

# AUSTRALIAN LOBBYING CODES OF CONDUCT

## Challenges for Reform

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## INTRODUCTION

Lobbying is a part of the democratic process

It can be a positive enhancement to government decision-making

There remain negative perception and corruption risks

Regulatory models for lobbying activities have been developed to respond to these risks

This paper and discussion -

- What is lobbying?
- Some of the public perceptions of corruption
- Who lobbies and is lobbied?
- Regulation in Australia and challenges for the future

## WHAT IS LOBBYING?

- Communicating and eliciting information
- Applying influence on government
- Informal or formal - face to face meetings, events, letter campaigns, submissions
- Indirect - through the media or a public event
- Mutual interest and benefit between lobbyists and government officials

Contestability of policy advice – lobbyists have a role in providing an alternative or supplement to departmental advice

## LOBBYISTS

- Professional or third party lobbyists
- Non-government organisations
- Technical advisers - town planners, architects, engineers, lawyers and accountants
- Peak bodies, industry associations, trade unions and professional associations
- Churches, charities and social welfare organisations
- Community-based or grassroots groups, sometimes single-issue interest groups
- Members of Parliament – independents and other parties
- Local government
- Political parties
- Citizens acting on their own behalf or for the interests of their relatives, friends or their local communities

## WHO IS LOBBIED?

- Ministers and Parliamentary Secretaries
- Other Members of Parliament
- Ministerial advisers
- Heads of government agencies and senior bureaucrats
- Departmental staff

## LOBBYIST CHARACTERISTICS

- Experience in how government decision making works
- Knowledge of the system and the players
- Backgrounds in politics, media, public service, policy development, law, etc
- Zealots and aspiring political players

## WHY LOBBY?

Reasons are diverse -

- Benefits and relief from Government action or inaction
- Gain or retain an economic, environmental or social advantage
- Resolve problems

Single issue that affects one person or company

Large concern that affects a group of people or community

## WHAT LOBBYISTS DO

- No standard set of services or approach
- Single issues or range of issues
- Public policy
- Private interests
- Professional or third party



## WHAT PROFESSIONAL LOBBYISTS DO

- Research
- Meetings with government and decision-makers on an ad hoc or issues basis
- Media campaigns
- Preparing submissions
- Advice about Government processes
- Informing and influencing key decision-makers and elected representatives
- Heavy reliance on interpersonal relationships and networks

## PUBLIC PERCEPTIONS OF CORRUPTION ASSOCIATED WITH LOBBYING

- Buying access or money to lobby and run campaigns and influence on the political and decision-making process rather than the cogency of a case
- Private advantages are promoted at the expense of public interest
- Closed door meetings – secret communications
- The ‘revolving door’ - the ability for high level people to move to and from roles in industry on the one hand and to ministerial or senior official roles on the other, or vice versa

## WHY DO WE CARE ABOUT THESE PERCEPTIONS?

- Transparency and trust in government
- The rule of law
- Ethical behaviour strengthens democracy
- Breakdown in trust of democratic institutions
- Citizens believe that a government is corrupt
- Decision making should be robust and based on what is in the public interest
- Appropriate lobbying can enhance government decision-making

## THE REGULATION OF OF LOBBYING IN AUSTRALIA

- 1993 – Commonwealth Code of Conduct – register not public and compliance issues
- 1996 – Commonwealth Code and register abolished
- 2007 – Western Australia introduced Code of Conduct and register following ‘Bourke and Grills’ scandal and CCC hearings
- 2008 – Commonwealth Code of Conduct introduced (reviewed in 2010)
- 2009 - Victoria, NSW, South Australia, and Tasmania
- 2009 – Queensland Integrity Commission Act 2009 commenced  
1 January 2010
- 2010 - 2011 - NSW ICAC report and changes to NSW regulation

### Preamble

‘promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty’

### Four elements –

1. Third party lobbyists
2. Lobbying activities
3. The targets of lobbying i.e. government representatives
4. Post employment prohibitions

## THIRD PARTY LOBBYISTS

Third party lobbyists – professional firms or individuals who conduct lobbying on behalf of a client

### Exclusions -

- Charitable and religious organisations
- Associations - trade unions, peak bodies and interest groups
- Professionals - e.g. lawyers, who only lobby occasionally and/or incidentally to their professional work
- Individuals
- Grassroots campaigns

## TARGETS OF LOBBYING ACTIVITIES

### Government representatives -

- Ministers
- Parliamentary Secretaries
- Ministerial staff
- Senior public servants (Heads of Department)
- Australian Defence Force (Commonwealth)

### Exclusions

- Parliamentarians not holding executive Government
- Local government (QLD includes local government)

## REGISTRATION OF THIRD PARTY LOBBYISTS

### Registration requirements -

- Provide their business registration details including, if not a publicly listed company, the names of owners, partners or major shareholders
- Names and titles of employees who lobby
- The names of clients for whom lobbying is undertaken

No registration = no access to government representatives

Update details at regular intervals and where there are changes to registration details



## MAINTENANCE OF REGISTER

### Central agencies

- Department of the Prime Minister and Cabinet
- Departments of Premier and Cabinet
- Public Sector Standards Commissioner (VIC and WA)

### Queensland – Integrity Commissioner

Lobbyists may be removed from the register for ‘misconduct’ or providing inaccurate information

## BREACHES

Onus is on Government representatives to report breaches

Power to sanction is at the discretion of the Cabinet Secretary, Secretary of the Department of Premier and Cabinet or Public Sector Standards Commissioner

Sanctions are removal from register - therefore no ability to contact or deal with government representative

## POST-EMPLOYMENT PROVISIONS

Former Ministers and Parliamentary Secretaries who are prohibited from engaging in lobbying on any matter on which they had official dealings during their last 12 – 18 months in office

Most States, apart from Tasmania and WA, ban ministerial staff from taking up positions as lobbyists when leaving a Ministerial office for a period

WA do not include post employment provisions

## PRINCIPLES OF ENGAGEMENT

- Lobbyists must make full disclosure of who they are and their clients
- There is a range of unacceptable conduct that is prohibited, such as any corrupt, dishonest, illegal or threatening behaviour
- Lobbyists must attempt to be as accurate and truthful as is possible and must not misrepresent the nature and extent of their access to government representatives – no boasting
- Lobbyists must strictly separate their lobbying activities from any personal involvement in political party activities

Administered by the Integrity Commissioner -

- Registration of lobbyists is set out in Part 2 of the Act and penalties for non compliance

Integrity Commissioner can -

- refuse to register a lobbyist and may cancel a registration – show cause notices provide natural justice
- issue warnings and suspend registration

Standards of conduct include -

- declaring conflicts of interest and not taking action that may constitute improper influence on a government representative
- onus on lobbyists to inform themselves of Queensland Government and local government policies relating to gifts
- **disclose reason for approach**

### NSW ICAC findings and recommendations 2010

- *Lobbying of Government Officials Act 2011* - criminal offence to pay or receive a success fee for lobbying
- Discretion of the Director-General to remove lobbyists from the register - if behaviour has been inconsistent with general standards of ethical conduct or registration details are inaccurate
- Lobbyists are ineligible for appointment to Government Boards or Committees where the appointment relates to any matter in which the lobbyists has made representation to government on in the preceding 12 months
- Protocol for managing contact between the Department of Planning and Infrastructure (NSW) and registered lobbyists - meeting requests and report of contact

## ISSUES AND CHALLENGES FOR REFORM

- Harmonisation
- Legislation of Code of Conduct
- Who is considered a lobbyist? Why do we exclude?
- Disclosures and reporting
- Financial disclosure
- Gifts and benefits
- Payment of success fees
- Post separation employment: Government Representative to Lobbyist
- Post separation employment: Lobbyist to Government Representative
- Government representatives and other Members of Parliament

## CONCLUSION

Medium level regulation

Room for improvement -

- Equity of who should abide by the standards and prohibitions
- Dealing with breaches – natural justice and range of sanctions
- Balance private and commercial-in-confidence interests with an a climate of disclosure

Ethical behaviour also regulated by -

- Standards and codes of conduct applying to government representatives
- Freedom of information laws and information management practices