

REGULATING DIRECT LOBBYING IN NEW SOUTH WALES FOR INTEGRITY AND FAIRNESS

A Report Prepared for the New South Wales
Electoral Commission

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LIST OF RECOMMENDATIONS

Recommendation One

The following should be statutorily recognised as the central objects of the *Lobbying of Government Officials Act 2011* (NSW):

- To protect the integrity of representative government through transparency of government decision-making;
- To protect the integrity of representative government through prevention of corruption and misconduct;
- To promote fairness in government decision-making; and
- To respect political freedoms - particularly the freedom to directly lobby.

Recommendation Two

The Register of Lobbyists in New South Wales should be underpinned by legislation, as provided for by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW).

Recommendation Three

The New South Wales register of lobbyists should cover all 'repeat players' – in particular professions, companies and interest groups that engage in direct lobbying and third party lobbyists.

Recommendation Four

The legislative provisions establishing the New South Wales Register of Lobbyists should explicitly state that the Register does not prohibit direct lobbying not covered by it.

Recommendation Five

'Government representative' under the register should be defined as a New South Wales minister, parliamentary secretary, ministerial staff, Member of Parliament and public servant.

Recommendation Six

'Lobbying' under the New South Wales Register of Lobbyists should be defined as 'communicating with Government officials for the purpose of representing the interests of others, in relation to legislation/proposed legislation or a current/proposed government decision or policy, a planning application or the exercise by Government officials of their official functions and activities associated with such communication'.

Recommendation Seven

All lobbyists covered by the New South Wales Register of Lobbyists should disclose the names and details of their owners and/or key officers.

Recommendation Eight

All lobbyists covered by the New South Wales register of lobbyists should disclose on a monthly basis:

- the month and year in which they engaged in a contact with a Government representative involving lobbying;
- the identity of the government department, agency or ministry lobbied;
- the name of any Government representative/s lobbied;
- whether the purposes of any contact with Government representatives involving lobbying included:
 - the making or amendment of legislation;
 - the development or amendment of a government policy or program;
 - the awarding of government contract or grant;
 - the allocation of funding; or
 - the making a decision about planning or giving of a development approval under the New South Wales planning laws;
- details of the relevant legislation, policy or program if the disclosed purposes of the contact involving direct lobbying included the making or amendment of legislation, or the development or amendment of a government policy or program;
- details of the relevant contract, grant or planning/development decision if the disclosed purposes of the contact included the award of a government contract or grant, allocation of funding, making a decision about planning or

giving of a development approval under the New South Wales planning laws unless these details are 'commercial-in-confidence';

- identities of any individual or entity who has financially contributed to their lobbying; and
- in the case of Third Party Lobbyists, the name of the client or clients for whom the lobbying occurred, together with the name of any entity related to the client the interests of which did derive or would have derived a benefit from a successful outcome of the lobbying activity.

Recommendation Nine

The NSWEC should integrate information on political donations made by lobbyists into the Register of Lobbyists.

Recommendation Ten

Lobbyists covered by the New South Wales Register of Lobbyists should be required to disclose how much they have spent on their lobbying activities.

Recommendation Eleven

- Lobbyists covered by the New South Wales Register of Lobbyists should be required to disclose whether they are a former Government representative and if so, when they left their public office.
- A list of former New South Wales Government representatives subject to restrictions relating to direct lobbying and the period of these restrictions should be published on the website of the New South Wales Register of Lobbyists.

Recommendation Twelve

The obligation on public officials not to permit lobbying by lobbyists not covered by the Register of Lobbyists should be established in legislation.

Recommendation Thirteen

The provision rendering officers of registered political parties ineligible for registration should be narrowed to officers of the governing political parties.

Recommendation Fourteen

- The criminal prohibitions under the *Lobbying of Government Officials Act 2011* (NSW) relating to success fees and post-separation employment of former Ministers and Parliamentary Secretaries should be repealed.
- In its place, the Code of Conduct for Lobbyists should prohibit:
 - success fees;
 - former ministers and parliamentary secretaries from engaging in any lobbying relating to any matter that they had official dealings with in their last 18 months in office for a period of 18 months after leaving office; and
 - former ministerial and parliamentary secretary staff and former Senior Government representatives from engaging in any lobbying 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.

Recommendation Fifteen

- The Lobbyists Code of Conduct should be approved by the NSWEC.
- The Code should be tabled before each House of Parliament and be disallowable by either House (like regulations).
- The NSWEC shall consult the relevant parliamentary committee prior to approving (or amending) the Code.

Recommendation Sixteen

The New South Wales Lobbyists Code of Conduct should cover all ‘repeat players’ – in particular professions, companies and interest groups that engage in direct lobbying and third party lobbyists.

Recommendation Seventeen

The Lobbyists Code should include:

- the obligations currently imposed under the ‘Principles of Engagement’ of the NSW Government Lobbyist Code of Conduct;
- obligations recommended by ICAC, namely, the duties of lobbyists to:

- inform their clients and employees who engage in lobbying about their obligations under the Code of Conduct;
- comply with the meeting procedures required by Government representatives with whom they meet, and not attempt to undermine these or other government procedures or encourage Government representatives to act in breach of them;
- not place Government representatives in the position of having a conflict of interest;
- not propose or undertake any action that would constitute an improper influence on a Government representative, such as offering gifts or benefits; and
- not offer, promise or give any gift or other benefit to a Government representative, who is being lobbied by the lobbyist, has been lobbied by the lobbyist or is likely to be lobbied by the lobbyist;
- certain obligations presently found under the Queensland Lobbyists Code of Conduct, namely, the duties of lobbyists to:
 - not represent conflicting or competing interests without the informed consent of those whose interests are involved;
 - advise government and Opposition representatives that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client before proceeding/continuing with the undertaking;
 - provide accurate and updated information to the Government or Opposition representative, as far as is practicable, if a material change in factual information that the lobbyist provided previously to a Government or Opposition representative causes the information to become inaccurate and the lobbyist believes the Government or Opposition representative may still be relying on the information; and
 - if the lobbyist is a former senior Government representative or former Opposition representative within the last 2 years, to indicate to the Government or Opposition representative their former position, when they held that position and that the matter is not a prohibited lobbying activity.

- the obligation to advocate their views to public officials according to the merits of the issue at hand and not to adopt approaches that rely upon their wealth, political power or connections; or that of the individuals and/or organisations they represent.

Recommendation Eighteen

Public officials should be obliged to notify the NSWEC if there are reasonable grounds for suspecting that a lobbyist has breached the Lobbyists Code of Conduct.

Recommendation Nineteen

The codes of conduct applying to New South Wales Ministers, Members of Parliament and public servants should include the following duty:

When lobbied, public officials perform their duties and functions according to the merits of the issue at hand and shall not do so in a manner that privileges the wealth, political power or connections of lobbyists and the individuals and/or organisations they represent.

Recommendation Twenty

The recommendation made in the ICAC Lobbying Report concerning protocols of meetings between New South Wales public officials and lobbyists should be adopted.

Recommendation Twenty One

- Summaries of the diaries of New South Wales Ministers should be published on a monthly basis and provide details of meetings held with stakeholders, external organisations and individuals including the organisation or individual with whom the meeting occurred, details of any registered lobbyists present, and the purposes of the meeting.
- The information provided through these summaries should be consistent in form with that provided under the Register of Lobbyists so as to facilitate cross-checking.

Recommendation Twenty Two

The following clause should be inserted into the codes of conduct applying to New South Wales Ministers, Members of Parliament and public servants:

A public official must not improperly use his or her influence as a public official to seek to affect a decision by another public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, his or her private interests, a member of his or her family, or a business associate of the public official.

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I INTRODUCTION

In the space of less than two years - 2013 to the present time - the New South Wales Independent Commission Against Corruption (ICAC) has undertaken nine investigations into alleged corrupt conduct¹ by Ministers of the New South Wales government.² The seven completed investigations have resulted in corrupt conduct findings against three former Ministers of the previous Australian Labor Party (ALP) governments: Edward Obeid, Joseph Tripodi and Ian Macdonald.³

While the conduct exposed by ICAC investigations was initially seen as a particular manifestation of the culture and practices of the former ALP governments – a perception that strongly contributed to the ALP's loss of the 2011 state elections⁴ - such a belief was clearly put to rest by ongoing ICAC investigations. Operation Credo, which investigates allegations concerning corrupt conduct involving Australian Water Holdings Pty Ltd (AWH), has implicated Nicholas Di Girolamo, AWH Chief Executive and Liberal Party fund-raiser, and Arthur Sinodinos, a former director of AWH and former Treasurer of NSW Liberal Party. As a result of the publicity surrounding Operation Credo, Sinodinos has stepped aside as federal Assistant Treasurer. Operation Spicer, on the other hand, investigates allegations of corrupt solicitation, receipt and concealment of political funding payments to various Members of Parliament - including former Liberal Party Energy Minister Chris Hartcher - in exchange for favoured treatment of the funders. At the time this report was completed, these two investigations have resulted in the resignations of Barry O'Farrell as Premier; two Liberal Party Ministers, Chris Hartcher and Mike Gallacher;

¹ There is a complex definition of 'corrupt conduct' under the *Independent Commission Against Corruption Act 1988* (NSW), see sections 7-8.

² See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present.

³ See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operations Jarilo, Acacia, Jasper, Cyrus, Cabot and Meeka. In 2011, ICAC made corrupt findings against former ALP Minister, Tony Kelly in relation to his conduct when Minister of Lands which led to his resignation: ICAC, *Investigation into the Unauthorised Purchase of Property at Currawong by the Chief Executive of the Land and Property Management Authority* (2011).

⁴ See Brenton Holmes, '2011 NSW Election' (Background Note, Parliamentary Library, Commonwealth of Australia, 23 June 2011).

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/NSWElection#_Toc296600685>.

and the withdrawal of four Members of Parliament from the Liberal Party, Chris Spence, Darren Webber, Marie Ficarra and Andrew Cromwell.⁵

The ICAC investigations have not only exposed corrupt conduct on the part of individuals but also serious defects in the laws of the State ranging from its management of coal resources⁶ and retail leases at Circular Quay⁷ to the rules governing gifts and pecuniary interests of Parliamentarians.⁸ Undoubtedly, they have also led to a substantial loss of public confidence in the New South Wales system of government. At the root of all this is the perception, with some justification, that money in New South Wales politics (commercial interests; political donations; and gifts to public officials) is warping its system of government so much that some of its leaders – Ministers of the Crown – are preferring their private interests (and greed) over the public interest.

Corrupt conduct and the scandals associated with them clearly damage public institutions. Yet, that need not be their only consequence. Robust democracies have powerful self-corrective mechanisms when it comes to corruption and other forms of public wrongdoing; the scrutiny and accountability that comes in the wake of such conduct being exposed can have a ‘cleansing’ effect. They can lead to clarification of standards expected in public life, the setting of new standards where needed and the establishment of effective mechanisms to ensure that these standards are met.

This report evokes the self-corrective spirit of New South Wales’ democracy by critically examining a central aspect of the conduct exposed by the ICAC investigations – direct lobbying of public officials.

⁵ See ‘Political scalps of the NSW Independent Commission Against Corruption’, *ABC News* (online), 6 May 2014 <<http://www.abc.net.au/news/2014-05-02/political-scalps-of-nsw-icac/5427260>>. For an excellent interactive website on the web of relationships being investigated through Operations Credo and Spicer, see Tim Leslie and Adam Harvey, *A Tangled Web: ICAC Investigates NSW Corruption*, ABC News <<http://www.abc.net.au/news/interactives/icac-relationships-graph/>>.

⁶ New South Wales Independent Commission Against Corruption, *Reducing the Opportunities and Incentives for Corruption in the State’s Management of Coal Resources* (2013). (“*Coal Resources Report*”)

⁷ New South Wales Independent Commission Against Corruption, *Investigation into the Conduct of the Hon Edward Obeid MLC and others concerning Circular Quay Retail Lease Policy* (2014). (“*Circular Quay Retail Lease Report*”)

⁸ New South Wales Independent Commission Against Corruption, above n 6, 43.

If lobbying is understood as activity directed at influencing public decision-making and direct lobbying as lobbying involving direct communication with public officials, the alleged corrupt conduct by Ministers recently investigated by ICAC has centrally implicated direct lobbying of public officials. To illustrate: Edward Obeid, former Minister for Fisheries and Minister for Mineral Resources, was clearly engaging in such conduct when he successfully persuaded his ALP colleague, Ian Macdonald, to grant a coal exploration licence in order to benefit his family's interests.⁹ This was also apparent when Obeid persuaded then Finance Minister, Michael Costa, to meet with representatives of Direct Health Solutions Pty Ltd (without disclosing his interest in the company),¹⁰ and when Obeid sought to influence a range of Ministers in relation to the Circular Quay Retail Lease policy.¹¹ The grant by Ian Macdonald as Minister for Energy of a coal exploration licence to Doyles Creek Mining Pty Ptd was also the result of direct lobbying by the company's representative,¹² and businessman, Ronald Medich, was undertaking direct lobbying when he persuaded Ian Macdonald – when Minister for Energy – to facilitate meetings between Medich and representatives of certain energy companies so Medich could promote his business interests.¹³

This report will examine the topic of direct lobbying in eight parts:

- Part I: Scope of the Report: Regulation of Direct Lobbying at the State Level
- Part II: What is Direct Lobbying, Who Does It and to whom is it Directed?
- Part III: The Democratic Principles to Govern Direct Lobbying
- Part IV: The Problems of Direct Lobbying
- Part V: Australian Regulation of Direct Lobbying
- Part VI: Regulation of Lobbying in Jurisdictions Overseas
- Part VII: An Evaluation of NSW Regulation of Direct Lobbying and Recommendations for Reform

⁹ See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operation Jasper.

¹⁰ See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operation Meeka.

¹¹ See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operation Cyrus.

¹² See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operation Acacia.

¹³ See Appendix 1: Table on NSW Independent Commission Against Corruption investigations involving Ministers: 2013-present, Operation Jarilo.

The report closely examines the amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) which establishes by legislation a Register of Lobbyists to be administered by the New South Wales Electoral Commission (NSWEC) and also provides for a Lobbyists Code of Conduct to be promulgated by regulations and administered by the Commission. It broadly welcomes these amendments – they unequivocally represent an advance in terms of the democratic regulation of direct lobbying in New South Wales.

There are, however, limitations to the regime established by *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) and this report makes 22 recommendations that will enhance the its robustness. Central amongst these recommendations are the following:

- Its coverage of lobbyists should be expanded to capture all ‘repeat players’ in the field of direct lobbying including professions, companies and interest groups that engage in direct lobbying and third party lobbyists (Recommendations Three and Sixteen);
- Its coverage of public officials should be extended to include New South Wales Members of Parliament (Recommendation Five);
- All lobbyists covered by the New South Wales Register of Lobbyists should disclose on a monthly basis specified particulars of their contacts with Government representatives (Recommendation Eight); and
- The Lobbyists Code of Conduct should be approved by the NSWEC instead of being promulgated by regulations (Recommendation Fifteen).

II SCOPE OF THE REPORT: REGULATION OF DIRECT LOBBYING AT THE STATE LEVEL

This report focuses on the regulation of direct lobbying. As Warhurst succinctly explains:

Direct lobbying involves dealing with formal political institutions, like government, parliament, the public service or, less frequently, the courts. Indirect lobbying involves dealing with the media, public opinion or the electoral process.¹⁴

There are, of course, commonalities between direct and indirect lobbying: they are different strategies directed at the overall aim of influencing the political process; and both are generally funded political activity. These commonalities suggest that similar democratic principles govern both types of lobbying. The principal author of this present report has previously prepared for the New South Wales Electoral Commission a report entitled *Towards a More Democratic Political Funding Regime in New South Wales* which identified four key principles which should govern election funding, an area that would include indirect lobbying:

- 1 Protecting the integrity of representative government;
- 2 Promoting fairness in politics;
- 3 Supporting political parties in performing their functions; and
- 4 Respecting political freedoms.¹⁵

As will be explained later, Principles 1), 2) and 4) are of particular relevance when it comes to the regulation of direct lobbying.¹⁶

There is, however, a difference between direct and indirect lobbying that warrants a focussed treatment of direct lobbying. By definition, such lobbying occurs directly between the lobbyists and public officials; it is communication unmediated by voters or the media. This gives rise to problems that do not commonly attend the public

¹⁴ John Warhurst, *Behind Closed Doors: Politics, Scandals and the Lobbying Industry* (UNSW Press, 2007) 9.

¹⁵ Joo-Cheong Tham, *Towards a More Democratic Political Funding Regime in New South Wales* (2010) pt II
<[http://www.efa.nsw.gov.au/_data/assets/pdf_file/0005/128714/Towards_a_More_Democratic Political Finance Regime in NSW Report for NSW EC.pdf](http://www.efa.nsw.gov.au/_data/assets/pdf_file/0005/128714/Towards_a_More_Democratic_Political_Finance_Regime_in_NSW_Report_for_NSW_EC.pdf)>.

¹⁶ See Part IV below.

activity of indirect lobbying, problems that call for a distinctive regulatory response, particularly for reasons of transparency. As ICAC has noted:

Lobbying is often conducted in private. Whether intentional or not, this can mean that the lobbying activity is effectively secret, since there may be no mechanisms in place for information on the activity to be made available to members of the public.¹⁷

This report accordingly focuses on the distinctive issues concerning the regulation of direct lobbying. The regulation of indirect lobbying in New South Wales principally falls within the province of its election funding laws which have been examined in two reports written by the principal author of this report, *Towards a More Democratic Political Funding Regime in New South Wales* (2010) and *Establishing a Sustainable Framework for New South Wales Election Funding and Spending Laws* (2012) (NSW Political Finance Report).

The report is also restricted to the regulation of direct lobbying at the State level and does not extend to direct lobbying at the NSW local government level. As with the related topic of election funding,¹⁸ the issues arising at the State and local government levels significantly differ. As ICAC has noted, direct lobbying at the local government level is different from that at the State level due to the different nature of the lobbyists (who principally comprise those involved in property development); the subject matter of lobbying (which primarily concerns matters affecting land value); and the problem of covert relationships between those lobbying and council officers.¹⁹

¹⁷ New South Wales Independent Commission Against Corruption, *Investigation into Corruption Risks Involved in Lobbying* (2010) 18. ("ICAC Lobbying Report")

¹⁸ Joo-Cheong Tham, *Regulating the Funding of New South Wales Local Government Election Campaigns* (2010)

<http://www.efa.nsw.gov.au/__data/assets/pdf_file/0007/128716/Regulating_the_Funding_of_NSW_Local_Government_Election_Campaigns_final.pdf>.

¹⁹ ICAC Lobbying Report, above n 17, ch 11. See also New South Wales Independent Commission Against Corruption, *Lobbying Local Government Councillors: A Guide for Councillors, Constituents And Other Interested Parties* (2006).

III WHAT IS LOBBYING, WHO ENGAGES IN IT AND TO WHOM IS IT DIRECTED?

A *What Is Direct Lobbying?*

Despite widespread use of the term, 'lobbying' has no settled meaning in scholarship, policy or law.²⁰ A recent survey by the Organisation for Economic Co-operation and Development (OECD) of its 34 member countries, for instance, found that there was not a shared understanding of 'lobbying' in the laws of these countries.²¹

That said, the definition adopted in an OECD report on lobbying provides a useful starting point:

The essence of lobbying involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions.²²

This definition treats the communication between those lobbying and public officials as central. Such communication can take place in various ways, including private meetings with public officials, participation in government consultations and 'backgrounding' public officials.²³

It is crucial, however, to stress that direct lobbying involves much more than communication between those lobbying and public officials – it is much more than advocacy.²⁴ For the communication involved in direct lobbying to be effective, not only do those lobbying need to be properly informed but their communication needs to be informed by strong strategic analysis. As explained by veteran commercial lobbyist, Peter Sekules:

At least half of a lobbyist's work involves supplying information to clients. The rest is concerned with applying that information to influencing government decisions, that is,

²⁰ See Conor McGrath, *Lobbying in Washington, London, and Brussels: The Persuasive Communication of Political Issues* (Edwin Mellen Press, 2005) ch 2; Mark Sheehan, 'Lobbying Defined And Observed' in Mark Sheehan and Peter Sekules, *The Influence Seekers: Political Lobbying in Australia* (Australian Scholarly Publishing, 2012) 2-3.

²¹ OECD, *Lobbyists, Governments and Public Trust: Volume 1* (OECD Publishing, 2009) 18.

²² *Ibid* 18 (emphasis original).

²³ See *ICAC Lobbying Report*, above n 17, 24.

²⁴ Conor McGrath, above n 20, 32-39.

persuading politicians or bureaucrats to take or not to take a particular action. The appropriate decision makers have to be informed about the merits of the client's proposition and the demerits of the opposing point of view. The client usually supplies the raw information, but the lobbyist moulds it into an acceptable form and recommends to whom and when it should be disseminated to achieve optimum results.²⁵

In a similar vein, Peter Cullen - who is believed to have pioneered commercial lobbying in Australia²⁶ - has stipulated the following rules of effective lobbying:

Find out what your client really wants; find out all the information you can about government approaches to similar problems; think about the problems; set down in specific terms the decisions you require of government to solve your client's particular problem; confirm with your client; think about solutions; devise a strategy based upon the following considerations: who makes the final decision? who advises him? what considerations does he take into account? what factors are likely to influence the results, e.g. media publicity, questions in Parliament, backbench pressure?

Summed up: if you want a favourable decision you must couch your argument to appeal to those whom you are seeking to persuade.²⁷

An important aspect of direct lobbying efforts is research on the issue at hand.²⁸ Indeed, Geoff Allen, Foundation Executive Director of the Business Council of Australia and founder of Allen Consulting (now known as ACIL Allen Consulting) – which claims to be ‘the largest Australian owned, independent, economic, public policy, and public affairs management consulting firm in Australia’²⁹ – has noted the increased use of research-based lobbying in Australia.³⁰

²⁵ Peter Sekules, *Lobbying Canberra in the Nineties: The Government Relations Game* (Allen & Unwin, 1991) 21.

²⁶ John Warhurst, above n 14, 18.

²⁷ Peter Cullen, ‘The Rise of Pressure/Interest Groups: Lobbying and the Professional Lobbyist’ in *Power in Australia: Directions of Change* (Centre for Continuing Education, 1982) 289-290 quoted in John Warhurst, ‘Lobbyists and Policy Making in Canberra’ (1987) 64(3) *Current Affairs Bulletin* 13, 16.

²⁸ *ICAC Lobbying Report*, above n 17, 24.

²⁹ ACIL Allen, *Economic Consultants – Policy, Strategy, Advice, Solutions* (2013) <<http://www.acilallen.com.au/>>.

³⁰ Geoff Allen, ‘The Rise of Research-Based Policy Advocacy’ in Mark Sheehan and Peter Sekules, *The Influence Seekers: Political Lobbying in Australia* (Australian Scholarly Publishing, 2012) ch 9.

What is also central to direct lobbying efforts is providing and gaining access to government decision-making processes through knowledge of these complex processes and personal contacts.³¹ Personal contacts are of particular significance with direct lobbying; such lobbying has been said to be characterised by '(t)he personalization of relations... the underlying vein is irreducibly personalized and sustained mainly on trust and personal relations'.³² Maintaining good relations with public officials and other lobbyists has been said to be one of the activities that dominates the work of American lobbyists.³³ One commentator has gone so far as to say:

In the lobbying world, nothing is more important than relationships. The best business relationships are those that allow you to ask a favour.³⁴

One other aspect of direct lobbying efforts worth stressing is that they are frequently part of a long-term and integrated political campaign. For instance, the campaign by the Business Council of Australia for a change in the industrial relations system from awards to enterprise bargaining took place over several years in the latter half of the 1980s and relied on both direct and indirect lobbying informed by research and policy documents.³⁵ Another example here is the 'Rights at Work' campaign by the Australian Council of Trade Unions that took place over the period January 2005 to November 2007 and involved direct lobbying, workplace mobilisation, community campaigning and political advertising.³⁶

³¹ John Warhurst, above n 14, 9.

³² Luigi Graziano, *Lobbying, Pluralism and Democracy* (Palgrave Macmillan, 2001) 11.

³³ Kenneth Godwin, Scott Ainsworth and Erik Godwin, *Lobbying and Policymaking: The Public Pursuit of Private Interests* (CQ Press, 2013) 3-6.

³⁴ Robert Kaiser, *So Damn Much Money: The Triumph of Lobbying and the Corrosion of American Government* (Vintage, 2010) 7.

³⁵ Geoff Allen, 'The Business Council Of Australia: Its Origins And Early Years' in Mark Sheehan and Peter Sekules, *The Influence Seekers: Political Lobbying in Australia* (Australian Scholarly Publishing, 2012) 76, 90-92.

³⁶ Kathie Muir, *Worth Fighting For: Inside The Your Rights at Work Campaign* (UNSW Press, 2008). For a long-term lobbying campaign in another sphere, see Claire Hooker and Simon Chapman, 'Structural elements in achieving legislative tobacco control in NSW, 1955-95: political reflections and implications' (2006) 30(1) *Australian and New Zealand Journal of Public Health* 10.

B *Who Engages in Direct Lobbying?*

There is a variety of individuals, groups and organisations that engage in direct lobbying. They include:

- Third party or professional lobbyists;
- Government relations staff and directors of corporations and other commercial entities;
- Technical advisers who lobby as a part of their principal work for clients (e.g. architects, engineers, lawyers, accountants);
- Representatives of peak bodies and member organisations;
- Churches, charities and social welfare organisations;
- Community-based groups and single-interest groups;
- Members of Parliament;
- Local councillors;
- Head office representatives of political parties; and
- Citizens acting on their own behalf or for their relatives, friends or local communities.³⁷

It is useful here to distinguish between ad-hoc direct lobbying, notably by individual citizens; and direct lobbying by 'repeat players' - organisations and individuals that regularly engage in direct lobbying. Lobbying by 'repeat players' has become increasingly significant in recent decades. In examining lobbying at the Commonwealth level, Peter Sekules observed that:

From a handful of institutional lobbies and a clutch of consultant lobbyists in the late 1970s, the government relations industry has expanded to the stage where lobbying is a recognised factor in the growth of Canberra.³⁸

The lobbying industry in 21st century Australia is literally 'big business', with an estimated 150 lobby groups and commercial lobbyists, 1 000 lobbyists in all and a combined turnover of over \$1 billion.³⁹ Australia is not alone in witnessing such a

³⁷ *ICAC Lobbying Report*, above n 17, 22.

³⁸ Peter Sekules, above n 25, 3. For accounts of the evolution of lobbying in Australia, see *ibid* chs 2-4; John Warhurst, above n 14, ch 1.

³⁹ Julian Fitzgerald, *Lobbying in Australia: You Can't Expect Anything To Change If You Don't Speak Up* (Rosenberg Publishing, 2006) 12.

development. The lobbying industry has become a significant feature of many democracies: in the United States, US\$3.28 billion was spent on lobbying at the federal level in 2008 with nearly 15 000 registered lobbyists employed; in Canada, there are more than 5 000 registered lobbyists; and the European Commission's voluntary register launched in 2008 had more than 2 000 lobbyist registrations in first 14 months.⁴⁰

The 'repeat players' can be categorised into different groups.⁴¹ There are the third party lobbyists (also known as professional, commercial or consultant lobbyists) - individuals and companies which engage in the business of lobbying by representing the interests of their clients. Appendix Two provides details of the 134 third party lobbyists that were registered under the New South Wales Register of Lobbyists (including names of their clients) as at 13 July 2014, while Appendix Three provides the number of clients each registered lobbyist had at that time.

Taking the number of clients as a proxy for size, it can be seen that the work of registered lobbyists in New South Wales varies greatly in size: some lobbyists have only one client or none at all, while the larger establishments have more than 20 clients (with 71 clients, Barton Deakin Pty Limited has the largest number of clients). Table 1 ranks the top twenty NSW registered lobbyists according to the number of clients.

Table 1: NSW Register of Professional Lobbyists – Top 20 Largest Lobbying Firms By Client

	Business Entity Name	Trading Name	No of Clients
1.	Barton Deakin Pty Limited	Barton Deakin Pty Limited	71
2.	Government Relations Australia Advisory Pty Ltd	Government Relations Australia Advisory Pty Ltd	38
3.	First State Advisors & Consultants Pty Ltd	First State Government and Corporate Relations	35
4.	Kreab Gavin Anderson (Australia) Limited	Kreab Gavin Anderson	33
5.	Premier State Consulting Pty Ltd	Premier State	30
6.	Richardson Coutts Pty Limited	Richardson Coutts Pty Ltd	30
7.	The Trustee for Endeavour	Endeavour Consulting Group Pty Ltd	29

⁴⁰ OECD, above n 21, 3.

⁴¹ See generally Peter Sekules, above n 25, chs 2-3; Julian Fitzgerald, above n 39, 21-26; John Warhurst, above n 14, 10-11.

	Business Entity Name	Trading Name	No of Clients
	Consulting Group Unit Trust		
8.	Crosby Textor Research Strategies Results Pty Ltd	Crosby Textor Research Strategies Results Pty Ltd	23
9.	Newgate Communications Pty Limited	Newgate Communications	22
10.	Statecraft Pty Ltd	Statecraft	21
11.	Hugo Halliday PR & Marketing Pty Ltd	Hugo Halliday PR + Government Relations + Marketing + Media Training	20
12.	Cotterell, Jannette Suzanne	Executive Counsel Australia	17
13.	The Premier Communications Group Pty Ltd	The Premier Communications Group	17
14.	Parker & Partners Pty Ltd	Parker & Partners Public Affairs	16
15.	Ogilvy PR Health Pty Ltd	Ogilvy PR Health	14
16.	Policy Solutions Group Pty Ltd	The Agenda Group NSW	14
17.	Jo Scard Pty Ltd	Fifty Acres – The Communications Agency	13
18.	Primary Communication Pty Ltd	Primary Communication	13
19.	Profile Consulting (Aust) Pty Ltd	Profile Consulting (Aust) Pty Ltd	13
20.	Repute Communications & Associates Pty Ltd	Repute Communications & Associates Pty Ltd	13

Source: NSW Register of Professional Lobbyists

The diversity in terms of size is not, however, matched in relation to the client base of the registered lobbyists. As Appendix Two indicates, while there are several public sector bodies, unions and charities represented by the registered lobbyists, the clients of these lobbyists are overwhelmingly companies. According to Peter Sekules, these clients can be further classified into two groups: 1) ongoing clients, who are usually large corporations requiring regular contact with government; 2) single issue clients, who have usually hired the lobbyist for a specific project or campaign.⁴²

Corporations and other commercial entities are also another group of 'repeat players'. Some corporations will only engage the services of third-party lobbyists. But other corporations will undertake direct lobbying on their own as an alternative – and at times, a complement – to the efforts of third party lobbyists. According to ICAC:

⁴² Peter Sekules, above n 25, 22-23.

Corporations that actively lobby the NSW Government with their own staff and directors are probably more modest in number than might be expected; in the range of several hundred.⁴³

Such lobbying is often undertaken by in-house lobbying departments, usually described as government relations or public relations departments, which are more likely to be found in larger companies.⁴⁴ A study by Bell and Warhurst has found that the staff of these departments plays a vital role in the lobbying strategies of some businesses by engaging in 'middle-level lobbying'.⁴⁵ Another way some corporations engage in direct lobbying is through their senior managers and directors. The importance of such lobbying should not be underestimated – the study by Bell and Warhurst found that senior managers and company directors were typically responsible for lobbying to 'highest level contacts'.⁴⁶ As Warhurst has observed:

Few would doubt . . . that individuals like Rupert Murdoch of News Ltd and James Packer of Publishing and Broadcasting Ltd (and his father before him) are key lobbyists, as are those companies' board members and chief executives.⁴⁷

A key group of 'repeat players' are interest groups – organisations that seek to influence the political process in order to advance particular interests or causes. Interest groups include membership-based organisation like unions, churches and charities, peak organisations (e.g. NSW Business Chamber; Unions NSW; Council of Social Service of New South Wales). ICAC has estimated the number of some of these groups:

Of the peak bodies . . . there would be several hundred. Of the charities that lobby the NSW Government, the number might be between 50 and 100. Some churches (including diocesan groupings) lobby actively and regularly at NSW Government level, but the number that do so is likely to be less than 50.⁴⁸

⁴³ *ICAC Lobbying Report*, above n 17, 57.

⁴⁴ Stephen Bell and John Warhurst, above n 44, 'Business Political Activism and Government Relations in Large Companies in Australia' (1993) 28 *Australian Journal of Political Science* 201, 212.

⁴⁵ *Ibid* 212.

⁴⁶ *Ibid*.

⁴⁷ John Warhurst, above n 14, 36.

⁴⁸ *ICAC Lobbying Report*, above n 17, 57.

The opportunities for some of these interest groups to directly lobby will vary according to whether the Coalition or the ALP hold office with a more business-friendly and union-hostile approach when the Coalition is in power.⁴⁹ But differences can go beyond the union/corporate split. For instance, under the Howard federal government, there was a greater lobbying role for church and charities.⁵⁰

Another group of 'repeat players' brought into the limelight by ICAC investigations are public officials (Ministers, Members of Parliaments, public servants) – who engage in 'lobbying from within'.⁵¹ As an illustration, Operation Cyrus – which investigated the conduct of Edward Obeid and others in relation to the Circular Quay Retail Lease Policy – revealed systematic lobbying by Mr Obeid of his ministerial colleagues, namely Michael Costa, Eric Roozendaal and Joseph Tripodi.⁵²

C To Whom is Direct Lobbying Directed?

If direct lobbying is understood as a strategic (communicative) activity with the goal of influencing government decision-making, the targets of lobbying can be expected to hold positions of public power. This means the targets of direct lobbying will be deeply influenced by the structures of government. In New South Wales, as in other Australian jurisdictions, there is a Westminster system dominated by political parties. The executive branch of government is headed by the party or coalition that has majority support in the NSW Legislative Assembly and comprises elected officials who are Ministers, as well as public servants. The legislative branch comprises a bicameral Parliament with different voting systems for the NSW Legislative Assembly and Legislative Council. The result is that the governing party – which has to enjoy a majority in the Legislative Assembly - does not necessarily command a majority in the Legislative Council.

Such a system of government has two key arenas of lobbying: the legislature and the executive.⁵³ Broadly speaking, there are also two groups which can be targets of lobbying: elected officials (political lobbying) and public servants (administrative

⁴⁹ See John Warhurst, above n 14, 32-33.

⁵⁰ John Warhurst, above n 14, 33.

⁵¹ OECD, above n 21, 73.

⁵² *Circular Quay Retail Lease Report*, above n 7, chs 3-5.

⁵³ Luigi Graziano, above n 32, ch 1.

lobbying).⁵⁴ Ministerial advisers – who mediate between Ministers and public servants – can also be lobbied. One commentator has remarked that ‘the sheer number of advisers and their political backgrounds make them more attractive as targets to lobbyists irrespective of the party in power’.⁵⁵

The choice of the targets of lobbying will be profoundly determined by where the power of public decision-making resides or is perceived to reside. When it comes to the passage of legislation, non-government Members of Parliament who enjoy significant power (e.g. Shadow Ministers; Parliamentarians holding the ‘balance of power’) are more likely to be lobbied than a government backbencher.

With the exercise of executive power, the target of lobbying will vary significantly according to the context. When the power of decision-making lies with a public servant – as in the case of the allocation of water licences at Cherrydale Park⁵⁶ - the public servant will tend to be the target of lobbying; when the power of decision-making lies with Minister – as in the case of the grant of the mining exploration licence to Doyles Creek Mining by Ian Macdonald⁵⁷ - it is the relevant Minister who is most likely to be lobbied.

The complex systems and practices of government decision-making also mean that sustained lobbying campaigns will typically have multiple targets of lobbying. Peter Sekules has observed in relation to direct lobbying at the Commonwealth level:

There is no single point of pressure on an issue. Canberra is basically an interactive pressure system, and any effective approach must be many-faceted. The value of professional lobbyists is their knowledge of where and when to make approaches

⁵⁴ John Warhurst, ‘Political Lobbying in Australia’ (1990) 5 *Corruption and Reform* 173, 182.

⁵⁵ Noel Turnbull and Claire Shamier, ‘Lobbying under Liberal and Labor governments’ in Mark Sheehan and Peter Sekules, *The Influence Seekers: Political Lobbying in Australia* (Australian Scholarly Publishing, 2012) 111, 115-116.

⁵⁶ See New South Wales Independent Commission Against Corruption, *Investigations into the conduct of the Hon Edward Obeid MLC And Others In Relation To Influencing The Granting of Water Licences And The Engagement of Direct Health Solutions Pty Ltd* (2014) ch 4 (“*Water Licences Report*”).

⁵⁷ New South Wales Independent Commission Against Corruption, *Investigation Into The Conduct of Ian MacDonal, John Maitland and Others* (2013).

and in what form. Decisions are seldom made by one department; six to eight may be involved.⁵⁸

As a recent text of US lobbying succinctly put it, 'lobbying and policymaking are multistage processes'.⁵⁹

Operation Cyrus – which investigated the conduct of Edward Obeid and others in relation to the Circular Quay Retail Lease Policy – is illustrative. The conduct revealed by this investigation involved lobbying by Obeid of his ministerial colleagues; lobbying by Joseph Tripodi – then a Minister – of Cabinet; and also lobbying within the Maritime Authority of NSW by Steven Dunn, then deputy chief executive officer of the authority and head of its Property Division.⁶⁰

⁵⁸ Peter Sekules, above n 25, 24.

⁵⁹ Kenneth Godwin, Scott Ainsworth and Erik Godwin, above n 33, 11.

⁶⁰ *Circular Quay Retail Lease Report*, above n 7, ch 9.

IV THE DEMOCRATIC PRINCIPLES TO GOVERN DIRECT LOBBYING

There are strong negative perceptions surrounding direct lobbying. Direct lobbying should not, however, be deemed to be inherently suspect. As ICAC has rightly observed:

lobbying is not only an essential part of the democratic process but that it can positively enhance government decision-making. It does this by ensuring that arguments being put forward are well-researched, clearly articulated and address relevant government concerns. Lobbying assists government to consult widely in a timely manner, and better understand the potential implications of its decisions.⁶¹

As these comments suggest, direct lobbying is of importance to the workings of democracies. As the British Neill Committee on Standards on Public Life recognised, '[t]he democratic right to make representations to government – to have access to the policy-making process – is fundamental to the proper conduct of public life and the development of sound policy'.⁶² Similarly, in one of its reports into the activities of Brian Burke, the former Western Australian ALP Premier notorious for presiding over the WA Inc debacle,⁶³ and Julian Grill, a former Minister in the Burke State Government, the Western Australian Corruption and Crime Commission emphasised that:

The right to influence government decisions is a fundamental tenet underpinning our system of government and a form of political participation that helps make 'the wheels of government' turn. When managed according to 'the public interest', lobbying has not only a legitimate but also an important role to play in the democratic process.⁶⁴

⁶¹ *ICAC Lobbying Report*, above n 17, 20. For a defence of the importance of lobbying, see Nicholas Allard, 'The Seven Deadly Virtues of Lobbyists: What Lawyer Lobbyists Really Do' (2014) 13(1) *Election Law Journal* 210.

⁶² Committee on Standards in Public Life, *Reinforcing Standards: Sixth Report of the Committee on Standards in Public Life: Review of the First Report of the Committee on Standards in Public Life* (2000) 86.

⁶³ Western Australia, WA Inc Royal Commission, *Report on WA Inc: Part I* (1992).

⁶⁴ Procedure and Privileges Committee of the Legislative Assembly, Parliament of Western Australia, *Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly: Inquiry Conducted into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA* (2008) 44 ('McGrath, Quigley and Wyatt Report').

The ‘important’ role of lobbying is underpinned by the benefits it can bring to the process of democratic deliberation and accountability. Lobbying can enrich this process as it allows citizens a voice in public decision-making. It also potentially enhances the quality of information upon which public decisions are made. Specifically, lobbying can provide policy information, or information on particular policy issues including technical expertise, as well as political information, namely, information on the electoral consequences of adopting particular policies.⁶⁵

There is little reason then to presume lobbying guilty until proven innocent. On the other hand, we should not fall into the opposite trap of treating all kinds of lobbying as appropriate. A more discerning approach is called for that draws out ‘[w]hat constitutes proper influence on government’⁶⁶ and, in particular, makes ‘a clear distinction between legitimate lobbying, which forms part of the democratic process and can provide important information to decision-makers, and inappropriate lobbying which is intended to or can have the effect of undermining the integrity of decision-making processes’.⁶⁷ As the Western Australian Corruption and Crime Commission rightly noted:

‘[t]he challenge [here] . . . is to ensure that access to government is available to all groups, and that decision-making processes are balanced, open and focused on benefiting the whole society to capture the knowledge, skills, experience and co-operation of the various interest groups while addressing the public interest’.⁶⁸

Three democratic principles are of particular importance in distinguishing between legitimate and illegitimate direct lobbying:

- 1 Protecting the integrity of representative government;
- 2 Promoting fairness in politics; and

⁶⁵ E.g. Bryan McQuide, ‘Interest Group Informational Lobbying: Policy vs Political Information’ (Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, 12 April 2007) 8.

⁶⁶ Corruption and Crime Commission of Western Australia, *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup* (2007) 101 (“*Smiths Beach Report*”)

⁶⁷ New South Wales Independent Commission Against Corruption, *Report on Investigation into Planning Decisions Relating to the Orange Grove Centre* (2005) 8 (“*Orange Grove Centre Report*”).

⁶⁸ *Smiths Beach Report*, above n 66, 98–99.

3 Respecting political freedoms.

In order to protect the integrity of representative government in relation to direct lobbying, the core tenet is *transparency of government decision-making*. As the House of Commons Public Administration Select Committee said succinctly in its report, *Lobbying: Access and Influence in Whitehall*:

The key, in this area as in others, is transparency. There is a public interest in knowing who is lobbying whom about what.⁶⁹

One of the OECD's 10 Principles for Transparency and Integrity in Lobbying (see Table 2) is that:

Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.

Such transparency implicates two central principles: the principle of accountability and the principle of acting in the public interest. At the heart of these notions is the requirement of justification: public officials should openly explain their decisions, the reasons for them and the process of decision-making. It is through this process of justification that citizens are able to judge the performance of these officials. Conversely, when reasons for decisions (such as the influence of particular lobbyists) are kept secret or where clandestine practices of making law and policy develop, the ability of citizens to judge public officials and to hold them accountable, especially during election time, is impaired and distorted.

Transparency of direct lobbying is also crucial because it assists in preventing corruption and misconduct. Some of those contemplating malfeasance would be deterred by the prospect of having their wrongdoing made public; once corruption and misconduct has occurred in relation to direct lobbying, transparency would allow it to be identified and fully exposed.

⁶⁹ House of Commons Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, House of Commons Paper No 36-1, Session 2008-09 (2008) 60
<<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf>>.

Ensuring fairness in politics in this context translates into the more specific principle of *fairness in government decision-making*. Such fairness is achieved when government decision-making accords with principle of political equality - that each citizen is of equal status regardless of wealth, power, status or connections. As Harrison Moore observed of the franchise under the Commonwealth *Constitution*, the ‘great underlying principle’ of the *Constitution* is that citizens have ‘each a share, and an equal share, in political power’.⁷⁰ More generally, Ronald Dworkin has insisted that the principle of political equality implies that citizens should have ‘a genuine chance to make a difference’⁷¹ – they should have leverage over the political process.

When it comes to direct lobbying, this principle of fair government decision-making has profound consequences for who has the opportunity to influence public officials, and the weight public officials give to the views communicated. In other words, there should fairness in terms of accessing and influencing public officials through direct lobbying. The OECD report, *Lobbyists, Governments and Public Trust* put it this way:

When concern is related to **accessibility to decision makers**, measures to provide a level playing field for all stakeholders interested in participating in the development of public policies is indispensable – for instance to ensure that not only the “privileged”, but also the “public” has a voice.⁷²

The very first principle of the OECD’s 10 Principles for Transparency and Integrity in Lobbying (see Table 2) is that:

Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

⁷⁰ Harrison Moore, *The Constitution of the Commonwealth of Australia* (John Murray, 1st ed, 1902) 329. This statement was cited with approval in *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 139–40 (Mason CJ).

⁷¹ Ronald Dworkin, ‘Equality, Democracy, and Constitution: We the People in Court’ (1990) 28(2) *Alberta Law Review* 324, 338.

⁷² OECD, above n 21, 22 (emphasis original).

The third democratic principle is respect for political freedoms – specifically *respect for freedom to directly lobby*. The statements quoted earlier by ICAC, the British Neill Committee on the Standards in Public Life and the WA Crime and Corruption Commission make clear the importance of this principle.

This principle directs attention to ‘freedom from’ restrictions on lobbying. Whatever restrictions are put in place, there should still be a meaningful ability to access government decision-making through direct lobbying. Further, any restrictions put in place should be properly directed to public objectives with the extent of the restrictions proportionate to the weight of these objectives.

The principle of respect for the freedom to directly lobby also embraces ‘freedom to’ - the actual ability to undertake direct lobbying. This directs attention to the practical constraints on the ability to directly lobby due to the lack of resources (knowledge, skills, expertise, funds). Attention to ‘freedom to’ directly lobby requires governments to be vigilant as to how political, economic and social inequalities encumber the disadvantaged, hindering their ability to effectively influence the political process through direct lobbying, and – more often than has been recognised – to take remedial action by providing these individuals and groups with resources. Here, there is a direct connection between respect for political freedoms and fairness in government decision-making – in certain situations, both would require the State to ‘level up’ the resources of disadvantaged groups to enable them to directly lobby.

These three principles provide touchstones for determining the legitimacy of direct lobbying. Such lobbying tends to be illegitimate when it breaches one or more of these principles: when it involves processes that are not open - situations of secrecy; when it is not focussed on addressing the public interest - situations of corruption and misconduct; and when it undermines the principle of access to government by all groups - situations of unfair access and influence. These situations will be examined in turn.

Table 2: 10 Principles for Transparency and Integrity in Lobbying

The OECD'S 10 Principles for Transparency and Integrity in Lobbying	
1.	Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
2.	Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.
3.	Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.
4.	Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.
5.	Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.
6.	Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities.
7.	Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.
8.	Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.
9.	Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.
10.	Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

Source: OECD, *Transparency and Integrity in Lobbying* (2013)
<<http://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>>.

V THE PROBLEMS OF DIRECT LOBBYING

A *Secrecy*

The problem of secrecy⁷³ is neatly captured by the title of a primer on lobbying in Australia, 'Behind Closed Doors'.⁷⁴ Direct lobbying can be shrouded in secrecy in various ways. In some cases, the fact and details of such lobbying are never known – many of the informal meetings that leading politicians have with captains of industry would fall into this category. In other situations, the fact of lobbying is known but not its details. This category would include lobbying occurring through the purchase of access and influence, in particular, discussions during 'off the record' briefings.⁷⁵ Also included in this category would be some of the informal meetings that ALP leaders have with trade union officials. Arguably, such secret lobbying would have occurred at a recent dinner the Prime Minister, Tony Abbott, had with media proprietor, Rupert Murdoch, in New York: this 'private meal' most likely included discussion of public policies.⁷⁶

A third type of secret lobbying occurs when the fact and details of lobbying are not known at the time the law or policy is being made, but are exposed later. An example is the successful lobbying by the 'greenhouse mafia' of the Howard government. The influence of this group, or what Clive Hamilton has described as 'a cabal of powerful fossil-fuel lobbyists representing the very corporations whose commercial interests would be most affected by any move to reduce Australia's greenhouse gas

⁷³ This is also one of the main complaints of former ALP President, Carmen Lawrence, who has argued that '[i]n Australia ... we're in the dark about these influences (of lobbying)': Carmen Lawrence, 'Railroading Democracy' (Discussion Paper No 6/07, Democratic Audit of Australia, March 2007) 8.

⁷⁴ John Warhurst, *Behind Closed Doors: Politics, Scandals and the Lobbying Industry* (UNSW Press, 2007).

⁷⁵ See Joo-Cheong Tham, *Money and Politics: The Democracy We Can't Afford* (UNSW Press, 2010) 81-87.

⁷⁶ Judith Ireland, 'Tony Abbott fulfils wish to dine with Rupert Murdoch in New York', *The Sydney Morning Herald* (online), 11 June 2014 <<http://www.smh.com.au/federal-politics/political-news/tony-abbott-fulfils-wish-to-dine-with-rupert-murdoch-in-new-york-20140611-39wsh.html>>. Matthew Knott and Judith Ireland, 'Media ownership reform call comes as Tony Abbott dines with Rupert Murdoch', *The Sydney Morning Herald* (online), 12 June 2014 <<http://www.smh.com.au/federal-politics/political-news/media-ownership-reform-call-comes-as-tony-abbott-dines-with-rupert-murdoch-20140611-39xs1.html>>.

emissions',⁷⁷ was not known when the Howard Government's greenhouse policies were being developed but only came to light some time later.⁷⁸

These situations of secret lobbying concern the extent to which such activities are known to the general public. There is another kind of secret lobbying that relates more to information being withheld from the public officials who are being lobbied. This is a particular concern with third party lobbyists and the degree of transparency in relation to their clients - the fear here is that these lobbyists might misrepresent or keep secret the identity of their clients when engaging in lobbying.⁷⁹ The ICAC investigations into Edward Obeid and their exposure of how he directly lobbied his parliamentary colleagues without disclosing his financial interests also reveal how the risk of withholding of information from public officials being lobbied is not restricted to third party lobbyists – such a risk can also attend 'lobbying from within'.

Secret lobbying undermines the integrity of representative government in its own right. It also threatens the public interest in two other ways. First, it raises the spectre of corruption and misconduct as those who engage in such conduct generally seek to conceal their misbehaviour; as ICAC has noted 'a lack of transparency in any process involving government decision-making can be conducive to corruption'.⁸⁰ Secret lobbying involves unfair access to, and influence of, the political process with some having privileged access over others. Both aspects of secret lobbying were present with the efforts of former Western Australian Minister John Bowler to conceal his contact with Brian Burke and Julian Grill. In its report into this matter, the Western Australian Corruption and Crime Commission found that Bowler, 'in an attempt to hide his contact and communication as a Minister with Mr Grill and Mr Burke':

- asked Mr Burke not to send emails to his Ministerial email address because

⁷⁷ See Clive Hamilton, *Scorcher: The Dirty Politics of Climate Change* (Black Inc Agenda, 2007) 3.

⁷⁸ See *ibid* ch 1.

⁷⁹ See Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *Knock, Knock ... Who's There? The Lobbying Code of Conduct* (2008) para 2.8 <http://www.aph.gov.au/~media/wopapub/senate/committee/fapa_cte/completed_inquiries/2008_10/lobbying_code/report/report_pdf.ashx>; cf Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *Knock, Knock ... Who's There? The Lobbying Code of Conduct*, Coalition Senators' Minority Report (2008) para 1.27). See also Standards Committee, *Report on Lobbying*, Scottish Parliament Paper No 507, Session 1 (2002) 4–5.

⁸⁰ *ICAC Lobbying Report*, above n 17, 18.

he believed that they could be the subject of Freedom of Information (FOI) requests;

- confirmed to Mr Grill that he did not want Mr Grill to send information to him by email, suggested it be sent by fax, and agreed to a suggestion that the client send it direct;
- asked Mr Grill not to officially request meetings with him at his office, but said that he would meet him, and Mr Burke, at Mr Grill's residence;
- organised on several occasions to attend either Mr Grill's residence or a venue other than his office to discuss issues relating to clients of Mr Grill and Mr Burke;
- stopped Mr Grill from discussing a client (Echelon Mining) on the phone and arranged to meet Mr Grill at his residence;
- asked Mr Grill not to attend a meeting he (Mr Bowler) was having with representatives of a company, Croesus Mining, which was Mr Grill's client;
- said to Mr Grill that if he wanted to discuss anything he should phone him (Mr Bowler) and invite him for afternoon tea;
- instructed Mr Corrigan (his chief of staff) not to log correspondence from Mr Grill or Mr Burke on the correspondence system; and
- instructed administrative staff not to email messages about phone calls from Mr Grill or Mr Burke but to write them on pieces of paper.⁸¹

According to the Commission, 'there was a political dimension to Mr Bowler's desire to keep secret his contacts with Mr Grill and Mr Burke' in that 'evidence of this in the hands of the opposition or the media, or of some of his party colleagues, could be used to damage him politically, and Mr Bowler was at pains to avoid this'.⁸²

Such concealment, in the opinion of the Commission, constituted misconduct under the *Corruption and Crime Commission Act 2003* (WA).⁸³ The reasons for its conclusion make clear the link between secrecy on one hand, and corruption and

⁸¹ Procedure and Privileges Committee of the Legislative Assembly, Parliament of Western Australia, *Corruption and Crime Commission of Western Australia Report on Issues Relating to Record Keeping in the Ministerial Office of the Hon John James Mansell Bowler MLA* (2008) para 122 <<http://www.ccc.wa.gov.au/pdfs/Recordkeeping%20Report.pdf>> ("*Bowler Report*").

⁸² *Ibid* para 127.

⁸³ *Ibid* para 130.

misconduct and unfair access on the other. In the words of the Commission:

these clandestine arrangements gave at the very least the appearance of opportunity to Mr Grill and Mr Burke (and hence their clients) to influence Mr Bowler in a way that would not come to the knowledge of the Premier, the Cabinet or the Parliament. In the circumstances, that constituted *the performance of his functions in a manner that was not honest. Nor was it impartial. The arrangements favoured Mr Grill and Mr Burke (and their clients) over persons who did not have that type of access to him.*⁸⁴

What is clear then is that secret lobbying leaves in its wake corruption and misconduct as well as unfair access and influence. These latter problems are, however, not restricted to situations involving covert lobbying. As the following discussion will explain, they can still occur despite the light of publicity.

⁸⁴ Ibid para 154 (emphasis added).

B *Corruption and Misconduct*

The ICAC investigations and the lobbying activities of Brian Burke and Julian Grill make clear that direct lobbying can threaten the integrity of government by leading to corruption and misconduct.

They also suggest that there are several groups that can engage in corruption and misconduct as a result of lobbying. Administrative lobbying, that is, lobbying of public servants,⁸⁵ may result in government employees engaging in such conduct. This was the case in Operation Cyrus where Steve Dunn – then deputy chief executive officer of the Maritime Authority – was successfully lobbied by Edward Obeid to effectively bring about a change in the Commercial Lease Policy of the authority for the purpose of benefitting Obeid and his family interests, actions that ICAC found to be corrupt conduct.⁸⁶ It was also the case with Dr Neale Fong who was found by the Western Australian Corruption and Crime Commission to have engaged in serious misconduct – as Director General of the Western Australian Department of Health - by disclosing a confidential matter concerning an investigation into a Department of Health employee to Burke.⁸⁷

In the case of political lobbying, that is, the direct lobbying of elected officials,⁸⁸ it is the elected officials themselves that can be implicated in instances of corruption and misconduct. For example, the Western Australian Corruption and Crime Commission made findings of misconduct against three Bussleton Shire Councillors in its report on the Smiths Beach development, an episode that also involved the lobbying efforts of Burke and Grill.⁸⁹ Other examples of political lobbying involving corruption and misconduct can be found in the ICAC investigations: the grant of exploration licences to Doyles Creek Mining Pty Ltd by Ian Macdonald, then Minister for Energy, after being successfully lobbied by John Maitland; and Macdonald's creation of the Mount Penny tenement to benefit the Obeid family's interests after lobbying by Edward

⁸⁵ John Warhurst, above n 54, 182.

⁸⁶ See Appendix One: NSW Independent Commission Against Corruption Investigations involving Ministers: 2013 to Present.

⁸⁷ Corruption and Crime Commission of Western Australia, *Report on the Investigation of Alleged Misconduct concerning Dr Neale Fong, Director General of the Department of Health* (2008) 5 (“*Fong Report*”).

⁸⁸ John Warhurst, above n 54, 182

⁸⁹ *Smiths Beach Report*, above n 66, 6–7.

Obeid, the decisions by Macdonald in both cases were found to be corrupt conduct by ICAC.⁹⁰

Besides the targets of lobbying (i.e. public servants and elected officials), lobbyists and their clients can also engage in corruption and misconduct. So much of this is reflected in the opprobrium surrounding Burke and Grill's lobbying activities; opprobrium so strong that the Western Australian Labor government, prior to being voted out of office, had in place a ban on Ministers meeting with either of these personalities.⁹¹

Whether individuals in these groups are judged to have engaged in corruption and misconduct as a result of lobbying depends on what standards of integrity apply - it is the departure from these standards that provides the gravamen of corruption and misconduct charges. The content of these standards, in turn, depends on the nature of the position or occupation being held. This will be drawn out by, firstly, discussing the standards of integrity that apply to public officials and then turning to the standards that apply to private sector actors, the lobbyists and the clients.

With public officials like elected officials and government employees, the standards are exacting as they are under a 'constitutional obligation to act in the public interest'.⁹² This obligation can be understood according to its positive and negative attributes. According to the Nolan report on Standards in Public Life from the UK, the former would mean displaying various attributes including selflessness, objectivity and honesty.⁹³ The Australian statutes governing anti-corruption commissions,⁹⁴ on

⁹⁰ See Appendix One: NSW Independent Commission Against Corruption Investigations involving Ministers: 2013 to Present.

⁹¹ Then Premier Geoff Gallop imposed a ban on contact with Brian Burke in April 2003 (see, eg, 'WA Govt bans ministers from meeting former premier', *ABC News* (online), 10 April 2003 <<http://www.abc.net.au/news/stories/2003/04/10/829055.htm>>; Steven Pennels, 'Burke ban divides WA Labor', *The West Australian*, 21 April 2003. The ban was then lifted in January 2006 by then Premier Alan Carpenter (replacing Geoff Gallop upon Gallop's resignation). Carpenter reinstated the ban in November 2006: Mischa Schubert & Brendan Nicholson, 'WA scandal ends Rudd's dream run', *The Age* (online), 2 March 2007 <<http://www.theage.com.au/news/national/wa-scandal-ends-rudds-dream-run/2007/03/01/1172338796047.html>>.

⁹² Western Australia, WA Inc Royal Commission, *Report on WA Inc: Part II* (1992) 1–2.

⁹³ Committee on Standards in Public Life, *Standards in Public Life: First Report of the Committee on Standards in Public Life: Volume 1*, House of Commons Paper No 2850 (1995) 14.

⁹⁴ There are three such statutes: *Independent Commission Against Corruption Act 1988* (NSW); *Crime and Misconduct Commission Act 2001* (Qld); and *Corruption and Crime Commission Act 2003* (WA).

the other hand, identify what does *not* constitute acting in a public interest by variously defining ‘corrupt conduct’ or ‘misconduct’ as including ‘dishonest or partial exercise of public functions’ and conduct involving a ‘breach of public trust’ as a criminal offence, disciplinary offence or reasonable grounds for dismissal.⁹⁵

In the context of lobbying, these positive and negative aspects of acting in the public interest can perhaps be boiled down to the central principle of merit-based decision-making. As the Western Australian Corruption and Crime Commission noted in its Smiths Beach report, ‘[t]o protect the public interest, decision making must be impartial, aimed at the common good, uninfluenced by personal interest and avoid abuse of privilege’.⁹⁶ ICAC has similarly emphasised that:

Public officials will be lobbied. How should they respond? If they are decision-makers, the answer is simple. They base their decision on the merits. The identity of the lobbyist is irrelevant. At least, that is the way it should be.⁹⁷

This rules out ‘an attempt, or perceived attempt, improperly to influence a public official’s impartial decision-making’ through lobbying.⁹⁸ Such ‘inappropriate lobbying’ includes situations where the decision-maker has prejudged the issue, in that s/he has fettered his or her discretion ‘by giving undertakings to an interested party prior to considering all information relevant to their decision’,⁹⁹ and also those where the decision-maker is successfully lobbied to take into account ‘factors irrelevant to the merits of the matter under consideration’.¹⁰⁰

This kind of inappropriate direct lobbying was evident with the conduct investigated by Operation Jasper where Ian Macdonald, then Minister for Primary Industries and Minister for Mineral Resources, Edward Obeid Sr and Moses Obeid were found to have engaged in corrupt conduct by entering into an agreement whereby Macdonald acted contrary to his public duty as a minister of the Crown by arranging for the

⁹⁵ See *Independent Commission Against Corruption Act 1988* (NSW) ss 7–9; *Crime and Misconduct Commission Act 2001* (Qld) ss 14–15 and *Corruption and Crime Commission Act 2003* (WA) s 4.

⁹⁶ *Smiths Beach Report*, n 66, 100.

⁹⁷ New South Wales Independent Commission Against Corruption, *Report on Investigation into North Coast Land Development* (1990) 33 (pt 5) (“*North Coast Report*”).

⁹⁸ *Orange Grove Centre Report*, above n 67, 101.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

creation of the Mount Penny tenement for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family.¹⁰¹

Also ruled out are ‘conflict of interest’ situations.¹⁰² This can result, for example, from the receipt of payments from lobbyists or their clients.¹⁰³ Similarly, there is also a risk of corruption with direct lobbying when the lobbyists or their clients make political donations to the elected official or his or her party.¹⁰⁴ This risk eventuated in the case of Edward Obeid and the \$50 000 donation made by Circular Quay lessees to the NSW ALP in mid-1990s where ICAC found that Obeid ‘was clearly seeking to participate in or affect the decision-making process in circumstances where, at least on the basis of his evidence, *money had been paid to the ALP as a form of valuable inducement for carrying out of a promise*’.¹⁰⁵ It followed for the Commission that ‘the circumstances thus revealed by Edward Obeid Sr’s evidence may properly be said to involve a *form of bribery*’.¹⁰⁶

The risk of corruption when lobbyists or their clients make political donations to the elected official or his or her party¹⁰⁷ is also illustrated by Operation Spicer, which is currently investigating allegations that Members of Parliament corruptly solicited, received and concealed payments from certain sources in exchange for favouring the interests of those making the payments.¹⁰⁸

The ICAC investigations demonstrate that this risk is neither speculative nor remote. It is also a risk that finds credence in the practice of third party lobbyists of giving political donations – see Appendix Four.

¹⁰¹ New South Wales Independent Commission Against Corruption, *Investigation into the Conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and Others* (2013) ch 33.

¹⁰² OECD, above n 21, 24.

¹⁰³ *Orange Grove Centre Report*, above n 67, 101.

¹⁰⁴ *ICAC Lobbying Report*, above n 17, 19.

¹⁰⁵ *Circular Quay Retail Lease Report*, above n 7, 54 (emphasis added).

¹⁰⁶ *Ibid.*

¹⁰⁷ *ICAC Lobbying Report*, above n 17, 19.

¹⁰⁸ See New South Wales Independent Commission Against Corruption, *NSW Public Officials and Members of Parliament – Allegations Concerning Corrupt Conduct Involving Australian Water Holdings Pty Lt (Operation Credo) and Allegations Concerning Soliciting, Receiving and Concealing Payments (Operation Spicer)* (2014) <<http://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>>.

This brings us to fund-raising practices by the major political parties that sell access and influence to their leaders through events where businesses and lobbyists pay thousands of dollars in order to meet Ministers and Shadow Ministers.¹⁰⁹ As former Queensland Integrity Commissioner, Gary Crooke, explained:

The usual strategy is for an organisation (usually a political party) to charge large sums of money for invitees to attend a function, promised that their subscription will earn them a right to speak to a decision-maker in their area of business or interest.¹¹⁰

The most recent – controversial – example of this is the activities of the North Sydney Forum, a campaign fund-raising body run by federal Treasurer Joe Hockey's North Sydney Federal Electoral Conference. This forum provided members with 'VIP' meetings with Mr Hockey, frequently in private boardrooms, in exchange for annual fees of up to \$22 000.¹¹¹

The Queensland Integrity Commissioner, Gary Crooke, provided an insightful analysis of the set of issues relating to the sale of access and influence by the major political parties, parts of which merit full reproduction. '[C]alling in aid a concept of capital in relation to government property', Crooke observed that:

All the components of government property (whether physical, intellectual or reputational) are really no more, and no less, than the property of the community, the capital of which is held in trust by elected or appointed representatives or officials.

The term 'capital' is an amorphous one and includes all the entitlement to respect and inside knowledge that goes with holding a high position in public administration.

¹⁰⁹ For a fuller discussion, see Joo-Cheong Tham, above n 75, ch 3.

¹¹⁰ Gary Crooke, 'When Public and Private Interests Clash: *Five years as Integrity Commissioner - A Retrospective*' (Paper presented at Australian Public Service Anti-Corruption Conference, Brisbane, 29 July 2009) <<http://www.integrity.qld.gov.au/library/document/catalogue/speeches-articles/five-years-as-integrity-commissioner-crooke.pdf>>.

¹¹¹ Sean Nicholls, 'Treasurer for sale: Joe Hockey offers privileged access', *Sydney Morning Herald* (online), 5 May 2014 <<http://www.smh.com.au/federal-politics/political-news/treasurer-for-sale-joe-hockey-offers-privileged-access-20140504-zr06v.html>>.

The trust bestowed importantly includes an obligation to deal with government property or capital only in the interests of the community. As such, it is singularly inappropriate for any person to use it for personal gain.¹¹²

Speaking of party fundraising, Crooke further noted that:

It seems to be a common strategy to hold a dinner or like function where entry is often by invitation, and usually at a price well beyond the cost of the provision of any food or services at the function. Often, it is openly advertised that such payment will ensure access to a Minister or other high-ranking politician.

Having regard to my reference to 'capital' and trusteeship of the same, it seems to me that questions such as the following need to be asked:

- What is being sold and who (or what entity) receives or controls the proceeds?
- Whose is it to sell, or can it appropriately be sold?
- Is what is on offer, being offered on equal terms to all members of the community?
- What is the likely understanding or expectation, of the payer on the one hand, and of the reasonable member of the community on the other, of what the buyer is paying for?
- If there is a Government decision to be made, is a perception likely to arise that those interested, and not attending the function, whether competitors for a tender, or opponents to a proposal, are at a disadvantage?

Unless questions such as the above can be unequivocally answered in a way which is consonant with the integrity issues raised in the previous discussion of capital and trusteeship, it would not be appropriate to engage in, or continue this practice.¹¹³

This report takes the view that the questions posed by Crooke cannot be answered in a way consistent with the integrity of representative government. The sale of access and influence – the sale of opportunities to directly lobby Ministers and

¹¹² Queensland Integrity Commissioner, *Annual Report 2007–08* (2008) 7.

¹¹³ *Ibid* 7–8.

Shadow Ministers¹¹⁴ are emphatic instances of what Walzer characterises as a 'blocked exchange', where money is used to buy political power.¹¹⁵ The result is corruption through undue influence: the purchase of access and influence creates a conflict between public duty and the financial interests of the party or candidate,¹¹⁶ resulting in some public officials giving an undue weight to the interests of their financiers rather than deciding matters in the public interest.¹¹⁷

Conflicts of interests may also arise in relation to direct lobbying whenever parliamentarians are engaged in secondary employment, that is, employment in addition to their parliamentary duties.¹¹⁸ Real questions are raised, for example, by former Deputy Prime Minister Mark Vaile taking up a paid consultancy, whilst a parliamentarian, to lobby for a company he dealt with while Trade Minister in the Howard Government.¹¹⁹

Related to the risks of secondary employment of parliamentarians are those that might arise in situations of post-separation employment, that is, 'where a public official leaves the public sector and obtains employment in the private sector'.¹²⁰ As the ICAC rightly notes '[c]onflicts of interest are at the centre of many of the post-separation employment problems'.¹²¹ It is, firstly, the prospect of future employment that gives rise to these conflicts, with the danger of public officials modifying their conduct in order to enhance their employment prospects in the private sector, including going 'soft' on their responsibilities or, generally, making decisions favourable to prospective employers.¹²² Conflicts might also arise when public officials are lobbied by former colleagues or superiors: here it is the prior (and

¹¹⁴ On the connection between political fund-raising and lobbying, see Noel Turnbull and Claire Shamier, above n 55, 119-120.

¹¹⁵ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983) 100.

¹¹⁶ Daniel Lowenstein, 'On Campaign Finance Reform: The Root of All Evil is Deeply Rooted' (1989) 18 *Hofstra Law Review* 301, 323-29.

¹¹⁷ Charles Beitz, 'Political Finance in the United States: A Survey of Research' (1984) 95(1) *Ethics* 129, 137.

¹¹⁸ See generally New South Wales Independent Commission Against Corruption, *Regulation of Secondary Employment for Members of the NSW Legislative Assembly* (2003).

¹¹⁹ See Australian Broadcasting Corporation, 'Mark Vaile freelancing in Middle East', *AM*, 5 March 2008 (Alexandra Kirk) <<http://www.abc.net.au/am/content/2008/s2180137.htm>>.

¹²⁰ New South Wales Independent Commission Against Corruption, *Strategies for Managing Post Separation Employment Issues* (1998) 3 ("*Post-Separation Employment Report*").

¹²¹ New South Wales Independent Commission Against Corruption, 'Managing Post Separation Employment' (Discussion Paper, April 1997) 7 ("*Post-Separation Employment Discussion Paper*")

¹²² *Ibid* 9-11.

possibly ongoing) association that potentially compromises impartial decision-making. Both dangers are clearly present when former public officials take up or intend to take up jobs as lobbyists, specifically 'if a former government minister obtains work as a political lobbyist, particularly if that work involves contact with his or her former department, colleagues, or staff'.¹²³

Post-separation employment resulting in public officials being lobbied by their former colleagues or superiors underlines how 'conflicts of interest' do not have to be financial in character, and can extend to situations where there is a close association between the decision-maker and the lobbyist. The report of the Western Australian Corruption and Crime Commission in relation to the Smiths Beach development is also illustrative. In this report, the Commission found Norm Marlborough engaged in misconduct because, when he was the Western Australian Minister for Small Business, he agreed with Burke's request to appoint a particular individual to a statutory agency with no knowledge of her suitability.¹²⁴ Marlborough's actions, according to the Commission, seemed to be 'driven by his close friendship with Mr Burke'.¹²⁵ In this episode, misconduct occurred through prejudgment prompted by a close association with an interested party.

Apart from corruption and misconduct resulting from breaches of the principle of merit-based decision-making, public officials can also engage in such conduct by 'disclosing confidential information to a lobbyist'.¹²⁶ Such conduct involves the misuse of information or material acquired during the course of public duties. This conduct is considered to be corrupt conduct or misconduct under the corruption commission statutes if it involves a criminal offence, disciplinary offence or reasonable grounds for dismissal.¹²⁷ The previously mentioned case of Dr Fong and Brian Burke provides a vivid illustration of such conduct.¹²⁸

¹²³ *Post-Separation Employment Report*, above n 121, 4. See also Committee of Inquiry Concerning Public Duty and Private Interest, *Public Duty and Private Interest: Report of the Committee of Inquiry* (1979) 115.

¹²⁴ *Smiths Beach Report*, above n 66, 6.

¹²⁵ *Ibid* 80.

¹²⁶ *Orange Grove Centre Report*, above n 67, 101.

¹²⁷ See *Independent Commission Against Corruption Act 1988* (NSW) ss 7–9; *Crime and Misconduct Commission Act 2001* (Qld) ss 14–15; and *Corruption and Crime Commission Act 2003* (WA) s 4.

¹²⁸ See *Fong Report*.

The lobbying activities of Brian Burke on behalf of Urban Pacific Ltd, a company that was part of the Macquarie Group, provides another example of unauthorised disclosure of confidential information. Urban Pacific was the developer of 504 hectares of land at Whitby in the outskirts of Perth and wanted the land to be rezoned so that it could be used for residential development.¹²⁹ Acting on behalf of Urban Pacific, Burke contacted Gary Stokes, then Deputy Director-General of the Department of Infrastructure and Resources, the department responsible for land development in Western Australia. In the course of this contact, Stokes – who at times was Acting Director-General of the Department – provided Burke with two confidential letters. When passing one of these to West Australian Project Director of Urban Pacific, Mr David Cecele, Burke said in an intercepted telephone call that ‘it’s worth my life if it gets out’.¹³⁰

According to the Commission, ‘Stokes deliberately provided Mr Burke and Mr Grill with information without authorisation which he knew could be of commercial value to them and their clients’.¹³¹ He did so because he ‘believed the lobbyists were able to influence Mr Bowler to advance Mr Stokes’ career’.¹³² It was these circumstances that led the Commission to conclude that Stokes had engaged in serious misconduct¹³³ and to recommend that he be prosecuted under the Western Australian Criminal Code.¹³⁴ Both Stokes and Burke were consequently charged in relation to this unauthorised disclosure of information. While the charge against Burke was dismissed, Stokes was convicted of disclosing official secrets contrary to the *Criminal Code 1913 (WA)*.¹³⁵

In some cases, these standards of integrity will apply differently to elected officials as distinct from public servants. For public servants, the electoral prospects of any particular candidate or party are typically not a relevant consideration in their decision-making. The position is, however, quite different in relation to elected

¹²⁹Corruption and Crime Commission of Western Australia, *Report on the Investigation of Alleged Misconduct concerning Rezoning of Land at Whitby* (2008) paras 4–5. (“*Whitby Report*”)

¹³⁰*Ibid* para 13.

¹³¹*Ibid* para 18.

¹³²*Ibid* paras 19.

¹³³*Ibid* para 25.

¹³⁴*Ibid* xii (Recommendation 2).

¹³⁵ *Corruption and Crime Commission v Stokes* [2013] WASC 282, 1, 8.

officials. In fact, elected officials should be responsive to concerns of citizens as a matter of democratic accountability – a principal way in which they are made to be responsive is through electoral accountability, with voters being able to support or punish candidates through the ballot box. Such accountability only works when elected officials *always* take into account their electoral prospects in their decision-making. Such conduct should then not be seen as corrupt but as a natural incident of responding to the wishes of citizens. Hence, lobbying of elected officials that successfully draws to their attention the electoral consequences of particular courses of action is not necessarily corrupt but, on the contrary, is a desirable feature of democratic politics. Corruption and misconduct can, however, occur in *the manner* in which electoral prospects are taken into account. Such prospects can be legitimately taken into account provided that other relevant considerations are assessed and given their proper weight. However, when electoral prospects become the *principal* motivation for a decision (thereby sidelining other relevant considerations),¹³⁶ there will be a breach of the merit-based principle, paving the way for corruption and misconduct.

What then of lobbyists and their clients who are in the private sector? What standards of integrity should apply to them? On one view, we should expect very little by way of propriety. The Western Australian Corruption and Crime Commission seems to have adopted this stance in one of the earlier reports into the Burke and Grill affair when it stated that ‘[l]obbyists are, by their very nature, not responsible for promoting an unbiased or balanced view of the issue at hand, nor must they abide by ‘public sector rules’’.¹³⁷ Underlying this view seems to be the notion that private sector behaviour should not be orientated to the public interest or bound by rules of

¹³⁶ There was more than a hint of such behaviour in some of the conduct associated with WA Inc. For example, the conclusions of the Royal Commission on WA Inc included the following:

Some ministers elevated personal or party advantage over their constitutional obligation to act in the public interest. The decision to lend Government support to the rescue of Rothwells in October 1987 was principally that of Mr Burke as Premier. Mr Burke's motives in supporting the rescue were not related solely to proper governmental concerns. They derived in part from his well-established relationship with Mr Connell, the chairman and major shareholder of Rothwells, and from his desire to preserve the standing of the Australian Labor Party in the eyes of those sections of the business community from which it had secured much financial support.

Western Australia, above n 92, 1–2 (emphasis added).

¹³⁷ *McGrath, Quigley and Wyatt Report*, above n 64, 46.

integrity. Fortunately, the Western Australian Commission seems to have moved away from this view by laying corruption charges against Burke and Grill, as mentioned above¹³⁸ (the Director of Public Prosecutions, however, moved to dismiss the case in early 2012 after these charges made it to the Court of Appeal of the Supreme Court of Western Australia and fresh trials had been ordered).¹³⁹

The better view is to recognise '[t]he public significance of private sector corruption'.¹⁴⁰ Such corruption is publicly significant in at least two ways. First, as Hindess correctly observes, 'private sector attempts to shape the regulatory environment can have significant effects on the conduct of politics'.¹⁴¹ Second, private sector behaviour is a clear culprit when there is corruption and misconduct by public officials resulting from lobbying; that much is made clear by the Burke and Grill affair. The very real possibility of private sector agents engaging in corruption and misconduct explains why the New South Wales and Queensland anti-corruption statutes expressly capture such conduct. In these statutes, conduct in/directly leading to 'corrupt conduct' and 'misconduct' by public officials, whether by public officials or private persons, is deemed as 'corrupt conduct' and 'misconduct'.¹⁴²

As the OECD report on *Lobbyists, Governments and Public Trust* puts it, '(s)ince "it takes two to lobby", lobbyists share responsibilities with public officials for ensuring transparency, accountability and integrity in lobbying'¹⁴³ – hence, a principle of the OECD's 10 Principles for Transparency and Integrity in Lobbying is that:

Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.¹⁴⁴

¹³⁸ Corruption and Crime Commission of Western Australia, 'Charges Laid Over Lobbying Hearings' (Media Release, 6 November 2008) <http://www.ccc.wa.gov.au/media_statements.php?id=155>.

¹³⁹ Kate Campbell, 'Burke, Grill trial abandoned', *The West Australian* (online), 2 February 2012 <<https://au.news.yahoo.com/a/12791188/burke-grill-trial-abandoned/>>.

¹⁴⁰ Barry Hindess, 'Corruption and Democracy in Australia' (Report No 3, Democratic Audit of Australia, 2004) 25.

¹⁴¹ *Ibid* 27.

¹⁴² See *Independent Commission Against Corruption Act 1988* (NSW) ss 7–9; *Crime and Misconduct Commission Act 2001* (Qld) ss 14–15. *The Corruption and Crime Commission Act 2003* (WA) appears to be directed only at public officials, see s 4.

¹⁴³ OECD, above n 21, 10.

¹⁴⁴ See Table 2.

Such responsibility on the part of lobbyists should be subject to robust standards, as is made clear by identical clauses found in the New South Wales and Western Australian Lobbyists Codes of Conduct. The preambles to these codes state in emphatic terms:

Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant Government Representatives.

In performing this role, there is a public expectation that lobbyists will be individuals of strong moral calibre who operate *according to the highest standards of professional conduct*.¹⁴⁵

What standards of integrity should then apply to lobbyists and their clients? The standards laid down in the federal Lobbying Code of Conduct, the Canadian Lobbyists' Code of Conduct and the code developed by the British Association of Professional Political Consultants suggest the following principles:

- honesty in relation to clients and public decision-makers;¹⁴⁶
- transparency in representations to public decision-makers, including full disclosure of the identity of client and reasons for lobbying;¹⁴⁷
- accuracy in representations made, including a positive obligation to ensure truth of statements and a prohibition on misleading statements;¹⁴⁸

¹⁴⁵ New South Wales Government, *NSW Government Lobbyist Code of Conduct*, cl 1 <<http://www.dpc.nsw.gov.au/publications/news/stories/?a=32066>> (“*NSW Lobbyist Code of Conduct*”); Western Australia Department of Premier and Cabinet, *Contact with Lobbyists Code* (2008) cl 1 (“*WA Contact with Lobbyists Code*”) <<https://secure.dpc.wa.gov.au/lobbyistsregister/index.cfm?event=contactWithLobbyistsCode>> (emphasis added).

¹⁴⁶ Department of Prime Minister and Cabinet, Australian Government, *Lobbying Code of Conduct* (2013) cl 8.1 <<http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=contactWithLobbyistsCode>> (“*Commonwealth Lobbying Code of Conduct*”); Association of Professional Political Consultants, *APPC Code of Conduct* (2013) cl 2 <<http://www.appc.org.uk/code-of-conduct/appc-code-of-conduct/>>; Office of the Commissioner of Lobbying of Canada (“*APPC Code of Conduct*”), *The Lobbyists' Code of Conduct* (2012) <http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00014.html> (“*The Lobbyists' Code of Conduct Canada*”).

¹⁴⁷ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 8.1; *APPC Code of Conduct*, above n 146, cl 4; *The Lobbyists' Code of Conduct Canada*, above n 146, Rule 1.

¹⁴⁸ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 8; *APPC Code of Conduct*, above n 146, cl 3, 6; *The Lobbyists' Code of Conduct Canada*, above n 146, Rule 2.

- avoiding conflicts of interest (e.g. elected representatives acting as lobbyists in their own jurisdictions) including a strict separation between lobbying and political party activities;¹⁴⁹
- respect for confidentiality of information;¹⁵⁰ and
- avoiding improper influence on public decision-makers, including a prohibition on gifts to public decision-makers that could be interpreted as an attempt to influence the decision-maker.¹⁵¹

When there is departure from these principles, we should not be unafraid to characterise it as a form of corruption or misconduct.

¹⁴⁹ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 8; *APPC Code of Conduct*, above n 146, cl 8, 11, 12; *The Lobbyists' Code of Conduct Canada*, above n 146, Rules 6, 7.

¹⁵⁰ *The Lobbyists' Code of Conduct Canada*, above n 146, Rules 4, 5.

¹⁵¹ *APPC Code of Conduct*, above n 146, cl 7; *The Lobbyists' Code of Conduct Canada*, above n 146, Rule 8.

C *Unfair Access and Influence*

Fairness in government decision-making is achieved when government decision-making accords with the principle of political equality - that each citizen is of equal status regardless of wealth, power, status or connections.¹⁵² When it comes to the problem of unfair access and influence in relation to direct lobbying, it is well captured by the following statements by ICAC:

The problem arises when the lobbyist is someone who claims to have privileged access to decision-makers, or to be able to bring political influence to bear. The use of such privilege or influence is destructive of the principle of equality of opportunity upon which our democratic system is based. The purchase or sale of such privilege or influence, falls well within any reasonable concept of bribery or official corruption.¹⁵³

The underlying principles, as correctly identified by the Commission, are that:

No public official should display favour or bias towards or against any person in the course of her official duty, even if there is no payment or return favour. Equality of opportunity, including equality of access, should be the norm.¹⁵⁴

As noted earlier, the very first principle of the OECD's 10 Principles for Transparency and Integrity in Lobbying (see Table 2) is that:

Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

The OECD report on *Lobbyists, Governments and Public Trust* similarly emphasised that public officials shall ensure impartiality of decision-making by 'avoiding preferential treatment, for instance by providing balanced opportunities for various interest groups to make representations, and by ensuring that information provided to one interest group is also available to all other interest groups'.¹⁵⁵

¹⁵² See text above accompanying nn 70-71.

¹⁵³ *North Coast Report*, above n 97, 29 (pt 5).

¹⁵⁴ *Ibid* 32 (pt 5).

¹⁵⁵ OECD, above n 21, 24.

It is crucial to note that the problem of ‘privileged and unfair access’¹⁵⁶ is not a ‘victimless crime’.¹⁵⁷ It involves ‘granting preferential access or treatment to a lobbyist *while* denying similar access requested by another party’.¹⁵⁸ As ICAC elaborates:

One consequence is denial of the fundamental right of all citizens to equality of treatment at the hands of public officials. The more time spent on the favoured, the less there is available for others. People suffer unfairly, and the system fails, even if there was no payment. And how is the ordinary citizen who is kept waiting, or who misses out altogether, to be satisfied there was no payment.¹⁵⁹

Direct lobbying can result in unfair access and influence in various ways. Secret lobbying invariably involves such access and influence. When lobbying or the details of the lobbying are unknown, those engaged in such clandestine activities are able to put arguments to decision-makers that other interested parties are not in a position to counter simply because they are unaware. Unfair access and influence also occurs when details of lobbying are not known when the law or policy is being made, but are revealed later. The decisive time for influencing law or policy is usually when it is first formulated – the die tends to be cast once such law or policy is enacted. For instance, when the ‘greenhouse mafia’ were able to secretly influence the environmental policy of the Howard government, they enjoyed unfair leverage over the process as others were locked out at that crucial time. As put succinctly by the OECD report on *Lobbyists, Governments and Public Trust* OECD, ‘(l)obbying can improve government decisions by providing valuable insights and data, but it can also lead to unfair advantages for vocal vested interests if the process is *opaque* and standards are lax’.¹⁶⁰

¹⁵⁶ *McGrath, Quigley and Wyatt Report*, above n 64, 44.

¹⁵⁷ As Greg Palast, journalist with *The Observer*, correctly observed (quoted in Committee on Standards in Public Life, above n 62, 85):

‘When Government gives special access to business interests, the rest of the public is left outside the door: in this power industry story, I can list the advocates for poor people ... who were turned down flat on requests on meetings on utility charges. They had no lobbyist, no cash, and as a result, no access’

¹⁵⁸ *Orange Grove Centre Report*, above n 67, 101.

¹⁵⁹ *North Coast Report*, above n 97, 31 (pt 5).

¹⁶⁰ OECD, above n 21, 3 (emphasis added).

Even when there is no problem with secrecy, unfair access and influence can still result from direct lobbying. Such situations are a consequence of access and influence being granted to a lobbyist on the basis of circumstances or advantages other than the merit of the lobbyist's cause, the support the cause enjoys, or the lobbyist's knowledge or expertise.

The 'suspect' circumstances include situations when access and influence is granted to lobbyists because of the political connections they have or the political power they wield. An example is found in the Western Australian Corruption and Crime Commission report on John Quigley and Benjamin Wyatt, both members of the Western Australian Legislative Assembly. In this report, the Commission found that these members felt they had to cultivate Brian Burke because of his power within the ALP to the extent of agreeing to undertake a parliamentary inquiry suggested by Burke (even though they had no intention of honouring these undertakings).¹⁶¹

Two other examples where lobbyists have secured unfair access and influence due to their political connections and/or power can be found in the conduct revealed by the ICAC investigations. The first example is Operation Jasper (discussed earlier) where it was found that Ian Macdonald, then Minister for Primary Industries and Minister for Mineral Resources, Edward Obeid Sr and Moses Obeid engaged in corrupt conduct by entering into an agreement whereby Mr Macdonald acted contrary to his public duty as a minister of the Crown by arranging for the creation of the Mount Penny tenement for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family.¹⁶² According to ICAC, key to the circumstances leading to this (corrupt) agreement was 'a close and personal relationship between Mr Macdonald and Edward Obeid Sr';¹⁶³ indeed, ICAC found that '(h)aving regard to that relationship, to Edward Obeid Sr's position as the leader of the Terrigals, and to his considerable influence in the state ALP, his support of Mr Macdonald amounted to a kind of patronage'.¹⁶⁴ In other words, the lobbyist in this case, Obeid, was able to leverage his political power over Macdonald to secure an agreement that (corruptly) benefited his family's financial interests.

¹⁶¹ *McGrath, Quigley and Wyatt Report*, above n 64, 47, 50–51.

¹⁶² New South Wales Independent Commission Against Corruption, above n 101, ch 33.

¹⁶³ *Ibid* 34.

¹⁶⁴ *Ibid* 34.

The second example of unfair access and influence due to political connections and/or power comes from Operation Acacia (previously discussed) where it was found that Ian Macdonald engaged in corrupt conduct by acting contrary to his duty as Minister for Primary Industries and Minister for Mineral Resources – as a Minister of the Crown – in granting Doyles Creek Mining Pty Ltd (DCM) consent to apply for an exploration licence (EL) in relation to land at Doyles Creek and also in granting DCM the EL with both grants being made substantially for the purpose of benefiting John Maitland.¹⁶⁵

As with the circumstances in Operation Jasper, political connections were integral to this episode. John Maitland, who was a shareholder and chairman of DCM at the time the EL was granted, was a former leader of the Construction, Forestry, Mining and Energy Union (CFMEU), Mining and Energy Division, who had a close relationship with Ian Macdonald. In a paragraph warranting reproduction, ICAC found the following:

The Commission accepts that the relationship between Mr Macdonald and Mr Maitland was not a social one but professional relationships can be close indeed, and the Commission finds that their relationship was particularly close. Professional relationships between colleagues, over time, can strengthen to the degree that the colleagues may be regarded as “mates” in the colloquial sense. The significance of the term “mates” is that it connotes a close and enduring friendship of a comradely kind . . . The Commission is satisfied that the relationship between Mr Macdonald and Mr Maitland was such that it justified, in everyday parlance, of “mateship” – *they were “mates”*.¹⁶⁶

The relationship between Macdonald and Maitland was critical to Maitland being hired by DCM. According to ICAC, Craig Ransley, co-founder of DCM,¹⁶⁷ ‘gave Mr Maitland the job of *using his relationship with Mr Macdonald* to influence him to allocate the EL (exploration licence) directly to DCM’.¹⁶⁸ In short, Maitland was hired

¹⁶⁵ Ibid 8, 136-137.

¹⁶⁶ Ibid 30 (emphasis added).

¹⁶⁷ Ibid 12.

¹⁶⁸ Ibid 107 (emphasis added).

to lobby Mr Macdonald through exploitation of their relationship as ‘mates’, a process that clearly involved unfair access and influence.

These accounts may give a misleading impression that unfair access and influence due to political connections and power result simply from individual relationships – this could not be farther from the truth. The individual relationships - which allow such unfair access and influence to thrive – result from systemic political practices. This can be seen starkly in relation to American politics where lobbyists are closely integrated into the election campaigns of candidates through the provision of funds and strategic support.¹⁶⁹

The relationship between systemic political practices and unfair lobbying also exists in Australia albeit in a different form. For one, there is a strong connection between the conduct engaged in by Macdonald and Obeid and how the NSW ALP is organised. This clearly came through in an address made by Senator John Faulkner, former Commonwealth Special Minister of State, to the 2014 NSW Labor conference. In this address, Senator Faulkner condemned the NSW ALP’s current system of pre-selecting Legislative Council candidates by its annual State conference, a system dominated by factional leaders (like Obeid), and pointedly observed:

Look who the current system has delivered.

Eddie Obeid – four separate ICAC investigations made corruption findings against him. He was preselected three times by this annual conference.

Ian Macdonald – three separate ICAC investigations made corruption findings against him. He was preselected three times by this annual conference.

Tony Kelly – also found by ICAC to have engaged in corrupt conduct. He was preselected three times by this annual conference.¹⁷⁰

¹⁶⁹ Ronald G Shaiko, ‘Making the Connection: Organized Interests, Political Representation, and the Changing Rules of the Game in Washington Politics’ in Paul Herrnson, Ronald Shaiko and Clyde Wilcox (eds), *The Interest Group Connection: Electioneering, Lobbying, and Policymaking in Washington* (CQ Press, 2nd ed, 2004) 1, 19. See also Robert Kaiser, above n 34.

¹⁷⁰ John Faulkner, ‘John Faulkner explains why NSW Labor needs to change the way it works’, *The*

Unfair access and influence due to the political connections of the lobbyists also occurs when commercial lobbyists are able to secure direct lobbying opportunities due to their relationships with the party in power. This is not a fanciful scenario - many commercial lobbyists have close ties with either of the major political parties with their fortunes varying according to which party is in power. The following has been said of the influence of Bruce Hawker under the previous NSW ALP governments, who was the managing director of Hawker Britton at that time:¹⁷¹

It's Bruce Hawker No. 1 and a distant second to anyone else. If you want an opportunity to present your case you do it through Hawker Britton.¹⁷²

The current Liberal government, on the other hand, is said to have strong ties with the commercial lobbyists, Premier State and Hugo Halliday.¹⁷³

Fair access to government decision-making is also undermined when access and influence is granted because of the financial power or wealth of the lobbyists. The seriousness of this risk should be understood against the background of sharp economic inequalities in Australian society. Despite the perception of Australia being a 'land of the fair go', a recent report by the Australia Institute found that:

While income distribution is unequal, the distribution of wealth is even more so. The top 20 per cent of people have five times more income than the bottom 20 per cent, and hold 71 times more wealth. Perhaps the gap between those with the most and those with the least is most starkly highlighted by the fact that the richest seven individuals in Australia hold more wealth than 1.73 million households in the bottom 20 per cent.¹⁷⁴

Age (online), 28 July 2014 <<http://www.theage.com.au/comment/john-faulkner-explains-why-nsw-labor-needs-to-change-the-way-it-works-20140728-zxlky.html#ixzz39NPYQJ8C>>.

¹⁷¹ The current managing director of Hawker Britton is Simon Banks, see Hawker Britton, *Staff* <<http://www.hawkerbritton.com/staff.php>>

¹⁷² John Warhurst, above n 14, 41.

¹⁷³ Noel Turnbull and Claire Shamier, above n 55, 119.

¹⁷⁴ David Richardson and Richard Dennis, The Australia Institute, *Income and Wealth Inequality in Australia* (2014) 2 <<http://www.tai.org.au/content/income-and-wealth-inequality-australia>>.

Such inequality allows the wealthy to secure access and influence based on their wealth in direct and subtle ways. The sale of access and influence are straightforward instances of such unfairness, with little doubt that it is the payment of thousands of dollars that secures superior lobbying opportunities. The unfairness involved in such access and influence was highlighted by Gary Crooke, former Queensland Integrity Commissioner, when he rightly asked:

What, for example, of the developer who pays \$3,000 for a seat next to a Minister responsible for making a decision about a contentious project in which the guest is involved? What of those objectors or other members of the Community who are interested in the outcome of the decision? Are they being perceived to be fairly treated?¹⁷⁵

As Crooke observed, '(i)t is the unspoken creation of an expectation of preferential treatment attending this, which will result in the inevitable conclusion by informed public opinion that the activity is untoward.'¹⁷⁶

Wealth, however, also speaks in softer tones. Businesses have power not only through direct contributions to parties but also through its ownership of the means of production, distribution and exchange. It is such power that gives rise to what Lindblom rightly described as the 'privileged position of business'.¹⁷⁷ Such a position means that businesses have tremendous power in the market *and* in the political sphere. The latter results from political representatives being heavily reliant on the decisions of business for their own electoral success.¹⁷⁸ As Lindblom has observed, '[b]usinessmen cannot be left knocking at the doors of the political systems, they must be invited in'.¹⁷⁹

¹⁷⁵ Gary Crooke, above n 110, 6.

¹⁷⁶ Ibid 7.

¹⁷⁷ Charles Lindblom, *Politics and Markets: The World's Political Economic Systems* (Basic Books, 1977) ch 13.

¹⁷⁸ It can be added that trade union officials are also dependent on the decisions of business for their ability to maintain the support of their membership with the welfare of their constituency profoundly shaped by the decisions of business on how to use and deploy its capital.

¹⁷⁹ Charles Lindblom, above n 177, 175.

The result is that wealthy businessmen like Rupert Murdoch and James Packer have many more contacts in the higher echelons of government and are much more likely to be listened to than the average Australian: Would an ordinary Australian have been able to share intimate dinners with Prime Ministers as Rupert Murdoch was able to do with Tony Abbott in June 2014 and Kevin Rudd in September 2009? Would an ordinary Australian be able to have then Prime Minister Kevin Rudd and his wife, Therese Rein, stay at their holiday accommodation (for those who own one) as Seven Network chairman, Kerry Stokes, was able to in October 2009?¹⁸⁰

Another powerful illustration of the 'privileged position of business' was, arguably, provided in relation to the proposed 43 per cent increase in the number of gaming tables in Crown Casino, Melbourne. When this increase was agreed to by the Brumby Labor government, the Liberal Party spokesperson on gaming Michael O'Brien fiercely criticised the decision being made after 'two phone calls from James Packer – one to the Premier, one to the Treasurer'. A few months later, however, the Liberal Party decided to abandon its opposition to the increase after a meeting between Mr Packer, Rowen Craigie, Crown Casino's chief executive, Mr O'Brien and Ted Ballieu, the Opposition Leader.¹⁸¹

The privileged access of the mega-rich also extends, although to a lesser degree, to senior executives of major corporations. For instance, the ability of Mark Ryan, Director of Corporate Affairs for Westfield, to directly lobby Graeme Wedderburn, Chief of Staff to then Premier Bob Carr, in relation to Liverpool City Council's approval of a development proposed by one of Westfield's competitors, Gazcorp Pty Ltd,¹⁸² would not have been shared by ordinary citizens; neither would have been the ability of Don Argus, then Chairman of BHP Billiton, to lobby Treasurer Wayne Swan in relation to the application by Chinese Government-owned Chinalco to purchase a share of Rio Tinto.¹⁸³ As noted earlier, a study by Bell and Warhurst found that these

¹⁸⁰ Tony Wright, 'The worker's mate has a day on the piste with Kerry', *The Age* (Melbourne), 18 February 2010, 6.

¹⁸¹ Jason Dowling and Royce Millar, 'Opposition U-turn on Crown expansion', *The Age* (Melbourne), 5 December 2009, 5.

¹⁸² See *Orange Grove Centre Report*, above n 67, 7–8.

¹⁸³ Barry Fitzgerald & Ari Sharp, 'Argus and Co. never far from seats of power', *The Business Age*, 16 October 2009, 1.

managers, together with company directors, were typically responsible for 'highest level contacts'.¹⁸⁴

The rich can also enjoy unfair access and influence because they are more able to secure lobbying services. This can be through in-house lobbying departments, often described as government relations or public relations departments, which, as mentioned earlier, are responsible for engaging in 'middle-level lobbying'.¹⁸⁵ Even amongst businesses, the Bell and Warhurst study has shown that the extent of wealth can determine the ability of a business to enjoy these lobbying services. In particular the study has shown that it is larger companies that are more likely to have such departments (interestingly, it has also shown that companies that have lobbying departments tend also to be members of the BCA).¹⁸⁶

And, of course, those who are well resourced are also more able to pay the fees charged by commercial lobbyists and other businesses providing lobbying services. It has been estimated that commercial lobbyists' fees can be up to \$400 per hour with a success fee ranging from one to three per cent;¹⁸⁷ the starting price of the services of these lobbyists has been estimated to be around \$50 000 and could reach half a million dollars if there is an integrated media and direct lobbying campaign.¹⁸⁸ It is not surprisingly in this context that the clients of NSW registered lobbyists are overwhelmingly companies;¹⁸⁹ and that national law firms that provide lobbying services tend to service major corporations.¹⁹⁰

The unequal distribution of private wealth can create the conditions for unfair access and influence but so can patterns of public funding. There is now extensive state funding of non-government organisations. There is a legitimate foundation to such funding, because non-government organisations can make a vital contribution to the political process through the participation within those groups by members of the

¹⁸⁴ Stephen Bell and John Warhurst, above n 44, 212.

¹⁸⁵ Ibid 212.

¹⁸⁶ Ibid 208-209.

¹⁸⁷ Barry Fitzgerald & Ari Sharp, above n 183, 1.

¹⁸⁸ Julian Fitzgerald, above n 39, 19.

¹⁸⁹ See Appendix Two.

¹⁹⁰ See generally Matthew Darke, 'Lobbying by Law Firms: A Study of Lobbying by National Law Firms in Canberra' (1997) 56(4) *Australian Journal of Public Administration* 32.

public, and also by the groups themselves representing the concerns of the marginalised and disadvantaged, thereby enhancing the policy process.¹⁹¹ In short, lobbying by these organisations may enhance democratic politics. It is legitimate then for the public to fund such activities, especially when these activities would not otherwise be carried out due to lack of resources.

While public funding of such activities has a legitimate basis, this does not sanction any pattern of funding. Such funding must be carefully directed at facilitating the empowerment of the disenfranchised, and should avoid erecting its own barriers to political access and influence. Put differently, such funding should not entrench the position of 'insider' groups. These are groups that are recognised by government as legitimate spokespersons of specific groups or causes and, therefore, are allowed to participate in dialogue with government *but*, as a condition of being an 'insider' group, are required to abide by 'certain rules of the game' (e.g. staying within the boundaries of 'respectable' debate, not 'overly' criticising the government).¹⁹² 'Insider' groups tend to be more influential in the policy-making process¹⁹³ than 'outsider' groups¹⁹⁴ and the unorganised. The difficulty here is that the provision of public funding itself bestows 'insider' status upon a group. Perhaps the challenge here is to ensure that there is a diversity of insider groups and also change and fluidity in terms of the composition of such groups, together with multiple avenues for the voices of outsider groups and the unorganised to be heard.

¹⁹¹ Bronwen Dalton & Mark Lyons, 'Representing the Disadvantaged in Australian Politics: The Role of Advocacy Organisations', (Report No 5, Democratic Audit of Australia, 2005). See also Sarah Maddison & Richard Denniss, 'Democratic Constraint and Embrace: Implications for Progressive Non-Government Advocacy Organisations in Australia' (2005) 40(3) *Australian Journal of Political Science* 373, 376–380; Marian Sawyer, 'Governing for the Mainstream: Implications for Community Representation' (2002) 61(1) *Australian Journal of Public Administration* 39; and Sarah Maddison and Clive Hamilton, 'Non-Government Organisations' in Clive Hamilton and Sarah Maddison (eds), *Silencing Dissent* (Allen & Unwin, 2007) 78.

¹⁹² Wyn Grant, 'Pressure Politics: The Changing World of Pressure Groups' (2004) 57(2) *Parliamentary Affairs* 408, 408. There are different types of insider groups: core insider groups dealing with wide range of topics; specialist insider groups; and peripheral insider groups; all of which would enjoy varying levels of influence: Wyn Grant, 'Pressure Politics: The Changing World of Pressure Groups' (2004) 57(2) *Parliamentary Affairs* 408, 409. See also Mark Civitella, 'Insiders and Outsiders: How Australian Democracy is Failing its Stakeholders' in Mark Sheehan and Peter Sekules, *The Influence Seekers: Political Lobbying in Australia* (Australian Scholarly Publishing, 2012) ch 3.

¹⁹³ While the distinction between insider and outsider groups does not precisely map the level of influence, insider group strategies are generally seen to be more successful: Wyn Grant, above n 192, 409–12.

¹⁹⁴ There are groups that are outsiders by necessity and those who are outsiders by choice: Wyn Grant, above n 192, 408, 409.

The problem of insiders receiving unfair access and influence is compounded by the employment of former public officials as lobbyists. This brings us to another aspect of the risks involved in post-separation employment. We saw earlier how such situations threw up the danger of corruption and misconduct with the potential of public officials skewing their decision-making processes in order to enhance their employment prospects in the private sector. This time around the danger, as correctly identified by ICAC, is of unfair access and influence:

Public officials must act fairly when providing services to the public. Problems can arise if former public officials seek to influence the work of ex-colleagues or subordinates ... Former colleagues may regard the lobbyist as an insider and grant special access and therefore give lobbyists an unfair advantage ... no public official should favour any former public official in the course of their duty and equality of access should be a feature of all official dealings.¹⁹⁵

This danger is severely exacerbated by the revolving door between public officials and lobbyists. For instance, a study of nine national law firms found a majority of the lobbyists directly employed in these firms were previously public servants.¹⁹⁶ The case of the 'greenhouse mafia' is illustrative. According to Hamilton:

Almost all of these industry lobbyists have been plucked from the senior ranks of the Australian Public Service, where they wrote briefs and Cabinet submissions and advised ministers on energy policy. The revolving door between the bureaucracy and industry lobby groups has given the fossil-fuel industries unparalleled insight into the policy process and networks throughout Government.¹⁹⁷

It is not only the public service that is a recruiting ground for lobbying firms. A study of government relations departments in large Australian firms found that a majority of these staff were either former public servants or former ministerial staff.¹⁹⁸ Moreover, as Warhurst observes, 'lobbying has certainly become an accepted career path after

¹⁹⁵ *Post-Separation Employment Discussion Paper*, above n 121, 15–16.

¹⁹⁶ Matthew Darke, above n 190, 35.

¹⁹⁷ Clive Hamilton, above n 77, 3-4.

¹⁹⁸ Stephen Bell and John Warhurst, above n 44, 211.

politics'.¹⁹⁹ The roll call of leading politicians that have become lobbyists or consultants providing lobbying advice after retiring from formal politics is long and growing longer. It includes:

- former federal Finance Minister, John Fahey, working for investment bank JP Morgan;
- former federal Environment Minister, Ros Kelly, working for environment consultants Dames and Moore;
- former federal Defence Minister, Peter Reith, working for defence contractor Tenix;
- former federal Health Minister, Michael Wooldridge, acting as a consultant to the Royal Australian College of General Practitioners;²⁰⁰
- former ALP Opposition Leader, Kim Beazley, acting as a lobbyist for Ernst & Young²⁰¹ (prior to taking up his ambassadorship to the United States);
- former Queensland Premier, Wayne Goss, taking up chairmanship of accounting firm Deloitte;
- former New South Wales Premier, Bob Carr, working as a consultant for the Macquarie Group;
- former Victorian Premier, Steve Bracks, working as a consultant to KPMG; and
- former Western Australia Premier, Alan Carpenter, heading up retail group Wesfarmers' public relations department.²⁰²

As a final note, the deep connection between situations of unfair access and influence, on one hand, and the value of freedom to influence the political process through lobbying and questions of corruption and misconduct, on the other, should be underscored. With the freedom to lobby, such unfair situations clearly subvert the fair value of such freedom by providing undeserved access and influence (based on political and/or economic power). With corruption and misconduct, such conduct (as

¹⁹⁹ John Warhurst, above n 14, 64.

²⁰⁰ Ian Holland 'Post-Separation Employment of Ministers', (Research No 40, Parliamentary Library, Parliament of Australia, 2002) 1.

²⁰¹ Katharine Murphy, 'Beazley now lobbyist', *The Age* (Melbourne), 18 October 2008, 8.

²⁰² Adele Ferguson and Eric Johnston, 'Lobbyist control plans in disarray', *The Age* (Melbourne), 6 February 2010, 7.

noted earlier) occurs in the context of public decision-making when there is departure from the principle of merit-based decision-making. There are, however, no Platonic or abstract notions of merit. Understandings of merit emerge from the quality of the processes, and if the political processes are pervaded by unfair access and influence, then notions of merit will be skewed in favour of those granted privileged access. Such distortions are no less a departure from the principle of merit-based decision making, and constitute a corruption of public decision-making. With such corruption, there can very well be a 'corrupt culture' - a culture that 'accepts corruption as part of the way things are done'.²⁰³

²⁰³ New South Wales Independent Commission Against Corruption, *Second Report on Investigation into the Metherell Resignation and Appointment* (1992) 3 ("Metherell Report").

VI AUSTRALIAN REGULATION OF DIRECT LOBBYING

In Australia, the key sources of regulation of direct lobbying are:

- Registers of lobbyists and codes of conduct for lobbyists; and
- Codes of conduct for Ministers, Members of Parliament and public servants.

This part of the report will detail these distinct – and interacting – sources of regulation by, firstly, examining the position in Australian jurisdictions other than New South Wales and then the regulation that exists in New South Wales.

A *Registers of Lobbyists and Codes of Conduct for Lobbyists*

1 *Australian Jurisdictions other than New South Wales*

Registers of lobbyists are of relatively recent provenance in Australia. The first scheme of this kind was adopted at the federal level in 1983 by the Hawke ALP government in the wake of the Combe-Ivanov affair.²⁰⁴ This scheme is widely considered a failure, due to inadequate compliance and the fact that the information concerning lobbyists was not made public.²⁰⁵ In 1996, the newly-elected Howard Coalition government abolished the scheme.²⁰⁶

More than a decade later, the controversy surrounding the lobbying activities of former Western Australian Premier Brian Burke and his former ministerial colleague, Julian Grill, prompted a round of regulation directed at third-party lobbyists. The Western Australian government was the first to regulate in 2007. This was quickly followed by most jurisdictions. The result is that registration schemes and codes of conduct for lobbyists have been adopted federally and in all the States (neither the ACT nor the Northern Territory have adopted such regulation).

(a) *Registers of Lobbyists*

As Table 3 indicates, the key dimensions of the registration schemes are:

²⁰⁴ For an account of this affair, see John Warhurst, above n 14, 22-23.

²⁰⁵ Julian Fitzgerald, above n 39, 108-109; John Warhurst, above n 14, 25-26. See also Peter Sekules, above n 25, chs 11-12.

²⁰⁶ John Warhurst, above n 14, 27-28.

- The legal source of the register: whether it is legislative and/or executive regulation;
- Lobbyists covered by the register;
- Public officials covered by the register;
- Lobbying activities covered by the register;
- Obligations on public officials covered;
- Obligations on lobbyists covered;
- Prohibitions on who can act as a lobbyist;
- Prohibition on certain lobbying activities;
- Penalties for breaching obligations imposed on lobbyists; and
- Agency responsible for compliance and enforcement.

Table 3: Lobbying Registration Schemes in Other Australian Jurisdictions

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
Legal Source of Register	Executive regulation - Australian Government Lobbyists Register (Cth)	Executive regulation - Register of Lobbyists (Vic)	Legislative regulation - <i>Integrity Act 2009</i> (Qld), Queensland Lobbyists Register (Qld)	Executive regulation - Lobbyist Register (SA)	Executive regulation - Register of Lobbyists (WA)	Executive regulation - Register of Lobbyists (Tas)
Lobbyists covered	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists
Public officials covered	Government representatives, i.e. Ministers, Parliamentary Secretaries, ministerial or electorate staff, agency heads, public servants, contractors or consultants of government agency whose staff are public servants, Australian Defence Force	Government representatives, i.e. Ministers, Cabinet Secretaries, Parliamentary Secretaries, ministerial staff, public officials	Government and Opposition representatives, i.e. Ministers, Assistant Ministers, councillors, public sector officers, ministerial staff, assistant ministerial staff, Leader of the Opposition, Deputy Leader of the Opposition, Opposition Leader staff members	Government representatives, i.e. Ministers and Parliamentary Secretaries, ministerial staff, public sector employees	Government representatives, i.e. Ministers, Parliamentary Secretaries, ministerial staff, public sector agencies employees and contractors	Government representatives, i.e. Ministers, Parliamentary Secretaries, Members of Parliament of party constituting government, ministerial staff, agency heads
Lobbying activities covered	Communications with a Government representative to influence Government decision-making, including legislative amendment, development or amendment of Government policy	Communications with a Government representative to influence Government decision-making, including legislative amendment, development or amendment of Government policy	Contact with a Government representative to influence State or local government decision-making, including legislative amendment, development or amendment of Government policy or program, awarding of Government contract, grant or allocation of funding, decision-making about	Communications with a Government representative to influence Government decision-making, including legislative amendment, development or amendment of Government policy	Contact with a Government representative for the purposes of lobbying activities	Communications with a Government representative to influence Government decision-making, including legislative amendment, development or amendment of Government policy

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
	or program, awarding of Government contract or grant or allocation of funding	or program, awarding of Government contract or grant or allocation of funding	planning or development approval	or program, awarding of Government contract or grant or allocation of funding		or program, awarding of Government contract or grant or allocation of funding
Obligations on public officials covered	A government representative must only be lobbied by lobbyists on the Register	A government representative must only be lobbied by lobbyists on the Register	A government representative must only be lobbied by lobbyists on the Register	A government representative must only be lobbied by lobbyists on the Register	A government representative must only be lobbied by lobbyists on the Register	A government representative must only be lobbied by lobbyists on the Register
Obligations on lobbyists	Lobbyists must provide the following details to the Register: a. business registration details of lobbyist, including names of owners, partners or major shareholders b. names and positions of persons employed, contracted or otherwise engaged by lobbyist to carry out lobbying activities c. names of third	Lobbyists must provide the following details to the Register: a. business registration details of lobbyist, including names of owners, partners or major shareholders b. names and positions of persons employed, contracted or otherwise engaged by lobbyist to carry out lobbying activities c. names of third	Lobbyists must provide the following details to the Register: a. lobbyist's name and business registration particulars; b. for each person (listed person) employed, contracted or otherwise engaged by the lobbyist to carry out a lobbying activity, the person's name and role; and if the person is a former senior government/Opposition representative, the date the person became a former senior government/Opposition representative. Keep their details updated within 10 days of any change.	Lobbyists must provide the following details to the Register: a. business registration details of lobbyist, including names of owners, partners or major shareholders b. names and positions of persons employed, contracted or otherwise engaged by lobbyist to carry out lobbying activities c. names of third	Lobbyists must provide the following details to the Register: a. business registration details of lobbyist, including names of owners, partners or major shareholders b. names and positions of persons employed, contracted or otherwise engaged by lobbyist to carry out lobbying	Lobbyists must provide the following details to the Register: a. business registration details of lobbyist, including names of owners, partners or major shareholders b. names and positions of persons employed, contracted or otherwise engaged by lobbyist to carry out lobbying activities c. names of third

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
	<p>parties lobbyist is currently retained to provide paid or unpaid services as a lobbyist</p> <p>d. names of persons the lobbyist has recently provided paid or unpaid services as a lobbyist during the previous three months.</p> <p>Keep their details updated within 10 days of any change.</p> <p>Annually provide confirmation of their details and that they have not been sentenced to imprisonment of 30 months or more or convicted of an offence of dishonesty in the last 10 years.</p>	<p>parties lobbyist is currently retained to provide paid or unpaid services as a lobbyist</p> <p>d. names of persons the lobbyist has recently provided paid or unpaid services as a lobbyist during the previous three months.</p> <p>Confirm their records are updated within 10 business days</p> <p>Annually provide confirmation of their details and that they have not been sentenced to prison for more than 30 years, not been convicted of an offence that involves dishonesty and have not received a success fee.</p>	<p>Annually provide confirmation of their details and that they have not been sentenced to a period of imprisonment of 30 months or more or convicted of an offence of dishonesty in the last 10 years.</p> <p>Inform the Integrity Commissioner within 15 days after the end of every month details of every lobbying contact, including the name of the registered lobbyist, whether the lobbyist complied with the Code of Conduct in arranging the contact, the date of the contact, the client of the lobbyist, the title and/or name of the government or opposition representative, the purpose of contact. This information will be published on the Integrity Commissioner's website.</p>	<p>parties lobbyist is currently retained to provide paid or unpaid services as a lobbyist</p> <p>d. names of persons lobbyist has recently provided paid or unpaid services as a lobbyist during the previous three months.</p> <p>Keep their details updated within 10 days of any change.</p> <p>Annually provide confirmation of their details and that they have not been convicted of an offence of dishonesty or indictable offence.</p>	<p>activities</p> <p>c. names of third parties lobbyist is currently retained to provide paid or unpaid services as a lobbyist</p> <p>d. names of persons lobbyist has recently provided paid or unpaid services as a lobbyist during the previous three months.</p> <p>Confirm their details are updated quarterly.</p>	<p>parties lobbyist is currently retained to provide paid or unpaid services as a lobbyist</p> <p>d. names of persons lobbyist has recently provided paid or unpaid services as a lobbyist during the previous three months.</p> <p>Keep their details updated within 10 days of any change.</p> <p>Annually provide confirmation of their details and that they have not been sentenced to prison for 2 years or more, convicted of an offence of dishonesty or indictable offence in the last 10 years.</p>
Prohibitions on who can	Persons sentenced to prison for 30	Persons sentenced to prison for 30	Persons sentenced to prison for 30 months or more or	<u>Ministers</u> : ban for 2 years after	N/A	Persons sentenced to prison for 2 years

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
become a lobbyist	<p>months or more or convicted of an offence of dishonesty in the last 10 years.</p> <p>Federal, state or administrative executive of political parties.</p> <p><u>Ministers and Parliamentary Secretaries</u>: ban for 18 months after departure on lobbying on matters where they had official dealings in the last 18 months in office</p> <p><u>Senior public service executive</u>: ban for 12 months after departure on lobbying on matters where they had official dealings in the last 12 months in office</p>	<p>months or more, persons convicted as an adult of an offence of dishonesty in the last 10 years.</p> <p>Persons who have received success fees on the award of a public project from the Victorian Government or public sector after 1 January 2014.</p> <p><u>Ministers and Cabinet Secretary</u>: ban for 18 months after departure on lobbying on matters where they had official dealings in the last 18 months in office.</p> <p><u>Parliamentary Secretaries, Senior public service executives, and ministerial staff</u>: ban for 1 year after departure on lobbying on matters where they had official dealings in the last 1 year in office</p>	<p>convicted of an offence of dishonesty in the last 10 years.</p> <p><u>Ministers, Opposition Representatives, senior public service executives</u>: ban for 2 years after departure on lobbying on matters where they had official dealings in the last 2 years in office</p>	<p>departure on lobbying on matters where they had official dealings in the last 18 months in office</p> <p><u>Parliamentary Secretaries, public servants, and ministerial staff</u>: ban for 12 months after departure on lobbying on matters where they had official dealings in the last 12 months in office.</p>		<p>or more, persons convicted of an offence of dishonesty or indictable offence in the last 10 years</p> <p><u>Ministers, Parliamentary Secretaries and Agency Heads</u>: ban for 1 year after departure on lobbying on matters where they had official dealings in the last 1 year in office</p>

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
Prohibitions on lobbying activities	N/A	Success fee after 1 January 2014 is banned (sanction: removal from Register)	Success fee is banned (Maximum penalty—200 penalty units (\$22,000))	N/A	N/A	N/A
Penalties for breaching obligations	Removal from the Register	Removal from the Register	Warning by Integrity Commissioner, suspension or removal from the Register	Removal from the Register	Removal from the Register	Removal from the Register
Agency responsible for compliance and enforcement	Secretary, Department of the Prime Minister and Cabinet	Public Sector Standards Commissioner	Integrity Commissioner	Chief Executive, Department of Premier and Cabinet	Public Sector Commissioner	Secretary, Department of Premier and Cabinet

(i) *Victoria, South Australia, Western Australia, Tasmania and the Commonwealth*

All jurisdictions except for Queensland have broadly similar lobbyist registration schemes. In the Commonwealth, Victoria, South Australia, Western Australia and Tasmania, the lobbyist register is purely based on executive regulation. There may be future legislative reform in Western Australia, which is discussed below.

The scope of lobbyists covered by the registers in these jurisdictions is narrow. The registers only cover third party lobbyists, defined under the registers as any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. This means that the following are excluded from the definition of lobbyists for the purpose of the registers:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- individuals making representations on behalf of relatives or friends about their personal affairs;
- members of trade delegations visiting Australia;
- persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, Customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession;
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers,

doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities; and

- any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client (i.e. in-house lobbyists).

Third party lobbyists are required to register their details on a lobbyist register. Only registered lobbyists are allowed to lobby 'Government representatives'. Under the registers in Victoria, South Australia, Western Australia and the Commonwealth, 'Government representatives' include Ministers, Parliamentary Secretaries, ministerial advisers and senior public servants. The registers do not, however, cover Opposition Members, Members of Parliament and local government.

In Tasmania, 'Government representatives' include Ministers, Parliamentary Secretaries, Members of Parliament of party constituting government, ministerial advisers and agency heads appointed under the *State Service Act 2000* (Tas). In one respect, the coverage of the Tasmanian scheme is narrower than the other jurisdictions, as it does not cover all senior public servants, but instead only covers the agency heads; in another respect, it is broader as it covers Members of Parliament of the party of the government of the day.

These registers cover contact that lobbyists make with 'Government representatives', including all communications with 'Government representatives' to influence Government decision-making. This includes legislative amendment; development or amendment of a Government policy or program; award of a Government contract; and grants or allocation of funding.

Under the registration schemes, lobbyists are required to provide the names of their owners and major shareholders, the names of the staff who lobby and the names of their paid and unpaid clients in the last three months for whom they lobby. Lobbyists have to ensure that their details are kept up to date within 10 days of a change. An

additional requirement exists under the Victorian register where a Government Affairs Director must inform the Government representative whether they are a Government Affairs Director who is required by the Code to have their Lobbyist's Details recorded on the Register of Lobbyists, and whether they have complied with this requirement.²⁰⁷

Under the registers in the Commonwealth, Victoria, South Australia and Tasmania, there is an annual requirement for lobbyists to sign a statutory declaration confirming that they have not been convicted of an offence of dishonesty or indictable offences of varying seriousness. This implies that people convicted of these offences are prohibited from being lobbyists.

The registration schemes in the Commonwealth, Victoria, South Australia and Tasmania also have post-separation employment requirements that prohibit Ministers, Parliamentary Secretaries, senior public servants and ministerial advisers from engaging in lobbying in the subject matters where they have had official dealings for a certain period after they leave office. The Western Australian register does not have any post-separation requirements.

At the Commonwealth level, there is a ban operating for 18 months for former Ministers and Parliamentary Secretaries after their departure from lobbying on matters where they had official dealings in the last 18 months in office. Similarly, senior public service executives are subject to a ban for 12 months after departure from lobbying on matters where they had official dealings in the last 12 months in office.²⁰⁸ In Victoria, there is a ban for Ministers and Cabinet Secretaries for 18 months after departure on lobbying on matters where they had official dealings in the last 18 months in office, while Parliamentary Secretaries, senior public service executives, and ministerial staff are banned for 12 months after departure from lobbying on matters where they had official dealings in the last 12 months in office.²⁰⁹ In South Australia, Ministers are banned for 2 years after departure from lobbying on matters where they had official dealings in the last 18 months in office, while

²⁰⁷ Victorian Government, *Professional Lobbyist Code of Conduct* (2013) cl 4.3 ("Victorian Lobbyist Code of Conduct").

²⁰⁸ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 7.

²⁰⁹ *Victorian Lobbyist Code of Conduct*, above n 207, cl 7.

Parliamentary Secretaries, public servants, and ministerial staff are banned for 12 months after departure from lobbying on matters where they had official dealings in the last 12 months in office.²¹⁰ In Tasmania, Ministers, Parliamentary Secretaries and Agency Heads are subject to a ban for 12 months after departure from lobbying on matters where they had official dealings in the last 12 months in office.²¹¹

At the Commonwealth level, the members of the executive, administrative committee or equivalent body of a State or federal branch of a political party are prohibited from being lobbyists.²¹² Success fees are banned in Victoria, but not in the Commonwealth, South Australia, Western Australia and Tasmania.

Lobbyists who breach their obligations or who have been convicted of an offence can be removed from the lobbyists register. Third party lobbyists who are removed from the register will no longer be able to lobby Government representatives.

The lobbyist registration scheme is administered by the Department of the Prime Minister and Cabinet at the Commonwealth level, the Department of Premier and Cabinet in South Australia and Tasmania, and the Public Sector Commissioners in Victoria and Western Australia.

For the sake of comprehensiveness, it should be noted that the regulation of direct lobbying in Western Australia may be reformed in the near future. The Integrity (Lobbyists) Bill 2011 (WA) imposes a requirement for third party lobbyists to be registered. Contravention of this requirement could incur a fine of \$10,000. The coverage of the Bill is similar to the executive regulation that currently exists and covers a wide range of decision-makers. The Public Sector Commissioner is still responsible for maintaining the register. The Bill imposes a ban on success fees, which is an additional prohibition. It is an offence to supply false or misleading information to the Commissioner, which is punishable by a fine of \$10,000.

²¹⁰ Government of South Australia, 'Lobbyist Code of Conduct', (Circular No 32, Department of The Premier and Cabinet, October 2009) cl 7 ("*SA Lobbyist Code of Conduct*").

²¹¹ Department of Premier and Cabinet, *Tasmanian Government Lobbying Code of Conduct* (2013) cl 7 <http://lobbyists.dpac.tas.gov.au/__data/assets/pdf_file/0020/105509/Lobbying_Code_of_Conduct_-_November_2013.pdf> ("*Tasmanian Lobbying Code of Conduct*").

²¹² Commonwealth *Lobbying Code of Conduct*, above n 146, cl 10.1(c).

The proroguing of the Western Australian Parliament on 14 December 2012, has, however, meant that this Bill had to be reintroduced in the next session.²¹³ The Premier of Western Australia, Colin Barnett has stated that the Bill will be reintroduced with amendments by the end of 2014.²¹⁴ This had not happened at the date of the report.

(ii) *Queensland*

The Queensland system is notably different from the other Australian jurisdictions. The Queensland registration scheme resulted from a green paper published by the Queensland Government on Integrity and Accountability in Queensland in 2009.²¹⁵ Following the receipt of more than 240 submissions, and after a number of public consultations, the Government decided to introduce a number of significant changes to the existing accountability regime.²¹⁶ This led to the introduction of the *Integrity Act 2009* (Qld).

Section 49 of the *Integrity Act 2009* (Qld) requires the Integrity Commissioner to keep a register of lobbyists. The Queensland Integrity Commissioner is an independent officer of Parliament.²¹⁷ The Integrity Commissioner is responsible for maintaining the Queensland Lobbyists Register and monitoring compliance with the Act and the Lobbyists Code of Conduct, by lobbyists and government or local government.²¹⁸ The Commissioner can also provide advice about ethics or integrity

²¹³ Premier of Western Australia, 'Western Australian Parliament Prorogued' (Media Release, 14 December 2012

<<http://www.mediastatements.wa.gov.au/Lists/StatementsBarnett/DispForm.aspx?ID=6970>>.

²¹⁴ AAP, 'WA Plans to Re-introduce Lobbyists Bill', *Perth Now* (online), 20 September 2013 <<http://www.perthnow.com.au/news/western-australia/wa-plans-to-re-introduce-lobbyists-bill/story-fnhocxo3-1226723586691?nk=c52f59d988f567301c9c68ad4b181073>>.

²¹⁵ Queensland Government, *Integrity and Accountability in Queensland* (2009) <<http://www.premiers.qld.gov.au/publications/categories/reviews/integrity-and-accountability-reform/assets/integrity-and-accountability-paper.pdf>>.

²¹⁶ Queensland Government, *Response to Integrity and Accountability in Queensland* (2009) <<http://www.premiers.qld.gov.au/publications/categories/reviews/integrity-and-accountability-reform/assets/response-to-integrity-accountability.pdf>>; Department of Premier and Cabinet, *Integrity and Accountability Consultation Results* (2 April 2013) Queensland Government <<http://www.premiers.qld.gov.au/publications/categories/reviews/integrity-and-accountability-reform/consultation-results.aspx>>.

²¹⁷ *Integrity Act 2009* (Qld) s 6(2).

²¹⁸ *Ibid* ss 7(1)(c), 49.

issues to various officials, including Ministers, MPs and senior government officials.²¹⁹

Like the other jurisdictions, the Queensland register only covers third party lobbyists.²²⁰ However, there is broader coverage of public officials under the Queensland register. In addition to including Ministers, Parliamentary Secretaries and ministerial advisers, the Queensland register also includes all public sector officers (instead of just senior public servants), local government lobbying, as well as lobbying of certain Opposition Members.²²¹

Under the Queensland register, third-party lobbyists must provide the following details for registration: the lobbyist's name and business registration particulars; for each person employed, contracted or otherwise engaged by the lobbyist to carry out a lobbying activity, the person's name and role; and if the person is a former senior Government representative or a former Opposition representative, the date the person became a former senior Government representative or a former Opposition representative.²²² Lobbyists are required to keep their details updated within 10 days of any change.²²³ Lobbyists must also annually provide confirmation of their details and provide a statutory declaration stating that they have not been sentenced to a period of imprisonment of 30 months or more or convicted of an offence of dishonesty in the last 10 years.²²⁴

Success fees are banned in Queensland and are subject to a maximum penalty of 200 penalty units (\$22,000).²²⁵

²¹⁹ Ibid s 7(1)(a), (b). In 1998, the position of Parliamentary Ethics Adviser was created in New South Wales. The Parliamentary Ethics Adviser is responsible for assisting and advising MPs in resolving ethical issues and problems, including on their use of entitlements, interpretation of the code of conduct and guidelines of the House, potential conflicts of interest and issues of post-separation employment: Legislative Assembly, 'Parliamentary Ethics Adviser' (VP No 07/06/2006 97-8, Parliament of New South Wales, 7 June 2006).

²²⁰ Ibid s 41.

²²¹ Ibid ss 42, 44-47B.

²²² Ibid s 49(3).

²²³ Ibid s 50.

²²⁴ Ibid ss 51, 53.

²²⁵ Ibid s 69.

The Commissioner is able to impose a broader range of sanctions on lobbyists compared to other jurisdictions, including issuing a warning or suspending the registration of a lobbyist for a reasonable period, in addition to cancellation of their registration.²²⁶

(b) *Codes of Conduct for Lobbyists*

In each jurisdiction where a register of lobbyists has been adopted, a code of conduct for lobbyists has also been promulgated. As Table 4 shows, central aspects of these codes are:

- The legal source of the Code: whether it is legislative and/or executive regulation;
- Lobbyists covered by the Code;
- Obligations imposed by the Code;
- Penalties for breaching obligations imposed on lobbyists under the Code; and
- Agency responsible for compliance and enforcement of the Code.

²²⁶ Ibid ss 62, 66, 66A(2).

Table 4: Lobbying Code of Conduct in Other Australian Jurisdictions

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
Legal Source of Code	Executive regulation Lobbying Code of Conduct 2013 (Cth)	Executive regulation Victorian Government Professional Lobbyist Code of Conduct 2013 (Vic)	Legislative regulation <i>Integrity Act 2009</i> (Qld), Lobbyist Code of Conduct 2013 (Qld)	Executive regulation Lobbyist Code of Conduct 2009 (SA)	Executive regulation Contact with Lobbyists Code 2008 (WA)	Executive regulation Tasmanian Government Lobbying Code of Conduct 2009 (Tas)
Lobbyists covered by Code	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists	Third party lobbyists
Obligations imposed by Code	Lobbyists must: a. not engage in corrupt, dishonest or illegal conduct/cause or threaten any detriment; b. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them; c. not make misleading, exaggerated or extravagant	Lobbyists must: a. not engage in corrupt, dishonest or illegal conduct/cause or threaten any detriment; b. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them; c. not make misleading, exaggerated or extravagant claims about, or misrepresent, the nature or extent of their access to Government	Lobbyists must: a. conduct their business to the highest professional and ethical standards, and comply with all lobbying laws and regulation; b. act with honesty, integrity and good faith and avoid conduct/practices likely to bring discredit upon themselves, Government representatives, their employer or client. c. not engage in corrupt, dishonest or illegal conduct, or cause or threaten any detriment;	Lobbyists must: a. not engage in corrupt, dishonest or illegal conduct/cause or threaten any detriment; b. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them; c. not make misleading, exaggerated or extravagant	Lobbyists must: a. not engage in corrupt, dishonest or illegal conduct/cause or threaten any detriment; b. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them; c. not make misleading, exaggerated or extravagant claims about/misrepresent the nature or extent of their access to Government	Lobbyists must: a. not engage in corrupt, dishonest or illegal conduct/cause or threaten any detriment; b. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them; c. not make misleading, exaggerated or extravagant

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
	<p>claims about/misrepresent, the nature or extent of their access to Government representatives, political parties/to any other person;</p> <p>d. separate between their activities as lobbyists any personal activity or involvement in a political party; and</p> <p>e. inform the Government representatives that they are lobbyists or employees of, or contractors or persons engaged by, lobbyists; whether they are currently listed on the Register; the name of their client(s); and the nature</p>	<p>representatives, political parties or to any other person;</p> <p>d. separate between their activities as lobbyists any personal activity or involvement in a political party;</p> <p>e. keep their records updated and annually confirm their details and that they have not been sentenced to prison for more than 30 years, not been convicted of an dishonesty offence and have not received a success fee.</p> <p>f. Former Ministers, former Parliamentary Secretaries, persons who have held the position of National/State Secretary,</p>	<p>d. use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them;</p> <p>e. if there is a material change in the factual information that the lobbyist provided previously to a government or Opposition representative causes the information to become inaccurate and the lobbyist believes the government or Opposition representative may still be relying on the information, the lobbyist should provide accurate and updated information to the government or Opposition representative, as far as is practicable.</p> <p>g. not make misleading, exaggerated or extravagant claims about, or misrepresent, the</p>	<p>claims about/misrepresent, the nature/extent of their access to Government representatives, political parties/ to any other person;</p> <p>d. separate between their activities as lobbyists any personal activity or involvement in a political party; and</p> <p>e. inform Government representatives that they are lobbyists or employees of/contractors/ persons engaged by, lobbyists; whether they are currently listed on the Register; the name of their client(s); and the nature</p>	<p>representatives/ political parties to any other person;</p> <p>d. separate between their activities as lobbyists any personal activity or involvement in a political party; and</p> <p>e. inform the Government representatives that they are lobbyists /employees of/ contractors/ persons engaged by, lobbyists; whether they are currently listed on the Register; the name of their client(s); and the nature of the matters that their clients wish them to raise.</p> <p>f. Provide quarterly confirmation that their details are updated</p>	<p>claims about/misrepresent the nature/extent of their access to Government representatives, political parties/to any other person;</p> <p>d. separate between their activities as lobbyists any personal activity or involvement in a political party; and</p> <p>e. inform the Government representatives that they are lobbyists or employees of, or contractors or persons engaged by, lobbyists; whether they are currently listed on the Register; the name of their client(s); and the nature</p>

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
	of the matters that their clients wish them to raise.	Director/Deputy, Assistant Secretary/ Director of a political party, and senior ministerial staff must disclose that position to the Registrar and proactively disclose it when making representations to government.	<p>nature or extent of their access to Government representatives, political parties or to any other person;</p> <p>f. separate between their activities as lobbyists any personal activity or involvement in a political party;</p> <p>g. indicate to their client their obligations under the <i>Integrity Act</i>, and their obligation to adhere to the Lobbyists Code of Conduct.</p> <p>h. not divulge confidential information without the informed consent of their client, or disclosure is required by law.</p> <p>i. not represent conflicting or competing interests without the informed consent of those whose interests are involved.</p>	<p>of the matters that their clients wish them to raise.</p> <p>f. Keep their details updated and annually provide confirmation of their details and that they have not been convicted of an offence of dishonesty or indictable offence.</p> <p>g. Lobbyists who are appointed to Government Boards or Committees must comply with honesty, integrity and conflict of interest requirements in the <i>Public Sector Management Act 1995 (SA)</i></p>		<p>of the matters that their clients wish them to raise.</p> <p>f. Provide annual confirmation that their details are updated and details of their employees.</p>

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
			<p>j. advise government and Opposition representatives that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client before proceeding/continuing with the undertaking.</p> <p>k. not place government or Opposition representatives in a conflict of interest by proposing or undertaking any action that would improperly influence them.</p> <p>l. inform themselves of the policies of the Queensland Government and local governments restricting the acceptance of gifts by officials.</p> <p>m. Former senior Government representatives or former opposition representatives within</p>			

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
			<p>the last 2 years must indicate to the government or opposition representative their former position, when they held that position and that the matter is not a prohibited lobbying activity</p> <p>n. inform the Integrity Commissioner within 15 days after the end of every month details of every lobbying contact, including name of registered lobbyist, whether lobbyist complied with the Code of Conduct in arranging the contact, the date of the contact, client of the lobbyist, title and/or name of the government or opposition representative, the purpose of contact. This information will be published on the Integrity Commissioner's website.</p>			
Penalties for breaching	Removal from the Register	Removal from the Register	Refusal of application for registration, cancelling	Removal from the Register	Removal from the Register	Removal from the Register

Jurisdiction	Cth	Vic	Qld	SA	WA	Tas
obligations under the Code			lobbyist's registration, warning to a registrant, or suspension of registration for a reasonable period			
Agency responsible for compliance and enforcement of the Code	Secretary, Department of the Prime Minister and Cabinet	Public Sector Standards Commissioner	Integrity Commissioner	Chief Executive, Department of Premier and Cabinet	Public Sector Commissioner	Secretary, Department of Premier and Cabinet

Note: The ACT and Tasmania have no Lobbying Code of Conduct.

The operation of the lobbyist register and codes of conduct is tightly coupled in all jurisdictions. This means, in particular, that the penalties for breach and administration of the registers and codes of conduct are identical, as discussed below. As the schemes in all jurisdictions are similar except for Queensland, the following description will detail the position in Victoria, South Australia, Western Australia, Tasmania and the Commonwealth and then separately discuss the Lobbyists Code of Conduct in Queensland.

(i) *Victoria, South Australia, Western Australia, Tasmania and the Commonwealth*

In the Commonwealth, Victoria, South Australia, Western Australia and Tasmania, the Code of Conduct is in the form of executive regulation that only covers third party lobbyists, defined as any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.

This means that the following are excluded from the definition of lobbyists under the schemes:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- individuals making representations on behalf of relatives or friends about their personal affairs;
- members of trade delegations visiting Australia;
- persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession;

- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities; and
- any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client (i.e. in-house lobbyists).

The codes impose obligations on third party lobbyists to engage with Government representatives in an appropriate manner. In particular, they impose the following principles of engagement (see Table 4):

- Lobbyists shall not engage in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment;
- Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them to clients whom they represent, the wider public and Government representatives;
- Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members of political parties or to any other person;
- Lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party; and

- When making initial contact with Government representatives with the intention of conducting lobbying activities, lobbyists who are proposing to conduct lobbying activities on behalf of clients must inform the Government representatives:
 - that they are lobbyists or employees of, or contractors or persons engaged by, lobbyists;
 - whether they are currently listed on the Register of Lobbyists;
 - the name of their relevant client or clients, including a client whose identity is not required to be made public; and
 - the nature of the matters that their clients wish them to raise with Government representatives.

Lobbyists who breach the code of conduct can be removed from the lobbyists register. This means that they are no longer able to lobby Government representatives.

The Lobbyist Code of Conduct is administered by the Department of the Prime Minister and Cabinet at the Commonwealth level, the Department of Premier and Cabinet in South Australia and Tasmania, and the Public Sector Commissioner in Victoria and Western Australia.

As previously discussed, there may be a legislative regime for lobbyists introduced in Western Australia. Of particular relevance here is that the Integrity (Lobbyists) Bill 2011 (WA) requires lobbyists to comply with a code of conduct issued by the Public Sector Commissioner.²²⁷

(ii) *Queensland*

The Queensland legislative regime is established by the *Integrity Act 2009* (Qld). Section 68 of the *Integrity Act 2009* (Qld) provides that the Integrity Commissioner may, after consultation with the parliamentary committee responsible for this

²²⁷ Integrity (Lobbyists) Bill 2011 (WA) s 16.

portfolio, approve a Lobbyists Code of Conduct. The Lobbyists Code of Conduct, which must be published online, aims to provide standards of conduct for lobbyists designed to ensure that contact between lobbyists and Government representatives, and contact between lobbyists and Opposition representatives, is carried out in accordance with public expectations of transparency and integrity.²²⁸

As the Register of Lobbyists in Queensland, the Code only covers third-party lobbyists and obligates these lobbyists in Queensland to follow certain principles when engaging with Government and Opposition representatives:

- Lobbyists shall conduct their business to the highest professional and ethical standards, and in accordance with all relevant law and regulations with respect to lobbying;
- Lobbyists shall act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, Government representatives, their employer or client;
- Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;
- Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;
- If a material change in factual information that the lobbyist provided previously to a Government or Opposition representative causes the information to become inaccurate and the lobbyist believes the Government or Opposition representative may still be relying on the information, the lobbyist should provide accurate and updated information to the Government or Opposition representative, as far as is practicable;
- Lobbyists shall not knowingly make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions;

²²⁸ *Integrity Act 2009* (Qld) ss 68(3).

- Lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party;
- Lobbyists shall indicate to their client their obligations under the Integrity Act, and their obligation to adhere to the Lobbyists Code of Conduct;
- Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, or disclosure is required by law;
- Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved;
- Lobbyists shall advise Government and Opposition representatives that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking;
- Lobbyists shall not place Government or Opposition representatives in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on them; and
- Lobbyists should inform themselves of the policies of the Queensland Government and local governments restricting the acceptance of gifts by officials.²²⁹

In addition, third-party lobbyists in Queensland must inform the Integrity Commissioner within 15 days after the end of every month details of every lobbying contact, including:

- the name of the registered lobbyist;
- whether the lobbyist complied with the Code of Conduct in arranging the contact;
- the date of the contact, the client of the lobbyist;
- the title and/or name of the Government or Opposition representative; and

²²⁹ Queensland Integrity Commissioner, *Lobbyists Code of Conduct* (2013) cl 3 (“*Lobbyists Code of Conduct Queensland*”).

- the purpose of contact.²³⁰

This information will be published on the Integrity Commissioner's website. This requirement is more extensive compared to other jurisdictions, which do not require lobbyists to disclose information concerning their lobbying contacts.

In Queensland, there is a ban on Ministers, Opposition Representatives and senior public service executives for 2 years after departure on lobbying on matters where they had official dealings in the last 2 years in office.²³¹

The Queensland Lobbyists Code of Conduct is enforced by the Integrity Commissioner. If lobbyists breach the Code, the Integrity Commissioner may refuse an application for registration as a lobbyist, cancel a lobbyist's registration, issue a warning to the registrant, or suspend the registration for a reasonable period.²³²

2 *New South Wales*

In the wake of the Burke-Grill controversy, the New South Wales Government – like the federal and other State governments – adopted a register of lobbyists together with a code of conduct in 2009. The 2009 scheme is broadly similar to those currently existing in other Australian jurisdictions (other than Queensland). Further, this scheme has been – until recently – subject to relatively minor amendments through changes in executive regulation and also through the *Lobbying of Government Officials Act 2011* (NSW). However, the enactment of the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) heralds significant changes to the current regime. When this Act takes effect – on a day to be proclaimed – it will entail profound changes to the regulation of direct lobbying in New South Wales.

The section describes the current register of lobbyists and its code of conduct; and the scheme brought about by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW). It then compares these two schemes.

²³⁰ Ibid; *Integrity Act 2009* (Qld) s 68(4).

²³¹ *Integrity Act 2009* (Qld) s 70.

²³² Ibid ss 62, 66, 66A(2).

(a) *Current register of lobbyists*

Third party lobbyists need to be registered on the Register of Lobbyists before they can lobby Government representatives.²³³

In essence, this scheme only covers third-party lobbyist with a lobbyist defined as a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government representative. As such, the current register does not cover:

- an association or organisation constituted to represent the interests of its members;
- a religious or charitable organisation; or
- an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

Lobbyists covered by the Register are required to provide the following details and ensure that the details are updated within 10 business days of any change:

- the business registration details, including the names of owners, partners or major shareholders, as applicable;
- the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities; and
- the names of clients who currently retain the lobbyist or have been provided lobbying services by the lobbyist during the past three months.²³⁴

Like the other jurisdictions, the definition of 'Government representatives' is broad and encompasses Ministers, Parliamentary Secretaries, ministerial advisers and

²³³ *NSW Lobbyist Code of Conduct*, above n 146, cl 4.1.

²³⁴ *Ibid* cl 5.1, 5.3.

senior public servants.²³⁵ Government representatives must only have contact with registered lobbyists.²³⁶

The Department of Premier and Cabinet administers the Register.²³⁷ The Director General of the Department of Premier and Cabinet can remove part or all of a lobbyist's details from the Register of Lobbyists if in the opinion of the Director General:

- any prior or current conduct of the Lobbyist or the Lobbyist's employee, contractor or person otherwise engaged by the Lobbyist to carry out lobbying activities has contravened any of the terms of the Code or the *Lobbying of Government Officials Act 2011* (NSW);
- the lobbyist or the lobbyist's employee, contractor or person otherwise engaged to provide lobbying services for the lobbyist has represented the interests of a third party to a Government representative in relation to any matters that relates to the functions of a Government Board or Committee or which the lobbyist, employee, contractor or person is a member;
- any prior or current conduct of the lobbyist or association of the lobbyist with another person or organisation is considered to be inconsistent with general standards of ethical conduct;
- the registration details of the lobbyist are inaccurate;
- the lobbyist has not confirmed the lobbyist's details as required by the Code;
or
- there are other reasonable grounds for doing so.²³⁸

(b) *Current Code of Conduct for lobbyists*

²³⁵ Ibid cl 3.

²³⁶ Ibid cl 4.1.

²³⁷ Ibid cl 5.2.

²³⁸ Ibid cl 8.2.

Registered lobbyists – third-party lobbyists - are required to observe a Code of Conduct. The Code requires lobbyists to observe the following principles when engaging with Government representatives:

- Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;
- Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;
- Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions;
- Lobbyists shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party; and
- A lobbyist who has been appointed to a Government Board or Committee must not represent the interests of a third party to a Government representative in relation to any matter that relates to the functions of the Board or Committee.²³⁹

There are restrictions on lobbyists being appointed to government boards. Under Premier's Memorandum M2011-13, lobbyists are ineligible for appointment to any Government Board or Committee if the functions of the Board or Committee relate to any matter on which the lobbyists represent the interests of third parties, or have represented the interests of third parties 12 months before the date of the proposed appointment.

In addition, there are also restrictions on who can become lobbyists. From 31 October 2013, the Code was amended to require lobbyists not to occupy or act in an office or position concerned with the management of a registered political party. Lobbyists must sign a statutory declaration to that effect. Owners, partners, major

²³⁹ Ibid cl 7.1.

shareholders or other individuals involved in the management of the business of the lobbyist are similarly prohibited.

Lobbyists must also sign a statutory declaration certifying that they have never been sentenced to a term of imprisonment of 30 months or more, and have not been convicted, in the last 10 years of an offence of dishonesty, such as theft or fraud.²⁴⁰ This means that persons who have committed these offences are ineligible to become lobbyists.

Certain lobbying activities are also prohibited by the *Lobbying of Government Officials Act 2011* (NSW). This Act made it a criminal offence for a former Minister or former Parliamentary Secretary to lobby a government official in relation to an official matter dealt with by them in relation to their portfolio responsibilities during the 18 months before they ceased to hold office.²⁴¹ The maximum penalty is 200 penalty units (\$22,000).²⁴²

The Act also criminalised success fees²⁴³ being paid to or received by a lobbyist;²⁴⁴ with a maximum penalty of 500 penalty units for corporations (\$55,000) or 200 penalty units for individuals (\$22,000). A success fee is an amount of money or other valuable consideration the giving or receipt of which is contingent on the outcome of the lobbying of the Government official. This would cover both:

- contingency fees, that is, where a lobbyist undertakes to engage in lobbying for a client on the basis that they will be paid their normal fee only where their lobbying is successful; and

²⁴⁰ Ibid cl 8.1.

²⁴¹ *Lobbying of Government Officials Act 2011* (NSW) s 8.

²⁴² Ibid.

²⁴³ A 'success fee' for the lobbying of a Government official is an amount of money or other valuable consideration the giving or receipt of which is contingent on the outcome of the lobbying of the Government official by or on behalf of a lobbyist or on the outcome of a matter about which such lobbying is carried out.

²⁴⁴ *Lobbying of Government Officials Act 2011* (NSW) s 5.

- fee uplifts, that is, where a client agrees to pay a lobbyist a bonus or an additional sum of money on top of the lobbyist's normal fee where the lobbyist is successful.²⁴⁵

There is an exception when a success fee is paid primarily for the provision of professional services other than lobbying services.²⁴⁶ This is because certain contingency arrangements are common for technical advisers, such as legal and financial advisers.

The Code of Conduct is administered by the Department of Premier and Cabinet. The Director General of the Department of Premier and Cabinet can remove part or all of a lobbyist's details from the Register of Lobbyists if the lobbyist has breached the Code of Conduct or the *Lobbying of Government Officials Act 2011 (NSW)*.²⁴⁷

(c) Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)

Prompted by the controversy surrounding the ICAC investigations, major changes to this scheme were proposed by the Premier Mike Baird. These changes – which were enacted through the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)* – are unquestionably the most significant since the adoption of a lobbyists' register and code of conduct in 2009. These provisions will commence on a day appointed by proclamation²⁴⁸ (which has yet to be made).

The *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)* amended the *Lobbying of Government Officials Act 2011 (NSW)* in order to establish a new regulatory scheme for lobbyists in New South Wales. The new scheme replaces the register for third party lobbyists and lobbyist code of

²⁴⁵ ICAC *Lobbying Report*, above n 17, 20.

²⁴⁶ *Lobbying of Government Officials Act 2011 (NSW)* s 7.

²⁴⁷ *NSW Lobbyist Code of Conduct*, above n 145, cl 8.3.

²⁴⁸ *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)* s 2.

conduct introduced in 2009;²⁴⁹ and will be reviewed by the Department of Premier and Cabinet in May 2015.²⁵⁰

- (i) *Register of Third Party Lobbyists under the Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*

The new Register of Third Party Lobbyists will only cover third party lobbyists. Third party lobbyists who wish to lobby Government officials are required to be registered on this register, which will be established by the NSWEC.²⁵¹ The lobbyists listed on the current register will be transferred to the new Register.²⁵²

Officers of registered political parties are not allowed to be registered as lobbyists.²⁵³ This parallels the position under the current Lobbyist Code where individuals occupying or acting in an office or position concerned with the management of a registered political party are prohibited from being included on the Lobbyist Register.²⁵⁴

Lobbying is defined as communicating with 'Government officials' for the purpose of representing the interests of others, in relation to legislation/proposed legislation or a current/proposed government decision or policy, a planning application or the exercise by 'Government officials' of their official functions.²⁵⁵

The coverage of the public officials lobbied in the new scheme is broad. 'Government officials' covers Ministers, Parliamentary Secretaries, public service

²⁴⁹ The *NSW Government Lobbyist Code of Conduct* provides that Government Representatives must only be lobbied by a professional lobbyist who is registered and has the lobbyist's details on the Register.

²⁵⁰ Mike Baird, 'Transforming Politics: Tough New Rules for Lobbyists' (Media Release, 13 May 2014) <<https://www.nsw.liberal.org.au/news/state-news/transforming-politics-tough-new-rules-lobbyists>>.

²⁵¹ *Lobbying of Government Officials Act 2001* (NSW) s 9.

²⁵² Entries from the previous Register are transferred to the new register: *Lobbying of Government Officials Act 2001* (NSW) sch 1 pt 3 s 3. The Register was checked on 19 June 2014. The list of lobbyists is publicly accessible at:

<http://www.dpc.nsw.gov.au/programs_and_services/lobbyist_register/who_is_on_register>.

²⁵³ *Lobbying of Government Officials Act 2001* (NSW) s 9(3).

²⁵⁴ Barry O'Farrell, 'M2013-11 NSW Lobbyist Code of Conduct' (Memorandum No M2013-11, Department of Premier and Cabinet, New South Wales, 29 October 2013)

<http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2013/m2013-11_nsw_lobbyist_code_of_conduct>.

²⁵⁵ *Lobbying of Government Officials Act 2001* (NSW) s 4.

agency heads, public servants, ministerial staff, electorate officers, employees of the transport service and members of statutory bodies. Local government officials are, however, not included within the scope of the scheme.

Third party lobbyists are subject to the following requirements:

- they must update their information in the Register, which must contain contact details of the lobbyist and the identity of their clients;²⁵⁶ and
- they are required to comply with the Lobbyist Code of Conduct when lobbying Government officials.²⁵⁷

The Register is administered and enforced by the NSWEC.²⁵⁸ The NSWEC may cancel or suspend the registration of a third-party lobbyist if the lobbyist breaches the Act or fails to update information on the Register.²⁵⁹

(ii) *Lobbyists Code of Conduct under the Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*

The new Lobbyists Code of Conduct has yet to be proclaimed by the Regulations under the Act, but certain aspects of the Code are set out in the Act.

The Code covers:

- third party lobbyists, i.e. individuals or bodies carrying out the business of lobbying for money or other valuable consideration; and
- other individuals and bodies that lobby Government officials.

Both third party lobbyists and other lobbyists are required to comply with the Lobbyist Code of Conduct when lobbying Government officials.

The NSWEC is responsible for enforcing compliance with the Lobbyists Code and the Act.²⁶⁰ In this vein, the NSWEC will be empowered to use its investigative

²⁵⁶ Ibid s 10(2).

²⁵⁷ Ibid s 7.

²⁵⁸ Ibid s 19.

²⁵⁹ Ibid s 9(7).

²⁶⁰ Ibid (NSW) s 19.

powers to enforce the Act, such as the power to compel documents and information.²⁶¹

The NSWEC may cancel or suspend the registration of a third-party lobbyist if the lobbyist breaches the Act or Lobbyist Code, or fails to update information on the Register.²⁶²

In addition, the NSWEC is to maintain a Lobbyists Watch List, which is a public document published on the same website as the Lobbyist Register, listing any third party or other lobbyists who have breached the Act or Lobbyist Code.²⁶³ Codes of conduct of government officials may specify special procedures for communication by the officials with the lobbyists on the Lobbyists Watch List.²⁶⁴ This was foreshadowed by the government announcement that lobbying activities of entities on the Watch List may be severely restricted where strict meeting protocols are enforced, such as having two departmental officials including a note-taker present.²⁶⁵

(d) *Comparison of the current register of lobbyists and code of conduct with those under the Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*

Table 5 identifies the key differences and similarities with the register of lobbyists that currently exists and the one that will be put in place once the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)* takes effect.

²⁶¹ *Lobbying of Government Officials Act 2001 (NSW) s 19(2); Election Funding, Expenditure and Disclosures Act 1981 (NSW) s 110A.* The power to compel documents was given to the Election Funding Authority, whose role is going to be replaced by the Electoral Commission by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*.

²⁶² *Lobbying of Government Officials Act 2001 (NSW) s 9(7).*

²⁶³ *Ibid* s 12.

²⁶⁴ *Ibid* s 12(2).

²⁶⁵ Mike Baird, 'Transforming Politics: Tough New Rules for Lobbyists' (Media Release, 13 May 2014) <<https://www.nsw.liberal.org.au/news/state-news/transforming-politics-tough-new-rules-lobbyists>>.

Table 5: Comparison of the Current Register of Lobbyists and Code of Conduct with those under the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*

Current Scheme		Scheme under <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)</i>
Legal source of scheme	Executive regulation	Legislative regulation
Public officials covered by the scheme	Ministers, Parliamentary Secretaries, ministerial advisers, senior public servants	Ministers, Parliamentary Secretaries, ministerial advisers, senior public servants, electorate officers, statutory body members
Lobbyists covered by the scheme	Third party lobbyists	Third party lobbyists
Lobbying activities covered by the scheme	Communicating with a government official (in person, in writing or by telephone or other electronic means) for the purpose of representing the interests of another person or a body in relation to legislation or proposed legislation or a government decision or policy or proposed government decision or policy, a planning application, or the exercise by the official of the official's official functions (<i>Lobbying of Government Officials Act 2011 (NSW) s 3</i>).	Communicating with a government official (in person, in writing or by telephone or other electronic means) for the purpose of representing the interests of another person or a body in relation to legislation or proposed legislation or a government decision or policy or proposed government decision or policy, a planning application, or the exercise by the official of the official's official functions (<i>Lobbying of Government Officials Act 2011 (NSW) s 3</i>).
Obligations on public officials covered	A Government representative must only be lobbied by lobbyists on the Register	A government official must only be lobbied by lobbyists on the Register
Obligations on lobbyists covered	Lobbyists must provide the following details to the Register: a. business registration details of the lobbyist, including names of owners, partners or major shareholders	Lobbyists must provide the following details to the Register: a. business registration details of the lobbyist, including names of persons with management, financial or other interest

	<p>b. names and positions of persons engaged by the lobbyist to carry out lobbying activities</p> <p>c. names of third parties for whom the lobbyist is currently retained to provide paid/unpaid services as a lobbyist</p> <p>d. names of persons for whom the lobbyist has recently provided paid/unpaid services as a lobbyist during the previous 3 months.</p> <p>Keep their details updated within 10 days of any change.</p> <p>Annually confirm their details and that they have not been sentenced to imprisonment for 30 months or more or convicted of an offence of dishonesty in the last 10 years.</p>	<p>b. names and positions of persons engaged by the lobbyist to carry out lobbying activities</p> <p>c. names of third parties for whom the lobbyist has been retained to provide paid/unpaid services as a lobbyist.</p> <p>Keep their details updated as prescribed in Regulations.</p>
Prohibitions on who can act as a lobbyist	<ul style="list-style-type: none"> • Officers of registered political parties. • Persons sentenced to imprisonment for 30 months or more or convicted of an offence of dishonesty in the last 10 years. 	<ul style="list-style-type: none"> • Officers of registered political parties. • Those not considered 'fit and proper' persons.
Prohibition on certain lobbying activities	<ul style="list-style-type: none"> • Criminal offence if former Minister/Parliamentary Secretary lobbies a government official regarding an official matter dealt with by them, relating to their portfolio responsibilities, in the 18 months before they ceased to hold office. • Criminal offence to give or receive success fees. 	<ul style="list-style-type: none"> • Criminal offence if former Minister/Parliamentary Secretary lobbies a government official regarding an official matter dealt with by them, relating to their portfolio responsibilities, in the 18 months before they ceased to hold office. • Criminal offence to give or receive success fees.
Penalties for breaching obligations	Removal from the Register.	Cancellation or suspension of the registration of a third-party lobbyist if lobbyist breaches the Act, or fails to update information on the Register.

imposed on lobbyists		
Agency responsible for compliance and enforcement	Department of Premier and Cabinet	Electoral Commission

The new Lobbyists Register has a statutory basis, rather than being mere executive regulation as with the current scheme. The coverage of the public officials lobbied in the new scheme is broader than the current regime as it includes electorate officers and members of statutory bodies.

The obligations on public officials covered remain the same. Further, the lobbyists covered by both schemes are identical, that is, third party lobbyists. Also the same are the obligations on lobbyists covered and prohibitions on who can act as a lobbyist remains the same.

It is, however, unclear whether the requirement for lobbyists to lodge a statutory declaration certifying that they have not been sentenced to a period of imprisonment of 30 months or more or convicted of an offence of dishonesty in the last 10 years will continue. This may be prescribed in the Regulations or continue to be executive practice.

Significantly, the Register is administered and enforced by the NSWEC,²⁶⁶ whereas the current register is maintained by the New South Wales Department of the Premier and Cabinet. The NSWEC also has the additional sanctions of suspension and placing a lobbyist on the Lobbyists Watch List.

As to the code of conduct for lobbyists, Table 6 identifies the key differences and similarities with the code that currently exists and the one that will be put in place once the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) takes effect.

²⁶⁶ *Lobbying of Government Officials Act 2001* (NSW) s 19.

Table 6: Key Differences between Current Scheme and the Scheme under the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)*

Current Scheme		Scheme under <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)</i>
Legal source of the code	Executive regulation	Legislative regulation
Lobbyists covered by the code	Third party lobbyists	Third party lobbyists; and Other lobbyists: <ul style="list-style-type: none"> organisations constituted to represent the interests of their members, eg in-house lobbyists who are board members, executives or employees of an organisation, trade unions, industry representative bodies, developers, charities; and technical advisers, such as legal and financial advisers, who as part of the services provided to third parties in the course of their occupation represent the views of the third party.
Obligations imposed by the code	The Code requires lobbyists to observe the following principles when engaging with Government representatives: <ol style="list-style-type: none"> Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment; Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies; 	To be proclaimed by Regulation.

	<p>c. Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions;</p> <p>d. Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party; and</p> <p>e. A Lobbyist who has been appointed to a Government Board or Committee must not represent the interests of a third party to a Government representative in relation to any matter that relates to the functions of the Board or Committee.</p> <p>Lobbyists must sign a statutory declaration certifying that they have never been sentenced to a term of imprisonment of 30 months or more, have not been convicted, in the last ten years of an offence of dishonesty, such as theft or fraud.</p>	
Penalties for breaching obligations imposed on lobbyists under the code	Removal from the Register	Cancellation or suspension of registration if a third party lobbyist contravenes the lobbyists code. Name of third party and other lobbyists who have contravened the Code may be placed on a public Watch List.
Agency responsible for compliance and enforcement of the code	Department of Premier and Cabinet	Electoral Commission

The requirement for a Code of Conduct is now specified under legislation, rather than through executive regulation. The Code of Conduct under the new regime has not been promulgated by Regulation yet, so it is uncertain what obligations it will impose besides what is set out in the legislation.

Significantly, however, the new Code will have broader coverage than the current one. Presently, only third-party lobbyists are covered; the new Code will cover these lobbyists as well as other lobbyists. The latter group would include organisations constituted to represent the interests of their members, such as in-house lobbyists who are board members, executives or employees of an organisation, trade unions, industry representative bodies, developers, charities, and technical advisers, such as legal and financial advisers, who as part of the services provided to third parties in the course of their occupation represent the views of the third party.

The Code of Conduct under the new scheme is enforced by the NSWEC, rather than the Department of Premier and Cabinet. The NSWEC has a wider range of sanctions available beyond removal from the Register, such as suspension of registration of a third party lobbyist and placing the names and identifying details of third party lobbyists and other lobbyists who have breached the Code on a public Watch List.

B Codes of Conduct for Ministers, Members of Parliament and Public Servants

1 Australian Jurisdictions other than New South Wales

This section deals with requirements relating to direct lobbying found in the Codes of Conduct for Ministers, Members of Parliament and public servants for Australian jurisdictions other than New South Wales.

(a) Codes of Conduct for Ministers

All jurisdictions except for the Northern Territory have a code of conduct for Ministers.

There are no requirements in the ministerial code of conduct in Queensland and South Australia about complying with the Lobbyists Code of Conduct. The Australian Capital Territory ministerial code of conduct does not contain any mandatory requirements about lobbyists, but states that Ministers must handle lobbying by business and other parties carefully and ensure their personal interests do not clash with or override their public duties.²⁶⁷

On the other hand, the Commonwealth, Victorian, Western Australian and Tasmanian ministerial codes of conduct require Ministers to comply with the Lobbyists Code of Conduct in that particular jurisdiction. There is a Victorian Fundraising Code that states that Ministers and Parliamentary Secretaries should comply with the Lobbyists Code of Conduct when dealing with lobbyists who may attend a fundraising event, function or activity.²⁶⁸

Post-separation employment requirements are specified in the ministerial codes of the Commonwealth, Queensland and South Australia. Post separation employment requirements are stipulated in the regulation of lobbyists in Victoria and Tasmania, but not in the ministerial code of conduct. There are no post-separation employment requirements in Western Australia, the Australian Capital Territory and the Northern Territory.

Breaches of Ministerial Codes of Conduct tend to be handled internally within the Executive by the Prime Minister, Premier or Cabinet Secretary. Sanctions would be informal and in private, unless the First Minister decides that they should be made public.

The details of the codes – where there are requirements relating to direct lobbying - are provided below.

²⁶⁷ ACT Government, *Ministerial Code of Conduct* (2012) cl 5(g)
<http://www.cmd.act.gov.au/__data/assets/pdf_file/0008/298772/MinCodeofConduct2012.pdf
> (“ACT Ministerial Code of Conduct”).

²⁶⁸ Victorian Government, *Fundraising Code of Conduct for Ministers, Parliamentary Secretaries and Coalition Members of Parliament* (2011) cl 5.1
<http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00_Victorian_Government_Fundraising_Code_of_Conduct.pdf> (“Victorian Fundraising Code”).

(i) *Commonwealth*

The Australian Government Standards of Ministerial Ethics provides that Ministers should ensure that dealings with lobbyists are conducted consistently with the Lobbyists Code of Conduct, so that they do not give rise to a conflict between public duty and private interest.²⁶⁹ This provision has not been expressed in mandatory language.

In addition, Ministers undertake that for 18 months after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last 18 months of office.²⁷⁰

The Prime Minister is to decide about breaches of the Standards, and may refer the matter to an appropriate independent authority for investigation and/or advice.²⁷¹ Advice from the Secretary of the Department of the Prime Minister and Cabinet may be made public by the Prime Minister, subject to proper considerations of privacy.²⁷²

(ii) *Australian Capital Territory*

The Australian Capital Territory Ministerial Code of Conduct stipulates that Ministers must handle lobbying by business and other parties carefully and ensure their personal interests do not clash with or override their public duties.²⁷³

²⁶⁹ Department of Prime Minister and Cabinet, Australian Government, *Standards of Ministerial Ethics* (2010) cl 8.2 (“*Commonwealth Ministerial Standards*”). As such, Ministers should only deal with registered lobbyists and report instances of non-compliance with the Lobbyists Code to the Secretary of the Department of the Prime Minister and Cabinet. Department of Prime Minister and Cabinet, Australian Government, *Standards of Ministerial Ethics* (2010) cl 8.5; *Commonwealth Lobbying Code of Conduct*, above n 146, cl 9.1.

²⁷⁰ *Commonwealth Ministerial Standards*, above n 269, cl 2.19, 8.6.

²⁷¹ *Ibid* cl 7.3.

²⁷² *Ibid* cl 7.4.

²⁷³ ACT *Ministerial Code of Conduct*, above n 267, cl 5(g).

(iii) *Queensland*

The Queensland Code of Conduct for Ministers states that Ministers guarantee that, for two years after leaving office, they will not undertake lobbying activities (as set out in the *Integrity Act 2009* (Qld)) in relation to their official dealings as a Minister in their last two years in office.²⁷⁴

Where there is any doubt about compliance with the post-separation employment requirements, the Premier may seek the advice of the Integrity Commissioner.²⁷⁵ Otherwise, the Cabinet Secretary is responsible for administering the Code.²⁷⁶

(iv) *South Australia*

The South Australian Ministerial Code of Conduct provides that Ministers shall, within 14 days of taking up office, provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that they will not, for a two year period after ceasing to be a Minister, take employment with, accept a directorship of or act as a consultant to any company, business or organisation:

- with which they had official dealings as Minister in their last 12 months in office; and which:
 - is in or in the process of negotiating a contractual relationship with the Government; or
 - is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; or
 - has a government entity as a shareholder; or

²⁷⁴ Department of Premier and Cabinet, Queensland Government, *Queensland Ministerial Code of Conduct* (2014) <<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook/appendices/appendix-1.aspx>> (“*Queensland Ministerial Code of Conduct*”).

²⁷⁵ *Ibid.*

²⁷⁶ Department of Premier and Cabinet, Government of Western Australia, *Ministerial Code of Conduct* (2013) cl 2 <http://www.dpc.wa.gov.au/RoleOfGovernment/Documents/Ministerial_Code_of_Conduct_April2013.pdf> (“*WA Ministerial Code of Conduct*”).

- is in receipt of government loans, guarantees or other forms of capital assistance; or engages in conduct directly inconsistent with the policies and activities of the Minister,

without the prior written consent of the Commissioner for Public Employment in consultation with the Premier of the day.²⁷⁷

If the Commissioner for Public Employment decides following consultation with the Premier, that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the company or organisation concerned, or that an employer could make improper use of official information to which a former Minister has had access, the Commissioner may withhold his or her consent or recommend that the former Minister stand aside from participating in certain activities of the employer for a two year period.

(v) *Tasmania*

The Tasmanian Code of Conduct for Ministers requires Ministers to handle any dealings with lobbyists according to the Tasmanian Lobbyist Code of Conduct to avoid giving rise to a conflict of interest between their public duty and personal interests.²⁷⁸

Ministers are obliged to report any non-compliance with the Code by themselves or another Minister to the Premier, or in the case of the Premier, to Cabinet.²⁷⁹

²⁷⁷ Department of Premier and Cabinet, Government of South Australia, *South Australia Ministerial Code of Conduct* (2002) cl 7.1
<http://dpc.sa.gov.au/sites/default/files/pubimages/documents/Ministerial_CodeOfConduct.pdf> (“*South Australia Ministerial Code of Conduct*”).

²⁷⁸ Department of Premier and Cabinet, Tasmanian Government, *Code of Conduct for Ministers* (2014) 5 (“*Tasmanian Code of Conduct for Ministers*”).

²⁷⁹ *Ibid* 2.

(vi) *Victoria*

The Victorian Code of Conduct for Ministers and Parliamentary Secretaries states that Ministers and Parliamentary Secretaries should ensure that any dealings are conducted consistently with the Lobbyists Code of Conduct.²⁸⁰ Ministers and Parliamentary Secretaries should only deal with registered lobbyists and report any non-compliance with the requirements to the State Services Authority.²⁸¹

The Premier will decide on breaches of the Code, and may refer the matter for investigation or advice.²⁸² Advice received may be made public by the Premier.²⁸³

There is also a Victorian Fundraising Code of Conduct for Ministers, Parliamentary Secretaries and Coalition Members of Parliament.²⁸⁴ This provides that Ministers and Parliamentary Secretaries should ensure that any dealings with third party lobbyists who may attend a fundraising event, function or activity are conducted consistently with the Lobbyists Code of Conduct.²⁸⁵

There are no enforcement mechanisms stipulated in the Fundraising Code. It is likely that the Premier informally enforces the Code, given that the Code was promulgated by the Premier.²⁸⁶

(vii) *Western Australia*

²⁸⁰ Victorian Government, *Code of Conduct for Ministers and Parliamentary Secretaries* (2012) cl 4.1 (“*Victorian Ministerial Code of Conduct*”)

²⁸¹ *Ibid* cl 4.4.

²⁸² *Ibid* cl 9.3.

²⁸³ *Ibid*.

²⁸⁴ Victorian Government, *Fundraising Code of Conduct for Ministers, Parliamentary Secretaries and Coalition Members of Parliament* (2011) <http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00_Victorian_Government_Fundraising_Code_of_Conduct.pdf>.

²⁸⁵ *Ibid* cl 5.1.

²⁸⁶ Ted Bailleu, ‘Premier delivers tough new Code of Conduct to reform political fundraising and lobbying in Victoria’ (Media Release, 30 October 2011) <<http://www.premier.vic.gov.au/media-centre/media-releases/2367-premier-delivers-tough-new-code-of-conduct-to-reform-political-fundraising-and-lobbying-in-victoria.html>>.

The Western Australian Ministerial Code of Conduct flags that legislation will be introduced regulating lobbyists in Western Australia, but provides that in the meantime Ministers and Parliamentary Secretaries must comply with the Contact with Lobbyists Code.²⁸⁷

The consequences for breaching the Code are not explicitly set out in the Code itself, but the Cabinet Secretary is responsible to the Premier for the administration of the Code.²⁸⁸

(b) Codes of Conduct for Members of Parliament

There are no codes of conduct for Members of Parliament in the Commonwealth and South Australia. In several jurisdictions where there are such codes, there are no obligations relating to direct lobbying, as is the case in Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

The details of the Queensland and Victorian codes – where there are provisions relating to direct lobbying - are provided below.

(i) Queensland

The Legislative Assembly of Queensland Code of Ethical Standards notes that the contempt of bribery is wider than a criminal offence of bribery in s 59 of the *Criminal Code 1899* (Qld):

Therefore, whilst a member who accepts a bribe to do something which does not necessarily affect their conduct in the House (such as to lobby a Minister) is not guilty of an offence under the Criminal Code, they may nonetheless be guilty of a contempt of Parliament.²⁸⁹

²⁸⁷ *WA Ministerial Code of Conduct*, above n 276, cl 18.

²⁸⁸ *Ibid* cl 2.

²⁸⁹ Member's Ethics and Parliamentary Privileges Committee, Parliament of Queensland, *Code of Ethical Standards* (2004) cl 3.4.2 (amended 2009) <<http://www.parliament.qld.gov.au/documents/assembly/procedures/CodeOfEthicalStandards.pdf>>.

Thus, if a Member of Parliament accepts a bribe to lobby a Minister on behalf of a third party on matters outside of parliamentary proceedings, this can constitute contempt of Parliament, even if it falls short of the criminal offence of bribery.

(ii) *Victoria*

The Code of Conduct for Members of Parliament in Victoria is enshrined in the *Members of Parliament (Register of Interests) Act 1978* (Vic).²⁹⁰ This includes a provision that disallows a MP from receiving any fee, payment, retainer or reward, nor permitting any compensation to accrue to the Member's beneficial interest for or on account of, or as a result of the use of, his position as a Member.²⁹¹

This provision may imply that Victorian MPs are not able to utilise their position as a Member to lobby government officials for compensation.

(c) *Codes of Conduct for Public Servants*

All jurisdictions have codes of conduct for public servants. The codes of conduct in Victoria, Tasmania, Australian Capital Territory and Northern Territory do not impose any obligations on public servants in relation to lobbyists.

On the other hand, the codes of conduct for public servants in the Commonwealth, Queensland and South Australia oblige public servants to comply with the lobbyist code. The enforcement of the codes of conduct is conducted by senior staff within the public sector agencies, with strong sanctions based on public service legislation.

²⁹⁰ *Members of Parliament (Register of Interests) Act 1978* (Vic) s 3.

²⁹¹ *Ibid* s 3.

In Western Australia, a public sector commissioner circular requires public servants to comply with the lobbyist code. There does not appear to be any strong mechanisms to ensure compliance with the circulars.

The details of the codes – where there are provisions relating to direct lobbying - are provided below.

(i) *Commonwealth*

At the Commonwealth level, the APS Code of Conduct and Values enshrined in the *Public Service Act 1999* (Cth) do not contain any explicit references to interacting with lobbyists.²⁹² However, the Australian Public Service Commission website regarding the APS Values and Code in practice states that APS employees, contractors and consultants are required to comply with the Lobbyists Code of Conduct and only deal with registered lobbyists.²⁹³ Further, agencies should have frameworks and processes in place for managing contacts with lobbyists.²⁹⁴

Breaches of the Code of Conduct are handled by the Agency Head.²⁹⁵ Sanctions that can be imposed are reprimands, fines, reduction in salary, reassignment of duties, reduction in classification and termination of employment.²⁹⁶

(ii) *Northern Territory*

The Northern Territory Code of Conduct for public servants states that the Chief Executive Officer must approve outside employment for public

²⁹² *Public Service Act 1999* (Cth) ss 10, 13.

²⁹³ Australian Public Service Commission, *Working with Lobbyists: the Lobbying Code of Conduct and Post Separation Lobbying Contacts with Government* (2013) s 2.8 <<http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-with-lobbyists>>.

²⁹⁴ APS staff must report breaches of the Lobbyists Code to the Secretary of the Department of the Prime Minister and Cabinet. Agencies should have an internal point of contact for any such reports which could then be passed at agency level to the Department of the Prime Minister and Cabinet. Australian Public Service Commission, above n 293, s 2.8.

²⁹⁵ *Public Service Act 1999* (Cth) s 15.

²⁹⁶ *Ibid.*

servants.²⁹⁷ In doing so, the Chief Executive Officer should consider whether conflict may arise between the employee's public sector responsibilities and the proposed private employment, including whether the company or private organisation concerned is in, or is entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government agencies or Members of Parliament, or whether it is in a regulatory relationship with any Government body.²⁹⁸ However, there are no requirements for public servants dealing with lobbyists.

(iii) *Queensland*

The Queensland Code of Conduct for public servants provides that public servants will ensure any engagement with lobbyists is properly recorded and ensure that business meetings with persons who were formerly Ministers, Parliamentary Secretaries or senior Government representatives are not on matters those persons had official dealings with in their recent previous employment in accordance with government policy.²⁹⁹

Any allegations of behaviour that is contrary to the Code are handled by Managers of the agency.³⁰⁰ Thus breaches of the Code are handled internally within the government agency.

(iv) *South Australia*

Although the Code of Conduct in South Australia does not have any provisions dealing with lobbyists,³⁰¹ there is a binding circular from the

²⁹⁷ Office of the Commissioner for Public Employment, Northern Territory Government, *Northern Territory Public Sector Principles and Code of Conduct: Public Sector Employment and Management Act (2007)* cl 15.1

<http://www.ocpe.nt.gov.au/__data/assets/pdf_file/0016/53422/conduct_2007_November.pdf>

²⁹⁸ *Ibid* cl 15.2.

²⁹⁹ Public Service Commission, Queensland Government, *Code of Conduct for the Queensland Public Service (2011)* cl 4.2(b)

<http://www.ethics.qld.gov.au/publications/Code_of_Conduct_060313.pdf>.

³⁰⁰ *Ibid* 4.

³⁰¹ Commissioner for Public Employment, Government of South Australia, *Code of Conduct for South Australian Public Sector Employees (2005)*

<http://www.wch.sa.gov.au/research/committees/humanethics/documents/code_of_conduct.pdf>.

Department of Premier and Cabinet that obliges South Australian public sector employees to comply with the Lobbyists Code of Conduct.³⁰²

Any breaches of the Lobbyists Code by public servants are investigated within the public sector agency and are subject to penalties under the *Public Sector Act 2009* (SA) depending on the nature and seriousness of the non-compliance.³⁰³ Penalties could range from a reprimand to suspension or termination of employment.³⁰⁴

(v) *Western Australia*

In Western Australia, each agency develops its own code of conduct.³⁰⁵ However, there is a public sector commissioner's circular that obliges all Western Australian public sector officers to comply with the Contact with Lobbyists Code.³⁰⁶

Public Sector Commissioner's Circulars are instruments issued by the Public Sector Commissioner to communicate public sector management policies or arrangements or mandatory compliance obligations that do not originate from the Public Sector Commissioner's functions or the *Public Sector Management Act 1994* (WA).³⁰⁷ Public Sector Commissioner's Circulars are issued by the Public Sector Commissioner in carrying out the Commissioner's functions under Section 21A of the *Public Sector Management Act 1994* (WA), which

³⁰² Department of the Premier and Cabinet, 'Lobbyist Code of Conduct' (DPC Circular No 32, Government of South Australia, October 2009) <http://dpc.sa.gov.au/sites/default/files/pubimages/Circulars/PC032_Lobbyist-CodeOfConduct.pdf>.

³⁰³ Ibid cl 5.

³⁰⁴ *Public Sector Act 2009* (SA) ss 53-5.

³⁰⁵ Public Sector Commission, Government of Western Australia, *Commissioner's Instruction No 8: Codes of Conduct and Integrity Training* (2012) <http://www.publicsector.wa.gov.au/sites/default/files/documents/commissioners_instruction_08_codes_of_conduct_and_integrity_training.pdf>.

³⁰⁶ M C Wauchope, 'Contact with Lobbyists Code and the Register of Lobbyists' (Circular No 2009-13, Public Sector Commission, 31 March 2012) <http://www.publicsector.wa.gov.au/sites/default/files/documents/2009-13_contact_with_lobbyists_code_and_the_register_of_lobbyists_0.pdf>.

³⁰⁷ Public Sector Commission, Government of Western Australia, *Administration of Public Sector Commissioner's Circulars* (2012) <<http://www.publicsector.wa.gov.au/publications-resources/instructions-standards-and-circulars/public-sector-commissioners-circulars/administration-public-sector-commissioners-circulars>>.

requires the Commissioner to 'promote the overall effectiveness and efficiency of the Public Sector'.³⁰⁸

The responsibility for monitoring compliance with circulars resides with the Chief Executive Officer of the originating agency,³⁰⁹ which in this case is the Public Sector Commissioner. There is no explicit consequence stated for government officials breaching the requirement in the circular. Although the Public Sector Commissioner has all the legislative powers that are needed for the performance of the Commissioner's functions,³¹⁰ the circulars are not part of the Commissioner's legislative functions. Thus, it is likely that there are no strong compliance mechanisms where government officials breach their obligations.

2 *New South Wales*

(a) *Code of Conduct for Ministers*

The *Code of Conduct for Ministers of the Crown* (Ministerial Code of Conduct) is published by the Department of Premier and Cabinet in the Ministerial Handbook, and is promulgated by the Premier in a Premier's Memorandum.³¹¹ There is no explicit specification of who is responsible for ensuring compliance with the Code, but the Code specifies that Ministers should refer to the Premier in any doubt and Ministers have to provide financial disclosures to the Premier. The Department of Premier and Cabinet maintains a Register of Gifts to Ministers. There is no specification of the consequences of a breach of the Ministerial Code of Conduct within the Code itself.

³⁰⁸ *Public Sector Management Act* (1994) s 21A; ³⁰⁸ Public Sector Commission, Government of Western Australia, *Administration of Public Sector Commissioner's Circulars* (2012) <<http://www.publicsector.wa.gov.au/publications-resources/instructions-standards-and-circulars/public-sector-commissioners-circulars/administration-public-sector-commissioners-circulars>>.

³⁰⁹ *Ibid.*

³¹⁰ *Public Sector Management Act* (1994) s 22G.

³¹¹ Barry O'Farrell, 'M2011-09 Code of Conduct for Ministers of the Crown' (Memorandum No M2011-09, Department of Premier and Cabinet, New South Wales, 2 June 2011) <http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2011/m2011-09_code_of_conduct_for_ministers_of_the_crown>.

The Government has announced that that the Ministerial Code of Conduct will become applicable under the ICAC Act, giving ICAC the power to investigate and make findings on a substantial breach of the Ministerial Code.³¹² This can be done by providing a ministerial code of conduct in the *Independent Commission Against Corruption Regulation 2010* (NSW) that is prescribed as a ministerial code of conduct for the purposes of the definition of ‘applicable code of conduct’ in section 9(3) of the *Independent Commission Against Corruption Act 1988* (NSW).³¹³

The Ministerial Code of Conduct provides that Ministers must comply with the Lobbyist Code.³¹⁴ The Code of Conduct also refers to the criminal offences under the *Lobbying of Government Officials Act 2011* (NSW) (discussed above).

(b) *Requirement for Ministers to Publish Quarterly Diary Summaries*

Consistent with the announcement of Mike Baird about the reform of lobbying regulation on 13 May 2014,³¹⁵ a Premier’s Memorandum now requires all Ministers to regularly publish extracts from their diaries detailing scheduled meetings held with stakeholders, external organisations and individuals from 1 July 2014.³¹⁶

³¹² *Independent Commission Against Corruption Act 1988* (NSW) s 9. Mike Baird, ‘Transforming Politics: Tough New Rules for Lobbyists’ (Media Release, 13 May 2014) <<https://www.nsw.liberal.org.au/news/state-news/transforming-politics-tough-new-rules-lobbyists>>. *Independent Commission Against Corruption Act 1988* (NSW) s 9. The Opposition Leader proposed this change through the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Bill 2014, but the Bill was not passed: Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Bill 2014.

³¹³ *Independent Commission Against Corruption Act 1988* (NSW) s 93().

³¹⁴ Department of Premier and Cabinet, NSW Government, *Code of Conduct for Ministers of the Crown* (2011) cl 8.1 <http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0011/121421/Ministerial_Code_of_Conduct_June_2011.pdf>.

³¹⁵ Mike Baird, ‘Transforming Politics: Tough New Rules for Lobbyists’ (Media Release, 13 May 2014) <<https://www.nsw.liberal.org.au/news/state-news/transforming-politics-tough-new-rules-lobbyists>>.

³¹⁶ Mike Baird, ‘M2014-07 - Publication of Ministerial Diaries’ (Memorandum No M2014-07, Department of Premier and Cabinet, New South Wales, 27 June 2014) <http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2014/m2014-07_-_publication_of_ministerial_diaries>.

The summary should disclose the organisation or individual with whom the meeting occurred, details of any registered lobbyists present, and the purpose of the meeting.

It is not necessary to disclose information about:

- meetings with Ministers, ministerial advisers, Parliamentarians or government officials;
- meetings that are strictly personal, electorate or party political;
- social or public functions or events; and
- matters for which there is an overriding public interest against disclosure.³¹⁷

The information will be published on the website of the Department of Premier and Cabinet.

A Premier's Memorandum is issued by the Premier to all Ministers to communicate whole of Government administrative policies.³¹⁸ Premier's Memoranda are a form of executive self-regulation, and do not have legal status. There are no formal methods of ensuring compliance with the memorandum if it is not adhered to by the Minister. The publication of diaries is administered by the Department of Premier and Cabinet, who can notify the Premier if the memorandum is not complied with. Then the Premier is able to reprimand the errant Minister and request that he or she comply or face the displeasure of the Premier. However, this depends on the power relations between the Premier and the Ministers, rather than any enforceable sanctions to ensure compliance.

(c) Code of Conduct for New South Wales Members of Parliament

The Legislative Assembly and the Legislative Council adopted the *Code of Conduct for Members of Parliament* (MP Code) by sessional resolution in

³¹⁷ Ibid.

³¹⁸ Department of Premier and Cabinet, *Memoranda & Circulars* (2014) New South Wales Government <<http://www.dpc.nsw.gov.au/announcements>>.

2011.³¹⁹ The Code does not specify any entity or person responsible for ensuring compliance with the Code of consequences of breaching the Code. However, a substantial breach of the MP Code is able to be investigated by ICAC.³²⁰

The MP Code does not refer to lobbying or how to deal with lobbyists.³²¹ Members of Parliament are able to undertake secondary employment or engagements, provided that they disclose such employment.³²² However, this disclosure obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate which goes beyond the general interest of the public.³²³

The *Constitution (Disclosure by Members) Regulation 1983* (NSW) envisages that a Member of Parliament may use their parliamentary position to provide a service to another person that arises from or relates to the use of the Member's position as a Member, including (but not limited to) any of the following services:

- the provision of public policy advice;
- the development of strategies, or the provision of advice, on the conduct of relations with the Government or Members; or
- lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.³²⁴

Income gained by a Member of Parliament from lobbying must be disclosed.³²⁵ This indicates that Members of Parliament are able to take up secondary employment of lobbying the Government and gain financial advantage from their privileged position as an elected representative, while simultaneously serving as Members of Parliament. The ICAC has criticised

³¹⁹ Legislative Assembly, Parliament of New South Wales, *Sessional and Other Orders* (2014) 46 ('Code of Conduct for Members')
<[http://www.parliament.nsw.gov.au/Prod/la/precedent.nsf/0/aae3771a42ffcd09ca25788b00196cc3/\\$FILE/1st%20Session%20No%2006%20-%20January%202014.pdf](http://www.parliament.nsw.gov.au/Prod/la/precedent.nsf/0/aae3771a42ffcd09ca25788b00196cc3/$FILE/1st%20Session%20No%2006%20-%20January%202014.pdf)>

³²⁰ *Independent Commission Against Corruption Act 1988* (NSW) s 9.

³²¹ Legislative Assembly, Parliament of New South Wales, above n 319, 46.

³²² *Ibid* cl 7.

³²³ *Ibid*.

³²⁴ *Constitution (Disclosure by Members) Regulation 1983* (NSW) s 7A.

³²⁵ *Ibid* s 7.

this as being an undesirable position and recommended that a prohibition on paid advocacy by Members of Parliament be implemented.³²⁶

(d) *Code of Conduct for New South Wales Public Servants*

The New South Wales public sector does not have a general code of conduct for public servants. Rather, there are general guidelines for each agency to draft their own agency-specific codes of conduct.³²⁷

Many departmental codes of conduct require their staff to comply with the NSW Lobbyist Code of Conduct when dealing with lobbyists, such as the Department of Premier and Cabinet, Department of Family and Community Services, the Department of Education and Training the Department of Trade and Investment, Regional Infrastructure and Services, the Department of Transport and the Department of Treasury.³²⁸ The Department of Health has a policy directive that mandates that their staff comply with the NSW Lobbyists Code of Conduct.³²⁹ There is no reference to lobbyists in the

³²⁶ ICAC *Lobbying Report*, above n 17, 34.

³²⁷ Bob Carr, 'M1997-10 Model Code of Conduct for NSW Public Agencies', (Memorandum, Department of Premier and Cabinet, New South Wales, 3 June 1997) <http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/1997/m1997-10>; Public Service Commission, 'Guidelines for Developing and Implementing a Code of Conduct' (Directive No D1997_005, New South Wales Government, 30 June 2011) <http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0010/116578/Guidelines_for_Developing_and_Implementing_a_Code_of_Conduct.pdf>.

³²⁸ Department of Premier and Cabinet, *Code of Conduct* (2014) cl 3.55 <http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/96112/dpc-code-of-conduct.pdf>; Strategic Human Resources, New South Wales Government, *Department of Family and Community Services Code of Ethical Conduct* (2013) cl 10.11 <http://www.facs.nsw.gov.au/__data/assets/file/0009/276750/FACS_Code_of_Ethical_Conduct_V1.1_-_October_2013.pdf>; Department of Trade and Investment, New South Wales Government, *Code of Conduct* (2012) <<http://www.trade.nsw.gov.au/?a=427637>>; NSW Department of Education & Training, *Code of Conduct: Fairness, Respect, Integrity and Responsibility* (2010) cl 19 <http://www.dec.nsw.gov.au/detresources/codeofconduct_VkQRxHvLzM.pdf>; Director-General of Transport for New South Wales, New South Wales Government, *Transport for NSW Code of Conduct* (2011) cl 3.21 <<http://www.transport.nsw.gov.au/sites/default/files/b2b/aboutus/code-of-conduct.pdf>>; Department of Treasury, 'Code of Conduct', (Internal Policy & Procedure Document No 2.5, New South Wales Government, 15 June 2012) cl 15 <http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0014/17411/TIPP_2.5_Code_of_Conduct_dnd.pdf>

³²⁹ Director-General, 'Lobbyist - Code of Conduct, Management and Corruption Allegations' (Directive No PD2009_031, Ministry of Health, June 2009) <http://www0.health.nsw.gov.au/policies/pd/2009/pdf/PD2009_031.pdf>

Attorney-General's Department of New South Wales Code of Conduct and Ethics.³³⁰

This means that many public servants are explicitly mandated to comply with the Lobbyist Code of Conduct through their employment codes. Breaches of codes of conduct can result in disciplinary action by the employing department.³³¹ The sanction may depend on particular factors:

- the seriousness of the breach;
- the likelihood of the breach occurring again;
- whether the officer has committed the breach more than once;
- the risk the breach poses to employees, students or any others; and
- whether the breach would be serious enough to warrant formal disciplinary action.³³²

Penalties may include formal written cautions/warnings, reprimands and, for very serious breaches, dismissal.³³³

(e) *Department-specific Protocols*

Of the nine New South Wales government departments,³³⁴ one department – the Department of Planning and Infrastructure – has adopted its own

³³⁰ Attorney-General's Department of New South Wales, *Code of Conduct and Ethics* (2001) <[http://www.lawlink.nsw.gov.au/Lawlink/Corporate/ll_corporate.nsf/vwFiles/CodeofConductandEthicsJan02.pdf/\\$file/CodeofConductandEthicsJan02.pdf](http://www.lawlink.nsw.gov.au/Lawlink/Corporate/ll_corporate.nsf/vwFiles/CodeofConductandEthicsJan02.pdf/$file/CodeofConductandEthicsJan02.pdf)>.

³³¹ Eg Director-General of Transport for New South Wales, New South Wales Government, *Transport for NSW Code of Conduct* (2011) cl 3.24 <<http://www.transport.nsw.gov.au/sites/default/files/b2b/aboutus/code-of-conduct.pdf>>

³³² Eg Department of Education & Training, above n 328, cl 5.4.

³³³ Eg Director-General of Transport for New South Wales, above n 331, cl 3.22; Eg Department of Education & Training, above n 328, cl 5.5.

³³⁴ The NSW Department of Premier and Cabinet has a lobbyist query flowchart that covers the Lobbyist Code of Conduct requirements: Department of Premier and Cabinet, *Lobbyist Query Flowchart* (10 February 2010) NSW Government <http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/37809/Lobbyist_Query_Flowchart.pdf>, the NSW Department of Education & Training Code of Conduct covers the Lobbyist Code of Conduct requirements: Department of Education & Training, above n 328, 28; the NSW Department of Family and Community Services Code of Ethical Conduct covers the Lobbyist Code of Conduct requirements: Strategic Human Resources, above n 328, 23, the NSW Department of Health covers the Lobbyist Code of Conduct requirements in a policy directive 'Lobbyist - Code of Conduct, Management and Corruption Allegations': Director-General,

protocols in relation to lobbying. The department maintains its own Lobbyist Contact Register,³³⁵ which provides details about the meetings, e-mails and telephone conversations conducted by registered lobbyists with departmental officials in relation to specific planning proposals and/or development matters. The register includes the subject matter and primary outcome of the interaction.

This contact register is maintained in accordance with the Department of Planning and Environment Registered Lobbyist Contact Protocol, which specifies that records of contact with registered lobbyists are to be published on the website within 10 days of the date of the contact.³³⁶ Meetings with registered lobbyists must be held at government offices, Council premises, or on site only.³³⁷ A minimum of two Departmental staff must attend the meetings.³³⁸ In Sydney, a Director or person of a higher rank must attend a meeting with a registered lobbyist while, in other offices, the Regional Director can decide which staff may attend the meetings due to a possible shortage of

'Lobbyist - Code of Conduct, Management and Corruption Allegations' (Directive No PD2009_031, Ministry of Health, June 2009)
 <http://www0.health.nsw.gov.au/policies/pd/2009/pdf/PD2009_031.pdf>; the NSW Department of Trade and Investment, Regional Infrastructure and Services Code of Conduct covers the Lobbyist Code of Conduct requirements: Department of Trade and Investment, New South Wales Government, *Code of Conduct* (2012)
 <<http://www.trade.nsw.gov.au/?a=427637>>; the NSW Department of Treasury covers the Lobbyist Code of Conduct requirements: Department of Treasury, 'Code of Conduct', (Internal Policy & Procedure Document No 2.5, New South Wales Government, 15 June 2012)
 <http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0014/17411/TIPP_2.5_Code_of_Conduct_dnd.pdf>; the NSW Department of Transport covers the Lobbyist Code of Conduct requirements: Director-General of Transport for New South Wales, New South Wales Government, *Transport for NSW Code of Conduct* (2011)
 <<http://www.transport.nsw.gov.au/sites/default/files/b2b/aboutus/code-of-conduct.pdf>>. There is no guidance on the websites of the NSW Department of the Attorney-General and Justice.
³³⁵ The Lobbyist Contact Register can be accessed at Department of Planning and Environment, *Lobbyist Contact Register*, New South Wales Government
 <<http://www.planning.nsw.gov.au/en-us/aboutus/righttoinformation/lobbyistcontactregister.aspx>>.
³³⁶ Sam Haddad, New South Wales Department of Planning and Infrastructure, *Registered Lobbyist Contact Protocol* (2011)
 <http://www.planning.nsw.gov.au/Portals/0/Lobbyist_Docs/Registered_Lobbyist_Contact_Protocol.doc>.
³³⁷ Ibid.
³³⁸ Department of Planning and Infrastructure, *Registered Lobbyist Contact Protocol Flowchart* (27 June 2011) New South Wales Government
 <http://www.planning.nsw.gov.au/Portals/0/Lobbyist_Docs/Registered_Lobbyists_Flowchart.pdf>.

senior staff.³³⁹ The Executive Director, Corporate Governance Policy, is responsible for ensuring that an annual audit of the Protocol's implementation is conducted.³⁴⁰ The Protocol was enacted as part of the ICAC's recommendation for maintaining records of meeting with registered lobbyists.³⁴¹

3 Conclusion

To sum up, the regulation of lobbying in Australia has developed significantly from the modest scheme enacted by the Commonwealth in 1983. Following political scandals in the 2000s, there was a move towards executive regulation in all States except for Queensland. Queensland has a more independent and comprehensive legislative scheme that includes external enforcement by an Integrity Commissioner and publication of each lobbying contact made by a registered lobbyist.

The new regime in New South Wales under the *Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW), combined with the requirement for Ministers to publish their diaries quarterly, will be a pioneering step for the Australian regulation of lobbyists. Its Lobbyists Code of Conduct covers a wide range of lobbyists beyond third party lobbyists; and the sanction regime includes a broader range of measures beyond removal of the Register to include suspension and placement on a public Lobbyist Watch List.

³³⁹ Sam Haddad, New South Wales Department of Planning and Infrastructure, *Registered Lobbyist Contact Protocol* (2011) <http://www.planning.nsw.gov.au/Portals/0/Lobbyist_Docs/Registered_Lobbyist_Contact_Protocol.doc>; *ICAC Lobbying Report*, above n 17, 32.

³⁴⁰ Sam Haddad, New South Wales Department of Planning and Infrastructure, *Registered Lobbyist Contact Protocol* (2011) <http://www.planning.nsw.gov.au/Portals/0/Lobbyist_Docs/Registered_Lobbyist_Contact_Protocol.doc>

³⁴¹ ICAC recommended a public sector meeting protocol be established for the conduct of meetings and relevant telephone calls: *ICAC Lobbying Report*, above n 17, 7, 9.

VII REGULATION OF LOBBYING IN JURISDICTIONS OVERSEAS

To provide an international context, this part will examine the regulation of direct lobbying in jurisdictions overseas. This part of the report draws heavily on the excellent comparative work by Raj Chari, Gary Murphy and John Hogan.³⁴²

First, the report will discuss countries with lobbying regulation. Following this, the main types of regulatory approaches for lobbying will be canvassed. The report will then outline the characteristics of low, medium and high-regulation systems, including examples from each country.

A Countries with Lobbying Regulation

The regulation of lobbying around the world is still rare, even in modern democracies. There are only 16 known countries in existing literature with some form of statutory regulation of lobbying. These are set out in the Table 7 (The research presented in the table below is current until 2010-11 although, where the researchers are alert to international regulation of lobbying that has been conducted in the last few years, the table has been updated to reflect this. The countries highlighted have some form of rules regulating lobbying).

Table 7: Regulations in Place in the Council of Europe Member States, Non-Member States, the Political System of the EU, Australia and Taiwan Country Rules Governing Lobbyists as of 2010-11

Country	Rules Governing Lobbyists as of 2010-2011
Albania	No statutory rules
Andorra	No statutory rules
Armenia	No statutory rules
Australia	As of 1 July 2008 there are national rules in place and a register.

³⁴² Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: a Global Comparison* (Manchester University Press, 2010) 10-11, Raj Chari, John Hogan and Gary Murphy, 'Report on the Legal Framework for the Regulation of Lobbying in the Council of Europe Member States' (Study No 590/2010, European Commission for Democracy through Law, 31 May 2011).

Country	Rules Governing Lobbyists as of 2010-2011
	Originally formulated and implemented in the 1980s, lobbying rules were then abandoned in 1996. Each Australian state also has its own state lobbying rules/legislation.
Austria	No statutory rules
Azerbaijan	No statutory rules
Belgium	No statutory rules
Bulgaria	No statutory rules
Bosnia and Herzegovina	No statutory rules
Canada	Federal Level: Rules and Register since the Lobbyists Registration Act of 1989, amended in 1995, 2003 and 2008. Provincial Level: Lobbying regulations exist in Ontario, Quebec, British Columbia, Nova Scotia, Newfoundland and Alberta. New Brunswick has been considering the introduction of lobbying regulations since 2009.
Chile	No statutory rules, although a bill on regulating lobbying was being debated as of 2010.
Croatia	No statutory rules
Cyprus	No statutory rules
Czech Republic	No statutory rules, although the issue was discussed as of 2011. A voluntary code of ethics, including guidance on how elected officials should maintain relations and communications with interest groups, was introduced in 2005.
Denmark	No statutory rules
Estonia	No statutory rules
EU: European Parliament	Regulated by Rule 9(2) of the Rules of Procedure, 1996. In 2011 the EU Parliament and Commission merged their registers and operated a joint register.
EU: Commission	Before 2008, 'self-regulation' was the model adopted by the Commission. However, as of 23 June, 2008, the Commission opened a voluntary register of interest representations. In 2011 the EU Parliament and Commission merged their registers and operated a joint register.
EU: Council	No statutory rules
Finland	No statutory rules
France	Rules established in 2009.
Georgia	Rules established in 1998.
Germany	Regulation and registration through rules of procedure of the

Country	Rules Governing Lobbyists as of 2010-2011
	Bundestag in 1951; later amended in 1975 and 1980.
Greece	No statutory rules
Holy See	No statutory rules
Hungary	Regulation of Lobbying Activity introduced in 2006, but repealed in 2011.
Iceland	No statutory rules
India	No statutory rules
Ireland	No statutory rules, although discussing the issue as of 2011
Israel	Rules established in 2008.
Italy	No statutory rules at national level. Nevertheless, regional schemes have been introduced in the Consiglio regionale della Toscana in 2002 and Regione Molise in 2004.
Japan	No statutory rules
Latvia	No statutory rules
Liechtenstein	No statutory rules
Lithuania	Regulation since 2001.
Luxembourg	No statutory rules
Malta	No statutory rules
Mexico	Lobbyist Registration Act introduced in 2010.
Moldova	No statutory rules
Monaco	No statutory rules
Montenegro	No statutory rules
Netherlands	Since 2012 the Dutch parliament has had a mandatory lobbyists register.
New Zealand	No statutory rules
Norway	No statutory rules
Poland	Regulations since 2005.
Portugal	No statutory rules
Romania	No statutory rules
Russia	No statutory rules
San Marino	No statutory rules
Serbia	No statutory rules
Slovakia	No statutory rules
Slovenia	Rules established in June 2010.
South Korea	No statutory rules
Spain	No statutory rules
Sweden	No statutory rules
Switzerland	No statutory rules

Country	Rules Governing Lobbyists as of 2010-2011
“The former Yugoslav Republic of Macedonia”	No statutory rules
Taiwan	Lobbying Act passed on 8/8/2007, came into force on 8/8/2008.
Turkey	No statutory rules
Ukraine	No statutory rules, although a lobbying bill was introduced in 2010.
United Kingdom	Legislation introduced in 2014: <i>Transparency of Lobbying, Non-Party Campaigning and Trades Unions Administration Act 2014</i> (UK)
United States	Federal Level: The Lobbying Act 1946, amended in 1995 and 2007. State Level: All states have lobbying regulations.

Sources: Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: a Global Comparison* (Manchester University Press, 2010) 10-11, Raj Chari, John Hogan and Gary Murphy, ‘Report on the Legal Framework for the Regulation of Lobbying in the Council of Europe Member States’ (Study No 590/2010, European Commission for Democracy through Law, 31 May 2011) 5-6.

The countries that regulate lobbying include a number of comparable Western democracies to Australia, such as the United Kingdom, United States and Canada. The regulation of lobbying in the world is, however, concentrated in the region of Europe with a number of European countries regulating lobbying, such as France, Germany, Lithuania, the Netherlands, Hungary, Poland, Slovenia and Georgia. The European Union Parliament and European Commission also have rules about lobbying. Only one known Asian country regulates lobbying (Taiwan). Likewise only one known Middle Eastern country (Israel) regulates lobbying.

B *Three Regulatory Approaches*

Table 7 suggests that there are three main approaches to direct lobbying in the world.

1. No explicit regulation of direct lobbying;
2. Approach based on self-regulation:
 - a. by lobbyists;
 - b. by lobbied; and

3. Legal regulation in a growing number of countries.

Each of these will be briefly examined.

1 *No Explicit Regulation of Direct Lobbying*

As Table 7 indicates, this is the predominant approach, as most countries in the world do not explicitly regulate lobbying. Only 16 known countries out of 195 have statutory regulation of lobbying. This means that 179 countries globally (or 92% of the world) do not regulate lobbying.

2 *Approach Based on Self-Regulation*

(a) By Lobbied

One method of self-regulation occurs where, although there are no statutory rules, the lobbied within the Executive or Parliament imposes rules on those lobbying on how they can approach the Executive or Parliament. One example is European Union Parliament where there are rules imposed by the European Parliament about how lobbyists are able to approach them. This is combined with a joint lobbyist register with the European Commission, called the Transparency Register.

The European Parliament elects a College of Quaestors, who are given the responsibility for the administrative and financial matters of Members in the rules of lobbying in Parliament and transparency and member's financial interests in the Rules of Procedure Annex I and IX.³⁴³ The Rules of Procedure introduced a 'door pass' system that provided passes to registered lobbyists to gain access to the parliamentary buildings.³⁴⁴ With this method, the European Parliament restricts access by lobbyists to the parliamentary buildings unless they register on the Transparency Register. Registered

³⁴³ Raj Chari, John Hogan and Gary Murphy, 'Report on the Legal Framework for the Regulation of Lobbying in the Council of Europe Member States' (Study No 590/2010, European Commission for Democracy through Law, 31 May 2011) 7-10.

³⁴⁴ *Ibid* 9.

lobbyists have to comply with a code of conduct and subject themselves to sanctions under the code.³⁴⁵ This scheme is discussed in more detail below.

(b) *By Lobbyists*

Another mode of self-regulation is where the lobbyists seek to regulate themselves through a peak representative body that sets standards and disciplines lobbyists.

For instance, in the United Kingdom, before the adoption of legislative regulation of lobbying in the *Transparency of Lobbying, Non-Party Campaigning and Trades Unions Administration Act 2014* (UK), there was self-regulation by lobbyists. In particular, the United Kingdom Public Affairs Council (UKPAC) was a self-regulatory body whose members are the Association of Professional Political Consultants and the Chartered Institute of Public Relations.³⁴⁶ The UKPAC maintains an online register of lobbyists covering agencies, individuals and clients.³⁴⁷ The UKPAC is overseen by a board comprising three independent members, two industry members, and two alternate directors nominated by the industry members.³⁴⁸

The UKPAC aims to maintain public confidence in lobbyists and to maintain 'high ethical standards, transparency and accountability amongst whom the Council regulates.'³⁴⁹ The UKPAC has the function of setting guiding principles for lobbyists, examining the creation of a code of conduct, maintaining a register of lobbyists and disciplining lobbyists who contravene the principles based on complaints against lobbyists.³⁵⁰ This form of self-regulation is voluntary and it is uncertain if sanctions would be effective.

³⁴⁵ European Parliament, *Rules of Procedure* (2014) annex IX r 17 ('Transparency Register') <<http://www.europarl.europa.eu/sides/getLastRules.do?reference=ANN-09&language=EN>>;

³⁴⁶ UK Public Affairs Council, *Welcome to UK Public Affairs Council* (2012) <<http://www.publicaffairsCouncil.org.uk/>>.

³⁴⁷ *Ibid.*

³⁴⁸ As of 30 June 2013, the board temporarily has two independent directors instead of three, while consideration is given to the governance structure. UK Public Affairs Council, *Board* (2013) <<http://www.publicaffairsCouncil.org.uk/en/governance/index.cfm>>.

³⁴⁹ UK Public Affairs Council, *Terms of Reference* (2010) <<http://www.publicaffairsCouncil.org.uk/en/about-ukpac/>>.

³⁵⁰ *Ibid.*

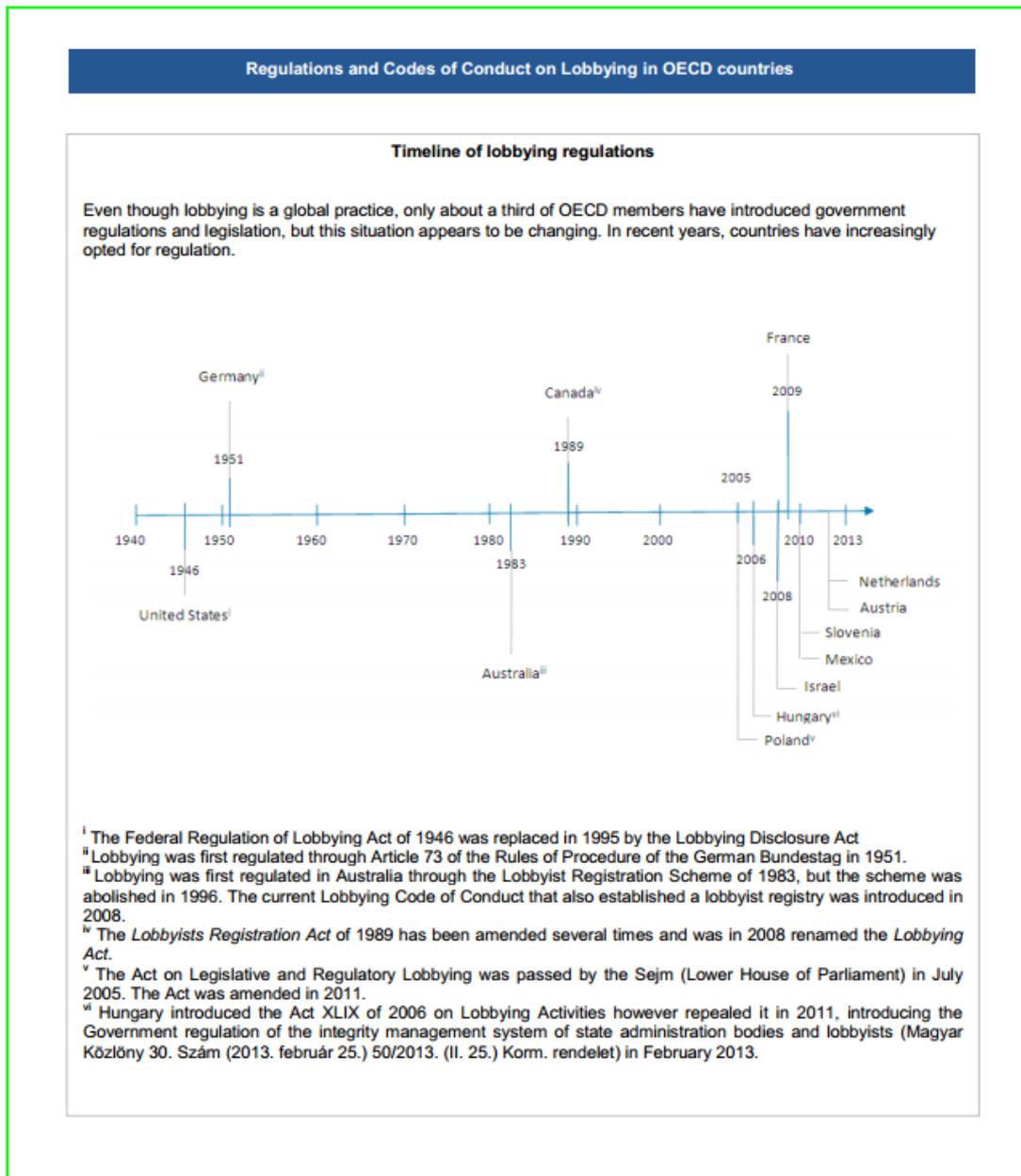
3 *Legal Regulation in a Growing Number of Countries*

The legal regulation of lobbying in the world is a relatively recent phenomenon. In the 19th century, the regulation of lobbyists was confined to some American states.³⁵¹ The first national regulation of lobbying in the world was in the United States in 1946, with Germany also being an early adopter in 1951. There was then a big lull until the 1980s, where Australia was the third country in the world to adopt regulations on lobbying in 1983, although as previously discussed the first form of regulation was largely ineffective and replaced by a scheme of executive regulation in 2005. Another mid-point adopter was Canada, who began regulating lobbying in 1989. A decade later, the EU Parliament adopted rules about lobbying in 1996, while Georgia started regulating lobbying in 1998.

In the 2000s, there was a comparative flurry of countries adopting lobbying regulation, including Poland, Hungary, France, Israel, Taiwan, Mexico, Slovenia, Austria and the Netherlands. Most recently in 2014, the United Kingdom passed legislation regulating lobbying.

The diagram that follows provides a visual timeline of lobbying regulation across the world.

³⁵¹ John Hogan, Gary Murphy and Raj Chari, 'Regulating the Influence Game in Australia' (2011) 57(1) *Australian Journal of Politics and History* 102.



Source: OECD, Regulations and Codes of Conduct on Lobbying.³⁵²

C Classifying Regulatory Schemes of Direct Lobbying

This section of the report discusses a useful classificatory approach towards the regulation of direct lobbying based on a method developed by the United States' Centre for Public Integrity (CPI), which has been adapted and more broadly applied by Chari, Murphy and Hogan. This discussion allows Australian regulation of direct lobbying to be situated in the global context.

³⁵² OECD, *Regulations and Codes of Conduct on Lobbying in OECD Countries* (21 July 2014) <<http://www.oecd.org/gov/ethics/Lobbying%20timeline.pdf>>.

1 *Centre for Public Integrity's 'Hired Guns' Index*

CPI is a non-profit and non-partisan digital news organisation which aims 'to serve democracy by revealing abuses of power, corruption and betrayal of public trust by powerful public and private institutions'.³⁵³

Its 'hired guns' index seeks to analyse and rank lobbying disclosure laws in 50 US States.³⁵⁴ In a survey conducted in 2003, the CPI reviewed lobbying statutes and asked 48 questions to officials in charge of lobbying regulation about eight key areas of disclosure:

- Definition of Lobbyist;
- Individual Registration;
- Individual Spending Disclosure;
- Employer Spending Disclosure;
- Electronic Filing;
- Public Access;
- Enforcement; and
- Revolving Door Provision.

Table 8: Questions Asked in Centre for Public Integrity Survey

Questions Asked in Centre for Public Integrity Survey	
1	In addition to legislative lobbyists, does the definition recognise executive branch lobbyists?
2	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?
3	Is a lobbyist required to file a registration form?
4	How many days can lobbying take place before registration is required?
5	Is subject matter or bill number to be addressed by a lobbyist required on registration forms?
6	How often is registration by a lobbyist required?

³⁵³ Centre for Public Integrity, *About the Centre for Public Integrity* (2014) <<http://www.publicintegrity.org/about>>.

³⁵⁴ Centre for Public Integrity, *Accountability: Waste, Fraud and Abuse: Hired Guns Methodology* (15 May 2014) <<http://www.publicintegrity.org/2003/05/15/5914/methodology>>.

- 7 Within how many days must a lobbyist notify the oversight agency of changes in registration?
- 8 Is a lobbyist required to submit a photograph with registration?
- 9 Is a lobbyist required to identify by name each employer on the registration form?
- 10 Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (ie, compensated or non-compensated/contract or salaried)?
- 11 Is a lobbyist required to file a spending report?
- 12 How often during each two-year cycle is a lobbyist required to report spending?
- 13 Is compensation/salary required to be reported by a lobbyist on spending reports?
- 14 Are summaries (totals) of spending classified by category types (ie gifts, entertainment, postage, etc)?
- 15 What spending must be itemised?
- 16 Is the lobbyist employer/principal on whose behalf the itemised expenditure was made required to be identified?
- 17 Is the recipient of the itemised expenditure required to be identified?
- 18 Is the date of the itemised expenditure required to be reported?
- 19 Is a description of the itemised expenditure required to be reported?
- 20 Is subject matter or bill number to be addressed by a lobbyist required on spending reports?
- 21 Is spending on household members of public officials by a lobbyist required to be reported?
- 22 Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?
- 23 What is the statutory provision for a lobbyist giving and reporting gifts?
- 24 What is the statutory provision for a lobbyist giving and reporting campaign contributions?
- 25 Is a lobbyist who has done no spending during a filing period required to make a report of no activity?
- 26 Is an employer or principal of a lobbyist required to file a spending report?
- 27 Is compensation/salary required to be reported on employer/principal spending reports?
- 28 Does the oversight agency provide lobbyists/employers with online registration?
- 29 Does the oversight agency provide lobbyists/employers with online spending reporting?
- 30 Does the oversight agency provide training about how to file registrations/spending reports electronically?
- 31 Location/format of registrations or active lobbyist directory
- 32 Location/format of spending reports
- 33 Cost of copies
- 34 Are sample registration forms/spending reports available the Web?
- 35 Does the state agency provide an overall lobbying spending total by year?
- 36 Does the state agency provide an overall lobbying spending total by spending-report deadlines?

- 37 Does the state agency provide an overall lobbying spending total by industries lobbyists represent?
- 38 How often are lobby lists updated?
- 39 Does the state have statutory auditing authority?
- 40 Does the state agency conduct mandatory reviews or audits?
- 41 Is there a statutory penalty for late filing of lobby registration form?
- 42 Is there a statutory penalty for late filing of a lobby spending report?
- 43 When was a penalty for late filing of a lobby spending report last levied?
- 44 Is there a statutory penalty for incomplete filing of a lobby registration form?
- 45 Is there a statutory penalty for incomplete filing of a lobby spending report?
- 46 When was a penalty for incomplete filing of a lobby spending report last levied?
- 47 Does the state publish a list of delinquent filers either on the Web or in a printed document?
- 48 Is there a “cooling off” period required before legislators can register as lobbyists?

Each state was numerically scored based on the 48 questions, with a maximum possible score of 100. The CPI regarded a score of above 70 as being relatively satisfactory, while 60-69 was regarded as a marginal score.³⁵⁵ The CPI considered a score below 60 as a fail.³⁵⁶ Broadly, this means that the higher the CPI score, the more rigorous the lobbying legislation, while the lower the CPI score, the less regulation existed in that jurisdiction.

As a result, the CPI found that:

- 27 US States received failing scores because their definitions of lobbying excluded some executive branch lobbyists, there were infrequent filing periods, lobbyists were not required to itemise all expenses, state agencies failed to provide totals of spending information by year, by reporting deadline or by industry;
- 14 received marginal scores due to lax enforcement mechanisms and a lack of ‘cooling off’ laws that mandate a break in the time between a legislator leaving office and becoming a lobbyist; and
- 9 states drew relatively satisfactory scores because they prohibited lobbyists from giving gifts to legislators and required both monthly

³⁵⁵ Ibid.

³⁵⁶ Ibid.

spending reports and listings of bill numbers addressed by lobbyists. They also provided electronic disclosure and strong public access to reports.³⁵⁷

2 *Chari, Hogan and Murphy International Comparative Index*

Chari, Hogan and Murphy adopted the CPI index as a framework for comparative analysis of other jurisdictions and political systems.³⁵⁸ They adopted the 48 questions across eight different sections used by the CPI to assess the stringency of lobbying regulation in overseas jurisdictions.³⁵⁹

The following table summarises the results of Chari, Hogan and Murphy's analysis of comparative CPI scores for jurisdictions overseas. For illustrative purposes, Chari, Hogan and Murphy have included different scores reflecting successive amendments to Canadian and US federal lobbying legislation.³⁶⁰ With each amendment the lobbying legislation in Canada and the United States became more rigorous over time.³⁶¹

Table 9: Centre for Public Integrity Scores (Scale: 1-100) as of 2010-11

Jurisdiction	Score	Jurisdiction	Score
Washington	87	Idaho	53
Kentucky	79	Nevada	53
Connecticut	75	Alabama	52
South Carolina	75	West Virginia	52
New York	74	Canada Fed (2008)	50
Massachusetts	73	Pennsylvania	50
Wisconsin	73	Newfoundland	48
California	71	Iowa	47
Utah	70	Oklahoma	47
Maryland	68	North Dakota	46
Ohio	67	Hungary	45

³⁵⁷ Robert Morlino, Leah Rush, Derek Willis, *Hired Guns - Initial Report* (Centre for Public Integrity, 2003) <<http://www.publicintegrity.org/2003/05/15/5908/hired-guns-initial-report>>.

³⁵⁸ Chari, Hogan and Murphy, above n 342, 99-102; Raj Chari, John Hogan and Gary Murphy, above n 343, 23-4.

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

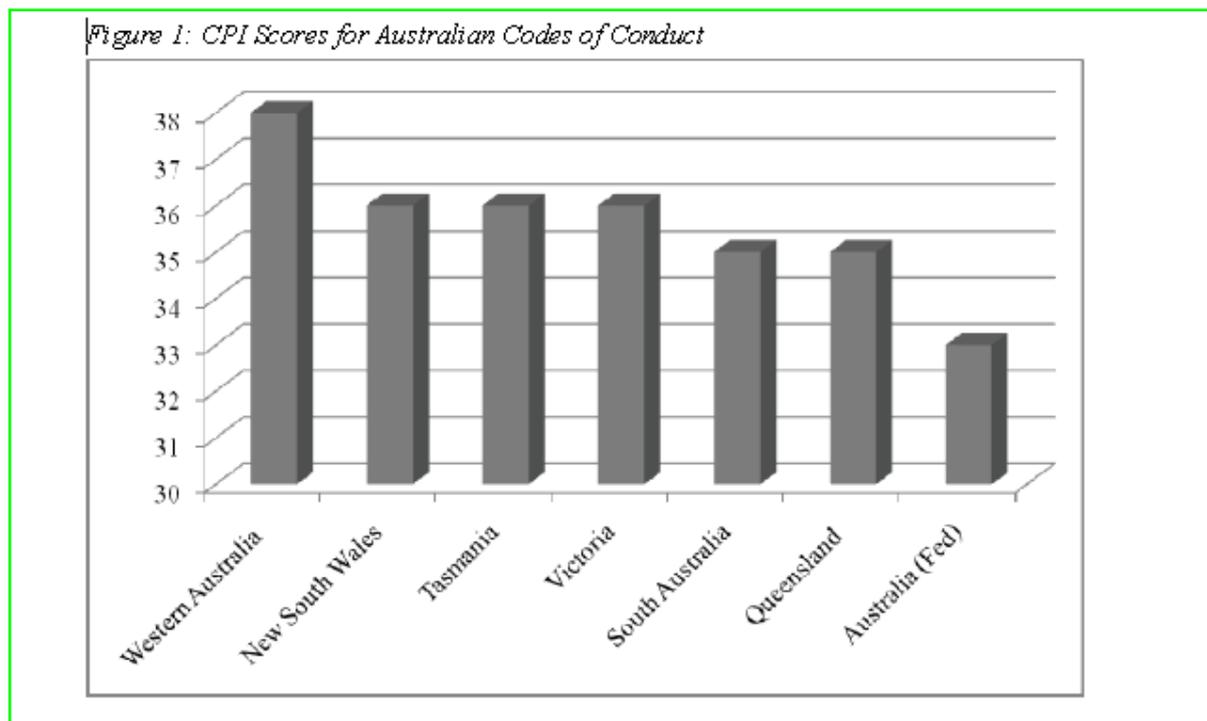
³⁶¹ Chari, Hogan and Murphy, above n 342, 102.

Jurisdiction	Score	Jurisdiction	Score
Indiana	66	Canada Fed (2003)	45
Texas	66	Illinois	45
New Jersey	65	Tennessee	45
Mississippi	65	Lithuania	44
Alaska	64	British Columbia	44
Virginia	64	Ontario	43
Kansas	63	South Dakota	42
Georgia	63	Quebec	40
Minnesota	62	Alberta	39
US Federal (2007)	62	Taiwan	38
Missouri	61	Western Australia	38
Michigan	61	New Hampshire	36
Nebraska	61	US Federal (1995)	36
Arizona	61	Nova Scotia	36
Colorado	60	New South Wales	36
Maine	59	Tasmania	36
North Carolina	58	Victoria	36
New Mexico	58	South Australia	35
Rhode Island	58	Queensland	35
Montana	56	Wyoming	34
Delaware	56	Australia (Fed)	33
Arkansas	56	Alberta	33
Louisiana	55	Canada Fed (1989)	32
Florida	55	Poland	27
Oregon	55	EU Commission	24
Vermont	54	France	20
Hawaii	54	Germany	17
		EU Parliament	15

Sources: Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: a Global Comparison* (Manchester University Press, 2010) 103, Raj Chari, John Hogan and Gary Murphy, 'Report on the Legal Framework for the Regulation of Lobbying in the Council of Europe Member States' (Study No 590/2010, European Commission for Democracy through Law, 31 May 2011) 25-6.

The graph below shows the scores for the Australian jurisdictions as of 2009. Hogan, Murphy and Chari gave the Commonwealth a CPI score of 33, New South Wales a CPI score of 36, Western Australia a CPI score of 38,

Queensland a CPI score of 34, Tasmania a CPI score of 36, Victoria a CPI score of 35 and South Australia a CPI score of 35.³⁶²



Source: John Hogan, Gary Murphy and Raj Chari, 'Regulating the Influence Game in Australia' (2011) 57(1) *Australian Journal of Politics and History* 102, 108.

Following the comparative ranking of the countries, instead of ascribing a fail mark like the CPI methodology, Chari, Hogan and Murphy classified the regulatory systems of the countries into three main categories: low regulation, medium regulation and high regulation. The features of the three ideal types of regulatory systems are summed up in the table below.

Table 10: The Three Ideal Types of Regulatory Systems

	Lowly Regulated Systems	Medium Regulated Systems	Highly Regulated Systems
Registration regulations	Rules on individual registration, but few details required	Rules on individual registration; more details required	Rules on individual registration are extremely rigorous
Targets of lobbying defined	Only members of the legislature	Members of the legislature and staff, executive and staff,	Members of the legislature and staff, executive and staff,

³⁶² John Hogan, Gary Murphy and Raj Chari, above n 351, 110.

	Lowly Regulated Systems	Medium Regulated Systems	Highly Regulated Systems
		agency heads and public servants/officers	agency heads and public servants/officers
Spending disclosure	No rules on individual spending disclosure, or employer spending disclosure	Some regulations on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure
Electronic filing	Weak online registration and paperwork required	Robust system for online registration; no paperwork necessary	Robust system for online registration; no paperwork necessary
Public access	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available; detailed, and updated frequently	List of lobbyists and their spending disclosures available; detailed, and updated frequently
Enforcement	Little enforcement capabilities invested in state agency	In theory, state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews/audits
'Revolving door' provision	No cooling-off period before former legislators can register as lobbyists	There is a cooling-off period before former legislators can register as lobbyists	There is a cooling-off period before former legislators can register as lobbyists

Sources: Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: a Global Comparison* (Manchester University Press, 2010) 108; Raj Chari, Gary Murphy and John Hogan, 'Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union' (2007) 78(3) *The Political Quarterly* 422, 428

Each regulatory type will be explained in more detail below.

(a) *Low-Regulation Systems*

Low regulation systems correspond to states with CPI scores between 1 and 29.³⁶³ A low regulation system has the following characteristics:

³⁶³ Chari, Hogan and Murphy, above n 342, 105-6; Chari, Hogan and Murphy, above n 343, 26-7.

- Rules on individual registration exist, but few details have to be given.
- The definition of ‘lobbyist’ does not include those who lobby the executive branch of government, but only those who lobby the legislature.
- There are no rules on disclosure of the spending of the individual lobbyist or of employer spending (i.e. lobbyists and employers are not required to file spending reports).
- There is a weak system for online registration and registration includes having to do some form of ‘paperwork’.
- Lobbyist lists are available to the public, but not all details are necessarily collected or given (such as spending reports).
- There is little in the way of enforcement capabilities.
- No cooling-off period is mentioned in the legislation, which means that legislators and members of the executive can register as lobbyists immediately on leaving office.³⁶⁴

Countries or international institutions with low regulation systems include Germany, the European Parliament and European Commission’s 2011 joint voluntary registration scheme, France and Poland.³⁶⁵ The regulation in Germany and the joint system of the European Parliament and Commission will be examined in further detail as examples of low regulation jurisdictions.

(i) *Germany*

Germany has a CPI score of 17. The German Bundestag (lower house of Parliament) has adopted formal rules on the registration of lobbyists.³⁶⁶ Each year a public list is collated of all groups who wish to lobby either the

³⁶⁴ Chari, Hogan and Murphy, above n 342, 105-6; Chari, Hogan and Murphy, above n 343, 26-7.

³⁶⁵ Chari, Hogan and Murphy, above n 342, 105-6; Chari, Hogan and Murphy, above n 343, 26-7.

³⁶⁶ Chari, Hogan and Murphy, above n 342, 61.

Bundestag or federal government or both.³⁶⁷ The register is published yearly in the Federal Gazette (*Bundesgesetzblatt*).³⁶⁸ The procedure is overseen by the President of the Bundestag.³⁶⁹ Lobbyists are required to provide basic information when registering, but financial information is not required.³⁷⁰

A registered lobbyist has access to parliamentary buildings and is able to participate in the drafting of federal legislation.³⁷¹ Although lobbyists cannot be heard by parliamentary committees or be issued with a pass allowing them access to parliamentary buildings unless they are on the register, this can be circumvented by the Bundestag inviting organisations that are not on the register to present information on an ad hoc basis.³⁷² Essentially this means that not being registered is not a significant impediment to presenting before parliamentary committees or Members of the Bundestag.

(ii) *European Parliament and European Commission*

The European Parliament is one of three main institutions in European Union policy-making, along with the European Commission and the Council of Ministers.³⁷³ The European Parliament introduced a lobbyist register under Rules of Procedure 9 in 1996.³⁷⁴ As discussed above, the European Parliament elects a College of Quaestors, who are given the responsibility for the administrative and financial matters of the Members in the rules of lobbying in the European Parliament.³⁷⁵ The Rules of Procedure introduced a 'door pass' system that provided passes to registered lobbyists for a year to gain access to Parliament.³⁷⁶ The European Commission also introduced a voluntary lobbyist register in 2008.³⁷⁷

³⁶⁷ Ibid.

³⁶⁸ Ibid. The Bundesgesetzblatt is available at Bundesanzeiger Verlag, *Bundesgesetzblatt* <<http://www1.bgbl.de/>>.

³⁶⁹ Chari, Hogan and Murphy, above n 342, 61.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Chari, Hogan and Murphy, above n 342, 45-7.

³⁷⁴ Ibid 51.

³⁷⁵ Chari, Hogan and Murphy, above n 343, 7-10.

³⁷⁶ Chari, Hogan and Murphy, above n 343, 9.

³⁷⁷ Chari, Hogan and Murphy, above n 342, 56.

In 2011, the European Parliament and European Commission jointly launched a Transparency Register.³⁷⁸ The register combined the existing Parliament and Commission registers. The Transparency Register provides more information than the previous registers, such as how many people are involved in lobbying activities, and any EU funding or support received by the registrant.³⁷⁹

The register is voluntary; however Members of the European Parliaments have decided that all lobbyists wishing to enter the European Parliament's premises will have to register.³⁸⁰ This is similar to the previous 'door pass' scheme introduced by the European Parliament. However, there are problems with only regulating physical access to the Parliament building, as lobbying can easily be conducted outside the building in other locations.³⁸¹ As Chari, Hogan and Murphy noted, several lobbyists active in the European Parliament were not registered under the previous scheme as they could still lobby without being on the register.³⁸²

The EU Commission's voluntary register scored 24 on the CPI index, while the EU Parliament's legislation scored 15 on the CPI index. The new Transparency Register may score slightly higher due to enhanced financial disclosure requirements, although it would still be considered to be low regulation given the voluntary nature of the register.

Under the Transparency Register, all organisations and self-employed individuals engaged in 'activities carried out with the objective of directly or

³⁷⁸ Transparency Register, *Key Events* <<http://ec.europa.eu/transparencyregister/info/about-register/keyEvents.do?locale=en>>; European Parliament, above n 345, annex IX ("*European Transparency Register*").

³⁷⁹ European Parliament, 'Parliament and Commission to Launch New Register for Lobbyists' (Press Release, 20110622IPR22295, 22 June 2011) <<http://www.europarl.europa.eu/news/en/news-room/content/20110622IPR22295/html/Parliament-and-Commission-to-launch-new-register-for-lobbyists>>.

³⁸⁰ European Parliament, 'MEPs back Joint Parliament-Commission Register of Lobbyists' (Press Release, 20110510IPR19128, 11 May 2011) <<http://www.europarl.europa.eu/news/en/news-room/content/20110510IPR19128/html/MEPs-back-joint-Parliament-Commission-register-of-lobbyists>>.

³⁸¹ Chari, Hogan and Murphy, above n 343, 9.

³⁸² *Ibid.*

indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions' are expected to register.³⁸³ These activities include:

- contacting members or officials of the EU institutions;
- preparing, circulating and communicating letters, information material or argumentation and position papers;
- organising events, meetings or promotional activities (in the offices or in other venues); and
- activities that are part of formal consultations on legislative proposals and other open consultations.³⁸⁴

The register includes in-house lobbyists, law firms, trade unions, NGOs, think tanks as well as third party lobbyists.³⁸⁵ On the other hand, churches and religious communities, political parties, as well as local, regional and municipal authorities are beyond the scope of the register.³⁸⁶

Registrants undertake to comply with a Code of Conduct.³⁸⁷ Registered lobbyists who have a 'door pass' are subject to additional obligations to:

- comply strictly with the European Parliament's Rules of Procedure on the Transparency Register,³⁸⁸ and

³⁸³ *European Transparency Register*, above n 345, annex IX r 8; European Parliament, 'Parliament and Commission to Launch New Register for Lobbyists' (Press Release, 20110622IPR22295, 22 June 2011) <<http://www.europarl.europa.eu/news/en/news-room/content/20110622IPR22295/html/Parliament-and-Commission-to-launch-new-register-for-lobbyists>>.

³⁸⁴ *European Transparency Register*, above n 345, *Rules of Procedure* (2014) annex IX r 8.

³⁸⁴ European Parliament, 'Parliament and Commission to Launch New Register for Lobbyists' (Press Release, 20110622IPR22295, 22 June 2011) <<http://www.europarl.europa.eu/news/en/news-room/content/20110622IPR22295/html/Parliament-and-Commission-to-launch-new-register-for-lobbyists>>.

³⁸⁵ Transparency Register, *Who is Expected to Register?* European Parliament <<http://ec.europa.eu/transparencyregister/info/your-organisation/whoRegister.do?locale=en>>.

³⁸⁶ *European Transparency Register*, above n 345, r 10-4; Transparency Register, *Who is Expected to Register?* European Parliament <<http://ec.europa.eu/transparencyregister/info/your-organisation/whoRegister.do?locale=en>>.

³⁸⁷ *European Transparency Register*, above n 345, annex IX r 17; Transparency Register, *Code of Conduct* European Parliament <<http://ec.europa.eu/transparencyregister/info/about-register/codeOfConduct.do?locale=en>>.

³⁸⁸ *European Transparency Register*, above n 345, annex I art 2(2), annex X r 9. Lobbyists must also satisfy themselves that any assistance provided in the context of Article 2 of Annex I to the European Parliament's Rules of Procedure is declared in the appropriate register.

- in order to avoid possible conflicts of interest, obtain the prior consent of the Member or Members of the European Parliament concerned about any contractual relationship with or employment of a Member's assistant, and subsequently declare this in the register.³⁸⁹

Registrants have to provide the following information annually when applying for registration or renewal:

- their contact details, identity of persons legally responsible for the organisation, names of persons who will have a 'door pass' to the European Parliament buildings, number of lobbyists, countries where operations are carried out;
- main legislative proposals covered in the preceding year by activities of the registrant falling within the scope of the Transparency Register; and
- certain financial information must be provided for the most recent financial year:
 - Professional consultancies/law firms/self-employed consultants: details must be given of the turnover attributable to the activities falling within the scope of the register, as well as the relative weight attaching to their clients based on their turnover in Euros.
 - In-house lobbyists and trade/professional associations: an estimate must be given of the cost of activities falling within the scope of the register.
 - Non-governmental organisations, think tanks, research and academic institutions, organisations representing churches and religious communities, organisations representing local, regional and municipal authorities, other public or mixed entities, etc: the overall budget must be specified, together with a breakdown of the main sources of funding.

³⁸⁹ Transparency Register, *Code of Conduct* European Parliament
<<http://ec.europa.eu/transparencyregister/info/about-register/codeOfConduct.do?locale=en>>.

- Additionally, for all registrants, the amount and source of funding received from EU institutions in the most recent financial year, as of the date of registration or of renewal.³⁹⁰

Any complaint about registered lobbyists breaching the Code of Conduct will be referred to the joint Transparency Register Secretariat.³⁹¹ The Secretary-General of Parliament will forward details of decisions to strike persons off the register to the Quaestors, who will take a decision on the withdrawal of the 'door pass' allowing access to the Parliament building.³⁹²

However, as Chari, Hogan and Murphy argue, the Code of Conduct consists of requirements that are minimalist, such as lobbyists stating the interests they represent, definitions that are too broad for enforcement, such as refraining from dishonesty, or difficult to trace, such as not to circulate for profit to third parties documents obtained from Parliament.³⁹³ It is important to note that the new disclosure provisions, which include financial disclosure, are more extensive than under the previous scheme examined by Chari, Hogan and Murphy.

As of July 2014, there were 6 729 lobbyists registered on the Transparency Register.³⁹⁴ This is less than half of the 15 000 lobbyists estimated by Chari, Hogan and Murphy to lobby the EU in 2011.³⁹⁵

(b) *Medium-regulation systems*

Medium regulation systems correspond to states with CPI scores between 30 and 59.³⁹⁶ A medium regulation system has the following characteristics:

³⁹⁰ *European Transparency Register*, above n 345, annex II, IX.

³⁹¹ *Ibid* annex IX r 2.

³⁹² *Ibid*.

³⁹³ Chari, Hogan and Murphy, above n 343, 9.

³⁹⁴ Transparency Register, *Search Register*

<<http://ec.europa.eu/transparencyregister/public/consultation/search.do#searchResult>>.

³⁹⁵ Chari, Hogan and Murphy, above n 342, 106; Chari, Hogan and Murphy, above n 343, 11.

³⁹⁶ Chari, Hogan and Murphy, above n 342, 106; Chari, Hogan and Murphy, above n 343, 27.

- Rules on individual registration exist and are tighter than low regulation systems (i.e. the lobbyist must generally state the subject matter/bill/governmental institution to be lobbied).
- In addition to legislative lobbyists, the definition of lobbyist recognises executive branch lobbyists.
- Some, although not detailed, regulations exist surrounding individual spending disclosures (such as gifts are prohibited and all political contributions must be reported; but, there are clearly loopholes such as free ‘consultancy’ given by lobbyists to political parties).
- There are no regulations for employer spending reports (i.e. an employer of a lobbyist is not required to file a spending report).
- There is a system for on-line registration (in some cases, such as Ontario, this is very efficient and effective, requiring low resources to use/update).
- The lobbyist register is accessible to the public and is frequently updated, although spending disclosures are not in public domain.
- In theory, a state agency can conduct mandatory reviews/audits, although it is infrequent that the agency will prosecute violations of regulations given lack of resources and information (for instance there is only one case on file in Canada, in Quebec in March 2006).
- There is a cooling off period before legislators, having left office, can register as lobbyists.³⁹⁷

Countries with medium regulation systems include Australia, Canada and many countries that enacted lobbying rules in the 2000s, including Lithuania, Hungary, and Taiwan. The Australian CPI scores and Canadian system will be outlined as an example of medium regulation jurisdictions.

(i) *Australia*

³⁹⁷ Ibid.

As noted above, as of 2009, Hogan, Murphy and Chari gave the Commonwealth a CPI score of 33, New South Wales a CPI score of 36, Western Australia a CPI score of 38, Queensland a CPI score of 34, Tasmania a CPI score of 36, Victoria a CPI score of 35 and South Australia a CPI score of 35.³⁹⁸ Hogan, Murphy and Chari analysed the regulation of Australian jurisdictions as of 2011 based on the medium regulated jurisdiction characteristics. Their results are presented in the table below.

³⁹⁸ Hogan, Murphy and Chari, above n 351, 110.

Table 11: Regulatory Characteristics of Australian Jurisdictions

Criteria	Medium Regulated Jurisdictions Characteristics	WA 2007 CPI 38	Cth 2008 CPI 33	NSW 2009 CPI 36	QLD 2009 CPI 34	TAS 2009 CPI 36	VIC 2009 CPI 36	SA 2009 CPI 35
Registration regulations	Rules on individual registration	YES	YES	YES	YES	YES	YES	YES
Targets of lobbyists defined	Members of legislature + staff; executive + staff; agency heads	YES	YES	YES	YES	YES	YES	YES
Spending Disclosure	Some regs on individual spending disclosure; no employer spending info							
Electronic filing	Robust system for online registration, no paperwork necessary	YES	YES	YES	YES	YES	YES	YES
Public access	List of lobbyists available, detailed and updated frequently	YES	YES	YES	YES	YES	YES	YES
Enforcement	State agency possesses enforcement capabilities, though infrequently used	YES	YES	YES	YES	YES	YES	YES
'Revolving door' provision	Cooling off period before former legislators can register as lobbyists		YES		YES	YES	YES	YES

Source: John Hogan, Gary Murphy and Raj Chari, 'Regulating the Influence Game in Australia' (2011) 57(1) *Australian Journal of Politics and History* 102, 110.

Hogan, Murphy and Chari attributed higher scores to Western Australia and New South Wales despite the jurisdictions ticking fewer boxes in the table because these jurisdictions vested more enforcement authority in their registers.³⁹⁹

However, it is important to note that these CPI scores are slightly dated. As discussed previously, Queensland has a more comprehensive scheme now introduced by the *Integrity Act 2009* (Qld), and New South Wales now has 'revolving door' provisions that makes it a criminal offence if a former Minister or former Parliamentary Secretary lobbies a government official in relation to an official matter dealt with by them in relation to their portfolio responsibilities during the 18 months before they ceased to hold office.⁴⁰⁰ The proposed scheme in New South Wales under the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) is likely to increase the CPI score for New South Wales as well.

However, even with the enhanced regulation, New South Wales is still likely to fall within the classification of a medium regulation jurisdiction as there is no requirement for lobbyist or employer spending disclosure. This classification will also depend on whether the new regulatory body (NSWEC) utilises its enforcement procedures regularly and conducts regular audits, which is the case in high regulation jurisdictions.

(ii) *Canada*

In Canada, lobbying at the federal level was first introduced in 1989.⁴⁰¹ The Act was amended in 1995 by the *Amendment to Lobbyist Registration Act*, which increased the information requirements to be provided by registered lobbyists. Another major amendment was introduced with Bill C-15 in 2003,

³⁹⁹ Hogan, Murphy and Chari, above n 351, 110.

⁴⁰⁰ *Lobbying of Government Officials Act 2011* (NSW) s 8.

⁴⁰¹ *Lobbyists Registration Act*, RSC 1985 (4th Supp), c 44.

which sought to close loopholes for the definition of lobbyists.⁴⁰² Finally, in 2008, the *Lobbying Act* increased obligations and penalties on lobbyists.⁴⁰³

The 2008 iteration of the Canadian federal legislation scored 50 on the CPI index, compared to 45 in 2003 and 32 in 1989. This shows a general trend towards strengthening lobbying legislation over time. The scope of the most recent Canadian legislation will be discussed.

The current Canadian lobbyists register requires the registration of professional lobbyists or any individual who, in the course of his or her work for a client, communicates with or arranges meetings with a public office holder.⁴⁰⁴ This includes third party lobbyists, in-house lobbyists for corporations, and in-house lobbyists for not-for-profit organisations.⁴⁰⁵

The public office-holders covered by the Canadian scheme are numerous, including Ministers of the Crown, Ministers of State, Deputy Ministers, Chief Executive Officers, Associate Deputy Ministers, Assistant Deputy Ministers, Members of Parliament, Senators, staff of Leaders of the Opposition in the House of Commons and the Senate, Chief of the Defence Staff, Vice Chief of the Defence Staff, Chief of Maritime Staff, Chief of Land Staff, Chief of Air Staff, Chief of Military Personnel, Judge Advocate Generals, any position of Senior Advisor to the Privy Council to which the office holder is appointed by the Governor in Council, Deputy Minister (Intergovernmental Affairs), Privy Council Office, Comptroller General of Canada, and any position where the office holder is appointed under paragraph 127.1(1)(a) or (b) of the *Public Service Employment Act*.⁴⁰⁶

Consultant lobbyists and in-house lobbyists have an obligation file a monthly return to the Commissioner of Lobbying, not later than 15 days after the end

⁴⁰² Raj Chari, Gary Murphy and John Hogan, 'Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union' (2007) 78(3) *The Political Quarterly* 422, 423.

⁴⁰³ Chari, Hogan and Murphy, above n 342, 36.

⁴⁰⁴ *Lobbying Act*, RSC 1985 (4th Supp), c 44 ss 5-7.

⁴⁰⁵ *Ibid* ss 5-7.

⁴⁰⁶ *Designated Public Office Holder Regulations*, SOR/2008-117, sch 1.

of every month, setting out the details of the lobbying clients, name of the public office holder, subject matter and date of communication.⁴⁰⁷

Lobbying activities are defined as the arrangement of a meeting between a public office holder and any other person or communication with a public office holder relating to:

- the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons;
- the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament;
- the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*;
- the development or amendment of any policy or program of the Government of Canada;
- the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada; or
- the awarding of any contract by or on behalf of Her Majesty in right of Canada.⁴⁰⁸

Former ministers, senior public servants and designated former members of prime ministerial transition teams may not act as consultant lobbyists, or accept employment as in-house lobbyists employed by an organisation for a period of five years after leaving public office.⁴⁰⁹ They may still be employed by a corporation as an in-house lobbyist, if lobbying activities do not constitute a 'significant part of their duties'.⁴¹⁰ The giving and receiving of success fees is prohibited.⁴¹¹

The Canadian lobbying scheme is enforced by the Commissioner of Lobbying, who possesses the rank and powers of a deputy head of a

⁴⁰⁷ *Lobbying Act*, RSC 1985 (4th Supp), c 44 ss 5-7.

⁴⁰⁸ *Ibid* s 5.

⁴⁰⁹ *Ibid* s 10.11.

⁴¹⁰ *Ibid* s 10.11.

⁴¹¹ *Ibid* s 10.1.

department, and is appointed by Governor in Council as an independent agent of Parliament.⁴¹² The Commissioner of Lobbying has broad investigative powers, similar to a superior court of record to compel persons and documents and administer oaths.⁴¹³ The Canadian Commissioner is able to conduct investigations and write reports tabled in Parliament.⁴¹⁴ Civil and criminal penalties apply for breaches of lobbying provisions, with a possibility of imprisonment of up to two years.⁴¹⁵ The Canadian Commissioner may publicise the name of an offending lobbyist and prohibit lobbying activities for two years.⁴¹⁶

However, Chari, Hogan and Murphy note that as of 2010 there was only one case that resulted in penalties being imposed, in 2006 where an immigration lawyer in Quebec was fined for not registering as a lobbyist before lobbying immigration officials.⁴¹⁷ Therefore, although there are theoretical sanctions, these do not seem to be regularly enforced.

Lobbyists are able to contribute to political parties, within the limit of \$1,000 stipulated by the Canadian *Elections Act* for corporations, trade unions and associations.⁴¹⁸ However, there is a loophole within the system that allows lobby groups to provide 'consultancy services' to political parties for free during election times and many lobbyists do so.⁴¹⁹

(c) *High-Regulation Systems*

⁴¹² Ibid s 4.

⁴¹³ Ibid s 10.4.

⁴¹⁴ Ibid s 10.4.

⁴¹⁵ Ibid s 14. Every individual who fails to file a return, or knowingly makes any false or misleading statement in any return or other document submitted to the Commissioner is guilty of an offence and liable on summary conviction, to a fine not exceeding \$50,000 or to imprisonment for six months or less, or to both; and on proceedings by way of indictment, to a fine not exceeding \$200,000 or to imprisonment for two years or less, or to both. Every individual who contravenes any other provision of the Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000. If a person is convicted of an offence under this Act, the Commissioner may prohibit the person from carrying out lobbying activities for two years or less.

⁴¹⁶ Ibid s 14.01.

⁴¹⁷ Chari, Hogan and Murphy, above n 342, 44.

⁴¹⁸ *Canada Elections Act*, SC 2000, c 9 s 405.

⁴¹⁹ Chari, Hogan and Murphy, above n 342, 42.

Highly regulated systems include those jurisdictions that attained a CPI score of over 60.⁴²⁰ The jurisdiction with the highest CPI score is Washington State, with a score of 87.⁴²¹

Features of highly regulated systems are:

- Rules on individual registrations exist and are the tightest of all the systems (e.g. lobbyists must state not only the subject matter/institution when registering, but also the name of all employees. They must also notify almost immediately any changes in the registration, and must provide a picture).
- Similar to medium regulated systems, the definition of lobbyist does recognise executive branch lobbyists.
- Tight individual spending disclosures are required, in stark contrast to both low and medium regulated systems. Lobbyists must:
 - file a spending report;
 - report their salary;
 - account for and itemise all spending;
 - identify all people on whom money was spent;
 - report spending on household members of public officials; and
 - account for all campaign spending.
- Employer spending disclosure is tight - unlike other low regulation or medium regulation systems, an employer of a lobbyist is required to file a spending report and all salaries must be reported.
- System for online registration exists.

⁴²⁰ Chari, Hogan and Murphy, above n 342, 106-7; Chari, Hogan and Murphy, above n 343, 28.

⁴²¹ Ibid.

- The lobbying register is available to the public and is frequently updated, including spending disclosures, which are public (the latter of which is not found in the other two systems).
- State agencies can and do conduct mandatory reviews/audits, and there is a statutory penalty for late and incomplete filing of a lobbying registration form.
- There is a cooling off period before legislators, having left office, can register as lobbyists.⁴²²

The highly regulated systems are found exclusively in American jurisdictions, with more than 50% of the US federal and state systems being highly regulated.⁴²³ The lobbying regulation at the federal level in the United States and the US State of Washington will be examined as examples of high regulation jurisdictions.

(i) *United States Federal*

In the 1930s, the US Congress enacted lobbying legislation following scandals concerning the lobbying of public utility companies and the maritime industry.⁴²⁴ However, these regulations were seen to be inadequate and the *Lobbying Act 1946* (US) was implemented.⁴²⁵ However, this Act still contained many loopholes.⁴²⁶ A 1991 General Accounting Office report found that fewer than 4,000 of the 13,500 individuals listed in a directory of Washington lobbyists were registered.⁴²⁷ The 1946 Act was replaced with the more stringent *Lobbying Disclosures Act 1995* (US). This was then further strengthened by the *Honest Leadership and Open Government Act of 2007* (US), which increased public disclosure requirements about lobbying activity and funding and placed more restrictions on gifts for members of Congress

⁴²² Ibid.

⁴²³ Ibid.

⁴²⁴ Chari, Murphy and Hogan, above n 402, 422.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid. See Bruce C Wolpe and Bertram J Levine, *Lobbying Congress: How the System Works* (CQ Press, 1996) 193.

and their staff. The 2007 US legislation scored 62 on the CPI index, while the 1995 legislation scored 36.

The current regulation of lobbying at the US federal level will be discussed.

At the federal level in the United States, both legislative and executive branch officials are covered by the lobbying provisions.⁴²⁸

Lobbyists covered by the scheme are:

- Persons who receive financial or other compensation for lobbying in excess of \$2,500 per three month period, makes more than one lobbying contact and spends 20% or more of their time over a three month period on lobbying activities on behalf of an employer or individual client. This covers both third party lobbyists and in-house lobbyists; and
- An organisation is required to register if it plans to engage in lobbying activities during any three-month period and during that period incurs at least \$12,500 in lobbying expenses for organisations that employ in-house lobbyists and \$3,000 for lobbying firms.⁴²⁹

Lobbying activities covered are communications with a covered executive branch official or covered legislative branch official that is made on behalf of a client with regard to:

- the formulation, modification, or adoption of federal legislation (including legislative proposals);

⁴²⁸ Covered executive branch official, i.e. the President, the Vice President, any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President, any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order, any member of the uniformed services whose pay grade is at or above O-7 under section 201 of title 37, United States Code; and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5, United States Code: *Lobbying Disclosure Act of 1995*, 2 USC § 1601-3.

Covered legislative branch official, i.e. a Member of Congress, an elected officer of either House of Congress, any employee of, or any other individual functioning in the capacity of an employee of a Member of Congress, a committee of either House of Congress, the leadership staff of the House of Representatives or the leadership staff of the Senate, a joint committee of Congress, and a working group or caucus organised to provide legislative services or other assistance to Members of Congress; and any other legislative branch employee serving in a position described under section 109(13) *Ethics in Government Act 1978* (5 USC App).

⁴²⁹ *Lobbying Disclosure Act of 1995*, 2 USC § 1601-3(10).

- the formulation, modification, or adoption of a federal rule, regulation, executive order, or any other program, policy, or position of the United States government;
- the administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or licence); or
- the nomination or confirmation of a person for a position subject to confirmation by the Senate.⁴³⁰

Registered lobbyists are required to file quarterly activity reports with the Clerk of the US House of Representatives and the Secretary of the US Senate.⁴³¹

Lobbyists must also file semi-annual reports of campaign contributions to federal candidates and events that honour federal officeholders.⁴³² The semi-annual report must contain information about the lobbying clients, issues, including bill numbers and executive branch actions, and total income and expenses received from the client. In particular, the following information is required:

- the name of the registrant, the name of the client, and any changes or updates to the information provided in the initial registration;
- for each general issue area in which the registrant engaged in lobbying activities on behalf of the client during the semi-annual filing period:
 - a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;
 - a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client;

⁴³⁰ *Lobbying Disclosure Act of 1995*, 2 USC § 1601-3(8).

⁴³¹ *Ibid* § 1601-5.

⁴³² Office of the Clerk, *Guide to the Lobbying Disclosure Act* (17 June 2014) US House of Representatives <http://lobbyingdisclosure.house.gov/amended_lda_guide.html>.

- a list of the employees of the registrant who acted as lobbyists on behalf of the client; and
- a description of the interest, if any, of any foreign entity identified;
- in the case of a lobbying firm, a good faith estimate of the total amount of all income from the client (including any payments to the registrant by any other person for lobbying activities on behalf of the client) during the semi-annual period, other than income for matters that are unrelated to lobbying activities; and
- in the case of a registrant engaged in lobbying activities on its own behalf, a good faith estimate of the total expenses that the registrant and its employees incurred in connection with lobbying activities during the semi-annual filing period.

There is a strong disclosure regime by lobbyists enforced by the Clerk of the House and Senate, breach of which may lead to civil and criminal penalties, including the possibility of imprisonment of up to 5 years.⁴³³

There are post-separation requirements where the Secretary of the Senate and the Clerk of the House of Representatives, Senators, Cabinet Secretaries, and very senior executive personnel are subject to a ban for two years after departure on lobbying Congress/their previous department.⁴³⁴ Senior Senate staff and Senate officers are subject to a ban for one year after departure from lobbying contacts within the Senate, while Senior House staff are banned for one year after departure from lobbying their former office or

⁴³³ Civil penalty: A person or entity knowingly fails to remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives; or comply with any other provision of the Act; shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than \$50,000, depending on the extent and gravity of the violation.

Criminal penalty: A person or entity who knowingly and corruptly fails to comply with any provision of this Act shall be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.

Lobbying Disclosure Act of 1995, 2 USC 26 § 1601-7.

⁴³⁴ *Honest Leadership and Open Government Act of 2007*, 18 U.S. Code § 207(d)(1).

Committee.⁴³⁵ The Clerk of the House or Senate will publicly publish the period of restriction on a website.⁴³⁶

Senate spouses who are registered lobbyists are prohibited from engaging in lobbying contacts with any Senate office, with the exception of Senate spouses who were serving as registered lobbyists at least one year prior to the most recent election of their spouse to office, or at least one year prior to their marriage to that Member.⁴³⁷ Further, Senators' immediate family members who are registered lobbyists are prohibited from engaging in lobbying contacts with their family member's staff.⁴³⁸

Executive Order 13490 places strict limits on the ability of lobbyists to serve in Government positions related to their prior lobbying activities. A President Memorandum in 2010 directed agencies and departments in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions.⁴³⁹ This is currently subject to legal challenge.⁴⁴⁰

(ii) *Washington State*

The US State of Washington is the jurisdiction with the strongest lobbying regulation in the world, with a CPI score of 87. The genesis of the strong regulation in Washington has been attributed to strong grassroots campaigning by the Coalition for Open Government, a group of concerned citizens who gathered 163,000 signatures advocating for the public's right to know who was financing political activity in the State in 1972.⁴⁴¹ This led to Initiative 276, which required the State Government to establish the Public

⁴³⁵ Ibid § 207(d)(1)..

⁴³⁶ Ibid.

⁴³⁷ Standing Rules of the United States Senate, Rule XXXVII.

⁴³⁸ Ibid.

⁴³⁹ Lobbyists on Agency Boards and Commissions, 75 Fed Reg 35955, (23 June 2010); *Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions*, 76 Fed Reg 61756, 61756-61757 (5 October 2011).

⁴⁴⁰ Andy Sullivan, 'Obama Lobbying Ban Faces Setback in Court', Reuters (Washington), 17 January 2014, <<http://www.reuters.com/article/2014/01/17/us-usa-courts-lobbying-idUSBREA0G1JU20140117>>.

⁴⁴¹ Public Disclosure Commission, *Public Disclosure in Washington State* <<http://www.pdc.wa.gov/home/about/history/publicdisclosure.aspx>>.

Disclosure Commission in order to provide information to the public about campaign fundraising and expenditures. This initiative was passed by voters in a plebiscite into law at the same time as the general election in 1973.⁴⁴² Further, at the 1992 general election, voters passed a comprehensive reform proposal about contribution limits and other campaign restrictions by plebiscite.⁴⁴³ This shows very strong citizen interest and participation in lobbying reforms.

The Washington State Public Disclosure Law provides that persons receiving compensation or making expenditures for the purpose of attempting to influence the passage or defeat of any legislation or rule by the state legislature or a state agency are required to register as lobbyists.⁴⁴⁴ The executive and legislative branch officials are covered. "Lobbyist" is defined broadly as including any person who lobbies either in his or her own or another's behalf.⁴⁴⁵

Once registered, lobbyists must file detailed monthly reports showing the names of their employers, the subject matter of legislation or other legislative activity or rule-making, the amount of compensation, the identities of those entertained, any gifts provided and the amounts involved, amounts spent on political advertising, public relations, telemarketing, polling, or similar activities if the activities, directly or indirectly, are intended, designed, or calculated to influence legislation or the adoption or rejection of a rule, standard, or rate by

⁴⁴² Elections Division, *Elections and Voting: Elections Search Results November 1972* General Washington Secretary of State
<http://www.sos.wa.gov/elections/results_report.aspx?e=&c=&c2=&t=&t2=&p=&p2=276&y=>;
Public Disclosure Commission, *Public Disclosure in Washington State*
<<http://www.pdc.wa.gov/home/about/history/publicdisclosure.aspx>>; *Public Disclosure Law*,
42.17A Wash Rev Code §001 (2012).

⁴⁴³ Elections Division, *Elections and Voting: Elections Search Results November 1972* General Washington Secretary of State
<http://www.sos.wa.gov/elections/results_report.aspx?e=&c=&c2=&t=&t2=&p=&p2=276&y=>;
Public Disclosure Commission, *Public Disclosure in Washington State*
<<http://www.pdc.wa.gov/home/about/history/publicdisclosure.aspx>>.

⁴⁴⁴ *Public Disclosure Law*, 42.17A Wash Rev Code §600 (2012).

⁴⁴⁵ *Ibid* §005 (2012).

an agency under the *Administrative Procedure Act*.⁴⁴⁶ Lobbyist employers must file a similar report annually.⁴⁴⁷

The online public register discloses the name of lobbyists, their clients and detailed financial information about how much they earned and spent, including total compensation, total personal expenses, total entertainment, total contributions, total advertising, total political ads, total other expenses and total expenses.⁴⁴⁸ There are 41 categories of lobbying sectors.⁴⁴⁹ As of July 2014, there are 916 lobbyists on the Washington register.⁴⁵⁰

The Public Disclosure Commission may determine whether an actual violation of the law has occurred; and issue and enforce an appropriate order following such a determination.⁴⁵¹ In addition to other penalties provided in the Act, the Commission may assess a penalty not exceeding \$10 000.⁴⁵² The Commission may also refer the matter to the Attorney-General or other enforcement agencies instead of imposing its own orders.⁴⁵³

There are civil penalties if any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of the law. The lobbyist's registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying.⁴⁵⁴ The imposition of a sanction will not excuse the lobbyist from filing statements and reports required by the law.⁴⁵⁵ A person who fails to report a contribution or expenditure as required by the law may be subject to a civil penalty equivalent to the amount not reported.⁴⁵⁶

⁴⁴⁶ Ibid §615 (2012).

⁴⁴⁷ Ibid §630 (2012).

⁴⁴⁸ The Public Disclosure Commission Lobbyist Register is accessible at: Public Disclosure Commission, *Registered Lobbyists in 2014*

<<http://www.pdc.wa.gov/MvcQuerySystem/Lobbying/Lobbyists?year=2014>>.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ *Public Disclosure Law*, 42.17A Wash Rev Code §755 (2012).

⁴⁵² Ibid.

⁴⁵³ Ibid.

⁴⁵⁴ *Public Disclosure Law*, 42.17A Wash Rev Code §750 (2012).

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

Criminal penalties may also apply:

- A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor;
- A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor; and
- A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony.⁴⁵⁷

The Attorney-General and the prosecuting authorities may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in the Act.⁴⁵⁸ In addition, the Attorney-General and prosecuting authorities may conduct an investigation of the activities of any person whom there is reason to believe is or has been acting in violation of the Act, including possessing powers to compel documents and give information under oath.⁴⁵⁹

However, even under the most stringent and well-enforced disclosure regime in the world, the CPI reported that the Washington laws were being undermined by lobbyists who reported their clients' purposes on disclosure forms in 'vague, non-descriptive terms'.⁴⁶⁰

(d) Proportion of Jurisdictions with High, Medium and Low Lobbying Regulation

A snapshot of the jurisdictions that have high, medium and low lobbying regulation is provided in the table below.

⁴⁵⁷ Ibid §755 (2012).

⁴⁵⁸ Ibid §765 (2012).

⁴⁵⁹ Ibid.

⁴⁶⁰ Neil Gordon, 'State Lobbyists Near the \$1 Billion Mark' on *Centre for Public Integrity* (10 August 2005) <<http://www.publicintegrity.org/2005/08/10/5905/state-lobbyists-near-1-billion-mark>>; Chari, Hogan and Murphy, above n 342, 28.

Table 12: Jurisdictions found in each classification of regulatory environments

High Regulation Jurisdiction	CPI Score	Medium Regulation Jurisdiction	CPI Score	Low Regulation Jurisdiction	CPI Score
Washington	87	Maine	59	Poland	27
Kentucky	79	North Carolina	58	EU Commission	24
Connecticut	75	New Mexico	58	France	20
South Carolina	75	Rhode Island	58	Germany	17
New York	74	Montana	56	EU Parliament	15
Massachusetts	73	Delaware	56		
Wisconsin	73	Arkansas	56		
California	71	Louisiana	55		
Utah	70	Florida	55		
Maryland	68	Oregon	55		
Ohio	67	Vermont	54		
Indiana	66	Hawaii	54		
Texas	66	West Virginia	52		
New Jersey	65	Canada Fed (2008)	50		
Mississippi	65	Pennsylvania	50		
Alaska	64	Newfoundland	48		
Virginia	64	Iowa	47		
Kansas	63	Oklahoma	47		
Georgia	63	North Dakota	46		
Minnesota	62	Hungary	45		
US Federal (2007)	62	Canada Fed (2003)	45		
Missouri	61	Illinois	45		
Michigan	61	Tennessee	45		
Nebraska	61	Lithuania	44		
Arizona	61	British Columbia	44		
Colorado	60	Ontario	43		
		South Dakota	42		
		Quebec	40		
		Alberta	39		
		Taiwan	38		
		Western Australia	38		
		New Hampshire	36		
		US Federal (1995)	36		
		Nova Scotia	36		

		New South Wales	36		
		Tasmania	36		
		Victoria	36		
		South Australia	35		
		Queensland	35		
		Wyoming	34		
		Australia (Fed)	33		
		Alberta	33		
		Canada Fed (1989)	32		

From the table, it can be seen that the majority (58%) of jurisdictions fall within the medium regulation category (43), 35% of jurisdictions fall within the high regulation category (26) while 7% fall within the low regulation category (5).

D *Concluding thoughts*

In conclusion, the regulation of lobbying is still a relatively rare phenomenon across the world. Only 16 known countries in the world have statutory rules about lobbying, with the majority of countries adopting regulation in the 2000s. Australia was the third country in the world to introduce regulation on lobbying.

Countries that lobby can be categorised into three main categories: low regulation, medium regulation and high regulation. Australia is classified as a medium regulation jurisdiction under the CPI index, along with Canada. This can be contrasted with high regulation jurisdictions which only exist in the United States, with Washington having the most extensive form of lobbying regulation. At the other end of the scale are low regulation jurisdictions such as Germany and the European Parliament.

There is much to be learnt from the experiences of jurisdictions overseas. Direct lobbying appears to be growing in significance worldwide – lobbying is increasingly a global phenomenon. This is especially so given the evidence that there is a globalisation of lobbying practices – an international dispersion of common lobbying techniques – linked with economic globalization, in

particular, the increased role and power of multinational corporations.⁴⁶¹ These developments throw up common challenges in different countries including Australia.

This does not, however, translate into a straightforward approach towards the adoption of regulatory schemes. As Principle 2 of the OECD's 10 Principles for Transparency and Integrity in Lobbying (see Table 2) states:

Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, *and respect the socio-political and administrative contexts* (emphasis added).

This point can be further pressed. Different regulatory systems can – and do – develop in countries with similar political contexts and constitutional traditions: compare for instance the regulation of direct lobbying in the United Kingdom with that of Canada.

Implicit in this insight is that there is no hierarchy of regulatory schemes. While the preceding discussion has classified regulatory schemes according to low, medium and high regulation, this classification is used analytically to understand different kinds of regulatory schemes. It is not used, in a normative sense, to imply that the more regulated the system, the better it is – that 'high regulation' systems are preferable to 'medium' and 'low' regulation systems; 'medium' regulation systems are preferable to 'low' regulation systems.

As Principle 2 of the OECD's Principles emphasises, the sounder approach is to begin by identifying the governance concerns related to direct lobbying as Part IV of the report has done by detailing the problems of direct lobbying in New South Wales. Devising regulatory responses to these problems should be based on an understanding of the menu of options – Parts V and VI which respectively explained the Australian regulation of direct lobbying and that existing in jurisdiction overseas were directed at this. All this sets the scene

⁴⁶¹ OECD, above n 21, 38, 46.

for a detailed evaluation of the New South Wales regulation of direct lobbying and the making of recommendations for reform – the part of the report that will now follow.

VIII AN EVALUATION OF NEW SOUTH WALES REGULATION OF DIRECT LOBBYING AND RECOMMENDATIONS FOR REFORM

A *Democratic Principles and the Problems of Direct Lobbying – A Case for Legal Regulation*

This report has identified the key democratic principles to govern direct lobbying:

- Protection of the integrity of representative government through transparency of government decision-making;
- Protection of the integrity of representative government through prevention of corruption and misconduct;
- Promoting fairness in government decision-making; and
- Respect for the political freedom to directly lobby.⁴⁶²

These principles allow us to clearly delineate the problems relating to direct lobbying:

- Secret lobbying;
- Lobbying involving the risk of corruption and misconduct, particularly conflicts of interest on the part of public officials due to receipt of payments including political donations; secondary employment; and the ‘revolving door’ between public officials and lobbyists; and
- Unfair access and influence through secrecy; political connections and power of the lobbyists and their advantages of wealth; patterns of public funding; preferential access and influence to ‘insiders’; and the ‘revolving door’ between public officials and lobbyists.

Analysis of the problems associated with direct lobbying provides a rejoinder to arguments that legal regulation of direct lobbying is unnecessary and that self-regulation by the lobbyists and those lobbied is adequate to serve the public interest.⁴⁶³

⁴⁶² See Part IV of the report.

⁴⁶³ See generally *ICAC Lobbying Report*, above n 17, 36-37.

Of course, it is not a matter here to choose one form of regulation over another: legal regulation over self-regulation or vice-versa. Self-regulation will *a/ways* have a place in ensuring that direct lobbying accords with democratic principles.⁴⁶⁴ Even when legal regulation predominates, self-regulation will determine whether those subjects to the laws of direct lobbying comply with an aim of advancing the purposes of these laws or do so with a view that such laws are illegitimate restrictions to be interpreted in the narrowest possible way.

Important as self-regulation may be, it has distinct limits when it comes to direct lobbying. Its effectiveness in preventing corruption and misconduct is highly questionable in light of the inappropriate and corrupt lobbying practices exposed by the investigations of ICAC and the Western Australian Crime and Corruption Commission.⁴⁶⁵ It is not surprising there is no systematic self-regulation by lobbyists, as there does not seem to be a professional body dedicated to lobbyists which issues and *enforces* standards of conduct.

Also, as ICAC has correctly noted '(t)he claim that lobbying is generally a "clean" and non-corrupt activity does not address the problem that lobbying at present remains closed and subject to various corrupt risks'.⁴⁶⁶ One need only ask: will lobbyists voluntarily disclose details of their lobbying activities? Further, self-regulation by lobbyists does little to promote fairness in government decision-making. On the contrary, it could be said that structural features of the lobbying industry tend to give rise to unfair access and influence. Direct lobbying by 'repeat players' is invariably a paid activity, which means that those who can pay more will secure more by way of lobbying services - it is not the principle of political equality that obtains, but the logic of the market. Also, key parts of the 'lobbying industry' trade on the political connections they have in selling their services. An examination by the ICAC of websites of commercial lobbyists concluded '(m)any boasted about the nature

⁴⁶⁴ See generally OECD, *Lobbyists, Governments and Public Trust: Volume 2* (OECD Publishing, 2012).

⁴⁶⁵ See Part V, Section B of the report.

⁴⁶⁶ See generally *ICAC Lobbying Report*, above n 466, 38.

and quality of their connections to, and contacts within, government'.⁴⁶⁷ Such a *modus operandi* easily leads to unfair access and influence due to political connections.

These serious limits to the self-regulation of direct lobbying point to the need for legal regulation. The question is: what kind of legal regulation?

B *Regulatory Goals*

This report focuses on the following regulatory instruments: the Register of Lobbyists which is principally aimed at disclosing the details of lobbyists and their activities; the Code of Conduct for Lobbyists which lays down norms of lobbying; and the codes of conduct applying to Ministers, Members of Parliaments and public servants which sets down norms of dealing with lobbyists and lobbying when it comes to public decision-making.

The benchmark for evaluating and designing these regulatory instruments comes from their goals. These regulatory goals can be derived from the democratic principles governing direct lobbying and the problems associated with it – see Table 13.

The goals identified in Table 13 suggest that the scope and impact of these regulatory instruments should be kept in perspective. These instruments do not – cannot – deal with the fair distribution of lobbying resources (public and private) which gives rise to problems of unfair access and influence; these instruments do not bring about the equitable distribution of public funding of non-government organisations, and addressing wealth inequality will require far more profound measures than regulation of direct lobbying.

Also, while these regulatory instruments can regulate how public officials behave once in office, they do not go to the crucial question of how these officials are selected, a point of significance when it comes to the relationship

⁴⁶⁷ *ICAC Lobbying Report*, above n 17, 20.

between the practices and culture of political parties and the individuals they choose for elected office.⁴⁶⁸

Another point of note in terms of the scope and impact of these regulatory instruments is that they are part of regulatory regime aimed at ensuring integrity of government, including laws providing for public participation and consultation in policy making; freedom of information laws; administrative law, election funding laws and laws specifically directed at corruption⁴⁶⁹ - they form part of a nation's 'ethics regime'.⁴⁷⁰

⁴⁶⁸ See text above accompanying nan 169-170.

⁴⁶⁹ OECD, above n 17, 23.

⁴⁷⁰ Ibid 47.

Table 13: Democratic Principles, Problems, and Regulatory Goals of Direct Lobbying

Democratic principles	Problems	Goals of the regulation of direct lobbying
To protect the integrity of representative government through transparency of government decision-making	Secrecy in terms of: <ul style="list-style-type: none"> • Who is lobbying; • The objectives of lobbying; • Who is being lobbied. 	To provide timely disclosure of: <ul style="list-style-type: none"> • Who is lobbying; • The objectives of lobbying; • Who is being lobbied.
To protect the integrity of representative government through prevention of corruption and misconduct	Lobbying involving the risks of corruption and misconduct – in particular through conflicts of interest due to receipt of payments including political donations; secondary employment; and the ‘revolving door’ between public officials and lobbyists.	To effectively manage conflicts of interest associated with direct lobbying To effectively address the problems arising from the ‘revolving door’ between public officials and lobbyists
To promote fairness in government decision-making	Unfair access and influence due to: <ul style="list-style-type: none"> • Secrecy; • Political connections and power; • Advantages of wealth; • Patterns of public funding; • Preferential access and influence to ‘insiders’; and • The ‘revolving door’ between public officials and lobbyists. 	To ensure government decision-making is not based on the wealth, resources or political connections and power of those lobbying
To respect political freedoms – particularly the freedom to directly lobby	Unfair access and influence constraining ‘freedom to’ directly lobby of the less advantaged	To ensure that any regulation does not place an undue burden on the ability to engage in direct lobbying

* * *

In November 2012, one of the co-authors of this report completed a comprehensive evaluation of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (EFED Act) for the NSWEC, *Establishing a Sustainable Framework for Election Funding and Spending Laws in New South Wales*.⁴⁷¹ Part IV of this report (extracted below) discussed the question of the objects of the EFED Act and recommended that the objects of this Act be statutorily recognised.

Amendments made to the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) have been consistent with this recommendation. These amendments insert section 4A into the EFED Act which provides as follows:

4A Objects of Act

The objects of this Act are as follows:

- (a) to establish a fair and transparent election funding, expenditure and disclosure scheme,
- (b) to facilitate public awareness of political donations,
- (c) to help prevent corruption and undue influence in the government of the State,
- (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,
- (e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

The amended section 22(2) of the EFED Act further provides that '(t)he

⁴⁷¹ This report is available on the NSW Electoral Commission's website at https://www.elections.nsw.gov.au/data/assets/pdf_file/0018/111591/20121113_Joo-Cheong_Tham_-_Establishing_A_Sustainable_Framework_for_Election_Funding_and_Spending_Laws_in_New_South_Wales_final_report.pdf (accessed on 28 July 2014).

Electoral Commission is to have regard to the objects of this Act in exercising its functions under the Act’.

The points made in Part IV concerning the importance of the objects for the EFED Act similarly apply to the *Lobbying of Government Officials Act 2011* (NSW). The objects of the latter Act should be the key democratic principles that should govern direct lobbying.

Recommendation One

The following should be statutorily recognised as the central objects of the *Lobbying of Government Officials Act 2011* (NSW):

- To protect the integrity of representative government through transparency of government decision-making;
- To protect the integrity of representative government through prevention of corruption and misconduct;
- To promote fairness in government decision-making; and
- To respect political freedoms - particularly the freedom to directly lobby.

Extracted from Joo-Cheong Tham, *Establishing A Sustainable Framework for Election Funding and Spending Laws in New South Wales (2012)*

IV THE CENTRAL OBJECTS OF ELECTION FUNDING AND SPENDING LAWS IN NEW SOUTH WALES

The EFED Act currently lacks a statement of its central objects - this is a remarkable omission. A statement of objects is vital as it provides the key rationales for the Act, paving the way for greater clarity, understanding and confidence on the part of the public. A statement also lays down clear benchmarks for evaluating the implementation and impact of the Act. Moreover, it guides the performance of functions by the responsible statutory agency, a matter that is of greater significance if – as is recommended by this report – the NSWEC is to be given increased legislative power.¹

This report proposes four central objects for the laws regulating election funding and spending in New South Wales:

- Protecting the integrity of representative government (including preventing corruption);
- Promoting fairness in politics;
- Supporting political parties to discharge their democratic functions; and
- Respecting political freedoms (in particular, freedom of political expression and freedom of political association).

These principles are relatively uncontroversial. In their key report, *Public Funding of Election Campaigns*, JSCEM recommended that these purposes be enshrined in the object clause of legislation reforming the electoral and political finance regime.² The NSW Electoral Commissioner has also

¹ See Part VI: Principles-based Legislation in Administration and Securing Compliance.

² Joint Standing Committee on Electoral Matters, Parliament of New South Wales, *Public Funding of Election Campaigns* (2010), 3.

endorsed these purposes,³ most recently in his submission to the current JSCEM's review of the PE & E Act and EFED Act.⁴

Recommendation 2: The following should be statutorily recognised as the central objects of New South Wales laws regulating election funding and spending:

- Protecting the integrity of representative government (including preventing corruption);
- Promoting fairness in politics;
- Supporting political parties to discharge their democratic functions; and
- Respecting political freedoms (in particular, freedom of political expression and freedom of political association).

³ See also Joint Standing Committee on Electoral Matters, above n2, 58-60.

⁴ See NSW Electoral Commissioner, Submission No 18 to the Joint Standing Committee on Electoral Matters, Parliament of New South Wales, *Review of the Parliamentary Electorates & Elections Act 1912 and the Election Funding, Expenditure and Disclosure Act 1981*, 12 June 2012, 71-73

<[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/e30620bfe58f1c13ca257a2200004a30/\\$FILE/ATTL703H.pdf/Submission%2018%20-%20Electoral%20Commission%20of%20NSW.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/e30620bfe58f1c13ca257a2200004a30/$FILE/ATTL703H.pdf/Submission%2018%20-%20Electoral%20Commission%20of%20NSW.pdf)> ('Submission of NSW Electoral Commissioner').

* * *

The next two sections of the report respectively evaluate the New South Wales Register for Lobbyists and the Code of Conduct for Lobbyists as provided for by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW). This is followed by an assessment of the codes of conduct that apply to New South Wales Ministers, Members of Parliament and public servants.

These evaluations will include a detailed analysis of the recommendations made by ICAC in its key report on lobbying, *Investigation into the Corruption Risks involved in Lobbying* which was published in 2010 (ICAC Lobbying Report).⁴⁷⁶ These recommendations were recently referred to by ICAC in its report, *Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources* – which predated the enactment of the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) – with ICAC observing that:

While some of the recommendations were adopted, most were not. The Commission's recommendations should be considered in their entirety as representing an integrated control system that allows third parties to determine who or what lobbied, for whom and for what purpose. Consequently, the Commission believes that the government should consider implementing the remaining recommendations.⁴⁷⁷

⁴⁷⁶ New South Wales Independent Commission Against Corruption, *Investigation into Corruption Risks involved in Lobbying* (2010). See also New South Wales Independent Commission Against Corruption, *Lobbying in NSW: An Issues Paper on the Nature and Management of Lobbying in NSW* (2010).

⁴⁷⁷ *Coal Resources Report*, above n 6, 44.

C *Evaluation of the Register of Lobbyists in New South Wales*

1 *Legal Source of the Register*

As discussed above, the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) provides the Register of Third-Party Lobbyists with a legislative underpinning through amendments to the *Lobbying of Government Officials Act 2011* (NSW). The current register takes effect through executive regulation – administrative arrangements put in place by the government of the day. The present situation reflects the norm in relation to the legal source of registers for lobbyists in Australia with all jurisdictions except for Queensland providing such registers through executive regulation.

The very first recommendation made in the ICAC Lobbying Report was for the NSW Government to enact ‘legislation to provide for the regulation of lobbyists, including the establishment and management of a new Lobbyists Register’⁴⁷⁸ - this report strongly endorses this recommendation.

A legislative basis for the Register of Lobbyists is essential for several reasons. The Register constitutes significant regulation of the political process and should be dealt with through legislation as are other public policy measures of significance. Parliamentary deliberation of such regulation – which is public – is far more preferable than discussion restricted to the executive branch of government, details which tend not to be made public. Both these circumstances are essential for the legitimacy of the register as the ability of the government of the day to change provisions relating to the register – provisions that regulate its decision-making processes – without a public debate put question-marks over the register’s legitimacy. Moreover, legislative underpinning of the Register facilitates conferral of the responsibility for compliance and enforcement on an independent agency which should preferably be done through statutory provisions.⁴⁷⁹ All of this conduces to increased effectiveness of the Register. As then Queensland

⁴⁷⁸ *ICAC Lobbying Report*, above n 17, 40.

⁴⁷⁹ See Part VIII, Section C.10.

Integrity Commissioner, Dr David Solomon stated in a submission to ICAC, which was a view endorsed by the Commission:

a regulatory system that relies on a series of Codes of Conduct, protocols, memoranda and directives will inevitably be less effective than a system that is based on and supported by legislation.⁴⁸⁰

Recommendation Two

The Register of Lobbyists in New South Wales should be underpinned by legislation, as provided for by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW).

2 Lobbyists Covered by the Register

Which lobbyists are covered by the Register of Lobbyists is a foundational question for the design of the register. The regulatory goal here is obvious - it is to provide disclosure of who is lobbying.

One approach is to require registration of all those who undertake direct lobbying - that undertaken on an ad-hoc basis and direct lobbying by 'repeat players'. The appeal of this approach is its clear and simple logic flowing from the goal of disclosing who is undertaking direct lobbying.

This better approach, however, is to restrict coverage to 'repeat players'. As the OECD report on *Lobbyists, Governments and Public Trust* emphasised, '(t)he primary target is *professional lobbyists* who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists'.⁴⁸¹

This targeted approach on 'repeat players' has key advantages. It avoids the undue burden on the 'freedom from' regulation of those engaged on ad-hoc lobbying that would result from requiring such individuals and groups to register given the intermittent nature of lobbying activity; 'repeat players', on

⁴⁸⁰ ICAC *Lobbying Report*, above n 17, 39.

⁴⁸¹ OECD, above n 21, 12 (emphasis original).

the other hand, should be able to bear the administrative burdens of registration given the regularity of their direct lobbying. Requiring those engaged in ad-hoc lobbying to be registered may also exacerbate unfairness in government decision-making as it may result in ad-hoc lobbying being stifled, with the effect that direct lobbying becomes the reserve of repeat players. Moreover, the transparency imperative in relation to ad-hoc lobbying can be served in ways other than registration, for instance, through the regular publication of ministerial diaries.⁴⁸² The transparency imperative is also far weightier in relation to the direct lobbying of 'repeat players' - they systematically influence the political process.

This report, therefore, recommends that the register of lobbyists cover all 'repeat players' – in particular professions, companies and interest groups that engage in direct lobbying and third party lobbyists.⁴⁸³

The current register and also the one provided for by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) are, however, restricted to one type of 'repeat player' - third party lobbyists. Such restrictive coverage fails to provide proper transparency of government decision-making in terms of direct lobbying by 'repeat players'. For instance, Dr David Solomon - when Queensland Integrity Commissioner - estimated that the Queensland regime which only extended to third party lobbyists covered 'only a small proportion – perhaps 20 per cent – of the corporate lobbying that does occur'.⁴⁸⁴ Such restrictive coverage also constitutes unfair treatment of third party lobbyists, as there is no justifiable basis for distinguishing their direct lobbying activities from those by other 'repeat players' (e.g. in-house lobbyists).

⁴⁸² See text below accompanying nn 622-623.

⁴⁸³ See Part III, Section B.

⁴⁸⁴ Dr David Solomon, Queensland Integrity Commissioner, 'Ethics, Government and Lobbying' (Speech delivered at a seminar conducted by Transparency International, Brisbane, 21 June 2013) 5

<http://www.integrity.qld.gov.au/library/document/catalogue/speeches-articles/ethics_government_and_lobbying_dr_solomon.pdf>.

In broadening the coverage of the Register beyond third party lobbyists, the Canadian approach provides one way forward. The Canadian Lobbyists Register covers professional lobbyists *and* any individual who, in the course of his or her work for a client, communicates with or arranges meetings with a public office holder – it covers both third party lobbyists and in-house lobbyists.⁴⁸⁵

Another option is to adopt the recommendations of ICAC for the Register of Lobbyists to cover third party lobbyists⁴⁸⁶ *as well as* lobbying entities which are defined as bodies corporate, unincorporated associations, partnerships, trusts, firms or religious or charitable organisations that engage in a lobbying activity on their own behalf.⁴⁸⁷

Recommendation Three

The New South Wales register of lobbyists should cover all ‘repeat players’ – in particular professions, companies and interest groups that engage in direct lobbying and third party lobbyists.

The British Nolan Committee on Standards in Public Life argued that developing a public register of lobbyists may dangerously give the impression that the only way to approach a Member of Parliament successfully is through a registered lobbyist.⁴⁸⁸

To establish a public register of lobbyists would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access.

⁴⁸⁵ *Lobbying Act* (R.S.C., 1985, c 44 (4th Supp) (Canada) ss 5-7.

⁴⁸⁶ ICAC defines ‘third party lobbyist’ as ‘(a) person, body corporate, unincorporated association, partnership, trust or firm who or which is engaged to undertake a Lobbying Activity for a third party client in return for payment or the promise of payment for that lobbying: *ICAC Lobbying Report*, above n 17, 48.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ Committee on Standards in Public Life, above n 93, 36.

It is not easy, however, to see why *requiring* registration is likely to create the perception that registered lobbyists are gate-keepers to government decision-making. Even so, the risk can be easily be dealt with by making clear in legislative provisions establishing the Register that it does not prohibit direct lobbying not covered by the Register.⁴⁸⁹

Recommendation Four

The legislative provisions establishing the New South Wales Register of Lobbyists should explicitly state that the Register does not prohibit direct lobbying not covered by it.

3 Public Officials Covered by the Register

The regulatory goal under this heading is to cover who is being lobbied. The earlier discussion on public officials potentially subject to direct lobbying made the point that there will be a range of public officials who will be lobbied in both legislative and executive branches of government: Ministers, ministerial advisers, Members of Parliament especially those with significant power (e.g. Shadow Ministers; MPs holding balance of power) and public servants.⁴⁹⁰ This report recommends that the Register of Lobbyists cover all of these public officials.

This is a broader approach than that recommended in the ICAC Lobbying Report. That report recommended that the definition of ‘Government representative’ in the current Code be retained as delineating which public officials are covered. That definition defines ‘Government representative’ as:

A minister, parliamentary secretary, ministerial staff member or person employed, contracted or engaged in a public sector agency (a division of the government service as defined in section 4A of the Public Sector Employment and Management Act 2002), other than staff employed under section 33 of the Public Sector Employment and Management Act 2002.

⁴⁸⁹ See Chari, Hogan and Murphy, *Regulating Lobbying: A Global Comparison*, above n 342, 7.

⁴⁹⁰ See Part III, Section C.

While this report is recommending the inclusion of Members of Parliaments who are not ministers or parliamentary secretaries, the ICAC Lobbying Report recommended *against* such an inclusion. In its words:

The definition (of ‘Government Representative’) does not include a non-executive member of parliament (MP). There are constitutional reasons for not attempting to regulate the circumstances of their contact with the community. More importantly, while MPs may lobby actively, they do not have executive power with which to make decisions.⁴⁹¹

There are flaws in the reasoning found in this paragraph. It is true that non-executive Members of Parliament do not – by definition – exercise executive power but they certainly exercise legislative power. In any event, coverage should not be restricted to those who *exercise executive power* but *those involved in government decision-making*. Further, the constitutional reasons for not regulating the contact of Members of Parliament with the community are unclear as they are not specified. It is also not apparent why there should be constitutional difficulties with regulation, given that laws exist that seek to address the conflicts of interest Members of Parliament may have in performing their public functions – notably, the laws relating to pecuniary interests of Members of Parliament – and the Tasmanian register covers *all* Members of Parliament of the governing party and the Queensland regime extends to the Opposition Leader (and her or his staff) as well as the Deputy Opposition Leader.⁴⁹²

The Register of Lobbyists established by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) covers Ministers, Parliamentary Secretaries, public service agency heads, public servants, ministerial staff, electorate officers, employees of the transport service and members of statutory bodies (local government officials are, however, not included within the scope of the scheme).⁴⁹³ Like the approach

⁴⁹¹ ICAC Lobbying Report, above n 17, 50.

⁴⁹² See Table 3 above.

⁴⁹³ See definition of ‘government official’ in newly-inserted section 3 of the *Lobbying of Government Officials Act 2001* (NSW).

taken in the ICAC Lobbying Report, such coverage falls short of what is recommended by this report in that it does not include Members of Parliament.

Recommendation Five

‘Government representative’ under the register should be defined as a New South Wales minister, parliamentary secretary, ministerial staff, Member of Parliament and public servant.

4 *Lobbying Activities Covered by the Register*

The Register of Third-Party Lobbyists established by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) defines ‘lobbying’ as:

communicating with Government officials for the purpose of representing the interests of others, in relation to legislation/proposed legislation or a current/proposed government decision or policy, a planning application or the exercise by Government officials of their official functions.⁴⁹⁴

This definition is very similar to that recommended in the ICAC Lobbying Report.⁴⁹⁵

In essence, this definition of ‘lobbying’ is based on the notion of lobbying as advocacy. Lobbying activities, however, go far beyond advocacy and include various other activities associated with advocacy including monitoring, research, strategic analysis, gaining access to public officials and maintaining good relationships with such officials.⁴⁹⁶ Given this, ‘lobbying’ should be defined as:

‘communicating with Government officials for the purpose of representing the interests of others, in relation to legislation/proposed legislation or a current/proposed government decision or policy, a planning application or the

⁴⁹⁴ *Lobbying of Government Officials Act 2001* (NSW) s 4.

⁴⁹⁵ *ICAC Lobbying Report*, above n 17, 49-50.

⁴⁹⁶ See Part III, Section A of the report.

exercise by Government officials of their official functions *and activities associated with such communication*'.

Recommendation Six

'Lobbying' under the New South Wales Register of Lobbyists should be defined as 'communicating with Government officials for the purpose of representing the interests of others, in relation to legislation/proposed legislation or a current/proposed government decision or policy, a planning application or the exercise by Government officials of their official functions and activities associated with such communication'.

5 *Obligations on Lobbyists Covered*

Under the laws of direct lobbying, lobbyists will be subject to two key sources of obligations: those under the Register of Lobbyists and those imposed under the Code of Conduct. The former principally comprise duties of disclosure whilst duties under the Code will tend to go towards how direct lobbying is conducted.

With the duties of disclosure under the Register, several regulatory goals are relevant. The principle of transparency of government decision-making requires provide timely disclosure of:

- Who is directly lobbying;
- The objectives of such lobbying; and
- Who is being directly lobbied.

The OECD report on *Lobbyists, Government and Public Trust* has similarly emphasised that the core disclosure requirements of a register for lobbyists should elicit information that:

- Captures the intent of the lobbying activity;
- Identifies its beneficiaries; and
- Points to those offices and institutions that are its targets.⁴⁹⁷

⁴⁹⁷ OECD, above n 21, 58-72.

Also relevant is the goal of effectively managing the conflicts of interest associated with direct lobbying, a goal that suggests timely disclosure of political donations made by lobbyists. In addition, the principle of fair government decision-making would imply disclosure of resources devoted to lobbying – both direct and indirect – so there is information to evaluate the extent to which this principle is being observed. Finally, dealing with the problems arising from the ‘revolving door’ between public officials and lobbyists would suggest disclosure as to whether a lobbyist was a former public official.

Two overriding principles should also apply to these duties of disclosure. First, these duties should provide meaningful information;⁴⁹⁸ this principle counsels against disclosure requirements that result in ‘information overload’.⁴⁹⁹ As ICAC has noted, the ‘provision of excessive information or “dumping” was not a transparency act, and could have the opposite effect’.⁵⁰⁰ Second, the duty should be to make timely disclosure. As the OECD report on *Lobbyists, Government and Public Trust* rightly stressed ‘(t)o serve the public interest, disclosure must be made and updated in a *timely fashion*’.⁵⁰¹

The following analysis examines these regulatory goals in turn.

(a) *Disclosure of Who is Lobbying*

This set of duties of disclosure arises at two levels: general details required by the Register in relation to lobbyists and particulars required in relation to specific lobbying activity.

The ICAC Lobbying Report dealt with the issues at the first level in this way:

The register would consist of two panels; one where a third party lobbyist must register and identify the clients they represent; and one where each lobbying entity must register, declaring its name but not identifying individual officers,

⁴⁹⁸ Ibid 57.

⁴⁹⁹ Ibid 28.

⁵⁰⁰ *ICAC Lobbying Report*, above n 17, 56.

⁵⁰¹ OECD, above n 21, 79 (emphasis original).

lobbyists or owners.⁵⁰²

Whilst there are convincing reasons given in the ICAC report as to why it was not recommending that individuals who lobby be disclosed either by third party lobbyists or lobbying entities,⁵⁰³ it is not clear why the requirement to disclose the owners and/or key officers which applies to third party lobbyists should not be applied more broadly. As far as practicable, there should be parity of treatment between 'third party lobbyists' and 'lobbying entities'; otherwise, there is a risk of unfair treatment of lobbyists subject to more onerous requirements (third-party lobbyists in this case).

Recommendation Seven

All lobbyists covered by the New South Wales Register of Lobbyists should disclose the names and details of their owners and/or key officers.

The second set of issues relate to the particulars required in relation to specific lobbying activity. The ICAC Lobbying Report dealt with this set of issues through Recommendation 8:

Both Third Party Lobbyists and Lobbying Entities would disclose on the register the month and year in which they engaged in a Lobbying Activity, the identity of the government department, agency or ministry lobbied, the name of any Senior Government Representative lobbied, and, in the case of Third Party Lobbyists, the name of the client or clients for whom the lobbying occurred, together with the name of any entity related to the client the interests of which did derive or would have derived a benefit from a successful outcome of the lobbying activity.⁵⁰⁴

It should be noted here that the definition of 'Lobbying Activity' adopted in the ICAC Lobbying Report is based on lobbying as advocacy and does not extend to the various activities associated with lobbying as advocacy.⁵⁰⁵

⁵⁰² ICAC Lobbying Report, above n 17, 52.

⁵⁰³ Ibid 56.

⁵⁰⁴ Ibid 57.

⁵⁰⁵ See text above accompanying nn 494-496.

This report endorses this recommendation save in two respects. The first are concerns of restricting this requirement to 'Senior Government representatives', which will be discussed later.⁵⁰⁶

The other relates to the requirement that third party lobbyists disclose 'the name of any entity related to the client the interests of which did derive or would have derived a benefit from a successful outcome of the lobbying activity'. This requirement is aimed at identifying the beneficiaries of lobbying. As the OECD report on *Lobbyists, Government and Public Trust* observed '(w)hile registration identifies lobbyists themselves, it does not **shed much light on those who benefit**'.⁵⁰⁷

This requirement that applies to third party lobbyists is not appropriate to apply to lobbying entities given that it is predicated on a client-lobbyist relationship. What can, however, apply to *all lobbyists* is a requirement to disclose details of those who have financially contributed (in money or in-kind) to their lobbying activity⁵⁰⁸ - see Recommendation Eight below.

(b) Disclosure of the Objectives of Lobbying

The objectives of direct lobbying are clearly of relevance and importance in terms of the transparency of government decision-making. There is, however, the challenge of eliciting meaningful information from requirements to disclose such objectives.⁵⁰⁹

It was the stubbornness of this challenge – especially in relation to the Canadian experience - that prompted ICAC to recommend *against* the subject matter of lobbying being included in the Register of Lobbyists; its view was that the *Government Information (Public Access) Act 2009* (NSW) be used as

⁵⁰⁶ See text below accompanying nn 514-516.

⁵⁰⁷ OECD, above n 21, 59.

⁵⁰⁸ See OECD, above n 21, 59-68.

⁵⁰⁹ OECD, above n 21, 69.

the avenue for seeking further information regarding the objectives of direct lobbying.⁵¹⁰

By comparison, the Queensland regime governing direct lobbying requires third-party lobbyists to provide to the Queensland Integrity Commissioner on a monthly basis details of their 'lobbying activities' - where 'lobbying activities' is defined as:

contact with a Government representative in an effort to influence State or local government decision-making, including the making or amendment of legislation; the development or amendment of a government policy or program; the awarding of a government contract or grant; the allocation of funding; and the making of a decision about planning or giving of a development approval under the Sustainable Planning Act 2009.⁵¹¹

Included in the required details is information as to the purpose of the contact, with third-party lobbyists having the following menu of options to nominate from:

- Making or amendment of legislation;
- Development or amendment of a government policy or program, awarding of government contract or grant;
- Allocation of funding;
- Making a decision about planning or giving of a development approval under the *Sustainable Planning Act 2009* (Qld);
- Commercial-in-confidence; and
- Other.⁵¹²

This disclosure requirement is susceptible to the criticism that it results in vague information. It also has two other weaknesses: it presumes that the lobbying contact has a singular purpose ('the purpose of the contact') when a contact can have multiple purposes, which will not be fully revealed through

⁵¹⁰ *ICAC Lobbying Report*, above n 17, 54.

⁵¹¹ *Integrity Act 2009* (Qld) s 42(1).

⁵¹² *Lobbyists Code of Conduct Queensland*, above n 112, cl 4(f).

this requirement; the catch-all option of ‘commercial-in-confidence’ may easily allow avoidance of full disclosure.

Adaptation of the Queensland system can, however, bring about more meaningful information in relation to the objectives of lobbying – see Recommendation Eight below.

Rather than being asked to nominate ‘the purpose of the contact’, lobbyists should be required to state whether the purposes of the contact *include*: the making or amendment of legislation; development or amendment of a government policy or program; awarding of government contract or grant; allocation of funding; making a decision about planning or giving of a development approval under the New South Wales planning laws.

If the disclosed purposes of the contact include the making or amendment of legislation, or the development or amendment of a government policy or program, lobbyists should be required to specify the relevant legislation, policy or program. A similar requirement exists under US federal regulation of direct lobbying.⁵¹³

If the disclosed purposes of the contact include the award of a government contract or grant, allocation of funding, making a decision about planning or giving of a development approval under the New South Wales planning laws, lobbyists should be required to specify the relevant contract, grant or planning/development decision unless these details are ‘commercial-in-confidence’.

This recommended system of monthly disclosure of contacts involving direct lobbying will require lobbyists to provide specific information as well as provide protection of ‘commercial-in-confidence’ where appropriate.

⁵¹³ Office of the Clerk, *Lobbying Disclosure Act Guidance* (17 June 2014), US House of Representatives <http://lobbyingdisclosure.house.gov/amended_lda_guide.html>; *Public Disclosure Law*, 42.17A Wash Rev Code §615 (2012).

(c) *Disclosure of Who is being Lobbied*

The recommendation of the ICAC Lobbying Report as to the disclosure of details of lobbyists' contact with public officials restricted this requirement of identities of those lobbied to 'Senior Government representatives' (see above). A 'Senior Government representative' was defined as '(a) minister, parliamentary secretary, ministerial staff member or division head referred to in Schedule 1 of the Public Sector Employment and Management Act 2002, and members of the senior executive service, as defined in the Public Sector Employment and Management Act 2002'.⁵¹⁴

The ICAC Lobbying Report explained the definition of 'Senior Government representatives' in this way:

The purpose of this definition is to identify those public officials who are most likely to be either the decision-makers or, in the case of ministerial staff and members of the senior executive service, primarily involved in advising the principal decision-makers. These are the persons most likely to be lobbied; consequently it is lobbying of them that requires greater transparency.⁵¹⁵

What is said in this paragraph is true and provides strong justification for the disclosure of the identities of 'Senior Government representatives'. It, however, does *not* justify exempting other 'Government representatives' from this disclosure requirement. Other 'Government representatives' – those not employed at the higher levels of government - should also be subject to this disclosure requirement as they too can be directly lobbied when they are the key decision-makers. A vivid example is provided by Operation Cabot which investigated the conduct of Edward Obeid and others in relation to the grant of water licences at Cherrydale Park; in this case, the water licences were granted by licensing officers at the New South Wales Department of Water and Energy who would not have been 'Senior Government representatives'.⁵¹⁶

⁵¹⁴ ICAC Lobbying Report, above n 17, 50.

⁵¹⁵ Ibid 51.

⁵¹⁶ See *Water Licences Report*, above n 56, ch 4.

Recommendation Eight

All lobbyists covered by the New South Wales register of lobbyists should disclose on a monthly basis:

- the month and year in which they engaged in a contact with a Government representative involving lobbying;
- the identity of the government department, agency or ministry lobbied;
- the name of any Government representative/s lobbied;
- whether the purposes of any contact with Government representatives involving lobbying included:
 - the making or amendment of legislation;
 - the development or amendment of a government policy or program;
 - the awarding of government contract or grant;
 - the allocation of funding; or
 - the making a decision about planning or giving of a development approval under the New South Wales planning laws;
- details of the relevant legislation, policy or program if the disclosed purposes of the contact involving direct lobbying included the making or amendment of legislation, or the development or amendment of a government policy or program;
- details of the relevant contract, grant or planning/development decision if the disclosed purposes of the contact included the award of a government contract or grant, allocation of funding, making a decision about planning or giving of a development approval under the New South Wales planning laws unless these details are 'commercial-in-confidence';
- identities of any individual or entity who has financially contributed to their lobbying; and

in the case of Third Party Lobbyists, the name of the client or clients for whom the lobbying occurred, together with the name of any entity related to the

client the interests of which did derive or would have derived a benefit from a successful outcome of the lobbying activity.

(d) Disclosure of Political Donations Made by Lobbyists

Political donations made by lobbyists directly to Government representatives give rise to a conflict of interest and a corruption risk.⁵¹⁷ As will be recommended below, such donations should be banned.⁵¹⁸

What about donations made by lobbyists to political parties, especially those of elected officials? As was shown in Appendix Four, many third-party lobbyists donate substantial amounts to the major political parties.

The ICAC Lobbying Report recommended *against* requiring lobbyists to disclose their political donations to political parties, amongst other requirements, because such information was available from the New South Wales Election Funding Authority.⁵¹⁹

This conclusion was, however, reached in the context of the recommendation that the New South Wales Information Commissioner be given the responsibility for administering the Register of Lobbyists.⁵²⁰ The *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW), on the other hand, confers this responsibility on the NSWEC (which will be reconstituted so that it assumes the functions of the New South Wales Election Funding Authority which will be abolished). This means that the same body – the NSWEC – will be responsible for administering the Register of Lobbyists under the *Lobbying of Government Officials Act 2011* (NSW) and the disclosure scheme in relation to political donations under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). This allows for the integration of the details disclosed under the Register of Lobbyists with information relating to political donations so as to better enable the detection

⁵¹⁷ See text above accompanying nn 102-108.

⁵¹⁸ See Recommendation Seventeen below.

⁵¹⁹ *ICAC Lobbying Report*, above n 17, 54.

⁵²⁰ *Ibid* 38.

of possible conflicts of interest due to political donations made by lobbyists. Such integration would clearly advance a key object of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) - 'to facilitate public awareness of political donations'.⁵²¹

Recommendation Nine

The NSWEC should integrate information on political donations made by lobbyists into the Register of Lobbyists.

(e) *Disclosure of Resources Devoted to Lobbying*

The ICAC Lobbying Report recommended *against* lobbyists being required to disclose resources devoted to lobbying. The key paragraph explaining this conclusion follows:

The Commission has formed the view that, however useful in other ways, to require that information would not be consistent with the goal of rendering the content of lobbying activity transparent by regulation. The public declaration of monies spent would not (in the Australian context) hamper corrupt payments, if there is intent to make them. Such corrupt conduct must be detected in other ways.⁵²²

The difficulty with this view is that it fails to take transparency of government decision-making as governing principle, being more narrowly based on transparency of the *content* of lobbying activity; the former is more demanding and would imply making public how much money is being spent on influencing government decision-making including monies spent on lobbying. The doubts as to the utility of disclosing details of expenditure on lobbying in preventing corruption are also odd. As the OECD report on *Lobbyists, Government and Public Trust* put it, it is 'a reasonable assumption' that the 'the level of expenditure on lobbying (is correlated) with the prize to be won'.⁵²³ While cautioning against exaggerating the value of disclosure of lobbying

⁵²¹ Section 4(b) inserted by *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) sch 2 para 4.

⁵²² ICAC *Lobbying Report*, above n 17, 54.

⁵²³ OECD, above n 21, 60.

expenditure,⁵²⁴ the OECD report recommended that disclosure requirements include disclosure of the fees involved in lobbying and expenditure on direct and indirect lobbying (e.g. ‘grassroots’ campaigns).⁵²⁵ This view should be adopted.

The United States federal and Washington State regimes are examples of jurisdictions with detailed spending disclosure. It is a requirement in the both jurisdictions that lobbying firms disclose the total amounts of income received from their clients for lobbying activities and third party lobbyists disclose the total expenses incurred in connection with lobbying activities.⁵²⁶ In Washington State, there are additional requirements for lobbyists and lobbyists’ employers to disclose monthly reports showing the identities of those entertained, provided gifts and contributed to and the amounts involved, as well as amounts spent on political advertising, public relations, telemarketing, polling, or similar activities if the activities, directly or indirectly, are intended, designed, or calculated to influence legislation or the adoption or rejection of a rule, standard, or rate by an agency under the *Administrative Procedure Act*.⁵²⁷

Recommendation Ten

Lobbyists covered by the New South Wales Register of Lobbyists should be required to disclose how much they have spent on their lobbying activities.

(f) *Disclosure of Whether Lobbyists are Former Public Officials*

Such disclosure assists in identifying possible conflicts of interest and counteracting unfair access and influence due to the ‘revolving door’ between public officials and lobbyists.⁵²⁸ The requirement under the Commonwealth Lobbying Code of Conduct that lobbyists disclose whether they are a former

⁵²⁴ Ibid 67.

⁵²⁵ Ibid 27-28.

⁵²⁶ Office of the Clerk, *Lobbying Disclosure Act Guidance* (17 June 2014), US House of Representatives <http://lobbyingdisclosure.house.gov/amended_lda_guide.html>; *Public Disclosure Law*, 42.17A Wash Rev Code §§615, 630 (2012).

⁵²⁷ *Public Disclosure Law*, 42.17A Wash Rev Code §§615, 630 (2012).

⁵²⁸ See text above accompanying nn 120-125, 196-202.

Government representative and when they became so should be adopted in New South Wales.⁵²⁹

Another measure warranting adoption is the publication of the list of former Government representatives who are subject to restrictions and the period of these restrictions on a website. This is done at the United States federal level, where the Clerk of the House or Senate publishes the names of former Government representatives and the period of the restriction that apply to them on a website.⁵³⁰

Recommendation Eleven

- Lobbyists covered by the New South Wales Register of Lobbyists should be required to disclose whether they are a former Government representative and if so, when they left their public office.
- A list of former New South Wales Government representatives subject to restrictions relating to direct lobbying and the period of these restrictions should be published on the website of the New South Wales Register of Lobbyists.

⁵²⁹ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 5.1 (a)(iii).

⁵³⁰ *Honest Leadership and Open Government Act of 2007* (US) ss 101, 531.

6 *Obligations on public officials covered*

The principal obligation of public officials under the current Register of Lobbyists is simple and significant: 'A Government Representative shall not at any time permit lobbying by . . . a Lobbyist who is not on the Register of Lobbyists'.⁵³¹ This position should be maintained with no other significant obligation imposed on public officials under the Register. In the main, the Register should impose obligations on the lobbyists it covers, with the policing of these obligations resting upon the compliance and enforcement agency, the NSWEC.

The obligation on public officials not to permit lobbying by unregistered lobbyists covered by the Register of Lobbyists should be enshrined in legislation rather than provided for through executive regulation (including codes of conduct) - this obligation is a cornerstone of the Register. As Recommendation 7 of the ICAC Lobbying Report provided:

The Commission recommends that the legislation, enacted in accordance with Recommendation 1 of this report, includes a provision that a Government Representative not permit any Lobbying Activity by a Third Party Lobbyist or any person engaged by a Lobbying Entity, unless the Third Party Lobbyist or the Lobbying Entity is registered on the proposed Lobbyists Register.⁵³²

Recommendation Twelve

The obligation on public officials not to permit lobbying by lobbyists not covered by the Register of Lobbyists should be established in legislation.

7 *Prohibitions on Who can Act as a Lobbyist*

The prohibitions on who can act as a lobbyist under the Register of Lobbyists should be viewed together with prohibitions on particular kinds of lobbying

⁵³¹ *NSW Lobbyist Code of Conduct*, above n 145, cl 4.1(a).

⁵³² *ICAC Lobbying Report*, above n 17, 57.

activity. Both are significant restrictions on 'freedom from' regulation in relation to lobbying and therefore require strong justifications.

Such justifications, however, are not to be found with the principle of transparency of government decision-making as these restrictions are not disclosure requirements. They are to be found – if all – with the principle of protecting the integrity of representative government through preventing corruption and undue influence; and the principle of promoting fairness in government decision-making and their regulatory goals.

There are, however, key differences with the prohibitions on who can act as a lobbyist and prohibitions on particular kinds of lobbying activity. Prohibitions on *who* can act as a lobbyist should be justified on the basis that specified groups of persons (or the positions they occupy) pose a strong risk of illegitimate lobbying whereas prohibitions on lobbying *activities* should be justified on the ground that particular kinds of lobbying pose such a risk; the former prohibitions also impose a more severe restriction on 'freedom from' than the latter.

Under the amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW), the prohibitions on who can act as a lobbyist is found in section 9(3) of *Lobbying of Government Officials Act 2011* (NSW), which provides as follows:

A third-party lobbyist (or any individual so engaged) is not eligible to be registered if the person is an officer of a registered political party, is not a fit and proper person to be registered or is otherwise ineligible under regulations to be registered.

The prohibition relating to those who are not fit and proper persons is appropriate as there should be a 'good character' test in relation to who can become a registered lobbyist.⁵³³

The prohibition relating to officers of a registered political party mirrors the current provisions obliging the Director-General of the New South Wales Department of Premier and Cabinet not to include the name of an individual on the Register unless s/he provides a statutory declaration that s/he 'is not occupying or acting an office or position concerned with the management of registered political party'.⁵³⁴ A similar provision exists under the Commonwealth Lobbying Code of Conduct.⁵³⁵

The reasoning for this prohibition seems to be that there is a strong risk that a political party official lobbying Government representatives on behalf of third parties may exploit her or his political connections and power, thereby giving rise to the unfair access and influence and a perceived conflict of interest on the part of Government representatives. This risk is real *but* only when party officials of the party or coalition in power lobby Government representatives. For instance, there is no or minimal risk of inappropriate lobbying in this context when officials of the Australian Labor Party lobby Coalition government ministers or when officials of the New South Wales Greens, Christian Democratic Party or the Shooters and Fishers Party lobby these Ministers. As the ICAC Lobbying Report put it:

The risk of preference or its perception, and the risk to an MP that is dependent on the party for pre-selection or ministerial position, suggest that party officials should never be involved in lobbying *members of their own government* in an interest. In this regard, any lobbying done by a party office in an interest, other than an interest of the party machine itself, would and does, raise suspicion.⁵³⁶

⁵³³ This is broader than the more limited prohibition under current register of being sentenced to 30 months or more; or convicted in the last ten years of an offence which had dishonesty as one of its elements: *NSW Lobbyist Code of Conduct*, above n 145, cl 8.1(a)-(b).

⁵³⁴ *NSW Lobbyist Code of Conduct*, above n 145, cl 8.1(c).

⁵³⁵ *Commonwealth Lobbying Code of Conduct*, above n 146, cl 10(c).

⁵³⁶ *ICAC Lobbying Report*, above n 17, 52 (emphasis added).

The current prohibition is, therefore, over-inclusive and should be narrowed.

Recommendation Thirteen

The provision rendering officers of registered political parties ineligible for registration should be narrowed to officers of the governing political parties.

For comprehensiveness, it should be added that the website of the current Register provides the following:

Separation of lobbying activities from executive decision-making by political parties

On and from 31 October 2013, the Lobbyist Code prohibits individuals occupying or acting in an office or position concerned with the management of a registered political party from being included on the Lobbyist Register.

*Owners, partners, major shareholders or other individuals involved in the management of the business of the Lobbyist will be similarly prohibited.*⁵³⁷

The status of prohibition stated in the last sentence is very unclear: it is not found in the current Register and Code; on the contrary, the current Register provides details of the owners of registered lobbyists. Moreover, this prohibition comes under the heading of ‘Separation of lobbying activities from executive decision-making by political parties’ when it does nothing of that sort. More fundamentally, the justification for this prohibition is not clear. This prohibition should *not* be enacted under the Register to be established as a result of the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW).

⁵³⁷ Barry O’Farrell, ‘M2013-11 NSW Lobbyist Code of Conduct’ (Memorandum No M2013-11, Department of Premier and Cabinet, New South Wales, 29 October 2013) <http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2013/m2013-11_nsw_lobbyist_code_of_conduct>.

8 *Prohibitions on Certain Lobbying Activities*

The *Lobbying of Government Officials Act 2011* (NSW) presently criminalises two types of lobbying activity:

- those involving a success fee; and
- lobbying by former Ministers and Parliamentary Secretaries in relation to the official matters they dealt with in the 18 months prior to their ceasing to hold office as a former Minister or Parliamentary Secretary during the “cooling-off” period, which is presently 18 months after the former Minister or Parliamentary Secretary ceasing to hold office.⁵³⁸

This report takes the view that there should be a ban on success fees. It agrees with the following statements made in the ICAC Lobbying Report:

success fees (pose) a corruption risk, irrespective of whether they are in the nature of a contingency fee or a bonus. This is because both are dependent on the lobbyist achieving a successful outcome. The risk exists because an unscrupulous lobbyist may be encouraged to use corrupt means to gain a favourable lobbying outcome in order to obtain payment.⁵³⁹

Consequently, it agrees with Recommendation 12 of the ICAC Lobbying Report:

The Commission recommends that the new lobbying regulatory scheme includes a prohibition of the payment to or receipt by lobbyists of any fee contingent on the achievement of a particular outcome or decision arising from a Lobbying Activity.⁵⁴⁰

The post-separation ban found under the *Lobbying of Government Officials Act 2011* (NSW) is justified by the corruption risks attending the ‘revolving door’ between public officials and lobbyists. As the ICAC Lobbying Report stated:

⁵³⁸ See text above accompanying nn 241-246.

⁵³⁹ *ICAC Lobbying Report*, above n 17, 60.

⁵⁴⁰ *Ibid* 60.

Two corruption risks arise from former public officials becoming lobbyists: relationships they developed with other public officials may be used to gain an improper or corrupt advantage; and confidential information, to which they had access while public officials, may also be used to gain such an advantage.⁵⁴¹

Recommendation 11 of the ICAC Lobbying Report deals with these risks:

The Commission recommends that, consistent with restrictions currently contained in the Australian Government Lobbying Code of Conduct, the proposed lobbying regulatory scheme includes provisions that former ministers and parliamentary secretaries shall not, for a period of 18 months after leaving office, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 18 months in office. The Commission also recommends that former ministerial and parliamentary secretary staff and former Senior Government Representatives shall not, for a period of 12 months after leaving their public sector position, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 12 months in office.⁵⁴²

While the part of the recommendation dealing with former Ministers and Parliamentary Secretaries has been adopted through the ban in the *Lobbying of Government Officials Act 2011* (NSW), this is not so with the part of the recommendation dealing with former ministerial and parliamentary secretary staff and former Senior Government representatives. This is in contrast with the position in most Australian jurisdictions.⁵⁴³ A post-separation ban on former ministerial and parliamentary secretary staff and former Senior Government representatives should be enacted.

It should be emphasised that these bans should operate upon the broader definition of 'lobbying' as recommended by this report. This approach defined 'lobbying' as 'communicating with Government officials for the purpose of representing the interests of others, in relation to legislation/proposed

⁵⁴¹ Ibid 58.

⁵⁴² Ibid 60.

⁵⁴³ See Table 3 above.

legislation or a current/proposed government decision or policy, a planning application or the exercise by Government officials of their official functions and *activities associated with such communication*' (see Recommendation Six above). Having the post-separation bans operate upon this definition means that former Government representatives who are subject to these bans will not only be prohibited from lobbying through advocacy but also from undertaking various other activities associated with such lobbying including providing strategic advice.

Should these prohibitions on success fees and post-separation employment take the form of criminal offences? This report argues in the negative. Criminal penalties are not only disproportionate but risk being ineffective given the costs and demanding burden of proof involved in criminal proceedings. These prohibitions should be part of the Code of Conduct for Lobbyists and subject to the range of penalties available for breaches of this Code (including penalty notices).⁵⁴⁴

Recommendation Fourteen

- The criminal prohibitions under the *Lobbying of Government Officials Act 2011* (NSW) relating to success fees and post-separation employment of former Ministers and Parliamentary Secretaries should be repealed.
- In its place, the Code of Conduct for Lobbyists should prohibit:
 - success fees;
 - former ministers and parliamentary secretaries from engaging in any lobbying relating to any matter that they had official dealings with in their last 18 months in office for a period of 18 months after leaving office; and
 - former ministerial and parliamentary secretary staff and former Senior Government representatives from engaging in any lobbying relating to any matter that they had official dealings

⁵⁴⁴ See text below accompanying nn 545-546.

with in their last 12 months in office for a period of 12 months after leaving office.

9 Penalties for Breaching Obligations

There should be a spectrum of penalties for breaching obligations under the Register of Lobbyists.⁵⁴⁵ The amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) go some way towards providing such a spectrum.

In terms of penalties that can be imposed by the NSWEC in response to breaches of obligations under the Register of Lobbyists and the Lobbyists Code of Conduct, the Commission can cancel or suspend the registration of a lobbyist.⁵⁴⁶ In addition, newly inserted section 12 of the *Lobbying of Government Officials Act 2011* (NSW) establishes a Lobbyists Watch List. This section provides as follows:

12 Lobbyists Watch List

- (1) The Electoral Commission is to maintain (subject to the regulations) a Lobbyists Watch List that contains the names and other identifying details of any third-party or other lobbyist whom the Electoral Commission determines should be placed on the Lobbyists Watch List because of contraventions of the Lobbyists Code or of this Act.
- (2) Any code of conduct or other official rules applying to Government officials may include special procedures for communication by the officials with lobbyists on the Lobbyists Watch List.
- (3) The Lobbyists Watch List is to be published on the website maintained by the Electoral Commission on which the Lobbyists Register is published.
- (4) The Electoral Commission may (subject to the regulations) remove persons from the Lobbyists Watch List if the Electoral Commission is satisfied that they should no longer be placed on the List.

⁵⁴⁵ See Table 2: 10 Principles for Transparency and Integrity in Lobbying, Principle 9.

⁵⁴⁶ Newly-inserted section 9(7) of the *Lobbying of Government Officials Act 2011* (NSW).

The Lobbyists Watch List is a novel penalty that has the potential to be highly effective due the public opprobrium attached to being placed on the list and the restrictions on meetings with Government representatives that might triggered by being placed on the list. At the very least, the penalty should be trialled for its effectiveness.

10 *Agency Responsible for Compliance and Enforcement of the Register*

A central principle here is independence of the agency responsible for compliance and enforcement of the Register of Lobbyists. The OECD report, *Lobbyists, Governments and Public Trust*, stressed that such independence must exist.⁵⁴⁷ The ICAC Lobbying Report similarly proposed that the '(m)aintenance and enforcement of the register would be carried out by an independent government entity'.⁵⁴⁸ The principle of independence was also evident in Recommendation 9 of the report which provided that:

The Commission recommends that an *independent* government entity maintains and monitors the Lobbyists Register, and that sanctions be imposed on Third Party Lobbyists and Lobbying Entities for failure to comply with registration requirements.⁵⁴⁹

The NSW Political Finance Report⁵⁵⁰ discussed in detail the topic of the independence of the NSWEC in relation to its administration of election funding and spending laws. This discussion – which is extracted below - is equally pertinent in relation to the administration by the NSWEC of the Register of Lobbyists and the Code of Conduct for Lobbyists.

It should be noted that amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) have been consistent with several of the recommendations made in the NSW Political

⁵⁴⁷ OECD, above n 21, 32-33.

⁵⁴⁸ ICAC Lobbying Report, above n 17, 52.

⁵⁴⁹ Ibid 52 (emphasis added).

⁵⁵⁰ This report is available on the NSW Electoral Commission's website at https://www.elections.nsw.gov.au/data/assets/pdf_file/0018/111591/20121113_Joo-Cheong_Tham_-_Establishing_A_Sustainable_Framework_for_Election_Funding_and_Spending_Laws_in_New_South_Wales_final_report.pdf (accessed on 28 July 2014).

Finance Report. This Act abolishes the New South Wales Election Funding Authority and reconstitutes the NSWEC by combining the functions of the current Electoral Commission and the Election Funding Authority.⁵⁵¹ Various provisions relating to the appointment of the members of the reconstituted NSWEC are consistent with Recommendation 5 of the NSW Political Finance Report, which proposed as follows:

Members of the statutory agency administering NSW election funding and spending laws should not be party-appointments.

The amended section 21AB(4) of the *Parliamentary Electorates and Elections Act 1912* (NSW) provides that:

(4) A person is not eligible for appointment as the Electoral Commissioner if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:

- (a) a member or officer of a party,
- (b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,
- (c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or a candidate for election to such an office,
- (d) a party agent or official agent under the *Election Funding, Expenditure and Disclosures Act 1981*,

A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as the Electoral Commissioner.⁵⁵²

Newly-inserted clause 2 of Schedule 21A of the *Parliamentary Electorates and Elections Act 1912* (NSW) further provides the following in relation to the

⁵⁵¹ *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) schs 1, 2.

⁵⁵² *Ibid* sch 1 para 3.

appointment of members of the NSWEC (other than the Electoral Commissioner):

2 Persons not eligible for appointment

(1) A person is not eligible for appointment as an appointed member if the person is (or was at any time during the period of 5 years immediately preceding the proposed appointment) any of the following:

- (a) a member or officer of a party,
- (b) a member of any legislature (in Australia or in any other country) or a candidate for election as such a member,
- (c) a councillor or mayor of a council, or the chairperson or a member of a county council, under the *Local Government Act 1993* or a candidate for election to such an office,
- (d) a party agent or official agent under the *Election Funding, Expenditure and Disclosures Act 1981* .

(2) A person who is a member of a public authority constituted by an Act or of the governing body of any such public authority is also not eligible for appointment as an appointed member.

The other recommendation of relevance from the NSW Political Finance Report, is Recommendation 7 which proposed that:

NSW election funding and spending laws should stipulate that the responsible statutory agency is not subject to the direction or control of the relevant Minister in respect of the performance of its responsibilities and functions, and the exercise of its powers.

Newly inserted ss 21C(4)-(5) of the *Parliamentary Electorates and Elections Act 1912* (NSW) are consistent with Recommendation 7. They provide that:

(4) The Electoral Commission is not subject to the control or direction of the Minister in the exercise of its functions.

(5) The Electoral Commissioner is not subject to the control or direction of the Electoral Commission in the exercise of his or her functions

under this or any other Act (other than functions of the Electoral Commission that are delegated to the Electoral Commissioner).

Extracted from Joo-Cheong Tham, *Establishing A Sustainable Framework for Election Funding and Spending Laws in New South Wales* (2012) pp 29-39

B *Guiding Principles*

'Guiding principles' in this context refers to the standards applicable to the discharge of the key functions – they govern how these functions are performed. The principles that apply to the discharge of functions by electoral authorities in the area of election funding and spending laws are similar to those that apply to the administration of elections, a point on which there was strong agreement amongst the electoral commissioners.¹ Three principles are of particular importance:

- 1) Independence;
- 2) Impartiality and Fairness;
- 3) Accountability.

1 *Principle of Independence*

This principle/Independence is clearly crucial in relation to electoral commissions. Indeed, Orr, Mercurio and Williams have gone further to argue that the independence of electoral authorities is the *single most important factor* in ensuring free and fair elections.²

In understanding the principle of independence, it is important to distinguish between its various aspects. One concerns the subject-matter of

¹ Interview with Phil Green, ACT Electoral Commissioner (Telephone Interview, 5 September 2012); Interview with Julian Type, Tasmanian Electoral Commissioner (Telephone Interview, 5 September 2012); Interview with Liz Williams, Acting Victorian Electoral Commissioner (Melbourne, 6 September 2012); Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012); Interview with David Kerslake, Queensland Electoral Commissioner (Telephone Interview, 6 September 2012); See also Julian Type, 'Electoral management bodies: independence and accountability in Australia and New Zealand' (Paper presented at the Conference on Building Key Principles into the Design of the Future Electoral Management Body: Tunisian and International Perspectives, United Nations Development Program, Tunis, 27 February 2012).

² Graeme Orr, Bryan Mercurio and George Williams, 'Australian Electoral Law: A Stocktake' (2003) 2(3) *Election Law Journal* 383, 399.

independence - independence in relation to *what*. The answer must be independence in performing its key functions as prescribed by the law.

Another aspect of the principle of independence is independence from *whom*. There is consensus here that electoral commissions should be independent of the government of the day and those being regulated (e.g. political parties and candidates) in performing their functions. There should be, in this respect, 'freedom from all partisanship'³ or 'non-partisanship'.⁴

There should also be a distinction between institutional and behavioural aspects of independence.⁵ The latter can exist without former. This is illustrated by former Australian Electoral Commissioner Colin Hughes' observation that federal electoral officials acted independently (behavioural independence) whilst housed in a branch of a federal department (institutional dependence). In his words:

The continuities over the first hundred years of federal electoral administration – initially (1902) with an ordinary departmental structure, then (1977) under statutory officers, and most recently (1984) under a statutory commission – are quite remarkable and likely to be maintained. One of the most striking continuities is the degree of independence that has prevailed throughout that period.⁶

Conversely, legislative provisions – the focus of this report - can provide institutional independence but cannot guarantee behavioural independence. Behavioural independence is the product of legislative provisions *as well as*

³ Graeme Orr, *The Law of Politics: Elections, Parties and Money in Australia* (Federation Press, 2010) 90.

⁴ Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

⁵ See Paul Dacey, 'What do "Impartiality", "Independence" and "Transparency" Mean? Some Thoughts from Australia' (Paper presented at the Conference on Improving the Quality of Election Management, New Delhi, 24-26 February 2005) 6. For application of this distinction in the context of administrative tribunals reviewing migration decisions, see Yee-Fui Ng, 'Tribunal Independence in the Age of Migration Control' (2012) 19(4) *Australian Journal of Administrative Law* 203.

⁶ Colin Hughes, 'The Independence of the Commissions: The Legislative Framework and the Bureaucratic Reality' in Graeme Orr, Bryan Mercurio and George Williams (eds), *Realising Democracy: Electoral Law in Australia* (Federation Press, 2003) 205, 205-206. See also Colin Hughes, 'Institutionalising Electoral Integrity' in Marian Sawer (ed), *Elections - Full, Free and Fair* (Federation Press, 2001) 142, 156.

the leadership of the Commissioner and the culture and practices of Commission. It also depends on the culture and practices of those to whom the Commissioner is accountable, in particular, Parliament and the relevant Minister; all parliamentarians, including the relevant Minister, have a duty of care to respect the independence of the Commission.

As several electoral commissioners emphasised,⁷ independence is a question of degree. In part, this reflects the contexts in which the electoral commissions currently operate. It is also dictated by structural necessity: electoral commissions are a part of the Executive, one of three branches of government (the other being the legislature and the judiciary); by its nature, it cannot be fully independent of the Executive.

Considerations of principle also suggest that there is no 'absolute notion of independence'⁸ for two reasons. The first is the rule of law - as with all public bodies in Australia, the powers of electoral commissions are governed by the law. The second is the principle of accountability (discussed below). As a general rule, the more significant the powers conferred upon a public body, the more stringent should be the accountability mechanisms that apply to it.⁹ As Australian Electoral Commissioner, Ed Killesteyn opined: 'there is probably an argument . . . that the more independent you are the more accountable you need to be'. In a similar vein, the Western Australian Commissioner for Public Sector Standards has said of accountability officers (including the Western Australian Electoral Commissioner) that '(t)he greater their independence from the Executive Government, the greater the need for accountability officers themselves to be held accountable for their actions'.¹⁰ Hence the paradox of independence: greater autonomy comes with an increased obligation to be accountable.

⁷ Interview with Warwick Gately, Western Australian Electoral Commissioner (Telephone Interview, 5 September 2012); Interview with Phil Green, ACT Electoral Commissioner (Telephone Interview, 5 September 2012).

⁸ Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

⁹ See Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

¹⁰ Office of the Public Standards Commissioner, Western Australia, *Accountability Officers of the Western Australian Parliament: Accountability and Independence Principles* (2006) 5.

This report will now examine the principle of independence in relation to the key areas of:

- Legislative power;
- Appointment;
- Termination; and
- Performance of functions.¹¹

(a) *Independence and Legislative Power*

Does the principle of independence necessitate the conferral of legislative power upon electoral commissions? Former Australian Electoral Commissioner Colin Hughes has commented in relation the Australian Electoral Commission that:

some might think that ‘independence’ could mean the ability to pursue the AEC’s own interpretation of general principles like those which might be implicit in a goal of ‘free and fair’ elections or ‘one vote, one value’ . . . within a loose framework of statutory provisions and broad discretions.¹²

Hughes’ comments were arguably in response to views like those of the intergovernmental organisation, International IDEA (International Institute for Democracy and Electoral Assistance).¹³ According to International IDEA, the power to independently develop the electoral regulatory framework under the law is a key aspect of the independence of electoral commissions.¹⁴ Applying the benchmarks laid down by International IDEA, Norm Kelly has concluded ‘Australian electoral administrations have their independence threatened

¹¹ For an excellent discussion of the independence of Australian electoral commissions, see Norm Kelly, *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management* (ANU E Press, 2012) Chapter 3. See also Roger Beale, Philip Green and Dawn Casey, Elections ACT, Submission No 4 to the Standing Committee on Administration and Procedure, *Inquiry into the feasibility of establishing the position of Officer of the Parliament*, 20 July 2011, 6-13.

¹² Colin Hughes, ‘The Independence of the Commissions: The Legislative Framework and the Bureaucratic Reality’ in Graeme Orr, Bryan Mercurio and George Williams (eds), *Realising Democracy: Electoral Law in Australia* (Federation Press, 2003) 205, 206.

¹³ For information on International IDEA, see International Institute for Democracy and Electoral Assistance, *International IDEA* (23 October 2012) <<http://www.idea.int/>>.

¹⁴ Alan Wall, Andrew Ellis et al, *Electoral Management Design: The International IDEA Handbook* (International Institute for Democracy and Electoral Assistance, 2006) 9.

(because) they have virtually no independent ability to improve or amend the electoral systems they administer'.¹⁵

These are problematic views. They involve a conceptual elision: the question of 'independent *from*' (executive, regulated bodies like political parties) is conflated with 'independent *to*'. The imperative of 'independent from' is a necessary condition of impartiality and fairness.¹⁶

The issue of 'independent to', however, goes to the question of what functions should the electoral agency have. This involves considerations different from the question of being 'independent from'. The function of making laws, in particular, raises a different (complex) set of issues which have – at its heart – which institution is the legitimate law-making body in the area of electoral regulation, a discussion picked up below.¹⁷

Even if the principle of independence requires a power to make laws to be conferred upon the electoral commissions, whether or not such power *should* be conferred depends on its compatibility with other guiding principles, such as the principle of accountability and the principle of impartiality and fairness. The principle of independence, while crucial - perhaps even paramount - is not the only principle to be considered.

Of note here is how the *absence of discretion* has been seen by some as providing electoral commissions with a strong (conclusive?) defence of their impartiality and fairness. A common understanding of the way in which Australian electoral commissions carry out their functions is given by former Australian Electoral Commissioner, Colin Hughes when he stated that '(e)lectoral administration, carrying out duties and exercising discretions, is

¹⁵ Norm Kelly, 'The Independence of Electoral Management Bodies: The Australian Experience' (2007) 59(2) *Political Science* 17, 31. See also Norm Kelly, 'Australian Electoral Administration and Electoral Integrity' in Joo-Cheong Tham, Brian Costar and Graeme Orr (eds), *Electoral Democracy: Australian Prospects* (Melbourne University Press, 2011) 99, 103-104; Kelly, above n11, 29.

¹⁶ See Part V: A Single Electoral Commission: Key Functions and Guiding Principles, Section B(2).

¹⁷ See Part VI: Principles-based Legislation in Administration and Securing Compliance.

tightly constrained by statutory detail'.¹⁸ With little discretion provided under this 'bureaucratic model',¹⁹ a compelling response to accusations or allegations of bias, partiality or unfairness would be to point out how decisions were mandated by the law. As explained by the current Australian Electoral Commissioner, '(o)ne of the best protections I think that a commission has against arguments of bias or prejudice are the rules are laid out in legislation because you simply follow them'.²⁰

That said, the advantage this model provides in terms of perception of impartiality might very well be outweighed by its drawbacks. The submission of the NSW Electoral Commissioner, for instance, has argued that:

If it can be said that Electoral Commissions in Australia can be described as administrators, rather than regulators, this reflects the strictures of the tradition of excessively detailed electoral legislation under which they have operated. Moreover, it under-sells the independence and expertise of the Commissions.²¹

These points are more closely examined in this report through its consideration of whether NSW election funding and spending laws should be in the form of principles-based legislation.²²

(b) Independence and Appointment Process

Under the EFED Act, the NSW Election Funding Authority comprised three persons:

¹⁸ Hughes, above n12, 206.

¹⁹ See Colin Hughes, 'The Bureaucratic Model: Australia' (1992) 37 *Journal of Behavioral and Social Sciences* 106.

²⁰ Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

²¹ NSW Electoral Commissioner, Submission No 18 to the Joint Standing Committee on Electoral Matters, Parliament of New South Wales, *Review of the Parliamentary Electorates & Elections Act 1912 and the Election Funding, Expenditure and Disclosure Act 1981*, 12 June 2012, 19

<[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/e30620bfe58f1c13ca257a2200004a30/\\$FILE/ATTL703H.pdf/Submission%2018%20-%20Electoral%20Commission%20of%20NSW.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/e30620bfe58f1c13ca257a2200004a30/$FILE/ATTL703H.pdf/Submission%2018%20-%20Electoral%20Commission%20of%20NSW.pdf)> ('Submission of NSW Electoral Commissioner').

²² See Part VI: Principles-based Legislation in Administration and Securing Compliance.

- the NSW Electoral Commissioner who is the Chairperson of the EFA²³ and is appointed by the Governor;²⁴ and
- two other members, both appointed by the Governor, with one nominated by the Premier and the other nominated by the Leader of the Opposition in the Legislative Assembly.²⁵

Vesting the power to appoint electoral commissioners and members of commissions in the Governor reflects the norm in Australia. Most jurisdictions also insist that the parliamentary leaders of each political party represented in Parliament be consulted prior to the appointments being made;²⁶ in Queensland, the obligation to consult extends to consulting the relevant parliamentary committee (see Appendix Two). At the very least, both should apply in relation to the NSW Electoral Commission as it enhances the prospect of an appointment that is seen to be impartial and fair and adds legitimacy to the process of appointment.²⁷ Other options worth considering are JSCEM having the power to veto the appointment of the NSW Electoral Commissioner²⁸ and the appointment of the commissioner being ratified by the New South Wales Parliament, as suggested by the NSW Electoral Commissioner²⁹

Recommendation 4: Parliamentary leaders of each political party represented in the New South Wales Parliament and members of the Joint Standing Committee on Electoral Matters shall be consulted prior to the appointment of the NSW Electoral Commissioner and other

²³ EFED Act s 7.

²⁴ PE & E Act s 21AA.

²⁵ EFED Act s 6.

²⁶ See *Electoral Act 1992* (ACT) ss 12(3), 22(2); *Electoral Act 2004* (NT) s 314(2); *Electoral Act 1992* (Qld) ss 6(7), 22(2)-(3); *Electoral Act 2004* (Tas) ss 8(2), 14(2); *Electoral Act 1907* (WA) s 5B(3).

²⁷ The current Australian Electoral Commissioner has observed that the appointment process of the Australian Electoral Commissioners is currently less than transparent because consultation is not required: Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

²⁸ Submission of NSW Electoral Commissioner, above n 21, 37.

²⁹ Interview with Colin Barry, New South Wales Electoral Commissioner (Sydney, 22 August 2012).

members of the statutory agency responsible for administering NSW election funding and spending laws.

The membership of the NSW EFA is unusual in having members that are appointed upon nomination of the governing party and the Opposition.³⁰ Two reasons can be given for this composition: the need for a 'balanced' EFA and the need for the EFA to have expertise regarding how NSW political parties operate. Both reasons strongly lack plausibility.

(i) *An Imbalanced Composition*

The rationale based on 'balance' goes along these lines: having the governing party and the Opposition represented in the EFA results in an EFA that is balanced (impartial and fair) in its administration of election funding and spending laws.

This rationale is highly questionable. Even on its own terms, it cannot assure balance as many political parties are not represented including parliamentary parties like the Greens, Christian Democratic Party, Greens and the Shooters and Fishers Party. This rationale is based on the two-party model; a model which the Tasmanian Electoral Commissioner correctly pointed out 'tends to pre-suppose there are only two parties and marginalizes those parties which are not part of the model'.³¹ The result, as put by the NSW Electoral Commissioner, is that 'the optics look a little bit one sided'.³²

There are more fundamental difficulties with the 'balance' rationale. It fails to secure independence on the part of the EFA; in fact, it embeds a lack of independence from the leading parties in a structural sense. As the Victorian Electoral Commissioner noted, an independent electoral authority should not have members that are 'participants in the electoral process or have a

³⁰ The current members appointed in this way are Kirk McKenzie and Edward Pickering: Election Funding Authority of New South Wales (NSW), *2010/11 Annual Report* (2011) 9.

³¹ Interview with Julian Type, Tasmanian Electoral Commissioner (Telephone Interview, 5 September 2012).

³² Interview with Colin Barry, New South Wales Electoral Commissioner (Sydney, 22 August 2012).

connection with or be perceived to have a connection with participants in electoral process'.³³

This lack of independence necessarily results in the perception of partiality, unfairness and bias. This vividly arises when the EFA, which is responsible for approving prosecutions, has to determine whether or not to prosecute either the governing party or the Opposition. As Norm Kelly rightly observes, '(t)his places the authority's two nominated members in a position of potentially starting action against their own party colleagues – a clear conflict of interest'.³⁴ A conflict of interest also arises when the EFA is deciding to prosecute 'unrepresented' parties – members nominated by the governing party and the Opposition may, in such situations, be deciding to prosecute their party's competitors.

There is also a risk of collusion. As noted by Julian Type, the Tasmanian Electoral Commissioner, 'party appointees are probably vulnerable to allowing each other quid pro quos in that if one of them becomes aware of a possible infraction by the other then rather than the matter being prosecuted; they're probably vulnerable to turning a blind eye to the misbehaviour of the other party'.³⁵

All this is not to suggest impropriety on the part of the party-nominated members of the EFA. The words of NSW Legislative Council Select Committee on Electoral and Political Party Funding capture well the difficulties with having such members:

The Committee of is the view that partisan appointments to the EFA should cease, to remove any *perception of bias* in the operation of the EFA. The

³³ Interview with Liz Williams, Acting Victorian Electoral Commissioner (Melbourne, 6 September 2012).

³⁴ Kelly, above n 11, 11.

³⁵ Interview with Julian Type, Tasmanian Electoral Commissioner (Telephone Interview, 5 September 2012).

Committee underscores that there is no evidence of impropriety on the part of the EFA, but that partisan appointments give rise to this perception.³⁶

(ii) *Composition not Necessary for Expertise in Affairs of Political Parties*

The goal of the EFA having expertise in the operations of NSW political parties is a legitimate one but the means employed here are wrong. Given that only the governing party and the Opposition are ‘represented’, the expertise secured predominantly relates to these parties.

More importantly, the EFA should – and does – secure such expertise through its operational experience.³⁷ It also secures it through adequate stakeholder consultation. As Australian Electoral Commissioner, Ed Killesteyn observed:

you need strong relationships and understanding and dialogue with the people who are your stakeholders. If you don’t have that good consultation, that good dialogue, then inevitably you lose an ability to work with them in a co-operative . . . way.³⁸

As noted by David Kerlake, the Queensland Electoral Commissioner, ‘being independent and impartial doesn’t mean that you have to be aloof’.³⁹

Recommendation 5: Members of the statutory agency administering NSW election funding and spending laws should not be party-appointments.

Removing the requirement for party-appointments raises the question as who should replace the members of the EFA appointed in this manner. It is probably best to approach this question by identifying the attributes and skills that such members should have (rather than specifying possible office-holders). They should, firstly, have the attributes that allow them to give effect

³⁶ Legislative Council Select Committee on Electoral and Political Party Funding, Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales* (2008) 213 (emphasis added).

³⁷ Interview with Julian Type, Tasmanian Electoral Commissioner (Telephone Interview, 5 September 2012).

³⁸ Interview with Ed Killesteyn, Australian Electoral Commissioner (Melbourne, 4 September 2012).

³⁹ Interview with David Kerlake, Queensland Electoral Commissioner (Telephone Interview, 6 September 2012).

to the guiding principles of independence, impartiality and fairness, and accountability. As to their skills, these members should have demonstrated experience and ability to develop the strategic directions of a complex organisation like the NSWEC. Given the increased focus of election funding and spending laws on compliance, it is also desirable that these members have skills in this area (e.g. auditing skills, forensic accounting skills, legal skills).

(c) Independence and Termination of Appointment Process

Section 22AB(3) of the PE & E Act deals with the termination of appointment of the NSW Electoral Commissioner:

The Electoral Commissioner may be suspended from office by the Governor for misbehaviour or incompetence, but cannot be removed from office except in the following manner:

- (a) The Minister is to cause to be laid before each House of Parliament a full statement of the grounds of suspension within 7 sitting days of that House after the suspension.
- (b) An Electoral Commissioner suspended under this subsection is restored to office by force of this Act unless each House of Parliament at the expiry of the period of 21 days from the day when the statement was laid before that House declares by resolution that the Electoral Commissioner ought to be removed from office.
- (c) If each House of Parliament does so declare within the relevant period of 21 days, the Electoral Commissioner is to be removed from office by the Governor accordingly.

While this provision vests in the Governor the power to initiate the removal of the Commissioner from office, it also requires both Houses of Parliament declaring by resolution that the Commissioner should be removed. This position is similar to the position in other jurisdictions (see Appendix Two). It is highly appropriate in that it provides an important structural mechanism to guarantee the independence of the Commissioner from the governing party

through the requirement of parliamentary resolutions – and it underscores the principal accountability that the Commissioner has to Parliament.⁴⁰

Recommendation 6: Section 22AB(3) of the PE & E Act should be retained.

(d) *Independence and Performance of Functions*

A crucial aspect of independence in relation to electoral commissions is independence from Ministerial directions in relation to the performance of their functions. In some States and Territories, for instance South Australia, Western Australia and Australian Capital Territory,⁴¹ such independence is based on conventions, not legislative provisions. In Tasmania⁴² and Victoria,⁴³ on other hand, there are express statutory provisions stipulating that the Commission is not subject to direction or control of the relevant Minister. Such provision should be adopted in relation to NSW election funding and spending laws – especially given the accountability of the Commission to the relevant Minister.⁴⁴

Recommendation 7: NSW election funding and spending laws should stipulate that the responsible statutory agency is not subject to the direction or control of the relevant Minister in respect of the performance of its responsibilities and functions, and the exercise of its powers.

⁴⁰ See Part V: A Single Electoral Commission: Key Functions and Guiding Principles, Section B(3).

⁴¹ See Interview with Kay Mousley, South Australian Electoral Commissioner (Telephone Interview, 6 September 2012); Interview with Phil Green, ACT Electoral Commissioner (Telephone Interview, 5 September 2012); Interview with Warwick Gately, Western Australian Electoral Commissioner (Telephone Interview, 5 September 2012).

⁴² *Electoral Act 2004* (Tas) s 10.

⁴³ *Electoral Act 2002* (Vic) s 10.

⁴⁴ See Part V: A Single Electoral Commission: Key Functions and Guiding Principles, Section B(3).

A similar recommendation has been made by the ACT Electoral Commission, see Beale, Green and Casey, Elections ACT, above n11, 9.

11 Measures to Facilitate Transparency of Information disclosed under the Register of Lobbyists

Disclosure by lobbyists under the Register of Lobbyists does not necessarily translate into transparency of government decision-making. Such transparency will only result if the disclosed information is effectively incorporated into the political process through its use by the media, lobbyists, public officials and the broader public. This, of course, depends on how energetic these groups are in utilising the information disclosed under the Register.

It also depends on how effectively such information is disseminated by the responsible agency, the New South Wales Electoral Commission.⁴⁵ Various measures can be taken here:

- analytical tools on the Commission's website can be created that allow the information disclosed under the Register of Lobbyists to be analysed: longitudinally (for a period of time); according to particular lobbyist/s, Government representative/s, law and policy; and
- Email alerts can be provided to the public (including the media, Government representatives and lobbyists) that are tailored according to particular lobbyist/s, Government representative/s, law and policy.

Recommendation Fourteen

The New South Wales Electoral Commission should adopt measures that effectively disseminate the information disclosed under the Register of Lobbyists including providing for:

- analytical tools on the Commission's website that allow the information disclosed under the Register of Lobbyists to be analysed: longitudinally (for a period of time); according to particular lobbyist/s, Government representative/s, law and policy;
- Email alerts provided to the public (including the media, Government representatives and lobbyists) that can be tailored

⁴⁵ See OECD, above n 21, 77.

according to according to particular lobbyist/s, Government representative/s, law and policy.

D *Evaluation of the Code of Conduct for Lobbyists in New South
Wales*

1 *Legal Source of the Code*

The *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) inserts section 5 into the *Lobbying of Government Officials Act 2011* (NSW) – which provides as follows:

5 The Lobbyists Code

(1) The Lobbyists Code of Conduct is the code of conduct prescribed by the regulations for third-party and other lobbyists (the "*Lobbyists Code*").

(2) The Minister is to consult the Electoral Commission on any proposed code of conduct or amendment of the code of conduct.

This provision makes clear that the Code is prescribed by regulation. There are, however, two other alternatives in establishing the legal source of the Code: the first is to adopt the approach taken in relation to the Register of Third-Party Lobbyists and set out the detail of the Code in the principal provisions of the *Lobbying of Government Officials Act 2011* (NSW); the second is to take the approach of the regime under the *Integrity Act 2009* (Qld) which empowers the Queensland Integrity Commissioner to approve a lobbyists' code of conduct after consultation with the relevant parliamentary committee.⁵⁹⁸

Of these three approaches – prescription in the principal statute, by regulations or by the responsible agency – the last is to be preferred. The Lobbyists Code of Conduct will deal with matters of detail that are best not set down in the principal statute as statutory codification might give rise to inflexibility. Having the Code promulgated by Regulations made by the relevant Minister is not desirable; having such rules of political integrity being made by the government of the day - albeit after consultation with the NSWEC – may raise a perception of partiality thereby casting some degree of

⁵⁹⁸ *Integrity Act 2009* (Qld) s 68(1).

illegitimacy over the rules. Having the Code of Conduct approved by an independent statutory entity like the NSWEC (as in the Queensland regime) avoids both the risk of inflexibility and the perception of partiality.

The potential limitation of conferring upon the NSWEC the power to approve the Code of Conduct for Lobbyists is a democratic deficit, as the Commission do not consist of elected officials. This deficit can, however, be addressed by ensuring that the power of the Commission is accompanied by adequate accountability mechanisms – most importantly, accountability to Parliament.⁵⁹⁹ This can be achieved in two ways: having the Code being tabled before both Houses of Parliament and being disallowable (like regulations) and requiring the Commission to consult the relevant parliamentary committee prior to approving the Code (as in Queensland).

Recommendation Fifteen

- The Lobbyists Code of Conduct should be approved by the NSWEC.
- The Code should be tabled before each House of Parliament and be disallowable by either House (like regulations).
- The NSWEC shall consult the relevant parliamentary committee prior to approving (or amending) the Code.

2 Lobbyists Covered by the Code

The amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) do not specify the lobbyists who are to be covered by Code other than to say that the Code will be prescribed ‘for third-party and other lobbyists’.⁶⁰⁰ The reference to ‘other lobbyists’ clearly indicates that the coverage of the Code is broader than the coverage of the Register of Lobbyists, which is presently restricted to third-party lobbyists.

⁵⁹⁹ See Joo-Cheong Tham, *Establishing a Sustainable Framework for New South Wales Election Funding and Spending Laws* (2012) 41-43.

⁶⁰⁰ *Lobbying of Government Officials Act 2011* (NSW) s 5(1) as inserted by *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) sch 3 para 3.

As the earlier discussion argued, the coverage of the Register should be broadened to encompass all ‘repeat players’⁶⁰¹ – this conclusion similarly applies to the Code.

Recommendation Sixteen

The New South Wales Lobbyists Code of Conduct should cover all ‘repeat players’ – in particular professions, companies and interest groups that engage in direct lobbying and third party lobbyists.

3 Obligations imposed by the Code

The amendments made by the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) insert section 6 into the *Lobbying of Government Officials Act 2011* (NSW) – which provides as follows:

6 Content of the Lobbyists Code

(1) The Lobbyists Code is to set out the ethical standards of conduct to be observed by lobbyists in connection with the lobbying of Government officials in order to promote transparency, integrity and honesty.

(2) The Lobbyists Code may provide for any matter relating to lobbying or lobbyists, including the procedures for meetings or other contact with Government officials. The Lobbyists Code may make different provision in relation to different classes of lobbyists.

Newly-inserted section 7 of the *Lobbying of Government Officials Act 2011* (NSW), in turn, stipulates that ‘(i)t is the duty of a lobbyist to comply with the Lobbyists Code in connection with the lobbying of Government officials’. As the regulations prescribing the Lobbyists Code have yet to be promulgated, it is not clear what standards will be laid down in the new Code.

⁶⁰¹ See text above accompanying nn 481-487.

The current Code imposes various obligations on the lobbyists it covers in terms of ‘principles of engagement’.⁶⁰² The ICAC Lobbying Report dealt with these obligations through Recommendation 6 (set out below):

The Commission recommends that the NSW Government develops a new code of conduct for lobbyists, which sets out mandatory standards of conduct and procedures to be observed when contacting a Government Representative. The code should be based on the current NSW Government Lobbyist Code of Conduct, and include requirements that lobbyists must:

- a. inform their clients and employees who engage in lobbying about their obligations under the code of conduct
- b. comply with the meeting procedures required by Government Representatives with whom they meet, and not attempt to undermine these or other government procedures or encourage Government Representatives to act in breach of them
- c. not place Government Representatives in the position of having a conflict of interest
- d. not propose or undertake any action that would constitute an improper influence on a Government Representative, such as offering gifts or benefits.⁶⁰³

The duties imposed pursuant to the principles of engagement under the current Code and the additional ones recommended by ICAC can be broadly categorised in the following way. There are, firstly, duties of *legal compliance* – which would include the obligation not to engage in any corrupt or unlawful behaviour, duties to comply with meeting procedures laid down by Government representatives, and the duty to inform clients and employees who engage in lobbying about their obligations under the Code, as recommended by the ICAC. This set of duties is plainly directed at protecting the integrity of representative government by buttressing the rule of law.

Another group of obligations are *duties of truthfulness* which would have – at their heart - the obligation on lobbyists under the current Code to ‘use all

⁶⁰² See text above accompanying n 239.

⁶⁰³ *ICAC Lobbying Report*, above n 17, 47.

reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them to clients whom they represent, the wider public and Government representatives'.⁶⁰⁴ These duties too are directed at protecting the integrity of representative government by promoting transparency of government decision-making and also by assisting to prevent corruption and misconduct.

There is also a set of duties specifically aimed at preventing corruption and misconduct – *duties to avoid conflicts of interests*. Included in this group of duties is the obligation recommended by ICAC that lobbyists not place Government representatives in the position of having a conflict of interest; the duty of lobbyists under the current Code to keep their activities as lobbyists strictly separate from their involvement in a political party⁶⁰⁵ also falls within this category.

The last obligation also comes within the category of *duties to avoid unfair access and influence*. So does the prohibition under the current Code for lobbyists to 'make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members of political parties or to any other person'.⁶⁰⁶

The duties found under the current Code and those recommended by ICAC should be adopted under the new Lobbyists Code. They should also be enhanced in these ways:

(a) Duties of truthfulness

The Queensland Lobbyists Code of Conduct imposes the following obligation on the lobbyists it covers:

if a material change in factual information that the lobbyist provided previously to a government or Opposition representative causes the information to

⁶⁰⁴ *NSW Lobbyist Code of Conduct*, above n 145, cl 7.1(b).

⁶⁰⁵ *Ibid* cl 7.1(d).

⁶⁰⁶ *Ibid* cl 7.1(c).

become inaccurate and the lobbyist believes the government or Opposition representative may still be relying on the information, the lobbyist should provide accurate and updated information to the government or Opposition representative, as far as is practicable.⁶⁰⁷

This obligation should be adopted under the new Lobbyists Code, as it rightly makes the duty of truthfulness an ongoing obligation rather than one restricted to the point of information being provided.

(b) Duties to avoid conflicts of interest

The Queensland Lobbyists Code of Conduct requires the lobbyists it covers to:

- not represent conflicting or competing interests without the informed consent of those whose interests are involved.⁶⁰⁸
- advise Government and Opposition representatives that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client before proceeding/continuing with the undertaking.⁶⁰⁹

These duties should also be adopted under the new Lobbyists Code – they are simple (uncontroversial) obligations to avoid conflicts of interest on the part of the lobbyists.

The Queensland code also requires:

‘(f)ormer senior government representatives or former opposition representatives within the last 2 years must indicate to the government or opposition representative their former position, when they held that position and that the matter is not a prohibited lobbying activity’.⁶¹⁰

Such an obligation too should be adopted under the new Lobbyists Code as it provides an important duty of disclosure to deal with the risks accompanying the ‘revolving door’ between public officials and lobbyists.

⁶⁰⁷ *Lobbyists Code of Conduct Queensland*, above n 229, cl 3.1(e).

⁶⁰⁸ *Ibid* cl 3.1(j).

⁶⁰⁹ *Ibid* cl 3.1(k).

⁶¹⁰ *Ibid* cl 3.3.

What should also be included within the duties to avoid conflicts of interest is a ban on lobbyists and their clients giving gifts to those being lobbied. As ICAC put it:

Controls on public officials accepting gifts and benefits are commonplace in the NSW public sector. Generally, there is a prohibition on public officials seeking or accepting gifts or other benefits. The reasons for the prohibition are obvious and do not need to be re-stated.⁶¹¹

These views led the Recommendation 10 of the ICAC Lobbying Report:

The Commission recommends that the new code of conduct for lobbyists contains a clear statement prohibiting a lobbyist or a lobbyist's client from offering, promising or giving any gift or other benefit to a Government Representative, who is being lobbied by the lobbyist, has been lobbied by the lobbyist or is likely to be lobbied by the lobbyist.⁶¹²

This recommendation should be adopted in relation to the new Lobbyists Code.

(c) Duties to Avoid Unfair Access and Influence

This cluster of duties should include the following obligation:

Lobbyists shall advocate their views to public officials according to the merits of the issue at hand, and shall not adopt approaches that rely upon their wealth, political power or connections; or that of the individuals and/or organisations they represent.

The reasons for this duty are obvious: it orientates the advocacy of the lobbyists towards the public interest and requires them to avoid strategies that involve unfair access and influence. As will be recommended below, this duty should be paralleled by a mirror obligation on public officials.⁶¹³

⁶¹¹ ICAC Lobbying Report, above n 17, 58.

⁶¹² Ibid 58.

⁶¹³ See text below accompanying n 618.

Recommendation Seventeen

The Lobbyists Code should include:

- the obligations currently imposed under the 'Principles of Engagement' of the NSW Government Lobbyist Code of Conduct;
- obligations recommended by ICAC, namely, the duties of lobbyists to:
 - inform their clients and employees who engage in lobbying about their obligations under the Code of Conduct;
 - comply with the meeting procedures required by Government representatives with whom they meet, and not attempt to undermine these or other government procedures or encourage Government representatives to act in breach of them;
 - not place Government representatives in the position of having a conflict of interest;
 - not propose or undertake any action that would constitute an improper influence on a Government representative, such as offering gifts or benefits; and
 - not offer, promise or give any gift or other benefit to a Government representative, who is being lobbied by the lobbyist, has been lobbied by the lobbyist or is likely to be lobbied by the lobbyist;
- certain obligations presently found under the Queensland Lobbyists Code of Conduct, namely, the duties of lobbyists to:
 - not represent conflicting or competing interests without the informed consent of those whose interests are involved;
 - advise government and Opposition representatives that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client before proceeding/continuing with the undertaking;
 - provide accurate and updated information to the Government or Opposition representative, as far as is practicable, if a

- material change in factual information that the lobbyist provided previously to a Government or Opposition representative causes the information to become inaccurate and the lobbyist believes the Government or Opposition representative may still be relying on the information; and
- if the lobbyist is a former senior Government representative or former Opposition representative within the last 2 years, to indicate to the Government or Opposition representative their former position, when they held that position and that the matter is not a prohibited lobbying activity.
 - the obligation to advocate their views to public officials according to the merits of the issue at hand and not to adopt approaches that rely upon their wealth, political power or connections; or that of the individuals and/or organisations they represent.

4 *Penalties for Breaching Obligations*

The analysis in relation to the Register of Lobbyists similarly applies here.⁶¹⁴

5 *Agency Responsible for Compliance and Enforcement of the Code*

The analysis in relation to the Register of Lobbyists similarly applies here.⁶¹⁵

⁶¹⁴ See text above accompanying nn 545-546.

⁶¹⁵ See Part VIII, Section C.10 of the report.

E *Evaluation of the Codes of Conduct applying to New South Wales
Ministers, Members of Parliament and Public Servants*

This section assesses the codes of conduct applying to New South Wales Ministers, Members of Parliament and public servants as they relate to direct lobbying. These codes should lay down appropriate standards when:

- New South Wales public officials are directly lobbied; and
- public officials themselves directly lobby - when there is 'lobbying from within'.

The regulatory goals of these standards include those associated with transparency of government decision-making. These standards should also be aimed at effectively managing the conflicts of interest associated with direct lobbying and at ensuring that government decision-making is not based on the wealth, resources or political connections and power of those lobbying.

It should be noted that this report does not deal with regimes governing the disclosure of interests by New South Wales Members of Parliament and Ministers as these regimes raise complex issues going beyond the regulation of direct lobbying.

1 *Standards when New South Wales Public Officials are Directly Lobbied*

Whilst the Code for New South Wales Members of Parliament makes no reference to the NSW Government Lobbyists Code of Conduct, the codes applying to New South Wales Ministers and public servants require that these public officials comply with Lobbyists Code of Conduct.⁶¹⁶ As noted earlier, the principal obligation of these public officials under the current Register of Lobbyists is simple and significant: 'A Government Representative shall not at any time permit lobbying by . . . a Lobbyist who is not on the Register of Lobbyists'.⁶¹⁷ This report has recommended that this obligation be established in legislation – see Recommendation Twelve above.

⁶¹⁶ See text above accompanying n 531.

⁶¹⁷ *NSW Lobbyist Code of Conduct*, above n 145, cl 4.1(a).

This obligation should be supplemented by an obligation to notify the NSWEC if there are reasonable grounds for suspecting that a lobbyist has breached the Lobbyists Code of Conduct. This obligation will enhance the enforcement 'bite' of the Code by providing crucial intelligence to the enforcement agency, the NSWEC; and in doing so, constitute an important deterrent to breaches of the Lobbyists Code of Conduct. Such an obligation is not novel and, indeed, parallels the duty currently imposed under section 11 of the *Independent Commission Against Corruption Act 1988* (NSW) on certain groups of New South Wales public officials to report to ICAC any matter that the public official suspects on reasonable grounds concerns corrupt conduct under the Act.

Recommendation Eighteen

Public officials should be obliged to notify the NSWEC if there are reasonable grounds for suspecting that a lobbyist has breached the Lobbyists Code of Conduct.

In laying down standards when New South Wales public officials are directly lobbied, the codes should also stipulate the appropriate standard of decision-making for public officials. Recommendation Seventeen of the report included the following prescription:

Lobbyists shall advocate their views to public officials according to the merits of the issue at hand and shall not adopt approaches that rely upon their wealth, political power or connections; or that of the individuals and/or organisations they represent.

As stated earlier, the reasons for this duty are obvious: it orientates the advocacy of the lobbyists towards the public interest and requires them to avoid strategies that involve unfair access and influence.⁶¹⁸ For similar reasons, there should be a 'mirror' obligation on public officials – such a duty will orientate the activities of public officials towards the public interest and require them to insulate their decision-making from unfair access and influence.

⁶¹⁸ See text above accompanying n 613.

Recommendation Nineteen

The codes of conduct applying to New South Wales Ministers, Members of Parliament and public servants should include the following duty:

When lobbied, public officials perform their duties and functions according to the merits of the issue at hand and shall not do so in a manner that privileges the wealth, political power or connections of lobbyists and the individuals and/or organisations they represent.

Another set of obligations that are essential in laying down appropriate standards for New South Wales public officials when they are directly lobbied concerns meeting protocols. This topic was dealt with through Recommendation 2 of the ICAC Lobbying Report, which provided as follows:

The Commission recommends that the NSW Premier develops a model policy and procedure for adoption by all departments, agencies and ministerial offices concerning the conduct of meetings with lobbyists, the making of records of these meetings, and the making of records of telephone conversations. As a minimum, the procedure should provide for:

- a. a Third Party Lobbyist and anyone lobbying on behalf of a Lobbying Entity to make a written request to a Government Representative for any meeting, stating the purpose of the meeting, whose interests are being represented, and whether the lobbyist is registered as a Third Party Lobbyist or engaged by a Lobbying Entity
- b. the Government Representative to verify the registered status of the Third Party Lobbyist or Lobbying Entity before permitting any lobbying
- c. meetings to be conducted on government premises or clearly set out criteria for conducting meetings elsewhere
- d. the minimum number and designation of the Government Representatives who should attend such meetings
- e. a written record of the meeting, including the date, duration, venue, names of attendees, subject matter and meeting outcome

f. written records of telephone conversations with a Third Party Lobbyist or a representative of a Lobbying Entity.⁶¹⁹

At the time of this recommendation was made in 2010, only one department – the Department of Planning – had in place protocols for the conduct of meetings between its officials and lobbyists,⁶²⁰ nearly four years later, the situation remains the same.⁶²¹ This report strongly endorses the ICAC recommendation on meeting protocols.

Recommendation Twenty

The recommendation made in the ICAC Lobbying Report concerning protocols of meetings between New South Wales public officials and lobbyists should be adopted.

A final consideration is the requirement that Ministers publish extracts from their diaries detailing scheduled meetings held with stakeholders, external organisations and individuals from 1 July 2014 on a quarterly basis, with these summaries disclosing the organisation or individual with whom the meeting occurred, details of any registered lobbyists present, and the purpose of the meeting.⁶²²

This is a welcome measure. It should, however, be enhanced in two ways. First, the diary summaries should be published on a monthly basis – a frequency that this report has recommended in relation to contacts that lobbyists have with public officials. Second, the information provided through these summaries should be consistent in form with that provided under the Register of Lobbyists so as to facilitate cross-checking. For instance, information provided through the diary summaries in relation to the purposes of the meeting should be organised in the following ways:

- Rather than being asked to nominate ‘the purpose of the meeting’, Ministers should be required to state whether the purposes of the meeting

⁶¹⁹ ICAC Lobbying Report, above n 17, 42.

⁶²⁰ Ibid 41.

⁶²¹ See text above accompanying nn 334-341.

⁶²² See text above accompanying nn 315-318.

include: the making or amendment of legislation; development or amendment of a government policy or program; awarding of government contract or grant; allocation of funding; making a decision about planning or giving of a development approval under the New South Wales planning laws.

- If the disclosed purposes of the meeting include the making or amendment of legislation, or the development or amendment of a government policy or program, Ministers should be required to specify the relevant legislation, policy or program. If the disclosed purposes of the contact include the award of a government contract or grant, allocation of funding, making a decision about planning or giving of a development approval under the New South Wales planning laws, Ministers should be required to specify the relevant contract, grant or planning/development decision unless these details are 'commercial-in-confidence'.⁶²³

Recommendation Twenty One

- Summaries of the diaries of New South Wales Ministers should be published on a monthly basis and provide details of meetings held with stakeholders, external organisations and individuals including the organisation or individual with whom the meeting occurred, details of any registered lobbyists present, and the purposes of the meeting.
- The information provided through these summaries should be consistent in form with that provided under the Register of Lobbyists so as to facilitate cross-checking.

2 Standards when New South Wales Public Officials Directly Lobby

The risks of 'lobbying from within' have been highlighted by the lobbying activities of Edward Obeid.⁶²⁴ It was these activities that led to ICAC to make the following recommendation in its report, *Reducing the opportunities and incentives for corruption in the state's management of coal resources*:

That the NSW Parliament's Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee consider amending the

⁶²³ See text above accompanying nn 509-513.

⁶²⁴ See text above accompanying nn 51-52.

Code of Conduct for Members to deal comprehensively with improper influence by members.⁶²⁵

Explaining its recommendation, ICAC made these observations:

there may be nothing improper about parliamentarians lobbying ministers on behalf of concerned constituents and stakeholders. Indeed, this principle is an essential element of the Westminster system. But lobbying on behalf of one's own private interest, especially when the interest is not declared, is completely antithetical to the ideals of the Westminster system.⁶²⁶

As a result of the ICAC's recommendation, New South Wales Legislative Assembly's Parliamentary Privilege and Ethics Committee has undertaken an inquiry into ICAC report, *Reducing the opportunities and incentives for corruption in the state's management of coal resources*, and made the following recommendation:

The Committee recommends that the *Code of Conduct for Members* be amended by the addition of the following Clause 8:

8 Improper Influence

A member must not improperly use his or her influence as a member to seek to affect a decision by a public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, the private interests of the member, a member of the member's family, or a business associate of the member.⁶²⁷

This report endorses this recommendation of the Parliamentary Privileges and Ethics Committee; indeed, it recommends that a similar clause to that recommended by the Committee be included in the codes of conduct applying to Ministers and public servants.

⁶²⁵ ICAC Lobbying Report, above n 17, Recommendation 22.

⁶²⁶ *Circular Quay Retail Lease Report*, above n 7, 64.

⁶²⁷ Coal Resources Report, above n 6, 5 (emphasis original).

Recommendation Twenty Two

The following clause should be inserted into the codes of conduct applying to New South Wales Ministers, Members of Parliament and public servants:

A public official must not improperly use his or her influence as a public official to seek to affect a decision by another public official including a minister, public sector employee, statutory officer or public body, to further, directly or indirectly, his or her private interests, a member of his or her family, or a business associate of the public official.

IX CONCLUSION

This report has taken a principles-based approach in its examination of the regulation of direct lobbying in New South Wales with key democratic principles providing its anchor points - transparency of government decision-making; prevention of corruption and misconduct; fairness in government decision-making; and respect for the freedom to directly lobby.

This framework has enabled the report to identify the main problems associated with direct lobbying: secret lobbying; lobbying involving corruption and misconduct; and lobbying involving unfair access and influence. It has also provided the goals for the regulation of direct lobbying – regulatory goals that provide the evaluative benchmark for such regulation.

Informed by these regulatory goals, this report welcomes the amendments made by the *Electoral and Lobbying Amendment (Electoral Commission) Act 2014* (NSW) for strengthening the democratic regulation of direct lobbying in New South Wales. The regime established by these amendments can, however, be enhanced in significant ways; and to this end, this report makes 22 separate recommendations.

**APPENDIX ONE: NSW INDEPENDENT COMMISSION AGAINST CORRUPTION INVESTIGATIONS INVOLVING MINISTERS:
2013 TO PRESENT⁶²⁸**

Name of investigation	Scope of investigation	Corrupt conduct findings
<p>Operation Jarilo: Investigation of Ian Macdonald, Ronald Medich and others</p>	<p>This investigation examined allegations that:</p> <ul style="list-style-type: none"> • Ian Macdonald, while NSW minister for energy, by arrangement with a businessman, Ronald (Ron) Medich, exercised his influence as a minister of the Crown to set up meetings between Mr Medich, and George Maltabarow, the managing director of EnergyAustralia on 1 June 2009 and between Mr Medich and Craig Murray, the managing director of Country Energy, on 15 July 2009, for the purpose in both cases of allowing Mr Medich to promote his business interests to these executives; • Shortly prior to the second meeting of 15 July 2009, Fortunato (Lucky) Gattellari, at the direction of Mr Medich and at the request of Mr Macdonald, arranged the provision to Mr Macdonald of sexual services and hotel accommodation to take place immediately after the second meeting; • Mr Macdonald utilised the services and hotel accommodation so arranged; and • The services and hotel accommodation were provided to Mr Macdonald and accepted by him as a reward for his having arranged the meetings involving the energy executives and Mr Medich.⁶²⁹ 	<p>The Commission found that:</p> <ul style="list-style-type: none"> • Mr Macdonald engaged in corrupt conduct by exercising his influence as the minister for energy to cause Mr Murray to attend the Tuscany Restaurant at Leichhardt in Sydney on 15 July 2009 so that Mr Medich, and any other person Mr Medich wished to have present, could attend the meeting and promote the electrical services of Rivercorp Pty Ltd (“Rivercorp”), an electrical contracting company in which Mr Medich had a significant financial interest, to Mr Murray and, prior to the meeting, soliciting the sexual services of a woman as a reward for arranging the meeting and, on 15 July 2009, receiving from Mr Medich and Mr Gattellari the services of a woman and hotel accommodation as a reward for arranging the meeting. • Mr Medich and Mr Gattellari engaged in corrupt conduct by arranging hotel accommodation and the services of a woman to be provided to Mr Macdonald as a means of rewarding Mr Macdonald for showing favour to Mr Medich by arranging the 15 July 2009 meeting with Mr Murray so that Mr Medich, and any other person he wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray.⁶³⁰

⁶²⁸ Text in the first three columns is generally extracted verbatim from material published by the New South Wales Independent Commission Against Corruption. Quotation marks have not been used to enable greater readability.

Name of investigation	Scope of investigation	Corrupt conduct findings
Operation Acacia: Investigation into the conduct of Ian MacDonald, John Maitland and others	This investigation concerned: <ol style="list-style-type: none"> 1) The circumstances surrounding the application for and allocation to Doyles Creek Mining Pty Ltd (DCM) of Exploration Licence (EL) No 7270 under the Mining Act 1992 (NSW) (“the Mining Act”); 2) The circumstances surrounding the making of profits, if any, by the shareholders of NuCoal Resources NL as proprietors of DCM; 3) Any recommended action by the NSW Government with respect to licences or leases under the Mining Act over the Doyles Creek area; 4) Any recommended action by the NSW Government with respect to amendment of the Mining Act; and 5) Whether the NSW Government should commence legal proceedings, or take any other action, against any individual or company in relation to the circumstances surrounding the allocation of EL No 7270.⁶³¹ 	The Commission found that: <ul style="list-style-type: none"> • Mr Macdonald engaged in corrupt conduct by acting contrary to his duty as a minister of the Crown in granting DCM consent to apply for the EL in respect of land at Doyles Creek and by granting the EL to DCM, both grants being substantially for the purpose of benefiting Mr Maitland. The Commission finds that, but for that purpose, Mr Macdonald would not have made those grants. • Mr Maitland engaged in corrupt conduct by making and publishing to the Department of Primary Industries (the DPI) certain false or misleading statements. • others engaged in corrupt conduct by agreeing to Mr Maitland publishing to the DPI certain false or misleading statements.⁶³²

⁶²⁹New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, Ronald Medich and others* (July 2013) 5.

⁶³⁰New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, Ronald Medich and others* (July 2013) 5, Chapter 5.

⁶³¹New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, John Maitland and others* (August 2013) 8.

⁶³²New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, John Maitland and others* (August 2013) 8, Chapter 37.

Name of investigation	Scope of investigation	Corrupt conduct findings
Indus: Operation Investigation into the conduct of Moses Obeid, Eric Roozendaal and others	This investigation concerned allegations that, in June 2007, Moses Obeid corruptly provided the Hon Eric Roozendaal MLC with a gift or benefit being: <ul style="list-style-type: none"> • A Honda CR-V motor vehicle; or • A Honda CR-V motor vehicle at a price reduced by \$10,800 from the market price; or • A payment of \$10,800 towards the price of a Honda CR-V motor vehicle.⁶³³ 	The Commission found Moses Obeid engaged in corrupt conduct by providing a \$10,800 benefit to Mr Roozendaal as an inducement for Mr Roozendaal to show favour to Obeid business interests in the exercise of his official functions, or the receipt of which would tend to influence Mr Roozendaal to show favour to Obeid business interests in the exercise of his public official functions. ⁶³⁴
Operation Jasper: Investigation into the conduct of Ian McDonald, Edward Obeid, Moses Obeid and others	This investigation concerned: <ol style="list-style-type: none"> 1) The circumstances surrounding a decision made in 2008 by the then minister for primary industries and minister for mineral resources, the Hon Ian Macdonald MLC, to grant a coal exploration licence, referred to as the Mount Penny tenement, in the Bylong Valley. The circumstances in question include whether that decision was not impartially made and was influenced by the Hon Edward Obeid MLC ("Edward Obeid Sr") or members of his family (whether on Edward Obeid Sr's behalf or otherwise); 2) Mr Macdonald's role in the decision of the NSW Department of Primary Industries (DPI), in about September 2008, to call for limited expressions of interest (EOIs) for the awarding of exploration licences in respect of the coalmining allocation areas known as Mount Penny, Glendon Brook and Yarrowa; 3) The circumstances surrounding the tenders made by Monaro Mining NL ("Monaro Mining") for exploration licences in respect of the coalmining allocation areas known as Mount Penny, Glendon Brook and Yarrowa and the awarding of those licences; 4) The roles of Mr Macdonald and Travers Duncan in the decision in 	The Commission found that Mr Macdonald engaged in corrupt conduct by: <ol style="list-style-type: none"> a) entering into an agreement with Edward Obeid Sr and Moses Obeid whereby he acted contrary to his public duty as a minister of the Crown by arranging for the creation of the Mount Penny tenement for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family; b) entering into an agreement with Edward Obeid Sr and Moses Obeid whereby he acted contrary to his public duty as a minister of the Crown by providing Moses Obeid or other members of the Obeid family with confidential information for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family; c) deciding to reopen the EOIs process for exploration licences in order to favour Mr

⁶³³ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Moses Obeid, Eric Roozendaal and others* (July 2013) 5.

⁶³⁴ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Moses Obeid, Eric Roozendaal and others* (July 2013) 5.

Name of investigation	Scope of investigation	Corrupt conduct findings
	<p>November 2008 to reopen the EOI process for the awarding of exploration licences in 11 coalmining areas and to extend further invitations to additional mining companies, including Cascade Coal Pty Ltd (“Cascade”);</p> <p>5) Whether Mr Macdonald, or any member of his personal staff, or any employee of the DPI, improperly provided confidential information relating to the EOI process in respect of the Mount Penny and Yarrawa tenements to members of the Obeid family or persons associated with Cascade;</p> <p>6) Whether such confidential information was used by members of the Obeid family or persons associated with Cascade;</p> <p>7) Whether Mr Macdonald, or any member of his personal staff, or any employee of the DPI, improperly provided confidential information relating to the reopening of the EOI process and other confidential information in respect of the Mount Penny exploration licence to Mr Duncan or any other person;</p> <p>8) The circumstances under which Voope Pty Ltd (“Voope”) acquired an interest in Monaro Coal Pty Ltd (“Monaro Coal”), and under which the Yarrawa exploration licence was awarded to Loyal Coal Pty Ltd (“Loyal Coal”). The name of Loyal Coal was formerly Monaro Coal;</p> <p>9) The circumstances surrounding the bid made by Cascade for the Mount Penny exploration licence and the awarding of that exploration licence to Cascade;</p> <p>10) The circumstances relating to the entering into of a joint venture involving Monaro Mining, the Obeid family, or any members of that family or entities associated with that family such as Buffalo Resources Pty Ltd (“Buffalo Resources”), and Cascade;</p> <p>11) The circumstances relating to the extraction of the Obeid interests from the joint venture;</p> <p>12) Whether any confidential information was provided improperly by Mr Macdonald, or any member of his personal staff, or any employee of the DPI, to any person for use in connection with any such joint venture or ventures or in selling or acquiring any interest in any such joint venture or ventures;</p>	<p>Duncan; and</p> <p>d) providing Mr Duncan with confidential information, being the document titled “Proposed NSW Coal Allocations”, and advice that the process for EOIs in coal release areas was to be reopened.</p> <p>The Commission found that Edward Obeid Sr engaged in corrupt conduct by:</p> <p>a) entering into an agreement with Mr Macdonald whereby Mr Macdonald acted contrary to his public duty as a minister of the Crown by arranging for the creation of the Mount Penny tenement for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family; and</p> <p>b) entering into an agreement with Mr Macdonald whereby Mr Macdonald acted contrary to his public duty as a minister of the Crown by providing Moses Obeid or other members of the Obeid family with confidential information for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family.</p> <p>The Commission found that Moses Obeid engaged in corrupt conduct by:</p> <p>a) entering into an agreement with Mr Macdonald whereby Mr Macdonald acted contrary to his public duty as a minister of the Crown by arranging for the creation of the Mount Penny tenement for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family; and</p>

Name of investigation	Scope of investigation	Corrupt conduct findings
	<p>13) The circumstances relating to the intended sale of shares in Cascade to White Energy Company Ltd (“White Energy”);</p> <p>14) The roles played by Mr Macdonald, members of the Obeid family, Mr Duncan, Richard Poole, John McGuigan, James McGuigan, John Kinghorn, John Atkinson and Greg Jones in the transactions described in paragraphs 9 to 13 above; and</p> <p>15) Whether any deliberate misrepresentations were made by Mr Duncan, Mr Poole, John McGuigan, James McGuigan, Mr Kinghorn, Mr Atkinson and Mr Jones to White Energy’s Independent Board Committee (IBC), or by any of those persons to the Australian Stock Exchange (ASX), in connection with the proposed acquisition by White Energy of the shares of Cascade, and whether any of those persons breached any fiduciary duty they owed to White Energy in connection with that proposed acquisition.⁶³⁵</p>	<p>b) entering into an agreement with Mr Macdonald whereby Mr Macdonald acted contrary to his public duty as a minister of the Crown by providing Moses Obeid or other members of the Obeid family with confidential information for the purpose of benefiting Edward Obeid Sr, Moses Obeid and other members of the Obeid family.</p> <p>The Commission found that Mr Duncan engaged in corrupt conduct by:</p> <p>a) deliberately misleading Graham Cubbin (the chairman of White Energy’s IBC) as to the Obeid family involvement in the Mount Penny tenement by failing to disclose the involvement to Mr Cubbin when Mr Cubbin raised the issue with him;</p> <p>b) deliberately failing to disclose to the IBC the fact of the Obeid family involvement despite knowing that the IBC was concerned with any such involvement;</p> <p>c) telling Anthony Levi that John McGuigan would directly contact Mr Cubbin and thereby relieving Mr Levi from having to answer Mr Cubbin’s request for information about the Obeid family involvement; and</p> <p>d) authorising Mr Poole to arrange for the Obeids to be extracted from the Mount Penny joint venture through arrangements involving Coal & Minerals Group Pty Ltd (“Coal & Minerals Group”) and Southeast Investments Group</p>

⁶³⁵ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, Edward Obeid, Moses Obeid and others* (July 2013) 8-9.

Name of investigation	Scope of investigation	Corrupt conduct findings
		<p>Pty Ltd (“Southeast Investments”) with the intention, in each case, of deceiving relevant public officials or public authorities of the NSW Government as to the involvement of the Obeids in the Mount Penny tenement.</p> <p>The Commission found that John McGuigan engaged in corrupt conduct by:</p> <ul style="list-style-type: none"> a) deliberately failing to disclose to the IBC the fact of the Obeid family involvement despite knowing that the IBC was concerned with any such involvement; b) telling Mr Levi that he (John McGuigan) would directly contact Mr Cubbin and thereby relieving Mr Levi from having to answer Mr Cubbin’s request for information about the Obeid family involvement; and c) authorising Mr Poole to arrange for the Obeids to be extracted from the Mount Penny joint venture through arrangements involving Coal & Minerals Group and Southeast Investments; <p>with the intention, in each case, of deceiving relevant public officials or public authorities of the NSW Government as to the involvement of the Obeids in the Mount Penny tenement.</p> <p>The Commission found that Mr Atkinson engaged in corrupt conduct by:</p> <ul style="list-style-type: none"> a) deliberately failing to disclose to the IBC the fact of the Obeid family involvement despite knowing that the IBC was concerned with any such involvement; and b) authorising Mr Poole to arrange for the Obeids to be extracted from the Mount Penny joint

Name of investigation	Scope of investigation	Corrupt conduct findings
		<p>venture through arrangements involving Coal & Minerals Group and Southeast Investments; with the intention, in each case, of deceiving relevant public officials or public authorities of the NSW Government as to the involvement of the Obeids in the Mount Penny tenement.</p> <p>The Commission found that Mr Kinghorn engaged in corrupt conduct by deliberately failing to disclose information to the IBC about the Obeid family involvement in the Mount Penny tenement, with the intention of deceiving relevant public officials or public authorities of the NSW Government as to the involvement of the Obeids in that tenement.</p> <p>The Commission found that Mr Poole engaged in corrupt conduct by:</p> <ul style="list-style-type: none"> a) deliberately failing to disclose to the IBC the fact of the Obeid family involvement despite knowing that the IBC was concerned with any such involvement; b) telling the IBC that he was not aware of any payments having been made to Edward Obeid Sr or any entities associated with him; and c) arranging for the Obeids to be extracted from the Mount Penny joint venture through arrangements involving Coal & Minerals Group and Southeast Investments; with the intention, in each case, of deceiving relevant public officials or public authorities of the

Name of investigation	Scope of investigation	Corrupt conduct findings
Operation Cyrus: Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay Retail Lease Policy	<p>The investigation concerned the allegations that:</p> <ul style="list-style-type: none"> • Between 1995 and 2011 the Hon Edward Obeid MLC (“Edward Obeid Sr”) misused his position as a member of Parliament (MP) to attempt to influence other public officials to exercise their official functions with respect to retail leases at Circular Quay in Sydney without disclosing that he, his family or a related entity had an interest in certain of the leases; and • Between 2000 and 2011 certain public officials, including the Hon Joseph Tripodi, improperly exercised their official functions with respect to retail leases at Circular Quay for the purpose of benefiting Edward Obeid Sr or his family.⁶³⁷ 	<p>NSW Government as to the involvement of the Obeids in the Mount Penny tenement.⁶³⁶</p> <p>The Commission found that Edward Obeid Sr engaged in corrupt conduct by misusing his position as an MP:</p> <ul style="list-style-type: none"> • In about 2000 to make representations to minister the Hon Carl Scully that Mr Scully should benefit Circular Quay leaseholders by ensuring they were offered new leases with five-year terms and options for renewal for five years at a time when Edward Obeid Sr was influenced in making the representations by the knowledge that Circular Quay leaseholders had donated \$50,000 to the Australian Labor Party (ALP) as payment for the carrying out of what they understood to be a promise that their interests as leaseholders would be looked after by the government; • Between 2003 and 2006 by making representations to ministers Michael Costa and the Hon Eric Roozendaal to change government policy to allow for direct negotiations for new leases with existing Circular Quay leaseholders rather than proceed with an open tender process and deliberately failing to disclose to them that his family had interests in Circular Quay leases and would benefit financially from such a change in policy; and

⁶³⁶ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of Ian MacDonald, Edward Obeid, Moses Obeid and others* (July 2013) 9-10, Chapter 33.

⁶³⁷ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay Retail Lease Policy* (June 2014) 6.

Name of investigation	Scope of investigation	Corrupt conduct findings
		<ul style="list-style-type: none"> <li data-bbox="1438 282 2033 555">• To benefit his family's financial interests by making representations to Mr Tripodi and Mr Steve Dunn (who at the relevant time was deputy chief executive officer of the Maritime Authority of NSW) to pressure them to change government policy to allow for direct negotiations for new leases with existing Circular Quay leaseholders rather than proceed with an open tender process. <p data-bbox="1438 587 2033 922">The Commission found that Mr Tripodi engaged in corrupt conduct in 2007 by deliberately failing to disclose to his Cabinet colleagues his awareness of the Obeid family's financial interests in Circular Quay leases, knowing that those interests would benefit from Cabinet's endorsement of changes to the Commercial Lease Policy by effectively eliminating any material prospect of a public tender process for those leases and instead permitting direct negotiations for their Circular Quay tenancies.</p> <p data-bbox="1438 959 2033 1224">The Commission found that Mr Dunn engaged in corrupt conduct in 2007 by using his public official position for the purpose of benefiting Edward Obeid Sr and the Obeid family by effectively bringing about a change to the Commercial Lease Policy to allow for direct negotiations with existing Circular Quay leaseholders, knowing that the Obeid family's financial interests in Circular Quay leases would benefit from the change in policy.⁶³⁸</p>

⁶³⁸ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others concerning Circular Quay Retail Lease Policy* (June 2014) 6-7, Chapter 10.

Name of investigation	Scope of investigation	Corrupt conduct findings
<p>Operation Cabot: Investigation into the conduct of Edward Obeid MLC and others concerning the granting of water licences at Cherrydale Park</p>	<p>This investigation was concerned with whether, between 2007 and 2008:</p> <ul style="list-style-type: none"> • The Hon Edward Obeid MLC misused his position as a member of Parliament (MP) to influence other public officials to exercise their official functions with respect to the review and grant of water licences at Cherrydale Park without disclosing that he, his family or a related entity had interests in the licences; and • Certain public officials improperly exercised their official functions with respect to the review and grant of water licences at Cherrydale Park.⁶³⁹ 	<p>The Commission found that:</p> <ul style="list-style-type: none"> • Edward Obeid Sr engaged in corrupt conduct by misusing his position as an MP to benefit his family's financial interests by improperly influencing Steve Dunn, a senior bureaucrat formerly with the NSW Department of Water and Energy (DWE), in the discharge of Mr Dunn's public official duties; and • Edward Obeid Sr engaged in corrupt conduct by misusing his position and influence as an MP to benefit his family's financial interests by engaging Mark Duffy, then DWE director-general, so that, in the carrying out of his official functions, Mr Duffy would unwittingly fulfil Edward Obeid Sr's expectations that his financial interests with respect to the water licences affecting Cherrydale Park would be favoured.⁶⁴⁰
<p>Operation Meeka: Investigation into the conduct of Edward Obeid MLC and others concerning the engagement of Direct Health Solutions Pty Ltd</p>	<p>This investigation was concerned with whether, between 2005 and 2008, Edward Obeid Sr MLC misused his position as an MP to attempt to influence other public officials to make decisions favouring Direct Health Solutions Pty Ltd without disclosing that he, his family or a related entity had an interest in that company.⁶⁴¹</p>	<p>The Commission found that Edward Obeid Sr engaged in corrupt conduct by misusing his position as an MP to further his own interests by arranging for finance minister Michael Costa to meet with businessmen Paul Dundon and Mitchell Corn for the purpose of them promoting the services of DHS to the NSW Government so as to benefit DHS and without disclosing his family's financial interest in DHS.⁶⁴²</p>

⁶³⁹ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd* (June 2014) 6.

⁶⁴⁰ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd* (June 2014) 6, Chapter 8.

⁶⁴¹ New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd* (June 2014) 6.

Name of investigation	Scope of investigation	Corrupt conduct findings
Operation Credo: Investigation into allegations concerning corrupt conduct involving Australian Water Holdings Pty Ltd	This investigation will examine: <ul style="list-style-type: none"> • Allegations that persons with an interest in Australian Water Holdings Pty Ltd (AWH) obtained a financial benefit through adversely affecting the official functions of Sydney Water Corporation (SWC) by: including expenses incurred in other business pursuits in claims made on SWC for work on the North West Growth Centre; drawing from funds allocated for other purposes; and preventing SWC from ascertaining the true financial position, including the level of the executives' remuneration; and • Whether public officials and others were involved in the falsification of a cabinet minute relating to a public private partnership proposal made by AWH intended to mislead the NSW Government Budget Cabinet Committee and obtain a benefit for AWH, and other related matters.⁶⁴³ 	Investigation ongoing

⁶⁴² New South Wales Independent Commission Against Corruption, *ICAC Report: Investigation into the conduct of the Hon Edward Obeid MLC and others in relation to influencing the granting of water licences and the engagement of Direct Health Solutions Pty Ltd* (June 2014) 7, Chapter 11.

⁶⁴³ New South Wales Independent Commission Against Corruption, *MEDIA ALERT: Public inquiry into alleged corruption involving public officials and persons with interest in Australian Water Holdings starts Monday* (14 March 2014)(available at <http://www.icac.nsw.gov.au/investigations/current-investigations/article/4510>; accessed on 9 June 2014)

Name of investigation	Scope of investigation	Corrupt conduct findings
<p>Operation Spicer: Investigation into allegations that certain members of parliament and others corruptly solicited, received and concealed payments from various sources in return for certain members of parliament and others favouring the interests of those responsible for the payments</p>	<p>The investigation will examine whether:</p> <ul style="list-style-type: none"> • Between April 2009 and April 2012, certain members of parliament including Christopher Hartcher, Darren Webber and Christopher Spence, along with others including Timothy Koelma and Raymond Carter, corruptly solicited, received, and concealed payments from various sources in return for certain members of parliament favouring the interests of those responsible for the payments; • Between December 2010 and November 2011, certain members of parliament, including those mentioned above, and others, including Raymond Carter, solicited, received and failed to disclose political donations from companies, including prohibited donors, contrary to the Election Funding, Expenditure and Disclosures Act 1981; • Eightbyfive, a business operated by Mr Koelma entered into agreements with each of a series of entities including Australian Water Holdings Pty Ltd (AWH), whereby each entity made regular payments to Eightbyfive, purportedly for the provision of media, public relations and other services and advice, in return for which Mr Hartcher favoured the interests of the respective entity; <p>The investigation will also examine the circumstances in which false allegations of corruption were made against senior SWC executives (see also the Commission's Operation Credo public inquiry).</p>	<p>Investigation ongoing</p>

APPENDIX TWO: NEW SOUTH WALES REGISTER OF PROFESSIONAL LOBBYISTS

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
21.	Aegis Consulting Group Pty Ltd	Aegis Consulting Australia	Vishal Beri, Director	<ul style="list-style-type: none"> • Blue Line Cruises; • Australasian Regional Association of Zoos and Aquaria. 	Vishal Beri
22.	Alkar Pty Ltd	Allan King Consultancy	Allan King	<ul style="list-style-type: none"> • Aviation/Aerospace Australia; • Converga Pty Ltd. 	<ul style="list-style-type: none"> • Allan King; • Karen King.
23.	Aspromonte Holdings Pty. Limited	Aspromonte Holdings Pty. Limited	Stefano Laface, Director	N/A	Stefano Laface
24.	Asset Public Relations Pty Ltd	Asset Public Relations Pty Lt	Anthony S. Rasman, Strategic Council	<ul style="list-style-type: none"> • McCain Foods; • US Chamber of Commerce Institute of Legal Reform. 	<ul style="list-style-type: none"> • Julianne Dowling; • Anthony Serge Rasman.
25.	AusAccess Unit Trust	AusAccess Pty Ltd	Mark Ridgway	<ul style="list-style-type: none"> • GDI; • Genesys Australia; • Hindmarsh; • Samsung Techwin; • TECC Ltd. 	<ul style="list-style-type: none"> • Mark Ridgway (Consulting Canberra); • Kerrie Ridgway (Consulting Canberra).
26.	Australian Public Affairs Ltd Partnership	Australian Public Affairs	<ul style="list-style-type: none"> • Rodney Frail, Director - Media & Issues Management; • Liam Bathgate, Director; • Rachael Fry, Senior Consultant – Regulatory Affairs. 	<ul style="list-style-type: none"> • Aviagen ANZ; • Elementus Energy Pty Limited ; • HammondCare; • Indiana Wesleyan University; • National Insurance Brokers Association (NIBA); 	<ul style="list-style-type: none"> • Australian Public Affairs Pty Ltd; • Centre for Litigation Communications Pty Ltd; • Strategic Issues Management Pty Ltd;

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Red Bull GmbH; • Wesley Institute. 	<ul style="list-style-type: none"> • Tracey Cain.
27.	Bartholomew Quinn and Associates Pty Ltd	Bartholomew Quinn and Associates	David Quinn, Managing Director	<ul style="list-style-type: none"> • Norske Skog; • Shaw Contracting; • Wallenius Wilhelmsen Logistics. 	David Quinn
28.	Barton Deakin Pty Limited	Barton Deakin Pty Limited	<ul style="list-style-type: none"> • Hon Peter Collins AM QC, Chairman; • Matthew Hingerty; CEO, Managing Director; • Anthony Benschel, Managing Director (NSW); • Amanda Parker; Consultant; • Patrick McGrath, Director; • Melanie Brown, Research Analyst; • Lyndon Gannon, Office Manager/Executive Assistant. 	<ul style="list-style-type: none"> • Adobe Systems Pty Ltd; • Alpha Salmon; • AMP; • Aspen Medical; • Association of Independent Schools of NSW; • Association of Professional Strata Managers; • Australian Health Tourism; • Bass Flinders; • Blackstone; • Bombardier; • Bradcorp Holdings Pty Ltd; • Bunnings; • Camp Quality; • Canada Pension Plan Investment Board; • Capital Property Corporation Pty Ltd; • CBRE Pty Limited; • CGI; 	<ul style="list-style-type: none"> • Consolidated Investment Fund No. 88 Pty Limited; • Peter Edward James Collins; • Singleton Ogilvy & Mather (Holdings) Pty Ltd.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Corning Cable Systems Australia; • Corrs Chambers Westgarth; • Country Women's Association of New South Wales; • Crowe Horwath; • Crown Castle; • Cure Brain Cancer Foundation; • Deans Property Pty. Ltd; • Fujitsu; • Healthscope; • Honeywell Holdings Pty Ltd; • Hutchinson Port Holdings; • Indue; • INS Career Management; • International Parking Group; • InvoCare Australia Pty Limited; • Jacobsen International; • John Pollaers; • KinCare Community Services Limited; • Laing O'Rourke; • Lilac Pty Ltd; • McDonald's Australia Ltd.; 	

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Medibank Health Solutions; • Model Sites Pty Ltd; • Motorola; • Multiple Sclerosis Limited; • National Financial Services Federation; • National Patient Transport Pty Ltd; • Navitas; • Nelune Foundation; • Northgate Public Services Pty Limited; • NSW Public Libraries Association; • Ogilvy & Mather (Sydney) Pty Limited; • OPower, Inc; • Palace Cinemas Nominees Pty Ltd; • Royal Agricultural Society NSW; • Rural Fire Service Association of New South Wales; • Scientific Games International Inc; • Settlement Services International; • Smart Services CRC Pty 	

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Ltd; <ul style="list-style-type: none"> • St George Community Housing Limited; • St Vincent's Healthcare Australia; • The Australian Centre for Healthcare Governance Pty Ltd; • The Benevolent Society; • The Financial Investor Group; • Thomas Kelly Youth Foundation Limited; • Tomago Aluminum; • Total Environment Centre; • Trility; • Uber; • Vector (New Zealand); • ViiV Healthcare; • Volgren Australia Pty Ltd; • Westpac Rescue Helicopter Service; • Yellow Edge. 	
29.	Belman Consulting Pty Ltd	Belman Consulting Pty Ltd	Liam Bathgate, Director	Tenix Group Pty Ltd	<ul style="list-style-type: none"> • Liam Bathgate • Jeanne Bathgate
30.	Bespoke Approach Pty Ltd as trustee for Bespoke Approach Unit Trust	Bespoke Approach	<ul style="list-style-type: none"> • Ian Richard Smith; • Nick Bolkus; • Thomas Pagliaro, Associate; • Caroline Louise 	<ul style="list-style-type: none"> • Genesee & Wyoming Australia Pty Ltd; • Kohlberg Kravis Roberts & Co L.P.; • Lend Lease; 	<ul style="list-style-type: none"> • Ian Richard Smith; • Nick Bolkus; • Alexander Downer.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			Rhodes, Managing Director; <ul style="list-style-type: none"> Paul David Tierney, Managing Director; Georgia Bradshaw, Researcher. 	<ul style="list-style-type: none"> Santos Limited. 	
31.	Bluegrass Consulting Pty Ltd	Bluegrass Consulting Pty Ltd	Rodd Pahl, Managing Director	<ul style="list-style-type: none"> Friends of Collector Inc; GPT Group; Inco Ships Pty Ltd; iTIC Finance Australia Pty Ltd; Moorebank Intermodal Company; Reliance Rail. 	Rodd Pahl
32.	Blyde Communications Pty Ltd	Blyde Communications	Dan Blyde	Qube Holdings Ltd	Dan Blyde
33.	Bossy Group Pty Ltd	Bossy Group	Peter Michael McMahon, Principal Consultant	<ul style="list-style-type: none"> GRA Everingham; Conference of Asia Pacific Express Carriers 	<ul style="list-style-type: none"> Peter Michael McMahon; Nicole Martine Gill Cameron; McMahon Family Trust.
34.	Bramex Pty Ltd	Bramex Pty Ltd	<ul style="list-style-type: none"> Mervyn Ross Ramsay; Barbara Ramsay. 	Iridium Satellite LLC and Iridium Subsidiary Corporations	<ul style="list-style-type: none"> Mervyn Ross Ramsay; Barbara Ramsay.
35.	Burson-Marsteller Pty Ltd	Burson-Marsteller	<ul style="list-style-type: none"> Christine McMenamin, CEO; Carrie Cousins, Director 	<ul style="list-style-type: none"> Hewlett-Packard; Huawei; Peabody Energy; Qualcomm. 	<ul style="list-style-type: none"> CHAFMA B.V. (100% Direct Shareholder); WPP plc (100% Beneficial)

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
					Owner).
36.	Butcher & Co Pty Ltd	Butcher & Co	Andrew Butcher, Principal	Lend Lease	Andrew Butcher
37.	C2Hills Investments Pty Ltd	C2Hills Investments Pty Ltd	Cara Leanne Dale, Director/Consultant	Wauchope Show Society Ltd	<ul style="list-style-type: none"> • Cara Leanne Dale; • Glen Anthony Dale
38.	Campbell, Ian Charles	Campbell, Ian Charles	Ian Campbell, Principal (Sole)	Mayfield Aged Care	Ian Campbell
39.	Cannings Advisory Services Pty Limited	Cannings Advisory Services Pty Limited	Luis Garcia	<ul style="list-style-type: none"> • Cash Store Financial; • Spark Infrastructure Re Limited 	STW Group
40.	Capital Hill Advisory Pty Ltd	Capital Hill Advisory	<ul style="list-style-type: none"> • Nick Campbell, Chairman; • Claire Dawson, Manager, Federal Government; • Stephanie Wawn, Manager, Federal Policy; • Christopher Peter Stone, Director, Policy & Strategy; • Michael Photios, Director; • Cathy Duncan, Practice Manager; • David Begg, Director; • Scott Glynn Farlow, Director, Public 	<ul style="list-style-type: none"> • AstraZeneca Pty Ltd; • Bristol-Myers Squibb Australia Pty Ltd; • Merck Sharp & Dohme (Australia) Pty Ltd; • Novartis Pharmaceuticals Australia Pty Ltd; • Pfizer Australia Pty Ltd; • Sanofi-Aventis Australia Pty Ltd; • Saputo Inc. 	National Strategy Group

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			Affairs; <ul style="list-style-type: none"> • Ian Hancock, Advisor; • Peter Sylvester Sykes, Consultant. 		
41.	Cass, David John	David J Cass	David J Cass	Australian Hotels Association (NSW)	David J Cass
42.	Cato Counsel Pty Limited	Cato Counsel Pty Limited	<ul style="list-style-type: none"> • Sue Cato, Principal; • Todd Hayward, Communications Advisor; • David Symons, Communications Advisor; • Nino Tesoriero, Communications Advisor; • John Brady, Communications Advisor; • Michael Ross, Communications Advisor. 	McAleese Group	Sue Cato
43.	CMAX Communications Pty Ltd	CMAX Communications	<ul style="list-style-type: none"> • Tara Taubenschlag, Managing Director; • Christian Taubenschlag, Government Relations Adviser; • Adele Langton, 	<ul style="list-style-type: none"> • Australian Coal Association; • L3 Nautronix; • Northrop Grumman; • Pegasus: Riding for the Disabled; • Recurrent Energy; 	<ul style="list-style-type: none"> • Tara Taubenschlag, Managing Director, Sole Shareholder; • Christian Taubenschlag.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			Senior Account Director; <ul style="list-style-type: none"> Jacob Traeger, Account Manager. 	<ul style="list-style-type: none"> Saab Systems; Slater & Gordon Lawyers; Stryker. 	
44.	CMGRP Pty Limited	Weber Shandwick Worldwide	<ul style="list-style-type: none"> Jacquelyne Willcox, Head of Public Affairs; Eliza Newton, Senior Account Manager; Alistair Nicholas, Senior Advisor; Joshua Wright, Advisor; Jun Ting Justin Yuen, Account Coordinator. 	<ul style="list-style-type: none"> AstraZeneca Pty Ltd; Dr Brendan Steinfort; G4S; IHMS (International Health & Medical Services); Nutricia; Ticketmaster Australia. 	Interpublic Group
45.	Con Walker, Betty (Dr)	Centennial Consultancy	Dr Betty Con Walker, Principal	None listed.	Dr Betty Con Walker
46.	Conlon, Geoffrey Kershaw	Geoff Conlon	Geoff Conlon, Sole Proprietor	A&D S.R.L. Italy	Geoff Conlon
47.	Cosway Australia Pty Limited	Cosway Australia	Tony Nagy, Director	<ul style="list-style-type: none"> Adelaide Capital Partners Pty Ltd; Energy Developments Limited; First State Super - FSS Trustee Corporation; Virgin Group; Wealth Resources Pty Ltd; Wet 'n' Wild Sydney. 	Clemenger Group
48.	Cotterell, Jannette Suzanne	Executive Counsel Australia	<ul style="list-style-type: none"> Jannette Cotterell, Managing Director; 	<ul style="list-style-type: none"> Australian and International Pilots 	Jannette Cotterell

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Rachel Eve Gilbertson, Researcher; • Anna Thompson, Policy Analyst; • Glenn Milne, Principal (Strategist). 	Association; <ul style="list-style-type: none"> • Australian Childcare Alliance; • Australian Diagnostic Imaging Association; • Australian Technology Network of Universities; • BOC Ltd Australia; • Cancer Voices (pro bono); • Carers Australia; • Child Care NSW; • Community Pharmacy Chemotherapy Services Group; • Generic Medicines Industry Association; • Genworth Financial; • LPG Australia; • Medical Oncology Group of Australia; • National Association of Obstetricians & Gynaecologists; • Pharmacy Guild of Australia; • Professionals for Safe Cancer Treatment; • Sheepmeat Council of Australia. 	
49.	Cox Inall Communications	Cox Inall	<ul style="list-style-type: none"> • Tim Powell, 	N/A	Belgiovane Williams

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
	Pty Ltd	Communications Pty Ltd	Managing Director		Mackay
50.	CPR Communications & Public Relations Pty Ltd	CPR Communications & Public Relations Pty Ltd	<ul style="list-style-type: none"> • Brendan Rowswell, Senior Adviser; • William Forwood, Consultant 	<ul style="list-style-type: none"> • Brisbane Airport Corporation; • GDF Suez; • National Pharmacies; • Ozhub Incorporated; • Rare Cancers Australia. 	Enero Group Limited
51.	CRAKYL Pty Ltd	CRAKYL Pty Ltd	Craig Stephen Munnings, Managing Director and Public Officer	<ul style="list-style-type: none"> • Gibbens Industries; • Carlingford Developments; • Future School; • Mainpac; • Manns Homeworld. 	<ul style="list-style-type: none"> • Craig Stephen Munnings; • Kylie Gaye Munnings.
52.	Cromarty Communications Pty Ltd	Cromarty Communications Pty Ltd	Michael James Cooke, Managing Director/ Government Relations Consultant	<ul style="list-style-type: none"> • Holdmark; • St George – Illawarra Rugby League Club. 	Michael James Cooke
53.	Crosby Textor Research Strategies Results Pty Ltd	Crosby Textor Research Strategies Results Pty Ltd	<ul style="list-style-type: none"> • Remo Nogarotto, Chief Executive Officer; • Yaron Finkelstein, Director; • Andrew John Laidlaw, Campaign & Research Consultant; • Leanne White, Senior Consultant; • Peter Shmigel, Senior Consultant – Community; 	<ul style="list-style-type: none"> • Almona Pty Ltd; • Amy Gillett Foundation; • Australian Petroleum Production and Exploration Association Ltd (APPEA NSW); • Australian Rugby League Commission Limited; • Benedict Recycling Pty Ltd; • Beta Renewables Pty Ltd; • Brenex Pty Ltd; • Cape York Group Limited; 	<ul style="list-style-type: none"> • Crosby Pty Ltd; • Rotxet Pty Ltd

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • George Brougham, Campaign Assistant; • Carrington Brigham, Online & Campaign Consultant; • Nicholas Nogarotto, Business Development Manager; • Catherine Gordon Beachley, Consultant. 	<ul style="list-style-type: none"> • Chemtex Pty Ltd; • Corporate Health Services Pty Ltd; • Gruppo Pizzarotti; • Land Use Investments and Consulting; • Leda Holdings; • M & G Group; • M.I.L. Pty Ltd; • Mortlake Consolidated; • Parmalat Australia Pty Ltd; • Parramatta Leagues Club; • Plenary Group; • Research in Motion (RIM); • Taemas Group Limited; • The Village Building Co. Limited; • Urban Development Institute of Australia NSW (UDIA). 	
54.	CSR Limited	CSR	Martin Wallace Jones, General Manager, Government Relations	<ul style="list-style-type: none"> • Sugar Australia Pty Ltd; • Wilmar Sugar Australia Limited. 	ASX Publicly Listed Company
55.	Dale Fitzell & Associates Pty Ltd	Brian Dale & Partners	Brian Dale, Director	<ul style="list-style-type: none"> • Australian Rail Track Corporation; • Xstrata Coal Pty Ltd; • Accor Advantage Plus; • Anglican Retirement Villages; • Anglican Retirement 	<ul style="list-style-type: none"> • Brian Dale; • Sandra Dale.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Villages; • Cabcharge Australia Ltd.	
56.	Deep River Business Trust	Precise Planning	Jeffrey Raymond Bulfin, Managing Director	• William Shead; • Safe Waste Australia (Lachlan Laing).	• Jeffrey Bulfin; • Leah Bulfin.
57.	Diplomacy Pty Limited	Diplomacy Pty Limited	• Adam Kilgour, Managing Director; • Josh Williams, Director; • Anthony Reed, Associate Director.	• Air New Zealand; • ADCO Constructions; • BDO; • Equinix; • Knauf Plasterboard Pty Ltd; • Norton Rose Fullbright.	• Park Avenue Management; • Perry Street Pty Ltd.
58.	ED & Associates Pty Ltd	ED & Associates Pty Ltd	• Man Wai (Edmund) Ng, Director.	Tranquil Travel Service Pty Ltd	Man Wai (Edmund) Ng
59.	Edelman Public Relations Worldwide Pty Ltd	Edelman	• Nic Jarvis, Director; • Craig Kershaw, Public Affairs Associate.	• eBay Inc; • Mars Inc; • Ministry of Foreign Affairs of the Federal Government of UAE; • PayPal Australia Pty Ltd; • Samsung; • University of NSW Medical.	Edelman Europe Holdings BV
60.	Edman, Donna	Astute Advocacy	Donna Therese Edman, CEO	Hearing Care Industry Association	Donna Therese Edman
61.	Enhance Corporate Pty Ltd	Enhance Corporate Ltd	James Peter Elder	• Centurion; • China Rail 15 Group.	James Peter Elder
62.	Essential Media Communications Pty Ltd	Essential Media Communications	• Peter Lewis, Director; • Carla Stacey, Associate Director;	Sydney Aboriginal Services Ltd	• Elizabeth Lukin; • Anthony Douglas; • Peter Lewis.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Martin Watters, Communications Consultant; • Jackie Woods, Communications Consultant; • Jane Garcia, Communications Consultant; • Olivia Greentree, Senior Account Manager; • Alana Mew, Communications Consultant. 		
63.	Etched Communications Pty Ltd	Etched Communications	<ul style="list-style-type: none"> • Andrew Butler, Managing Director; • Peter Taueki, Account Manager. 	<ul style="list-style-type: none"> • Achieve Australia; • Interface Aust Pty Limited; • Plastic and Chemicals Industries Association; • Nestle Australia. 	<ul style="list-style-type: none"> • Andrew Butler; • Cameron Blair; • Peter Taueki; • Dalton Chung.
64.	F. L. Press Pty Limited	F. L. Press Pty Limited	Theodore Skalkos, Director	None listed.	<ul style="list-style-type: none"> • Theodore Skalkos; • Denbutton Pty Limited.
65.	FIPRA Australia Pty Limited	FIPRA Australia	<ul style="list-style-type: none"> • David Lieberman; • John Richardson; • Stephen Coutts; • Madeleine Lewis, Account Executive; • Shannan Manton, 	<ul style="list-style-type: none"> • FIPRA Europe; • FIPRA International UK; • Royal Caribbean Cruises Australia Pty Limited; • Royal Caribbean Cruises Limited, Miami USA; 	David Lieberman

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			Account Executive.	<ul style="list-style-type: none"> • Uber Australia Pty Limited; • Veritec Solutions USA. 	
66.	First State Advisors & Consultants Pty Ltd	First State Government and Corporate Relations	<ul style="list-style-type: none"> • Joseph Tannous, Executive Director, Australia; • Dr. John Tierney OAM, Special Counsel; • Gary Humphries, Special Counsel; • Christian Dunk, Government Relations Consultant. 	<ul style="list-style-type: none"> • Advance Algal Technologies Limited; • arbias Ltd; • Aspen Medical Pty Ltd; • Australian Institute of Building Surveyors; • Bravehearts Inc. (Pro-Bono); • Calcorp Services Pty Ltd; • Caption It Pty Ltd; • Cemento Pty Ltd; • Charlton Excavation & Demolition Pty Ltd; • China Rail 15 Group; • Cracknell and Lonergan Architects Pty Ltd; • Dell Australia Pty Ltd; • Demigold Pty Ltd; • Direct Freight Express Pty Ltd; • Eloura Holdings; • Flower Power Group Pty Ltd; • George Concord Pty Ltd; • Greenacre Business Park Pty Ltd; • Greenex Environmental Pty Ltd; 	<ul style="list-style-type: none"> • Three 888 Corporation Pty Ltd; • St Joseph Enterprises Pty Ltd.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Group of Eight Australia (GO8); • Hunter Investment Corporation Pty Ltd; • Imperial Tobacco Australia Pty Ltd; • NSW Aboriginal Land Council; • Pinpoint Marketing Pty Ltd; • Polio Australia (Pro Bono); • Polio NSW (Pro-Bono); • Popular Compass Development Limited; • Romtech Co. Ltd; • Samstone Pty Ltd; • Southern United Minerals Pty Ltd; • Staples Pty Ltd; • The Village Building Co. Limited; • Thiess Pty Ltd; • University of Western Sydney (UWS); • Women's Housing Limited. 	
67.	FordComm Consulting Pty Ltd	FordComm Consulting Pty Ltd	Christopher Ford, Managing Director	<ul style="list-style-type: none"> • Incitec Pivot Pty Limited; • Newcastle Coal Infrastructure Group; • Regain Services Pty Ltd; 	Christopher John Ford.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Rose Group. 	
68.	Fowlstone Communications Pty Ltd	Fowlstone Communications	Geoff Fowlstone, Director	<ul style="list-style-type: none"> • Australian Chamber Orchestra; • Motor Traders' Association of New South Wales; • Social Ventures Australia (Pro Bono); • Strike Energy; • WorleyParsons. 	<ul style="list-style-type: none"> • Geoff Fowlstone; • Janene Fowlstone.
69.	FPL Advisory Pty Ltd	FPL Advisory Pty Ltd	<ul style="list-style-type: none"> • Steve Cusworh, Director; • Jenny Beales, Executive Officer. 	<ul style="list-style-type: none"> • Outdoor Recreation Industry Council (ORIC); • The Australian and New Zealand Institute of Insurance and Finance (ANZIIF); • The Outdoor Education Group. 	Steve Cusworth
70.	FTI Consulting (Sydney) Pty Ltd	FTI Consulting	Clair Cameron, Senior Director	<ul style="list-style-type: none"> • Banpu Australia Co Pty Ltd; • Transurban. 	FTI Consulting–FD Australia Holdings Pty Ltd
71.	G.C. Advocacy Pty Ltd	Geoff Corrigan Advocacy	Geoffrey Corrigan, Director	<ul style="list-style-type: none"> • Catholic Cemeteries Board; • Motor Traders Association of NSW. 	<ul style="list-style-type: none"> • Geoffrey Corrigan; • Susanne Maree Corrigan.
72.	Galbraith & Company Pty Ltd	Galbraith & Company Pty Ltd	Allan King, Partner	<ul style="list-style-type: none"> • iiNet; • Intel; • Juniper. 	ATLAS Holdings Unit Trust
73.	Gambolling Pty Ltd trading as Carney Associates	Carney Associates	<ul style="list-style-type: none"> • Stephen JM Carney, Principal; 	<ul style="list-style-type: none"> • APAL Ltd; • Canberra Airport Group; 	<ul style="list-style-type: none"> • Stephen Carney; • Barbara Joan

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Dr Barbara Carney, Director. 	<ul style="list-style-type: none"> • Deakin University; • EuroMaritime Consultancy; • La Trobe University; • Murray Darling Medical School; • National Australia Bank; • Norfolk-Aus Financial Horizons P/L; • Swinburne University of Technology; • University of Western Australia. 	Carney.
74.	Gell Southam Group Pty Limited	GSG Counsel	Patrick Southam	<ul style="list-style-type: none"> • NuCoal Resources; • Wallarah Coal Project. 	<ul style="list-style-type: none"> • Patrick Southam; • Mark Edward Gell.
75.	George Brownbill Consulting Pty Ltd	George Brownbill Consulting Pty Ltd	George Brownbill, Principal	<ul style="list-style-type: none"> • Australian Self Medication Industry; • Australian Osteopathic Association; • Bodcare; • Wool Producers Australia; • Yless4u. 	George Brownbill
76.	Government Relations Australia Advisory Pty Ltd	Government Relations Australia Advisory Pty Ltd	<ul style="list-style-type: none"> • Leslie Graham Timar, Managing Director; • Alexander Cramb, Director; • Kirsten Elizabeth Mulley, Director; • Sean Alexander 	<ul style="list-style-type: none"> • Accolade Wines; • AECOM; • Airwave Solutions Australia; • ALDI Stores; • Alexion Pharmaceuticals Australasia Pty Ltd; 	Diversified Marketing Services Pty Ltd

Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
		<p>Johnson, Associate Director;</p> <ul style="list-style-type: none"> • Kary Alexander Petersen, Associate Director; • Paolo Giovanni Bini, General Manager; • Trista Grainger, Consultant; • David Llewellyn Reeves, Research & Policy Assistant; • Jack Brady, Research & Policy Analyst; • Margo Delaney, Executive Assistant. • Michael Chaitow, Research & Policy Analyst. 	<ul style="list-style-type: none"> • AMP Capital Investments; • Archer Daniels Midland Company; • BA Infrastructure; • Bradcorp Holdings Pty Ltd; • Broadcast Australia; • BUPA Australia Group; • Byron Venue Management Pty Ltd; • Clemenger BBDO; • DrinkWise Australia Ltd; • Fletcher Building (Australia) Pty Ltd; • Forgacs Engineering Pty Ltd; • Gilead Sciences; • Governors Hill Partnership; • Halliburton Energy Services; • HPS Pharmacies; • Human Systems Asia Pacific Pty Limited; • Invensys Rail; • Maxxia; • MGM Wireless Limited; • Mirabel Foundation; • Mulpha Australia Limited; • North Byron Parklands; 	

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Pacific Brands; • Project Management Institute; • QGC—a BG Group business; • Siemens Rail Automation; • State Grid Corporation of China; • State Grid International Development; • Stolthaven Australasia Pty Ltd; • TA Associates; • Transdev Australasia Pty Ltd; • Walker Corporation Pty Ltd; • Warren Centre for Advanced Engineering Ltd. 	
77.	Government Relations Solutions Pty Ltd	GR Solutions	<ul style="list-style-type: none"> • The Hon. Wayne Matthew, Director; • David Scotland, Consultant; • Wendy Matthew, Administration/Research. 	<ul style="list-style-type: none"> • Adelaide Equity Partners Ltd; • Beach Energy Ltd; • Burke Urban Developments Pty Ltd; • Conics Ltd; • ERO Mining Limited; • National Pharmacies. 	Matthew Family Trust
78.	GRA Everingham Pty Ltd	GRA Everingham Pty Ltd	<ul style="list-style-type: none"> • Paul Everingham, Managing Director; 	<ul style="list-style-type: none"> • Australian Food and Grocery Council; 	<ul style="list-style-type: none"> • Paul Everingham; • Elissa

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Peter McMahon, Senior Consultant. 	<ul style="list-style-type: none"> • Cash Converters; • Conference of Asia Pacific Express Carriers Australia Ltd (CAPEC). 	<ul style="list-style-type: none"> • Everingham; • GRA Advisory Pty Ltd; • Jason Marocchi Family Trust.
79.	Halden Burns Pty Ltd	Halden Burns Pty Ltd	<ul style="list-style-type: none"> • Anne Louise Burns, Director; • (Stanley) John Halden, Director. 	<ul style="list-style-type: none"> • Cristal Mining Australia Ltd; • Unity Mining Ltd. 	<ul style="list-style-type: none"> • Anne Burns as Trustee–Rees Family Trust; • John Halden as Trustee–Halden Family Trust.
80.	Hawker Britton Group Pty Limited	Hawker Britton Group	<ul style="list-style-type: none"> • Danny Pearson, Director; • Simon Banks, Managing Director; • Alice Crawford, Research Analyst 	<ul style="list-style-type: none"> • AMP Limited; • Bunnings; • Harness Racing Australia; • STW Group. 	Singleton Ogilvy and Mather (Holdings) Pty Ltd
81.	Health Communications Australia Pty Limited	Health Communications Australia Pty Limited	<ul style="list-style-type: none"> • Geoffrey Quayle; • Felicity Moffat. 	<ul style="list-style-type: none"> • Allergan; • The GUT Foundation. 	Geoffrey Quayle
82.	Highchair Pty Ltd & The Civic Group Holdings Pty Ltd	The Civic Group	<ul style="list-style-type: none"> • Jason Aldworth, Director; • Paul Cormack, Consultant. 	<ul style="list-style-type: none"> • Asahi Group Holdings; • Asahi Premium Beverages Pty Ltd; • Independent Distillers; • JCP Investment Partners; • Mariner Corporation Ltd; • Meridian Energy Australia Pty Ltd; • Powershop Australia Pty Ltd. 	<ul style="list-style-type: none"> • Marco Gattino; • Jason Aldworth; • Andres Puig; • Rora Furman.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
83.	Hill and Knowlton Australia Pty Limited	Hill & Knowlton Strategies	Tim McPhail, Director	<ul style="list-style-type: none"> • Coca-Cola South Pacific; • Compass Group Australia; • Comcast-NBC Universal; • Digital Post Australia; • Enirgi Metal Group; • InSinkErator; • Intuit; • SSP Solutions; • Wrigley. 	WPP Group
84.	Hugo Halliday PR & Marketing Pty Ltd	Hugo Halliday PR + Government Relations + Marketing + Media Training	<ul style="list-style-type: none"> • William Edward (Bill) Pickering, Managing Director; • Nathaniel Smith, Senior Government Relations Consultant; • Michael Cooke, Senior Government Relations Consultant. 	<ul style="list-style-type: none"> • Arcadia Pacific Group Pty Ltd; • Bluestone Property Solutions Pty Ltd; • BMC Prestige Builders Pty Ltd; • Capital Corporation; • Deaf Football Australia; • DSD Nominees Pty Ltd; • Dundas Developments Pty Ltd; • EMAG Apartments Pty Ltd; • Gazcorp Pty Ltd; • Geitonia Pty Ltd; • HYECORP Property Group; • La Vie Developments Pty Ltd; • Mason Picture Company; • Master Plumbers 	William Edward Pickering

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Association of NSW; <ul style="list-style-type: none"> • Optometrists Association of Australia NSW Division; • Oz Care Australia Pty Ltd; • Sydney Property Sales Pty Ltd; • Tangara Building Company Pty Ltd; • Treebah Pty Ltd; • Wyong Shire Council. 	
85.	Ivydale Nominees Pty Ltd	Riley Matthewson Public Relations	Richard Taylor, Senior Consultant	Coogee Chemicals Pty Ltd	Braden Park Pty Ltd
86.	Jo Scard Pty Ltd	Fifty Acres – The Communications Agency	<ul style="list-style-type: none"> • Jo Scard, Director; • Brigid Lombard, Administrator; • Genevieve Dwyer, Associate. 	<ul style="list-style-type: none"> • Act for Kids; • Australian Drug Foundation; • Australian Indigenous Leadership Centre; • Diversity Council Australia; • Girl Guides Australia; • Homebirth Australia; • Jodi Lee Foundation; • Kellogg (Australia); • Maternity Coalition; • McGrath Foundation; • National Centre for Indigenous Excellence; • Plan International (Australia); • The Australian Charities 	<ul style="list-style-type: none"> • Jo Scard; • Andrew Meares.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Fund Operations Limited.	
87.	John Connolly & Partners Pty Limited	John Connolly & Partners	<ul style="list-style-type: none"> • John Michael Connolly, Partner; • Gabrielle Mary Notley, Partner. 	<ul style="list-style-type: none"> • ANZ Limited; • Queensland Investment Corporation; • BHP Billiton Ltd; • Sydney Theatre Company; • ISS Facility Services Australia Ltd. 	<ul style="list-style-type: none"> • John Michael Connolly; • Manager Pty Ltd; • Julie Lyn Connolly.
88.	Johnston, Adam David	ADJ Consultancy Services	Adam Johnston, Proprietor	N/A	Adam Johnston
89.	KPMG	KPMG	<ul style="list-style-type: none"> • Warwick Ryan, Director; • Langdon Samuel Patrick, Senior Manager; • Leigh Obradovic, Manager; • Ebony-Maria Levy, Manager; • John Philip Gallagher, Manager; • Mohammad Sharaf Hafiz Khan, Consultant; • Caitlin May Cooper, Consultant; • Rhiannon Rae Brand, Consultant. 	<ul style="list-style-type: none"> • Appco Group Australia; • Australian Federation of Travel Agents; • Australian Mushroom Growers Associations; • Cobra Group Pty Ltd; • Distilled Spirits Industry Council of Australia; • Global Blue Holdings AB; • National Tourism Alliance; • The Horticulture Taskforce; • Tourism Shopping Reform Group. 	See attached list.
90.	Kreab Gavin Anderson	Kreab Gavin	<ul style="list-style-type: none"> • Armon Hicks, 	<ul style="list-style-type: none"> • Aboriginal Legal Service 	<ul style="list-style-type: none"> • Magnora AB;

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
	(Australia) Limited	Anderson	Managing Partner Australia/NZ; <ul style="list-style-type: none"> • Sandra Eccles, Partner – Office Head (Melbourne); • Hamish Arthur, Partner - Office Head (Canberra); • Michael Morgan, Partner - Office Head (Brisbane); • Gavin Clancy, Director; • Karina Angela Randall, Director; • Suzanne Mercer, Director; • Jeff D. Sorrell, Associate Director; • Lucy Mudd, Associate Director; • Zackary James McLennan, Associate Director; • Jessica McIntyre, Executive Assistant; • Jemima Daly, Associate; • Lars Madsen, Executive Associate; 	(NSW/ACT); <ul style="list-style-type: none"> • Accommodation Association of Australia; • Arrium Ltd; • Aristocrat Leisure Limited; • ATM Industry Reference Group; • BlueScope Steel; • Brickworks; • Carnival Australia; • Cashcard; • Croplife; • DC Payments; • Downer Group Ltd; • First Data; • Fotowatio Renewable Ventures (FRV); • Foxtel; • Good Technology; • Greyhound Racing NSW; • Holcim Australia; • Incitec Pivot Limited; • IGT (Australia) Pty Ltd; • Institute of Chartered Accountants in Australia (ICAA); • International Social Games Association (ISGA); • Interlink Roads Pty Ltd; 	<ul style="list-style-type: none"> • GAV Management (Guernsey) Limited Partnership; • Omnicom Group Inc.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> Amy Vickers, Executive Associate. 	<ul style="list-style-type: none"> Kellogg's; Mars; McAfee Australia/New Zealand; QBE Insurance (Australia) Ltd; Ramsay Holdings; Santos; Sportsbet; The Banktech Group; The MENTOR Network; The Pharmacy Guild of Australia New South Wales Branch. 	
91.	Leisure Solutions®	Leisure Solutions®	Angus M Robinson, Managing Partner	Advanced Manufacturing CRC	<ul style="list-style-type: none"> Angus Muir Robinson; Jeanette Ruth Robinson.
92.	LESL Services Pty Limited	LESL Services Pty Limited	Stephen Loosley, Director	<ul style="list-style-type: none"> Minter Ellison Lawyers; Seven Group Holdings Limited; The Gut Foundation. 	<ul style="list-style-type: none"> Stephen Loosley; Lynne Loosley.
93.	Lighthouse Communications Group Pty Ltd	Lighthouse Communications Group	Peter John Laidlaw, Managing Director	<ul style="list-style-type: none"> Berrima Diesel; Byron Group; oOh! Media. 	Peter John Laidlaw
94.	Lyndon George Pty Ltd	Lyndon George	<ul style="list-style-type: none"> Hellen Georgopoulos, Director; Gregory Lyndon Mole, Director. 	<ul style="list-style-type: none"> Thoroughbred Breeders of the Hunter Valley; Thales Australia Limited. 	<ul style="list-style-type: none"> Hellen Georgopoulos; Gregory Lyndon Mole.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
95.	MacGregor Public Relations Pty Ltd	MacGregor Public Relations	<ul style="list-style-type: none"> • John MacGregor, Managing Director; • Marie–Stella Louise McKinney, Consultant. 	<ul style="list-style-type: none"> • BT Australasia Pty Ltd; • Cubic Corporation; • Jemena; • Pearl Consortium; • Sharpe Brothers. 	John MacGregor.
96.	Macquarie Group Limited	Macquarie Group Limited	Trevor John Burns, Division Director, Government Relations	Macquarie Pastoral Fund	Macquarie Group Ltd
97.	McLaughlin, Thomas John	TJM Consulting	Thomas McLaughlin, Proprietor	Optometrists Association NSW	Thomas John McLaughlin
98.	N/A	Stephen Kendal	Stephen Leslie Kendal, Consultant	<ul style="list-style-type: none"> • Dr Harikumar Pallathadka; • Arun Kumar Pallathadka. 	Stephen Leslie Kendal
99.	Nelcorb Pty Ltd	Nelcorb Pty Ltd	Thomas Forrest, Director	<ul style="list-style-type: none"> • Carparking Partnership Pty Limited; • Grocon Group; • Harrington Properties Pty Limited; • Miller Street Partners; • Manboom Pty Limited (OSUT); • Manboom Signage Partnership Pty Ltd; • Robert Whyte; • SMEC Australia. 	<ul style="list-style-type: none"> • Erica Forrest; • James Forrest.
100.	Newgate Communications Pty Limited	Newgate Communications	<ul style="list-style-type: none"> • Brian Tyson, Managing Partner; • Jodie Brough, Partner; • Michael van Maanen, Partner; 	<ul style="list-style-type: none"> • Allianz Australia; • Australian Airport Association; • Australian Pork Limited; • Byron Preservation Association; 	Porta Communications Plc.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Jeremy Andrew Vine, Senior Consultant; • Anita Brown, Senior Consultant; • Sophie Travers, Consultant; • Fatima May (Anne) Patawaran, Consultant. 	<ul style="list-style-type: none"> • Capella Capital; • Chris O'Brien Lifehouse; • Clontarf Foundation; • Coalpac; • Diversified Infrastructure Trust; • Echo Entertainment Group Limited; • Google; • Harbour City Ferries; • Kellogg's; • King & Wood Mallesons; • Lend Lease; • Moelis; • National Farmers Federation; • National Heavy Vehicle Regulator; • Sydney Swans Ltd; • The Committee for Sydney; • University of New England; • Whitehaven Coal. 	
101.	No Strings Attached Animation Pty Ltd	No Strings Attached	James Anthony Hall, Director	Grant Richards Real Estate (Liverpool) Pty Ltd	James Anthony Hall
102.	Oakville Pastoral Co Pty Limited	Oakville Pastoral Co Pty Limited	Michael John Logan, Director/Secretary	<ul style="list-style-type: none"> • Dairy Connect NSW; • Amalgamated Milk Vendors Association. 	Michael John Logan

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
103.	Ogilvy PR Health Pty Ltd	Ogilvy PR Health	<ul style="list-style-type: none"> • Leon Beswick, Managing Director; • Michelle Parker, Director; • Georgina Morris, Account Director; • Emma Pearson, Account Manager; • Julia MacQueen, Account Manager; • Belinda Humphries, Account Manager; • Alexander Chapman, Senior Consultant; • Sally Wiber, Account Director; • Samuel Dudley North, Media Director; • Carly Vale, Account Executive; • Rachel Margaret Beck, Account Coordinator; • Megan McCarthy, Senior Consultant. 	<ul style="list-style-type: none"> • 3M Australia; • Australian Diabetes Council; • Bristol-Meyers Squibb; • Fitness First; • Garvan Research Foundation; • Genzyme; • K Care; • Medical Staff Council St George Hospital; • MKM Consulting; • National Breast Cancer Foundation; • Patient Track; • Pfizer; • Prostate Cancer Foundation of Australia; • Willow Pharmaceuticals. 	Ogilvy Public Relations Worldwide Pty Ltd
104.	Parker & Partners Pty Ltd	Parker & Partners Public Affairs	<ul style="list-style-type: none"> • Michael Hartmann, Director, Government Relations; • Arli Miller, Director; 	<ul style="list-style-type: none"> • AstraZeneca; • Australian Institute of Company Directors; • Australian Olive Oil 	<ul style="list-style-type: none"> • Ogilvy Public Relations Worldwide Pty Ltd;

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			<ul style="list-style-type: none"> • Susan Redden Makatoa, Group Managing Director, Corporate; • Hamish Li, Account Manager. 	<ul style="list-style-type: none"> Association; • Australian Rehabilitation Providers Association; • Bell Shakespeare; • Children’s Medical Research Institute; • Dubai Holdings; • DuPont; • Emirates Airline; • Emirates Group; • Emirates Hotels & Resorts; • Lend Lease; • STW Group; • Telstra; • Vale Australia; • WPP plc. 	<ul style="list-style-type: none"> • WPP plc; • STW Group Ltd.
105.	Phillips, Sonya Ethel	Solutions by Sonya	Sonya Phillips, Director	N/A	Sonya Phillips
106.	Policy Solutions Group Pty Ltd	The Agenda Group NSW	Mark Sutton, Director	<ul style="list-style-type: none"> • Allied Mills; • Bell Communications Pty Ltd; • Bell Partners Pty Ltd; • Capella Capital; • CSC Australia; • Energy Australia; • Henry Davis York; • Hospitality Training Australia Pty Ltd; • Levinson Institute; • MS Research Australia; 	Mark Sutton

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Otto Bock Australia; • Payce Communities; • SITA Environmental Solutions; • Assistive Technology Suppliers Australasia Inc. 	
107.	Potts, Geoff	Potts and Associates	Geoffrey (Geoff) Potts, Principal	N/A	Geoffrey Potts
108.	Premier State Consulting Pty Ltd	PremierState	<ul style="list-style-type: none"> • Michael Photios, Chairman; • David Begg, Director; • Chris Stone, Director – Policy & Strategy; • Nick Campbell, Director; • Scott Farlow, Director – Public Affairs; • Natalie Christiansen, Manager – Governance and Strategic Planning; • Tracey Hughes, Manager – Client Liaison; • Ian Hancock, Government & Policy Analyst; • Christine Kirk, Executive Assistant. 	<ul style="list-style-type: none"> • AFGC (Australian Food & Grocery Council); • Amalgamated Holdings Limited; • Assetlink Services Pty Limited; • Australian Hotels Association (NSW); • Brookfield Multiplex Construction Pty Ltd; • Caltex Australia Limited; • Concept Safety Systems Pty Ltd; • Echo Entertainment Group Limited; • Employers Mutual Limited; • ENS International Pty Ltd; • Flagstaff Partners Pty Ltd; • Glencore Xstrata plc; • Gloucester Resources Pty Ltd; • Hill Rogers Spencer Steer; 	National Strategy Group Pty Ltd

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Malabar Coal Pty Ltd; • Merivale Group (Hemmes Trading Pty Ltd); • Mounties Group; • Norton Rose Fulbright Australia; • Police Citizens Youth Clubs NSW Ltd (PCYC); • PricewaterhouseCoopers Australia Limited; • Primo Moraitis Fresh Pty Ltd; • QIC Limited; • Secure Parking Pty Ltd; • Spur Hill Management Pty Ltd; • Suncorp Group Limited; • Telstra Corporation Limited; • Transfield Services (Australia) Pty Ltd; • Viagogo; • YHA Ltd (YHA); • Young Men's Christian Association of Sydney. 	
109.	Primary Communication Pty Ltd	Primary Communication	<ul style="list-style-type: none"> • Jennifer Muir, Group Account Director; • Ian Zakon, Account Director. 	<ul style="list-style-type: none"> • Alstom; • BOC Australia; • BOC South Pacific; • Consulting Surveyors National; 	Annabelle Warren

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • ELGAS; • ETS Global; • Gas Industry Alliance; • Hunter Institute of Mental Health; • National Catholic Education Commission; • National Eating Disorders Collaboration (NEDC); • Scouts; • Sustainability Victoria; • The Butterfly Foundation. 	
110.	Professional Public Relations Pty Ltd	Professional Public Relations Pty Ltd	<ul style="list-style-type: none"> • Peter Frederick Lazar, Company Director; • Michael Pooley, General Manager. 	<ul style="list-style-type: none"> • Pacific Link; • McDonald's Australia. 	<ul style="list-style-type: none"> • Richard Lazar; • Peter Lazar; • WPP.
111.	Profile Consulting (Aust) Pty Ltd	Profile Consulting (Aust) Pty Ltd	<ul style="list-style-type: none"> • Ian R. G. Knop, Director; • Nick Melas, Managing Director. 	<ul style="list-style-type: none"> • ATEC Rail Group; • Calibre Global Pty Ltd; • CSC Australia; • Derwent Executive; • Grocon Pty Ltd; • Herbert Smith Freehills; • Macquarie Group Limited; • Markham Corporation; • Maximus Solutions Australia; • Metcash Trading Limited; • National E-Conveyancing Development Ltd; 	<ul style="list-style-type: none"> • Nick Melas; • Ian R. G. Knop.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Newsagents Association of NSW & ACT; • PPB Advisory. 	
112.	Public Affairs Network Pty Ltd	Public Affairs Network	Rosie Yeo, Director	Campbell Arnott's	Rosemary Anne Yeo
113.	R. A Neilson & M Salmon	Salmon Neilson	<ul style="list-style-type: none"> • Ross Neilson, Director; • Michael Salmon, Consultant. 	<ul style="list-style-type: none"> • New South Wales Nurses Association; • Penrith Lakes Development Corporation; • Travel Managers Pty Ltd. 	<ul style="list-style-type: none"> • Michael Salmon; • Ross Neilson.
114.	Republic Consulting Pty Ltd	Republic Consulting	<ul style="list-style-type: none"> • David Mair, Director; • Liza-Jayne Loch, Director. 	<ul style="list-style-type: none"> • American Express; • INSEAD; • Lions Australia; • Luna Media; • Quantum Energy Technologies; • Stella Travel Services; • Travelscene; • Oakstand Property Group. 	<ul style="list-style-type: none"> • David Mair; • Liza-Jayne Loch.
115.	Reputation Pty Ltd	Reputation Pty Ltd	Marina Konysheva, Senior Consultant	<ul style="list-style-type: none"> • Philips Australia; • Becton, Dickinson and Company. 	Terri-Helen Gaynor
116.	Repute Communications & Associates Pty Ltd	Repute Communications & Associates Pty Ltd	<ul style="list-style-type: none"> • Matthew Watson, Managing Director; • Brian Thomas Dale, Associate. 	<ul style="list-style-type: none"> • Bickham Coal; • Cody Live; • Daracon; • HVCCC Ltd; • Richmond PRA; • Rutherford Industrial Precinct Alliance: <ul style="list-style-type: none"> ○ Bio Diesel 	<ul style="list-style-type: none"> • Matthew Watson; • Rochelle Watson.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Industries Australia; <ul style="list-style-type: none"> ○ AP Foods; ○ Renewable Oil Services; ○ The Treloar Group; ○ Wax Convertor Textiles. <ul style="list-style-type: none"> ● Svitzer Salvage; ● Svitzer Towage; ● Tomago Aluminum. 	
117.	Res Publica Pty Ltd	Res Publica Pty Ltd	<ul style="list-style-type: none"> ● Natalie Helm, Account Manager; ● Angela Koutoulas, Account Director; ● Gabriel McDowell, Managing Director. 	<ul style="list-style-type: none"> ● Australian Association of National Advertisers (AANA); ● Cosmetic Physicians Society of Australasia (CSPA); ● Fitness Australia; ● Lion; ● Spinal Cure Australia; ● The Australian Private Equity and Venture Capital Association; ● Ultimate Fighting Championship (UFC); ● Unilever Australasia. 	<ul style="list-style-type: none"> ● Melissa Cullen; ● Gabriel McDowell.
118.	Richardson Coutts Pty Limited	Richardson Coutts Pty Ltd	<ul style="list-style-type: none"> ● Stephen Coutts, Director; ● John Richardson, Director; 	<ul style="list-style-type: none"> ● Anglo American; ● Allocate Software; ● APN Outdoor; ● Australian Communication 	<ul style="list-style-type: none"> ● Richardson and Associates Pty Ltd; ● Stephen Coutts

Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
		<ul style="list-style-type: none"> • Shannan Manton, Consultant; • Madeleine Lewis, Associate. 	<ul style="list-style-type: none"> Exchange; • Boveri Defence Systems; • Brookfield Infrastructure Group; • CH2M Hill; • FIPRA; • FRID Resources; • Fulton Hogan; • Goodman; • IBM; • Intergraph; • Jagermeister; • Johnny Warren Football Foundation; • Law in Order; • Law Society of NSW; • Lightfoot Solutions; • McKinsey and Company; • Mitsui Matsushima; • Moorebank Intermodal Company; • NuCoal Resources; • Optus; • Royal Caribbean Line Australia; • Sustain Community Housing; • Sydney Marine Sand; • Uber Australia Pty Ltd; • Veritec Solutions; 	Pty Ltd.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> Water Factory Company; ZAC Homes. 	
119.	Right Angle Business Services Pty Ltd	Jeanes Holland and Associates	Dave Holland, Company Director.	<ul style="list-style-type: none"> Australian Solar Group Limited; Eastern Iron Limited; Canadian Solar (Australia) Pty Ltd; H2O Conservation Solutions Pty Ltd; Solargain Pty Ltd; Solar Juice Pty Ltd; Trina Solar Australia Pty Ltd; Yingli Green Energy Australia Pty Ltd. 	<ul style="list-style-type: none"> Dave Holland; Linda Holland.
120.	Riverview Global Partners Pty Limited	Riverview Global Partners Pty Limited	<ul style="list-style-type: none"> Josephine Cashman, Managing Director; Charleene Mundine, Chief of Staff. 	Lorvon	<ul style="list-style-type: none"> Josephine Cashman; Martyn Dominy.
121.	SAS Consulting Group Pty Ltd	SAS Group	<ul style="list-style-type: none"> Peter Costantini, Chief Executive/Director; The Honourable Larry Anthony, Director. 	<ul style="list-style-type: none"> Master Electricians Australia; ERM Power; Indue Ltd; MAXNetwork; Prysmian Cables & Systems Australia; Shenhua Watermark. 	<ul style="list-style-type: none"> Concetto Antonio Sciacca; Lawrence James Anthony; Peter Costantini and Julie Catherine McLennan.
122.	Schacht, Christopher Cleland	C C Schacht	Chris Schacht, Chairman	<ul style="list-style-type: none"> Pilatus Australia; Liebherr Australia. 	Chris Schacht
123.	Scott & Beaumont Pty Ltd	Scott & Beaumont Pty	Glenda Gartrell, Director.	<ul style="list-style-type: none"> Koppers Australia; 	Glenda Gartrell.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
		Ltd		<ul style="list-style-type: none"> • Connectland Pty Ltd; • W.S. Lloyd. 	
124.	Sefiani Communications Group Pty Ltd	Sefiani Communications Group	<ul style="list-style-type: none"> • Robyn Sefiani; • Nicholas Owens. 	<ul style="list-style-type: none"> • M & L Hospitality; • Metlife Insurance; • Special Olympics Australia; • St George Bank; • The Hospitals Contribution Fund of Australia Ltd (HCF); • Western Sydney Institute. 	<ul style="list-style-type: none"> • Robyn Sefiani, Managing Director; • Nicholas Owens, Director; • Sarah Craig, Director.
125.	Senate Finance & Insurance Pty Ltd	Senate Finance & Insurance Pty Ltd	Chris John Liberiou, Director	N/A	Chris John Liberiou
126.	Smith, Wayne Christopher	Clean Economy Services	Wayne Christopher Smith, Director	<ul style="list-style-type: none"> • Australian Solar Council; • Greenbank Environmental; • REC Agents Association; • Renewable Energy Traders. 	Wayne Christopher Smith
127.	Sporting Management Concepts Pty Ltd	Sporting Management Concepts Pty Ltd	<ul style="list-style-type: none"> • Ben Tatterson; • Gary Gray. 	Tennis Australia	<ul style="list-style-type: none"> • Ben Tatterson; • Gary Gray.
128.	Statecraft Pty Ltd	Statecraft	<ul style="list-style-type: none"> • Gavin Melvin, Director; • Jody Fassina, Director; • Gregory Holland, Director; • Jodie Varnai, Director; • Michael Priebe, 	<ul style="list-style-type: none"> • AbbVie; • Airbnb Australia Pty Ltd; • Allergan Inc; • Belbeck Investments Pty Ltd; • Bouygues Construction Australia; • Cockatoo Coal; • Dimension Data; 	<ul style="list-style-type: none"> • Eupepsia Pty Ltd; • Priebe Family Trust.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
			Partner; <ul style="list-style-type: none"> • Jonathon Moore, Senior Consultant; • Georgie Mills, Consultant; • Lucy Rayner, Consultant. 	<ul style="list-style-type: none"> • Epilepsy Action Australia; • Fivex Commercial Property; • Hume Coal; • KEPCO Australia; • Novartis; • Medicines Australia; • Merck Sharp & Dohme; • Moelis & Company; • POSCO Australia; • Rosenfeld, Kant and Co; • RP Data Ltd; • Shenhua Watermark Coal Pty Ltd; • Yancoal; • Yieldbroker Pty Ltd. 	
129.	Strategic Partnership Group (Aust) Pty Limited	Strategic Partnership Group (Aust) Pty Limited	<ul style="list-style-type: none"> • Eric Lindsay Forbes, Director; • Aileen Wiessner, Consultant. 	<ul style="list-style-type: none"> • Australian Fertility Medicine Foundation; • Baseplan Software Pty Limited; • Fertility Society of Australia; • IVF Directors Group; • Linfox Pty Limited; • National In-Home Childcare Association; • Performance English Pty Ltd; • Sydney in Home Care. 	Eric Lindsay Forbes
130.	The Fifth Estate	The Fifth Estate	<ul style="list-style-type: none"> • William John 	<ul style="list-style-type: none"> • Global Renewables; 	<ul style="list-style-type: none"> • William John

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
	Consultancy Pty Limited		Hurditch, Director; <ul style="list-style-type: none"> • Ian Wisken, Corporate Counsel; • Julia Leanne Beck, Project Co-ordinator 	<ul style="list-style-type: none"> • Port Kembla Copper Pty Ltd; • Pratt Holdings Pty Ltd; • Yancoal Australia Limited; • Visy Pty Ltd. 	Hurditch; <ul style="list-style-type: none"> • Craig Michael Taylor.
131.	The HTT Trust	HTT Associates Pty Ltd	Helene Rosa Teichmann, Joint Managing Director	None listed.	<ul style="list-style-type: none"> • Helene Rosa Teichmann; • Zachary Anton Teichmann
132.	The Narrative Investments Pty Limited	The Narrative	Simon Murphy	<ul style="list-style-type: none"> • Chan and Naylor; • enlighten; • Government of Timor Leste (East Timor); • Homesafe Solutions; • Manufacturing Australia; • Metgasco; • Nearmap; • Tech Mahindra; • Tiger Air. 	<ul style="list-style-type: none"> • Anthony Fehon; • Simon Murphy.
133.	The Premier Communications Group Pty Ltd	The Premier Communications Group	<ul style="list-style-type: none"> • Richard Lenarduzzi, Director; • Garrie Gibson, Senior Advisor; • Suzanne Davies, Senior Advisor; • Ross Michael Grove, Senior Advisor. 	<ul style="list-style-type: none"> • 20th Man Fund Incorporated; • Associazione Sportivo Australia (ASA); • Astute Training; • Australasian Health Manufacturers and Development Association Incorporated; • Australian Nursing and Midwifery Federation; 	Richard Lenarduzzi

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Bello Café; • Cassegrain Wines; • Concrete Recyclers Pty Ltd; • Evolve Housing; • Global Orthopaedic Technology; • Hadcon Constructions; • IDraft Group; • Panthers Group; • Phebra; • Resort Living Group; • Rhomberg Rail Australia; • VASP Group. 	
134.	The Risorsa Group Pty Ltd	The Risorsa Group Pty Ltd	Kaye Dalton	<ul style="list-style-type: none"> • Hay Private Irrigation District; • Rubicon Water 	Kaye Dalton
135.	The Six Hats – Investor Relations Pty Ltd	The Six Hats – Investor Relations Pty Ltd	Anna Candler	Wentworth Community Housing	Anna Candler
136.	The Strategic Counsel Pty Ltd	The Strategic Counsel Pty Ltd	<ul style="list-style-type: none"> • Donna Staunton, Managing Director; • Antonia Gleeson, Associate 	<ul style="list-style-type: none"> • Aspen Medical; • Blackmores; • Hearing Care Industry Association. 	Donna Staunton
137.	The Taylor Street Consultancy Pty. Limited	Taylor Street Advisory	<ul style="list-style-type: none"> • Christopher Brown; • Tania Hyde, Director. 	<ul style="list-style-type: none"> • Capella Capital; • Dockside Group; • Intercontinental Hotels Group Australasia; • Lend Lease Corporation Limited; 	Christopher Brown

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Lend Lease Developments; • Moss Capital; • National Rugby League; • NRMA Motoring and Services; • Parramatta NRL Club; • SAP. 	
138.	The Trustee for Consultum Trust	Consultum Campaigns	Graham Peter Staerk, Managing Director.	<ul style="list-style-type: none"> • Narrabeen Golf Centre No 2 Pty Limited; • Pasta Pantry; • Pasta Pantry Westfield Sydney CBD; • PM No. 1 Pty Ltd; • Staerk Corporation; • SV Partners (NSW); • SVP Group (NSW). 	Graham Peter Staerk.
139.	The Trustee for ECG Advisory Trust	The Trustee for ECG Advisory Trust	<ul style="list-style-type: none"> • David Gazard; • Jonathan Epstein. 	<ul style="list-style-type: none"> • Cambridge ESOL; • Coles Supermarkets; • DP World Australia Ltd; • National Retail Association; • Peet Limited; • Transurban Group; • Wesfarmers; • Westpac Banking Corporation. 	<ul style="list-style-type: none"> • GPJT Pty Ltd; • Jonnik Pty Ltd; • Phomadse Pty Ltd;
140.	The Trustee for Endeavour Consulting Group Unit	Endeavour Consulting Group Pty Ltd	<ul style="list-style-type: none"> • Jeff Townsend, Chairman; • Mark Brandon-Baker, 	<ul style="list-style-type: none"> • American Express Australia; • Australian Orthopaedic 	<ul style="list-style-type: none"> • Lexem Pty Ltd; • Tomogen Pty Ltd; • Minerve

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
	Trust		Partner; <ul style="list-style-type: none"> • Paul Chamberlin, Partner. 	Association; <ul style="list-style-type: none"> • Australian Road Safety Foundation; • Christmas Island Phosphates; • Clubs Australia; • Clubs NSW; • Coca-Cola South Pacific; • Convergá; • Corum Group; • Energy Assured; • Energy Resources Australia Ltd; • GDF Suez; • Google Australia; • Griffith University; • Incitec Pivot Pty Ltd; • Manufacturing Australia; • Northern Land Council; • Phonographic Performance Company of Australia; • Pindo Deli; • Port Waratah Coal Services; • Rio Tinto Ltd; • Seven Network; • Solaris; • The Shell Company of Australia Ltd; 	<ul style="list-style-type: none"> • Investments Pty Ltd.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				<ul style="list-style-type: none"> • Truck Industry Council; • University of Canberra; • Ure Chan Group; • Vodafone Hutchison; • Woolworths. 	
141.	The Trustee for Chikarovski Family Trust	The Trustee for Chikarovski Family Trust	<ul style="list-style-type: none"> • Kerry Chikarovski, Director; • Samantha Dybac, Lobbyist. 	<ul style="list-style-type: none"> • Cement Concrete and Aggregates Association; • EJ Cooper & Son; • Health Field Group; • Pages Pty Ltd; • Paul Gallen; • Rocla Pty Ltd; • Salini Australia Pty Ltd; • Stirling Bridge Capital; • Surrogacy Australia; • Sydney Kings Basketball; • The MAC Group; • Victoria Buchan. 	Kerry Chikarovski
142.	The Trustee for the OneProfile Communications Unit Trust	OneProfile Communications Pty Ltd	Emma Cullen-Ward, Director	None listed.	Golden Grass Pty Ltd
143.	The Trustee for the S & L Santoro Family Trust	Santo Santoro Consulting	<ul style="list-style-type: none"> • Santo Santoro, Director; • Mark Kaffir Powell, Partner. 	<ul style="list-style-type: none"> • Ansaldo STS Australia Pty Ltd; • Aurizon Operations Limited; • Infigen Energy Limited; • Gerard Group; • Ghella Pty Ltd; • NKT Cables Australia Pty 	<ul style="list-style-type: none"> • Comm. Hon. Santo Santoro; • Letitia Mary Santoro.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
				Ltd; <ul style="list-style-type: none"> • Schiavello Project Interiors Pty Ltd; • Stormwater360 Australia; • TechnologyOne; • The Mantle Group; • Walker Corporation. 	
144.	The Trustee for the Salmon Odgers Family Trust	Salmon Communications	Michael Salmon, Director	<ul style="list-style-type: none"> • Ally Group; • Australian Content Industry Group; • Travel Managers Pty Ltd. 	<ul style="list-style-type: none"> • Michael Salmon; • Carolyn Odgers.
145.	The Trustee for The Shac Trust	Shac Communications	<ul style="list-style-type: none"> • Simone Holzapfel, Director; • Katrina Beikoff, Media Director. 	<ul style="list-style-type: none"> • Global Road Technology; • Habitat Early Learning Centres; • Jeld-Wen Australia; • Leighton Contractors; • Nimrod Resources; • Pearls Australasia; • Rheem; • Sunland Group; • World Firefighters Games. 	Simone Holzapfel
146.	Troy, Clive	Philippine Commerce and Trade Advisory Service	Clive Troy, Principal	<ul style="list-style-type: none"> • Infratex Philippines; • Free Fair Trade Philippines. 	Clive Troy
147.	The Trustee for the Bowden Family Trust	Foresight Communications	Bob Bowden, Senior Partner	<ul style="list-style-type: none"> • Australian Self Medication Industry; • Evans & Peck Pty Ltd; • Group Training Australia; • Harmony Walk; • TAFE Directors Australia. 	Bob Bowden

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
148.	Vanguard Consulting & Services Pty Ltd	Vanguard Health	<ul style="list-style-type: none"> • Kerry Gallagher, Managing Director; • Timothy John Gallagher, Marketing Manager; • David Matthew Russell, Professional Communicator; • Julie Ann Sawyer, Manager, Communication & Policy. 	<ul style="list-style-type: none"> • Australian Army Training Team Vietnam Association (AATTV); • Australian Society of Ophthalmologists (ASO); • Specialist Connect Pty Ltd. 	<ul style="list-style-type: none"> • Kerry Gallagher; • Sharon Gallagher.
149.	Walker Watterson Holdings Pty. Limited	Watterson Marketing Communications	<ul style="list-style-type: none"> • Hannah Watterson; • Cameron Wells; • Jonathan Englert; • Hvorje Ferle. 	<ul style="list-style-type: none"> • Avaya; • Bis Shrapnel; • Emerson; • FireEye; • Motorola Solutions; • Nutanix; • Riverbed. 	<ul style="list-style-type: none"> • Hannah Watterson; • James Watterson.
150.	Wells Haslem Strategic Public Affairs Pty. Ltd.	Wells Haslem Strategic Public Affairs Pty. Ltd.	<ul style="list-style-type: none"> • Philip John Wells; • Benjamin Haslem; • Julie Louise Sibraa; • Kerry Walter Sibraa; • Alexandra Mayhew, Partner. 	<ul style="list-style-type: none"> • Boomerang & Blueys Beach Group; • Chrysler Australia; • Insurance Council of Australia; • James Hardie; • Manly Warringah Sea Eagles; • Zurich Financial Services Australia Limited. 	<ul style="list-style-type: none"> • Philip John Wells; • Benjamin Haslem; • Alexandra Mayhew.

	Business Entity Name	Trading Name	Lobbyist Details	Client Details	Owner Details
151.	Willard Public Affairs Pty Limited	Willard Public Affairs	<ul style="list-style-type: none"> • David Thomas Miles, Principal; • Matthew Moran, Director; • Andrew John Plumley, Senior Consultant; • Mary Andrew, Consultant; • Taran Payne Smith, Office and Events Manager. 	<ul style="list-style-type: none"> • G. I Smoker and M. R Tudehope; • Mary Smoker and Amanda Fairjones Partnership; • Matrix on Board; • Mundipharma Pty Ltd; • Sonic Healthcare Limited; • United States Chamber of Commerce; • Vertex Pharmaceuticals (Aust) Pty Ltd; • Zoetis Australia Pty Ltd. 	<ul style="list-style-type: none"> • Willard Consulting Pty Ltd as trustee for David Miles Family Trust; • MIJMO Pty Ltd as trustee for M and J Moran Family Trust.
152.	Wise McBaron Communications Pty. Ltd.	Wise McBaron Communications Pty Limited	<ul style="list-style-type: none"> • Trudy Leigh Wise, Director; • Stephen John Naylor, Account Director. 	Australasian Association of Convenience Stores	Trudy Leigh Wise
153.	Word Worker Pty Ltd	McDermott Media and Communications	Lisa McDermott, Director	Shoalhaven City Council	<ul style="list-style-type: none"> • Paul McDermott (Shareholder); • Lisa McDermott (Shareholder).
154.	WPRM Pty Ltd	Wilkinson Group	Peter Wilkinson, Director	<ul style="list-style-type: none"> • Achieve Australia; • Bellamy's Organic; • CO2 Australia P/L; • Nestle; • Nick Scali. 	Peter Wilkinson

APPENDIX THREE: NEW SOUTH WALES REGISTER OF PROFESSIONAL LOBBYISTS – NUMBER OF CLIENTS

	Business Entity Name	Trading Name	No of Clients
155.	Aegis Consulting Group Pty Ltd	Aegis Consulting Australia	2
156.	Alkar Pty Ltd	Allan King Consultancy	2
157.	Aspromonte Holdings Pty. Limited	Aspromonte Holdings Pty. Limited	0
158.	Asset Public Relations Pty Ltd	Asset Public Relations Pty Lt	2
159.	AusAccess Unit Trust	AusAccess Pty Ltd	5
160.	Australian Public Affairs Ltd Partnership	Australian Public Affairs	7
161.	Bartholomew Quinn and Associates Pty Ltd	Bartholomew Quinn and Associates	3
162.	Barton Deakin Pty Limited	Barton Deakin Pty Limited	71
163.	Belman Consulting Pty Ltd	Belman Consulting Pty Ltd	1
164.	Bespoke Approach Pty Ltd as trustee for Bespoke Approach Unit Trust	Bespoke Approach	4
165.	Bluegrass Consulting Pty Ltd	Bluegrass Consulting Pty Ltd	6
166.	Blyde Communications Pty Ltd	Blyde Communications	1
167.	Bossy Group Pty Ltd	Bossy Group	2
168.	Bramex Pty Ltd	Bramex Pty Ltd	1
169.	Burson-Marsteller Pty Ltd	Burson-Marsteller	4
170.	Butcher & Co Pty Ltd	Butcher & Co	1
171.	C2Hills Investments Pty Ltd	C2Hills Investments Pty Ltd	1
172.	Campbell, Ian Charles	Campbell, Ian Charles	1
173.	Cannings Advisory Services Pty Limited	Cannings Advisory Services Pty Limited	2
174.	Capital Hill Advisory Pty Ltd	Capital Hill Advisory	7
175.	Cass, David John	David J Cass	1
176.	Cato Counsel Pty Limited	Cato Counsel Pty Limited	1
177.	CMAX Communications Pty Ltd	CMAX Communications	8
178.	CMGRP Pty Limited	Weber Shandwick Worldwide	6
179.	Con Walker, Betty (Dr)	Centennial Consultancy	0
180.	Conlon, Geoffrey Kershaw	Geoff Conlon	1

	Business Entity Name	Trading Name	No of Clients
181.	Cosway Australia Pty Limited	Cosway Australia	6
182.	Cotterell, Jannette Suzanne	Executive Counsel Australia	17
183.	Cox Inall Communications Pty Ltd	Cox Inall Communications Pty Ltd	0
184.	CPR Communications & Public Relations Pty Ltd	CPR Communications & Public Relations Pty Ltd	5
185.	CRAKYL Pty Ltd	CRAKYL Pty Ltd	5
186.	Cromarty Communications Pty Ltd	Cromarty Communications Pty Ltd	2
187.	Crosby Textor Research Strategies Results Pty Ltd	Crosby Textor Research Strategies Results Pty Ltd	23
188.	CSR Limited	CSR	2
189.	Dale Fitzell & Associates Pty Ltd	Brian Dale & Partners	6
190.	Deep River Business Trust	Precise Planning	2
191.	Diplomacy Pty Limited	Diplomacy Pty Limited	6
192.	ED & Associates Pty Ltd	ED & Associates Pty Ltd	1
193.	Edelman Public Relations Worldwide Pty Ltd	Edelman	6
194.	Edman, Donna	Astute Advocacy	1
195.	Enhance Corporate Pty Ltd	Enhance Corporate	2
196.	Essential Media Communications Pty Ltd	Essential Media Communications	1
197.	Etched Communications Pty Ltd	Etched Communications	4
198.	F. L. Press Pty Limited	F. L. Press Pty Limited	0
199.	FIPRA Australia Pty Limited	FIPRA Australia	6
200.	First State Advisors & Consultants Pty Ltd	First State Government and Corporate Relations	35
201.	FordComm Consulting Pty Ltd	FordComm Consulting Pty Ltd	4
202.	Fowlstone Communications Pty Ltd	Fowlstone Communications	5
203.	FPL Advisory Pty Ltd	FPL Advisory Pty Ltd	3
204.	FTI Consulting (Sydney) Pty Ltd	FTI Consulting	2
205.	G.C. Advocacy Pty Ltd	Geoff Corrigan Advocacy	2
206.	Galbraith & Company Pty Ltd	Galbraith & Company Pty Ltd	3

	Business Entity Name	Trading Name	No of Clients
207.	Gambolling Pty Ltd trading as Carney Associates	Carney Associates	10
208.	Gell Southam Group Pty Limited	GSG Counsel	2
209.	George Brownbill Consulting Pty Ltd	George Brownbill Consulting Pty Ltd	5
210.	Government Relations Australia Advisory Pty Ltd	Government Relations Australia Advisory Pty Ltd	38
211.	Government Relations Solutions Pty Ltd	GR Solutions	6
212.	GRA Everingham Pty Ltd	GRA Everingham Pty Ltd	3
213.	Halden Burns Pty Ltd	Halden Burns Pty Ltd	2
214.	Hawker Britton Group Pty Limited	Hawker Britton Group	4
215.	Health Communications Australia Pty Limited	Health Communications Australia Pty Limited	2
216.	Highchair Pty Ltd & The Civic Group Holdings Pty Ltd	The Civic Group	7
217.	Hill and Knowlton Australia Pty Limited	Hill & Knowlton Strategies	9
218.	Hugo Halliday PR & Marketing Pty Ltd	Hugo Halliday PR + Government Relations + Marketing + Media Training	20
219.	Ivydale Nominees Pty Ltd	Riley Matthewson Public Relations	1
220.	Jo Scard Pty Ltd	Fifty Acres – The Communications Agency	13
221.	John Connolly & Partners Pty Limited	John Connolly & Partners	5
222.	Johnston, Adam David	ADJ Consultancy Services	0
223.	KPMG	KPMG	9
224.	Kreab Gavin Anderson (Australia) Limited	Kreab Gavin Anderson	33
225.	Leisure Solutions®	Leisure Solutions®	1
226.	LESL Services Pty Limited	LESL Services Pty Limited	3
227.	Lighthouse Communications Group Pty Ltd	Lighthouse Communications Group	3
228.	Lyndon George Pty Ltd	Lyndon George	2
229.	MacGregor Public Relations Pty Ltd	MacGregor Public Relations	5
230.	Macquarie Group Limited	Macquarie Group Limited	1
231.	McLaughlin, Thomas John	TJM Consulting	1

	Business Entity Name	Trading Name	No of Clients
232.	N/A	Stephen Kendal	2
233.	Nelcorb Pty Ltd	Nelcorb Pty Ltd	9
234.	Newgate Communications Pty Limited	Newgate Communications	22
235.	No Strings Attached Animation Pty Ltd	No Strings Attached	1
236.	Oakville Pastoral Co Pty Limited	Oakville Pastoral Co Pty Limited	2
237.	Ogilvy PR Health Pty Ltd	Ogilvy PR Health	14
238.	Parker & Partners Pty Ltd	Parker & Partners Public Affairs	16
239.	Phillips, Sonya Ethel	Solutions by Sonya	0
240.	Policy Solutions Group Pty Ltd	The Agenda Group NSW	14
241.	Potts, Geoff	Potts and Associates	0
242.	Premier State Consulting Pty Ltd	PremierState	30
243.	Primary Communication Pty Ltd	Primary Communication	13
244.	Professional Public Relations Pty Ltd	Professional Public Relations Pty Ltd	2
245.	Profile Consulting (Aust) Pty Ltd	Profile Consulting (Aust) Pty Ltd	13
246.	Public Affairs Network Pty Ltd	Public Affairs Network	1
247.	R. A Neilson & M Salmon	Salmon Neilson	3
248.	Republic Consulting Pty Ltd	Republic Consulting	8
249.	Reputation Pty Ltd	Reputation Pty Ltd	2
250.	Repute Communications & Associates Pty Ltd	Repute Communications & Associates Pty Ltd	13
251.	Res Publica Pty Ltd	Res Publica Pty Ltd	8
252.	Richardson Coutts Pty Limited	Richardson Coutts Pty Ltd	30
253.	Right Angle Business Services Pty Ltd	Jeanes Holland and Associates	8
254.	Riverview Global Partners Pty Limited	Riverview Global Partners Pty Limited	1
255.	SAS Consulting Group Pty Ltd	SAS Group	6
256.	Schacht, Christopher Cleland	C C Schacht	2
257.	Scott & Beaumont Pty Ltd	Scott & Beaumont Pty Ltd	3
258.	Sefiani Communications Group Pty Ltd	Sefiani Communications Group	6
259.	Senate Finance & Insurance Pty Ltd	Senate Finance & Insurance Pty Ltd	0
260.	Smith, Wayne Christopher	Clean Economy Services	4

	Business Entity Name	Trading Name	No of Clients
261.	Sporting Management Concepts Pty Ltd	Sporting Management Concepts Pty Ltd	1
262.	Statecraft Pty Ltd	Statecraft	21
263.	Strategic Partnership Group (Aust) Pty Limited	Strategic Partnership Group (Aust) Pty Limited	8
264.	The Fifth Estate Consultancy Pty Limited	The Fifth Estate	5
265.	The HTT Trust	HTT Associates Pty Ltd	0
266.	The Narrative Investments Pty Limited	The Narrative	9
267.	The Premier Communications Group Pty Ltd	The Premier Communications Group	17
268.	The Risorsa Group Pty Ltd	The Risorsa Group Pty Ltd	2
269.	The Six Hats – Investor Relations Pty Ltd	The Six Hats – Investor Relations Pty Ltd	1
270.	The Strategic Counsel Pty Ltd	The Strategic Counsel Pty Ltd	3
271.	The Taylor Street Consultancy Pty. Limited	Taylor Street Advisory	10
272.	The Trustee for Consultum Trust	Consultum Campaigns	7
273.	The Trustee for ECG Advisory Trust	The Trustee for ECG Advisory Trust	8
274.	The Trustee for Endeavour Consulting Group Unit Trust	Endeavour Consulting Group Pty Ltd	29
275.	The Trustee for Chikarovski Family Trust	The Trustee for Chikarovski Family Trust	12
276.	The Trustee for the OneProfile Communications Unit Trust	OneProfile Communications Pty Ltd	0
277.	The Trustee for the S & L Santoro Family Trust	Santo Santoro Consulting	11
278.	The Trustee for the Salmon Odgers Family Trust	Salmon Communications	3
279.	The Trustee for The Shac Trust	Shac Communications	9
280.	Troy, Clive	Philippine Commerce and Trade Advisory Service	2
281.	The Trustee for the Bowden Family Trust	Foresight Communications	5
282.	Vanguard Consulting & Services Pty Ltd	Vanguard Health	3
283.	Walker Watterson Holdings Pty. Limited	Watterson Marketing Communications	7

	Business Entity Name	Trading Name	No of Clients
284.	Wells Haslem Strategic Public Affairs Pty. Ltd.	Wells Haslem Strategic Public Affairs Pty. Ltd.	6
285.	Willard Public Affairs Pty Limited	Willard Public Affairs	8
286.	Wise McBaron Communications Pty. Ltd.	Wise McBaron Communications Pty Limited	1
287.	Word Worker Pty Ltd	McDermott Media and Communications	1
288.	WPRM Pty Ltd	Wilkinson Group	5

APPENDIX FOUR: POLITICAL DONATIONS MADE BY PROFESSIONAL LOBBYISTS IN NSW SINCE AUGUST 2008

Business Entity Name	Trading Name	Total Political Donations	Liberal Party (NSW) Donations	ALP (NSW) Donations	Political Donations to Other Parties and Organisations	
289.	KPMG	KPMG	\$404,840	\$123,470	\$258,395	\$22,975
290.	Macquarie Group Limited	Macquarie Group Limited	\$134,250	\$77,250	\$44,250	\$12,750
291.	Government Relations Australia Advisory Pty Ltd	Government Relations Australia Advisory Pty Ltd	\$128,730	\$41,425	\$67,255	\$20,050
292.	CPR Communications & Public Relations Pty Ltd	CPR Communications & Public Relations Pty Ltd	\$123,202.15 ⁶⁴⁴	\$53,705 ⁶⁴⁵	\$22,900 ⁶⁴⁶	\$42,297.15
293.	Hawker Britton Group Pty Limited	Hawker Britton Group	\$114,948.16		\$114,948.16	
294.	John Connolly & Partners Pty Limited	John Connolly & Partners	\$111,559.20 ⁶⁴⁷	\$54,294.08	\$56,765.12	\$500
295.	Parker & Partners Pty Ltd	Parker & Partners Public Affairs	\$102,985	\$49,185	\$13,850	\$39,950
296.	Health Communications Australia Pty Limited	Health Communications Australia Pty Limited	\$98,850	\$63,350		\$35,500
297.	Barton Deakin Pty	Barton Deakin Pty	\$67,952.71	\$56,793.63		\$11,159.08

⁶⁴⁴ \$117,402.15 from CPR Communications & Public Relations Pty Ltd; \$5,800 from CPR Communications.

⁶⁴⁵ \$47,905 from CPR Communications & Public Relations Pty Ltd; \$5,800 from CPR Communications.

⁶⁴⁶ \$22,900⁶⁴⁶ from CPR Communications & Public Relations Pty Ltd.

⁶⁴⁷ Note: John Connolly and Partners Pty Limited listed as a donor in 2009, no details listed.

	Business Entity Name	Trading Name	Total Political Donations	Liberal Party (NSW) Donations	ALP (NSW) Donations	Political Donations to Other Parties and Organisations
	Limited	Limited				
298.	Kreab Gavin Anderson (Australia) Limited	Kreab Gavin Anderson	\$67,745	\$29,135	\$13,500	\$25,110
299.	MacGregor Public Relations Pty Ltd	MacGregor Public Relations	\$60,043	\$24,801	\$31,242	\$4,000
300.	The Trustee for Endeavour Consulting Group Unit Trust	Endeavour Consulting Group Pty Ltd	\$58,372 ⁶⁴⁸	\$3,000	\$49,612	\$5,760
301.	Australian Public Affairs Ltd Partnership	Australian Public Affairs	\$49,635 ⁶⁴⁹	\$12,975		\$36,660
302.	Enhance Corporate Pty Ltd	Enhance Corporate	\$36,909	\$6,800	\$30,109	
303.	FordComm Consulting Pty Ltd	FordComm Consulting Pty Ltd	\$31,800	\$19,000	\$11,800	\$1,000
304.	Hugo Halliday PR & Marketing Pty Ltd	Hugo Halliday PR + Government Relations +	\$25,180 ⁶⁵⁰	\$13,210		\$11,970

⁶⁴⁸ Endeavour Consultancy Group listed as donor in 2008 and 2009 but no further information given.

⁶⁴⁹ Note: Australian Public Affairs P/L listed as donor in 2008 but no information given.

⁶⁵⁰ Hugo Halliday PR & Marketing also listed as a donor in 2010 but no information given.

	Business Entity Name	Trading Name	Total Political Donations	Liberal Party (NSW) Donations	ALP (NSW) Donations	Political Donations to Other Parties and Organisations
		Marketing + Media Training				
305.	Bluegrass Consulting Pty Ltd	Bluegrass Consulting Pty Ltd	\$20,820	\$4,800	\$10,250	\$5,770
306.	Richardson Coutts Pty Limited	Richardson Coutts Pty Ltd	\$15,981.50 ⁶⁵¹	\$6,630	\$2,600	\$6,751.50
307.	McLaughlin, Thomas John	TJM Consulting	\$14,970		\$11,970	\$3,000
308.	Lighthouse Communications Group Pty Ltd	Lighthouse Communications Group	\$11,300 ⁶⁵²	\$7,100	\$2,700	\$1,500
309.	Statecraft Pty Ltd	Statecraft	\$11,050	\$8,050		\$3,000
310.	AusAccess Unit Trust	AusAccess Pty Ltd	\$9,325	-	-	\$9,325
311.	Cox Inall Communications Pty Ltd	Cox Inall Communications Pty Ltd	\$8,760 ⁶⁵³	\$7,260		\$1,500
312.	CSR Limited	CSR	\$8,588.64	\$8,588.64		
313.	SAS Consulting Group Pty Ltd	SAS Group	\$8,350 ⁶⁵⁴	\$3,550 ⁶⁵⁵		\$6,050
314.	Crosby Textor	Crosby Textor	\$8,250	\$8,100		\$150

⁶⁵¹ Richardson Coutts listed as donor in 2010 but no further information given.

⁶⁵² Lighthouse Communications Group listed as donor in 2010 but no further information given.

⁶⁵³ Note: Cox Inall Communications Pty Ltd listed as donor in 2009 but no information given.

⁶⁵⁴ \$3,000 from SAS Consulting Group Pty Ltd; \$5,350 from SAS Group.

⁶⁵⁵ \$3,000 from SAS Consulting Group Pty Ltd; \$550 from SAS Group.

	Business Entity Name	Trading Name	Total Political Donations	Liberal Party (NSW) Donations	ALP (NSW) Donations	Political Donations to Other Parties and Organisations
	Research Strategies Results Pty Ltd	Research Strategies Results Pty Ltd				
315.	Res Publica Pty Ltd	Res Publica Pty Ltd	\$8,000 ⁶⁵⁶	\$8,000		
316.	Fowlstone Communications Pty Ltd	Fowlstone Communications	\$7,762	\$7,122		\$640
317.	Scott & Beaumont Pty Ltd	Scott & Beaumont Pty Ltd	\$7,750		\$7,750	
318.	Gambolling Pty Ltd trading as Carney Associates	Carney Associates	\$7,154			\$7,154
319.	Hill and Knowlton Australia Pty Limited	Hill & Knowlton Strategies	\$7,022	\$2,250	\$4,772	
320.	Reputation Pty Ltd	Reputation Pty Ltd	\$7,013.14	\$1,650	\$4,000	\$1,363.64
321.	Premier State Consulting Pty Ltd	PremierState	\$5,665	\$3,165		\$2,500
322.	Cannings Advisory Services Pty Limited	Cannings Advisory Services Pty Limited	\$5,500	\$5,500		
323.	The Fifth Estate Consultancy Pty Limited	The Fifth Estate	\$5,450	\$2,000		\$3,450
324.	Burson-Marsteller Pty Ltd	Burson-Marsteller	\$5,000	\$5,000		
325.	CMAX Communications Pty Ltd	CMAX Communications	\$5,000	\$5,000		

⁶⁵⁶ Res Publica Pty Ltd listed as donor in 2010 but no further information given.

	Business Entity Name	Trading Name	Total Political Donations	Liberal Party (NSW) Donations	ALP (NSW) Donations	Political Donations to Other Parties and Organisations
326.	The Trustee for The Shac Trust	Shac Communications	\$3,600	\$3,600		
327.	The Trustee for the S & L Santoro Family Trust	Santo Santoro Consulting	\$3,500	\$3,500		
328.	Sefiani Communications Group Pty Ltd	Sefiani Communications Group	\$3,360	\$3,360		
329.	GRA Everingham Pty Ltd	GRA Everingham Pty Ltd	\$3,300 ⁶⁵⁷	\$3,300		
330.	Cato Counsel Pty Limited	Cato Counsel Pty Limited	\$2,886.36	\$2,886.36		
331.	The Trustee for Chikarovski Family Trust	The Trustee for Chikarovski Family Trust	\$2,100	\$2,100		
332.	Strategic Partnership Group (Aust) Pty Limited	Strategic Partnership Group (Aust) Pty Limited	\$2,000	\$2,000		
333.	Gell Southam Group Pty Limited	GSG Counsel	\$1,500			\$1,500
334.	George Brownbill Consulting Pty Ltd	George Brownbill Consulting Pty Ltd	\$1,000			\$1,000

⁶⁵⁷ GRA Everingham also listed as donor in 2010 and 2011 but no further information given.