

Compliance and enforcement policy

Electoral Disclosure and Funding Act 2023

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1. Summary

The Tasmanian Electoral Commission (TEC) is responsible for promoting and enforcing the disclosure and funding compliance of electoral participants, with the requirements of legislation it regulates. This policy sets out the underlying principles and methodology which support the compliance and enforcement work of the TEC.

2. Policy statement

This policy identifies the TEC's compliance and enforcement activities and possible responses when working with electoral participants and the public, starting with the education and empowering of electoral participants to comply with legislation, through to more serious enforcement measures.

See **6. Principles and objectives of compliance and enforcement** below for more detailed information.

3. Scope

The TEC is an impartial and independent statutory authority. The TEC's disclosure and funding compliance and enforcement work is performed under the authority provided by the *Electoral Act 2004* and the *Electoral Disclosure and Funding Act 2023*. Electoral participants are any person, group of people or other entity who either incur electoral expenditure, or make or receive political donations. They can be political parties, Members, candidates, intending candidates, associated entities, third-party campaigners, political donors, party agents or official agents.

This policy applies to:

- The promotion of compliance with the requirements of the *Electoral Act 2004* and the *Electoral Disclosure and Funding Act 2023*
- The investigation of potential non-compliance
- The TEC's enforcement of these laws
- Officers of the TEC, including contractors and third-party consultants, who are involved in identifying, investigating and undertaking enforcement action.

4. Related legislation and documents

- *Electoral Act 2004* ("EA")
- *Electoral Disclosure and Funding Act 2023* ("EDFA")
- The TEC's **Compliance approach**
- *Good decision-making*, Ombudsman Tasmania

5. Definitions

Electoral participant – may refer to a candidate, elected Member, political party, party or official agent, associated entity, third-party campaigner, or significant political donor (see Part 2 of the EDFA for definitions of each specific electoral participant type).

Electoral expenditure – expenditure incurred for the dominant purpose of creating or communicating electoral matter in relation to an election (further detail available in section 6 of the EDFA).

Political donation – a gift or gift in kind made to, or for the benefit of a candidate, Member, political party, associated entity or third-party campaigner, the whole or part of which was used or intended for the purposes of an election (further detail available in section 12 of the EDFA).

Registration – the keeping of a register by the TEC of required details in an approved format (see Part 10 of the EDFA for definitions of each specific registration type).

6. Principles and objectives of compliance and enforcement

The following principles guide the TEC's compliance and enforcement activities:

Objectivity and impartiality – the facts of a case are identified and assessed objectively and impartially, balancing voluntary compliance by electoral participants with the TEC's enforcement activity.

Evidence (to the required standard) – depending on the case type, evidence to the required standard is obtained to assist in directing enforcement action. Decisions on compliance and enforcement action are based upon the collection of evidence and material facts.

Proportionality – any enforcement action is proportionate to the seriousness of the breach, the resulting harm, and other relevant circumstances surrounding it.

Due process – facts are identified before deciding whether a breach has occurred, and the establishment of a breach occurs before deciding on enforcement action.

Consistency – an investigation considers a broad range of evidence and conduct relative to the matter in question, as well as precedent matters across jurisdictions (such as previous decisions by the TEC and by other agencies). Decisions made are also consistent with the intent, objectives and provisions of the relevant legislation.

Responsible use of powers – enforcement powers are used within the scope and parameters of the law. Decision-making takes place within a rigorous governance framework as the TEC’s actions may be subject to internal or external review.

Timeliness and prioritisation – matters are prioritised according to a number of considerations, including but not limited to legislative timeframes, risk of harm, and the impact on the integrity of an election.

Appropriate use of TEC resources – compliance matters are monitored, investigated and enforced in a way that uses the TEC’s resources appropriately and efficiently.

Adequate record-keeping – compliance and enforcement matters are recorded accurately with sufficient detail to enable review of the conduct of a matter, and use as evidence in a court proceeding, if necessary. Record keeping of matters meet the requirements of the *Archives Act 1983* and relevant regulations.

Transparency – the TEC 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 following objectives underpin the TEC’s compliance and enforcement activities:

Encouraging compliance and accountability – the TEC’s compliance approach encourages electoral participants’ compliance with the EA and EDFA by making full use of appropriate means. This includes proactive communication and the provision of educational content; regular intelligence assessments, audits and reviews; and the implementation of targeted compliance review programs and initiatives based on identified risks. The TEC’s enforcement activities (or the power to enforce) encourages electoral participants to remain accountable to the Tasmanian public.

Deterrence – an effective deterrence framework assures those engaged in misconduct that such behaviour will be detected and the relevant laws and penalties enforced. Deterrence is integral to protecting the transparency and integrity of political systems operating in Tasmania.

Promoting fairness – where the law has been breached in a way that creates an unfair situation for voters or other electoral participants, the enforcement of that breach upholds fairness. Compliance and enforcement matters are assessed and actioned in a way that sets a good precedent for future matters.

7. The TEC's compliance and enforcement role

The TEC is responsible for regulating the management and disclosure of political donations and electoral expenditure by electoral participants for parliamentary elections in Tasmania. The TEC monitors and enforces compliance with the EA and EDFA; compliance monitoring provides information about potential breaches, which are assessed for possible review, investigation and educational activity.

The main disclosure and funding functions of the TEC as prescribed by the EA and EDFA are:

- To regulate the registration of candidates, Assembly Members, political parties, associated entities, third-party campaigners and applicable agents
- To regulate the disclosure of the source and the amount of political donations received, and the amount of electoral expenditure incurred for parliamentary elections (including expenditure limits to Legislative Council candidates)
- To foster compliance with the various registration and campaign finance management requirements for parliamentary elections.

8. Compliance and enforcement

Education and information

The TEC encourages compliance with the EA and EDFA by promoting public awareness and informing electoral participants about their obligations. Educational content is made available primarily via the TEC's website where information, guidance and tools are published to advise specific user groups of their obligations. The TEC considers the prevention of a breach of electoral laws as preferable to taking enforcement action after a breach has occurred.

Monitoring

The TEC uses a number of compliance monitoring tools, including:

- Implementing regulatory processes to identify non-compliance
- Surveillance and risk-based assessments
- Receiving referrals, complaints and feedback from the public
- Compliance audits and reviews
- Undertaking inspections
- Conducting investigations.

Compliance and enforcement actions

Depending on the type of breach, options to promote compliance or to enforce the law in relation to an identified offence/s include communication with electoral participants and other relevant stakeholders, and the TEC undertaking educational

activities to address non-compliance. Options to address more serious breaches include:

Written warnings (recorded against the person who committed the breach) – the TEC may issue warning letters in response to potential or actual breaches of Tasmanian electoral disclosure and funding laws, where other enforcement activities may not be warranted. 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 electoral law, and how they can improve for any future involvement in Tasmanian elections.

Compliance agreements – the TEC can enter into a written compliance agreement with an electoral participant who has an obligation under the EDFA, to ensure that person’s legislative compliance, or the rectification of any breach of their disclosure and funding obligations.

Penalty infringement notices (PINs) – PINs are applicable to infringement offences set out by the EA and EDFA. It is a fine which may be issued in lieu of commencing prosecution action; no conviction results from such action. The TEC can issue a PIN where there is a reasonable belief that a person has committed an infringement offence. Issuing a PIN for an offence emphasises to electoral participants that the TEC treats offending seriously.

Prosecution – the TEC is likely to undertake prosecution action for the most severe breaches of disclosure and funding laws. Upon completion of a successful prosecution, a defendant may be convicted and issued with a fine as a penalty, although some offences may result in imprisonment.

Recovery of unlawful donations – the EDFA prohibits certain types of political donations. The TEC may seek to recover an unlawful donation where evidence suggests recovery action is warranted.

Note: the TEC does not intend to proceed with PINs for a period after the introduction of the EDFA. This will reasonably allow electoral participants to familiarise themselves with their new disclosure and funding obligations, while also allowing the TEC opportunity to review the initial conduct and responses of electoral participants to provide targeted education where appropriate.

Selection of enforcement action

The TEC’s selection of the most proportionate and effective enforcement action against an alleged offender is based on four primary factors, where considerations may include (but are not limited to):

The severity or seriousness of the breach	Public interest considerations
<ul style="list-style-type: none"> • The degree of harm or potential harm resulting from the breach • The magnitude or degree of non-compliance • The duration or frequency of non-compliance • Includes consideration of the likely harm caused to public confidence in the effectiveness of electoral laws 	<ul style="list-style-type: none"> • Whether or not the offence is of considerable public concern • The cost to the general community of the breach, including the cost of imposing and ensuring compliance • The prevalence of the offence and resulting need for deterrence, both for the offending person and community • Whether enforcement action is required to achieve the objectives of the law • The youth, maturity, intelligence, physical health, mental health or special disability or infirmity of an offender or witness
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • The known or foreseeable consequences of the breach • Whether an offender used a position of authority to commit the offence • The degree of culpability of an offender in connection with the offence • A history of non-compliance by the offender • The continuance or frequency of a breach • Financial gain or other advantage to an offender • Uncooperative conduct of an offender 	<ul style="list-style-type: none"> • A good compliance record of an offender (e.g. first-time offence) • Actions taken by the offender to eliminate or reduce the risk of damage resulting from non-compliance • Cooperative conduct of the offender • Length of time elapsed since the breach occurred

The applicability of each of these factors will be applied on a case-by-case basis to account for the particulars of each case. Overall assessments are made based on the consideration of the importance of each relevant factor in the circumstances.

Factors which do not influence the selection of an enforcement action are:

- The race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of an alleged offender or any other person involved (unless they have special significance to the commission of the offence, or should otherwise be taken into account objectively)

- The personal feelings of the investigating officers or prosecutor concerning an offence, an alleged offender or a victim
- The possible effect of the decision on the personal or professional circumstances of those responsible for the investigation or prosecution, or otherwise involved in its conduct
- The possible media or community reaction to the decision.

Reporting

The TEC reports on its compliance and enforcement actions via its Annual Report, tabled before each House of Parliament every financial year. The TEC generally does not comment on compliance matters subject to investigation, so as not to compromise procedural fairness nor expose active investigation methods.

The TEC may use general, de-identified information or statistics about successful compliance outcomes in educational materials (for example, as case studies) or to target initiatives to encourage and guide future compliance for all electoral participants.

9. Responsibilities

Who	How
Tasmanian Electoral Commission	<ul style="list-style-type: none"> • Approves this policy and associated documents
Director, Legislation and Compliance	<ul style="list-style-type: none"> • Participates in the consultation process • Determines policy instrument content and compliance with electoral disclosure and funding laws • Communicates policy development and revision with relevant third parties as appropriate
Manager, Compliance and Investigation	<ul style="list-style-type: none"> • Develops and amends policy instruments as required • Coordinates administration of the policy development and review process • Manages the publication, amendment or archiving of approved policy instruments

10. Version history and review

Version	Date	Changes Made	Reviewed By	Approval Status
1.0	21/03/25	Initial approval	Tasmanian Electoral Commission	Approved
1.1				
1.2				
2.0				