

Lobbying of Government Officials Act 2011 No 5

[2011-5]



New South Wales

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Lobbying of Government Officials Act 2011 No 5



New South Wales

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

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.

2A Objects of Act

The objects of this Act are to promote transparency, integrity and honesty by:

- (a) ensuring that lobbyists comply with ethical standards of conduct and other requirements set out in the Lobbyists Code, and
- (b) conferring on the Electoral Commission the function of enforcing compliance with the Lobbyists Code and the provisions of this Act, and
- (c) enabling the Electoral Commission to investigate alleged breaches of the Lobbyists Code, this Act and the regulation and impose sanctions, and
- (d) banning success fees for lobbying, and
- (e) restricting lobbying by former Ministers and Parliamentary Secretaries.

3 Definitions

(1) In this Act:

Commonwealth public official means any of the following:

- (a) a Minister or Parliamentary Secretary of the Commonwealth Government,
- (b) a staff member of a Minister or Parliamentary Secretary of the Commonwealth Government (including a staff member in an electorate office),

- (c) a person employed in the Commonwealth Public Service (including the head of any department, division, branch or agency of that Service),
- (d) an individual who is engaged under a contract to provide services to or on behalf of the Commonwealth Public Service or any other service of the Crown in right of the Commonwealth,
- (e) a member (however expressed) of, or of the governing body of, a statutory body established under a law of the Commonwealth.

communicate includes communicate in person, in writing, by telephone or by email or other electronic means.

Electoral Commission means the New South Wales Electoral Commission constituted under the [Electoral Act 2017](#).

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) the head of a Public Service agency,
- (d) a person employed in the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (e) an individual who is engaged under a contract to provide services to or on behalf of the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (f) a member (however expressed) of, or of the governing body of, a statutory body, but does not include (except in Parts 5 and 6) a local government official.

lobbying—see section 4.

lobbyist means:

- (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).

Lobbyists Code means the Lobbyists Code of Conduct prescribed by the regulations under Part 2.

Lobbyists Register means the Register of Third-Party Lobbyists established under

Part 3.

Lobbyists Watch List means the Lobbyists Watch List established under Part 4.

officer of a registered political party means a person who is occupying or acting in an office or position concerned with the management of a party registered under Part 6 of the [Electoral Act 2017](#).

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 plan under that Act in relation to any development, project or activity on a particular site, or
- (b) for consent to, or approval of, any development, project or activity under that Act or for the modification of any such consent or approval.

success fee—see section 14.

third-party lobbyist means 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, and:

- (a) includes an individual or body included in this definition by the regulations, but
- (b) does not include an individual or body excluded from this definition by the regulations.

(2) Notes included in this Act do not form part of this Act.

4 Meaning of “lobbying”

- (1) For the purposes of this Act, **lobbying** a Government official means communicating with the official for the purpose of representing the interests of others 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 his or her official functions.
- (2) Lobbying extends to:
 - (a) any such communication whether or not in the course of carrying on the business of lobbying Government officials, and
 - (b) any such communication by a person who works for an organisation for the

purpose of representing the interests of the organisation or its members, and

(c) any such communication for the purpose of representing community interests, and

(d) any communication included in this definition by the regulations.

(3) However, lobbying does not include:

(a) any communication by a member of Parliament acting in the ordinary course of his or her duties as a member (or any communication by a constituent of a member of Parliament in the ordinary course of seeking electorate advice or assistance from the member), or

(b) any communication by a Government official acting in the ordinary course of his or her duties as a Government official, or

(c) any communication excluded from this definition by the regulations.

Part 2 Lobbyists Code of Conduct

5 The Lobbyists Code

(1) The Lobbyists Code of Conduct is the code of conduct prescribed by the regulations for third-party and other lobbyists (the **Lobbyists Code**).

(2) The Minister is to consult the Electoral Commission on any proposed code of conduct or amendment of the code of conduct.

6 Content of the Lobbyists Code

(1) The Lobbyists Code is to set out the ethical standards of conduct to be observed by lobbyists in connection with the lobbying of Government officials in order to promote transparency, integrity and honesty.

(2) The Lobbyists Code may provide for any matter relating to lobbying or lobbyists, including the procedures for meetings or other contact with Government officials. The Lobbyists Code may make different provision in relation to different classes of lobbyists.

7 Compliance with Lobbyists Code

It is the duty of a lobbyist to comply with the Lobbyists Code in connection with the lobbying of Government officials.

Note—

See section 19 for enforcement of the Code by the Electoral Commission.

Part 3 Register of Third-Party Lobbyists

8 The Lobbyists Register

- (1) The Electoral Commission is to establish a Register of Third-Party Lobbyists (the ***Lobbyists Register***).
- (2) The Electoral Commission is to publish the Lobbyists Register on a website maintained by the Electoral Commission.

9 Registration of third-party lobbyists and those undertaking lobbying for third-party lobbyists

- (1) A third-party lobbyist is required to be registered in the Lobbyists Register.
- (2) An individual engaged to undertake lobbying for a third-party lobbyist is required to be registered in the Lobbyists Register in respect of the third-party lobbyist.
- (3) A third-party lobbyist (or any individual so engaged) is not eligible to be registered if the person is an officer of a registered political party, is not a fit and proper person to be registered or is otherwise ineligible under the regulations to be registered.
- (4) An application for the registration of a third-party lobbyist may be made to the Electoral Commission by or on behalf of the lobbyist.
- (5) The application for registration:
 - (a) is to be in the form approved by the Electoral Commission, and
 - (b) is to contain the names of the individuals engaged to undertake lobbying for the third-party lobbyist, and
 - (c) is to require the disclosure of any other information to be included in the Lobbyists Register in respect of the third-party lobbyist, and
 - (d) may require the disclosure of the criminal record of the third-party lobbyist, individuals engaged to undertake lobbying or other persons associated with the third-party lobbyist.
- (6) The Electoral Commission must register a third-party lobbyist (and any individual engaged to undertake lobbying for a third-party lobbyist) if an application for registration has been duly made to the Electoral Commission unless it is satisfied that the person is not eligible to be registered.
- (7) The Electoral Commission may cancel or suspend the registration of a third-party lobbyist (or any individual engaged to undertake lobbying for a third-party lobbyist) if:
 - (a) the lobbyist (or an individual so engaged) contravenes the Lobbyists Code or this Act, or
 - (a1) the lobbyist (or an individual so engaged) ceases to be eligible to be registered in

the Lobbyists Register, or

(b) in the case of a third-party lobbyist—the lobbyist fails to update the information in the Lobbyists Register when required to do so, or

(c) in the case of a third-party lobbyist—the lobbyist no longer carries on the business of lobbying, or

(d) in the case of an individual engaged to undertake lobbying for a third-party lobbyist—the individual is no longer so engaged, or

(e) the Electoral Commission is authorised to do so by the regulations.

(8) The Electoral Commission may determine that a third-party lobbyist who has carried on the business of lobbying while not registered is ineligible to be registered for the period specified by the Electoral Commission.

(9) A person is taken for the purposes of this section not to be a fit and proper person to be registered in the Lobbyists Register (without limiting any other circumstances) if the person:

(a) has been sentenced to a term of imprisonment of 30 months or more, or

(b) has been convicted, within the previous 10 years, of an offence committed as an adult involving fraud or dishonesty.

10 Information in the Lobbyists Register

(1) The following information is required to be included in the Lobbyists Register in respect of each registered third-party lobbyist:

(a) the name and business contact details of the lobbyist,

(b) the names of the individuals engaged to undertake the lobbying of Government officials for the lobbyist,

(c) the names of the persons having a management, financial or other interest in the lobbyist of a kind prescribed by the regulations,

(d) 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),

(e) such other information relating to the lobbyist as the regulations may prescribe or the Electoral Commission considers appropriate.

(2) A registered third-party lobbyist is required to update the information in the Lobbyists Register, in writing to the Electoral Commission, at such times or at the end of such periods as the regulations require.

- (3) The Electoral Commission may, at the request of a lobbyist, exclude information in the Lobbyists Register from being made publicly available if the Electoral Commission is satisfied that there is an overriding public interest against disclosure of the information (within the meaning of the *Government Information (Public Access) Act 2009*).
- (4) The Electoral Commission may decline to include in the Lobbyists Register any information that the Electoral Commission has reason to believe is vexatious, false or misleading.
- (5) Information is required to be included in the Lobbyists Register of:
 - (a) any lobbyist whose registration has been cancelled or suspended (otherwise than because the lobbyist no longer provides lobbying services or undertakes lobbying), or
 - (b) any unregistered lobbyist whom the Electoral Commission has determined is ineligible to be registered for the period specified by the Electoral Commission.
- (6) Information is to be retained in the Lobbyists Register until the end of the period provided by the regulations.
- (7) Information required to be retained in the Lobbyists Register, but that is no longer current, is to indicate the period for which it was current.

Note—

It is an offence under Part 5A of the *Crimes Act 1900* to knowingly provide false or misleading information or to knowingly produce documents that are false or misleading in purported compliance with a law of the State.

11 General provisions relating to Lobbyists Register

- (1) The Lobbyists Register is a public document.
- (2) The Electoral Commission may require information provided in an application for registration as a third-party lobbyist or to update information in the Lobbyists Register to be verified by statutory declaration.
- (3) The regulations may make provision for or with respect to registration under this Part and the Lobbyists Register.

Part 4 Lobbyists Watch List

12 Lobbyists Watch List

- (1) The Electoral Commission is to maintain (subject to the regulations) a Lobbyists Watch List that contains the names and other identifying details of any third-party or other lobbyist whom the Electoral Commission determines should be placed on the Lobbyists Watch List because of contraventions of the Lobbyists Code or of this Act.

- (2) Any code of conduct or other official rules applying to Government officials may include special procedures for communication by the officials with lobbyists on the Lobbyists Watch List.
- (3) The Lobbyists Watch List is to be published on the website maintained by the Electoral Commission on which the Lobbyists Register is published.
- (4) The Electoral Commission may (subject to the regulations) remove persons from the Lobbyists Watch List if the Electoral Commission is satisfied that they should no longer be placed on the List.

13 General provisions relating to Lobbyists Watch List

- (1) The Lobbyists Watch List is a public document.
- (2) The Electoral Commission may, at the request of a lobbyist, exclude information in the Lobbyists Watch List from being made publicly available if the Electoral Commission is satisfied that there is an overriding public interest against disclosure of the information (within the meaning of the [Government Information \(Public Access\) Act 2009](#)).
- (3) The regulations may make provision for or with respect to the Lobbyists Watch List.

Part 5 Ban on success fees for lobbying

14 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.

15 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).

16 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.

17 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 6 Other restrictions on lobbying

18 Cooling-off period for former-Ministers and former-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) a member of Parliament, or
 - (b) a member of the Parliament of the Commonwealth, or
 - (c) a Government official, or
 - (d) a Commonwealth public official.
- (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 7 Miscellaneous

19 Enforcement of Lobbyists Code and this Act

- (1) The Electoral Commission has the function of enforcing compliance with the Lobbyists Code and the provisions of this Act (including any code of conduct or official rules referred to in section 12 (2)).
- (2) For that purpose, the Electoral Commission may exercise any investigative or other functions the Electoral Commission has under the *Electoral Funding Act 2018* for the purpose of enforcing compliance with that Act.
- (3) Accordingly, a reference in Part 9 of that Act to “this Act” is taken to be a reference to the Lobbyists Code and this Act.

19A Electoral Commission to give notice of and reasons for certain decisions

- (1) Where the Electoral Commission makes any of the following decisions, it must give the person who is the subject of the decision notice in writing of the decision and reasons for the decision:
 - (a) a decision to refuse to register a third-party lobbyist (or an individual engaged to undertake lobbying for a third-party lobbyist) under section 9 (6),
 - (b) a decision to cancel or suspend the registration of a third-party lobbyist (or an individual engaged to undertake lobbying for a third-party lobbyist) under section 9 (7),
 - (c) a determination that a third-party lobbyist who has carried on the business of lobbying while not registered is ineligible to be registered for the period specified by the Electoral Commission under section 9 (8),
 - (d) a decision to place the name of a third-party or other lobbyist on the Lobbyists Watch List under section 12.
- (2) The Electoral Commission is also to publish notice of, and the reasons for, the decision on its website, unless the Electoral Commission is satisfied that there is an overriding public interest against the disclosure of the information (within the meaning of the *Government Information (Public Access) Act 2009*).

20 Protections in respect of defamation and breach of confidence

- (1) This section applies if:
 - (a) the name of a person or other information is included in or removed from (or not included in or removed from) the Lobbyists Register or Lobbyists Watch List by the Electoral Commission pursuant to a decision under this Act, and
 - (b) the Electoral Commission believes in good faith, when making the decision, that this Act permits or requires the decision to be made.

- (2) In any such case, no action for defamation or breach of confidence lies against the Crown, the Electoral Commission, a member of the Electoral Commission or a member of the staff of the Electoral Commission by reason of the making of the decision or any disclosure of information resulting from the decision.

21 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.

22 Nature of proceedings for offences

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

23 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.

24 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

 any Act that amends 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 (before its renumbering as Part 5) and Part 5 (after its renumbering) apply in respect of any agreement, or any success fee payable under an agreement, in force before the commencement of this Act.
- (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.
- (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.

Part 3 Provisions consequent on enactment of [Electoral and Lobbying Legislation Amendment \(Electoral Commission\) Act 2014](#)

3 Existing Register of Lobbyists

- (1) In this clause, ***existing Lobbyists Register*** means the Register of Lobbyists kept by the Secretary of the Department of Premier and Cabinet immediately before the

commencement of Part 3 of this Act, as inserted by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014*.

(2) A person registered on the existing Lobbyists Register is taken, on the commencement of Part 3 of this Act (as so inserted), to be registered under Part 3 as a third-party lobbyist or as an individual engaged to undertake lobbying for the third-party lobbyist, as the case requires. Any information on the existing Lobbyists Register relating to the lobbyist is taken to be information relating to the lobbyist for the purposes of the Lobbyists Register under Part 3.

(3) This clause is subject to any provision made by the regulations under clause 1.

4 Application of *Subordinate Legislation Act 1989*

(1) Section 5 of the *Subordinate Legislation Act 1989* (Regulatory impact statements) may be complied with in relation to an initial regulation under this Act within 6 months after the regulation is made despite anything to the contrary in that Act.

(2) An initial regulation under this Act is the first regulation that prescribes a Lobbyists Code of Conduct under Part 2 of this Act or the first regulation that is made under Part 3 or 4 of this Act (Register of Third-Party Lobbyists and Lobbyists Watch List).