

Budget Estimates post-hearing responses

Director - Budget Estimates Secretariat
Parliament House
Macquarie Street
SYDNEY NSW 2000

1 December 2021

Dear Director,

Please find attached the Budget Estimates post-hearing responses in relation to the hearing on 4 November 2021 for the NSW Electoral Commissioner, part of the Premier's portfolio.

Please find enclosed my answers to questions taken on notice.

A hard copy will be delivered to your office shortly.

Yours sincerely,

John Schmidt
Electoral Commissioner for NSW

QUESTIONS ON NOTICE

(1) - Page 59

The Hon. JOHN GRAHAM: One of your other responsibilities is the function of enforcing compliance with the Lobbyists Code of Conduct in New South Wales. Has anyone ever been watchlisted or suspended under those provisions?

Mr SCHMIDT: Yes. I would have to take on notice the details, particularly suspension. As you will have noticed, the ICAC report is out there. It is a very light-handed regulatory regime. When you say "in force", there is a limited range of enforcement powers.

The Hon. JOHN GRAHAM: If you could take on notice the number of people who have been both on the watchlist and suspended.

Mr SCHMIDT: Yes, absolutely.

The three-member NSW Electoral Commission, of which I am a member, has the function to administer and enforce the provisions of the *Lobbying of Government Officials Act 2011* and the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*.

Since 1 July 2018, the NSW Electoral Commission must publish notice of, and the reasons for, the decisions to:

- refuse to register a third-party lobbyist,
- cancel or suspend the registration of a third-party lobbyist,
- determine that a third-party lobbyist who has carried on the business of lobbying while not registered is ineligible to be registered for a period of time, and
- place the name of a third-party or other lobbyists on the Lobbyists Watch List.

These decisions are available from the following page of the Electoral Commission's website:
<https://www.elections.nsw.gov.au/Political-participants/Third-party-lobbyists/NSW-Electoral-Commission-decisions>

From 1 July 2018 until 30 November 2021, the following decisions were made:

78 cancellations of a third-party lobbyist registration, including:

- 64 at the request of the third-party lobbyist as they no longer carry on the business of lobbying,
- 8 for failure to update the information in the register when required to do so, and
- 6 for failure to update information in the register when required to do so and contravening the Lobbyists Code of Conduct.

24 suspensions of a third-party lobbyist registration, including:

- 17 for failure to update the information in the register when required to do so,
- 6 for failure to update information in the register when required to do so and contravening the Lobbyists Code of Conduct, and
- 1 for contravening the Lobbyists Code of Conduct.

There has been no decision to refuse to register, to determine that a third-party lobbyist is ineligible to be registered or to place the name of a third-party lobbyist on the Lobbyists Watch List during this period.

(2) - Pages 59-60

The Hon. JOHN **GRAHAM**: One of the requirements is that lobbyists must not engage in any misleading, dishonest, corrupt or otherwise unlawful conduct in connection with a meeting or other communication for the purpose of lobbying New South Wales Government officials. That is quite constrained, isn't it? It has got to be in connection with some lobbying they conduct. They might be found to be generally dishonest or generally corrupt and that may not be a reason for you to strike them off the register. Is that a correct interpretation?

Mr SCHMIDT: My understanding of our enforcement role here is extremely limited. Bear with me for a moment. I need to draw a distinction, of course, that I am sitting here as the Electoral Commissioner. The responsibility for the lobbyist legislation is the commission of which I am only a member. I refer back to the ICAC report. It has pointed out that it is a light-handed regulatory regime.

The Hon. JOHN GRAHAM: One of the concerns that has developed in the most recent week is that in the course of the ICAC hearings it has been revealed that Daryl Maguire, with assistance from a former MP, was seeking to determine the route of the M9 and then pass that information on to a developer for their commercial benefit and potentially for his commercial benefit. Transport has given a short list of MPs who were briefed on that route. There are only two former MPs who are on that list. Is collaborating with an **MP** to pass on confidential information to a developer for their commercial benefit the sort of activity which could see someone removed from the lobbyist register or not?

Mr SCHMIDT: I would take it on notice and come back to you, but I do not believe it is. I think we are very constrained. There are only certain technical requirements about reporting to us and some of the other administrative arrangements captured by the legislation. Information or requirements under the code do not trigger an enforcement capability within the commission.

The meaning of lobbying under the *Lobbying of Government Officials Act 2011* (the Act) excludes any communication by a member of Parliament acting in the ordinary course of his or her duties as a member.

The Electoral Commission can place a lobbyist on the Lobbyists Watch List, suspend or cancel their registration for a contravention of the Lobbyists Code of Conduct (the Code). This includes where it is satisfied that a lobbyist has engaged in any misleading, dishonest, corrupt or other unlawful conduct in connection with a meeting or other communication for the purpose of lobbying NSW Government officials, as set out in the Code. A third-party lobbyist is also ineligible for registration if they are not a fit and proper person, as set out in section 9 of the Act.

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Mr DAVID SHOEBRIDGE: Would it be permissible under this regime for volunteers at polling booths to have a QR code like a printed out A4 version of a QR code that people could scan? Is that considered to be permissible?

Mr SCHMIDT: I do not believe that will be permissible because it is now- if they put it on their posters, that is fine.

Mr DAVID SHOEBRIDGE: Yes, and they could point to it-

Mr SCHMIDT: Yes.

Mr DAVID SHOEBRIDGE: -but they could not show it to people.

Mr SCHMIDT: No, because that is a form of how to vote. Just quickly, Mr Graham, 9 July 2000 and hang on, I will give you the date, sorry.

The Hon. JOHN GRAHAM: Two thousand and twenty-one.

Mr SCHMIDT: Ninth of July this year that regulation came into force. Sorry, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: No, that is okay. That was the regulation under which you made those two orders. That is my understanding.

Mr SCHMIDT: Yes.

Mr DAVID SHOEBRIDGE: They would not be able to hold a picture of a QR code for people to scan-not to hand over but for people to scan. That would not be permissible?

Mr SCHMIDT: Because they would have to come into contact with them to scan it.

Mr DAVID SHOEBRIDGE: They would not.

Mr SCHMIDT: From a distance?

Mr DAVID SHOEBRIDGE: It could go on a piece of paper and they could say, "Scan it."

Mr SCHMIDT: I will take that on notice and have a look at it. No-one has raised that with me as a possibility before, only putting QR codes on the posters.

The directions I made in relation to handing out electoral material and posters aim to reduce the risk of infection from COVID-19 within the area around polling places by supporting physical distancing.

A person must not display a poster within 100 metres of a polling place or a pre-polling office on a day during the election period on which voting will be occurring unless the poster was displayed by the person before 7am and the display of the poster is not adjusted or altered in any way until after 7pm.

The definition of a "poster " under the *Local Government (General) Regulation 2021* is broad, being any electoral matter printed, drawn or depicted on any material whatsoever. A poster being held out by a volunteer for scanning by voters within the 100 -metre zone would contravene the direction.

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Mr SCHMIDT: It is slow; I am not quite sure what is happening I did get some feedback on the question about the QR code on a board. I have got my staff obviously watching this intently. That would constitute a poster, in which case it should be affixed to the-

Mr DAVID SHOEBRIDGE: No worries. What if it was on at-shirt?

Mr SCHMIDT: I do not know; I will have to take that on notice.

Under the *Local Government (General) Regulation 2021*, different rules apply to "wearables" as electoral material. The Electoral Commission has advised all participants that electoral matter on a t-shirt worn by

volunteers is acceptable under the direction but that volunteers should still maintain physical distancing from voters, which may limit the effectiveness of a QR code in that context.