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Financial Disclosure Compliance and Enforcement Policy

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Introduction

The purpose of the Commonwealth funding and disclosure scheme (the disclosure scheme) in Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act), and the Referendum disclosure scheme (the referendum disclosure scheme) in Part VIIIA of the *Referendum (Machinery Provisions) Act 1984* (Referendum Act), is to increase transparency and inform the public about the financial dealings of political parties, candidates, members of the House of Representatives and senators, referendum entities and others involved in the electoral and referendum process.

Neutrality

The Australian Electoral Commission (AEC) is an independent electoral management body established under Part II of the Electoral Act to, among other things, administer the disclosure scheme. In addition, the AEC administers the referendum disclosure scheme under the authority of the Referendum Act.

The AEC places special emphasis on political and issue neutrality because it is responsible for providing the Australian people with an independent electoral service. Every AEC employee signs a neutrality agreement. At all times, the AEC acts impartially when enforcing regulatory requirements.

Annual disclosure returns

The annual disclosure scheme requires political parties, significant third parties, associated entities, third parties, members of the House of Representatives, senators and annual donors to lodge financial disclosure returns with the AEC. The disclosure returns are then made available for public inspection on the Transparency Register.

Election disclosure returns

The election disclosure scheme requires candidates, Senate groups and election donors to lodge financial disclosure returns with the AEC within 15 weeks after polling day. The disclosure returns are then made available for public inspection on the Transparency Register.

Referendum disclosure returns

The referendum disclosure scheme requires referendum entities and referendum donors to lodge referendum disclosure returns with the AEC within 15 weeks after voting day. The disclosure returns are then made available for public inspection on the Transparency Register.

Authority of the AEC

The Electoral Act and Referendum Act provide the AEC with authority to investigate non-compliance and, where necessary, take appropriate enforcement action. Types of non-compliance with Part XX of the Electoral Act and Part VIIIA of the Referendum Act may include:

- failure to register as a significant third party or associated entity
- receiving foreign donations or establishing schemes to conceal the receipt of foreign donations
- failure to disclose donations and electoral or referendum expenditure
- failure to submit disclosure returns by registered political parties and others
- making claims for public funding that a candidate or party is not entitled to
- failure to keep records.

This Financial Disclosure Compliance and Enforcement Policy outlines the approach that the AEC may take to support compliance with the disclosure schemes. [Penalties – Financial disclosure on the AEC website](#) summarises the obligations in Part XX of the Electoral Act, and the penalties for non-compliance. [Penalties – referendum disclosure](#) summarises the obligations in Part VIIIA of the Referendum Act and the penalties for non-compliance.

Policy statement

To increase the transparency of both disclosure schemes, the AEC assists those with obligations under Part XX of the Electoral Act and Part VIIIA of the Referendum Act to understand and comply with their obligations.

- The AEC seeks to deter non-compliance by increasing understanding through education and guidance in order to assist political participants to understand and meet their financial disclosure requirements.
- When non-compliance is detected, the AEC will consider the conduct and likely causal factors before undertaking prosecution and/or enforcement.

Compliance and enforcement approach

The AEC will undertake compliance and enforcement action in a way that is:

- in accordance with the legislation
- effective, timely and proportionate
- fair and impartial
- evidence based.

The AEC will undertake a risk-based approach to compliance and enforcement of the disclosure schemes. The AEC reserves the right to take the action it considers necessary and appropriate to support compliance with the disclosure schemes and to deal with non-compliance. To determine the appropriate action, the AEC will consider the behaviour and motivation of participants in the electoral process:

Electoral participants behaviour and motivation ¹		
Compliant	Inadvertent non-compliance	Unwilling to comply
<ul style="list-style-type: none">• Maintains regular contact.• Invests time and effort to understand the scheme and remains up to date with any changes.• Provides all requested information.• Takes corrective action when asked.	<ul style="list-style-type: none">• Engages early when experiencing difficulty complying.• Makes honest mistakes.• Seeks guidance to correct mistakes.• Rectifies mistakes in a timely manner.	<ul style="list-style-type: none">• Intentionally provides incomplete or inaccurate information or has not made sufficient effort to become compliant.• Ignores obligation deadlines.• Does not engage or reply to AEC correspondence and interactions.• Does not take corrective action.



To determine the appropriate action to achieve compliance the AEC will also consider:

- the extent and regularity of the non-compliance
- the benefits of pursuing the non-compliance, relative to the expense
- whether an alternative course of action is available.

Where there is scope for an individual or entity to rectify and address the non-compliance, the AEC will provide the individual or entity a reasonable opportunity to do this. However, for more serious breaches, such as intentional or repeated non-compliance, the AEC may consider other enforcement mechanisms in the Electoral Act and Referendum Act, including obtaining an enforceable undertaking or seeking to impose a civil penalty or referring criminal conduct to the relevant agency, such as the Australian Federal Police (AFP).

¹ Note the enforcement process is presented as a spectrum rather than the typical presentation as a Braithwaite enforcement pyramid.

Compliance activities

The AEC will seek to achieve compliance with obligations in the disclosure schemes by:

- providing information on the AEC website to promote awareness of disclosure responsibilities under the Electoral Act and Referendum Act
- being approachable and simplifying processes to enable compliance to be easily achieved
- providing easy avenues to seek advice and information via the funding and disclosure help desk
- publishing disclosure scheme guides and providing educational material
- sending information about the disclosure scheme obligations to candidate agents, newly registered political parties, significant third parties, associated entities, third parties, members of the House of Representatives, senators, donors, and potential referendum entities
- sending obligation and/or reminder letters (including advice on the potential penalties for non-compliance)
- monitoring information in the public domain to determine whether an individual or entity may have a disclosure obligation under the Electoral Act or Referendum Act
- facilitating public access to disclosure information via publication of information from returns in an easy-to-use format on the Transparency Register
- encouraging potential breaches of the disclosure scheme to be reported to the AEC via the tip-off facility.

Neither the Electoral Act nor the Referendum Act require the AEC to contact an individual or entity about their obligations under either disclosure scheme. An individual or entity is not absolved of their obligations under either the Electoral Act or Referendum Act if they do not receive advice or a request from the AEC.

Initial compliance assessment

The AEC will conduct initial compliance assessment checks to confirm that:

- all disclosure returns expected to be lodged have been lodged, and
- returns appear fully and correctly completed.

The AEC will take follow-up action in relation to returns not received by the due date or which do not appear to contain all the requisite information.

Compliance reviews

The AEC undertakes a regular program of risk-based compliance reviews that examines a sample of disclosure returns. The AEC examines a range of criteria to determine the relative risk of non-compliance with disclosure obligations.

Compliance reviews are initiated through the issue of a formal notice by the AEC, which requires a person to provide documents and other evidence.

There is a legal obligation to comply with a notice issued under s 314AN of the Electoral Act.

There is also a legal obligation to comply with a notice issued under s 109N of the Referendum Act.

Investigations

In addition to the regular program of compliance reviews, the AEC has the authority to undertake investigations relating to the disclosure schemes under the Electoral Act and the Referendum Act. The AEC will consider all the facts and circumstances of a matter to determine whether to commence an investigation. The AEC can compel the production of documents or other information for an investigation if there are reasonable grounds to believe that a person is capable of giving information, or producing a document or other thing, that is relevant for the purposes of ensuring compliance with Part XX of the Electoral Act or Part VIIIA of the Referendum Act.

Enforcement action

Following the conclusion of any compliance review or investigation, where the AEC is satisfied that an offence or contravention has occurred, the AEC will select the most appropriate enforcement action based on a number of considerations including the nature and seriousness of the breach, frequency, mitigating factors and public interest considerations.

Enforceable undertakings

An enforceable undertaking is a legally binding agreement that may be entered into to resolve non-compliance or improve compliance with Part XX of the Electoral Act or Part VIIIA of the Referendum Act. Undertakings are designed to secure effective remedies to address non-compliance without the need for court proceedings or as an alternative to civil penalties.

Civil penalties

A civil penalty is a financial penalty imposed by the court on application by the Electoral Commissioner. Both Part XX of the Electoral Act and Part VIIIA of the Referendum Act set out the maximum penalties that a court may impose for a breach. This can be either an amount of penalty units or in some cases, such as where a donation is received from a foreign donor, the court may impose a penalty equal to three times the value of the donation received. Civil penalties do not result in an individual or incorporated entity being convicted of an offence. The purpose of civil penalties is to deter political participants from breaching the Electoral Act and Referendum Act and impose a financial penalty for non-compliance.

Criminal offences

While most of the offences in the Electoral Act and Referendum Act are civil penalties, there are some criminal offences relating to the illegal receipt of foreign donations and the failure to comply with an investigation.

The AEC has two options in relation to potential criminal offences under either Part XX of the Electoral Act or Part VIIIA of the Referendum Act:

- If sufficient evidence can be established, the AEC may refer a potential criminal offence to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP will determine whether to prosecute having regard to the Prosecution Policy of the Commonwealth.
- If the AEC suspects a criminal offence, the AEC may refer a matter to the Australian Federal Police (AFP) for further investigation. The AFP makes a determination on further referrals to the CDPP.

Tables of offences and penalties

Part XX of the Electoral Act sets out the offences and relevant penalties that relate to the disclosure scheme. A series of tables summarising these penalties is available on the AEC website at [Penalties – Financial disclosure](#), including:

- Registration requirements for significant third parties and associated entities
- Foreign donation restrictions
- Disclosure of donations
- Disclosure of electoral expenditure
- Annual returns
- Electoral expenditure by foreign campaigners
- AEC investigations
- Keeping records.

Part VIIIA of the Referendum Act sets out the offences and relevant penalties that relate to referendum disclosure. Tables summarising these penalties are at [Penalties – referendum disclosure](#), including:

- Referendum returns
- Foreign donation restrictions
- Referendum expenditure by foreign campaigners
- Anti-avoidance
- AEC investigations
- Keeping records.

In addition to the penalties outlined in the tables, sections 137.1 and 137.2 of the *Criminal Code Act 1995* also applies for providing false or misleading information or documents to the AEC.

Recovery of payments

Section 315 of the Electoral Act allows a court, in addition to imposing a penalty under s 137.1 of the *Criminal Code Act 1995* or making a civil penalty order, to order the refund to the Commonwealth the amount of any election funding payment wrongfully obtained under Division 3 of Part XX of the Electoral Act, or the amount or value of any gift made in contravention of Part XX of the Electoral Act.

Section 109T of the Referendum Act allows a court to recover an amount due to the Commonwealth under s 109R of the Referendum Act. Section 109R of the Referendum Act

applies if the gift is made to, or for the benefit of a person, and a court has determined the gift recipient, or any other person, has contravened s 109J of the Referendum Act.

The amount or value of the gift (determined at the time the gift is made) is payable by the gift recipient to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Reporting of compliance and enforcement actions

The AEC publishes information about its performance on compliance activities in its annual report which is provided to the Minister responsible for electoral matters after each financial year.

Following an election, under s 17(2) of the Electoral Act, a report is prepared and released documenting funding and disclosure activities.

Following a referendum, under s 109Y of the Referendum Act, a report is prepared and released documenting referendum disclosure activities.

The AEC publishes enforceable undertakings on the [Transparency Register](#).

[Outcomes of compliance reviews](#) are published on the AEC's website.