



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329

December 15, 2016

Commonwealth of Australia
c/o Mr. James D. McNairy, Esq.
Seyfarth Shaw LLP
jmcnairy@seyfarth.com

Re: Warning Letter
FPPC Case No. 15/1360

Gentlepersons:

The Enforcement Division of the California Fair Political Practices Commission enforces the provisions of California's Political Reform Act (the "Act").¹ This letter is in response to a sworn complaint, which alleged that the Commonwealth of Australia ("Australian Government"), through its Department of Agriculture, violated the Act's lobbying disclosure provisions. After investigation, the Enforcement Division is closing its file on this matter with this warning letter as discussed below.

Persons (including any organization or group of persons acting in concert) who are not lobbyists, lobbying firms, lobbyist employers, or lobbying coalitions—but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action in California must file a Form 645 (Report of Person Spending \$5,000 or More to Influence Legislative or Administrative Action) with the California Secretary of State during the month following that calendar quarter. Certain types of payments must be aggregated to determine if the \$5,000 threshold has been met, including the following:²

- ❖ payments for or in connection with the support or assistance of lobbyists;
- ❖ payments for or in connection with direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action;

¹ The Act is contained in California Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the FPPC are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² See Sections 82045; 82047; 86115, subdivision (b); 86116; 86117; 86118; and Regulation 18616.

- ❖ payments for or in connection with soliciting or urging persons other than the filer or the filer's employees to enter into direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action; and
- ❖ payments to an organization, other than regular dues payments, for the purpose of hiring a lobbyist.

In this case, our investigation found that:

- In approximately May 2014, the Australian Government, through its Department of Agriculture, entered into a grant agreement with the Kangaroo Industries Association of Australia, Inc. (KIAA). The total amount of the grant was \$143,000 (Australian dollars). Currently, this equates to roughly \$104,000 (United States dollars, USD).
- The grant payments were to be made in installments in 2014 and 2015, subject to achievement of certain milestones.
- The purpose of the grant was for KIAA to engage a suitable representative to prevent kangaroo products from being banned in California on animal welfare grounds. Grant activities were to include engagement of a suitable contractor, the kangaroo industry, and other organizations for additional financial or in-kind contributions. (Ultimately, KIAA would engage the lobbying firm of Manatt, Phelps & Phillips, LLP, but the Manatt firm was not named or identified in the original grant agreement.)
- Pursuant to the grant agreement, the Australian Government made payments to KIAA during the second and fourth quarters of 2014, and during the second quarter of 2015. The payments were in excess of \$5,000 (USD) per calendar quarter—but the Australian Government did not file any lobbying disclosure forms with the California Secretary of State.
- On or about June 15, 2015, KIAA filed a Form 602 (Lobbying Firm Activity Authorization), which disclosed that KIAA had retained the Manatt lobbying firm. In the filing, KIAA identified itself as representing wildlife management services *in coordination with the Australian Government*. Additionally, KIAA described itself as representing government licensed kangaroo harvesters.
- On or about July 29, 2015, KIAA filed a Form 635 (Report of Lobbyist Employer) for the second quarter of 2015, which disclosed that KIAA had made a payment in the approximate amount of \$43,644 (USD) to the Manatt lobbying firm. Then, on or about January 29, 2016, KIAA filed another Form 635 for the fourth quarter of 2015, which disclosed that KIAA had made an additional payment in the amount of \$55,000 (USD) to the Manatt lobbying firm. (Also, these payments were disclosed on Form 625's (Reports of Lobbying Firms) filed by Manatt.)
- The Australian Government cooperated with the Enforcement Division's investigation, and it does not appear that there was any intent to conceal information.

Given the stated purpose of the grant (for KIAA to engage a suitable representative to prevent kangaroo products from being banned in California on animal welfare grounds), there is some appearance that the Australian Government may have been acting as a lobbyist employer

(with KIAA serving as an intermediary). However, pursuant to the grant agreement, grant activities were to include undertaking fundraising and other collaborative efforts. Under these circumstances, there is insufficient evidence to find that the Australian Government had filing obligations as a lobbyist employer—but there is no question that the Australian Government was required to file a Form 645 as a person spending \$5,000 or more to influence legislative or administrative action in California.

Failure to file Form 645's for the calendar quarters in which the grant payments were made was a violation of California Government Code sections 86115, subdivision (b); 86117; and 86118. However, as noted above, there was some public disclosure because KIAA: (1) timely filed all required lobbyist employer reports, (2) identified itself as representing wildlife management services *in coordination with the Australian Government*, and (3) payments by KIAA to the Manatt lobbying firm properly were reported by those entities. Also, the Australian Government now has filed all required Form 645's. Additionally, the failure to timely file appears to have been the result of a mistake by a foreign government not familiar with California's lobbying disclosure laws. For these reasons, we are closing this case with this warning letter.

Even though we are closing this matter with a warning letter, the information in this case will be retained and may be used in the future should an enforcement action become necessary due to newly discovered information and/or failure to comply with the Act in the future. Failure to comply with the provisions of the Act in the future may result in administrative prosecution and monetary penalties of up to \$5,000 per violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Fair Political Practices Commission's website ten days from the date of this letter.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. Please feel free to contact me at (916) 323-6424 with any questions you may have regarding this matter.

Very truly yours,



Neal P. Bucknell
Senior Commission Counsel
Enforcement Division
(916) 323-6424