

Fact sheet

Local government by-election electoral funding obligations

The following information applies at local government by-elections in New South Wales (NSW) even if the NSW Electoral Commission is not conducting the by-election. A local government by-election is held each time a vacancy occurs in a local council of NSW. All participants at local government by-elections are responsible for understanding and complying with the *Electoral Funding Act 2018* and regulations.

Electoral funding obligations of electoral participants at local government by-elections

Political parties, candidates, third-party campaigners, political donors and other election participants are responsible for complying with electoral funding laws before, during and after a local government by-election is held. Such obligations range from the requirements to register for a by-election to the management and disclosure of political donations and electoral expenditure.

An election calendar which includes relevant dates for each by-election is published on the Electoral Commission's (NSWEC) [website](#).

Registration of candidates, groups, and third-party campaigners

Candidates must be registered for a by-election before accepting a [political donation](#) or making a payment for [electoral expenditure](#) for the by-election. If there is more than one vacancy to be filled at the by-election, and there are groups of candidates contesting the by-election, the candidates must be registered as a group before accepting a political donation or making a payment for electoral expenditure with respect to the group.

It is an offence for a candidate or group to accept a political donation or make a payment for electoral expenditure without being registered.

The registration of candidates and groups for a by-election is a separate process to being [nominated](#) as a candidate or requesting to form a group on a ballot paper. A nomination form (and grouping form in relation to a group) must be validly lodged with the NSW Electoral Commissioner during the nomination period to have the candidate's name (and the group) printed on the ballot paper. For more information about being nominated as a candidate or forming a group for a by-election email nominations@elections.nsw.gov.au.

A person or entity (not being a party, associated entity, elected member or candidate) must be registered as a [third-party campaigner](#) before making payments for electoral expenditure, where more than \$2,000 in electoral expenditure is incurred during the [capped expenditure period](#) for a by-election.

It is an offence for a person or entity to make payments for electoral expenditure or accept political donations for that purpose without being registered if they incur more than \$2,000 in electoral expenditure.

A third-party campaigner must appoint an [official agent](#) who is responsible for managing the campaigner's political donations and electoral expenditure including operating a [campaign account](#) and making [disclosures](#) to the NSWEC.

To register for a by-election, complete the relevant form and submit it to the NSWEC by the deadline:

- Candidates: [Application to register as a local government candidate \(EF.729\)](#)
- Groups: [Application to register as a local government group \(EF.732\)](#)
- Third-party campaigners: [Application to register a third-party campaigner and notice of appointment of official agent \(EF.735\)](#)

Registrations for a by-election open on a date to be determined by the NSWEC, which is no later than the date of the close of the electoral roll for the by-election, and close 12noon on nomination day for candidates and groups, and on the eighth day (the second Friday) before election day for third-party campaigners.

The registered details of candidates, groups, third-party campaigners and official agents are published on the NSWEC [website](#).

Detailed information on the registration of candidates, groups and third-party campaigners and the roles and responsibilities of official agents is available on the NSWEC [website](#).

Who is responsible?

Candidates, groups and third-party campaigners must understand who is responsible for the management and disclosure of political donations and electoral expenditure.

At local government elections, candidates (and the lead candidate of a group) are generally responsible for the management and disclosure of the candidate or group's political donations and electoral expenditure including the operation of a campaign account. The following exceptions apply:

- where there is a candidate who is a member of a registered party and there is a mutual agreement between the candidate and the [party agent](#) of the party (and the NSWEC has been advised of the agreement) the party agent is responsible for the candidate
- where there is a group whose members are members of the same registered party and there is a mutual agreement between the group members and the party agent of the party (and the NSWEC has been advised of the agreement) the party agent is responsible for the group
- where there is a group and one or more members of the group are members of one registered party and one or more members of the group are members of another registered party, and there is agreement between the group members and the party agent of one of those parties (and the NSWEC has been advised of the agreement), the party agent is responsible for the group.

The official agent of a third-party campaigner is responsible for the management and disclosure of the political donations and electoral expenditure of the third-party campaigner, including the operation of the campaigner's campaign account.

Political donations

Political donations must be disclosed in NSW and only people on the electoral roll, entities with a business number, or those approved by the NSWEC can lawfully make political donations.

It is an offence to make or accept a political donation that does not comply with the law. This includes anonymous donations and donations from prohibited donors.

Political donations are subject to specific [caps](#) in NSW. It is an offence to accept a political donation that exceeds the cap. Caps are adjusted each financial year.

Detailed information on political donations including unlawful donations, prohibited donors and current donation cap amounts is available on the NSWEC [website](#).

Electoral expenditure

All electoral expenditure incurred by (or on behalf of) a party, candidate, group or a third-party campaigner in connection with a by-election must be disclosed to the NSWEC.

Electoral expenditure of parties, candidates, groups and third-party campaigners is capped during the [capped local government expenditure period](#) for a by-election. It is an offence to incur electoral expenditure in connection with a by-election that exceeds the expenditure caps.

The capped local government expenditure period for a by-election commences on the day on which the by-election is publicly notified and ends on election day.

Detailed information on electoral expenditure, including current cap amounts, is available on the NSWEC [website](#).

Campaign accounts

A candidate that is responsible for their own disclosures (or lead candidate that is responsible for a group) must open a [campaign account](#) for the by-election before accepting \$1,000 or more in political donations (or any reportable political donations) or incurring \$1,000 or more in electoral expenditure.

The campaign account is to be used to make payments for all electoral expenditure and for depositing political donations made to the candidate or group.

Where a party agent is responsible for a candidate or group's disclosures, the candidate or group is not permitted to open a campaign account for the by-election. All electoral expenditure of the candidate or group must be paid by the party agent from the local government campaign account of the party.

Third-party campaigners are required to keep a [campaign account](#) for a by-election to make payments for electoral expenditure and to deposit political donations received that are used to pay for the electoral expenditure. The official agent of a third-party campaigner must operate the campaign account.

Detailed information about campaign accounts of candidates, groups and third-party campaigners including contributions made by candidates to finance their own election campaign is on the NSWEC [website](#).

Making disclosures to the NSWEC

Political donations and electoral expenditure must be disclosed to the NSWEC. Disclosures are made in a declaration form which must be signed and submitted by the deadline by the person responsible. There are three types of disclosures that apply to by-elections:

- Political donations made and received must be disclosed within 4 weeks of the end of each half year period ending 31 December and 30 June (i.e. by 28 January and 28 July) (does not apply to political donors)
- Electoral expenditure incurred must be disclosed within 12 weeks of the end of the annual period ending 30 June (i.e. by 22 September) (does not apply to political donors)
- Reportable political donations made by political donors must be disclosed within 4 weeks of the end of an annual period ending 30 June (i.e. by 28 July).

Complete and accurate [records](#) of political donations and electoral expenditure must be retained for 3 years. The NSWEC conducts compliance audits of parties, candidates, groups, third-party campaigners and other electoral participants.

Detailed information on the requirements for the disclosure of political donations and electoral expenditure including the rules for who is responsible for making disclosures on behalf of a candidate, group or third party campaigner is available on the NSWEC [website](#).

More information

If you have any questions contact the NSW Electoral Commission on 1300 022 011 or email fdc@elections.nsw.gov.au. The *Electoral Funding Act 2018* is available at www.legislation.nsw.gov.au.