

# Media statement

22 January 2019

## Statement by the Chairperson Prosecutions and other litigation in 2018

A primary function of the NSW Electoral Commission (the Commission) is to investigate and institute proceedings for breaches of electoral, electoral funding and lobbyist legislation.

During 2018, a number of court proceedings instituted by the Commission were finalised. These proceedings related to breaches of electoral funding laws and the conduct of local government elections.

### Prosecutions

#### Non-compliant electoral material - St Georges River local government election

In late September 2017, the Commission received a number of complaints alleging anonymous and offensive electoral material was being distributed during the regulated period for the Georges River local government election.

Electoral material that appeared to be non-compliant was identified and a financial trail led to the identification of the person responsible for its distribution.

The Commission commenced proceedings in March 2018, bringing charges pursuant to the *Local Government (General) Regulation 2005* concerning the printing, publishing and distributing of non-compliant electoral material [cl.356D] and electoral material not legibly showing the authoriser and printer details [cl.356G(1)].

On 10 May 2018, the defendant pleaded guilty to the above offences and was fined a total of \$1,500.

#### Misconduct in relation to postal voting - Orange local government election

Another local government election matter arose in September 2017 when a worker at a healthcare facility was identified as appearing to have interfered with postal vote certificates intended for the facility's residents.

The matter came to the attention of the Commission when anomalies in returned postal votes were identified by the returning officer. Subsequent inquiries and admissions by the worker that she had completed the residents' ballot papers herself led to the institution of proceedings.

The worker pleaded guilty on 8 October 2018 at the Orange Local Court to unlawfully marking 35 ballot papers in contravention of clause 363 of the *Local Government (General) Regulation 2005*.

In sentencing remarks on 14 December 2018, the Magistrate noted the seriousness of the offences given the fragility of the democratic system and the need for trust for its survival. The defendant was subsequently fined \$3,850.

It should be noted that none of these postal votes were included in the election count and the affected residents were given a fresh opportunity to cast a vote.

### **Unregistered third-party campaigner - Shoalhaven local government election**

Arising from an investigation into campaigning activities at the time of the 2016 Shoalhaven local government election, investigators identified an individual responsible for causing the distribution of flyers to the value of more than \$2,000 while not being registered as a third-party campaigner.

Proceedings were commenced against the person pursuant to the *Election Funding, Expenditure and Disclosures Act 1981* (the EFED Act), specifically:

- s.96AA(1A) which requires that payments for electoral communication expenditure for a local government election during a local government expenditure period only be made by the official Agent appointed by the registered third-party campaigner
- s.96AA(2)(a) which requires that payment for electoral communication expenditure only be made by the official Agent from the campaign account of the third-party campaigner.

During the course of the investigation, the person also provided to the Commission's investigators a falsified invoice to support his earlier assertion that he had spent less than \$2,000 and, consequently, was not a third-party campaigner.

The matter was referred to the NSW Police Force to consider prosecution for using a false document under s.254 of the *Crimes Act 1900*. In August 2018, the defendant entered guilty pleas in relation to the s.96AA(1A) offence and the s.254 offence.

He was sentenced to a 30-month good behaviour bond, a \$3,000 fine plus \$15,000 in court costs for the EFED Act offence.

On 14 November 2018, he was sentenced in relation to the Crimes Act offence to 18 months imprisonment under an Intensive Corrections Order, with community service and supervision by a community corrections officer.

During her summation, the Magistrate said the offences struck at the heart of democracy, being the need to maintain a fair and transparent democratic process, adding that the use of a false document undermined this principle and that the sentence imposed must reflect this and ensure others are deterred.

### **Failure to lodge disclosure – Rockdale City Council elected member**

On 2 October 2018, a former elected member of the Rockdale City Council pleaded guilty to a charge of failing to lodge a disclosure declaration for the 2016/17 disclosure period in accordance with s.96H of the EFED Act.

This was the second time the Commission instituted proceedings for failure to lodge a disclosure against this individual. The former councillor was fined \$3,500 and ordered to pay \$966 of the prosecutor's costs.

### **Other litigation – recovery of unlawful donations**

While conducting a compliance audit in 2016, the Commission identified what it considered to be political donations over the cap accepted by the Liberal Party of Australia NSW Division from two of its endorsed candidates at the 2015 State election. A statement of claim was lodged to recover the value of the unlawful political donations in accordance with s.96J of the EFED Act. In February 2018, the party was ordered by the Supreme Court of NSW to pay to the State \$200,000 plus \$45,480 in interest as well as costs.

The party appealed the decision but the appeal was dismissed with costs in December 2018. The party has now repaid the value of the unlawful donations, as well as costs as agreed, and the matter has been finalised.

**ENDS**

### **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 four NSW Acts. These provisions govern electoral funding, expenditure and disclosures, the conduct of State and local government 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). Information about this independent Commission's work can view viewed at:

[www.elections.nsw.gov.au/About-us/Governance/Three-member-statutory-authority](http://www.elections.nsw.gov.au/About-us/Governance/Three-member-statutory-authority).