

# Complaints Protocol for State Elections

## 1. PURPOSE

The Complaints Protocol establishes the standards which the Electoral Commissioner requires for formal complaints to be considered; and establishes the standards which individuals and organisations may expect to receive in their dealings with the Electoral Commission of South Australia (ECSA)

The handling of complaints under the *Electoral Act 1985* (the 'Act') is subject to the Complaints Protocol policy of ECSA and the *Instructions for the handling of complaints regarding offences under the Electoral Act, 1985* (the 'Instructions').

## 2. LODGING A COMPLAINT

Any individual or organisation may make a complaint about an electoral offence under the Act. The complaint must be in writing and establish the facts and provide evidence of the alleged electoral offence.

All complaints should be addressed and sent to:

mail : Electoral Commissioner  
Electoral Commission SA  
GPO Box 646  
ADELAIDE SA 5001

email : [electoral.commissioner@sa.gov.au](mailto:electoral.commissioner@sa.gov.au)

fax : 08 7424 7477

## 3. CONSIDERATION OF COMPLAINTS

The Electoral Commissioner will consider all formal complaints on merit and the provision of evidence is essential in enabling this consideration.

The Electoral Commissioner will determine, based on the complaint, whether a potential breach has occurred. If no breach is apparent, the complainant will be advised accordingly. However, if the Electoral Commissioner believes a potential offence may have been committed, he/she will contact the alleged offender and allow them an opportunity to make a submission. The Electoral Commissioner may then make a determination based on the information and evidence received (such as seeking a withdrawal of offending material or a retraction of statements); seek further information from either of the parties; issue a warning; or commence prosecution action.

Should a person or organisation who has been accused of committing an electoral offence be contacted for further information they should furnish the Electoral Commissioner with the information requested as soon as possible. Such cooperation will be taken into consideration by the Electoral Commissioner in determining whether to prosecute alleged offenders.

#### **4. CONFIDENTIAL TREATMENT OF COMPLAINTS**

The Electoral Commissioner treats complaints confidentially, and does not identify the complainant to the alleged offender. In rare circumstances, the Electoral Commissioner may disclose the identities involved to both parties. Such circumstances typically occur where there exists a likelihood of conflicting evidence relied upon; or where one or more of the parties involved, publicise the matter.

Where the parties involved in a complaint have publicised the matter, the Electoral Commissioner may confirm the existence of a complaint with the media, but will not discuss the details of the complaint.

The Electoral Commissioner may make public comments (eg to the media) following a successful injunction, prosecution or Court of Disputed Returns, in order to ensure electors are aware of a situation and/or have accurate information.

#### **5. TIMEFRAMES**

Complaints may be received at any time, however the Electoral Commissioner may take into account the electoral cycle and the likelihood of an incident affecting an election in making his/her determinations. Typically, the majority of complaints the Electoral Commissioner receives, are during the election period.

When a complaint is received in writing, ECSA will acknowledge the complaint as being received and aims to do this within 48 hours. All complaints regarding electoral offences are handled as expeditiously as possible. To ensure this, the Electoral Commissioner may provide deadlines for responses when seeking information from parties involved.

ECSA aims to resolve most issues within 3-4 days. In cases where conflicting evidence and counter submissions occur, matters may take some 1-2 weeks to resolve. Where there is the likelihood of prosecution action, this may extend the resolution for some months.

Election periods are limited and have strict legislative timeframes so time is of the essence when handling complaints regarding electoral offences. There may be the potential for an offence to have an effect on the election results, particularly misleading advertising. However, the Electoral Commissioner is committed to ensuring that any effect is minimised and may seek a withdrawal or retraction of offending material. Furthermore, if the alleged offender fails to withdraw or retract offending material, the Act provides the Electoral Commissioner with the ability to seek a Supreme Court injunction.

#### **6. HISTORY**

Instructions for the handling of complaints regarding offences under the *Electoral Act 1985* were commended to Parliament on 3 August 1989.

In 2010, the Electoral Commissioner reviewed the Instructions with input from the Crown Solicitor, Solicitor General and Director of Public Prosecutions. These Instructions now form the basis for the Complaints Protocol and are attached as Appendix 1.

## Appendix 1

### Instructions for the handling of complaints regarding offences under the *Electoral Act, 1985*

#### PURPOSE

1. These Instructions are intended to regulate the manner in which complaints regarding electoral offences are to be handled and the manner in which assistance is to be afforded to the Electoral Commissioner for the purposes of determining whether or not appropriate legal proceedings are to be commenced in respect of them.
2. In these Instructions the expression “electoral offence” means an offence under Part XIII (sections 109-130) of the *Electoral Act, 1985*, and includes conduct that may be the subject of an application by the Electoral Commissioner to the Supreme Court for an injunction pursuant to section 132 of the *Act*.

#### COMPLAINT TO POLICE

3. Where a complaint regarding an electoral offence is made to a member of the police force the member must direct the complainant to the Electoral Commissioner for the purposes of making the complaint.

#### RECEIPT AND INVESTIGATION OF COMPLAINT

4. Any complaint must be in writing and include the particulars regarding the alleged electoral offence.
- 4A. Any complaint lodged must be supported by evidence of the alleged electoral offence.
- 4B. Anonymous complaints will not be considered unless there is sufficient evidence to commence an investigation.
- 4C. The Electoral Commissioner will take reasonable steps to ensure the confidentiality of any person or organisation making a complaint or accused of committing an electoral offence.
5. The Electoral Commissioner must ensure that a complaint regarding an electoral offence is investigated as expeditiously as possible. For this purpose the Electoral Commissioner will, on request, be given assistance by the Crown Solicitor.

#### SOLICITOR-GENERAL, CROWN SOLICITOR AND DIRECTOR OF PUBLIC PROSECUTIONS

6. When a complaint regarding an electoral offence has been investigated the Electoral Commissioner may seek the advice of the Solicitor-General or the Crown Solicitor. The Solicitor-General or the Crown Solicitor will, if asked to do so, advise the Electoral Commissioner whether an electoral offence appears to have been committed.
7. If an electoral offence appears to have been committed the Solicitor-General or the Crown Solicitor will make a recommendation whether or not a prosecution for the electoral offence should be commenced, or an application by the Electoral Commissioner to the Supreme Court for an injunction, should be made. Any such advice or recommendation will be in writing.
8. However, where the electoral offence is an indictable offence, such written advice or recommendation is to be obtained from the Director of Public Prosecutions.

#### ELECTORAL COMMISSIONER

9. The Electoral Commissioner should, in normal circumstances, act on any such recommendation, but may seek further legal advice from the Crown Solicitor, Solicitor-General, Director of Public Prosecutions or other legal counsel if the Commissioner considers it appropriate.