

Annual Report 2012/13



		\$		Yen	
		2.57	2.60	0.86	
		2.45	2.66	0.83	
		2.90	2.93	0.90	
		3.17	3.20	0.99	
		3.42	3.45	1.08	
		3.64	3.67	1.16	
		3.83	3.86	1.28	
		3.99	4.01	1.38	
		4.12	4.15	1.48	
		4.24	4.27	1.58	

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Level 25 201 Kent Street, Sydney 2000.

Letter from the Chairperson



31 October 2013

The Hon Barry O'Farrell MP
Premier
Level 40
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Premier

In accordance with the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*, I submit for tabling in both Houses of Parliament the report on the operations of the Election Funding Authority of New South Wales for the financial year ended 30 June 2013.

As per your Memorandum M2013-09 the annual report was produced in-house eliminating any external production costs.

Yours sincerely

A handwritten signature in black ink that reads 'Colin Barry' with a flourish at the end.

Colin Barry
Chairperson

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Chairperson's Overview



Colin Barry – Chairperson

I am pleased to present the Annual Report for the Election Funding Authority (EFA) for the reporting period 2012–2013.

Major amendments to the *Election Funding, Expenditure and Disclosures Act 1981* (the Act) were made in early 2011 and took effect at the NSW State Election in March 2011 and, more recently, the Local Government Elections in September 2012.

The two major events brought their own challenges for election participants, especially challenges in managing campaign finances, record keeping and, ultimately, reporting and disclosure.

The EFA's initial focus was primarily on educating and informing stakeholders of their obligations and responsibilities. The EFA subsequently addressed those aspects where the intent of the legislation was not being met.

Feedback from face-to-face seminars, matters raised through enquiry channels and the learnings from compliance audits are all providing valuable information.

What is apparent is that State and Local Government elections are very different in character and it is clear that the current legislation does not satisfy a “one size fits all” approach.

There are encouraging signs that the recent review by the Joint Standing Committee on Electoral Matters of the *Election Funding, Expenditure and Disclosures Act 1981* and the *Parliamentary Electorates and Elections Act 1912* recognises this issue.

The EFA has focused its attention over the past year on the learnings since the legislative reforms. It is evident that continued and tailored education and information to stakeholders is critical to improved understanding and compliance.

Awareness amongst both experienced and prospective election participants is increasing as a direct consequence of strategies implemented by the EFA. However, this must be coupled with acknowledgement and acceptance of their lawful obligations and this will continue to be the focus of the EFA into the next year.

I would like to take this opportunity, on behalf of the members of the EFA, to thank all parties, groups and candidates as well as the staff of the EFA for their enthusiastic work, co-operation and support.

Yours sincerely

A handwritten signature in black ink that reads "Colin Barry". The signature is written in a cursive style with a long, horizontal flourish extending to the right.

Colin Barry
Chairperson

Charter



The Election Funding Authority of NSW (EFA) is established under the *Election Funding, Expenditure and Disclosures Act 1981* (the Act) and has four main purposes:

- to deal with applications for registration of candidates, groups, third-party campaigners and agents;
- to deal with claims for public funding in respect to parties and candidates for State election campaigns and, in the case of parties and independent Members of Parliament, for administrative and policy development expenses;
- to enforce the imposition of maximum amounts (or 'caps') on the value of political donations that might be lawfully accepted and the electoral communication expenditure

that might lawfully be incurred, and to enforce the prohibition on donations from a limited class of intending donors; and

- to enforce the requirement to disclose the source and the amount of all political donations received and the amount of electoral expenditure for State parliamentary and Local Government election campaigns.

The Act imposes a duty on the EFA to exercise its functions in a manner that is not unfairly biased against or in favour of any particular party, group, candidate or other person, body or organisation.

About Us

The Election Funding Authority of NSW (EFA) is a statutory body responsible for administering the provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (the Act) and the Election Funding, Expenditure and Disclosures Regulation 2009 (the Regulation).

The EFA's role includes:

- registering of candidates, groups of candidates, third-party campaigners and their agents for funding and disclosure purposes;
- receiving and processing disclosures of political donations and electoral expenditure lodged by or in respect to parties, elected members, candidates, groups, third-party campaigners and major political donors;
- receiving and processing claims for payment from the Election Campaigns Fund, the Administration Fund and the Policy Development Fund;
- publishing the disclosures of political donations and electoral expenditure on the EFA's website;
- seeking compliance with the requirements of the Act by election participants; and
- undertaking research in relation to public funding, political contributions, electoral expenditure and other matters relating to the Act.

Services Provided

The EFA is committed to the provision of quality services which meet stakeholder requirements and expectations which have regard to their legal obligations and responsibilities. The EFA seeks to perform its functions, activities and responsibilities impartially, effectively and efficiently.

Services include, but are not limited to:

- ensuring the lodgement and publishing of disclosures lodged in respect to elected members, candidates, groups, parties, third-party campaigners and political donors;
- receiving and processing applications for the registration of candidates, groups, third-party campaigners and agents for elections;
- administration of claims for public funding;
- conducting compliance audits of compliance with the requirements of Part 6 of the Act by a party, elected member, group or candidate; and
- education and information programmes for parties, elected members, candidates, groups, third-party campaigners, agents and political donors.

The EFA's Stakeholders include:

- the people and electors of NSW;
- NSW Parliament;
- Members of Parliament;
- political parties;
- candidates;
- groups of candidates;
- political donors;
- third-party campaigners;
- Local Government councillors and mayors;
- official and party agents; and
- the media.

Vision

The EFA's vision is to contribute to an impartial electoral system in NSW by providing transparent, efficient and unbiased administration of public funding, expenditure and disclosure legislation.

Values

- Integrity
- Impartiality
- Professionalism

Governance Overview

The EFA's work is governed by the following main pieces of legislation:

- *Election Funding, Expenditure and Disclosures Act 1981* (the Act);
- Election Funding, Expenditure and Disclosures Regulation 2009; and
- *Parliamentary Electorates and Elections Act 1912*.

Members

The EFA is constituted as a corporation with the corporate name of the Election Funding Authority of NSW.

The members of the EFA are:

- the Electoral Commissioner for NSW as Chairperson;
- a member appointed by the Governor on the nomination of the Premier;
- a member appointed by the Governor on the nomination of the Leader of the Opposition in the Legislative Assembly.

The Act also provides for:

- an alternate member appointed by the Governor on the nomination of the Premier; and
- an alternate member appointed by the Governor on the nomination of the Leader of the Opposition in the Legislative Assembly.

Appointed members' and alternate members' terms of office start six months after the return of the Writs for the previous State election and run until six months after the return of the Writs for the current election. Members and alternates may be re-appointed.

The NSW Electoral Commission (NSWEC) is the administrative unit through which the EFA undertakes its statutory responsibilities.

During the 2012–2013 year, the members of the EFA were:

- **Colin Barry**
Chairperson
- **Kirk S McKenzie**
Member appointed on the nomination of the Leader of the Opposition
- **Edward P Pickering**
Member appointed on the nomination of the Premier

The Year in Numbers

5,486 registrations of candidates, groups and third-party campaigners

996 participants undertook the official agent online training on the EFA's website

1,379 official agents registered

2,421 disclosures received

2,421 compliance audit and reviews conducted

169 compliance reviews commenced

33 investigations finalised and 3 investigations commenced

\$69,594 from the Election Campaigns Fund was distributed to 3 parties

\$1,011,068 from the Election Campaigns Fund was distributed to 77 candidates

\$8,026,423 from the Administration Fund was paid to 7 parties and 3 independent Members of Parliament

\$8,225 from the Policy Development Fund was paid to 2 parties

17 Candidate Information Seminars conducted throughout NSW

55 Elected Member Information Seminars conducted throughout NSW

8,753 email and telephone enquiries responded to

70,597 visitors to the EFA website, 21,342 of those being unique visitors

Corporate Plan

(1 July 2011 – 31 December 2012)

The EFA is responsible for administering the provisions of the Act and Regulations and undertakes this role with a view to meeting, to the greatest extent possible, stakeholder expectations.

However, results indicators are significantly impacted by influences beyond the control of the EFA. Many stakeholders contribute to the overall health and functioning of the NSW funding and disclosure system and all have major roles to play in making the system transparent and effective.

As a result of our services:

- parties, elected members, candidates, groups, third-party campaigners, political donors and agents are informed about their entitlements and responsibilities;

- State and Local Government candidates, groups, third-party campaigners and agents are registered for election funding, expenditure and disclosure purposes;
- eligible parties, elected members and candidates are paid their public funding entitlements in a timely manner;
- a robust compliance audit and enforcement regime is implemented; and
- information relating to political donation and electoral expenditure is made publicly available in an accessible and timely manner.

Table A: EFA Corporate Plan Results Indicators – Performance

Results Indicators	Target	30/06/2009	31/12/2009	30/06/2010	30/6/2011	30/6/2012
Disclosures required to be lodged		2,183	2,259	2,371	4,644	2,493
Disclosures actually lodged by the due date	95%	86%	87%	79%	81%	84%
Disclosures lodged after the due date*		8%	7%	15%	11%	13%
Disclosures not lodged	5%	6%	6%	6%	8%	3%
Timeliness of funding and disclosure information published on our website	Within 2 months of due date	100%	100%	100%	100%	100%

*includes those lodged by the date approved for an extension of the due date

This reporting year has seen an increase in the number of disclosures actually lodged by the due date with just under 84 per cent of disclosures being lodged by 24 September 2012. This was an increase of three per cent from the previous reporting year. Some 13 per cent of disclosures were lodged late (including those lodged by the date approved for an extension of the due date) leaving just three per cent of disclosures not lodged.

The EFA will continue to work with our stakeholders with a view to achieving a robust funding and disclosure system in NSW and consequently giving credibility to a strong democratic process.

Objectives

The objective for the reporting year was to continue to develop and mature the overall public funding and disclosure regime.

This is to be achieved through the EFA striving to ensure the delivery of high quality services which are supported by excellence in people, processes and technology. The challenges for the last year were to continue to ensure the EFA meets its statutory obligations and delivers services consistent with the needs of all stakeholders. This included:

- The overall continued development of management systems and processes introduced to put into effect the amendments to the *Election Funding, Expenditure and Disclosures Act 1981* which commenced on 1 January 2011 and further amendments to the Act on 9 March 2012.
- The further development and review of a compliance audit and enforcement program.
- Pursuing the procurement of a computerised application to support the business processes associated with the administration of the *Election Funding, Expenditure and Disclosures Act 1981*.
- The development and implementation of strategies to inform, educate, assist and support stakeholders to manage campaign finances consistent with legislative requirements with particular focus on the Local Government Elections 2012.
- To continue to strive to ensure best practice is being achieved in the administration of funding, expenditure, disclosure, audit and compliance matters including monitoring changes and innovations across Australian and international funding and disclosure jurisdictions.

Future Directions

Our challenge for the next reporting year is to continuously review our services with a focus on the following:

- A regime for ongoing review, assessment and development of management and administrative systems and processes.
- Development and implementation of a computerised application to support business processes.
- Continued innovation in the identification and development of strategies to educate, assist and support stakeholders to manage campaign finances consistent with legislative requirements and, in particular, their reporting obligations.
- To continue to strive to ensure best practice is being achieved in the overall administration of funding, expenditure, disclosure, audit and compliance matters.

Joint Standing Committee on Electoral Matters (JSCEM)

On 3 April 2012 an inquiry was established for the JSCEM to comprehensively review the *Parliamentary Electorates and Elections Act 1912* (excluding Part 2) and the *Election Funding, Expenditure and Disclosures Act 1981*.

The NSW Electoral Commission engaged Dr Joo-Cheong Tham, Associate Professor, Melbourne Law School, to submit an independent report to the JSCEM to assist with this inquiry.

Subsequently in November 2012 Dr Tham submitted a report to the JSCEM entitled 'Establishing a Sustainable Framework for Election Funding and Spending Laws in NSW'.

On 9 May 2013, the JSCEM tabled its Report on the review of electoral legislation in NSW. The Report made 26 Recommendations and 1 Finding.

Review of Operations

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A blurred background image of a financial table. The table has columns labeled 'Bid', 'Ask', 'US \$', and 'Yen'. The data is organized in rows, with numerical values in each cell. The text is out of focus, but the structure of the table is visible.

Registration

Performance

- Processed 4,597 registrations for candidates
- Processed 887 registrations for groups
- Processed 1,379 registrations for official agents
- Processed 2 registrations for third-party campaigners

Candidates and Groups

Persons intending to stand as a candidate or as a group of candidates at a Local Government election or by-election are required to register with the EFA and appoint an official agent before they accept any political donations or incur any electoral expenditure for the election.

Similarly, persons intending to stand as a candidate or as a group of candidates for State elections or by-elections are required to register with the EFA and appoint an official agent (unless the candidate or group has an ex officio official agent) before they accept political donations or incur any electoral expenditure for the election.

During the reporting year the EFA processed a total of 4,597 candidate registrations and a total of 887 group registrations.

Official and Party Agents

The appointed official agents of candidates, groups, third-party campaigners and elected members must be registered with the EFA.

A party must appoint a party agent. The party agent must be registered with the EFA.

Official and party agents are responsible for:

- managing political donations received and electoral expenditure incurred, including operation of the campaign account (where required);
- keeping proper records of political donations received and electoral expenditure incurred;
- lodging disclosures of political donations received and electoral expenditure incurred; and
- lodging claims for public funding, when applicable.

Prospective official and party agents who are not otherwise exempt are required to complete the Official Agent Online Training which addresses the key processes and responsibilities inherent in complying with the provisions of the Act and Regulation.

During the reporting year, 996 people successfully completed the agent online training and a total of 1,379 official agents registered with the EFA. The 1,379 official agents registered with the EFA were appointed by four parties, 4,209 candidates and 841 groups of candidates.

There were 41 party agents registered with the EFA at the time disclosures became due for the period ending 30 June 2013.



Third-party Campaigners

Persons and entities (other than parties, elected members, candidates and groups of candidates) who incur electoral communication expenditure during a capped expenditure period that exceeds \$2,000 in total are considered to be third-party campaigners and are required to register with the EFA and appoint an official agent.

During the reporting year, a capped expenditure period applied to the Sydney, Heffron and Northern Tablelands State By-elections held on 25 August 2012, 27 October 2012 and 25 May 2013 respectively. The EFA received two registrations of third-party campaigners for the Heffron and Northern Tablelands State By-elections.

Registers

The EFA maintains the following registers for each election:

- Register of Candidates (which includes persons associated with a group);
- Register of Party Agents;
- Register of Official Agents; and
- Register of Third-party Campaigners.

The Register of Candidates lists the details of persons who have registered as a candidate with the EFA for an election or by-election, including their association, if any, with a group.

The Register of Official Agents lists the details of those persons who have been appointed as an official agent by candidates or groups for an election or by-election.

The Register of Party Agents lists the details of those persons who have been appointed as the party agent of a political party.

All registers are available for public inspection at the office of the EFA by appointment.

Political parties applying for registration under the *Parliamentary Electorates and Elections Act 1912* or *Local Government Act 1993* are required to state in their application whether the party also wishes to be registered for the purposes of the *Election Funding, Expenditure and Disclosures Act 1981*. Only parties registered for State purposes are eligible to receive public funding for campaign, administration and policy development expenditure (should that party fulfil the other criteria necessary to receive funding).

Disclosure

Performance

- Processed 1,942 candidate and elected member disclosures
- Processed 363 donor disclosures
- Processed 50 party disclosures
- Processed 0 third-party campaigner disclosures
- Processed 66 group disclosures

Disclosure Requirements

The Act requires disclosure of political donations received and electoral expenditure incurred by parties, elected members, groups, candidates and third-party campaigners for the relevant disclosure period. This report covers the 12 month disclosure period ending 30 June 2012.

Disclosure Period Ending 30 June 2012

Disclosures for the 12 month period ending 30 June 2012 were due on 22 October 2012 for major political donors (except those who were also third-party campaigners), and 24 September 2012 for all parties, candidates, groups, third-party campaigners and elected members.

The EFA receipted and processed 2,421 disclosures for the period.

Tables B and C are summary reports of donations received and expenditure incurred by registered political parties for this period. (All figures are correct at the time of writing this report.) Amendments to disclosures received and processed by the EFA after this date will change the final disclosure figures for affected parties.

Copies of disclosures lodged for the disclosure period ending 30 June 2012 can be found on the EFA's website – www.efa.nsw.gov.au

Table B: Summary Report of Donations Received and Expenditure Incurred by State Registered Parties for the Reporting Period 01/07/2011 – 30/06/2012

Party Name	Total Donations	Total Expenditure
Australian Labor Party (NSW Branch)	\$866,895.52	\$1,116,024.05
Building Australia Party	\$1,036.00	\$9,555.35
Christian Democratic Party (Fred Nile Group)	\$157,474.59	\$18,405.00
Country Labor Party	\$33,800	\$8,780.00
Family First NSW Inc	\$1,065.00	\$0.00
Liberal Party of Australia New South Wales Division	\$1,250,154.95	\$643,973.63
National Party of Australia – NSW	\$420,866.74	\$146,565.37
No Parking Meters Party	\$11,300.00	\$4,062.00
Outdoor Recreation Party	\$30.00	\$229.35
Save Our State	\$2,899.04	\$0.00
Shooters and Fishers Party	\$10,231.00	\$66,887.00
Socialist Alliance	\$3,594.90	\$0.00
Socialist Equality Party	\$0.00	\$2,090.00
The Fishing Party	\$27.00	\$7.00
The Greens	\$245,814.30	\$49,644.00
Unity Party	\$7,380.00	\$2,339.00
Totals	\$3,012,569.04	\$2,068,561.75

Table C: Summary Report of Donations Received and Expenditure Incurred by Local Government Registered Parties for the Reporting Period 01/07/2011 – 30/06/2012

Party Name	Total Donations	Total Expenditure
Albury Citizens and Ratepayers Movement	\$286.00	\$0.00
Australia First Party (NSW) Incorporated (Councils)	\$13,080.00	\$3,710.90
Australian Protectionist Party	\$5,148.44	\$4,087.39
Australian Sex Party NSW	\$2,836.50	\$0.00
Bob Thompson's Independent Team	\$6,000.00	\$55.00
Burwood Community Voice	\$1,353.00	\$750.00
Clover Moore Independent Team	\$84,725.00	\$51,670.76
Community First Team	\$0.00	\$0.00
Community Development "Environment" Save Campbelltown Koalas	\$1,500.00	\$300.00
Eurobodalla First	\$0.00	\$0.00
Eurobodalla Ratepayers Action	\$0.00	\$0.00
Help End Marijuana Prohibition (HEMP) Party	\$0.00	\$0.00
Holroyd Independents	\$0.00	\$0.00
Keep Coogee a Village	\$0.00	\$0.00
Kogarah Residents' Association	\$0.00	\$0.00
Liberal Democratic Party	\$165.00	\$0.00
Liverpool Community Independents Team	\$14,886.00	\$6,542.65
Lorraine Wearne Independents	\$4,140.00	\$3,913.00
Manly Independents – Putting Residents First	\$0.00	\$0.00
Our Sustainable Future	\$800.00	\$0.00
Parramatta Better Local Government Party	\$495.00	\$495.00
Residents Action Group for Auburn Area	\$1,910.00	\$105.00
Residents First Woollahra	\$5,200.00	\$1,359.76
Residents for Mosman	\$14,000.00	\$6,464.59
Save Tuggerah Lakes	\$10,250.00	\$0.00
Serving Mosman	\$8,115.70	\$3,834.10
Shire Watch Independents	\$4,549.00	\$1,170.00
Shire Wide Action Group	\$0.00	\$0.00
Shoalhaven Independents Group	\$6.00	\$3,097.72
The Living Sydney Team	\$11,600.34	\$8,191.59
The Parramatta Independents	\$0.00	\$0.00
Totally Locally Committed Party	\$28,878.60	\$700.00
Woodville Independents	\$0.00	\$0.00
Your Warringah	\$180.00	\$117.50
Totals	\$220,104.58	\$96,564.96

Audit

Requirement

The Election Funding, Expenditure and Disclosures Regulation 2009 provides that the EFA may conduct a compliance audit of compliance with the requirements of Part 6 of the Act by a party, elected member, group or candidate.

Purpose

The primary purpose of these compliance audits is to identify matters of non-compliance with Part 6 of the Act. This is substantially achieved through the audit of disclosures lodged by party agents and official agents and having particular regard to the following (the relevant sections of the Act are shown):

- the manner in which the disclosure is lodged (sections 88 – 95);
- political donation caps (sections 95A – 95D);
- electoral communication expenditure caps (sections 95E – 95J);
- campaign accounts (section 96B);
- prohibitions on donations (sections 96D – 96G); and
- requirements with regard to Audit Certificates (s. 96K).

The compliance audits identify any matters of non-compliance with political donation, electoral expenditure and campaign financial management obligations and responsibilities and assist with any subsequent compliance or enforcement action. The information gained from these audits also contributes to educational and instructional strategies and ultimately the compliance audits are intended to promote transparency, accountability and integrity of election campaigns.

Scope

The scope of each compliance audit includes those matters provided for in Part 6 of the Act, including political donations and electoral expenditure. The audit will also examine all supporting documentation that is lodged with party, group, elected member and candidate disclosures.

Party disclosures are required to be accompanied by audited Annual Financial Statements as well as accounting and bank records, in a form approved by the EFA, and these also form part of the compliance audit.

The compliance audit includes (but is not necessarily limited to) the following:

- verifying compliance with political donation and electoral expenditure caps, recording and vouching requirements;
- verifying electoral communication expenditure claimed is within the scope and timeframe of the claim;
- verifying that donors are on the roll of electors for Federal, State or Local Government elections;
- verifying whether a campaign account was required to be established; and
- reconciling electoral communication expenditure disclosures with the supporting documentation.

Verification of compliance for certain aspects of the disclosure process is also achieved by reconciling data against other sources such as donor disclosure information.

Audit Process

The compliance audit regime includes:

- documented audit policy, systems and procedures (the Audit Policy is publicly available on the EFA website);
- standardised documentation including:
 - audit plans;
 - audit worksheets;
 - audit checklists (developed for stakeholder categories of parties, groups, candidates, elected members and third-party campaigners);
 - letter templates; and
 - audit reports.
- training of temporary audit team members;
- performing the actual compliance audits;
- communicating non-compliance matters with stakeholders (party and official agents);
- verification of amounts claimed for reimbursement by eligible parties and candidates from the Election Campaigns Fund;
- preparing audit reports for consideration by the Compliance Team; and
- issuing letters to stakeholders at the end of the compliance audit process.

For the disclosure period ending 30 June 2012, the EFA issued a formal audit plan to parties in June 2012.

Disclosures

All party, elected member, group and candidate disclosures for the period ending 30 June 2012 were subject to a compliance audit in accordance with the EFA's Audit Policy as well as reviews of disclosures made by political donors.

A total of 2,421 disclosures were examined in relation to the reporting period ending 30 June 2012.

Table D: Summary of Disclosures Audited and Reviewed

Compliance Audits	Total Disclosures Audited & Reviewed
State Parties	16
State Members of Parliament	135
State Candidates at By-elections	8
Local Government Parties	34
Local Government Groups	66
Local Government Councillors	1,429
Local Government Candidates	370
Total Audits	2,058
Reviews	
Third-party Campaigners	0
Political Donors	363
Total Reviews	363
TOTAL	2,421

The figures provided above relate to all stakeholders with an obligation to make a disclosure for the reporting period ending 30 June 2012. However, at the time of preparing this report, a number of disclosures had not been lodged and will be subject to a compliance audit on receipt.

The compliance audits are generally dealt with on a 'first received' basis although disclosures received from parties are dealt with separately. Local Government candidate disclosures are audited jointly with any disclosure received from a group of which the candidate was a member to ensure all the financial activity has been appropriately recorded.

Political donor disclosures received are reconciled to the relevant entity receiving the donation.

Audit continued

Outcomes

Each compliance audit undertaken results in an audit report being prepared and referred to the Compliance Team for consideration in terms of the EFA's Compliance Policy.

Conclusion

Letters were sent to all party and official agents in June 2013 notifying them that the compliance audit had been completed.

Compliance Reviews – Claims for Public Funding

Public funding schemes in NSW appropriate public money to reimburse eligible registered political parties and candidates for certain electoral expenditure incurred at a State election or by-election up to limits specified in the Act.

There is no public funding for Local Government elections in NSW, Local Government parties or for elected members of local councils.

There are three funds from which State parties, candidates and elected members can claim public funding:

These funds are:

- the Election Campaigns Fund
- the Administration Fund
- the Policy Development Fund

The Election Campaigns Fund provides public funding to eligible parties and candidates for electoral communication expenditure incurred during the capped expenditure period at a State election or by-election.

The Administration Fund distributes public funds to eligible parties and independent Members of Parliament in respect of their annual administrative expenditure. A party that is not eligible for payment from the Administration Fund may claim funding from the Policy Development Fund in respect of their annual expenditure on policy development.

Claims for payment received in respect to claims for public funding are assessed through an audit process to ensure they meet the requirements of claims for payment made under Part 5 of the Act and in accordance with the EFA guidelines.

Payment of claims for public funding are dependent on the agents of eligible parties and candidates providing the required supporting documentation in order for the expenditure claimed to be verified and assessed as eligible for reimbursement.

Election Campaigns Fund

NSW State Election 2011

There were no additional claims for public funding from the Election Campaigns Fund received from parties for the NSW State Election 2011.

However, an audit was undertaken of substantiation (vouching) of electoral communication expenses included in claims by parties for the NSW State Election 2011, but not previously paid, during the reporting period.

There were no additional claims for public funding from the Election Campaigns Fund received from candidates for the NSW State Election 2011.

An audit was also undertaken of substantiation (vouching) of electoral communication expenses included in claims by candidates for the NSW State Election 2011, but not previously paid, during the reporting period.

State By-elections

There were seven claims for public funding from the Elections Campaigns Fund by candidates in connection with the Clarence, Heffron and Sydney State By-elections.

Eight compliance reviews were undertaken of substantiation (vouching) of electoral communication expenses included in these claims during the reporting period.

Administration Fund

During the reporting period an assessment was undertaken of 13 claims for public funding from the Administration Fund.

Policy Development Fund

During the reporting year an assessment was undertaken of two claims for public funding from the Policy Development Fund.



Compliance

The compliance function of the EFA includes:

- the preparation and implementation of policy, guidelines, procedures and processes associated with the Act and Regulation;
- consideration of audit reports;
- the undertaking of investigations;
- taking action as provided for in the EFA's Compliance Policy in respect to instances where there has been an apparent failure to comply with the Act or Regulation; and
- the preparation and adjustment of monetary caps and guidelines under section 24 of the Act.

The EFA's Compliance Policy provides a framework within which decisions can be made in respect to the options and selection of enforcement action where any apparent breach of the Act or Regulation is identified.

Overview

The Compliance Policy provides for a preliminary review and assessment of each matter of apparent non-compliance. This is not an investigation, but investigation may be one of the courses of action recommended at the conclusion of a preliminary review and assessment.

In circumstances where the preliminary review and assessment provides sufficient information to establish whether or not a breach has occurred, it may be determined that no investigation or enforcement action is required; investigation is necessary; or no investigation is required and proceedings for enforcement may be initiated.

If either a preliminary review and assessment or an investigation establishes that a breach has occurred, the Compliance Policy provides a range of enforcement options. They include (in ascending order of severity):

1. A written warning or advice of breach;
2. Penalty notice;
3. Recovery of monetary amount;
4. Compliance agreements;
5. Supreme Court injunction; and
6. Prosecution.

From 1 January 2011 the Act has empowered the EFA to issue penalty notices for certain offences against the Act or the Regulation. Penalty notices are used as a tool for maximising compliance with disclosure obligations without resorting to court action.

The EFA may become aware of alleged breaches of the Act and the Regulation through, but not limited to, the registration disclosure or audit processes; complaints made by members of the public; information received through media reports; and complaints or matters referred to the EFA by other government agencies.

Preliminary Reviews and Assessments

During the reporting period, the EFA commenced 169 preliminary reviews and assessments. They resulted in the following recommendations:

- No further action (81);
- Issue warning letter (35);
- Issue penalty notice (35); and
- Commence investigation (6).

At the time of writing, the remaining 12 preliminary reviews and assessments are still in progress.

As a result of the 35 penalty notice decisions made in the reporting period, 32 penalty notices were issued in the period (see Enforcement Powers below). The remaining three penalty notices will be issued in the period ending 30 June 2014.

Investigations

In the year ending 30 June 2013, the EFA commenced four investigations. Three of those investigations resulted from preliminary reviews and assessments which were finalised in the reporting period. Each of these three investigations were not finalised as at the end of the reporting period. One investigation which was commenced in the reporting period arose from a preliminary review and assessment which was finalised in the period ending 30 June 2012. It was finalised with no further action required.

With respect to the three remaining preliminary reviews and assessments which were finalised during the reporting period and which resulted in a recommendation of an investigation those investigations had not commenced as at the end of the reporting period.

During the period, 33 investigations (which commenced in previous disclosure periods) were finalised. They resulted in the following outcomes:

- No further action (26);
- Issue warning letter (5); and
- Recovery of monetary amount (2).

Enforcement powers used

The following information indicates the use by the EFA of its enforcement powers under the Act during the reporting period:

- 27 notices issued pursuant to section 110 and 110A;
- 0 compliance agreements made pursuant to section 110B;
- 0 proceedings commenced pursuant to section 111;
- 33 penalty notices issued pursuant to section 111A; and
- 2 recovery of monetary amount pursuant to section 96J.

Penalty notices issued

In accordance with section 111A(3) of the Act, a penalty notice issued by the EFA is declared to be a penalty notice for the purposes of the *Fines Act 1996*.

All penalty notices issued during the reporting period were in respect of the offence under section 96H (1) of the Act (failing to lodge a declaration of political donations and electoral expenditure within the required time). Of the 33 penalty notices issued:

- 10 notices were issued to official agents of candidates;
- 1 notice was issued to an official agent of a group of candidates;
- 21 notices were issued to the official agents of elected members; and
- 1 notice was issued to the party agent of one registered party.

Section 24A of the *Fines Act 1996* provides that penalty notice recipients may apply for a review of the decision to issue a penalty notice. In the reporting period, the EFA received 11 applications for review of decisions to issue penalty notices. The following determinations were reached:

- Withdraw penalty notice (3);
- Replace penalty notice with a caution (5); and
- Penalty notice to stand (3).

For further information about penalty notices, penalty notice reviews, and review determinations, see the EFA's Penalty Notice Guidelines and Caution Guidelines in the Appendices section of this report. These guidelines support the Compliance Policy of the EFA.

Compliance continued

Recovery of monetary amounts

Pursuant to section 96J of the Act, if a person accepts a political donation, loan or indirect campaign contribution that is unlawful because of Part 6 of the Act, an amount equal to the amount or value of the donation, loan or contribution (or double that amount if the person knew that it was unlawful) is payable by that person to the State and may be recovered as a debt due to the State.

During the reporting period the EFA recovered two unlawful donations pursuant to section 96J of the Act as follows:

- \$2,000 from a registered party with respect to an unlawful donation accepted by the party during the disclosure period ending 30 June 2011. The donation was accepted by the party from a prohibited donor.
- \$2,500 from the official agent of an endorsed candidate with respect to an unlawful donation accepted by the candidate during the disclosure period ending 30 June 2011. The donation exceeded the cap on political donations made to a candidate.

Prosecutions

During the reporting period, no prosecutions were commenced. Of prosecutions commenced in previous periods, two proceedings were finalised.

One was finalised in the NSW Supreme Court against a person with respect to the offence of failing to lodge a declaration of political donations and electoral expenditure within the time required for the disclosure period ending 31 December 2008. A plea of guilty was entered by the defendant. The defendant made submissions as to sentencing. The defendant was convicted of the offence under section 96H(1) of the Act, and fined \$6,000 with 50 per cent payable to the prosecutor.

The other was finalised in the NSW Local Court against a person with respect to the offence of failing to lodge a declaration of political donations and electoral expenditure within the time required for the disclosure period ending 30 June 2010. The defendant was conditionally discharged under section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999*. The *Criminal Records Act 1991* prohibits, without lawful authority, the disclosure of any information in this case.

Monetary Caps

Political Donation Caps

Caps on political donations (except in relation to Local Government elections and elected members of local councils) came into effect on 1 January 2011.

For the period 1 July 2012 to 30 June 2013 the political donation caps were as follows.

Table E: Political Donation Cap Amounts

Capped amount	Made to or for the benefit of
\$5,300	A registered party
\$2,200	An unregistered party
\$2,200	An elected member
\$5,300	A group of candidates for the Legislative Council
\$2,200	A candidate
\$2,200	A third-party campaigner

The capped amounts referred to above are adjusted for inflation each financial year.

Electoral Communication Expenditure Caps

Electoral communication expenditure is capped during the capped expenditure period for a State election.

During the reporting period by-elections were held in three State electoral districts.

The capped expenditure period for each by-election commenced on the day the writ was issued for each by-election and ended on election day for each by-election as follows.

Table F: Capped expenditure for by-elections held in the reporting period

State by-election	Capped expenditure period
Heffron	23 July 2012 to 25 August 2012
Sydney	8 October 2012 to 27 October 2012
Northern Tablelands	22 April 2013 to 25 May 2013

The caps on electoral communication expenditure that applied for these by-elections were adjusted for inflation for the four year period commencing 27 March 2011. The adjusted amounts for the by-elections held during the reporting period were as follows.

Table G: Electoral Communication Expenditure Cap Amounts from 27 March 2011

Electoral communication expenditure incurred by:	Cap on electoral communication expenditure during the capped expenditure period
A candidate for a Legislative Assembly by-election	\$222,300
A third-party campaigner for a by-election	\$22,300

Section 24 guidelines issued

Section 24 of the Act empowers the EFA to determine and issue guidelines, not inconsistent with the Act or the Regulation, for or with respect to any matters dealt with in the Act (except in certain parts of the Act).

During the reporting period, two section 24 guidelines were determined and issued by the EFA, as follows:

EFA Guideline 14:

The 'generally prevailing interest rate for a loan of that kind' to be a nominal rate based on the cash rate of the Reserve Bank and would be set at the rate of 5% per annum commencing 1 January 2013, which would be reviewed on a calendar year basis.

Determined: 26/04/2013

Relevant legislative provision: Section 85 (3B)

Compliance continued



EFA Guideline 15:

If a political entity owns or operates a publication, and sells advertising space in that publication, the amount paid by an advertiser for advertising space up to an amount that is equal to the cost price is not considered to be a donation. If the amount paid by an advertiser for advertising space exceeds the cost price of that advertising space, the excess amount is a political donation.

The provisions of Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 apply to such political donations.

For the purposes of this guideline, the following definitions apply:

- “political entity” means a party, elected member, candidate or group of candidates.
- “cost price” means the relative apportionment of the direct cost of production and distribution of a particular advertising space
- “electoral roll” means the roll of electors for federal elections, State elections or Local Government elections.

Determined: 28/05/2013

Relevant legislative provision: Section 85

Legislative Amendments

During the reporting period there were a number of changes to the Act. The changes were made through the following amending Acts:

Statute Law (Miscellaneous Provisions) Act (No 2) 2012. Assented to 21 November 2012;

Election Funding, Expenditure and Disclosures Further Amendment Act 2012. Assented to 26 November 2012; and

Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013. Assented to 3 April 2013.

Statute Law (Miscellaneous Provisions) Act (No 2) 2012

The changes to the Act included:

- Provisions to enable the EFA to designate an official agent for an elected member or third-party campaigner if an official agent is not otherwise appointed or designated for the member or campaigner.
- Provisions consequential on amendments enacted in 2010. In particular, to remove a note that is no longer accurate under the definition of “official agent” in section 4(1) of the Act, to update cross-references in section 47 of the Act to Part 4 Division 4 of the Act, to update a heading of Part 6 Division 4A of the Act and to update a note under section 96GA of the Act.

Election Funding, Expenditure and Disclosures Further Amendment Act 2012

The changes to the Act included:

- Provisions that mean a party that fails to comply with the obligations under section 41 of the Act (e.g. to appoint a party agent) commits an offence against that section.
- Provisions to ensure that a person, who is required by section 91 (5) of the Act to make a declaration relating to political donations or electoral expenditure for a relevant disclosure period even if the person has no disclosures to make, can be prosecuted for an offence.
- The amendment relating to the lodgement of “nil” declarations applied for the disclosure period ending 30 June 2012 which were required to be lodged with the EFA no later than 24 December 2012.

Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Act 2013

The changes to the Act included:

- Provisions to increase the amount, for which registered parties with elected members of State Parliament, and elected members of State Parliament who are not members of registered parties, are eligible to be paid by the EFA from the Administration Fund.
- Provisions to enable the quarterly payments of amounts from the Administration Fund.
- Provisions to require payments from the Administration Fund or the Policy Development Fund for expenditure incurred to be made by the EFA within six weeks after the claim is made.

Public Funding

Public funding is available to reimburse eligible registered political parties, candidates and elected members for certain expenditure incurred up to limits specified in the Act.

There is no public funding for Local Government elections in NSW, Local Government parties or for elected members of local councils.

The Act imposes a duty on the EFA to exercise its public funding functions in a manner that is not biased against or in favour of any particular party, candidate, elected member or other person, body or organisation.

There are three funds from which State parties, candidates, and elected members can claim public funding:

These funds are:

- the Election Campaigns Fund
- the Administration Fund
- the Policy Development Fund

The Election Campaigns Fund provides public funding to eligible parties and candidates for electoral communication expenditure incurred at a State election or by-election.

The Administration Fund distributes public funds to eligible parties and independent members of Parliament in respect of their annual administrative expenditure. A party that is not eligible for payment from the Administration Fund may claim funding from the Policy Development Fund in respect of their annual expenditure on policy development.

During the reporting period the EFA published the following policy documents with respect to public funding:

- Election Campaigns Fund Policy
- Administration Fund Policy
- Policy Development Fund Policy

The policy documents are intended to operate as a plain English guide to the three funds. They cover the purpose of each fund, who is eligible for payments, making a claim for payment, how the EFA processes a claim and what types of expenditure may be included in a claim. These policy documents are in the Appendices section of this report.

Election Campaigns Fund

The EFA maintains the Election Campaigns Fund in respect of State elections and by-elections.

During the reporting period payments were approved by the EFA from the Election Campaigns Fund in respect of the following elections:

- NSW State Election 2011
- Clarence State By-election 19 November 2011
- Heffron State By-election 25 August 2012
- Sydney State By-election 27 October 2012

On 25 May 2013 a State by-election was held for the electoral district of Northern Tablelands. During the reporting period no payments were made from the Election Campaigns Fund in respect of the by-election.

NSW State Election 2011

Payments in respect of parties

During the reporting period the EFA approved payments to the following parties in respect of electoral communication expenditure incurred for the NSW State Election 2011 as follows.

Table H: Payments made from the Election Campaigns Fund to parties for the NSW State Election 2011

Party	Maximum funding entitlement	Payments made during the previous reporting period	Payments made during the reporting period	Total amount paid
Australian Labor Party (NSW Branch)	\$6,600,000.00	\$6,492,928.31	\$26,387.40	\$6,519,315.71
Liberal Party of Australia NSW Division	\$5,475,000.00	\$4,737,567.12	\$42,103.74	\$4,779,670.86
The Greens	\$6,975,000.00	\$1,025,327.70	\$1,103.07	\$1,026,430.77
Total amount paid			\$69,594.21	

Payments in respect of candidates

During the reporting period the EFA approved payments to the following candidates in respect of electoral communication expenditure incurred for the NSW State Election 2011 as follows.

Table I: Payments made from the Election Campaigns Fund to candidates for the NSW State Election 2011

Candidate	Electoral District	Party Affiliation	Maximum funding entitlement	Payments made during the previous reporting period	Payments made during the reporting period	Total amount paid
Alley, Peter	Port Macquarie	Labor	\$30,000.00	\$200.00	\$11,275.01	\$11,475.01
Amery, Richard	Mount Druitt	Labor	\$30,000.00	\$15,905.29	\$3,185.67	\$19,090.96
Annesley, Graham	Miranda	Liberal	\$30,000.00	\$26,515.05	\$154.02	\$26,669.07
Bassett, Bart	Londonderry	Liberal	\$30,000.00	\$20,512.93	\$652.17	\$21,165.10
Blackshield, Joe	Oxley	Labor	\$30,000.00	\$0.00	\$3,715.88	\$3,715.88
Bleasdale, Nicholas	Campbelltown	Labor	\$30,000.00	\$5,212.36	\$24,787.64	\$30,000.00
Brierley Newton, De	Sydney	The Greens	\$30,000.00	\$1,325.54	\$2,051.61	\$3,377.15
Brown, Matthew	Kiama	Labor	\$30,000.00	\$3,323.19	\$26,676.81	\$30,000.00
Burney, Linda	Canterbury	Labor	\$30,000.00	\$10,566.41	\$19,433.59	\$30,000.00
Byrnes, Reece	Tweed	Labor	\$30,000.00	\$9,892.71	\$227.83	\$10,120.54
Car, Nicholas	Hornsby	Labor	\$30,000.00	\$0.00	\$8,595.39	\$8,595.39
Cook, Therese	Miranda	Labor	\$30,000.00	\$2,475.11	\$10,018.84	\$12,493.95
Coombs, Robert	Swansea	Labor	\$30,000.00	\$16,917.58	\$13,082.42	\$30,000.00
Corrigan, Geoffrey	Camden	Labor	\$30,000.00	\$607.12	\$14,215.92	\$14,823.04
Costa, Phillip	Wollondilly	Country Labor	\$30,000.00	\$9,272.78	\$20,727.22	\$30,000.00
Dominello, Victor	Ryde	Liberal	\$30,000.00	\$21,575.42	\$104.23	\$21,679.65
Dorahy, John	Keira	Liberal	\$30,000.00	\$26,648.98	\$1,015.78	\$27,664.76
Doyle, Bryan	Campbelltown	Liberal	\$30,000.00	\$24,189.22	\$762.93	\$24,952.15
Doyle, Trisha	Blue Mountains	Labor	\$30,000.00	\$6,799.98	\$23,200.02	\$30,000.00

Public Funding *continued***Table I: Payments made from the Election Campaigns Fund to candidates for the NSW State Election 2011**

Candidate	Electoral District	Party Affiliation	Maximum funding entitlement	Payments made during the previous reporting period	Payments made during the reporting period	Total amount paid
Duffy, Kevin	Orange	Labor	\$30,000.00	\$1,495.50	\$9,391.74	\$10,887.24
Elliott-Rudder, Glenn	Wagga Wagga	Labor	\$30,000.00	\$8,758.61	\$330.83	\$9,089.44
Esber, Pierre	Parramatta	Labor	\$30,000.00	\$7,351.02	\$22,648.98	\$30,000.00
Evans, Lee	Heathcote	Liberal	\$30,000.00	\$28,680.80	\$57.89	\$28,738.69
Feneley, Michael	Maroubra	Liberal	\$30,000.00	\$28,884.55	\$1,115.45	\$30,000.00
Firth, Verity	Balmain	Labor	\$30,000.00	\$5,922.17	\$24,077.83	\$30,000.00
Gasmier, Neville	Murray-Darling	Labor	\$30,000.00	\$222.15	\$11,826.51	\$12,048.66
Gibbons, Melanie	Menai	Liberal	\$30,000.00	\$0.00	\$27,076.14	\$27,076.14
Gilliland, Mathew	Davidson	Labor	\$30,000.00	\$8,168.87	\$1,031.25	\$9,200.12
Guillaume, Prudence	Mulgoa	Labor	\$30,000.00	\$13,681.62	\$16,318.38	\$30,000.00
Harris, David	Wyong	Labor	\$30,000.00	\$4,229.35	\$17,484.24	\$21,713.59
Hay, Anthony	Baulkham Hills	Labor	\$30,000.00	\$4,172.35	\$1,060.00	\$5,232.35
Hornery, Sonia	Wallsend	Labor	\$30,000.00	\$15,213.87	\$14,786.13	\$30,000.00
Jarnason, Susan	Vaucluse	The Greens	\$30,000.00	\$7,926.71	\$210.00	\$8,136.71
Jary, Jennifer	Manly	Labor	\$30,000.00	\$0.00	\$5,066.54	\$5,066.54
Judge, Virginia	Strathfield	Labor	\$30,000.00	\$8,963.04	\$20,238.78	\$29,201.82
Keneally, Kristina	Heffron	Labor	\$30,000.00	\$20,663.94	\$2,750.92	\$23,414.86
Khoshaba, Ninos	Smithfield	Labor	\$30,000.00	\$16,518.86	\$13,481.14	\$30,000.00
Laxale, Jerome	Ryde	Labor	\$30,000.00	\$3,488.20	\$10,926.22	\$14,414.42
Lloyd, Kristy	Toongabbie	Liberal	\$30,000.00	\$23,308.35	\$726.01	\$24,034.36
Lynch, Paul	Liverpool	Labor	\$30,000.00	\$16,566.61	\$10,249.50	\$26,816.11
McLeay, Paul	Heathcote	Labor	\$30,000.00	\$11,936.45	\$18,063.55	\$30,000.00
Morris, Matthew	Charlestown	Labor	\$30,000.00	\$825.00	\$29,175.00	\$30,000.00
Moy, Andrew	Lismore	Labor	\$30,000.00	\$9,764.55	\$538.70	\$10,303.25
O'Grady, Kerrin	Blue Mountains	The Greens	\$30,000.00	\$7,083.00	\$1,591.44	\$8,674.44
Pearce, Paul	Coogee	Labor	\$30,000.00	\$16,075.17	\$13,924.83	\$30,000.00
Perrottet, Dominic	Castle Hill	Liberal	\$30,000.00	\$20,680.14	\$1,472.24	\$22,152.38
Perry, Barbara	Auburn	Labor	\$30,000.00	\$27,799.33	\$2,200.67	\$30,000.00
Rees, Nathan	Toongabbie	Labor	\$30,000.00	\$13,553.41	\$15,102.11	\$28,655.52
Shearan, Allan	Londonderry	Labor	\$30,000.00	\$5,041.37	\$5,471.46	\$10,512.83
Sims, Glenn	South Coast	Labor	\$30,000.00	\$328.59	\$12,615.25	\$12,943.84
Smith, Katie	Gosford	Labor	\$30,000.00	\$3,853.33	\$12,843.42	\$16,696.75
Speakman, Mark	Cronulla	Liberal	\$30,000.00	\$20,161.46	\$123.20	\$20,284.66
Tebbutt, Carmel	Marrickville	Labor	\$30,000.00	\$24,419.34	\$5,580.66	\$30,000.00

Table I: Payments made from the Election Campaigns Fund to candidates for the NSW State Election 2011

Candidate	Electoral District	Party Affiliation	Maximum funding entitlement	Payments made during the previous reporting period	Payments made during the reporting period	Total amount paid
Terenzini, Francesco	Maitland	Labor	\$30,000.00	\$16,635.22	\$3,852.65	\$20,487.87
Thain, John	Penrith	Labor	\$30,000.00	\$241.30	\$14,295.26	\$14,536.56
Tracey, Ryan	Castle Hill	Labor	\$30,000.00	\$998.04	\$9,507.67	\$10,505.71
Troy, Dale	Cessnock		\$67,500.00	\$25,663.65	\$7,216.83	\$32,880.48
Tsang, Mario	Lane Cove	Labor	\$30,000.00	\$572.00	\$7,741.29	\$8,313.29
Tsirekas, Angelo	Drummoyne	Labor	\$30,000.00	\$0.00	\$30,000.00	\$30,000.00
Turner, Dale	Bathurst	Country Labor	\$30,000.00	\$4,936.35	\$25,063.65	\$30,000.00
Vassili, Michael	Riverstone	Labor	\$30,000.00	\$0.00	\$17,681.78	\$17,681.78
Wareham, Paul	Albury		\$67,500.00	\$31,115.43	\$1,076.13	\$32,191.56
Washington, Kate	Port Stephens	Labor	\$30,000.00	\$12,548.89	\$5,917.76	\$18,466.65
Watson, Anna	Shellharbour	Labor	\$30,000.00	\$4,888.37	\$25,111.63	\$30,000.00
Wicks, Peter	Hawkesbury	Labor	\$30,000.00	\$7,380.39	\$1,060.00	\$8,440.39
Winton, Tabitha	North Shore	Labor	\$30,000.00	\$7,228.60	\$1,851.76	\$9,080.36
Wood, William	Murrumbidgee	Labor	\$30,000.00	\$6,112.14	\$1,117.26	\$7,229.40
Zangari, Gaetano	Fairfield	Labor	\$30,000.00	\$11,617.63	\$18,382.37	\$30,000.00
Total amount paid					\$683,316.03	

Clarence State By-election

On 19 November 2011 a State by-election was held for the electoral district of Clarence. During the reporting period the EFA approved one payment to a candidate in respect of electoral communication expenditure incurred for the by-election.

Table J: Payments made from the Election Campaigns Fund to candidates for the Clarence State By-election

Candidate	Party Affiliation	Maximum Funding Entitlement	Payments made during the previous reporting period	Payments made during the reporting period	Total amount paid
Cavanaugh, Janet	The Greens	\$66,690.00	\$17,085.36	\$0.00	\$17,085.36
Ellem, Peter	Country Labor	\$66,690.00	\$0.00	\$49,694.67	\$49,694.67
Gulaptis, Christopher	The Nationals	\$66,690.00	\$66,690.00	\$0.00	\$66,690.00
Total amount paid				\$49,694.67	

Public Funding continued

Heffron State By-election

On 25 August 2012 a State by-election was held for the electoral district of Heffron. Four candidates were duly nominated for the by-election. All four candidates were eligible for payments from the Election Campaigns Fund.

During the reporting period the EFA approved three payments to candidates in respect of electoral communication expenditure incurred for the by-election.

Table K: Payments made from the Election Campaigns Fund to candidates for the Heffron State By-election

Candidate	Party Affiliation	Maximum Funding Entitlement	Payments made during the reporting period
Faruqi, Mehreen	The Greens	\$66,690.00	\$22,394.00
Hoenig, Ron	Labor	\$66,690.00	\$66,690.00
Peebles, Robyn	Christian Democratic Party	\$66,690.00	\$4,058.55
Simmons, Andrew	Australian Democrats	\$66,690.00	\$0.00
Total amount paid			\$93,142.55

Sydney State By-election

On 27 October 2012 a State by-election was held for the electoral district of Sydney. Five candidates were duly nominated for the by-election. Of those five candidates three were eligible for payments from the Election Campaigns Fund.

During the reporting period the EFA approved three payments to candidates in respect of electoral communication expenditure incurred for the by-election.

Table L: Payments made from the Election Campaigns Fund to candidates for the Sydney State By-election

Candidate	Party Affiliation	Maximum Funding Entitlement	Payments made during the reporting period
Greenwich, Alexander		\$100,035.00	\$64,335.37
Harris, Christopher	The Greens	\$66,690.00	\$66,690.00
Mallard, Shayne	Liberal	\$66,690.00	\$53,889.29
Total amount paid			\$184,914.66

Northern Tablelands State By-election

On 25 May 2013 a State by-election was held for the electoral district of Northern Tablelands. Seven candidates were duly nominated for the by-election. Of those seven candidates five were eligible for payments from the Election Campaigns Fund.

During the reporting period no payments were made by the EFA from the Election Campaigns Fund in respect of the by-election.

Table M: Payments made from the Election Campaigns Fund to candidates for the Northern Tablelands State By-election

Candidate	Party Affiliation	Maximum Funding Entitlement	Payments made during the reporting period
Beyersdorf, Herman	Country Labor	\$66,690.00	\$0.00
Koops, Dora	The Greens	\$66,690.00	\$0.00
Maher, Edward		\$100,035.00	\$0.00
Marshall, Adam	The Nationals	\$66,690.00	\$0.00
Nicholson, Katherine		\$100,035.00	\$0.00
Total amount paid			\$0.00

Administration Fund

The EFA maintains an Administration Fund for eligible parties registered for State elections and elected members of the NSW Parliament.

The purpose of the Administration Fund is to reimburse administrative and operating expenditure incurred by independent elected members of the NSW Parliament and registered parties that have representatives in Parliament.

An eligible party or elected member is entitled to receive an annual payment for a calendar year, or a quarterly payment, only if the party or elected member makes a claim for payment. A claim must:

- be lodged with the EFA and it must be made in writing;
- be accompanied by a declaration of administrative expenditure and evidence and information relating to the expenditure as required by the EFA; and
- be lodged within six months after the end of the calendar year to which the expenditure relates (except for a quarterly payment).

Public Funding continued

2011 Calendar Year

During the reporting period the EFA made one payment from the Administration Fund with respect to administrative expenditure incurred in the 2011 calendar year.

Table N: Payments made from the Administration Fund in respect of the 2011 calendar year

Party or elected member name	Maximum Funding Entitlement	Payments made during the reporting period
Richard Torbay	\$83,000.00	\$3,000.00
Total amount paid		\$3,000.00

2012 Calendar Year

Seven parties and two elected members were entitled to make a claim for payment from the Administration Fund for administrative expenditure incurred in the 2012 calendar year.

During the reporting period the EFA made payments from the Administration Fund to seven parties and one elected member.

Table O: Payments made from the Administration Fund in respect of the 2012 calendar year

Party or elected member name	Maximum Funding Entitlement	Payments made during the reporting period
Australian Labor Party (NSW Branch)	\$2,276,000.00	\$2,202,900.00
Christian Democratic Party (Fred Nile Group)	\$350,000.00	\$334,120.38
Country Labor Party	\$450,000.00	\$441,000.00
Liberal Party of Australia New South Wales Division	\$2,276,000.00	\$2,202,900.00
National Party of Australia – NSW	\$2,276,000.00	\$2,000,000.00
Shooters and Fishers Party	\$350,000.00	\$344,000.00
The Greens	\$498,000.00	\$494,127.82
Alexander Greenwich	\$200,000.00	\$4,374.51
Gregory Piper	\$200,000.00	\$0.00
Total amount paid		\$8,023,422.71

2013 Calendar Year

During the year the Act was amended with respect to the Administration Fund. The objectives of the amendment were:

- to increase the amounts for which registered parties with elected members of State Parliament, and elected members of State Parliament who are not members of registered parties, are eligible to be paid by the EFA for administrative expenditure incurred;
- to enable quarterly payments of such amounts; and
- to require payments from the Administration Fund or the Policy Development Fund for expenditure incurred to be made by the EFA within six weeks after a claim is made.

The annual amount to be distributed from the Administration Fund to an eligible party is the amount of actual administrative expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the amounts shown as follows:

Number of elected members endorsed by the party*	Maximum annual amount of a party – 2012 calendar year	Maximum annual amount of a party – 2013 calendar year
1	\$200,000	\$204,700
2	\$350,000	\$358,100
3	\$450,000	\$460,400
4 - 25	\$450,000 plus \$83,000 for each elected member between 4 and 25	\$460,400 plus \$85,000 for each elected member between 4 and 25

*the number of endorsed elected members of a party is determined as at the end of the calendar year on the assumption that the number of elected members endorsed by the party is the same when the party claims a quarterly payment during the calendar year.

The annual amount to be distributed from the Administration Fund to an eligible elected member, in respect of the 2013 calendar year, is the amount of actual administrative expenditure incurred by or on behalf of the elected member during the calendar year to which the payment relates, but not exceeding \$204,700. In respect of the 2012 calendar year expenditure, the maximum annual amount was \$200,000.

During the reporting period the EFA made no payments from the Administration Fund with respect to the 2013 calendar year.

Policy Development Fund

The EFA maintains a Policy Development Fund for eligible parties registered for State elections who are not entitled to receive funds from the Administration Fund.

The purpose of the Policy Development Fund is to reimburse policy development expenditure incurred by eligible parties.

An eligible party is entitled to receive an annual payment for a calendar year only if the party makes a claim for payment. A claim must:

- be lodged with the EFA and it must be made in writing;
- be accompanied by a declaration of administrative expenditure and evidence and information relating to the expenditure as required by the EFA; and
- be lodged within six months after the end of the calendar year to which the expenditure relates (except for a quarterly payment).

2011 Calendar Year

During the reporting period the EFA made two payments to parties from the Policy Development Fund with respect to policy development expenditure incurred by or on behalf of the parties during the 2011 calendar year.

Table P: Payments made from the Policy Development Fund in respect of the 2011 calendar year

Eligible party	Maximum funding entitlement	Payments made during the reporting period
Building Australia Party	\$5,200.00	\$5,200.00
Outdoor Recreation Party	\$9,369.88	\$3,025.00
Total amount paid		\$8,225.00

2012 Calendar Year

During the reporting period, no payments were made from the Policy Development Fund in respect of the 2012 calendar year.

Communication and Public Awareness

Objectives

- To ensure that parties, candidates, groups, elected members, third-party campaigners and political donors have access to current information about their entitlements and obligations; and
- to ensure the public and the media have access to publicly available disclosure documents by publishing the disclosures of political donations and electoral expenditure.

Performance Overview

- Revision of educational material resources and publications available to the EFA's stakeholders;
- additional 8 candidate information seminars held in July for the Local Government Elections 2012;
- conduct of 9 candidate information seminars for both State and Local Government by-elections;
- conduct of 55 councillor (elected members of Local Government) information seminars;
- 2,421 disclosures and amendments published on the EFA website;
- roll out of the online portal through the EFA website specific to the Local Government Elections 2012 participants;
- redevelopment of the EFA's website;
- implementation of the email subscription service for stakeholders;
- conducted an online survey of 681 candidate information seminar participants; and
- responded to amendments made to the Act.

Future

- Go live of the EFA's new website;
- continue to raise awareness of political donation laws in NSW;
- provide assistance to the Local Government Elections 2012 participants in meeting their disclosure obligations; and
- continue review of website and publications and respond to feedback from stakeholders and changes to the legislation.

Stakeholder Communications

During the financial year, the EFA provided information to candidates, groups, parties, elected members, donors and other stakeholders on their obligations and responsibilities under the funding and disclosures legislation.

In addition to the website the EFA provides stakeholders with a range of ways in which to access information which includes a dedicated telephone help desk enquiry service and an email enquiry service.

During the year the EFA responded to 7,447 telephone enquiries and 1,306 email enquiries from stakeholders.

In June 2013 advertisements were placed in publications throughout NSW advising major political donors of their obligation to make a disclosure for the 2012-13 reporting period.

EFA Website

For the period July to September 2012 the focus of the EFA's website was on the Local Government Elections 2012. An online portal was developed and implemented providing a one stop shop for intending candidates and their official agents to access resources relating to their responsibilities under the Act.

From October 2012 this focus was changed to provide information on the disclosure requirements for stakeholders following the Local Government Elections 2012.

The EFA website was visited 70,597 times during the reporting year by 21,342 unique visitors.

Education of Stakeholders

A comprehensive review was undertaken of all guides and forms used by stakeholders having particular regard to the amendments to the Act that came into effect on 9 March 2012 concerning the prohibition on political donations from corporations and other entities.

Educational material was available to the EFA's stakeholders by way of Funding and Disclosure Guides for each type of stakeholder and specific to the election event. Fact Sheets that provide information by topic as well as How-to sheets were developed specifically to the address the responsibilities of candidates and their official agents for the Local Government Elections 2012.

The Act requires that a person is not qualified for appointment as a party agent or an official agent unless the person has completed an authorised training program provided by the EFA for that purpose. This is delivered via an online training module on the EFA's website. As this is a compulsory requirement (unless a person is exempt) this is an avenue available to the EFA to have a significant impact on the education of agents. As such the EFA undertook

a redevelopment of this training material to specifically address identified areas of low compliance by agents in previous elections.

Candidate Information Seminars

During the reporting year, the EFA provided eight Candidate Information Seminars in addition to the 58 Candidate Information Seminars held in the previous reporting period for participants at the Local Government Elections 2012.

Candidate Information Seminars for the Local Government Elections 2012 were arranged through host councils throughout NSW and conducted in July. These seminars were held in conjunction with the NSW Electoral Commission and the Division of Local Government (DLG).

An additional nine Candidate Information Seminars were provided for both State and Local Government by-elections conducted during the reporting year.

Survey of Participants at the Candidate Information Seminars

In 2012 the EFA's Public Awareness and Education Programme included the provision of Candidate Information Seminars in the lead up to the Local Government Elections 2012 to provide information and education to the EFA's stakeholders in order for them to meet their obligations under the Act.

A survey was sent to 681 people who had registered their interest in attending a Local Government Elections 2012 Candidate Information Seminar held during May to July 2012.

The survey consisted of 16 questions designed to obtain feedback primarily on the awareness of the seminars, the seminar logistics, the knowledge and presentation skills of the EFA presenters and the overall benefit provided to our stakeholders.

Communication and Public Awareness

continued

The results indicated that the EFA performed extremely well against the criteria for conducting the seminars with the majority of responses within the 'strongly agree' and 'agree' categories with a total of 92 per cent of those responding to the survey indicating that the seminars were of benefit.

The survey responses indicated that participants found the seminars to be informative and well presented.

A total of 64.5 per cent of stakeholders who responded to the survey said that given the opportunity they would find a follow up seminar subsequent to the election desirable. This was the basis for the Local Government elected member information seminars conducted in April and May 2013.

Elected Member (Local Government Councillor) Information Seminars

In January 2013 correspondence was sent to 107 regional councils seeking advice concerning whether there was interest in having the EFA conduct a seminar for re-elected and newly elected councillors and mayors to provide information regarding their disclosure obligations under the Act as follows:

- Disclosure obligations for the period ending 30 June 2013
- Ongoing disclosure obligations
- The appointment and role of Official Agents
- Campaign accounts
- Political donations and electoral expenditure

The majority of councils responded and 44 Elected Member Information Seminars were conducted by the EFA during April and May 2013 covering 60 regional Local Government areas.

Additionally 11 Elected Member Information Seminars were conducted by the EFA during May and June 2013 in selected areas to accommodate the remaining 44 metropolitan Local Government areas.

Media Monitoring

The subject of political donations and expenditure and the disclosure scheme continued to attract media and public interest in the reporting year.

The EFA notes that the scheme presents challenges and encourages public debate and feedback on funding and disclosure issues as a further means to electoral transparency.

Governance

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EFA Corporate Governance

The NSW Electoral Commission (NSWEC) is the administrative unit through which the EFA exercises its statutory responsibilities.

The NSWEC's Funding and Disclosure Branch is headed by the Director, Brian DeCelis.

During the 2012–2013 year the members of the EFA were:

Colin Barry
Chairperson

Kirk S McKenzie
Member appointed on the nomination of the Leader of the Opposition

Edward P Pickering
Member appointed on the nomination of the Premier

Colin Barry took the position of EFA Chairperson upon his appointment as NSW Electoral Commissioner on 1 July 2004.

The Act provides that members hold office from the end of the period of six months commencing on and including the day of the return of the writs for the previous election and until the end of the period of six months commencing on and including the day for the return of the writs for the next general election.

The EFA held regular meetings throughout the reporting year. The following table lists the meeting dates.

Table Q: Meetings of the EFA 2012–2013

Meeting No	Date	Participants
140	27/08/2012	Colin Barry, Kirk McKenzie, Edward Pickering
141	29/10/2012	Colin Barry, Kirk McKenzie, Edward Pickering
Special Meeting	05/03/2013	Colin Barry, Kirk McKenzie, Edward Pickering
142	26/04/2013	Colin Barry, Kirk McKenzie, Edward Pickering
143	28/05/2013	Colin Barry, Kirk McKenzie, Edward Pickering

Human Resources

Staff members who undertake the work of the administration of the EFA are employed by the NSWEC. Wages, salaries and allowances are included in the annual report of the NSWEC and key components of human resource management and industrial relations policies and practices are satisfied through the resource management planning and reporting activities of the NSWEC.

Training and Development

The opportunity to foster a learning culture within the EFA and the NSWEC to support the promotion and maintenance of professional and committed staff is an essential prerequisite to delivering services effectively.

The EFA, through its administrative unit in the NSWEC, provides an opportunity for personal development for EFA staff in areas such as communications, information technology, audit practices, logistics, resourcing, event management and electoral administration.

For information on training courses undertaken by staff see the NSWEC Annual Report for 2012-13.

Workplace Health and Safety

The Workplace Health and Safety system incorporating the Return to Work Program is managed by the NSWEC. Safety incidents, injuries and claims statistics are available in the NSWEC Annual Report for 2012-13.

Equal Employment Opportunity

The NSWEC's Equal Employment Opportunity Management Plan seeks to recognise and eliminate possible sources of direct and indirect discrimination by identifying key result areas and actions required. More information is available in the NSWEC Annual Report for 2012-13.

Disability Plans

Details of the Disability Action Plan applicable to the EFA are set out in the NSWEC's Annual Report. The NSWEC is required to report on Disability Plans on a triennial basis. More information is available in the NSWEC Annual Report for 2012-13.

Multicultural Policies and Services Program

Details of the Disability Action Plan applicable to the EFA are set out in the NSWEC Annual Report for 2012-13.

Public Interest Disclosures

The EFA received nil Public Interest Disclosures under the *Public Interest Disclosures Act 1994* during the reporting year.

Information Technology

The Information Technology Branch of the NSWEC plays an important role by supporting central election funding and disclosure processes and in assisting the EFA to conform to certain legal and statutory requirements.

Records Management

The EFA is committed to the secure and controlled management, handling and storage of sensitive documents, records, files, materials and information in accordance with business and client needs and to comply with the *State Records Act 1998*. Several NSWEC policies, including the NSWEC Security Policy, the NSWEC Communication Devices and Electronic Records Policy Statement, the EFA and NSWEC Privacy Policy and the Records Management Policy, outline how the NSWEC complies with the *State Records Act 1998* and *Privacy and Personal Information Act 1998* regarding the retention and security of records held by the NSWEC and EFA.

Environmental Management

The EFA recognises that administrative practices particularly associated with disclosure, reporting and public inspection obligations should be subject to ongoing review, with the objective of avoiding paper product waste, increasing the purchase of recycled product content and increasing resource recovery.

For those areas where election processes utilise paper products, office equipment and consumables, the EFA has developed waste mitigation and minimisation strategies.

The NSWEC's Waste Reduction and Purchasing Plan identified key reduction areas and resulted in improvements during the last reporting year.

EFA Corporate Governance continued



Internal Audit and Risk Management Attestation for the 2012-13 Financial Year for the Election Funding Authority of New South Wales

I, Colin Barry, am of the opinion that the Election Funding Authority of New South Wales has internal audit and risk management processes in place that are, in all material respects, compliant with the core requirements set out in Treasury Circular NSW TC 09/08 *Internal Audit and Risk Management Policy*. These processes provide a level of assurance that enables the senior management of the Election Funding Authority of New South Wales to understand, manage and satisfactorily control risk exposures.

I, Colin Barry, am of the opinion that the Audit and Risk Committee for the Election Funding Authority of New South Wales is constituted and operates in accordance with the independence and governance requirements of Treasury Circular NSW TC 09/08.

The Chair and Members of the Audit and Risk Committee are:

- Brian Suttor, Independent Chair (term four years to 1 December 2013).
- Kathleen Haddock, Independent Member (term four years to 13 May 2014).
- John Gordon, Independent Member (term four years to 13 October 2014).

I declare that this Internal Audit and Risk Management Attestation is made on behalf of the Election Funding Authority of New South Wales.

Colin Barry
Chair
Election Funding Authority of New South Wales

Dated: 11/7/13

Risk Management

The NSWEC has introduced risk management strategies to assess upcoming risks in all operating areas of the NSWEC and EFA. The Director Funding and Disclosure Branch of the NSWEC is responsible for managing and implementing a continuous review process for EFA risks. Risk registers contain identified areas of potential risk, the probability of the risk occurring, potential impacts and the risk response strategy.

Audit and Risk Committee

The NSW Electoral Commission Audit and Risk Committee reviews practices and processes of the NSWEC and the EFA and can make recommendations designed to reduce business risk and improve corporate governance.

Details of the Audit and Risk Committee applicable to the EFA are set out in the NSWEC Annual Report for 2012-13.

Government Information (Public Access) Act 2009

Section 125 of the *Government Information (Public Access) Act 2009* (GIPA Act) requires an agency to prepare an annual report on the agency's obligations under the GIPA Act. The Government Information (Public Access) Regulation 2009 (GIPA Regulation) sets out the information to be included in the annual report.

The Office of the NSWEC provides administrative services to both the NSW Electoral Commission (a statutory corporation established under section 21A of the *Parliamentary Electorates and Elections Act 1912*) and the Election Funding Authority of New South Wales (a statutory corporation established under section 5 of the *Election Funding, Expenditure and Disclosures Act 1981*).

The report below is prepared by the Office of the NSWEC as required under section 125 of the GIPA Act and concerns access to

government information pertaining to both the NSWEC and the EFA.

GIPA annual report

Agency Name	Office of the New South Wales Electoral Commission for the NSW Electoral Commission (NSWEC) and the Election Funding Authority of NSW (EFA)
Principal Department (if applicable)	N/A
Reporting Period	2012/2013

Obligations under the GIPA Act

1. Review of proactive release program – Clause 7(a) GIPA Regulation

Our agency's program for proactive release of information is detailed below:

- All Directors are responsible for identifying (within their areas of responsibility) information that should in the public interest be released proactively.
- Proposals are submitted to the Management Committee for endorsement.
- Upon endorsement from the Management Committee, information to be released proactively is referred to the Right to Information Officer who will arrange public access to that information.

As noted in our GIPA Policy and Procedures manual, the Management Committee is required to conduct an annual review concerning the proactive release program in June each year.

During the 2012/2013 financial year the program was included as a standing agenda item for Management Committee meetings. Directors were invited to review the program and advise whether they identified any information that should in the public interest be released proactively. No changes were made to the program with exception to when and how the program is reviewed.

EFA Corporate Governance continued

Information proactively released during the reporting period includes the following:

Details	Published	Website	Type	Pages
Technology Assisted Voting Approved Procedures for NSW State by-elections Report	23/07/12	NSWEC website	PDF	29
Report on the Conduct of the Shellharbour City Council Election – 3 September 2011	2/10/12	NSWEC Website	PDF	29
Report on the Conduct of the Wollongong City Council Election – 3 September 2011	2/10/12	NSWEC Website	RDF	35
Establishing A Sustainable Framework For Election Funding And Spending Laws In New South Wales: A Report Prepared for the New South Wales Electoral Commission	14/11/12	NSWEC website	PDF	296
Information sheet concerning the counting of votes under proportional system and data preference files for the 2012 Local Government elections	18/12/12	FTP NSWEC Website	Word doc	1
Internet Voting and Voter Interference Report	5/04/13	NSWEC Website	PDF	51

2. Number of access applications received – Clause 7(b) GIPA Regulation

During the reporting period, our agency received one valid formal access application.

3. Number of refused applications for Schedule 1 information – Clause 7(c) GIPA Regulation

During the reporting period, our agency refused a total of one valid formal access application because the information requested was information referred to in Schedule 1 to the GIPA Act. The application was refused in full on the basis that it sought access to information referred to in Clause 6 of Schedule 1 of the GIPA Act (excluded information referred to in Clause 4 of Schedule 2 of the GIPA Act, being the investigative or prosecuting functions of the EFA).

4. Statistical information about access applications – Clause 7(d) and Schedule 2 GIPA Regulation

Table 1: Number of applications by type of applicant and outcome*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	1	0	0	0	0	1
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representative)	0	0	0	0	0	0	0	2
Members of the public (other)	0	0	1	0	0	0	0	0

*More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table 2.

Table 2: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*	0	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	0	2	0	0	0	0	3
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

*A **personal information application** is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual). The total number of decisions in Table 2 should be the same as Table 1.

Table 3: Invalid applications

Reason for invalidity	Number of applications
Application does not comply with formal requirements (section 41 of the Act)	4
Application is for excluded information of the agency (section 43 of the Act)	1
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	5
Invalid applications that subsequently became valid applications	1

Table 4: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 of the Act

	Number of times consideration used*
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	1
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0

*More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table 5.

EFA Corporate Governance continued

Table 5: Other public interest considerations against disclosure: matters listed in table to section 14 of the Act

	Number of occasions when application not successful
Responsible and effective government	1
Law enforcement and security	1
Individual rights, judicial processes and natural justice	1
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	1
Exempt documents under interstate Freedom of Information legislation	0

Table 6: Timeliness

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	2
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0
Total	2

Table 7: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review	0	1	1
Review by Information Commissioner*	0	0	0
Internal review following recommendation under section 93 of Act	0	0	0
Review by ADT	0	0	0
Total	0	1	1

*The Information Commissioner does not have the authority to vary decisions, but can make recommendation to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made.

Table 8: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	1
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0

Legislative Compliance

The NSWEC Legal Branch provides high quality, impartial legal advice and assistance to the EFA including advice on investigations into potential breaches of campaign finance laws and evidentiary matters.

The EFA's work is governed by the following legislation:

- *Election Funding, Expenditure and Disclosures Act 1981*;
- *Election Funding, Expenditure and Disclosures Regulation 2009*; and
- *Parliamentary Electorates and Elections Act 1912*.

Legislative Amendments

During the reporting year, the Legal Branch provided advice and legal support to the EFA on a number of matters including:

- coordination of aspects of the investigation into suspected failures to disclose the making of political donations, drafting briefing papers and legal instruments in connection with those investigations and subsequent prosecutions;
- the preparation of submissions to the Government and Parliamentary Committees in relation to proposals for legislative reform;
- the impact of legislative reforms on EFA operations;
- questions relating to enforcement of breaches of election funding and disclosures legislation;
- the outcomes and implications of prosecutions commenced;
- the interpretation and application of election funding and disclosures legislation and other laws on EFA operations; and
- the development and review of prescribed forms, policy documents, guidelines, and other instruments.

The Election Funding, Expenditure and Disclosures Further Amendment Bill 2012 came into effect on 26 November 2012. The object of the Bill was to amend the *Election Funding, Expenditure and Disclosures Act 1981* to put beyond doubt that a party that fails to comply with the obligation to appoint a party agent commits an offence and to ensure that a person, who is required to make a declaration relating to political donations or electoral expenditure for a relevant disclosure period even if the person has no disclosures to make, can be prosecuted for an offence by clarifying that the lodging of the declaration is the making of a disclosure and that the time for making such a declaration is the time by which declarations containing disclosures are required to be made.

The Election Funding, Expenditure and Disclosures Amendment (Administrative Funding) Bill 2013 came into effect on 3 April 2013. The purpose of the Bill was to increase the amounts for which registered parties with elected members of State Parliament, and elected members of State Parliament who are not members of registered parties, are eligible to be paid by the Election Funding Authority for administrative expenditure incurred.

Public Access to Documents

Under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) Act certain information is required by law to be available on our website, free of charge.

The EFA is required by legislation to make available for public inspection for up to six years after an election:

- disclosures;
- claims for payment; and
- registers of candidates, official and party agents.

The documents are available for public inspection at the EFA's office in Sydney by appointment.

Privacy

The EFA collects personal information from electors, other individuals and organisations in order to fulfil its functions under the *Election Funding, Expenditure and Disclosures Act 1981* and other governing Acts.

The Privacy and Personal Information Protection Amendment Regulation 2011 commenced on 3 March 2011. The object of the Regulation is to exempt the EFA from the provisions of the Part 6 of the *Privacy and Personal Information Act 1998* (NSW) which prevented the EFA from disclosing by way of publication on the internet any personal information contained in a public register kept by the EFA.

The Regulation enables the EFA to now publish extracts of a register on its website. These extracts may contain personal information such as an individual's name. The EFA will not publish on the internet the individual's personal address, telephone number or email address.

During the reporting year the EFA did not receive any privacy related complaints.

Feedback and Complaints

The EFA assesses its performance through stakeholder feedback, including enquiries, suggestions, compliments and complaints.

Our Feedback and Complaints Policy provides the overall approach and framework for the handling of feedback, including complaints received by the NSWEC and EFA. This policy is based on the customer satisfaction model outlined in the NSW Ombudsman's *Effective Complaint Handling (2004)* guidelines and the Australian Standard *ISO 10002:2004, Customer Satisfaction – Guidelines for complaints handling in organisations*.

The aim of the NSWEC and EFA Feedback and Complaints Policy and supporting mechanisms is to ensure that:

- all members of the community have the opportunity to provide a compliment, suggestion, or lodge a complaint about the NSWEC;
- all feedback received is handled effectively, appropriately and in accordance with the NSW Ombudsman's recommendations; and
- feedback received is used to assess the performance of the NSWEC and EFA and determine areas for improvement.

All complaints received about EFA services are logged into a centralised complaints database referred to the NSWEC Complaints Coordinator and information used to improve services at the EFA.

Stakeholder Complaints

In 2012–2013 the EFA Chairperson received no requests for review of an EFA complaint.

Financial Performance

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Financial Summary

The financial statements of the EFA are prepared in accordance with the *Public Finance and Audit Act 1983*. The Auditor-General's Report in relation to these statements for the financial year is included in this section.

The EFA is a not for profit entity and it has no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts. The *Election Funding Expenditure and Disclosures Act 1981* provides for public funding of Parliamentary election campaigns and for a portion of party and elected members administration expense and some policy development funding for other eligible parties. The EFA has no employees, nor does it own or control any non-current assets. There are no known contingent assets or liabilities as at 30 June 2013.

Statement by the Members of the Election Funding Authority of New South Wales

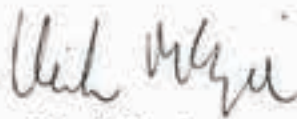
Statement by the Members of the Election Funding Authority of New South Wales

Pursuant to Section 41C(1B) of the *Public Finance and Audit Act 1983*, and in accordance with a resolution of the members of the Election Funding Authority of New South Wales, we declare that in our opinion:

- (a) The financial statements have been prepared in accordance with:
- the provisions of the *Public Finance and Audit Act 1983*, the *Public Finance and Audit Regulation 2010* and the Treasurer's Directions;
 - Australian Accounting Standards (which include Australian Accounting Interpretations);
 - the Financial Reporting Code for NSW General Government Sector Entities
- (b) The financial statements exhibit a true and fair view of the financial position as at 30 June 2013 and financial performance of the Election Funding Authority for the year then ended;
- (c) There are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



Colin Barry
Chairperson



Kirk McKenzie
Member



Edward P Pickering
Member

26 August 2013

Independent Auditor's Report



INDEPENDENT AUDITOR'S REPORT Election Funding Authority of New South Wales

To Members of the New South Wales Parliament

I have audited the accompanying financial statements of the Election Funding Authority of New South Wales (the Authority), which comprise the statement of financial position as at 30 June 2013, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information.

Opinion

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Authority as at 30 June 2013, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 41B of the *Public Finance and Audit Act 1983* (the PF&A Act) and the *Public Finance and Audit Regulation 2010*.

My opinion should be read in conjunction with the rest of this report.

The Members' Responsibility for the Financial Statements

The members of the Authority are responsible for the preparation of the financial statements that give a true and fair view in accordance with Australian Accounting Standards and the PF&A, and for such internal control as the members determine is necessary to enable the preparation of financial statements that give a true and fair view and that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with Australian Auditing Standards. Those Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Authority's preparation of the financial statements that give a true and fair view in order to design audit procedures appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the members, as well as evaluating the overall presentation of the financial statements.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independent Auditor's Report


My opinion does not provide assurance:

- about the future viability of the Authority
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal control
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about other information which may have been hyperlinked to/from the financial statements.

Independence

In conducting my audit, I have complied with the independence requirements of the Australian Auditing Standards and other relevant ethical pronouncements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies, but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by the possibility of losing clients or income.



Peter Achterstraat
Auditor-General

27 August 2013
SYDNEY

START OF AUDITED FINANCIAL STATEMENTS

Statement of comprehensive income

for the year ended 30 June 2013

	Notes	Actual 2013 \$'000	Actual 2012 \$'000
Expenses excluding losses			
Operating Expenses	2(a)	9,115	29,613
Other expenses	2(b)	3,743	3,705
Total expenses excluding losses		12,858	33,318
Revenue			
Grants and contributions	3(a)	9,115	29,613
Other revenue		3,743	3,705
Total Revenue		12,858	33,318
Other gains/(losses)		-	-
Net Result		-	-
Other comprehensive income		-	-
Total other comprehensive income		-	-
Total comprehensive income		-	-

The accompanying notes form part of these financial statements.

Statement of changes in equity

for the year ended 30 June 2013

	Notes	Accumulated Funds \$000	Total \$000
Balance at 1 July 2012		-	-
Net result for the year		-	-
Total other comprehensive income		-	-
Total comprehensive income for the year		-	-
Balance at 30 June 2013		-	-
Balance at 1 July 2011		-	-
Net result for the year		-	-
Total other comprehensive income		-	-
Total comprehensive income for the year		-	-
Balance at 30 June 2012		-	-

The accompanying notes form part of these financial statements.

Statement of financial position

as at 30 June 2013

	Notes	Actual 2013 \$'000	Actual 2012 \$'000
Assets			
Current Assets		-	-
Total Current Assets		-	-
Non-Current Assets		-	-
Total Non-Current Assets		-	-
Total Assets		-	-
Liabilities			
Current Liabilities		-	-
Total Current Liabilities		-	-
Non-Current Liabilities		-	-
Total Non-Current Liabilities		-	-
Net Assets		-	-
Equity			
Accumulated funds		-	-
Total Equity		-	-

The accompanying notes form part of these financial statements.

Statement of cash flows

for the year ended 30 June 2013

	Notes	Actual 2013 \$'000	Actual 2012 \$'000
Cash flows from operating activities			
Payments			
Other		(9,115)	(29,613)
Total Payments		(9,115)	(29,613)
Receipts			
Grants and contributions		9,115	29,613
Total Receipts		9,115	29,613
Net cash flows from operating activities	7	-	-
Net increase/(decrease) in cash			
Opening cash and cash equivalents		-	-
Closing cash and cash equivalents		-	-

The accompanying notes form part of these financial statements.

Notes to the financial statements

1. Summary of Significant Accounting Policies

(a) Reporting Entity

The Election Funding Authority of New South Wales (EFA) is a New South Wales (NSW) government entity. The EFA is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

Major reforms to funding and disclosure legislation commenced on 1 January 2011 and have impacted on political donations, campaign expenditure and public funding for NSW State elections. In particular, the reforms imposed caps on political donations and electoral communication expenditure and provided for a restructure in public funding for NSW State election campaigns.

The *Election Funding, Expenditure and Disclosures Act 1981* provides for the public funding of parliamentary election campaigns and requires the disclosure of certain political donations and electoral expenditure for parliamentary or Local Government election campaigns. The following funds are maintained by the EFA.

Election Campaigns Fund

Candidates and registered parties endorsing candidates for Legislative Assembly or Legislative Council elections may be eligible for payments from the Election Campaigns Fund.

The amount to be distributed from the Election Campaigns Fund is a reimbursement to a party or a candidate eligible for payment in respect of a State election of the amount of the actual electoral communication expenditure incurred, on a sliding scale and subject to the applicable cap.

Administration Fund

Parties with elected members are eligible for annual payments, on a calendar year basis, from the Administration Fund for administrative or operating expenses of the party during the year. Independent members of Parliament are also eligible for annual payments from the Fund.

Policy Development Fund

Parties that are not eligible for payment from the Administration Fund may be eligible for annual payments, on a calendar year basis, from the Policy Development Fund of the amount of actual policy development expenditure incurred by or on behalf of the party during the year.

These financial statements for the year ended 30 June 2013 have been authorised for issue by the Chairperson and members on 26 August 2013.

(b) Basis of Preparation

The EFA's financial statements are general purpose financial statements which have been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and Regulation; and
- the Financial Reporting Directions published in the Financial Reporting Code for NSW General Government Sector Entities or issued by the Treasurer.

Judgements, key assumptions and estimations management has made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest dollar and are expressed in Australian currency.

(c) Statement of Compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Revenue Recognition

Revenue is measured at the fair value of the consideration or contribution received or receivable and is recognised when the EFA gains control, which is usually when the cash is received. Additional comments regarding the accounting policies for the recognition of revenue are discussed below.

(i) *Parliamentary appropriations and contributions*
Consolidated fund appropriations under the *Election Funding, Expenditure and Disclosures Act 1981* are received by way of transfer payment from the NSW Electoral Commission.

(e) Expense Recognition

The EFA maintains the Funds and approves the making of payments from the Funds for valid claims made by candidates, groups and political parties. An expense is not recognised until:

- an entitlement exists under legislation
- the candidate, party or group has supplied sufficient documentation supporting the claim. This documentation includes invoices or receipts relating to electoral expenditure incurred to substantiate the level of claim
- The EFA has validated the invoices to determine if they meet the legislative requirement for payment.

Whilst a maximum entitlement exists under legislation, the actual payment depends on the value of invoices submitted by candidates, parties or groups.

A corresponding revenue item is recognised as the cost of claims is fully funded by consolidated fund appropriations.

(f) Asset and liability recognition

As all approved claims are paid during the year, EFA does not have any liabilities and corresponding assets at reporting date.

(g) Comparative Information

Except when an Australian Accounting Standard permits or requires otherwise, comparative information is disclosed in respect of the previous period for all amounts reported in the financial statements.

(h) New Australian Accounting Standards issued but not effective

A number of new Accounting Standards have not been applied and are not yet effective. The possible impact of these Standards in the period of initial application is unlikely to be material.

2. (a) Expenses Excluding Losses**(I) Policy Development Fund**

	2013 \$ \$000	2012 \$ \$000
Save Our State	-	10
Outdoor Recreation Party	3	6
The Building Australia Party	5	-
Total Payments from Policy Development Fund	8	16

(II) Administration Fund

	2013 \$ \$000	2012 \$ \$000
Australian Labor Party (NSW Branch)	2,203	2,073
National Party of Australia – NSW	2,000	2,158
Shooters and Fishers Party	344	326
The Greens	494	610
Country Labor Party	441	729
Liberal Party of Australia New South Wales Division	2,203	3,490
Christian Democratic Party	334	196
Independent candidates	7	-
Total Payments from Administration Fund	8,026	9,582

Notes to the financial statements continued**(III) Election Campaigns Fund**

	2013 \$ \$000	2012 \$ \$000
The Greens	94	1,025
Liberal Party of Australia New South Wales Division	129	4,738
National Party of Australia – NSW	-	1,420
Australian Labor Party (NSW Branch)	686	6,493
Country Labor Party	95	460
Christian Democratic Party	4	287
Shooters and Fishers Party	-	654
Independent candidates	73	4,938
Total Payments from Election Campaigns Fund	1,081	20,015

Reconciliation

	2013 \$ \$000	2012 \$ \$000
Payments from Policy Development Fund	8	16
Payments from Administration Fund	8,026	9,582
Payments from Election Campaigns Fund	1,081	20,015
Total Payments	9,115	29,613

2. (b) Other Expenses

	2013 \$ \$000	2012 \$ \$000
Personal services expenses	2,225	2,461
Other operating expenses	1,518	1,244
Total personnel services expenses	3,743	3,705

All transactions for EFA are conducted through the NSW Electoral Commission's accounting framework. Within this framework, the NSW Electoral Commission has incurred personnel services expenses of \$2.2 million and other operating expenses of \$1.5 million in conducting EFA's affairs. The NSW Electoral Commission has not recovered these costs from EFA. As such EFA has recognised these services as contributions received free of charge as part of the line item 'Other revenue' in the statement of comprehensive income.

3. (a) Grants and Contributions

	2013 \$ \$000	2012 \$ \$000
Total draw-downs from NSW Treasury*	9,090	29,613
Contribution from NSW Electoral Commission	25	-
Total grants and contributions	9,115	29,613

*The annual *Appropriation Act* provides funding to the NSW Electoral Commission which includes an amount for the public funding of an Election Campaigns Fund, Administration Fund and a Policy Development Fund. The *Election Funding, Expenditure and Disclosures Act* requires that the Election Funding Authority make payment to parties and candidates through a regulated claims procedure. The Election Funding Authority requests the NSW Electoral Commission to make the payments on its behalf. The value of the transfer payments for the 2012-13 financial year was \$9.090 million.

4. Administered Income

	2013 \$ \$000	2012 \$ \$000
Fines for infringements of the <i>Election Funding, Expenditure and Disclosures Act</i>	24	-

5. Contingent Assets and Liabilities

There are no known contingent assets or liabilities at balance date (Nil at 30 June 2012).

6. Commitments

The Authority has no contractual commitments or any operating or finance leases (Nil at 30 June 2012).

7. Reconciliation Of Cash Flows From Operating Activities To Net Result

	2013 \$ \$000	2012 \$ \$000
Net result	-	-

Notes to the financial statements continued

8. Events after the Reporting Period

In May 2013 the Joint Standing Committee on Electoral Matters (JSCEM) released its recommendations from its review of the *Parliamentary Electorates and Elections Act 1912* and *Election Funding, Expenditure and Disclosures Act 1981*. The two key recommendations arising from the review were:

- that the NSW Government introduce legislation for a new electoral act for NSW which provides for both the conduct of State elections and the regulation of campaign finance and expenditure
- there should be one statutory corporation responsible for the conduct of State elections and the regulation of campaign finance and expenditure.

If the new legislation is introduced it is possible that the Election Funding Authority could cease to be a separate statutory body. The State Government has six months to provide a response to the JSCEM Report which contains the above recommendations.

END OF AUDITED FINANCIAL STATEMENTS

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Appendices

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Policy Document

Election Campaigns Fund Policy

Purpose

This policy is intended to operate as a plain-English guide to the Election Campaigns Fund. It covers the purpose of the Election Campaigns Fund, eligibility, lodging a claim, how the Authority processes a claim and what types of expenditure are claimable or not claimable.

Overview

The purpose of the Election Campaigns Fund is to reimburse electoral communication expenses to eligible registered political parties and candidates that contest a State general election. The Fund is also available to reimburse electoral communication expenses to eligible candidates that contest a State by-election.

The Election Campaigns Fund was introduced on 1 January 2011 in Part 5 of the Election Funding, Expenditure and Disclosures Act 1981 (the Act). Part 5 provides for public funding of State election campaigns.

The Parliament of NSW considers that conducting elections under a public funding model is in order to partly compensate election participants for the loss in revenue arising from the caps on political donations.¹

Eligibility

Registered Political Parties

A registered political party is eligible for election campaign funding if:

- it is a registered political party on election day for the State election; and
- it endorses candidates who are properly nominated for the State election; and
- it satisfies at least one of the party eligibility criteria; which are:
 - in the case of an Assembly general election – the total number of first preference votes received by all those candidates endorsed by a party is at least 4% of the total number of first preference votes in all electoral districts in which the candidates were nominated;
 - in the case of a periodic Council election – the total number of first preference votes received by all those candidates endorsed by a party (and by all other candidates included in the same group) is at least 4% of the total number of first preference votes in that election; and
 - at least one of the candidates endorsed by a party is elected at the State election.

Candidates

A candidate is eligible for funding if:

- the candidate is registered as such a candidate in the Register of Candidates for the election on election day; and
- in the case of a candidate for a periodic Council election, the candidate was not included in a group, or was included in a group none of whose members were endorsed by a party; and
- the candidate satisfies at least one of the candidate eligibility criteria; which are:
 - in the case of an Assembly election or by-election for the Assembly the candidate is elected or the total number of first preference votes received by the candidate is at least 4% of the total number of first preference votes in the electoral district in which the candidate was nominated;
 - in the case of a periodic Council election the candidate is elected or the total number of first preference votes received by the candidate (and, if included in a group, by all other candidates included in the same group) is at least 4% of the total number of first preference votes in the election.

¹ Parliament of NSW's Second Reading Speech for consideration of the Election Funding and Disclosures Amendment Bill 2010, on 10 November 2010, which inserted (among other provisions) Part 6A into the Act: [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/a552a04e447ea2b6ca2577ca001c5535/\\$FILE/LC%209510.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/a552a04e447ea2b6ca2577ca001c5535/$FILE/LC%209510.pdf)

May 2013

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Appendix 1: Election Campaigns Fund Policy – page 2 of 6

Policy Document

Election Campaigns Fund Policy

Entitlements

The amount payable to an eligible party or candidate is the amount of actual electoral communication expenditure incurred during the capped period up to a maximum amount.

Electoral communication expenditure is expenditure described in the table on page 5 of this document, “List of examples of acceptable and unacceptable items of expenditure in a claim: Section 87(2)(a)-(f): Electoral communication expenditure”.

The capped period is:

- (a) in the case of the 2011 NSW State Election – from and including 1 January 2011 until the end of 26 March 2011,
- (b) in the case of the next general election to be held after the term of the Legislative Assembly has expired (March 2015) – from and including 1 October 2014 until the end of polling day for the election,
- (c) in any other case (including by-elections) – 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.

For example, the capped expenditure period for the Sydney by-election, held on 27 October 2012, was from 8 October 2012 to 27 October 2012 (inclusive).

The maximum amounts payable are a percentage of the relevant expenditure caps which are adjusted for inflation every election period (four years).

Calculation of amount payable

The amounts payable are calculated as follows:

Eligible Assembly party

Actual Expenditure within expenditure cap	% of Actual Expenditure to be paid
Expenditure within 0-10% of expenditure cap	100% of this actual expenditure
Expenditure within 10-90% of expenditure cap	75% of this actual expenditure
Expenditure within 90-100% of expenditure cap	50% of this actual expenditure

Eligible Council party

Actual Expenditure within expenditure cap	% of Actual Expenditure to be paid
First one third of expenditure cap	100% of this actual expenditure
Next third of expenditure cap	75% of this actual expenditure
Final third of expenditure cap	50% of this actual expenditure

Eligible Assembly party candidate

Actual Expenditure within expenditure cap	% of Actual Expenditure to be paid
Expenditure within 0-10% of expenditure cap	100% of this actual expenditure
Expenditure within 10-50% of expenditure cap	50% of this actual expenditure

Eligible Assembly independent candidate

Actual Expenditure within expenditure cap	% of Actual Expenditure to be paid
Expenditure within 0-10% of expenditure cap	100% of this actual expenditure
Expenditure within 10-80% of expenditure cap	50% of this actual expenditure

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Appendices continued

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Policy Document

Election Campaigns Fund Policy

Eligible Council candidate

Actual Expenditure within expenditure cap	% of Actual Expenditure to be paid
First one third of expenditure cap	100% of this actual expenditure
Next third of expenditure cap	75% of this actual expenditure
Final third of expenditure cap	50% of this actual expenditure

Expenditure caps

These are the current expenditure caps, for the election period from 27 March 2011 until polling day for the next Assembly general election (March 2015),² that are relevant to the Election Campaigns Fund:

Claimant	Expenditure cap	Section of the Act
Parties with Assembly candidates in a general election (per electorate)	\$111,200	95F(2)
Other parties with Council candidates in a general election	\$1,166,600	95F(4)
Party candidates in Assembly general election	\$111,200	95F(6)
Independent candidates in Assembly general election	\$166,700	95F(7)
Non-grouped candidates in Council general election	\$166,700	95F(8)
Candidates in Assembly by-election	\$222,300	95F(9)

How to lodge a claim

Claims for election campaign funding must be lodged within 120 days after the day for the return of the writs for the election. The day for the return of the writs is published on the EFA website.

Claims must be lodged with the Authority in writing by completing and returning the following:

- Form EF683 – Claim for payment from the Election Campaigns Fund
 - This includes a Certificate of a Registered Company Auditor: see page 1 of the form
- Form EF689 – Electronic Funds Transfer (EFT) Payment Authority
- Vouching of all claimed expenditure
 - Invoices, accounts and receipts for items of expenditure
 - Information about allocation or apportionment of expenses where applicable
 - Recharge invoices where expenses have been reimbursed by the party³

After nomination date for an election, all parties and candidates who are registered to contest the election receive an explanation of expenditure caps and the Election Campaigns Fund. Once the results of the election are published, all eligible parties and candidates are notified of their eligibility to make a claim. This will include details of how to make a claim.

² The caps for the election period that ended on 26 March 2011 are given in s.95F(2)-(13) of the Act, and are adjusted for subsequent election periods under s.95F(14) and Sch. 1 cl. 3 of the Act.

³ See s.66 of the Act and cl. 6 of the Regulation.

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Policy Document

Election Campaigns Fund Policy

When a claim is due at the same time as a Part 6 declaration

Disclosure of political donations and electoral expenditure is required after the end of each disclosure period by parties, candidates, elected members, groups, third-party campaigners and major political donors. A Part 6 declaration is the form in which such disclosures are required to be made. For parties, candidates and elected members, Part 6 declarations are due 12 weeks after the end of the disclosure period (for 2013, the due date is 23 September 2013). If a State election (including a by-election) is held in April or May of a particular year, it is possible for the Part 6 declarations to be due at the same time as a claim for Election Campaigns Funding in respect of that election.

For instance, claims for election campaign funding in respect of the Northern Tablelands by-election (to be held on 25 May 2013) are due on 5 October 2013 (120 days after the return of writs on 7 June 2013).

If a claim for election campaign funding is due at or around the same time as a Part 6 declaration, the relevant declaration form will be enclosed with the eligibility letter. The declaration must also be audited by a registered company auditor. In this case, instead of listing all electoral communication expenditure twice (once on the claim form and once on the declaration form), a one-page claim form will be enclosed and the declaration will serve two purposes: a declaration of expenditure for the purposes of the Election Campaigns Fund claim, and a declaration of expenditure (and political donations) for the purposes of compulsory disclosure under Part 6 of the Act.

How we process a claim

Once the Authority receives a claim for election campaigns funding, the claim (and declaration, if applicable) is assessed for completeness. The claim, declaration (if applicable) and vouching are then reviewed to ensure that only electoral communication expenditure under s.87, incurred in the capped expenditure period as per s.95H, is included in the party's or candidate's entitlement. See the table below listing types and examples of expenditure that are acceptable and not acceptable.

Authority approval

Once a claim for funding has been processed and the party's or candidate's eligibility and entitlement have been verified, the claim is submitted to the Authority meeting for approval.

What types of expenditure are acceptable and not acceptable

The amount to be distributed from the Election Campaigns Fund to an eligible party or candidate in respect of a State election is the amount of actual expenditure incurred *by the party or candidate during the capped expenditure period, but not exceeding the maximum entitlement. See the tables above for the maximum entitlements.*

1. **Actual** expenditure means total actual electoral communication expenditure incurred by the party or candidate. It must be supported with vouching.
2. **Electoral communication expenditure is expenditure** which falls into the categories under s.87(2)(a)-(f), and does not fall into any category under s.87(2)(g)-(j) or s.87(3) or (4). See the table below for examples.
 - For the purpose of clarity "electoral communication expenditure" (ECE) is a subset of "electoral expenditure".
3. **Incurred by the party or candidate** means that only invoices or receipts addressed to the party, or a representative of the party, are accepted. If an expense was incurred partially by the claimant and partially for other use (for example, a mobile phone used by a party senior officer for party and personal use), the party must advise the Authority of the apportionment of the expense (for example, 30% for electoral communication).
4. **Incurred... during the capped expenditure period:** For the purposes of ECE caps, ECE is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered. In particular:
 - Expenditure on advertising is incurred when the advertising is broadcast or published; and
 - Expenditure on the production and distribution of election material is incurred when the material is distributed; and

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Appendices continued

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Policy Document

Election Campaigns Fund Policy

- Expenditure on the employment of staff is incurred during the period of their employment. See 95J of the Act.
- The capped expenditure period, under s.95H of the Act, is:
 - i. For the next State general election held following the expiry of the Legislative Assembly – from 1 October in the year before the election until the end of election day;
 - ii. In any other case (including State by-elections) – from the day of the issue of the Writ/s of Election until the end of election day.

List of examples of acceptable and unacceptable items of expenditure in a claim

Section 87(2)(a)-(f): Electoral communication expenditure

	Provision wording	Examples
(a)	expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material	Placement of ad in a newspaper Cost of broadcasting radio/tv ads
(b)	expenditure on the production and distribution of election material	Printing Artwork Photography Letter box drop Web site design
(c)	expenditure on the Internet, telecommunications, stationery and postage	Telephone bills in name of individual or business (apportioned if necessary) Postal box (if for campaign)
(d)	expenditure incurred in employing staff engaged in election campaigns	Workers insurance Payroll tax
(e)	expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member)	Rent Utilities – electricity, water Carpet cleaning Office furniture rental Keys and locks
(f)	such other expenditure as may be prescribed by the regulations as electoral communication expenditure	

Section 87(2)(g)-(j): Not electoral communication expenditure

The following types of expenditure may **not** be claimed from the Election Campaigns Fund:

	Provision wording
(g)	expenditure on travel and travel accommodation
(h)	expenditure on research associated with election campaigns
(i)	expenditure incurred in raising funds for an election or in auditing campaign accounts

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Policy Document

Election Campaigns Fund Policy

(j)	<p>such other expenditure as may be prescribed by the regulations as not being electoral communication expenditure</p> <p>Examples include:</p> <ul style="list-style-type: none"> • a motor vehicle • motor vehicle accessories • a vessel or aircraft used for the purpose of navigation • televisions and radios • television and radio broadcasting equipment • electronic equipment for recording sounds or visual images • photographic equipment • computers and associated equipment and computer software • office furniture and equipment <p>Conditions, exceptions and definitions apply to the above. See clause 5 of the Regulation for more information.</p>
-----	---

Section 87 – Not electoral expenditure

The following types of expenditure are not electoral expenditure, and are therefore not ECE:

(3)(a)	expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament
(3)(b)	<p>expenditure on factual advertising of:</p> <ul style="list-style-type: none"> (i) meetings to be held for the purpose of selecting persons for nomination as candidates for election, or (ii) meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties, or (iii) any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties
(4)	expenditure incurred by an entity or other person (not being a registered party, elected member, group or candidate) if the expenditure is not incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.

Appendices continued

Appendix 2: Administration Fund Policy – page 1 of 5

Policy Document

Administration Fund Policy

Purpose

This policy is intended to operate as a plain-English guide to the management of the Administration Fund. It covers the purpose of the Administration Fund, eligibility, entitlements, lodging a claim, how a claim is processed, and what types of expenditure are acceptable or not acceptable.

Overview

The purpose of the Administration Fund is to reimburse administration and operating expenses to eligible parties and independent members of Parliament.

The Administration Fund commenced on 1 January 2011 as a consequence of the insertion of Part 6A into the Election Funding, Expenditure and Disclosures Act 1981 (the Act) which provides for the reimbursement of administrative and operating expenses for eligible parties and independent elected members within fixed limits.

The Parliament of NSW considers that administration funding is a necessary source of income for parties and independent elected members in order to compensate for the loss in revenue arising from the caps imposed on political donations.¹

Eligibility

Parties

A party is eligible for annual payments on a calendar year basis if:

- it was a registered party at the previous State election, and the party continued to be a registered party as at 31 December in the calendar year to which a payment relates;
- it endorsed candidates who were elected at that election, and the Election Funding Authority (the Authority) is satisfied that the elected members claimed to be endorsed by the party; and
- the Authority is satisfied that the elected members continued to be members or representatives of the party as at 31 December in the relevant calendar year.²

Independent Elected Members

An independent elected member is eligible for annual payments on a calendar year basis if:

- the elected member was not an endorsed candidate of any party at the State election at which the member was elected; and
- the Authority is satisfied that the elected member is not a member or representative of any party as at 31 December in the calendar year to which a payment relates.³

¹ Parliament of NSW's Second Reading Speech for consideration of the Election Funding and Disclosures Amendment Bill 2010, on 10 November 2010, which inserted (among other provisions) Part 6A into the Act.

² Section 97E(2) of the Act.

³ Section 97F(2) of the Act.

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Appendix 2: Administration Fund Policy – page 2 of 5

Policy Document

Administration Fund Policy

Entitlements

The annual amount payable to an eligible party or independent elected member is the amount of administrative expenditure incurred during the calendar year up to a maximum amount.

The maximum amounts payable are adjusted for inflation each year. The maximum amounts payable for expenditure incurred in a calendar year are:

Maximum Amounts Claimant	Calendar year in which expenditure was incurred	
	2012 (claimed in 2013)	2013 (claimed in 2013 on a quarterly basis, or claimed 2014)
Party	\$200,000 if there is only one elected member endorsed by the party, or \$350,000 if there are only 2 elected members endorsed by the party, or \$450,000 if there are only 3 elected members endorsed by the party, or \$450,000 if there are more than 3 elected members endorsed by the party plus \$83,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.	\$204,700 if there is only one elected member endorsed by the party, or \$358,100 if there are only 2 elected members endorsed by the party, or \$460,400 if there are only 3 elected members endorsed by the party, or \$460,400 if there are more than 3 elected members endorsed by the party plus \$85,000 for each such member in excess of 3 up to a maximum of 22 members in excess of 3.
Independent elected member	\$200,000	\$204,700

The amounts shown above were introduced to the Act on 3 April 2013. If a claimant has already made a claim from the Administration Fund before that date, they may apply to the Authority for a redetermination of their 2012 entitlement under the new amounts. A claimant can do so by lodging a new claim form (see below), along with a declaration of, and vouching for, any additional items of expenditure that the claimant wishes to have included in the redetermination.

It is not necessary to lodge a new declaration form and additional vouching if the expenditure declared and vouched for in the initial claim is sufficient to obtain the new entitlement. A new claim form, stating the new amount claimed, must be lodged.

How to lodge a claim

Claims for an annual payment of administration funding must be lodged between 1 January and 30 June of the year following the year in which administrative expenditure was incurred.

Claims for a quarterly payment may also be lodged after each of the first three quarters of the calendar year.

A quarterly payment must not exceed:

- (a) 25% of the annual amount if the payment is in respect of the first quarter, and
- (b) 50% of the annual amount if the payment is in respect of the second quarter, less any amounts paid in respect of the first quarter, and
- (c) 75% of the annual amount if the payment is in respect of the third quarter, less any amounts paid in respect of the first and second quarters.

A payment for an annual amount after the end of the calendar year will have any previous quarterly payments in that calendar year deducted from the claimant's entitlement.

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Administration Fund Policy

Claims must be lodged with the Authority in writing by completing and returning the following:

- Form EF697 – Claim for Payment from the Administration Fund
- Form EF698 – Declaration of Expenditure for Administration Purposes
 - This includes a certificate which must be completed by a registered company auditor
- Form EF689 – Electronic Funds Transfer (EFT) Payment Authority
- Vouching of all claimed expenditure
 - Invoices and receipts for items of expenditure
 - Information about allocation or apportionment of expenses where applicable
 - Payroll summaries certified by a senior officer showing remuneration of staff⁴

Each year, all eligible parties and independent elected members are notified of their eligibility by post. The letter encloses forms EF697, EF698 and EF689. Eligible claimants may also contact the Authority for copies of these forms.

How we process a claim

On receipt of a claim for administration funding, the claim and declarations are assessed for completeness. The claim, declaration and vouching are reviewed to ensure that only claimable expenditure under s.97B(1) of the Act is considered for reimbursement. See the table below of expenditures that are acceptable and not acceptable.

Parties

In order to satisfy the Authority of a party's eligibility under s.97E(2)(b) and (c) of the Act, the Authority will contact the party's endorsed elected members requesting advice in terms of s.97E(2)(b) and (c). A party may only realise its full maximum entitlement when all members, or at least 25 members if there are more than 25, have responded personally, in writing, and in the affirmative in terms of s.97E(2)(b) and (c) of the Act. If only a portion of the party's members or less than 25 have responded as such, the party's maximum entitlement is calculated as if the party endorses only those members.

Independent elected members

Each independent elected member who claims administration funding will be contacted and requested to confirm eligibility under s.97F(2)(b) of the Act. A personal, written response in the affirmative to the eligibility question serves to satisfy the Authority of eligibility for funding.

Authority approval

Once a claim for funding has been examined and the claimant's eligibility and entitlement have been verified, the claim is submitted to the Authority for approval.

A payment from the Administration Fund must be made by the Authority within 6 weeks after the Authority receives all of the following:

- (a) a claim for the payment that complies with Division 4 of Part 6A of the Act,
- (b) all other documentation that is required to be provided, under Division 4 of Part 6A of the Act, in connection with the claim,
- (c) information or evidence required by the Authority, under Division 4 of Part 6A of the Act, in connection with the claim.

⁴ This form of vouching is required for expenses claimed under s.97B(1)(a)(vi)

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Policy Document Administration Fund Policy

What types of expenditure are acceptable and not acceptable

The annual amount to be distributed from the Administration Fund to any eligible party (under s.97E(3)) or eligible elected member (under s.97F(3)) is the amount of actual administrative expenditure incurred by or on behalf of the party or elected member during the calendar year to which the payment relates, but not exceeding the maximum entitlement.

1. **Actual** administrative expenditure is that which is supported by adequate vouching.
2. **Administrative expenditure** is expenditure outlined under s.97B(1)(a) of the Act but does not include expenditure under s.97B(1)(b). See the table below.
3. **Incurred by or on behalf of the claimant** means that only invoices or receipts addressed to the claimant, or a representative of the claimant, are accepted. If an expense was incurred partially by the claimant and partially for personal use (for example, a mobile phone) the claimant must indicate the apportionment of the expense (for example, 30% for administrative expenditure).
4. **Incurred... during the calendar year to which the payment relates** means that the services for which the expenditure is incurred are actually provided, or the goods for which the expenditure is incurred are actually delivered, between 1 January and 31 December (inclusive) of that year. It does not always mean that the invoice was paid in that year. For example, if a service is paid for in advance in 2011 to cover a period of time in 2012, it was incurred in 2012.

List of examples of acceptable items of expenditure

Section 97B(1)(a): Administrative expenditure

(i) Expenditure for the administration or management of the activities of the eligible party or elected member	<ul style="list-style-type: none"> • Fees for the party’s or elected member’s main NSW bank account (but not for any campaign accounts) • MYOB subscriptions • Office supplies • Telephone, mobile phone, fax charges
(ii) Expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party or elected member are discussed or formulated	<ul style="list-style-type: none"> • Conference venue hire and deposit • Conference venue accommodation • Conference-related banners, flyers, inserts, stationery
(iii) Expenditure on providing information to the public or a section of the public about the eligible party or elected member	<ul style="list-style-type: none"> • Internet connection charges • Website-related costs (e.g. hosting, domain name) • Envelopes and postage • Brochures, flyers, forms, invitations • Business cards
(iv) Expenditure on providing information to members and supporters of the eligible party or elected member	<ul style="list-style-type: none"> • All examples under (iii) above • Venue hire for community or Party meeting • Party newsletter • Annual handbook • Use of mobile phone • Photography
(v) Expenditure in respect of the audit of the financial accounts of, or claims for payment or disclosures under this Act of, the eligible party or elected member	<ul style="list-style-type: none"> • Audit of Declaration of Expenditure for Administration Purposes for the previous year’s claim (if audited and incurred in the relevant calendar year) • Audit of Financial Statements and Disclosure of Political Donations and Electoral Expenditure for past period (if audited and incurred in the relevant calendar year)

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Administration Fund Policy

(vi) Expenditure on the remuneration of staff engaged in the above activities for the eligible party or elected member (being the proportion of that remuneration that relates to the time spent on those activities)	<ul style="list-style-type: none"> • Remuneration paid to staff engaged in the above activities. • It must only be for the portion of the staff's time spent on the above activities, and (if the claimant is a party) in relation to the NSW branch of the party, not to the Federal or local government branches. • See EFA Guidelines 6 and 7 in relation to this category of expenditure.
(vii) Expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities)	<ul style="list-style-type: none"> • Printers and photocopiers • Computer hardware • Vehicle running or rental costs for vehicles used for administrative purposes
(viii) Expenditure on office accommodation for the above staff and equipment	<ul style="list-style-type: none"> • Office rent and ancillary expenses (e.g. car park rental) • Electricity • Water usage • Waste disposal • Cleaning, grounds maintenance • See EFA Guideline 13 in relation to this category of expenditure.
(ix) Expenditure on interest payments on loans	<ul style="list-style-type: none"> • Interest paid to financial institutions for loans taken by the claimant for NSW administrative purposes.

Section 97B(1)(b): Not administrative expenditure

The following types of expenditure may **not** be claimed from the Administration Fund:

(i) Electoral expenditure	Any expenses relating to campaigning and elections.
(ii) Expenditure for which a member may claim a parliamentary allowance as a member	Any expense for which a Parliamentary allowance can be claimed.
(iii) Expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament	Any expenses, including administrative expenses, which relate to the Federal (or other State or Territory) activities of a claimant.

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Appendix 3: Policy Development Fund Policy – page 1 of 4

Policy Document

Policy Development Fund Policy

Purpose

This policy is intended to operate as a plain-English guide to the management of the Policy Development Fund. It covers the purpose of the Policy Development Fund, eligibility, entitlements, lodging a claim, how a claim is processed, and what types of expenditure are acceptable or not acceptable.

Overview

The purpose of the Policy Development Fund is to reimburse policy development expenses to eligible political parties which are not eligible for the Administration Fund. This means that claimants are parties that do not have members of Parliament.

The Policy Development Fund commenced on 1 January 2011 as a consequence of the insertion of Part 6A into the Election Funding, Expenditure and Disclosures Act 1981 (the Act) which provides for the reimbursement of policy development expenses for eligible parties within fixed limits.

The Parliament of NSW considers that Policy Development funding is necessary in light of concerns that caps on donations may have an adverse impact of the development of new parties.¹

Eligibility

A party is eligible for annual payments on a calendar year basis if:

- it was a registered party for the full calendar year in which the policy development expenditure was incurred, and
- the Election Funding Authority (the Authority) is satisfied that it operates as a genuine political party, and
- it is not entitled to payments from the Administration Fund.²

Entitlements

The annual amount payable to an eligible party is the amount of actual policy development expenditure incurred during the calendar year, up to a maximum amount.

The maximum amounts payable are adjusted for inflation each year. The maximum amounts payable for expenditure incurred in a calendar year are:

	Calendar year in which expenditure was incurred		
	2011 (claimed 2012)	2012 (claimed 2013)	2013 (claimed 2014)
Party maximum entitlement	25 cents per first preference vote received by any party candidate at the previous State election (both Houses), or \$5,000, whichever is the greater	26 cents per first preference vote received by any party candidate at the previous State election (both Houses), or \$5,200, whichever is the greater	27 cents per first preference vote received by any party candidate at the previous State election (both Houses), or \$5,400, whichever is the greater

1 Parliament of NSW's Second Reading Speech for consideration of the Election Funding and Disclosures Amendment Bill 2010, on 10 November 2010, which inserted (among other provisions) Part 6A into the Act.
 2 Section 97(2) of the Act.



Appendices continued

Appendix 3: Policy Development Fund Policy – page 2 of 4

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Policy Development Fund Policy

How to lodge a claim

Claims for Policy Development funding must be lodged between 1 January and 30 June of the year following the year in which policy development expenditure was incurred.

Claims must be lodged with the Authority in writing by completing and returning the following:

- Form EF695 – Claim for Payment from the Policy Development Fund
- Form EF696 – Declaration of Expenditure for Policy Development Purposes
 - This includes a certificate which must be completed by a registered company auditor
- Form EF689 – Electronic Funds Transfer (EFT) Payment Authority
- Vouching of all claimed expenditure
 - Invoices and receipts for items of expenditure
 - Information about allocation or apportionment of expenses where applicable
 - Payroll summaries certified by a senior officer showing remuneration of staff³

Each year, all eligible registered political parties are notified of their eligibility to make a claim. The letter encloses forms EF695, EF696 and EF689. Eligible parties may also contact the Authority for copies of these forms.

How we process a claim

On receipt of a claim for policy development funding, the claim and declarations are assessed for completeness. The claim, declaration and vouching are reviewed to ensure that only claimable expenditure under s.97C(1) of the Act is considered when examining the claim. See the table below of expenditures that are acceptable and not acceptable.

In order to satisfy the Authority of a party's eligibility under s.97(2)(b) of the Act, the Authority may check for signs that the party operates as a genuine registered political party, including:

- That the party has as one of its objects or activities the promotion of the election to Parliament of a candidate or candidates endorsed by it, in accordance with the definition of "party" under s.4 of the Act;
- That the party still had a level of membership sufficient for party registration as at 31 December of the relevant calendar year.

Authority approval

Once a claim for funding has been examined and the claimant's eligibility and entitlement have been verified, the claim is submitted to the Authority for approval.

A payment from the Policy Development Fund must be made by the Authority within 6 weeks after the Authority receives all of the following:

- (a) a claim for the payment that complies with Division 4 of Part 6A of the Act,
- (b) all other documentation that is required to be provided, under Division 4 of Part 6A of the Act, in connection with the claim,
- (c) information or evidence required by the Authority, under Division 4 of Part 6A of the Act, in connection with the claim.

³ This form of vouching is required for expenses claimed under s.97C(1)(a)(v)

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What types of expenditure are acceptable and not acceptable

The annual amount to be distributed from the Policy Development Fund to any such eligible party is the amount of actual policy development expenditure incurred by or on behalf of the party during the calendar year to which the payment relates, but not exceeding the maximum entitlement.

1. **Actual** policy development expenditure is that which is supported by adequate vouching.
2. **Policy development expenditure** is expenditure outlined under s.97C(1)(a) but does not include expenditure under s.97C(1)(b). See the table below.
3. **Incurred by or on behalf of the party** means that only invoices or receipts addressed to the party, or a representative of the party, are accepted. If an expense was incurred partially by the party and partially for personal use (for example, a mobile phone), the party must advise the Authority of the apportionment of the expense (for example, 30% for policy development expenditure).
4. **Incurred... during the calendar year to which the payment relates** means that the services for which the expenditure is incurred are actually provided, or the goods for which the expenditure is incurred are actually delivered, between 1 January and 31 December (inclusive) of that year. It does not always mean that the invoice was paid in that year.
For example, if a service is paid for in advance in 2011 to cover a period of time in 2012, it was incurred in 2012.

List of examples of acceptable items of expenditure

Section 97C(1)(a): Policy development expenditure

(i) Expenditure for providing information to the public or a section of the public about the eligible party	<ul style="list-style-type: none"> • Telephone, mobile phone, fax charges • Internet connection charges • Website-related costs (e.g. hosting, domain name) • Envelopes and postage • Brochures, flyers, forms, invitations • Business cards
(ii) Expenditure for conferences, seminars, meetings or similar functions at which the policies of the eligible party are discussed or formulated	<ul style="list-style-type: none"> • Conference venue hire and deposit • Conference venue accommodation • Conference-related banners, flyers, inserts, stationery
(iii) Expenditure on providing information to members and supporters of the eligible party	<ul style="list-style-type: none"> • All examples under (i) above • Venue hire for community or Party meeting • Party newsletter • Annual handbook • Use of mobile phone • Photography
(iv) Expenditure in respect of the audit of the financial accounts of, or claims for payment or disclosures under this Act of, the eligible party	<ul style="list-style-type: none"> • Audit of Declaration of Expenditure for Policy Development Purposes for the previous year's claim (if audited and incurred in the relevant calendar year) • Audit of Financial Statements and Disclosure of Political Donations and Electoral Expenditure for past period (if audited and incurred in the relevant calendar year)
(v) Expenditure on the remuneration of staff engaged in the above activities for the eligible party (being the proportion of that remuneration that relates to the time spent on those activities)	<ul style="list-style-type: none"> • Remuneration paid to staff engaged in the above activities. • It must only be for the portion of the staff's time spent on the above activities, and in relation to the NSW branch of the party, not to the Federal or local government branches. • See EFA Guideline 6 in relation to this category of expenditure.

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Policy Development Fund Policy

(vi) Expenditure on equipment or vehicles used for the purposes of the above activities (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities)	<ul style="list-style-type: none"> • Printers and photocopiers • Computer hardware • Vehicle running or rental costs for vehicles used for policy development purposes
(vii) Expenditure on office accommodation for the above staff and equipment	<ul style="list-style-type: none"> • Office rent and ancillary expenses (e.g. car park rental) • Electricity • Water usage • Waste disposal • Cleaning, grounds maintenance
(viii) Expenditure on interest payments on loans	<ul style="list-style-type: none"> • Interest paid to financial institutions for loans taken by the party for NSW policy development purposes.

Section 97C(1)(b): Not policy development expenditure

The following types of expenditure may **not** be claimed from the Policy Development Fund:

(i) Electoral expenditure	Any expenses relating to campaigning and elections.
(ii) Expenditure incurred substantially in respect of operations or activities that relate to the election of members to a Parliament other than the NSW Parliament	Any expenses, including policy development expenses, which relate to the Federal (or other State or Territory) activities of a party.

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Appendix 4: Penalty Notice Guidelines – page 1 of 10

Guidelines

Penalty Notice Guidelines

Introduction

1. The Election Funding Authority Penalty Notice Guidelines (**the Guidelines**) describe the circumstances in which it is appropriate for authorised officers to issue penalty notices to people who appear to have committed an offence, which is a penalty notice offence, against the *Election Funding, Expenditure and Disclosures Act 1981 (the Act)* or the *Election Funding, Expenditure and Disclosures Regulation 2009 (the Regulation)*. The Guidelines set out the procedures to be followed.
2. The purpose of the Guidelines is to provide consistency in enforcement actions for non-compliance and to ensure:
 - a. Transparency in each action;
 - b. Procedural fairness and natural justice are applied in each case; and
 - c. Enforcement action is proportionate to the alleged offence in each case.
3. The Guidelines should be read in conjunction with other policies developed by the Election Funding Authority (**EFA**) in the compliance and enforcement series, including the:
 - a. Compliance Policy;
 - b. Prosecution Policy; and
 - c. Audit Policy.

What is a Penalty Notice

4. A penalty notice is an administrative mechanism that allows a person, who is alleged to have committed a specified offence, to pay a specified penalty rather than have the matter heard by a court. It is a notice¹:

“...to the effect that the person to whom it is directed has committed a specified offence and that, if the person does not wish to have the matter dealt with by a court, the person may pay the specified amount for the offence to a specified person within a specified time”.
5. Payment of the specified penalty amount imposed by a penalty notice is not to be regarded as an admission of liability for the purpose of any civil claim, action or proceeding arising out of the same occurrence². If the penalty amount prescribed for an alleged offence is paid, no person is liable to any further proceedings for the alleged offence³. Finalisation of an offence by way of a penalty notice does not result in a conviction being recorded.
6. The recipient of a penalty notice may choose to have the matter dealt with by a court instead of paying the amount payable under the penalty notice⁴.

Penalty Notice Offences

7. Section 111A of the Act enables certain offences in the Act and the Regulation to be dealt with by penalty notice, and it provides detail on such things as the nature, manner of service and effect of payment of a penalty notice. It enables the Regulation to prescribe which offences in the Act or Regulation are penalty notice offences and the amount payable as a penalty for each offence⁵.

1 *Fines Act 1996*, s20(1)
 2 *Election Funding, Expenditure and Disclosures Act 1981*, s111A(6)
 3 *Election Funding, Expenditure and Disclosures Act 1981*, s111A(5)
 4 *Fines Act 1996*, s23A
 5 *Election Funding, Expenditure and Disclosures Act 1981*, s.111A(1) & (7)

Appendices continued

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Penalty Notice Guidelines

8. Schedule 2 to the Regulation sets out the list of offences that are prescribed as penalty notice offences and the penalty prescribed for each offence⁶. Some of the offences prescribed in Schedule 2 are restricted in their operation to particular persons (eg, parties or officers). If an offence is not prescribed as a penalty notice offence, the only way to deal with it is by prosecution in court. Attached as Appendix A is a list of the offences prescribed in Schedule 2 and the corresponding penalties.
9. The *Fines Act 1996* (**Fines Act**) underpins the penalty notice system in NSW and sets out detailed procedures relating to fines and the enforcement of penalty notices. The procedures detailed in the Fines Act govern things such as:
 - a. The content of and the manner of serving a penalty notice and, where required, penalty notice reminder notices;
 - b. The timeframe within which the alleged offender is required to pay the penalty amount;
 - c. The right to elect to have the matter dealt with by a court and the procedure for doing so;
 - d. The right to request an internal review of the decision to issue the penalty notice and the procedure for that review; and
 - e. Enforcement action that may be taken against those who fail to respond to the penalty notice.
10. The State Debt Recovery Office (**SDRO**), established under the Fines Act, manages the overall process of penalty notices and fine enforcement. It coordinates with agencies that are empowered to issue penalty notices, such as the EFA. The SDRO's main functions relate to:
 - a. Receipt and collection of penalty amounts;
 - b. Making enforcement orders;
 - c. Taking enforcement action against those who fail to pay the penalty amount;
 - d. Writing-off outstanding penalty notice amounts.

Who can issue a penalty notice for offences under the Act or Regulation?

11. Penalty notices for offences under the Act or Regulation may only be issued by an authorised officer⁷. An authorised officer is an inspector within the meaning of section 110 of the Act⁸. Under section 110, an **inspector** means a person:

- "a. who is employed under Chapter 1A of the **Public Sector Employment and Management Act 2002** in the Government Service, or*
 - b. who is not so employed but is subject to the control and direction of the Authority in relation to any function under this section,*
- and who is appointed by the Authority as an inspector for the purposes of this section."*

Assessment and decision to issue a penalty notice

12. Before issuing a penalty notice the authorised officer must conduct a preliminary review and assessment ("an Assessment") of the alleged offence. The Assessment will include an analysis of available information, including EFA records. It must appear to the authorised officer that a penalty notice offence has been committed.⁹

⁶ *Election Funding, Expenditure and Disclosures Regulation 2009*, cl.48

⁷ *Election Funding, Expenditure and Disclosures Act 1981*, s111A(1)

⁸ *Election Funding, Expenditure and Disclosures Act 1981*, s111A(10)

⁹ *Election Funding, Expenditure and Disclosures Act 1981*, s111A(1)

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- 13. The authorised officer should be satisfied that there is sufficient evidence to prove the commission of the offence by the penalty notice recipient. At the time of issuing the penalty notice the information to establish each element does not need to be in the form of evidence that would be admissible in court but needs to be readily available.
- 14. The authorised officer will record the decision as to whether a penalty notice should be issued in a written file note on the relevant agency file.
- 15. A penalty notice cannot be issued unless the following steps have been completed:
 - a. An assessment and/or investigation has been undertaken by an authorised officer and an offence against the Act or Regulation has been identified;
 - b. The authorised officer is satisfied that every element of the offence is capable of being proved; and
 - c. The Compliance Manager has been notified of the decision to issue a penalty notice.

Is a penalty notice the appropriate response for the offence?

- 16. The decision to issue a penalty notice is discretionary. This means that, although there may be sufficient information to establish that a penalty notice offence has in fact been committed, the authorised officer may determine that a penalty notice is not the appropriate enforcement response. The appropriate enforcement response is to be determined by reference to the EFA's Compliance Policy.
- 17. When a penalty notice is determined to be the appropriate enforcement response, an authorised officer may give a person an official caution instead of issuing a penalty notice. Section 19A of the Fines Act provides:

“19A Appropriate officer may give official caution

- 1. *An appropriate officer may give a person an official caution instead of issuing a penalty notice if the appropriate officer believes:*
 - a. *on reasonable grounds that the person has committed an offence under a statutory provision for which a penalty notice may be issued (a penalty notice offence), and*
 - b. *that it is appropriate to give an official caution in the circumstances.*
- 2. *In making a decision under subsection (1), an appropriate officer (other than a police officer) must have regard to the applicable guidelines relating to the giving of official cautions in respect of penalty notice offences.*
- 3. *In this section: guidelines means guidelines:*
 - a. *issued by the Attorney General that are published in the Gazette and made available on the internet site of the State Debt Recovery Office, or*
 - b. *issued by the relevant issuing agency that are consistent with the guidelines issued by the Attorney General.”*

- 18. There are a number of factors to be taken into account in determining whether it is appropriate or not to issue a penalty notice. Examples of situations where the issue of a penalty notice may not be appropriate could include where:
 - a. there have been multiple breaches by the same person and the particular breach is part of an ongoing pattern of noncompliance (which may warrant the commencement of legal proceedings or entry into a compliance agreement to achieve a more appropriate outcome and a higher level of deterrence); or
 - b. a long period of time has elapsed since the alleged offence (note that legal proceedings must be commenced within 3 years of commission of the offence); or
 - c. the evidence is insufficient such that if a Court heard the matter, it would be unlikely to succeed.

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Penalty Notice Guidelines

19. The issue of a penalty notice may be appropriate in circumstances including:
- where the breach is a minor one; or
 - where the breach can be remedied quickly; or
 - where the issuing of a penalty notice is likely to have the desired deterrent effect.

Official Cautions

20. The EFA has issued guidelines (**EFA Caution Guidelines**) pursuant to section 19A(3)(b) of the *Fines Act* which are consistent with the Guidelines issued by the Attorney General under section 19A(3)(a) of the *Fines Act*. When deciding whether to issue a caution or penalty notice, authorised officers of the EFA must have regard to the EFA Caution Guidelines.
21. The purpose of the EFA Caution Guidelines is to ensure that authorised officers exercise good judgment and take into account relevant considerations when deciding whether to give a caution for a penalty notice offence. They do not create any right or obligation to give a caution.

Issuing the Penalty Notice

22. After the decision to issue the Penalty Notice is made by the authorised officer, penalty notices are prepared by the Compliance Manager. Penalty notices are computer generated documents, the form of which has been approved by the SDRO. Penalty notices issued by the EFA are processed by the SDRO. The SDRO is also responsible for enforcement of outstanding fines and penalty notice amounts.
23. The penalty notice is produced in triplicate:
- Part A is the copy of the notice which is forwarded to the SDRO;
 - Part B is a duplicate of the SDRO Part A and is retained by the EFA;
 - Part C is the copy of the notice which is served on the alleged offender.
24. The penalty notice contains the following information:
- Issue Date;
 - Penalty Notice Number;
 - Penalty Amount;
 - Date Due;
 - Details of the Offence;
 - Date of the Offence;
 - How to Pay;
 - What will happen if the recipient does not act on the penalty notice by the due date;
 - Options available to respond to the penalty notice; and
 - Contact details for the SDRO.

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25. Part C of the penalty notice must be served on the alleged offender. It may be served personally or by post¹⁰. There is no legal time limitation for serving a penalty notice, however, it should be served within a relatively short period of time after the commission of the relevant offence. This is because firstly, one of the reasons for inclusion of an offence within the penalty notice scheme is that the offence is one that can, and should, be dealt with swiftly. Secondly, it provides the recipient with the maximum opportunity to recall the events the subject of the penalty notice.
26. Part A of the penalty notice is to be provided to the SDRO within 3 business days of the issue of a penalty notice Part C to an alleged offender.
27. The Compliance Manager will keep and maintain an internal penalty notice tracking system which documents the following:
- The date that a penalty notice was issued;
 - The person to whom the penalty notice was issued;
 - The inspector who issued the penalty notice
 - Whether or not one of the options on the penalty notice was actioned by the alleged offender, and if so, details of the option selected and the date of this action;
 - Details of any follow-up action that has been taken by SDRO and the date of this action; and
 - Details of any enforcement action that has been taken by the SDRO and the date of this action.
28. The Compliance Manager is to notify the Director of Funding and Disclosure at least 5 working days prior to the penalty notice being issued. Notification via email is sufficient. The notification should include:
- The name of the alleged offender;
 - A brief description of the alleged offence;
 - The amount of the penalty;
 - The name of the issuing inspector; and
 - A link to the updated internal penalty notice tracking system.

What is the procedure following the issue of a penalty notice?

29. Once a penalty notice is issued by the authorised officer, the recipient of the penalty notice can elect to take one of the following options:
- Pay the specified penalty amount within the time period stated in the notice (21 days); or
 - Request a review of the decision to issue a penalty notice¹¹; or
 - Elect to have the matter heard before a court¹²

¹⁰ *Election Funding, Expenditure and Disclosures Act 1981*, s111A(3)

¹¹ The procedure for review of the issue of a penalty notice is set out in Part 3 Division 2A of the Fines Act

¹² Section 23A Fines Act

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Penalty Notice Guidelines

30. The Fines Act stipulates time periods in respect of the issuing of penalty notices, including
 - a. issuing penalty reminder notices, if the penalty notice has not been paid within the time required by the notice, payable within 28 days,
 - b. lodging requests for review before the due date for payment of the penalty notice,
 - c. considering requests for review, and
 - d. responding to requests for review within 42 days of receipt of the application, or within 56 days if additional information is requested from the applicant.

Payment of penalty amount

31. Payment of the specified penalty amount is to be made to the SDRO. Payment may be made by part payments. However, for payment to be valid, the full amount payable under a penalty notice is to be paid within the time required by the notice¹³.
32. Once full payment has been made, there is no further liability for the offence to which the notice relates.¹⁴

Request for review

33. A request for review may be received by either the SDRO or the EFA. However, in all circumstances, the review will be undertaken by a reviewing officer from the EFA. Where a request for review is received by the EFA, the EFA will notify the SDRO as soon as possible so that the SDRO can suspend action in relation to the penalty notice.
34. The purpose of internal review is to determine, on the available information, whether a penalty notice was correctly issued, and whether any circumstances warrant withdrawal of the penalty notice¹⁵.
35. The procedure for review of the issue of a penalty notice is set out in Part 3 Division 2A of the Fines Act.
36. The Attorney General has issued, and made publicly available, the Attorney General's Internal Review Guidelines¹⁶. These guidelines are issued as a standard to assist agencies to conduct internal reviews of penalty notices fairly, impartially, and consistently across Government, and in accordance with the Fines Act. The Attorney General's Internal Review Guidelines explain the nature of internal review and also set out some matters that will, or will not, be regarded as relevant in relation to a number of commonly occurring offences.
37. The Attorney General's Internal Review Guidelines do not apply where an agency has issued its own internal review guidelines. Where an agency does issue its own internal review guidelines, they must not be inconsistent with the Attorney General's Internal Review Guidelines¹⁷. The EFA has not issued its own internal review guidelines.
38. Where the EFA conducts a review and either confirms the decision to issue a penalty notice or withdraws the penalty notice, the EFA's agreement with SDRO requires that the SDRO be notified of the decision within 10 business days. This time requirement allows the SDRO to ensure it is able to communicate the outcome of the review to the applicant within the time limits required by section 24E(4) of the Fines Act.

¹³ Section 23(1A) *Fines Act 1996*

¹⁴ Section 23(2) *Fines Act 1996* and Section 111A(5) *Election Funding, Expenditure and Disclosures Act 1981*

¹⁵ Uniform Guidelines for Internal Review, Attorney General, cl4.3

¹⁶ Uniform Guidelines for internal review issued by the Attorney General for use under the *Fines Act 1996*

¹⁷ Uniform Guidelines for Internal Review, Attorney General, cl 1.1

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Who can conduct a review?

39. The internal review must be conducted by a person who was not involved in making the decision to issue the penalty notice.¹⁸ The person or people who made the decision to issue the penalty notice must not be the manager or superior of the person conducting the review¹⁹.
40. When a request for internal review is received by the SDRO it is forwarded to the EFA where the following steps are taken:
- a. Application is received and registered on the Penalty Notice Register;
 - b. File is assigned to an inspector to conduct the review;
 - c. Review is conducted in accordance with Fines Act, Internal Review Guidelines under the *Fines Act* and the EFA Caution Guidelines;
 - d. Memo recording the outcome of the review is prepared by the inspector conducting the review;
 - e. The outcome of the review will be either:
 - i. Penalty to stand; or
 - ii. Withdraw the penalty notice and issue caution; or
 - iii. Withdraw the penalty notice.
 - f. Completed review is forwarded to the Compliance Manager so that SDRO can be informed of the outcome and advise the applicant accordingly.

Court election

41. A person alleged to have committed an offence has the right to elect to have the matter dealt with by a court²⁰. A person may make such an election even if the whole or part of the amount payable under the penalty notice has been paid, but such an election must be made within 90 days from when the original penalty notice was served²¹.
42. If a person has made an application for review of the decision to issue a penalty notice, they may elect to have the matter dealt with by a court at any time whilst the review is in progress, or up to 28 days after the review confirms the decision to issue the penalty notice²².
43. If proceedings are brought in the Local Court, the maximum penalty that the Court may impose is 40 penalty units (\$4,400) or the maximum penalty for the offence under the Act or regulations – whichever is lesser²³. If proceedings are brought in the Supreme Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty for the offence under the Act or regulations (for example, the maximum monetary penalty under the Act is 200 penalty units or \$22,000)²⁴.
44. Any court election referred to the EFA by SDRO must be referred immediately to the Compliance Manager who will take action to inform the EFA's Legal Branch.
45. Proceedings in respect of an offence may only be commenced within 3 years after the offence was committed²⁵.

18 Section 24C(2) *Fines Act 1996*

19 Uniform Guidelines for Internal Review, Attorney General, cl 4.7

20 Section 23A(1) *Fines Act*

21 Section 23A(2) & (2A) *Fines Act*

22 Section 23A(2B) & (2C) *Fines Act*

23 Section 111(2) *EFEDA*

24 Section 111(3) *Election Funding, Expenditure and Disclosures Act (1981)*

25 Section 111(4) *EFEDA*

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Penalty notice enforcement

46. If the specified penalty amount is not paid, or is not paid in full, and there has been no request for review and no election to have the matter heard before a court, the SDRO may make a penalty notice enforcement order for the enforcement of the amount payable under the penalty notice²⁶.
47. If the amount remains unpaid after a penalty notice enforcement order is made, the SDRO may commence enforcement action against the recipient of the penalty notice.
48. Part 4 of the Fines Act sets out the procedure for enforcement of a penalty notice:
 - a. **Service of fine enforcement order**²⁷ – Notice of the fine enforcement order is served on the recipient who is notified that if payment is not made enforcement action will be taken.
 - b. **Driver licence or vehicle registration suspension or cancellation**²⁸ – If the fine is not paid within the period specified, Roads and Maritime Services suspends any driver's licence, and may cancel any vehicle registration, of the recipient. If the driver's licence of the recipient is suspended and the fine remains unpaid for 6 months, Roads and Maritime Services cancels that driver's licence.
 - c. **Civil enforcement**²⁹ – If the recipient does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, which can include a property seizure order, a garnishee order or the registration of a charge on land owned by the recipient.
 - d. **Community service order**³⁰ – If civil enforcement action is not successful, a community service order is served on the recipient.
 - e. **Imprisonment if failure to comply with community service order**³¹ – If the recipient does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the recipient.
 - f. **Fines payable by corporations**³² – The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations.
 - g. **Fine mitigation**³³ – A recipient may seek further time to pay and the SDRO may write off unpaid fines or make a work and development order in respect of the recipient for the purposes of satisfying all or part of the fine.

26 Division 4 of Part 3 *Fines Act*
 27 Section 59 *Fines Act*
 28 Section 66 *Fines Act*
 29 Division 4, Part 4 *Fines Act*
 30 Section 79 *Fines Act*
 31 Section 87 *Fines Act*
 32 Section 98 *Fines Act*
 33 Division 8 Part 4 *Fines Act*

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Appendix A

Offences under the <i>Election Funding, Expenditure and Disclosures Act 1981</i>		
Section number	Offence under the Act	Penalty Amount
Section 38(1)	Failure by the official agent of a candidate or group to provide the Authority, within 30 days after an alteration is made to any of the particulars stated in the Register of Candidates, with a statement in writing setting out the details of the alteration.	\$55
Section 38F(1)	Failure by the person's official agent to provide the Authority, within 30 days after an alteration is made to any of the particulars stated in the Register of Third-party Campaigners, with a statement in writing setting out the details of the alteration.	\$55
Section 41	<ul style="list-style-type: none"> Failure to appoint a party agent (41(1)); Failure to promptly notify the Authority, in writing of the death or resignation of a party agent (41(4)); In case of death or resignation of party agent failure to appoint another party agent (41(5)); Failure to notify the Authority by notice of the appointment or revocation of the appointment of a party agent (41(6)). 	\$2,750 – in relation to a party. \$1,100 – in relation to an officer of a party.
Section 46	<ul style="list-style-type: none"> Failure by a candidate or group to appoint an official agent (46(1)); Failure by a candidate or group to promptly notify the Authority, in writing, of the death or resignation of an official agent (46(4)); In case of death, resignation or revocation of an official agent, failure by the candidate or group to appoint another official agent (46(5)). 	\$2,750
Section 68(7)	Failure by an agent to comply with any reasonable condition (which is applicable to the agent or any of its predecessors) imposed by the Authority with respect to the disbursement of payments to an agent under Part 5 of the Act.	\$2,750
Section 96H(1)	Failure to lodge a declaration under section 91 within the time required (within 12 weeks after the end of each relevant disclosure period, or in the case of a disclosure made by a major political donor – within 16 weeks after the end of each relevant disclosure period)	\$2,750 – if the offence was committed by a party agent. \$1,100 – in any other case.
Section 96I(2)	Failure to keep for at least 3 years: <ol style="list-style-type: none"> a record made (by the person accepting a reportable political donation) under section 96C relating to a reportable political donation; or any other record that is required by the regulations to be kept by the person (accepting reportable political donations) for that period. 	\$2,750 – if the offence was committed by a party. \$1,100 – in any other case
Section 110A(6)	Failure by a person, without reasonable excuse, to comply with a requirement made by the Authority under section 110A to: <ul style="list-style-type: none"> Provide such information as Authority reasonably requires for the purposes of enforcement of Act; Produce any document that the Authority reasonably requires for the purposes of enforcement of Act; Answer questions (at a specified place and time) about any matters in respect of which information is reasonably required for the purposes of enforcement of Act.	\$2,750

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Offences under the <i>Election Funding, Expenditure and Disclosures Regulation 2009</i>		
Clause number	Offence under the Act	Penalty Amount
Clause 11	Failure by a party to keep at its party headquarters in New South Wales (or at some other address approved by the Authority) the following accounting records: <ul style="list-style-type: none"> • receipt book • acknowledgement book • deposit book • cash book (or receipts cash book and payments cash book) • cheque book, journal, ledger 	\$220
Clause 21	Where the Authority has approved an application by a party to keep a system of accounting records other than that described in Part 3 Division 2 of the Regulations, failure by party to keep a system of accounting records that complies with the terms of the application and any condition subject to which the approval was given.	\$220
Clause 22	Failure by an official agent of an elected member, group, candidate or third-party campaigner to keep the following accounting records in respect of an election campaign: <ul style="list-style-type: none"> • receipt book • acknowledgement book • cheque book • petty cash book • cash book (or receipts cash book and payments cash book) 	\$220
Clause 38	Failure by the agent of an elected member, party, group or candidate to keep all accounts, records, documents and papers that relate to the expenditure referred to in a claim for a Part 5 payment or to any matter required to be set out in a Part 6 declaration – in a manner that: <ul style="list-style-type: none"> • discloses a true and fair view of the transactions; and • enables an auditor to issue a certificate under Sections 65 or 96K of the Act. 	\$220
Clause 39	Failure of a current or former elected member, party, group or candidate or a current or former agent of an elected member, party, group or candidate to comply with a direction by the Authority, under clause 39 of the Regulation, to lodge within the time specified such records as the Authority may require – of political donations made or received or electoral expenditure incurred by the elected member, party, group or candidate.	\$220
Clause 40	Failure by the party or an official agent of elected member, group or candidate to retain any DVD, video tape, film or transparency that is used for the purposes of an advertisement appearing on television or at a cinema (at the direction or with approval of a party or an official agent of an elected member, group or candidate) for a period of 12 months after the date of the last presentation of the advertisement. Failure by the party or an official agent of elected member, group or candidate to arrange for any such DVD, video tape, film or other transparency to be viewed by a member of the Authority or a person authorised by the Authority – if required by the Authority.	\$220

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Appendix 5: Caution Guidelines – page 1 of 5

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Caution Guidelines

These Guidelines are issued by the Election Funding Authority (**EFA**) under section 19A(3) of the *Fines Act 1996* (**the Fines Act**).

Penalty notices issued under section 111A of the Election Funding, Expenditure and Disclosures Act 1981 (**the Act**) are declared to be penalty notices for the purposes of the Fines Act. Authorised officers must have regard to these Guidelines in deciding whether to give a person a caution instead of a penalty notice for a penalty notice offence.

The Guidelines are to give authorised officers direction as to the relevant considerations to be had in exercising their discretion. They do not create any right or obligation to give a caution.

In the event of any inconsistency between these Guidelines and the Fines Act, the Fines Act prevails.

An authorised officer may determine that it is appropriate to issue a caution rather than a penalty notice. The Fines Act states that a caution may be given if the officer believes:

- on reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued (**a penalty notice offence**); and
- it is appropriate to give a caution in the circumstances¹.

The matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:²

- (a) The officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health;
- (b) The offending behaviour is at the lower end of the seriousness scale for that offence;
- (c) The person did not knowingly or deliberately commit the offence;
- (d) It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

¹ Section 19A(1) Fines Act.

² These Guidelines include extracts from the Attorney General's Caution Guidelines.

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Guidelines

Caution Guidelines

1. Scope

- 1.1 Authorised officers must have regard to these Guidelines in deciding whether to give a person a caution instead of a penalty notice.
- 1.2 These Guidelines, issued by the EFA, have been compared to the Attorney General’s Caution Guidelines under the Fines Act 1996 to ensure minimum standards and consistency across Government³. In addition, these Guidelines contain information to suit the EFA’s particular operational environment.
- 1.3 Nothing in these Guidelines limits authorised officers’ existing discretion to deal with penalty notice offences in accordance with the EFA Compliance Policy contained on the EFA’s website.

2. Purpose

- 2.1 The purpose of these Guidelines is to ensure that authorised officers exercise good judgment and take into account relevant considerations when deciding whether to give a caution for a penalty notice offence.

3. Definitions

- 3.1 **Offence** means an offence under the Act or the *Election Funding, Expenditure and Disclosures Regulation 2009 (the Regulation)* for which a penalty notice may be issued.
- 3.2 **Authorised officer** means an inspector appointed under section 110 of the Act who is authorised to issue a penalty notice for offences under the Act or Regulation.
- 3.3 **Issuing agency** means the EFA, being the agency that has employed or engaged the authorised officer who issued the penalty notice or the caution.

4. When may a caution be given instead of a penalty notice?

Overview

- 4.1 A caution may be given if⁴:
 - (a) The offence is one for which a penalty notice may be issued;
 - (b) The authorised officer has reasonable grounds to believe that an offence has been committed; and
 - (c) The authorised officer believes it is appropriate to give a caution in the circumstances.
- 4.2 In deciding whether to give a person a caution, the authorised officer must exercise his or her discretion based on the facts of the individual case, and having regard to these Guidelines.

The offence is one for which a penalty notice may be issued

- 4.3 Schedule 2 of the Regulation lists the offences for which penalty notices may be issued.

There are reasonable grounds to believe that an offence has been committed

- 4.4 An authorised officer must only give a caution if there are reasonable grounds to believe that a penalty notice offence has been committed. This is the same test used when deciding whether or not to issue a penalty notice.

³ These Guidelines include extracts from the Attorney General’s Caution Guidelines.
⁴ Section 19A(1) of the Act.

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- 4.5 Every element of the offence must appear to be present and there must be sufficient evidence to prove the offence. For example, when an inspector considers giving a caution instead of issuing a penalty notice to an official agent for failing to lodge a declaration⁵, the inspector must be satisfied that each of the following elements of the offence exist in the same manner as if he or she were intending to issue a penalty notice:
- (a) that it is the person to whom the notice is to issue who was responsible for lodging the declaration;
 - (b) that the person failed to lodge the declaration; and
 - (c) that the person failed to lodge the declaration within the time required under the Act.

It is appropriate to give a caution in the circumstances

- 4.6 The decision to give a caution, rather than issue a penalty notice, requires the exercise of good judgement, involving an assessment of all the circumstances.
- 4.7 Without limiting the discretion to give a caution, the matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:
- (a) The authorised officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health. For example, the offence was committed because of a medical condition which affected the person's ability to comply with the Act;
 - (b) The offending behaviour is at the lower end of the scale of seriousness for that offence;
 - (c) The person claims on reasonable grounds that they did not knowingly or deliberately commit the offence. For example:
 - where the offence involves an outstanding declaration and reminder letters were not sent to the address provided to the EFA by the person responsible for lodging the declaration; or
 - where a donor who is required to lodge a declaration was not provided with a receipt which informed the donor of the requirement to lodge a declaration.
 - (d) There are other reasonable grounds for giving a caution, taking into account the circumstances of the particular case. For example, where the offence involves an outstanding declaration and the declaration was lodged within a reasonable time after the due date.
- 4.8 The fact that one or more of these factors is present does not mean that the authorised officer is obliged to issue a caution. All the circumstances of the case should be taken into account to determine whether a caution is an appropriate and reasonable response to the penalty notice offence.
- 4.9 In considering whether there are reasonable grounds to believe that a person has a medical condition, an authorised officer should make his/her own judgment having regard to all the circumstances, including documentary evidence produced by the person.
- 4.10 In deciding whether to issue a caution, it may be relevant to consider whether the person has been issued with a caution for the same or similar offence before. However, the fact that someone has been issued with a caution previously does not mean that they cannot be given another caution.

5. When a caution must not be given

- 5.1 An authorised officer must not give a person a caution if they are not able to issue the person with a penalty notice for the same behaviour.
- 5.2 For example, an authorised officer must not give a caution if:

⁵ An offence pursuant to section 96H(1) of the Act.

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- (a) he or she does not have reasonable grounds to believe that a penalty notice offence has been committed, or
- (b) each element of the offence is not present, or
- (c) there is insufficient evidence to prove the offence, or
- (d) the person has a lawful excuse.

6. Do cautions have to be recorded?

- 6.1 The fact that a caution has been given to a person must be recorded in the penalty notice determination.
- 6.2 Where a record is made, it should include:
- (a) The date of the caution;
 - (b) The name of the authorised officer who gave the caution;
 - (c) The penalty notice offence for which the caution was given; including details of the offence and the date of the offence; and
 - (d) The name and address of the person given the caution.

7. What if a caution is given by mistake?

- 7.1 The Fines Act makes it clear that giving a caution in relation to a penalty notice offence does not affect the power of the issuing agency to take other action it would otherwise be allowed to take in respect of an offence⁶.
- 7.2 This provision is intended to be a safeguard so that alternative action can be taken by the issuing agency instead of a caution if it later becomes apparent, having regard to applicable guidelines, that a caution was not the most appropriate response.
- 7.3 For example, if the issuing agency later discovers that a person's conduct was, in fact, so serious that a caution was not the most appropriate response, it could issue a penalty notice or commence court proceedings in addition to the caution. Any other action must take place within the applicable statutory limitation period.
- 7.4 Similarly, if an issuing agency discovers that a person's conduct was lawful and that a caution should not have been given, it must update any record of the caution accordingly.
- 7.5 An agency should have good reason for taking alternative action after an authorised officer has already cautioned a person for an offence.
- 7.6 It is **not** intended that a person should receive both a caution and a penalty notice for the same offence. Authorised officers should decide the most appropriate response taking into account all the circumstances of the case.

8. Agency roles and responsibilities

- 8.1 The EFA ensures that all authorised officers:
- (a) have a good understanding of the actual offences for which they are authorised to issue penalty notices and cautions;
 - (b) are aware of these Guidelines; and
 - (c) receive regular and appropriate training to assist in the interpretation and use of these Guidelines, tailored to meet their particular needs and areas of responsibility.

⁶ Section 19B Fines Act.

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Abbreviations and Acronyms

Abbreviation/ Acronym	Meaning
EC	Electoral Commissioner
EEO	Equal Employment Opportunity
EFA	Election Funding Authority
FOI	Freedom of Information
GIPA	<i>Government Information (Public Access) Act 2010</i>
JSCEM	Joint Standing Committee on Electoral Matters
KRA	Key Results Areas
LA	Legislative Assembly
LC	Legislative Council
LGA	Local Government Area
LGE	Local Government Elections

Abbreviation/ Acronym	Meaning
MOU	Memorandum of Understanding
MP	Member of Parliament
NSW	New South Wales
NSWEC	New South Wales Electoral Commission
WHS	Workplace Health and Safety
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
PRCC	Proportional Representation Count Centre
RPP	Registered Political Parties
SES	Senior Executive Service
SGE	State General election

Compliance to Annual Reporting Requirements

Under the *Annual Reports (Departments) Act 1985*, the Annual Reports (Department) Regulation 2010 and various Treasury Circulars, the EFA is required to include information on the topics in the table below.

Annual Reporting Requirement	Page Number and Comments
Letter of Submission	1
Applications for extensions of time	No extension of time required.
Charter	5
Aims and objectives	10
Access	Back cover
Management and structure <ul style="list-style-type: none"> Names of principal officers Organisational chart indicating functional responsibilities 	38
Summary review of operations	8
Funds granted to non-government community organisations	Not applicable.
Legal Change	45
Economic or other factors	Not applicable.
Management and activities	12-36
Research and development	Not applicable.
Human resources	Staff members who work on matters related to the EFA are employed by the NSWEC. Human resource details appear in the NSWEC Annual Report for 2012-13.
Consultants	The EFA did not use any consultants during the reporting period.
Equal Employment Opportunity	Staff members who work on matters related to the EFA are employed by the NSWEC.
Disability Plans	Details of the Disability Action Plan applicable to the EFA are set out in the NSWEC's Annual Report for 2012-13.
Land Disposal	Not applicable.
Promotion – Overseas Visits	Not applicable.
Consumer Response (complaints)	46
Payment of Accounts	All transactions are conducted through the NSWEC's accounting framework and are set out in the NSWEC's Annual Report for 2012-13.
Time for Payment of Accounts	All transactions are conducted through the NSWEC's accounting framework and are set out in the NSWEC's Annual Report for 2012-13.
Risk management and insurance activities	Appears in the NSWEC Annual Report for 2012-13.
Internal audit and risk management policy attestation	40
Disclosure of Controlled Entities	Not applicable.
Disclosure of Subsidiaries	Not applicable.
Multicultural Policies and Services Program (formerly EAPS)	Details of the Multicultural Policies and Services Program are set out in the NSWEC Annual Report for 2012-13.
Agreements with the Community Relations Commission	Not applicable.

Compliance to Annual Reporting Requirements continued

Annual Reporting Requirement	Page Number and Comments
Workplace Health and Safety	WHS is managed by the Administration Branch of the NSWEC. Details appear in the NSWEC Annual Report for 2012-13.
Waste	39
Financial Statements	52-60
Identification of audited financial statements	50
Inclusion of unaudited financial statements	Not applicable.
Additional Matters – Compliance with the <i>Privacy and Personal Information Protection Act 1998</i>	46
Additional Matters – matters arising since July 2013 having a significant effect on operations or communities we serve	No additional matters had a significant effect on operations or the EFA's stakeholders.
Additional Matters – total external costs in the production of this report	Total external costs: Nil; printed in-house.
Additional Matters – is the report available in non-printed formats?	Yes
Additional Matters – is the report available on the internet?	Yes, at www.efa.nsw.gov.au
Performance and number of executive officers	There are no SES positions at the EFA.
<i>Government Information (Public Access) Act 2009</i>	45
Public Interest Disclosures	39
Implementation of Price Determination	Not applicable.
Credit card certification	The EFA does not hold any credit cards.
Requirements arising from employment arrangements	Not applicable.

Glossary of Terms

Term	Meaning
Act	<i>Election Funding, Expenditure and Disclosures Act 1981.</i>
Agent	A party agent or an official agent. A party agent is the registered agent of a registered political party. An official agent is the registered agent of a candidate, group or an elected member.
Assembly	Legislative Assembly of New South Wales.
Auditor	A registered company auditor within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth.
Authority	Election Funding Authority of New South Wales.
By-election	In relation to State elections – means a by-election for the Legislative Assembly. In relation to Local Government elections – means a by-election for a councillor (including the mayor) of a local council or a Local Government area.
Candidate	A person nominated as a candidate at an election, and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. A candidate is also a person who accepts a gift for a purpose related to being a candidate at a future election.
Contest(ed)	Where more than one person contends or competes in an election. A person who is a candidate in an election remains a candidate for 30 days after the election day for that election.
Disclosure period	A 12 month period ending 30 June each year.
Donor	A person or legal entity that makes a gift of money or in-kind to a candidate, a group of candidates, an elected member or a political party.
Donation in kind (gift in-kind)	A gift of goods and/or services at no charge or at a discounted charge.
EFA	Election Funding Authority of New South Wales.
Elected member	A member of Parliament or a Local Government councillor (including a mayor). This includes a person who has ceased to be an elected member but is entitled to remuneration as such.
Election	An Assembly general election or by-election, a periodic Council election, a Local Government general election or by-election.
Election Day	Or polling day is the day for the taking of the polls at an election.
Election Period	The election period of an election includes the period starting 30 days after election day for the previous general election and ending 30 days after election day for the current election.
Electoral District	A district for the election of a member to serve in the Assembly.
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. Expenditure includes any disposition of property.
Endorsed	In relation to a political party, means endorsed, selected or otherwise accredited to stand as a representative of the party.
Entity	An incorporated or unincorporated body or a trustee of a trust.
General Election	In relation to State elections – Assembly general election and a periodic Council election held or to be held concurrently. In relation to Local Government elections – an election other than a by-election for the office of councillor or mayor.
Gift	Any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

Glossary of Terms continued

Term	Meaning
Group	A group of candidates, or part of a group of candidates, for an election. For the purposes of the <i>Election Funding, Expenditure and Disclosures Act 1981</i> , a group also includes a group of individuals that intends to accept a gift for a purpose related to being a group at a future election. A group of candidates in an election remain a group for 30 days after the election day for that election.
Head Candidate	The candidate whose name appears first on the 'Request to form a group' lodged with the New South Wales Electoral Commission.
Legislative Council	The Legislative Council of New South Wales is the Upper House in the system of government and is often referred to as a House of Review.
Local Government Election	An election under the <i>Local Government Act 1993</i> for the office of councillor or mayor under that Act (other than an election of mayor by councillors).
Nomination Day	Or day of nomination is the day by which all nominations of candidates must be made.
Official Agent	A person who is appointed by a candidate or group of candidates to act on behalf of himself/herself or the group. A person appointed as an official agent assumes full responsibility for complying with the requirements of the Act and Regulation.
Parliament	The Parliament of New South Wales.
Party	A body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to parliament of a candidate or a group of candidates endorsed by it or by a body or organisation of which it forms part.
Periodic Council Election	An election held for the return of 21 members of the Legislative Council.
Person	Includes an individual, a corporation, a body corporate or a politic.
Political donation	A gift made to an elected member, a party, a candidate or a group of candidates. This includes, but is not limited to: cash; the purchase of tickets or other items relating to fund-raising events; the provision of goods or services at no cost or insufficient cost; and subscriptions paid to a party by members or affiliated groups.
Primary Votes	In relation to a candidate at an election the total number of formal first preference votes recorded for the candidate on all ballot papers. In relation to a group of candidates, or a party with endorsed candidates, at an election, the total number of formal first preference votes recorded for the candidates on all ballot papers other than the votes recorded for candidates for election to the Assembly.
Registered	(except in the case of a party) means registered in accordance with the Act.
Registered agent	See Agent, Official agents and party agents must be registered by the EFA.
Registered political party	A party registered under Part 4A of the <i>Parliamentary Electorates and Elections Act 1912</i> and <i>Local Government Act 1993</i> .
Regulation	Election Funding, Expenditure and Disclosures Regulation 2009.
Reportable loan	A loan of \$1,000 or more from a non-financial institution.
Reportable political donation	A political donation or donations totalling \$1,000 or more by a person within a financial year.
Returning Officer	In relation to State elections – a person who is legally authorised to act on behalf of the New South Wales Electoral Commission to manage a Legislative Assembly election for an electoral district. In relation to Local Government elections – a person appointed by the New South Wales Electoral Commission to each council area to conduct the election on behalf of and under the direction of the Electoral Commissioner.
Small political donation	A political donation, or donations, that are less than \$1,000 each, or multiple donations from the same donor in the same financial year that total less than \$1,000.
Writ	The document issued by the Governor-General ordering the election of a member or members of parliament.

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