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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) is to increase transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process.

The disclosure scheme requires candidates, Senate groups, political parties, political campaigners, associated entities, third parties and donors to lodge election or annual financial disclosure returns with the Australian Electoral Commission (AEC). The disclosure returns are then made available for public inspection.

The AEC is an independent electoral management body established under the Electoral Act to, among other things, administer the disclosure scheme.

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

- failure to register as a political campaigner or associated entity
- receiving foreign donations or establishing schemes to hide the receipt of foreign donations
- failure to disclose donations and electoral expenditure
- failure to submit annual 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 scheme. [Appendix A](#) summarises the obligations in Part XX and the penalties for non-compliance.

Policy statement

To increase the transparency of the disclosure scheme the AEC assists those with obligations under Part XX of the Electoral 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 of political participants before undertaking prosecution and 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 scheme. The AEC reserves the right to take the action it considers necessary and appropriate to support compliance with the disclosure scheme 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

¹ Note the enforcement process is presented as a spectrum rather than as it is typically presented as a Braithwaite enforcement pyramid.

more serious breaches, such as intentional or repeated non-compliance, the AEC may consider other enforcement mechanisms in the Electoral Act including obtaining an enforceable undertaking or seeking to impose a civil penalty or initiating criminal proceedings.

Compliance activities

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

- providing information on the AEC website to promote awareness of disclosure responsibilities under the Electoral 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, political campaigners, associated entities, third parties and donors
- sending obligation and 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
- facilitating public access to disclosure information via publication of 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.

The Electoral Act does not require the AEC to contact an individual or entity about their obligations under the disclosure scheme. Not receiving advice or a request from the AEC does not absolve an individual or entity from their obligations under the disclosure scheme.

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. A risk matrix is used to assess political participants across a range of criteria to determine the relative risk of non-compliance with disclosure obligations.

Investigations

The AEC has the power to investigate contraventions, or possible contraventions, of the disclosure scheme. The AEC will consider all the facts and circumstances of a matter to determine whether to commence an investigation. The AEC can only commence an investigation if there are reasonable grounds to believe that a person is capable of producing evidence relating to a contravention, or possible contravention, under Part XX of the Electoral Act.

The AEC must also conduct an investigation where an entity or individual has made a gift or disposition of property of \$25,000 or more to a registered political party or candidate. Disposition of property is a defined term in the Electoral Act and includes, but is not limited to, any transfer, assignment or payment of property such as an allotment of shares in a company, a grant of interest in land, a discharge of debt, etc.²

Enforcement action

Following the conclusion of any 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. 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. Part XX of the Electoral Act sets 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 impose a financial penalty for non-compliance.

Part XX of the Electoral Act sets out the offences and relevant penalties that relate to election funding and financial disclosure. A table summarising these penalties is at Appendix A.

² *Commonwealth Electoral Act 1918*, s 287(1).

Criminal penalties

While most of the offences in Part XX of the Electoral Act are civil penalties, there are some criminal penalties 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 Part XX of the Electoral 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.

Recovery of payments

Section 315 of the Electoral Act allows a court, in addition to imposing a penalty under section 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 or the amount or value of any gift made in contravention of Part XX of the Electoral Act.

Reporting of compliance and enforcement actions

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

The AEC publishes enforceable undertakings on the Transparency Register.

Appendix A: Penalties relating to funding and disclosure obligations

In addition to the penalties outlined in the following tables, section 137.1 of the *Criminal Code Act 1995* also applies for providing false or misleading information. An individual or entity may contravene this section if they give information to the Commonwealth knowing that the information is false or misleading or omits any matter which would make the information misleading. If found guilty, the penalty is imprisonment for 12 months.

Registration requirements of political campaigners and associated entities

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Incurring electoral expenditure if the person or entity is not registered as a political campaigner in that same financial year	287F	Political campaigner	Whichever is higher of: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of electoral expenditure incurred (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of electoral expenditure) (s 287F(3)) 	Not applicable
Incurring electoral expenditure if the entity is not registered as an associated entity in that same financial year	287H	Associated entity	Whichever is higher of: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount of electoral expenditure incurred (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of electoral expenditure) (s 287H(3)) 	Not applicable

Failure to notify the Electoral Commissioner within 90 days if information on the Transparency Register fails to be correct or complete	287P	Political Campaigner Associated entity	60 penalty units (s 287P(2))	Not applicable
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Foreign donation restrictions

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure of political entity or political campaigner to take acceptable action in regards to a foreign donation	302D(1)	Political entity or its agent Political campaigner or its financial controller	Whichever is higher of: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302D(3)) 	200 penalty units (s 302D(2))
Failure of a third party to take acceptable action in regards to a foreign donation	302E(1)	Third party	Whichever is higher of: <ul style="list-style-type: none"> ■ 100 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302E(4)) 	50 penalty units (s 302E(3))

<p>Failure to take acceptable action in regards to a foreign gift</p>	<p>302F(1)</p>	<p>Political entity or its agent</p> <p>Political campaigner or its financial controller</p> <p>Third party</p>	<p>For contravention of s 302F(1) by a third party:</p> <ul style="list-style-type: none"> ■ 100 penalty units (s 302F(5)) <p>For contravention of s 302F(1) by a person or entity other than a third party, whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302F(5)) <p>For contravention of s 302F(2) whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302F(5)) 	<p>For contravention of s 302F(1) by a third party:</p> <ul style="list-style-type: none"> ■ 50 penalty units (s 302F(3)) <p>For contravention of s 302F(1) by a person or entity other than a third party:</p> <ul style="list-style-type: none"> ■ 100 penalty units (s 302F(3)) <p>For contravention of s 302F(2):</p> <ul style="list-style-type: none"> ■ 100 penalty units (s 302F(3))
<p>Knowingly providing a false affirmation or information that a donor is not a foreign donor</p>	<p>302G(1)</p>	<p>Political entity or its agent</p> <p>Political campaigner or its financial controller</p> <p>Third party Donor</p>	<p>Whichever is higher of:</p> <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302G(4)) 	<p>100 penalty units (s302G(2))</p>

Establishing a scheme to avoid sections 302D, 302E or 302F	302H	Political entity Political campaigner Third party Donor	Whichever is higher: <ul style="list-style-type: none"> ■ 200 penalty units, or ■ three times the amount or value of the gift (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift) (s 302H(5)) 	200 penalty units (s302H(3))
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Disclosure of donations

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure to provide a return disclosing the value of gifts received	304	Candidate (including members of a group who were candidates) or the candidate agent	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount or value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gifts not disclosed) (s 304(2)) 	Not applicable
Failure to provide a return disclosing the value of gifts received	304	Agent of a group whose members were candidates	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount or value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gifts not disclosed) (s 304(3)) 	Not applicable

Failure to provide a return disclosing gifts valued at more than the disclosure threshold	305A	Donor who is not a political entity or an associated entity	<p>Whichever is higher:</p> <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount or value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gifts not disclosed) <p>(s 305A(2))</p>	Not applicable
Failure to disclose gifts totalling more than the disclosure threshold in a financial year	305B	Donor who is not a political entity or an associated entity	<p>Whichever is higher of:</p> <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount or value of the gifts not disclosed (if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gifts not disclosed) <p>(s 305B(1))</p>	Not applicable

Disclosure of electoral expenditure

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure by the agent of a person who was a candidate to provide a return disclosing the amount of electoral expenditure	309	Candidate (but not a candidate who was the member of a group) or the candidate's agent	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount of the electoral expenditure not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the electoral expenditure not disclosed) (s 309(2)) 	Not applicable
Failure by the agent of a group to provide a return disclosing the amount of electoral expenditure	309	Agent of a group whose members were candidates	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount of the electoral expenditure not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the electoral expenditure not disclosed) (s 309(3)) 	Not applicable

Annual returns by registered political parties and others

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure of a political party or political campaigner to provide an annual return	314AB	Registered political party or its agent or its financial controller Political campaigner or its agent or its financial controller	Whichever is higher of: <ul style="list-style-type: none"> ■ 120 penalty units, or ■ three times the amount not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed) (s 314AB(1)) 	Not applicable
Failure of an associated entity to provide an annual return	314AEA	Associated entity or its financial controller	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed) (s 314AEA(1)) 	Not applicable
Failure of third party to provide an annual return	314AEB	Third party	Whichever is higher of: <ul style="list-style-type: none"> ■ 60 penalty units, or ■ three times the amount not disclosed (if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed) (s 314AEB(1)) 	Not applicable

AEC investigations

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Refusal or failure to comply with a notice relating to a compliance review or investigation	316 (5)-(5A)	Political entity or its agent Political campaigner or its financial controller Associated entity or its financial controller Third party Donor Prescribed person under s 17(2A)	Not applicable	For a refusal to comply with a notice under s 316(2A), (3) or (3A): ■ 10 penalty units (s 316(5)) For a failure to comply with a notice under s 316(2A), (3) or (3A): ■ 10 penalty units (s 316(5A))
Providing false or misleading information during a compliance review or investigation	316(6)	Political entity or its agent Political campaigner or its financial controller Associated entity or its financial controller Third party Donor Prescribed person under s17(2A)	Not applicable	Imprisonment for 6 months, or 10 penalty units, or both (s 316(6))

Keeping records

Offence	Section of the Electoral Act	Applies to	Maximum civil penalty	Maximum criminal penalty
Failure to keep records	317(2)-(4)	Political entity or its agent Political campaigner or its financial controller Associated entity or its financial controller Third party Donor Prescribed person under s 17(2A)	200 penalty units (s 317(1))	Not applicable