Submission No 1

INQUIRY INTO THE NSW ELECTORAL COMMISSION ADMINISTRATION OF ELECTORAL DONATION REPORTING IN THE ELECTORAL DISTRICT OF KOGARAH IN 2014-2016

Organisation: New South Wales Electoral Commission

Date Received: 24 October 2025

NSW Electoral Commission

Submission to the Public Accountability and Works Committee inquiry

Ms Abigail Boyd, MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

24 October 2025

Dear Chair,

Inquiry into the NSW Electoral Commission administration of electoral donation reporting in the electoral district of Kogarah 2014-2016

Thank you for the opportunity to make a submission to the Public Works and Accountability Committee inquiry into the NSW Electoral Commission's administration of electoral donation reporting in the electoral district of Kogarah between 2014 and 2016, particularly with regard to matters subsequently raised in ICAC's Operation Aero and its findings of corruption in 2022.

The now repealed *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act) sets out the scheme for the disclosure of political donations for NSW State and local government elections between 2014 and 2016. From 1 December 2014 the NSW Electoral Commission has been responsible for the administration and enforcement of electoral funding laws in NSW. Prior to 1 December 2014 the Election Funding Authority of New South Wales was the responsible statutory body.

The attached submission details the applicable legislation between 2014 and 2016 for the disclosure of political donations at NSW State elections and the NSW Electoral Commission's administration of that scheme.

If you have any questions about this submission, please contact the NSW Electoral Commission Secretariat at

Yours sincerely,

The Hon Arthur Emmett, AO KC

Chairperson, NSW Electoral Commission

Public Accountability and Works Committee Inquiry

Submission to the inquiry into the NSW Electoral Commission administration of electoral donation reporting in the electoral district of Kogarah 2014-2016

Submitted 24 October 2025

Contents

Inquiry into the NSW Electoral Commission administration of electoral donation reporting in the electoral district of Kogarah 2014-2016

The establishment of the NSW Electoral Commission in 2014

1. On 1 December 2014 the, now repealed, *Parliamentary Electorates and Elections Act 1912* established the NSW Electoral Commission (the Electoral Commission) as the statutory body whose functions included those conferred on the Electoral Commission under the, now repealed, *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act)[1]. Prior to 1 December 2014, the Election Funding Authority of NSW was responsible for the administration of the EFED Act. This submission includes information about the Electoral Commission's administration of political donation reporting from 1 December 2014 until 2016 and limited information about the Election Funding Authority's administration of disclosures in 2014, prior to 1 December 2014.

Applicable legislation between 2014 and 2016

2. The EFED Act set out the scheme for the disclosure of political donations by political parties, elected members of Parliament, elected members of local councils, NSW state and local government election candidates, groups of candidates, third-party campaigners and major political donors during this period. Political donations made and received were required to be disclosed on an annual basis as at 30 June each year, with disclosures due to be submitted to the Electoral Commission within 12 weeks of the end of the relevant disclosure period, or 16 weeks in the case of major political donors who are not also third-party campaigners.
3. With respect to the NSW State general election held 28 March 2015, Part 7A of the EFED Act included additional disclosure requirements for reportable political donations received during the period 1 July 2014 to 1 March 2015, but only in relation to State elections and elected members of Parliament[2]. Disclosures of those reportable political donations were to be made between 2 March and 9 March 2015 and the Electoral Commission was required to publish a disclosure within seven days after it was made. The additional disclosure requirement for reportable political donations was separate to the requirement to disclose all political donations after the end of the annual period ending 30 June 2015. This meant that reportable political donations disclosed in relation to the additional disclosure period were also required to be disclosed in relation to the annual period.
4. The first annual disclosure required to be lodged by the official agent of a registered candidate was for the annual period in which the candidate was registered. In addition, a disclosure of reportable political donations for the 2015 additional disclosure period was required if the candidate was registered on or before 1 March 2015. If a candidate was not registered until after 1 March 2015, there was no requirement for a disclosure to be lodged by the official agent of the candidate for the additional disclosure period unless a reportable political donation was made to or for the benefit of the candidate during the period 1 July 2014 to 1 March 2015.
5. Disclosures were required to be made in a declaration lodged with the Electoral Commission in the form and manner approved by the Electoral Commission. The declaration was to contain a statement to the effect that all disclosures required to be made in relation to the relevant disclosure period have been made. A declaration was required to be made even if it did not contain any disclosures. Disclosures were required to be vouched for by way of a copy of the

[1] On 1 July 2018, the *Electoral Act 2017* replaced the *Parliamentary Electorates and Elections Act 1912,* and the *Electoral Funding Act 2018* replaced the *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act).
[2] In the case of disclosures by a party, elected member, group, candidate or third-party campaigner, a reportable political donation was a single political donation of $1,000 or more, or multiple political donations of less than $1,000 made by the same donor to the recipient in a financial year, which in total amount to $1,000 or more.

receipts issued to each person or entity that made a reportable political donation. A declaration of disclosures by a party was required to be accompanied by a copy of the duly audited annual financial statement of the party.

6. A disclosure was required to be accompanied by a certificate of a registered company auditor. The Electoral Commission could waive the audit requirement in certain circumstances set out in the EFED Act. A declaration was taken to have been invalidly lodged if it did not include the certificate of an auditor and if the audit requirement had not been waived.
7. The person responsible for making a disclosure could request an extension to submit the disclosure if they were unable to do so within the time required. The Electoral Commission could approve an extension of up to eight weeks if it was satisfied there was good cause to do so. The audit requirement and option for a person to request an extension did not apply to disclosures for the 2015 additional disclosure period.
8. The person responsible for making a disclosure was as follows:
    - in the case of a party – the party agent
    - in the case of an elected member – the official agent of the member
    - in the case of a group or candidate – the official agent of the group or candidate
    - in the case of a third-party campaigner – the official agent of the third-party campaigner
    - in the case of a major political donor – the political donor.
9. In the case of an official agent of an elected member, candidate, group of candidates or third-party campaigner, the agent was also responsible for the management of political donations and electoral expenditure, which included operating a campaign account and keeping complete and accurate records of political donations and electoral expenditure.
10. The Electoral Commission was required to publish on its website the disclosures of political donations as soon as practicable after the due date for the making of the disclosures. Disclosures were required to be kept by the Electoral Commission for at least six years after the period to which they relate, and the Electoral Commission was required to make disclosures available for public inspection. The Electoral Commission could conduct a compliance audit of compliance with the requirements of Part 6 of the EFED Act (political donations and electoral expenditure) by a party, an elected member, a group or candidate.
11. The person who lodged a disclosure, or that person's successor in the case of an agent, could amend the disclosure by making an alteration, addition, omission or substitution. Amended disclosures were required to be published on the Electoral Commission's website, made available for public inspection and were subject to the requirement of being accompanied by a certificate of registered company auditor, unless the audit requirement had been waived.

Offences relating to disclosures and political donations

12. A person who was required to lodge a declaration of disclosures but who failed to do so within the time required was guilty of an offence (maximum penalty: 200 penalty units ($22,000) or a penalty notice of $2,750 if the offence was committed by a party agent or $1,100 in any other case). A person who made a statement in a declaration of disclosures or in a request for an extension of the due date for making the disclosure, that the person knew was false, or that the person did not reasonably believe was true, was guilty of an offence (maximum penalty: 400 penalty units ($44,000) or imprisonment for two years, or both). An elected member, member of a group, candidate or third-party campaigner who, in relation to a matter required to be disclosed by the official agent of the elected member, group, candidate or third-party campaigner, who gave or withheld information to or from the agent knowing that it would result in the making of a false statement in a disclosure or request for extension by the agent, was guilty of an offence (maximum penalty: 400 penalty units ($44,000) or imprisonment for two years, or both). The EFED Act also included offences related to the caps on political donations and electoral expenditure and an offence relating to a scheme to circumvent the donation or expenditure prohibitions or restrictions.

Investigation powers of the Electoral Commission

13. The Electoral Commission could appoint a person as an inspector who was authorised to issue penalty notices and undertake inspections for the purpose of ascertaining whether the EFED Act was being, or had been, contravened. The Electoral Commission, or a person authorised by the Electoral Commission, could, by notice in writing, require a person to provide information, produce documents, answer questions or attend a location to answer questions. A person who, without reasonable excuse, failed to comply with a requirement was guilty of an offence (maximum penalty: 200 penalty units ($22,000)). A person who provided any document or information, or answered any question, in purported compliance with a requirement, knowing that the document, information or answer is materially false or misleading, was guilty of an offence (maximum penalty: 400 penalty units ($44,000) or imprisonment for two years, or both). The Electoral Commission could enter into a compliance agreement with a party, elected member, a group of candidates, a candidate or third-party campaigner for the purpose of ensuring the person or entity complies with the EFED Act or remedies an apparent contravention of the EFED Act.

Proceedings for offences

14. Proceedings in respect of an offence against the EFED Act or the regulations can only be commenced with the consent of the Electoral Commission. The offence relating to a scheme to circumvent the donation or expenditure prohibitions or restrictions is strictly indictable and so proceedings can only be commenced in the Supreme Court or the District Court on behalf of the Crown in the name of the Director of Public Prosecutions or the Attorney General. Proceedings for other offences against the EFED Act or the regulations could be commenced before the Local Court or before the Supreme Court. If proceedings in respect of an offence against the EFED Act or the regulations were brought in the Local Court, the maximum monetary penalty the court could impose in respect of the offence was 40 penalty units ($4,400) or the maximum monetary penalty provided by the EFED Act in respect of the offence, whichever was the lesser. For an offence that occurred prior to 28 October 2014, proceedings were required to commence no later than three years after the offence. For offences from 28 October 2014 the period to commence proceedings was 10 years, except in relation to the offence relating to a scheme to circumvent the donation or expenditure prohibitions or restrictions.

The Electoral Commission's administration of political donation disclosures in relation to the electoral district of Kogarah between 2014 and 2016

15. For political donation disclosures required to be made by candidates and elected members in Kogarah between 2014 and 2016, table 1 shows the relevant disclosure periods, the applicable due dates for making disclosures for each period and the date by which disclosures for each period were first published by the Electoral Commission on its website.

Table 1: Disclosure periods, due dates and publication dates for political donations between 2014 and 2016

Relevant disclosure period	Disclosure due date	Publication date of disclosures
Annual period ending 30 June 2014	22 September 2014	24 November 2014
Additional disclosure period for the 2015 NSW State election	9 March 2015	15 March 2015
Annual period ending 30 June 2015	22 September 2015	30 November 2015
Annual period ending 30 June 2016	22 September 2016	14 November 2016

16. Parties, third-party campaigners and major political donors were also required to make disclosures for the annual disclosure periods ending 30 June 2014, 30 June 2015 and 30 June 2016. Parties and third-party campaigners were also required to make a disclosure for the additional disclosure period for the 2015 NSW State election.
17. The Election Funding Authority approved the form and manner for making disclosures for the annual period ending 30 June 2014 and the additional disclosure period for the 2015 NSW State election. The Electoral Commission approved the form and manner for making disclosures for the annual periods ending 30 June 2015 and 30 June 2016. Disclosure forms were made available on the Electoral Commission's website for party agents, official agents and major political donors to use. The person responsible for making a disclosure was required to print the form and complete the form by hand and sign and date the declaration on the form. Reminder letters and emails were sent to those responsible for making a disclosure and forms were made available after the end of the relevant annual disclosure period and in February 2015 in relation to the additional disclosure period.

Elected members and candidates for the electoral district of Kogarah

18. Ms Cherie Burton was elected as the member for Kogarah at the 2011 NSW State election. As an elected member, disclosures were required to be made by Ms Burton's official agent for each annual period in which Ms Burton was an elected member. A disclosure was also required to be made in relation to the additional disclosure period for the 2015 NSW State election if any reportable political donations were received by or on behalf of Ms Burton between 1 July 2014 and 1 March 2015.
19. The candidates in table 2 were registered for the 2015 NSW State election for the electoral district of Kogarah.

Table 2: Candidates registered for the 2015 NSW State election for the electoral district of Kogarah

Candidate	Candidate registration date	Party
Annie Siu Wing Tang	12 March 2015	Unity Party
Brenton Heber	28 March 2014	The Greens NSW
Christopher Minns	5 December 2013	Labor
Nicholas Aroney	12 March 2015	Liberal
Sonny Susilo	12 March 2015	Christian Democratic Party
Wei Ming Lin	12 March 2015	No Land Tax Campaign

20. Mr Christopher Minns was elected as the member for Kogarah at the 2015 NSW State election. As an elected member, disclosures were required to be made by the official agent of Mr Minns as an elected member for each annual period in which Mr Minns was an elected member. Disclosures were also required to be made by the official agent of Mr Minns for the annual periods in which he was a registered candidate (that is, 30 June 2014 and 30 June 2015). A disclosure was also required to be made in relation to the additional disclosure period for the 2015 NSW State election if any reportable political donations were received by or on behalf of Mr Minns between 1 July 2014 and 1 March 2015.
21. Table 3 shows the political donation disclosures required to be made by official agents of the candidates and elected members in Kogarah.

Table 3: Donation disclosures required by official agents of the candidates and elected members in Kogarah

Relevant disclosure period	Candidates and elected members	Official agent	Disclosure lodged[3]
Annual period ending 30 June 2014	Cherie Burton – elected member	Loretta Marcus	22 October 2014
Annual period ending 30 June 2014	Christopher Minns - candidate	Loretta Marcus	22 October 2014
Additional disclosure period for the 2015 NSW State election	Brenton Heber - candidate	Paul Gage	4 March 2015
Additional disclosure period for the 2015 NSW State election	Cherie Burton – elected member	Loretta Marcus	9 March 2015
Additional disclosure period for the 2015 NSW State election	Christopher Minns - candidate	Loretta Marcus	9 March 2015
Annual period ending 30 June 2015	Annie Siu Wing Tang - candidate	Hong Yan Xiao	18 September 2015
Annual period ending 30 June 2015	Brenton Heber - candidate	Paul Gage	14 September 2015
Annual period ending 30 June 2015	Cherie Burton – elected member	Loretta Marcus	21 October 2015
Annual period ending 30 June 2015	Christopher Minns - candidate	Loretta Marcus	26 November 2015
Annual period ending 30 June 2015	Christopher Minns – elected member	Loretta Marcus	26 November 2015
Annual period ending 30 June 2015	Nicholas Aroney - candidate	Simon McInnes	10 November 2015
Annual period ending 30 June 2015	Sonny Susilo - candidate	Ian Smith	13 October 2015
Annual period ending 30 June 2015	Wei Ming Lin - candidate	Wei Ming Lin	24 August 2015
Annual period ending 30 June 2016	Christopher Minns – elected member	Glenn Bacic	16 September 2016

22. The annual political donation disclosures lodged by official agents of candidates and elected members were published, and remain published, on the Electoral Commission's website[4]. The

[3] With respect of the date a disclosure was lodged with the Electoral Commission, the due date for lodgement may have been extended in any case where the official agent requested an extension and the Electoral Commission was satisfied there was good cause to do so.
[4] https://elections.nsw.gov.au/electoral-funding/disclosures/view-disclosures

disclosures for the additional disclosure period are no longer published online but are available for public inspection and are attached to this submission (**Annexure 1**). The disclosures were subject to a compliance audit in accordance with the Electoral Commission's Compliance Audit Policy (**Annexure 2**). Any identified or potential breaches of the EFED Act were subsequently dealt with in accordance with the Electoral Commission's Compliance and Enforcement Policy and Compliance and Enforcement Procedures (**Annexure 3**).

ICAC's Operation Aero and its findings of corruption in 2022

23. The Electoral Commission is aware of the ICAC's report on its investigation into political donations facilitated by Chinese Friends of Labor in 2015. In its report, published in February 2022, the ICAC found serious corrupt conduct had occurred in relation to a scheme between 2015 and 2018 for circumventing the EFED Act. In particular, the requirement to disclose to the Electoral Commission the true source of certain reportable political donations. The Electoral Commission is also aware of evidence given by witnesses during the ICAC's inquiry to the effect they were involved in a similar arrangement to raise funds to support the campaign of the Labor candidate for Kogarah in 2015. Allegations of breaches of electoral funding legislation the Electoral Commission becomes aware of are dealt with in accordance with the Electoral Commission's Compliance and Enforcement Policy. While it is open to the Electoral Commission to investigate offences under the EFED Act, as noted above the offence relating to a circumvention scheme can only be commenced in the name of the Director of Public Prosecutions or the Attorney General.

Disclosure of information

24. Unless permitted by law, the Electoral Commission is not authorised to disclose information about investigations or actions it may or may not have undertaken with respect to suspected contraventions of the EFED Act. While section 268 of the *Electoral Act 2017* was amended in 2022 to include exemptions that allow the Electoral Commission to disclose information in certain circumstances in the public interest, these do not apply where the information relates to a possible contravention of the EFED Act. The Electoral Commission's Compliance and Enforcement Publication Policy contains further information about what the Electoral Commission may and may not disclose (**Annexure 4**). It is the duty of the Electoral Commission under section 10(3) of the *Electoral Act 2017* to exercise its functions in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations.

Annexure 1: additional disclosure period disclosures by Kogarah candidates and elected members

Annexure 1A: 2015 Additional Disclosure Period BURTON, Cherie

Disclosure of Political Donations for an **Elected Member** (Member of Parliament) for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF.714

Elected Member Details

CHERIE BURTON
NAME OF ELECTED MEMBER ON WHDSE BEHALF THIS DISCLOSURE IS MADE

KOGARAH
NAME OF STATE DISTRICT

Disclosure Period

1 July 2014	1 March 2015
DISCLOSURE PERIOD COMMENCES	DISCLOSURE PERIOD ENDS

Official Agent Declaration

This form must be signed by the Official Agent. If an Official Agent was not appointed then the Elected Member is deemed to be their Official Agent and must complete this section.

I, LORETTA MARCUS
OFFICIAL AGENT/ELECTED MEMBER FULL NAME

declare that (tick one of the boxes below):

☐ All reportable political donations as required to be disclosed in relation to the above disclosure period pursuant to section 103F of the *Election Funding, Expenditure and Disclosures Act 1981* have been disclosed; OR

☒ No reportable political donations were received by the Elected Member during the period covered by this disclosure (Nil Disclosure)

I understand that giving information which I know is false or do not reasonably believe is true, is an offence.

Signature Redacted
SIGNATURE OF OFFICIAL AGENT

09/03/2015
DATE

MC.
RECEIVED BY

13/86. 018426.
FILE NO

RECEIVED
9 MAR 2015
004188

ENTERED

Disclosure of Political Donations for an **Elected Member** (Member of Parliament) for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF.714

Elected Member Name CHERIE BURTON

Reportable Political Donations Received

Reportable political donations are donations or gifts of $1,000 or more, or multiple donations or gifts from one donor in one financial year that total $1,000 or more to the same recipient. Donations can be monetary or non-monetary (in-kind donations).

Were any reportable political donations made to or for the benefit of the Elected Member during the period covered by this disclosure?

☐ **YES** Enter the details below

☒ **NO**

Date Donation made	Name of Individual eg Surname, Given Name(s) or Registered Business Name of Entity	Enrolled Address of Individual or Registered Office/al Address of Entity	Registered Business Number eg ABN/ACN (Entity Only)	Amount or Value of Donation ($)	Receipt No	Gift Type (Monetary/ Non-Monetary)
Eg. 01.08.12	*SMITH, John*	*4 Smith St, Smithville 2458*		*$1250.00*	*393618*	*Monetary*
				TOTAL	**$**	

If more space is required please attach an additional list in the same format.

Annexure 1B: 2015 Additional Disclosure Period MINNS, Christopher

Disclosure of Political Donations for a **State Candidate** for period 1 July 2014 to 1 March 2015

electoral commission NSW

EF.711

Candidate Details

CHRISTOPHER MINNS
NAME OF STATE CANDIDATE ON WHOSE BEHALF THIS DISCLOSURE IS MADE

KOGARAH
NAME OF STATE DISTRICT

Disclosure Period

1 July 2014
DISCLOSURE PERIOD COMMENCES

1 March 2015
DISCLOSURE PERIOD ENDS

Official Agent Declaration

This form must be signed by the Official Agent. If an Official Agent was not appointed then the candidate is deemed to be the Official Agent and must complete this section.

MS	MARCUS	LORETTA
OFFICIAL AGENT TITLE	OFFICIAL AGENT SURNAME AS ON THE ELECTORAL ROLL	OFFICIAL AGENT GIVEN NAME(S) AS ON THE ELECTORAL ROLL

I declare that (tick one of the boxes below):

[X] All reportable political donations as required to be disclosed in relation to the above disclosure period pursuant to section 103F of the *Election Funding, Expenditure and Disclosures Act 1981* have been disclosed; OR

[ ] No reportable political donations were received by the candidate during the period covered by this disclosure (Nil Disclosure)

I understand that giving information which I know is false or do not reasonably believe is true, is an offence.

Signature Redacted
SIGNATURE OF OFFICIAL AGENT

09/03/2015
DATE

OFFICE USE ONLY

RECEIVED BY

RECEIVED
9 MAR 2015
004161
BY:

CF2013/251
FILE NO

018457
FADMS DISCLOSURE RECORD NO

Disclosure of Political Donations for a **State Candidate** for period 1 July 2014 to 1 March 2015

electoral commission NSW

EF.711

State Candidate Name CHRISTOPHER MINNS

Reportable Political Donations Received

Reportable political donations are donations or gifts of $1,000 or more, or multiple donations or gifts from one donor in one financial year that total $1,000 or more to the same recipient. Donations can be monetary or non-monetary (in-kind donations).

Were any reportable political donations made to or for the benefit of the candidate during the period covered by this disclosure?

[X] **YES** Enter the details below

[ ] **NO**

Date Donation made	Name of Individual eg. Surname, Given Name or Registered Business Name of Entity	Enrolled Address of Individual or Registered Official Address of Entity	Registered Business Number ie ABN/ACN (Entity Only)	Amount or Value of Donation ($)	Receipt No
Eg. 01.08.12	*SMITH, John*	*4 Smith St, Smithville 2548*		*$1,250.00*	*363951*
04/12/14	Daryl Burge-Lopez	54 Ocean St Kogarah NSW 2217		$1,200.00	183464
04/2/15	Rainbow Alliance	6-8 Kangaroo Point Rd Kangaroo Point NSW 2224	85 161 951 542	$1,200.00	183461
04/12/14	Natajle Ljubica	71 Penshurts St Penshurst NSW 2222		$1,200.00	183453
04/12/14	Cheryl Han	65 Washington St Bexley NSW 2207		$1,200.00	183460
25/11/14	Joanne Goudie	162 Cawarra Road Caringbah NSW 2229		$ 890.00	1834 58
04/12/14	Christopher Kamper	28 Woodlands Rd Taren Point NSW 2229		$1,200.00	183452
02/12/14	Greg & Catherine Barratta	131 Mulga Rd Oatley NSW 2223		$1,000.00	183463
03/12/14	Greg & Catherine Barratta	131 Mulga Rd Oatley NSW 2223		$ 450.00	183463
3/12/14	Greg & Catherine Barratta	131 Mulga Rd Oatley NSW 2223		$ 240.00	183463
10/12/14	St George Illawarra Dragons	Locked Bag 1500 Ramsgate NSW 2217	74 085 008 340	$1,200.00	183451
17/12/14	The Trades Hall Association	4-10 Goulburn St Sydney NSW 2000		$1,200.00	37289
31/1/15	George Houssos	25 Wolli Ave Earlwood NSW 2206		$1,200.00	183454
06/02/2015	Clubs NSW	Lvl 8, 51 Druitt Street Sydney 2000	61 724 302 100	$1,000.00	183457
26/02/2015	Joanne Goudie	162 Cawarra Road Caringbah NSW 2229		$ 140.00	183459
01/03/2015	Tesse Thomas	18 Rosemount Ave Mortdale NSW 2223		$1,140.00	183465
			TOTAL	$14,460.00	

If more space is required please attach an additional list in the same format

Annexure 1C: 2015 Additional Disclosure Period MINNS, Christopher (Amendment 1)

Amended Disclosure for an **Elected Member, Candidate or Group of Candidates** for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF.717

Collection and Availability of Information

The information on this form is collected under the *Election Funding, Expenditure and Disclosures Act 1981* and will be made publicly available. Please refer to the relevant funding and disclosure guide available on the New South Wales Electoral Commission's (NSWEC) website (www.elections.nsw.gov.au) when completing this form.

This amendment applies to the Disclosure of Political Donations and Electoral Expenditure for: (TICK WHICHEVER APPLIES)

[ ] Elected Member [X] Candidate [ ] Group of Candidates

Disclosure Details

CHRISTOPHER MINNS
FULL NAME OF ELECTED MEMBER/CANDIDATE OR HEAD CANDIDATE OF GROUP

KOGARAH
ELECTORAL DISTRICT

1 July 2014 - 1 March 2015
RELEVANT DISCLOSURE PERIOD

Official Agent Declaration

I, LORETTA MARCUS
INSERT OFFICIAL AGENT NAME

state that the amendments supplied were omitted or incorrectly declared in the original disclosure of political donations lodged with the NSWEC and that the donations specified in this amendment were incurred for the above named elected member/candidate/group of candidates during the disclosure period. I understand that giving information which I know is false or do not reasonably believe is true, is an offence.

Signature redacted
SIGNATURE OF OFFICIAL AGENT

17 MARCH 2015
DATE

OFFICE USE ONLY

RECEIVED BY

CF2013/251
FILE NO

023806
FADMS DISCLOSURE RECORD NO

ENTERED

RECEIVED
17 MAR 2015
BY: 004572

Amended Disclosure for an **Elected Member, Candidate or Group of Candidates** for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF717

Elected Member/Candidate/Group of Candidate Full Name: CHRISTOPHER MINNS

Amendments

Amendment Legend: Editing the details of an item = **E** Omit an item = **O** Add a new item = **A** Substitute an item = **S**

If the amendment is to edit an item listed in the original disclosure indicate using 'E'
If the amendment is to omit an item from your original disclosure indicate using 'O'
If the amendment is to add an item to your original disclosure indicate using 'A'
If the amendment is to substitute an item to your original disclosure indicate using 'S'

Reportable Political Donations Received

If more space is required please attach an additional list in the same format

Date Donation was made	Name of Individual eg. Surname, Given Name or Registered Business Name of Entity	Enrolled Address of Individual or Registered Official Address of Entity	Registered Business Number ie ABN/ACN (Entity Only)	Amount or Value of Donation ($)	Receipt No	Gift Type (Monetary/ Non-Monetary)	Legend E, O, A or S
02/12/14	Gregory Baratta	131 Mulga Rd Oatley NSW 2223		$1,000.00	183463	Monetary	'E'
03/12/14	Gregory Baratta	131 Mulga Rd Oatley NSW 2223		$ 690.00	183463	Monetary	'E'
			TOTAL	1,690.00			

EF_00-0782_EF715_JAN15

Annexure 1D: 2015 Additional Disclosure Period MINNS, Christopher (Amendment 2)

Amended Disclosure for an **Elected Member, Candidate or Group of Candidates** for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF:717

Collection and Availability of Information

The information on this form is collected under the *Election Funding, Expenditure and Disclosures Act 1981* and will be made publicly available. Please refer to the relevant funding and disclosure guide available on the New South Wales Electoral Commission's (NSWEC) website (www.elections.nsw.gov.au) when completing this form.

This amendment applies to the Disclosure of Political Donations and Electoral Expenditure for: (TICK WHICHEVER APPLIES)

[ ] Elected Member [X] Candidate [ ] Group of Candidates

Disclosure Details

CHRISTOPHER JOHN MINNS

FULL NAME OF ELECTED MEMBER/CANDIDATE OR HEAD CANDIDATE OF GROUP

KOGARAH

ELECTORAL DISTRICT

1 July 2014 - 1 March 2015

RELEVANT DISCLOSURE PERIOD

Official Agent Declaration

I, LORETTA MARCUS

INSERT OFFICIAL AGENT NAME

state that the amendments supplied were omitted or incorrectly declared in the original disclosure of political donations lodged with the NSWEC and that the donations specified in this amendment were incurred for the above named elected member/candidate/group of candidates during the disclosure period. I understand that giving information which I know is false or do not reasonably believe is true, is an offence.

Signature Redacted

SIGNATURE OF OFFICIAL AGENT

5 AUGUST 2015

DATE

OFFICE USE ONLY

KN

RECEIVED BY

CR2014/251

FILE NO

031886

FADMS DISCLOSURE RECORD NO

RECEIVED
10 AUG 2015
BY: 000993

ENTERED

Amended Disclosure for an **Elected Member, Candidate or Group of Candidates** for the period 1 July 2014 to 1 March 2015

electoral commission NSW

EF:717

Elected Member/Candidate/Group of Candidate Full Name: CHRISTOPHER JOHN MINNS

Amendments

Amendment Legend: Editing the details of an item = **E** Omit an item = **O** Add a new item = **A** Substitute an item = **S**

If the amendment is to edit an item listed in the original disclosure indicate using 'E'
If the amendment is to omit an item from your original disclosure indicate using 'O'
If the amendment is to add an item to your original disclosure indicate using 'A'
If the amendment is to substitute an item to your original disclosure indicate using 'S'

Reportable Political Donations Received

If more space is required please attach an additional list in the same format

Date Donation was made	Name of Individual eg. Surname, Given Name or Registered Business Name of Entity	Enrolled Address of Individual or Registered Official Address of Entity	Registered Business Number ie ABN/ACN (Entity Only)	Amount or Value of Donation ($)	Receipt No	Gift Type (Monetary/ Non-Monetary)	Legend E, O, A or S
04/12/14	Natajle Iloski	6-8 Kangaroo Point NSW 2224		$1,200.00	183453	Monetary	E
26/02/2015	Joanne Goudie	162 Cawarra Road Caringbah NSW 2229		$ 140.00	183459	Monetary	O
			TOTAL	$1,340.00			

EF_00-0782_EF715_JAN15

Annexure 1E: 2015 Additional Disclosure Period HEBER, Brenton

Disclosure of Political Donations for a **State Candidate** for period 1 July 2014 to 1 March 2015

electoral COMMISSION NSW

EF:711

Candidate Details

BRENTON HEBER

NAME OF STATE CANDIDATE ON WHOSE BEHALF THIS DISCLOSURE IS MADE

KOGARAH

NAME OF STATE DISTRICT

Disclosure Period

1 July 2014

DISCLOSURE PERIOD COMMENCES

1 March 2015

DISCLOSURE PERIOD ENDS

Official Agent Declaration

This form must be signed by the Official Agent. If an Official Agent was not appointed then the candidate is deemed to be the Official Agent and must complete this section.

MR

OFFICIAL AGENT TITLE

GAGE

OFFICIAL AGENT SURNAME AS ON THE ELECTORAL ROLL

PAUL MICHAEL

OFFICIAL AGENT GIVEN NAME(S) AS ON THE ELECTORAL ROLL

I declare that (tick one of the boxes below):

☐ All reportable political donations as required to be disclosed in relation to the above disclosure period pursuant to section 103F of the *Election Funding, Expenditure and Disclosures Act 1981* have been disclosed; OR

☑ No reportable political donations were received by the candidate during the period covered by this disclosure (Nil Disclosure)

I understand that giving information which I know is false or do not reasonably believe is true, is an offence.

Signature redacted

SIGNATURE OF OFFICIAL AGENT

DATE

OFFICE USE ONLY

RECEIVED BY

RECEIVED
4 MAR 2015
BY: 03832

FILE NO CF2014/170.

017861.

FADMS DISCLOSURE RECORD NO

ENTERED

KOGARAH

Disclosure of Political Donations for a **State Candidate** for period 1 July 2014 to 1 March 2015

electoral COMMISSION NSW

EF711

State Candidate Name: BRENTON HEBER

Reportable Political Donations Received

Reportable political donations are donations or gifts of $1,000 or more, or multiple donations or gifts from one donor in one financial year that total $1,000 or more to the same recipient. Donations can be monetary or non-monetary (in-kind donations).

Were any reportable political donations made to or for the benefit of the candidate during the period covered by this disclosure?

☐ YES Enter the details below

☑ NO

Date Donation made	Name of Individual (eg. Surname, Given Name) or Registered Business Name of Entity	Enrolled Address of Individual or Registered Official Address of Entity	Registered Business Number ie ABN/ACN (Entity Only)	Amount or Value of Donation ($)	Receipt No
Eg. 01.06.12	*SMITH, John*	*4 Smith St Smithville 2548*		*$1,250.00*	*303961*
			TOTAL	NIL	

If more space is required please attach an additional list in the same format

Annexure 2: Compliance Audit Policy

Compliance Audit Policy

1. Introduction

The NSW Electoral Commission ("NSWEC") is responsible for regulating the scheme for political donations and electoral expenditure under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* ("the EFED Act").

The objectives of the EFED Act, as they relate to disclosure are:

- to establish a fair and transparent election funding, expenditure and disclosure scheme;
- to facilitate public awareness of political donations;
- to help prevent corruption and undue influence in the government of the State; and
- to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

The *Election Funding, Expenditure and Disclosures Regulation 2009* ("the EFED Regulation") provides that the NSWEC may conduct a compliance audit of compliance with the requirements of Part 6 of the EFED Act by a party, an elected member or a group or candidate.

The scope of a compliance audit is to ensure compliance with Part 6 of the EFED Act by a party, elected member, group or candidate. A similar review may also be performed to ensure compliance with Part 6 of the EFED Act by a third-party campaigner or major political donor. A compliance audit involves examination of a declaration of disclosures to determine if:

- it has been validly lodged and if so;
- to verify the political donations and electoral expenditures disclosed against the supporting documentation lodged with the declaration, and other available information.

Officers of the NSW Electoral Commission staff agency ('the Electoral Commission agency') undertake compliance audits on behalf of the NSWEC.

2. Purpose

This policy aims to provide a guide as to the approach and overarching principles in the conduct of compliance audits by the NSWEC.

This document is not a guideline within the meaning of section 24 of the EFED Act.

3. Scope and application

This policy applies to:

- compliance audits performed on parties, elected members, candidates and groups of candidates with regards to their obligations under Part 6 of the EFED Act;
- compliance reviews performed on third party campaigners and major political donors with regards to their obligations under Part 6 of the EFED Act; and
- officers of the Electoral Commission agency, including contractors and third-party consultants, who are involved in compliance audits and reviews.

4. Principles and objectives

4.1 Competence

Compliance audits and reviews are undertaken by competent audit officers, who hold relevant qualifications and possess a thorough understanding of the legislation.

4.2 Integrity and objectivity

In addition to meeting the requirements of the NSWEC with regards to political neutrality, officers of the Electoral Commission agency that undertake and oversee an audit or review must perform their work with impartiality and objectivity. Officers will not be influenced by third parties when planning and executing their audits and reviews.

4.3 Quality assurance and improvement

The audit work is to be subject to regular peer or managerial review. In instances where audit issues or a potential incident of non-compliance is identified, a systematic independent review of the relevant audit work papers is to be performed prior to issuing an audit report or letter.

Officers will aim to improve the efficiency of their audit or review and share best practice with their peers.

4.4 Communication with external stakeholders

While communicating with external stakeholders, officers are to remain respectful and courteous. Audit communications aim principally to verify compliance with the requirements of the EFED Act, but also to educate external stakeholders about their compliance requirements.

4.5 Documentation

An intact copy of all physical or electronic documents provided by external stakeholders should be preserved to support potential enforcement action. The EFED Act requires the NSWEC to retain disclosures for at least 6 years after the period to which they relate.

Audit work papers are to be detailed enough to allow a third party to re-perform the audit procedures and reach the same conclusions. Work papers and evidence of review are to be kept in accordance with the *State Records Act 1998*.

Audit documentation may be used in an investigation or prosecution and, as such, is excluded from being disclosed in response to an access application under the *Government Information (Public Access) Act 2009* (the GIPA Act). This is because information in relation to the investigative or prosecuting functions of the NSWEC is 'excluded information' for which an access application cannot be made under the GIPA Act.

4.6 Risk-based approach

A risk-based approach, which may include samples, may be used in the planning and execution of audit procedures.

The risk profile will be established based on the likelihood and consequence of potential incidents of non-compliance, using measurable or objective parameters.

4.7 Identification of incidents of non-compliance and referrals

Potential incidents of non-compliance that are identified are to be assessed by an officer under the supervision of the manager and referred to an Investigator for review in accordance with the NSWEC's Compliance and Enforcement Policy and Compliance and Enforcement Procedures.

5. Definitions and abbreviations

Commissioner	New South Wales Electoral Commissioner
Electoral Commission agency	NSW Electoral Commission staff agency
EFED Act	*Election Funding, Expenditure and Disclosures Act 1981*
FDC	Funding, Disclosure and Compliance branch of the Electoral Commission agency
NSWEC	New South Wales Electoral Commission

6. Associated documents

1. Compliance and Enforcement Policy
2. Compliance and Enforcement Procedures
3. Prosecution Policy

7. Document control

7.1 Approval authority

The approval authority for this document is the NSWEC.

7.2 Branch responsible for content and implementation

Funding, Disclosure and Compliance branch (FDC) of the Electoral Commission agency.

7.3 Revision Record

Date	Version	Revision description
01/12/2014	V1	Legislative change – *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014*
29/06/2016	V1.1	Periodic review

7.4 Review frequency

This document will be reviewed by the FDC branch every 3 years following the anniversary date of approval or as required due to legislative change, whichever is the earliest.

Annexure 3: Compliance and Enforcement Policy and Procedures 2018

NSW Electoral Commission

Compliance and Enforcement Policy

1 Definitions and abbreviations

Abbreviations

Electoral Act	*Electoral Act 2017* (NSW)
Electoral Regulation	Electoral Regulation 2018 (NSW)
Electoral Commission agency	NSW Electoral Commission staff agency
NSW Electoral Commissioner	New South Wales Electoral Commissioner
EF Act	*Electoral Funding Act 2018* (NSW)
EF Regulation	Electoral Funding Regulation 2018 (NSW)
Electoral Regulation	*Electoral Regulation 2018* (NSW)
FDC	Funding Disclosure and Compliance Division of the NSW Electoral Commission
LG Act	*Local Government Act 1993* (NSW)
LG Regulation	Local Government (General) Regulation 2005 (NSW)
LOGO Act	*Lobbying of Government Officials Act 2011* (NSW)
LOGO Regulation	Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (NSW)
NSW Electoral Commission	New South Wales Electoral Commission

Definitions

1.1 **Associated Entity** means a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members.

1.2 **Candidate** in relation to an election, means a person nominated as a candidate at the election in accordance with the EF Act, or in accordance with the LG Act (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. For the purposes of Part 2 of the EF Act, a candidate includes an individual who accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future election.

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

1.4 **Election** means a State election or a local government election in NSW.

1.5 **Group** in relation to State elections means a group of candidates, or part of a group of candidates, for a Legislative Council election, or in relation to local government elections means a group of candidates, or part of a group of candidates, for a local government election. For the purposes of Part 2 of the EF Act, a group includes individuals who accept a gift for use solely or substantially for a purpose related to the proposed candidacy of the individuals at a future election.

1.6 **Lobbyist** means:

(a) a third-party lobbyist, or

(b) any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist).

1.7 **Lobbyists Code** means the Lobbyists Code of Conduct prescribed by the regulations under Part 2 of the LOGO Act.

1.8 **Lobbyists Register** means the Register of Third-Party Lobbyists established under Part 3 of the LOGO Act.

1.9 **Lobbyists Watch List** means the Lobbyists Watch List established under Part 4 of the LOGO Act.

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

1.11 **Political Donor** means a person who makes a gift.

1.12 **Registered party** means a party registered in accordance with Part 6 of the Electoral Act, or in accordance with Chapter 10 Part 7 of the LG Act.

1.13 **Third-party campaigner** in the case of a State election – means an entity or other person (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure during the capped expenditure period for a State or local government election (as defined in Part 2 of the EF Act) that exceeds $2,000 in total and includes an individual or entity that is registered as a third-party campaigner in accordance with Part 7 of the EF Act.

2 Introduction

2.1 The NSW Electoral Commission is responsible for promoting compliance by political and election participants with the requirements of the legislation it regulates.

2.2 Political and election participants are individuals and entities involved in politics and elections in NSW including:

- political parties, candidates, groups of candidates, elected members, third-party campaigners, associated entities, and their agents

- political donors
- third-party lobbyists.

2.3 The NSW Electoral Commission administers and regulates legislation under four NSW Acts (and relevant supporting Regulations):

1. The *Electoral Funding Act 2018* ('EF Act') regulates election funding, expenditure and disclosure and registration for elections[1]
    - Supported by the *Electoral Funding Regulation 2018* ('EF Regulation')
2. The *Electoral Act 2017* ('Electoral Act') regulates NSW State elections and the use of enrolment information[2]
    - Supported by the *Electoral Regulation 2018* ('Electoral Regulation')
3. The *Lobbying of Government Officials Act 2011* ('LOGO Act') regulates the lobbying of government officials in New South Wales
    - Supported by the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* ('LOGO Regulation').
4. The *Local Government Act 1993* ("LG Act') regulates the conduct of local government elections in NSW
    - Supported by the *Local Government (General) Regulation 2005* ('LG Regulation')

2.4 Integrity and public confidence in the outcomes of elections and the decision-making processes of government are vital to our democracy. The NSW Electoral Commission is committed to working with everyone involved in the electoral process to:

- ensure that elections are conducted in a transparent, fair and impartial way and in accordance with the law
- administer and enforce a fair and transparent electoral funding, expenditure and disclosure scheme and
- ensure that the interactions between government officials and third-party lobbyists are transparent and accountable.

[1] *The Electoral Funding Act 2018* commenced 1 July 2018 and replaced the now repealed *Election Funding, Expenditure and Disclosures Act 1981*. References in this document to the *Electoral Funding Act 2018* apply to comparable provisions of the *Election Funding, Expenditure and Disclosures Act 1981*.
[2] The *Electoral Act 2017* commenced 1 July 2018 and replaced the now repealed *Parliamentary Electorates and Elections Act 1912.* References in this document to the *Electoral Act 2017* apply to comparable provisions of the *Parliamentary Electorates and Elections Act 1912*.

3 Purpose

3.1 The purpose of this policy is to:

- set out the principles and objectives of compliance and enforcement
- provide a guide for the use of investigation and enforcement powers by the NSW Electoral Commission and its authorised officers
- outline how the NSW Electoral Commission accounts for enforcement action taken.

3.2 This policy is supported by Compliance and Enforcement Procedures.

3.3 This document is not a guideline within the meaning of section 152 of the EF Act.

4 Scope and application

4.1 This policy applies to:

- the promotion of compliance with the requirements of the *EF Act, Electoral Act, LG Act* (electoral provisions only), LOGO Act and related Regulations[3]
- the investigation of potential incidents of non-compliance
- the NSW Electoral Commission's enforcement of the law
- officers of the NSW Electoral Commission staff agency ('Electoral Commission agency'), including contractors and third-party consultants, who are involved in identifying, investigating and undertaking enforcement action.

5 NSW Electoral Commission's Compliance and Enforcement Role

5.1 The NSW Electoral Commission monitors and enforces compliance with the legislation. Compliance monitoring provides information about potential breaches, which are assessed for possible review and investigation.

The NSW Electoral Commission's role in relation to the *Electoral Funding Act 2018*

5.2 The NSW Electoral Commission is responsible for regulating the management and disclosure of political donations and electoral expenditure by election participants for State and local government elections in New South Wales. The EF Act governs these matters from 1 July 2018. The main funding and disclosure functions of the NSW Electoral Commission as prescribed by the EF Act are:

[3] The NSW Electoral Commission is responsible for regulating the provisions of the now repealed *Election Funding, Expenditure and Disclosures Act 1981* and the *Electoral Act 1912* in relation to any unlawful act that occurred prior to the repeal of those Acts on 30 June 2018.

- to maintain a scheme of public funding to eligible political parties and candidates for the conduct of State election campaigns and, in the case of eligible political parties and independent members of Parliament, to maintain a scheme of public funding for administrative and policy development expenses
- to regulate the disclosure of the source and the amount of political donations received and the amount of electoral expenditure incurred for State and local government elections
- to foster compliance with the various campaign finance management requirements for State and local government elections
- to regulate the maximum amounts (or "caps") on the value of political donations that can lawfully be accepted, and the electoral communication expenditure that can lawfully be incurred in connection with State and local government elections.

5.3 The NSW Electoral Commission is responsible for investigating non-compliance and for subsequent enforcement action that is in relation to:

- the registration of candidates, groups of candidates, third-party campaigners, associated entities, official agents and party agents
- claims for public funding
- the management and disclosure of political donations and electoral expenditure
- caps on political donations and electoral expenditure
- the prohibition of certain political donations.

The NSW Electoral Commission's role in relation to the *Electoral Act 2017*

5.4 The Electoral Act constitutes the NSW Electoral Commission and empowers it to perform functions under the Electoral Act, the EF Act and the LOGO Act. The Electoral Act also authorises the NSW Electoral Commission to regulate conduct at State elections including the use of enrolment information. The Electoral Act governs these matters as of 1 July 2018.

5.5 The NSW Electoral Commission is responsible for investigating non-compliance with the Electoral Act and for the subsequent enforcement action that is in relation to:

- the registration of political parties
- the enrolment of electors
- the use of enrolment information
- voting at a State election
- the conduct of candidates, groups, parties and electors at an election
- the conduct of scrutineers and others at an election.

5.6 The NSW Electoral Commission also has an educative role in preventing electoral malpractice and ensuring people are aware of their responsibilities and obligations under electoral legislation.

The NSW Electoral Commission's role in relation to the *Lobbying of Government Officials Act 2011*

5.7 The LOGO Act applies a set of ethical standards to all third-party lobbyists and other individuals and organisations that lobby government. The NSW Electoral Commission is responsible for investigating non-compliance and for subsequent enforcement action that is in relation to:

- the registration of third-party lobbyists
- compliance with the Lobbyists Code.

5.8 The Lobbyists Code requires all lobbyists who seek to influence government policy or decision making to observe certain ethical standards.

5.9 All third-party lobbyists must be registered and must comply with additional standards and requirements set out in Part 3 of the Lobbyists Code.

The NSW Electoral Commission's role in relation to the *Local Government Act 1993*

5.10 The NSW Electoral Commission is empowered to institute proceedings for offences under the LG Act in connection with the conduct of local government elections and to exercise its investigative powers under the EF Act for that purpose.

6 Principles and Objectives of Compliance and Enforcement

Principles

Objectivity and impartiality

6.1 The facts of a case are identified and assessed objectively and impartially.

Evidence (to the required standard)

6.2 Depending on the case type, evidence to the required standard is obtained to assist in directing enforcement action.

Proportionality

6.3 Any enforcement action decided upon is proportionate to the seriousness of the breach and the circumstances surrounding it.

Due process

6.4 When assessing or investigating a matter, due process is exercised. This means identifying facts before deciding whether a breach has occurred; establishing that a breach has occurred before deciding on enforcement action. It also means being mindful of objectivity, fairness and ethical conduct.

Consistency

6.5 A review or investigation of a matter considers a broad range of evidence and conduct relative to the matter in question, as well as precedent matters across multiple jurisdictions (such as previous decisions by the NSW Electoral Commission and by other agencies). This promotes consistency in decision-making.

Consistent with the legislation

6.6 Decisions made are consistent with the intent, objectives and provisions of the relevant legislation.

Responsible use of powers

6.7 Enforcement powers are used within the scope and parameters of the law.

Timeliness

6.8 Matters will be reviewed, investigated (if applicable) and enforced in a timeframe that considers due process, the need for appropriate action, as well as meeting legislative requirements.

Prioritisation of matters

6.9 Matters are prioritised according to a number of considerations, including but not limited to legislative timeframes, the known or foreseeable impact on third parties of the particular breach.

Appropriate use of the NSW Electoral Commission's resources

6.10 Compliance matters are monitored, investigated and enforced in a way that uses the NSW Electoral Commission's resources appropriately.

Adequate record-keeping

6.11 Compliance matters and enforcement actions are recorded accurately with sufficient detail to enable peer or supervisor review of the conduct of a matter, and use as evidence in a court proceeding, if necessary. Record keeping of matters meets the requirements of the *State Records Act 1998*.

Objectives

Encouraging stakeholder compliance

6.12 The NSW Electoral Commission adopts a strategy of encouraging stakeholder compliance with the laws that the agency enforces by making full use of all appropriate means, including proactive communication and awareness raising, education programs, intelligence assessments, audits and reviews, risk assessment and strategic targeting. These strategies are applied to ensure the use of available sanctions (administrative, civil and criminal) is exercised reasonably, fairly and ethically.

Deterrence

6.13 Deterrence is at the heart of strategies to protect the transparency and integrity of political systems operating in New South Wales. An effective deterrence framework assures those engaged in misconduct that such behaviour will be detected, prosecuted and sanctioned. The NSW Electoral Commission applies workable strategies that maximise the prospects of delivering credible deterrence in a risk-based environment.

Creating good precedents

6.14 Matters are assessed and enforced in a way that sets a model for future matters.

Promoting accountability

6.15 Enforcement of breaches (or the power to do so) encourages political participants to remain accountable to the NSW public.

Promoting fairness

6.16 Where the law has been breached in a way that creates an unfair situation for voters or other political participants, the enforcement of that breach upholds fairness.

Justice

6.17 Enforcement achieves justice to the people of New South Wales for breaches of the law.

Education

6.18 Compliance monitoring and enforcement educates stakeholders, and informs the FDC Division of areas where education and awareness raising activities should be focussed.

7 Compliance monitoring and enforcement

Compliance monitoring tools

7.1 The NSW Electoral Commission utilises a number of compliance monitoring tools including:

- implementing processes to identify non-compliance
- surveillance and risk based assessments
- sharing and receiving information with other agencies
- receiving complaints, referrals and feedback from the public
- compliance audits and reviews
- undertaking inspections
- conducting investigations.

Compliance and enforcement actions

7.2 Depending on the type of breach, options to promote compliance or to enforce the law in relation to an identified offence/s are as follows:

- no further action
- communication with stakeholders
- education
- a written warning or advice of breach (recorded against the person who committed the breach)
- a written caution (recorded against the person)
- penalty notice (applicable to penalty notice offences listed in Schedule 1 of the EF Regulation, and Schedule 1 of the Electoral Regulation)
- recovery of monetary amount (applicable to unlawful political donations, indirect campaign contributions and loans)
- compliance agreements (applicable to the EF Act)
- Supreme Court injunction (applicable to the EF Act)
- prosecution (applicable to the Electoral Act, the EF Act, the LG Act and the LOGO Act)
- removal from the Lobbyist Register (applicable to LOGO Act)
- being placed on a Lobbyists Watch List (applicable to LOGO Act).

7.3 **Note**: though not enforcement actions, the NSW Electoral Commission is:

i. obligated to withhold public funding where a party or candidate has failed to lodge a declaration of disclosure or any annual financial statements
ii. authorised to deduct from a public funding payment to recover an amount from a party, party agent or candidate.

Selection of enforcement action

7.4 The selection of the most appropriate enforcement action is based on:

- the severity or seriousness of the breach
- frequency
- public interest considerations
- antecedents (history
- aggravating and mitigating factors.

7.5 **Severity or seriousness of the breach**

- the degree of harm or potential harm resulting from the breach. This includes consideration of the likely harm caused to public confidence in the effectiveness of the Acts and Regulations
- the magnitude or degree of non-compliance
- the duration of non-compliance.

7.6 **Public interest**

- whether or not the alleged offence is of considerable general public concern
- the necessity to maintain public confidence in the NSW Electoral Commission
- the prevalence of the alleged offence and any need for deterrence, both personal (i.e. of the alleged offender) and general (i.e. of the community at large) or both
- the cost to the general community of the breach, including the cost of imposing and ensuring compliance with enforcement option
- the degree of culpability of the alleged offender in connection with the offence
- whether or not the consequences of any enforcement action would be unduly harsh or oppressive
- whether enforcement action is required to achieve the objectives of the law (Acts and Regulations)
- the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender or witness
- the alleged offender's antecedents and background, including language ability.

7.7 **Aggravating factors**

Aggravating factors which may warrant the taking of more serious enforcement action include, but are not limited to:

- the known or foreseeable consequences of the breach
- whether the alleged offender used a position of authority to commit the offence

- a history of non-compliance by offender
- the breach is continuing
- financial gain or other advantage to the offender as a result of non-compliance
- uncooperative conduct of offender
- disadvantage (financial or reputational) to other stakeholders.

7.8 **Mitigating factors**

Mitigating factors which may warrant the taking of less serious enforcement action include, but are not limited to:

- a good compliance record of offender (first time offence)
- any action that has been taken by the offender to eliminate or reduce the risk of damage resulting from the non-compliance
- cooperative conduct of the offender
- a long period of time has elapsed since the breach occurred/staleness of the offence.

7.9 The applicability of, and weight to be given to, each of the above factors will vary widely and will depend on the particular circumstances of each case.

7.10 It is likely that any particular case may have some factors in favour of a particular enforcement action and some against. In each case, an overall assessment will be made based on consideration of the importance of each relevant factor in the circumstances.

7.11 **Factors which do not influence the selection of enforcement action**

- the race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively)
- the personal feelings of the investigating officers or prosecutor concerning the offence, the alleged offender, or a victim
- the possible effect of the decision on the personal or professional circumstances of those responsible for the investigation or prosecution, or otherwise involved in its conduct
- the possible media or community reaction to the decision.

Accounting for enforcement action

7.12 The NSW Electoral Commission accounts for investigation and enforcement functions used as follows:

- reporting statistical information about the use of its enforcement powers in its Annual Report to the NSW Parliament

- publishing on its website enforcement actions undertaken and outcomes from such actions including convictions and amounts recovered (unless there is a preclusion to publication) and
- providing submissions to the NSW Parliament's Joint Standing Committee on Electoral Matters (JSCEM) in response to JSCEM inquiries into the NSW Electoral Commission's functions.

Working with other agencies

7.13 The NSW Electoral Commission has agreements with other agencies:

- to share relevant information
- to receive referrals of potential breaches of the laws administered by the NSW Electoral Commission
- to coordinate investigation and enforcement.

7.14 Regulatory action taken by another authority does not prevent the NSW Electoral Commission from taking enforcement action in response to a breach of the legislation. However, where an offence is identified which involves conduct that another regulatory agency may also be addressing, the NSW Electoral Commission in appropriate cases will consult with the responsible authority to facilitate a coordinated, constructive and proportionate enforcement approach.

8 Roles and responsibilities

Who	How
NSW Electoral Commission	• Approve this policy and associated documents
Executive Director and Directors Funding, Disclosure and Compliance	• participate in the consultation process • determine policy instrument content and compliance with electoral funding laws • communicate policy development and revision with Legal and Governance and the Policy Coordinator
Policy Coordinator(Legal and Governance)	• coordinates administration of the policy development and review process • manages the publication, amendment or archiving of approved policy instruments in the Policy Library

Who	How
Senior Advisor Regulatory Advice and Analysis	• develops or amends policy instruments as required • forwards approved policy instruments to the Policy Coordinator for registration and publication • forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation

9 Monitoring, evaluation and review of this policy

9.1 This policy will be reviewed every three years, or whenever it becomes apparent that a revision is needed.

10 Associated documents

10.1 Compliance and Enforcement Procedures

10.2 Compliance Audit Policy

10.3 Compliance and Enforcement Publication Policy and Procedures

10.4 Disclosure Policy and Procedures

10.5 Registration of Political Participants Policy

10.6 Non-Prohibited Donor Determinations Policy and Procedures

10.7 Party Registration Policy and Procedures

10.8 Penalty Notice and Caution Procedures

10.9 Identification of Potential Political Donors Policy and Procedures

10.10 Prosecution Policy

10.11 Public Funding Policy

11 Document control

Document management

Approved by:	**Signature:**
The NSW Electoral Commission	Signature Redacted Date approved: 12 December 2018
Executive Director Review:	**Signature:**
Hugo Bergeron Executive Director, Funding, Disclosure and Compliance	Signature Redacted
Director Review:	**Signature:**
David Wildman Director, Compliance	Signature Redacted

Publication details

Document Type:	☒ Policy ☐ Standard ☐ Procedure ☐ Guidelines	
Responsible Business Unit: Funding, Disclosure and Compliance	**Author:** Senior Adviser, Regulatory Advice and Analysis	**Publication:** ☐ Not for publication ☐ Internal catalogue ☐ Intranet only ☒ Intranet and website

Review Record

Date	Version	Revision description
01 December 2014	V 1.0	Legislative change – *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014*
29 June 2016	V 1.1	Periodic review
11 October 2017	V 1.2	Legislative change – *Environmental Planning and Assessments and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017.*
12 December 2018	V 1.3	Legislative change – *Electoral Act 2017 and Electoral Funding Act 2018.*

NSW Electoral Commission

Compliance and Enforcement Procedures

1 Abbreviations and definitions

Abbreviations

EF Act	*Electoral Funding Act 2018* (NSW)
EF Regulation	Electoral Funding Regulation 2018 (NSW)
Electoral Act	*Electoral Act 2017* (NSW)
Electoral Regulation	Electoral Regulation 2018 (NSW)
Electoral Commission agency	NSW Electoral Commission staff agency
Electoral Commissioner	NSW Electoral Commissioner
FDC	Funding, Disclosure and Compliance Division of the NSW Electoral Commission
LOGO Act	*Lobbying of Government Officials Act 2011*(NSW)
LOGO Regulation	Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (NSW)

Definitions

1.1 **Associated Entity** means a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members.

1.2 **Candidate** in relation to an election, means a person nominated as a candidate at the election in accordance with the EF Act, or in accordance with the LG Act (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. For the purposes of Part 2 of the EF Act, a candidate includes an individual who accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future election.

1.3 **Council** - the Legislative Council of New South Wales.

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

1.5 **Election** means a State election or a local government election in NSW.

1.6 **Electoral expenditure** - expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election, as defined in section 7 of the EF Act.

1.7 **Expenditure period** in the case of a State election – the period from and including 1 October in the year before which the election is to be held to the end of polling day for the election; in the case pf a State by-election – the period from and including the day of the issue of the writ or writs for the election to the end of polling day for the election; in the case of a local government general election – the period from and including 1 July in that year to

the end of polling day for the election; and for another other local government election – the period from and including the day on which the date of the election is publicly notified by the person conducting the election to the end of polling day for the election.

1.8 **Group** in relation to State elections means a group of candidates, or part of a group of candidates, for a Legislative Council election, or in relation to local government elections means a group of candidates, or part of a group of candidates, for a local government election. For the purposes of Part 2 of the EF Act, a group includes individuals who accept a gift for use solely or substantially for a purpose related to the proposed candidacy of the individuals at a future election.

1.9 **Inspector** – has the same meaning as under s.139 of the *Electoral Funding Act*.

1.10 **Lobbyist** – (a) a third-party lobbyist; or (b) any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist).

1.11 **Lobbyists Code** - the Lobbyists Code of Conduct prescribed by the regulations under Part 2.

1.12 **Lobbyists Register** - the Register of Third-Party Lobbyists established under Part 3.

1.13 **Lobbyists Watch List** - the Lobbyists Watch List established under Part 4.

1.14 **Local government election** – an election under the LG Act for the office of councillor or mayor under that Act (other than an election of mayor by councillors).

1.15 **Nomination day** – means the day by which all nominations in an election must be made.

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

1.17 **Political Donor** means a person who makes a gift.

1.18 **Political donation** - is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales, as defined in section 5 of the EF Act.

1.19 **Registered party** means a party registered in accordance with Part 6 of the Electoral Act, or in accordance with Chapter 10 Part 7 of the LG Act.

1.20 **Senior office holder (of a party)** - a person involved in the management or control of the party or the operations of the party.

1.21 **Third-party campaigner** in the case of a State election – means an entity or other person (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure during the capped expenditure period for a State or local government election (as defined in Part 2 of the EF Act) that exceeds $2,000 in total and includes an individual or entity that is registered as a third-party campaigner in accordance with Part 7 of the EF Act.

2 Introduction

2.1. The New South Wales Electoral Commission ('the NSW Electoral Commission') is responsible for promoting compliance by political and election participants with the requirements of the legislation it regulates.

2.2 Political and election participants are individuals and entities involved in politics and elections in NSW including:

- political parties, candidates, groups of candidates, elected members, associated entities, third-party campaigners, and agents
- political donors
- lobbyists and
- others involved in election campaigns.

2.3 The NSW Electoral Commission administers and regulates legislation under four NSW Acts (and relevant supporting Regulations)[1]:

1. The *Electoral Funding Act 2018 ('Electoral Funding Act')*
   Supported by the *Electoral Funding Regulation 2018 ('Electoral Funding Regulation')*[2]

2. The *Electoral Act 2017 ('Electoral Act')*
   Supported by the *Electoral Regulation 2018 ('Electoral Regulation)*[3]

3. The *Lobbying of Government Officials Act 2011* ('the Lobbying Act');
   Supported by the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* ('the Lobbying Regulation')

4. The *Local Government Act 1993 ('Local Government Act')* (electoral provisions only) Supported by the *Local Government (General) Regulation 2005 ('Local Government Regulation')*

2.4 Integrity and public confidence in the outcomes of elections and the decision-making processes of government are vital to our democracy. The NSW Electoral Commission is committed to working with everyone involved in the electoral process to ensure that elections are conducted in a transparent, fair and impartial way and in accordance with the law; and that the interactions between government officials and third-party lobbyists are transparent and accountable.

[1] The NSW Electoral Commission is responsible for regulating the provisions of the now repealed *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912* in relation to any unlawful act that occurred prior to the repeal of those Acts on 30 June 2018.
[2] *The Electoral Funding Act 2018* commenced 1 July 2018 and replaced the now repealed *Election Funding, Expenditure and Disclosures Act 1981*. References in this document to the *Electoral Funding Act 2018* apply to comparable provisions of the *Election Funding, Expenditure and Disclosures Act 1981*.
[3] The *Electoral Act 2017* commenced 1 July 2018 and replaced the now repealed *Parliamentary Electorates and Elections Act 1912.* References in this document to the *Electoral Act 2017* apply to comparable provisions of the *Parliamentary Electorates and Elections Act 1912*.

3 Purpose

3.1 The purpose of these Procedures is to provide a guide as to how the NSW Electoral Commission's investigation and enforcement actions meet the principles and objectives stated in the Compliance and Enforcement Policy.

3.2 This document is not a guideline within the meaning of section 152 of the EF Act.

4 Scope

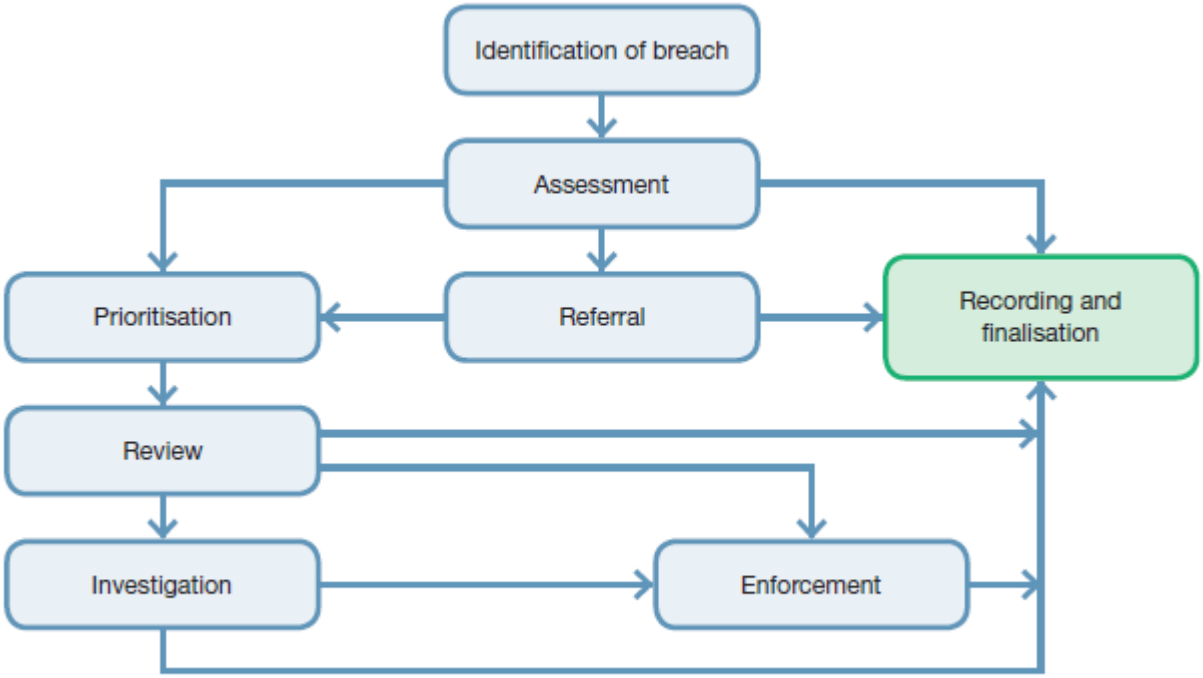
4.1 The Procedures apply to:

- the promotion of compliance by political participants with the requirements of the EF Act Electoral Act, LOGO Act, the electoral provisions of the LG Act and related Regulations
- the review and investigation of potential incidents of non-compliance
- the NSW Electoral Commission's enforcement activity against non-compliance and
- officers of the NSW Electoral Commission staff agency ('Electoral Commission agency'), including contractors and third-party consultants, who are involved in identifying, investigating and undertaking enforcement action.

5 Compliance matters

Phases of a compliance matter

5.1 A compliance matter goes through a number of phases, some of which are discretionary. The following flow-chart illustrates the possible paths that a compliance matter can take through these phases. Each phase is explained in more detail after the flowchart.



Identification of potential breach

5.2 The NSW Electoral Commission may become aware of potential breaches of applicable law through, but not limited to, the following sources.

Internal sources

- client experience and regulatory services
- audit surveillance
- election processes
- intelligence gathering or
- lobbyist registration and monitoring processes.

External sources

- the complaints of members of the public or organisations about suspected breaches of the legislation
- media reports
- information received as a result of a referral from a political participant
- information referred to the NSW Electoral Commission by the NSW Parliament, the Department of Premier and Cabinet or the Independent Commission Against Corruption ('the ICAC'), or
- information referred to the NSW Electoral Commission by other government agencies.

Assessment of potential breaches

5.3 Every potential breach that comes to the attention of the NSW Electoral Commission or officers of the Electoral Commission staff agency must be assessed to determine:

- whether the allegation actually concerns a breach of the law (for instance, it might be a complaint about conduct that is not against the law)
- whether the matter is within the responsibility of the NSW Electoral Commission or the Electoral Commissioner, or whether it should more appropriately be referred to another authority (such as another state regulatory agency) and
- whether the nature or seriousness of the potential breach warrants further action.

5.4 If the answer to these questions is in the affirmative, the matter proceeds to a review. If not, the matter is recorded and finalised.

Referral

5.5 As indicated in the flowchart above, a potential breach can proceed to review or alternatively be referred for action. Referral can be internal, for example for a compliance audit, or external, to another regulatory body.

5.6 A compliance audit is an examination of declarations of disclosure lodged by a party, candidate, group or elected member under Part 3 of the EF Act, to ensure that the declarations are valid, and that the disclosed transactions are accurate and consistent with supporting documents and other available information. Please see the Compliance Audit Policy for more information. A breach is referred for a compliance audit if:

- it is in the NSW Electoral Commission's jurisdiction
- it is an electoral funding, expenditure or disclosure matter and
- there is not enough information to proceed to review (for example, it needs to be compared with disclosures of political donations and electoral expenditure).

5.7 Any breach that is referred to audit may, after completion of the audit, be referred back as a compliance matter.

5.8 A breach is referred to another regulatory body if it is not within the NSW Electoral Commission's jurisdiction.

5.9 Referral can occur at any stage, but most referrals will be made after assessment. This is because compliance matters that pass to the review phase and beyond are those within the NSW Electoral Commission's jurisdiction and with sufficient information to review.

Prioritisation of potential breaches

5.10 Before a review commences, a potential breach brought to the attention of the NSW Electoral Commission is prioritised to ensure that:

- the NSW Electoral Commission's time and resources are used appropriately and

- the most serious potential breaches or breaches that are continuing are identified and addressed as quickly as possible.

5.11 Breaches are generally prioritised by seriousness and urgency. The **seriousness** of a breach is made up of factors like:

- the impact of the breach on transparency and fairness of the political 'playing field'
- whether the breach was inadvertent, opportunistic or deliberately deceptive
- whether the breach is recurrent
- the amount of money involved and
- the penalty for the potential offence connected to the breach.

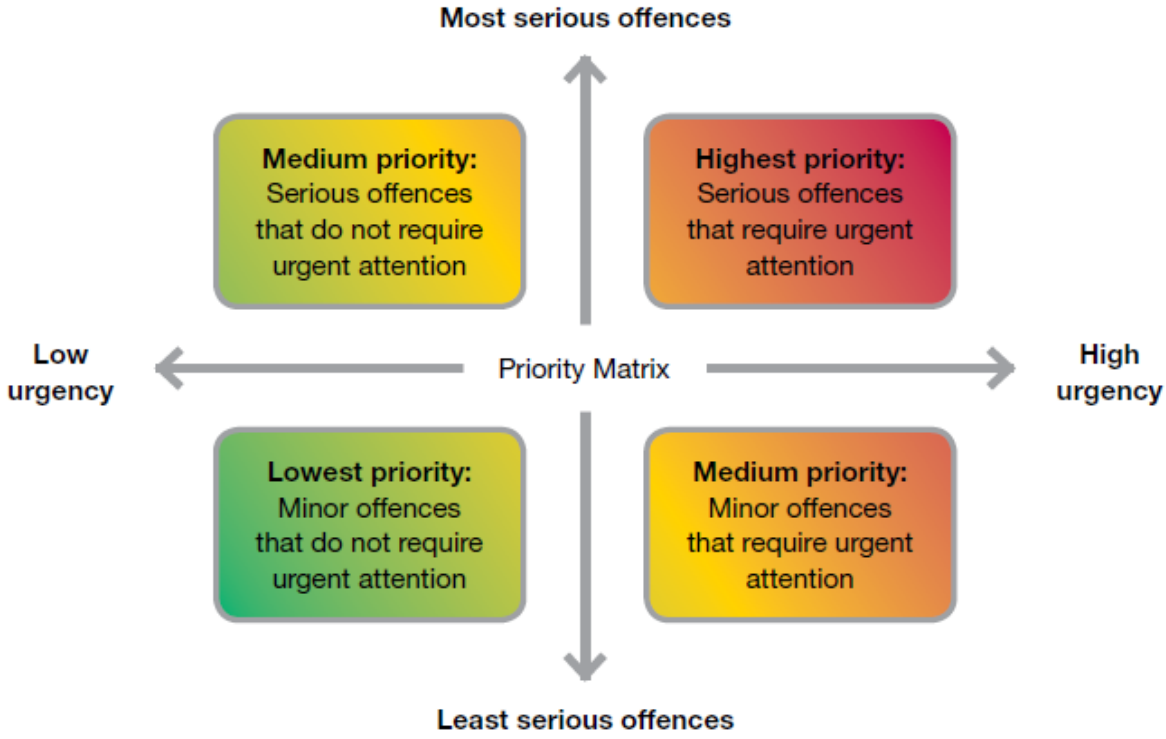
5.12 The following table assists in categorising the seriousness of potential breaches in a general manner:

Seriousness	Category of breach
5	Serious, deliberate non-conformance: these breaches involve deliberate fraud, circumvention, and prohibited acts that have significant impact on transparency and fairness.
4	Serious non-conformance: these breaches have a significant impact on fairness and may be deliberate or inadvertent.
3	Opportunistic, substantial non-conformance: there is a general disregard for regulation which has an impact on transparency or fairness.
2	Opportunistic non-conformance: there is a general disregard for regulation.
1	Minor non-conformance: education and public awareness campaigns are targeted to the population of interest, to improve understanding and awareness.
0	Inadvertent, minor non-conformance: political and election participants attempt to comply with their requirements under the legislation, without success.

5.13 The **urgency** of a breach comes from:

- limitation periods (statutory timeframes)
- the type of information received by the NSW Electoral Commission, such as specific allegation
- accompanied by evidence, or vague allegations without specifics or evidence
- whether there is a risk that evidence, witnesses or related information will be lost or destroyed
- any legal obligations between the NSW Electoral Commission and referral bodies
- time and resources available to the Electoral Commission staff agency
- the seriousness of the breach
- whether the breach is continuing.

5.14 The higher the level of urgency and the more serious the potential breach, the higher the allegation or complaint will generally be prioritised, as illustrated in the following graphic:



5.15 In all matters, the NSW Electoral Commission aims to use its resources as efficiently as possible to achieve the most effective result possible.

Review

5.16 A review of a potential breach is undertaken to determine whether there is evidence that the breach occurred.

What is a review?

5.17 A review involves the collection, collation and consideration of available evidence that will assist in making a decision of future action.

5.18 A review generally involves:

- considering documents available to the NSW Electoral Commission, relating to the suspected breach and persons/ entities involved
- seeking further information or clarification from related persons, entities or agencies
- making initial inquiries with other NSW Electoral Commission officers where appropriate and/or
- making a determination of the appropriate course of action.

5.19 Investigative tools and powers are generally not used in a review phase; however, in certain cases an Inspector may utilise such tools and powers to address specific questions in the review that should be answered before a decision to progress the matter is made.

5.20 Depending on the evidence obtained and the suspected breach, it may be determined that:

1. an investigation or enforcement action is not required

   For example, there is insufficient evidence to support that a breach has occurred; or

2. an investigation is necessary

   For example, the evidence suggests that a breach has occurred but further investigation is required, and the use of powers or other investigative tools are required or

3. no investigation is required and enforcement action is to commence

   For example, a breach involving a strict liability offence may be enforced administratively (e.g., a warning letter or a penalty notice) if there is sufficient admissible evidence to suspect that the offence was committed.

5.21 The decision to action 1, 2 or 3 above, will be based on the Principles of Enforcement set out in the Compliance and Enforcement Policy.

Timeframe

5.22 A review is completed within 20 business days, with an extension if necessary. It also takes into account the timeframe of a possible investigation, and any other applicable time periods.

5.23 This does not apply to penalty notice reviews, which have a separate statutory timeframe. See the Penalty Notice and Caution Procedures.

Records of review

5.24 The results of the review are recorded in the NSW Electoral Commission's records management systems.

Investigation

5.25 If a review determines that an investigation is warranted, an investigation is commenced.

What is an investigation?

5.26 An investigation is a phase that commences in circumstances where, after conducting a review:

1. *there are reasonable grounds to believe there has been a suspected breach of the legislation and*
2. *the offence identified is one which satisfies the Principles of Enforcement in the Compliance and Enforcement Policy and*
3. *it is determined an investigation is appropriate to:*
    a. examine and assess relevant documents/records
    b. source other relevant evidence
    c. identify and interview witnesses and/or
    d. provide an opportunity for the alleged offender to provide evidence.

5.27 The purpose of an investigation is to collect, collate and consider available evidence to establish:

1. *the facts surrounding the alleged breach and*
2. *determine to the requisite standard if an offence under the relevant legislation has occurred.*

5.28 If an investigation establishes the existence of an offence or offences, the NSW Electoral Commission considers the available evidence to determine what action should be taken to achieve the appropriate regulatory outcome.

5.29 The NSW Electoral Commission's investigative function is undertaken by Inspectors appointed by the NSW Electoral Commission for that purpose under section 139 of the *Electoral Funding Act* (and simultaneously, under section 258 of the *Electoral Act*, section 19 of the Lobbying Act and section 325 of the Local Government Act).

5.30 For the purposes of an investigation, Inspectors are empowered by the legislation to:

- require information or the production of documents reasonably required for the purpose of the enforcement of the relevant legislation
- enter premises at which relevant documents or records are or might be kept
- question persons in connection with the enforcement of the relevant legislation and
- in some instances, require persons to attend at a specified place and time to answer questions put to them about a particular matter.

Investigation plan

5.31 In cases where there are reasonable grounds to suspect that a person has committed an offence under the relevant legislation, the Inspector who is assigned the investigation is to develop an Investigation Plan. The Investigation Plan is to include recommendations on the most efficient and effective methods to source, collect and collate the evidence, and plan the investigation according to the investigation timeframe and any other applicable timeframes, such as limitation periods, for commencing proceedings.

Require documents and information

5.32 The NSW Electoral Commission has powers under section 138 of the *Electoral Funding Act* to require a person, by notice in writing, to provide information, to produce documents at a specified time and place, and to answer questions.

5.33 The place and time to produce documents must be reasonable in the circumstances. The written notice may only require a person to provide existing documents that are in the person's possession or within the person's power to obtain lawfully.

5.34 The NSW Electoral Commission may take copies of any documents provided, and if it has reason to believe that any such documents are evidence of an offence under the legislation, it may keep the documents until proceedings for the offence have finished.

Interviews

5.35 An Inspector has further powers under section 138 of the *Electoral Funding Act* to require a person to attend for interview at a certain time and place. The location and timing of the interview must be reasonable in the circumstances. Individuals are permitted to be accompanied at interviews by a legal representative or other person, unless the Inspector determines that, on the available facts, the presence of that other person is likely to compromise the integrity of the investigation.

Inspections

5.36 An Inspector has powers of inspection under section 137 of the *Electoral Funding Act* which may be exercised to ascertain whether the relevant legislation has been breached. An Inspector is empowered to:

- enter at any reasonable time any place at which the Inspector has reasonable grounds to believe that relevant documents are kept
- request, by notice in writing, the owner or occupier of the place to produce for inspection any relevant documents at the place
- request, by notice in writing, any person employed or engaged at the place to produce for inspection any relevant documents that are in the custody or under the control of that person

- examine any person at a place entered with respect to matters under the relevant legislation, and
- examine and inspect any relevant documents at the place, and
- copy, or take extracts from, any relevant documents at the place, and make such examinations and inquiries as the Inspector considers necessary.

5.37 Inspectors must produce a certificate of his or her appointment to the occupier of the premises if requested by the occupied.

5.38 A person being examined by an inspector is entitled to be represented by an Australian legal practitioner.

Timeframe

5.39 The NSW Electoral Commission recognises that, in the public interest and in the interests of natural justice for those involved, it is important to conclude reviews and investigations at the earliest opportunity. The NSW Electoral Commission aims to complete investigations, depending on complexity, number of witnesses, resources, reporting date or legislative limitations, within 50 business days from the date of the decision to refer the matter for formal investigation. This timeframe may be extended if necessary, for example based on the availability of evidence or witnesses, or the amount of material to be examined. It also takes into account any other applicable time periods, such as limitation periods, for commencing proceedings.

Informing those involved

5.40 An Inspector may notify the subject(s) of any investigation of the existence of the investigation, including the nature of the suspected offence, in order to allow that person to respond to the allegation/s before an enforcement decision is made.

5.41 An Inspector may also provide general information about the existence of the investigation to third parties who are impacted by the events or circumstances under investigation.

Investigation report

5.42 At the completion of an investigation, a report will be prepared which will include:

- a statement of facts
- evidence collected
- determination as to weight, value, and outcome of evidence against alleged conduct.

5.43 Once the investigation report and evidence has been reviewed, a decision will be made on an appropriate enforcement response.

Enforcement

5.44 An enforcement response is selected based on the Principles and Objectives of Compliance and Enforcement in the Compliance and Enforcement Policy. Compliance and enforcement actions are detailed in section 5 below.

Recording and finalisation

5.45 Any potential breach is recorded, even if it does not proceed to enforcement.

5.46 A matter is finalised when it is determined that no further action (such as enforcement or investigation) is necessary, or when the enforcement action has been completed.

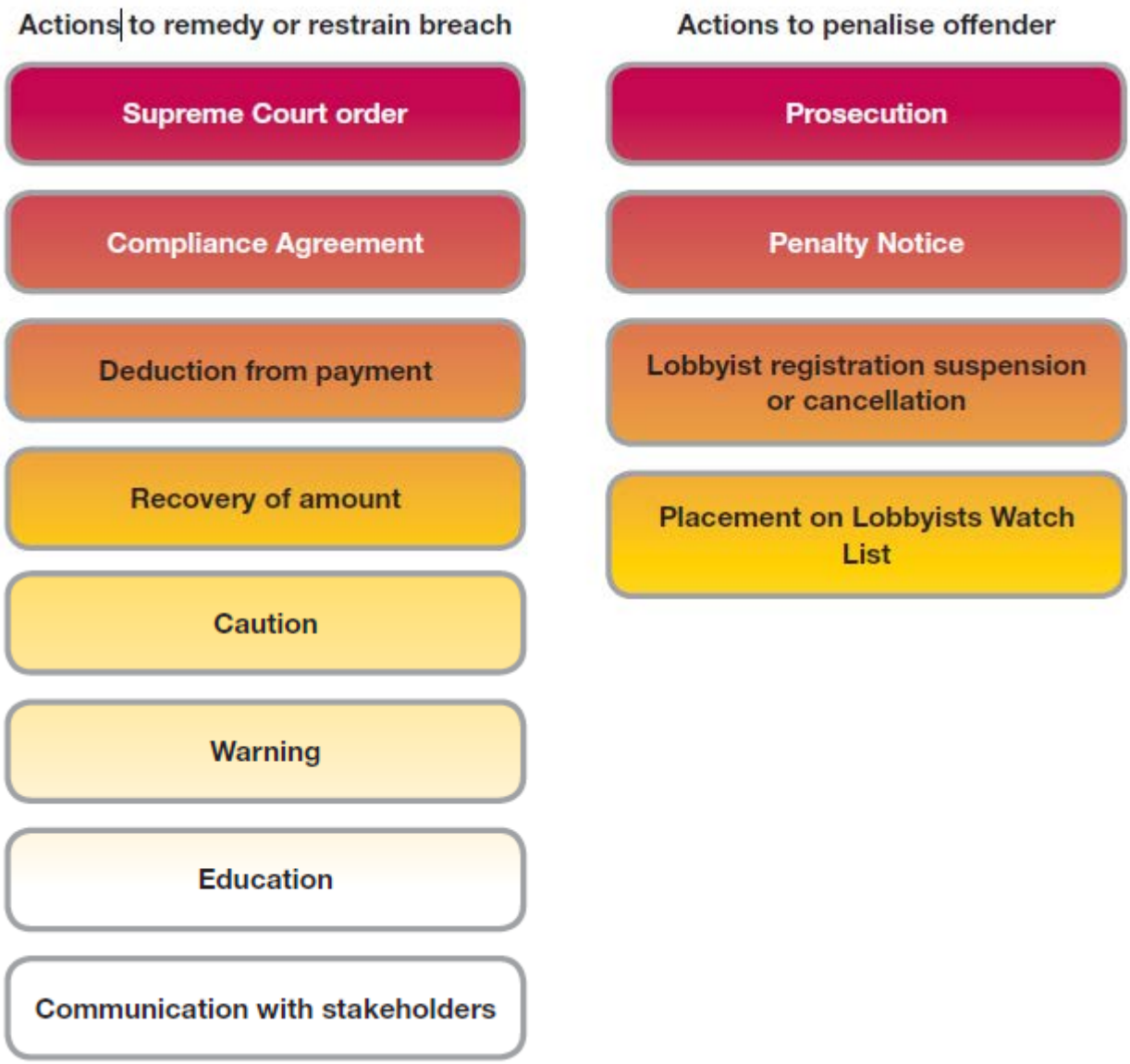
6 Compliance and enforcement actions

6.1 If there is admissible evidence of a breach, then an appropriate enforcement action is to be decided. Enforcement actions include actions to restrain or remedy the breach, and actions to penalise the offender.

6.2 Enforcement actions are not necessarily mutually exclusive. For example, recover an amount of money and prosecute in relation to the offence that warranted the recovery.

6.3 The range of enforcement actions available to the NSW Electoral Commission, in descending order of seriousness, is shown in the figure below. Each action is then explained in more detail.

6.4 The following explanations are in ascending order of seriousness.



Communications with stakeholders

6.5 If the NSW Electoral Commission has admissible evidence that a person has committed an offence, the NSW Electoral Commission or Electoral Commissioner, or an officer of the Electoral Commission staff agency (as appropriate to the offence) may write to the person seeking an explanation of the breach and, if possible, directing them to remedy the breach. In some cases that may be the only action that is taken. Alternatively, the matter may be escalated for further action.

Education

6.6 The NSW Electoral Commission undertakes stakeholder awareness raising and education.

6.7 The NSW Electoral Commission publishes information resources for political participants. The NSW Electoral Commission targets education and awareness strategies to improve awareness of, and compliance with, the requirements under the legislation.

6.8 For requirements under the EF Act, the NSW Electoral Commission may determine and issue guidelines in accordance with section 152 of the EF Act to help political participants to understand their legal obligations. The NSW Electoral Commission's guidelines are published on the website.

6.9 Where appropriate, the NSW Electoral Commission may also seek to educate a person in response to an apparent breach of the legislation, by writing to the person with advice about the legal requirements or advising on necessary training and the possible enforcement action should the breach occur again.

Warning

6.10 There are circumstances in which it is appropriate for an officer of the Electoral Commission agency or an Inspector to issue a warning to a person who appears to have committed an offence under the legislation. The fact that a person has received a warning is considered in any future compliance actions against that person that occur within 5 years from the date of the warning. A warning is expunged from a person's record after 5 years if there are no further breaches of the legislation by the person during the 5-year period.

What is a warning?

6.11 A warning is a letter which is sent in response to the apparent offence, instead of more serious enforcement action, when there are relevant mitigating factors to warrant doing so. Examples of mitigating factors are listed in section 6 of the Compliance and Enforcement Policy.

6.12 The letter details the apparent offence, the recipient's legal obligations, and possible further action if the offence is repeated.

6.13 There are two types of warnings:

1. *Warning of escalation*

   This is a general warning that if the apparent offence occurs again, it will be escalated for a review and possible enforcement. A warning of escalation can be issued by an officer of the Electoral Commission agency, even if they are not an Inspector.

2. *Warning of sanction*

   This is a specific warning that if the apparent offence occurs again, it will attract a sanction, such as a more serious enforcement action. The letter may name the potential sanction. A warning of sanction can only be issued by an officer that is able to exercise the sanction, such as an Inspector. For Lobbying Act offences, a sanction might be placement on the Lobbyists Watch List.

Recording warnings

6.14 The issuing of a warning is recorded against the person.

Lobbyist Watch List

6.15 The NSW Electoral Commission may place a lobbyist on the Lobbyist Watch List where it is apparent the lobbyist has breached one or more provisions of the Lobbying Act. For example, where there has been a repeated failure to update details and/or comply with the statutory confirmation process.

6.16 This enforcement action is the likely enforcement response for those lobbyists who seriously breach the Lobbyists Code and who are not third-party lobbyists. Examples of a serious breach of the Lobbyists Code may include misleading, dishonest, corrupt or other unlawful conduct in the course of lobbying.

Cancelling of suspending lobbyist registration

6.17 A lobbyist's registration may be suspended or cancelled by the NSW Electoral Commission where there is a serious or repeated breach of the Lobbying Act.

6.18 Cancelling or temporarily suspending a lobbyist's registration is a significant disciplinary sanction, which effectively prevents a third-party lobbyist from lobbying a Government official.

Compliance agreements

6.19 The NSW Electoral Commission may enter into a compliance agreement with a person as an enforcement option. A compliance agreement is a written agreement between the NSW Electoral Commission and any person affected by the legislation. The purpose of the compliance agreement is to ensure that the person complies with the legislation, or remedies an apparent breach of the legislation.

6.20 The NSW Electoral Commission may make an application to the Supreme Court to have a compliance agreement enforced where a person has contravened a compliance agreement.

Penalty notices

6.21 There are circumstances in which it is appropriate for an Inspector to issue a penalty notice to a person who is suspected to have committed an offence, which is a penalty notice offence under the legislation.

6.22 A penalty notice is an enforcement option that allows a person, who is suspected to have committed a specified offence, to pay a specified penalty rather than have the matter heard by a court.

6.23 For more information about penalty notices, refer to the Penalty Notice and Caution Procedures.

Supreme Court Order

6.24 The NSW Electoral Commission may apply to the Supreme Court for an injunction, declaration or other order within the jurisdiction of the Court to ensure compliance with the relevant legislation.

Prosecution

6.25 Prosecution is a method of enforcement for the most serious offences under the legislation or where a person has received a penalty notice and has elected to have the matter determined by a court. The NSW Electoral Commission may commence a prosecution against a person for committing an offence under the *Electoral Funding Act*, the *Electoral Act*, the Lobbying Act or the electoral provisions of the Local Government Act. A number of factors, including (but not limited to) the following, will be considered in deciding whether to prosecute:

- the alleged offence is capable of having a significant impact on the transparency, fairness and integrity of elections, the lobbying regime or of the funding and disclosure regime
- alternative enforcement action is insufficient for ensuring compliance with the legislation
- an alleged breach of the legislation involves material amounts of money
- an alleged offender engages in repeated non-compliance
- cases of apparent deliberate non-compliance, including acts of dishonesty and
- it is in the public interest to prosecute.

6.26 The question of whether or not a prosecution is in the public interest is determined by:

- whether or not the admissible evidence available is capable of establishing each element of the offence (the prima facie case test)
- whether there is a reasonable prospect of conviction and if so
- whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest (the public interest factors).

6.27 The NSW Electoral Commission is required to give consent to the commencement of proceedings against a person for an offence under the *Electoral Funding Act*, the *Electoral Act*, the Lobbying Act and the Local Government Act.

Publishing enforcement actions and outcomes

6.28 All enforcement actions and outcomes (such as convictions and amounts recovered, unless there is a non-disclosure order) are published in the NSW Electoral Commission's annual reports and on its website.

6.29 Enforcement actions and outcomes may be published as statistics without naming persons or entities involved, case studies, statements and so on depending on the nature of the action and penalty imposed. For more information refer to the Compliance and Enforcement Publication Policy.

7 Roles and responsibilities

Who	How
NSW Electoral Commission	• Approve this policy and associated documents
Executive Director and Directors Funding, Disclosure and Compliance	• participate in the consultation process • determine policy instrument content and compliance with electoral funding laws • communicate policy development and revision with Legal and Governance and the Policy Coordinator
Policy Coordinator(Legal and Governance)	• coordinates administration of the policy development and review process • manages the publication, amendment or archiving of approved policy instruments in the Policy Library
Senior Advisor Regulatory Advice and Analysis	• develops or amends policy instruments as required • forwards approved policy instruments to the Policy Coordinator for registration and publication • forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation

8 Monitoring, evaluation and review of this policy

8.1 This policy will be reviewed every three years, or whenever it becomes apparent that a revision is needed.

9 Associated documents

9.1 Compliance and Enforcement Policy

9.2 Compliance Audit Policy

9.3 Disclosure Policy and Procedures

9.4 Electoral Participant and Agent Registration Policy and Procedures

9.5 Non-Prohibited Donor Determination Policy and Procedures

9.6 Party Registration Policy and Procedures

9.7 Penalty Notice and Caution Procedures

9.8 Potential Political Donors (Not enrolled or do not have a Relevant Business Number) Policy and Procedures

9.9 Prosecution Policy

9.10 Public Funding Policy

9.11 Compliance and Enforcement Publication Policy

10 Relevant legislation

10.1 *Electoral Act 2017*

10.2 *Electoral Regulation 2018*

10.3 *Electoral Funding Act 2018*

10.4 *Electoral Funding Regulation 2018*

10.5 *Lobbying of Government Officials Act 2012*

10.6 *Lobbying of Government Officials (Lobbyists Code of Conduct) 2014*

10.7 *Local Government Act 1993*

10.8 *Local Government (General) Regulation 2005*

11 Document control

Document management

Approved by:	**Signature:**
The NSW Electoral Commission	Signature Redacted Date approved: 12 December 2018
Executive Director Review:	**Signature:**
Hugo Bergeron Executive Director, Funding, Disclosure and Compliance	Signature Redacted
Director Review:	**Signature:**
David Wildman Director, Compliance	Signature Redacted

Publication details

Document Type:	☒ Policy ☐ Standard ☐ Procedure ☐ Guidelines	
Responsible Business Unit: Funding, Disclosure and Compliance	**Author:** Senior Adviser, Regulatory Advice and Analysis	**Publication:** ☐ Not for publication ☐ Internal catalogue ☐ Intranet only ☒ Intranet and website

Revision record

Date	Version	Revision description
01 December 2014	V 1.0	Legislative change – Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014
29 June 2016	V 1.1	Periodic Review
01 October 2017	V 1.2	Legislative change – Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017
12 December 2018	V 1.3	Legislative change – *Electoral Act* 2017, *Electoral Funding Act* 2018

Annexure 4: Compliance and Enforcement Publication Policy

NSW Electoral Commission

Compliance and Enforcement Publication Policy

1 Definitions and abbreviations

Abbreviations

NSW Electoral Commission	New South Wales Electoral Commission
NSW Electoral Commissioner	New South Wales Electoral Commissioner
Electoral Act	*Electoral Act 2017* (NSW)
Electoral Regulation	Electoral Regulation 2018 (NSW)
EF Act	*Electoral Funding Act 2018* (NSW)
EF Regulation	Electoral Funding Regulation 2018 (NSW)
FDC&GC	Funding, Disclosure, Compliance and General Counsel Division of the NSW Electoral Commission
GIPA Act	*Government Information (Public Access) Act 2009* (NSW)
LG Act	*Local Government Act 1993* (NSW)
LG Regulation	Local Government (General) Regulation 2021 (NSW)
Lobbying Act	Lobbying of Government Officials Act 2011 (NSW)
Lobbying Regulation	Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (NSW)

Definitions

1.1 **Media -** includes (but is not limited to):

- newspapers and magazines (paper and online)
- books, journals, bulletins, newsletters and noticeboards (paper and online)
- social media (e.g. Facebook, Twitter, comments on online articles, blogs)
- professional networks (e.g. LinkedIn)
- websites
- radio programs and advertisements

- television programs and advertisements or
- seminars, webinars and papers.

1.2 **Prosecution -** a method of enforcement for the most serious offences under the legislation or where a person has received a penalty notice and has elected to have the matter determined by a court.

1.3 **Publish -** to make information available to people.

1.4 **Stakeholder -** stakeholders include:

- political parties, their staff and volunteers
- members of political parties
- candidates and groups for NSW State and local government elections
- NSW Parliament elected members and government Ministers
- NSW local government councillors
- third-party campaigners
- associated entities
- political donors
- third-party lobbyists
- individuals who access enrolment information and
- individuals who engage in election campaigns.

2 Introduction

2.1 The NSW Electoral Commission is responsible for promoting compliance by political and election participants with the requirements of the legislation it regulates. FDC&GC staff carry out this regulatory function on behalf of the NSW Electoral Commission.

2.2 Where the NSW Electoral Commission is authorised or permitted by law, publishing information about compliance activities and enforcement actions exercised under the NSW Electoral Commission's responsibility is an important way to foster transparency, promote awareness, and encourage compliance with the law. The public is best served through easy access to information about compliance and enforcement, including provision of information online.

2.3 Uncontrolled publication of information can, however, put the NSW Electoral Commission in breach of the law, compromising its duties to the NSW public, and undermining its ability to

enforce offences. For instance, it is unlawful[1] in NSW and elsewhere in Australia to publish details of spent convictions without authority. Further, information in relation to the investigative or prosecuting functions of the NSW Electoral Commission is protected by law from public disclosure.[2] The public interest against disclosure of such information requires it to be treated with a very high level of confidentiality.

3 Purpose

Compliance and enforcement publication policy

3.1 This policy is intended to ensure consistency and accuracy in the information about compliance activities and enforcement actions released publicly, including through online publication.

3.2 This policy should be read along with other relevant policies and procedures of the NSW Electoral Commission, particularly the following that each provide general information about the exercise of the NSW Electoral Commission's compliance, investigation and enforcement functions:

- Compliance and Enforcement Policy
- Compliance and Enforcement Procedures
- Compliance Audit Policy
- Prosecution Policy
- Complaints Management Policy.

3.3 This document is not a guideline within the meaning of section 152 of the EF Act.

4 Scope and application

Breadth of compliance and enforcement activities

4.1 This policy is a guide for how the NSW Electoral Commission may deal with:

- publication, including online, of information regarding the NSW Electoral Commission's compliance, investigation and enforcement functions
- the release of information about investigations, compliance and enforcement actions

[1] Criminal Records Act 1991, Crimes Act 1900 s579
[2] Government Information (Public Access) Act 2009 (the GIPA Act)

- the release of information about convictions, including spent convictions
- personal information related to the above
- publicly available information related to the above.

4.2 This policy relates to the compliance and enforcement activities of the NSW Electoral Commission with respect to the Electoral Act, the EF Act, the LG Act and the Lobbying Act.

5 Policy details

Application of policy

5.1 This policy and procedures instrument applies to:

- staff members of FDC&GC and
- staff members of other NSW Electoral Commission divisions whether they are permanent, temporary, casual, or contracted. It applies to staff on secondment from other organisations, and to staff and proprietors of other organisations working with the NSW Electoral Commission.

Definition of publish

5.2 In this document, publish is defined as 'to make information available to a person or persons', and includes but is not limited to any of the following:

- printed material that is made available to the those outside the NSW Electoral Commission
- material provided on the NSW Electoral Commission website or elsewhere online
- media releases and other advice to the media
- newspapers and magazines (paper and online)
- books, journals, bulletins, newsletters and noticeboards (paper and online)
- social media (e.g. Facebook, Twitter, comments on online articles, blogs)
- professional networks (e.g. LinkedIn)
- websites
- radio programs and advertisements
- television programs and advertisements
- seminars, webinars and papers.

5.3 The NSW Electoral Commission monitors and enforces compliance with relevant legislation by political stakeholders. In doing so, the interests of other stakeholders are also considered.

5.4 The relevant legislation is the following:

- the *Electoral Act 2017* ('Electoral Act')
- the *Electoral Funding Act 2018* ('EF Act')
- the *Local Government Act 1993* (NSW) ('LG Act')
- the *Lobbying of Government Officials Act 2011* (NSW) ('Lobbying Act')
- any regulations made under these Acts.

5.5 Political stakeholders include:

- political parties (including staff and volunteers)
- members of political parties
- candidates and groups for NSW State and local government elections
- NSW Parliament elected members
- NSW local government councillors
- third-party campaigners
- associated entities
- political donors
- third-party lobbyists
- individuals who access enrolment information
- individuals involved in election campaigning.

5.6 Other stakeholders include:

- the NSW public
- the Parliament of NSW and government ministers
- local Councils in New South Wales
- other electoral regulation bodies such as the Australian Electoral Commission
- other investigative or law enforcement agencies such as the Independent Commission Against Corruption and the NSW Police
- supporting agencies such as the Crown Solicitor's Office.

5.7 To regulate political stakeholders' compliance with relevant legislation, the NSW Electoral Commission can conduct compliance audits and undertake reviews and investigations. Depending on the outcome of an audit, review or investigation the NSW Electoral Commission can take enforcement action against a political stakeholder, including commencing a prosecution. For more information about the enforcement actions available to the NSW Electoral Commission refer to the Compliance and Enforcement Procedures.

Information that will not generally be published

5.8 Spent convictions will not be published by the NSW Electoral Commission and every attempt should be made to ensure that convictions are removed from the NSW Electoral Commission website when they become spent.

5.9 It is unlawful in New South Wales, and elsewhere in Australia, to publish details of spent convictions without authority. In New South Wales, spent convictions are covered by the Criminal Records Act 1991, Crimes Act 1900 s579, and specific provisions within some legislation.

5.10 There are multiple mechanisms by which a conviction may become spent. The process differs given the offence and legislation. There are also mechanisms by which a conviction might become spent regardless of the offence, for instance a court order of the dismissal of charges without recording a conviction under Section 10 Crimes (Sentencing Procedure) Act 1999.

5.11 In considering publishing statistical or de-identified details relating to spent convictions, the NSW Electoral Commission must take great care to ensure that:

- the information does not provide evidence that may lead to discovery of the identity of a person who has a spent conviction (e.g. a description of an offence or offences that, while not providing name/s, provides dates, location, current professional status of those involved) and
- a totality of information provided in any given publication or combination of publications does not provide evidence that may lead to discovery of the identify of a person who has a spent conviction (e.g. details provided in different locations that contribute to an understanding about the general description of a person who has a spent conviction (when and where they were employed, and in what position when the offence occurred).

5.12 Unless permitted by law and in the public interest to do so (refer to paragraphs 5.23 to 5.31), detailed information about past or ongoing audits, reviews, investigations and enforcement actions will not be published by the NSW Electoral Commission.

5.13 The NSW Electoral Commission conducts audits, reviews and investigations to ascertain if there has been a breach of the legislation. As an audit, review or investigation progresses, much information such as personal details, communications between the subject of the investigation and the NSW Electoral Commission, witness communications, financial information and other evidence are collected. Unless permitted by law and in the public interest to do so the NSW Electoral Commission will not publicly disclose information or evidence about a current or ongoing audit, review or investigation.

5.14 Audits, reviews and investigations can result in enforcement action against a political stakeholder or other person. Enforcement action can include issuing a warning, caution or penalty notice, recovering the value of an unlawful donation, suspension or cancellation of a third-party lobbyist registration and prosecution. The NSW Electoral Commission keeps a record of enforcement actions in regard to stakeholders, and the reasons for a particular enforcement action.

5.15 Information in relation to the NSW Electoral Commission's investigative and prosecuting functions is 'excluded information' under the GIPA Act.[3] The GIPA Act states that there is a conclusive presumption of an overriding public interest against disclosure of excluded information (unless the NSW Electoral Commission consents to its disclosure).[4] The GIPA Act also prevents an access application being made to the NSW Electoral Commission for excluded information.[5]

5.16 As a result, information about the NSW Electoral Commission's investigative and prosecuting functions cannot be obtained through a GIPA access application (unless the NSW Electoral Commission consents to its disclosure). This includes information such as whether a particular stakeholder is being investigated for an alleged offence. Accordingly, the NSW Electoral Commission will not voluntarily provide excluded information unless it has already been made publicly available (see below), or the NSW Electoral Commission has consented to its disclosure.

5.17 Personal information will not generally be published by the NSW Electoral Commission.

[3] Government Information (Public Access) Act 2009 (NSW) – Schedule 2, clause 4.
[4] Government Information (Public Access) Act 2009 (NSW) – Schedule 1, clause 6.
[5] Government Information (Public Access) Act 2009 (NSW) – Schedule 1, section 43.

5.18 Unless required or authorised or permitted by law to do so, the NSW Electoral Commission will not publish personal information, or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including:

- electoral roll or enrolment information
- election voting information (including in statutory ballots)
- personal information of political stakeholders such as candidates and elected members
- funding and disclosure information that is not publicly available
- human resources information
- feedback and complaints information
- information or an opinion about the physical or mental health or disability of an individual.

5.19 Refer to the following documents which explain access to information, privacy, and exceptions to the above rules in more detail:

- the NSW Electoral Commission webpage, Access to Information
- the NSW Electoral Commission's Privacy Policy Statement and Management Plan
- the NSW Electoral Commission's Government Information (Public Access) Policy and Procedures.

Information that will generally be published

5.20 The NSW Electoral Commission publishes information that may identify individuals and entities where authorised or permitted by law and where there is no public interest against disclosure, such as:

- details of, and reasons for, a decision to suspend or cancel the registration of a third-party lobbyist (or an individual engaged to undertake lobbying for a third-party lobbyist)
- details of, and reasons for, a decision to place the name of a third-party or other lobbyist on the Lobbyists Watch List
- details of, and reasons for, a decision to refuse to register a third-party lobbyist (or an individual engaged to undertake lobbying for a third-party lobbyist)
- details of, and reasons for, a determination that a third-party lobbyist who has carried on the business of lobbying while not registered is ineligible to be registered for the period specified by the NSW Electoral Commission.

5.21 The NSW Electoral Commission publishes de-identified information such as:

- statistical information* about Supreme Court orders, prosecutions, convictions, penalty notices, cautions and other enforcement decisions that may include details of offences by stakeholder category, election, and the period to which the information relates
- statistical information* about warnings that may include details of offences by stakeholder category, election, and the period to which the information relates
- statistical information* about the level of compliance or non-compliance that may include details of offences by stakeholder category, election, and the period to which the information relates
- information about compliance operations for election events and
- information about audit and compliance findings may be published on a case by case basis.

  * statistical or de-identified information here should not provide evidence that may lead to discovery of the identity of person.

5.22 For an explanation of the NSW Electoral Commission's policies and procedures in the exercise of its investigative and enforcement powers, refer to the Compliance and Enforcement Policy and Compliance and Enforcement Procedures.

Disclosure of information if in the public interest

5.23 Generally, the NSW Electoral Commission will neither confirm nor deny that a particular allegation has been received and will not comment on any matter that is the subject of ongoing investigation or consideration. However, under section 268(2) of the Electoral Act, the NSW Electoral Commission or Commissioner may disclose information if:

- the information is disclosed to a person who has given information about possible contraventions of the Electoral Act and the EF Act or a regulation under either of these Acts, and
- the disclosure is reasonably necessary for the purpose of:
  - reporting the progress of an investigation into the possible contravention, or
  - providing the person who gave the information with advice as to the outcome of the investigation or any action taken as a result of the investigation, and
- the NSW Electoral Commission or Commissioner is satisfied the disclosure is in the public interest.

5.24 Under section 268(3) of the Electoral Act, the NSW Electoral Commission or Commissioner may also disclose information if:

- the information concerns a possible contravention of the Electoral Act or the EF Act or a regulation under either of these Acts, and
- the disclosure is for the purpose of reporting to the public about the progress or outcome of an investigation into the possible contravention, and
- the NSW Electoral Commission or Commissioner is satisfied the disclosure is in the public interest.

5.25 The NSW Electoral Commission and Commissioner have qualified privilege in proceedings for defamation arising out of a disclosure made under these provisions.

5.26 Disclosures of information under section 268(2) or (3) may only be made in relation to possible contraventions of the Electoral Act and the EF Act or a regulation under either of these Acts. They cannot be made in relation to contraventions of other legislation the NSW Electoral Commission has the function to enforce such as contraventions under the following Acts or regulations made under these Acts:

- the now repealed *Election Funding, Expenditure and Disclosures Act 1981*,
- the now repealed *Parliamentary Electorates and Elections Act 1912*,
- election provision under the LG Act, and
- the Lobbying Act

5.27 The NSW Electoral Commission often receives information in relation to possible contraventions from political stakeholders such as political parties and candidates. Any disclosure of information that is made to a person who has given information to the NSW Electoral Commission about a possible contravention of the Electoral Act or the EF Act MUST be in the interest of the public and not merely the individual or private interest of the informant. Disclosing information about an investigation only to a specific political stakeholder may be, or be perceived to be, in favour of this stakeholder. To comply with its duty to exercise its functions in a manner that is not unfairly biased, where it determines there is a public interest in favour of disclosure the NSW Electoral Commission may make a disclosure to the public under section 268(3) instead of to a particular informant under section 268(2). Such disclosure may be made in the form of a statement from the Chairperson published on the Electoral Commission's website or any other way determined by the NSW Electoral Commission. A disclosure will contain a statement to the effect the NSW Electoral Commission considers it is in the public interest to do so and may include the reasons. A record of the reasons will be kept internally.

5.28 Whether a disclosure is in the public interest will be assessed in relation to the specific circumstances of the matter for which information may be disclosed. Considerations for and

against disclosure will need to be balanced. The timing of a matter may also impact the nature of the information that may be released. There is no general obligation to disclose information under s. 268(2)-(3), even if on balance disclosure is in the public interest. It is anticipated that disclosure under s. 268(2)-(3) will only be made in limited circumstances.

5.29 The disclosure of information pursuant to s 268(2)-(3) requires the positive identification of a public interest to necessitate the disclosure. The following factors, amongst others, will be considerations in favour of disclosure:

- information publicly reported (eg media, public statements) about the alleged contravention or investigation is inaccurate and misleading about a political stakeholder,
- misinformation or disinformation about certain matters is widely circulating on social media platforms,
- the alleged contravention or investigation has generated significant public interest and the Electoral Commission does not intend to take any further action in the matter,
- there is a potential misunderstanding in the public about the relevant legislative requirements or the functions of the NSW Electoral Commission or Commissioner,
- the integrity of electoral processes including the funding and disclosure scheme in New South Wales will be supported,
- the administration of justice and the integrity of the criminal justice system will be supported, or
- the disclosure of information may serve as an opportunity to educate the public or political stakeholders and prevent future contraventions.

5.30 It is also necessary to consider whether any public interest(s) that mitigate against disclosure exist and, if so, it must be determined where the balance of interests for and against disclosure lie. The following factors, amongst others, will be considerations against disclosure:

- the alleged contravention or investigation is not already in the public domain,
- an audit, review or investigation into the alleged contravention is ongoing or is likely to result in court proceedings,
- the outcomes of other similar matters have not been the subject of disclosure,
- the disclosure is prohibited by law, such as privacy and sentencing legislation,
- complaints that have arisen as a public interest disclosure,
- the information is the subject of a non-publication or suppression order,
- the information is the subject of legal privilege or public interest immunity,

- disclosure would prejudice the effective exercise of the NSW Electoral Commission's functions,
- disclosure would prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,
- disclosure would prejudice any court processes,
- disclosure would expose a person to a risk of harm or serious harassment or serious intimidation,
- objection to disclosure has been made by ICAC, NSW Police or any other investigative agency involved in a particular matter,
- objection to disclosure has been made by the Office of the Director of Public Prosecutions (ODPP) with respect to a particular matter, or
- the disclosure of information may affect the integrity and fair conduct of elections, particularly during a period of 6 months preceding a general election, or from when it is known that a by-election will be held.

5.31 Where an identified public interest would be served by a disclosure, and there are competing factors of the public interest on the side of confidentiality, information may or may not be disclosed, according to the balance of competing considerations. The exercise of determining where the public interest lies can sometimes involve weighing competing considerations that are finely balanced. In some circumstances, the Commission may decide to consult any person who might be adversely impacted by disclosure.

5.32 The NSW Electoral Commission may, in certain circumstances, delegate the function of disclosing information including the assessment of the public interest considerations to a member of staff of the NSW Electoral Commission.

5.33 The NSW Electoral Commission will not accept broadly framed requests for information concerning allegations or investigations about a particular party or individual that appear to be without foundation or requests for information the disclosure of which would be unlikely to be in the public interest.

6 Roles and responsibilities

Who	How
NSW Electoral Commission	• approves this policy and associated documents
Executive Director and Directors FDC & GC	• participates in the consultation process • determines policy instrument content and compliance with electoral funding laws • communicates policy development and revision with the Legal Unit and the Policy Coordinator
Policy Coordinator	• coordinates administration of the policy development and review process • manages the publication, amendment or archiving of approved policy instruments in the Policy Library
Manager, Regulatory Education and Policy	• develops or amends policy instruments as required • forwards approved policy instruments to the Policy Coordinator for registration and publication • forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation

7 Monitoring, evaluation and review of this policy

7.1 This policy will be reviewed every three years, or whenever it becomes apparent that a revision is needed.

8 Associated documents

8.1 Access of Information

8.2 Compliance and Enforcement Policy

8.3 Compliance and Enforcement Procedures

8.4 Compliance Management Policy

8.5 Governance Information (Public Access) Policy and Procedures

8.6 Media Protocol

8.7 NSW Electoral Commission Code of Conduct

8.8 Privacy Management Plan

8.9 Prosecution Policy

9 Relevant legislation

9.1 The NSW Electoral Commission monitors and enforces compliance with relevant legislation by political stakeholders. In doing so, the interests of other stakeholders are also considered.

The relevant legislation is the following:

- *The Electoral Act 2017* (NSW) ('Electoral Act')
- *the Electoral Funding Act 2018* ('EF Act')
- the *Lobbying of Government Officials Act 2011* (NSW) ('the Lobbying Act')
- the *Local Government Act 1993* (NSW) ('the LG Act');
- any Regulations made under the above four Acts;
- *Criminal Records Act 1991*, *Crimes Act 1900*; and
- *Government Information (Public Access) Act 2009* (the GIPA Act).

10 Stakeholders

10.1 Political stakeholders are:

- political parties
- candidates and groups for NSW State and local government elections
- NSW Parliament elected members and government Ministers

- NSW local government councillors
- third-party campaigners
- associated entities
- political donors
- third-party lobbyists
- individuals who access enrolment information and
- individuals who engage in election campaigns.

10.2 Other stakeholders include:

- the NSW public
- other electoral regulation bodies such as the Australian Electoral Commission
- other investigative or law enforcement agencies such as the Independent Commission Against Corruption and the NSW Police and
- supporting agencies such as the Crown Solicitor's Office.

11 Document control

Document management

Approved by:	**Signature:**
The NSW Electoral Commission	Signature Redacted Date approved: 3 March 2023
Executive Director Review:	**Signature:**
Rachel McCallum Director Funding, Disclosure & Compliance and General Counsel	Signature Redacted
Director Review:	**Signature:**
Hugo Bergeron Director Compliance	Signature Redacted

Publication details

Document Type:	☒ Policy ☐ Standard ☐ Procedure ☐ Guidelines	
Responsible Business Unit: Funding, Disclosure & Compliance and General Counsel	**Author:** Manager, Regulatory Education and Policy	**Publication:** ☐ Not for publication ☐ Internal catalogue ☐ Intranet only ☒ Intranet and website

Review Record

Date	Version	Revision description
01 July 2017	V 1.0	New Policy and Procedures
11 October 2017	V 1.1	Legislative change – *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017*
10 October 2018	V 1.2	Periodic review and update in response to post-implementation feedback. Legislative changes – *Electoral Act 2017* and *Electoral Funding Act 2018*
14 August 2019	V 1.3	Periodic review
21 February 2023	V 1.4	Legislative changes – *Electoral Act 2017*