

Statement

By the Deputy of the Chairperson, NSW Electoral Commission

NSW Electoral Commission concludes investigation into donations made to NSW Liberal Party candidates in the lead up to the 2011 State election

Background

In NSW, donations made to political parties, candidates and other election participants must be disclosed to the NSW Electoral Commission (NSWEC). Since 14 December 2009 property developers have been prohibited from making political donations. Since 1 January 2011 political donations at State elections have been capped.

The ICAC investigated allegations of breaches of the *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act) in relation to political donations made to the NSW Liberal Party in the lead up to the 2011 State election. The allegations included: political donations that were not disclosed as required by the EFED Act; political donations made by prohibited donors such as property developers; political donations that exceeded the cap; as well as donations that were channelled through other entities to evade NSW election campaign financing laws.

Investigation

One matter investigated by the NSWEC was in relation to payments made to the business titled Eightbyfive. For its decision-making concerning that matter the NSWEC was chaired by the Deputy of the Chairperson.

It was suspected that payments had been made by a number of corporations through Eightbyfive to two candidates endorsed by the NSW Liberal Party for the 2011 State general election. The candidates were Christopher Spence and Darren Webber. The donations had not been disclosed and were made by potential property developers.

The payments investigated by the NSWEC were made by the following companies:

- Australian Water Holdings Pty Ltd, between March 2009 and May 2011, for the amount of AU\$183,342.50
- Gazcorp Pty Ltd, between May 201 and March 2011, for the amount of AU\$121,000; and
- Patinack Farm Pty Ltd, between July 2010 and March 2011, for the amount of AU\$66,000.

Determination assessment

To determine whether the payments made by these companies were unlawful political donations the NSWEC needed to establish that:

- Payments made through Eightbyfive to Spence and Webber were political donations made to them as candidates for the 2011 State general election; and
- Payments were made by corporations that were property developers.

Further information

In its report in relation to Operation Spicer¹, the ICAC found that Mr Timothy Koelma registered the business named Eightbyfive in March 2009. Eightbyfive operated until March 2011. It was alleged that Christopher Hartcher (the then member for Terrigal) was involved in the creation of Eightbyfive and its initial agreement with Australian Water Holdings and was subsequently involved in the creation of agreements with Gazcorp and Patinack Farm. Mr Hartcher was updated on the activities of Eightbyfive and was actively involved in those activities concerning Australian Water Holdings, Gazcorp and Patinack Farm.

Following the State election in March 2011, Mr Koelma was employed as a senior policy advisor for Mr Hartcher who was returned at the election as the member for Terrigal.

Eightbyfive entered into agreements with each of a series of entities whereby each entity made regular payments to Eightbyfive, purportedly for the provision of media, public relations and other services and advice. Payments received by Eightbyfive were principally from Australian Water Holdings, Gazcorp and Patinack Farm. In its report, the ICAC noted that Timothy Koelma and representatives of these companies could not produce any documents in relation to the agreements and were not able to substantiate claims by way of documentary evidence that the payments were made for services rendered.

Conclusion

The NSWEC received advice from the Crown Solicitor's Office that there was, in this instance, insufficient evidence to prove that:

- These donors were property developers according to the EFED Act definition; and
- Payments to Spence and Webber were political donations as defined by the EFED Act.

¹ Independent Commission Against Corruption NSW, *Investigation into NSW Liberal Party electoral funding for the 2011 State election campaign and other matters* (2016) www.icac.nsw.gov.au/docman/investigations/reports/4865-investigation-into-nsw-liberal-party-electoral-funding-for-the-2011-state-election-campaign-and-other-matters-operation-spicer/file.

ABOUT THE NSW ELECTORAL COMMISSION

In December 2014, the three member Electoral Commission was constituted. It is separate to the agency led by the Electoral Commissioner. The Commission is an independent, statutory authority. It approves public funding to the political parties and others and enforces the provisions of three NSW Acts. These provisions govern electoral funding, expenditure and disclosures, the conduct of State elections and the lobbying of government officials. The Commission's Chairperson is the Hon Keith Mason AC QC, a former President of the NSW Court of Appeal (1997 to 2008). The Deputy of the Commission's Chairperson is Adjunct Professor Joseph Campbell, a former judge of the NSW Court of Appeal and the Supreme Court of New South Wales (2001 to 2012). Information about this independent Commission's work can view viewed at:

www.elections.nsw.gov.au/about_us/work_of_the_commission.

More information about funding and disclosure laws is available at: www.elections.nsw.gov.au/fd