

The regulation of lobbying access and influence in NSW - a chance to have your say (April 2019)

From Dr David Solomon AM.

Questions posed in the paper, and my responses.

### **Register of Third-party Lobbyists**

- 1. Are there any examples of lobbying laws/practices in other jurisdictions (interstate or overseas) that seem to work well?* <sup>[L]</sup><sub>[SEP]</sub>
- 2. Who should be required to register on the Register of Third-party Lobbyists?*
- 3. Should there be a distinction between lobbyists on the register and lobbyists bound by the code of conduct?* <sup>[L]</sup><sub>[SEP]</sub>
- 4. Should there be a distinction between “repeat players” and “ad hoc lobbyists”?* <sup>[L]</sup><sub>[SEP]</sub>
- 5. Should there be targeted regulation for certain industries? If so, which industries should be targeted?* <sup>[L]</sup><sub>[SEP]</sub>

1. In my view, the Canadian system is the most appropriate for Australia to adopt. Because it is concerned with those who actually lobby, rather than with a small class of lobbyists (third-part professional lobbyists) it addresses all lobbying rather than just a small proportion (say, 20 per cent) of it.
2. The register should be of all those who lobby, including peak bodies and those who lobby on their own behalf (as in Canada).
3. No – all should be bound by the Code.
4. Preferably, no, though it may be necessary to draw some distinctions for ad hoc lobbyists.
5. Perhaps for those who make political party donations.

## Disclosure of lobbying activity

6. *What information should lobbyists be required to provide when they register?* <sup>[L]</sup><sub>[SEP]</sub>
7. *Should lobbyists be required to provide, or at least record, details of each lobbying contact they have, as well as specify the legislation/grant/contract they are seeking to influence? Should this information be provided only to regulatory agencies or be publicly available?* <sup>[L]</sup><sub>[SEP]</sub>
8. *Should lobbyists be required to disclose how much income they have received and/or how much they have spent on their lobbying activities?* <sup>[L]</sup><sub>[SEP]</sub>
9. *How should lobbying interactions with ministerial advisers, public servants, and members of Parliament be recorded and disclosed?* <sup>[L]</sup><sub>[SEP]</sub>
10. *What information should ministers be required to disclose from their diaries and when?* <sup>[L]</sup><sub>[SEP]</sub>
6. The present requirements for initial registration are probably sufficient.
7. Yes, and it should be publicly accessible on a register that lobbyists are required to update regularly (say, monthly).
8. Probably not.
9. Certainly – including backbench MPs who may influence party decisions.
10. Who they meet with, all attendees, nature of the matters discussed.

## Promoting accessibility and effectiveness

11. *How can disclosures of lobbying regulation best be presented and formatted to better enable civil society organisations to evaluate the disclosure of lobbying activities?* [L]  
[SEP]
12. *Should there be greater integration of lobbying- related data? For example, should there be integration of:*
  - (i) *information on political donations made by lobbyists* [L]  
[SEP]
  - (ii) *the register of lobbyists* [L]  
[SEP]
  - (iii) *ministerial diaries* [L]  
[SEP]
  - (iv) *details of investigations by the Commission* [L]  
[SEP]
  - (v) *list of holders of parliamentary access passes* [L]  
[SEP]
  - (vi) *details of each lobbying contact (if reform occurred)?* [L]  
[SEP]
13. *Should the NSW Electoral Commission be required to present an annual analysis of lobbying trends and compliance to the NSW Parliament?* [L]  
[SEP]

[L]  
[SEP]

11. In a publicly accessible on-line register.
12. Yes, but this would involve co-operating between a number of (independent) agencies.
13. Certainly.

## Regulation of the lobbyists

14. *What duties should apply to lobbyists in undertaking lobbying activities?* <sup>[L]</sup><sub>[SEP]</sub>
15. *Should NSW members of Parliament be allowed to undertake paid lobbying activities?* <sup>[L]</sup><sub>[SEP]</sub>
16. *Should lobbyists be prohibited from giving gifts to government officials?* <sup>[L]</sup><sub>[SEP]</sub>
14. As outlined in the current Qld code.
15. No – and they should be banned from doing so for 5 years after they leave Parliament.
16. Yes, over a set, small amount (ie, the occasional lunch or football ticket need not be banned, but should be declared.)

## Regulation of the lobbied

17. *Should the definition of “government official” be expanded to include members of Parliament?* <sup>[L]</sup><sub>[SEP]</sub>
18. *What obligations should apply to government officials in relation to lobbying activities?* <sup>[L]</sup><sub>[SEP]</sub>
19. *Should public officials be obliged to notify<sup>[L]</sup><sub>[SEP]</sub> the NSW Electoral Commission if there are reasonable grounds for suspecting that a lobbyist has breached the lobbyist legislation?* <sup>[L]</sup><sub>[SEP]</sub>
20. *Should government officials be required to comply with certain meeting procedures when interacting with lobbyists? If so, what procedures are appropriate?* <sup>[L]</sup><sub>[SEP]</sub>
17. Yes.
18. Requirement to document attendance and subject matter discussed, such material to be able to be accessed by the public.
19. Yes.
20. Yes, as in 18 above.

## **Regulation of post-separation employment**

21. *Should there be a cooling off period for former ministers, members of Parliament, parliamentary secretaries, ministerial advisers, and senior public servants from engaging in any lobbying activity relating to any matter that they have had official dealings in? If so, what length should this period be?* [L] [SEP]
22. *How should a post-separation employment ban be enforced?* [L] [SEP]
23. *Should lobbyists covered by the NSW Register of Lobbyists be required to disclose whether they are a former minister, ministerial adviser, member of Parliament or senior government official and, if so, when they left their public office?* [L] [SEP]
24. *Should lobbyists covered by the NSW Register of Lobbyists, who are former government officials, be required to disclose their income from lobbying if it exceeds a certain threshold? If so, what should be the threshold? And for how long should this obligation apply after the lobbyist has left government employment?* [L] [SEP]

21. Yes, 5 years.

22. By legislation – civil penalties should generally apply, but there should be the possibility of prosecution where the possibility of corruption arises.

23. Yes.

24. Yes. They should not be able to lobby for 5 years. The obligation for disclosure should continue for 5 years after they take on a lobbying role.

## **Promoting the integrity of direct lobbying – other measures**

25. *Should there be a requirement on the part of the NSW Government to make a public statement of reasons and processes in relation to significant executive decisions? If so, what circumstances would trigger such a requirement and how might it operate in practice?*

25. Yes, but it is difficult to set down a particular rule. Almost all Cabinet decisions should fall within this requirement.

### **Fair consultation processes**

25. *Should there be NSW Government guidelines on fair consultation processes?* [L]  
[SEP]
26. *If so, what should be provided under these guidelines in terms of these processes being inclusive, allowing for meaningful participation by stakeholders and promoting adequate responsiveness on the part of government officials?* [L]  
[SEP]
27. *If so, how should these guidelines be integrated with a requirement to provide a statement of reasons and processes with significant executive decisions?* [L]  
[SEP]

25-7. I don't wish to comment on this.

### **Resourcing disadvantaged groups**

29. *How can disadvantaged groups be supported by the NSW Government in their lobbying efforts (for example, ongoing funding of organisations, and public service dedicated to supporting community advocacy) to promote openness in the political process and to promote advocacy independent of government?*

29. I have no comment.

### **Promoting the balance of freedom, restrictive measures and proportionality**

28. *How can the measures to promote the democratic role of direct lobbying be designed so as to have a proportionate impact on the freedom to directly lobby?* [L]  
[SEP]
29. *Should there be provision for exemption from restrictions on direct lobbying such as the ban on post-separation employment when undue hardship can be demonstrated?* [L]  
[SEP]
30. *Could existing or new regulatory requirements drive improper lobbying practices underground or have a dampening effect on legitimate*

*lobbying?* [L]  
[SEP]

31. *Is there adequate support for lobbyists and government officials to enable them to understand their obligations under the lobbying legislation?* [L]  
[SEP]
32. *To understand their obligations in relation to lobbying, should there be training and/or education programs for:* [L]  
[SEP] (i) lobbyists [L]  
[SEP] (ii) public servants [L]  
[SEP] (iii) ministers [L]  
[SEP] (iv) ministerial advisers?

*If so, what sort of training or education program is needed?*

28-32 At this stage I can only suggest that the Canadian system should be our guide.

### **Promoting independent supervision to enforce lobbying laws**

33. *Does the NSW Electoral Commission have adequate powers and resources to enforce lobbying regulations in NSW?* [L]  
[SEP]
34. *How can the enforcement of the lobbyist regime be improved?* [L]  
[SEP]
35. *Are the sanctions under the lobbyist legislation adequate (that is, suspension of lobbyists, placement on the Watch List and deregistration)?* [L]  
[SEP]

33-35. The lobbying regulations need to have legislative backing and the legislation should provide the Electoral Commission with full investigative powers and contain penal provisions covering all significant (enforceable) aspects of the regulations.