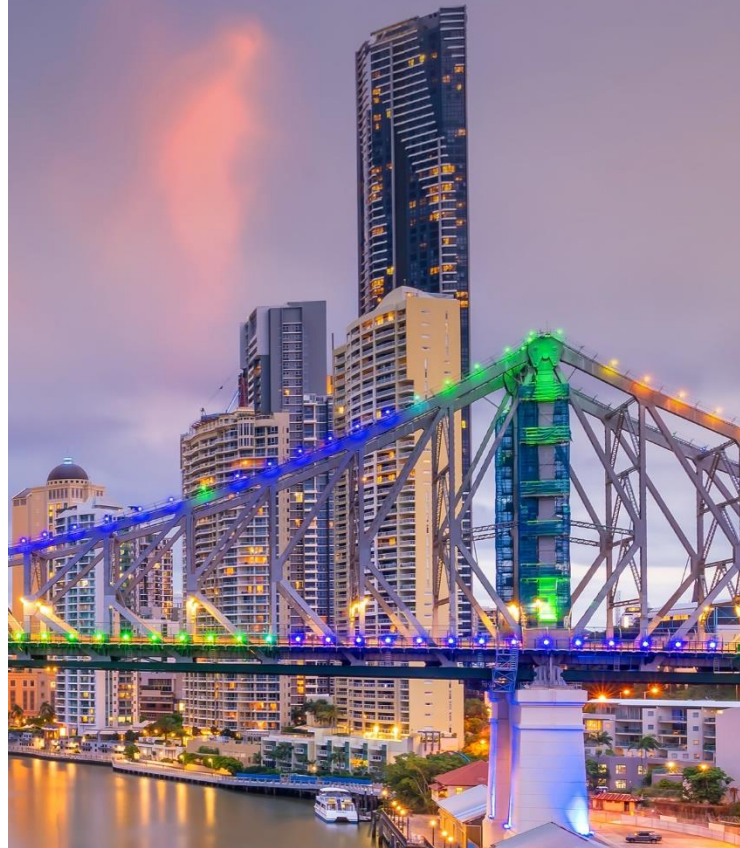


Lobbying and the public sector

A report of the
Integrity Summit 2021

A joint initiative of



About the Integrity Summit

The first Integrity Summit was held in Brisbane on 25 March 2021. It was convened by partner agencies, the Queensland Integrity Commissioner, the Queensland Crime and Corruption Commission, and the South Australian Independent Commissioner against Corruption.

Attendees included representatives of more than 20 different agencies from across Australia.

The summit was an introductory meeting designed to:

- familiarise agencies with the work being undertaken by their peers
- enable them to explore the strengths of existing frameworks as well as areas for enhancement, and
- identify potential opportunities for future collaboration.

The theme for this inaugural summit was ‘Lobbying and the public sector’ which was chosen because of its particular relevance to all integrity agencies.

The focus for 2021

The summit provided an important opportunity for agencies to focus on an area of particular relevance to members of the public — lobbying and its impact on public sector decision-making. The theme for the summit was timely given the recent intense media focus on lobbying activity, the regulation of lobbying, and strengths and deficiencies within existing regulatory models. In addition, the current economic environment, which has been brought about by the global pandemic, has given rise to opportunities for individuals and entities, including suppliers, manufacturers, and consultants, to engage with government under terms and conditions that deviate from usual or standard practices.

Under such conditions, where new entities are seeking to engage with government for the first time, or where entities with existing government relationships are seeking to engage more often or more successfully with government, the benefits of engaging a ‘lobbyist’ with close ties to key decision-makers make commercial sense.

About the day

The summit was opened by Mr Linus Power MP, who spoke about Queensland corruption in the 1980s, noting that the public expected governments to serve with integrity and honour. Mr Power noted that this led to Queensland’s strong lobbying, integrity, and accountability legislative reforms. Mr Power also spoke about the five-year strategic review that was about to be undertaken of the Integrity Act 2009 (Qld).

Key themes

Attendees at the summit discussed the following questions.

What were the main concerns about lobbying from both the public and integrity agencies?

Attendees overwhelmingly shared the view that two factors are central to good government:

- equal access to decision-makers and
- ensuring decisions are free from undue influence.

The clear concern across both the public and integrity agencies was the lack of transparency of lobbying activities.

Attendees noted the significant public concerns about the effects of undue influence, including unfair access to decision-makers and the impact upon decision-making by particular interests (i.e., a conflict arising due to a pecuniary or non-pecuniary interest of the decision-maker, such as a longstanding close association).

Attendees acknowledged that the public's view appears to be that the likelihood of success of a lobbyist is generally regarded as being tied to political and business contacts, networks, and relationships, which might then be leveraged for the commercial benefit of a paying third-party client.

Further, members of the public appear to have a reasonably clear view of what lobbying is and how it may lead to corruption by way of bribery or access and influence on decision-makers. The general public also appear to have a good deal of interest in this space, with many Australians seeing corruption (which includes undue influence) as a problem in government.

The public and the integrity agencies want adequate mechanisms — including mechanisms to promote open, trustworthy decision-making — in place to ensure that the public can have confidence in decisions being made by elected officials and public servants.

Do current regimes reflect public sentiment regarding concerns of lobbying and undue influence?

Currently there is no agreed 'best practice' standard, making this a complex and multi-faceted question.

Each jurisdiction's scheme is fairly new, and each jurisdiction has different means of regulating lobbying. The methods of regulating lobbying include strategies and mechanisms that can be put in place to provide assurance to the public that any potential for undue influence is minimised.

As well, the integrity agencies noted that not all lobbying was being captured by existing schemes.

The integrity agencies understand the view of the general public and noted that lobbyists often have extensive and longstanding political and business contacts, networks, and relationships that can create an opportunity for a well-connected lobbyist to receive a ‘reward’ for their work.

Inherent in the nature of lobbying is that access to decision-makers can be used for personal benefit by lobbyists who may be inclined to do so, and this gives rise to significant corruption risks.

What are the strengths and weaknesses of the current regimes?

A shared concern expressed by attendees was whether there is an existing scheme that would be effective enough to satisfy public concerns.

However, determining a best practice standard is in the interest of the community and therefore it is an issue that requires further exploration.

When determining how effective and efficient regulatory schemes for lobbying ought to work, methods of regulation need to take into account how effective those mechanisms might realistically be in preventing corruption, increasing transparency, and improving the quality of government decision-making. As well, any scheme must be flexible enough to take into account area-specific issues.

For example, in Australia there are differences between the governing power of states and those of territories. An effective scheme in the territories would also be likely to involve a significant overlap of activity that falls within the federal jurisdiction, such as a federal minister being lobbied about decisions that would affect a territory (for example, the Northern Territory).

It is useful to reflect on overseas schemes — for example, those in Canada and the United Kingdom — which cover both inhouse lobbying and third-party lobbying. (This is not the current practice in any Australian jurisdiction, as it includes only the latter.) Generally however, each existing regulatory scheme, including internationally, seems to be subject to criticism that it has either cast the net too widely or too narrowly.

What we do know about lobbying activity locally is that data show that such activity increases prior to elections — this is a ‘risk window’ — and this led to discussion of the adequacy of schemes to capture those who lobby public officials as well as candidates.

Attendees noted that in-depth data about lobbying activity has been made available to the Queensland Integrity Commissioner, which will place her in a better position to understand which persons are being targeted by lobbyists and why, as well as other emerging trends and tension points.

An issue common to almost all jurisdictions was their very limited powers under existing legislation to adequately deal with lobbying issues, including the range of sanctions available. In this regard the schemes were viewed as perhaps being a 'soft touch' and limited in application. Concerns were also raised about 'soft corruption' being a real weakness, for example, the lack of transparency around inhouse lobbying. Other hidden activity may be likely to be occurring.

When looking at what steps can be taken by integrity agencies, investigation and exposure of issues represent a reactive approach. A more sustainable and effective approach is likely to be one where there is also a strong focus on prevention, that is, a proactive approach.

The participation of so many relevant agencies in the summit shows their commitment across jurisdictions to enhance any existing regimes in order to ensure the public can have confidence in the regulation of lobbying.

What additional measures can be introduced to allay public concerns about undue influence and lobbying conduct?

Integrity agencies noted that a large number of former public officials are now lobbyists. Indeed, lobbying is widely viewed as a career that can directly stem from previous work as a public official, where the use of influence, networks, and information about government processes can be leveraged for private benefit by lobbyists.

This therefore raises questions about the optimal length of post-separation quarantine periods to maintain public confidence that former public officials, ministerial staff members, or public servants, are not able to improperly influence decision-making.

A better understanding is needed about what activity is considered significant enough to warrant being captured by the regulatory schemes. The absence of quality data about lobbying activity currently impedes the ability to determine criteria and thresholds for acceptable lobbying activity and bright line rules to guide best practice. Relevant agencies in some jurisdictions are much better informed than others and therefore better able to understand the interactions between lobbyists and elected officials and public officials, including when meetings take place, who attends them, and what is discussed.

Overall, a practical first step would be to introduce measures that provide for a higher level of detail about lobbying activity to be available to all integrity agencies to aid those agencies understand the extent of influence and other issues.

What does a 'best practice standard' look like in terms of regulation and registration of lobbyists?

Currently there are three different models in Australia and no agreed best practice approach.

When considering what a best practice standard would look like, it is necessary to strike a balance between a 'not too heavy and not too light' approach. For example, should activities of peak organisations (such as business councils and minerals councils) also be included on public lobbying registers, or would this be impractical, unworkable and too broad?

Attendees noted that any scheme needs a clear rationale to explain how it reduces corruption risks (for example, improved recording and publication of meetings to improve transparency), and any measures need to be proportional and effective in reducing the corruption risk.

Overall, the notion of a 'best practice standard' runs into problems in trying to define exactly when and why appropriate lobbying crosses the line into being inappropriate. The current regimes are too new to have fully explored and set this important standard.

However, an important first step would be for more stringent requirements to disclose, by means of public records and registers, a higher level of detail about what meetings are occurring, why and with whom? This would provide for better transparency.

How might this best practice standard best be achieved by those agencies responsible for regulating and registering lobbyists?

The attendees saw the value in meeting to discuss important issues. They believed that further collaboration and data sharing between the jurisdictions, complemented by further informed discussions with relevant stakeholders, including academics with expertise in lobbying regimes, would be of great benefit. Agencies would work together to determine, at least, a minimum threshold for effective lobbying regimes.

It would also be of value to set out common 'illegitimate' activities versus 'legitimate' activities, noting that even legitimate lobbying should be held up to public scrutiny.

What work can the responsible agencies do collaboratively to ensure that public confidence in decision-making by public officials and public servants is maintained?

Being able to reflect on past and current issues, and to work together collectively to resolve any uncertain aspects is invaluable. The summit was an important first step in ensuring that the professional community regularly comes together.

Key questions for continuing discussions include:

- Given the shared commitment across jurisdictions to enhancing existing regulatory regimes, what might an effective regulatory design look like as we work towards best practice?
- What activity is important to capture through regulation, and why and how can this occur?
- What level of disclosure of lobbying activity is necessary for integrity agencies and members of the public to have confidence that the regimes are serving their purpose?
- Are post-separation quarantine periods effective and, if so, what length of time or other considerations might provide a higher level of comfort for members of the community?

Summit outcome

In Queensland, the outcomes of the summit will be provided to the Strategic Reviewer who is conducting a review of the Integrity Act 2009 (Qld).

It is likely the next summit will be held in 2022 or 2023.