



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
Speaker (Chair), Ms Tara Cheyne MLA, Mr Shane Rattenbury MLA,
Mr Andrew Wall MLA

Submission Cover Sheet

Inquiry into the ACT Register of Lobbyists

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Ethics and Integrity Adviser

Ms Joy Burch MLA
Speaker
Legislative Assembly for the Australian Capital Territory

Dear Madam Speaker

Proposed Changes to the ACT Lobbyist Register

I refer to your letter of 9 November 2018 requesting that I provide a submission to the Standing Committee on Administration and Procedure in relation to the referral to it by the Assembly on 1 November 2018 of a proposal to expand the scope of the ACT Lobbyist Register to cover "in-house government relations staff, industry associations and project management liaison officers and companies", and related matters.

There are two principles which I believe should govern the Committee's consideration of these matters:

- First, governments should intervene to regulate the affairs of members of the community only to achieve a public benefit, and then only to the extent necessary to achieve that benefit; and
- Secondly, parliamentarians should perform their duties, whether in the Assembly or as a member of the Executive, solely in the public interest. For this purpose, each Member should take all reasonable steps to ensure that they are aware of all relevant considerations before taking any decision or action so that they can reach a balanced view, thereby avoiding any undue benefit or unwarranted detriment to any member or group of members in the community.

Lobbying of parliamentarians to urge them to perform their duties in a particular way is a fundamental right of all members of the community and is, of itself, unobjectionable. At the same time, however, parliamentarians should not accept or reject the urgings of those who lobby them without careful consideration.

Clearly, ascertaining the identity of those whose interests are sought to be advanced by those on whose behalf lobbying is conducted is an essential part of the process in that consideration. For example, Members might be urged to support a change to the zoning of a block of land to allow

construction of a mixed residential, commercial and retail development. Those lobbying for that change might advance the apparently plausible argument that the development would achieve urban renewal and create local employment and wealth generation. To accept that argument without being aware that it was being advanced on behalf of the current lessee of the block in question would, however, be wrong. On becoming aware of that fact, Members might well feel compelled to seek the views of lessees of neighbouring land and find that they were firmly opposed to the proposed development because, despite its claimed benefits, it would adversely affect the amenity of their existing lease uses by adding to local traffic congestion, noise, etc. Accepting the pro-development argument without realising that it was advanced on behalf of the developer could well confer undue benefit on the developer and impose unwarranted detriment on other land lessees and thereby breach the fundamental obligation of a member to act in a balanced way and only in the public interest.

The fundamental purpose of the ACT Lobbyist Register is to facilitate Members becoming aware of the identity of those on whose behalf they are lobbied by third persons who undertake such activities for commercial reward. The present regime for the regulation of lobbyists in the ACT is based on advice I provided to the then Speaker on 5 May 2014. In that advice I noted that:

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.

...

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.

...

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.

...

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:

- (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.*

Viewed from the above perspectives, I consider that:

- There is no compelling or in my view logical reason to extend the ACT Lobbyist Register to cover “in-house government relations staff” and doing so would infringe the first principle to which I have referred above. Because they are “in-house”, the identity of those whose interests they seek to advance (that is, their employer) is readily apparent. In seeking to comply with the second principle to which I have referred above, Members whom they lobby would not be advantaged by the registration of such person in assessing the views they advance and identifying those other interests which might be affected by adopting those views.

It should also be noted that there would be a clear definitional problem in expanding the scope of the Register to cover such persons. If the category were defined as those persons designated by their employer as “in-house government relations staff”, the obligation to register would be readily avoided by the employer simply designating the same staff by some different title without changing their role. Alternatively, if the category were defined to cover any person who might lobby on behalf of their employer, then registration could be required for potentially every employee. Members would thereby be precluded from potentially any discussion with the chairs, directors and chief executives of identified entities unless they were registered, notwithstanding that Members were fully aware of their position with such entity. Such a registration requirement would achieve no real purpose.

- Similarly, there is no compelling or in my view logical reason to extend the ACT Lobbyist Register to cover “industry associations”. Such associations exist for the sole purpose of advancing the interests of their constituent members. It should be readily apparent to any Member lobbied by an industry association that the purpose of that lobbying is to advance the interests of one or more members of the association. Registration of the association would not provide the member with any additional information and requiring registration would thus infringe the first principle to which I have referred without assisting Members in complying with the second principle.
- So far as I am aware, the designation of “project management liaison officers and companies” is not one that is readily recognised in the classification of occupations in Australia. Expanding the scope of the ACT Lobbyist Register to cover such persons would therefore in my view pose problems of definition. But, more fundamentally, it seems to me that it would be unnecessary. This is because:

- such persons or companies , however defined, would appear to already be prima facie covered by the existing registration requirement if they were undertaking lobbying for reward on behalf of third persons;
- such persons or companies should not be required to be registered if they fall within an existing exception to the registration requirements, such as that for lawyers; and
- if such persons or companies were lobbying on their own behalf, registration would not provide Members with any additional information to assist them in complying with the second principle referred to above and would infringe the first principle.

In light of the above, I am opposed to the proposal to expand the scope of the ACT Lobbyist Register to cover any of “in-house government relations staff, industry associations and project management liaison officers and companies”.

Your letter also sought my views on some additional matters.

First, you asked whether, in light of recent developments such as the publication of Ministers’ diaries as required by the amended Freedom of Information legislation, and the intended formation of an integrity commission, there is still a need for a lobbyist register. In my view those matters do not detract in any way from the need for a lobbyist register and they are, in fact, irrelevant to the question. As the fundamental purpose of lobbyist regulation is to ensure that those being lobbied are aware of the identity of those whose interests are being urged upon them, publication of a Minister’s diary might provide observers with some knowledge after the event of the persons with whom a Minister has met but says nothing about the identity of those whose interests were advanced in such meetings. Similarly, the existence of an integrity commission would not, of itself, assist Members to gain knowledge of such identity.

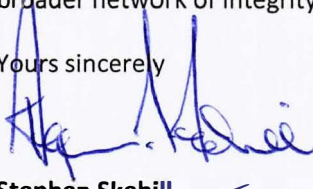
Second, you asked whether, if there is still a need for a register, what should be the scope of those who should be or should not be required to register. In my view, when the fundamental purpose of lobbyist regulation is recognised, there is no reason to vary the existing definitions of those required to be registered. The only significant problem of which I am aware in the operation of the regime to date is that, as recently recognised in the review of Standing Orders, in introducing the present scheme the Assembly failed to include a requirement that Members should not entertain lobbying from lobbyists who were required to be but were not registered.

In this regard, I note that a criticism made of the register arrangements in an article in the *Canberra Times* on 13 October 2014 was in my view unfounded. That article suggested that “if lobbyists want to avoid registering, all they need to do is become a non-voting director of the company they’re speaking for”. But, quite obviously, by that change of status, the identity of the party whose interests the lobbyist is representing thereby becomes readily apparent.

Finally, you asked whether , if there is still a need for a register, it should be administered by the Clerk of the Assembly or by the proposed Integrity Commission or some other body. I have no strong view in this regard and believe that, while I think there is no other body that would be appropriate, a reasonable case can be made for administration by either the Clerk or the Integrity Commission. At the same time, on balance I would favour moving administration to the Commission

when it is formed, to reinforce the importance of lobbyist regulation as an important element in the broader network of integrity assurance.

Yours sincerely



Stephen Skehill

Ethics and Integrity Adviser to the members of the Legislative Assembly

29 November 2018