

# Compliance and Enforcement Procedures

<b>1 Abbreviations and definitions</b>	<b>2</b>
Abbreviations	2
Definitions	2
<b>2 Introduction</b>	<b>4</b>
<b>3 Purpose</b>	<b>5</b>
<b>4 Scope</b>	<b>5</b>
<b>5 Compliance matters</b>	<b>5</b>
Identification of potential breach	6
Prioritisation of potential breaches	7
<b>6 Compliance and enforcement actions</b>	<b>14</b>
Communications with stakeholders	15
Education	15
Warning	16
Lobbyist Watch List	17
Cancelling of suspending lobbyist registration	17
Compliance agreements	17
Penalty notices	17
Supreme Court Order	18
Prosecution	18
Publishing enforcement actions and outcomes	18
<b>7 Roles and responsibilities</b>	<b>19</b>
<b>8 Monitoring, evaluation and review of this policy</b>	<b>19</b>
<b>9 Associated documents</b>	<b>19</b>
<b>10 Relevant legislation</b>	<b>20</b>
<b>11 Document control</b>	<b>20</b>
Document management	20
Publication details	21
Revision record	21

## 1 Abbreviations and definitions

### Abbreviations

<b>EF Act</b>	<i>Electoral Funding Act 2018 (NSW)</i>
<b>EF Regulation</b>	Electoral Funding Regulation 2018 (NSW)
<b>Electoral Act</b>	<i>Electoral Act 2017 (NSW)</i>
<b>Electoral Regulation</b>	Electoral Regulation 2018 (NSW)
<b>Electoral Commission agency</b>	NSW Electoral Commission staff agency
<b>Electoral Commissioner</b>	NSW Electoral Commissioner
<b>FDC</b>	Funding, Disclosure, Compliance and General Counsel Division of the NSW Electoral Commission
<b>LG Act</b>	<i>Local Government Act 1993 (NSW)</i>
<b>LG Regulation</b>	Local Government (General) Regulation 2005 (NSW)
<b>Lobbying Act</b>	<i>Lobbying of Government Officials Act 2011(NSW)</i>
<b>Lobbying Regulation</b>	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 Electoral 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 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 and an individual who makes a payment for electoral expenditure for the election 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 of 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 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 and a group of individuals who make a payment for electoral expenditure for the election 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** - 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).
- 1.11 **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 or entity that 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** - 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)<sup>1</sup>:
1. The *Electoral Funding Act 2018* ('*Electoral Funding Act*')  
Supported by the *Electoral Funding Regulation 2018* ('*Electoral Funding Regulation*')<sup>2</sup>
  2. The *Electoral Act 2017* ('*Electoral Act*')  
Supported by the *Electoral Regulation 2018* ('*Electoral Regulation*')<sup>3</sup>
  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

---

<sup>1</sup> 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.

<sup>2</sup> 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*.

<sup>3</sup> 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*.

law; and that the interactions between government officials and third-party lobbyists are transparent and accountable.

---

### 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

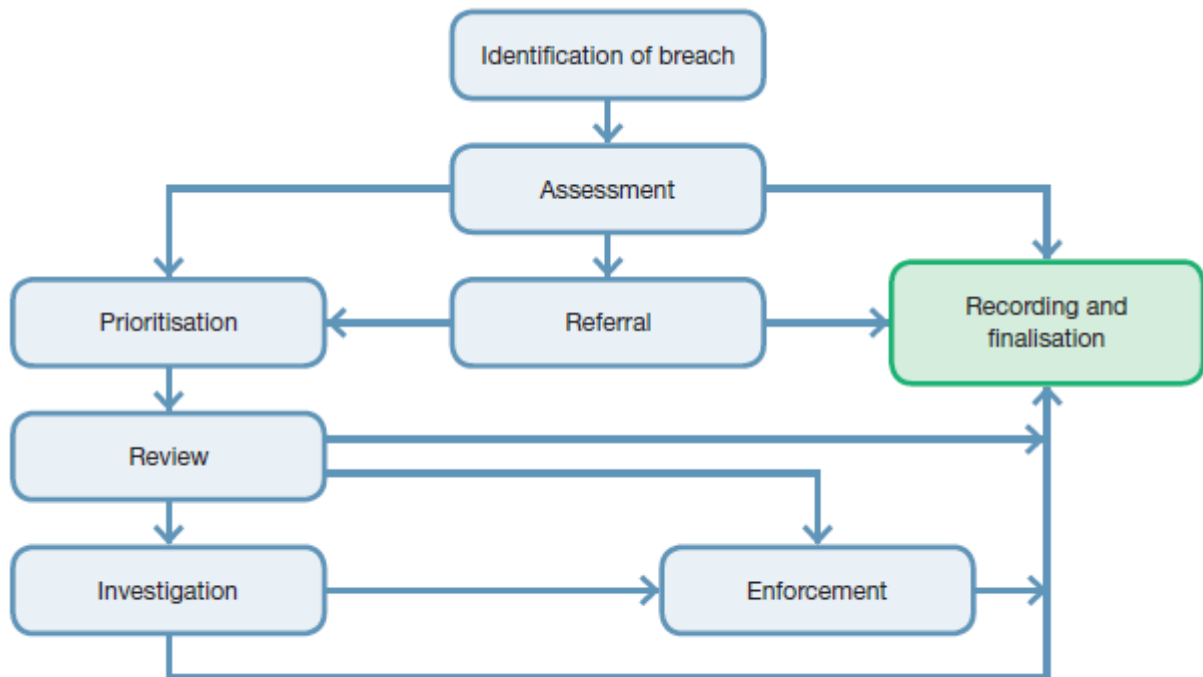
- 4.1 The Procedures apply to:
- the promotion of compliance by political participants with the requirements of the EF Act Electoral Act, Lobbying Act, the electoral provisions of the LG Act and related Regulations
  - the review and investigation of potential incidents of non-compliance
  - the NSW 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 occupier.

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 Except where authorised or permitted by law, the NSW Electoral Commission does not report on, or disclose, detailed information about compliance matters and enforcement actions.

5.41 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. An Inspector, or staff authorised by the Commission, may notify the subject(s) of any investigation of the outcome of the investigation and any enforcement actions that will be taken against them.

5.42 An Inspector, or staff authorised by the Commission, may inform the person who made an allegation that an investigation of the matter has concluded.

### **Investigation report**

5.43 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.

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

### **Enforcement**

- 5.45 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 6 below.

### **Recording and finalisation**

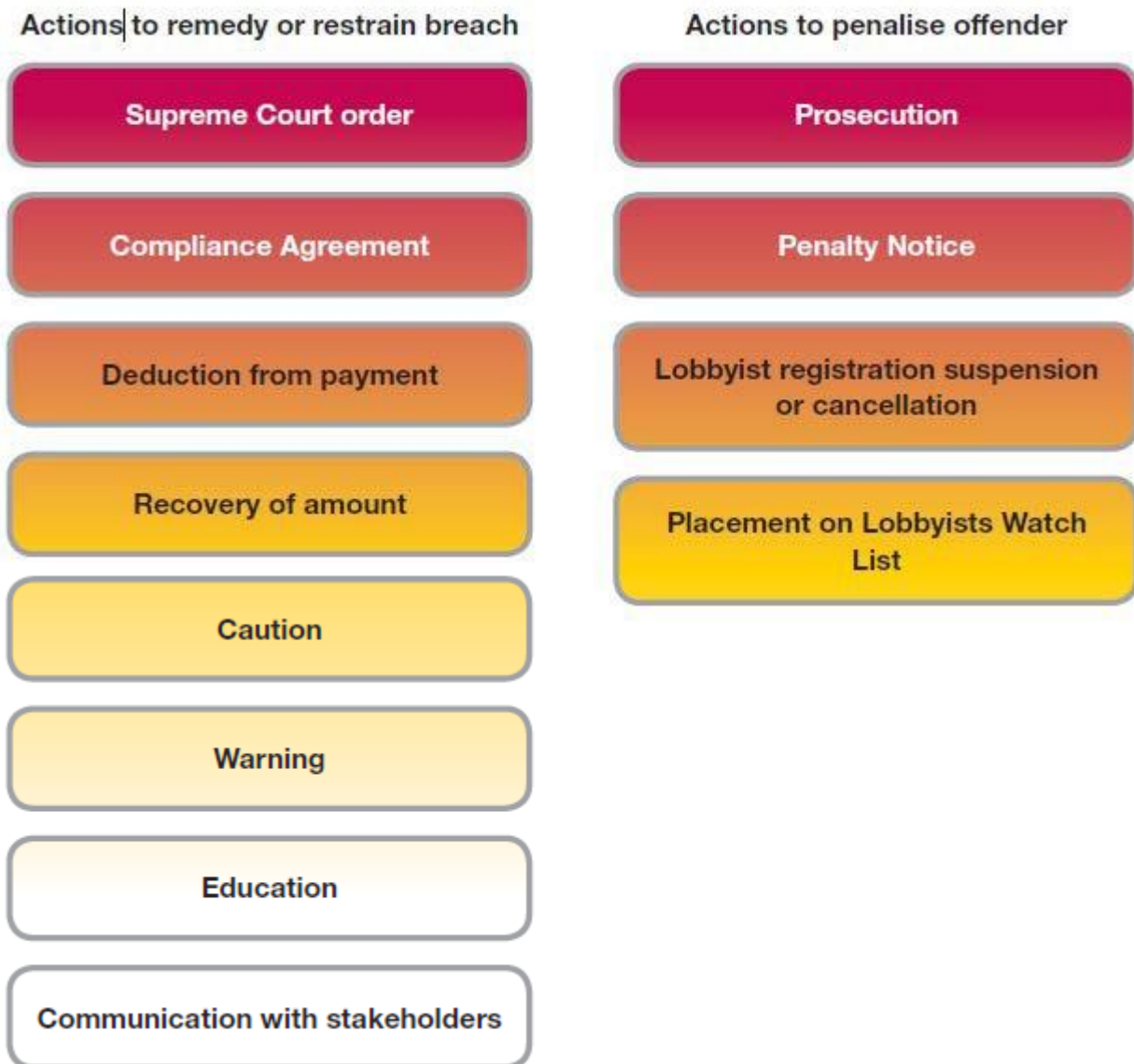
- 5.46 Any potential breach is recorded, even if it does not proceed to enforcement.
- 5.47 A matter is finalised when it is determined that no further action (such as enforcement or investigation) is necessary, or when the enforcement action has been completed.

---

## **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 Except when authorised or permitted by law, the NSW Electoral Commission does not report on, or disclose, detailed information about compliance matters and enforcement actions.

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 and Procedures.

## 7 Roles and responsibilities

Who	How
NSW Electoral Commission	<ul style="list-style-type: none"> <li>• approves this policy and associated documents</li> </ul>
Executive Director and Directors FDC & GC	<ul style="list-style-type: none"> <li>• participates in the consultation process</li> <li>• determines policy instrument content and compliance with electoral funding laws</li> <li>• communicates policy development and revision with the Legal Unit and the Policy Coordinator</li> </ul>
Policy Coordinator	<ul style="list-style-type: none"> <li>• coordinates administration of the policy development and review process</li> <li>• manages the publication, amendment or archiving of approved policy instruments in the Policy Library</li> </ul>
Senior Advisor Regulatory Advice and Analysis	<ul style="list-style-type: none"> <li>• develops or amends policy instruments as required</li> <li>• forwards approved policy instruments to the Policy Coordinator for registration and publication</li> <li>• forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation</li> </ul>

## 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

<b>Approved by:</b>	<b>Signature:</b>
The NSW Electoral Commission	<div style="border: 1px solid black; background-color: #f4a460; padding: 10px; width: fit-content; margin: 0 auto;">Signature Redacted</div> <p>Date approved: 23 August 2019</p>
<b>Executive Director Review:</b>	<b>Signature:</b>
Rachel McCallum Executive Director, Funding Disclosure & Compliance and General Counsel	<div style="border: 1px solid black; background-color: #f4a460; padding: 10px; width: fit-content; margin: 0 auto;">Signature Redacted</div>
<b>Director Review:</b>	<b>Signature:</b>
David Wildman Director Compliance	<div style="border: 1px solid black; background-color: #f4a460; padding: 10px; width: fit-content; margin: 0 auto;">Signature Redacted</div>

### Publication details

<b>Document Type:</b>	<input type="checkbox"/> Policy <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Procedure <input type="checkbox"/> Guidelines	
<b>Responsible Business Unit:</b> Funding, Disclosure and Compliance	<b>Author:</b> Senior Advisor, Regulatory Advice and Analysis	<b>Publication:</b> <input type="checkbox"/> Not for publication <input type="checkbox"/> Internal catalogue <input type="checkbox"/> Intranet only <input checked="" type="checkbox"/> 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 – <i>Electoral Act 2017, Electoral Funding Act 2018</i>
14 August 2019	V 1.4	Periodic review