



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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Member for Kurrajong

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Standing Committee on Administration and Procedure

ACT Legislative Assembly

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Dear Mr Duncan *10m*

I am writing about the 2018 Standing Committee on Administration and Procedure's Inquiry into the ACT Register of Lobbyists. On 7 November 2018 the Speaker wrote to me inviting a written submission from the ACT Government. The Speaker proposed a closing date for submissions to the inquiry of Friday 7 December.

Under the terms of reference, the Standing Committee is inquiring into and reporting on expanding the scope of the ACT Register Lobbyists to cover in-house government relations staff, industry associations, and project management liaison officers and companies.

Please find enclosed the ACT Government submission to the Standing Committee's inquiry. I look forward to the Standing Committee's report being provided to the Legislative Assembly on 21 February 2019 as per the agreed extension of time.

Yours sincerely

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11 DEC 2018

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Scope of matters to be considered by the Standing Committee

The ACT Government has resolved to improve probity, integrity, and accountability in decision-making in the Territory. Ensuring lobbying in the ACT is properly regulated and managed is an important part of this process. Regulation of lobbying activity cannot be free standing, it must be part of a comprehensive regime which consists of interdependent laws and practices which implement good governance principles across the public and private sectors.

On 1 November 2018, the ACT Legislative Assembly resolved that the Standing Committee on Administrative and Procedure (the Standing Committee) inquire into, and report on, expanding the scope of the ACT Lobbyist Register (the Register). The Inquiry's terms of reference are drawn from section 10 of the Ninth Legislative Assembly Parliamentary Agreement, which states that ACT Labor and the Greens agree to implement a package of reforms to improve decision making in the Territory:

Through the Assembly process, expand the scope of the lobbyist register to capture in-house government relations staff, industry associations, and project management liaison officers and companies, and conduct a review of its effectiveness after one year.

The Standing Committee also invited comment on the following matters:

- (1) whether there is still a need for the Register in light of other transparency measures; and
- (2) if there is a need for the Register:
 - a. the scope of who is covered by the Register; and
 - b. whether the scheme should be administered by the Clerk of the Legislative Assembly, or rather the soon to be appointed ACT Integrity Commissioner, or another body.

Is there a need for the ACT Lobbyist Register?

The ACT Government has committed to a range of measures to increase confidence and trust in Territory governance. These measures included reforming the Register to improve probity, integrity and transparency in government decision making. One objective of the Register is to enable decision makers to effectively balance the views of lobbyists with alternative and competing interests and perspectives. Increasing participation of stakeholders in policy development assists in providing the full range of relevant expertise, experiences and interests.

In its report *Lobbyists, Governments and Public Trust*, the OECD states that effective regulation for enhancing transparency in lobbying can neither be initiated nor reformed in isolation. In recent years, the ACT government has introduced a range of reforms designed to improve probity, integrity and accountability in government decision making. These reforms include broadening freedom of information laws, strengthening electoral donation laws, and legislating to establish an ACT Integrity Commission. Despite these significant improvements, it is the ACT Government's position that there remains a need for a lobbyist register because the specific objectives of the scheme are sufficiently divergent to other improvements in Territory governance to warrant a dedicated regulatory focus.

The scope of who is covered by the Register

At present in the ACT, a lobbyist is 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 out 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.

A lobbying activity is any oral or written (including electronic) communication with a public official to influence legislation or policy, regulatory or administrative decision of any relevant public official. This includes the making or content of policy or legislation, the awarding of a contract, allocation of funding or the making of a planning decision. There are two classes of exemption which apply to this scheme: exemptions based on the type of communication and those based on the communicating entity.

Under the current scheme there are a number of entities that are not required to be registered before conducting lobbying activities. It is the view of the ACT Government that the scope of persons and entities required to be listed on the Register should be expanded to capture:

- (i) in-house government relations staff; and
- (ii) project management liaison officers and companies; and
- (iii) industry associations.

Including in-house government relations staff and project management liaison officers and companies in the definition of lobbyists broadens the scope of the scheme to include 'first person' lobbying. It captures any person employed to undertake lobbying activity for the organisation that employs them.

Further clarification should accompany this expansion to identify the retention of the list of activity and entity exemptions which would remain alongside the addition of in-house lobbyists. This would maintain the intention that religious bodies, charities, not-for profits and professional associations who play a role in advocating policy outcomes for the community are not captured.

The inclusion of "industry associations" in the list of exempt entities should be omitted from any future scheme. A generally accepted understanding of the term "industry association" is that it is an organisation that is founded and funded by businesses that operate in a specific industry.

- The Cambridge Dictionary defines "industry associations" as "an organisation that supports companies and employers of a particular type of industry and protects their rights."
- It is anticipated that the following organisations could be captured within the meaning of "industry association":
 - Canberra Business Chamber
 - Housing Industry Association – ACT
 - ScreenACT.

It is not the intention that organisations representing employees or professions would be captured under the meaning of "industry association".

Administration of the Lobbyist Register

The Register is currently administered by the Clerk of the Legislative Assembly. The Clerk has responsibility for registration decisions, maintaining the accuracy of the register, and the handling of complaints relating to lobbying activities.

The ACT Government acknowledges the inclusion of in-house lobbyists in the scheme will likely involve increases in the resourcing required to administer the Register. At the federal level, of the estimated 5000^[1] lobbyists working across the country, only 580 are on the federal register. This disparity is because in-house lobbyists or those working for industry bodies are not required to be registered. It is likely, given the similarities between the Commonwealth and ACT schemes, the number of registered lobbyists in the ACT as a proportion of the total would be similar. As at 27 November 2018, there are a total of 41 registered lobbyists on the ACT Register, extrapolating the percentage from the Commonwealth, this would equate to an additional registration of approximately 312 entities.

In order to secure compliance and ensure the integrity of the Register, the administrator should have adequate institutional arrangements and the requisite operational competence. It is the view of the ACT Government that the Clerk of the Assembly possesses the expertise to continue to administer an expanded Register in-line with the proposed definitional changes. The Clerk is responsible for a range of governance and procedural matters, parliamentary education and public affairs. The Government recommends the administrator focus on preventative and educative role in fostering ethical practices. The extent to which the role for the administrator extends to these functions will be a future resourcing consideration for the Government and subject to review in the future.

Conclusion

The Government has committed to, and delivered on, a range of initiatives to increase public trust in government decision making. Conflicts of interest, both perceived and real, can result from a failure in transparency around representations made to government. Where communications by lobbyists constitute “lobbying activity” they should be clearly identifiable as such, to ensure balanced and well considered outcomes and community satisfaction about due process. The Government supports the expansion of the definition to include in-house government relations staff and project management liaison officers and companies, and industry associations.

^[1] <https://www.smh.com.au/politics/federal/canberra-inc-lobbyists-and-the-influence-industry-20171012-gyzzr52.html>