

Answers to questions taken on notice by the NSW Electoral Commissioner – Budget Estimates hearing 7 September 2022

What is the process for forfeiting a political donation?

The *Electoral Funding Act 2018* (NSW) (the 'EF Act') creates a statutory obligation for persons to pay amounts arising from their acceptance of unlawful donations to the NSW Electoral Commission (NSWEC). The NSWEC may recover (voluntarily or via court proceedings) the following as debts due to the State:

- The value of an unlawful donation, loan or indirect campaign contribution or double the amount if the person knew it was unlawful.
- Double the value of a donation from a donor that becomes a property developer within 12 months of making the donation.

The NSWEC must be satisfied on the balance of probabilities that there is sufficient evidence to support its claim that a debt is owed under section 58 of the EF Act due to a donation being unlawful.

Informal or Voluntary Recovery

First, the NSWEC invites the person or party that appears to have accepted an unlawful donation to pay (forfeit) the amount of that donation voluntarily to the NSWEC. The NSWEC cannot accept voluntary payments unless it has formed a view that, on the balance of probabilities, a donation was unlawful.

Formal Recovery

Should a person not pay voluntarily, the NSWEC is empowered to act on behalf of the State to recover the debt in court.

This process involves the NSWEC sending a letter of demand for payment advising that, if the monies are not paid, civil court proceedings will be commenced to obtain and enforce a judgement.

Where the NSWEC obtains a judgement in its favour, either by default or following a hearing or settlement, an application is made to a court for a certificate of judgement. The NSWEC may then enforce recovery of the judgement debt. The CSO provides advice and acts for NSWEC in respect of enforcement of the debt. The debt may be recovered by seizure of property or via a garnishee order.

In certain circumstances the NSWEC is able to recover a debt from an amount payable for public funding of State election campaigns or for Administrative and New Party policy development funding in accordance with the EF Act.

Is there a formal process for forfeiting a political donation and what happens to such money?

Money recovered under section 58 is a debt due to the State of NSW, not to the NSWEC.

The recovered sums are initially paid to the NSWEC. The recovered monies are then transferred from the NSWEC account to Treasury where they are placed in the Consolidated Fund account.