

Penalty Notice and Caution Procedures

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1 Abbreviations and definitions

Abbreviations

EF Act	<i>Electoral Funding Act 2018 (NSW)</i>
EF Regulation	Electoral Funding Regulation 2018 (NSW)
Electoral Act	<i>Electoral Act 2017 (NSW)</i>
Electoral Regulation	Electoral Regulation 2018 (NSW)
Electoral Commission agency	NSW Electoral Commission staff agency
Electoral Commissioner	NSW Electoral Commissioner
Fines Act	<i>Fines Act 1996</i>
FDC	Funding, Disclosure and Compliance Division of the NSW Electoral Commission
LOGO Act	<i>Lobbying of Government Officials Act 2011 (NSW)</i>
LOGO Regulation	Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (NSW)

Definitions

- 1.1 **Associated Entity** means a corporation or other entity that operates solely for the benefit of one or more registered parties or elected members.
- 1.2 **Candidate** in relation to an election, means a person nominated as a candidate at the election in accordance with the EF Act, or in accordance with the LG Act (as the case requires) and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election. For the purposes of Part 2 of the EF Act, a candidate includes an individual who accepts a gift for use solely or substantially for a purpose related to the proposed candidacy of the individual at a future election.
- 1.3 **Council** - the Legislative Council of New South Wales.
- 1.4 **Elected member** means a member of Parliament, or a councillor (including the mayor) of the council of a local government area, and includes a person who, during any period after ceasing to be a member of Parliament or a councillor, is entitled to remuneration as such a member or councillor.
- 1.5 **Election** means a State election or a local government election in New South Wales.
- 1.6 **Electoral expenditure** - expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election, as defined in section 7 of the EF Act.
- 1.7 **Expenditure period** in the case of a State election – the period from and including 1 October in the year before which the election is to be held to the end of polling day for the election; in the

case of a State by-election – the period from and including the day of the issue of the writ or writs for the election to the end of polling day for the election; in the case of a local government general election – the period from and including 1 July in that year to the end of polling day for the election; and for another other local government election – the period from and including the day on which the date of the election is publicly notified by the person conducting the election to the end of polling day for the election.

- 1.8 **Group** in relation to State elections means a group of candidates, or part of a group of candidates, for a Legislative Council election, or in relation to local government elections means a group of candidates, or part of a group of candidates, for a local government election. For the purposes of Part 2 of the EF Act, a group includes individuals who accept a gift for use solely or substantially for a purpose related to the proposed candidacy of the individuals at a future election.
- 1.9 **Inspector** – has the same meaning as under s.139 of the *EF Act*.
- 1.10 **Lobbyist** – (a) a third-party lobbyist; or (b) any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist).
- 1.11 **Lobbyists Code** - the Lobbyists Code of Conduct prescribed by the regulations under Part 2.
- 1.12 **Lobbyists Register** - the Register of Third-Party Lobbyists established under Part 3 of the LOGO Act.
- 1.13 **Lobbyists Watch List** - the Lobbyists Watch List established under Part 4 of the LOGO Act.
- 1.14 **Local government election** – an election under the LG Act for the office of councillor or mayor under that Act (other than an election of mayor by councillors).
- 1.15 **Nomination day** – means the day by which all nominations in an election must be made.
- 1.16 **Party** means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the NSW Parliament or a local Council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.
- 1.17 **Political Donor** means a person who makes a gift.
- 1.18 **Political donation** - is a gift made to, or for the benefit of, a political party, elected member, candidate, group of candidates, or other person or entity including an associated entity or third-party campaigner in New South Wales, as defined in section 5 of the [EF Act](#).
- 1.19 **Registered party** means a party registered in accordance with Part 6 of the Electoral Act, or in accordance with Chapter 10 Part 7 of the LG Act.
- 1.20 **Senior office holder (of a party)** - a person involved in the management or control of the party or the operations of the party.
- 1.21 **Third-party campaigner** in the case of a State election – means an entity or other person (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure during the capped expenditure period for a State or local government election (as defined in Part 2 of the EF Act) that exceeds \$2,000 in total and includes an individual or entity that is registered as a third-party campaigner in accordance with Part 7 of the EF Act.

2 Introduction

- 2.1 The NSW Electoral Commission is responsible for promoting compliance by political participants with the requirements of the legislation it regulates.
- 2.2 Political participants are individuals and entities involved in election campaigns, lobbying and elections in NSW including:
- political parties, candidates, groups of candidates, elected members, third-party campaigners, associated entities and agents
 - political donors and
 - others involved in election campaigns.
- 2.3 The NSW Electoral Commission administers and regulates the electoral funding, expenditure and disclosure scheme under the EF Act, supported by the EF Regulation¹. The NSW Electoral Commission also regulates the conduct of individuals in relation to State elections under the Electoral Act, supported by Electoral Regulation².
- 2.4 The NSW Electoral Commission is empowered to investigate and take enforcement action against those who commit offences under the EF Act, EF Regulation, Electoral Act and Electoral Regulation. A selection of offences under the EF Act, EF Regulation and Electoral Act are 'penalty notice offences', which the NSW Electoral Commission can enforce by issuing penalty notices or cautions.
- 2.5 Penalty notices are issued under section 148 of the EF Act and section 263 of the Electoral Act, in accordance with the Fines Act, for penalty notice offences listed in Schedule 2 of the EF Regulation and Schedule 1 of the Electoral Regulation, respectively. Cautions are issued for penalty notice offences in accordance with the rules set down in the Fines Act.
- 2.6 The Fines Act provides that cautions must be issued with regard to the applicable guidelines about cautions for penalty notice offences. Guidelines are those issued by the NSW Attorney-General, or issued by the relevant issuing agency that are consistent with the Attorney-General's guidelines³.

¹ *The Electoral Funding Act 2018* commenced 1 July 2018 and replaced the now repealed *Election Funding, Expenditure and Disclosures Act 1981*. References in this document to the *Electoral Funding Act 2018* apply to comparable provisions of the *Election Funding, Expenditure and Disclosures Act 1981*.

² The *Electoral Act 2017* commenced 1 July 2018 and replaced the now repealed *Parliamentary Electorates and Elections Act 1912*. References in this document to the *Electoral Act 2017* apply to comparable provisions of the *Parliamentary Electorates and Elections Act 1912*.

³ See the NSW Attorney-General's Caution Guidelines and Internal Review Guidelines under the Fines Act here: http://www.justice.nsw.gov.au/justicepolicy/Pages/lpcld/lpcld_publications/lpcld_guidelines.aspx

3 Purpose

- 3.1 This document:
- is a guide as to how the NSW Electoral Commission issues penalty notices and cautions, and how penalty notices are generally dealt with once issued and
 - functions as the NSW Electoral Commission's caution and internal review 'guidelines', as required under the *Fines Act*, which are consistent with the guidelines issued by the Attorney-General on the same matters.¹
- 3.2 The procedures outlined in this document are in accordance with the principles and objectives of compliance and enforcement set out in the Compliance and Enforcement Policy and Procedures.
- 3.3 This procedure does not apply to penalty notices issued for the offence of failure to vote at an election. This document is not a guideline within the meaning of section 152 of the *EF Act*.

4 Scope/application

- 4.1 This document applies to:
- political participants where it is apparent a participant has committed a breach which is a penalty notice offence
 - the investigation and enforcement of potential penalty notice offences
 - the issuing of penalty notices and cautions
 - the conduct of internal reviews of decisions to issue penalty notices and
 - officers of the NSW Electoral Commission staff agency ('Electoral Commission agency'), including contractors and third-party consultants, who are involved in identifying, investigating and undertaking enforcement action for penalty notice offences.

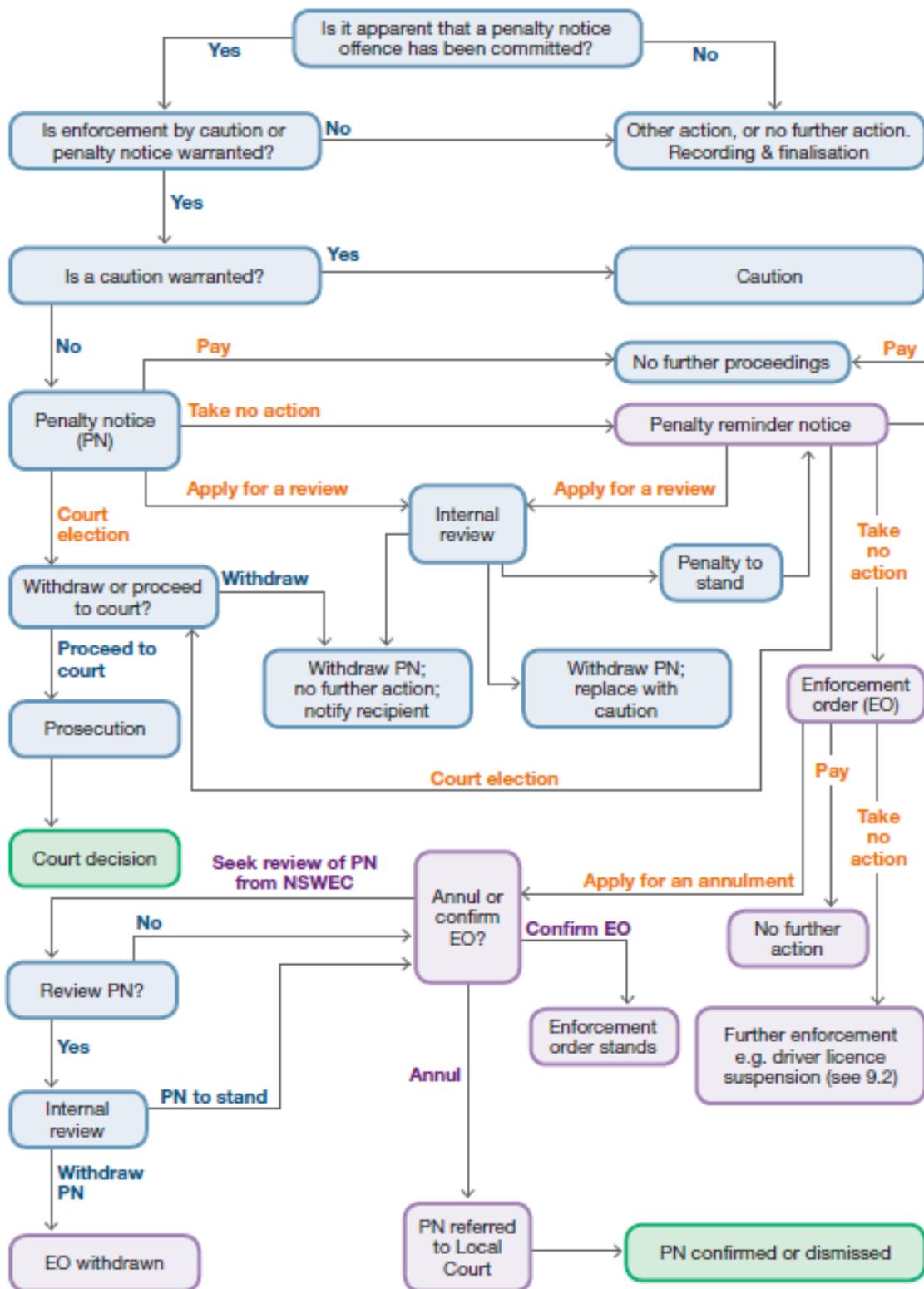
5 Process for enforcing a penalty notice offence

- 5.1 The following flowchart illustrates the process for enforcing a penalty notice offence. It starts from consideration of enforcement by caution or penalty notice, and continues to finalisation, caution, prosecution or enforcement order.
- 5.2 Colour key:
- Blue indicates a question, answer, or compliance or enforcement action by the NSW Electoral Commission.

- Orange indicates a choice made by a penalty notice recipient.
- Purple indicates a question, action or choice made by the Commissioner of Fines Administration, also known as Revenue NSW.
- Green indicates a decision by the Local Court of NSW.

5.3 Notes about apparent loops in the flowchart:

- In the flowchart, the decision of 'penalty to stand' is followed by the issue of another reminder notice, and a subsequent review application is an option. However, the NSW Electoral Commission can refuse to conduct an internal review if one has already been conducted on the decision to issue that penalty notice. See Review of penalty notice decision in section 6.11 below for more information.
- The decision by the NSW Electoral Commission not to review a penalty notice in response to an application to annul an enforcement order is followed by Revenue NSW's decision as to whether to annul the enforcement order or not, and a subsequent NSW Electoral Commission review appears to be an option again. However, a subsequent review will not be requested by Revenue NSW if one has already been conducted. See Review of penalty notice before annulment in paragraph 9.1.2 below for more information.



6 Issuing a penalty notice

What is a penalty notice?

- 6.1 A penalty notice is an enforcement option that allows a person, who is suspected to have committed a specified offence, to pay a specified penalty by specified due date, rather than have the matter heard by a court.
- 6.2 If the penalty amount prescribed for an alleged offence is paid, the person is not liable to any further proceedings for the alleged offence.
- 6.3 Finalisation of an offence by way of a penalty notice does not result in a conviction being recorded.
- 6.4 Payment of the specified penalty amount imposed by a penalty notice is not an admission of liability for the purpose of any civil claim, action or proceeding arising out of the same alleged offence.
- 6.5 The due date specified in a penalty notice served by the NSW Electoral Commission for a penalty notice offence under the EF Act or Electoral Act is 21 days after the penalty notice was served. If no action is taken by a penalty notice recipient by the due date, a penalty reminder notice is served by Revenue NSW. See section 8 of this document for more information.

Penalty notice offences

- 6.6 Section 148 of the EF Act enables certain offences in the EF Act and the EF Regulation to be dealt with by way of a penalty notice and section 263 of the Electoral Act enables certain offences under the Electoral Act to be dealt with by way of a penalty notice. The EF Act and Electoral Act provide detail on the nature, manner of service and effect of payment of a penalty notice, and enable the EF Regulation and Electoral Regulation to prescribe which offences are penalty notice offences and the amount payable as a penalty for each offence.
- 6.7 Schedule 2 to the EF Regulation and Schedule 1 of the Electoral Regulation set out the list of offences that are prescribed as penalty notice offences and the penalty for each offence. All penalty notice offences are strict liability offences, which means that it does not matter if the person intended to commit the offence when it was committed. Some of the offences prescribed are restricted to particular persons (e.g. parties or officers of parties). If an offence is not prescribed as a penalty notice offence, a penalty notice or caution cannot be issued for the offence. To enforce the offence the NSW Electoral Commission would need to exercise an available enforcement option, for example, prosecution or warning. A list of the penalty notice offences prescribed and the corresponding penalties is linked from section 10 of this document.
- 6.8 The Fines Act underpins the penalty notice system in NSW and sets out detailed procedures relating to fines and the enforcement of penalty notices. The procedures detailed in the Fines Act govern:

- the content of and the manner of serving a penalty notice and, where required, penalty notice reminder notices
- the timeframe within which the alleged offender is required to pay the penalty amount
- the right to elect to have the matter dealt with by a court and the procedure for doing so
- the right to request an internal review of the decision to issue the penalty notice and the procedure for that review and
- enforcement action that may be taken against those who fail to respond to the penalty notice.

6.9 Revenue NSW manages the overall process of penalty notices and fine enforcement. It coordinates with agencies that are empowered to issue penalty notices, such as the NSW Electoral Commission. Revenue NSW's main functions relate to:

- receipt and collection of penalty amounts
- making enforcement orders
- taking enforcement action against those who fail to pay the penalty amount and
- writing-off outstanding penalty notice amounts.

Who can issue a penalty notice?

- 6.10 Only an Inspector may issue a penalty notice for an offence under the EF Act, EF Regulation or Electoral Act. An Inspector is defined under s.139 of the EF Act as a person who is:
- a member of staff of the NSW Electoral Commission or
 - a person belonging to a class of persons under the Electoral Funding Regulation.

Review and decision to issue a penalty notice

- 6.11 Before issuing a penalty notice the Inspector must conduct a review (and, if necessary, an investigation) of the alleged offence, as described in the NSW Electoral Commission's Compliance and Enforcement Procedures. The review will include an analysis of available information, including NSW Electoral Commission records. It must appear to the Inspector that a penalty notice offence has been committed.
- 6.12 The Inspector should be satisfied that there is sufficient evidence to prove the commission of the offence by the penalty notice recipient. At the time of issuing the penalty notice, the information to establish each element does not need to be in the form of evidence that would be admissible in court, but needs to be readily available.
- 6.13 The Inspector must record the decision as to whether a penalty notice should be issued in the NSW Electoral Commission's records management system.
- 6.14 A penalty notice cannot be issued unless the following steps have been completed:
1. a review and/or investigation has been undertaken by an Inspector and a penalty notice offence against the EF Act, EF Regulation or Electoral Act is apparent;
 2. the Inspector is satisfied that every element of the offence is capable of being proved and
 3. the Chief of Investigations in the Funding, Disclosure and Compliance Division at the NSW Electoral Commission has been notified of the decision to issue a penalty notice.

Is a penalty notice the appropriate enforcement action for the offence?

- 6.15 The decision to issue a penalty notice is discretionary. This means that, although it may be apparent that a penalty notice offence has in fact been committed, the Inspector may determine that a penalty notice is not the appropriate enforcement response. The appropriate enforcement response is to be determined by reference to the NSW Electoral Commission's Compliance and Enforcement Policy.
- 6.16 When a penalty notice is determined to be the appropriate enforcement response, an Inspector may give a person an official caution instead of issuing a penalty notice. See *Issuing a caution* in section 6 of this document for more information about cautions.
- 6.17 There are a number of factors to be taken into account in determining whether it is appropriate to issue a penalty notice. Examples of situations where the issue of a penalty notice may not be appropriate could include where:
- there have been multiple offences by the same person and the particular offence is part of an ongoing pattern of non-compliance (which may warrant the commencement of legal proceedings or other enforcement action to achieve a regulatory outcome and a higher level of deterrence); or
 - a long period of time has elapsed since the alleged offence (note that legal proceedings must be commenced within 10 years of commission of the offence); or
 - the evidence is insufficient such that if a Court heard the matter, it would be unlikely to succeed.
- 6.18 The issue of a penalty notice may be appropriate in certain circumstances including where the issuing of a penalty notice is likely to have the desired deterrent effect.

7 Issuing a caution

What is a caution?

- 7.1 A caution is an enforcement option that can be issued instead of a penalty notice. It is a statement, usually contained in a letter, that the recipient has committed a penalty notice offence, but that there are mitigating factors justifying the issue of a caution instead of a penalty notice. A caution does not impose a fine, but it may state that if the person does not take certain action or commits the penalty notice offence again, a penalty notice will be issued. This is because issuing a caution does not prevent further enforcement action being taken for the same offence. A caution is recorded against the person for reference in any future compliance matters.

Who can issue a caution?

- 7.2 Only an Inspector may issue a caution, because a caution can only be issued as an alternative to a penalty notice. An Inspector is defined under s.139 of the EF Act.

Assessment and decision to issue a caution

- 7.3 An Inspector may determine that it is appropriate to issue a caution rather than a penalty notice. The Fines Act states that a caution may be given if the Inspector believes:
- on reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued (a penalty notice offence) and
 - it is appropriate to give a caution in the circumstances.

7.4 In making this decision, the Inspector must take into account the considerations given in this document.

7.5 Can a caution be issued for a non-penalty notice offence?

A caution cannot be issued for an offence that is not a penalty notice offence. This is because a caution can only be issued for a penalty notice offence in accordance with s.19A of the *Fines Act 1996*. An Inspector or other officer of the Electoral Commission agency may instead determine that it is appropriate to issue a warning for such an offence, if the same set of beliefs (above) applies.

Is a caution the appropriate enforcement action for the offence?

- 7.6 The matters that are taken into account when deciding whether it is appropriate to give a person a warning or caution, instead of a penalty notice or other enforcement action, include:
- the officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health
 - the offending behaviour is at the lower end of the seriousness scale for that offence
 - the person did not knowingly or deliberately commit the offence and
 - it is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

8 Form of penalty notice

Generating the penalty notice

- 8.1 After the decision to issue the Penalty Notice is made by the Inspector, penalty notices are generated by computer, using the data about the penalty notice offence and the offender that was entered into the
- 8.2 NSW Electoral Commission's records management system. The form of penalty notice is approved by Revenue NSW and penalty notices issued by the NSW Electoral Commission are processed by Revenue NSW. Revenue NSW is also responsible for enforcement of outstanding fines and penalty notice amounts.
- 8.3 A penalty notice is produced in two forms:
1. The form of the penalty notice which is served on or posted to the offender and
 2. The form of the notice which is forwarded to Revenue NSW
- Copies of both forms of each penalty notice are retained by the NSW Electoral Commission in

its records management system.

8.4 Each penalty notice contains the following information:

- issue date
- Penalty Notice Number
- penalty amount
- date due
- details of the offence and
- date of the offence.

8.5 In addition, the form of the notice which is sent to the offender contains the following information:

- how to pay
- what will happen if the recipient does not act on the penalty notice by the due date
- options available to respond to the penalty notice (penalty notice options) and
- contact details for Revenue NSW.

9 Response to receiving a penalty notice

9.1 A penalty notice recipient has three options for dealing with a penalty notice:

1. pay the penalty notice amount
2. apply for an internal review of the decision to issue the penalty notice or
3. elect to have the matter dealt with by a court (court election).

Penalty reminder notice

9.2 If a penalty notice recipient does not exercise any of the above options by the due date specified in the penalty notice, Revenue NSW serves a penalty reminder notice within a week of that due date.

9.3 A penalty reminder notice from Revenue NSW specifies a due date of 28 days after it was served; a week longer than the due date specified in an initial penalty notice from the NSW Electoral Commission.

9.4 Like a penalty notice, a penalty reminder notice from Revenue NSW provides the three options stated above for dealing with the penalty reminder notice.

Pay the penalty notice amount

9.5 The amount payable under a penalty notice is the amount specified in the notice ('the fine'). A penalty notice recipient can pay the fine in full or by part payments; however, the full amount is to be paid within the time required by the notice. Once the full amount of the fine is paid, there is no further liability for further proceedings for the offence (excluding proceedings commenced as a result of the recipient making a court election).

Review of penalty notice decision

9.6 Penalty notice recipients can apply for a review of the decision to issue a penalty notice under certain grounds, even if the fine has been fully or partly paid.

Review application

9.7 An application for review must:

- be made in writing to Revenue NSW, as indicated on the penalty notice, or to the NSW Electoral Commission
- include the mailing address of the applicant and the grounds on which the review is sought (including supporting evidence);
- be made no later than:
 - if the whole fine has been paid and no penalty reminder notice has been served – 60 days after the penalty notice was served or
 - in any other case – the due date specified in the penalty reminder notice.

9.8 If the application for review is made to Revenue NSW, Revenue NSW will refer the application to the NSW Electoral Commission.

9.9 Applications may be made by any person to whom a penalty notice has been issued. Applications may also be made on behalf of another person, for example, by their carer, guardian, parent or advocate.

9.10 A review may also be done at the request of the Commissioner of Fines Administration (who has functions under the Fines Act, including the annulment of penalty notice enforcement orders). The Commissioner of Fines Administration ('the Commissioner FA') may seek a review of a decision to issue a penalty notice before annulling a penalty notice enforcement order.⁴

When a review must be conducted

9.11 The NSW Electoral Commission may review a decision to issue a penalty notice, or withdraw a penalty notice, on its own motion.

9.12 However, a review must be conducted in accordance with the Fines Act if an application for review is received, and that application complies with the Fines Act's requirements, as set out in paragraph 8.2.1 above.

9.13 A review will not be undertaken if the penalty notice has gone to enforcement. See section 9 below, 'Further enforcement' for information on how to dispute a penalty notice that has gone to enforcement.

Review purpose and scope

9.14 A review is to determine, on the available information, whether a penalty notice was correctly issued, and whether any circumstances warrant withdrawal of the penalty notice.

9.15 A review cannot result in any variation of the amount to be paid under the penalty notice, nor any variation in options for payment.

Who can conduct a review?

9.16 The internal review must be conducted by an Inspector who was not involved in making the decision to issue the penalty notice. The reviewing Inspector must not be subordinate to the Inspector who made the decision to issue the penalty notice.

- 9.17 An Inspector must not review a penalty notice if they have any actual, potential or perceived conflict of interest or personal interest in the outcome of the decision relating to that penalty notice, including:
- where the penalty notice was issued to a relative, family member, business partner or friend of the person; or
 - where the person's relative, family member, business partner or friend issued the penalty notice

Matters to be taken into account on review

- 9.18 Review officers conducting internal agency reviews must ensure that their discretionary powers are exercised in good faith and in a way that is consistent with Division 2A of the Fines Act,⁵ the Internal Review Guidelines under the Fines Act, or this document.
- 9.19 To help ensure the integrity of the review process, applications must be determined with reference to the written application and wherever possible, to any statement or other information provided by the applicant, such as medical, psychological or case worker reports.
- 9.20 The review must also take into account the grounds upon which the application for review has been made and whether, given the person's application, prosecution of the offence would be likely to be successful and/or, whether it is appropriate to continue the enforcement process.
- 9.21 The NSW Electoral Commission may request additional information from the applicant, in writing. The review can be conducted without the additional information if this is not provided within 14 days of the request.

Review timeframe

- 9.22 The penalty notice is suspended for the duration of the review. The review is to be concluded within 42 days from receipt of the review request. If additional information is required, the review period is extended to 56 days.

Review outcomes

- 9.23 There are three possible review outcomes: withdrawal of penalty notice with no further action; withdrawal with the issue of a caution; and confirmation of penalty notice.

Withdrawal of penalty notice with or without a caution

- 9.24 The NSW Electoral Commission has the discretion to withdraw a penalty notice on its own motion, and on any grounds it sees fit.
- 9.25 However, the Fines Act stipulates mandatory grounds on which a penalty notice must be withdrawn. On review, a penalty notice must be withdrawn if the NSW Electoral Commission finds that:
- the penalty notice was issued contrary to law
 - the issue of the penalty notice involved a mistake of identity
 - the penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence or

- the person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - to understand that their conduct constituted an offence or
 - to control such conduct.

9.26 Note that the obligation to withdraw the penalty notice only arises if the person is unable to understand that their conduct is an offence, or is unable to control the conduct constituting the offence, as a result of their condition.

9.27 If the reviewing Inspector finds that a caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines (see 'Issuing a Caution', section 6, above), then a caution should replace the penalty notice.

9.28 Once the penalty notice is withdrawn:

- any amount paid under the notice is to be refunded by Revenue NSW and
- any penalty reminder notice is also deemed to have been withdrawn.

9.29 If the NSW Electoral Commission withdraws a penalty notice on its own motion after the amount under the penalty notice (or the corresponding penalty reminder notice) has been paid, no person is liable to any further proceedings for the alleged offence.

9.30 Refer to the Attorney-General's Uniform Guidelines for Internal Review⁶ under the Fines Act for more information.

Confirmation of penalty notice

9.31 A penalty reminder notice is automatically issued for all penalty notices, even if they are being internally reviewed. If after review the penalty notice is confirmed, the person must be advised of the new due date for payment of the penalty. This advice may be in the form of a second reminder notice issued by Revenue NSW.

Court election

9.32 A penalty notice recipient can elect to have the matter dealt with by a court instead of paying the fine in the penalty notice, even if some, or all of the fine, has been paid. Court proceedings are in the form of a prosecution by the NSW Electoral Commission, which could result in a criminal conviction recorded against the penalty notice recipient, if they are found guilty of the offence.

9.33 If a penalty notice recipient elects to have the matter dealt with by a court, the Inspector that issued the notice must then decide whether to withdraw the penalty notice, or recommend that the NSW Electoral Commission consent to proceed with a prosecution.

9.34 If a penalty notice recipient elects to have the matter dealt with by a court while a review of the penalty notice decision is in progress, the review is terminated when the person makes that election.

9.35 For more information about prosecution, please see the NSW Electoral Commission's Prosecution Policy.

10 Further enforcement

Enforcement order

- 10.1 As shown in the flowchart in section 4 above, if the specified penalty amount is not paid, or is not paid in full, and there has been no request for review and no election to have the matter heard before a court, Revenue NSW may make a penalty notice enforcement order (enforcement order) for the enforcement of the amount payable under the penalty notice.

Application for annulment of enforcement order

- 10.2 Recipients of an enforcement order may apply to have the enforcement order annulled. An application may be made by or on behalf of any person for the annulment of an enforcement order made against the person.
- 10.3 An annulment is an application to take a fine to the Local Court after the due date has passed on the penalty reminder notice. Such an application is to be made in writing to Revenue NSW. The application can be completed and lodged online on [Revenue NSW's website](#).

Review of penalty notice before annulment

- 10.4 Before Revenue NSW considers an annulment application, it is to seek a review of the original penalty notice from the NSW Electoral Commission if:
- Revenue NSW has reason to suspect that the penalty notice should be withdrawn, having regard to the grounds of withdrawal in section 24E(2) of the Fines Act and
 - a review of the decision to issue the penalty notice has not been done.
- 10.5 The NSW Electoral Commission will then notify the annulment applicant and Revenue NSW of its review determination.
- 10.6 If the NSW Electoral Commission determines that the penalty notice should be withdrawn, Revenue NSW must withdraw the penalty notice enforcement order.

Annulment of enforcement order

- 10.7 Revenue NSW must annul the enforcement order if it is satisfied of the following conditions:
- the person was not aware that a penalty notice had been issued until the enforcement order was served, but only if the application was made within a reasonable time after that service
 - the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice, but only if the application was made within a reasonable time after the person ceased being so hindered or
 - the penalty reminder notice was, or both the penalty notice and the penalty reminder notice, in relation to a particular offence were, returned as being undelivered to its sender after being sent to the person at the person's recently reported address and notice of the enforcement order was served on the person at a different address.

- 10.8 Revenue NSW may annul the enforcement order if:
- Revenue NSW is satisfied that a question or doubt has arisen as to the person's liability for the penalty or other amount concerned, but only if the person had no previous opportunity to obtain a review of that liability or
 - having regard to the circumstances of the case, Revenue NSW is satisfied that there is other just cause why the application should be granted.
- 10.9 If Revenue NSW annuls an enforcement order, it must refer the original penalty notice matter to the Local Court unless:
- it was an annulment under one of the conditions described in 1 to 3 above (when Revenue NSW *must* annul an enforcement order)
 - the person concerned does not dispute his or her responsibility to pay the penalty notice fine (or balance if it was partially paid) and
 - that amount was paid to Revenue NSW when the annulment application was made.
- 10.10 Payment of the full amount under a penalty notice results in there being no further liability for further proceedings for the offence to which the notice relates. This means that no court action will follow the annulment.
- 10.11 Revenue NSW must give notice of the outcome of an application for annulment to all parties interested or concerned.
- 10.12 Revenue NSW may, but is not required to, refund the annulment application fee if an annulment is granted.

Enforcing a penalty notice after an enforcement order has been served

- 10.13 If the enforcement order has not been annulled, and the amount payable under the penalty notice enforcement order remains unpaid, Revenue NSW may commence enforcement action against the recipient of the penalty notice.
- 10.14 The procedure for enforcement of a penalty notice is as follows:

Service of fine enforcement order

- 10.15 Notice of the fine enforcement order is served on the recipient who is notified that if payment is not made enforcement action will be taken.

Driver licence or vehicle registration suspension or cancellation

- 10.16 If the fine is not paid within the period specified, Roads and Maritime Services suspends any driver's licence, and may cancel any vehicle registration, of the recipient. If the driver's licence of the recipient is suspended and the fine remains unpaid for 6 months, Roads and Maritime Services cancels that driver's licence.

Civil enforcement

- 10.17 If the recipient does not have a driver's licence or a registered vehicle or the fine remains unpaid after 6 months, civil action is taken to enforce the fine, which can include a property seizure order, a garnishee order or the registration of a charge on land owned by the recipient.

Community service order

- 10.18 If civil enforcement action is not successful, a community service order is served on the recipient.

Imprisonment if failure to comply with community service order

- 10.19 If the recipient does not comply with the community service order, a warrant of commitment is issued to a police officer for the imprisonment of the recipient.

Fines payable by corporations

- 10.20 The procedures for fine enforcement (other than community service orders and imprisonment) apply to fines payable by corporations.

Fine mitigation

- 10.21 A recipient may seek further time to pay and Revenue NSW may write off unpaid fines or make a work and development order in respect of the recipient for the purposes of satisfying all or part of the fine.

11 Penalty amounts

- 11.1 Refer to [Schedule 2 of the Electoral Funding Regulation](#) and [Schedule 1 of the Electoral Regulation](#) for a list of penalty notice offences under the *Electoral Funding Act*, *Electoral Funding Regulation* and *Electoral Regulation*, and corresponding penalty amounts.

12 Reference

- 12.1 Uniform Guidelines for Internal Review, Attorney General.

13 Roles and responsibilities

Who	How
NSW Electoral Commission	<ul style="list-style-type: none">• Approve this policy and associated documents
Executive Director and Directors Funding, Disclosure and Compliance	<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
Policy Coordinator(Legal and Governance)	<ul style="list-style-type: none">• coordinates administration of the policy development and review process• manages the publication, amendment or archiving of approved policy instruments in the Policy Library
Senior Advisor Regulatory Advice and Analysis	<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

14 Monitoring, evaluation and review of this policy

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

15 Associated documents

- 15.1 Compliance and Enforcement
- 15.2 Policy Compliance and Enforcement Procedures
- 15.3 Prosecution Policy

16 Relevant legislation

- 16.1 *Electoral Act 2017*
- 16.2 *Electoral Regulation 2018*
- 16.3 *Electoral Funding Act 2018*
- 16.4 *Electoral Funding Regulation 2018*
- 16.5 *Lobbying of Government Officials Act 2012*
- 16.6 *Lobbying of Government Officials (Lobbyists Code of Conduct) 2014*
- 16.7 *Local Government Act 1993*
- 16.8 *Local Government (General) Regulation 2005*

17 Document control

Document management

Approved by:	Signature:
The NSW Electoral Commission	<div style="text-align: center;">Signature Redacted</div> Date approved: 12 December 2018
Executive Director Review:	Signature:
Hugo Bergeron Executive Director, Funding, Disclosure and Compliance	<div style="text-align: center;">Signature Redacted</div>
Director Review:	Signature:
David Wildman Director, Compliance	<div style="text-align: center;">Signature Redacted</div>

Publication details

Document Type:	<input checked="" type="checkbox"/> Policy <input type="checkbox"/> Standard <input type="checkbox"/> Procedure <input type="checkbox"/> Guidelines	
Responsible Business Unit: Funding, Disclosure and Compliance	Author: Senior Adviser, Regulatory Advice and Analysis	Publication: <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
01 December 2014	V 1.0	Legislative change – Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014
29 June 2016	V 1.1	Periodic Review
01 October 2017	V 1.2	Legislative change – Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017
12 December 2018	V 1.3	Legislative change – <i>Electoral Act 2017</i> , <i>Electoral Funding Act 2018</i>