

## PART 2 – REGULATION OF LOBBYING ACTIVITIES

### 2.1 What is lobbying?

#### 2.1.1 Definition

Lobbying in Queensland is regulated by the *Integrity Act 2009* and the Lobbyists Code of Conduct<sup>1</sup> made under s.68 of that Act.

S. 42(1)(a) of the Act defines lobbying activities as—

- ... contact with a government representative in an effort to influence state or local government decision-making, including—
- (i) the making or amendment of legislation; and
  - (ii) the development or amendment of a government policy or program; and
  - (iii) the awarding of a government contract or grant; and
  - (iv) the allocation of funding; and
  - (v) the making of a decision about planning or giving of a development approval under the *Sustainable Planning Act 2009*.

S. 42(1)(b) extends the scope of the definition to contact with an Opposition representative in an effort to influence Opposition decision-making, including—

- (i) the making or amendment of legislation; and
- (ii) the development or amendment of an Opposition policy or program; and
- (iii) the Opposition's position or view in relation to State or local government decision-making, including, for example, the matters mentioned in paragraph (a)(i) to (v)

The key to understanding whether an action is or is not considered 'lobbying' under the Act is 'contact with a government representative in an effort to influence ... decision-making'.

It should also be noted that, under s.41 of the Act, a lobbyist is an entity that carries out a lobbying activity for a third party client and receives a fee or other reward for providing those services.

#### 2.1.2 Activities that the Act states are not lobbying

S.42 (2) of the Act states that certain activities are not lobbying:

- Contact with a committee of the Legislative Assembly or a local government
- Contact with a member of the Legislative Assembly, or a councillor, in his or her capacity as a local representative on a constituency matter.
- Contact in response to a call for submissions.
- Contact in response to a request for tender.
- Statements made in a public forum
- Responses to requests by government representatives or Opposition representatives for information.

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<sup>1</sup> The amended code took effect from 12 September 2013.

- Incidental meetings beyond the control of a government representative or Opposition representative.
- Contact on non-business issues, including, for example, issues not relating to a third party client of the lobbyist or the lobbyists' sector.
- Contact only for the purpose of making a statutory application.

It should be noted that 'contact' includes telephone contact, email contact, written mail contact and face-to-face meetings (s. 42(3)).

### **2.1.3 Associated activities that are NOT considered lobbying**

Lobbying contact does not include contact solely for the purpose of arranging, changing or cancelling a meeting or meetings. The organisation of the meeting is not lobbying; it is contact to organise a meeting at which, at a later stage, lobbying may take place.

If the person arranging a meeting gives a person an overview of what it is hoped will be achieved by a future meeting, the integrity commissioner does not consider this to be lobbying.

Similarly, the act of organising for a group of people to be together in a room for the purpose of lobbying, even if they would otherwise not meet, is also not considered to be lobbying.

A lobbyist who is preparing a strategy for a client is not lobbying as defined in the Act. Lobbyists do these things, but they are not the activities that the Act seeks to regulate.

A meeting between a lobbyist and a government or Opposition representative does not always constitute lobbying as defined in the Act. For example, a meeting in the street or at a party where pleasantries are exchanged, but no lobbying takes place, is not a lobbying activity.

### **2.1.4 Success fees**

S.69 of the *Integrity Act 2009* creates offences designed to prohibit the payment or receipt of success fees in relation to any lobbying activity. It provides that on conviction for any such offence, the relevant success fee is forfeited to the state.

## **2.2 The Register of Lobbyists**

### **2.2.1 Who must register?**

The *Integrity Act 2009* requires that professional lobbyists who wish to lobby State, local government or Opposition representatives in Queensland must be listed on the Register of Lobbyists.

S. 41 of the 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.

However, s. 41 specifically excludes from the definition:

- non-profit entities
- entities constituted to represent the interests of their members
- members of trade delegations visiting Queensland

- entities that carry out incidental lobbying activities
- entities carrying out a lobbying activity only for the purpose of representing the entity's own interests.

Also excluded are employees or contractors of, or people otherwise engaged by one of the entities already excluded, in relation to work carried out for the entity.

### **2.2.2 About the Register**

Registration requirements previously set out in the Queensland *Contact with Lobbyist Code* were replaced on 1 January 2010 by requirements under the Act. To be listed, professional lobbyists who act on behalf of third party clients need to:

- apply for inclusion on the Register of Lobbyists
- provide information about the business and all individuals involved in lobbying
- name the third parties for whom lobbying is undertaken with State government, local government, or both - whether paid or unpaid
- for each listed person, if the person is a former senior government representative, give the date the person ceased in the role of senior government representative
- name those clients to whom the lobbyist has provided paid or unpaid services as a lobbyist during the previous 12 months
- update the register when their information changes
- maintain details of contact with government representatives as required (see below).

Lobbyists are provided with a user name and password, which enable them to enter the section of the website relevant to the entity and update details as soon as practicable after their circumstances change.

### **2.3 The Register of Lobbying Contacts**

Under the lobbyist's code, lobbyists are required to maintain a regularly updated register of details of contact with government and Opposition representatives. The record of contact for a calendar month must be submitted electronically before the 15th of the following month; and information will become available to the public after submission.<sup>2</sup>

The required details are:

- date of meeting
- title(s) and or name(s) of government or Opposition representative(s)
- name of the lobbyist entity
- name of the client
- purpose of the meeting.

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<sup>2</sup> In December 2012, the *Right to Information and Integrity (Openness and Transparency) Amendment Act 2012* amended s 68 of the *Integrity Act 2009* to state that the Lobbyists Code of Conduct could impose obligations on lobbyists to give the integrity commissioner information about lobbying activities carried out by them. On 1 May 2013, the original Lobbyists Code of Conduct was withdrawn and a new code issued. The new code includes a requirement for lobbyists to notify their contacts with government and Opposition representatives.

### 2.3.1 Government representatives

Lobbyists must register their contacts with 'government and Opposition representatives'. Under s. 44 of the Act, each of the following people is a government representative—

- the Premier or another Minister
- a Parliamentary Secretary
- a councillor (including a mayor)
- a 'public sector officer'. Under section 47 of the Act, a public sector officer is the chief executive of, or a person employed by, one of the following entities:
  - a department
  - a public service office
  - a registry or other administrative office of a court or tribunal
  - a local government
  - a corporate entity under the *Local Government Act 2009*
  - the parliamentary service
  - a government owned corporation
  - an entity, prescribed by regulation, that is assisted by public funds.
- a ministerial staff member
- a parliamentary secretary staff member.

### 2.3.2 Opposition representatives

S.47A of the Act defines Opposition representatives as being the Leader and Deputy Leader of the Opposition, and staff members in the office of the Leader.

## 2.4 Obligations on government representatives to record information about lobbying

As noted above, the lobbyists' code of conduct requires all registered lobbyists to submit to the integrity commissioner records of their contact with government and Opposition representatives.

There is no corresponding obligation on government and Opposition representatives under the *Integrity Act 2009* to maintain a similar register. However, Ministerial diary publication requirements cover meetings with lobbyists;<sup>3</sup> and an agency's general record-keeping obligations extend to contact with lobbyists (whether the relevant lobbyist and/or contact is required to be registered under the *Integrity Act 2009* or not).

Further, under the relevant archives disposal schedule, all public authorities (i.e. State, local government and Opposition representatives) must retain any records of their contact with lobbyists for 10 years.<sup>4</sup>

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<sup>3</sup> Ministerial diaries are required to be published under the Ministerial Handbook, 3.12. See <http://www.cabinet.qld.gov.au/ministers/diaries.aspx>, retrieved on 30 March 2016.

<sup>4</sup> See reference number 1.7.3 of the Queensland State Archives General Retention and Disposal Schedule for Administrative Records, available at: <http://www.archives.qld.gov.au/Recordkeeping/GRKDownloads/Documents/GeneralDisposalSchedule.pdf>, retrieved on 30 March 2016.

Under the code of conduct for the Queensland Public Service, there is an obligation to ensure that ‘any engagement which [a person bound by the code has] with lobbyists is properly recorded’.<sup>5</sup>

## **2.5 Limitations on lobbying activities by former senior government and Opposition representatives**

S.70 of the Act provides that for a period of 2 years after a person becomes a former senior government or Opposition representative, they must not carry out ‘related lobbying activity’ for a third party client.

### **2.5.1 Former senior government and Opposition representatives**

Under s.45 of the Act, a person is a former senior government representative if the person was (but no longer is)—

- the Premier or another Minister
- a Parliamentary Secretary
- a councilor
- a public sector officer employed as a chief executive, senior executive or senior executive equivalent
- a ministerial staff member
- a parliamentary secretary staff member

S. 47B of the Act defines a former Opposition representative as being a Leader or Deputy Leader of the Opposition or staff member in the office of the Leader who is no longer an Opposition representative, and is not a government representative.

### **2.5.2 Related lobbying activities**

S.70(4) of the Act defines ‘related lobbying activity’ for a person who is a former senior government representative or a former Opposition representative, as lobbying activity relating to the person’s official dealings as government representative or Opposition representative in the 2 years before they became a former representative.

## **2.6 Employment limitations on former government representatives**

The Ministerial Code of Conduct states that in accepting their appointment, Ministers undertake not to take personal advantage in any future employment, of information obtained as a Minister which is not publicly available.

Further, Ministers undertake that for a period of 2 years after leaving office – or 18 months in the case of an Assistant Minister – that they will exercise care in considering offers of employment or providing services, and will not have meetings with Government business representatives, in relation to their official dealings as a Minister during their last two years in office.

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<sup>5</sup> See paragraph 4.2.b of the Code of Conduct for the Queensland Public Service i.e. the code of conduct made under Subdivision 1, Division 2 of Part 4 (ss.11-12C) of the *Public Sector Ethics Act 1994*.

S.22(1) of the *Ministerial and Other Office Holder Staff Act 2010* provides that Ministerial staff must comply with an approved code of conduct that applies to the staff member. The Code of Conduct for Ministerial staff members<sup>6</sup> has been approved for this purpose. It provides that Ministerial staff must:

Comply with post separation employment restrictions and ensure that you will not:

- have business meetings with a Queensland Government representative on any matter with which you had official dealings within your last eighteen months, for a period of eighteen months after ceasing ministerial employment
- disclose confidential information in breach of your contract of employment
- undertake lobbying activities for a third party on matters with which you had official dealings within your last two years of ministerial employment, for a period of two years after you cease ministerial employment.<sup>7</sup>

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<sup>6</sup> Code of Conduct for Ministerial staff members, 31 October 2012, available at <http://www.premiers.qld.gov.au/right-to-info/published-info/assets/code-of-conduct-ministerial-staff.pdf>, retrieved on 30 March 2016.

<sup>7</sup> Principle 4, p12.