

Compliance Audit Policy

1 Abbreviations and definitions	2
Definitions	2
2 Introduction	3
Compliance audit of disclosures	3
3 Purpose	4
4 Scope	4
5 Policy details	5
Competence	5
Integrity and objectivity	5
Quality assurance and improvement	5
Communication with external stakeholders	5
Documentation	5
Risk-based approach	6
Identification of incidents of non-compliance and referrals	6
6 Roles and responsibilities	6
7 Monitoring, evaluation and review	7
8 Associated documents	7
9 Relevant legislation	7
10 Document Control Section	8
Document management	8
Publication Details	8
Revision record	9

1 Abbreviations and definitions

Abbreviations

Electoral Funding Act	<i>Electoral Funding Act 2018 (NSW)</i>
Electoral Funding Regulation	Electoral Funding Regulation 2018 (NSW)
Electoral Commission agency	NSW Electoral Commission staff agency
Electoral Commissioner	NSW Electoral Commissioner
FDC&GC	Funding, Disclosure & Compliance and General Counsel Division of the NSW Electoral Commission

Definitions

- 1.1 **Associated Entity** means a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members.
- 1.2 **Candidate** in relation to an election, means a person nominated as a candidate at the election in accordance with the EF Act, or in accordance with the LG Act (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. For the purposes of Part 2 of the EF Act, a candidate includes an individual who accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future election.
- 1.3 **Elected member** means a member of Parliament, or a councillor (including the mayor) of the council of a local government area, and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.
- 1.4 **Electoral expenditure** - expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election, as defined in section 7 of the [EF Act](#).
- 1.5 **Group** in relation to State elections means a group of candidates, or part of a group of candidates, for a Legislative Council election, or in relation to local government elections means a group of candidates, or part of a group of candidates, for a local government election. For the purposes of Part 2 of the EF Act, a group includes individuals who accept a gift for use solely or substantially for a purpose related to the proposed candidacy of the individuals at a future election.
- 1.6 **Party** means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the NSW Parliament or a local Council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.
- 1.7 **Political donation** - is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales, as defined in section 5 of the [EF Act](#).
- 1.8 **Political Donor** means a person who makes a gift.

- 1.9 **Registered party** means a party registered in accordance with Part 6 of the Electoral Act, or in accordance with Chapter 10 Part 7 of the LG Act.
- 1.10 **Senior office holder (of a party)** - a person involved in the management or control of the party or the operations of the party.
- 1.11 **Third-party campaigner** in the case of a State election – means an entity or other person (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure during the capped expenditure period for a State or local government election (as defined in Part 2 of the EF Act) that exceeds \$2,000 in total and includes an individual or entity that is registered as a third-party campaigner in accordance with Part 7 of the EF Act.

2 Introduction

- 2.1 The NSW Electoral Commission is responsible for regulating the scheme for political donations and electoral expenditure under Part 3 of the [EF Act](#).
- 2.2 The objectives of the [EF Act](#), as they relate to disclosure are:
- to establish a fair and transparent election funding, expenditure and disclosure scheme
 - to facilitate public awareness of political donations
 - to help prevent corruption and undue influence in the government of the State
 - to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

Compliance audit of disclosures

- 2.3 Section 59 (1) and (2) of the [EF Act](#) provides that the NSW Electoral Commission may audit a declaration of disclosures (other than a declaration lodged by a major political donor) by a party, an elected member, group, candidate, third-party campaigner or associated entity¹. They must assist the NSW Electoral Commission by:
- (a) giving the NSW Electoral Commission full and free access at all reasonable times to all accounts and documents of the person responsible for lodging the declaration and of the

¹ The NSW Electoral Commission is also responsible for conducting compliance audits in accordance with the now repealed *Election Funding, Expenditure and Disclosures Act 1981* in relation to political donations and electoral expenditure prior to 30 June 2018.

party, elected member, group, candidate, third-party campaigner or associated entity (as the case requires) relating directly or indirectly to any matter required to be disclosed

(b) giving the NSW Electoral Commission all information and explanations that the NSW Electoral Commission reasonably asks for with respect to any matter required to be set out in the declaration.

2.4 A similar review may also be performed to ensure compliance with Part 3 of the [EF Act](#) by a major political donor.

2.5 A compliance audit involves examination of a declaration of disclosures to determine if:

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

2.6 Officers of the NSW Electoral Commission staff agency undertake compliance audits on behalf of the NSW Electoral Commission.

3 Purpose

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

3.2 This document is not a guideline within the meaning of section 152 of the [EF Act](#).

4 Scope

4.1 This policy applies to:

- compliance audits performed on parties, elected members, candidates, groups, third-party campaigner and associated entity with regards to their obligations under Part 3 of the [EF Act](#)
- compliance reviews performed on major political donors with regards to their obligations under Part 3 of the [EF Act](#)
- officers of the Electoral Commission agency, including contractors and third-party consultants, who are involved in compliance audits and reviews.

5 Policy details

Competence

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

Integrity and objectivity

- 5.2 In addition to meeting the requirements of the NSW Electoral Commission with regards to political neutrality, officers of the Electoral Commission agency that undertake and oversee an audit or review must perform their work with impartiality and objectivity. Officers must take care to avoid undue influence by regulated external stakeholders when planning and executing their audits and reviews.

Quality assurance and improvement

- 5.3 The audit work is to be subject to regular peer and managerial review. In instances where audit issues or a potential incident of non-compliance is identified, a systematic independent review of the relevant audit work papers is to be performed prior to issuing an audit report or letter.
- 5.4 Officers will aim to improve the efficiency of their audit or review and share best practice with their peers.

Communication with external stakeholders

- 5.5 While communicating with external stakeholders, officers are to remain respectful and courteous. Audit communications aim principally to verify compliance with the requirements of the [Electoral Funding Act](#) but also to educate external stakeholders about their compliance requirements.

Documentation

- 5.6 An intact copy of all physical or electronic documents provided by external stakeholders should be preserved to support potential enforcement action. The [EF Act](#) requires the NSW Electoral Commission to retain disclosures for at least 6 years after the period to which they relate.
- 5.7 Audit work papers are to be detailed enough to allow a third party to re-perform the audit procedures and reach the same conclusions. Work papers and evidence of review are to be kept in accordance with the *State Records Act 1998*.
- 5.8 Audit documentation may be used in an investigation or prosecution and, as such, is excluded from being disclosed in response to an access application under the *Government Information (Public Access) Act 2009* (the GIPA Act). This is because information in relation to the investigative or prosecuting functions of the NSW Electoral Commission is 'excluded information' for which an access application cannot be made under the GIPA Act.

Risk-based approach

- 5.9 A risk-based approach, which may include samples, may be used in the planning and execution of audit procedures.
- 5.10 The risk profile will be established based on the likelihood and consequence of potential incidents of non-compliance, using measurable or objective parameters.

Identification of incidents of non-compliance and referrals

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

6 Roles and responsibilities

- 6.1 The following table outlines the nature of the commitment expected from staff and the way that commitment should be implemented:

Who	Commitment
NSW Electoral Commission	<ul style="list-style-type: none">• approves this policy and associated documents
Executive Director and Directors FDC & GC	<ul style="list-style-type: none">• participate in the consultation process• determine policy instrument content and compliance with relevant legislation• communicate policy development and revision with the Legal Business Unit and the Manager, Governance
Manager, Governance	<ul style="list-style-type: none">• coordinates administration of the policy development and review process• manages the publication, amendment or archiving of approved policy instruments in the Policy Library
Manager Regulatory Education and Policy	<ul style="list-style-type: none">• develops or amends policy instruments as required• forwards approved policy instruments to the Manager, Governance for registration and publication• forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation

7 Monitoring, evaluation and review

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

8 Associated documents

- 8.1 Compliance and Enforcement Policy
- 8.2 Compliance and Enforcement Procedures
- 8.3 Prosecution Policy

9 Relevant legislation

- 9.1 Electoral Funding Act 2018
- 9.2 Electoral Funding Regulation 2018
- 9.3 Government Information (Public Access) Act 2009
- 9.4 State Records Act 1998

10 Document Control Section

Document management

Approved by:	Signature:
The NSW Electoral Commission	<div style="text-align: center;">Signature Redacted</div> Date approved: 14 June 2023
Executive Director Review:	Signature:
Rachel McCallum Executive Director, Funding, Disclosure & Compliance and General Counsel	<div style="text-align: center;">Signature Redacted</div>
Director Review:	Signature:
Hugo Bergeron Director, Compliance	<div style="text-align: center;">Signature Redacted</div>

Publication Details

Document Type:	<input checked="" type="checkbox"/> Policy <input type="checkbox"/> Standard <input type="checkbox"/> Procedure <input type="checkbox"/> Guidelines		
Responsible Business Unit:	Author:	Publication:	
Funding, Disclosure & Compliance and General Counsel	Manager, Regulatory Education and Policy	<input type="checkbox"/> Not for publication <input type="checkbox"/> Internal catalogue <input type="checkbox"/> Intranet only <input checked="" type="checkbox"/> Intranet and website	

Revision record

Date	Version	Revision description
01 December 2014	V 1.0	Legislative change – Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014
29 June 2016	V 1.1	Periodic Review
01 October 2017	V 1.2	Legislative change – Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017
12 December 2018	V 1.3	Legislative change – <i>Electoral Act 2017</i> , <i>Electoral Funding Act 2018</i>
14 June 2023	V 1.4	Periodic Review