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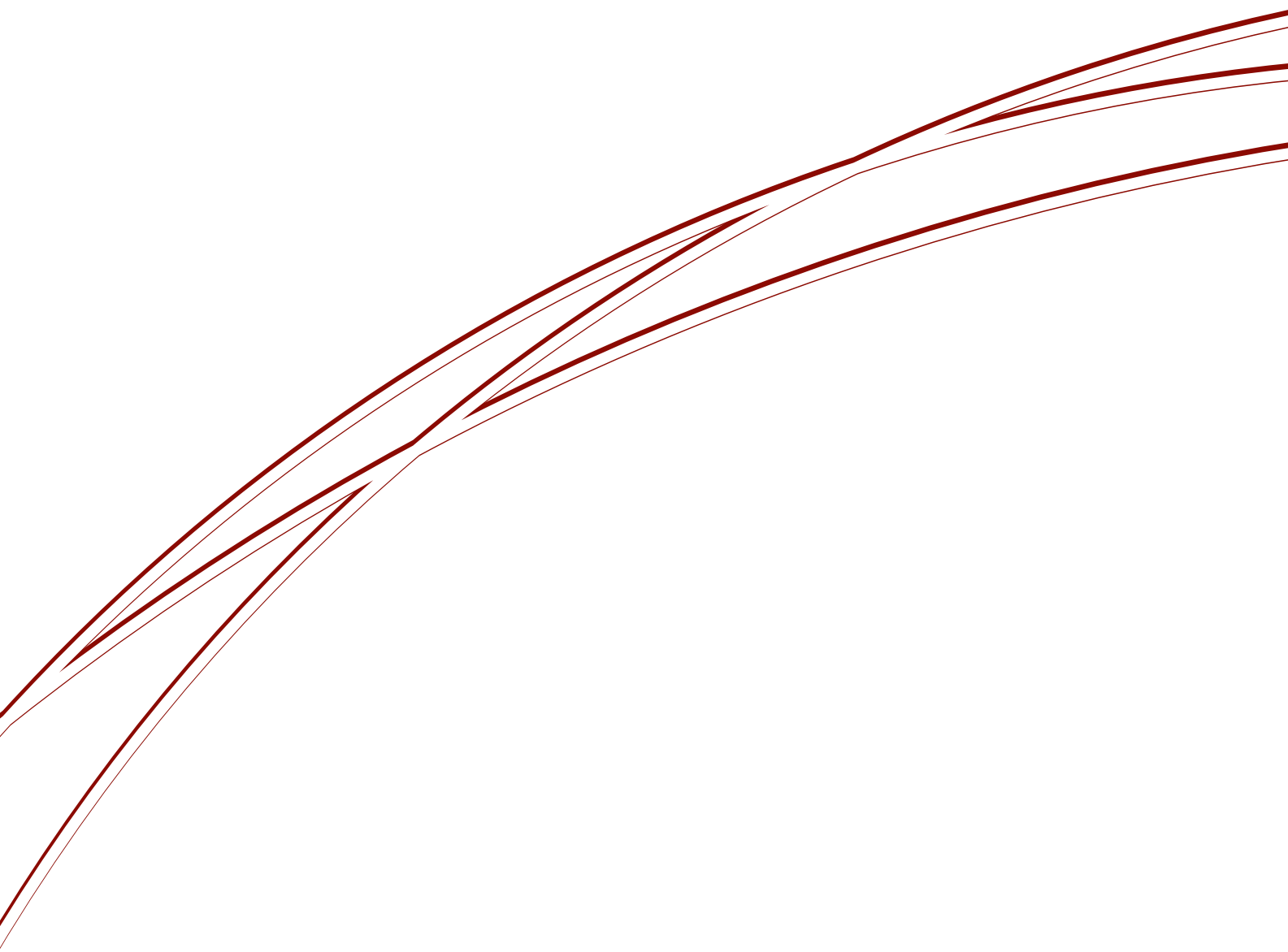
INDEPENDENT COMMISSION AGAINST CORRUPTION

LOBBYING IN NSW

AN ISSUES PAPER ON THE NATURE AND MANAGEMENT OF LOBBYING IN NSW

MAY 2010



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This publication and further information about the Independent Commission Against Corruption can be found on the Commission's website at www.icac.nsw.gov.au.

Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.

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Contents

Lobbying in NSW – a chance to have your say

This issues paper has been produced as part of an investigation being conducted by the Independent Commission Against Corruption into the procedures followed in NSW relating to the lobbying of public officials and public authorities. The issues paper has been prepared for the purpose of generating community and agency consideration and discussion on the nature and management of lobbying in NSW and whether changes need to be made to the current regulatory system to promote transparency, accountability and fairness in order to reduce the likelihood of the occurrence of corrupt conduct.

The Commission encourages all those interested in this subject to contribute to the Commission's investigation by making a written submission addressing the issues identified in the issues paper and raising any relevant additional issues for consideration.

Submissions should be received by the Commission by 5 pm on Wednesday 23 June 2010.

Submissions can be submitted by email to: **icac@icac.nsw.gov.au** or addressed to:

The Solicitor to the Commission
Independent Commission Against Corruption
GPO Box 500
Sydney NSW 2001

Further information concerning the issues paper or the investigation can be obtained from the Commission on telephone (02) 8281 5999 or by email at icac@icac.nsw.gov.au.

Introduction

The Independent Commission Against Corruption (ICAC) is currently conducting an investigation into lobbying of public officials and public authorities in NSW and the related procedures and regulatory system.

Section 13 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") sets out the principal functions of the Commission. Section 13(1)(a) provides that these include:

> *To investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:*
>
> *(i) corrupt conduct, or*
>
> *(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
>
> *(iii) conduct connected with corrupt conduct,*
>
> *may have occurred, may be occurring or may be about to occur.*

Section 13(2) of the ICAC Act provides that the Commission is to conduct its investigations with a view to determining:

(a) whether any corrupt conduct, or any other conduct referred to in subsection (1)(a), has occurred, is occurring or is about to occur, and

(b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and

(c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.

The scope and purpose of this investigation is to consider the relationship between lobbyists and public authorities and public officials for the purpose of examining whether such relationships may allow, encourage or cause the occurrence of corrupt conduct or conduct connected with corrupt conduct, and to identify whether any laws governing any public authority or public official need to be changed and whether any methods of work, practices or procedures of any public authority or public official could allow, encourage or cause the occurrence of corrupt conduct and if so, what changes should be made.

This issues paper has been produced as part of the investigation and for the purpose of generating community and public sector agency consideration and discussion on the nature and management of lobbying in NSW and whether changes need to be made to the current regulatory system to reduce the likelihood of the occurrence of corrupt conduct. Submissions received in response will help inform the investigation.

The issues paper examines the current regulatory regime in NSW and elsewhere for the purpose of identifying shortcomings and to highlight issues for consideration. This is part of the process through which the Commission proposes to identify what changes need to be made to the regulatory system applicable to lobbying in NSW to promote transparency, accountability and fairness and thereby reduce the likelihood of the occurrence of corrupt conduct.

Not all lobbying activity should be subjected to the same level of regulation. It is necessary to determine what level of regulation is required to address risks posed by particular classes of lobbyists.

The issues paper is structured around 26 principal issues. For each principal issue there is some discussion followed by specific "issues for consideration". Neither the principal issues nor "issues for consideration" are intended to be

exhaustive. Those responding to the issues paper are invited to respond to particular issues and/or to identify other issues.

The Commission intends to disseminate this issues paper widely, so as to obtain as comprehensive a response as possible. The paper is available on the Commission's website: www. icac.nsw.gov.au. The Commission hopes that those who read it will respond by way of submissions. Consideration of such submissions will be important in informing the Commission's investigation.

The Commission also proposes to conduct a public inquiry for the purpose of the investigation and to prepare a public report on its investigation.

The context for this investigation

The Commission is not alone in recognising that particular types of lobbying can represent a substantial corruption risk. In Western Australia the Corruption and Crime Commission has conducted a number of investigations concerning allegations of public sector misconduct in connection with the activities of lobbyists and other persons. Dealings between Western Australian lobbyists Brian Burke and Julian Grill and various public officials have received extensive media coverage.[1] In Queensland the Crime and Misconduct Commission has also conducted investigations into the activities of lobbyists.[2] Some aspects of the role of lobbyists in NSW were examined by the ICAC in its recent investigation into allegations of corruption made by or attributed to Michael McGurk.[3]

Lobbying has increased in scale, complexity and sophistication in recent years.[4] In 2009 the Organisation for Economic Co-operation and Development (OECD) reported that lobbying is now "a worldwide phenomenon" with globalisation producing similar lobbying techniques in different countries.[5]

Both in NSW and elsewhere in Australia, governments have established regulatory regimes designed, at least in part, to address the need for effective standards and procedures to ensure some level of transparency in the interaction between public officials and lobbyists. Overseas, many jurisdictions have established controls and oversight mechanisms in relation to lobbying. Recently, the OECD has examined the responses of member countries to the issue of lobbying. That examination demonstrates that many countries are taking action but that the nature of that action differs depending on local conditions.

In its 2009 report *Lobbyists, government and public trust* the OECD noted that:

> *Effective standards and procedures that ensure transparency and accountability in decision making are essential to reinforce public trust. There is a growing recognition that regulations, policies and practices which require disclosure of information on key aspects of the communication between public officials and lobbyists have become vital aspects of transparency in 21st century democracies to empower citizens in exercising their right to public scrutiny. Measures promoting a culture of integrity are also an integral part of the "good governance" approach, particularly those that clarify expected standards of conduct in lobbying for both public officials and lobbyists.*[6]

List of principal issues

1. What is lobbying?
2. What is the role of a lobbyist?
3. What is the public perception of the role of lobbyists?
4. What persons and organisations act as lobbyists?
5. Who are the lobbyists' clients?
6. Who are the people and organisations that are lobbied?
7. What matters are subject to lobbying?
8. What corruption risks are associated with lobbying?
9. What is the current NSW regulatory system?
10. What are the weaknesses of the current NSW regulatory system?
11. What are the current regulatory systems in other States and the Commonwealth?
12. How do regulatory systems operate in other countries?
13. What should be the guiding principles of any regulatory scheme?
14. If lobbyists are regulated should they be self-regulated, regulated by government or a combination of both?
15. How should the term "lobbyist" be defined in a regulatory system?
16. Should those who are lobbied be included in the same regulatory regime as that applying to lobbyists?
17. Should restrictions be placed on former ministers, ministerial staffers, MPs and public servants acting as lobbyists?
18. Should lobbyists be prohibited from organising or arranging the organising of fund raising activities and campaigns for MPs, local councillors, political candidates or political parties?
19. Should lobbyists be prohibited from serving on government committees or boards?
20. Should giving gifts or other benefits be banned?
21. What information should be disclosed by lobbyists?
22. What information should be disclosed by those lobbied?
23. Should lobbyists be able to charge a success fee?
24. What roles are there for training and education and who should undertake those roles?
25. How should any regulatory regime be overseen?
26. What mechanisms should exist to regularly review the functioning and effectiveness of the regulatory regime?

Issues

General nature of lobbying

1. What is lobbying?

The Corruption and Crime Commission of Western Australia ("the CCC") referred to the role of lobbyists and the definition of lobbying in its November 2008 *Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons – The Hon. Anthony David McRae MLA and Mr Rewi Edward Lyall*:

> *Lobbying is the process by which individuals or groups seek to represent their views to government representatives, and to influence or persuade government decision-making. A "lobbyist" is a person whose business it is to represent the views of a third party, their client, to government. ... Lobbying can be direct (by direct approaches to public officers) or indirect (for example, by exerting pressure through the media).*[7]

For the purposes of this paper, lobbying is considered as any communication with a public official for the purpose of influencing the making of a decision, including the making or content of policy or legislation, the awarding of a contract, allocation of funding or the making of a planning decision.

Not everyone who engages in lobbying is considered a lobbyist for the purpose of regulation of conduct.

In determining the extent to which any lobbying activity should be regulated it is appropriate to distinguish between those activities which have a low corruption risk and those that, potentially at least, have a higher corruption risk or are perceived as having a higher corruption risk.

With a broad range of activities classed as lobbying, it is unsurprising that no jurisdiction has attempted to control all such activity. To impose controls such as registration, codes of conduct and disclosure requirements across the board may unduly interfere with open access to government and government agencies. It is, however, important to strike a balance between allowing freedom of access and ensuring that freedom is not abused to the detriment of the public interest.

For the purpose of this paper, a lobbyist can be considered as someone who engages in lobbying activity in return for payment or as part of his or her employment, whether or not employed primarily in lobbying. (The issue of how "lobbyist" should be defined in a regulatory system is considered on page 20 of this paper.)

Lobbying usually involves direct contact between the lobbyist and the lobbied. However, lobbying can also be indirect – for example, by exerting pressure through the media to broadcast a message and manipulate public opinion.

"Grassroots lobbying" occurs when ordinary people mobilise concerning an issue and may take the form of letter-writing campaigns and petitions although media coverage can also play an important role. A truly "grassroots" movement should be natural and spontaneous. In the United States the establishment and manipulation of what on their face appear to be grassroots movements

to promote particular interests has been termed "astroturf lobbying":

> *Astroturf refers to apparently grassroots-based citizen groups or coalitions that are primarily conceived, created and/or funded by corporations, industry trade associations, political interests or public relations firms. ...*
>
> *Senator Lloyd Bentsen, himself a long-time Washington and Wall Street insider, is credited with coining the term "astroturf lobbying" to describe the synthetic grassroots movements that now can be manufactured for a fee by companies...*[8]

Issues for consideration:

1.1 Does the definition of lobbyist given above adequately cover the type of lobbyist whose conduct or involvement is most likely to affect public perceptions as to transparency, accountability and fairness of decision-making?

1.2 To what extent does indirect lobbying occur in NSW?

1.3 Are there any recent examples of indirect lobbying in NSW?

1.4 Is there any evidence of "astroturf lobbying" in NSW?

2. What is the role of a lobbyist?

One high-profile registered lobbyist in NSW, Graham Richardson, giving evidence to the 2010 ICAC public inquiry into allegations of corruption made by or attributed to Michael McGurk, described the role of a lobbyist in the context of land development in the following terms:

> A. *I think you've got two jobs to do. The first is to make sure the client understands how best to put their case to the Government because many of them would have no idea. What matters to them doesn't necessarily matter to the Government, you've got to try and marry the two. And secondly, you've got to try and convince the Government, in this case I always went to the Department* [of Planning] *the last few years because it's been fairly obvious that Ministers have gotten pretty wary of the whole development game in my view because of the publicity that it attracts. And they only sign off what the Department recommends so you may as well go to the Department and forget the Ministers.*
>
> Q. *And so when you see the Department or someone in the Department what kind of a process do you say occurs between the Departmental officer and you as the lobbyist?*
>
> A. *The process – you put a case, you, you, I mean, most, most of the dealings I suppose are about pace. The pace of development here is incredibly slow in New South Wales much slower than anywhere else in Australia and that frustrates those who are investing money and you try and quicken the pace.*
>
> Q. *Would you accept that there's a division or a line of demarcation between the function of a lobbyist on the one hand and the consultants or other kinds of technical experts on the other?*
>
> A. *I'm not certain of the answer to that. I do know that from time to time some of those technical experts go in and push pretty hard for the client they're representing. I know that they do talk to people in the Department at all sorts of levels so I'm not sure you can delineate a difference in the way you're seeking to.*[9]

Sam Haddad, the Director General of the Department of Planning, also gave evidence in the public inquiry. He distinguished lobbyists from consultants. He described consultants as usually being "technical people" who undertake studies of a technical nature which they then submit to the Department in support of a particular proposal. He said that lobbyists acted as advisers for their clients and made representations on their behalf for projects to proceed but did not present the technical merits of the project. When asked whether lobbyists were of assistance to the Department he answered "no". He recognised, however, that lobbyists also played another role by assisting their clients to understand how the planning assessment system worked.[10]

Issues for consideration:

2.1 What role do lobbyists play in NSW?

2.2 Does this role differ depending on the nature of the issue that is the subject of the lobbying activity?

2.3 Are lobbyists needed to provide information to their clients on how to put their case to government or are other sources of information available to clients to enable them to ascertain how to do so?

2.4 Is there a difference between representations made by a lobbyist and those made by a consultant or other similar entity?

2.5 Is it possible to distinguish between the role of a lobbyist and a consultant when it comes to representing a client's interests to public officials?

3. What is the public perception of the role of lobbyists?

Lobbying can be perceived negatively as giving a special access to decision-making for those with money or connections. Such perceptions can be reinforced if lobbying is conducted behind closed doors and is not open to public scrutiny. Negative perceptions will also arise where the ultimate decision is controversial or perceived as unfair.

With the increasing scale and sophistication of lobbying has come increasing concern about inappropriate access and undue influence. Recent reports concerning Brian Burke and Julian Grill in Western Australia have highlighted the way lobbyists can use relationships and power in attempts to influence government decisions.

In some cases there is a "revolving door" from government to lobbying. In NSW about half of the 272 registered lobbyists have been political advisers, ministerial staffers or are former Members of Parliament (MPs) – some with continued party affiliation. Some of these individuals undoubtedly have relationships and influence that will have a bearing on how effective they are as lobbyists.

Where high levels of discretion on the part of a public official and high-value decisions are combined lobbying is likely to be more intense. There is particular public concern as to the role of lobbyists in specific areas such as planning.

Issues for consideration:

3.1 What is the public perception of the role of lobbyists in NSW?

3.2 What factors have contributed to this perception?

3.3 Do public perceptions differ depending on the background of the lobbyist (i.e. if the lobbyist is a former minister, MP, political staffer or senior public official)?

3.4 Does the public perception of lobbying differ depending on the subject of the lobbying?

3.5 Do public perceptions differ depending on whether the person being lobbied is a politician or a public sector employee?

3.6 What is the public perception of the way in which lobbyists gain access to public sector decision-makers?

3.7 What factors have contributed to this perception?

4. What persons and organisations act as lobbyists?

The NSW Lobbyist Register was established by the NSW Government in February 2009 and is publicly accessible at www.dpc.nsw.gov.au/prem/lobbyist_register. The Commission analysed its contents as at 11 February 2010. At that time, there were 114 lobbyist entities (companies, businesses and individuals) registered in NSW. These involved 272 individual lobbyists either acting individually or employed by companies or businesses. Eleven individuals were listed as lobbyists with more than one lobbyist entity.

Information on the lobbyists listed on the register was largely derived from the lobbying entity websites, although sources such as media reports were also examined by the Commission. The level of information that could be obtained was variable as less information was usually available if the entity lacked a website or its website did not include staff profiles.

Of the 272 individual lobbyists listed in NSW, at least 134 (49%) had a background in politics, either as former MPs or, more commonly, as ministerial staffers or political advisers. There were 22 former MPs, state or federal (including a former NSW premier), and 112 former staffers and advisers.

Of the 114 lobbying entities analysed:

- 56 do not employ any lobbyists with political backgrounds
- eight employ five or more lobbyists with political backgrounds
- 18 of the 19 lobbyists employed at the company with the most lobbyists have political backgrounds.

On the issue of whether a background in politics is useful to a lobbyist, Mr Richardson gave the following evidence to the Commission:

> *Q. Presumably you would take the view that for both yourself and any other well-known lobbyist who has a political or another widely known background that the use of a relationship is one of the tools that is available to a lobbyist. Would you agree with that?*
>
> *A. I would, yes.*

Lobbying may not be the principal activity of all the entities on the register. For instance, the website of one lobbying entity described itself as "an independent institutional funds management third party marketing, sales and client servicing firm."[11] This suggests that lobbying is not the primary role of its business.

Issues for consideration:

4.1 What particular skills or knowledge are required to make a successful lobbyist?

4.2 What factors explain the existence of so many lobbyist entities in NSW?

4.3 What factors explain why so many former politicians and political staffers are engaged as lobbyists in NSW?

4.4 What attributes or skills make former politicians and political staffers valuable as lobbyists?

4.5 Are there particular corruption risks associated with former politicians and political staffers acting as lobbyists and if so how can the risks be managed?

5. Who are the lobbyists' clients?

As of February 2010, 869 clients were listed on the NSW lobbyist register. Some clients were represented by as many as four lobbyist entities. Removing these duplicates left 804 clients.[12]

There was considerable variation in the number of clients listed for each lobbying entity although on average there were almost eight clients per lobbying entity.

Of the 804 clients, 757 could be identified through internet searches and were classified according to the 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) using multiple codes when an entity could be categorised into more than one industrial sector.[13] Charities, not-for-profit organisations and peak bodies and industry associations were classified as "civic, professional and other interest groups" and were also grouped into the relevant industry sectors that they represented.

The table below shows a breakdown of clients according to industry sectors.

The "Civic, professional and other interest groups" was the largest industry sector. The next largest group – "Professional, technical and scientific services" – accounts for 20% of the clients and includes services such as accounting, legal, engineering, architecture, market research, management and consulting services, and scientific research. Sixteen per cent of clients come from the manufacturing industry. Property developers are included in the "Construction" group, which comprises 14% of the total. As any entity could be categorised into multiple sectors the total is greater than the number on the register. The table illustrates only those industry sectors that included more than five per cent of the clients.

Issues for consideration:

5.1 What factors determine why certain industry sectors are more likely to engage the services of lobbyists?

5.2 Is the industry sector represented by lobbyists related to the value of decisions that might be made and/or the level of discretion exercisable in making those decisions?

6. Who are the people and organisations that are lobbied?

The Commission has not been able to locate any comprehensive information on who is being lobbied in NSW.

Evidence given at the Commission's 2010 public inquiry into allegations of corruption made by or attributed to Michael McGurk indicated that officials of the Department of Planning, rather than the relevant minister,

Industry	Number of clients	% of all clients on register
Civic, professional and other interest groups*	182	24%
Professional, technical and scientific services	151	20%
Manufacturing	122	16%
Construction	106	14%
Transport, postal and warehousing	71	9%
Health care and social assistance	70	9%
Financial and insurance services	64	8%
Arts and recreation services	62	8%
Electricity, gas, water and waste services	55	7%
Education and training	49	6%
Administrative and support services	47	6%

* All peak bodies/industry associations and charity/not-for-profit organisations are placed in this category (in addition to whatever other sector(s) they represent).

were subject to lobbying. The lobbyist Graham Richardson told the Commission that, at least in matters of planning, it was important to lobby those officers responsible for preparing recommendations for consideration by the minister.[14] He took the view that given the controversy surrounding planning issues, ministers were more likely to accept departmental recommendations. In that case, it would make sense to lobby the relevant departmental officials to get recommendations favourable to the lobbyist's interests rather than to lobby the minister as it would be potentially more difficult for a minister to override a departmental recommendation.

It would appear that officers of the Department of Planning are often subject to lobbying. As a result the Department introduced its own Meeting and Telephone Communications Code of Practice in December 2009. This is referred to in more detail under Issue 9 on pages 15–16.

Ministers may often be the final decision-makers for particular matters. In other cases, as members of Cabinet, they may be part of the final decision-making process. There is evidence that ministers are subject to lobbying. The Corruption and Crime Commission has published reports on investigations it has conducted into lobbying of ministers in Western Australia. There is little publicly available information, however, on what ministerial portfolios in NSW are particularly susceptible to lobbying or the extent of such lobbying.

Chiefs of staff to ministers may also be subjected to lobbying activity. The Corruption and Crime Commission investigations into the lobbying activities of Mr Burke and Mr Grill identified that Rewi Lyall, the Chief of Staff to the then Minister Assisting the Minister for Planning and Infrastructure, Anthony McCrae, had been lobbied in relation to a number of matters. Given the role of a ministerial chief of staff and close relationship with the relevant minister it is to be expected that a chief of staff could play an important role in influencing ministerial decisions or arranging access to the minister for lobbying activity.

There is little publicly available information on the extent to which lobbyists have contact with MPs who are not ministers. While such MPs are unlikely to be in a position to directly make decisions that may impact on the interests promoted by a lobbyist they may be able to influence the decision-making process by making representations to the relevant minister. Their decision on whether or not to support a particular legislative proposal may also be an issue on which certain MPs may be subjected to lobbying.

The current regulatory regime in NSW does not apply to local government. It is not clear why. It would be expected that some local councils have contact with lobbyists in relation to planning and development issues. Metropolitan councils and those in areas where development is an issue are most likely to receive approaches from lobbyists.

The *State Owned Corporations Act 1989* establishes a number of statutory state owned corporations. The following are statutory state owned corporations for the purpose of that Act:

- Country Energy
- Delta Electricity
- EnergyAustralia
- Eraring Energy
- Hunter Water Corporation
- Integral Energy Australia
- Landcom
- Macquarie Generation
- Newcastle Port Corporation
- Port Kembla Port Corporation
- Rail Infrastructure Corporation
- State Water Corporation
- Superannuation Administration Corporation
- Sydney Ports Corporation
- Sydney Water Corporation
- TransGrid
- Transport Infrastructure Development Corporation
- Waste Recycling and Processing Corporation.

The current lobbying regulatory regime in NSW does not apply to these organisations. It is not known to what extent any of them is subject to lobbying. Given the nature of the business conducted by some of these organisations it would be expected that they would have dealings with lobbyists from time to time.

Issues for consideration:

6.1 Which ministerial portfolios are most susceptible to lobbying by lobbyists and on what matters are they lobbied?

6.2 To what extent are ministers, ministerial chiefs of staff and other ministerial staff subjected to lobbying by lobbyists and on what matters are they lobbied?

6.3 To what extent are other MPs subjected to lobbying by lobbyists and on what matters are they lobbied?

6.4 To what extent are departmental public officials subjected to lobbying by lobbyists and on what matters are they lobbied?

6.5 What levels of departmental officials are subject to lobbying by lobbyists and on what matters are they lobbied?

6.6 To what extent are elected local government representatives (councillors, including mayors) subjected to lobbying by lobbyists and on what matters are they lobbied?

6.7 To what extent are staff of local government councils (including general managers) subjected to lobbying by lobbyists and on what matters are they lobbied?

6.8 Do councillors lobby their own councils and if so should such lobbying be subject to regulation?

6.9 Should the NSW regulatory system for lobbying be extended to cover local government?

6.10 To what extent do lobbyists deal with officers of state owned corporations and on what matters do they lobby?

6.11 Should the NSW regulatory system for lobbying be extended to cover state owned corporations?

7. What matters are subject to lobbying?

Lobbying is most likely to be concentrated around areas where there are competing significant interests and the discretion to affect those interests. It is reasonable to expect that the intensity of lobbying may vary according to:

a) the advantage, whether financial or otherwise, likely to be obtained from successful lobbying,

b) the level of discretion afforded to the public official,

c) the possibility of review/appeal of any decision, and

d) the number of participants in the industry.

Consistent with these characteristics, complaints to the Commission and concerns reported by the media in relation to lobbying are more common in the areas of planning, state and regional development, forest and mineral resources and gaming, racing and liquor.

Issues for consideration:

7.1 What types of matters are the subject of lobbying in NSW?

8. What corruption risks are associated with lobbying?

A lobbyist undertakes lobbying activity for the purpose of achieving an outcome favourable to the interests represented by the lobbyist. Depending on the value of any advantage to be obtained from successful lobbying, there may be temptations on the part of the lobbyist (or the lobbyist's client) and the lobbied to achieve the desired outcome through corrupt means.

Corrupt conduct can occur where a lobbyist seeks to improperly affect the honest or impartial exercise of official functions by, for example, offering the lobbied official a financial or other incentive. Corrupt conduct will also occur where a lobbied official seeks or accepts such an incentive in return for exercising his or her official functions in a particular way or otherwise exercises his or her official functions dishonestly or partially. Some lobbying behaviour may not of itself be corrupt but may be conducive to corruption (e.g. the formation of a close personal relationship between a public official and a lobbyist).

Lobbyists often provide public officials with information to try to persuade them of the value of the interest they represent. This provision of knowledge and information might create a sense of obligation, which in turn can lead to undue influence. Thomas Susman has described this psychological phenomenon associated with lobbying as based on the "reciprocity principle".[15]

Some of the potential corruption risks are highlighted by recent investigations conducted by the Corruption and Crime Commission into the lobbying activities of Brian Burke and Julian Grill.

Issues for consideration:

8.1 What are the particular corruption risks to which lobbying is susceptible?

8.2 Are some areas of lobbying more susceptible to corruption risks than others?

8.3 Is there evidence of actual corruption associated with lobbying in NSW?

Current lobbying regulatory systems

9. What is the current NSW regulatory system?

There is no specific legislation in NSW regulating the conduct of lobbyists or the public officials with whom they deal.

New South Wales introduced the NSW Government Lobbyist Code of Conduct ("the NSW Lobbyist Code") in 2009 (see Appendix 1).

From 1 February 2009 lobbyists (as defined in the Code) who act on behalf of third party clients are required to be registered with the Department of Premier and Cabinet before they can lobby a "Government Representative" (as defined in the Code).

The definition of "Government Representative" includes ministers and parliamentary secretaries but does not otherwise include MPs. This is consistent with the position taken by the Commonwealth. The Standing Committee on Finance and Public Administration in its 2008 inquiry into the Australian Commonwealth's Lobbying Code of Conduct canvassed the issue of all MPs being made the subject of its code. The Committee was not persuaded that the scope of the code should be extended to all MPs.[16]

The NSW Register of Lobbyists is a public document available on the internet and maintained by the Director General of the Department of Premier and Cabinet. The Code sets out the information to be included in the Register. The Director General can refuse to accept applications to be placed on the Register and can remove a lobbyist from the Register in certain circumstances.

Section 7.1 of the NSW Lobbyist Code sets out four principles a lobbyist must observe when engaging with a Government Representative. They are:

a) *Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;*

b) *Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, government and agencies;*

c) *Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions; and*

d) *Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.*

The Code provides that a Government Representative is not to permit lobbying by a lobbyist not on the register. No other guidelines are set out in the Code concerning the conduct expected of a Government Representative. However, the conduct of public officials is governed by criminal and civil law, they have a general duty to act in the public interest and are subject to various codes of conduct and other guidelines concerning their behaviour. The application of controls to public officials in NSW involves a mix of codes, legislation and updates via memoranda that apply variously to some groups but not others. In part, the effectiveness of the regulation of lobbying depends on the degree to which the controls apply to vulnerable points at which the lobbying relationship may occur. Inconsistent coverage of the public sector may create opportunities to pursue inappropriate lobbying through the gaps.

Applicable controls include:

- The Code of Conduct for Members of Parliament and the Pecuniary Interest Register set out some general standards of conduct expected of Members of the NSW Parliament but do not specifically address lobbying.
- The Ministerial Code of Conduct is not a publicly available document and therefore the extent, if any, to which it is relevant to lobbying is not immediately ascertainable. The code does appear to have been available online at some point as the Commission identified dead links to it. However those links now have been removed. By comparison, the Australian Government's *Standards of Ministerial Ethics*[17], Queensland's *Ministers' Code of Ethics*[18] and its *Ministerial Handbook*[19] and the UK's *Ministerial Code*[20] are accessible online.
- The Model Code of Conduct for NSW Public Sector Agencies[21] and the Code of Conduct and Ethics for Public Sector Executives[22] require that public officials and executives comply with the NSW Lobbyist Code.
- *Memorandum M2006-01: Guidelines for Managing Lobbyists and Corruption Allegations made during Lobbying* (2006) applies to all ministers, ministerial staff and public officials who are lobbied in respect of a proposed statutory decision. The Guidelines apply where the person who is lobbied is the actual decision-maker as well as in those cases where the person who is lobbied is not the decision-maker and another minister or public official is responsible for making the decision. The Guidelines apply to lobbying

by any person, including principals seeking or resisting the making of the proposed statutory decision, special interest groups, professional advocates, MPs and any other person. The Guidelines provide that:

Ministers, ministerial staff and public officials should ensure that lobbying in relation to a statutory decision:

a) is undertaken in accordance with appropriate practices; and

b) does not undermine the integrity of decision-making processes.

- *Memorandum M2009-03: Lobbyist Code of Conduct and Register* (2009) issued by former Premier Nathan Rees stated that the Ministerial Code of Conduct has been amended to expressly require ministers and government MPs to comply with the NSW Lobbyist Code.
- The NSW Government Department of Planning's Meeting and Telephone Communications Code of Practice came into operation on 1 December, 2009 (see Appendix 2). It was developed to guide departmental officers in their interactions with lobbyists and others. It is complementary to the NSW Lobbyist Code but provides a more detailed and rigorous regime concerning the conduct of meetings and telephone discussions. Written records of telephone conversations are required to be made and filed. A request for a meeting with a registered lobbyist must be considered by an officer of or above the position of director. Meetings must be conducted on government premises and be attended by at least two departmental representatives. If the meeting is attended by a registered lobbyist then at least one of the departmental officers must be a director. A written record of the meeting must be made and signed by the departmental officers present. Agreed outcomes must be noted at the conclusion of the meeting and signed and certified as accurate. Disclosure of details including the name of the lobbyist and associated organisation must be made available as an attachment to the relevant reports, which are available online.

Issues for consideration:

9.1 Are there any other rules, guidelines or procedures that seek to regulate lobbying in NSW?

10. What are the weaknesses of the current NSW regulatory system?

The NSW Legislative Council, General Purpose Standing Committee No. 4's report, *Badgerys Creek land dealings and planning decisions*[23], made public in November 2009, made a number of critiques and recommendations in relation to the NSW Lobbyist Code:

- ***Recommendation 7:*** *That the Premier strengthen the NSW Lobbyist Code of Conduct to require that each minister is informed at regular intervals of contact between government representatives and registered lobbyists.*
- ***Recommendation 8:*** *That the Premier strengthen the NSW Lobbyist Code of Conduct by publishing a report on the internet at regular intervals detailing contact between government representatives and registered lobbyists. The report should include the name of the lobbyist, date of contact, meeting attendees (if applicable) and issues discussed.*
- ***Recommendation 9:*** *That the Premier strengthen the NSW Lobbyist Code of Conduct by establishing protocols to be applied to all meetings between government representatives and registered lobbyists. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least one government representative.*

In addition to the matters identified by the Committee, there are other matters that may be considered as potential weaknesses in the current regulatory system applicable to lobbyists. These include:

- Lack of definition of "lobbying" or "lobbying activities" in the NSW Lobbyist Code.
- The definition of "lobbyist" in the Code has a number of exclusions such as in-house lobbyists, lobbyists from peak bodies, religious or charitable organisations, and some professions including doctors, lawyers and accountants.
- The NSW Lobbyist Code and related memoranda that comprise the NSW regulatory regime currently do not apply to state owned corporations (SOCs), local council officials or councillors.
- The definition of "Government Representative" in the Code does not include MPs who are not ministers or parliamentary secretaries. These are included by virtue of Memorandum M2009-03 (see above).

- The Code contains no guidelines for the behaviour of Government Representatives in dealing with lobbyists (other than that a Government Representative cannot permit lobbying by a lobbyist not on the Register).
- The Code does not require public disclosure of the matters lobbied.
- The Code does not prescribe what records of the lobbying activity should be kept by the party lobbied.
- The Code does not require publication of records of lobbying activity.
- There is no requirement for lobbyists to disclose income from lobbying.
- The Code is silent on the issue of payment of success fees to lobbyists.
- Under the Code, oversight is conducted by the Director General of the Department of Premier and Cabinet rather than an independent body. Both the Director General and the Department may be subject to lobbying activity.
- The Register does not require lobbyists to disclose whether they were former politicians or members of staff for a politician.
- The onus is on the lobbyist to update details on the Register and there is no mechanism for checking the accuracy of the information provided.
- There are no penalties other than deregistration for breaches of the Code.

Issues for consideration:

10.1 Do you disagree with any of the weaknesses identified above and if so, why?

10.2 Are there any other weaknesses in the current regulatory system?

10.3 Is there evidence that any particular weaknesses are being exploited and if so by whom and to what extent?

10.4 Are there any potential weaknesses in the regulatory system applicable to those who are lobbied?

11. What are the current regulatory systems in other States and the Commonwealth?

Western Australia (https://secure.dpc.wa.gov.au/lobbyistsregister/), South Australia (www.premcab.sa.gov.au/lobbyist/), Tasmania (http://lobbyists.dpac.tas.gov.au/), Victoria (www.lobbyistsregister.vic.gov.au/lobbyistsregister/), Queensland (www.integrity.qld.gov.au/page/lobbyists/index.shtml) and the Commonwealth (http://lobbyists.pmc.gov.au/lobbyistsregister/) have lobbyist codes of conduct and registers similar to those in place in NSW. In each case the definition of "lobbyist" is similar and limited to those employed by third parties to represent their interests.

Queensland's *Integrity Act 2009* has been in force since 1 January 2010. Chapter 4 of that Act regulates lobbying activities (see Appendix 3).

Section 41 of that Act defines a lobbyist as "an entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client". There are a number of exclusions from the definition, including non-profit entities, entities constituted to represent the interests of their members (such as employer groups and trade unions) and entities carrying out a lobbying activity for the purpose of representing their own interests.

Section 42 defines a lobbying activity as "contact with a government representative in an effort to influence State or local government decision-making". There are a number of exclusions in section 42(2). Contact includes contact by email, telephone, writing and face-to-face meetings.

The Act empowers the State's Integrity Commissioner to keep a register of registered lobbyists. The register must be published on the Integrity Commissioner's website. The Act prescribes basic information that must be contained in the register. The Integrity Commissioner can refuse to register a lobbyist and may cancel registration of a lobbyist. An entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client, nor must a government representative knowingly permit lobbying by an entity that is not a registered lobbyist. The Act provides for the Integrity Commissioner, after consultation with a parliamentary committee, to approve a lobbyist code of conduct which must be complied with by lobbyists. The code must also be published on the Integrity Commissioner's website. Section 68(3) of the Act provides that:

> *The purpose of the lobbyist code of conduct is to provide standards of conduct for lobbyists*

designed to ensure that contact between lobbyists and government representatives is carried out in accordance with public expectations of transparency and integrity.

The Act bans success fees and places a penalty on lobbyists who receive or agree to receive such fees. There are also restrictions on former senior government representatives carrying out a related lobbying activity for a third party client (see Issue 18 on page 23 for fuller discussion on this point).

In Queensland the Integrity Commissioner has responsibility to administer the lobbyist register and monitor the interaction of lobbyists, government and local government. In Victoria the Register of Lobbyists is overseen by the Public Sector Standards Commissioner.

As in NSW, the South Australian and Tasmanian lobbyist registers are currently overseen by the Department of Premier and Cabinet. Tasmania is in the process of establishing its own Integrity Commission which will assume responsibility for the Register of Lobbyists.

It was recently announced in Parliament in Western Australia that legislation concerning lobbyists will be introduced in 2010. At the Commonwealth level the Special Minister of State announced a review of the lobbyist register.

Issues for consideration:

11.1 Are there any other rules, guidelines or procedures in other Australian jurisdictions that seek to regulate lobbying that should be considered?

11.2 Is it desirable that regulatory regimes be harmonised across Australian jurisdictions, how should this occur and what should be the co-ordinating authority?

12. How do regulatory systems operate in other countries?

New Zealand does not have a lobbyist register or a code of conduct specifically relating to lobbying.

Canada has gone much further than Australia and enacted legislation, the *Lobbying Act* (1985), to regulate lobbying at the federal level. A copy of the Act is at Appendix 4.

The Act establishes a Commissioner of Lobbying to oversee the operation of the Act. The Commissioner is required to develop a Lobbyists' Code of Conduct and has powers to conduct investigations and report to Parliament.

The Act regulates the conduct of "consultant lobbyists" and "in-house lobbyists (corporations and organisations)". In the case of the former, an individual who, for payment, undertakes to communicate with a public office holder, on behalf of any person in relation to any of the matters set out in section 5(1)(a) of that Act or to arrange a meeting with a public office holder, is required to file a return not later than 10 days after entering into the undertaking. The matters to be disclosed are set out in section 5(2) and include the subject matter of the communication or proposed meeting. If the individual is a former public office holder then a description of the office(s) held and the date on which the individual ceased to last hold that office must also be disclosed. There are also disclosure requirements placed on in-house lobbyists.

The term "public office holder" is broadly defined and includes an MP.

The Act includes a ban on success fees (section 10.1(1)) and restricts former public office holders from engaging in lobbying activity during a period of five years after they ceased to be a public office holder (section 10.11). The Act also sets out a number of offences.

In the United States lobbying at the federal level is regulated by the *Lobbying Disclosure Act of 1995*. The obligation to register is confined to those lobbyists who expect to receive more than a specified amount over a six-month period or organisations that expect to spend more than a specified amount in a six-month period on lobbying with their own employees. Semi-annual reports must be filed that list the issues lobbied on, the institutions contacted, and the lobbyists involved. The Act extends to lobbying of Congress, Congressional support staff, and policy making officials of the executive branch including the President, senior White House staff, Cabinet members and their deputies and independent agency administrators and their assistants.

The United Kingdom does not have a register or code of conduct for lobbyists. The regulatory system focuses on the conduct of public officials and self-regulation of lobbyists. A statutory register of lobbying activity was recommended by the Public Administration Select Committee in 2009, however this was rejected by the government. There has been significant criticism of the lack of a statutory register of lobbying activity and interests.

Issues for consideration:

12.1 Are there any specific features of regulatory systems in other jurisdictions that should be considered in NSW?

How should a regulatory scheme operate?

13. What should be the guiding principles of any regulatory scheme?

The preamble to the NSW Lobbyist Code of Conduct provides that the Code was established to ensure that contact between lobbyists and government representatives is conducted in accordance with public expectations of "transparency, integrity and honesty".

In Queensland lobbying is regulated by the *Integrity Act 2009*. One of the purposes of that Act is expressed (in section 4) to be:

> *to encourage confidence in public institutions by ... regulating contact between lobbyists and State or local government representatives so that lobbying is conducted in accordance with public expectations of transparency and integrity.*

Issues for consideration:

13.1 Is it desirable that any regulatory system be based on broad, paramount guiding principles? If so, what should these principles be?

14. If lobbyists are regulated should they be self-regulated, regulated by government or a combination of both?

In the United Kingdom the lobbying industry is self-regulated. The Sixth Report of the British House of Commons Committee on Standards in Public Life concluded that "the weight of evidence is against regulation by means of a compulsory register and code of conduct".[24] However, this does not appear to be a concern held in other jurisdictions.

In the Australian states and the Commonwealth the industry is regulated by government-imposed codes of conduct and registration requirements. In Queensland and Canada the industry is subject to regulation by legislation.

The 2009 OECD report on Lobbyists, Government and Public Trust noted that:

> *the public has a right to know how public decisions were influenced by stakeholders and interests. When there is so much at stake that competition for public goods may make it impossible to achieve compliance with lobbying policies or regulations on a voluntary basis, mandatory regulations and codes may be needed to achieve the principles of transparency, accountability and integrity in lobbying.*[25]

While noting that the most important recent moves towards securing integrity in the lobbying process have been the adoption of codes of conduct, which in some cases have been attached to statutes, the report also warned that the efficacy of lobbying legislation was an important concern:

> *Early regulations were bedevilled by unrealistic disclosure requirements which undermined the legitimacy of the legislation. In recent years new information technologies have facilitated registration, permitting refinements in reporting requirements and greatly extending the capacity of both officials and the public to monitor the activities of lobbyists. With improved facilities to actually carry out their assignments, registry officials have sought, and sometimes obtained, the powers needed to carry out investigations and to see that violations are prosecuted. The most recent developments have seen some registrars given a degree of administrative autonomy of the government of the day.*[26]

As a general principle the report noted that it is essential that lobbying regulation be perceived by those concerned to serve a useful function. The report examined the Australian Commonwealth experience where a lobbyist register was instituted in 1983 only to be abandoned in 1996 because in the view of the then new government it was "toothless and unenforceable", its provisions were ignored and access to registered information was highly restricted.

Issues for consideration:

14.1 What are the advantages and disadvantages of self-regulation?

14.2 Is there evidence that mandatory regulation is required to achieve desirable standards of transparency, accountability and fairness?

14.3 If codes of conduct are to form part of the regulatory system should compliance be mandatory and if so how should this be monitored and enforced?

14.4 If legislation is to form part of the regulatory regime what should it cover?

14.5 If legislation is to form part of the regulatory regime to what extent should the Queensland *Integrity Act 2009* and the Canadian *Lobbying Act* be considered as models and what provisions in

those Acts should be considered for adoption in NSW?

14.6 Are there any other legislative regimes that should be considered for adoption in NSW?

14.7 Do some types of lobbying activity (e.g. in relation to planning and development) pose a greater risk than others to the extent that there is a need for different levels or types of regulation?

14.8 Is there a need for different levels or types of regulation depending on the type of lobbyist involved (e.g. external contracted lobbyist, in-house lobbyist, interest group lobbyist, employee or employer group lobbyist)?

15. How should the term "lobbyist" be defined in a regulatory system?

The European Commission issued guidelines in May 2008 that any entity would be expected to register on its Register of Interest Representatives (which came into force on 23 June 2008) if the entity is engaged in "activities carried out with the objective of influencing the policy formulation and decision-making processes of European institutions".[27] This definition of lobbyists includes "public affairs consultancies, law firms, non government organisations, think-tanks, corporate lobby units ('in-house representatives') or trade associations".[28] The exclusions for the European Commission's Register of Interest Representatives are narrowed to three defined types of activities, which include activities of legal and other professional advice.[29]

On 17 March 2010 there were 2,604 interest representatives on the register. Just over half of those registered were in-house lobbyists.[30]

Canada's provisions cover consultant lobbyists (hired to communicate on behalf of a client) and in-house lobbyists employed by a corporation or other organisation. This definition is also mirrored in that of the Province of Ontario which outlines three lobbyist types (consultant, in-house (corporation) and in-house (organisation)) in the *Lobbyists Registration Act (1998)*. On 15 April 2010 there was a total of 3,537 lobbyists registered in Canada, 2,788 of whom were in-house lobbyists. This means that in-house lobbyists in Canada make up over three quarters of the registered lobbyists.[31]

The definition of "lobbyist" in the NSW Lobbyist Code captures only those engaged to represent the interest of third parties to a government representative. Assuming the proportions of consultant lobbyists and in-house lobbyists are somewhat comparable across jurisdictions, the NSW definition misses a significant proportion of those involved in lobbying.

The Commonwealth states that the purpose of its Register is to assist Ministers to ascertain the interests a lobbyist is representing. In this case only a narrow definition of lobbying is necessary. This is based on the assumption that it is simple to determine whose interests are being represented by an in-house lobbyist, peak body or trade union lobbyist.[32] This approach implies the Register is solely a tool to assist government representatives who might be lobbied. This approach ignores the importance of a register as an aid to public transparency and accountability. It also negates the rights of the public to know the level and nature of lobbying that is conducted on all issues.

Issues for consideration:

15.1 Should the definition of lobbyist extend beyond those representing third parties and include entities such as public affairs consultancies, law firms, non-government organisations, think-tanks, corporate lobby units, in-house lobbyists, and trade associations?

15.2 Who should be excluded from the definition?

15.3 What form of words should be used to describe the type(s) of lobbyist that should be subject to the regulatory system?

16. Should those who are lobbied be included in the same regulatory regime as that applying to lobbyists?

Those who are lobbied are not passive victims of irresistible forces. They choose who they meet and under what conditions. They generally know the motivations of the lobbyist, just as they may be aware of their tactics. They have control over the degree to which they disclose the content of meetings and the decisions that ensue.

It is therefore equally appropriate that rules controlling the lobbyist relationship, enforcement, and disclosure apply in part to the lobbied as well as the lobbyist. In fact, most government departments should, like the Department of Planning, have clear rules on the conduct of meetings with external lobbyists, with a second departmental staff member being present and file notes kept. There are no specific requirements placed upon MPs, staffers, local government and officers of state owned corporations.

The NSW parliamentary inquiry into land dealings at Badgerys Creek and the Commission's investigation into allegations of corruption made by or attributed to Michael McGurk highlighted weaknesses in the controls on lobbying. Staff at the NSW Department of Planning met alone and off-site with a lobbyist. The Minister was not informed of meetings with lobbyists and was thus not able to judge the Department's proposals in light of lobbying that had taken place. Recent changes made to the Department's procedures as a result of the parliamentary inquiry are designed to ensure that written records are made of meetings and telephone conversations concerning specific planning proposals and development matters and that those records are attached to the relevant reports which are to be available online. The parliamentary inquiry also recommended (Recommendation 7) that the NSW Lobbyist Code require that each minister is informed at regular intervals of contact between government representatives and registered lobbyists.

This highlights the importance of ensuring that appropriate records are maintained by those who communicate with lobbyists and that there are effective lines of communication to ensure that relevant decision-makers are aware of the extent to which lobbyists were involved. It would seem both more logical and transparent to clearly define, in the regulatory system governing lobbyists, when records should be made by public officials, what records should be made by them and who should have access to those records.

The conduct of public officials is governed by various laws, codes of conduct and guidelines, some of which make specific reference to interaction with lobbyists. However, these may not always be readily accessible to members of the public or others when examining the conduct of a public official in relation to his or her dealings or interaction with a lobbyist. Logic and transparency would suggest that rules governing the conduct of public officials in their dealings with lobbyists should be included in the same regulatory regime as that applying to the conduct of lobbyists.

Issues for consideration:

16.1. What are the advantages and disadvantages of including those who are lobbied in the same regulatory regime as that applying to lobbyists?

17. Should restrictions be placed on former ministers, ministerial staffers, MPs and public servants acting as lobbyists?

Close relationships between government officials and lobbyists can provide a mechanism for the improper influence of government decisions. A revolving door can exist through which MPs and staffers move into lobbying, and as lobbyists move back into government roles. Some jurisdictions, such as Queensland, have moved to close the revolving door, constraining the ease with which MPs and staffers can become lobbyists and the option for lobbyists to act as advisers and decision-makers in government positions.

Currently, former MPs and staffers dominate the NSW lobbying industry. As noted above, of the 272 individuals listed on the NSW register in February 2010, 49% have a background in politics, either as MPs or, more commonly, as ministerial staffers or advisers.

There may be legitimate reasons why former MPs, especially former ministers, and staffers are employed as lobbyists. Their understanding of the system and any informal processes may improve their ability to make a case to government. It is a knowledge set not generally found within private sector organisations and it is a commercial decision of organisations to obtain this knowledge by engaging a lobbyist.

Knowledge of the parliamentary system and the working of public sector agencies is likely to be accompanied by personal relationships and political influence.

The Corruption and Crime Commission reported in November 2008 on its investigation into the lobbying activities of Brian Burke and Julian Grill in relation to the then Minister Assisting the Minister for Planning and Infrastructure, Anthony McCrae. That investigation highlighted the fact that both Mr Burke and Mr Grill had significant influence in the Western Australian ALP, which at that time was in government in that state. Both had considerable networks of friends, former colleagues and factional allies within the ALP. The Corruption and Crime Commission found that Mr Burke had openly claimed to several politicians that he had been instrumental in them securing a seat in Parliament. It was noted in the report that "Mr Burke and Mr Grill also maintained links with government representatives independent of the needs of their lobbying clients. They were both active in party political decision-making, and used these political links to benefit their business where they could".[33]

The effect of pre-existing relationships or power on the lobbying process is of enough concern for many jurisdictions to restrict post separation employment. "Cooling-off" periods between state employment and lobbyist employment are designed to address this concern.

In NSW there are currently no restrictions on former MPs or staffers becoming lobbyists, although ministers must consult the Parliamentary Ethics Advisor should they consider such a position within 12 months of leaving office. This is similar to the UK and Scotland although both those jurisdictions are in the process of developing restrictions. As the current NSW Ministerial Code of Conduct is not a public document it is not known to what extent, if any, it addresses this issue.

In the Australian Commonwealth, Queensland, Victoria, South Australia, Canada and the Province of Ontario, there are specified time periods and conditions which limit former politicians and staffers from lobbying. In Australia the time periods are generally between one and two years. There are also restrictions placed on lobbying on issues worked on while employed by the state.

The South Australian Ministerial Code of Conduct (2002) requires incoming ministers to provide a written undertaking to the Premier that they will not, for a two-year period after ceasing to be a minister, take employment with an organisation or business with which they had official dealings as a Minister in their last 12 months in office. Similar restrictions are set out in the South Australian Government's Professional Lobbyist Code: ministers are restricted for two years after they cease to hold office from engaging in lobbying activities related to their official dealings in their last 18 months in office. A 12-month restriction is also placed on ministerial staff employed under South Australia's *Public Sector Management Act 2009*.

The Victorian Government's Professional Lobbyist Code of Conduct (2009) prohibits former ministers from engaging in lobbying activities related to their former portfolio for 18 months after they leave office. The Victorian *Public Administration Act 2004* prohibits ministerial staffers engaging in lobbying activities relating to any matter with which they had official dealings in their last 12 months in office for a period of 12 months after they cease their employment.

Section 70(1) of the Queensland *Integrity Act 2009* provides that:

> *For 2 years after becoming a former senior government representative, the former senior government representative must not carry out a related lobbying activity for a third party client.*

A "former senior government representative" is a person who was the Premier or another minister, a parliamentary secretary, a councillor, a public sector officer, who is a chief executive, senior executive or senior executive equivalent, a ministerial staff member, or a parliamentary secretary staff member. A "related lobbying activity" for a former senior government representative is defined as "a lobbying activity relating to the former senior government representative's official dealings as a government representative in the 2 years before becoming a former senior government representative".

Commonwealth ministerial post-separation employment is managed by the *Commonwealth of Australia Standards of Ministerial Ethics* (2007). This specifically states that ministers are required to undertake that, for an 18-month period after ceasing to be a minister, they will not lobby, advocate or have business meetings with members of the government, Parliament, public service or defence forces on any matters on which they have had official dealings as minister in their last 18 months in office.

Commonwealth ministerial staff and consultants and ministers' electorate officers are prohibited for a 12-month period from engaging in lobbying activities as third party lobbyists in relation to any matter that they had official dealings with in their last 12 months of employment. The Code of Conduct for Ministerial Staff, however, does not restrict former senior ministerial staff from lobbying on behalf of companies that employ them after they cease their employment with the government.

Canada addresses the issue in the *Conflict of Interest Act (2006)*. A five-year ban on lobbying activities is imposed on designated public office holders, which includes ministerial staff. A one-year ban is imposed on ministerial staff after leaving office for activities other than lobbying that relate to their former position. Ontario, in its *Public Service of Ontario Act, 2006*, Ontario Regulation 382/07 and 381/07, imposes a 12-month ban on former public servants lobbying public servants who work in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant. A monetary penalty of up to $25,000 (Canadian) may be imposed on the former public servant should they knowingly place the public office holder in a position of real or potential conflict of interest.

Issues for consideration:

17.1 Should former ministers, ministerial staff, MPs and other public officials be restricted from acting as lobbyists for a period of time after leaving public sector employment and if so for how long?

17.2 Should former ministers, ministerial staff, parliamentarians, and other public officials be restricted from lobbying in relation to matters they dealt with when in the public sector?

17.3 Should former ministers, ministerial staff, parliamentarians, and other public officials be restricted from lobbying public officials they dealt with when they were in the public sector?

17.4 Should any other restrictions be placed on former ministers, ministerial staff, parliamentarians, and other public officials acting as lobbyists?

17.5 How should any restrictions be monitored and enforced?

18. Should lobbyists be prohibited from organising or arranging the organising of fundraising activities and campaigns for MPs, local councillors political candidates or political parties?

The Queensland Crime and Misconduct Commission's Response to the Queensland Government Green Paper *Integrity and Accountability in Queensland* examined this issue and recommended (in Recommendation 8) that persons registered as lobbyists be prohibited from organising or arranging the organisation of fundraising activities for MPs, political candidates or parties.[34]

The Crime and Misconduct Commission noted that concerns about political fundraising activities have given rise to considerable comment in recent times. It cited as an example the conduct of Julian Grill in Western Australia as reported in the Corruption and Crime Commission's *Report on the investigation of alleged public sector misconduct in connection with the activities of lobbyists and other persons: The Hon Anthony David McRae MLA and Mr Rewi Edward Lyall* (2008). In that matter the Corruption and Crime Commission recorded a conversation between Mr Grill and his client in which Mr Grill advised his client that he and Brian Burke would organise a fund raiser for a particular politician who, it was claimed by Mr Grill, was supportive of the client's interests. The Crime and Misconduct Commission noted that:

> *In this instance, the fundraising function was organised for a candidate by a lobbyist. The situation clearly contains a strong potential for misconduct to occur, or for the perception of misconduct to arise. Comparable serious risks would arise were the candidate to organise a fundraising event and make direct requests for money from businesses and individuals. The risk is less direct, but nonetheless still present where the function is organised by a political party as a general fundraising event.*[35]

In its report on the investigation, the Corruption and Crime Commission noted that "Assisting Parliamentarians and candidates with fund-raising was doubly rewarding for Mr Burke and Mr Grill as lobbyists and consultants. Not only might the recipient of the funds be inspired to feel gratitude towards them, it was one of the most effective methods Mr Burke and Mr Grill had for introducing their clients to decision-makers".[36] In this particular matter the Corruption and Crime Commission was satisfied that a minister, who had made but not communicated a decision favourable to the interests of Mr Burke's and Mr Grill's client, telephoned Mr Grill with the purpose of discussing his fundraising plans and secure the assistance of Mr Grill and Mr Burke for those plans. The Corruption and Crime Commission found that the minister had deliberately linked the exercise of his ministerial power to approve a development to gaining assistance for his political fundraising activities.

Issues for consideration:

18.1 What if any restrictions should be placed on lobbyists organising or arranging the organising of fund raising activities and campaigns for MPs, local councillors, political candidates, or political parties?

18.2 How should any restrictions be monitored and enforced?

19. Should lobbyists be prohibited from serving on government committees or boards?

The NSW Lobbyist Code does not address the appointment of lobbyists to government boards. However, following recommendations from the 2009 parliamentary inquiry into land dealings and planning decisions at Badgerys Creek, the then Premier Nathan Rees, stated "the Government will ban lobbyists from appointment to all public boards and committees"[37].On 24 November, he announced in the Parliament that all lobbyists had been contacted and advised that they must "resign as a lobbyist and retain the board seat or vice versa" [38].The Commission has been unable to find any other records referring to this ban, or any indication as to how it is operating or being enforced.[39]

In August 2009, following negative publicity concerning the possible role of former Labor MPs in the South-East Queensland Regional Plan, Queensland Premier

the Hon Anna Bligh MP announced a ban on registered lobbyists serving on government-appointed boards or in other significant appointments paid for by the Queensland Government.[40]

The Victorian Government Professional Lobbyist Code of Conduct notes the potential for conflicts of interest to arise and at 4.4 states:

> *A Lobbyist who holds an appointment to any Government Board or Committee must also ensure that they comply with the integrity provisions of the Public Administration Act 2004, public sector codes of conduct and take guidance from the Public Sector Standards Commissioner's Conflict of Interest Framework.*[41]

Issues for consideration:

19.1 Should lobbyists be banned from holding government-funded positions?

19.2 If not banned from holding such positions, what controls, if any, should be put in place to manage conflicts of interest and how should these be overseen?

20. Should giving gifts or other benefits be banned?

The giving of gifts or other benefits poses a corruption risk as they may influence or be perceived to influence the behaviour and decision-making of the recipient. Gifts or other benefits (such as free travel) might be provided to a decision-maker not for the explicit purpose of obtaining a favourable decision in any particular matter but for the purpose of developing an ongoing relationship. The establishment of a close relationship by these means may place the lobbyist in an advantageous position when it comes to dealing with the decision-maker at a later time. In the United States, section 206 of the *Honest Leadership and Open Government Act* (2007) prohibits the provision of gifts or travel by registered lobbyists to members of congress and to congressional employees.[42] Section 203 of the Act also requires registered lobbyists to file semi-annual reports including certification that the filer understands the gift and travel rules of both the House and the Senate and has observed them. The *Rules of the House of Representatives, one hundred eleventh congress* contains a reciprocal ban on Members, Delegates, Resident Commissioners, officers, or employees of the House accepting gifts from registered lobbyists.[43]

Issues for consideration:

20.1 Should lobbyists be prohibited from giving gifts or other benefits to those they lobby?

21. What information should be disclosed by lobbyists?

Disclosure by lobbyists allows the general public, those lobbied, the media and Parliament to form an opinion as to the appropriateness of lobbying activities.

The NSW Lobbyist Code requires that the following information be included in the Register of Lobbyists:

a) *the business registration details of the Lobbyist, including names of owners, partners or major shareholders as applicable;*

b) *the names and positions of persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities;*

c) *the names of third parties for whom the Lobbyist is currently retained to provide paid or unpaid services as a Lobbyist; and*

d) *the names of persons for whom the Lobbyist has provided paid or unpaid services as a Lobbyist during the previous three months.*

While this provides for disclosure of details about the lobbyist, their employees and clients, it does not require disclosure of who was lobbied, when the lobbying occurred or details of what was lobbied. Ideally, third parties should be able to determine who lobbied, for whom, for what purpose, and, where applicable, what decisions have been made.

The OECD report notes that it is not difficult to disguise a specific interest behind a real or dummy interest group. It is therefore helpful if disclosure includes identification of the beneficiaries of lobbying or those who are directing the activity. To this end, financial disclosure can enhance overall transparency. The OECD report suggests that those interested should be able to see how much money is spent overall on lobbying, with the option of being able to break down that expenditure by relevant policy area, industry sector or type of lobbying agent.

The OECD report makes the point that financial disclosure can assist in identifying misleading and unethical lobbying:

> *Aside from helping to expose misleading lobby campaigns, financial disclosure can also help identify unethical lobbying practices. For example, data from the US lobby disclosure system helped to trigger the*

investigations into the scandal around lobbyist Jack Abramoff.[44]

The OECD report notes that the United States' *Federal Regulation of Lobbying Act* (1946) (now replaced by the 1995 *Lobbying Disclosure Act*) required disclosure of detailed financial information, including:

- the lobbyist's salary and duration of employment,
- how much the lobbyist was paid for expenses and the nature of those expenses,
- quarterly updating reports specifying funds received or spent and to whom and for what purpose they were paid,
- more detailed reports identifying each person who contributed $500 or more to the lobbyist or the lobbyist's organisation, the total sum of contributions for the year and details of expenditure.

Disclosure requirements in NSW are similar to those in other Australian jurisdictions – the Commonwealth, Victoria, South Australia and Western Australia.

The Queensland register distinguishes between current clients and those for whom the lobbyist has provided services in the past 12 months. It also includes information indicating whether current clients are paying the lobbyist or receiving services free of charge. In addition, lobbyists registered in Queensland are required to declare whether they are "former senior government representatives" and the date they ceased to hold this post.

Canada and the Province of Ontario have extensive disclosure requirements. In addition to the business details of the lobbying company, these registers provide the full business contact details of the lobbyist and of their clients. They provide information about the ownership structure of the client companies including any parent companies and/or subsidiaries that may benefit from the lobbying activities and whether the lobbying company receives any government funding.

Lobbyists active in Canada and the Province of Ontario are also required to provide detailed returns concerning their activities. For each client, they must disclose the subject matter of the lobbying activity, which government departments or ministries the lobbyist has contacted, and the lobbying techniques used. In Ontario, from 1 April 2010, lobbyists are required to identify the appropriate individual ministry and/or agency when registering their lobbying activities, in order to improve the transparency of its registration process and "to provide the public with more precise information about where lobbyists are focusing their work"[45]. The Canadian register also keeps monthly returns detailing all meetings arranged by lobbyists with designated public office holders and the matters discussed at these meetings.

A disclosure regime that is too complex, however, may pose significant problems.

First, the type of information released may not be useful. The OECD report notes that regulators must choose bewteen "accepting broad descriptions of lobbyists' objectives or requiring them to provide more precise details about the specific legislation, programme, policy or other government activity that they are concerrned with".[46] If the former is chosen, the information provided may be too general to reveal the real purpose of the lobbying activities.

Secondly, if more detailed information is required the amount of detail disclosed can be overwhelming. Being swamped with detail does not improve transparency.

Thirdly, the OECD report notes that regulatory thickets and onerous disclosure requirements can lead to reduced compliance. As compliance rates drop opportunity is created for less scrupulous lobbyists to not report questionable activities.[47]

Fourthly, enforcement and checking of complex disclosure regimes may be expensive.

Disclosure only contributes to transparency and oversight if the information is accessible and able to be analysed. When large amounts of information are disclosed, but not presented appropriately, it provides a formidable barrier to identifying patterns or relationships between activities and decisions. Excessive disclosure can swamp attempts at analysis. For transparency to be an effective oversight mechanism the disclosure needs to be timely, accessible and able to be subjected to reasonable analysis.

The UK Parliament's 2009 report on lobbying found that a register:

- should include only information of genuine potential value to the general public, to others who might wish to lobby government, and to decision-makers themselves.
- should include so far as possible information which is relatively straightforward to provide – ideally, information which would be collected for other purposes in any case.[48]

Issues for consideration:

21.1 Should lobbyists be required to disclose to a regulator who they lobbied, when they conducted the lobbying, and the matter on which they lobbied?

21.2 What, if any, financial information should lobbyists be required to disclose to a regulator?

21.3 Is there any other information lobbyists should disclose about themselves, their clients or their activities?

21.4 When should lobbyists be required to disclose information to a regulator? Should there be different timelines for disclosure depending on the type of information disclosed?

21.5 To what extent should information disclosed by lobbyists be made public?

21.6 Are there particular types of information that should be publicly disclosed to make the activities of lobbyists more resistant to corrupt conduct?

21.7 At what stage should information be made public?

21.8 What format would best allow publicly disclosed information to be easily accessed, compared and analysed?

22. What information should be disclosed by those lobbied?

The NSW Lobbyist Code does not require those public officials who are lobbied to create or keep any particular records of the lobbying activity. As outlined on page 16, the Department of Planning's Meeting and Telephone Communications Code of Practice provides a more detailed and rigorous regime concerning the conduct of meetings and telephone discussions. Written records of telephone conversations and meetings must be made. Agreed outcomes must be noted at the conclusion of the meeting and signed and certified as accurate. Disclosure of details including the name of the lobbyist and associated organisation must be made available as an attachment to the relevant reports, which are available online.

Some additional information may be accessible through the *Freedom of Information Act 1989* or the *Government Information (Public Access) Act 2009* (which is due to commence on 1 July 2010).

However the media in NSW has reported a number of complaints of withholding information as "commercial in confidence" that may be associated with lobbying. These include public road closures following completion of the Cross City and Lane Cove tunnels, the retaining of Sydney Ferries in public hands, the letting of the contract for the Manly fast ferry service, the arrangement with Lend Lease around the Barangaroo redevelopment and recently the sale of NSW Lotteries. Media reports also reflect a suspicion that claims of "cabinet in confidence" may be exploited to deny freedom of information requests.

The 2009 OECD report emphasised that public officials should conduct their communications with lobbyists in a way that bears the closest public scrutiny.

Enhanced transparency could be achieved:

> *in public decision-making processes by disclosing information on communication with lobbyists and information received. This could be achieved by, for example, providing an indicative list of interest representation consulted in the formulation of public decisions and a summary of information received from lobbyists in the legislation process.* [49]

The report recommended conflicts of interest be avoided by reporting relevant private interests that might create actual, potential or apparent conflicts of interest.

Issues for consideration:

22.1 Should public officials who are lobbied by a lobbyist be required to record information about that activity?

22.2 If so, what information should be recorded and how should it be recorded?

22.3 At what stage in the lobbying process should public officials be required to disclose information and to whom should they disclose it? Should there be different timelines for disclosure depending on the type of information disclosed?

22.4 To what extent should information disclosed by public officials be made public?

22.5 Are there particular types of information that should be publicly disclosed to make the activities of lobbyists and the public officials who are lobbied more resistant to corrupt conduct?

22.6 Would it be possible to impose a uniform format for public disclosure so that information recorded by public officials can be more easily compared and analysed?

22.7 At what stage should information be made public?

22.8 How should the public be able to access any publicly available information?

23. Should lobbyists be able to charge a success fee?

Although the payment of commissions or other success fees forms a regular part of business practice, in the case of lobbying success fees pose a particular corruption risk as their existence may encourage lobbyists to disregard ethical standards or engage in corrupt conduct.

The NSW Lobbyist Code does not ban success fees. The Queensland *Integrity Act 2009* specifically prohibits the payment of success fees to lobbyists. The Canadian *Lobbying Act* bans contingency (success) fees. The Province of Ontario requires success fees to be disclosed in returns lodged by lobbyists.

Recent media reports indicate the Commonwealth is considering banning success fees as part of its review of the Commonwealth lobbyist code of conduct.

Issues for consideration:

23.1 To what extent is payment of success fees prevalent in NSW?

23.2 Do success fees pose a potential corruption risk?

23.3 Are success fees likely to create perceptions of corruption?

23.4 Should payment of success fees to lobbyists be banned?

23.5 How should any ban be monitored and enforced?

23.6 If payment of success fees is not banned should they be subject to public disclosure?

24. What roles are there for training and education and who should undertake those roles?

The NSW Lobbyist Code does not contain any provision for training of staff in its application. However, there is an e-learning module to accompany the Code available on the Department of Premier and Cabinet website. The Department of Planning Meeting and Telephone Communications Code of Practice provides that officers attending meetings with lobbyists must complete this e-learning module to ensure awareness and understanding of the Code of Practice and the NSW Lobbyist Code.

The Canadian *Lobbying Act (1985)* establishes a Commissioner of Lobbying whose duties and functions include developing and implementing educational programs to foster public awareness of the requirements of the Act, particularly on the part of lobbyists, their clients and public office holders.

Issues for consideration:

24.1 Should training be available or mandatory for public officials, and if so what matters should be covered by the training and who should be responsible for providing it?

24.2 Should training be available or mandatory to lobbyists, and if so what matters should be covered by the training and who should be responsible for providing it?

25. How should any regulatory regime be overseen?

Oversight bodies vary across jurisdictions in:

- their independence
- who they oversight
- their powers, and
- the penalties available.

In most jurisdictions a position is made accountable for overseeing lobbying. These positions are responsible for registering lobbyists, monitoring their suitability to stay on the register, removing lobbyists from the register if they have not met the relevant standards, and in some cases, taking further action against problem lobbyists.

The major differences between jurisdictions are the independence of the oversight bodies, their powers and extent of funding. An oversight body that is independent, powerful and well funded could be expected to be more effective than one that is not.

In NSW the overseeing of lobbying sits with the Director General of the Department of Premier and Cabinet. Officers of that Department, including the Director General, may be subject to lobbying activity. The Director General relies on reports provided by the lobbied to detect breaches. Memorandum M2009-3 states that NSW officials must report breaches of the Lobbyist Code.

The effectiveness of the reporting of breaches by the lobbied was brought into question recently. The Australian Government's January 2009 response to the 2008 Senate Standing Committee on Finance and Public Administration Report noted that, "to date, no lobbyist has been refused registration or removed from the Register at the discretion of the Cabinet Secretary".[50] The position in NSW is not known.

In Queensland the Integrity Commissioner has responsibility for keeping the lobbyist register and registering or de-registering lobbyists.

In Canada the lobbying regime is enforced by an independent Commissioner of Lobbying. Under previous legislation oversight was conducted by a civil servant in the executive branch of government. According to the OECD report, the official was ultimately subject to the pressures that ministers and other senior officials could bring to bear.

Sanctions range from cancellation of registration (NSW) to the imposition of fines (Canada) and criminal prosecution. Public reporting of breaches can act as a deterrent to others as well as providing public confidence that the system is working.

Issues for consideration:

25.1 Who should be responsible for overseeing lobbying?

25.2 Should the oversight body be independent?

25.3 What powers should the oversight body have?

25.4 What sanctions should apply for breaches of the regulatory regime?

25.5 How should sanctions be imposed?

25.6 Who should impose/enforce sanctions?

26. What mechanisms should exist to regularly review the functioning and effectiveness of the regulatory regime?

The OECD report noted that "in order to meet the growing expectations of society for good governance, governments should review the functioning of lobbying policies or regulations on a regular basis and make necessary adjustments in light of experience with implementation".[51]

The NSW Lobbyist Code does not contain any provision for regular review. The Department of Planning Meeting and Telephone Communications Code of Practice provides that an external independent compliance audit will be conducted annually.

Issues for consideration:

26.1 Who should be responsible for reviewing the regulatory regime?

26.2 Should reviews be conducted on a mandated regular basis or only if a particular issue warranting review is identified?

Endnotes

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Appendix 1: NSW Government Lobbyist Code of Conduct*

1. Preamble

Free and open access to the institutions of government is a vital element of our democracy.

Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant Government Representatives.

In performing this role, there is a public expectation that Lobbyists will be individuals of strong moral calibre who operate according to the highest standards of professional conduct.

The Government has established the Lobbyist Code of Conduct to ensure that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

2. Application

2.1 The NSW Government Lobbyist Code of Conduct has application through the Codes of Conduct that apply to Ministers, Ministerial Staff Members, senior public servants and public sector agencies, and through a Premier's Memorandum in relation to Parliamentary Secretaries.

2.2 The NSW Government Lobbyist Code of Conduct creates no obligation for a Government Representative to have contact with a particular Lobbyist or Lobbyists in general.

2.3 The NSW Government Lobbyist Code of Conduct does not serve to restrict contact in situations where the law requires a Government Representative to take account of the views advanced by a person who may be a Lobbyist.

3. Definitions

"Director General" means Director General of the Department of Premier and Cabinet.

"Lobbyist" means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative. "Lobbyist" does not include:

(a) an association or organisation constituted to represent the interests of its members;

(b) a religious or charitable organisation; or

(c) an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

"Lobbyist's Details" means the information described under clause 5.1.

"Government Representative" means a Minister, Parliamentary Secretary, Ministerial Staff Member, or person employed, contracted or engaged in a public sector agency (which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*) other than staff employed under section 33 of the *Public Sector Employment and Management Act 2002*.

"Ministerial Staff Member" means a person employed under section 33 of the *Public Sector Employment* and *Management Act 2002* to carry out work for a Minister or a Parliamentary Secretary; a person seconded to the Department of Premier and Cabinet under section 86 of the *Public Sector Employment and Management Act 2002*

* Accessed at http://www.dpc.nsw.gov.au/prem/lobbyist_register/code_of_conduct.

and assigned to a Minister's office; or a person otherwise placed, contracted or engaged in a Minister's office or assigned to a Parliamentary Secretary.

4. Contact between Lobbyists and Government Representatives

4.1 A Government Representative shall not at any time permit lobbying by:

(a) a Lobbyist who is not on the Register of Lobbyists;

(b) any employee, contractor or person engaged by a Lobbyist to carry out lobbying activities whose name does not appear in the Lobbyist's Details noted on the Register of Lobbyists in connection with the Lobbyist;

(c) any Lobbyist or employee, contractor or person engaged by a Lobbyist to carry out lobbying activities who, in the opinion of the Government Representative, has failed to observe any of the requirements of clause 4.3.

4.2 Contact with a Government Representative for the purposes of lobbying activities by a Lobbyist includes:

(a) telephone contact;

(b) electronic mail contact;

(c) written mail contact; and

(d) face to face meetings.

4.3 When making an initial contact with a Government Representative about a particular issue on behalf of a third party for whom the Lobbyist has provided paid or unpaid services, the Lobbyist must inform the Government Representative:

(a) that they are a Lobbyist or employee, contractor or person otherwise engaged by the Lobbyist who is currently listed on the Register of Lobbyists;

(b) that they are making the contact on behalf of a third party;

(c) the name of the third party; and

(d) the nature of that third party's issue.

5. Register of Lobbyists

5.1 There shall be a Register of Lobbyists which shall contain the following information:

(a) the business registration details of the Lobbyist, including names of owners, partners or major shareholders as applicable;

(b) the names and positions of persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities;

(c) the names of third parties for whom the Lobbyist is currently retained to provide paid or unpaid services as a Lobbyist; and

(d) the names of persons for whom the Lobbyist has provided paid or unpaid services as a Lobbyist during the previous three months.

5.2 A Lobbyist wishing to have contact with a Government Representative for the purposes of lobbying activities may apply to the Director General to have the Lobbyist's Details recorded in the Register of Lobbyists.

5.3 The Lobbyist shall submit updated Lobbyist's Details to the Director General in the event of any change to the Lobbyist's Details as soon as practicable but no more than 10 business days after the change occurs.

5.4 The Lobbyist shall provide to the Director General within 10 business days of 30 September, 31 January and 31 March of each year, confirmation that the Lobbyist's Details are up to date.

5.5 The Lobbyist shall provide to the Director General, within 10 business days of 30 June 2009 and each year thereafter, confirmation that the Lobbyist's Details are up to date together with statutory declarations for all persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities on behalf of a client, or where the Lobbyist is a person, a statutory declaration by that Lobbyist, as required under paragraph 8.1.

5.6 The registration of a Lobbyist shall lapse if the confirmations and updated statutory declarations are not provided to the Director General within the time frames specified in clauses 5.4 and 5.5.

6. Access to the Register of Lobbyists

6.1 The Register of Lobbyists shall be a public document.

6.2 The Director General shall ensure that the Register of Lobbyists is readily accessible to members of the public.

7. Principles of Engagement with Government Representatives

7.1 Lobbyists shall observe the following principles when engaging with Government Representatives:

(a) Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;

(b) Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;

(c) Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions; and

(d) Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.

8. Registration

8.1 The Director General shall not include on the Register of Lobbyists the name of an individual unless the individual provides a statutory declaration to the effect that he or she:

(a) has never been sentenced to a term of imprisonment of 30 months or more, and

(b) has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud.

8.2 Subject to clause 8.1, the Director General may at his or her discretion:

1) refuse to accept part or all of an application to be placed on the Register of Lobbyists; or

2) remove from the Register of Lobbyists part or all of the details of a Lobbyist

if, in the opinion of the Director General:

(a) any prior or current conduct of the Lobbyist or the Lobbyist's employee, contractor or person otherwise engaged to provide lobbying services for the Lobbyist has contravened any of the terms of this Code; or

(b) any prior or current conduct of the Lobbyist or association of the Lobbyist with another person or organisation is considered to be inconsistent with general standards of ethical conduct; or

(c) the registration details of the Lobbyist are inaccurate; or

(d) the Lobbyist has not confirmed the Lobbyist's Details in accordance with the requirements of clause 5.4 and/or clause 5.5; or

(e) there are other reasonable grounds for doing so.

Appendix 2: Planning NSW Meeting and Telephone Communications – Code of Practice*

Increased opportunity for public involvement and participation in environmental planning and assessment is a key objective of the *Environmental Planning and Assessment Act 1979*.

Public and stakeholder participation in policy and development decisions is an essential element to ensuring decisions are made in an open and transparent manner. Equally important is ensuring the Department's policy and procedural framework is designed to enable openness in decision making whilst protecting the integrity of the planning system and Departmental staff.

In undertaking their functions, Departmental staff frequently meet with a variety of stakeholders, in particular local government, industry associations, environmental and community representatives (both as associations and as individuals) and development proponents. On relatively fewer occasions meetings are held with registered lobbyists. This is part of the planning process and consistent with Government policy.

The Department has prepared this Code of Practice to guide staff in their interactions with development proponents, lobbyists, community groups and opponents of any planning or development matter. This Code of Practice must be read in conjunction with the NSW Government's Lobbyist Code of Conduct and Premier's Memorandum 2006-01 Guidelines for Managing Lobbyists and Corruption Allegations made during Lobbying. The Director General has instructed that all staff in the Department be trained on the Government Lobbyist Code of Conduct.

The provisions of the Code of Practice must be adhered to at all times by all staff of the Department, including consultants and contractors. The Code will apply equally to any person making representations on specific proposals and/or development matters (including public sector agencies which are proponents or objectors in planning matters) irrespective of whether they are a registered or unregistered lobbyist, proponent or objector.

Prior to confirming any meeting, staff will need to determine whether individuals / organisations attending meetings are registered on the Government's Lobbyist Register, as updated – this register is available on the Department of Premier and Cabinet Website.

The Deputy Directors General and the Executive Director, Corporate Governance & Policy will be fully accountable for the implementation of the Code of Practice in their respective Office.

Continuous and close control of the Code and its procedures by management at all levels is required, and in that regard, the Executive Director, Corporate Governance & Policy will ensure an independent audit of the Code and its implementation on a regular basis.

In addition, the Executive Director, Corporate Governance & Policy will provide the Planning Board with an external independent audit on implementation on an annual basis and to consult with the Department's front line staff who are expected to comply fully with the requirements of the Code of Practice.

To assist staff, record of meeting and telephone discussion templates have been prepared and are available on the Department's intranet. These should be used where relevant to ensure procedures are accurately followed and records maintained.

The Department of Planning will disclose all meeting or telephone interactions with registered lobbyists (including names of the people, organisations they represent and the number of meetings or phone calls) in relation to any specific planning proposals and/or development matters in an attachment to the relevant reports which are available online.

Staff attending meetings with lobbyists must have completed the eLearning module (available on the Department of Premier and Cabinet website). Awareness and understanding of the Government's Lobbyist Code of Conduct and this Code of Practice will now form part of the Department's:

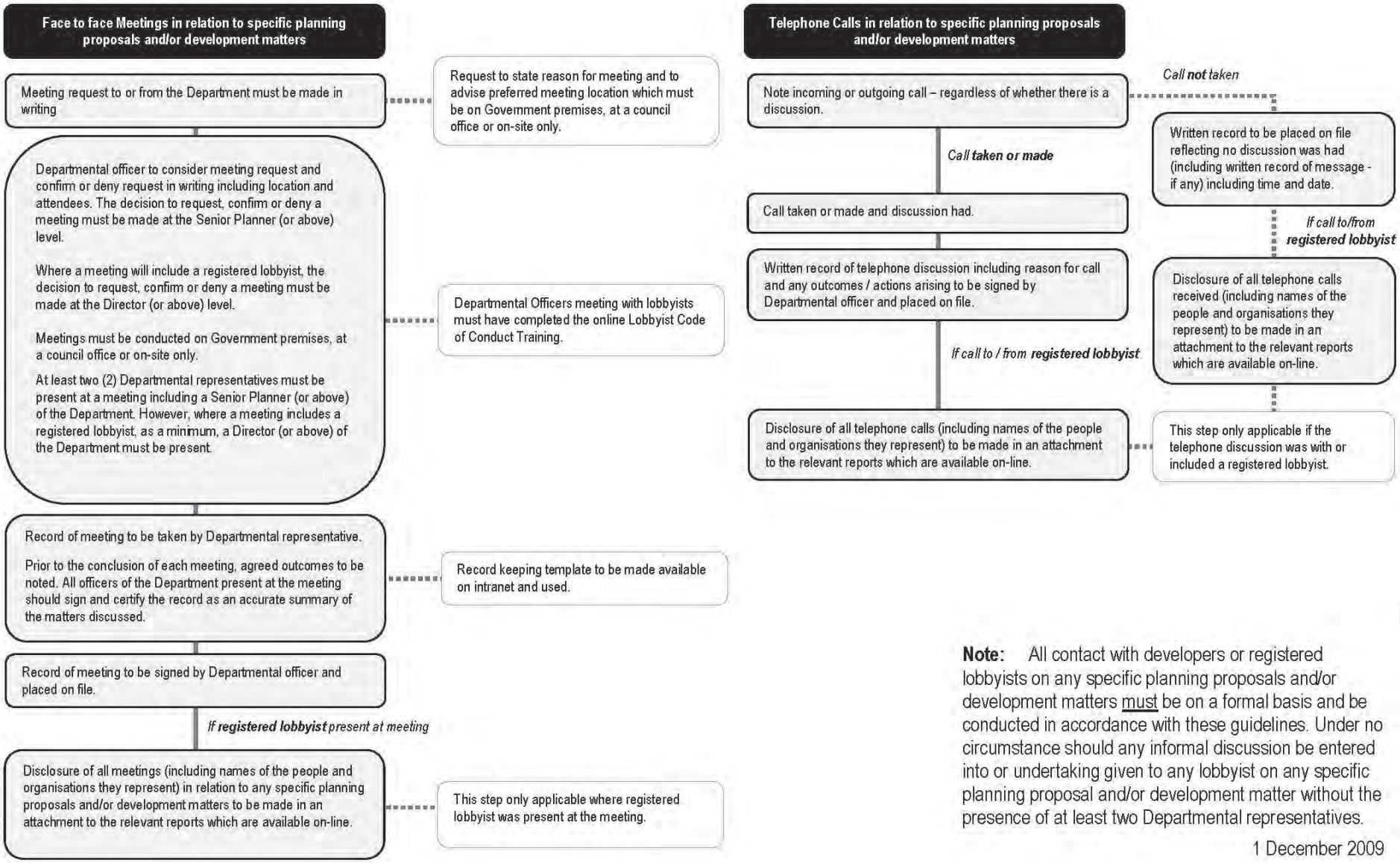
- recruitment selection process
- induction program
- ongoing training and capacity building
- performance monitoring of individuals
- procurement processes.

Should you have any questions, or if you require any assistance or advice in relation to this Code of Practice, please call the Office of Corporate Governance and Policy on 9228 6137.

1 December 2009

* Accessed at http://www.planning.nsw.gov.au/SettingtheDirection/Corporatepublications/tabid/95/language/en-US/Default.aspx#cop.

NSW GOVERNMENT | Planning



Note: All contact with developers or registered lobbyists on any specific planning proposals and/or development matters must be on a formal basis and be conducted in accordance with these guidelines. Under no circumstance should any informal discussion be entered into or undertaking given to any lobbyist on any specific planning proposal and/or development matter without the presence of at least two Departmental representatives.

1 December 2009

Face to Face Meetings in relation to specific planning proposals and/or development matters

1. Meeting request to or from the Department must be made in writing (Request to state reason for meeting – and to advise preferred meeting location which must be on Government premises, at a council office or on-site only).
2. Departmental officer to consider meeting request and confirm or deny request in writing including location and attendees. The decision to request, confirm or deny a meeting must be made at the Senior Planner (or above) level.
   - Where a meeting will include a registered lobbyist, the decision to request, confirm or deny a meeting must be made at the Director (or above) level.
   - Meetings must be conducted on Government premises, at a council office or on-site only.
   - At least two (2) Departmental representatives must be present at a meeting including a Senior Planner (or above) of the Department. However, where a meeting includes a registered lobbyist, as a minimum, a Director (or above) of the Department must be present.
3. Record of meeting to be taken by Departmental representative. Prior to the conclusion of each meeting, agreed outcomes to be noted. All officers of the Department present at the meeting should sign and certify the record as an accurate summary of the matters discussed.
4. Record of meeting to be signed by Departmental officer and placed on file.

If registered lobbyist present at meeting

5. Disclosure of all meetings (including names of the people and organisations they represent) in relation to any specific planning proposals and/or development matters to be made in an attachment to the relevant reports which are available online.

Telephone Discussions in relation to specific planning proposals and/or development matters

1. Note incoming or outgoing call – regardless of whether there is a discussion.

Either

2A. *If call not taken* – Written record to be placed on file reflecting no discussion was had (including written record of message - if any) including time and date.

2B. *If call to/from registered lobbyist not taken* – Disclosure of all telephone calls received (including names of the people and organisations they represent) to be made in an attachment to the relevant reports which are available online.

Or

3A. *If call taken / made and discussion had*

Written record of telephone discussion including reason for call and any outcomes / actions arising to be signed by Departmental officer and placed on file.

3B. *If call taken / made and discussion had with registered lobbyist*

Disclosure of all telephone calls (including names of the people and organisations they represent) to be made in an attachment to the relevant reports which are available online.

Note: All contact with developers or registered lobbyists on any specific planning proposals and/or development matters must be on a formal basis and be conducted in accordance with these guidelines. Under no circumstance should any informal discussion be entered into or undertaking given to any lobbyist on any specific planning proposal and/or development matter without the presence of at least two Departmental representatives.

1 December 2009

Appendix 3: *Integrity Act 2009* (Queensland)*

Chapter 4 Regulation of lobbying activities

Part 1: Core concepts

41 Meaning of *lobbyist* and related concepts

(1) A ***lobbyist*** is an entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client.

(2) However, none of the following entities is a lobbyist—

(a) a non-profit entity;

(b) an entity constituted to represent the interests of its members;

Examples—

- an employer group
- a trade union
- a professional body, for example, the Queensland Law Society

(c) members of trade delegations visiting Queensland;

(d) an entity carrying out incidental lobbying activities;

(e) an entity carrying out a lobbying activity only for the purpose of representing the entity's own interests.

(3) Also—

(a) an employee or contractor of, or person otherwise engaged by, an entity mentioned in subsection (2)(a) to (d) is not a lobbyist in relation to contact carried out for the entity; and

(b) an employee of an entity mentioned in subsection (2)(e) is not a lobbyist in relation to contact carried out for the entity.

(4) A ***non-profit entity*** is an entity that is not carried on for the profit or gain of its individual members.

Examples of entities that may be non-profit entities—

- a charity, church, club or environmental protection society

(5) An entity carries out ***incidental lobbying activities*** if the entity undertakes, or carries on a business primarily intended to allow individuals to undertake, a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services.

Examples—

- an architect or architectural practice
- an engineer or engineering practice
- a lawyer or legal practice
- an accountant or accountancy practice

42 Meaning of *lobbying activity* and *contact*

(1) ***Lobbying activity*** is contact with a government representative in an effort to influence State or local government decision-making, including—

(a) the making or amendment of legislation; and

(b) the development or amendment of a government policy or program; and

* Accessed at http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf on 11 March 2010.

(c) the awarding of a government contract or grant; and

(d) the allocation of funding; and

(e) the making of a decision about planning or giving of a development approval under the *Sustainable Planning Act 2009*.

(2) However, the following contact is not a lobbying activity—

(a) contact with a committee of the Legislative Assembly or a local government;

(b) contact with a member of the Legislative Assembly, or a councillor, in his or her capacity as a local representative on a constituency matter;

(c) contact in response to a call for submissions;

(d) petitions or contact of a grassroots campaign nature in an attempt to influence a government policy or decision;

(e) contact in response to a request for tender;

(f) statements made in a public forum;

(g) responses to requests by government representatives for information;

(h) incidental meetings beyond the control of a government representative;

Example—

A Minister speaks at a conference and has an unscheduled discussion with a lobbyist who is a conference participant.

(i) contact on non-business issues, for example, issues not relating to a client of the lobbyist or the lobbyists' sector.

(3) ***Contact*** includes telephone contact, email contact, written mail contact and face-to-face meetings.

43 Meaning of *lobbyists register* and *lobbyists code of conduct*

(1) The ***lobbyists register*** is the register, kept under section 49, of lobbyists registered under this Act.

(2) The ***lobbyists code of conduct*** is the code, approved under section 68, of conduct for lobbyists in relation to lobbying activities.

44 Meaning of *government representative*

Each of the following people is a ***government representative***—

(a) the Premier or another Minister;

(b) a Parliamentary Secretary;

(c) a councillor;

(d) a public sector officer;

(e) a ministerial staff member;

(f) a parliamentary secretary staff member.

45 Meaning of *former senior government representative*

A person is a ***former senior government representative*** if the person—

(a) was 1 of the following people—

(i) the Premier or another Minister;

(ii) a Parliamentary Secretary;

(iii) a councillor;

(iv) a public sector officer, who was a chief executive, senior executive or senior executive equivalent;

(v) a ministerial staff member;

(vi) a parliamentary secretary staff member; and

(b) is no longer a government representative.

46 Meaning of *councillor*

A **councillor** is a councillor, of a local government, including the mayor, within the meaning of the *Local Government Act 2009*.

47 Meaning of *public sector officer*

A **public sector officer** is the chief executive of, or a person employed by, 1 of the following entities—

(a) a department;

(b) a public service office;

(c) a registry or other administrative office of a court or tribunal;

(d) a local government;

(e) a corporate entity under the *Local Government Act 2009*;

(f) the parliamentary service;

(g) a government owned corporation;

(h) an entity, prescribed by regulation, that is assisted by public funds.

Part 2: Registration of lobbyists

DIVISION 1 INTERPRETATION

48 Definitions for part

In this part—

listed person see section 49.

proposed listed person see section 53.

registrant means an entity registered as a lobbyist in the lobbyists register.

DIVISION 2 REGISTER

49 Register

(1) The integrity commissioner must keep a register of registered lobbyists.

(2) The lobbyists register must be published on the integrity commissioner's internet website.

(3) The lobbyists register must contain the following particulars for each registered lobbyist—

(a) the lobbyist's name and business registration particulars;

(b) for each person (***listed person***) employed, contracted or otherwise engaged by the lobbyist to carry out a lobbying activity—

(i) the person's name and role; and

(ii) if the person is a former senior government representative, the date the person became a former senior government representative;

(c) the name of each current client of the lobbyist;

(d) the name of each client for which the lobbyist has carried out a lobbying activity within the 12 month period before the lobbyist most recently gave the integrity commissioner the particulars under section 53 or this division;

(e) other particulars prescribed under a regulation.

50 Timely updating of particulars

(1) If a particular provided for an application under section 53 changes, the registrant must give the integrity commissioner written notice of the change as soon as practicable and before the end of 10 business days after the registrant becomes aware of the change.

(2) As soon as practicable after being given notice of a change, the integrity commissioner must update the lobbyists register (if appropriate).

51 Updating of particulars contained in application

By 31 July each year, the registrant must give the integrity commissioner—

(a) confirmation that the particulars previously provided to the integrity commissioner in relation to the registration remain correct; and

(b) if a statutory declaration by a person was required for the registrant's application for registration, a new statutory declaration by the person.

Example—

A registrant becomes registered in February 2010. By 31 July 2010 and each following year, the registrant must comply with this section.

DIVISION 3 REGISTRATION

52 Definitions for division

In this division—

accepted representations see section 58.

show cause notice see section 57.

show cause period see section 57.

53 Application for registration

(1) Any entity may apply for registration as a lobbyist.

(2) An application must—

(a) be made to the integrity commissioner; and

(b) be in the approved form.

(3) The approved form may require the disclosure of any relevant criminal history of the applicant and each person (***proposed listed person***) employed, contracted or otherwise engaged by the applicant to carry out a lobbying activity.

(4) If the approved form requires the disclosure of a person's relevant criminal history, the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies to the disclosure.

(5) Information in the application must, if the approved form requires, be verified by a statutory declaration.

(6) In this section—

dishonesty offence means an offence involving fraud or dishonesty.

relevant criminal history, for a person, means—

(a) any offence for which the person has been sentenced to a term of imprisonment of 30 months or more; or

(b) any dishonesty offence for which the person has, as an adult, had a conviction in the previous 10 years.

54 Integrity commissioner's powers before deciding application

(1) Before deciding the application, the integrity commissioner may, by notice given to the applicant, require the applicant to give the integrity commissioner, within a reasonable time of at least 5 business days stated in the notice, further information or a document the integrity commissioner reasonably requires to decide the application.

(2) The integrity commissioner may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement made under this section.

55 Grounds for refusing registration

An entity's application for registration may be refused on any of the following grounds—

(a) the application includes a materially false or misleading representation or declaration;

(b) the entity or a proposed listed person has previously failed to comply with obligations under the lobbyists code of conduct or a requirement under this chapter;

(c) another ground the integrity commissioner considers sufficient.

Examples—

1. The integrity commissioner may consider it sufficient that, in Queensland or elsewhere, the entity or a proposed listed person has acted in a way the integrity commissioner considers is inconsistent with general standards of ethical behaviour.

2 If the entity or a proposed listed person has been removed from a register of lobbyists of the Commonwealth or another State, the integrity commissioner may, in deciding whether there is a ground the integrity commissioner considers sufficient, have regard to the facts and circumstances which resulted in the removal.

56 Decision

(1) The integrity commissioner must consider the application as soon as practicable and decide to—

(a) register the applicant as a lobbyist; or

(b) ask the applicant to show cause why the application should not be refused.

(2) If the integrity commissioner makes a decision mentioned in subsection (1)(a), the integrity commissioner must as soon as practicable—

(a) enter the lobbyist's particulars in the lobbyists register; and

(b) advise the lobbyist.

(3) If the integrity commissioner makes a decision mentioned in subsection (1)(b), the integrity commissioner must as soon as practicable give the applicant a notice under section 57.

57 Show cause notice

(1) The integrity commissioner must, before refusing to register an applicant, give the applicant a notice (a ***show cause notice***).

(2) The show cause notice must—

(a) state the integrity commissioner proposes to refuse the registration; and

(b) state the ground for the proposed refusal; and

(c) outline the facts and circumstances forming the basis for the ground; and

(d) invite the applicant to show within a stated period (the ***show cause period***) why the registration should not be refused.

(3) The show cause period must be a period ending not less than 5 business days after the show cause notice is given to the applicant.

58 Representations about show cause notice

(1) The applicant may make written representations about the show cause notice to the integrity commissioner during the show cause period.

(2) The integrity commissioner must consider all written representations (the ***accepted representations***) made under subsection (1).

59 Registration

If, after considering the accepted representations for the show cause notice, the integrity commissioner no longer believes the ground exists to refuse the registration, the integrity commissioner must make a decision under section 56(1)(a).

60 Refusal to register

(1) This section applies if, after considering the accepted representations for the show cause notice, the integrity commissioner—

(a) still believes the ground exists to refuse the registration; and

(b) believes refusal of the registration is warranted.

(2) This section also applies if there are no accepted representations for the show cause notice.

(3) The integrity commissioner may decide to refuse the registration.

(4) If the integrity commissioner decides to refuse the registration, the integrity commissioner must as soon as practicable give the applicant notice of the decision.

DIVISION 4 CANCELLATION OF REGISTRATION

61 Definitions for division

In this division—

accepted representations see section 64.

show cause notice see section 63.

show cause period see section 63.

62 Grounds for cancellation

A registrant's registration may be cancelled on any of the following grounds—

(a) the registrant was registered because of a materially false or misleading representation or declaration;

(b) the registrant or a listed person for the registrant has failed to comply with obligations under the lobbyists code of conduct or a requirement under this chapter;

(c) another ground the integrity commissioner considers sufficient.

Examples—

1. The integrity commissioner may consider it sufficient that, in Queensland or elsewhere, the registrant or a listed person has acted in a way the integrity commissioner considers is inconsistent with general standards of ethical behaviour.
2. If the registrant or a listed person has been removed from a register of lobbyists of the Commonwealth or another State, the integrity commissioner may, in deciding whether there is a ground the integrity commissioner considers sufficient, have regard to the facts and circumstances which resulted in the removal.

63 Show cause notice

(1) If the integrity commissioner believes a ground exists to cancel a registration, the integrity commissioner must, before taking action to cancel the registration, give the registrant a notice (a ***show cause notice***).

(2) The show cause notice must—

(a) state the integrity commissioner proposes to cancel the registration; and

(b) state the ground for the proposed cancellation; and

(c) outline the facts and circumstances forming the basis for the ground; and

(d) invite the registrant to show within a stated period (the ***show cause period***) why the registration should not be cancelled.

(3) The show cause period must be a period ending not less than 5 business days after the show cause notice is given to the registrant.

64 Representations about show cause notice

(1) The registrant may make written representations about the show cause notice to the integrity commissioner during the show cause period.

(2) The integrity commissioner must consider all written representations (the ***accepted representations***) made under subsection (1).

65 No cancellation

(1) This section applies if, after considering the accepted representations for the show cause notice, the integrity commissioner no longer believes the ground exists to cancel the registration.

(2) The integrity commissioner must not take any further action about the show cause notice.

(3) The integrity commissioner must also as soon as practicable after coming to the belief give notice to the registrant that no further action is to be taken about the show cause notice.

66 Cancellation

(1) This section applies if, after considering the accepted representations for the show cause notice, the integrity commissioner—

(a) still believes the ground exists to cancel the registration; and

(b) believes cancellation of the registration is warranted.

(2) This section also applies if there are no accepted representations for the show cause notice.

(3) The integrity commissioner may decide to cancel the registration.

(4) If the integrity commissioner decides to cancel the registration—

(a) the decision takes effect when the registrant's particulars are removed from the lobbyists register; and

(b) the integrity commissioner must as soon as practicable give the registrant notice of the decision.

Part 3: Limitations on lobbying activities

67 Definitions for part

In this part—

listed person see section 49.

lobbyist includes a listed person for the lobbyist.

68 Lobbyists code of conduct

(1) The integrity commissioner may, after consultation with the parliamentary committee, approve a lobbyists code of conduct.

(2) The lobbyists code of conduct must be published on the integrity commissioner's internet website.

(3) The purpose of the lobbyists code of conduct is to provide standards of conduct for lobbyists designed to ensure that contact between lobbyists and government representatives is carried out in accordance with public expectations of transparency and integrity.

(4) Lobbyists must comply with the lobbyists code of conduct.

69 Success fee prohibited

(1) An entity, other than a lobbyist, that has engaged a lobbyist (the ***relevant lobbyist***) to undertake a lobbying activity must not give, or agree to give, to the relevant lobbyist or a related person for the relevant lobbyist a success fee in relation to the lobbying activity carried out by or for the relevant lobbyist.

Maximum penalty—200 penalty units.

(2) A lobbyist or a related person for the lobbyist must not receive, or agree that the lobbyist or the related person receive, a success fee in relation to a lobbying activity carried out by or for the lobbyist.

Maximum penalty—200 penalty units.

(3) On a conviction under this section for giving or receiving a success fee, the success fee is forfeited to the State.

(4) Anything forfeited to the State by a person under subsection (3) must be returned to the person if the conviction mentioned in that subsection is quashed.

(5) In this section—

conviction includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

success fee, in relation to a lobbying activity, means an amount of money or other reward the giving or receiving of all or part of which is contingent on the outcome of the lobbying activity or of lobbying activities including the lobbying activity.

70 Related lobbying by former senior government representative prohibited

(1) For 2 years after becoming a former senior

government representative, the former senior government representative must not carry out a related lobbying activity for a third party client.

(2) A government representative must not knowingly permit a former senior government representative of less than 2 years standing to carry out with the government representative a related lobbying activity for a third party client.

(3) In this section—

related lobbying activity, for a former senior government representative, means a lobbying activity relating to the former senior government representative's official dealings as a government representative in the 2 years before becoming a former senior government representative.

71 Lobbying by unregistered entity prohibited

(1) An entity that is not a registered lobbyist must not carry out a lobbying activity for a third party client.

(2) A government representative must not knowingly permit an entity that is not a registered lobbyist to carry out a lobbying activity for a third party client with the government representative.

72 Act not to require contact or limit particular contact

Nothing in this Act—

(a) requires a government representative to have contact with a particular lobbyist or lobbyists in general; or

(b) limits a person's contact with a government representative if the law requires a government representative to take account of the views advanced by the person and the person is a lobbyist.

Appendix 4: Lobbying Act (Canada)*

1985, c. 44 (4th Supp.)

An Act respecting lobbying

NOTE

[*1988, c. 53, assented to 13th September, 1988*]

Preamble

WHEREAS free and open access to government is an important matter of public interest;

AND WHEREAS lobbying public office holders is a legitimate activity;

AND WHEREAS it is desirable that public office holders and the public be able to know who is engaged in lobbying activities;

AND WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government;

NOW THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., 1985, c. 44 (4th Supp.), preamble; 2003, c. 10, s. 1.

SHORT TITLE

Short title

1. This Act may be cited as the *Lobbying Act*.

R.S., 1985, c. 44 (4th Supp.), s. 1; 2006, c. 9, s. 66.

INTERPRETATION

Definitions

2. (1) In this Act,

"designated public office holder"
« *titulaire d'une charge publique désignée* »

"designated public office holder" means

(*a*) a minister of the Crown or a minister of state and any person employed in his or her office who is appointed under subsection 128(1) of the *Public Service Employment Act*,

(*b*) any other public office holder who, in a department within the meaning of paragraph (*a*), (*a.1*) or (*d*) of the definition "department" in section 2 of the *Financial Administration Act*,

(i) occupies the senior executive position, whether by the title of deputy minister, chief executive officer or by some other title, or

(ii) is an associate deputy minister or an assistant deputy minister or occupies a position of comparable rank, and

(*c*) any individual who occupies a position that has been designated by regulation under paragraph 12(*c.1*).

"Ethics Counsellor" [Repealed, 2004, c. 7, s. 19]

"organization"
« *organisation* »

"organization" includes

(*a*) a business, trade, industry, professional or voluntary organization,

* Accessed at http://laws.justice.gc.ca/en/L-12.4?FullText.html on 11 March 2010.

(*b*) a trade union or labour organization,

(*c*) a chamber of commerce or board of trade,

(*d*) a partnership, trust, association, charitable society, coalition or interest group,

(*e*) a government, other than the Government of Canada, and

(*f*) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects;

"payment"
« *paiement* »

"payment" means money or anything of value and includes a contract, promise or agreement to pay money or anything of value;

"prescribed"
« *Version anglaise seulement* »

"prescribed" means prescribed by regulation;

"public office holder"
« *titulaire d'une charge publique* »

"public office holder" means any officer or employee of Her Majesty in right of Canada and includes

(*a*) a member of the Senate or the House of Commons and any person on the staff of such a member,

(*b*) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than a judge receiving a salary under the *Judges Act* or the lieutenant governor of a province,

(*c*) an officer, director or employee of any federal board, commission or other tribunal as defined in the *Federal Courts Act*,

(*d*) a member of the Canadian Armed Forces, and

(*e*) a member of the Royal Canadian Mounted Police;

"registrar" [Repealed, 2006, c. 9, s. 67]

Subsidiary corporation

(2) For the purposes of this Act, a corporation is a subsidiary of another corporation if

(*a*) securities of the first-mentioned corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the first-mentioned corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation; and

(*b*) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the first-mentioned corporation.

Transition team

(3) Any person identified by the Prime Minister as having had the task of providing support and advice to him or her during the transition period leading up to the swearing in of the Prime Minister and his or her ministry is subject to this Act, except subsections 10.11(2) to (4), as if the person were a designated public office holder during that period.

R.S., 1985, c. 44 (4th Supp.), s. 2; 1995, c. 12, s. 1; 2002, c. 8, s. 182; 2003, c. 10, s. 2; 2004, c. 7, s. 19; 2006, c. 9, s. 67.

APPLICATION

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

Restriction on application

4. (1) This Act does not apply to any of the following persons when acting in their official capacity, namely,

(*a*) members of the legislature of a province or persons on the staff of such members;

(*b*) employees of the government of a province;

(*c*) members of a council or other statutory body charged with the administration of the civil or municipal affairs of a city, town, municipality or district, persons on the staff of such members or officers or employees of a city, town, municipality or district;

(*d*) members of the council of a band as defined in subsection 2(1) of the *Indian Act* or of the council of an Indian band established by an Act of Parliament, persons on their staff or employees of such a council;

(*d.1*) members of an aboriginal government or institution that exercises jurisdiction or authority under a self-government agreement, or under self-government provisions contained in a land claims agreement, given effect by or under an Act of Parliament, persons on the staff of those members or employees of that government or institution;

(*d.2*) [Repealed, 2003, c. 10, s. 3]

(*d.3*) [Repealed, 2004, c. 17, s. 20]

(*e*) diplomatic agents, consular officers or official representatives in Canada of a foreign government; or

(*f*) officials of a specialized agency of the United Nations in Canada or officials of any other international organization to whom there are granted, by or under any Act of Parliament, privileges and immunities.

Idem

(2) This Act does not apply in respect of

(*a*) any oral or written submission made to a committee of the Senate or House of Commons or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, in proceedings that are a matter of public record;

(*b*) any oral or written communication made to a public office holder by an individual on behalf of any person or organization with respect to the enforcement, interpretation or application of any Act of Parliament or regulation by that public office holder with respect to that person or organization; or

(*c*) any oral or written communication made to a public office holder by an individual on behalf of any person or organization if the communication is restricted to a request for information.

Idem

(3) Nothing in this Act shall be construed as requiring the disclosure of the name or identity of any individual where that disclosure could reasonably be expected to threaten the safety of that individual.

R.S., 1985, c. 44 (4th Supp.), s. 4; 1994, c. 35, s. 36; 1995, c. 12, s. 2; 2000, c. 7, s. 24; 2003, c. 10, s. 3; 2004, c. 17, ss. 17, 20.

OFFICE OF THE COMMISSIONER OF LOBBYING

Commissioner of Lobbying

Commissioner of Lobbying

4.1 (1) The Governor in Council shall, by commission under the Great Seal, appoint a Commissioner of Lobbying after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

Tenure of office and removal

(2) Subject to this section, the Commissioner holds office during good behaviour for a term of seven years, but may be removed for cause by the Governor in Council at any time on address of the Senate and House of Commons.

Further terms

(3) The Commissioner, on the expiry of a first or any subsequent term of office, is eligible to be reappointed for a further term not exceeding seven years.

Interim appointment

(4) In the event of the absence or incapacity of the Commissioner, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

2006, c. 9, s. 68.

Rank and powers

4.2 (1) The Commissioner has the rank and powers of a deputy head of a department, shall engage exclusively in the duties of the office of Commissioner under this Act or any other Act of Parliament and shall not hold any other office or employment for reward.

Duties and functions

(2) The Commissioner's duties and functions, in addition to those set out elsewhere in this Act, include developing and implementing educational programs to foster public awareness of the requirements of this Act, particularly on the part of lobbyists, their clients and public office holders.

Remuneration and expenses

(3) The Commissioner shall be paid the remuneration and expenses set by the Governor in Council.

Pension benefits

(4) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Commissioner, except that a person appointed as Commissioner from outside the public service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than 60 days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Commissioner from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

Other benefits

(5) The Commissioner is deemed to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

2006, c. 9, s. 68.

Staff

Staff of the Commissioner

4.3 (1) Any officers and employees that are necessary to enable the Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

Technical assistance

(2) The Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

2006, c. 9, s. 68.

Delegation

Delegation by Commissioner

4.4 The Commissioner may authorize any person to exercise or perform, subject to any restrictions or limitations that the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act except

(*a*) the power to delegate under this section; and

(*b*) those set out in subsections 10(1), 10.2(1), 10.5(1) and sections 11, 11.1, 14.01 and 14.02.

2006, c. 9, s. 68.

REGISTRATION OF LOBBYISTS

Consultant Lobbyists

Requirement to file return

5. (1) An individual shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to

(*a*) communicate with a public office holder in respect of

(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,

(iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,

(iv) the development or amendment of any policy or program of the Government of Canada,

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or

(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or

(*b*) arrange a meeting between a public office holder and any other person.

Time limit for filing return

(1.1) An individual shall file the return referred to in subsection (1) not later than 10 days after entering into the undertaking.

(1.2) and (1.3) [Repealed, 2006, c. 9, s. 69]

Contents of return

(2) The return shall set out the following information with respect to the undertaking:

(*a*) the name and business address of the individual and, if applicable, the name and business address of the firm where the individual is engaged in business;

(*b*) the name and business address of the client and the name and business address of any person or organization that, to the knowledge of the individual, controls or directs the activities of the client and has a direct interest in the outcome of the individual's activities on behalf of the client;

(*c*) where the client is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the individual, has a direct interest in the outcome of the individual's activities on behalf of the client;

(*d*) where the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;

(*e*) where the client is a coalition, the name and business address of each corporation or organization that is a member of the coalition;

(*e.1*) the client is funded in whole or in part by a government or government agency, the name of the government or agency, as the case may be, and the amount of funding received;

(*f*) particulars to identify the subject-matter in respect of which the individual undertakes to communicate with a public office holder or to arrange a meeting, and any other information respecting the subject-matter that is prescribed;

(*g*) the fact that the undertaking does not provide for any payment that is in whole or in part contingent on the outcome of any matter described in subparagraphs (1)(*a*)(i) to (vi) or on the individual's success in arranging a meeting referred to in paragraph (1)(*b*);

(*h*) particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract;

(*h.1*) if the individual is a former public officer holder, a description of the offices held, which of those offices, if any, qualified the individual as a designated public office holder and the date on which the individual last ceased to hold such a designated public office;

(*i*) the name of any department or other governmental institution in which any public office holder with whom the individual communicates or expects to communicate in respect of any matter described in subparagraphs (1)(*a*)(i) to (vi) or with whom a meeting is, or is to be, arranged, is employed or serves;

(*j*) if the individual undertakes to communicate with a public office holder in respect of any matter described in subparagraphs (1)(*a*)(i) to (vi), particulars to identify any communication technique that the individual uses or expects to use in connection with the communication with the public office holder, including any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion (in this Act referred to as "grass-roots communication"); and

(*k*) such other information relating to the identity of the individual, the client, any person or organization referred to in paragraph (*b*), any subsidiary referred to in paragraph (*c*), the other corporation referred to in paragraph (*d*), any member of a coalition referred to in paragraph (*e*) or any department or institution referred to in paragraph (*i*) as is prescribed.

Requirement to file monthly return

(3) The individual shall file a return, in the prescribed form and manner, not later than 15 days after the end of every month, beginning with the one in which the return is filed under subsection (1), that

(*a*) sets out, with respect to every communication referred to in paragraph (1)(*a*) that is of a prescribed type and that was made in that month involving a designated public office holder and relating to the undertaking,

(i) the name of the designated public office holder who was the object of the communication,

(ii) the date of the communication,

(iii) particulars, including any prescribed particulars, to identify the subject-matter of the communication, and

(iv) any other information that is prescribed;

(*b*) if any information contained in the return filed under subsection (1) is no longer correct or additional information

that the individual would have been required to provide under that subsection has come to the knowledge of the individual after the return was filed, provides the corrected or additional information; and

(*c*) if the undertaking has been performed or terminated, advises the Commissioner of that fact.

First monthly return

(4) The first return filed under subsection (3) shall, despite paragraph (3)(*a*), set out the information required by that paragraph in respect of communications made between the day on which the undertaking referred to in subsection (1) was entered into and the end of the month immediately before the filing of the return.

Exception

(4.1) Subject to subsection (4.2), no return is required under subsection (3) if no communication referred to in paragraph (3)(*a*) was made during the period with respect to which the return is to set out information, and if the circumstances referred to in paragraphs (3)(*b*) and (*c*) have not arisen.

Return — six-month period

(4.2) In any case, no more than five months shall have elapsed since the end of the month in which a return was last filed without a return being filed by the individual under subsection (3), even if, since the last return, no communication was made as referred to in paragraph (3)(*a*) and the circumstances referred to in paragraphs (3)(*b*) and (*c*) have not arisen, in which case the report shall so state.

Termination of reporting obligation

(4.3) The obligation to file a return under subsection (3) terminates when the undertaking has been performed or is terminated and a report has been filed under that subsection advising of that fact in accordance with paragraph (3)(*c*).

Information requested by Commissioner

(5) An individual who files a return shall provide the Commissioner, in the prescribed form and manner, with such information as the Commissioner may request to clarify any information that the individual has provided to the Commissioner pursuant to this section, and shall do so not later than thirty days after the request is made.

Restriction on application

(6) This section does not apply in respect of anything that an employee undertakes to do on the sole behalf of their employer or, where their employer is a corporation, in respect of anything that the employee, at the direction of the employer, undertakes to do on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary.

For greater certainty

(7) For greater certainty, an individual who undertakes to communicate with a public office holder as described in paragraph (1)(*a*) is not required to file more than one return under subsection (1) with respect to the undertaking, even though the individual, in connection with that undertaking, communicates with more than one public office holder or communicates with one or more public office holders on more than one occasion.

R.S., 1985, c. 44 (4th Supp.), s. 5; 1995, c. 12, s. 3; 1999, c. 31, s. 163(F); 2003, c. 10, s. 4; 2006, c. 9, ss. 69, 81.

6. [Repealed, 2003, c. 10, s. 5]

In-house Lobbyists (Corporations and Organizations)

Requirement to file return

7. (1) The officer responsible for filing returns for a corporation or organization shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (3) if

(*a*) the corporation or organization employs one or more individuals any part of whose duties is to communicate with public office holders on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary, in respect of

> (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,

(iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,

(iv) the development or amendment of any policy or program of the Government of Canada, or

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada; and

(*b*) those duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.

Time limit for filing return

(2) The officer responsible for filing returns shall file a return not later than two months after the day on which the requirement to file a return first arises under subsection (1).

(2.1) [Repealed, 2006, c. 9, s. 70]

Contents of return

(3) The return shall set out the following information:

(*a*) the name and business address of the officer responsible for filing returns;

(*b*) the name and business address of the employer;

(*b.1*) if the employer is a corporation, the name and business address of every subsidiary of the corporation that, to the knowledge of the officer responsible for filing returns, has a direct interest in the outcome of an employee's activities on behalf of the employer in respect of any matter described in subparagraphs (1)(*a*)(i) to (v);

(*b.2*) if the employer is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;

(*c*) a description in summary form of the employer's business or activities and any other information to identify its business or activities that is prescribed;

(*d*) if the employer is an organization, a description of the organization's membership and any other information to identify its membership that is prescribed;

(*e*) if the employer is funded in whole or in part by a government or government agency, the name of the government or agency, as the case may be, and the amount of funding received;

(*f*) if the employer is an organization, the name of each employee any part of whose duties is as described in paragraph (1)(*a*);

(*f.1*) if the employer is a corporation,

(i) a list including the name of each senior officer or employee a significant part of whose duties is as described in paragraph (1)(*a*), and

(ii) a second list including the name of each other senior officer any part of whose duties is as described in paragraph (1)(*a*) but without constituting a significant part;

(*g*) particulars to identify the subject-matter of any communication that any employee named in the return has made or is expected to make with a public office holder in respect of any matter described in subparagraphs (1)(*a*)(i) to (v) and any other information respecting that subject-matter that is prescribed;

(*h*) if any employee named in the return is a former public office holder, a description of the offices held, which of those offices, if any, qualified the employee as a designated public office holder and the date on which the employee last ceased to hold such a designated public office;

(*h.1*) to (*h.3*) [Repealed, 2006, c. 9, s. 70]

(*i*) particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution or financial benefit;

(*j*) the name of any department or other governmental institution in which any public office holder with whom any employee named in the return communicates or is expected to communicate in respect of any matter described in subparagraphs (1)(*a*)(i) to (v) is employed or serves;

(*k*) particulars to identify any communication technique, including grass-roots communication within the meaning of paragraph 5(2)(*j*), that any employee named in the return uses or is expected to use in connection with any communication in respect of any matter described in subparagraphs (1)(*a*)(i) to (v); and

(*l*) any other information that is prescribed that relates to the identity of the officer responsible for filing returns, the employer, any subsidiary referred to in paragraph (*b.1*), any corporation referred to in paragraph (*b.2*) of which the employer is a subsidiary, any employee referred to in paragraph (*f*) or (*f.1*) or any department or institution referred to in paragraph (*j*).

Requirement to file monthly return

(4) The officer responsible for filing returns shall file a return, in the prescribed form and manner, not later than 15 days after the end of every month, beginning with the one in which the return is filed under subsection (1), that

(*a*) sets out, with respect to every communication referred to in paragraph (1)(*a*) that is of a prescribed type and that was made in that month involving a designated public office holder,

(i) the name of the designated public office holder who was the object of the communication,

(ii) the date of the communication,

(iii) particulars, including any prescribed particulars, to identify the subject-matter of the communication, and

(iv) any other information that is prescribed;

(*b*) if any information contained in the return filed under subsection (1) is no longer correct or additional information that the officer would have been required to provide under that subsection has come to the knowledge of the officer after the return was filed, provides the corrected or additional information; and

(*c*) if the employer no longer employs any employees whose duties are as described in paragraphs (1)(*a*) and (*b*), advises the Commissioner of that fact.

First monthly return

(4.1) The first return filed under subsection (4) shall, despite paragraph (4)(*a*), set out the information required by that paragraph in respect of communications made between the day on which the requirement to file a return first arose under subsection (1) and the end of the month immediately before the filing of the return.

Exception

(4.2) Subject to subsection (4.3), no return is required under subsection (4) if no communication referred to in paragraph (4)(*a*) was made during the period with respect to which the return is to set out information and if the circumstances referred to in paragraphs (4)(*b*) and (*c*) have not arisen.

Return — six-month period

(4.3) In any case, no more than five months shall have elapsed since the end of the month in which a return was last filed without a return being filed under subsection (4), even if, since the last return, no communication was made as referred to in paragraph (4)(*a*) and the circumstances referred to in paragraphs (4)(*b*) and (*c*) have not arisen, in which case the report shall so state.

Termination of reporting obligation

(4.4) The obligation to file a return under subsection (4) terminates when the employer no longer employs any employees whose duties are as described in paragraphs (1)(*a*) and (*b*) and a report has been filed under that subsection advising of that fact in accordance with paragraph (4)(*c*).

Information requested by Commissioner

(5) If the Commissioner requests information to clarify any information that has been provided to the Commissioner under this section, the officer responsible for filing returns shall, in the prescribed form and manner, not later than thirty days after the request is made, provide the Commissioner with the information.

Definitions

(6) In this section,

"employee"
« *employé* »

"employee" includes an officer who is compensated for the performance of their duties;

"senior officer"
« *cadre dirigeant* »

"senior officer", in respect of a corporation, means

(*a*) a chief executive officer, chief operating officer or president of the corporation, or

(*b*) any other officer who reports directly to the chief executive officer, chief operating officer or president of the corporation.

"officer responsible for filing returns"
« *déclarant* »

"officer responsible for filing returns" means the employee who holds the most senior office in a corporation or organization and is compensated for the performance of their duties;

R.S., 1985, c. 44 (4th Supp.), s. 7; 1995, c. 12, s. 3; 2003, c. 10, s. 7; 2006, c. 9, ss. 70, 81.

Certification

Certification

7.1 Every individual who submits a return or other document to the Commissioner pursuant to this Act shall certify on the return or other document or, where it is submitted in electronic or other form in accordance with subsection 7.2(1), in such manner as is specified by the Commissioner, that the information contained in it is true to the best of their knowledge and belief.

1995, c. 12, s. 3; 2006, c. 9, s. 81.

Documents in Electronic or Other Form

Submission of documents

7.2 (1) Subject to the regulations, any return or other document that is required to be submitted to the Commissioner under this Act may be submitted in electronic or other form by such means and in such manner as is specified by the Commissioner.

Time of receipt

(2) For the purposes of this Act, any return or other document that is submitted in accordance with subsection (1) is deemed to be received by the Commissioner at the time provided for in the regulations.

1995, c. 12, s. 3; 2006, c. 9, s. 81.

Storage

7.3 (1) Subject to the regulations, any return or other document that is received by the Commissioner may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.

Evidence

(2) In any prosecution for an offence under this Act, a copy of a return or other document that is reproduced as permitted by subsection (1) and certified under the Commissioner's signature as a true copy is admissible in evidence without proof of the signature or official character of the person appearing to have signed the copy and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

1995, c. 12, s. 3; 2006, c. 9, s. 81.

Registry

8. [Repealed, 2006, c. 9, s. 71]

Registry

9. (1) The Commissioner shall establish and maintain a registry in which shall be kept a record of all returns and other documents submitted to the Commissioner under this Act and of any information sent under subsection 9.1(1) and responses provided relative to that information.

Form of registry

(2) The registry shall be organized in such manner and kept in such form as the Commissioner may determine.

Audit

(3) The Commissioner may verify the information contained in any return or other document submitted to the Commissioner under this Act.

Clarifications and corrections

(3.1) Every individual who is required to submit returns or other documents referred to in subsection (1), or to provide responses referred to in that subsection, shall provide in the prescribed time, manner and form any clarification or correction to them that the Commissioner requires.

Access to registry

(4) The registry shall be open to public inspection at such place and at such reasonable hours as the Commissioner may determine.

R.S., 1985, c. 44 (4th Supp.), s. 9; 1995, c. 12, s. 5; 2006, c. 9, ss. 72, 81.

Confirmation of lobbying activity information

9.1 (1) The Commissioner may send to any present or former designated public office holder information derived from that referred to in paragraph 5(3)(*a*) or 7(4)(*a*) and provided in returns filed under subsection 5(3) or 7(4) in order that the office holder — in the prescribed time, manner and form — confirm to the Commissioner its accuracy and completeness or correct and complete it.

Report

(2) The Commissioner may, in a report under section 11 or 11.1, report on the failure by a present or former designated public office holder to respond relative to information sent under subsection (1) or the provision by such a person of an unsatisfactory response.

2006, c. 9, s. 73.

Interpretation bulletins

10. (1) The Commissioner may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of this Act other than under sections 10.2 to 10.5.

Interpretation bulletins not statutory instruments

(2) The advisory opinions and interpretation bulletins are not statutory instruments for the purposes of the *Statutory Instruments Act* and are not binding.

R.S., 1985, c. 44 (4th Supp.), s. 10; 1995, c. 12, s. 5; 2004, c. 7, s. 20; 2006, c. 9, s. 74.

Lobbyists' remuneration

Prohibition — lobbyist

10.1 (1) An individual who is required to file a return under subsection 5(1) shall not receive any payment that is in whole or in part contingent on the outcome of any matter described in subparagraphs 5(1)(*a*)(i) to (vi) or on the individual's success in arranging a meeting referred to in paragraph 5(1)(*b*).

Prohibition — client

(2) The client of an individual referred to in subsection (1) shall not make any such payment to the individual.

1995, c. 12, s. 5; 2004, c. 7, s. 21; 2006, c. 9, s. 75.

Restriction on lobbying activity

Five-year prohibition — lobbying

10.11 (1) No individual shall, during a period of five years after the day on which the individual ceases to be a designated public office holder,

(*a*) carry on any of the activities referred to in paragraph 5(1)(*a*) or (*b*) in the circumstances referred to in subsection 5(1);

(*b*) if the individual is employed by an organization, carry on any of the activities referred to in paragraph 7(1)(*a*) on behalf of that organization; and

(*c*) if the individual is employed by a corporation, carry on any of the activities referred to in paragraph 7(1)(*a*) on behalf of that corporation if carrying on those activities would constitute a significant part of the individual's work on its behalf.

Exception

(2) Subsection (1) does not apply in respect of any designated public office that was held only because the individual participated in an employment exchange program.

Exemption

(3) On application, the Commissioner of Lobbying may, on any conditions that the Commissioner specifies, exempt an individual from the application of subsection (1) if the Commissioner is of the opinion that the exemption would not be contrary to the purposes of this Act having regard to any circumstance or factor that the Commissioner considers relevant, including whether the individual

(*a*) was a designated public office holder for a short period;

(*b*) was a designated public office holder on an acting basis;

(*c*) was employed under a program of student employment; or

(*d*) had administrative duties only.

Publication

(4) The Commissioner shall without delay cause every exemption and the Commissioner's reasons for it to be made available to the public.

2006, c. 9, s. 75.

Application for exemption

10.12 (1) Any person who is subject to this Act as if they were a designated public office holder by reason of subsection 2(3), may apply to the Commissioner for an exemption from section 10.11.

Commissioner may exempt

(2) The Commissioner may, on any conditions that the Commissioner specifies, exempt the person from the application of section 10.11 having regard to any circumstance or factor that the Commissioner considers relevant, including the following:

(*a*) the circumstances under which the person left the functions referred to in subsection 2(3);

(*b*) the nature, and significance to the Government of Canada, of information that the person possessed by virtue of the functions referred to in subsection 2(3);

(*c*) the degree to which the person's new employer might gain unfair commercial advantage by hiring the person;

(*d*) the authority and influence that the person possessed while having the functions referred to in subsection 2(3); and

(*e*) the disposition of other cases.

Publication

(3) The Commissioner shall without delay cause every exemption and the Commissioner's reasons for it to be made available to the public.

Audit

(4) The Commissioner may verify the information contained in any application under subsection (1).

2006, c. 9, s. 75.

LOBBYISTS' CODE OF CONDUCT

Lobbyists' Code of Conduct

10.2 (1) The Commissioner shall develop a Lobbyists' Code of Conduct respecting the activities described in subsections 5(1) and 7(1).

Consultation

(2) In developing the Code, the Commissioner shall consult persons and organizations that the Commissioner considers are interested in the Code.

Referral

(3) The Code shall be referred to a committee of the House of Commons before being published under subsection (4).

Code not a statutory instrument

(4) The Code is not a statutory instrument for the purposes of the *Statutory Instruments Act*, but the Code shall be published in the *Canada Gazette*.

1995, c. 12, s. 5; 2003, c. 10, s. 8; 2004, c. 7, ss. 22, 39; 2006, c. 9, s. 81.

Compliance with Code

10.3 (1) The following individuals shall comply with the Code:

(*a*) an individual who is required to file a return under subsection 5(1); and

(*b*) an employee who, in accordance with paragraph 7(3)(*f*) or (*f.1*), is named in a return filed under subsection 7(1).

Non-application of section 126 of the *Criminal Code*

(2) Section 126 of the *Criminal Code* does not apply in respect of a contravention of subsection (1).

1995, c. 12, s. 5; 2003, c. 10, s. 9.

INVESTIGATIONS

Investigation

10.4 (1) The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable.

Exception

(1.1) The Commissioner may refuse to conduct or may cease an investigation with respect to any matter if he or she is of the opinion that

(*a*) the matter is one that could more appropriately be dealt with according to a procedure provided for under another Act of Parliament;

(*b*) the matter is not sufficiently important;

(*c*) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose; or

(*d*) there is any other valid reason for not dealing with the matter.

Powers of investigation

(2) For the purpose of conducting the investigation, the Commissioner may

(*a*) in the same manner and to the same extent as a superior court of record,

(i) summon and enforce the attendance of persons before the Commissioner and compel them to give oral or written evidence on oath, and

(ii) compel persons to produce any documents or other things that the Commissioner considers relevant for the investigation;

and

(*b*) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

Investigation in private

(3) The investigation shall be conducted in private.

Evidence in other proceedings

(4) Evidence given by a person in the investigation and evidence of the existence of the investigation are inadmissible against the person in a court or in any other proceeding, other than in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the Commissioner.

Opportunity to present views

(5) Before finding that a person has breached the Code, the Commissioner shall give the person a reasonable opportunity to present their views to the Commissioner.

Confidentiality

(6) The Commissioner, and every person acting on behalf of or under the direction of the Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

(*a*) the disclosure is, in the opinion of the Commissioner, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under section 10.5;

(*b*) the information is disclosed in a report under section 10.5 or in the course of a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the Commissioner; or

(*c*) the Commissioner believes on reasonable grounds that the disclosure is necessary for the purpose of advising a peace officer having jurisdiction to investigate an alleged offence under this or any other Act of Parliament or of the legislature of a province.

Advice to peace officers

(7) If, during an investigation under this section, the Commissioner believes on reasonable grounds that a person has committed an offence under this or any other Act of Parliament or of the legislature of a province, the Commissioner shall advise a peace officer having jurisdiction to investigate the alleged offence and immediately suspend the Commissioner's investigation.

Suspension of investigation

(8) The Commissioner shall immediately suspend an investigation under this section if he or she discovers that the subject-matter of the investigation is also the subject-matter of an investigation to determine whether an offence under this or any other Act of Parliament or of the legislature of a province has been committed or that a charge has been laid with respect to that subject-matter.

Investigation continued

(9) The Commissioner may not continue an investigation under this section until any investigation or charge regarding the same subject-matter has been finally disposed of.

1995, c. 12, s. 5; 2003, c. 10, s. 10; 2004, c. 7, ss. 23, 39; 2006, c. 9, ss. 77, 81.

Report on investigation

10.5 (1) After conducting an investigation, the Commissioner shall prepare a report of the investigation, including the findings, conclusions and reasons for the Commissioner's conclusions, and submit it to the Speaker of the Senate and the Speaker of the House of Commons, who shall each table the report in the House over which he or she presides forthwith after receiving it or, if that House is not then sitting, on any of the first fifteen days on which that House is sitting after the Speaker receives it.

Contents of report

(2) The report may contain details of any payment received, disbursement made or expense incurred by an individual who is required to file a return under subsection 5(1) or by an employee who, in accordance with paragraph 7(3)(*f*) or (*f.1*), is named in a return filed under subsection 7(1), in respect of any matter referred to in any of subparagraphs 5(1)(*a*)(i) to (vi) or 7(1)(*a*)(i) to (v), as the case may be, or of any payment made by the client of an individual who is required to file a return under subsection 5(1) in respect of any matter referred to in any of subparagraphs 5(1)(*a*)(i) to (vi), any communication referred to in paragraph 5(1)(*a*) or any meeting referred to in paragraph 5(1)(*b*), if the Commissioner considers publication of the details to be in the public interest.

1995, c. 12, s. 5; 2003, c. 10, s. 11; 2004, c. 7, ss. 23, 39; 2006, c. 9, s. 78.

10.6 [Repealed, 2006, c. 9, s. 78]

REPORTS TO PARLIAMENT

Annual report

11. The Commissioner shall, within three months after the end of each fiscal year, prepare a report with regard to the administration of this Act during that fiscal year and submit the report to the Speaker of the Senate and the Speaker of the House of Commons, who shall each table the report in the House over which he or she presides forthwith after receiving it or, if that House is not then sitting, on any of the first fifteen days on which that House is sitting after the Speaker receives it.

R.S., 1985, c. 44 (4th Supp.), s. 11; 1995, c. 12, s. 6; 2004, c. 7, s. 24; 2006, c. 9, s. 78.

Special reports

11.1 (1) The Commissioner may, at any time, prepare a special report concerning any matter within the scope of the powers, duties and functions of the Commissioner if, in the opinion of the Commissioner, the matter is of such urgency or importance that a report on it should not be deferred until the next annual report.

Tabling of special report

(2) The Commissioner shall submit the special report to the Speaker of the Senate and the Speaker of the House of Commons, who shall each table the report in the House over which he or she presides forthwith after receiving it or, if that House is not then sitting, on any of the first fifteen days on which that House is sitting after the Speaker receives it.

2006, c. 9, s. 78.

REGULATIONS

Regulations

12. The Governor in Council may make regulations

(*a*) requiring a fee to be paid on the filing of a return or a return of a class of returns under section 5 or 7, or for any service performed or the use of any facility provided by the Commissioner, and prescribing the fee or the manner of determining it;

(*b*) respecting the submission of returns or other documents to the Commissioner under this Act, including those that may be submitted in an electronic or other form under section 7.2, the persons or classes of persons by whom they may be submitted in that form and the time at which they are deemed to be received by the Commissioner;

(*c*) respecting the entering or recording of any return or other document under section 7.3;

(*c.1*) designating, individually or by class, any position occupied by a public office holder as a position occupied by a designated public office holder for the purposes of paragraph (*c*) of the definition "designated public office holder" in subsection 2(1) if, in the opinion of the Governor in Council, doing so is necessary for the purposes of this Act;

(*d*) prescribing any matter or thing that by this Act is to be or may be prescribed; and

(*e*) generally for carrying out the purposes and provisions of this Act.

R.S., 1985, c. 44 (4th Supp.), s. 12; 1995, c. 12, s. 7; 2003, c. 10, s. 12; 2006, c. 9, ss. 79, 81.

RECOVERY OF FEES

Recovery of fees

13. Any fee required by the regulations to be paid constitutes a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

R.S., 1985, c. 44 (4th Supp.), s. 13; 1995, c. 12, s. 7.

OFFENCES AND PUNISHMENT

Contravention

14. (1) Every individual who fails to file a return as required under subsection 5(1) or (3) or 7(1) or (4), or knowingly makes any false or misleading statement in any return or other document submitted to the Commissioner under this Act or in any response provided relative to information sent under subsection 9.1(1), whether in electronic or other form, is guilty of an offence and liable

(*a*) on summary conviction, to a fine not exceeding $50,000 or to imprisonment for a term not exceeding six months, or to both; and

(*b*) on proceedings by way of indictment, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding two years, or to both.

Other contraventions

(2) Every individual who contravenes any provision of this Act — other than subsections 5(1) and (3), 7(1) and (4) and 10.3(1) — or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

Limitation

(3) Proceedings by way of summary conviction in respect of an offence under this section may be instituted at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings but, in any case, not later than ten years after the day on which the subject-matter of the proceedings arose.

R.S., 1985, c. 44 (4th Supp.), s. 14; 1995, c. 12, s. 7; 2006, c. 9, s. 80.

Prohibition on communication

14.01 If a person is convicted of an offence under this Act, the Commissioner may — if satisfied that it is necessary in the public interest, taking into account the gravity of the offence and whether the offence was a second or subsequent offence under this Act — prohibit for a period of not more than two years the person who committed the offence from effecting any communication described in paragraph 5(1)(*a*) or 7(1)(*a*) or arranging a meeting referred to in paragraph 5(1)(*b*).

2006, c. 9, s. 80.

Publication

14.02 The Commissioner may make public the nature of the offence, the name of the person who committed it, the punishment imposed and, if applicable, any prohibition under section 14.01.

2006, c. 9, s. 80.

REVIEW BY PARLIAMENT

Review of Act by parliamentary committee

14.1 (1) A comprehensive review of the provisions and operation of this Act must be undertaken, every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.

Review and report

(2) The committee referred to in subsection (1) must, within a year after the review is undertaken or within any further period that the Senate, the House of Commons, or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to Parliament that includes a statement of any changes to this Act or its operation that the committee recommends.

2003, c. 10, s. 13.

COMING INTO FORCE

Coming into force

*__15.__ This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

* [Note: Act in force September 30, 1989, *see* SI/89-193.]

RELATED PROVISIONS

— 2003, c. 10, s. 14:

Definitions

14. The following definitions apply in sections 15 to 17.

"new Act"
« *nouvelle loi* »

"new Act" means the *Lobbyists Registration Act* as it reads on the day on which this Act comes into force.

"old Act"
« *ancienne loi* »

"old Act" means the *Lobbyists Registration Act* as it read immediately before the day on which this Act comes into force.

— 2003, c. 10, s. 15:

Requirement to file return

15. (1) Subject to subsection (2), if, on the day on which this Act comes into force, an individual is engaged in an undertaking described in subsection 5(1) of the new Act, the individual shall, not later than two months after the day on which this Act comes into force, file a return with respect to the undertaking with the registrar in accordance with subsection 5(1) of the new Act.

Exception

(2) An individual is deemed to have filed a return with respect to an undertaking in accordance with subsection (1) if

(*a*) the individual filed a return with respect to the undertaking in accordance with subsection 5(1) of the old Act within the five months before the day on which this Act comes into force;

(*b*) there is no change to the information provided in the return referred to in paragraph (*a*); and

(*c*) the individual has no knowledge of any information required to be provided under subsection 5(2) of the new Act that was not provided in the return referred to in paragraph (*a*).

Deemed date of filing

(3) For the purpose of paragraph 5(1.1)(*b*) of the new Act, the day on which a return referred to in subsection (1) or paragraph (2)(*a*) is filed is deemed to be the date of filing a return under paragraph 5(1.1)(*a*) of the new Act.

— 2003, c. 10, s. 16:

Requirement to file return

16. If, on the day on which this Act comes into force, a corporation employs one or more employees whose duties are as described in paragraphs 7(1)(*a*) and (*b*) of the new Act, the officer responsible for filing returns, as defined in subsection 7(6) of the new Act, shall, not later than two months after the day on which this Act comes into force, file a return with the registrar in accordance with subsection 7(1) of the new Act.

— 2003, c. 10, s. 17:

Requirement to file return

17. (1) Subject to subsection (2), if, on the day on which this Act comes into force, an organization employs one or more employees whose duties are as described in paragraphs 7(1)(*a*) and (*b*) of the new Act, the officer responsible for filing returns, as defined in subsection 7(6) of the new Act, shall, not later than two months after the day on which this Act comes into force, file a return with the registrar in accordance with subsection 7(1) of the new Act.

Exception

(2) An officer responsible for filing returns for an organization is deemed to have filed a return in accordance with subsection (1) if

(*a*) the senior officer of the organization, as defined in subsection 7(6) of the old Act, filed a return in accordance with subsection 7(1) of the old Act within the five months before the day on which this Act comes into force;

(*b*) there is no change to the information provided in the return referred to in paragraph (*a*); and

(*c*) the officer responsible for filing returns has no knowledge of any information required to be provided under subsection 7(3) of the new Act that was not provided in the return referred to in paragraph (*a*).

Deemed date of filing

(3) For the purpose of paragraph 7(2)(*b*) of the new Act, the day on which a return referred to in subsection (1) or paragraph (2)(*a*) is filed is deemed to be the date of filing a return under paragraph 7(2)(*a*) of the new Act.

— 2006, c. 9, s. 3.1:

Reference to Act

3.1 (1) In this section, the "other Act" means, before the day on which section 66 of this Act comes into force, the *Lobbyists Registration Act* and, from that day, the *Lobbying Act*.

Five-year prohibition — lobbying

(2) If, on the day on which section 27 of this Act comes into force, section 10.11 of the other Act, as enacted by section 75 of this Act, is not yet in force, persons who would otherwise be bound by section 29 of the *Conflict of Interest and Post-Employment Code for Public Office Holders* by virtue of their office and who cease to hold that office on or after that day but before the day on which that section 10.11 comes into force, are subject to the obligations established by section 29 of that Code, despite the coming into force of section 27 of this Act.

Jurisdiction of registrar

(3) The registrar referred to in section 8 of the other Act has, with respect to the persons and obligations referred to in subsection (2), the same powers, duties and functions that the Ethics Commissioner would have in relation to those persons and obligations if section 27 of this Act were not in force.

— 2006, c. 9, s. 83:

Reference to Act

83. In sections 84 to 88.2 of this Act, the "other Act" means, before the day on which section 66 of this Act comes into force, the *Lobbyists Registration Act* and, from that day, the *Lobbying Act*.

— 2006, c. 9, s. 84:

Commissioner

84. (1) The person who holds the office of registrar immediately before the day on which section 68 of this Act comes into force is authorized to act as the Commissioner of Lobbying under the other Act until the appointment of a Commissioner under subsection 4.1(1) of the other Act — or of a person under subsection 4.1(4) of the other Act — as enacted by section 68 of this Act.

Employees

(2) The coming into force of section 68 of this Act does not affect the status of an employee — as defined in subsection 2(1) of the *Public Service Employment Act* — who occupied, immediately before the day on which that section 68 comes into force, a position in the Office of the Registrar of Lobbyists, except that the employee from that day occupies that position in the Office of the Commissioner of Lobbying.

— 2006, c. 9, s. 85:

Pending investigations

85. Any investigation by the registrar under the other Act that is pending immediately before the day on which section 77 of this Act comes into force may continue to be conducted by the Commissioner of Lobbying under the other Act.

— 2006, c. 9, s. 86:

Transfer of appropriations

86. Any amount that is appropriated, for the fiscal year in which section 71 of this Act comes into force, by an appropriation Act based on the Estimates for that year for defraying the charges and expenses of the federal public administration for the former registrar designated under section 8 of the other Act, as it read before the day on which that section 71 comes into force, and that, on that day, is unexpended is deemed, on that day, to be an amount appropriated for defraying the charges and expenses of the Office of the Commissioner of Lobbying under the administration of the Commissioner of Lobbying referred to in subsection 4.1(1) of the other Act, as enacted by section 68 of this Act.

— 2006, c. 9, s. 87:

Contingent payments

87. Section 10.1 of the other Act, as enacted by section 75 of this Act, does not apply with respect to any contingent payment that, on the day on which that section 75 comes into force,

(*a*) was mentioned in a return in accordance with paragraph 5(2)(*g*) of the other Act as it read before the day on which subsection 69(2) of this Act comes into force; or

(*b*) was provided for in an undertaking entered into before the day on which that section 75 comes into force but for which a return was neither filed nor yet required, under subsection 5(1.1) of the other Act as it read before the day on which subsection 69(1) of this Act comes into force, to be filed.

— 2006, c. 9, s. 88:

Former designated public office holders

88. (1) For greater certainty, section 10.11 of the other Act, as enacted by section 75 of this Act, does not apply with respect to any ceasing to hold office or to be employed that is referred to in that section 10.11 and that occurred before the day on which that section 75 comes into force.

Assistant deputy ministers

(2) Section 10.11 of the other Act, as enacted by section 75 of this Act, also does not apply in respect of any ceasing to be a designated public office holder with the rank of assistant deputy minister or any office of equivalent rank that occurs during the six months after the day on which that section 75 comes into force.

— 2006, c. 9, s. 88.1:

Five-year prohibition — lobbying

88.1 (1) No individual who was a member of a transition team who ceased to carry out his or her functions as a transition team member after January 24, 2006 but before the coming into force of section 10.11 of the other Act, as enacted by section 75 of this Act, shall, during a period of five years after the day on which he or she ceased to carry out those functions

(*a*) carry on any of the activities referred to in paragraph 5(1)(*a*) or (*b*) of the other Act in the circumstances referred to in subsection 5(1) of the other Act;

(*b*) if the individual is employed by an organization, carry on any of the activities referred to in paragraph 7(1)(*a*) of the other Act on behalf of that organization; and

(*c*) if the individual is employed by a corporation, carry on any of the activities referred to in paragraph 7(1)(*a*) of the other Act on behalf of that corporation if carrying on those activities would constitute a significant part of the individual's work on its behalf.

Exception

(2) Subsection (1) does not apply to a member of a transition team in respect of any activities referred to in that subsection that were carried out before the day on which this Act is assented to.

Contravention

(3) Every individual who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

Limitation

(4) Proceedings by way of summary conviction in respect of an offence under this section may be instituted at any time within but not later than five years after the day on which the registrar referred to in section 8 of the other Act became aware of the subject-matter of the proceedings but, in any case, not later than ten years after the day on which the subject-matter of the proceedings arose.

Definition

(5) For the purposes of this section, members of a transition team are those persons identified by the Prime Minister as having had the task of providing support and advice to him or her during the transition period leading up to the swearing in of the Prime Minister and his or her ministry.

— 2006, c. 9, s. 88.11:

Application for exemption

88.11 (1) Any member of a transition team referred to in section 88.1 may apply to the Commissioner of Lobbying for an exemption from that section.

Commissioner of Lobbying may exempt

(2) The Commissioner of Lobbying may, on any conditions that the Commissioner of Lobbying specifies, exempt the member from the application of section 88.1 having regard to any circumstance or factor that the Commissioner of Lobbying considers relevant, including the following:

(*a*) the circumstances under which the member left the functions referred to in subsection 88.1(5);

(*b*) the nature, and significance to the Government of Canada, of information that the member possessed by virtue of the functions referred to in subsection 88.1(5);

(*c*) the degree to which the member's new employer might gain unfair commercial advantage by hiring the member;

(*d*) the authority and influence that the member possessed while having the functions referred to in subsection 88.1(5); and

(*e*) the disposition of other cases.

Publication

(3) The Commissioner of Lobbying shall without delay cause every exemption and the Commissioner of Lobbying's reasons for it to be made available to the public.

Audit

(4) The Commissioner of Lobbying may verify the information contained in any application under subsection (1).

— 2006, c. 9, s. 88.2:

Publication

88.2 The registrar referred to in section 8 of the other Act may make public the nature of an offence committed under section 88.1, the name of the person who committed it and the punishment imposed.

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