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FAD / FUNDING AND
DISCLOSURE
REFORM

Electoral Expenditure Caps Guideline

for Registered Political Parties
and Expenditure Groups

Future FAD scheme commencing 1 July 2026



AEC

Australian Electoral Commission

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Purpose

The *Electoral Expenditure Caps Guideline for Registered Political Parties and Expenditure Groups* (the guideline) provides information and guidance to support entities to understand their electoral expenditure cap obligations under the *Commonwealth Electoral Act 1918* (Electoral Act). Entities are responsible for monitoring their electoral expenditure to ensure they do not exceed the relevant caps.

Important information

The guideline uses text boxes to highlight important information. Each text box is prefaced with a symbol. For example:



WARNING. A warning symbol indicates information about a legal obligation under the Electoral Act.



USEFUL TIP. An information symbol indicates a useful tip



DUE DATE. A clock symbol indicates a due date.

Legislation

Legislative provisions referenced in the guideline are from the Electoral Act as amended by the *Electoral Legislation Amendment (Electoral Reform) Act 2025*.



These guidelines are for the funding and disclosure scheme that commences on 1 July 2026. For information on the current scheme see the [Financial Disclosure](#) page.

Commonwealth Electoral Act 1918

Part XX	
Division 1	Preliminary
Division 3AB	Requirements relating to electoral expenditure
Division 5	Annual disclosure of donations and electoral expenditure etc.
Division 5C	Compliance and enforcement powers
Division 6	Miscellaneous
<i>Section 321AB</i>	Indexation of amounts relating to electoral expenditure

Disclaimer

The information in this publication is intended to provide general guidance only. It does not constitute legal, financial, or other professional advice. Persons and entities should seek their own professional advice to find out how the Electoral Act applies to their particular circumstances. The Australian Electoral Commission (AEC) has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency, or completeness of that information. Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication.

Please refer to www.aec.gov.au to access the AEC's current publications.

Introduction

Division 3AB of Part XX of the Electoral Act limits the electoral expenditure that registered political parties (RPPs), State branches of RPPs, candidates, members of the House of Representatives, Senators, significant third parties, associated entities, nominated entities and third parties can incur in a calendar year (annual cap).

Additionally, within the annual cap, specific electoral expenditure caps apply to expenditure that is targeted to a Division, State or Territory.

There are also separate caps that limit the amount of electoral expenditure that entities can incur for the purposes of a by-election or Senate-only election.

Electoral expenditure does not count towards the entity's annual, Divisional or Senate-only caps if it is incurred:

- during an election period for a by election or Senate-only election, and
- for the purposes of that by-election or Senate-only election caps.

The electoral expenditure cap values are determined by the entity type.

All entities are required to disclose their electoral expenditure in their annual disclosure return.

Electoral expenditure caps

What are expenditure caps?

Electoral expenditure caps limit the amount of electoral expenditure that political participants can incur each calendar year.

There is an overall annual cap on electoral expenditure (Federal cap). Within the Federal cap there is an annual cap for electoral expenditure targeted at each House of Representatives Division (Divisional cap) and an annual cap for each State or Territory (Senate cap). There are also caps that apply to by-elections and Senate-only elections.

The electoral expenditure cap is different for each person or entity type.

What is electoral expenditure and electoral matter?

Electoral expenditure is expenditure incurred for the dominant purpose of creating or communicating electoral matter. Electoral matter is matter communicated or intended to be communicated for the dominant purpose of influencing how electors vote in an election.

Expenditure may be considered electoral expenditure if it is incurred for the dominant purpose of creating or communicating specific electoral matter or is electoral matter generally.

For an RPP, a state branch of an RPP, a candidate or a member of a Senate group, a member of the House of Representatives or a Senator, or a person or entity that is (or must be) registered as a significant third party, an associated entity, or a nominated entity, electoral expenditure is generally any expenditure incurred with its authority in relation to an election.

Expenses that may be associated with electoral expenditure in relation to an election may include, but are not limited to:

- **Advertising and promotional material:** costs for TV, radio, print, and digital advertisements intended to influence voting behaviour.
- **Social media campaigns:** paid content or boosted posts on platforms like Facebook, Instagram, or X (Twitter) promoting or opposing candidates or parties.
- **Direct mail and leaflets:** printing and distributing brochures, flyers, or letters to electors.
- **Market research and polling:** surveys or focus groups conducted to shape electoral messaging.
- **Website and digital content:** development and hosting of websites or online platforms used for electoral communication.
- **Campaign staff and office accommodation:** employing campaign staff and providing office accommodation for campaign staff or candidates.
- **Campaign travel and accommodation:** travel and accommodation for candidates and campaign staff engaged in an election campaign.

Further information can be found in the **Fact sheet: Electoral Expenditure** available on the AEC website.



Electoral expenditure is **incurred** when a definitive liability to make a payment accrues.

In a general sense, this is when the relevant goods or services are supplied or provided to the relevant entity, regardless of when they are invoiced or paid.

For example, the cost of a television advertisement is incurred when it is first provided and the cost of producing and distributing campaign materials like flyers is incurred when those materials are first provided.

Example – dominant purpose of expenditure

An RPP prepares a television advertisement and tests it with a focus group. The advertisement is never used, as it tests poorly with the focus group. Test advertisements are a key part of the party's process for creating an effective campaign, because they help the party to develop and select the best advertisements for dissemination.

As the advertisement was prepared by an RPP, it is likely to be electoral matter. As the advertisement was intended to be shown to the public, it is also likely to be electoral matter.

This is the case even if the advertisement is not used. The dominant purpose of creating the advertisements was to influence voting at an election, so the advertisements are electoral matter and any expenditure incurred to create the advertisements is electoral expenditure.



Section 287AB of the Electoral Act defines electoral expenditure.

Section 4AA of the Electoral Act defines electoral matter.

Who do expenditure caps apply to?

Electoral expenditure caps apply to:

- RPPs
- State branches of RPPs
- candidates
- members of the House of Representatives
- Senators
- significant third parties
- associated entities
- nominated entities
- third parties.

The expenditure cap amounts are explored in detail in this guideline.

When do expenditure caps apply?

Electoral expenditure caps apply from 1 January to 31 December each year.

By-election and Senate-only election expenditure caps apply only in a by-election or Senate-only election period.



Section 302ARC of the Electoral Act provides that if there is more than one general election held in the same calendar year, on the issue of the writs for the subsequent election, the annual electoral expenditure caps reset.



By-election period – starts on the day the writs are issued and ends on polling day for the by-election.

Senate-only period – starts on the day the writs are issued and ends on polling day for the Senate-only election.

What expenditure caps apply to a registered political party?

Each calendar year, an RPP and its expenditure group are subject to a Federal cap on electoral expenditure. Within the Federal cap there is an annual Divisional cap for each House of Representatives Division and an annual Senate cap for each State and Territory.

The Divisional and Senate caps apply to electoral expenditure that is targeted to a Division, State or Territory (see section above 'Electoral expenditure targeted to a Division, State or Territory'). Targeted expenditure that counts towards either of those caps also counts towards the Federal cap.

Additionally, an RPP and its expenditure group are subject to a by-election cap and Senate-only election cap.

As at 1 July 2026, the caps are:

Federal cap is \$90 million.

Divisional cap is \$800,000.

Senate base amount is \$200,000.

By-election cap is 120% of the Divisional cap. The by-election cap = 120% x \$800,000 = **\$960,000.**

The **Senate cap** for a State or Territory is calculated by multiplying the Senate base amount by the number of Divisions in the State or Territory.

State/Territory	Formula (Senate base amount x the number of Divisions in the State or Territory as at 30 June 2025)	Senate cap
NSW	$(\$200,000 \times 46)$	\$9,200,000
VIC	$(\$200,000 \times 38)$	\$7,600,000
QLD	$(\$200,000 \times 30)$	\$6,000,000
WA	$(\$200,000 \times 16)$	\$3,200,000
SA	$(\$200,000 \times 10)$	\$2,000,000
TAS	$(\$200,000 \times 5)$	\$1,000,000
ACT	$(\$200,000 \times 3)$	\$600,000
NT	$(\$200,000 \times 2)$	\$400,000

Senate-only cap is 120% of the Senate cap for the State or Territory.

State/Territory	Formula (120% of the Senate cap amount x the number of Divisions in the State or Territory as at 30 June 2025)	Senate-only cap
NSW	$(\$200,000 \times 46) \times 120\%$	\$11,040,000
VIC	$(\$200,000 \times 38) \times 120\%$	\$9,120,000
QLD	$(\$200,000 \times 30) \times 120\%$	\$7,200,000
WA	$(\$200,000 \times 16) \times 120\%$	\$3,840,000
SA	$(\$200,000 \times 10) \times 120\%$	\$2,400,000
TAS	$(\$200,000 \times 5) \times 120\%$	\$1,200,000
ACT	$(\$200,000 \times 3) \times 120\%$	\$720,000
NT	$(\$200,000 \times 2) \times 120\%$	\$480,000



Expenditure caps are indexed on 1 January each year under section 321AB of the Electoral Act and are published on the AEC website.

What is an expenditure group?

Each RPP that is not a State branch of another RPP and is also not related to another RPP has an expenditure group. The RPP that meets this definition is taken to be the group owner of the expenditure group.

Two political parties are taken to be related if:

- one is part of the other; or
- both are parts of the same political party.

The expenditure group for an RPP is made up of the following **core members**:

- the group owner (the main party itself)
- its State branches (even if those branches are not separately registered)
- any candidates the group owner or its State branches endorse
- any current members of the House of Representatives or Senators who belong to the group owner or its State branches
- any nominated entity of the group owner or its State branches.

The expenditure group for an RPP also includes:

- any other RPPs that are considered part of the group owner because they are related to the group owner (but are not State branches of the group owner)
- any candidates, members of the House of Representatives, Senators, or nominated entities linked to these related (but not State branch) parties.

Any person or entity that falls within the above lists are members of the same expenditure group. Their electoral expenditures are combined and must stay below the total allowed limit for the expenditure group.

Associated entities, significant third parties, and third parties are not members of an RPP's expenditure group for the purposes of expenditure caps.



Subsection 302ALF(1) of the Electoral Act defines an expenditure group.
Section 123(2) of the Electoral Act describes when 2 political parties are related.

Member of multiple expenditure groups

If a person or entity is a member of more than one RPP's expenditure group, electoral expenditure incurred by the person or entity counts towards the total electoral expenditure of **each** expenditure group. This applies to the Federal, Divisional and Senate caps.



Subsection 302ALF(2) of the Electoral Act deals with expenditure of a member of multiple expenditure groups.

Example – Expenditure of a member of multiple expenditure groups counts towards the expenditure caps for each group

The following are all registered political parties:

Federal Quokka Party

Quokka Party (WA)

Federal Wombat Party

Wombat-Quokka Party (SA)

The Quokka Party (WA) is a State branch of the Federal Quokka Party and is a member of the Federal Quokka Party's expenditure group.

The Wombat-Quokka Party (SA) is a State branch of the Federal Wombat Party.

The Wombat-Quokka Party (SA) is not a State branch of the Federal Quokka Party, but it is related to the Federal Quokka Party within the meaning of section 123(2) because it is a part of the Federal Quokka Party.

The Wombat-Quokka Party (SA) is a member of the Federal Wombat Party's expenditure group. It is also a member of the Federal Quokka Party's expenditure group because it is related.

The Wombat-Quokka Party (SA) incurs \$50,000 of electoral expenditure. This expenditure will count towards the Federal cap for **both** expenditure groups that the Wombat-Quokka Party (SA) is a member of.

If the expenditure is targeted to a Division, State or Territory within the meaning of section 302ALC, it will also count towards the Divisional cap or Senate cap for both expenditure groups.

Electoral expenditure incurred by Senate groups

If electoral expenditure is incurred by a Senate group or an agent acting on behalf of the Senate group, the expenditure is taken to be incurred by:

- for a single-party endorsed group – the endorsing RPP
- for a jointly endorsed group – each endorsing RPP in equal shares, proportionate to the number of candidates endorsed by each party
- for an unendorsed group – each member incurs an equal share of the expenditure.

The effect in all cases is that the Senate group is not taken to have incurred the electoral expenditure, but rather the individual candidates or the endorsing RPP or parties.

A jointly endorsed Senate group means its members are endorsed by more than one RPP and an unendorsed Senate group means that none of the group's members are endorsed by a RPP.



For each member of an unendorsed Senate group, the individual member must determine their portion and report their share of the electoral expenditure in their candidate return, with the portion counting towards the candidate's expenditure cap.



Section 302ALB of the Electoral Act prescribes how Senate group electoral expenditure is treated.

Electoral expenditure targeted to a Division, State or Territory

Electoral expenditure incurred by a person or entity is taken to be targeted to a Division, State or Territory if:

- the expenditure is incurred for the dominant purpose of creating or communicating electoral matter; and
- the electoral matter is **express coverage matter** (see definition below) for the Division, State or Territory; and
- is not mainly communicated:
 - for a Division – to electors enrolled outside Divisions for which it is express coverage matter; or
 - for a State or Territory – to electors enrolled outside States and Territories for which it is express coverage matter.

The total amount of expenditure that is targeted to a Division, State or Territory is:

- if the electoral matter is targeted to a single Division, State or Territory – the total amount of the expenditure; or
- if the electoral matter to which the expenditure relates is express coverage matter for more than one Division, State or Territory – then the portion of the expenditure that the liable person or financial controller believes accurately represents the distribution of the electoral matter across the respective Division, State, or Territory.

It is the responsibility of the liable person for the expenditure to assess apportionment of targeted electoral expenditure and maintain adequate records to validate the procedure and methodology of apportionment.

What is express coverage matter?

Express coverage matter for a Division, State or Territory is electoral matter that:

- is communicated to electors enrolled in the Division, State or Territory; and
- expressly mentions either or both of the following:
 - the name or includes an image or likeness of a candidate for election to the House of Representatives for the Division or the Senate for the State or Territory
 - the Division or a Senate election for the State or Territory.

Exception – expenditure on how-to-vote cards

Electoral expenditure is not targeted to any Division, State or Territory if:

- it is incurred on a how-to-vote card as defined in subsection 4(1) of the Electoral Act; and
- if the card contains additional matter that does not satisfy any of the definition of a *how-to-vote card*, the exception will only apply if the dominant purpose of the electoral matter is to convey matter that satisfies any of the definitions of a *how-to-vote card*.



Electoral expenditure that is not targeted to any Division, State or Territory will still (depending on who incurred it) count towards the Federal cap for registered political party expenditure groups or capped entity cap.

Definition of how-to-vote card

A how-to-vote card means a card, handbill, or pamphlet:

- that is:
 - or includes, a representation of a ballot paper or part of a ballot paper for an election (or something that is intended to represent a ballot paper or part of a ballot paper for an election); and
 - apparently intended to affect, or is likely to affect, how votes are cast for any or all of the candidates in the election; or
- that lists the names of two or more candidates or registered political parties in an election, with a number indicating the order of voting preference next to the names of those candidates or parties; or
- that otherwise directs or encourages voting in a particular way during an election, other than a card, handbill, or pamphlet:
 - that only pertains to first preference votes; or
 - that only pertains to last preference votes.



Section 302ALC of the Electoral Act deals with situations where electoral expenditure is taken to be targeted to a Division, State or Territory.

Subsection 4(1) of the Electoral Act defines a how-to-vote card.

Example – Operation of ‘express coverage matter’

Express coverage matter

Pasha is the Quokka Australia Party (QAP) candidate for the Division of Nicholls. The QAP spends \$50,000 on billboards and flyers across the Division of Nicholls that say, ‘Vote 1 for Pasha’ and includes a smiling image of Pasha next to a quokka.

This is express coverage matter as it includes the candidate’s name and likeness and is communicated to electors in the candidate’s Division.

Not express coverage matter

The QAP is also running a series of television advertisements that include the party logo and outline the broad policy platform that the party is taking to the election. The television advertisements does not include the name, image or likeness of any candidate, nor does it explicitly mention any Division or the Senate election for any State or Territory.

This is not express coverage matter and is therefore not captured by the definition of targeted to a Division, State or Territory under section 302ALC(1).

Expenditure on these television advertisements would only contribute to the Federal cap of QAP and its expenditure group.

Example – exception on how-to-vote cards – section 302ALC(4)

A how-to-vote card is circulated across the Division of Fenner.

The Quokka Australia Party (QAP), a registered political party, spends \$10,000 on the production and distribution of the card.

The card depicts a ballot paper encouraging electors to vote for Mai, the endorsed candidate of the QAP in Fenner, satisfying paragraph (a) of the definition of how-to-vote card.

The card also includes a photograph of Mai as well as the QAP’s campaign slogan. However, the dominant purpose of the electoral matter is to convey matter that satisfies paragraph (a) of the definition of how-to-vote card.

Section 302ALC(4) provides that electoral expenditure on how-to-vote cards is not targeted to a Division, State or Territory. This means that the QAP’s expenditure on the how-to-vote card contributes only to the ‘Federal cap’ of the QAP and its expenditure group.

Example – Operation of targeted expenditure – section 302ALC

The federal branch of the Quokka Australia Party spends \$1 million on an electoral advertisement circulated in New South Wales (NSW) that does not reach other states or territories. It features the following candidates:

- Division of Dawson, Queensland (QLD) (Elizabeth)
- Division of Dobell, NSW (Patrick)
- Senate, NSW (Aarti)

The advertisement is not a how-to-vote card and therefore section 302ALC(4) does not apply.

Steps illustrating the operation of targeted expenditure in this scenario are set out below.

Step 1 – Determine whether the electoral matter is *express coverage matter* for one or more Divisions, States or Territories (section 302ALC(3)).

- If, for any Division, State or Territory, the answer is ‘YES’ as to whether the electoral matter expressly mentions either or both of the following:
 - the name or includes an image or likeness of a candidate for election to the House of Representatives for the Division or the Senate for the State or Territory
 - the Division or the State or Territory for a Senate election.
 move to [Step 2](#).
- If ‘NO’, the expenditure is allocated to the Federal cap.

Express mention test (section 302ALC(3)(b))

- YES – The advertisement expressly mentions the name and features the image of all listed candidates.

Communicated to relevant electors (section 302ALC(3)(a))

- YES – for candidates in the Division of Dobell (Patrick) and Senate, NSW (Aarti) – as the advertisement was communicated to electors in NSW only.
- NO – for Division of Dawson (Elizabeth) – as the advertisement was not communicated to electors in QLD.

Therefore, the electoral matter is express coverage matter for the Division of Dobell and NSW – continue to [Step 2](#).

Step 2 – Apportion the expenditure to the Divisions, States or Territories for which it is express coverage matter (if necessary) (section 302ALC(2)).

Is the electoral matter to which the expenditure relates, express coverage matter for more than one Division, State and/or Territory?

- If ‘YES’, the liable person or financial controller is required to apportion the expenditure on express coverage matter between the Divisions, States and/or Territories to which it relates in the manner they are reasonably satisfied reflects the distribution of the electoral matter and continue to [Step 3](#).
- If ‘NO’, continue straight to [Step 3](#).

Express coverage matter for more than one Division, State and/or Territory test (section 302ALC(2))

- YES – as identified at Step 1, the electoral matter is *express coverage matter* for candidates in the Division of Dobell (Patrick) and NSW (Aarti).

The QAP registered officer is the liable person for the QAP. The registered officer is now required to apportion the \$1 million between the Division of Dobell and NSW. The apportionment must be in a manner the registered officer is reasonably satisfied reflects the distribution of the electoral matter in the Division of Dobell and NSW more broadly.

Based on the broadcast of the electoral matter, the registered officer apportions:

- 20% of the expenditure to the Division of Dobell (\$200,000) – ‘Amount A’; and
- 80% of the expenditure to the Senate cap for NSW (\$800,000) – ‘Amount B’.

Continue to Step 3 to determine if each of these amounts (A and B) of electoral expenditure is *targeted* to a Division, State or Territory.

Step 3 – Determine whether the electoral expenditure on the *express coverage matter* is targeted to each Division, State or Territory? (section 302ALC(1))

- If ‘YES’ to all paragraphs of section 302ALC(1)
 - dominant purpose test (section 302ALC(1)(a));
 - express coverage matter test (section 302ALC(1)(b)); and
 - not mainly communicated outside test (section 302ALC(1)(c))

the electoral expenditure *is targeted* to that Division, State or Territory and the apportionment (Step 2) is allocated the relevant Divisional or Senate caps (and the Federal cap).

- If ‘NO’ to any of the tests in section 302ALC(1) – the electoral expenditure is *not targeted* to that Division, State or Territory and the apportionment (Step 2) is allocated only to the Federal cap.

Division of Dobell (Patrick) — Amount A**Dominant purpose test** (section 302ALC(1)(a))

- YES – the expenditure was for the dominant purpose of creating or communicating electoral matter.

Express coverage matter test (section 302ALC(1)(b))

- YES – as identified at Step 1.

Not mainly communicated outside test (paragraph 302ALC(1)(c))

- As the advertisement was distributed to all Divisions across the State, the electoral matter was mainly communicated to electors outside the Division of Dobell.

Therefore, the \$200,000 (20%) spent on *express coverage matter* for the Division of Dobell is *not targeted* to the Division of Dobell and is not counted towards the Divisional cap for Dobell. However, **it is counted towards the Federal cap.**

NSW (Aarti) – Amount B

Dominant purpose test (section 302ALC(1)(a))

- YES – the expenditure was for the dominant purpose of creating or communicating electoral matter.

Express coverage matter test (section 302ALC(1)(b))

- YES – as identified at [Step 1](#).

Not mainly communicated outside test (paragraph 302ALC(1)(c))

- As the advertisement was not mainly communicated to electors outside the State of NSW.

Therefore, the \$800,000 (80%) spent on *express coverage matter* for NSW *is targeted* to NSW and **counted towards the Senate cap for NSW**. It is **also counted towards the Federal cap**.

Final apportionment

\$1 million to the Federal cap for the QAP and its expenditure group, within the Federal cap, the final apportionment as *targeted* electoral expenditure:

- **\$800,000 to the Senate cap for NSW**

Note: As the 20% apportioned to the Division of Dobell as *express coverage matter* was not electoral expenditure *targeted* to the Division of Dobell under the test in [Step 3](#), the 20% (\$200,000) only counts to the Federal cap.

Who is responsible for monitoring expenditure caps?

Certain persons are subject to civil penalties if a relevant electoral expenditure cap is exceeded in a calendar year.

The responsibility for monitoring expenditure caps rests with the liable person for the RPP or the member of the expenditure group that incurs the expenditure.

The **liable person** for a member of a RPP's expenditure group is listed in the table below:

Entity type	Liable person
(a) Registered political party other than a State Branch	Registered officer
(b) State branch of a registered political party whichever of the following applies:	
i) registered State branch of a registered political party; or	Registered officer
ii) otherwise	Party agent
(c) Political party that is not covered by (a) or (b)	Party agent
(d) Candidate endorsed by a registered political party	Registered officer
(e) Candidate not endorsed by a registered political party	Agent of the candidate
(f) Member or Senator who is a member of a registered political party	Registered officer
(g) Member or Senator who is a not member of a registered political party	Member or Senator individually
(h) Nominated entity	Financial controller



Section 302ALA of the Electoral Act states who is the liable person for a registered political party's expenditure group.

Compliance considerations

An authorised officer of the AEC has the power to issue a notice to a person to obtain information, produce documents or to appear and answer questions to ensure compliance with Part XX of the Electoral Act.

The penalties for non-compliance with electoral caps is proportionate to the expenditure cap values to ensure that the value is sufficiently higher to act as a deterrent to breaching the caps and ensure integrity of the electoral process.

The civil penalty provisions for the contravention of electoral expenditure caps is the higher of the following:

- 1,000 penalty units; or
- 3 times the amount that exceeds the cap for the particular expenditure.

The Electoral Act provides that general non-compliance with Part XX (other than Division 3AB) in relation to an election does not invalidate that election (s 319). This exemption does not apply to non-compliance with the expenditure cap obligations under Division 3AB.

Part XXII of the Electoral Act outlines the powers of the Court of Disputed Returns. These powers include the power to declare an election void. Generally, the Court can only declare an election void where they are satisfied that the result of the election was likely affected (s 362). Section 319 means that the Court of Disputed Returns would have the power to void an election in the event a political actor is found to be non-compliant with the expenditure cap obligations if satisfied that the result of the election was likely affected.



Section 314AN of the Electoral Act empowers an authorised officer of the AEC to undertake compliance reviews under Division 5C of Part XX of the Electoral Act.

Subsection 319(1) of the Electoral Act carves out the general exemption for non-compliance with Division 3AB of Part XX of the Electoral Act.

Anti-avoidance

The Electoral Act contains civil penalties for avoiding electoral expenditure cap obligations under Part XX of the Electoral Act.

The anti-avoidance provisions prohibit schemes that are established to avoid the operation of the electoral expenditure caps and other provisions.

The Electoral Commissioner can issue a written notice requiring the person not to enter, begin or continue (as the case may be) a scheme.



It is an offence under section 314AS of the Electoral Act to establish schemes to avoid electoral expenditure cap obligations and other provisions.

Exceeding electoral expenditure caps

Federal cap

A Federal cap is exceeded if:

- the RPP or a member of the RPP's expenditure group incurs electoral expenditure in a calendar year; and
- the total electoral expenditure incurred in the year by members of the RPP's expenditure group combined is more than the Federal cap.

Note: There are instances where expenditure does not count towards the Federal cap and an exception for acceptable expenditure action is available. This is covered in the section on Exceptions.

The excess amount of the particular expenditure (relevant to the calculation of the maximum civil penalty) is:

- the amount of the particular expenditure; or
- the portion of the amount that is above the Federal cap.

Electoral expenditure targeted to a Division, State or Territory, is also electoral expenditure that counts towards the Federal cap. However, expenditure incurred in relation to a by-election or Senate-only election does not count towards the Federal cap.

The liable person may face civil penalties if the RPP expenditure group exceeds its Federal cap.

Divisional cap

A Divisional cap is exceeded if:

- the RPP or a member of the RPP's expenditure group incurs electoral expenditure targeted to a Division; and
- the total amount of the particular expenditure incurred in the year targeted to the Division by members of the RPP's expenditure group is more than the Divisional cap.

Note: There are instances where expenditure does not count towards the Divisional cap and an exception for acceptable expenditure action is available. This is covered in the section on Exceptions.

The excess amount of the particular expenditure (relevant to the calculation of the maximum civil penalty) is:

- the amount of the particular expenditure; or
- the portion of the amount that is above the Divisional cap.

The liable person may face civil penalties if the RPP expenditure group exceeds its Divisional cap.

Senate cap

A Senate cap is exceeded if:

- the RPP or a member of the RPP's expenditure group incurs electoral expenditure targeted to a State or Territory; and
- the total amount of the particular expenditure incurred in the year targeted to the State or Territory by members of the RPP's expenditure group is more than the Senate cap.

Note: There are instances where expenditure does not count towards the Senate cap and an exception for acceptable expenditure action is available. This is covered in the section on Exceptions.

The excess amount of the particular expenditure (relevant to the calculation of the maximum civil penalty) is:

- the amount of the particular expenditure; or
- the portion of the amount that is above the Senate cap.

The liable person may face civil penalties if the RPP expenditure group exceeds its Senate cap.

What expenditure is covered by the by-election or Senate-only election caps?

The by-election or Senate-only election caps apply to electoral expenditure incurred by a person or entity in the:

- by-election period of a by-election for the purpose of that by-election; or
- Senate-only election period of a Senate election for the purpose of that Senate-only election.

Electoral expenditure covered by the by-election or Senate-only election caps **does not** count towards the calendar year expenditure caps.



By-election period – starts on the day the writs are issued and ends on polling day for the by-election.

Senate-only period – starts on the day the writs are issued and ends on polling day for the Senate-only election.



Section 302ALD of the Electoral Act deals with what electoral expenditure counts towards the by-election or Senate-only election caps.

By-election cap

A by-election cap is exceeded if:

- the RPP or a member of the RPP's expenditure group incurs electoral expenditure for that by-election; and
- the total amount of the particular expenditure incurred in the by-election period for that by-election by members of the RPP's expenditure group is more than the by-election cap.

Note: There are instances where expenditure does not count towards the by-election cap and an exception for acceptable expenditure action is available. This is covered in the section on Exceptions.

The excess amount of the particular expenditure (relevant to the calculation of the maximum civil penalty) is:

- the amount of the particular expenditure; or
- the portion of the amount that is above the by-election cap.

The by-election cap is separate from, and additional to, the Federal, Divisional and Senate caps.

The liable person may face civil penalties if the RPP expenditure group exceeds its by-election cap.

Senate-only election cap

A Senate-only election cap is exceeded if:

- the RPP or a member of the RPP's expenditure group incurs electoral expenditure for that Senate-only election; and
- the total amount of the particular expenditure incurred in the Senate-only election period for that Senate-only election by members of the RPP's expenditure group is more than the Senate-only election cap.

Note: There are instances where expenditure does not count towards the Senate-only cap and an exception for acceptable expenditure action is available. This is covered in the section on Exceptions.

The excess amount of the particular expenditure (relevant to the calculation of the maximum civil penalty) is:

- the amount of the particular expenditure; or
- the portion of the amount that is above the Senate-only cap for the election in the State or Territory

The liable person may face civil penalties if the RPP expenditure group exceeds its Senate-only cap.

Exceptions

The Electoral Act has several provisions for instances where expenditure does not count towards the RPP's cap and an exception for acceptable expenditure action.



A person who wishes to rely on any of the exceptions under the Electoral Act bears an evidential burden. This means that if a person wants to rely on the exception, they must provide sufficient evidence to support their position.

Exception – acceptable expenditure action

A civil penalty provision does not apply if:

- at the time the excess electoral expenditure was incurred, the person did not know, and could not reasonably have been expected to know, that the total expenditure exceeded the cap; and
- within 6 weeks of becoming aware that the total electoral expenditure exceeded the cap, the person took **acceptable expenditure action** in relation to the excess amount.



Section 302AQA of the Electoral Act provides an exception to a civil penalty provision if acceptable expenditure action is taken.

Acceptable expenditure action

Acceptable expenditure action is taken in relation to an amount of electoral expenditure if:

- the amount of expenditure is cancelled or reversed; or
- the recipient of the expenditure repays an equivalent amount to the person or entity that incurred the expenditure; or
- if the person or entity is a member of an RPP's expenditure group, the member of the group that incurred the expenditure or another member of the group, transfers an equivalent amount to the Commonwealth.

Effect of acceptable expenditure action on total expenditure

For clarity, Division 3AB does not prevent a person or entity from taking acceptable expenditure action in relation to an amount that does not exceed a cap.

However, the Electoral Act states that once a cap has been exceeded, even if acceptable expenditure action is taken, there is no way to subsequently reduce the total electoral expenditure to an amount that is below the relevant expenditure cap.



Section 302ALE of the Electoral Act defines acceptable expenditure action.

Example – Acceptable expenditure action taken by a registered political party or connection

An RPP or a member of its expenditure group may take acceptable expenditure action in relation to electoral expenditure by another member of the group.

The Quokka Party NSW (QP NSW) is a State branch of the Quokka Australia Party (QAP), which is a registered political party. Sara is a House of Representatives candidate endorsed by QP NSW in the Division of Newcastle.

The QP NSW and Sara are members of the QAP's expenditure group and therefore share a Divisional cap in relation to electoral expenditure targeted to the Division of Newcastle.

Sara decides to purchase \$30,000 worth of extra advertising space on local billboards to boost her profile. This expenditure meets the definition of electoral expenditure targeted to a Division under section 302ALC.

Prior to Sara incurring this expenditure, the total amount incurred by QAP and its expenditure group members targeted to the Division of Newcastle was \$790,000. Sara did not know (and could not reasonably have been expected to know) that in purchasing the billboard space the Divisional cap will be breached, and she purchases the space.

One-week later QP NSW's registered officer sees the invoice receipt and realises that Sara's purchase has caused the QAP's expenditure group to exceed the Divisional cap of \$800,000 by \$20,000. The registered officer contacts Sara.

Sara and the QP NSW registered officer contact the registered officer of the QAP (federal branch). They decide that the registered officer of the QP NSW will take acceptable expenditure action in relation to the excess expenditure (\$20,000) by cancelling \$20,000 worth of the billboard advertising (which is permitted under the terms of the agreement Sara has with the advertiser).

Acceptable expenditure action has been taken in relation to the excess amount of electoral expenditure. The exception of acceptable expenditure action is available as an exception to the civil penalty (section 302AQA).

The QAP and its expenditure group cannot incur any further expenditure targeted to the Division of Newcastle.

Exception – expenditure covered by the by-election or Senate-only election caps

Electoral expenditure that counts towards annual expenditure caps is separate to electoral expenditure that counts towards the by-election or Senate-only election caps. A civil penalty provision that applies in relation to a calendar year does not apply to expenditure covered by the by-election or Senate-only election caps.



Section 302AQB of the Electoral Act provides an exception to a civil penalty provision for expenditure covered by the by-election or Senate-only election caps.

Exception – travel and translation expenses

Electoral expenditure incurred by a member of an RPP's expenditure group in the period concerned for the dominant purpose of the candidate's campaign for the purposes listed below does not count toward the expenditure caps:

- travel by a candidate who is a member of the expenditure group
- travel by the candidate's staff
- travel-related accommodation for the candidate or staff, and
- translation or interpretation services.

A candidate's staff includes any volunteers.

This exception does not apply to expenditure incurred in connection with a vessel, aircraft or vehicle which displays advertising or electoral matter for a candidate or RPP.

Example – Exception for travel for the dominant purpose of a candidate's campaign

The Quokka Party NSW (QP NSW) is a State branch of the Quokka Australia Party (QAP), an RPP. Katherine is an endorsed candidate for QP NSW and is running for the Division of Dobell in a general election.

The QP NSW and Katherine are members of the QAP's expenditure group.

Katherine spends \$1,000 on a hire car to travel with her staff to attend community events to campaign for her candidacy. This expenditure is exempt from the registered political party's cap.

Example – Exception for translation and interpretation services for the dominant purpose of a candidate's campaign

Francesca is running as an endorsed candidate for the House of Representatives and is a member of a RPP's expenditure group. As part of their campaign, they spend the following amounts:

\$10,000 on the design and printing of a leaflet outlining the RPP's policy platform

This expenditure is **not** exempt under this exception provision.

\$1,000 engaging a translation service to translate the content of the pamphlet into Mandarin and Arabic;

This expenditure is **exempt** under this exception provision.



Section 302AQC of the Electoral Act provides an exception to a civil penalty provision for expenditure related to certain travel and translation expenses.

Exception – salaries and allowances

Electoral expenditure on salaries or allowances paid to members of Parliament (MPs) or their staff does not count toward the expenditure caps.

This includes salaries, remuneration, allowances or expenses payable under any of the following:

- the Constitution
- the *Parliamentary Business Resources Act 2017*
- an agreement for employment or engagement referred to in the *Members of Parliament (Staff) Act 1984*.



Section 302AQD of the Electoral Act provides an exception to a civil penalty provision for expenditure related to salaries and allowances paid to members of Parliament or their staff.

Exception – campaign office accommodation

Expenditure on campaign offices for members of an RPP's expenditure group does not count towards the expenditure caps. The exception applies to a maximum of:

- \$20,000 in relation to a national party campaign headquarters; and
- \$20,000 for campaign offices in each Division, State or Territory.

The \$20,000 limit applies regardless of how many campaign offices are in a Division, State or Territory. This means that regardless of how an RPP or members of its expenditure group structure their campaign, such as having multiple campaign offices in a Division, only a maximum of \$20,000 can be claimed per Division.



Section 302AQE of the Electoral Act provides an exception to a civil penalty provision for expenditure related to campaign office accommodation.

Notification if expenditure reaches a cap

The liable person is required to advise the AEC if the total electoral expenditure for the relevant person, entity or expenditure group has reached the relevant cap for the period. The notice must be in the approved form and must be provided as soon as practicable after the person becomes aware that the total expenditure has reached the cap.

Civil penalties apply for failing to provide a written notice.



Section 302ARA of the Electoral Act provides that the liable officer must notify the AEC when total electoral expenditure reaches a cap.

Publication of cap amounts and periods

The AEC will publish the indexed expenditure caps for each entity type and the exception amounts on its website as soon as practicable:

- after the start of the new calendar year or
- after the writs are issued for a by-election or Senate-only election.



Section 302ARB of the Electoral Act provides for the publication of indexed expenditure caps and relevant periods.

Resetting of certain expenditure caps for multiple elections in a calendar year

Section 302ARC of the Electoral Act provides that if there is more than one general election held in the same calendar year, on the issuing of writs for the subsequent election, the annual electoral expenditure caps reset.



Section 302ARC of the Electoral Act sets out when expenditure caps reset.