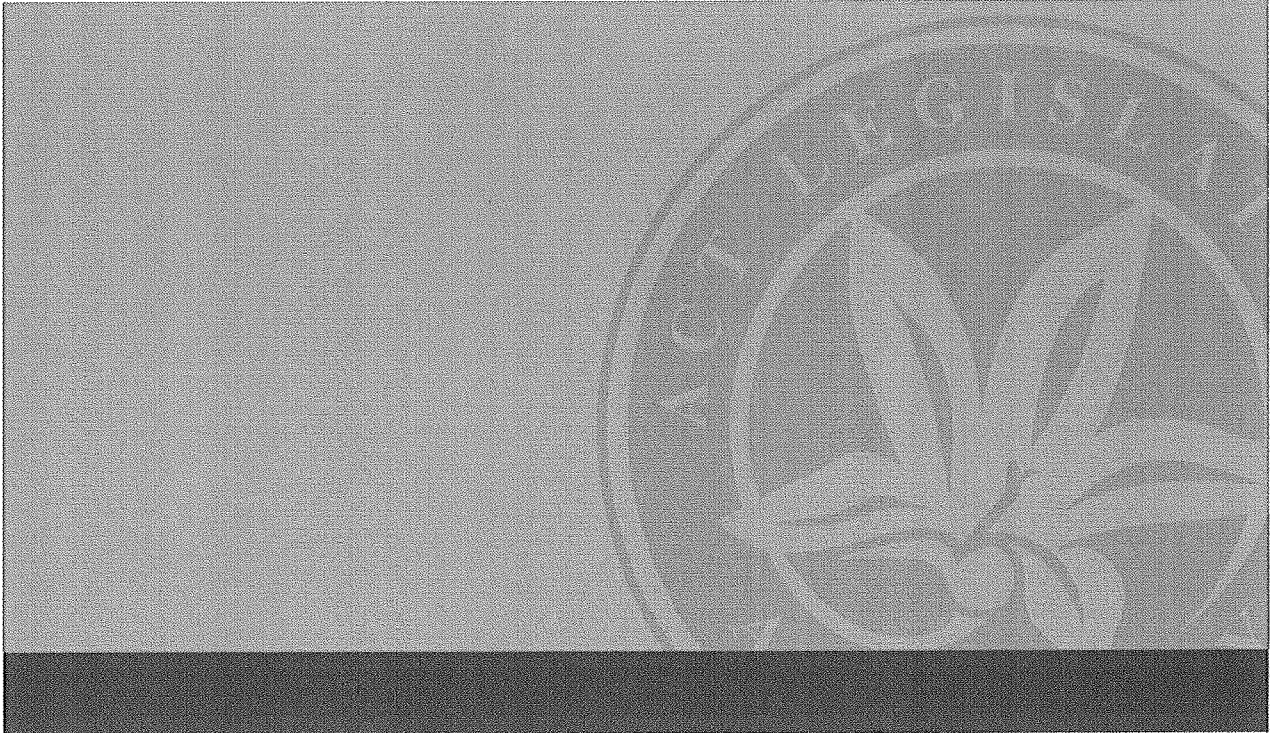




LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



LOBBYIST REGULATION

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

JUNE 2014

REPORT 3

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

TERMS OF REFERENCE

On 27 February 2014, Ms Gallagher MLA (Chief Minister), pursuant to notice, moved a motion which included proposing that the Standing Committee on Administration and Procedure draft a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines and report back to the Assembly by May 2014. A number of amendments were moved and subsequently the following motion was agreed to by the Assembly:

"That this Assembly:

- (1) notes:
 - (a) the importance of ensuring a strong integrity framework is in place to support the work of Members of the ACT Legislative Assembly and to maintain community trust in our parliamentary processes;
 - (b) the recent implementation of the Members' Code of Conduct and the appointment of the ACT Legislative Assembly's first Commissioner for Standards;
 - (c) the valid role for lobbyists to advocate on behalf of stakeholder clients; and
 - (d) that the ACT does not have a public register of lobbyists or an accompanying code of conduct; and
- (2) requests that the Standing Committee on Administration and Procedure provide advice on the implementation of a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines, and report back to the Assembly by the last sitting day in June 2014."

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RECOMMENDATION

RECOMMENDATION 1

1.12 Accordingly, the Committee resolved to recommend to the Assembly:

- (a) if the Assembly is of the view that ACT lobbying regulation should be confined to the Executive and not extend to all Members of the Assembly, then Mr Skehill's advice should be referred to the Chief Minister for any assistance it may provide to her in settling upon the form of any lobbying regulation that might be implemented for application to the Executive; but
- (b) if the Assembly is of the view that ACT lobbying regulation should extend to all Members of the Assembly, then such regulation should appropriately be implemented by a Continuing Resolution along the lines of the draft at Appendix B to this report.

1 INTRODUCTION AND CONDUCT OF INQUIRY

1.1 On 27 February 2014, a motion was moved by Ms Gallagher MLA, pursuant to notice, which proposed that the Committee draft a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines. A number of amendments to the motion were moved and agreed to with the following resolution passing the Assembly:

“That this Assembly:

(1) notes:

- (a) the importance of ensuring a strong integrity framework is in place to support the work of Members of the ACT Legislative Assembly and to maintain community trust in our parliamentary processes;
- (b) the recent implementation of the Members’ Code of Conduct and the appointment of the ACT Legislative Assembly’s first Commissioner for Standards;
- (c) the valid role for lobbyists to advocate on behalf of stakeholder clients; and
- (d) that the ACT does not have a public register of lobbyists or an accompanying code of conduct; and

(2) requests that the Standing Committee on Administration and Procedure provide advice on the implementation of a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines, and report back to the Assembly by the last sitting day in June 2014.”

1.2 To assist it in developing the advice thereby sought, the Assembly’s Ethics and Integrity Adviser, Mr Stephen Skehill, was engaged on behalf of the Committee to provide advice on the following matters:

- a draft lobbyists register that would be suitable for the ACT, having regard to practices in other jurisdictions;
- a draft code of conduct and/or guidelines and principles for the lobbyists register;
- whether it is appropriate for non-executive Members to be covered by the lobbyists register; and
- any other related matter.

A copy of Mr Skehill’s advice is at Appendix A to this report.

1.3 In considering the matters referred to it by the Assembly, the Committee first considered whether or not there was a need to regulate the conduct of lobbying directed at Members of the Assembly.

1.4 Committee members noted that in their common experience as Members of the Assembly, and in the experience of two Committee members as Ministers, third party lobbying of them by paid lobbyists was exceptionally rare and that, in each instance that could be recalled, there had been no issues of concern raised by the manner in which that lobbying had been conducted – it was apparent whose interests were being represented to them (generally because the client accompanied the lobbyist to meetings) and the personal conduct of the lobbyist was to all appearances quite proper.

1.5 Nevertheless, Committee members noted that:

- the Commonwealth and all State jurisdictions have introduced some form of lobbying regulation;
- the conduct of lobbyists has been a matter of some considerable contention in some jurisdictions in recent times;
- there was no guarantee that the past experience in the ACT would continue indefinitely; and
- any future improper behaviour by lobbyists could operate to the considerable detriment of the public interest.

1.6 Accordingly, while there might well be a far stronger need for regulating lobbying in other Australia jurisdictions, the Committee concluded that it would nevertheless be appropriate for the ACT, as a matter of proactive precaution and consistent with a strong commitment to transparency and integrity in public administration, to introduce a form of lobbying regulation. At the same time, the Committee also endorsed Mr Skehill's view that:

Regulating lobbying may be an important tool ..., but it can never eliminate corruption in public office. Personal integrity and commitment to and compliance with meaningful codes of conduct remain key essentials in combatting public corruption.

1.7 The Committee then considered whether ACT lobbying regulation should apply to all Members of the Assembly or only to those Members comprising the Executive from time to time. The Committee was evenly split on this issue.

1.8 Two members of the Committee noted that it was the Executive rather than the Assembly itself that was responsible for the day-to-day administration of the affairs of government in the Territory and that, as a result, it was members of the Executive who would be expected to predominantly be the "targets" of lobbying activity. These members noted that the responsibilities of non-Executive Members were largely confined to voting in the Chamber and participating in the activities of Assembly Committees, with current procedures in each case already providing considerable public transparency. These members further noted lobbying regulation in all Australian jurisdictions other than Queensland was confined to members of the Executive and that, in Queensland, the extension beyond the Executive was only to the Leader and Deputy Leader of the Opposition and not to all Members of Parliament. In the

view of these members of the Committee, there was no need for ACT lobbying regulation to extend beyond the Executive.

- 1.9 The remaining two members of the Committee were of the contrary view. They considered that as a matter of principle the policy reasons underlying the introduction of lobbying regulation were equally applicable to all Members of the Assembly and not just to the Executive. They noted Mr Skehill's advice on this issue, as follows:

It is of course the Executive rather than Members who have the authority to transact the day-to-day business of Government, whether by exercise of statutory powers conferred upon them by legislation passed by the Assembly, or in exercise of the inherent executive power of the Government. More usually, lobbying efforts will be therefore targeted towards Ministers and those who support and advise them.

However, non-ministerial Members of the Assembly are also lobbied as they not without power which lobbyists seek to influence – for example:

- *they vote to pass or not pass legislation or other business of the Assembly;*
- *they participate in Committee inquiries that may lead to changes in legislation or Government practice;*
- *they raise questions of the Government in the proceedings of the Assembly that may influence the conduct of the business of Government; and*
- *of course and very fundamentally, they formulate policies which they take to elections and which they promise to implement if elected to form a Government.*

In many respects, therefore, the decisions of non-ministerial Members are little different from those of Ministers.

If it is considered important that members of the Executive should know the identity of the interests being represented to them by a lobbyist when they exercise government power, then I perceive no reason in principle why non-ministerial Members should also not be armed with the same knowledge when they perform their functions as Members – functions which can clearly influence the exercise of the power of the present Government, and functions that they may be promising to undertake themselves when elected to form Government. Where no one party has an absolute majority in the Assembly, the potential for influence by Members from other parties is heightened and so too is the need for them to be able to take well-informed decisions based on interests represented to them by lobbyists.

In this regard I note that the Council of the Organisation for Economic Co-operation and Development (OECD) Principles for Transparency and Integrity in Lobbying specifically state as follows:

The Principles are primarily directed at decision makers in the executive and legislative branches. They are relevant at both national and sub-national level.

Lobbying, the oral or written communication with a public official to influence legislation, policy or administrative decisions, often focuses on the legislative branch at the national and sub-national levels. However, it also takes place in the executive branch, for example, to influence the adoption of regulations or the design of projects and contracts. Consequently, the term public officials includes civil and public servants, employees and holders of public office in the executive and legislative branches, whether elected or appointed.

Thus, while it would be consistent with most Australian lobbying regulation to limit an ACT scheme to the Executive and not apply it to all Members, I consider that the arguments for adopting such a limitation are weak and that the contrary arguments are strong.

- 1.10 These members were therefore of the view that ACT lobbying regulation should extend beyond the Executive and apply to all Members of the Assembly.
- 1.11 In these circumstances, it was not possible for the Committee to come to a majority view on this issue. In any event, resolution of the issue is inherently one for the Assembly rather than the Committee.

Recommendation 1

1.12 The Committee recommends that:

- (a) If the Assembly is of the view that ACT lobbying regulation should be confined to the Executive and not extend to all Members of the Assembly, then Mr Skehill's advice should be referred to the Chief Minister for any assistance it may provide to her in settling upon the form of any lobbying regulation that might be implemented for application to the Executive; but**
- (b) if the Assembly is of the view that ACT lobbying regulation should extend to all Members of the Assembly, then such regulation should appropriately be implemented by a Continuing Resolution along the lines of the draft at Appendix B to this report.**

1.13 Appendix B largely adopts the proposals laid out in Mr Skehill's advice. It would generally give effect to a regime of lobbying regulation that was not inconsistent with those applying in other Australian jurisdictions. On a few issues it would not be as "intrusive" as the regimes in a small number of jurisdictions – for example, those that ban success fees, or those that currently require or propose to require periodic notification of lobbying activities conducted. On some other issues it would adopt standards that improved on or reflected the best of provisions generally applicable in other jurisdictions – for example, the treatment of lobbying on behalf of friends and relatives and the content of the Code of Conduct for Registered Lobbyists.



Vicki Dunne MLA
Chair

3 June 2014

Appendix A Regulation of Lobbying in the Australian Capital
Territory

Advice provided by Stephen Skehill, dated 5 May 2014

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Background

On 27 February 2018 the ACT Legislative Assembly resolved as follows:

That this Assembly:

(1) *notes:*

- (a) *the importance of ensuring a strong integrity framework is in place to support the work of Members of the ACT Legislative Assembly and to maintain community trust in our parliamentary processes;*
- (b) *the recent implementation of the Members' Code of Conduct and the appointment of the ACY Legislative assembly's first Commissioner for Standards;*
- (c) *the valid role for lobbyists to advocate on behalf of stakeholder clients; and*
- (d) *that the ACT does not have a public register of lobbyists or an accompanying code of conduct; and*

(2) *requests that the Standing Committee on Administration and Procedure provide advice on the implementation of a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines, and report back to the Assembly by the last sitting day in June 2014.*

On 28 March 2018 I was engaged on behalf of the Standing Committee on Administration to provide advice on the following matters:

- (1) a draft lobbyists register that would be suitable for the ACT, having regard to practices in other jurisdictions;
- (2) a draft code of conduct and/or guidelines and principles for the lobbyists register;
- (3) whether it is appropriate for non-executive Members to be covered by the lobbyists register; and
- (4) any other related matter.

I set out below my advice in relation to these matters.

However I note at the outset that, having regard to the time available to me to prepare this advice and to the wide range of threshold and other more detailed decisions that would be required to be made before a regime of lobbyist regulation could be implemented in the ACT, I have not sought to prepare draft instruments in terms that could be adopted without amendment if the views I express in this advice were adopted without change. Such seemed to me to be a very time consuming and expensive exercise that might be of little benefit if different views were formed by the Committee, the Assembly or the Government in relation to those threshold and detailed questions.

Instead, I have sought to raise, discuss and offer a personal view on the numerous issues on which decisions would be required to be made. Once those decisions were made, I believe it would then be possible to draft appropriate instruments in a speedy, more efficient and more economical manner. I would be more than happy to assist in that regard if the Committee so wished.

Executive Summary

The ACT has no form of lobbying regulation and thereby stands (with the Northern Territory) in stark contrast to the Commonwealth and all the Australian States which do have some form of such regulation.

It is beyond the capacity of this advice to provide a comprehensive review of all aspects of the various schemes adopted for the regulation of lobbying at the Commonwealth and State levels in Australia, or in other not dissimilar jurisdictions overseas.

Instead, this advice provides some general commentary on lobbying regulation and primarily focusses on a form of regulation that would see the ACT come generally into line with established Australian practice.

Lobbying, while currently the subject of much controversy and critical comment in Australia, plays a vital and beneficial role in any democracy and can ensure that public officials are fully informed to make decisions in the best interests of the community they serve. At the same time, however, lobbying has the clear potential to lead, intentionally or inadvertently, to distorted outcomes unduly favourable to particular members or groups of members within a community without regard to the overall public interest. In a worst case scenario it may involve corruption of and by public officials.

Regulating lobbying may be an important tool in dealing with such distortions, but it can never eliminate corruption in public office. Personal integrity and commitment to and compliance with meaningful codes of conduct remain key essentials in combatting public corruption.

The Assembly resolution of 27 February 2014 contemplates a form of regulation that would apply to the Legislative Assembly and thus, implicitly, to all Members of it. At the same time, the Committee's request for advice raises the question of whether such regulation should apply to non-Executive Members.

This is a fundamental threshold question for the Assembly, the answer to which would affect not only the coverage of any regulation but the form in which it might best be implemented.

In either case, implementation could be by legislation. By reference to general Australian practice, however, administrative implementation without legislative force would be more usual.

In my view there is no compelling reason why lobbying regulation in the ACT should be introduced by way of legislation. The benefits that might be sought through such regulation can be achieved by administrative means, especially as there are pre-existing provisions in the *Criminal Code 2002* that allow criminal proceedings to be taken against public officials or lobbyists (amongst others) who might abuse the relationship between the two classes of persons.

If regulation was to apply to all Members of the Assembly, administrative implementation would be predominantly by way of a resolution of the Assembly. In contrast, if regulation was to apply only to those Members constituting the Executive from time to time, administrative implementation would predominantly be by way of decision by the Executive rather than the Assembly.

Attachment A is a table that contrasts the different methods of administrative implementation that would seem to be applicable depending upon how the Assembly resolved this question.

While a resolution that limited regulation to the Executive would not be inconsistent with general Australian practice, there is in my view no reason in principle why such regulation should not extend to all Members. Indeed, in my view, there are strong arguments why it should so extend and the arguments to the contrary are comparatively weak.

Once this threshold question is resolved, the next question that falls for consideration is which of the following purposes would be sought to be achieved by the proposed regulation:

- (1) to provide the public official being “targeted” by lobbying activity with transparency as to the identity of the parties on whose behalf lobbying is being undertaken, thus enabling them to better assess the views being advanced and to better judge whether they need to seek alternative or balancing views from other quarters;
- (2) to lay down expectations for the conduct of lobbyists while engaged in lobbying activities;
- (3) to prevent lobbying by some categories of persons while they hold particular positions;
- (4) to prevent lobbying by former holders of particular positions for a “cooling-off” period post-separation from those positions; and
- (5) to provide the public with a degree of transparency as to the influences and reasons that may have led public officials to take particular decisions or to act in particular ways.

Australian regimes of lobbying regulation all seek to achieve purposes (1) and (2). To greater or lesser extent some also seek to achieve purposes (3) and (4). Notwithstanding that some may claim to advance purpose (5), only one actually seeks to achieve this purpose in any meaningful way. Full attainment of purpose (5) would require far more complicated and intrusive regulation than is common either in Australia or in those overseas jurisdictions I have considered. I do not consider that there is at present any compelling need to embark down that path in the ACT.

If a decision is made to focus on the first four of these purposes, a raft of other questions then falls for decision. The body of this advice offers comment on these.

Attachment B then sets out an outline of a scheme of lobbying regulation for the ACT that I consider worthy of consideration in light of that commentary.

Regulation of Lobbying Generally

In the time available to me, it is beyond the capacity of this advice to provide a comprehensive review of all aspects of the various schemes adopted for the regulation of lobbying in Australia at the Commonwealth and State levels or, more particularly, in other not dissimilar overseas jurisdictions such as the United States, Canada, the United Kingdom and Europe.

Moreover, in many jurisdictions, including some Australian jurisdictions, consideration is currently being given to extending, significantly changing or refining existing regulatory regimes with the result that any comprehensive analysis of other jurisdictions might quickly become outdated.

Accordingly, this advice provides a general overview of the concepts underlying, and forms of, lobbying regulation.

Additionally, because the ACT which has no form of lobbying regulation stands in stark contrast to all the Australian States which do have some form of such regulation, it focusses on a form of regulation that would see the ACT come generally into line with established Australian practice among the Commonwealth and the States.

Benefits and Risks of Lobbying

Lobbying and lobbyists play a vital role in any democracy.

For public officials (whether Parliamentarians, Ministers, their staff or public servants) to exercise their roles in the best interests of the community they serve, it is essential that they have a highly developed understanding of the often diverse views of the members of that community and a refined appreciation of how particular actions they may take may impact, often differently and disadvantageously, on particular members or groups of members within that community.

Lobbying can be an essential tool in enabling and fostering that understanding and appreciation

At the same time, lobbying has the potential to lead, intentionally or inadvertently, to distorted outcomes unduly favourable to particular members or groups of members within a community without regard to the overall public interest. In a worst case scenario it may involve corruption of and by public officials.

In an endeavour to promote the beneficial, and deter the potentially undesirable or insidious aspects of lobbying, many jurisdictions around the world have introduced a degree of regulation of lobbying. There is no universal approach and, while often possessing some common elements, the various regimes can differ widely.

Purposes of Regulating Lobbying

At a broad conceptual level, these various forms of lobbying regulation may be seen to have some, but not necessarily all, of the following purposes:

- to provide the public official being “targeted” by lobbying activity with transparency as to the identity of the parties on whose behalf lobbying is being undertaken, thus enabling them to better assess the views being advanced and to better judge whether they need to seek alternative or balancing views from other quarters;
- to lay down expectations for the conduct of lobbyists while engaged in lobbying activities;
- to prevent lobbying by some categories of persons while they hold particular positions;
- to prevent lobbying by former holders of particular positions for a “cooling-off” period post-separation from those positions; and
- to provide the public with a degree of transparency as to the influences and reasons that may have led public officials to take particular decisions or to act in particular ways.

Whatever their purpose(s), these various regimes of lobbying regulation can be established either statutorily or administratively, or by some combination of the two. So, for example:

- an Act or Parliament or Regulations or Statutory Instruments made under such legislation may fully establish and impose the regime; or

- the targets of lobbying activity may administratively agree amongst themselves that they will only entertain approaches from lobbyists who meet agreed criteria; or
- a scheme implemented administratively by agreement amongst a group of lobbying targets, such as Ministers, may be extended to other targets such as their staff or public service officials by directions issued under the legislation under which those staff or officials are employed.

Resort to legislative imposition would generally be essential where it was desired to create offences for breaches of the regulatory regime by public officials or by lobbyists. However, where the only adverse consequence desired is to exclude a non-compliant lobbyist from engaging in lobbying activities, this should be achievable by administrative agreement amongst lobbying targets and, as appropriate, directions to their staff and the public servants supporting them.

Lobbying regulation may rightly be seen as an important part of a broader and multi-faceted scheme for ensuring propriety and avoiding corruption in public office, but it is important to recognise that it is by itself insufficient to achieve those purposes. Personal integrity and commitment to and compliance with meaningful codes of conduct remain key essentials in combatting public corruption.

Lobbying regulation may also operate contemporaneously with, or be supplemented by, other not-unrelated regulations directed towards propriety of conduct by public office holders – such as commitment to and compliance with meaningful codes of conduct and requirements that gifts be refused, declared or, if accepted, become the property of the Government or the recipient's employing agency. This advice does not traverse such collateral regulation but focuses instead on regulation more directly related to the act of lobbying itself.

Lobbying "Targets"

Using terminology common within Australia, generally lobbying regulation applies to lobbying activities directed at some or all of the following categories of public officials or holders of public office:

- the Executive, comprising Ministers, Assistant Ministers and Parliamentary Secretaries; or
 - Members of Parliament generally;
- staff directly employed by, or in the offices of, the above; and
- senior public servants; or
 - all public servants;

Generally however, at least in Australia, lobbying regulation does not extend to other holders of public office, such as statutory officers.

Lobbyists

Lobbying regulation generally does not apply to individuals who lobby on their own personal behalf but may be *prima facie* applied to some or all of the following categories of persons:

- bodies or persons who lobby on behalf of third parties for reward; or

- bodies or persons who lobby on behalf of third parties whether or not for reward; and
- persons who lobby only on behalf of their employing entity or its affiliates.

However, lobbying regulation generally provides exemptions for some or all of the following sub-categories of persons otherwise caught by the above descriptions:

- persons employed by an industry, trade, professional or similar organisation who lobby on behalf of some or all of the members of that organisation;
- persons registered or licensed by the Government to represent clients in their interactions with Government in the ordinary course of the provision of their registered or licensed activity, such as registered tax agents, customs brokers, company auditors and liquidators and insolvency practitioners;
- persons who are members of other recognised advisory professions, such as accountants, doctors and lawyers, who may lobby as an incidental part of the professional services they provide to their clients;
- charitable, religious or other organisations that enjoy tax exempt or similar status;
- persons who lobby on behalf of family or friends;
- members of foreign trade delegations.

Further, some regulatory regimes preclude the registration of certain categories of persons who might otherwise fall within the regime's definition of a lobbyist, such as:

- office holders of political parties; and
- often only for a period, former public officials.

Lobbying Activity

Lobbying regulation generally means any form of communication with a defined lobbying target with the intention to influence the performance by that target of their public role, which role may include some or all of the following:

- the making or amendment of legislation;
- the development or amendment of Government policy;
- the awarding of a Government contract;
- the grant or allocation of Government funding;
- the exercise of a statutory power;
- general administration of the business of government

or participating as a member of a public entity in activities associated with those roles.

At the same time, however, lobbying regulation may provide exemptions for some or all of the following activities:

- communications with a committee of the Parliament;

- communications with a member of the Executive in their capacity as a local Member and unrelated to their non-ministerial duties;
- communications in response to a call for submissions;
- petitions or communications of a "grassroots" campaign nature ;
- communications in response to a request for tender;
- statements made in a public forum; or
- responses to a request by a public official for information.

The Method of Regulation of Lobbying Activity

Lobbying regulation generally requires that those who fall within the regime's definition of un-exempted lobbyist must become enrolled on a publicly accessible register and, when they engage in lobbying activity as defined by that regime, must behave in a manner set out in a code of conduct. Whether by agreement amongst themselves or by binding direction, targets of lobbying then refuse to entertain lobbying activity from lobbyists who should be but are not registered, and from registered lobbyists who act in a manner contrary to the applicable code of conduct (who may thereby have their registration revoked so that lobbying targets generally no longer entertain their lobbying activity).

Registration of Lobbyists

Registration requirements vary from regime to regime but, as a minimum, generally require disclosure of the principals and lobbying staff of a lobbying organisation and the clients on whose behalf lobbying is conducted. In some cases some additional information about actual lobbying activity is required to be provided, and periodically updated.

Registers of lobbyists are publicly available – predominantly electronically.

New registrations and changes to existing registered details are generally required to be processed speedily so that the legitimate business of lobbying is not unduly delayed to the disadvantage of those whose interests are being represented or of those who should have access to views on such interests.

Codes of Conduct

Codes of conduct tend to focus on behavioural standards required to be displayed in the course of lobbying activity – such as disclosure as a lobbyist, disclosure of the client being represented, presentation of accurate and not-misleading information – and to ensure the ongoing accuracy of registered details.

Considerations relevant to the regulation of Lobbying in the A.C.T.

Should regulation be introduced by legislation or administratively?

Of the Australian lobbying regulation regimes, only that in Queensland is implemented by subject-specific legislation or legislative instruments – the *Integrity Act 2009* (Qld) and the Code of Conduct made under section 68 of that Act by the holder of the statutory office of Integrity Commissioner. In all other jurisdictions, the regime is implemented predominantly by agreement amongst relevant office-holders and then extended to their personal and public service staff by directions or instruments under the pre-existing legislation under which those staff are employed.

In my view there is no compelling reason why lobbying regulation in the ACT should be introduced by way of legislation.

There are pre-existing provisions in the *Criminal Code 2002* that allow criminal proceedings to be taken against public officials or lobbyists (amongst others) who might abuse the relationship between the two classes of persons - for example, sections 333, 335, 337, 342, 356 and 359.

Further, limiting access by unregistered lobbyists can be implemented administratively:

- so far as Members of the Assembly are concerned – by agreement amongst themselves expressed in a resolution of the Assembly;
- if the regime is to be limited to the Executive, by agreement between Ministers or by direction of the Chief Minister;
- so far as the staff, consultants and contractors employed by Members or Ministers are concerned – by direction by Members/Ministers under the *Legislative Assembly (Members' Staff) Act 1989*; and
- so far as public service officials are concerned - by direction from the Chief Minister to the Head of Service under the *Public Sector Management Act 1994*.

Attachment A is a table that contrasts the different methods of administrative implementation that would seem to be applicable depending upon whether an ACT regime of regulation was to apply to all Members or only to Ministers.

Accordingly, as the benefits that might be sought to be achieved can be achieved by administrative means, legislation seems to be unnecessary, at least at this time.

Which public officials can only be lobbied by registered lobbyists?

The immediate and fundamental question in this regard is whether any lobbyist regulation should apply to all Members or only to Ministers.

Some overseas regimes apply to all members of the parliament in question. In Australia, the regimes at the Commonwealth level and in New South Wales, Victoria, South Australia, Western Australia and Tasmania apply only to Ministers/Assistant Ministers/Parliamentary Secretaries (and their personal and public service staff). Only in Queensland does the regime extend beyond the Executive – and then only to the Leader and Deputy Leader of the Opposition (and the personal staff of the Leader), rather than to all Members of the Queensland Parliament.

It is of course the Executive rather than Members who have the authority to transact the day-to-day business of Government, whether by exercise of statutory powers conferred upon them by legislation passed by the Assembly, or in exercise of the inherent executive power of the Government. More usually, lobbying efforts will be therefore targeted towards Ministers and those who support and advise them.

However, non-ministerial Members of the Assembly are also lobbied as they not without power which lobbyists seek to influence – for example:

- they vote to pass or not pass legislation or other business of the Assembly;
- they participate in Committee inquiries that may lead to changes in legislation or Government practice;
- they raise questions of the Government in the proceedings of the Assembly that may influence the conduct of the business of Government; and
- of course and very fundamentally, they formulate policies which they take to elections and which they promise to implement if elected to form a Government.

In many respects, therefore, the decisions of non-ministerial Members are little different from those of Ministers.

If it is considered important that members of the Executive should know the identity of the interests being represented to them by a lobbyist when they exercise government power, then I perceive no reason in principle why non-ministerial Members should also not be armed with the same knowledge when they perform their functions as Members – functions which can clearly influence the exercise of the power of the present Government, and functions that they may be promising to undertake themselves when elected to form Government. Where no one party has an absolute majority in the Assembly, the potential for influence by Members from other parties is heightened and so too is the need for them to be able to take well-informed decisions based on interests represented to them by lobbyists.

In this regard I note that the Council of the Organisation for Economic Co-operation and Development (OECD) *Principles for Transparency and Integrity in Lobbying* specifically state as follows:

The Principles are primarily directed at decision makers in the executive and legislative branches. They are relevant at both national and sub-national level.

Lobbying, the oral or written communication with a public official to influence legislation, policy or administrative decisions, often focuses on the legislative branch at the national and sub-national levels. However, it also takes place in the executive branch, for example, to influence the adoption of regulations or the design of projects and contracts. Consequently, the term public officials includes civil and public servants, employees and holders of public office in the executive and legislative branches, whether elected or appointed.

Thus, while it would be consistent with most Australian lobbying regulation to limit an ACT scheme to the Executive and not apply it to all Members, I consider that the arguments for adopting such a limitation are weak and that the contrary arguments are strong.

Whether ACT lobbying regulation applies to all Members or only to Ministers, it should also apply to a range of other persons who support Members/Ministers – their personal staff and relevant public servants. Members and Ministers are often influenced by their official advisers and to exclude those advisers from a scheme of regulation that applied to Members/Ministers would simply open the avenue for lobbyists to direct their efforts to those advisers in order to thereby bypass the regulatory regime.

Accordingly, staff, consultants and contractors employed under the *Legislative Assembly (Members' Staff) Act 1989* and officers engaged under the *Public Sector Management Act 1994* should, *prima facie*, be subject to the same regulatory regime as applies to the Members/Ministers whom they serve.

In some regimes it is only support officials above a certain classification who are subject to lobbyist regulation. However it seems to me that this is unwise. While Members/Ministers might generally be provided with written or oral advice from the more senior persons in their offices/Departments, those persons in turn are often influenced in their advice by the advice they receive from those subordinate to them. And, of course, over and beyond the advice given to Members/Ministers, lobbyists may seek to influence the decisions of non-Member/non-Minister public officials in respect of the decisions that those officials make themselves – many of which may be made at quite junior levels.

I thus believe that any lobbyist regulation should apply to personal and public service staff at all levels.

Consistently with the separation of powers, lobbyist regulation would not apply to members of the judiciary (whether Judges or Magistrates) or to public servants to the extent that and while they are exercising judicial power (e.g., court registrars when exercising delegated judicial power). However, there appears to be no reason why regulation should not apply to such officers when they exercise their ordinary administrative functions and to other public servants employed within the court administration.

Australian regimes do not seek to extend lobbying regulation to other non-judicial statutory officers or to staff who are not employed under the general public service legislation. Clearly these officials might be subject to lobbying in just the same way as Members/Ministers and core public servants. However, given general Australian practice, it is probably satisfactory to leave it to such other statutory officers to voluntarily adopt some limitation on their dealings with lobbyists and, as necessary, to direct any non-core public service support staff to act similarly.

In some foreign jurisdictions lobbyist regulation provides a “carve-out” for some additional specific categories of public officials – for example, for the equivalents of the Reserve Bank, the Australian Taxation Office, the Customs and Border Protection Service, the Australian Federal Police and the armed forces – even though they may be employed under the general public service legislation of the jurisdiction. Most of these are irrelevant in the context of the ACT but, in any event, I do not perceive any need for exemptions of this nature.

Intended purposes of regulation

The content of a lobbyist regulation scheme will of course be fundamentally affected by the purposes it is intended to achieve.

As noted earlier, the following purposes are generally identified:

- (1) to provide the public official being “targeted” by lobbying activity with transparency as to the identity of the parties on whose behalf lobbying is being undertaken, thus enabling them to better assess the views being advanced and to better judge whether they need to seek alternative or balancing views from other quarters;
- (2) to lay down expectations for the conduct of lobbyists while engaged in lobbying activities;
- (3) to prevent lobbying by some categories of persons while they hold particular positions;
- (4) to prevent lobbying by former holders of particular positions for a “cooling-off” period post-separation from those positions; and
- (5) to provide the public with a degree of transparency as to the influences and reasons that may have led public officials to take particular decisions or to act in particular ways.

Australian regimes of lobbying regulation (and the international ones I have examined) all seek to achieve purposes (1) and (2). They do this by establishing a register of lobbyists and creating codes of conduct to be complied with by registered lobbyists.

To greater or lesser extent some also seek to achieve purposes (3) and (4). These purposes seem to be the subject of increasing focus in recent times, particularly in light of the situation emerging in New South Wales.

In my view only the Queensland regime seeks to achieve purpose (5) in any meaningful way.

Full attainment of purpose (5) would require far more complicated and intrusive regulation than is common either in Australia or in those overseas jurisdictions I have considered. A register that simply identifies that a lobbyist acts for a particular party provides no information as to their actual lobbying activities really provides very little transparency to members of the public. Moreover, even information about who they have lobbied, what issues they raised, and what arguments they made is of limited utility if the public do not know whether, and if so how, those lobbying activities have influenced the eventual position of the lobbying target.

In some foreign jurisdictions lobbyist are required to provide periodic returns that provide some fairly general detail as to their activities, but in none that I have examined is there a requirement for full detail or for the target to make any disclosure as to whether regard was had to the lobbyist’s importuning or the weight attached to it.

The Tasmanian regime does not require lobbyists to record on the register any detail about their lobbying activity – just the clients for whom they currently act.

The Commonwealth regime and those in New South Wales, South Australia and Western Australia require that lobbyists record on the register not only the clients for whom they are paid to act but also the names of those clients for whom they have provided paid or unpaid lobbying services over the preceding 3 months. The Victorian regime is somewhat stricter, requiring that detail for the preceding 12 months.

In contrast, the Queensland regime requires a monthly return that identifies each and every lobbying contact and specifying:

- the name of the registered lobbyist who made the contact;
- whether the lobbyist complied with specified provisions of the Code of Conduct in arranging the contact;
- the date of the contact;
- the title and/or name of the official lobbied: and
- the purpose of the contact, being one of either:
 - making or amendment of legislation;
 - development or amendment of a government policy or program;
 - awarding of a government contract or grant;
 - allocation of funding;
 - making a decision about town planning or giving of a development approval; or
 - other.

There have been suggestions from time to time that Parliamentarians should be required, before casting a vote in their parliament, to declare whether or not they had been lobbied in relation to the issues concerned, or that Ministers' diaries should be publicly available on-line so that there is transparency as to their appointments.

None of the Australian regimes adopt either of these requirements and I do not consider that there is at present any demonstrable need to embark down that path in the ACT.

I thus suggest that any ACT lobbyist regulation scheme should primarily focus on purposes (1)-(4) above but also adopt the Victorian mid-course on purpose (5).

In doing so, I note that, in respect of some decisions taken by Ministers and public officials, disclosure of lobbying received and the influence it has had may be statutorily required – e.g., in statements required or proceedings instituted under the *Administrative Decisions (Judicial Review) Act 1989* or the *ACT Civil and Administrative Tribunal Act 2008*.

Defining a “lobbyist”

A fairly standard definition of a “lobbyist” would be along the lines:

Any person, company or organisation who conducts lobbying activities on behalf of a third party or whose employees or other personnel conduct lobbying activities on behalf of a third party.

Such a definition, if adopted, would apply to lobbying whether or not it was paid or unpaid.

In each Australian regime this definition is further limited so that it only applies to a third party who has engaged a lobbyist:

- “on a retained or other income” (as in the Commonwealth);
- “for a fee or other reward that is agreed before” the lobbyist provides the services (as in Queensland);
- whose “business” includes being contracted or engaged to lobby, which terminology seems to suggest a “fee-for service” type of relationship (as in New South Wales and Western Australia); or
- as a “client” which seems to suggest some form of a relationship for reward lobbyist on a retainer or for other form of income (as in Victoria, South Australia and Tasmania).

At the same time, all regimes other than that in Queensland require registration of all clients for whom paid or unpaid lobbying has been undertaken during a specified preceding period. In Queensland, only past paid lobbying must be reported.

Thus the Australian regimes all provide that “paid” lobbying can only be conducted for clients that are listed on the register before the lobbying occurs, and all permit unpaid lobbying without pre-registration but subject to the provision (except in Queensland) that the identity of “unpaid” third parties for whom the lobbyist has acted must be disclosed after the event.

Requiring that a lobbyist must act on a remunerative or repeat basis leaves the way open for potentially significant but unregulated lobbying that might be of the worst type – e.g., where the lobbyist might be acting on a one-off basis induced by a promise of capital rather than income gain if they secure a particular advantage for the party whose interests they represent.

On the other hand, adopting an unqualified definition like that above may inadvertently capture some perfectly innocent and socially valuable lobbying – for example, by family, friends or “community” volunteers who seek to assist the socially disadvantaged to better negotiate their dealings with what may be to them an often bewildering bureaucracy.

A sensible middle course in the ACT that adopts the general Australian model but avoids some of the potential for abuse might well be to require pre-registration for lobbying for any form of reasonably expected reward, whether or not agreed in advance or limited to income, and to require post-event registration for other lobbying not for reward.

In some foreign regimes, a party otherwise caught by the definition of lobbyist may only be required to register whether their lobbying activity in a specified past period exceeds specified volumes of time spent or income earned, or where their forecast future lobbying activity is expected to exceed specified limits. I do not favour qualifications of this nature because they not only complicate the regulatory regime but again leave the way open for potentially significant but unregulated lobbying that might be pernicious.

Definitions of lobbyist almost universally apply only to activity undertaken on behalf of a “third party”. This means that persons acting solely on their own behalf or solely on behalf of the company or other organisation by which they are employed are not required to be registered. Where the motivating purpose of the regulation is to ensure that the lobbying target knows whose interests are being represented to them, this is clearly sensible.

But some company groups centralise government relations activities, including lobbying, within one corporate entity that acts in these regards on behalf of all companies within the group. In such cases, the third-party requirement would mean that the group government relations body could lobby without registration on behalf of its employing company, but would have to be registered to lobby on behalf of other companies within the group.

As this may be perceived to be anomalous, it could be specified that a “third party” did not include a related body corporate in a group in which each other company was directly or indirectly wholly- (or perhaps majority-) owned by a common group company. However, group corporate relationships can be so complicated and lacking in transparency that such an exclusion may be so difficult to apply and the inconvenience of registration so insignificant as to make the while exercise of little net benefit. I thus consider that the ACT should not depart from the usual Australian practice in this regard.

There are however other problems that do require some qualification on the concept of “third party”.

Applying the regime to all persons or bodies that represent the interest of a “third party” may require registration for little or no public benefit – for example, where the very identity of a lobbyist as a trade or industry organisation makes plain whose interests they are representing or where their identification as a professional services provider (such as accountants or solicitors) generally makes plain that they are acting for someone other than themselves.

Again, definition by reference to representation of a third party without further qualification could also inadvertently catch a public official acting in the course of their duties – e.g., a child welfare worker that makes representations to a housing authority.

Issues of this nature are generally resolved by specifying a variety of exclusions for categories of persons that it is not desired to catch within the prima facie definition of “lobbyist”. Such exemptions are discussed further below.

Defining “lobbying activities”

A fairly standard definition of a “lobbying activities” would be along the lines:

Any oral or written (including electronic) communication with a public official to influence legislation or policy, regulatory or administrative decisions of the public official or another public official.

The breadth of such a definition would appropriately catch communications made by any means and at any time or in any context – e.g., as an aside at an unrelated official meeting, or on a social occasion.

But it would also catch communications beyond those initiated by the lobbyist or uninvited by the target. For example, some public officials have coercive power to require the provision of information even where provision would otherwise be rejected; on other occasions public officials issue general invitations to the public to submit views or are legally obliged to seek out and have regard to the views of specified individuals or groups before taking decisions entrusted to them; and sometimes people make their views known in circumstances that make clear to the world at large (including public officials) that they are seeking influence decisions of public officials - for example, through media releases or by signing petitions for presentation to the parliament.

Issues of this nature are generally resolved by specifying a variety of exclusions for categories of activities that it is not desired to catch within the prima facie definition of "lobbying activities". Such exemptions are discussed further below.

Exemptions for lobbyists not required to be registered

The following groups are frequently exempted from the definition of "lobbyist" and thereby not required to be registered:

- religious bodies;
- charities;
- not-for-profit organisations that represent the interests of their members, such as trade unions, trade and industry associations, etc.;
- members of foreign trade delegations;
- persons/bodies registered under Government laws where dealings with Government are part of the normal day-to-day work of people in their profession – e.g., architects, Customs brokers, etc.; and
- members of professions who make occasional representations to Government on behalf of others in a way that is incidental to the provision of their professional services – e.g., doctors, accountants, lawyers.

Exemptions of this nature raise some concerns – for example, a firm of lawyers or accountants may only occasionally make representations to Government and then do so in a manner incidental to the provision of its professional services when viewed on a whole-of-firm basis, but may employ persons whose only duty within the firm is to prepare and conduct lobbying activity and who, if they were sole traders, would be required to be registered. However, trying to define a clear line of demarcation between when such firms should be required to be registered and when they need not be registered is problematical and probably of little real advantage.

A more worrying exemption found in the Commonwealth, Victorian, South Australia and Tasmanian schemes is that for "individuals making representations on behalf of relatives and friends about their personal affairs". No such exemptions are included in the New South Wales, Queensland or Western Australia regimes.

The terms "relatives", "friends" and "personal affairs" are difficult if not impossible to objectively apply without definition and none of these schemes offer any attempt at definitions.

Commentary surrounding recent inquiries of the Independent Commission against Corruption in New South Wales suggests that this might be an extremely troubling form of lobbying. Adding some definition of “personal affairs” would seem to be the most appropriate method of drawing a balance between the good sense in not inhibiting “community advocacy” and simply opening a door to regulatory avoidance.

Exemptions for activities that can be conducted without registration

In some overseas jurisdictions lobbying is totally exempted from regulation except in a specified period leading up to elections. In my view such an exemption is unwarranted.

However, there are some other activities that are commonly exempted and that I consider should similarly be recognised in any ACT regulation regime:

- communications with a committee of the parliament;
- communications with a Minister in their capacity as a local Member and in relation to matters falling outside their ministerial responsibilities;
- communications in response to a coercive requirement by a public official for information;
- communications in response to a request by a public official for information or the submission of view;
- communications in response to a request for tender, expression of interest, etc.;
- communications protected by a government-endorsed whistle-blower regime;
- approaches to a public official for publicly available information without any attempt to influence;
- grassroots campaign petitions or communications; and
- statements made in a public forum.

Because they would themselves not involve a communication with a public official, there would be no need to include any express exemption for:

- preparatory and supporting activity prior to the making of a communication with a public official; or
- preparing submissions that were to be lodged by and in the name of the third party.

If the scheme is limited to lobbying undertaken for reward, there would strictly be no need to include any express exemption for:

- communications by one government to another government; and
- communications by one government official to another government official in the course of the official duties of the former.

Even so, some regimes do expressly state, for the avoidance of doubt, that such activities are not caught.

Lobbyists ineligible for registration

Some regimes preclude registration where an individual fails to meet a form of personal integrity or “fit and proper person” test”.

The Commonwealth, New South Wales, and Victorian regimes do not permit registration of person unless they provide a statutory declaration to the effect that they:

- have never been sentenced to a term of imprisonment of 30 months or more; and
- have not been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud.

The Tasmanian regime is somewhat tougher, precluding registration where there has been imprisonment for 24 month or more.

Such exclusions appear to be entirely appropriate for adoption in the ACT.

The South Australia regime is somewhat different in that, in contrast, it has no hard and fast rule – it requires declaration of any conviction for dishonesty or another indictable offence, but confers discretion on the registering official as to whether or not to permit registration.

In Queensland, whether such convictions have to be declared depends upon the requirements of an approved form, and the Integrity Commissioner has a general discretion to refuse registration on any ground he or she “considers sufficient”.

The Western Australia scheme stands in stark contrast – it makes no reference to past criminal conduct.

Some regimes also preclude registration of certain, or limit activities by, certain persons even though they may be “fit and proper”.

One important category relates to officials of political parties. There have been suggestions that lobbying by such persons can place undue influence on elected officials from their party if it is express or implied that selection or endorsement for future elections may be at risk if a particular position is not taken in response to lobbying activity.

Commonwealth scheme excludes from registration a person who is “a member of a state or federal political party executive, state executive or administrative committee (or the equivalent body)”. New South Wales excludes a person “occupying or acting in an office or position concerned with the management of a registered political party”.

Again, such exclusions appear to be appropriate for the ACT, even though they are not present in other State regimes.

Another category concerns lobbyist who act for a success fee.

The New South Wales allows for refusal of or removal from registration of a lobbyist if any of their lobbying activity has contravened the *Lobbying of Government Officials Act 2011*. That Act makes it an offence for a person to give or receive a “success fee” for the lobbying of a government official. A success fee is defined as:

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.

In Victoria a lobbyist seeking registration must provide a statutory declaration to the effect that they have not received a success fee on the tendering or awarding of a public project from the Victorian Government or a State public sector body on or after 1 January 2014 and lobbyists already on the register who receive success fees after that date may be removed from the register at the discretion of the Public Sector Standards Commissioner. A success fee is defined as:

an amount of money or other valuable consideration, the receipt of which is contingent on the tendering or awarding of a public project from the Victorian Government or a public sector body.

In Queensland section 69 of the *Integrity Act 2009* makes it an offence to give or receive a success fee for lobbying activity and provides that, on conviction, the success fee is forfeited to the State. A success fee is defined as:

an amount of money or other reward the giving or receiving of all or part of which is contingent on the outcome of the lobbying activity or of lobbying activities including the lobbying activity.

If a scheme of lobbying regulation in the ACT was to be established without legislation, it could not prohibit or make it an offence to give or receive a success fee. It could however require lobbyists to declare whether they had received success fees and then either refuse or remove registration on that basis.

Whether the ACT should adopt such a course is a difficult question.

Neither the Commonwealth, South Australia, Western Australia nor Tasmania has yet sought to do so.

Moreover, it is not immediately apparent that success fees, like legal contingency fee arrangements, are necessarily evil. If the intent underlying introduction of lobbying regulation in the ACT is simply to adopt a scheme that is comparable to the “average” of other Australian jurisdictions, then it would probably not deal with this issue at this stage. Even if the aim is to seek to adopt “best practice” amongst Australian jurisdictions, it is not clear to me that the scheme should seek to limit the receipt of success fees.

The third such category relates to former holders of public office. Here the concern is generally not with permanent exclusion but rather with “revolving doors” – that is, with officials who leave office but very soon thereafter revisit their former workplace as lobbyists in areas of interest in which they previously operated. Accordingly, relevant regimes do not preclude registration of former public officials, but instead limit their activities in former duty areas for a period post-separation.

So far as I have been able to ascertain in the time available, all Australian jurisdictions other than New South Wales and Western Australia impose a limitation for a period post-separation on senior former office holders lobbying in relation to a matter on which they have had official dealings over a preceding period in office. The lengths of these periods vary from jurisdiction to jurisdiction, and generally differ between former Ministers on the one hand and former personal staff and senior public servants on the other hand.

Post separation periods for Ministers are 2 years in Queensland and South Australia, 18 months in the Commonwealth and Victoria and 12 months in Tasmania. Preceding periods are 2 years in Queensland, 18 months in the Commonwealth, Victoria and South Australia and 12 months in Tasmania.

For personal staff and senior public servants, post separation and preceding periods are 2 years in Queensland and 12 months in the Commonwealth, Victoria South Australia and Tasmania.

It would be appropriate for the ACT to adopt broadly comparable periods of limitation.

Finally, it is worth considering whether members of public bodies may be registered as lobbyists.

The New South Wales Code of Conduct contains the following note:

Under Premier's Memorandum M2011-13, a Lobbyist and the employees, contractors or persons otherwise engaged by the Lobbyist to carry out lobbying activities 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 Lobbyist represents the interests of third parties, or has represented the interests of third parties in the 12 months prior to the date of the proposed appointment.

The New South Wales Code of Conduct also includes the following principle:

A Lobbyist who has been appointed to a Government Board or Committee must not represent the interests of a third part to a Government representative in relation to any matter that relates to the functions of the Board or Committee.

On the other hand, the South Australian Code provides as follows:

A lobbyist who holds an appointment to any Government Board or Committee must ensure that they comply with the honesty and integrity provisions and the conflict of interest provisions of the Public Sector Management Act SA 1995.

Clearly lobbying of a government body by a present member of it squarely raises conflict of interest questions. Membership of a government body by a person who have previously lobbied that body may well raise the same questions, depending upon the time at which and issue in relation to which such lobbying related – lobbying a long time ago in relation to an issue long resolved may not be problematical at all; pre-appointment lobbying in relation to an issue still under active consideration may be far less an issue if the former lobbying abstains from taking part in current decision-making processes.

It is an issue for judgement whether there should be a ban on the appointment of lobbyists to government bodies and whether members of government bodies should be required to resign if they become lobbyists. My view is that absolute bans of such a nature would go too far. I also note

Ministers and other appointing bodies are expected to have regard to the antecedents of potential appointees and to make appointment decisions that do not give rise to the potential for significant conflicts of interest. I also note that public sector bodies have, or should have, established procedures for dealing with members' conflicts of interest. On balance I consider that, in the absence of any clear evidence that these safeguards are systemically flawed, it is probably sufficient to simply include a statement in an ACT Lobbyists Code of Conduct along the lines of that in South Australia.

What details must a registered lobbyist disclose on the register?

Apart from the obvious details of the lobbyist themselves, Australian regimes require disclosure of:

- the identity of other persons who may conduct lobbying activities on behalf of the lobbyist;
- the identity of persons of authority within the business of the lobbyist;
- persons/entities on whose behalf the lobbyist is engaged to and may act; and
- persons/entities on whose behalf the lobbyist has in fact acted in a specified preceding period.

An ACT regulatory scheme should clearly include details of this nature.

Whether any ACT regulatory regime should also require additional detail such as actual lobbying activity (such as in Queensland) or turnover (as in some overseas jurisdictions) is discussed above.

Maintaining the accuracy of the lobbyist register

It goes without saying that any public register is of value only if it is accurate and up-to-date. Accordingly, all Australian regimes require prompt reporting by registered parties of any change in their registered details. Additionally, they also require periodic returns to confirm the accuracy of registered detail and generally to provide renewed statutory declarations as to criminal records and, where relevant, party-political involvement – although there is no commonality in the frequency with which such confirmation returns are required.

Any ACT regime should make similar provision.

Registrar's discretions

In various regimes there are discretions of various types – e.g., to refuse to register an otherwise eligible lobbyist or to not revoke the registration of a registered lobbyist who has breached the Code of Conduct in a way considered to be not overly serious. In the States these are conferred on the registration authority, but in the Commonwealth they rest with the Minister Assisting the Prime Minister for the Public Service. It is common to require that, where such a discretion is proposed to be exercised contrary to the interests of a lobbyist, the intending decision-maker should afford the lobbyist an opportunity to make a submission and have regard to anything they put in response.

I consider it would be appropriate for an ACT scheme to provide for some limited discretions of this type, subject to procedural fairness requirements. I would not favour discretions of this nature being conferred on Ministers as opposed to the official charges with maintaining the Register.

The official charged with maintaining the Register varies from jurisdiction to jurisdiction, as follows:

- Commonwealth – Secretary of the Department of Prime Minister and Cabinet;
- New South Wales – Director-General of the Department of Premier and Cabinet;
- Victoria – Public Sector Standards Commissioner;
- Queensland – Integrity Commissioner;
- South Australia – Chief Executive of the Department of the Premier and Cabinet;
- Western Australia – Public Service Commissioner;
- Tasmania – Secretary, Department of the Premier and Cabinet.

As indicated in Attachment A and having regard to relevant institutions in the ACT, it seems to me that the registration authority in the ACT should be:

- if the regime is to apply to all Members of the Assembly – the Clerk of the Assembly; or
- if the regime is not to apply only to non-ministerial member – the Head of Service of the ACT Public Service.

Content of code of conduct

All Australian regimes include a preamble setting out the context in which the code of conduct for lobbyists is to operate and a series of principles with which registered lobbyists are required to comply. There is a deal of commonality amongst regimes on both preamble and principles, although the Queensland code has additional and, I think, appropriate principles.

Attachment B contains an outline of a preamble and statement of principles that draws heavily on the Australian precedents and that I consider would be appropriate to be adopted in the ACT.

Conclusion

In light of the above discussion, Attachment B contains out an outline of the details of a scheme of lobbying regulation that I consider would be suitable for adoption in the ACT. Such a scheme would, I believe, see the ACT generally “come into line” with the Commonwealth and the States without adopting what some might think to be “best practice” or “leading edge”.

Of course, if there was a desire to “lead the field” among Australian jurisdictions, I would be happy to suggest how the detail in Attachment B might be further refined.

Attachment A

ADMINISTRATIVE IMPLEMENTATION OF A SCHEME FOR LOBBYIST REGULATION IN THE A.C.T.

	Regulation applicable to all Members of the Assembly and public officials	Regulation limited to Members who comprise the Executive, and relevant public officials
Implemented by:	Resolution of the Assembly and <ul style="list-style-type: none"> · directions by Assembly Members to their staff, consultants and contractors employed under the <i>Legislative Assembly (Members' Staff) Act 1989</i>; and · direction by the Chief Minister to the Head of Service under the <i>Public Sector Management Act 1994</i> 	Decision of the Cabinet and <ul style="list-style-type: none"> · directions by Ministers to their staff, consultants and contractors employed under the <i>Legislative Assembly (Members' Staff) Act 1989</i>; and · direction by the Chief Minister to the Head of Service under the <i>Public Sector Management Act 1994</i>
Register of Lobbyists maintained by:	Office of the Legislative Assembly	Department of the Chief Minister
Decisions to refuse registration of a Lobbyist taken by:	Clerk of the Assembly	Head of Service
Decisions to remove a Lobbyist from the Register taken by:	Clerk of the Assembly	Head of Service
Register of Lobbyists publicly available on:	Legislative Assembly website	Chief Minister's Department website
Sanction for attempted lobbying by unregistered Lobbyist:	None, other than refusal of access by Members, their staff and public servants	None, other than refusal of access by Ministers, their staff and public servants
Sanction for entertaining lobbying by unregistered Lobbyist:	For Members – possible action by the Assembly for breach of resolution For Member's staff – possible action under the <i>Legislative Assembly (Members' Staff) Act 1989</i> for breach of employer direction For public servants - possible action under the <i>Public Sector Management Act 1994</i> direction by head of administrative unit	For Ministers – possible action by the Chief Minister For Minister' staff – possible action under the <i>Legislative Assembly (Members' Staff) Act 1989</i> for breach of employer direction For public servants - possible action under the <i>Public Sector Management Act 1994</i> direction by head of administrative unit

Attachment B**OUTLINE OF A SCHEME FOR LOBBYIST REGULATION IN THE A.C.T.**

If a decision were taken to proceed with a scheme for the regulation of lobbying in the ACT in accordance with one or other of the two key options in the table at Attachment A, it is suggested that the following scheme details be adopted:

Prohibition on contact with unregistered Lobbyists

Members/Ministers would agree, and their personal staff and all ACT public service officers would be directed, that they would not knowingly or intentionally entertain any non-exempted communication from:

- a lobbyist not registered on the ACT Register of Lobbyists;
- an employee, contractor or other person authorised to carry out lobbying activities on behalf of a registered lobbyist where that person's name does not appear on the Register in the details recorded for that registered lobbyist; or
- any registered lobbyist or employee, contractor or other person authorised to carry out lobbying activities on behalf of that registered lobbyist who in their opinion has failed to comply with the Lobbying Code of Conduct

and would immediately advise the registering authority for the Register if they became aware or reasonably suspected that a registered lobbyist or authorised person had contravened the ACT Lobbying Code of Conduct.

Public Content of Lobbyist Register

The public section of the Register would contain the following detail for each registered entity:

- For a natural person:
 - Full name
 - Trading name, if applicable
 - Business address
 - Telephone contact
 - ABN, if applicable
 - Full name and of any other person authorised to conduct lobbying activity on behalf of the registrant
 - For the registrant and any other named person, place of and title in previous public sector employment and date of separation
 - Name and address of each client on whose behalf lobbying activity is or may be conducted
 - Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward

- For a partnership:
 - Full name of each partner
 - Trading name of partnership, if applicable
 - Business address of partnership
 - Telephone name and contact for partner principally responsible for registration
 - ABN of partnership, if applicable
 - Full name of any person authorised to conduct lobbying activity on behalf of the partnership
 - For the each partner and any other named person, place of and title in previous public sector employment and date of separation
 - Name and address of each client on whose behalf lobbying activity is or may be conducted
 - Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward
- For a company:
 - Registered company name
 - Trading name of company, if applicable
 - Business address of company
 - Name and address of each director of the company
 - Name and address of any entity or other person holding 10% or more of the issued capital of the company
 - Telephone name and contact for company officer principally responsible for registration
 - ACN/ABN of company
 - Full name of any person authorised to conduct lobbying activity on behalf of the company
 - For each director and any other named person, place of and title in previous public sector employment and date of separation
 - Name and address of each client on whose behalf lobbying activity is or may be conducted
 - Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward.

Timing of entries on or changes to the Register

To avoid any unwarranted delay in the conduct of the business of a lobbyist, new entries or changes to existing entries should be available on the Register webpage on average within 2 business days of the receipt of properly completed registration forms.

Registration Forms

In addition to providing the information required to be shown on the public Register, applications for registration would be required to be accompanied by:

- a statutory declaration by each person whose name will appear on the Register to the effect that he or she:
 - has never been sentenced to a term of imprisonment of 30 months or more;
 - has not been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud; and
 - is not and does not act as a member of a federal, state or territory political party executive or administrative committee, or similar; and
- an undertaking to comply with the ACT Lobbying Code of Conduct, separately signed by each person whose name will appear on the Register.

Changes to registered details

A registered lobbyist would be required to advise the registering authority of any change to any detail appearing on the public register within 10 days of that change occurring.

A registered lobbyist would additionally be required to advise the registering authority within 10 days of becoming aware that any person named on the Register has:

- been sentenced to a term of imprisonment of 30 months or more;
- been convicted of an offence, one element of which involves dishonesty, such as theft or fraud; or
- has become or is acting as a member of a federal, state or territory political party executive or administrative committee, or similar.

Maintaining accuracy of the Register

In addition to providing notification of changes in registered details, a registered lobbyist would be required to provide a quarterly return, within 10 working days of 31 March, 30 June, 30 September and 31 December in each year, which return would be required to:

- confirm that their registered details are accurate; and
- update the listing of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward.

In addition, the return for the quarter ending 30 June would be required to be accompanied by fresh statutory declarations from each person named on the register to the effect that he or she:

- has never been sentenced to a term of imprisonment of 30 months or more;
- has not been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud; and

- is not and does not act as a member of a federal, state or territory political party executive or administrative committee, or similar.

Registration decisions

The registering authority would be precluded from placing on the Register a lobbyist or authorised person who has not provided all required documents.

The registering authority would also:

- be empowered to deny registration where he or she believes that registration documents provided are false or misleading;
- be empowered to remove from the Register any currently registered lobbyist or authorised person who the registering authority considers has since become ineligible for registration;
- be empowered to remove from the Register any lobbyist or authorised person who the registering authority considers has acted in contravention of the Lobbying Code of Conduct unless satisfied that the contravention was unintentional and that adequate steps have been implemented to render any further contravention unlikely;
- be required to remove from the Register any lobbyist or authorised person who, once registered, does not provide all required change notification or confirmation documents;
- have a general discretion to refuse (or remove) registration of an otherwise eligible lobbyist or person authorised to lobby on their behalf where the registering authority considers that there are reasonable grounds to believe that that lobbyist or person has acted, or cannot be relied upon to act, in a manner consistent with general standards of ethical behaviour.

Before exercising any of these listed powers, the registering authority would be required to offer the lobbyist and any authorised person in question a reasonable opportunity to make a submission in relation to the proposed decision and should be required to have regard to any submission made before taking a final decision.

Freedom of access to the Register

Internet access to the Register would be available to the public free of any charge.

Persons/Entities required to be registered

A "lobbyist" would be defined along the following lines:

Any person, company or organisation who conducts lobbying activities on behalf of a third party, or whose employees or other personnel conduct lobbying activities on behalf of a third party, where such lobbying activities are ordinarily carried on in the expectation of receiving direct or indirect financial reward or other valuable consideration whether or not the amount thereof is ascertainable at the time such activities are conducted.

For that purpose “lobbying activities” would be defined along the following lines:

Any oral or written (including electronic) communication with a public official to influence legislation or policy, regulatory or administrative decisions of the public official or another public official other than a communication:

- with a committee of the Assembly;
- with a Minister in their capacity as a local Member and in relation to matters falling outside their ministerial responsibilities
- in response to a coercive requirement by a public official for information;
- in response to a request by a public official for information or the submission of view;
- in response to a request for tender, expression of interest, etc.;
- protected by a government-endorsed whistle-blower regime;
- that is only an approach to a public official for publicly available information without any attempt to influence;
- as part of a grassroots campaign;
- made in a public forum; or
- for the avoidance of doubt:
- by one government to another government; or
- by one government official to another government official in the course of the official duties of the former.

And “public official” would be defined to mean:

- *a Member of the Legislative Assembly or a Minister (depending on the resolution of this threshold question); and*
- *any person employed by such a person under the Legislative Assembly (Members’ Staff) Act 1989; and*
- *any person employed under the Public Sector Management Act 1994.*

Persons/Entities ineligible to be registered

The following persons would be ineligible to be registered as a lobbyist or authorised person:

- a person who has ever been sentenced to a term of imprisonment of 30 months or more;
- a person who has been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud;
- a person who is or acts as a member of a federal, state or territory political party executive or administrative committee, or similar;
- a person whose name has been previously removed from the Register because of a contravention of the Lobbyists Code of Conduct;
- a person who, in the opinion of the registering authority, has acted, or cannot be relied upon to act, in a manner consistent with general standards of ethical behaviour.

Persons/Entities not required to be registered

The following categories of persons/entities would not be required to be registered before conducting defined lobbying activities even though they might otherwise fall within the definition of lobbyist:

- religious bodies;
- charities;
- not-for-profit organisations that represent the interests of their members, such as trade unions, trade and industry associations, etc.;
- members of foreign trade delegations;
- persons/bodies registered under Government laws where dealings with Government are part of the normal day-to-day work of people in their profession – e.g., architects, Customs brokers, etc.;
- members of professions who make occasional representations to Government on behalf of others in a way that is incidental to the provision of their professional services – e.g., doctors, accountants, lawyers; and
- persons who conduct lobbying activities only for relatives or friends and only in respect of the personal rather than business or commercial affairs of such persons.

Code of Conduct for Registered Lobbyists

A Code of Conduct setting out the expectations of registered lobbyists might be along the following lines:

Preamble:

- Free and open access to the institutions of government is a vital element of our democracy.
- Ethical lobbying is a legitimate activity and an important part of the democratic process.
- Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with public officials.
- 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.
- This Code of Conduct is designed to ensure that contact between lobbyists and public officials is conducted in accordance with public expectations of transparency, integrity and honesty.

When engaging with a public official, a lobbyist must observe the following principles:

- a lobbyist shall conduct their business to the highest professional and ethical standards, and in accordance with all relevant requirements with respect to lobbying activities;

- a lobbyist shall act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, public officials or those whose interests they represent;
- a lobbyist shall not engage in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment;
- a lobbyist 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, to the wider public, or to public officials;
- a lobbyist who becomes aware that information they have previously provided to a public official was or is now inaccurate shall provide accurate and updated information to that public official if they believe that the official may be relying on the accuracy of the information previously provided;
- a lobbyist shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature and extent of their access to public officials, members of political parties or any other person;
- a lobbyist shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement as a member of or on behalf of a political party;
- when making initial contact with public officials with the intention of conducting lobbying activities, a lobbyist who is proposing to conduct lobbying activities must inform the public official:
 - that they are a lobbyist or a person engaged by a lobbyist to conduct lobbying activities;
 - whether or not they are currently listed on the ACT Register of Lobbyists;
 - the name of the person(s) on whose behalf they seek to conduct those lobbying activities; and
 - the nature of the matters that they wish to raise in those lobbying activities
- a lobbyist shall not disclose confidential information of another party unless they have obtained the informed consent of that party, or they are required to do so by law;
- a lobbyist shall not represent conflicting or competing interests without having obtained the informed consent of the parties whose interests are involved;
- a lobbyist shall take all reasonable steps to ensure that their details as recorded on the ACT Register of Lobbyists are and remain correct from time to time;
- a lobbyist who was previously a Member of the ACT Legislative Assembly/Minister of the ACT Government (depending upon how this threshold issue is resolved) shall not, within 18 months of ceasing to hold that office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office;
- a lobbyist who was previously employed under the *Legislative Assembly (Members' Staff) Act 1989* shall not, within 12 months of ceasing to be so employed, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months in such employment;

- a lobbyist who was previously employed under the *Public Sector Management Act 1994* as a Head of Service, Director-General or Executive shall not, within 12 months of ceasing to be so employed, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months in such employment;
- a lobbyist who:
 - is sentenced to a term of imprisonment of 30 months or more;
 - is convicted of an offence, one element of which involves dishonesty, such as theft or fraud; or
 - becomes or commences to act as a member of a federal, state or territory political party executive or administrative committee, or similar

shall thereupon cease to engage in lobbying activities and shall so advise the registering authority for the ACT Register of Lobbyists;

- A lobbyist shall ensure that any owner, partner shareholder or other individual involved in the management of the business of the lobbyist does not occupy or act as a member of a federal, state or territory political party executive or administrative committee, or similar;
- A lobbyist who has is appointed to a Government board, committee or other entity must not represent the interests of a third part to a public official in relation to any matter that relates to the functions of entity and must, where they have made such representations prior to that appointment, ensure that they comply with all honesty, integrity and conflict of interest provisions and procedures applicable to appointees to that entity.

Appendix B Draft Continuing Resolution of the Legislative Assembly—Lobbyist Regulations

That this Assembly:

- (1) notes that:
 - (a) it is vitally important to ensure a strong integrity framework is in place to support the work of Members of the Legislative Assembly for the Australian Capital Territory and to maintain community trust in our parliamentary processes;
 - (b) lobbying is a legitimate activity and an important part of the democratic process; and
 - (c) there is a public expectation that lobbying activities will be carried out ethically and transparently;
- (2) requests the Clerk to establish, by [date], an ACT Register of Lobbyists in accordance the guidelines at Attachment A to this resolution;
- (3) resolves that, from that date, Members of the Legislative Assembly should not knowingly allow themselves to be the subject of lobbying activities by persons or entities who:
 - (a) under those guidelines, should be but are not registered on the ACT Register of Lobbyists; or
 - (b) even though registered, conduct lobbying activities in a manner inconsistent with the ACT Lobbying Code of Conduct at Attachment B to this resolution (details of which conduct should be provided to the Clerk);
- (4) resolves that Members of the Legislative Assembly should instruct their staff, consultants and contractors employed under the *Legislative Assembly (Members' Staff) Act 1989* that, from that date, they should not knowingly allow themselves to be the subject of lobbying activities by persons or entities who:
 - (a) under those guidelines, should be but are not registered on the ACT Register of Lobbyists; or
 - (b) even though registered, conduct lobbying activities in a manner inconsistent with the ACT Lobbying Code of Conduct at Attachment B to this resolution (details of which conduct should be provided to the Clerk); and
- (5) requests the Chief Minister to direct the Head of Service under the *Public Sector Management Act 1994* that, from that date, persons employed under that Act should not knowingly allow themselves to be the subject of lobbying activities by persons or entities who:
 - (a) under those guidelines, should be but are not registered on the ACT Register of Lobbyists; or

- (b) even though registered, conduct lobbying activities in a manner inconsistent with the ACT Lobbying Code of Conduct at Attachment B to this resolution (details of which conduct should be provided to the Clerk).

Attachment A to Continuing Resolution—Lobbyist Regulation**Lobbying Regulation Guidelines****Persons/Entities required to be registered**

A “lobbyist” is defined as:

Any person, company or organisation who conducts lobbying activities on behalf of a third party, or whose employees or other personnel conduct lobbying activities on behalf of a third party, where such lobbying activities are ordinarily carried on in the expectation of receiving direct or indirect financial reward or other valuable consideration whether or not the amount thereof is ascertainable at the time such activities are conducted.

For that purpose “lobbying activities” are defined as:

Any oral or written (including electronic) communication with a public official to influence legislation or policy, regulatory or administrative decisions of the public official or another public official other than a communication:

- *with a committee of the Assembly;*
- *with a Minister in their capacity as a local Member and in relation to matters falling outside their ministerial responsibilities*
- *in response to a coercive requirement by a public official for information;*
- *in response to a request by a public official for information or the submission of view;*
- *in response to a request for tender, expression of interest, etc.;*
- *protected by a government-endorsed whistle-blower regime;*
- *that is only an approach to a public official for publicly available information without any attempt to influence;*
- *as part of a grassroots campaign;*
- *made in a public forum; or*
- *for the avoidance of doubt:*
- *by one government to another government; or*
- *by one government official to another government official in the course of the official duties of the former.*

And a “public official” means:

- *a Member of the Legislative Assembly; and*
- *any person employed by such a person under the Legislative Assembly (Members’ Staff) Act 1989; and*
- *any person employed under the Public Sector Management Act 1994.*

Persons/Entities ineligible to be registered

The following persons are ineligible to be registered as a lobbyist or authorised person:

- a person who has ever been sentenced to a term of imprisonment of 30 months or more;
- a person who has been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud;
- a person who is or acts as a member of a federal, state or territory political party executive or administrative committee, or similar;
- a person whose name has been previously removed from the Register because of a contravention of the ACT Lobbyists Code of Conduct; and
- a person who, in the opinion of the Clerk, has acted, or cannot be relied upon to act, in a manner consistent with general standards of ethical behaviour.

Persons/Entities not required to be registered

The following categories of persons/entities are not required to be registered before conducting defined lobbying activities even though they might otherwise fall within the definition of lobbyist:

- religious bodies;
- charities;
- not-for-profit organisations that represent the interests of their members, such as trade unions, trade and industry associations, etc;
- members of foreign trade delegations;
- persons/bodies registered under Government laws where dealings with Government are part of the normal day-to-day work of people in their profession – eg, architects, Customs brokers, etc;
- members of professions who make occasional representations to Government on behalf of others in a way that is incidental to the provision of their professional services – eg, doctors, accountants, lawyers; and
- persons who conduct lobbying activities only for relatives or friends provided that such are only in respect of the personal rather than business or commercial affairs of such persons.

Public Content of the ACT Register of Lobbyists

The public section of the Register is to contain the following detail for each registrant:

- For a natural person:
 - Full name
 - Trading name, if applicable
 - Business address
 - Telephone contact

- ABN, if applicable
- Full name and of any other person authorised to conduct lobbying activity on behalf of the registrant
- For the registrant and any other named person, place of and title in previous public sector employment and date of separation
- Name and address of each client on whose behalf lobbying activity is or may be conducted
- Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward
- For a partnership :
 - Full name of each partner
 - Trading name of partnership, if applicable
 - Business address of partnership
 - Telephone name and contact for partner principally responsible for registration
 - ABN of partnership, if applicable
 - Full name of any person authorised to conduct lobbying activity on behalf of the partnership
 - For the each partner and any other named person, place of and title in previous public sector employment and date of separation
 - Name and address of each client on whose behalf lobbying activity is or may be conducted
 - Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward
- For a company:
 - Registered company name
 - Trading name of company, if applicable
 - Business address of company
 - Name and address of each director of the company
 - Name and address of any entity or other person holding 10% or more of the issued capital of the company
 - Telephone name and contact for company officer principally responsible for registration
 - ACN/ABN of company
 - Full name of any person authorised to conduct lobbying activity on behalf of the company
 - For each director and any other named person, place of and title in previous public sector employment and date of separation

- Name and address of each client on whose behalf lobbying activity is or may be conducted
- Name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward.

Registration Forms

In addition to providing the information required to be shown on the public Register, applications for registration are to be accompanied by:

- a statutory declaration by each person whose name will appear on the Register to the effect that he or she:
 - has never been sentenced to a term of imprisonment of 30 months or more;
 - has not been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud; and
 - is not and does not act as a member of a federal, state or territory political party executive or administrative committee, or similar; and
 - an undertaking to comply with the ACT Lobbying Code of Conduct, separately signed by each person whose name will appear on the Register.

Changes to registered details

A registered lobbyist is required to advise the Clerk of any change to any detail appearing on the public register within 10 days of that change occurring.

A registered lobbyist is additionally required to advise the Clerk within 10 days of becoming aware that any person named on the Register has:

- been sentenced to a term of imprisonment of 30 months or more;
- been convicted of an offence, one element of which involves dishonesty, such as theft or fraud; or
- has become or is acting as a member of a federal, state or territory political party executive or administrative committee, or similar.

Maintaining accuracy of the Register

In addition to providing notification of changes in registered details, a registered lobbyist is required to provide the Clerk with a quarterly return, within 10 working days of 31 March, 30 June, 30 September and 31 December in each year, which return is required to:

- confirm that their registered details are accurate; and
- update the listing of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward.

In addition, the return for the quarter ending 30 June is required to be accompanied by fresh statutory declarations from each person named on the register to the effect that he or she:

- has never been sentenced to a term of imprisonment of 30 months or more;
- has not been convicted, as an adult, in the last 10 years, of an offence, one element of which involves dishonesty, such as theft or fraud; and
- is not and does not act as a member of a federal, state or territory political party executive or administrative committee, or similar.

Registration decisions

The Clerk is precluded from placing on the Register a lobbyist or authorised person who has not provided all required documents.

The Clerk is also:

- empowered to deny registration where he or she believes that registration documents provided are false or misleading;
- empowered to remove from the Register any currently registered lobbyist or authorised person who the Clerk considers has since become ineligible for registration;
- empowered to remove from the Register any lobbyist or authorised person who the Clerk considers has acted in contravention of the ACT Lobbying Code of Conduct unless satisfied that the contravention was unintentional and that adequate steps have been implemented to render any further contravention unlikely;
- required to remove from the Register any lobbyist or authorised person who, once registered, does not provide all required change notification or confirmation documents;
- has a general discretion to refuse (or remove) registration of an otherwise eligible lobbyist or person authorised to lobby on their behalf where the registering authority considers that there are reasonable grounds to believe that that lobbyist or person has acted, or cannot be relied upon to act, in a manner consistent with general standards of ethical behaviour.

Before exercising any of these listed powers, the Clerk is required to offer the lobbyist and any authorised person in question a reasonable opportunity to make a submission in relation to the proposed decision and should be required to have regard to any submission made before taking a final decision.

Access to the Register

Internet access to the Register is to be available to the public free of any charge.

Timing of entries on or changes to the Register

To avoid any unwarranted delay in the conduct of the business of a lobbyist, new entries or changes to existing entries should be available on the Register webpage on average within two (2) business days of the receipt of properly completed registration forms.

Handling of Complaints

If the Clerk receives a complaint that lobbying activities have been conducted by a person required to be registered but not registered on the Register, he is to contact that person and ensure that they are aware of the registration requirements. If that person does not become registered within a reasonable period, the Clerk is to advise all Members and the Head of Service that the person in question is not registered and that Members, their staff, consultants and contractors and persons employed under the *Public Sector Management Act 1994* are not permitted to knowingly entertain lobbying activities from that person.

If the Clerk receives a complaint that a person registered on the Register has breached the ACT Lobbying Code of Conduct, the Clerk is to consider whether or not that person should be removed from the Register. Before taking any such action the Clerk is required to offer the lobbyist or authorised person in question a reasonable opportunity to make a submission in relation to the proposed decision.

If the Clerk receives a complaint that a Member has entertained lobbying activities by a person required to be but not registered on the Register, the Clerk should refer that matter to the Member in question for their consideration, and copy that referral to the Speaker.

If the Clerk receives a complaint that a staff member or contractor or consultant to a Member has entertained lobbying activities by a person required to be but not registered on the Register, the Clerk should refer that matter to the Member in question for their consideration of any necessary further direction to or other action in respect of that a staff member or contractor or consultant, and copy that referral to the Speaker.

If the Clerk receives a complaint that a person employed under the *Public Sector Management Act 1994* has entertained lobbying activities by a person required to be but not registered on the Register, the Clerk should refer that matter to the Head of Service for their consideration of any necessary further direction to or other action in respect of that a person, and copy that referral to the Chief Minister.

Attachment B to Continuing Resolution—Lobbyist Regulation**ACT Lobbying Code of Conduct**

Preamble:

- Free and open access to the institutions of government is a vital element of our democracy.
- Ethical lobbying is a legitimate activity and an important part of the democratic process.
- Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with public officials.
- 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.
- This Code of Conduct is designed to ensure that contact between lobbyists and public officials is conducted in accordance with public expectations of transparency, integrity and honesty.

When making initial contact with public officials with the intention of conducting lobbying activities, a lobbyist who is proposing to conduct lobbying activities must inform the public official:

- that they are a lobbyist or a person engaged by a lobbyist to conduct lobbying activities;
- whether or not they are currently listed on the ACT Register of Lobbyists;
- the name of the person(s) on whose behalf they seek to conduct those lobbying activities; and
- the nature of the matters that they wish to raise in those lobbying activities.

When engaging with a public official, a lobbyist must observe the following principles:

- a lobbyist shall conduct their business to the highest professional and ethical standards, and in accordance with all relevant requirements with respect to lobbying activities;
- a lobbyist shall act with honesty, integrity and good faith and avoid conduct or practices likely to bring discredit upon themselves, public officials or those whose interests they represent;
- a lobbyist shall not engage in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment;
- a lobbyist 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, to the wider public, or to public officials;

- a lobbyist who becomes aware that information they have previously provided to a public official was or is now inaccurate shall provide accurate and updated information to that public official if they believe that the official may be relying on the accuracy of the information previously provided;
- a lobbyist shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature and extent of their access to public officials, members of political parties or any other person;
- a lobbyist shall keep strictly separate from their duties and activities as lobbyists any personal activity or involvement as a member of or on behalf of a political party;
- a lobbyist shall not disclose confidential information of another party unless they have obtained the informed consent of that party, or they are required to do so by law;
- a lobbyist shall not represent conflicting or competing interests without having obtained the informed consent of the parties whose interests are involved;
- a lobbyist shall take all reasonable steps to ensure that their details as recorded on the ACT Register of Lobbyists are and remain correct from time to time;
- a lobbyist who was previously a Member of the ACT Legislative Assembly/Minister of the ACT Government (depending upon how this threshold issue is resolved) shall not, within 18 months of ceasing to hold that office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office;
- a lobbyist who was previously employed under the *Legislative Assembly (Members' Staff) Act 1989* shall not, within 12 months of ceasing to be so employed, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months in such employment;
- a lobbyist who was previously employed under the *Public Sector Management Act 1994* as a Head of Service, Director-General or Executive shall not, within 12 months of ceasing to be so employed, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months in such employment;
- a lobbyist who has is appointed to a Government board, committee or other entity must not represent the interests of a third part to a public official in relation to any matter that relates to the functions of entity and must, where they have made such representations prior to that appointment, ensure that they comply with all honesty, integrity and conflict of interest provisions and procedures applicable to appointees to that entity;
- a lobbyist who:
 - is sentenced to a term of imprisonment of 30 months or more;
 - is convicted of an offence, one element of which involves dishonesty, such as theft or fraud; or
 - becomes or commences to act as a member of a federal, state or territory political party executive or administrative committee, or similar
 shall thereupon cease to engage in lobbying activities and shall so advise the Clerk of the ACT Legislative Assembly;

- a lobbyist shall ensure that any owner, partner shareholder or other individual involved in the management of the business of the lobbyist does not occupy or act as a member of a federal, state or territory political party executive or administrative committee, or similar.