

Compliance and Enforcement Policy for Funding and Disclosure Obligations

Version 4.0

Approval



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Electoral Commissioner

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Version history

Version	Notes	Author	Date of Change
1.0A	Draft	Director Compliance	November 2018
1.0	Issued for use	Electoral Commissioner	November 2018
2.0A	Update for legislative amendments	Senior Compliance Officer	November 2020
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4.0A	Draft updates for 2024 election year and update to title	A/ Director, Funding, Disclosure & Compliance	November 2022
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Review

This Policy has been considered to ensure compatibility with the 23 protected rights under the *Human Rights Act 2019* and is deemed compatible.

This Policy will be reviewed **every four years** from the approval date, or if the relevant regulatory framework changes in a way that means this policy is no longer contemporary for the ECQ.

About this policy

This Policy sets out the underlying principles that the Electoral Commission of Queensland (ECQ) uses to regulate and help achieve compliance with the *Electoral Act 1992* (EA), the *Local Government Electoral Act 2011* (LGEA), and the *Referendums Act 1997* (RA) (except those matters relating to elector participation). This Policy identifies the ECQ's compliance and enforcement activities and possible responses when working with stakeholders and the public, using collaborative and cooperative approaches to help achieve desired compliance objectives.

The ECQ is an impartial and independent statutory authority that objectively serves the public interest. The ECQ's funding and disclosure compliance and enforcement related work is performed under the authority provided by the EA, LGEA, and the RA.

The ECQ uses a range of compliance and enforcement tools to incentivise and enable voluntary compliance with funding and disclosure obligations, including:

- promoting public awareness of funding and disclosure obligations via education and information programs,
- providing information about funding and disclosure matters to stakeholders including the Legislative Assembly and other legislative bodies, the government, political parties, elected officials, candidates, and the community,
- publishing material relating to the promotion and enforcement of funding and disclosure related functions, and
- working proactively with stakeholders, other regulators, and other law enforcement agencies to deal with matters of mutual interest.

The ECQ has a range of enforcement options available to incentivise compliance and address non-compliance, including:

- issuing warning notices,
- issuing penalty infringement notices (fines),
- prosecution,
- recovering amounts as a civil debt to the State,
- entering into a compliance agreement with the electoral participant, and
- referring conduct to another regulatory or law enforcement agency.

Further detail about these enforcement options is outlined below.

Guiding principles

The ECQ's vision is to provide electoral excellence with integrity for Queensland. To meet its regulatory responsibilities, the ECQ exercises its compliance and enforcement powers impartially, independently, in the public interest, and with integrity and professionalism.

The following principles direct the ECQ's compliance work:

1. **Accountability** – the ECQ's decision-making takes place within a rigorous governance framework as the ECQ's actions and decisions may be subject to internal or external review.
2. **Confidentiality** – generally, the ECQ conducts investigations in confidence and does not comment on matters it may or may not be investigating. This confidentiality maintains the integrity of the investigate process and gives effect to principles 4 and 5 below.
3. **Evidence-based enforcement** – decisions on compliance and enforcement action are proportional and based upon the collection of evidence and material facts.
4. **Fairness and impartiality** – fairness has several aspects, and the ECQ seeks to:
 - 4.1. practice due process to assess facts, balancing voluntary compliance by stakeholders with the ECQ's enforcement activity, while responding to many competing interests,
 - 4.2. exhibit integrity to ensure a consistent approach and to ensure similar matters are treated in a similar manner, and
 - 4.3. balance fairness to persons and entities that are subject to the ECQ's enforcement action(s), informing stakeholders and the public about the ECQ's work, while being impartial and transparent about what action the ECQ is taking and why.
5. **Procedural fairness** – procedural fairness applies to any decision affecting the rights, interests, or reasonable expectations of a person in a direct or immediate way. Procedural fairness obligations are not regarded as a burden or impediment to an investigation as they provide a means of checking facts and identifying issues, as well as expose any potential weaknesses in evidence that has been collected.
6. **Proportionality** – the ECQ's enforcement responses are proportionate to the conduct and the resulting or potential harm. Compliance matters and enforcement actions are monitored, investigated (as required) and enforced in a way that uses the ECQ's resources efficiently, effectively, and economically.
7. **Objective-based** – the ECQ's objectives are to achieve compliance which otherwise may not have occurred (e.g. by obtaining disclosures which were not voluntarily completed) and to deter future non-compliance by participants.
8. **Risk-focused** – apply risk assessments to identify and assess the likelihood and consequence of any alleged breaches to reduce the actual risk posed.
9. **Timeliness** – the ECQ's investigation and resolution of enforcement matters is done as efficiently as possible to avoid costly delays and uncertainty for stakeholders and the public. The ECQ considers due process and timeliness in all actions to meet statutory requirements.
10. **Economic efficiency** – the ECQ's enforcement actions seek to maximise the greatest degree of compliance with electoral laws at the lowest possible cost to all parties.
11. **Transparency of process** – the ECQ makes open and accountable decisions in the public interest and within the law. The ECQ's enforcement actions finalised by litigation are made public, and other enforcement activities may be published in a de-identified, general matter (e.g. case studies, number of fines issued, etc.).
12. **Transparency of election activities** – the ECQ ensures the greatest amount of information that should be public (as determined by law) is public, while minimising the risk of publishing confidential information.

The ECQ's compliance and enforcement strategy

The ECQ engages in a differentiated compliance and enforcement strategy informed by an electoral participant's previous behaviour, history of engagement, and the responses the ECQ obtains from stakeholders. To achieve its compliance objectives, the ECQ uses seven flexible and integrated compliance strategies:

1. Provide specific education to stakeholders.
2. Publish extensive educational material on all aspects of funding and disclosure obligations for all stakeholders.
3. Incorporate assurance, compliance monitoring, and enforcement practices into the ECQ's business processes.
4. Implement targeted compliance review programs and initiatives based on identified risks,
5. Coordinate with external agencies to enforce funding and disclosure regulations and refer matters to another responsible agency for their consideration where necessary and appropriate.
6. Encourage practices which allow for self-reporting of non-compliance.
7. Maintain processes and practices which allow for tip-offs and reporting of non-compliance by electoral participants and the community.

To bring greater integrity to the electoral system requires a sound compliance and enforcement regime. The ECQ administers electoral laws through a proactive preventative regulatory methodology to deter people from contravening the law and a reactive enforcement regulatory methodology to impose penalties on persons who contravene the law.

Stakeholders have an incentive to comply with their obligations and to cooperate with the ECQ during any compliance activity to reduce the risk of the ECQ commencing enforcement action.

ECQ's compliance and enforcement responses

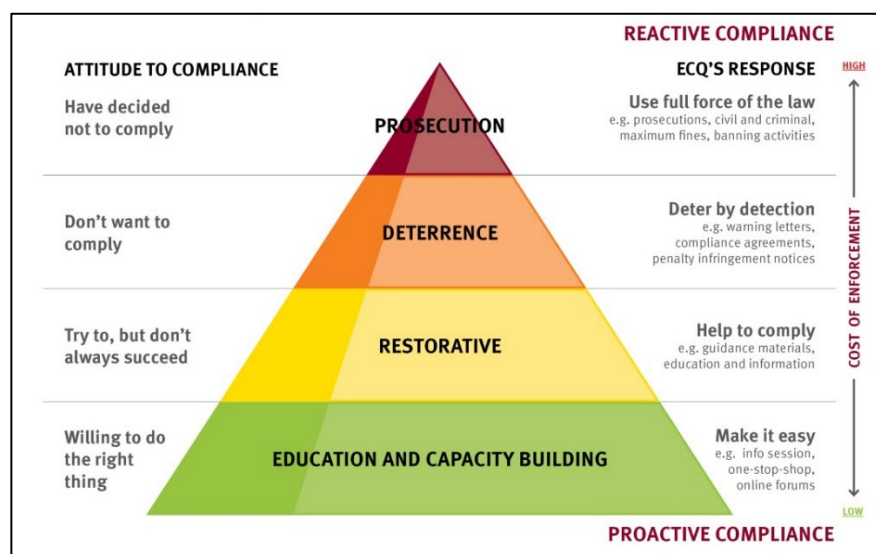


Figure 1: ECQ Compliance and Enforcement Pyramid

The ECQ uses a range of compliance and enforcement responses to encourage compliance with electoral laws (see Figure 1 above).

The ECQ adopts a risk-based approach to assessing how to utilise its compliance resources, as well as to decide how to mitigate the risk of non-compliance amongst its regulated stakeholders. Risk assessments also inform the prioritisation of complaints and notifications about potential non-compliance. The ECQ exercises its discretion to direct its resources to the matters which protect the legitimacy of electoral processes and provide the greatest overall benefit to the public. The ECQ focuses on circumstances that will, or have the potential to, harm public confidence in the integrity of Queensland's electoral system, a specific election, or results in conduct that falls below the community's expectations.

The ECQ's proactive compliance activities

Compliance activities help stakeholders and the public understand how to comply with the law or provide an intervention to address issues of potential non-compliance. The ECQ's conduct of proactive compliance activities is aimed at maximising voluntary compliance by striving to ensure electoral participants receive the information they need to enable their voluntary compliance. The ECQ's proactive compliance activities are set out below.

Education and information

The ECQ encourages compliance with the electoral laws by promoting public awareness and informing stakeholders and the public about their obligations. The ECQ considers the prevention of a breach of electoral laws as preferable to taking enforcement action after a breach has occurred. The ECQ also seeks to ensure its stakeholders and the public are aware of their obligations under the electoral laws through clear and targeted communications including mass-communication tools (emails, newsletters, SMS), and the publication of extensive educational material on the ECQ's website.

The ECQ provides information, guidance, and tools to help stakeholders through a wide range of communication channels. These include (but are not limited to):

- Publication of fact sheets, handbooks, user guides, and web content, all of which is targeted to specific user groups.
- Direct email campaigns to stakeholders, especially before, during, and after electoral events.
- Providing content for education material of other government agencies, including content for the candidate training mandated by the LGEA.
- Attending and presenting at stakeholder events (e.g. council meetings, peak body conferences).
- Regularly contacting and engaging with stakeholders and providing comprehensive advice and support.
- Conducting in-person or online information sessions.

The ECQ liaises with state and local governments and representative bodies about how to comply with electoral laws and the ECQ's role as regulator to enforce the law. Where possible and appropriate, the ECQ promotes public awareness of funding and disclosure matters to ensure that electors and other interested parties (such as media organisations) have access to information they need.

Peak body and stakeholder engagement

The ECQ maintains impartial and professional relationships across all levels of government, representative bodies, and the public to leverage their networks and promote the ECQ's role to their members, including how to comply, and the support that is available. The ECQ attends events and meetings (where appropriate) and conducts its own information sessions (primarily through live and pre-recorded webinars).

Proactive monitoring, research, and reporting

The ECQ conducts environmental scanning on emerging trends (e.g. through case law monitoring). The ECQ employs standard business practices which monitor the performance and results of compliance activities. This information is then used to inform the drafting of educational materials, future compliance programs, and investments in business / system improvements. Importantly, the information obtained from the environmental scanning on compliance activities enables the ECQ to give robust and informed advice to the government on any proposals for electoral reform.

Compliance reviews

The ECQ's compliance reviews seek to identify non-compliance by examining the data available. This will usually involve contacting the person responsible for the stakeholder's obligations to seek clarification, rectification, or an explanation about identified issues. The ECQ conducts regular compliance reviews to ensure disclosures are being made in accordance with the law.

The ECQ's compliance reviews are standardised and comprehensive to ensure impartiality, fairness, and consistency. Compliance reviews are based on risk assessments to ensure the ECQ's compliance resources are prioritised to address the most serious and systemic risks and will improve compliance over the longer-term.

Investigations

The ECQ's investigations focus on fact-finding. It is a process of gathering information and evaluating it, and then recommending appropriate, proportionate, effective, and fair action to resolve the matter that is under investigation. The ECQ secures evidence that will establish material facts and assist the ECQ in making good, robust, and sound enforcement decisions. The ECQ's investigations must be able to withstand both internal and external scrutiny and must contain only the information needed to establish the facts.

The ECQ's reactive enforcement action

The ECQ has a range of enforcement measures available to manage its enforcement functions as the regulator administering Queensland's electoral laws.

Warnings

The ECQ may issue warning letters in response to potential or actual breaches of Queensland's electoral laws, where other enforcement activities may not be warranted.

The majority of minor or inadvertent non-compliance can be dealt with by way of educating stakeholders and the public regarding their obligations. Warnings are an effective means to ensure a person is made aware of how their actions (or inactions) have not met the standard required by law, and how to improve for any future involvement in Queensland's electoral processes.

Penalty infringement notice

A Penalty infringement notice (PIN) is a fine which may be issued in lieu of commencing prosecution action. No conviction results from such action. The ECQ can issue a PIN where there is a reasonable belief that a person has committed an infringement notice offence. Issuing a PIN for an offence emphasises to election participants that the ECQ takes offending seriously.

When the ECQ issues a PIN, the person has 28 days to pay the fine or can elect to contest the matter in court. If the person elects to have the matter heard in court, the matter becomes a prosecution. The effect of pursuing the prosecution reinforces with the recipient the ECQ views the matter seriously, while also demonstrating to the public that reasonable efforts were made to resolve the matter efficiently.

Prosecution

Prosecution is the most severe form of action available to the ECQ. The ECQ is likely to take prosecution action for the most serious breaches of the Queensland electoral laws. A recommendation to pursue a prosecution requires the production of a brief of evidence to establish that a *prima facie* case exists against the alleged defendant. Upon completion of a successful prosecution a defendant may be convicted and, in most cases, issued with a fine as a penalty, although some offences may result in a person being imprisoned.

The ECQ's preference is for a conciliatory rather than a confrontational approach to enforcement, while taking seriously its duty to enforce electoral laws if reasonable voluntary compliance attempts fail. Where the ECQ believes a disclosure contravention has occurred and the person responsible for the disclosure is unwilling to make that disclosure, the ECQ may take prosecution for the disclosure related offence to enable, among other measures and penalties, the acquisition of a court order to compel disclosure.

Recovery action

The EA and LGEA regulate donations to all electoral participants. The ECQ may seek to recover an unlawful donation (e.g. a donation from a prohibited donor, anonymous donations or loans, or political donations above the applicable cap) where evidence suggests recovery action is

warranted. Amounts of electoral expenditure can also be recovered if an electoral participant exceeds the applicable cap.

The purpose of debt recovery is to remove the money from the political landscape, thus removing the influence the donor may have been trying to gain by making the donation, or the benefit which a participant may have obtained from exceeding the electoral expenditure cap. Recovery action is separate to and may be in addition to any other enforcement action that may be taken.

Failure to pay the amount to the State may result in civil court proceedings, independent from any other criminal proceedings which the ECQ may decide to take, either before, during or after the civil proceedings.

Compliance agreement and court orders

The ECQ can enter into a written compliance agreement with a person on whom an obligation is placed to ensure the person complies with election funding and financial disclosure obligations. An agreement may state the specific measures to be taken by the person to whom it applies to ensure the person understands their obligations and the consequences of non-compliance. A court may, on application by the ECQ, declare a person contravened a compliance agreement and make ancillary orders to enforce the agreement. The ECQ, despite such a court order, is still able to pursue proceedings for an offence for a contravention of the law.

Reporting of ECQ's compliance and enforcement actions

The ECQ reports on its compliance and enforcement actions by reporting information about the use of its compliance and enforcement powers in its Annual Report tabled in the Legislative Assembly.

The ECQ generally does not comment on compliance matters, especially where a matter is ongoing. In doing this, the ECQ maximises its chances of reaching the correct outcome, without compromising procedural fairness or exposing its investigation methods. In some instances, the ECQ may respond to media enquiries where knowledge of a matter is in the public domain, and the ECQ's considers it to be in the public interest to provide comment.

The ECQ may also embed general information about successful compliance outcomes in its educational material to reinforce the message that the ECQ has an active compliance program which does detect non-compliance. This information may take the form of a de-identified case study, statistics about non-compliance, or any other form which may serve to reinforce the desired message.

The ECQ's compliance work with external agencies

The ECQ's work may intersect with different regulators and government agencies in Queensland and their counterparts across the Australian, state and territory governments including equivalent electoral commissions.

At times, the ECQ may receive a complaint that falls outside of its jurisdiction or is best dealt with by another agency. The ECQ may refer any matter to those agencies, particularly when doing so may reduce duplication. The ECQ has information-sharing arrangements with relevant agencies to enable agencies to perform their functions.

The ECQ continues to work closely with law enforcement agencies that specialise in particular types of criminal activity or corrupt conduct. The ECQ works closely with the Department of State Development, Infrastructure, Local Government and Planning in the administration of the LGEA and the *Local Government Act 2009* as they are impacted by electoral matters.

The ECQ is a member of the Electoral Council of Australia and New Zealand (ECANZ) which enables member electoral commissions to consult on the management of various types of electoral matters relating to Commonwealth, State and Territory and local government elections.