



New South Wales

Electoral and Lobbying Legislation Amendment (Electoral Commission) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to reconstitute the New South Wales Electoral Commission (so that it is constituted by the Electoral Commissioner, a former Judge as Chairperson of the Commission and a member with financial or audit skills, instead of it being constituted only by the Electoral Commissioner),
- (b) to abolish the Election Funding Authority of New South Wales and to confer its functions on the reconstituted New South Wales Electoral Commission,
- (c) 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 to confer on the New South Wales Electoral Commission the function of keeping the Register and Watch List and of enforcing compliance with the Code,
- (d) to make other consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Parliamentary Electorates and Elections Act 1912 No 41

Schedule 1 [1] substitutes Division 1 of Part 3A of the Act to reconstitute the New South Wales Electoral Commission.

The Electoral Commission will consist of:

- (a) a former Judge appointed by the Governor as the Chairperson of the Commission, and
- (b) a person appointed by the Governor who is to have financial or audit skills and qualifications relevant to the functions of the Commission, and
- (c) the Electoral Commissioner.

The functions of the Electoral Commission will include:

- (a) the provision of assistance for the conduct of elections by the Electoral Commissioner, and
- (b) functions under the *Election Funding, Expenditure and Disclosures Act 1981* (which are currently exercised by the Election Funding Authority), including functions relating to:
 - (i) the administration of the election funding, expenditure and disclosure scheme under that Act, and
 - (ii) the registration of electoral participants, and
- (c) functions under the *Lobbying of Government Officials Act 2011* (conferred by the amendments made by Schedule 3 to the Bill), including functions relating to:
 - (i) the keeping of the Register of Third-Party Lobbyists and the Lobbyists Watch List, and
 - (ii) enforcing compliance with the Lobbyists Code and that Act, and
- (d) the institution of proceedings for offences against the Act, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, and
- (e) the conduct and promotion of research into electoral matters and other matters that relate to its functions, and the publication of the results of that research, and
- (f) the promotion of public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs.

The Electoral Commission is not subject to the direction or control of the Minister in the exercise of its functions. It is the duty of the Electoral Commission to exercise its functions in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons or bodies.

The functions under the Act of conducting elections will remain with the Electoral Commissioner.

Schedule 1 [2] and [3] amend section 21AB to provide the same grounds of ineligibility for appointment as the Electoral Commissioner as are proposed under Schedule 1 [5] for appointment as other members of the Electoral Commission.

Schedule 1 [4] inserts proposed section 184A into the Act to enable the Electoral Commission, for the purpose of enforcing compliance with the Act, to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981* for the purpose of enforcing compliance with that Act.

Schedule 1 [5] inserts proposed Schedule 21A into the Act. The Schedule contains provisions relating to the members and procedure of the Electoral Commission, including the following:

- (a) eligibility for appointment as a member of the Commission,
- (b) the term of office of appointed members,
- (c) the appointment of deputies of appointed members,

- (d) the remuneration of appointed members and deputies,
- (e) vacancies in office of appointed members and deputies,
- (f) suspension and removal from office by Parliament.

Schedule 2 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78

Schedule 2 [4] inserts proposed section 4A to set out the objects of the Act. The objects are as follows:

- (a) to establish a fair and transparent election funding, expenditure and disclosure scheme,
- (b) to facilitate public awareness of political donations,
- (c) to help prevent corruption and undue influence in the government of the State,
- (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,
- (e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

Schedule 2 [1]–[3] and [5]–[14] make consequential amendments to the Act relating to the abolition of the Election Funding Authority and its replacement by the Electoral Commission. In exercising its functions, the Electoral Commission is to have regard to the objects of the Act.

Schedule 2 [15] amends Schedule 2 to make savings, transitional and other provisions consequent on the enactment of the proposed Act.

Under the provisions, the Election Funding Authority is formally abolished and its assets, rights and liabilities transferred to the Electoral Commission.

Schedule 3 Amendment of Lobbying of Government Officials Act 2011 No 5

Schedule 3 [1] and [2] revise the definitions of terms and expressions used in the Act. In particular:

- (a) a **third-party lobbyist** (to whom the Act is currently limited) is defined 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,
- (b) a **lobbyist** is defined as a third-party lobbyist or any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist),
- (c) **lobbying** is defined (with relevant exceptions) as communicating with Government officials on designated official matters for the purpose of representing the interests of others (so as to extend to lobbying whether or not as part of a lobbying business, lobbying for the purpose of representing the interests of an organisation for which the person works, lobbying for the purpose of representing community interests and lobbying of a kind prescribed by the regulations).

Schedule 3 [3] inserts proposed Part 2 into the Act in relation to the Lobbyists Code of Conduct. The Code is to be prescribed by the regulations and is to set out the ethical standards of conduct to be observed by third-party and other lobbyists when lobbying Government officials in order to promote transparency, integrity and honesty.

Schedule 3 [3] also inserts proposed Parts 3 and 4 into the Act in relation to the Register of Third-Party Lobbyists and the Lobbyists Watch List. Third-party lobbyists (and individuals engaged to lobby for third-party lobbyists) are required to be registered on application to the

Electoral Commission (with information required to be included in the Register relating to their clients and to persons having a management, financial or other interest in the business of the lobbyist). The Electoral Commission is also required to maintain a Lobbyists Watch List that contains the names of lobbyists that the Commission considers should be on the Watch List because they have contravened the Lobbyists Code of Conduct or the Act. Under codes and official rules applying to Government officials, special procedures may apply to communications with persons on the Watch List and communications with unregistered lobbyists may be precluded. The Register and the Watch List are to be published on a website maintained by the Electoral Commission.

Schedule 3 [7] inserts proposed section 19 into the Act to confer on the Electoral Commission the function of enforcing compliance by lobbyists with the Lobbyists Code of Conduct and the Act, and for that purpose to enable the Commission to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981*. Schedule 3 [7] also inserts proposed section 20 to protect the Electoral Commission and others from liability in defamation or breach of confidence in connection with the exercise in good faith of the functions of the Commission.

Schedule 3 [4], [5] and [6] renumber existing Parts and sections of the Act as a consequence of the insertion of new Parts 2, 3 and 4 and make other consequential amendments.

Schedule 3 [8]–[10] amend Schedule 1 to make savings, transitional and other provisions consequent on the enactment of the provisions relating to the Register of Third-Party Lobbyists, the Lobbyists Watch List and the Lobbyists Code. In particular, the existing administrative Register of Lobbyists maintained by the Secretary of the Department of Premier and Cabinet is to be carried over to the Register established by the new Part 3 of the Act.

Schedule 4 Consequential amendments of other Acts and instruments

Schedule 4 makes consequential amendments to various Acts and regulations consequent on the proposed replacement of the Election Funding Authority with the Electoral Commission.

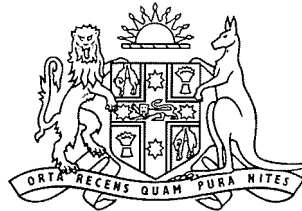


New South Wales

Electoral and Lobbying Legislation Amendment (Electoral Commission) Bill 2014

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New South Wales

Electoral and Lobbying Legislation Amendment (Electoral Commission) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Parliamentary Electorates and Elections Act 1912* and the *Election Funding, Expenditure and Disclosures Act 1981* to reconstitute the New South Wales Electoral Commission, to abolish the Election Funding Authority and to confer its functions on the Electoral Commission; to amend the *Lobbying of Government Officials Act 2011* to extend the regulation of third-party and other lobbyists and to confer functions under that Act on the Electoral Commission; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Parliamentary Electorates and Elections Act 1912 No 41	1
		2
[1] Part 3A, Division 1		3
Omit the Division. Insert instead:		4
Division 1	New South Wales Electoral Commission	5
21A	Constitution of Electoral Commission	6
(1)	There is constituted by this Act a corporation with the corporate name of the New South Wales Electoral Commission.	7 8
(2)	The Electoral Commission is a statutory body representing the Crown.	9
	Note. Section 13A of the <i>Interpretation Act 1987</i> provides that a statutory body representing the Crown has the status, privileges and immunities of the Crown.	10 11
21B	Members of Electoral Commission	12
(1)	The Electoral Commission consists of the following members:	13
(a)	a former Judge appointed by the Governor as the Chairperson of the Commission,	14 15
(b)	the Electoral Commissioner,	16
(c)	a person appointed by the Governor who has financial or audit skills and qualifications relevant to the functions of the Commission.	17 18
(2)	In this section, former Judge means:	19
(a)	a former Judge of the Supreme Court of the State or of any other State or Territory, or	20 21
(b)	a former Judge of the Federal Court of Australia, or	22
(c)	a former Justice of the High Court of Australia.	23
(3)	Schedule 21A contains provisions relating to the Electoral Commission.	24
21C	Functions of Electoral Commission	25
(1)	The Electoral Commission has the functions conferred or imposed on it by or under this Act, the <i>Election Funding, Expenditure and Disclosures Act 1981</i> , the <i>Lobbying of Government Officials Act 2011</i> or any other Act.	26 27 28
	Note. Under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> , the Electoral Commission has the function of administering the election funding, expenditure and disclosure scheme under that Act and registering electoral participants for the purposes of that scheme. Under the <i>Lobbying of Government Officials Act 2011</i> , the Electoral Commission has the function of maintaining the Register of Third-Party Lobbyists and Lobbyists Watch List, and of the enforcement of obligations relating to lobbying.	29 30 31 32 33 34 35
(2)	The Electoral Commission may:	36
(a)	provide assistance for the conduct of elections by the Electoral Commissioner under this or any other Act, and	37 38
(b)	institute proceedings for offences against this Act, the <i>Election Funding, Expenditure and Disclosures Act 1981</i> or the <i>Lobbying of Government Officials Act 2011</i> , and	39 40 41
(c)	conduct and promote research into electoral matters and other matters that relate to its functions, and publish the results of any such research, and	42 43 44

(d)	promote public awareness of electoral matters that are in the general public interest by means of education and information programs.	1 2
(3)	It is the duty of the Electoral Commission to exercise its functions in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons or bodies.	3 4 5
(4)	The Electoral Commission is not subject to the control or direction of the Minister in the exercise of its functions.	6 7
(5)	The Electoral Commissioner is not subject to the control or direction of the Electoral Commission in the exercise of his or her functions under this or any other Act (other than functions of the Electoral Commission that are delegated to the Electoral Commissioner).	8 9 10 11
21D	Staff of the Electoral Commission	12
(1)	Persons may be employed in the Public Service to enable the Electoral Commission and the Electoral Commissioner to exercise their functions. The persons so employed are to be employed in a separate Public Service agency and may be referred to as members of staff of the Electoral Commission.	13 14 15 16
(2)	Any conditions of employment (within the meaning of the <i>Industrial Relations Act 1996</i>) determined by the Electoral Commissioner under the <i>Government Sector Employment Act 2013</i> with respect to any such persons who are employed in casual employment in connection with an election have effect despite any State industrial instrument that applies to Public Service casual employees generally, unless the instrument expressly applies to those casual employees.	17 18 19 20 21 22 23
[2]	Section 21AB Tenure of office of Electoral Commissioner	24
	Omit section 21AB (2) (j). Insert instead:	25
	(j) becomes a person who is not eligible under subsection (4) to be appointed as the Electoral Commissioner, or	26 27
[3]	Section 21AB (4)	28
	Omit the subsection. Insert instead:	29
(4)	A person is not eligible for appointment as the Electoral Commissioner if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:	30 31 32
(a)	a member or officer of a party,	33
(b)	a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,	34 35
(c)	a councillor or mayor of a council, or the chairperson or a member of a county council, under the <i>Local Government Act 1993</i> or a candidate for election to such an office,	36 37 38
(d)	a party agent or official agent under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> .	39 40
	A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as the Electoral Commissioner.	41 42 43

[4] Section 184A	1
Insert after section 184:	2
184A Enforcement powers of Electoral Commission	3
(1) For the purpose of enforcing compliance with this Act, the Electoral Commission may exercise any investigative or other functions the Electoral Commission has under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> for the purpose of enforcing compliance with that Act.	4 5 6 7
(2) Accordingly, a reference in sections 110, 110A and 110B of that Act to “this Act” is taken to be a reference to this Act.	8 9
[5] Schedule 21A	10
Insert before Schedule 22:	11
Schedule 21A Provisions relating to Electoral Commission	12
	(Section 21B (3)) 13
1 Definitions	14
In this Schedule:	15
appointed member means a member of the Electoral Commission (other than the Electoral Commissioner).	16 17
Chairperson means the Chairperson of the Electoral Commission.	18
deputy means a deputy of an appointed member appointed under this Schedule.	19 20
member means a member of the Electoral Commission.	21
2 Persons not eligible for appointment	22
(1) A person is not eligible for appointment as an appointed member if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:	23 24 25
(a) a member or officer of a party,	26
(b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,	27 28
(c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the <i>Local Government Act 1993</i> or a candidate for election to such an office,	29 30 31
(d) a party agent or official agent under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> .	32 33
(2) A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as an appointed member.	34 35 36
3 Terms of office of appointed members	37
Subject to this Schedule, an appointed member holds office for such period (not exceeding 7 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	38 39 40
4 Part-time appointments	41
Appointed members hold office as part-time members.	42

5	Deputies of appointed members	1
(1)	The Governor may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.	2 3
(2)	The deputy of an appointed member must be a person who is eligible for appointment as the appointed member.	4 5
(3)	In the absence of an appointed member, the appointed member's deputy may, if available, act in the place of the appointed member.	6 7
(4)	While acting in the place of an appointed member, a person has all the functions of the member and is taken to be a member.	8 9
(5)	For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the appointed member.	10 11
6	Remuneration of appointed members and deputies	12
	An appointed member or deputy is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member or deputy.	13 14 15
7	Vacancy in office of appointed members and deputies	16
(1)	The office of an appointed member or deputy becomes vacant if the member or deputy:	17 18
(a)	dies, or	19
(b)	completes a term of office and is not re-appointed, or	20
(c)	resigns the office by instrument in writing addressed to the Governor, or	21
(d)	is removed from office by the Governor under clause 8 (in relation to an appointed member) or clause 5 (in relation to a deputy), or	22 23
(e)	in the case of an appointed member, is absent from 3 consecutive meetings of the Electoral Commission of which reasonable notice has been given to the member personally or by post, except on leave granted by the Governor or unless the deputy of the member was present at any or all of those meetings, or	24 25 26 27 28
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	29 30 31
(g)	becomes a mentally incapacitated person, or	32
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	33 34 35 36
(i)	is imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable, or	37 38 39 40
(j)	becomes a person who is not eligible under clause 2 to be appointed as the appointed member or deputy.	41 42
(2)	Section 47 (1) (b) of the <i>Interpretation Act 1987</i> does not apply to, or to the office of, an appointed member.	43 44

8	Suspension and removal from office of appointed members	1
	An appointed member may be suspended from office by the Governor for misbehaviour or incompetence, but cannot be removed from office except in the following manner:	2
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		4
	(a) The Minister is to cause to be laid before each House of Parliament a full statement of the grounds of suspension within 7 sitting days of that House after the suspension.	6
		7
	(b) An appointed member suspended under this clause is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 days from the day when the statement was laid before that House declares by resolution that the appointed member ought to be removed from office.	8
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		12
	(c) If each House of Parliament does so declare within the relevant period of 21 days, the appointed member is to be removed from office by the Governor accordingly.	13
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		15
9	Filling of vacancy in office of appointed member	16
	If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	17
		18
10	Disclosure of pecuniary interests	19
	(1) If:	20
	(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Electoral Commission, and	21
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	(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	24
		25
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Electoral Commission.	26
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		28
	(2) A disclosure by a member at a meeting of the Electoral Commission that the member:	29
		30
	(a) is a member, or is in the employment, of a specified company or other body, or	31
		32
	(b) is a partner, or is in the employment, of a specified person, or	33
	(c) has some other specified interest relating to a specified company or other body or to a specified person,	34
		35
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).	36
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	(3) Particulars of any disclosure made under this clause must be recorded by the Electoral Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Electoral Commission.	39
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		41
		42
	(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Electoral Commission otherwise determines:	43
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		45
	(a) be present during any deliberation of the Electoral Commission with respect to the matter, or	46
		47

	(b) take part in any decision of the Electoral Commission with respect to the matter.	1 2
(5)	For the purposes of the making of a determination by the Electoral Commission under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:	3 4 5
	(a) be present during any deliberation of the Electoral Commission for the purpose of making the determination, or	6 7
	(b) take part in the making by the Electoral Commission of the determination.	8 9
(6)	A contravention of this clause does not invalidate any decision of the Electoral Commission.	10 11
11	Effect of certain other Acts	12
(1)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to an appointed member.	13 14 15
(2)	If by or under any Act provision is made:	16
	(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	17 18
	(b) prohibiting the person from engaging in employment outside the duties of that office,	19 20
	the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.	21 22 23
12	Personal liability	24
	A matter or thing done or omitted to be done by the Electoral Commission, a member of the Electoral Commission or a person acting under the direction of the Electoral Commission does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.	25 26 27 28 29 30
13	General procedure	31
	The procedure for the calling of meetings of the Electoral Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Electoral Commission.	32 33 34
14	Quorum	35
	The quorum for a meeting of the Electoral Commission is 2 members (one of whom is the Chairperson of the Commission or the deputy of the Chairperson).	36 37
15	Presiding member	38
(1)	The Chairperson (or, in the absence of the Chairperson, the deputy of the Chairperson) is to preside at a meeting of the Electoral Commission.	39 40
(2)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	41 42

16	Voting	1
	A decision supported by a majority of the votes cast at a meeting of the Electoral Commission at which a quorum is present is the decision of the Electoral Commission.	2 3 4
17	Transaction of business outside meetings or by telephone	5
(1)	The Electoral Commission may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Electoral Commission for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Electoral Commission made at a meeting of the Electoral Commission.	6 7 8 9 10
(2)	The Electoral Commission may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	11 12 13 14
(3)	For the purposes of:	15
	(a) the approval of a resolution under subclause (1), or	16
	(b) a meeting held in accordance with subclause (2),	17
	the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Electoral Commission.	18 19
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Electoral Commission.	20 21
(5)	Papers may be circulated among the members for the purposes of subclause (1) by electronic means.	22 23

Schedule 2	Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78	1
		2
[1] Long title		3
Omit “to constitute the Election Funding Authority of New South Wales,”.		4
[2] The whole Act (other than Schedule 2 and any provisions omitted by this Act)		5
Omit “Authority” and “Authority’s” wherever occurring.		6
Insert instead “Electoral Commission” and “Electoral Commission’s”, respectively.		7
[3] Section 4 Definitions		8
Omit the definitions of <i>alternate</i> , <i>appointed member</i> , <i>Authority</i> , <i>Chairperson</i> and <i>member</i> from section 4 (1).		9
Insert in alphabetical order:		10
<i>Electoral Commission</i> means the New South Wales Electoral Commission constituted under the <i>Parliamentary Electorates and Elections Act 1912</i> .		11
		12
		13
[4] Section 4A		14
Insert after section 4:		15
4A Objects of Act		16
The objects of this Act are as follows:		17
(a) to establish a fair and transparent election funding, expenditure and disclosure scheme,		18
		19
(b) to facilitate public awareness of political donations,		20
(c) to help prevent corruption and undue influence in the government of the State,		21
		22
(d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,		23
		24
		25
(e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.		26
		27
		28
[5] Part 2 The Election Funding Authority		29
Omit the Part.		30
[6] Section 22		31
Omit the section. Insert instead:		32
22 General functions		33
(1) The Electoral Commission has the functions conferred or imposed on it under this Act.		34
		35
(2) The Electoral Commission is to have regard to the objects of this Act in exercising its functions under this Act.		36
		37
[7] Section 24 Guidelines		38
Omit “and Part 2” wherever occurring.		39

[8] Section 25 Research	1
Omit the section.	2
[9] Section 99 Funding of other expenses	3
Omit section 99 (2) and omit “and subsection (2)” from section 99 (1).	4
[10] Section 104 Shortened references to Authority	5
Omit the section.	6
[11] Section 105 Proof of certain matters not required	7
Omit the section.	8
[12] Section 107 Reports to Parliament	9
Insert “under this Act” after “work and activities” wherever occurring in section 107 (2) and (3).	10 11
[13] Section 115 Delegation	12
Omit the section.	13
[14] Schedule 2 Savings, transitional and other provisions	14
Omit Part 1.	15
[15] Schedule 2	16
Insert at the end of the Schedule with appropriate Part and clause numbers:	17
Part Provisions consequent on enactment of Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014	18 19 20
Abolition of Election Funding Authority	21
(1) The Election Funding Authority is abolished.	22
(2) Each person who holds office as a member (or alternate member) of the Election Funding Authority ceases to hold office as such a member.	23 24
(3) A person who ceases to hold office as a member (or alternate member) of the Election Funding Authority is not entitled to any remuneration or compensation because of the loss of that office.	25 26 27
(4) The assets, rights and liabilities (if any) of the Election Funding Authority become the assets, rights and liabilities of the Electoral Commission.	28 29
(5) The Electoral Commission is taken to be a continuation of the Election Funding Authority.	30 31
(6) Unless the context otherwise requires, a reference in any other Act or in any instrument made under another Act to the Election Funding Authority is to be read as a reference to the Electoral Commission.	32 33 34
(7) In this clause:	35
assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	36 37 38 39

<i>liabilities</i> means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).	1 2
<i>rights</i> means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).	3 4
Existing delegations	5
Any delegation of a function under section 115 and in force immediately before the repeal of that section by the <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014</i> is taken to be a delegation of the function by the Electoral Commission to the Commissioner.	6 7 8 9
General savings provision	10
Subject to this Part and the regulations, anything done under or for the purposes of a provision of this Act by the Election Funding Authority before its abolition is, to the extent that the thing has effect immediately before its abolition, taken to have been done by the Electoral Commission.	11 12 13 14

Schedule 3 Amendment of Lobbying of Government Officials Act 2011 No 5

[1] Section 3

Omit the section. Insert instead:

3 Definitions

(1) In this Act:

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 *Parliamentary Electorates and Elections Act 1912*.

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 4A of the *Parliamentary Electorates and Elections Act 1912*.

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.	1 2
	success fee —see section 14.	3
	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:	4 5 6
(a)	includes an individual or body included in this definition by the regulations, but	7 8
(b)	does not include an individual or body excluded from this definition by the regulations.	9 10
(2)	Notes included in this Act do not form part of this Act.	11
[2]	Section 4	12
	Insert after section 3:	13
4	Meaning of “lobbying”	14
(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:	15 16 17
(a)	legislation or proposed legislation or a government decision or policy or proposed government decision or policy,	18 19
(b)	a planning application,	20
(c)	the exercise by the official of his or her official functions.	21
(2)	Lobbying extends to:	22
(a)	any such communication whether or not in the course of carrying on the business of lobbying Government officials, and	23 24
(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	25 26 27
(c)	any such communication for the purpose of representing community interests, and	28 29
(d)	any communication included in this definition by the regulations.	30
(3)	However, lobbying does not include:	31
(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	32 33 34 35
(b)	any communication by a Government official acting in the ordinary course of his or her duties as a Government official, or	36 37
(c)	any communication excluded from this definition by the regulations.	38

[3] Parts 2, 3 and 4	1
Insert after Part 1:	2
Part 2 Lobbyists Code of Conduct	3
5 The Lobbyists Code	4
(1) The Lobbyists Code of Conduct is the code of conduct prescribed by the regulations for third-party and other lobbyists (the <i>Lobbyists Code</i>).	5 6
(2) The Minister is to consult the Electoral Commission on any proposed code of conduct or amendment of the code of conduct.	7 8
6 Content of the Lobbyists Code	9
(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.	10 11 12
(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.	13 14 15 16
7 Compliance with Lobbyists Code	17
It is the duty of a lobbyist to comply with the Lobbyists Code in connection with the lobbying of Government officials.	18 19
Note. See section 19 for enforcement of the Code by the Electoral Commission.	20
Part 3 Register of Third-Party Lobbyists	21
8 The Lobbyists Register	22
(1) The Electoral Commission is to establish a Register of Third-Party Lobbyists (the <i>Lobbyists Register</i>).	23 24
(2) The Electoral Commission is to publish the Lobbyists Register on a website maintained by the Electoral Commission.	25 26
9 Registration of third-party lobbyists and those undertaking lobbying for third-party lobbyists	27 28
(1) A third-party lobbyist is required to be registered in the Lobbyists Register.	29
(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.	30 31 32
(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.	33 34 35 36
(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.	37 38
(5) The application for registration:	39
(a) is to be in the form approved by the Electoral Commission, and	40

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- (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
 - (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.
- 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.	1 2 3
(5)	Information is required to be included in the Lobbyists Register of:	4
(a)	any lobbyist whose registration has been cancelled or suspended (otherwise than because the lobbyist no longer provides lobbying services or undertakes lobbying), or	5 6 7
(b)	any unregistered lobbyist whom the Electoral Commission has determined is ineligible to be registered for the period specified by the Electoral Commission.	8 9 10
(6)	Information is to be retained in the Lobbyists Register until the end of the period provided by the regulations.	11 12
(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.	13 14
	Note. It is an offence under Part 5A of the <i>Crimes Act 1900</i> 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.	15 16 17
11	General provisions relating to Lobbyists Register	18
(1)	The Lobbyists Register is a public document.	19
(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.	20 21 22
(3)	The regulations may make provision for or with respect to registration under this Part and the Lobbyists Register.	23 24
Part 4	Lobbyists Watch List	25
12	Lobbyists Watch List	26
(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.	27 28 29 30 31
(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.	32 33 34
(3)	The Lobbyists Watch List is to be published on the website maintained by the Electoral Commission on which the Lobbyists Register is published.	35 36
(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.	37 38 39
13	General provisions relating to Lobbyists Watch List	40
(1)	The Lobbyists Watch List is a public document.	41
(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	42 43 44

	interest against disclosure of the information (within the meaning of the <i>Government Information (Public Access) Act 2009</i>).	1 2
(3)	The regulations may make provision for or with respect to the Lobbyists Watch List.	3 4
[4]	Part 2 Ban on success fees for lobbying	5
	Renumber the Part as Part 5 and sections 4–7 as sections 14–17.	6
[5]	Part 3 Other restrictions on lobbying	7
	Renumber the Part as Part 6 and section 8 as section 18.	8
[6]	Part 4 Miscellaneous	9
	Renumber the Part as Part 7 and sections 9–12 as sections 21–24.	10
[7]	Sections 19 and 20	11
	Insert before section 9 (renumbered as section 21 by item [6]):	12
	19 Enforcement of Lobbyists Code and this Act	13
(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)).	14 15 16
(2)	For that purpose, the Electoral Commission may exercise any investigative or other functions the Electoral Commission has under the <i>Election Funding, Expenditure and Disclosures Act 1981</i> for the purpose of enforcing compliance with that Act.	17 18 19 20
(3)	Accordingly, a reference in sections 110, 110A and 110B of that Act to “this Act” is taken to be a reference to the Lobbyists Code and this Act.	21 22
	20 Protections in respect of defamation and breach of confidence	23
(1)	This section applies if:	24
(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	25 26 27 28
(b)	the Electoral Commission believes in good faith, when making the decision, that this Act permits or requires the decision to be made.	29 30
(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.	31 32 33 34
[8]	Schedule 1 Savings, transitional and other provisions	35
	Insert at the end of clause 1 (1):	36
	any Act that amends this Act	37

[9] Schedule 1	1
Omit clause 2 (1). Insert instead:	2
(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.	3 4 5
[10] Schedule 1	6
Insert after Part 2:	7
Part 3 Provisions consequent on enactment of Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014	8 9 10
3 Existing Register of Lobbyists	11
(1) In this clause, <i>existing Lobbyists Register</i> 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 <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014</i> .	12 13 14 15
(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.	16 17 18 19 20 21 22
(3) This clause is subject to any provision made by the regulations under clause 1.	23
4 Application of Subordinate Legislation Act 1989	24
(1) Section 5 of the <i>Subordinate Legislation Act 1989</i> (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.	25 26 27 28
(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).	29 30 31 32

Schedule 4	Consequential amendments of other Acts and instruments	1 2
4.1	Government Advertising Regulation 2012	3
	Clause 4 Exemptions relating to certain advertising campaigns undertaken by Electoral Commissioner or Electoral Commission	4 5
	Omit “Election Funding Authority” wherever occurring.	6
	Insert instead “Electoral Commission”.	7
4.2	Government Information (Public Access) Act 2009 No 52	8
	Schedule 2 Excluded information of particular agencies	9
	Omit “Election Funding Authority—investigative and prosecuting functions” from item 4.	10
	Insert instead “Electoral Commission—investigative and prosecuting functions”.	11
4.3	Local Government Act 1993 No 30	12
	Section 328A General manager to keep register of political donation disclosures	13
	Omit “Election Funding Authority” from section 328A (1).	14
	Insert instead “New South Wales Electoral Commission”.	15
4.4	Local Government (General) Regulation 2005	16
	Clause 295 Returning officer to nominate candidates	17
	Omit “Election Funding Authority of New South Wales” from clause 295 (4).	18
	Insert instead “New South Wales Electoral Commission”.	19
4.5	Privacy and Personal Information Protection Regulation 2005	20
	Clause 6 Exemptions in relation to public registers	21
	Omit “Election Funding Authority” from clause 6 (6).	22
	Insert instead “New South Wales Electoral Commission”.	23
4.6	Public Finance and Audit Act 1983 No 152	24
	Schedule 2 Statutory bodies	25
	Omit “Election Funding Authority of New South Wales”.	26
	Insert instead “New South Wales Electoral Commission”.	27