

FDC&GC Delegations Policy and Procedures

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1. Abbreviations and definitions

Abbreviations

Electoral Commission	New South Wales Electoral Commission (three-member statutory authority)
Electoral Commissioner	Electoral Commissioner for New South Wales
Electoral Act	<i>Electoral Act 2017</i>
Electoral Regulation	<i>Electoral Regulation 2018</i>
EF Act	<i>Electoral Funding Act 2018</i>
EF Reg	<i>Electoral Funding Regulation 2018</i>
FDC&GC	Funding, Disclosure and Compliance & General Counsel Division
Interpretation Act	<i>Interpretation Act 1987</i>
LG Act	<i>Local Government Act 1993</i>
LG Regulation	<i>Local Government (General) Regulation 2021</i>
LOGO Act	<i>Lobbying of Government Officials Act 2011</i>
NSW Electoral Commission Staff Agency	Staff Agency

Definitions

Electoral participants	Candidates, group of candidates, associated entities, third-party campaigners, party agents and official agents.
Lobbyists Watch List	The Lobbyists Watch List established under Part 4 of the LOGO Act.
Party	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 candidates endorsed by it or by a body or organisation of which it forms part.
Third-party lobbyist	An individual or body carrying on the business (generally for money or other valuable consideration) of lobbying government officials on behalf of another individual or body.

2. Introduction

2.1. The Electoral Commission is an independent, three-member statutory body constituted under section 8 of the Electoral Act. The Electoral Commission is separate and distinct from the Staff Agency which is headed by the Electoral Commissioner, pursuant to Part 3 of Schedule 1 to the *Government Sector Employment Act 2013*. Section 9(1) of the Electoral Act provides that the Electoral Commission consists of:

- a former judge as Chair;
- the Electoral Commissioner; and
- a person with Finance/Audit experience.

- 2.2. The Electoral Commission has functions related to the administration and enforcement of certain provisions of the following New South Wales Acts and their corresponding regulations:
- Electoral Act
 - Electoral Funding Act
 - LOGO Act, and
 - the electoral provisions of the LG Act.
- 2.3. The main functions of the Electoral Commission are the:
- regulation and administration of the election funding, expenditure and disclosure scheme and registration of electoral participants for the purposes of that scheme;
 - registration and regulation of third-party lobbyists and the Lobbyists Watch List; and
 - enforcement of funding and disclosure, electoral and lobbyist offences.
- 2.4. The day-to-day work that is necessary to carry out the Electoral Commission's functions is predominantly performed by officers of FDC&GC. The Division's responsibilities include:
- administering the provisions of the EF Act;
 - administering the provisions of the LOGO Act;
 - administering the party registration provisions of the Electoral Act and LG Act on behalf of the Electoral Commissioner; and
 - investigating and enforcing potential breaches of the EF Act, LOGO Act, Electoral Act and the electoral provisions of the LG Act and LG Regulation.
- 2.5. The Electoral Commission meets throughout the year to make decisions and to exercise its functions. It also provides advice to the Electoral Commissioner as required.
- 2.6. To enable Staff Agency to carry out the day-to-day work of the Electoral Commission effectively and efficiently, it is appropriate that the Electoral Commission delegates certain of its functions to officers of the FDC&GC Division..
- 2.7. The Electoral Commissioner is appointed under section 11 of the Electoral Act. The Electoral Commissioner has functions related to the administration of certain provisions of the Electoral Act and the electoral provisions of the LG Act and LG Regulation.
- 2.8. The main functions of the Electoral Commissioner are to:
- conduct general elections and by-elections for the Parliament of NSW;
 - administer local government elections subject to election arrangements with councils under s 296(2) of the LG Act
 - register political parties and facilitate the ongoing registration of registered parties
 - conduct other elections for:
 - the NSW Aboriginal Land Council under the *Aboriginal Land Rights Act 1981*;
 - registered clubs;
 - statutory bodies; and
 - state registered industrial organisations
 - enroll electors, maintain the Electoral Information Register and prepare authorised rolls for elections and other lists of electors under the Electoral Act.

- 2.9. The Electoral Commissioner is one of the three members of the Electoral Commission. As such, the Electoral Commissioner keeps the Electoral Commission informed about key areas of the electoral system and brings to the Electoral Commission's attention any information that may require advice or a decision to be made.
- 2.10. While the Electoral Commissioner is responsible for exercising their statutory functions, most of the day-to-day work of the Electoral Commissioner is carried out by the Staff Agency, including FDC&GC staff.
- 2.11. To enable staff to carry out their work effectively and efficiently, it is appropriate that the Electoral Commissioner delegates certain of their functions to officers of the FDC&GC Division.
- 2.12. This policy and procedures detail how the delegation and functions of the Electoral Commission and Electoral Commissioner operate in respect of FDC&GC's work, including:
- the basis of authority for delegations to be made;
 - the suitability for the delegation of certain functions;
 - the process for the delegation of functions; and
 - how the making of a delegation is to be recorded and be communicated to staff.
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3. Purpose

FDC&GC Division Delegations Policy

- 3.1. The purpose of this policy and procedures is to outline how the Electoral Commission and the Electoral Commissioner delegate legislative functions to FDC&GC officers.
- 3.2. This document provides supporting information to those with delegated functions on how lawfully to exercise those functions.
- 3.3. This document is intended to assist FDC&GC staff to understand their authority to make decisions in relation to the legislation; the limits of any such authority; and the process of seeking approval where a delegation is not sufficient for an officer to exercise a function .

Delegations Procedures

- 3.4. The FDC&GC Delegations Procedures are set out in Section 6 of this document. The Procedures are a guide for the consistent and appropriate application of the policy.
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4. Scope

Breadth of delegated functions

- 4.1. This policy is a guide for how the Electoral Commission and the Electoral Commissioner delegate their statutory functions to FDC&GC officers.
- 4.2. This policy relates to the provisions of each of the Electoral Act, EF Act, LOGO Act and the electoral provisions of the LG Act and corresponding Regulations that are the responsibility of either the Electoral Commission or the Electoral Commissioner.
- 4.3. This policy should be read together with other relevant policies and procedures of the Electoral Commission, in particular the following, each of which provide general information about the exercise of the Electoral Commission's functions:
 - Administration Fund Procedures
 - Compliance Audit Policy
 - Compliance and Enforcement Policy
 - Compliance and Enforcement Procedures
 - Compliance and Enforcement Publication Policy
 - Disclosure Policy and Procedures
 - Election Campaigns Fund Procedures
 - Electoral Participants and Agents Registration Policy
 - Identification of Potential Political Donors Policy and Procedures
 - New Parties Fund Procedures
 - Public Funding Policy
 - Penalty Notice Caution Procedures
 - Potential Political Donors Policy and Procedures
 - Prosecution Policy
 - Registration of Political Participants Policy
- 4.4. This policy does not cover delegations by the Electoral Commissioner concerning the Electoral Commissioner's functions as the accountable authority for the NSW Electoral Commission under the *Government Sector Finance Act 2018* or as head of agency under the *Government Sector Employment Act 2013*. Similarly, it does not cover delegations made by the Electoral Commissioner to senior executives in the FDC&GC Division or officers of the Legal Business Unit under the Government Information (Public Access) Act 2009 or other legislation not mentioned in this policy.

Application of policy and procedures

- 4.5 This policy and procedures instrument applies to:
 - members of the Electoral Commission
 - the Electoral Commissioner
 - the Executive Director, FDC&GC and Agency staff
 - Directors of the FDC&GC Division and Directors of the Staff Agency (as applicable), and
 - officers of the FDC&GC Division, whether they are permanent, temporary, casual, or contracted.¹ It applies to staff on secondment from other NSW Government Departments and agencies, secondees from other electoral commissions or offices within Australia, and to employees and proprietors of other organisations working with the Staff Agency.²
- 4.5. This document is not a guideline within the meaning of section 152 of the EF Act.

¹ Note: the Electoral Commission and Electoral Commissioner may not delegate functions to contractors or contingent labour, however contractors and contingent labour may perform tasks as directed by delegation holders to support the FDC&GC business functions and day-to-day operations..

² Note: Employees and proprietors of other organisations working with the Staff Agency cannot be delegated functions of the Electoral Commission or Electoral Commissioner and must not purport to exercise such functions in the performance of their duties.

5. Policy details

Definition of delegation

- 5.1. In this document, “delegation” refers to the delegation to FDC&GC staff of functions exercised under the Electoral Act, EF Act, LG Act and LOGO Act. It includes, but is not limited to, delegation of the following functions or part/s thereof:
- registration and continued registration of political parties;
 - regulation and administration of the election funding, expenditure and disclosure scheme and registration of electoral participants for the purposes of that scheme;
 - registration and regulation of third-party lobbyists and the Lobbyists Watch List; and
 - enforcement of funding and disclosure, electoral and lobbyist offences.
- 5.2. In this document, delegation does not refer to delegations made under the *Government Sector Finance Act 2018* or other legislation that confers functions on the Electoral Commissioner.

Delegation authority and description

- 5.3. Section 16(1) and 16(2) of the Electoral Act respectively give the Electoral Commission and the Electoral Commissioner authority to delegate their functions. They are authorised to delegate functions to:
- the Electoral Commissioner (in the case of functions of the Electoral Commission);
 - a member of the staff of the Electoral Commission;
 - an officer or member of staff of an electoral commission or electoral office of the Commonwealth or of a State or Territory; or
 - any person, or any class of persons, authorised by the regulations.³
- 5.4. A delegation may be to a particular person or the holder of a particular position or to a class of persons or holders of positions.
- 5.5. When considering the delegation of functions, the Electoral Commission or the Electoral Commissioner is to consider the suitability of a function for delegation, the appropriate person or position to which a function is to be delegated, and any conditions which might attach to the exercise of a delegation.
- 5.6. Importantly, the Electoral Commission and Electoral Commissioner may not delegate functions to contractors or contingent labour, however contractors and contingent labour may perform tasks as directed by delegation holders to support the FDC&GC business functions and day-to-day operations.
- 5.7. [Section 49](#) of the Interpretation Act provides direction on the delegation of functions under NSW legislation:
- Where an Act allows for a function to be delegated, the function can be delegated to a particular officer or an office holder.
 - The delegation may be general or limited. It must be signed in writing by the delegator. The delegator may revoke all or part of it.
 - A delegated function may only be exercised in accordance with given conditions. If required by law, a person delegated a function may exercise any incidental function required to exercise the delegated function.
 - Functions delegated to particular officer holders may be exercised by any person occupying or acting in that position.
 - The delegator may exercise any function that has been delegated to another person or entity, regardless of the delegation in place.

³ No regulation has been made for the purpose of s.16 of the Electoral Act.

- 5.8. An FDC&GC officer must not exercise any functions invested in the Electoral Commission or the Electoral Commissioner except where the officer expressly has been delegated a function by the Electoral Commission or the Electoral Commissioner, and only in accordance with the delegation.
- 5.9. If a function that has not been delegated must be exercised, the Electoral Commission or the Electoral Commissioner (as required) must be advised of the requirement to exercise the function. The relevant advice should include:
- details of the function to be exercised;
 - adequate description of and background to the matter;
 - all supporting material (where required) and
 - any recommended action/s.
- 5.10. The written approval of the Executive Director FDC&GC must be obtained prior to any FDC&GC officer making a submission to the Electoral Commission or the Electoral Commissioner for the delegation of the exercise of a function. The officer must subsequently maintain a proper record of the decision of the Electoral Commission or the Electoral Commissioner to exercise the function.

6. Procedures

Deciding which functions are suitable for delegation

- 6.1. The following criteria provide a guide in deciding whether or not a particular function may be suitable for delegation:
- a. the nature of the function, particularly insofar as it is, in the usual course, applied uniformly by the Electoral Commissioner or the Electoral Commission (in the case of functions of the Electoral Commission);
 - b. the degree to which the Electoral Commission or the Electoral Commissioner considers the exercise of a function is significant, complex or important; and
 - c. the time frame within which the function must be exercised.
- 6.2. A function suitable for delegation is one whose exercise is:
- a. in the view of the Electoral Commission or the Electoral Commissioner, of minor significance or importance (and is therefore suitable for exercise by the Chairperson or officer of the NSW Electoral Commission staff agency without reference to the other members); and/or
 - b. in the usual course, applied uniformly by the Electoral Commissioner or the Electoral Commission (in the case of functions of the Electoral Commission);
 - c. exercised in accordance with established policy and procedures that have been approved by the Electoral Commissioner or the Electoral Commission, as appropriate, and/or
 - d. likely to be called for at short notice or facilitates day to day FDC&GC's operations.

Deciding to whom functions can be delegated

- 6.3. Functions of the Electoral Commission or the Electoral Commissioner may be delegated to any one or more of the following:
- the Electoral Commissioner (in the case of the Electoral Commission functions);
 - the Executive Director FDC&GC;
 - the Director Compliance
 - the Director, Client Experience Regulatory Services
 - the Director, Communications
 - the Manager, Audit
 - a Senior Team Lead, Audit
 - a Senior Auditor

- an Auditor
- an Inspector (including an inspector appointed or authorised under s139 and s138 *EF Act*)
- the Manager, Client Services
- the Lead, Guidance and Decisions
- the Lead, Systems and Reporting; and
- a Senior Client Services Officer
- a Client Services Officer
- a Regulatory Services Officer
- Inspectors appointed by the Electoral Commission under s.139 of the Electoral Funding Act.

- 6.4. The principles set out in paragraph 6.2 can be used to determine the suitability for delegation of any function and the appropriate officer to exercise a delegated function.
- 6.5. A function may be delegated to an FDC&GC officer other than the Executive Director FDC&GC, where there is:
- a. a large volume of repeat work and/or
 - b. a short time frame to undertake the function and/or
 - c. a low chance of controversy/public interest issues arising.
- 6.6. A function may be delegated to the Executive Director, FDC&GC where there is:
- a. more than one related delegated function to be exercised as part of a broader process and/or
 - b. a small volume of work and/or
 - c. a medium time frame to undertake the function and/or
 - d. a low to moderate chance of sensitivity/controversy/public interest issues arising.
- 6.7. A function may be delegated to the Electoral Commissioner where there is:
- a. more than one related delegated function to be exercised as part of a broader process and/or
 - b. a small volume of work and/or
 - c. a medium time frame to undertake the function and/or
 - d. moderate chance of sensitivity/controversy/public interest issues arising.

Seeking approval to delegate a function

- 6.8. The delegation of a function by the Electoral Commissioner or the Electoral Commission to the Electoral Commissioner (in the case of the Electoral Commission functions) or to officers of the Staff Agency is governed by the Electoral Act and by the Interpretation Act. The key principles are as follows:
- i. only the Electoral Commission can delegate its functions
 - ii. only the Electoral Commissioner can delegate his or her functions
 - iii. a delegation must be made in writing
 - iv. a delegation may be made subject to conditions or limitations
 - v. the delegation of a function does not mean the Electoral Commission or the Electoral Commissioner for NSW (as applicable) cannot exercise the function that has been delegated
 - vi. the exercise of a function under delegation is deemed to be an exercise of that function by the Electoral Commission or the Electoral Commissioner (as applicable)
 - vii. where the Electoral Commission or the Electoral Commissioner delegates a function, the exercise of which is dependent upon the opinion, belief or state of mind of the Electoral Commission or the Electoral Commissioner (as applicable), the function is to be exercised upon the opinion, belief or state of mind of the person who is delegated to exercise the function.
- 6.9. To approve the delegation of a function:

- (i) the proposed delegation must be set out in written form:
 - (a) clearly identifying the legislative basis of the function and
 - (b) clearly stating the reasons for the delegation being sought, with reference to the suitability of the function for delegation;
- (ii) the Executive Director FDC&GC, having approved the proposal of a delegation, must present the written proposal for delegation to the Electoral Commission or the Electoral Commissioner (as applicable) for approval;
- (iii) the Electoral Commission or the Electoral Commissioner (as applicable) must make the delegation of a function in writing; and
- (iv) the Executive Director FDC&GC must advise the relevant officer who proposed the delegation of the outcome of the proposal.

Exercising a delegated function

- 6.10. Where a function has been delegated to an officer in FDC&GC Division, a contractor or contingent worker who is performing tasks to assist the delegate in the performance of that function must do so at the direction and under the supervision of the delegate.
- 6.11. Where a delegated function has been exercised, the person who has been delegated that function must report the exercise of the function to the Electoral Commission or the Electoral Commissioner (as applicable).
- 6.12. Written reports of the exercise of delegated functions are to be provided to the Electoral Commission and the Electoral Commissioner at every meeting of the Electoral Commission.

Record of delegations

- 6.13. The Legal Business Unit is to maintain a complete and accurate register of the delegations and make the register available to FDC&GC staff. The register is to include:
 - (i) a record of all legislative functions of the Electoral Commission and the Electoral Commissioner that have been delegated (as applicable to the responsibilities of FDC&GC);
 - (ii) details of each delegation including the date it was made; and
 - (iii) the date by which the delegations under each Act and Regulation will next be reviewed.⁴

Communication of delegations

- 6.14. The Regulatory Education and Policy Team and/or the Executive Director FDC&GC must communicate a record of delegations to all FDC&GC officers and any relevant Electoral Commission officers outside of FDC&GC. The communication is to include:
 - (i) a record of all approvals for delegations; and
 - (ii) the date at which delegations must be reviewed.

Review of delegations

- 6.15. A delegation should be reviewed whenever the relevant function may be affected by:
 - (i) legislative change;
 - (ii) a new policy or procedure that may affect the exercise of a function; and/or
 - (iii) an organisational restructure, e.g., a change of functional responsibility within the Electoral Commission Staff Agency.
- 6.16. Subject to paragraph 6.15 above, a delegation should be reviewed every three years from the previous delegation approval for that function.

⁴ If not reviewed sooner on a needs basis.

7. Roles and responsibilities

Who	How
NSW Electoral Commission	<ul style="list-style-type: none">• Approve this policy and procedures and associated documents
Executive Director and Directors, Funding, Disclosure and Compliance and General Counsel	<ul style="list-style-type: none">• Participate in the consultation process• Determine policy instrument content and compliance with electoral funding laws• Communicate policy development and revision with Legal and Governance and the Policy Coordinator
Director, Legal	<ul style="list-style-type: none">• Maintain a complete and accurate register of the delegations• Make the register available to FDC&GC staff• Liaise with Commission Secretariat to ensure current delegations are made accessible to the Commission members in SharePoint
Policy Coordinator (Governance)	<ul style="list-style-type: none">• Coordinate administration of the policy development and review process• Manage 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 Policy Coordinator for registration and publication• Forwards approved policy instruments to the Policy Implementer (if not also the Policy Author) for implementation• Maintains the FDC&GC Delegations Policy

8. Monitoring, evaluation and review of this policy

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

9. Relevant legislation

9.1. The legislation governing the functions and delegation authority of the Electoral Commission and the Electoral Commissioner are as follows:

- *Electoral Funding Act 2018* (NSW)
- *Electoral Act 2017* (NSW)
- *Interpretation Act 1987* (NSW)
- *Lobbying of Government Officials Act 2011* (NSW)
- the electoral provisions of the *Local Government Act 1993* (NSW)
- applicable regulations made under the above Acts.

10. Document control

Document management

Approved by:	Signature:
The NSW Electoral Commission	
Executive Director Review:	Signature:
Rachel McCallum Executive Director, Funding, Disclosure and Compliance, and General Counsel	
Director Review:	Signature:
Monica Richmond Director, Legal	
Director Review:	Signature:
Emma Keene Director, Client Experience Regulatory Services	

Publication details

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Responsible Business Unit:	Author:	Publication:		
Funding, Disclosure & Compliance and General Counsel	Policy Officer, 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
27 November 2017	V 1.0	First version
10 April 2019	V 1.1	Legislative change - <i>Electoral Funding Act 2018</i> and <i>Electoral Act 2017</i>
9 August 2023	V 1.2	Periodic Review