

Media statement

29 July 2019

Statement by the Chairperson

Accuracy of information on Register of Third-Party Lobbyists - warning to lobbyists to avoid breaches

The NSW Electoral Commission administers compliance with the *Lobbying of Government Officials Act 2011* and has the function of enforcing compliance with its provisions and the Lobbyists Code prescribed by the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*. The objects of the Act are to promote transparency, integrity and honesty by various means.

The Act requires particular information to be included in the Register of Third-Party Lobbyists in respect of each registered third-party lobbyist (s 10). This includes 'the names of the third parties who have retained the lobbyist to provide, or for whom the lobbyist has provided, lobbying services (whether paid or unpaid)' (s 10(1)(d)). Such information must be updated within 10 business days after a change occurs to that information (see Act, s 10 (2)), Regulation, clause 5 (1)).

Information required to be disclosed on the Register and recent amendments to the Regulation

The Commission wishes to draw attention to two matters of general interest about the information in the Register. Recent amendments to the Regulation have also extended the information required about clients to be included in the Register from 1 July 2019.

The Commission is concerned that third-party lobbyists and professional services firms take care to understand the scope of their obligations under the Act and Regulation.

(i) Lobbying for 'clients of clients'

In the course of its administration of the Act, it has been put to the Commission that it is common industry practice for third-party lobbyists to list on the Register only the entity that engages and instructs them, notwithstanding that the entity's various clients or members may be involved in the lobbying process at various stages of the engagement.

The Commission stresses that, in order to comply with s 10(1)(d) of the Act, a third-party lobbyist must include on the Register details of **all** entities that have retained the lobbyist (directly or indirectly) to provide, or for whom the lobbyist has provided, lobbying services (whether paid or unpaid). Having regard to the nature of individual instances, this may include both the names of professional firms (such as solicitors or accountants) as well as their client(s).

Part 5A of the *Crimes Act 1900* makes it an offence to knowingly provide false or misleading information in purported compliance with a law of the State. It is important that all third-party lobbyists recognise there are sanctions outside the LOGO Act that may apply in connection with their obligations to register.

(ii) Lobbying by professionals

The Commission notes that professional firms may sometimes directly, or indirectly through third-party lobbyists, seek to make direct contact with government officials to make representations on behalf of clients in litigious or other matters.

Professional firms need to be aware that they may themselves have obligations under the Act and the Code as lobbyists and/or third-party lobbyists. A third-party lobbyist is defined under the Act as an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body. The Regulation excludes a person from that definition, however, if the lobbying by that person is “incidental to” the provision of professional services to a client in the course of a professional persons’ work.

Before relying on that exemption, professionals should consider carefully whether the conduct rules that regulate membership of their profession permit or contemplate the possibility of “incidental” lobbying. For example, solicitors are restricted from dealing directly with an entity that is represented by another solicitor, with government agencies often represented by the Crown Solicitor or an external solicitor.

(iii) Lobbying for foreign principals

The Commission draws to the attention of third-party lobbyists the recently promulgated *Lobbying of Government Officials (Lobbyists Code of Conduct) Amendment Regulation 2019* which came into effect on **1 July 2019**.

The amending Regulation requires information about foreign principals for whom third-party lobbyists are lobbying to be included in the Register. It also amends the Lobbyists Code to require third-party lobbyists to disclose to NSW Government officials when they are lobbying for a foreign principal.

The Commission will bear these matters in mind in its ongoing scrutiny of the activities of lobbyists and third-party lobbyists in the future. It will also draw them to the attention of the Independent Commission Against Corruption (ICAC) in the submissions by the Commission to the current ICAC inquiry into lobbying issues.

ENDS

ABOUT THE NSW ELECTORAL COMMISSION

In December 2014, the three member Electoral Commission was constituted. It is separate to the agency led by the Electoral Commissioner. The Commission is an independent, statutory authority. It approves public funding to the political parties and others and enforces the provisions of four NSW Acts. These provisions govern electoral funding, expenditure and disclosures, the conduct of State and local government elections and the lobbying of government officials. The Commission’s Chairperson is the Hon Keith Mason AC QC, a former President of the NSW Court of Appeal (1997 to 2008). Information about this independent Commission’s work can view viewed at:

www.elections.nsw.gov.au/About-us/Governance/Three-member-statutory-authority.