Act, the regulations and the guidelines determined under section 24 is final.

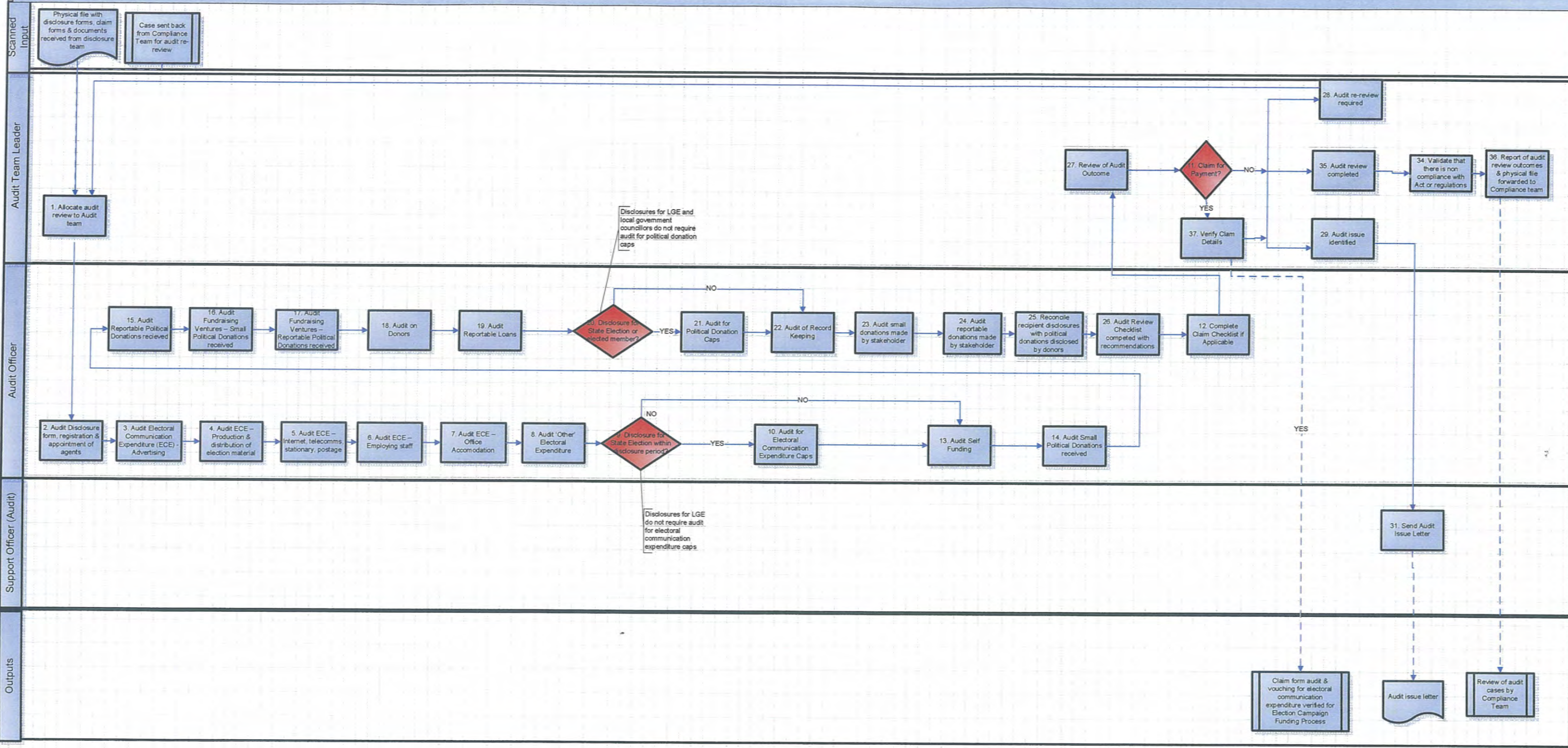
Section 64 of the Act provides, amongst other things, that if the Authority is satisfied that it is proper to do so, it may disallow, wholly or in part, any items of expenditure covered by a claim.

The view taken of both s55 and s64 of the Act is that any decision taken by the Authority can only be in connection with the nature of the expenditure and not in connection with the payment of a claim (or part of a claim) in respect to any items of expenditure not properly vouched for as provided for in the Act and Regulation.

This view is supported by Section 66 of the Act which provides that a claim is not validly lodged with the Authority unless all expenditure specified in the claim is vouched for in the manner prescribed by the regulations.

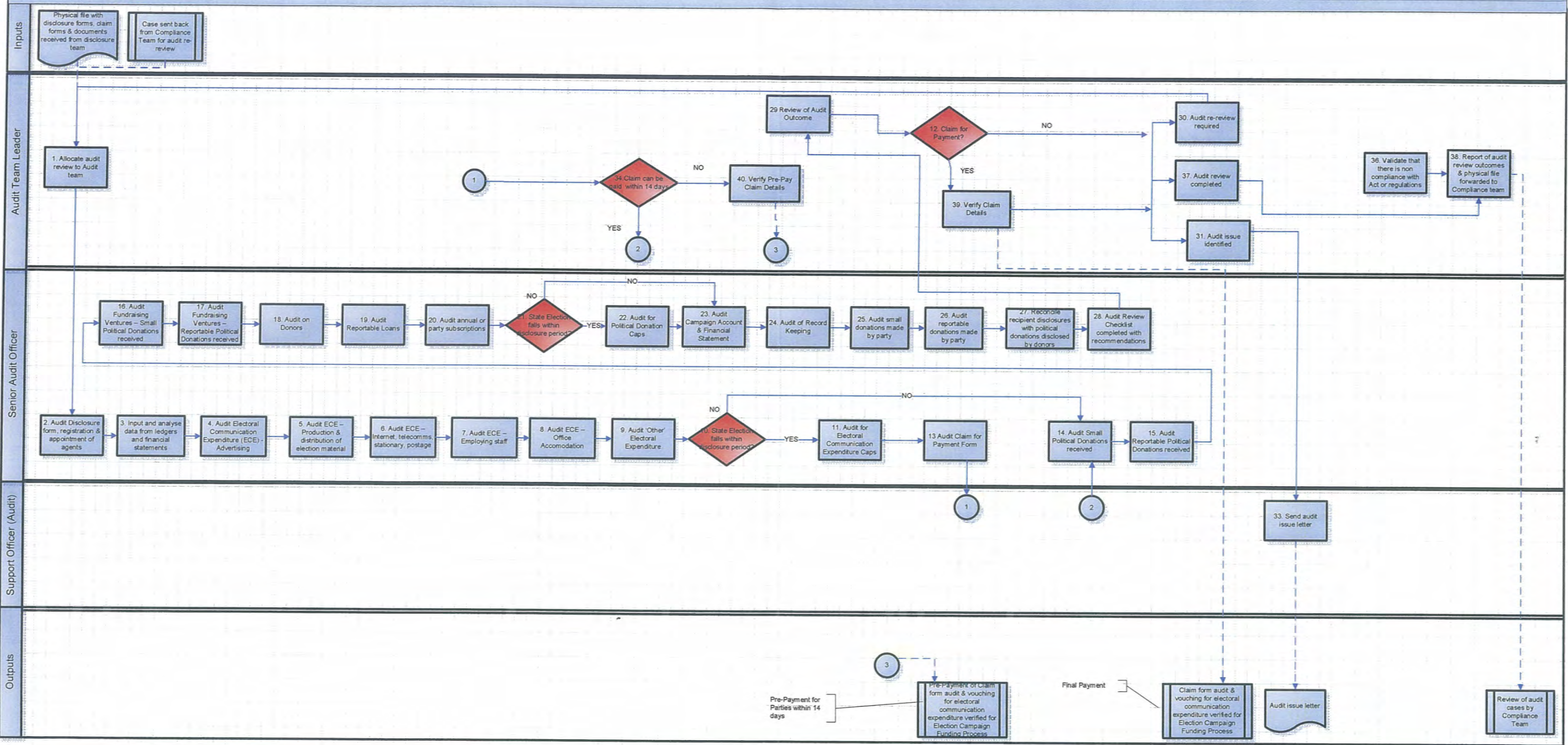


Proposed Audit Process for Candidates, Groups, Third-party Campaigners, Elected Members & Local Councillors ('To-Be' State)





Proposed Audit Process for Parties ('To-Be' State)





## Introduction

The Election Funding Authority ("the EFA") is responsible for the administration and enforcement of the *Election Funding, Expenditure and Disclosures Act 1981* ("the Act") and the *Election Funding, Expenditure and Disclosures Regulation 2009* ("the Regulation").

This Audit Policy includes compliance audits as provided for in Cl 33 of the Regulations and other reviews of information disclosed in accordance with the Act and Regulations.

The Audit Policy should be read in conjunction with the Compliance and Prosecution Policies.

### 1. Definitions

**Candidate** - in relation to an election, means a person nominated as a candidate at the election in accordance with the *Parliamentary Electorates and Elections Act 1912* or in accordance with the *Local Government Act 1993* (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election.

**Elected Member -**

- (a) a member of Parliament; or
- (b) a councillor (including the mayor) of the council of a local government area, and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.

**Election Funding Authority** – As constituted under Section 5 of the Act

**Election Funding, Expenditure and Disclosures Act 1981 No 78** - The Act

**Election Funding, Expenditure and Disclosures Regulation 2009** - The Regulation

**Group –**

- (a) in relation to State elections - a group of candidates, or part of a group of candidates, for a periodic Council election; or
- (b) in relation to local government elections - a group of candidates, or part of a group of candidates, for a local government election.

**Party** - a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or a local council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

**Registered Political Party** - a party registered under Part 4A of the *Parliamentary Electorates and Elections Act 1912*, being a party which stated in its application for registration that it wished to be registered for the purposes of this Act.

**Third-party Campaigner** - an entity or other person (not being a registered party, elected member, group or candidate) who incurs electoral communication expenditure during a capped expenditure period (as defined in Part 6 of the Act) that exceeds \$2,000 in total.

### 2. Composition and Functions of the EFA

#### 2.1 Composition

The EFA is constituted under the Act as a statutory corporation consisting of three members:

- (i) the Electoral Commissioner for New South Wales (being the Chairperson),
- (ii) a member appointed by the Governor on the nomination of the Premier; and



- (iii) a member appointed by the Governor on the nomination of the Leader of the Opposition in the Legislative Assembly.<sup>1</sup>

## 2.2 Main Functions

The main functions of the EFA as prescribed by the Act are to:

- maintain a scheme of public funding to eligible political parties, candidates and groups for the conduct of State Parliamentary election campaigns<sup>2</sup> and, in the case of some eligible parties and independent members of State Parliament, to maintain a scheme of public funding for administrative and policy development expenses;<sup>3</sup>
- require disclosure of the source and the amount of all political donations received and the amount of electoral expenditure incurred for State Parliamentary and local government elections;<sup>4</sup>
- impose various campaign finance management requirements for State Parliamentary and local government elections;<sup>5</sup> and
- impose maximum amounts (or “caps”) on the value of political donations that might lawfully be accepted and the electoral communication expenditure that might lawfully be incurred in connection with State Parliamentary elections.<sup>6</sup>

The EFA is empowered to appoint inspectors to investigate the alleged contravention of the Act or Regulation.

## 2.3 Key Principles

The EFA adopts the key principles that audits are conducted in the best interest of the public, with integrity and fulfilling responsibilities with honesty, fairness, objectivity, independence and confidentiality.

## 2.4 Objectives

Through the audit the EFA aims to:

- maintain the integrity of the funding and disclosure regime;
- further increase transparency of funding and disclosure by key stakeholders;
- assess the accuracy, completeness and reliability of information disclosure;
- identify any instances of failure to comply with the requirements of the Act and the Regulation; and
- identify issues experienced by electoral participants which are able to be used for education purposes.

## 3. Compliance Audit

### 3.1 Overview

The prescribed political stakeholders in the Act are required to make a disclosure of political donations received or made, and electoral expenditure incurred for the relevant disclosure period.<sup>7</sup> These disclosures are subject to a compliance audit by the EFA.

The legislative context of the compliance audit function of the EFA lies in clause 33 of the *Election Funding, Expenditure and Disclosures Regulation 2009*. Clause 33 of the Regulation provides:

*“The Authority may conduct a compliance audit of compliance with the requirements of Part 6 of the Act by a party, an elected member or a group or candidate”.*

The EFA conducts a compliance audit as follows:

- require the production of documents relevant to compliance audit;

1 Section 6 of the Act.

2 Part 5 of the Act.

3 Part 6A of the Act.

4 Part 6 of the Act.

5 Part 6 Division 3 of the Act.

6 Part 6 Division 3 of the Act.

7 Section 88 of the Act.



- perform compliance audit of the disclosures and the information accompanied with the disclosures;
- liaise with the stakeholders with regard to any uncertainty of matters in respect of the compliance audit; and
- escalation of non-compliance issues for further investigation.

### 3.2 Purpose

A detailed compliance audit of all disclosures is required to ensure political stakeholders have followed and complied with the requirements of Part 6 of the Act during an annual disclosure period.

The EFA is responsible for performing a compliance audit of disclosures lodged pursuant to Section 6 of the Act, and for identifying non-compliance issues. These issues are dealt with in accordance with the Compliance Policy. Occurrences of non-compliance may be further escalated for penalty notice or prosecution.

A standardised and detailed compliance audit of all party, elected member, group or candidate disclosures is required. A detailed compliance audit checklist will ensure impartiality, fairness and consistency in the review of disclosures and their findings. Complete and consistent information can then be provided for any matters that require escalation.

This policy document provides a framework on the process for compliance audit of disclosures and amendments made by:

- registered political parties;
- political parties;
- groups;
- elected members; and
- candidates

This policy assists with planning and conducting compliance audits on the disclosure of political donations and electoral expenditure as well as claims for public funding of State election campaigns.

### 3.3 Scope

The compliance audit covers the matters provided for in Part 6 of the Act, including political donations and electoral expenditure. Parties, groups, members and candidates will have the supporting vouching examined as part of the compliance audit.

Additionally, disclosures from parties are also required to be accompanied by audited Annual Financial Statements as well as accounting and bank records in a form approved by the EFA, which will also be part of the compliance audit.

The following sections of the Policy explain in detail the scope of compliance audits carried out by the EFA.

### 3.4 Political Donations

Political donations are required to be disclosed, for the relevant disclosure period, in connection with both State and local government elections and in respect to elected members of Parliament and Local Councils. The caps on political donations apply to State elections and elected members of the NSW Parliament only.<sup>8</sup>

The compliance audit on the political donations in accordance with Part 6 of the Act is mainly focused on, but not limited to, the following aspects:

- political donations received and disclosed by the parties, members, groups and candidates;<sup>9</sup>
- accounting records of the political donations received by the parties, members, groups and candidates;<sup>10</sup>

<sup>8</sup> Section 83 and section 88 of the Act.

<sup>9</sup> Section 88 of the Act.

<sup>10</sup> Division 2 and division 3 of the Regulation.



- the applicable caps on political donations;<sup>11</sup> and
- prohibited donors.

The following compliance audit measures are performed in respect to political donations required to be disclosed pursuant to Part 6 of the Act:

- examination and analysis of the vouching for political donations received from a party, an elected member, a group and a candidate;<sup>12</sup>
- examination and analysis of financial and accounting records of a party, elected member, group and candidate;<sup>13</sup>
- examination and verification of donation caps;<sup>14</sup> and
- cross-checking with donor disclosure information.

### 3.5 Electoral Expenditure

Electoral expenditure is required to be disclosed, for the relevant disclosure period, in connection with both State and local government elections and elected members but the caps on electoral communication expenditure only apply to State elections and elected members of the NSW Parliament.<sup>15</sup>

The compliance audit on the electoral expenditure in accordance with Part 6 of the Act is mainly focused on, but not limited to, the following aspects:

- the applicable caps on electoral communication expenditure on State election campaigns;<sup>16</sup>
- vouching for electoral communication expenditure;<sup>17</sup> and
- accounting records retained by the parties, members, groups and candidates of the electoral expenditure and electoral communication expenditure.<sup>18</sup>

The following compliance audit measures are performed on the electoral expenditure under Part 6 of the Act:

- examination and analysis of actual electoral expenditure incurred by the parties, members, groups and candidates;
- examination and analysis of the vouching and financial records for the actual electoral expenditure incurred by the parties, members, groups and candidates;
- examination of the applicable caps on electoral communication expenditure on State election campaigns; and
- cross-checking the actual electoral expenditure and the applicable caps.

### 3.6 Campaign Account

Parties, elected members, groups and candidates, in certain circumstances, are required to have a campaign account. Monetary political donations shall be paid into the campaign account. Payments for electoral expenditure incurred by or on behalf of the elected member, candidate or group shall be made from the campaign account.

The compliance audit on the campaign account in accordance with Part 6 of the Act is mainly focused on, but not limited to, the following aspects:

- the establishment of a campaign account;
- monetary deposits to the campaign account; and

11 Section 95(A) of the Act.

12 Section 9 of the Regulation.

13 Division 2 and division 3 of the Regulation.

14 Section 95(A) of the Act.

15 Section 83 and section 93 of the Act.

16 Section 95F of the Act.

17 Section 10 of the Regulation.

18 Division 2 and division 3 of the Regulation.



- payments made from the campaign account.

The following compliance audit measures are performed on the campaign account under Part 6 of the Act:

- examination of the set up, date and bank account authorisation of the campaign account;
- examination and analysis of the nature of the debit and credit transactions in the campaign account;
- cross-checking the transactions in the campaign account against the accounting records; and
- examination on the disbursement of surplus funds from the campaign account and the closure of the account.

### 3.7 Audit Opinions

After reviewing the information provided, the EFA may contact the official agent or party agent to seek clarification or additional information to the disclosure, before the compliance audit is completed.

A compliance audit assessment can then be sent to the agent. The assessment letter may be sent with no qualification where the EFA is satisfied that, in all material aspects, the disclosure is presented fairly and truly in conformance with the legislation and the guidelines published by the EFA.

For disclosures which include material aspects of the disclosure not in conformance with the legislation, the assessment letter may be sent with a qualified opinion.

If material aspects of the disclosure result in the EFA being unable to form an opinion, or is of the opinion that the disclosure does not comply with the legislation, then the matter is dealt with in accordance with the Compliance Policy.

## 4. Other Reviews

In addition to performing a compliance audit with Part 6 of the Act, the EFA also reviews and examines disclosures and additional supporting information provided by stakeholders. This review verifies that the information reported in disclosures and submitted as part of claims for public funding is accurate and conform to the legislation.

### 4.1 Public Funding

The Election Campaigns Fund is kept by the EFA in respect of State elections. Registered parties and duly nominated candidates are, subject to and in accordance with Part 5 of the Act, eligible to make a claim for payment from the Election Campaigns Fund in respect of a State election. The party and candidate claims on the distribution of payments in accordance with Part 5 of the Act from the Election Campaigns Fund are reviewed and examined on, but not limited to, the following aspects:

- eligibility criteria test for the registered parties and candidates;<sup>19</sup>
- applicable expenditure caps;<sup>20</sup>
- actual expenditure incurred; and
- the amount to be distributed from the Election Campaigns Fund.<sup>21</sup>

The following review is performed on the disclosure of electoral expenditure for the purpose of assessing claims for payments under Part 5 of the Act.

An eligibility criteria check on the registered parties and candidates is performed.

A check on the actual expenditure incurred will be performed and includes, but is not limited to:

- examination and analysis of the vouching of electoral communication expenditure;<sup>22</sup>

19 Section 57 and 59 of the Act.

20 Division 2B and Part 6 of the Act.

21 Section 58 and 60 of the Act.

22 Section 66 of the Act; section 6 of the Regulation

- examination and analysis of the copies of any advertising material to which any portion of the expenditure relates;<sup>23</sup> and
- examination and analysis of the financial records of the electoral communication expenditure.<sup>24</sup>

#### 4.2 Third-party Campaigners

Declarations by third-party campaigners are lodged pursuant to Part 6 of the Act and need to comply with the requirements to disclose vouching of income, electoral expenditure and requirements relating to a campaign account.

Third-party campaigner disclosures are reviewed and examined in accordance with the requirements noted above in subsections 3.4, 3.5 and 3.6. They are also reviewed and cross-checked with the declarations provided by parties and candidates.

Any inconsistent information in the declarations made by third-party campaigners is escalated for further review in accordance with the Compliance Policy.

#### 4.3 Donors

Declarations lodged by donors are also reviewed and cross-checked with the declarations provided by the parties, candidates and third-party campaigners.

Any inconsistent information in the declarations made by the donors is escalated for further review in accordance with the Compliance Policy.

### 5. Changes and Updates

This policy is subject to ongoing revisions to reflect legislation amendments and to adopt the best audit practices. The policy is to be published on the EFA's official website. The online policy is considered to be the current version.

It is the responsibility of the user(s) of this policy to ensure that the most current version is being applied.

It is the responsibility of the EFA to ensure that policy documents are regularly reviewed and to ensure that the most current approved version is available online.

### 6. Monitoring and Evaluation

The EFA's policies are reviewed each year from the date of implementation or earlier, should a review be required.

<sup>23</sup> Division 10A of the Regulation.

<sup>24</sup> Section 8B of the Regulation.



# Funding and Disclosure Guide

Political Parties and Party Agents

## Funding and Disclosure Guide, Political Parties

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Please address all enquiries to the New South Wales Electoral Commission, Level 25, 201 Kent Street, Sydney 2000.



## CONTENTS

Introduction	IV
Part A Parties and Party Agents	
1. Registration of Parties and Party Agents for the Purposes of Funding and Disclosure	1
2. Appointment and Registration of Party Agents	1
2.1 Party Agent Requirements – An Overview	
2.2 Who can be a Party Agent?	
2.3 Responsibilities of a Party Agent	
2.4 Responsibilities of Parties	2
2.5 Party Agent Training	
2.6 Appointing a Party Agent	3
2.7 Register of Party Agents	
2.8 Changing a Party Agent's Details	
2.9 Cancelling a Party Agent's Appointment	4
Part B Political Donations and Electoral Expenditure	
3. Understanding Political Donations and Electoral Expenditure	5
3.1 What is a Political Donation?	
3.2 What is not a Political Donation?	
3.3 Small Political Donations	
3.4 Reportable Political Donations	6
3.5 Non-monetary Gifts	
3.6 Reportable Loans	
3.7 Non-reportable Loans	
3.8 Caps on Political Donations to Registered and Unregistered parties	7
3.9 Unlawful Political Donations	8
3.9.1 Receiving Certain Indirect Campaign Contributions	
3.9.2 Prohibited Political Donations	
3.9.3 Receiving Reportable Loans unless the Details are Recorded	
3.10 Prohibited Donors	
3.11 Who are prohibited donors?	9
3.11.1 What is a property developer?	
3.11.2 What is a tobacco industry business entity?	
3.11.3 What is a liquor or gambling industry business entity?	
4. Managing Political Donations	10
4.1 Rules in Relation to Expenditure of Political Donations	
4.2 Issuing Receipts and Acknowledgements for Reportable Political Donations	
4.3 Issuing Receipts and Acknowledgements for Small Political Donations	11
5. Electoral Expenditure	11
5.1 What is Electoral Expenditure?	
5.2 What is Electoral Communication Expenditure?	
5.3 What is not Electoral Communication Expenditure?	12
5.4 What are the caps on electoral communication expenditure?	
5.5 Aggregation of expenditure of associated parties	13
5.6 Aggregation of expenditure of multiple endorsed candidates in Legislative Assembly electorates	
5.7 Aggregation of expenditure of parties and endorsed candidates	
5.8 What is the capped expenditure period?	
Part C Record Keeping	
6. Record Keeping	14
6.1 Record Keeping Requirements	

6.2	Maintaining Computer Accounting Records	
6.3	Receipt and Acknowledgement Book	
6.4	Deposit Book	15
6.5	Cash Book	
6.6	Journal	16
6.7	Ledger	
6.8	Records of Small Political Donations	
6.9	Advertising Records	
 Part D Disclosure		
7.	Disclosure of Political Donations and Electoral Expenditure	18
7.1	Disclosure Requirements	
7.2	Disclosure Periods and Due Dates for Parties Lodging a Disclosure	
8.	Completing a Disclosure Form - Parties	18
8.1	Disclosure Form to be used	
8.2	Part Agent Details and Declaration	19
8.3	Summary Table of Political Donations and Electoral Expenditure	
8.4	Part A – Small Political Donations received (General)	
8.5	Part B – Reportable Political Donations received (General)	
8.6	Part C – Fundraising Ventures and Functions	20
8.6.1	Table C1: Event Details of Fundraising Ventures and Functions	
8.6.2	Table C2: Small Political Donations Received at Fundraising Functions	
8.6.3	Table C3: Reportable Political Donations Received at a Fundraiser	
8.7	Part D – Reportable Loans	21
8.8	Part E – Annual Party Membership or Affiliation Subscriptions	
8.9	Part F – Electoral Expenditure and Electoral Communication Expenditure	
8.9.1	Table F1: Electoral Communication Expenditure - Advertising	22
8.9.2	Table F2: Production and Distribution of Election Material	
8.9.3	Table F3: Internet, Telecommunications, Stationery and Postage	
8.9.4	Table F4: Employing staff engaged in election campaigns	
8.9.5	Table F5: Office Accommodation for Staff and Candidates	23
8.10	Part G – Electoral Expenditure – Other	
8.11	Part H – Small Political Donations made by the Party	
8.12	Part I – Electoral Expenditure – Reportable Political Donations made by the party	
8.13	Auditing a Disclosure	24
8.14	Lodging a Disclosure	
8.15	Vouching for Political Donations and Electoral Expenditure	
9.	Other Information about Lodging a Disclosure	25
9.1	Compliance Audits	
9.2	Amending a Disclosure	
9.3	Requesting an Extension of Time to Lodge a Disclosure	
9.4	Public Access	
 Part E Public Funding		
10.	Public Funding of Election Campaigns	26
10.1	Funding Availability Overview	
10.2	Funds for a State Election	
10.2.1	Funding Eligibility Criteria and Entitlements of Legislative Assembly Candidates	
10.2.2	Funding Eligibility Criteria and Entitlements of Political Parties	27
10.2.3	Other considerations regarding funding eligibility	
10.2.4	Entitlements to advance payments	
11.	Making a Claim for Payment for a State Election or By-election	28
11.1	Overview	
12.	Completing a Claim for Payment for a Parliamentary Election	29
12.1	Claim Form to be used	



12.2	Election Details	
12.3	Claim Details	
12.4	Direction to Make Payment to a Party	30
12.5	Request for Funding	
12.6	Certificate of a Registered Company Auditor	
12.7	Vouching for Expenditure in a Claim for Payment	
13.	Other Information about Making a Claim for Payment	
13.1	Receiving Payments	
13.2	Requesting an Extension of Time to Lodge a Claim for Payment	31
13.3	Public Access	

#### Part F Administration Fund

14.	Administration Fund	32
14.1	Administration Fund Overview	
14.2	What expenditure can be funded from the Administration Fund?	
14.3	Funding Eligibility	
14.4	Amount of Funding	
14.5	Parties with the same endorsed elected members	33
14.6	Claims for Payment from the Administration Fund	
14.7	Certificate of Registered Company Auditor	
14.8	Claim for Payment and Declaration of Expenditure –Administrative Funding	
14.9	When to Lodge Claims for Payment from the Administration Fund	34
14.10	Receiving Payments from the Administration Fund	

#### Part G Policy Development Fund

15.	Policy Development Fund	35
15.1	Overview of the Policy Development Fund	
15.2	Amount of Funding	
15.3	Claims for Payment from the Policy Development Fund	
15.4	Certificate of Registered Company Auditor	
15.5	Claim for Payment and Declaration of Expenditure –Policy Development Fund	36
15.6	When to Lodge Claims for Payment from the Policy Development Fund	
15.7	Receiving Payments from the Policy Development Fund	

#### Part H Appendices

16.	Definitions	37
17.	Offences	39
18.	List of Forms to be Used by Parties and Party Agents	41

## INTRODUCTION

This guide is issued by the Election Funding Authority (the Authority) of New South Wales and details the obligations and entitlements of parties and party agents under the provisions of the *Election Funding, Expenditure and Disclosures Act 1981* and the *Election Funding, Expenditure and Disclosures Regulation 2009*.

The Authority has separate guides for registered candidates, groups, elected members of Parliament, local government councillors (including mayors), local government candidates, political donors and third-party campaigners. Those guides can be downloaded from the Authority's website [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au).

These guides are not intended to be a substitute for the Act and the Regulation. Parties, party agents and others are advised to obtain a copy of the Act and the Regulation and seek their own legal advice if necessary. The Act and the Regulation are available on the New South Wales Government Legislation website [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

Other publications relevant to parties and party agents contesting State elections issued by the New South Wales Electoral Commission (NSWEC) are available on the NSWEC's website [www.elections.nsw.gov.au](http://www.elections.nsw.gov.au).

### Overview of the Act and Regulation

The core objectives of the Act and Regulation are:

- To allocate public funds to parties, candidates and groups for the conduct of State Parliamentary election campaigns and (in the case of parties) to allocate public funds for administrative and policy development expenses
- To impose maximum amounts (or "caps") on the value of political donations that might lawfully be accepted and the electoral communication expenditure that might lawfully be incurred (and to *prohibit* donations from a limited class of intending donors, including property developers)
- To require disclosure of the source and the amount of all political donations received and the amount of electoral expenditure incurred for State parliamentary and local government election campaigns

Penalties apply to candidates, groups, agents and any other person guilty of an offence under the Act and/or Regulation (see section 23).

### Assistance and Enquiries

The Authority will provide assistance in some cases but it will not provide legal advice on specific compliance issues.

### Postal Address

The Secretary  
Election Funding Authority of New South Wales  
GPO Box 4046  
Sydney NSW 2001  
**Phone:** 1300 022 011  
**Fax:** 02 9290 5410  
**Email:** [enquiries@efa.nsw.gov.au](mailto:enquiries@efa.nsw.gov.au)  
**Web:** [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au)

### 1. REGISTRATION OF PARTIES AND PARTY AGENTS FOR THE PURPOSES OF FUNDING AND DISCLOSURE

Political parties applying for registration under the *Parliamentary Electorates and Elections Act 1912* or *Local Government Act 1993* are required to state in their application whether the party also wishes to be registered for the purposes of the *Election Funding, Expenditure and Disclosures Act 1981* (the Act).

A party that chooses to be registered for the purposes of the Act is recognised by the Election Funding Authority (the Authority) as being eligible to receive public funding for parliamentary election campaign purposes and policy development purposes (should that party fulfil the other criteria necessary to receive funding).

All parties, whether they are registered for the purposes of the Act or not, must comply with the disclosure requirements of the Act outlined in this guide.

For information about how to register a political party, contact the New South Wales Electoral Commission (NSWEC) by going to [www.elections.nsw.gov.au](http://www.elections.nsw.gov.au) or calling 1300 135 736.

### 2. APPOINTMENT AND REGISTRATION OF PARTY AGENTS

#### 2.1 Party Agent Requirements – An Overview

All political parties must appoint a party agent to act on their behalf in respect of election funding and disclosure matters. If at any time a party has not appointed a party agent, the registered officer of the party becomes the party agent for that party and must comply with the requirements of the Act and the Regulation.

Those intending to be appointed as a party agent must successfully complete an online training program provided on the Authority's website before their appointment.

The party agent has the responsibility for managing political donations and expenditure, maintaining records, lodging disclosures and lodging claims for public funding.

A person can be a party agent for more than one party, candidate, group or elected member. However, each appointment must be made separately. The party agent retains office until they die, resign or are removed by the party that appointed them.

#### 2.2 Who can be a Party Agent?

The eligibility requirements for an appointed party agent are:

- a person who is enrolled to vote in New South Wales;
- a person who has successfully completed the online training program set by the Authority;
- a person who has not been convicted of an electoral offence, an offence against the *Election Funding, Expenditure and Disclosures Act 1981*, an offence involving dishonesty or an indictable offence; and
- a person that does not hold any office or position under the *Parliamentary Electorates and Elections Act, 1912*.

Corporations cannot be appointed as party agents.

#### 2.3 Responsibilities of a Party Agent

A party agent is responsible for complying with the legislation on behalf of the party they were appointed by. These include but are not limited to:

- receiving political donations and making payments for electoral expenditure;



## Part A Parties and Party Agents

- obtaining and keeping full and accurate records of the party's political donations and electoral expenditure;
- issuing receipts or acknowledgements to people and entities who make reportable political donations;
- lodging disclosures with the Authority of political donations and electoral expenditure;
- making claims and receiving public funding payments;
- acting as the official agent for candidates, groups and elected members who are also members of the party (applies to state elections only);
- acting as the official agent for candidates;
- authorising persons to sign receipts for political donations made to or for the benefit of the party;
- authorising applying to the Authority for approval for the party to keep an alternative system of accounting records other than those described in the Regulations;
- keeping full and accurate accounts, records, documents and papers of the party for the purposes of disclosing the political donations and electoral expenditure of the party, lodging a claim for payment and facilitating an audit;
- lodging disclosures with the Authority of political donations and electoral expenditure; and
- making claims and receiving public funding payments (applies to State elections only).

### 2.4 Responsibilities of Parties

Parties are also responsible for complying with the legislation with respect to certain matters including (but not limited to):

- appointing a party agent;
- receiving political donations and making payments for electoral expenditure;
- maintaining bank accounts for use for a State election campaign and for other purposes;
- issuing receipts and acknowledgements to people and entities that make reportable political donations to or for the benefit of the party; and
- keeping, maintaining and retaining the accounting records of the party and providing those records to the party agent.

### 2.5 Party Agent Training

Prospective party agents must successfully complete an online training program prior to their appointment. The training program is available on the Authority's website [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au) and takes approximately one hour to complete.

To do the training program, prospective party agents must register online to get a username and a password.

The training consists of a number of information modules with quizzes and activities throughout. A quiz provides an opportunity for the prospective agent to reinforce their learning from each module.

The training program also consists of an assessment test of multiple choice questions. Prospective agents must answer at least 80% of the questions correctly in order to pass the assessment and successfully complete the training.

Those who have not passed the assessment after 5 attempts are not eligible to be appointed as a party agent. The following people are not required to undertake the training program:

- a Certified Practising Accountant who is a member of CPA Australia, New South Wales Division;
- a member of the Institute of Chartered Accountants in Australia, New South Wales Branch, who holds a Certificate of Public Practice issued by that Institute;
- a member of the Institute of Public Accountants who holds a Professional Practice Certificate issued by that Institute; and
- a person that has been granted an exemption by the Authority.

### 2.6 Appointing a Party Agent

Once a person has successfully completed the training program (unless they are exempt from training) and they meet all the eligibility requirements outlined in section 2.2 of this guide, a political party may appoint the person as their agent by completing a **Notice of Appointment of Party Agent (form EF.675)** and lodging it with the Authority.

The appointment of a party agent is ongoing.

The Authority will not accept the notice of appointment unless a party official of the party and the party agent have both signed the form.

A person may be a party agent for more than one party.

In the case of State elections, the party agent is automatically the official agent for those candidates, groups and elected members who are members of the party (unless a candidate or group chooses to appoint another person as their official agent with the consent of the party agent).

In the case of Local Government elections, the party agent is not automatically the official agent for candidates or groups who are members of the party. The party agent may be appointed as the official agent for any candidate or group. Elected members of local councils may apply to the Authority to have the party agent designated as their official agent.

A separate **Notice of Appointment of Party Agent (form EF.675)** or **Notice of Appointment of an Official Agent (form EF.672)** (as applicable) must be completed for each appointment.

A party agent must keep separate records for the party as well as each candidate, group and elected member they act as agent for.

Party agents (in their capacity as official agents) must comply with the requirements of the Act and Regulation with respect to the elected members, candidates and groups for whom they act. Refer to the *Funding and Disclosure Guide for Candidates, Groups and Official Agents* for information about being an official agent for a candidate or group.

### 2.7 Register of Party Agents

The Authority maintains a separate Register of Party Agents for State and local government elections. When the Authority receives a notice of appointment, the agent's details are entered into the appropriate register and the agent becomes a registered party agent.

The register is a public document and is made available for public inspection at the office of the Authority. The register includes the details of registered party agents. The information that is published on the register includes:

- the name of the party which appointed the agent;
- the name and address of the party agent; and
- the occupation of the party agent.

### 2.8 Changing a Party Agent's Details

Registered party agents must notify the Authority in writing if any of the following details change:

- the name of the party agent;
- the address of the party agent;
- the contact details of the party agent; and
- the occupation of the party agent.

When the Authority has received the changes, the party agent's details will be amended in the appropriate Register of Party Agents.

### 2.9 Cancelling a Party Agent's Appointment

If a party agent dies, resigns or has their appointment revoked by the party, the Authority must be notified in writing. A party official is to complete and lodge a **Cancellation of Appointment of an Agent (form EF.677)** available from the Authority's website.

When the Authority receives a cancellation of appointment, details of the party agent will be removed from the appropriate Register of Party Agents with respect to the party that cancelled the appointment.

The party is required to appoint a new party agent to act on their behalf in respect of election funding and disclosure matters. To do this, a party official of the party must complete and lodge a new **Notice of Appointment of Party Agent (form EF.675)**. All other criteria for appointment must also be met (see section 2.2).

If at any time a party has not appointed a party agent, the registered officer of the party becomes the party agent and would also act as an official agent for the party's candidates and groups who contest State elections and who are members of the party and all of the party's elected members to Parliament.



### 3. UNDERSTANDING POLITICAL DONATIONS AND ELECTORAL EXPENDITURE

#### 3.1 What is a Political Donation?

A political donation is a gift made to or for the benefit of a candidate, a group of candidates, an elected member, a political party or a third-party campaigner.

A political donation also includes a gift made to or for the benefit of an entity or other person, where the whole or part of the gift was used or is intended to be used by the entity or person:

- to enable them to make a political donation or to incur electoral expenditure; and
- to reimburse them for making a political donation or incurring electoral expenditure.

Political donations include:

- a donation of money;
- the provision of a service at no charge or at a discounted charge;
- an annual or other subscription paid to a party by a party member or a person/entity for affiliation with the party;
- the amount paid by a person as a contribution, entry fee or other payment that entitle that or any other person to participate in or benefit from a fundraising event where the amount forms part of the proceeds from the event;
- the transfer of money to a NSW branch of a party from the federal branch of the party;
- the transfer of money to a NSW branch of a party from the branch of another State or Territory;
- the transfer of money from a party to another party with which it has an association (eg common membership, coalition or otherwise);
- money from the sale of a gift donated to a candidate or group (eg a gift is donated to a candidate or group and it is sold by the candidate or group at a fundraising event such as an auction);
- uncharged interest on a loan – that is the additional amount that would have been payable to the lender if the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind, and the interest payable had not been waived, and any interest payments were not capitalised;
- use of a vehicle not owned by the candidate during an election campaign (unless a payment is made by the candidate, the value of the use of the vehicle is deemed to be a political donation);
- conducting a voter intention survey on behalf of a candidate at no charge (the cost of this service is deemed to be a political donation);
- interest earned from the investment of funds donated or raised for election campaign purposes;
- the provision of some types of volunteer labour;
- incidental or ancillary use of vehicles or equipment of volunteers; and
- anything provided or done by a party for the candidates endorsed by the party in accordance with the arrangements made by the party agent.

#### 3.2 What is not a Political Donation?

The following are not political donations:

- gifts to an individual made in a private capacity for personal use only;
- public funding of election campaigns; and
- funding from the Authority's Administration or Policy Development Funds.

#### 3.3 Small Political Donations

Small political donations are those that are less than \$1,000 each or multiple donations from the same donor in one financial year that total less than \$1,000. These donations can be monetary or non-monetary.

## Part B Political Donations and Electoral Expenditure

### 3.4 Reportable Political Donations

A reportable political donation is a donation of \$1,000 or more (or multiple donations from one donor in one financial year that total \$1,000 or more) to the party.

### 3.5 Non-monetary Gifts

Non-monetary gifts and indirect campaign contributions of \$1,000 or more from one donor to the same recipient in one financial year must be disclosed as reportable political donations.

Certain indirect campaign contributions totalling \$1,000 or more from one donor within one financial year are prohibited (see section 3.9).

Non-monetary gifts and indirect campaign contributions of less than \$1,000 from one donor in a financial year must be disclosed as small political donations. Acceptable indirect campaign contributions include the following:

- provision of volunteer labour; and
- anything provided or done by a party for the candidates endorsed by the party in accordance with arrangements made by the party agent.

The donation of time by a person is only considered volunteer labour if it does not constitute a service for which that person normally charges. For example, a solicitor who delivers voting pamphlets performs volunteer labour because the delivery is not a service for which that person normally charges. However, free legal advice by that solicitor would constitute a non-monetary donation, the value of which must be estimated and disclosed.

The value assigned to a non-monetary gift/indirect campaign contribution is to be a current value at the prevailing commercial rate. If necessary, a professional valuation should be obtained from a reputable source, such as an auctioneer, real estate agent etc.

The following guidelines can be used to assign values to non-monetary gifts:

- the current hourly award wage rate;
- the current average retail price of petrol;
- the level of rent normally charged for commercial premises;
- the nominal charges for the hire of equipment or vehicles; and
- the nominal selling price of an item or service.

At the Authority's request, the value of non-monetary gifts/indirect campaign contributions may need to be determined by valuers appointed or approved by the Authority in accordance with the Act.

### 3.6 Reportable Loans

A loan is an advance of money, the provision of credit or any other transaction that in substance affects a loan of money.

A reportable loan is a loan or total in loans of \$1,000 including multiple loans from the one source in the one financial year totalling \$1,000 or more.

Unpaid accounts and invoices are also considered reportable loans if there is an agreement with the supplier of the product or service to extend their standard payment period and/or payment terms.

### 3.7 Non-reportable Loans

A non-reportable loan is:



## Part B Political Donations and Electoral Expenditure

- a loan for an amount less than \$1000 or multiple loans from the one lender which when aggregated over the disclosure period total less than \$1000;
- a loan from a financial institution; and
- a credit card transaction.

These loans are not required to be disclosed to the Authority.

### 3.8 Caps on Political Donations to registered and unregistered parties

The caps on political donations apply only to State elections.

It is unlawful for a person to make or accept a political donation if the donation exceeds the applicable cap on political donations. With respect to political donations made to a party, the portion of the political donation which exceeds the applicable cap may be accepted if it is paid into an account kept exclusively for federal or local government elections.

Donation caps are as follows:

- \$5,000 for political donations to or for the benefit of a registered political party;
- \$5,000 for political donations to or for the benefit of a group;
- \$2,000 for political donations to or for the benefit of an unregistered party;
- \$2,000 for political donations to or for the benefit of a candidate; and
- \$2,000 for political donations to or for the benefit of a third-party campaigner.

A political donation made any time after 30 June 2010 is to be taken into account as a donation made during the 2010-2011 financial year.

Note: For the purposes of disclosure, the full amount of the donation must be disclosed. For the purposes of receiving the donation, only the amount of the donation up to the applicable cap can be deposited into the party's State campaign account. The remaining amount can only be paid into an account for a Federal or State election.

A party subscription paid to a party is not included in the applicable cap on political donations except the amount of the subscription that exceeds the maximum subscription. The maximum subscription is as follows:

- if the subscription is in respect of a membership of a party, the maximum subscription allowed is \$2,000 per member; and
- if the subscription is in respect of an affiliation with a party, the maximum subscription allowed is:
  - if the amount of the subscription is not based on the number of members of the affiliate, \$2,000; or
  - if the amount of the subscription is based on the number of members of the affiliate, \$2,000 multiplied by the number of members of the affiliate.

For example, if a payment is made to a party for a party membership that is \$3,000 then \$2,000 of that amount is the party subscription and the remaining \$1,000 is the political donation, which is subject to the political donation cap.

A party levy paid to a party by an elected member endorsed by the party is not subject to the cap on political donations.

Bequests are not a political donation and are therefore not subject to the cap on political donations.

Capped amounts are indexed to inflation. The Authority publishes adjustments to the political donation caps for a financial year on its website.

### 3.9 Unlawful Political Donations

The following kinds of political donations are unlawful.

#### 3.9.1 Receiving Certain Indirect Campaign Contributions

It is unlawful to make or accept any of the following indirect campaign contributions where the value of the contribution exceeds \$1,000 or the total value of the items provided by the same person/entity within the one financial year exceeds \$1,000:

- the provision of office accommodation, vehicles, computers or other equipment for no payment or inadequate payment for use solely or substantially for election campaign purposes;
- a full or part payment of costs incurred by a candidate or group of electoral expenditure for advertising or other purposes (or making an agreement to make such a payment); and
- waiving of all or part of a payment for costs incurred by the party for electoral expenditure for advertising incurred by the candidate or group.

Electoral expenditure for advertising is taken to be incurred by a political party if the advertising is authorised by that party.

Indirect campaign contributions must be disclosed as political donations and are subject to the cap on political donations.

#### 3.9.2 Prohibited Political Donations

It is unlawful for a person to accept a reportable political donation unless:

- it is made by an individual who is enrolled on the roll of electors for federal, state or local government elections; or
- it is made by an entity that has a relevant business number, which can be an Australian Business Number (ABN) or any other number allocated or recognised by the Australian Securities and Investments Commission for the purposes of identifying the entity.

It is unlawful for a person to accept a reportable political donation unless:

- the name and address of the person or entity are known or provided to the person accepting the donation; and
- there are no grounds to believe that the name and address provided are not true.

It is unlawful for a party (or an endorsed candidate, group or elected member) to make a political donation to a candidate, group or elected member not endorsed by that party.

#### 3.9.3 Receiving Reportable Loans unless the Details are recorded

It is unlawful for a person to receive a reportable loan (being a loan or loans totalling \$1,000 or more) unless the following are recorded:

- the terms and conditions of the loan; and
- the name and address of the entity or other person making the loan.

This provision does not apply to a loan from a financial institution.

### 3.10 Prohibited Donors

It is unlawful for a prohibited donor to make a political donation.



It is unlawful for a person to make a political donation on behalf of a prohibited donor.

It is unlawful for a person to accept a political donation that was made (wholly or partly) by a prohibited donor or by a person on behalf of a prohibited donor.

It is unlawful for a person to solicit another person on behalf of a prohibited donor to make a political donation.

A person who is a prohibited donor and who is also a member of a political party, or who has an affiliation with a party, may make annual or other subscriptions to the party so long as the payments do not constitute reportable political donations (see section 3.4).

### 3.11 Who are prohibited donors?

Property developers, tobacco industry business entities and liquor or gambling industry business entities are prohibited donors, including any industry representative organisation where the majority of its members are prohibited donors.

#### 3.11.1 What is a property developer?

A “property developer” is a corporation engaged in a business (or a person who is a “close associate” of such a corporation) that regularly involves the making of “relevant planning applications” by or on behalf of the corporation in connection with the residential or commercial development of land with the ultimate purpose of the sale or lease of the land for profit.

A “close associate” of a corporation (as mentioned above) includes:

- directors and officers of the corporation and their spouses;
- related body corporate;
- a person (or the spouse of such a person) whose voting power in the corporation or related body corporate is greater than 20%;
- stapled entities; and
- if the corporation is a trustee, manager or responsible entity in relation to:
  - a unit trust – persons who hold more than 20% of the units; and
  - a discretionary trust – persons who are beneficiaries of the trust.

#### 3.11.2 What is a tobacco industry business entity?

A “tobacco industry business entity” is a corporation engaged in a business (or a person who is a “close associate” of such a corporation) mainly concerned with the manufacture or sale of tobacco products.

A “close associate” of a corporation is explained at 3.11.1 above.

#### 3.11.3 What is a liquor or gambling industry business entity?

A “liquor or gambling industry business entity” is a corporation engaged in a business (or a person who is a “close associate” of such a corporation) mainly concerned with the manufacture and sale of alcohol products or wagering, betting or other gambling for the ultimate purpose of making a profit (including manufacture of machines used primarily for gambling).

A “close associate” of a corporation is explained at 3.11.1 above.



### 4. MANAGING POLITICAL DONATIONS

#### 4.1 Rules in Relation to Expenditure of Political Donations

Political donations made to or for the benefit of the party must only be used for the objects and activities of the party including administration of the party and community activities (or for any other approved purpose under the Act).

It is unlawful for political donations to be used by an individual from the party in a private capacity.

It is unlawful to accept a reportable political donation from an anonymous donor or from an entity without a relevant business number (see section 3.9).

Political donations made to or for the benefit of a party must be deposited into one of the party's accounts with a bank, building society or credit union. Political donations up to the applicable cap on political donations can be paid into the party's State election campaign account.

#### 4.2 Issuing Receipts and Acknowledgements for Reportable Political Donations

When a person or entity makes a reportable political donation to or for the benefit of a party, the person accepting the donation is required to make a record of the donation and issue a receipt/acknowledgement slip to the donor. The receipt or acknowledgement must be signed by a person authorised by the party agent.

The Authority provides Receipt and Acknowledgement books to parties and party agents free of charge. Extra books will be provided upon request.

The receipt/acknowledgement slips provided by the Authority are in triplicate form. The original must be given to the donor, the duplicate must be kept by the party agent and the triplicate must be kept in the Receipt and Acknowledgement book and must be lodged with the **Disclosure of Political Donations and Electoral Expenditure by a Political Party** (see section 8.16). Each receipt/acknowledgement slip must contain the following information:

- a receipt/acknowledgement number (the Receipt and Acknowledgement books issued by the Authority already have this number);
- the date donation was received;
- the name and address of the donor. The relevant business number must also be recorded if the donor is an entity;
- the type of donation received – cash, credit card, cheque, gift or service;
- the amount of money received or the value of the non-monetary gift/service donated (see section 3.5);
- description of the non-monetary gift/service (if applicable);
- the purpose of the payment;
- the signature of a person authorised by the party agent to sign receipts/acknowledgements; and
- the name of the political party to whom, or for whose benefit the donation was made.

In addition, each receipt/acknowledgement slip must contain the following statement advising the donor of their obligation to disclose political donations and electoral expenditure:

“If you make a political donation or incur electoral expenditure of \$1,000 or more, you must complete and lodge a declaration with the Election Funding Authority in accordance with the *Election Funding, Expenditure and Disclosures Act 1981*. A political donation includes a contribution or entry fee or an annual or other subscription. You must also disclose a political donation of less than \$1,000 if the total amount of political donations made by you in respect of the same party (or associated parties), elected member, group, candidate or person in the same financial year is \$1,000 or more. Penalties apply for failing to lodge a declaration.”

## Part B Political Donations and Electoral Expenditure

The Receipt and Acknowledgement books issued by the Authority already have this statement printed on the back of each receipt/acknowledgement slip.

If a receipt/acknowledgement must be cancelled, the word 'CANCELLED' must be written across the receipt/acknowledgement slip. Cancelled slips must be kept in the Receipt and Acknowledgement book.

### 4.3 Issuing Receipts and Acknowledgements for Small Political Donations

Party agents must obtain from the party records of small political donations (monetary and non-monetary) in order to disclose the total value of these donations received and the total number of people who made these donations during the disclosure period.

Although it is not a requirement to issue receipts or acknowledgements for donations under \$1,000, it is advisable to do so anyway, in case a donor makes more than one donation and the total sum exceeds \$1,000 in a financial year. In this case the donation becomes a reportable donation. For convenience use the Receipt and Acknowledgement book provided by the Authority.

It is also not a requirement to issue receipts or acknowledgements for non-monetary donations valued less than \$1,000, although it is advisable to do so anyway, in case a donor makes more than one donation and the total value exceeds \$1,000 in a financial year. The value of such donations must be estimated (see section 3.5). For convenience use the Receipt and Acknowledgement book provided by the Authority.

## 5. ELECTORAL EXPENDITURE

### 5.1 What is Electoral Expenditure?

Electoral expenditure is expenditure for, or in connection with, promoting or opposing, directly or indirectly, a political party or the election of a candidate or candidates. It is also expenditure for the purpose of influencing the voting at an election.

Electoral expenditure does not include:

- expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament; and
- expenditure on factual advertising of:
  - meetings to be held for the purpose of selecting persons for nomination as candidates for election;
  - meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties; and
  - any other matter involving predominantly the administration of parties or conferences, committees or other bodies or branches of parties.

Expenditure includes any disposition of property, including money.

### 5.2 What is Electoral Communication Expenditure?

Electoral communication expenditure is electoral expenditure incurred during the capped expenditure period of an election. It is subject to a cap on spending and may also be eligible for public funding.

Electoral communication expenditure includes expenditure for:

- advertisements on radio, television, the internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and any other printed election material;
- production and distribution of election material;
- the internet, telecommunications, stationery, phones, messages, postage and electronic transmissions;
- employing staff engaged in election campaigns; and



- office accommodation for staff and candidates (but not the campaign headquarters of a party or the electorate office of an elected member).

Electoral communication expenditure of a Legislative Assembly candidate endorsed by a registered party includes any electoral communication expenditure incurred by that party for the benefit of the candidate and invoiced by that party to the candidate.

### 5.3 What is not Electoral Communication Expenditure?

Certain types of electoral expenditure are not electoral communication expenditure and are therefore not subject to the expenditure cap. However, this expenditure must still be disclosed to the Authority.

These include, but are not limited to expenditure on:

- travel and travel accommodation;
- research associated with election campaigns;
- raising funds for an election or in auditing campaign accounts; and
- auditing campaign accounts.

Party agents are advised to contact the Authority for clarification if uncertain whether expenditure for a particular item or purpose must be disclosed.

### 5.4 What are the caps on Electoral Communication Expenditure?

It is unlawful for a party to incur electoral communication expenditure for a State election campaign during the capped expenditure period for the election if it exceeds the applicable cap on electoral communication expenditure.

If the electoral communication expenditure of any party is less than the applicable cap, the balance is not transferrable so as to increase the applicable cap of any other party or person.

For each capped expenditure period, the caps for parties are as follows:

- for parties with more than ten endorsed Legislative Assembly candidates in an election: \$100,000 multiplied by the number of electoral districts in which a Legislative Assembly candidate is endorsed by the party for election - the total cap for a party that endorses candidates in all 93 electorates at a general election is \$9.3 million; and
- for parties who endorse candidates in a group for the Legislative Council election, and who endorsed 10 or less candidates for election to the Legislative Assembly, the cap on electoral communication expenditure is \$1,050,000.

The applicable cap for parties is subject to an additional cap (within the overall applicable cap) of \$50,000 in respect of each electorate for electoral communication expenditure incurred substantially for the purposes of the election in that particular electorate in relation to State general elections, or by-elections in more than one electorate. Electoral communication expenditure is only incurred for the purposes of the election in a particular electorate if the expenditure is for advertising or other material that:

- explicitly mentions the name of the candidate in the election in that electorate or the name of the electorate;
- is communicated to electors in that electorate; and
- is not mainly communicated to electors outside that electorate.

These amounts are correct as at 1 January 2011. They are indexed and are therefore likely to change each year – consult the Authority's website [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au) for current amounts.



## Part B Political Donations and Electoral Expenditure

If the electoral communication expenditure of any candidate or group is less than the cap, the balance cannot be transferred to any other party, group or person.

### 5.5 Aggregation of expenditure of associated parties

Parties registered with the Authority are associated if:

- they endorse the same candidate for a State election;
- they endorse candidates included in the same group in a Legislative Council election; or
- they form a recognised coalition and endorse different candidates for a State election or endorse candidates in different groups in a periodic Legislative Council election.

The capped amounts outlined at 5.4 still apply and are to be shared by the associated parties. For example, the cap of \$100,000 per Legislative Assembly candidate applies and is to be shared by associated parties (it is not a separate amount for each of those parties). Similarly, for associated parties with Legislative Council candidates and candidates in not more than 10 electorates, the cap remains \$1,050,000 and is to be shared by the associated parties.

### 5.6 Aggregation of expenditure of multiple endorsed candidates in Legislative Assembly electorates

If 2 or more candidates are endorsed by the same party (or by associated parties) in the same electorate, the cap remains \$100,000 and is to be shared by those candidates (it is not a separate amount for each candidate).

### 5.7 Aggregation of expenditure of parties and endorsed candidates

Electoral communication expenditure incurred by a party for a State election campaign which is less than the capped amount will be treated as expenditure that exceeds the cap if that expenditure and any other electoral communication expenditure incurred by a candidate endorsed by the party for election to the Legislative Council exceed the applicable cap for the party.

Electoral communication expenditure incurred by a candidate endorsed by a party for a Legislative Assembly by-election campaign that is less than the capped amount for the candidate will be treated as expenditure that exceeds the cap if that expenditure and any other electoral communication expenditure incurred by the party (or by any associated party) for that by-election exceed the applicable cap.

### 5.8 What is the capped expenditure period?

The capped expenditure period is:

- for the general election to be held in March 2011, the capped expenditure period runs from 1 January 2011 to the end of election day;
- for subsequent general elections, the capped expenditure period will run from 1 October in the year before the election to the end of election day; and
- in any other case (eg by-elections), the capped period runs from the day the writ is issued until the end of election day.

Electoral communication expenditure is taken to be incurred when the services are actually provided or the goods are actually delivered. More specifically:

- expenditure on advertising is incurred when the advertising is broadcast or published;
- expenditure on the distribution of election material is incurred when the material is distributed; and
- expenditure on the employment of staff is incurred during the period of their employment.

### 6. RECORD KEEPING

#### 6.1 Record Keeping Requirements

Parties are required to keep proper records to ensure accurate and complete disclosure of political donations and electoral expenditure. These records must reflect the activities of both the party's head office and any branches or local offices and groups of the party. The records must be kept at the party's headquarters in New South Wales.

If at any time a party does not have a party agent, the registered officer of the party is responsible for obtaining full and proper records for the purposes of meeting the disclosure obligations of the party.

All accounting records of a political party must be kept for at least three years. Failure to do so is an offence (see section 22). Parties must keep the following accounting records:

- a Receipt and Acknowledgement book (or a separate receipt book and an acknowledgement book);
- a cheque book;
- a petty cash book;
- a cash book, or a receipts cash book and payments cash book;
- a journal; and
- a ledger.

Parties must also keep records of small political donations as well as advertising records.

The records of parties and party agents related to funding and disclosure matters may be subject to a compliance audit by the Authority.

#### 6.2 Maintaining Computer Accounting Records

If a party chooses to maintain accounting records using a computer, they must ensure that:

- the computer systems records comply with the requirements of maintaining accounting records;
- the entries appear in chronological order;
- the entries are sequentially numbered so that the completeness of the records can be verified;
- no amendment to the particulars of a transaction already recorded can be made other than by a separate transaction effecting the amendment;
- a back-up copy of all records that are less than three years old is made at least once a month; and
- the most recent back-up copy is kept in a separate location so that any incident that might adversely affect the records would not affect the back-up copy.

#### 6.3 Receipt and Acknowledgement Book

Parties must keep a Receipt and Acknowledgement book, or a separate receipt book and an acknowledgement book. The Authority provides Receipt and Acknowledgement books to party agents upon registration.

If a reportable political donation (monetary or non-monetary) is received, the party must issue a receipt/acknowledgement slip to the donor setting out the details of the donation (see section 4.2). The receipt/acknowledgement slips provided by the Authority are in triplicate form. The original must be given to the donor, the duplicate must be kept by the party agent and the triplicate must be kept in the Receipt and Acknowledgement book and lodged with the **Disclosure of Political Donations and Electoral Expenditure by a Political Party** (see section 8.16).



The party agent must authorise persons to sign the receipts and acknowledgements issued by the party. Authorised persons are the only persons permitted to sign the receipts and acknowledgements.

### 6.4 Deposit Book

Parties must keep a deposit book. A deposit book must contain deposit slips for each bank, credit union or building society where the party keeps its accounts. The deposit slips are to be in duplicate form where the duplicate copy is kept by the party for its records.

The following information must be included on each deposit slip:

- the date of the deposit;
- the amount of the deposit;
- the form of the deposit (eg cash, cheque, etc); and
- in the case of a deposit by cheque, the name of the drawer of the cheque.

The party must ensure that the deposit book is produced to the bank, credit union or building society at the time of making a deposit of a political donation, the particulars are entered on each deposit slip at the time of making the deposit and the duplicate copy of the deposit slip is initialled and stamped by an officer of the bank, credit union or building society where the deposit is being made.

### 6.5 Cash Book

Parties must keep a cash book. The cash book must be a book or books, where the sheets are consecutively numbered.

The consecutive numbers of receipts issued or cheques drawn must be shown on the respective sheets.

If the loose-leaf principle is used, separate sheets may be kept for the receipts cash book and the payments cash book, and it is not necessary to number the sheets consecutively.

As soon as practicable after a transaction takes place, the party must enter:

- on the receipts side of the cash book, on the receipts cash sheets or in the receipts cash book – particulars of all money received by the party by way of political donations; and
- on the disbursements side of the cash book, on the payments cash sheets or in the payments cash book – particulars of all money disbursed by the party by way of electoral expenditure.

At the end of each month, the cash book or books must be balanced and the balance carried forward to the commencement of the next month and to a ledger account provided for that purpose.

Also, at the end of each month:

- the entries in the cash book or books must be compared with the bank, credit union or building society statement for the party's account; and
- credit amounts appearing in the relevant bank statement for which no receipt had been written, and debit amounts appearing in the relevant bank statement for which no cheque had been drawn, must be entered in the cash book or books.

At the end of the entries for the month the party must enter in the cash book any necessary reconciliation:

- showing the balance in the bank, credit union or building society account as indicated on the relevant statement;
- adding any money received but not banked; and
- deducting any cheques drawn but not yet presented for payment.

## Part C Record Keeping

### 6.6 Journal

Parties must keep a journal. As soon as practicable after a transaction takes place, the party must enter in the journal particulars of:

- the value of any interest in property donated to the party;
- particulars of any interest in property disposed of by the party otherwise than for money;
- all adjustments to be made to accounts in the ledger;
- all transfers to be effected from one ledger account to another; and
- all other transactions affecting any ledger account which are not posted or to be posted from the cash book to the ledger (being transactions relating to political donations received or electoral expenditure incurred).

The particulars of each entry in the journal must be sufficient to identify the transaction in respect of which the entry is made and the reason for that entry.

### 6.7 Ledger

Parties must keep a ledger. The ledger must contain particulars of all political donations received and electoral expenditure incurred.

The particulars must, if taken in conjunction with other particulars in the receipt book, cash book or books and journal, be sufficient to identify the transaction in respect of which the political donation was received or the electoral expenditure incurred.

Each entry in the cash book or books relating to a political donation received or an electoral expenditure incurred must be posted as soon as practicable to the appropriate account in the ledger.

Against each entry in the ledger account the following must be recorded:

- a reference to the folio of the cash book from which the entry is posted; and
- if the cash book is kept on the loose leaf principle, a reference to the receipt number or cheque number.

Each entry in the journal relating to a political donation received or an electoral expenditure incurred must be posted as soon as practicable to the appropriate account in the ledger.

Against each entry in the ledger account the party must record a reference to the folio of the journal from which the entry is posted, preceded by the letter "J". At the end of each month, each account in the ledger must be balanced and the balance (if any) must be carried forward to the commencement of the next month.

### 6.8 Records of Small Political Donations

Parties must keep records of small political donations (monetary or non-monetary) in order to disclose the total value received and the total number of people who made donations/gifts during the disclosure period (see section 4.3). These records are to be kept in the cash book.

In addition, a receipt or acknowledgement may be provided to the donor, although this is not a requirement.

### 6.9 Advertising Records

Parties are required to keep video recordings (on tapes, DVDs, flash drives etc) with respect to all television and cinema advertising for a period of 12 months after the advertisement was last shown. The video recordings must be made available to the Authority upon request.



## Part C Record Keeping

A party or the party agent is required to keep the following advertising material in respect of which electoral expenditure was incurred by a party for at least three years after the advertisement was last printed, published or broadcast:

- the text from radio and internet advertising;
- a full page of the newspaper or periodical containing an advertisement, a statement identifying the advertisement, a listing of the name of each newspaper and periodical where the advertisement was published, the size of the advertisement, and the date of each publication; and
- a copy (each) of any other printed items.

## 7. DISCLOSING POLITICAL DONATIONS AND ELECTORAL EXPENDITURE

### 7.1 Disclosure Requirements

The party agent is required to lodge a disclosure of all political donations received or made and electoral expenditure incurred by the party in each twelve-month period ending 30 June.

A party disclosure must be lodged using the **Disclosure of Political Donations and Electoral Expenditure by a Political Party (form EF.679)** issued by the Authority.

Note: party agents who also act as the official agent for a candidate, group or elected member are also required to lodge a disclosure of political donations received or made and electoral expenditure incurred by or on behalf of the candidate, group or elected member following each twelve-month period ending 30 June.

Disclosures lodged by a party agent on behalf of a party must include all political donations received and made and all electoral expenditure incurred by the party and its local or sub-branches (refer to the definition of a party in section 21 of this guide). Disclosures are to be accompanied by a copy of the duly audited annual financial statement of the party in a form approved by the Authority. The annual financial statement must set out the following:

- the total amount received by, or on behalf of, the party during the financial year;
- the total amount paid by, or on behalf of, the party during the financial year; and
- the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party.

A disclosure must be lodged irrespective of whether any political donations were received or made, or any electoral expenditure was incurred.

If no donations were received or made and no expenditure incurred, a 'nil' disclosure must be lodged by the party agent. A disclosure must be lodged irrespective of whether the party is registered under Part 4A of the *Parliamentary Electorates and Elections Act 1912* or Chapter 10, Part 7 of the *Local Government Act 1993*.

A disclosure will not be accepted by the Authority unless:

- the disclosure is audited by a registered company auditor; and
- the political donations and electoral expenditure disclosed in the disclosure are vouched for correctly.

### 7.2 Disclosure Periods and Due Dates for Parties Lodging a Disclosure

Disclosures for the period ending 30 June are required to be lodged with the Authority between 1 July and 22 September. Disclosures cannot be lodged early, ie before 1 July.

## 8. COMPLETING A DISCLOSURE FORM – POLITICAL PARTIES

### 8.1 Disclosure Form to be used

The party agent must lodge a disclosure using the **Disclosure of Political Donations and Electoral Expenditure for a Political Party (form EF.679)** issued by the Authority.

All political donations received and electoral communication expenditure incurred by the political party in the period covered by the disclosure must be disclosed.

Before lodging the disclosure, the party agent should make sure that:



## Part D Disclosure

- all details are included and all required documents have been added to the disclosure; see checklist on page (i);
- all party agent details have been entered;
- the disclosure period start and end dates have been entered;
- the declaration has been signed by the party agent;
- the certificate of a Registered Company Auditor has been completed; and
- a photocopy has been made of the completed disclosure before lodging with the Authority.

### 8.2 Party Agent Details and Declaration

In this section, the following must be entered:

- the full name and surname of the party agent;
- the name of the political party on whose behalf the disclosure is made;
- the disclosure period start and end dates;
- the party agent's declaration; and
- the certificate of a Registered Company Auditor.

### 8.3 Summary Table of Political Donations and Electoral Expenditure by the Political Party

After entering all relevant political donations and electoral expenditure and totalling each part of the disclosure, the party agent must enter the total amount for each section as indicated in the final column in the Summary Table on page 1 of the disclosure form.

#### 8.4 Part A – Small Political Donations received (General – Not received at Fundraising Events)

Small political donations received by the political party are donations less than \$1,000 each or multiple donations from the same donor in one financial year that total less than \$1,000. These donations can be monetary or non-monetary.

This section of the disclosure must include the following details about small political donations received during the period covered by the disclosure:

- the total number of small political donations and non-monetary gifts received; and
- the total value of the small political donations and non-monetary gifts received.

In Part A you must indicate whether the small donations were received for Federal, State or Local Government election campaigns, or for Administration purposes.

Small political donations received during fundraising functions should not be included in this section, but in part C, table C2 of the disclosure – see section 8.5.2.

#### 8.5 Part B – Reportable Political Donations received (General – Not received at Fundraising Events)

A reportable political donation is a donation of \$1,000 or more, or multiple donations from one source to the same recipient in one financial year that total \$1,000 or more. A reportable donation can be monetary or non-monetary (see sections 3.4 and 3.5).

For more details on what is (and what is not) considered a reportable political donation refer to section 3. In the disclosure form reportable political donations received from fundraising ventures and functions are to be listed separately (see section 8.5.3, table C3).

This section of the disclosure must include the following details about reportable political donations received during the period covered by the disclosure:

- the date the donation was made;
- the name of the person or entity that made the donation;
- the enrolled address of the donor in the case of an individual, or the address of the registered or other official office of the donor in the case of an entity;
- a relevant business number of the person or entity that made the donation (eg ABN, ACN);
- the amount or value of the donation;
- the type of donation (eg gift, money, in-kind); and
- the purpose of the donation.

### 8.6 Part C – Fundraising Ventures and Functions

Political donations made to or for the benefit of the party during fundraising functions (held during the disclosure period) must be itemised in this section of the disclosure.

#### 8.6.1 Part C - Table C1: Event Details of Fundraising Ventures and Functions

This section of the disclosure must include the following details about each of the party's fundraising venture(s) and function(s) during the period covered by the disclosure:

- the date the function or venture was held;
- the description or name of the function or venture;
- the total proceeds of the function or venture;
- if the amount shown as proceeds is net or gross; and
- the purpose of the donation.

#### 8.6.2 Part C - Table C2: Small Political Donations Received at Fundraising Function(s) or Venture(s)

This section of the disclosure must include the following details about small political donations received as part of a fundraising function or venture:

- the date of the fundraising function or venture;
- the description or name of the function or venture (as per Table C1);
- the total number of small political donations received during the function or venture; and
- the total value of all small political donations received during the function or venture; and
- the purpose of the donation.

#### 8.6.3 Part C - Table C3: Reportable Political Donations Received at a Fundraising Function or Venture

This section of the disclosure must include the following details about each reportable political donation received as part of a fundraising function or venture:

- the date the donation was made;
- the name of the donor or entity that made the donation;
- the enrolled address of the donor in the case of an individual or the address of the registered or other official office of the donor in the case of an entity;
- the relevant business number of the person or entity that made the donation (eg ABN, ACN);
- the amount or value of the donation;
- the type of donation (gift, money, in-kind);
- the description or name of the fundraising event (as per table C1); and
- the purpose of the donation.



### 8.7 Part D – Reportable Loans

Reportable loans are loans of \$1,000 or more from one source in one disclosure period. Reportable loans do not include loans from financial institutions.

This section of the disclosure must include the following details about reportable loans made to the party during the disclosure period:

- the date of the loan;
- the name of the lender;
- the address of the lender;
- the lender's business number if applicable (eg ABN, ACN); and
- the amount of the loan.

Please note that unpaid accounts and invoices are also considered reportable loans, where there has been an agreement with the supplier of the product or service to extend their standard payment period and/or payment terms.

Separate loans made to the party by an entity or person within a disclosure period are to be aggregated and treated as a single loan.

For more details on what is (and what is not) considered a reportable loan, see sections 3.6 and 3.7.

### 8.8 Part E - Annual Party Membership or Affiliation Subscriptions

This section of the disclosure must include any membership payments from members of the party or any payments from persons or entities who are affiliated with the party.

This section must include the following details about membership payments made to the party during the disclosure period:

- the party membership or affiliation subscription rate;
- the number of persons or entities who paid each rate;
- the total amount received for each rate.

### 8.9 Part F - Electoral Expenditure and Electoral Communication Expenditure

'Electoral expenditure' is expenditure for, or in connection with, promoting or opposing, directly or indirectly, the election of a candidate or group of candidates.

'Electoral communication expenditure' is 'electoral expenditure' of the types required to be disclosed in tables F1 – F5 below. Caps apply to 'electoral communication expenditure' incurred for a State election during the capped expenditure period.

The capped expenditure period for the 2011 NSW State Election was from 1 January to 26 March 2011 inclusive.

Electoral communication expenditure is taken to be incurred when the services are actually provided or the goods are actually delivered. See section 8.5 for further details.

For electoral expenditure that is not electoral communication expenditure, see section 8.9.

You must submit invoices and/or receipts (or copies of these) supporting electoral communication expenditure with all sections of your disclosure.

#### 8.9.1 Part F – Table F1: Electoral Communication Expenditure - Advertising

This section of the disclosure must include details of advertising expenditure incurred during the period covered by the disclosure (eg radio, television, Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material).

For each item enter:

- the date from which the expenditure was incurred;
- the date to which the expenditure was incurred;
- the name of the supplier;
- a description of the product or service provided;
- the amount of the expenditure inclusive of GST; and
- the invoice number relating to the expenditure.

You must submit invoices and/or receipts supporting advertising expenditure listed on your disclosure.

#### 8.9.2 Part F – Table F2: Electoral Communication Expenditure - Production and Distribution of Election Material

This section of the disclosure must include details of expenditure incurred on the production and distribution of election material during the period covered by the disclosure. For each item enter:

- the date from which the expenditure was incurred;
- the date to which the expenditure was incurred;
- the name of the supplier;
- a description of the product or service provided;
- the amount of the expenditure inclusive of GST; and
- the invoice number relating to the expenditure.

You must submit invoices and/or receipts supporting expenditure for the production and distribution of election material listed on your disclosure.

#### 8.9.3 Part F – Table F3: Electoral Communication Expenditure - Internet, Telecommunications, Stationery and Postage

This section of the disclosure must include details of expenditure incurred on the Internet, Telecommunications, Stationery and Postage during the period covered by the disclosure. For each item enter:

- the date from which the expenditure was incurred;
- the date to which the expenditure was incurred;
- the name of the supplier;
- a description of the product or service provided;
- the amount of the expenditure inclusive of GST; and
- the invoice number relating to the expenditure.

You must submit invoices and/or receipts supporting expenditure for the above mentioned services listed on your disclosure.

#### 8.9.4 Part F – Table F4: Electoral Communication Expenditure - Employing staff engaged in election campaigns

This section of the disclosure must include details of expenditure incurred on the employment of staff engaged in election campaigns during the period covered by the disclosure. For each item enter:



## Part D Disclosure

- the date from which the expenditure was incurred;
- the date to which the expenditure was incurred;
- the category of staff;
- the service provided; and
- the amount of the expenditure inclusive of GST.

You must submit invoices and/or receipts supporting expenditure for the above mentioned services listed on your disclosure.

### 8.9.5 Part F – Table F5: Electoral Communication Expenditure - Office Accommodation for Staff and Candidates

This section of the disclosure must include details of expenditure incurred on office accommodation for staff and candidates (other than campaign headquarters of a party or electorate office of an elected member) engaged in election campaigns during the period covered by the disclosure. For each item enter:

- the date from which the expenditure was incurred;
- the date to which the expenditure was incurred;
- the name of the supplier;
- a description of the product or service provided;
- the amount of the expenditure inclusive of GST; and
- the invoice number relating to the expenditure.

You must submit invoices and/or receipts supporting expenditure for the above mentioned services listed on your disclosure.

### 8.10 Part G – Electoral Expenditure – Other

This section of the disclosure must include the details of any other electoral expenditure incurred by the party during the period covered by the disclosure.

Enter the total (including GST) for each category below:

- expenditure on travel and accommodation;
- expenditure on research associated with election campaigns;
- expenditure incurred in raising funds for an election;
- expenditure incurred in auditing campaign accounts;
- other electoral expenditure.

### 8.11 Part H – Small Political Donations made by the Party

This section of the disclosure must include details on any small political donations made by the political party to another NSW candidate, group of candidates, local government councillor, Member of Parliament, political party or third-party campaigner. The following must be entered:

- the total number of small donations made; and
- the total value of all small donations made.

### 8.12 Part I – Electoral Expenditure – Reportable Political Donations made by the Party

Parties that make political donations to another NSW candidate, group of candidates, local government councillor, Member of Parliament, political party or third-party campaigner must disclose such donations as electoral expenditure on this section of the form.

The following information must be disclosed of each political donation made by the

party during the period covered by the disclosure:

- the date the political donation was made;
- the name of the NSW candidate, group of candidates, Local Government Councillor, Member of Parliament, political party or third-party campaigner the donation was made to;
- the enrolled address of the individual or the registered official address of the entity the donation was made to;
- a relevant business number of the person or entity that received the donation, if applicable (eg ABN, ACN);
- the amount or value of the political donation; and
- the type of donation (eg gift, money, in-kind).

### 8.13 Auditing a Disclosure

Parties must have their disclosure audited by a registered company auditor unless the Authority has approved an exemption (contact the Authority for more details).

The auditor is encouraged to follow the guidelines for registered company auditors published on the Authority's website ([www.efa.nsw.gov.au](http://www.efa.nsw.gov.au)).

The Certificate of a Registered Company Auditor (on page (ii) of the disclosure form) must include the auditor's name and registration number. The auditor must sign and date this section of the disclosure.

Registered officers and deputy registered officers of registered political parties, elected members, candidates, official agents and party agents are not permitted to audit a disclosure.

The party agent must keep all records that relate to the disclosure to:

- disclose a true and fair view of the transactions; and
- to enable an auditor to sign the audit certificate.

See section 10 for more details on record keeping.

### 8.14 Lodging a Disclosure

A disclosure must be lodged irrespective of whether political donations were received or electoral expenditure was incurred. If no donations were received and no expenditure was incurred, a 'nil' disclosure must be lodged.

A disclosure will not be accepted by the Authority unless:

- it is audited by a registered company auditor (see section 12.11); and
- the political donations and electoral expenditure disclosed are vouched for correctly.

### 8.15 Vouching for Political Donations and Electoral Expenditure

The following items must be submitted with a disclosure:

- the triplicate (green) copy of each receipt/acknowledgement slip issued to each person and entity that made a reportable political donation (Part B and C3 of the disclosure);
- invoices and/or receipts supporting expenditure stated in Part F; and
- copies of the advertising and printing material.

Copies of receipt/acknowledgement slips issued to each person and entity that made a small (monetary or non-monetary) political donation can also be submitted, although it is not a requirement.



## 9. OTHER INFORMATION ABOUT LODGING A DISCLOSURE

### 9.1 Compliance Audits

The Authority conducts compliance audits on disclosures and the record keeping of parties and party agents. The Authority is empowered to require individuals to lodge records in connection with political donations and electoral expenditure.

### 9.2 Amending a Disclosure

A party agent may amend a disclosure by lodging an amended **Disclosure of Political Donations and Electoral Expenditure by a Political Party form (EF.679)** for the same disclosure period containing any alterations, omissions, additions or substitutions to any part of the original disclosure. Make a note on the disclosure form that you are lodging an amendment.

An amended disclosure must include the required vouching for any political donations and electoral expenditure that were not provided with the original disclosure. An amended disclosure must be audited by a registered company auditor (see section 8.14).

### 9.3 Requesting an Extension of Time to Lodge a Disclosure

The Authority may grant an extension of time for a party agent to lodge a disclosure if it considers there is good cause to do so.

The Authority is only able to consider granting an extension of time to lodge a disclosure if the written request is received before the due date for lodging the disclosure.

It is the responsibility of the party agent to apply to the Authority for an extension in writing. Upon receipt, the Authority will advise whether the extension has been granted and the new date for lodgement.

### 9.4 Public Access

Disclosures and amendments made by a party agent are kept by the Authority for at least six years after the period to which the disclosure relates.

The disclosures are published on the Authority's website as soon as practicable after the due date for making the disclosures.

Disclosures and are available for public inspection by appointment only at the Authority's office during ordinary business hours. Charges apply for providing copies of disclosures.

## 10. PUBLIC FUNDING OF ELECTION CAMPAIGNS

### 10.1 Funding Availability Overview

Public funding for electoral communication expenditure is available to eligible registered political parties and candidates who contest State elections or by-elections.

Public funding is based on a reimbursement of electoral communication expenditure incurred during the capped expenditure period, although there are limits to the amounts payable.

This part of the guide explains:

- how the entitlements of candidates and groups are calculated; and
- the manner in which candidates and groups can make a claim on their funding entitlement.

### 10.2 Funds for a State Election

For State elections the Election Funding Authority will keep an Election Campaigns Fund.

Registered political parties and candidates that contest State elections may be eligible for payments from the Election Campaigns Fund.

#### 10.2.1 Funding Eligibility Criteria and Entitlements of Legislative Assembly Candidates

A candidate who is nominated for a state election is eligible for payments from the Election Campaigns Fund in respect of the election if:

- the candidate is registered in the Register of Candidates for the election on election day;
- in the case of a candidate for the Legislative Council election, the candidate was not included in a group, or was a member of a group where the group members were not endorsed by a party; and
- in the case of a Legislative Assembly candidate:
  - the candidate is elected, or
  - the total number of first preference votes received by the candidate is at least 4% of the total number of first preference votes in the electoral district in which the candidate was nominated.
- in the case of a Legislative Council candidate:
  - the candidate is elected, or
  - the total number of first preference votes received by the candidate (and if in a group, by all other candidates included in the same group) is at least 4% of the total number of first preference votes in the Legislative Council election.

Eligible independent candidates for the Legislative Assembly are entitled to the following funding:

- 100% of the candidate's actual expenditure within 0-10% of the applicable cap on electoral communication expenditure, plus
- 50% of the candidate's actual expenditure within the next 10-80% of the applicable cap on electoral communication expenditure.

Eligible party candidates for the Legislative Assembly are entitled to the following funding:

- 100% of the candidate's actual expenditure within 0-10% of the applicable cap on electoral communication expenditure, plus
- 50% of the candidate's actual expenditure within the next 10-50% of the applicable cap on electoral communication expenditure.



Eligible candidates for the Legislative Council are entitled to the following funding:

- 100% of the candidate's actual expenditure within zero to one third of the applicable cap on electoral communication expenditure, plus
- 75% of the candidate's actual expenditure within the next one third to two thirds of the applicable cap on electoral communication expenditure, plus
- 50% of the candidate's actual expenditure within the last two thirds to 100% of the applicable cap on electoral communication expenditure.

### 10.2.2 Funding Eligibility Criteria and Entitlements of Political Parties

A political party is eligible for payment from the Election Campaigns Fund if:

- it is a registered party as at the election day for the State election;
- it endorses candidates who are duly nominated for the State election;
- the group is entered on the ballot papers for the election under s.83B of the *Parliamentary Electorates and Elections Act 1912*;
- the Authority is satisfied that the members of the group claim to be endorsed by the party; and
- at least one of the following occur:
  - in a periodic Legislative Council election the total number of first preference votes received by all those candidates endorsed by the party (and by all other candidates included in the same group) is at least 4% of the total number of first preference votes in that election;
  - in a Legislative Assembly election, the total number of first preference votes received by all those candidates endorsed by the party is at least 4% of the total number of first preference votes in all electoral districts in which the candidates were duly nominated for election; or
  - in any election, at least one of the candidates endorsed by the party is elected at the State election.

An eligible Assembly party is a party that is eligible for payment from the Election Campaigns Fund in respect of a State election and that is not an eligible Council party in respect of that election.

An eligible Council party means a party that is eligible for payment from the Election Campaigns Fund in respect of a periodic Council election because it satisfies one of the criteria listed under section 10.2.2 and (a) did not endorse any candidate for election to the Legislative Assembly or (b) only endorsed candidates for election to the Legislative Assembly in not more than 10 electorates.

Eligible Assembly parties are entitled to the following funding:

- 100% of so much of the actual expenditure of the party as is within 0-10% of the applicable expenditure cap, plus
- 75% of so much of the actual expenditure of the party as is within the next 10-90% of the applicable expenditure cap, plus
- 50% of so much of the actual expenditure of the party as is within the last 90-100% of the applicable expenditure cap.

Eligible Council parties are entitled to the following funding:

- 100% of so much of the actual expenditure of the party as is within zero to one third of the applicable expenditure cap, plus
- 75% of so much of the actual expenditure of the party as is within the next one third to two thirds of the applicable expenditure cap, plus
- 50% of so much of the actual expenditure of the party as is within the last two thirds to 100% of the applicable expenditure cap.

### 10.2.3 Other considerations regarding funding eligibility

- The same item of electoral communication expenditure cannot be claimed by both a candidate and the party that endorses the candidate. If any such item is claimed by both candidate and party, the expenditure will be taken to be that of the party.
- If the Authority is satisfied that a candidate or group of candidates is endorsed by one or more parties, then those parties are taken for the purposes of funding entitlements, to constitute one registered party. Any amounts payable from the Election Campaigns Fund is payable to those parties in equal shares or in such shares as they direct the Authority in writing. In these circumstances, if a registered party becomes entitled to be paid 2 or more amounts, the party will be paid only one of those amounts, being the largest amount.
- Parties are not eligible for funding if they have any outstanding declarations or financial statements.
- Any funding due to a party from the Elections Campaigns Fund may be reduced by any amounts the Authority has been authorised to recover from the party.

### 10.2.4 Entitlements to advance payments

Advance payments are not available in relation to the first State election to be held in March 2011.

A registered party eligible for funding from the Election Campaigns Fund is also eligible for an advance payment from the Fund for electoral communication expenditure incurred in connection with a State election.

An advance payment can be made for an amount equal to 30% of the total amount to which the party was entitled from the Election Campaigns Fund in respect of the previous general election.

The advance payment may be paid as a lump sum or by instalments, at any time after the commencement of the capped expenditure period for the election.

Any advance payment is deducted from the total amount payable to a party from the Election Campaigns Fund in respect of that election.

If a party receives more in advance payments than it becomes entitled to from the Election Campaigns Fund, the amount of the excess must be repaid to the Authority within 60 days after the day for the return of the writs for that election.

Any advance payment received by a party must be repaid on demand by the Authority if:

- The party does not contest the election; or
- Before the polling day for the election, the party ceases to operate or be registered or if it has been or is being dissolved or wound up.

Any amount required to be repaid may be recovered by the Authority as a debt in any court of competent jurisdiction.

## 11. MAKING A CLAIM FOR PAYMENT FOR A STATE ELECTION OR BY-ELECTION

### 11.1 Overview

To receive a payment from the Election Campaigns Fund for a State election or by-election, the candidate or their official agent must make a claim for payment.



A claim for payment must be lodged with the Authority within 120 days after the day for the return of the Writs.

The Authority will approve the claim if:

- the claim is made by the candidate or their official agent;
- the claim is made using the **Claim for Payment for a Parliamentary Election (form EF.683)** issued by the Authority;
- the claim is reviewed by a registered company auditor;
- the candidate is eligible to receive a payment; and
- the expenditure in the claim is vouched for correctly by including a relevant **Disclosure of Political Donations and Electoral Expenditure form/s**.

The Authority will not make any payments that exceed the entitlement of the candidate.

The Authority will disallow items of expenditure that are not for electoral communication expenditure incurred in the capped expenditure period for which the claim is being made. To receive a payment the candidate or their official agent must lodge an **Electronic Funds Transfer (EFT) Payment Authority (form EF.689)**. Payments are only made via EFT to the party agent or the registered political party.

## 12. COMPLETING A CLAIM FOR PAYMENT FOR A PARLIAMENTARY ELECTION

### 12.1 Claim Form to be used

To make a claim for payment for a parliamentary election, the official agent or party agent must lodge the **Claim for Payment for a Parliamentary Election (form EF.683)** issued by the Authority.

### 12.2 Election Details

In this section:

- tick whether the claim for payment is for a State General election or a by-election;
- enter the date of the election; and
- enter the name of the electoral district (in the case of a candidate).

### 12.3 Claim Details

In this section enter:

- the name of the candidate, group or registered political party that incurred election campaign expenditure; and
- the amount of election campaign expenditure claimed.

A claim for payment can only be made in respect of electoral communication expenditure incurred by a candidate or group allowed under the Act and the Regulation (see section 5).

Expenditure that can be included in a claim for payment includes:

- expenditure on goods and services for an election campaign;
- expenditure for the preparation of an election campaign; and
- expenditure incurred in the audit of a claim or a disclosure.

Expenditure that cannot be included in a claim for payment includes:

- expenditure incurred in respect of an election other than a State election;
- expenditure incurred for an election other than the one for which the claim has been lodged; and
- expenditure incurred outside the capped period.

### 12.4 Direction to Make Payment to a Party

In this section indicate whether the payment is to be made to a registered political party, the candidate or the party agent.

### 12.5 Request for Funding

This section contains a declaration to the effect that the electoral communication expenditure was incurred within the capped expenditure period by the candidate, group or registered political party named on the form with respect to the election stated on the form. This section must be signed and dated by a party agent, an official agent or a candidate (if no official agent is appointed).

### 12.6 Certificate of a Registered Company Auditor

A claim for payment will not be approved by the Authority unless it is reviewed by an auditor.

The registered officers and deputy registered officers of registered parties, elected members, candidates, registered official agents and registered party agents are not permitted to audit a claim for payment.

The Certificate of a Registered Company Auditor section of the form must include the auditor's name and registration number. The auditor must sign and date this section of the form. The Certificate must state that the auditor:

- was given full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the claim is to be lodged, and of the candidate or group, as the case may require, relating directly or indirectly to the expenditure referred to in the claim;
- duly examined such of those accounts, records, documents and papers as the auditor considers material for the purpose of giving the certificate;
- received all information and explanations that the auditor asked for with respect to the expenditure referred to in the claim, subject to the qualifications (if any) specified in the certificate;
- is satisfied that, from the information available to the auditor, the expenditure specified in the claim was incurred and is, having regard to the Act, the regulations and any guidelines issued by the Authority, expenditure which may properly be the subject of such a claim; and
- has no reason to think that any statement in the claim is not correct.

### 12.7 Vouching for Expenditure in a Claim for Payment

As stated previously, a claim will not be approved by the Authority unless the expenditure in the claim is vouched for correctly.

The correct way to vouch for expenditure is to provide with the claim for payment a copy of the relevant **Disclosure of Political Donations and Electoral Expenditure**.

All electoral expenditure incurred by way of advertising and the printing of electoral material that is disclosed in the disclosure must also be vouched for.

## 13. OTHER INFORMATION ABOUT MAKING A CLAIM FOR PAYMENT

### 13.1 Receiving Payments

Payments for parliamentary elections will only be made via Electronic Funds Transfer (EFT) to the party account of the political party.

To enable the payment to be made, the party agent must complete the **Electronic Funds Transfer (EFT) Payment Authority (form EF.689)** and lodge it with the **Claim for Payment** form.



### 13.2 Requesting an Extension of Time to Lodge a Claim for Payment

The Authority may grant an extension of time to lodge a Claim for Payment. It is the party agent's responsibility to apply for an extension to the Authority in writing. The Authority will advise the party agent whether the extension has been granted and the new date for lodgement.

The Authority will not grant an extension of time unless the written request is received on or before the due date, being 120 days after the return of the Writs for the election.

### 13.3 Public Access

Claims for Payment lodged with the Authority, together with any documents or correspondence relating to the assessment of a claim, are retained by the Authority for a minimum of 6 years. All claims and supporting documents are made available for public inspection by appointment only during ordinary office hours.

The Authority publishes reports about entitlements, claims lodged and payments made when it has finished dealing with all matters relating to an election. These reports are made available on the Authority's website and in the Authority's annual reports.

## 14. ADMINISTRATION FUND

### 14.1 Administration Fund overview

The Authority will keep an Administration Fund from which parties and elected independent members are eligible for funding.

Funding is based on actual administrative expenditure incurred during the calendar year to which the payment relates, to a defined limit.

### 14.2 What expenditure can be funded from the Administration Fund?

The Administration Fund funds the following administrative and operating expenses:

- administration or management of the activities of the eligible party;
- conferences, seminars, meetings or similar functions at which the policies of the eligible party are discussed or formulated;
- providing information to the public or a section of the public about the eligible party;
- providing information to members and supporters of the eligible party;
- audit of the financial accounts of, or claims under the Act of, the eligible party;
- remuneration of staff engaged in these administrative or operating activities for the eligible party (being the proportion of that remuneration that relates to the time spent on those activities);
- equipment or vehicles used in these administrative or operating activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities);
- office accommodation for the above staff and equipment; and
- interest payments on loans.

The Administration Fund does not fund the following:

- electoral expenditure;
- expenditure for which an elected member may claim a parliamentary allowance; and
- expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament.

### 14.3 Funding Eligibility

A party is eligible for annual payments, on a calendar year basis, from the Administration Fund if:

- it was a registered party on polling day for the previous State election and continues to be a registered party on the date that the entitlement for an annual payment is determined;
- candidates endorsed by the party were elected at the State election and the Authority is satisfied that the elected members claimed to be endorsed by the party; and
- the Authority is satisfied that the elected members continue to be members or representatives of the party on the date that the entitlement for an annual payment is determined.

Parties are not eligible for funding if they have any outstanding declarations or financial statements.

Any funding due to a party from the Administration Fund may be reduced by any amounts the Authority has been authorised to recover from the party.

### 14.4 Amount of Funding

An eligible party may be paid the amount of actual administrative expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, to a maximum of \$80,000 for each elected member endorsed by the party, or \$2,000,000 (whichever is the lesser).



The number of endorsed elected members of a party in relation to any annual payment is to be determined as at the date that the entitlement for an annual payment is determined.

The amounts payable are adjusted for inflation, and the current maximum amounts can be checked on the Authority's website [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au).

### 14.5 Parties with the same endorsed elected members

If the Authority is satisfied that a candidate or group of candidates is endorsed by one or more parties, then those parties are taken for the purposes of funding entitlements, to constitute one registered party. Any amounts payable from the Administration Fund is payable to those parties in equal shares or in such shares as they direct the Authority in writing. In these circumstances, if a registered party becomes entitled to be paid two or more amounts, the party will be paid only one of those amounts, being the largest amount.

### 14.6 Claims for Payment from the Administration Fund

A party is entitled to receive a payment from the Administration Fund for a calendar year only if the party makes a claim for the payment in accordance with the Act. A claim must be:

- lodged with the Authority in writing using the Claim for Payment from the Administration Fund;
- accompanied by a declaration and such supporting information as the Authority may require; and
- audited and made within six months after the end of the calendar year for which payment is to be made.

### 14.7 Certificate of a Registered Company Auditor

A claim for payment will not be approved by the Authority unless it is reviewed by an auditor.

The registered officers and deputy registered officers of registered parties, elected members, candidates, registered official agents and registered party agents are not permitted to audit a claim for payment.

The 'Certificate of a Registered Company Auditor' section of the form must include the auditor's name and registration number. The auditor must sign and date this section of the form. The Certificate must state that the auditor:

- was given full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the claim is to be lodged, and of the eligible party, as the case may require, relating directly or indirectly to the expenditure referred to in the claim;
- duly examined such of those accounts, records, documents and papers as the auditor considers material for the purpose of giving the certificate;
- received all information and explanations that the auditor asked for with respect to the expenditure referred to in the claim, subject to the qualifications (if any) specified in the certificate;
- is satisfied that, from the information available to the auditor, the expenditure specified in the claim was incurred and is, having regard to the Act, the regulations and any guidelines issued by the Authority, expenditure which may properly be the subject of such a claim; and
- has no reason to think that any statement in the claim is not correct.

### 14.8 Claim for Payment and Declaration of Expenditure – Administrative Funding

To make a claim for payment from the Administration Fund, the eligible elected member or their official agent must lodge the **Claim for Payment from the Administration Fund** (form EF.697) and make a declaration of expenditure for administrative funding using the **Declaration of Expenditure for Administrative Funding (form EF 698)** issued by the Authority.

#### 14.9 When to Lodge Claims for Payment from the Administration Fund

**Claims for Payments from the Administration Fund (form EF.697)** and the accompanying **Declaration of Expenditure for Administrative Funding (form EF.698)**, must be lodged with the Authority between 1 January and 30 June following the calendar year for which payment is sought.

#### 14.10 Receiving Payments

Payments from the Administration Fund will only be made via Electronic Funds Transfer (EFT) to the account of the party or eligible elected member.

To enable the payment to be made, the party or eligible elected member must complete the **Electronic Funds Transfer (EFT) Payment Authority (form EF.689)** and lodge it with the Claim for Payment form.



## 15. POLICY DEVELOPMENT FUND

### 15.1 Overview of the Policy Development Fund

The Authority will keep a Policy Development Fund in respect of parties which are not eligible for funding from the Administration Fund.

Parties that are not eligible for payments from the Administration Fund may be eligible for annual payments, on a calendar year basis, from the Policy Development Fund. A party is eligible for payments from the Policy Development Fund if:

- it is a registered party and has been a registered party for at least 12 months on the date the entitlement for an annual payment is determined;
- the Authority is satisfied that it operates as a genuine political party; and
- it is not entitled to payments from the Administration Fund.

Parties are not eligible for funding if they have any outstanding declarations or financial statements.

Any funding due to a party from the Policy Development Fund may be reduced by any amounts the Authority has been authorised to recover from the party.

### 15.2 Amount of funding

The annual amount to be distributed from the Policy Development Fund to any eligible party is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the relevant maximum amount payable.

The relevant maximum amount payable is 25 cents for each first preference vote received by any candidate at the previous State election who was endorsed by the party, either for the Legislative Assembly or the Legislative Council (in this case, the first preference votes are those received by a candidate or any candidate included in the same group). If this amount is less than \$5,000, then \$5,000 will be paid as follows:

- during the first eight calendar years after the commencement of Division 3 of the Election Funding, Expenditure and Disclosures Act (insert date of commencement); or
- during the first eight calendar years after a party first becomes a registered party after commencement of Division 3 of the Act.

If no first preference votes are received, no funding will be provided.

### 15.3 Claims for Payment from the Policy Development Fund

A party is entitled to receive a payment from the Policy Development Fund for a calendar year only if the party makes a claim for the payment in accordance with the Act. A claim must be:

- lodged with the Authority in writing, using the Claim for Payment from the Policy Development Fund;
- accompanied by a declaration and such supporting information as the Authority may require; and
- audited and made within six months after the end of the calendar year for which payment is to be made.

### 15.4 Certificate of a Registered Company Auditor

A claim for payment will not be approved by the Authority unless it is reviewed by an auditor.

## Part G Policy Development Fund

The registered officers and deputy registered officers of registered parties, elected members, candidates, registered official agents and registered party agents are not permitted to audit a claim for payment.

The Certificate of a Registered Company Auditor section of the form must include the auditor's name and registration number. The auditor must sign and date this section of the form. The Certificate must state that the auditor:

- was given full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the claim is to be lodged, and of the eligible party, as the case may require, relating directly or indirectly to the expenditure referred to in the claim;
- duly examined such of those accounts, records, documents and papers as the auditor considers material for the purpose of giving the certificate;
- received all information and explanations that the auditor asked for with respect to the expenditure referred to in the claim, subject to the qualifications (if any) specified in the certificate;
- is satisfied that, from the information available to the auditor, the expenditure specified in the claim was incurred and is, having regard to the Act, the regulations and any guidelines issued by the Authority, expenditure which may properly be the subject of such a claim; and
- has no reason to think that any statement in the claim is not correct.

### 15.5 Claim for Payment and Declaration of Expenditure – Policy Development Fund

To make a claim for payment from the Policy Development Fund the party agent must lodge the **Claim for Payment from the Policy Development Fund (form EF.695)** and make a declaration of expenditure for policy development purposes using the **Declaration of Expenditure for Policy Development Purposes (form EF 696)** issued by the Authority.

### 15.6 When to Lodge Claims for Payment from the Policy Development Fund

**Claims for Payments from the Policy Development Fund (form EF.695)** and the accompanying **Declaration of Expenditure for Policy Development Purposes (form EF.696)** must be lodged with the Authority between 1 January and 30 June following the calendar year for which payment is sought.

### 15.7 Receiving Payments from the Policy Development Fund

Payments from the Policy Development Fund will be made to the party or party agent.

The payments must be spent in accordance with the *Election Funding, Expenditure and Disclosures Act 1981*.

A registered political party must keep a separate record showing money received and expenditure incurred from the Policy Development Fund.



## 16. DEFINITIONS

**ABN** Australian Business Number.

**Act** *Election Funding, Expenditure and Disclosures Act 1981*.

**Auditor** A registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

**Authority** Election Funding Authority of New South Wales.

**By-election** a by-election for the Legislative Assembly (in relation to State elections)

**Candidate** a person who is nominated as a candidate at an election.

**Campaign account** an account from a financial institution (but not a personal account of a candidate or a group).

**Disclosure Period** a period ending 30 June.

**Disposition of property** includes any transaction that diminishes the value of a person's own property and increases the value of the property of another person. Property includes money.

**Donor** a person who makes a gift (monetary or non-monetary) to a party, elected member, candidate, group of candidates or third-party campaigner.

**EFA** Election Funding Authority of New South Wales.

**Elected member** a Member of Parliament (in relation to State elections).

**Election** a State or Local Government election in New South Wales.

**Election day** the day electors go to the polling place to vote.

**Electoral expenditure** expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.

**Electoral communication expenditure** electoral expenditure which is incurred during the capped expenditure period. Electoral communication expenditure is subject to a cap on spending and may also be eligible for public funding.

**Endorsed** selected/nominated or otherwise accredited to stand as a representative of a registered political party.

**Entity** an incorporated or unincorporated body or a trustee of a trust.

**Financial institution** a financial institution is an entity whose principal business is the provision of financial services or financial products, and includes banks, credit unions and building societies.

**General election** in relation to State elections – a general election of the Legislative Assembly and a Legislative Council election held or to be held concurrently.

**Gift** any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

**Group** a group of candidates, or part of a group of candidates, for a Legislative Council election (in relation to State elections).

**Head candidate** head candidate of the group is the person whose name appears first on the application to form a group.

**Nomination day** is the day by which all nominations in the election must be made.

**Official agent** a person appointed to act in the capacity of an official agent or in the case of a registered political party the party agent.

**Person** a natural person, an individual.

**Party agent** the official agent for a political party (can be the registered officer of the party).

**Political donation** a gift made to or for the benefit of a party, elected member, group or candidate. Political donations include cash donations, gifts, subscriptions, services, entry fees, the sale of tickets or other items relating to fundraising, etc.

**Registered** in relation to a candidate, group or agent – registered in accordance with the Act in order to receive political donations.

**Registered political party** a party registered under the *Parliamentary Electorates and Elections Act 1912* or *Local Government Act 1993*, being a party which stated in its application for registration that it wished to be registered for the purposes of the *Election Funding, Expenditure and Disclosures Act 1981*.

**Regulation** *Election Funding, Expenditure and Disclosures Regulation 2009*.

**Reportable loan** a loan of \$1,000 or more from a non-financial institution.

**Reportable political donation** donations totalling \$1,000 or more from one donor to the same recipient, in one financial year.

**Small political donation** donations that are less than \$1,000 each or multiple donations from one donor to the same recipient in one financial year that total less than \$1,000.

**State election** a Legislative Assembly general election, a Legislative Council election or a by-election for the Legislative Assembly.



## 17. OFFENCES

Offences under the *Election Funding, Expenditure and Disclosures Act 1981* and *Election Funding, Expenditure and Disclosures Regulation 2009*.

OFFENCE	SECTION OF ACT OR REGULATION	MAXIMUM PENALTY
Failure of an agent to comply with conditions made by the Authority in relation to disbursement of amounts paid from the Election Campaigns Fund	68	\$11,000
In any claim for payment lodged with the Authority, makes a statement that is false or misleading, knowing it to be false or not reasonably believing it to be true.	75(1)	Imprisonment for 2 years or \$22,000 or both
Submitting an incomplete disclosure (eg the disclosure is not signed or signed by the wrong person).	91	\$22,000 for parties, \$11,000 in other cases
Submitting the disclosure on the wrong forms, ie forms other than those provided by the Authority.	91(2)	\$22,000 for parties, \$11,000 in other cases
Inability to vouch for all the expenditure listed in the disclosure.	91(6)	\$22,000 for parties, \$11,000 in other cases
Failure to disclose all donations or expenditure.	92 and 93	\$22,000
Accepting a political donation if the donation exceeds the applicable cap.	95B(1)	\$22,000 for parties, \$11,000 for individuals
Incurring electoral communication expenditure for a State election campaign during the capped expenditure period for the election which exceeds the applicable cap.	95B(1)	\$22,000 for parties, \$11,000 for individuals
Improper use of political donations.	96(1) and (2), 96A(6)	\$22,000 for parties, \$11,000 in other cases
Accepting political donations without registering with the Authority.	96A(2)	\$11,000
Failure to record reportable donations. It is unlawful for the party agent, or a person acting on their behalf, to accept a reportable political donation to or for the benefit of a party without making a record of the details of the donation.	96C (1)	\$11,000
Receiving reportable political donations from an entity without a relevant business number.	96D	\$11,000
Accepting certain indirect campaign contributions if the value of the contribution exceeds \$1,000	96E	\$11,000
Receiving anonymous donations. It is unlawful for the party agent, or a person acting on their behalf, to receive a gift that is a reportable political donation unless the name and address of the person is known or is given to the agent or a person acting on their behalf.	96F	\$11,000
Failure to record reportable loans. It is unlawful for the party agent or a person acting on their behalf, to accept a reportable loan to or for the benefit of a party without	96G	\$11,000

making a record of the details of the loan.		
Provides information in connection with an application for determination by the Authority in relation to a prohibited donor knowing that the information is false or misleading in a material particular	96GB	\$22,000 or imprisonment for 12 months or both
Failure to lodge a disclosure by the due date.	96H (1)	\$22,000
Providing false or misleading information in the disclosure. A person who knowingly makes a false statement in a disclosure, amendment or any other forms, or makes a statement that the person does not reasonably believe to be true, is guilty of an offence.	96H(2)	\$22,000 or 12 months imprisonment or both
Failure to retain records. It is an offence to fail to retain records, containing information that could be required to be included in a disclosure return, for three years.	96I(2)	\$11,000
Failure to audit the disclosure (where required).	96K	\$22,000 for parties, \$11,000 in other cases
Making a false or misleading statement on the Claim for Payment from the Administration Fund or Policy Development Fund.	97M	\$22,000
Delaying or obstructing an inspection or failing to comply with the request of an inspector.	110(4)	\$11,000
Failure to keep any one of the following accounting records: <ul style="list-style-type: none"> <li>• a Receipt and Acknowledgement book</li> <li>• a cheque book</li> <li>• a deposit book</li> <li>• a cash book, or a receipts cash book and payments cash book</li> <li>• a journal</li> <li>• a ledger</li> </ul>	Regulation 22	\$2,200
Failure to lodge additional records requested by the Authority within the required time.	Regulation 39	\$2,200
Failure to retain video tapes, film or transparency for a period 12 months after the date of the last presentation of the advertisement concerned.	Regulation 40 (2)	\$2,200
Failure to arrange for video tapes, film or transparency to be viewed by a member of the Authority when requested.	Regulation 40 (3)	\$2,200



## 18. LIST OF FORMS TO BE USED BY PARTIES AND PARTY AGENTS

The following table provides a list of forms referred to in this guide and issued by the Authority to be used by parties and party agents. Forms are available from the Authority's website [www.efa.nsw.gov.au](http://www.efa.nsw.gov.au) or by contacting the Authority.

FORM NAME	PURPOSE
Notice of Appointment of Party Agent (form EF.675)	To appoint a party agent for a political party.
Cancellation of Appointment of an Agent (form EF.677)	To notify the Authority that a party agent has died, resigned or their appointment has been revoked.
Disclosure of Political Donations and Electoral Expenditure by a Political Party (form EF.679)	To disclose political donations and electoral expenditure.
Claim for Payment for a Parliamentary Election (form EF.683)	To make a claim for public funding for a State General election or by-election.
Electronic Funds Transfer (EFT) Payment Authority (form EF.689)	To provide the Authority with details of a party's account.
Claim for Payment from the Administration Fund (form EF.697)	To make a claim for public funding of administrative expenditure.
Declaration of Expenditure for Administrative Funding (form EF.698)	To declare how payments from the Administration Fund have been spent.
Claim for Payment from the Policy Development Fund (form EF.695)	To make a claim for public funding for policy development purposes.
Declaration of Expenditure for Policy Development Purposes (form EF.696)	To declare how payments from the Policy Development Fund have been spent.

