

Findings from the Queensland Integrity Commissioner's annual Lobbying Audit for 2021

Annual Lobbying Audit- About

Who is a lobbyist?

A 'lobbyist' is essentially a person or entity engaged to carry out 'lobbying activity' (influence State, Local Government, or Opposition decision making) for a 'third party client'. While many members of the community seek to lobby in relation to government policy or decision making, including on behalf of third parties, a 'lobbyist' as defined under the Act does this for 'fee or other reward' which is agreed to before they provide the services.

Are records kept of contact with lobbyists?

The *Public Records Act 2002* (Qld) provides that a public authority must make and keep full and accurate records of its activities.¹ Further, the Integrity Commissioner must keep a register of registered lobbyists.² The lobbyists register must be published on the Integrity Commissioner's website,³ and must contain specific particulars for each registered lobbyist

What is the lobbying audit?

In order to enhance public confidence that decisions made by elected officials and public authorities are free from undue influence or concealed influence, the Integrity Commissioner undertakes an annual audit of recorded contact with lobbyists (lobbying audit).

The objectives of the lobbying audit are two-fold:

1. To remind public authorities about their obligations under section 7 of the *Public Records Act 2002* (PRA) with respect to recording contact by lobbyists; and
2. To ensure that contact between public authorities and lobbyists, as entered in the Lobbying Contact Register, accurately represents all contact by lobbyists with any public authority.

The audit is specifically designed to negate the need for public authorities to provide the Integrity Commissioner with the authority's locally held records. That is, it is designed to encourage public authorities to meet their obligations under section 7 of the PRA whilst also minimising the administrative impediments which would arise under section 8 of the PRA if the Integrity Commissioner was required to reconcile the records.

¹ *Public Records Act 2002* (Qld), s 7.

² *Integrity Act 2009* (Qld), s 49(1).

³ *Integrity Act 2009* (Qld), s 49(2).

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What does the lobbying audit involve?

In November of each year the Integrity Commissioner writes to each chief executive of a department of government (a public authority under s.7(3)(a) of the PRA), and each chief executive officer of a local government (a public authority under s.7(3)(b) of the PRA), and requests that a review be undertaken of locally held records of contact with lobbyists, and that the local data be compared to the data entered on the Lobbying Contact Register for the preceding 12 month period.

For example, the 2021 Lobbying Audit involved a review by public authorities of their records of contact by lobbyists for the time period 1 December 2019 to 30 November 2020.

The Integrity Commissioner also requests that each chief executive of a department of government forward the Integrity Commissioner's request to each entity within the relevant ministerial portfolio (a public authority under s.7(3)(c) of the PRA)⁴ so that those public authorities can also undertake this process.

Any discrepancy between a public authority's locally held records and the Lobbying Contact Register are to be reported to the Integrity Commissioner for assessment.

What does a 'discrepancy' mean?

Discrepancies arise when:

- a public authority records contact with a government representative by a non-government person or entity (such as a meeting, phone call, or email) on the public authority's locally held record, and
- the contact is not recorded by the lobbyist on the Lobbying Contact Register held by the Integrity Commissioner.

Reported discrepancies are not indicative of wrong-doing in and of itself. Discrepancies can arise for a number of reasons, including:

- an honest mistake or oversight by a lobbyist
- public authorities erring on the side of caution and recording contact which they perceived was or might be 'lobbying'
- lack of understanding by a lobbyist regarding their obligations to record contact with a government representative

⁴ Noting there are currently more than 300 such 'public authorities' and the relevant chief executive of a department of government is best placed to know which authorities fall within their relevant portfolio, who the relevant chief executive is and their contact details.

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- lack of understanding by an unregistered individual or entity that the activity they are engaging in might be considered to be lobbying by a government representative, and they are required to be registered as a lobbyist
- lack of understanding by a lobbyist that the activity they are engaging in might be considered to be lobbying contact by a government representative
- a registered lobbyist deliberately not recording contact in an effort to conceal the name of a third-party client and/ or the nature of the dealings, or
- a deliberate course of conduct designed to circumvent the obligation to be registered as a lobbyist and/ or record contact with government representatives.

Are public authorities becoming more vigilant?

It is to be expected that public authorities will respond to heightened community expectations that contacts with lobbyists will be conducted with greater transparency, and that this will lead to public authorities becoming more vigilant about recording contact that may be perceived to be lobbying,

What happens with each reported discrepancy?

In each case where a discrepancy has been identified, the Integrity Commissioner contacts the person or entity concerned, and requests further information so that matter can be resolved in the public interest.

In assessing each discrepancy the Integrity Commissioner also considers whether:

- the conduct of a person or entity might warrant removal from the Lobbyists Register, or
- the conduct of a person or entity might warrant the QIC's refusal to register an entity or list a person as a lobbyist, or
- the conduct of a person or entity might warrant a referral by the QIC to an investigative agency such as the Crime and Corruption Commission.

Limitations of the audit

The audit is limited to discrepancies reported to the Integrity Commissioner by those public authorities who were aware of the audit and chose to assist the Integrity Commissioner in this initiative.

It should be noted that the Act does not require that an entity carrying out incidental lobbying activities be registered as a lobbyist.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

⁵ *Integrity Act 2009* (Qld), s 41(3)(d)

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occupation, in which lobbying activities are occasional only. Examples of such professional occupations include the provision of architectural, engineering, accounting, and legal services.⁶

As such, entities providing professional services are currently not required to be registered as lobbyists or to record contact in the Lobbying Contact Register which would otherwise meet the definition of lobbying activity. For example, if an employee of a multinational professional services firm met with a government representative on behalf of a third-party client, neither the firm nor the employee are required to be registered as lobbyists and the activity is considered to be 'incidental lobbying'.

Given the growth in the number of multidisciplinary professional services offering government relations services, the practical effect of the 'incidental lobbying' exemption is that a substantial volume of contact with government representatives, including on behalf of third-party clients, is not required to be recorded on the Lobbying Contact Register.

2021 Lobbying Audit- Findings

Who participated?

- 20 of the 21 chief executives of departments of government contacted agreed to participate and reconciled the accuracy of their locally held records against the data contained in the Lobbying Contact Register.
- Five (5) chief executives of departments of government forwarded on the Integrity Commissioner's request to other public authorities within their relevant Minister's portfolio and requested that those public authorities assist with the Integrity Commissioner's request.
- Every local government chief executive (77) either agreed to participate, and reconciled the accuracy of their locally held records against the data in the Lobbying Contact Register, or indicated that they would be introducing mechanisms to ensure that the local government would in a position to fully participate in the next lobbying audit

Deserving of special mention by the Integrity Commissioner

The Integrity Commissioner was particularly assisted by the following public authorities in conducting the inaugural lobbying audit:

- The Department of Premier and Cabinet led the way by ensuring that the Integrity Commissioner's request was forwarded to all public authorities within the Premier's portfolio, including the Office of the Governor.

⁶ *Integrity Act 2009* (Qld), s 41(6)

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- Brisbane City Council introduced a number of mechanisms to consolidate contact data and to improve accessibility by members of the public to records of contact with lobbyists.
- Chief Executive Officers of Queensland's First Nations Peoples local government were among the first councils to respond.
- All of Queensland's public safety and independent integrity agencies responded and assisted.
- The Chief Executive Officers of Noosa Shore Council and City of Gold Coast reported the greatest number of discrepancies, 14 and 20 respectively, and the Integrity Commissioner wishes to recognise the high quality of their record-keeping and reporting.

Summary of findings

- In total, 103 discrepancies were reported as a result of this year's audit.
- 46 discrepancies were identified by chief executives of a department of government.
- 57 discrepancies identified by chief executive officers of local governments.
- 29 discrepancies related to two registered lobbyists
- Of these two registered lobbyists referred to above:
 - 15 discrepancies were reported by a local government which related to one lobbyist; a former councillor. All 15 discrepancies related to contact the lobbyist had with current councillors regarding planning and development matters. The local government area is located in a coastal region experiencing a sustained growth in population and associated planning and development activity. During the audit period, the lobbyist concerned did not record any contact with government representatives on the Lobbying Contact Register.
 - 13 discrepancies were reported by a local government, and one by a state government department, which related to one lobbyist who had previously being employed as a political advisor. A substantial number of the identified discrepancies related to development and planning matters and involved contact with councillors. The local government area is located in highly developed coastal region with significant reliance on the tourism industry. During the audit period the lobbyist recorded contact with government representatives on the Lobbying Contact Register on only two occasions.
- Of the remaining discrepancies, 23 lobbyists did not record contact on the Lobbying Contact Register in circumstances where contacted had been recorded by a government representative.
- Of these 23 lobbyists, between one and four discrepancies were identified. It should be noted that no correlation was identified between how active a lobbyist was, and the number of reported discrepancies. For example, reported discrepancies relating to the five most active lobbyists in Queensland (Anacta Strategies Pty Ltd, Hawker Britton Group Pty Ltd, GRACosway Pty Ltd, Next Level Strategic Services Pty Ltd and BBS Communications Group Pty Ltd), were either minimal or non-existent.

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- 13 discrepancies involved 22 individuals who were not registered with the Integrity Commissioner as either lobbyists or working for lobbyists as listed persons.
- Overall, discrepancies at the local government level predominantly related to lobbyists representing the interests of third-party clients in planning and development matters.
- Overall, discrepancies at state level were more varied in terms of range of matters.
- However, at state level common matters included where a registered or unregistered lobbyist had advocated for a third party client () on project development matters such as mining and other site specific activity, or where a registered or unregistered lobbyist made contact with a government representative to seek out COVID-19 related opportunities for clients.

Follow-up

The office of the Integrity Commissioner is now in the process of contacting all registered and unregistered lobbyists where a discrepancy has been reported between the records of a public authority and the Lobbyists Register and requesting further information.

The Integrity Commissioner will again write to each by chief executive of a department of government and chief executive officer of local governments in November 2021, and the Commissioner hopes that participation rates in the next audit will be even greater, as this process is undoubtedly in the public interest.

Acknowledgments

The Integrity Commissioner wishes to express her thanks to each public authority who participated, and for their support and assistance. The collective commitment demonstrated by these authorities to ensuring the highest standard of ethics and integrity in the public sector is deeply appreciated. The Integrity Commissioner also wishes to express her thanks to those lobbyists who are committed to entering accurate and fulsome information on the Lobbying Contact Register.

After more information?

The Integrity Commissioner has published a list of common questions and answers which is available on the website of the Queensland Integrity Commissioner: [Lobbying: Common questions and answers \(integrity.qld.gov.au\)](https://integrity.qld.gov.au)

The website also provides valuable guidance for lobbyists in respect of the obligations under the Lobbyists Code of Conduct and the Integrity Act 2009, as well as practical information about using the Lobbyists Register.