



**NSW Government response to the June 2021 Independent Commission Against Corruption report entitled *Lobbying and the NSW public sector - the regulation of lobbying, access and influence in NSW* (Operation Eclipse)**

Recommendation	Government response
<p>1. That the Lobbyists Code of Conduct be renamed the “Lobbying Code of Conduct” and imposes standards and obligations on public officials with regard to how lobbying proposals are received, considered and determined.</p> <p>These standards and obligations will be consistent with the obligations at law that apply to the discharge of public functions and the exercise of public powers.</p>	<p><b>Accepted</b></p> <p>NSW public officials are already required to act impartially in the public interest when carrying out their public duties, including when being lobbied, or making decisions after being lobbied, by professional lobbyists. These obligations are imposed by various sources, including the following:</p> <ul style="list-style-type: none"><li>• Government sector employees are required to comply with the Ethical framework for the public sector issued under the Public Service Commissioner Direction No 1 of 2015, which requires employees to act with integrity by considering people equally without prejudice or favour, acting honestly and impartially, and placing the public interest over personal interest.</li><li>• Ministers are required to comply with the NSW Ministerial Code of Conduct, including by acting only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.</li><li>• The common law offence of misconduct in public office applies to all government officials, requiring officials to always act in the public interest when discharging their duties.</li></ul> <p>Premier’s Memorandum M2019-02 <i>NSW Lobbyists Code of Conduct</i> imposes obligations on NSW Government officials to not permit lobbying by:</p> <ul style="list-style-type: none"><li>• an unregistered third-party lobbyist,</li><li>• a lobbyist who has failed to make appropriate disclosures, and</li><li>• a lobbyist who has been placed on the Lobbyist Watch List (unless certain procedures are complied with).</li></ul> <p>The <i>State Records Act 1998</i> requires all NSW Government agencies and Ministerial offices to have appropriate systems, policies and procedures</p>

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	<p>in place to meet their obligations to create and maintain full and accurate records of any official government business, retain those records for as long as required, transfer records to the NSW State Archives and Records Authority and authorise public access to records.</p> <p>The NSW Government will consult the NSW Electoral Commission about providing the NSW Electoral Commission with the function of promoting compliance with these obligations, including by publishing guidance material to assist public officials in discharging their obligations when being lobbied, and rename the Lobbyists Code of Conduct.</p>
<p>2. That the “Lobbying Code of Conduct” includes general principles that a public official must adhere to when receiving, considering and determining a lobbying proposal, including the obligations:</p> <ul style="list-style-type: none"> <li>• to act honestly, impartially and disinterestedly</li> <li>• to act in the public interest and not for any extraneous purpose</li> <li>• not to act improperly, including by improper preferencing or favouritism.</li> </ul>	<p><b>Accepted</b></p> <p>See the response to recommendation 1.</p>

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<p>3. That the “Lobbying Code of Conduct” also sets out some detailed standards and obligations including:</p> <ul style="list-style-type: none"> <li>a) prohibition on undocumented or secret meetings and communications with lobbyists, which entails obligations to:</li> <li>b) document all communications with lobbyists, including those held away from government premises, apart from immaterial or ephemeral communications</li> <li>c) avoid discussing substantive matters with lobbyists in social settings</li> <li>d) an expectation that a public official makes all reasonable efforts to seek the views of all parties whose interests are likely to be affected by the adoption of a lobbying proposal</li> <li>e) a prohibition on improper preferential treatment of a lobbyist on the basis of any existing or former relationship (for example, a conflict of interest situation)</li> <li>f) that a public official should discourage lobbying representations relating to proposals in situations where there are formal assessment procedures in place for determining the merits of the proposal, and that these procedures (for example, those relating to development applications, tenders, grants and unsolicited proposals) offer a more suitable channel through which representations can be made</li> <li>g) that a public official must not divulge information to lobbyists that would provide them with an unfair advantage over other interested parties, including other lobbyists</li> <li>h) a requirement to report any reasonably suspected breach of the “Lobbying Code of Conduct” to the lobbying regulator.</li> </ul>	<p><b>Accepted in principle</b></p> <p>See the response to recommendation 1.</p>
<p>4. That, with respect to the proposed “Lobbying Code of Conduct”, the obligations on, and oversight of, government officials should extend to circumstances where an official is “lobbied” by a person or entity acting in their/its own interests; that is, not “representing the interests of <i>others</i>”.</p>	<p><b>Accepted</b></p> <p>NSW public officials are already required to act honestly and impartially in the public interest when carrying out their public duties, including when making decisions after being lobbied by persons who are lobbying in their own interests.</p> <p>See also the response to recommendation 1.</p>

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<p>5. That the lobbying regulator be empowered and resourced to:</p> <ul style="list-style-type: none"> <li>• develop minimum standards and a model policy relating to interactions with lobbyists and others making representations to government, which should: <ul style="list-style-type: none"> <li>- address recordkeeping, disclosure of records and protocols for organising and conducting meetings</li> <li>- prohibit undocumented or secret interactions with lobbyists or other persons making representations to government</li> </ul> </li> <li>• assess and report on agencies' compliance with minimum standards</li> <li>• give advice to agencies and individual government officials about compliance with minimum requirements and better practice</li> <li>• liaise with organisations such as the State Archives and Records Authority and the Information and Privacy Commission</li> <li>• direct an agency or public official to provide any lobbying-related documents or records. Such a direction would operate in a manner similar to the power in s 15 of the <i>State Records Act 1998</i>. In addition, the lobbying regulator should, subject to a public interest test, have the power to direct an agency to make public any document or record concerning lobbying communications.</li> </ul>	<p><b>Accepted</b></p> <p>As noted in the response to recommendation 1, the <i>State Records Act 1998</i> already requires agencies and Ministerial offices to keep full and accurate records of any official government business.</p>
<p>6. That all public sector agencies subject to the [Lobbying Act] be required to adopt policies and procedures that conform to minimum established standards issued by the lobbying regulator.</p>	<p><b>Accepted</b></p> <p>See the responses to recommendations 1 and 5.</p>

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<p>7. That all professional lobbyists (third-party lobbyists and in-house lobbyists) be required to register with the lobbying regulator and make entries into the NSW Lobbyists Register. Exemptions for organisations that are small or lobby infrequently should apply (based on the Scottish or Canadian systems). As is currently the case with third-party lobbyists, all lobbyists should:</p> <ul style="list-style-type: none"> <li>• provide relevant details about their organisation and staff that engage in lobbying activities</li> <li>• complete mandatory training</li> <li>• disclose if they represent a foreign principal and file statutory declarations with the lobbying regulator.</li> </ul>	<p><b>Accepted in principle</b></p> <p>The NSW Government accepts that third-party lobbyists should continue to be required to register on the NSW Lobbyists Register.</p> <p>The purpose of keeping a register of third-party lobbyists is to ensure that government officials can identify who a third-party lobbyist is representing.</p> <p>The Government will consider options for ensuring that in-house lobbyists are aware of and comply with their ethical obligations when lobbying public officials, including with reference to the Victorian model for the registration of in-house lobbyists.</p>
<p>8. That all regulated lobbyists on the Lobbyists Register should disclose:</p> <ul style="list-style-type: none"> <li>• Date and location where face-to-face lobbying communications took place; the name and role of the government official(s) being lobbied; a description of their lobbying communications; a description of the purpose and intended outcome of their lobbying communications; whether lobbying was undertaken on behalf of another party.</li> </ul> <p>Exemptions, similar to those in Scotland and Ireland, should be introduced.</p>	<p><b>Accepted in principle</b></p> <p>The NSW Government accepts the importance of the disclosure of details with respect to lobbying communications.</p> <p>Premier's Memorandum M2015-05 'Publication of Ministerial Diaries and Release of Overseas Travel Information' already requires, for meetings attended by third-party lobbyists, the disclosure of the third-party lobbyist's name, as well as the names of all individuals engaged by the third-party lobbyist to undertake lobbying who are attending the meeting, and the name of their client.</p> <p>The Government will consider how to best implement the policy intent of this recommendation through Ministerial diary disclosures.</p>

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<p>9. That lobbyists should file information electronically that is then automatically published on the Lobbyists Register. The register should allow any person to alert the lobbying regulator of any information that is considered missing or inaccurate.</p>	<p><b>Accepted</b></p> <p>As indicated in response to recommendation 8, the NSW Government will continue to publish lobbying communications through Ministerial diary disclosures.</p> <p>The NSW Government will consult about potential mechanisms to ensure that a person can alert the lobbying regulator if a third-party lobbyist is unregistered, or a matter on the Lobbyist Register is inaccurate; however, given the potential risks associated with the automatic publication of material on a NSW Government website, including those relating to the possible publication of false, misleading or defamatory information careful consideration will be given to timely publication of information.</p>
<p>10. That the lobbying regulator should have powers to determine whether a person or entity is required to register and whether the information required for the Lobbyists Register is accurate and up to date. This could include issuing information notices and making use of the Lobbyists Watch List. Failure to register may require the lobbying regulator to provide an adequate opportunity to comply, as there is with third-party lobbyists.</p>	<p><b>Accepted</b></p> <p>The NSW Government will, in consultation with the NSW Electoral Commission, consider the existing powers of the NSW Electoral Commission and whether these could be strengthened to reflect the policy intent of this recommendation.</p>
<p>11. That, in order to reduce the administrative burden, lobbyists required to be registered in NSW should be permitted to provide or rely on registration documentation filed with other jurisdictions, such as a jurisdiction under the Commonwealth. This could include relevant statutory declarations made in order to satisfy fit and proper person requirements.</p>	<p><b>Accepted</b></p> <p>The NSW Government will consult and consider administrative mechanisms to reduce the regulatory burden on lobbyists in the context of the material that is required to be provided to be registered in NSW.</p>
<p>12. That the diary and overseas travel information of ministers and parliamentary secretaries should be published:</p> <ul style="list-style-type: none"> <li>• monthly, not quarterly</li> <li>• in a single, searchable document or database formatted for easy access to enable public scrutiny</li> <li>• displaying each minister's name against his/her portfolio.</li> </ul>	<p><b>Accepted</b></p> <p>The NSW Government intends to introduce a requirement for <u>all</u> Members of Parliament to publish diary disclosures on a routine basis.</p>

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<p>13. That the NSW Government creates a pre-set menu of options that must be used to indicate the purpose of each meeting disclosed in the diary summaries of ministers. These options could be based on the categories of lobbying set out in s 4(1) of the [Lobbying Act] or another classification that adequately covers the types of disclosable meetings held by ministers. The individual ministers ultimately should be responsible for supplementing the indicated entry by adding a clear description of the specific purpose of the meeting.</p>	<p><b>Accepted in principle</b> See the response to recommendation 12.</p>
<p>14. That the [Lobbying Act] be amended to improve oversight of post-separation employment provisions by providing that the lobbying regulator may require any relevant former public official during the cooling-off period, who has a role in an organisation that employs lobbyists (whether or not a lobbyist themselves), to provide it with information concerning:</p> <ul style="list-style-type: none"> <li>• the terms and conditions of any employment or engagements undertaken by former public officials in the cooling-off period</li> <li>• the nature of any employment or engagement referred to in (a)</li> <li>• whether any employment or engagement undertaken in the cooling-off period has or does involve information obtained during his/her period as a public official</li> <li>• whether any employment or engagement undertaken in the cooling-off period involves or relates to any former portfolio functions or responsibilities pertaining to his/her former position as a public official.</li> </ul>	<p><b>Accepted</b> The NSW Government will consult with the NSW Electoral Commission, NSW Police Force and any other relevant stakeholders about options to improve the oversight of post-separation employment provisions.</p>
<p>15. That the [Lobbying Act] be amended to restrict ministerial and parliamentary secretary advisers of sufficient seniority from engaging in any lobbying activity relating to any matter that they had official dealings with in their last 12 months in office, for a period of 12 months after leaving office, except with the approval of the lobbying regulator. Based on criteria published by the lobbying regulator, the restriction period could be removed, modified or made subject to conditions.</p>	<p><b>Accepted in principle</b> The NSW Government will consult on the way in which this recommendation can be implemented.</p>

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<p>16. That the [Lobbying Act] be amended to mirror the provisions of s 16 of the <i>Gaming and Liquor Administration Act 2007</i>. This would provide secretaries and agency heads with authority to designate high-risk roles and associated “key officials” where appropriate.</p> <p>Officials in such roles would be subject to a six-month restriction on employment in certain areas related to their public duties. Based on criteria, published by the lobbying regulator, the restriction period could be removed, modified or made subject to conditions.</p>	<p><b>Accepted</b></p> <p>The NSW Government will consult with relevant stakeholders on the most appropriate way to implement this recommendation, including in relation to the identification of “key officials” who would be subject to the new provision.</p>
<p>17. That, in the absence of any other new measures to reduce the risks associated with lobbying by former public officials, the [Lobbying Act] be amended to introduce a “Former Public Officials” list, to be managed by the lobbying regulator. For a period of four years after leaving office, all former public officials involved in lobbying activities would be required to ensure they are named on this list, including those working for third-party lobbyists.</p>	<p><b>Accepted</b></p> <p>The NSW Government will improve transparency for lobbyists who are former public officials, based on the Australian Government Register of Lobbyists. The Government considers this approach to be more effective than maintain a separate list of former public officials.</p>
<p>18. That the NSW Government:</p> <ul style="list-style-type: none"> <li>• creates a dedicated NSW lobbying commissioner whose primary purpose is to regulate the [Lobbying Act]. The lobbying commissioner could head a stand-alone lobbying commission, or serve within an existing oversight agency</li> <li>• provides the lobbying regulator with additional resources and powers to carry out the expanded functions set out in this report.</li> </ul>	<p><b>Accepted in principle</b></p> <p>The NSW Government appreciates the importance of having a dedicated lobbying regulator. The Government will consult in relation to the implementation of this recommendation</p>



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<p>19. That the role of the lobbying regulator be clarified by creating clear legislative provisions that allow it to:</p> <ul style="list-style-type: none"> <li>• oversee the conduct of both public officials and lobbyists under the “Lobbying Code of Conduct” and [Lobbying Act], including the criminal, administrative and ethical aspects of the regulation</li> <li>• establish formal processes for accepting complaints and referrals in relation to lobbying matters</li> <li>• have powers with respect to auditing compliance</li> <li>• investigate suspected breaches (including of its own initiative) and make referrals for further investigation or sanction (if required)</li> <li>• publish and disseminate any relevant findings</li> <li>• have an advice-giving and standard-setting function.</li> </ul>	<p><b>Accepted</b></p> <p>See the response to recommendation 18.</p>
<p>20. That the [Lobbying Act] be amended to give the lobbying regulator responsibility for setting the conditions of the Lobbyists Watch List.</p>	<p><b>Accepted</b></p> <p>The NSW Government will consult with the NSW Electoral Commission concerning its existing powers regarding the Lobbyists Watch List and any improvements that should be made to strengthen and improve the process by which the conditions for the Lobbyists Watch List are set and updated.</p>
<p>21. That the requirement for ministers and parliamentary secretaries to publish summaries from their diaries should be set out in the regulation to the [Lobbying Act] rather than a Premier’s Memorandum. The lobbying regulator should be responsible for compliance.</p>	<p><b>Accepted in principle</b></p> <p>The NSW Government commenced the publication of Ministerial diary disclosures in 2014 to improve transparency. The requirements for ministers to publish diary summaries are clear and subject to an established process. The Government appreciates the importance of ensuring the clarity and accessibility of the diary summaries that are published – see the response to recommendation 12.</p>

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<p>22. That the NSW Government gives the lobbying regulator power to investigate and report on indirect lobbying that involves alleged unlawful and/or dishonest conduct.</p>	<p><b>Accepted</b></p> <p>Where conduct is engaged in that is unlawful, existing criminal offences will address these concerns, and other legal mechanisms already exist to address conduct that involves serious dishonesty or corruption, including through the exercise of powers by the ICAC.</p> <p>The NSW Government will consult regarding how to strengthen existing powers of the lobbying regulator.</p>
<p>23. That the NSW Parliament ensures that induction training for new members of Parliament is extended to existing members and addresses the administrative and ethical requirements of public officials in relation to lobbying. Such training should also be mandatory for parliamentary and ministerial staff.</p>	<p><b>Noted</b></p> <p>This recommendation is directed to the NSW Parliament.</p> <p>Ministerial staff receive annual mandatory training on the <i>Lobbying of Government Officials Act 2011</i>.</p>
<p>24. That the Lobbyists Code of Conduct be amended to prohibit lobbyists (as defined in the [Lobbying Act]) from offering, promising or giving gifts or other benefits to a public official who is, has been, or is likely to be lobbied.</p>	<p><b>Accepted in principle</b></p> <p>The NSW Ministerial Code of Conduct governs gifts to Ministers. Separate codes of conduct which regulate the receipt of gifts apply to Members of Parliament and public servants.</p> <p>The NSW Government will amend the Lobbyists Code of Conduct to strengthen the regulation of lobbyists offering or promising gifts.</p>
<p>25. That any fundraising event, where an attendee pays for any form of exclusive or private access to a minister, should be classified as a “scheduled meeting” for the purposes of Premier’s Memorandum M2015-05 and consequently be disclosed in published summaries of ministerial diaries – along with the fact that it was paid access. This information should be published irrespective of whether any lobbying takes place.</p>	<p><b>Accepted in principle</b></p> <p>Consistent with the response to recommendation 12, the Government intends to introduce improvements to publications of diary information.</p>
<p>26. That clause 13 of the Lobbyists Code of Conduct applies to all classes of lobbyist. However, this should not prevent members and supporters of a political party from lobbying in relation to policy issues.</p>	<p><b>Accepted</b></p> <p>The NSW Government will consider how to most appropriately implement the policy intent of this recommendation to all classes of lobbyist.</p>

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<p>27. That the prohibition on paid advocacy – as outlined in clause 2(a) of the Members’ Code of Conduct (Legislative Assembly) and the Members’ Code of Conduct (Legislative Council) – be extended beyond the promotion of matters in the NSW Parliament or its committees, to any communication with any other public officials, and that clause 7A of the Constitution (Disclosure by Members) Regulation 1983 (relating to disclosure) be amended accordingly.</p>	<p><b>Noted</b></p> <p>This recommendation is directed to Parliament.</p>
<p>28. That the NSW Government establishes a “Lobbying Reform Panel” comprising appropriately qualified persons to examine and formulate proposed legislative reforms. Appropriate secretariat services for the panel should be provided.</p>	<p><b>Accepted in principle</b></p> <p>The Government will consult and seek advice from subject-matter experts as required on any legislative reforms.</p>
<p>29. That, over a 12-month period, the “Lobbying Reform Panel” undertakes the required work under recommendation 28 and, by the end of the 12-month period, the panel provides a report setting out the provisions it recommends be incorporated into revised legislation.</p> <p>These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and as required by s 111E of the ICAC Act, will be furnished to the responsible minister or officer. The Commission will seek advice in relation to whether the recommendations will be implemented and if so, details of the proposed plan of action and progress reports. The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission’s website at <a href="http://www.icac.nsw.gov.au">www.icac.nsw.gov.au</a>.</p>	<p><b>Accepted in principle</b></p> <p>See the response to recommendation 28.</p>



Recommendation	Government response
<p><b>Recommendation 7 – Operation Dasha</b></p> <p>That the NSW Government amends the <i>Lobbying of Government Officials Act 2011</i> to ensure all provisions apply to local government.</p>	<p><b>Accepted in principle</b></p> <p>The NSW Government notes that this area is subject to varying views, with the ICAC concluding in its earlier Operation Halifax report “that registering third-party lobbyists in local government served no useful purpose and did not address the risk of corrupt lobbying”.</p> <p>The recommendation requires careful consideration and consultation to ensure that the provisions in the <i>Lobbying of Government Officials Act 2011</i> are appropriate for the unique role and operation of local government.</p> <p>The Government will consult with local government stakeholders and develop options for how lobbying regulation in the context of local government could be strengthened and improved.</p>