

Submission to the Department of  
Premier and Cabinet on the *Lobbying of  
Government Officials (Lobbyists Code of  
Conduct) Regulation 2014* –  
Regulatory Impact Statement

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## Executive Summary

The NSW Electoral Commission [NSWEC] considers that the provisions of the *Lobbying of Government Officials Act 2014* pertaining to the Register of Third-Party Lobbyists and the Lobbyists Code of Conduct are generally working well to meet their objectives of ensuring transparency in government decision-making, avoiding inappropriate influences on decision-making and promoting honesty and integrity in lobbying activity.

The NSWEC is of the view that some areas of the law could be clarified and strengthened to create a more effective Register and reduce unnecessary administrative burden on lobbyists.

For additional certainty, the NSWEC is asking that the Government consider more explicitly detailing the fit and proper person test for applicants, and that the requirement to nominate a Responsible Officer be included in the Regulation.

The NSWEC also recommends that in the interest of reducing unnecessary compliance burden, the required number of registration detail confirmations be reduced to a single annual confirmation in conjunction with a compulsory annual requirement that lobbyist responsible officers complete the Lobbyist Register e-learning module.

## **The Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014**

1. On 1 December 2014 the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* commenced, amending the *Lobbying of Government Officials Act 2011* [LOGO Act] to:
  - provide for a Register of Third-Party Lobbyists, a Lobbyists Watch List and a Code of Conduct for third-party and other lobbyists; and
  - confer on the NSWEC the function of keeping the Register and Watch List and of enforcing compliance with the Code.
2. On 5 December 2014 the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* [LOGO Regulation] commenced. Schedule 1 to that Regulation consisted of the NSW Lobbyists Code of Conduct 2014, giving a statutory basis to the prior administrative scheme maintained by the Department of Premier & Cabinet since 2009.
3. The new Lobbyists Code requires all lobbyists who seek to influence government policy or decision making to observe specified ethical standards. All lobbyists in NSW must:
  - disclose to the government, when seeking a meeting with a government official, the person or body on behalf of whom the meeting is sought, the nature of the matter proposed to be discussed and whether any registered third-party lobbyists will be present;
  - disclose any interest in the matter proposed to be discussed at a meeting with a government official prior to the meeting commencing;
  - not engage in any conduct that is misleading, deceptive, corrupt, or otherwise unlawful and
  - use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information provided in a meeting with a government official.
4. All *third-party lobbyists* must be registered and must comply with additional standards and requirements set out in Part 3 of the Lobbyists Code. Under s 3 of the LOGO Act, a 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.

### **Specifying the fit and proper person test**

5. Currently, s 9(3) of the LOGO Act provides that a third-party lobbyist or any individual so engaged is not eligible to be registered if they are:
  - an officer of a registered political party;
  - not a *fit and proper* person to be registered; or

- otherwise ineligible under the regulations.
6. The practice developed by the Department of Premier and Cabinet to establish whether or not a person is 'fit and proper' was to require persons who wish to be included in the Register to provide a statutory declaration to the effect that he or she:
    - has never been sentenced to a term of imprisonment of 30 months or more;
    - has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud; and
    - is not occupying or acting in an office or position concerned with the management of a political party registered under Part 4A of the *Parliamentary Electorates and Elections Act 1912*.
  7. This practice has been maintained by the NSWEC.
  8. As the High Court has held that the expression 'fit and proper' is to take its meaning "from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities",<sup>1</sup> the NSWEC believes that these requirements are appropriate. However, these particular declarations are not expressly based in the LOGO legislation. It is the view of the NSWEC that it may be beneficial to provide certainty by prescribing in the LOGO Regulation the Statutory Declaration requirements, perhaps as a new cl 5A.
  9. Specifying the test would be in line with practice for other statutes. Examples of more precisely prescribed fit and proper person tests can be found in various NSW legislative instruments, for example, cl 8 of the *Passenger Transport Regulation 2007*.

### **Nominating a Responsible Officer**

10. The registration process as developed requires a third-party lobbyist to nominate a Responsible Officer, i.e., the individual who will be the conduit for the flow of information between the third-party lobbyist and the NSWEC. However, the only authority for this is that the Electoral Commissioner has approved the forms which mandate this practice, pursuant to the delegation of the NSWEC's power to do so under s 9(5)(a) of the LOGO Act.
11. Having regard to the importance of current details of a Responsible Officer to the effective maintenance of the Register, it would seem highly appropriate that this requirement be given a legislative basis. This could be effected by including in the Regulation the requirement on all third-party lobbyists to nominate a Responsible Officer pursuant to s 10(1)(e) of the LOGO Act. This requirement would also be subject to the existing requirement in cl 5(1) of the Regulation that a registered third-party lobbyist must update the information in the Register within 10 business days after a change occurs to that information.

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<sup>1</sup> *Australian Broadcasting Tribunal v Bond and Ors* (1990) 170 CLR 321 at 380.

## **Annual confirmations with mandatory completion of e-learning module**

12. As noted above, cl 5(1) of the LOGO Regulation requires that registered third-party lobbyists update information in the Register within 10 business days after a change occurs to that information; in addition, cl 5(2) requires confirmation of details three times a year.
13. The NSWEC is strongly of the view that for the general confirmation of details, one confirmation annually is sufficient to ensure the integrity of the Register; this would preferably occur at the end of each Financial Year. In support of this proposal, we note that the significant majority of the confirmations received for the 31 January 2015 confirmation round contained no changes to details, indicating that there was a very high level of compliance with the statutory requirement to keep details up to date.
14. It is also noted that the Commonwealth Lobbyists Register only requires confirmations twice a year; and both the Victorian and Queensland Lobbyists Registers have only one confirmation of details annually.
15. In conjunction with a reduction in the administrative burden on lobbyists to a single annual confirmation, the NSWEC considers that it would be appropriate to make it a condition of continuing registration that the relevant Responsible Officer complete the e-learning module at the time of the annual confirmation. This also could be effected by amending cl 5 of the Regulation.
16. On this point it is noted that the NSWEC is shortly moving to a system of online self-service for lobbyists. This will allow a lobbyist's Responsible Officer to create an individual log in by which changes can be made to the lobbyist's details on the Register, subject to the approval of the NSWEC. However, no material will be able to be deleted from the Register, to ensure its integrity.
17. A component of this self-service scheme will be a training area which will include a revised e-learning module with the capacity to record whether the person signed in has completed the module. This will facilitate easy compliance with the requirement to complete the module, and with the confirmation process generally.