

Passed by both Houses



New South Wales

Lobbying of Government Officials Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Lobbying of Government Officials Bill 2011

Act No , 2011

An Act to ban success fees for lobbying Government officials; and to place other restrictions on the lobbying of Government officials.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Lobbying of Government Officials Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

Government official means any of the following:

- (a) a Minister or Parliamentary Secretary,
- (b) a staff member of a Minister or Parliamentary Secretary (including a staff member in an electorate office),
- (c) a chief executive officer or senior executive officer within the meaning of the *Public Sector Employment and Management Act 2002*,
- (d) a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*,
- (e) an individual who is engaged under a contract to provide services to or on behalf of a Division of the Government Service,
- (f) a member (however expressed) of, or of the governing body of, a statutory body.

lobbying a Government official means communicating with the official (in person, in writing or by telephone or other electronic means) for the purpose of representing the interests of another person or a body in relation to any of the following:

- (a) legislation or proposed legislation or a government decision or policy or proposed government decision or policy,
- (b) a planning application,
- (c) the exercise by the official of the official's official functions.

lobbyist means a person or body (incorporated or unincorporated) that carries on the business of lobbying Government officials on behalf of third parties and that generally does so for money or other valuable consideration, but does not include a person or body, or a member of a class of persons or bodies, prescribed by the regulations for the purposes of this definition.

planning application means an application or request by a person (other than a public authority within the meaning of the *Environmental Planning and Assessment Act 1979*):

- (a) to initiate the making of an environmental planning instrument or development control plan under that Act in relation to development on a particular site, or
- (b) for consent to, or approval of development or an activity, or a project or concept plan, under that Act.

success fee—see section 4.

Part 2 Ban on success fees for lobbying

4 Success fees

In this Act, a *success fee* for the lobbying of a Government official is an amount of money or other valuable consideration the giving or receipt of which is contingent on the outcome of the lobbying of the Government official by or on behalf of a lobbyist or on the outcome of a matter about which such lobbying is carried out.

5 Ban on success fees

- (1) A person must not give, or agree to give, a success fee for the lobbying of a Government official to a lobbyist or to any other person at the direction or with the agreement of the lobbyist.
- (2) A lobbyist must not receive or agree to receive, or agree that another person is to receive, a success fee for the lobbying of a Government official.
- (3) A person (other than a lobbyist) must not receive, or agree to receive, a success fee for the lobbying of a Government official.

Maximum penalty: 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

6 Forfeiture of success fees

- (1) If a person is found guilty of an offence under this Part, any success fee to which the offence relates given to or received by the person is, unless the court otherwise orders, forfeited to the Crown.
- (2) In proceedings for an offence under this Part, or on appeal, the court may order that a success fee not be forfeited or, if it has been forfeited, that it be returned to a specified person.

7 Exclusion of fees for technical professional services

This Part does not apply in respect of the giving or receipt of an amount of money or other valuable consideration if it is primarily given or received in consideration for the provision of professional advice or other professional services (other than lobbying services) by a lawyer, accountant, financial advisor or other technical specialist.

Part 3 Other restrictions on lobbying

8 Cooling-off period for ex-Ministers and ex-Parliamentary Secretaries

- (1) A Minister or Parliamentary Secretary who ceases to hold office as a Minister or Parliamentary Secretary must not, during the cooling-off period, engage in the lobbying of a Government official in relation to an official matter that was dealt with by the former Minister or Parliamentary Secretary in the course of carrying out portfolio responsibilities in the period of 18 months immediately before ceasing to hold office as a Minister or Parliamentary Secretary.
Maximum penalty: 200 penalty units.
- (2) This section does not apply to the lobbying of a Government official by a former Minister or Parliamentary Secretary who is lobbying as a Government official or as a member of Parliament.
- (3) In this section, the *cooling-off* period for a Minister or Parliamentary Secretary who ceases to hold office is the period of 18 months immediately after the Minister or Parliamentary Secretary ceases to hold office as a Minister or Parliamentary Secretary.

Part 4 Miscellaneous

9 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

10 Nature of proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

11 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.

12 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Existing agreements to pay success fees

- (1) Part 2 of this Act applies in respect of any agreement, or any success fee payable under an agreement, in force before the commencement of that Part.
- (2) However, it does not apply in respect of:
 - (a) any success fee paid before that commencement or that is payable (whether before or after that commencement) for work carried out before that commencement, or
 - (b) the entering into, before that commencement, of an agreement to give or receive a success fee.

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- (3) An agreement to give or receive a success fee that was entered into before that commencement is void to the extent that it provides for a success fee to be given or received for work carried out on or after that commencement.