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FAD / **FUNDING AND
DISCLOSURE
REFORM**

Electoral Expenditure Caps Guideline

for Capped Expenditure
Entities



AEC

Australian Electoral Commission

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Purpose

The *Electoral Expenditure Caps Guideline for Capped Expenditure Entities* (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 January 2027. 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
Section 321AB	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 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 and 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 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.

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.

For capped expenditure entities, there is an overall annual cap on electoral expenditure (Capped entity cap). Within the Capped entity cap there is an annual cap for electoral expenditure targeted at each House of Representatives Division (Capped entity Divisional cap) and an annual cap for each State or Territory (Capped entity 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

A capped expenditure entity 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 entity's process for creating an effective campaign, because they help the entity to develop and select the best advertisements for dissemination.

As the advertisement was prepared by a capped expenditure entity, 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 shown. The dominant purpose of creating the advertisements was to influence voting at an election, so the advertisements are electoral matter and any expenditure creating 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.

Capped expenditure entity

The Electoral Act defines a capped expenditure entity (CEE) as:

- a significant third party; or
- an associated entity; or
- a third party.

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.

If a by-election or Senate-only election period crosses over two calendar years, the cap does not reset, it remains set at the value from the issue of writ.

Example – operation of the by-election cap across calendar years

A CEE decides to campaign in a by-election for the Division of Gilmore.

The writ for the by-election is issued on 9 December 2026. The polling date for the by-election is fixed for 11 January 2027.

The by-election cap applies to all electoral expenditure incurred by the CEE in relation to that by-election, in the by-election period between 9 December 2026 and 11 January 2027.

Unlike annual caps, the value of the cap for that by-election does not reset on 1 January 2027.

Example – operation of the Senate-only election Senate cap across calendar years.

A CEE decides to campaign in a Senate-only election in WA.

The writ for the Senate-only election is issued on 9 December 2026. The polling date for the Senate-only election is fixed for 11 January 2027.

The Senate-only election Independent Senate cap applies to all electoral expenditure incurred by the CEE in relation to that Senate-only election, in the Senate-only election period between 9 December 2026 and 11 January 2027.

Unlike annual caps, the value of the cap for that by-election does not reset on 1 January 2027.



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 capped expenditure entity?

Each calendar year, a CEE is subject to a capped entity cap on electoral expenditure. Within the capped entity cap there is an annual capped entity Divisional cap for each House of Representatives Division and an annual capped entity Senate cap for each State or Territory.

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

Additionally, a CEE is subject to a capped entity by-election cap and capped entity Senate-only cap.

As at 1 January 2027, the caps are:

Capped entity cap is \$11.25 million.

Capped entity Divisional cap is \$100,000.

Capped entity Senate base amount is \$25,000.

Capped entity by-election cap is 120% of the capped entity Divisional cap. The capped entity by-election cap = $120\% \times \$100,000 = \$120,000$.

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

State/Territory	Senate cap	Formula (capped entity Senate base amount x the number of Divisions in the State or Territory as at 30 June 2025)
NSW	\$1,150,000	$(\$25,000 \times 46)$
VIC	\$950,000	$(\$25,000 \times 38)$
QLD	\$750,000	$(\$25,000 \times 30)$
WA	\$400,000	$(\$25,000 \times 16)$
SA	\$250,000	$(\$25,000 \times 10)$
TAS	\$125,000	$(\$25,000 \times 5)$
ACT	\$75,000	$(\$25,000 \times 3)$
NT	\$50,000	$(\$25,000 \times 2)$

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

State/Territory	Senate-only cap	Formula (120% of the capped entity Senate cap amount x the number of Divisions in the State or Territory as at 30 June 2025)
NSW	\$1,380,000	$(\$25,000 \times 46) \times 120\%$
VIC	\$1,140,000	$(\$25,000 \times 38) \times 120\%$
QLD	\$900,000	$(\$25,000 \times 30) \times 120\%$
WA	\$480,000	$(\$25,000 \times 16) \times 120\%$
SA	\$300,000	$(\$25,000 \times 10) \times 120\%$
TAS	\$150,000	$(\$25,000 \times 5) \times 120\%$
ACT	\$90,000	$(\$25,000 \times 3) \times 120\%$
NT	\$60,000	$(\$25,000 \times 2) \times 120\%$



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

Application of caps

If an entity was not a CEE at the start of the calendar year or relevant by-election or Senate-only election period but becomes one during that time:

- any reference to electoral expenditure incurred by the entity in the period includes electoral expenditure incurred by the entity prior to becoming a CEE; and
- any electoral expenditure incurred by the entity prior to becoming a CEE is considered to have been incurred when the entity starts to be a CEE, in relation to the relevant period.

If during a calendar year or relevant by-election or Senate-only election period, a CEE that satisfies one part of the definition of a CEE begins to satisfy another part of the definition, a reference to electoral expenditure incurred by that entity in the period also includes electoral expenditure incurred by the entity prior to that time.

If at any time a CEE becomes a nominated entity of an RPP, the CEE caps will not apply to that entity, as the entity will be a member of the relevant RPP's expenditure group and its electoral expenditure is covered by the expenditure caps for RPP expenditure groups.



Section 302APF of the Electoral Act provides for the application of caps for a CEE in a period.

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 person liable 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 s 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 definition 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
 - is 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.

[Section 4\(1\)](#) of the Electoral Act defines how-to-vote card.

Example – operation of ‘express coverage matter’

Express coverage matter

A CEE decides to support Don, a candidate for the Division of Nicholls. The CEE spends \$50,000 on billboards and flyers across the Division of Nicholls that say, ‘Vote 1 for Don’ and include an image of Don.

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 CEE is also running a series of social media advertisements that include the entity’s logo and outline the broad policy platform that the entity supports in 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 social media advertisements would contribute only to the CEE’s capped entity cap.

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

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

The CEE 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 a registered political party, in Fenner, satisfying paragraph (a) of the definition of how-to-vote card.

The card also includes a photograph of Mai. 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 CEE’s expenditure on the how-to-vote card contributes only to the capped entity cap of the CEE.

Example – Operation of targeted expenditure – section 302ALC

The CEE 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 Senate election for the State or Territory.
 move to Step 2.
- If ‘NO’, the expenditure is allocated to the capped entity 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 financial controller is the liable person for the CEE. The financial controller is now required to apportion the \$1 million between the Division of Dobell and NSW. The apportionment must be in a manner the financial controller 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 financial controller apportions:

- 10% of the expenditure to the Division of Dobell (\$100,000) – ‘Amount A’; and
- 90% of the expenditure to the Senate cap for NSW (\$900,000) – ‘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 capped entity 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 capped entity 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 (section 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 \$100,000 (10%) 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 capped entity 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 (section 302ALC(1)(c))

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

Therefore, the \$900,000 (90%) spent on *express coverage matter* for NSW *is targeted* to NSW and **counted towards the capped entity Senate cap for NSW**. It is **also counted towards the capped entity cap**.

Final apportionment

\$1 million to the capped entity cap for the CEE, within the capped entity cap, the final apportionment as *targeted* electoral expenditure:

- \$900,000 to the capped entity Senate cap for NSW

Note: As the 10% 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 10% (\$100,000) only counts to the capped entity 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.

For a capped expenditure entity, the **liable person** is the financial controller of the entity.



Note: For a third party the liable person for electoral expenditure caps purposes is the financial controller (s 302APA of the Electoral Act).

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 high 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 excess amount of 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 the Electoral Act.

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

Anti-avoidance

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

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 s 314AS of the Electoral Act to establish schemes to avoid electoral expenditure cap obligations and other provisions.

Exceeding electoral expenditure caps

Capped entity cap

A capped entity cap is exceeded if the financial controller of the CEE incurs particular electoral expenditure, that when combined with the total electoral expenditure incurred by the CEE in the calendar year, is more than the capped entity cap.

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

The excess amount of 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 capped entity cap.



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

The liable person may face civil penalties if the CEE exceeds the capped entity cap.

Capped entity Divisional cap

A capped entity Divisional cap is exceeded if the financial controller of the CEE incurs particular electoral expenditure targeted to a Division, that when combined with the total electoral expenditure targeted to a Division incurred by the CEE in the calendar year, is more than the capped entity Divisional cap.

Note: There are instances where expenditure does not count towards the capped entity 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 is:

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

The liable person may face civil penalties if the CEE exceeds the capped entity Divisional cap.

Capped entity Senate cap

A capped entity Senate cap is exceeded if the financial controller of the CEE incurs particular electoral expenditure targeted to a State or Territory that when combined with the total electoral expenditure targeted to a State or Territory incurred by the CEE in the calendar year, is more than the capped entity Senate cap.

Note: There are instances where expenditure does not count towards the capped entity 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 capped entity Senate cap.

The liable person may face civil penalties if the CEE exceeds the capped entity Senate cap.

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

The capped entity by-election or capped entity 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-only election for the purpose of that Senate-only election.

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



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.



Sections 302APD and 302APE of the Electoral Act deal with what electoral expenditure is applied to the capped entity by-election or capped entity Senate-only election caps.

Capped entity by-election cap

A capped entity by-election cap is exceeded if the financial controller of the CEE incurs electoral expenditure for the purpose of the by-election and the total amount of the particular expenditure incurred in the by-election period for the purpose of the by-election is more than the capped entity by-election cap.

Note: There are instances where expenditure does not count towards the capped entity 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 capped entity by-election cap.

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

The liable person may face civil penalties if the CEE exceeds the capped entity by-election cap.

Capped entity Senate-only election cap

A capped entity Senate-only election cap is exceeded if the financial controller of the CEE incurs electoral expenditure for the purpose of a Senate-only election and the total amount of the particular expenditure incurred in the Senate-only election period for the purpose of a Senate-only election, is more than the capped entity Senate-only election cap.

Note: There are instances where expenditure does not count towards the capped entity 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 is:

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

The liable person may face civil penalties if the CEE exceeds the capped entity Senate-only cap.

Exceptions

The Electoral Act has several provisions for instances where expenditure does not count towards the CEE's cap and an exception to civil penalty provisions where acceptable expenditure action is taken.



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 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
- the person or entity that incurred the expenditure 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 CEE

The campaign manager of a CEE decides to purchase advertising space on local billboards costing \$120,000 to boost their profile. This expenditure meets the definition of electoral expenditure.

Prior to incurring this expenditure, the total amount of electoral expenditure already incurred by the CEE was \$11.2 million. The campaign manager did not know (and could not reasonably have been expected to know) that in purchasing the billboard space the capped entity cap will be breached, and they purchase the space.

One week later the financial controller of the CEE receives the invoice and becomes aware that the campaign manager has caused the CEE to exceed the capped entity cap by \$70,000.

The financial controller contacts the campaign manager to discuss. The financial controller then takes acceptable expenditure action in relation to the excess expenditure (\$70,000) by cancelling \$70,000 worth of the billboard advertising (which is permitted under the terms of the agreement the campaign manager 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 refers).

No further electoral expenditure can be incurred by the CEE.

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

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



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

Notification if expenditure reaches a cap

The financial controller of the CEE is required to advise the AEC if the total electoral expenditure for the entity 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 financial controller 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 provides when expenditure caps reset.