ICAC
Independent Commission
Against Corruption
SOUTH AUSTRALIA

THE ROOM WHERE IT HAPPENS

LOBBYING AND INFLUENCE IN SOUTH AUSTRALIA

AUGUST 2024

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The room where it happens
Lobbying and influence
in South Australia

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LETTER OF TRANSMITTAL

28 August 2024

The Hon. Terence Stephens MLC
President
Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

The Hon. Leon Bignell MP
Speaker
House of Assembly
Parliament House
North Terrace
ADELAIDE SA 5000

Dear President and Speaker

In accordance with sections 40(3), 41(2) and 42(1)(c) of the *Independent Commission Against Corruption Act 2012* (SA) I present the report entitled *The Room Where it Happens: Lobbying and Influence in South Australia*.

Section 40(4) of the Act requires that you lay the report before the House of Assembly on the first sitting day after receiving this report.

I intend to publish the report on the Commission's website once it has been tabled.

Please find a copy of the report enclosed.

Yours sincerely

The Hon. Ann Vanstone KC
COMMISSIONER

GLOSSARY OF TERMS

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TERM	DEFINITION
AGD	Attorney-General's Department
APGRA	Australian Professional Government Relations Association
BCIS	Boards and Committees Information System
CEO	Chief Executive Officer
DPC	Department of the Premier and Cabinet
FOI Act	*Freedom of Information Act 1991*
Victorian IBAC	Independent Broad-based Anti-corruption Commission
ICAC Act	*Independent Commission Against Corruption Act 2012*
Lobbyists Act	*Lobbyists Act 2015*
Lobbyists Regulations	*Lobbyists Regulations 2016*
LGA	Local Government Association
LG Act	*Local Government Act 1999*
NSW ICAC	New South Wales Independent Commission Against Corruption
OECD	Organisation for Economic Co-operation and Development
OPI	Office for Public Integrity
PS(HA) Act	*Public Sector (Honesty and Accountability) Act 1995*
QLD CCC	Crime and Corruption Commission
SAES	South Australian Executive Service
WA CCC	Western Australia Corruption and Crime Commission

REFERENCES TO ONLINE CONTENT

Links and references to online content were accessed and checked on 26 August 2024.

COMMISSIONER'S FOREWORD

COMMISSIONER'S FOREWORD

Lobbying, at its core, is the attempt to sway decision makers in a particular direction.

Corruption, at its core, is the abuse of entrusted power for private gain.[1]

Seen in this way, it is clear why lobbying gives rise to the risk of corruption. Attempts to persuade may take many forms, not all of which are legitimate or fair. At one end of the spectrum, decision makers may openly and transparently receive facts, evidence and arguments from interested parties, and reach decisions dispassionately to serve the public interest. At the other end of the spectrum, decision makers may act opaquely, and in ways which designed to promote private interests.

The lobbying of public officials has been on the radar of anti-corruption and integrity agencies for some time. The increase in lobbying activity in recent years (especially, although not exclusively, at the federal level) has been reported by numerous media outlets[2] and the influence of lobbyists on government decision making is plainly a matter of public disquiet.[3]

In 2021, together with representatives of more than twenty anti-corruption and integrity agencies from around Australia, I attended an integrity summit with the theme, *Lobbying and the public sector*.[4] The event highlighted the importance of appropriate regulation of lobbying activity, and made plain to me that questions needed to be asked about the robustness of South Australia's scheme and its capacity to address the risks of corruption associated with lobbying.

1: This is the definition of 'corruption' adopted by Transparency International. See: Transparency International, What is corruption? (n.d.) https://www.transparency.org/en/what-is-corruption.

2: For example, see: Patrick Begly, 'In Canberra, lobbyists outnumber politicians three to one. Now there are growing calls for stronger regulation', ABC News (online), 13 November 2023 https://www.abc.net.au/news/2023-11-13/lobbyists-outnumber-politicians-code-of-conduct-regulation/103090798.

3: For example, see: Yee-Fui Ng, 'Australians think our politicians are corrupt, but where is the evidence?', The Conversation (online), 27 August 2018 https://theconversation.com/australians-think-our-politicians-are-corrupt-but-where-is-the-evidence-101822.

4: The Queensland Integrity Commissioner et al, Lobbying and the public sector (25 March 2021) https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Lobbying-and-the-public-sector_A-report-of-the-Integrity-Summit-2021.pdf.

The title of this report will be familiar to fans of *Hamilton: An American Musical*, written by Lin-Manuel Miranda.[5] *The Room Where it Happens* is sung by the character Aaron Burr, and is an expression of his frustration at his inability to see and participate in political decision making. The lyrics succinctly capture the essence of the corruption risks inherent in lobbying that lacks transparency:

> *No-one really knows how the game is played*
> *The art of the trade*
> *How the sausage gets made*
> *We just assume that it happens*
> *But no-one else is in the room when it happens*

Transparency is the key to protecting against corrupt lobbying and corrupt government decision making.

This report contains 31 recommendations. It is prepared pursuant to ss 40(3), 41(2) and 42(1)(c) of the *Independent Commission Against Corruption Act 2012* (the ICAC Act) and I publish it in the public interest.

I would like to acknowledge the contribution to this report made by Ms Claire McDonald LLB(Hons), B.A., G.D.L.P. She has from the outset managed the Commission's lobbying project and is largely responsible for this document.

The Hon. Ann Vanstone KC

Commissioner
INDEPENDENT COMMISSION AGAINST CORRUPTION

5: 'The Room Where it Happens', *Hamilton: An American Musical* by Lin-Manuel Miranda, 2015.

RECOMMENDATIONS

RECOMMENDATIONS

RECOMMENDATION 1

That any reform of the lobbying regulatory scheme in South Australia (including administrative reform) should be approached with a view to ensuring consistency, to the extent possible, with other such regulatory schemes in Australia.

RECOMMENDATION 2

That (if Recommendation 4 is *not* accepted) consideration be given to amending s 4 of the Lobbyists Act to remove the ambiguity introduced by the exception created by subsections (3) and (4).

RECOMMENDATION 3

That consideration be given to amending s 14 of the Lobbyists Act to clarify the prohibition on success fees.

RECOMMENDATION 4

That the definition of 'lobbying activity' in s 4(1) of the Lobbyists Act be amended to broaden the scope of the scheme and focus on the *purpose* of the activity being undertaken.

It should include *all* conduct intended to influence the outcome of government decision making, regardless of the identity of the individual making the representation, whether they receive payment for making the representations, or on whose behalf they act.

RECOMMENDATION 5

That the requirement to register as a lobbyist, and the obligations which flow from registration, be subject to appropriate exceptions based on a threshold test of lobbying activity (drawing on international examples in Scotland, Canada and Ireland).

RECOMMENDATION 6

That the definition of lobbying be subject to exceptions designed to protect the smooth and practical operations of government, appropriate access to political representatives, and to ensure that individuals' rights are not unnecessarily impinged upon.

RECOMMENDATION 7

That a Code of Conduct be made pursuant to s 19(4) of the Lobbyists Act with application both to lobbyists and public officials.

RECOMMENDATION 8

That the Code of Conduct incorporate those aspects of the South Australian Government Lobbyist Code of Conduct 2009 which were not replaced by the Lobbyists Act 2015, with appropriate amendments to reflect the legislated scheme. In particular:

Clause 4: Contact between Lobbyists and Government Representatives

Clause 8: Principles of Engagement with Government Representatives

RECOMMENDATION 9

That the Code of Conduct include guidelines to be followed when public officials meet with lobbyists addressing, for example,

- how meetings should be arranged
- where meetings should occur
- who should attend meetings
- the fact that meetings will be diarised and records kept regarding those matters required to be disclosed by lobbyists when contact is initiated (see Recommendation 8, above)
- how the content and outcome of meetings should be recorded.

RECOMMENDATION 10

That the lobbying regulatory scheme incorporate a requirement (either legislated or through the recommended Code of Conduct) that ministers and shadow ministers must cause to be created and made publicly available on the internet 'activity disclosure records' detailing all communication with lobbyists, including where that communication is directed to their personal staff (that is, staff employed under ss 71 and 72 of the *Public Sector Act 2009*).

RECOMMENDATION 11

That 'activity disclosure records' include at least the following information:

- when the communication took place
- what form the communication took (for example, in person, telephone, virtual, in writing)
- who was present during the communication
- the party whose interests were being represented
- the outcome sought by the party making the communication.

but that information is *not* required to be published if it is required to be kept confidential (for example, by reason of the *Public Interest Disclosure Act 2018*), if it is genuinely considered desirable to keep the information confidential in the public interest, or if it is genuinely considered to be commercial in confidence.

RECOMMENDATION 12

That consideration be given to whether, where a communication with a lobbyist is genuinely considered to be commercial in confidence, 'activity disclosure records' should reflect the fact, but not the content, of the communication.

RECOMMENDATION 13

That 'activity disclosure records' be required to be published on a monthly basis.

RECOMMENDATION 14

That consideration be given to whether 'activity disclosure records' should be submitted to, held and published by the body responsible for administering the lobbying regulatory scheme so that they can be made publicly available through the same website as the Lobbying Register (that is, in the same way that the current annual returns required to be produced by registered lobbyists are submitted to, held and published by the Attorney-General's Department as administrator of the regulatory scheme).

RECOMMENDATION 15

That ministers and shadow ministers be required to include attendance at networking events, awards nights, political fundraising events and other like functions in 'activity disclosure records'.

RECOMMENDATION 16

That the operation of s 13(1) be expanded to include:

- all members of the House of Assembly and Legislative Council in South Australia
- Ministers or shadow ministers in the Commonwealth Parliament
- Senators and members of parliament for South Australia in the Commonwealth Parliament
- Advisors to shadow ministers in the South Australian Parliament, and ministers and shadow ministers in the Commonwealth Parliament.

RECOMMENDATION 17

That the 'cooling-off' periods prescribed by s 13 be amended as follows:

- Ministers and shadow ministers of both the South Australian Parliament and Commonwealth Parliament – 3 years
- all other regulated former public officials – 2 years

but that the administrator of the regulatory scheme can exempt individuals from the restriction on lobbying for some or all of the specified period.

RECOMMENDATION 18

That the prohibition in respect of ministers and shadow ministers (of both the South Australian and Commonwealth Parliaments) apply to all lobbying activity, but that the prohibition relating to other regulated individuals apply to lobbying in respect of matters dealt with by the person in the ordinary course of their office or employment.

RECOMMENDATION 19

That, either through legislation or regulations, it be a requirement that a register of former public officials (in respect of whom a cooling-off period applies) be maintained by the South Australian government and made available to the Chief Executive responsible for the administration of the lobbying regulatory scheme. This register should record:

- personal details sufficient to identify the former public official
- the date on which they ceased to be a public official
- the capacity in which they were a public official
- portfolios in which the person was involved.

RECOMMENDATION 20

That, either through legislation or regulations, it be a requirement that registered lobbyists, when submitting lobbying activity returns (pursuant to s 8 of the Lobbyists Act), provide a signed assurance that they did not undertake any lobbying activity in disobedience to a restriction on their registration during the period covered by the return.

RECOMMENDATION 21

That, as part of standard exiting employment procedures, public officials in South Australia receive education about post-employment limitations and obligations under the Lobbyists Act.

RECOMMENDATION 22:

That the lobbying regulatory scheme be extended to apply to local government.

RECOMMENDATION 23:

That further consideration be given to the manner and extent to which the lobbying regulatory scheme, as it applies at the state government level, should apply at the local government level. This consideration should involve close consultation with the local government sector.

RECOMMENDATION 24:

That the scheme created by the Lobbyists Act and Lobbyists Regulations should be regulated and administered by the Ombudsman.

RECOMMENDATION 25:

That statutory declarations be required of *all* directors of a lobbying company addressing the matters set out in s 6(b)(ii).

RECOMMENDATION 26:

That registered lobbyists be required to make annual declarations that they do not have any relevant convictions.

RECOMMENDATION 27:

That, using the power in s 7(2) of the Lobbyists Act, the Chief Executive should amend the Statutory Declaration form for 'People Undertaking Lobbyist Activities' and require applicants to address the matters in s 13(1)(a), (b) and (c). This should include details about all roles previously undertaken within the relevant cooling-off period, the portfolio area, date of separation, and whether the person is currently a member of a government board.

RECOMMENDATION 28

That, where a lobbyist is identified as being a person to whom s 13(1) applies, this should be brought to the attention of the Chief Executive (or their delegate for this purpose) who should consider the information provided and communicate in writing with the lobbyist about the restrictions on their lobbying activity.

RECOMMENDATION 29

That, where a lobbyist's registration is subject to a restriction, the register provide details of topics or matters in respect of which the person is not permitted to lobby in the publicly searchable register.

RECOMMENDATION 30

That the Processes Document be updated to include more detailed guidance to the administrator regarding the level of detail required to be provided to comply with the requirements in s 8(1)(b).

RECOMMENDATION 31

That the Lobbyists Register website be updated to provide clear information and complaints processes to public officers and members of the pubic regarding both administrative and register-related complaints, and complaints about lobbying conduct. Internal documents and the public website should be updated to reflect public officers' reporting obligations.

INTRODUCTION

INTRODUCTION

This report examines corruption risks associated with lobbying and influencing activity aimed at public officials in South Australia and addresses how well the scheme of lobbying regulation, created by the *Lobbyists Act 2015* (the Lobbyists Act) and the *Lobbyists Regulations 2016* (the Lobbyists Regulations), mitigates those risks. Recommendations are made regarding the scope of the scheme, ways in which it might be reformed to better achieve its statutory aims, and other measures (legislative and administrative) which could be taken to mitigate the corruption risks associated with lobbying and influencing activity.

WHAT IS 'LOBBYING'?

Transparency International defines lobbying as:[6]

> *Any activity carried out to influence a government or institution's policies and decisions in favour of a specific cause or outcome.*

This is a broad definition of lobbying and one which likely accords with most people's understanding. It focuses on the *purpose* of the activity being carried out – that is, influencing government decision making – rather than by whom the activity is carried out, and in what circumstances.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **The fundamental, important thing is whatever you call these groups doing this activity, it is always activity that is designed... to influence decision making in respect of legislative policy or administrative outcomes.**
>
> — Dr Catherine Williams, Executve Director, Centre for Public Integrity

Sitting within this definition of lobbying is what is often referred to as 'third-party lobbying' – the kind of activity currently regulated by the South Australian lobbying regulatory scheme.[7]

'Third-party lobbying' is influencing activity carried out by a person, for money or other valuable consideration, on behalf of a third party.

It does not include what is known as 'direct' lobbying or 'in-house' lobbying (that is, lobbying carried out by an employee on behalf of their employer), or 'collective' lobbying (that is, lobbying carried out by a peak body or other group on behalf of its members, for example trade unions or business groups), or lobbying carried out by a charity or other not-for-profit organisation (for example, environmental groups, humanitarian groups or religious organisations).

6: See Transparency International, Lobbying (n.d.) https://www.transparency.org/en/corruptionary/lobbying.
7: Created by the Lobbyists Act and Lobbyists Regulations. For a more detailed explanation of the South Australian lobbying regulatory scheme see Chapter 3.

WHY ARE WE INTERESTED IN LOBBYING?

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **The risks of corruption lie in the absence of transparency and accountability, and those are really serious risks... Where we have insufficient regulation, there is the risk of what [Professor Joo Cheong Tham] calls a 'trinity of vices': secrecy, unfairness and, indeed, corruption.**
>
> — Dr Catherine Williams, Executve Director, Centre for Public Integrity

Integrity agencies focus on lobbying because activity aimed at influencing the outcome of government decision making gives rise to the *risk* of corruption. Where those seeking to influence the outcome of government decision making exploit personal connections, provide financial or political incentives to ensure that decision makers act in their favour, or present only facts which support their position while obscuring those which point to an alternative outcome, **there is a risk that decisions will be made in the service of private, rather than public, interests**.

This is not to say that *all* – or even *most* – lobbying activity is tainted by corruption, or that lobbying activity should be prohibited. Indeed lobbying, when understood as the presentation of viewpoints, information and ideas to government officials, is essential in a democratic society and can have a positive role to play in informing public policies and priorities.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **What lobbyists do, whether it's called government relations or lobbying, is they actually make it a lot easier for democracy to function. They're one of the structures that makes democracy work because if there was no filter for businesses or not-for-profits or individuals to fashion their ideas for government and for opposition preparing to be government, there simply wouldn't be enough hours in the day for ministers and members of parliament to meet with every single person who wanted to meet with them.**
>
> — The Hon. Christopher Pyne, Executive Director, Pyne and Partners

As noted by the Organisation for Economic Co-operation and Development (the OECD) in its 2024 *Recommendation of the Council on Principles for Transparency and Integrity in Lobbying and Influence*,[8]

> *Lobbying and influence actors, represent valid interests and bring to policy makers' attention much needed insights and data on all policy issues. Such an inclusive policy-making process provides opportunities for more informed and ultimately better policies.*

This legitimate activity can go awry, however, if it is not conducted fairly, openly and inclusively.

8: OECD, Recommendation of the Council on Transparency and Integrity in Lobbying and Influence (3 June 2024) OECD Legal Instruments https://legalinstruments.oecd.org/public/doc/256/256.en.pdf.

The most problematic influencing practices observed in this jurisdiction and elsewhere (both in Australia and internationally) have occurred *outside* lobbying regulatory schemes; that is to say, *registered* lobbyists are not often the persons who descend to dishonesty or corruption.

Influencing that turns into corruption is more commonly undertaken by persons *other than* third-party lobbyists.

METHOD ADOPTED BY THE COMMISSION

The Independent Commission Against Corruption (the Commission) has adopted a multi-faceted approach to the examination of lobbying in South Australia.

A major source of information for this report is open source research, including:

- work conducted and reports prepared by other Australian integrity agencies examining lobbying regulatory schemes in other Australian jurisdictions (see Table 1, below)
- investigation reports[9] from other integrity agencies about specific instances of corruption in public administration arising from lobbying activity
- research reports published by academics and civil society organisations both in Australia and internationally
- media reports and articles related to lobbying and the public perception of lobbying
- consideration of legislation and other instruments (such as regulations and codes of conduct) governing lobbying activity (including the interaction of public officials with lobbyists) both in Australia and internationally.

TABLE 1:
REPORTS PUBLISHED BY ANTI-CORRUPTION AGENCIES AND OTHER BODIES EXAMINING LOBBYING REGULATION IN AUSTRALIA

AGENCY	DATE	REPORT TITLE
NSW Independent Commission Against Corruption	November 2010	*Operation Halifax – Investigation into corruption risks involved in lobbying*
	June 2021	*Operation Eclipse – Investigation into the Regulation of Lobbying, Access and Influence in NSW*
Victorian Independent Broad-based Anti-corruption Commission	October 2022	*Report on Corruption Risks Associated with Donations and Lobbying*
Queensland Crime and Corruption Commission	January 2023	*Influence and Transparency in Queensland's Public Sector*
Integrity Commission of Tasmania	May 2022	*Research Report – Reforming Oversight of Lobbying in Tasmania*
	June 2023	*Framework Report – Model for Reform of Lobbying Oversight in Tasmania*
Australian Senate – Finance and Public Administration Reference Committee	May 2024	*Access to Australian Parliament House by lobbyists*

9: And, in some instances, decisions of courts where persons have been charged with corruption offences following investigations by anti-corruption agencies.

Information was sought directly from the chief executives of all South Australian government departments regarding measures put in place to address lobbying risks; in particular, any policies, practices or procedures addressing interactions between public officers and those seeking to influence the outcome of government decisions.

In July 2023 the Commission released a discussion paper[10] and called for submissions.

In addition to the public call for submissions, numerous interested parties – lobbyists, public officials, industry and other representative bodies, academics, civil society organisations and others – were contacted directly and invited to make a submission.

In total, 17 submissions were received in response to the discussion paper.[11] In addition, interviews were conducted with interested parties at different stages of the project.

Officers from the Commission were assisted by counterparts from interstate integrity bodies[12] about the work those bodies had undertaken (or were undertaking) in relation to lobbying regulation reform.

The Commission undertook an evaluation, pursuant to s 40(2) of the ICAC Act, of the practices, policies and procedures of both the Department of the Premier and Cabinet (DPC) and the Attorney-General's Department (AGD) insofar as they relate to the administration of the lobbying scheme.[13] In addition to the abovementioned research, the evaluation involved requesting and receiving documentary material from DPC and conducting interviews with key personnel from within DPC.

10: The South Australian Independent Commission Against Corruption, Discussion Paper: Lobbying and Influence (July 2023) https://www.icac.sa.gov.au/__data/assets/pdf_file/0003/924348/Lobbying-discussion-paper.pdf.
11: Submissions that authors have given permission to publish are available on the Commission's website.
12: Specifically, the New South Wales Independent Commission Against Corruption, the Victorian Independent Broad-based Anti-corruption Commission, the Queensland Crime and Corruption Commission, and the Tasmania Integrity Commission.
13: From its commencement until 30 May 2024, when machinery of government changes took effect, the lobbying regulatory scheme was administered by the Chief Executive of DPC. Following the machinery of government changes responsibility moved to the Chief Executive of AGD. For more details see Chapter 8.

PUBLIC FORUM

On 9 May 2024 the Commission held a public forum which took the form of a facilitated panel discussion. It was attended by both an in-person and an online audience. The discussion was facilitated by the Commissioner of Equal Opportunity SA, Ms Jodeen Carney, and the panel comprised people with relevant expertise and experience:

- The Hon. Christopher Pyne (Executive Director, Pyne and Partners)
- Dr Yee-Fui Ng (Associate Professor, Monash University)
- David Wolf (Deputy Commissioner, Independent Broad-based Anti-corruption Commission, Victoria)
- Dr Catherine Williams (Executive Director, Centre for Public Integrity)
- Mr David Washington (Solstice Media)
- Mr Ian Horne (Board Member, Tourism SA and former Chief Executive of the Australian Hotels Association, South Australia)

The forum produced lively and useful discussion, both from members of the panel and in-person and online attendees who were able to ask questions of the panellists. Aspects of that discussion are included throughout this report[14] and a video recording of the entire forum is available through the Commission's website.[15]

14: Direct quotes from forum participants are highlighted in blue text boxes throughout this report.
15: See the South Australian Independent Commission Against Corruption, 'ICAC – Lobbying and Influence Public Forum' (Vimeo, 9 May 2024) https://vimeo.com/948558172?share=copy.

CHAPTER 1
WHAT DOES CORRUPT LOBBYING LOOK LIKE?

CHAPTER 1: WHAT DOES CORRUPT LOBBYING LOOK LIKE?

Without purporting to give an exhaustive account of all the ways that lobbying may be corrupted, this chapter sets out some of the ways in which corruption risks in lobbying can manifest, drawing primarily on examples from Australian jurisdictions. Due to prohibitions on reporting[16] the examples cited are taken from jurisdictions other than South Australia. But they are consistent with what the Commission has observed in the course of its own investigations and in reports and complaints received[17] regarding potential corruption in public administration.

It should be noted that many of the examples in this section relate to 'lobbying' in the broader sense and not regulated – that is, third-party – lobbying. As already noted, the experience of anti-corruption agencies in all Australian jurisdictions is that problematic lobbying practices are predominantly undertaken by lobbyists who are *not* third-party lobbyists.

One thing that is clear from these examples is that lobbying gives rise to the risk of corruption on the part of both those seeking to influence, and those to whom the lobbying is directed; that is, both lobbyists and public officials. The capacity for both 'dance partners' to act improperly has been highlighted by investigations undertaken by the NSW Independent Commission Against Corruption (NSW ICAC),[18] the WA Corruption and Crime Commission (WACCC)[19] and the Victorian Independent Broad-based Anti-corruption Commission (IBAC).[20]

The corruption risks of lobbying can manifest in what might be thought of as straightforward corruption or bribery; that is, public officials receiving direct personal benefits for exercising public power in a particular way – 'money in brown paper bags'. A somewhat more subtle way is where those seeking to influence public decisions make 'donations' to causes associated with relevant public officials – for example, electoral campaigns – to curry favour either explicitly or subconsciously.

Clear examples of both are provided by the Victorian IBAC's Operation Sandon.

16: See the ICAC Act s 25.
17: By the Office for Public Integrity, prior to the changes to the ICAC Act in October 2021.
18: *Macdonald, Ian v R; Edward Obeid v R*; Moses Obeid v R [2023] NSWCCA 250.
19: See for example: Western Australian Corruption and Crime Commission, Report on the investigation of alleged misconduct concerning rezoning of land at Whitby (3 October 2008) https://www.ccc.wa.gov.au/sites/default/files/Report%20on%20the%20Investigation%20of%20Alleged%20Misconduct%20Concerning%20Rezoning%20of%20Land%20at%20Whitby.pdf.
20: The Victorian Independent Broad-based Anti-corruption Commission, Operation Sandon (27 July 2023) https://www.ibac.vic.gov.au/operation-sandon-special-report.

Case Study: Operation Sandon[21]

Operation Sandon saw the Victorian IBAC investigate allegations of corrupt conduct in respect of four planning matters involving a developer in the City of Casey in Melbourne's south-east. It was alleged that two councillors accepted undeclared payments, gifts and other benefits – including political donations – in return for favourable planning decisions which ultimately would serve the developer's commercial interests.

IBAC found, among other things, that the developer employed various methods to achieve these favourable outcomes, including by:

- providing direct inducements (including cash payments, investment returns and consultancy fees) to the two councillors in exchange for their promoting his client's interests on council, but also by identifying and coordinating the campaigns of a group of candidates for Council elections
- providing funds and in-kind support to other councillors
- lobbying and engaging registered lobbyists to help buy access to, and influence with, state and local government elected members and candidates for election, executives and political staffers
- donating to fundraising entities, and directly to election campaigns of local and state government candidates, to cultivate influence.

The two councillors were found to have accepted more than $500,000 each from the developer (over a period of 3 and 10 years respectively) in return for their support of his interests.

IBAC's investigation found that the developer sought to influence decision makers at both the local and state government level, not only ministers, members of parliament and councillors, but also ministerial advisors and electorate officers. The developer's efforts were assisted by the limited transparency and supervision arrangements governing political staff.

Corruption can also occur when those seeking to influence government trade on personal relationships or their own status to gain preferential access to, and treatment from, decision makers or those in a position to influence decision makers. In such cases, the influencer's trustworthiness or impartiality might be assumed and proposals may be given a tick of approval without the ordinary processes of scrutiny and assessment being applied. Alternatively, submissions might be given undue weight due to the status of the person making the submission (for example, friend, relative or former colleague) or the position of authority they occupy (for example, officeholder within a political party). In other cases, favouritism may be shown to friends, family members or those in positions of power, without any tangible benefit for the decision maker personally.

Examples of the exploitation of a position of authority and pre-existing relationships can be found in the prosecutions of former NSW MP and Minister, Edward Obeid, in 2016 and 2021.

21: Operation Sandon (n 20).

Case Study: Obeid and the NSW Maritime Authority[22]

Mr Obeid was a member of the NSW Legislative Council between 1991 and 2011, and Minister for Fisheries between 1999 and 2003. The Director-General of Fisheries during that period was Stephen Dunn. The two became acquainted over that time and continued to socialise infrequently after 2004. Mr Dunn regarded Mr Obeid as a mentor.

In early August 2007, Mr Dunn was appointed Deputy CEO of the NSW Maritime Authority which was responsible for dealing with various commercial leases at Circular Quay. A decision had been made earlier that the leases would be put out for competitive tender rather than existing tenants being offered the first opportunity to negotiate a renewal.

From 2004 onwards, a group of lessees had been lobbying the Maritime Authority and the relevant Minister – including through a professional negotiator – to achieve either renewal of leases or direct negotiations between the Maritime Authority and tenants. Their efforts had been unsuccessful and, as at August 2007, the Maritime Authority's policy position remained the same: the leases must be put out for tender.

In mid-August 2007 Mr Obeid spoke to Mr Dunn and told him he was unhappy about the way a group of lessees at Circular Quay had been treated by the Maritime Authority. He asked Mr Dunn to speak with the negotiator engaged by the group and said the lessees had been bullied by the Maritime Authority.

Mr Dunn thought that Mr Obeid was representing the position of constituents in his capacity as a member of the legislative council. At no time did Mr Obeid disclose to Mr Dunn that he had a personal and financial interest in two of the lessee businesses at Circular Quay.[23]

In late August 2007 Mr Dunn took steps to ensure the Maritime Authority's policy allowed for direct negotiation of lease renewals with lessees. The business associated with Mr Obeid signed a new lease in 2008.

Mr Obeid was convicted of misconduct in public office in relation to this matter in 2016.

22: See *Obeid v R* [2017] NSWCCA 221.

23: Two leases were held by a hospitality business, Circular Quay Restaurants Pty Ltd, the sole director of which was Mr Obeid's brother. The business was funded by Mr Obeid and his wife, and they were both potential beneficiaries of a discretionary trust to which 90% of the interest in the business flowed. Cash takings from the business were delivered to Mrs Obeid every week.

Case Study: Macdonald, the Obeids and the Bylong Valley[24]

In 2007, a company associated with the Obeid family, Locaway Pty Ltd, purchased a property, Cherrydale Park, in the Bylong Valley in NSW.

A coal seam had been identified by the Department of Mineral Resources which followed the general direction of the Bylong Valley and lay under three properties, including Cherrydale Park.

An exploration licence under the *Mining Act 1992* (NSW) was held by the Department of Primary Industries over properties adjacent to Cherrydale Park. In late 2007 there was no intention by the Department to release the area for private exploration.

In May 2008, Mr Ian Macdonald was the NSW Minister for Mineral Resources. Mr Obeid was member of the Legislative Council. They were both members of the Labor Party.

Mr Macdonald, Mr Obeid and his son, Moses Obeid, agreed that Mr Macdonald would take steps, in his capacity as Minister, to release the area in the Bylong Valley to exploration, with potential benefits for the Obeid family through their ownership of the Cherrydale Park property.

Over the next 18 months Mr Macdonald undertook acts in furtherance of this agreement. He sought confidential information from the Department of Primary Industries, and provided confidential information to the Obeids, knowing that it would benefit their family interests as Bylong Valley property owners. In doing so he breached his obligations of impartiality and confidentiality.

An exploration licence was granted over the area including Cherrydale Park, leading to a windfall of $30 million for the Obeid family. Mr Macdonald did not profit financially from his actions.

All three men were convicted of conspiracy to commit misconduct in public office in 2021.

Each of these examples involved lobbying in relation to single decisions that had the effect of benefiting one person's, or a small number of people's, interests and, conversely, causing a direct detriment to the interests of a relatively small number of people.[25] But corruption in lobbying can also have a much broader impact by, for example, shaping policies or regulatory practices which have capacity to impact the community as a whole. Such corruption is sometimes referred to as 'policy capture' and 'regulatory capture'.

'Policy capture' is described by the OECD as,[26]

> *... the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interests of a specific interest group or person. Capture is the opposite of inclusive and fair policy-making, and always undermines core democratic values.*

The risk of policy capture occurring in Australia was highlighted by Transparency International Australia which stated, in its 2021 Position Paper, *Lobbying and Revolving Doors: Analysis and Recommendations*:[27]

24: *Macdonald, Ian v R; Edward Obeid v R; Moses Obeid v R* [2023] NSWCCA 250.
25: Although, necessarily, the 'public interest' is damaged or potentially damaged whenever corruption occurs.
26: OECD, 'Preventing Policy Capture: Integrity in Public Decision Making' (2017), OECD Public Governance Reviews, OECD Publishing, Paris https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/03/preventing-policy-capture_g1g78280/9789264065239-en.pdf.
27: Transparency International Australia, Lobbying and Revolving Doors: Analysis and Recommendations (October 2021) https://transparency.org.au/wp-content/uploads/2021/10/TIA-Position-Paper_Lobbying-and-Revolving-Doors_Final.pdf.

> *The potential for policy capture by special interests, as well as the ability of powerful concentrated interests to drown out other voices in public debate, presents significant challenges for Australian democracy.*

In an article from May 2023[28] Dr Catherine Williams and Professor Joo-Cheong Tham described the development of climate change policy as a 'stark example' of policy capture in Australia, stating,

> *Under the Howard government, climate change policy was determined by fossil fuel lobbyists (many of whom were former senior public servants) who likened themselves to organised crime through a self-styled label – the greenhouse mafia.*
>
> *These lobbyists were part of a network of climate sceptics – dubbed the "Carbon Club" – that effectively hindered direct climate action by Australia for decades. They provide a stark illustration of how lobbying … can result in "policy capture" and steer public policy away from the public interest.*

Policy capture can be achieved through the provision of bribes or favours, but can also be achieved by less obviously corrupt means and in circumstances where decision makers themselves are unaware that they are being used, for example, by 'manipulating the information provided to them, or establishing social or emotional ties with them'.[29]

The same sorts of problems can arise in the regulatory sphere, where 'regulatory capture'[30] can occur. 'Regulatory capture' describes the circumstance in which regulators become so close or sympathetic to, or so aligned with the interests of, those whose conduct they are charged with regulating, that they cease to effectively regulate and instead do the industry's bidding.

The challenge for regulators is to engage with the industry they are mandated to regulate while maintaining their independence and compliance capability, including in the face of political pressure.

Although no findings of corruption were ultimately made, the NSW ICAC's investigations in Operation Avon and Operation Mezzo provide clear examples of how corrupt regulatory capture *could* occur.

28: Catherine Williams and Joo-Cheong Tham, 'Canberra lobbying must be reined in. Here's how we can protect our democracy', The Age (online), 8 May 2023 https://www.theage.com.au/politics/federal/canberra-lobbying-must-be-reined-in-here-s-how-we-can-protect-our-democracy-20230507-p5d6d8.html.

29: OECD, 'Policy Framework on Sound Public Governance: Baseline Features of Governments that Work Well' (2020) OECD Publishing, Paris, p 49 https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/12/policy-framework-on-sound-public-governance_931b05fc/c03e01b3-en.pdf.

30: 'Regulatory capture' is a concept which has its genesis in the economic theory of Nobel laureate George Stigler: George J Stigler, 'The Theory of Economic Regulation', The Bell Journal of Economics and Management Science Vol 2, No 1 (Spring, 1971): 1, pp 3–21.

Case study: Water management in the Murray-Darling Basin[31]

NSW ICAC's Operation Avon and Operation Mezzo investigated allegations that the minister and public servants were improperly lobbied to make changes to water management arrangements that benefitted irrigators in the Basin.

While there was no evidence of corruption, the Commission found that the approach taken by the department was inconsistent with the object, principles and duties of the *Water Management Act 2000* and did not give effect to legislated priorities for water sharing.

The Commission further concluded that:

- administrative failures concerning water regulation and compliance created an environment that unfairly privileged irrigators
- the relevant department's approach to stakeholder consultation was infected by its entrenched irrigator focus
- consultation processes focused on the irrigation industry, while restricting information available to other stakeholders (for example environmental agencies).

This resulted in policy making processes becoming 'vulnerable to improper favouritism, as environmental perspectives were sidelined from policy discussions.'[32]

The above examples by no means set out exhaustively the ways in which influencing behaviours can lead to corruption, or to government decisions being made other than in the public interest. However, they do demonstrate that:

- decision makers at all levels of government can be the target of influencing behaviour
- both political actors and public sector employees can be the target of lobbying
- people who are not themselves decision makers but who are close to, or have influence over, decision makers may be the target of influencing behaviour
- both 'legal' and illegal means can be employed to influence decisions in favour of private over public interests
- corrupt lobbying practices do not always rely on financial benefits to their targets
- lobbyists may seek to influence the outcome of individual decisions which directly impact one person, or a small group of people
- lobbyists may seek to influence policy making or regulatory processes which can directly impact the entire community.

31: See the New South Wales Independent Commission Against Corruption, NSW Government – allegations concerning management of water in NSW and systemic non-compliance with the Water Management Act 2000 (Operations Avon and Mezzo) (2020) https://www.icac.nsw.gov.au/investigations/past-investigations/2020/nsw-government.

32: Ibid, p 142.

These examples also allow observations to be drawn regarding the kinds of environments in which corruption can occur. Three important risk factors emerge:

a. Secrecy or a lack of visibility
Who is meeting who, on whose behalf and for what reason?

b. Undeclared or poorly managed conflicts of interests
On the part of either – or both – the lobbyist or the public official

c. Pre-existing relationships
Between public officials and lobbyists or the interests they represent

For a regulatory scheme to be effective in mitigating the corruption risks associated with influencing behaviour, these risk factors must be adequately addressed.

CHAPTER 2
SINGING FROM THE SAME SONG SHEET: HARMONISATION OF LOBBYING REGULATION

CHAPTER 2: SINGING FROM THE SAME SONG SHEET: HARMONISATION OF LOBBYING REGULATION

There is no single scheme operating in Australia to regulate lobbying across all jurisdictions. Instead, there is a patchwork of schemes which must coexist.[33]

It might be said that this is something of an inevitability in a federation like Australia, where it is the right and responsibility of each jurisdiction to legislate or otherwise regulate as it sees fit. However, the reality is that lobbyists operate across state and territory borders, and there are strong arguments in favour of ensuring, to the extent possible, that the various regulatory systems across Australia operate coherently and in a way that makes it easy for lobbyists to comply.

In some jurisdictions the regulatory scheme is created by legislation (with or without administrative regulation operating in tandem), while in others it is administrative only, operating through codes of conduct (see Table 2 below).

TABLE 2:
LOBBYING REGULATORY AND RELEVANT INSTRUMENTS IN AUSTRALIAN JURISDICTIONS

JURISDICTION	NATURE OF REGIME	RELEVANT INSTRUMENT
Commonwealth	Administrative	Lobbying Code of Conduct[34]
South Australia	Legislated	*Lobbyists Act 2015*
New South Wales	Legislated	*Lobbying of Government Officials Act 2011*[35]
		Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014
Victoria	Administrative	Victorian Government Professional Lobbyist Code of Conduct[36]
Queensland	Legislated	*Integrity Act 2009* (Qld)[37]
Western Australia	Legislated	*Integrity (Lobbyists) Act 2016* (WA)[38]
	Administrative	Lobbyist Code of Conduct[39]
Tasmania	Administrative	Tasmanian Lobbying Code of Conduct[40]
Australian Capital Territory	Administrative	ACT Lobbying Code of Conduct and ACT Lobbying Register[41]

33: Or, in the case of the Northern Territory, there is no lobbying regulatory scheme.
34: https://www.ag.gov.au/integrity/publications/lobbying-code-conduct.
35: https://legislation.nsw.gov.au/view/html/inforce/current/act-2011-005
36: https://www.lobbyists.vic.gov.au/code-of-conduct
37: www.legislation.qld.gov.au/view/html/inforce/current/act-2009-052#.
38: https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_13781_homepage.html.
39: https://www.wa.gov.au/government/publications/lobbyist-code-of-conduct.
40: https://lobbyists.integrity.tas.gov.au/code-of-conduct.
41: Created by the Continuing resolutions 8AB and 8AC. See Office of the Legislative Assembly (ACT), Standing orders and continuing resolutions of the Legislative Assembly for the Australian Capital Territory (6 June 2024) https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/2465722/Standing-Orders-as-at-6-June-2024.pdf.

Not only does the *mechanism* of regulation vary between jurisdictions, but the *approach* to regulation varies greatly between jurisdictions. For example:

- in NSW, Victoria, WA, Queensland and Tasmania, responsibility for oversight of the scheme lies with an independent regulator, while in SA and the Commonwealth it lies with a government department, and in the ACT responsibility is given to the Legislative Assembly[42]
- all jurisdictions other than SA operate by reference to a Code of Conduct which applies to lobbyists and, in some jurisdictions, to lobbied parties[43]
- SA and Tasmania are the only jurisdictions in which the definition of 'lobbied party'[44] extends to Members of Parliament beyond Ministers and Parliamentary Secretaries[45]
- all jurisdictions other than Tasmania and the Commonwealth prohibit the payment of 'success fees'[46] to lobbyists
- the information required to be given to the regulator/administrator of the regulatory scheme varies considerably between jurisdictions.

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> **[O]ne of the key things we saw when we did the analysis around Australia, is there was such variation in what was being regulated and how it was being regulated. So I think harmonisation to the extent possible was really important for the States and for the federal regime, and also for the tiers of government. I think it's really important – difficult to achieve.**
>
> — David Wolf, Deputy Commissioner, Independent Broad-based Anti-corruption Commission, Victoria

Both the Victorian IBAC and Queensland CCC specifically addressed the issue of harmonisation in their recent reports examining lobbying regulation in their respective states. In its report, *Influence and Transparency in Queensland's Public Sector*, the latter noted:[47]

> *[C]onsideration should be given to harmonising lobbying regulation and disclosure requirements across Australian jurisdictions. Several recent reviews have commented on the different models used throughout Australia and the administrative burden this causes lobbyists. A nationally consistent approach to lobbying regulation would help address concerns raised by lobbyists and other members of the public and could help ensure a focus remains on aligning these frameworks with emerging best practice standards.*

42: This topic is discussed further in Chapter 8.
43: While Queensland's Lobbyists Code of Conduct applies only to lobbyists, the Queensland Ministerial Code of Conduct contains provisions which address Ministers' engagement with registered lobbyists and, more importantly, ss 63 and 64 of the *Integrity Act 2009* (Qld) impose obligations on government representatives.
44: However that concept is referred to. For example, 'government official', 'public official'.
45: South Australia includes *all* MPs in the definition, while Tasmania includes only MPs who are members of the party or parties forming Executive Government.
46: A 'success fee' is essentially a fee paid to a lobbyist that is contingent upon the *outcome* of lobbying activity.
47: The Queensland Crime and Corruption Commission, Influence and transparency in Queensland's public sector: minimising the corruption risks associated with improper influence on government decisions (January 2023), https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Influence-and-transparency-in-Queenslands-public-sector.pdf.

Submissions received by the Commission echoed this sentiment. The Australian Professional Government Relations Association commented:[48]

> *The harmonisation of regulatory schemes across Australian jurisdictions is in the interests of the public, government representatives, and lobbyists.*
>
> *Some key challenges that would be addressed through harmonisation would include agreed definitions and compliance obligations, alongside uniform reporting windows. The current inconsistencies make administrative errors more likely to occur for practitioners, particularly those with a national footprint.*

The NSW ICAC also considered the need to reduce the administrative burden associated with registration and recommended:[49]

> *That, in order to reduce the administrative burden, lobbyists required to be registered in NSW should be permitted to provide or rely on documentation filed with other jurisdictions, such as a jurisdiction under the Commonwealth. This could include relevant statutory declarations made in order to satisfy fit and proper person requirements.*

Perfect harmonisation of jurisdiction-specific schemes will rarely be possible without a formal referral of powers to the Commonwealth. There is no suggestion that any such referral is on the cards insofar as lobbying regulation is concerned.

In considering the adequacy of South Australia's scheme and formulating recommendations for reform, the Commission has borne in mind the desirability of the South Australian scheme sitting comfortably with the schemes of other jurisdictions, both as they exist currently and, equally, as they will exist if and when recommendations for reform[50] are enacted.

That any reform of the lobbying regulatory scheme in South Australia (including administrative reform) should be approached with a view to ensuring consistency, to the extent possible, with other such regulatory schemes in Australia.

RECOMMENDATION 1

48: https://www.icac.sa.gov.au/__data/assets/pdf_file/0007/1064986/15-Sept-23-APGRA-Submission-SA-ICAC-Discussion-Paper-.pdf.

49: The New South Wales Independent Commission Against Corruption, Lobbying and the NSW public sector – the regulation of lobbying, access and influence in NSW (Operation Eclipse) (22 June 2021) https://www.icac.nsw.gov.au/investigations/past-investigations/2021/operation-eclipse, recommendation 11, p 12.

50: That is, as recommended in the reports referred to in Table 1.

CHAPTER 3
OVERVIEW OF THE REGULATORY SCHEME

CHAPTER 3: OVERVIEW OF THE REGULATORY SCHEME

LOBBYISTS ACT 2015 AND *LOBBYISTS REGULATIONS 2016*

The Lobbyists Act and Lobbyists Regulations directly regulate some lobbying activity in South Australia. Both the Act and Regulations are directed towards those engaging in 'lobbying', rather than those to whom lobbying is directed.

KEY DEFINITIONS

The definition of 'lobbying' is critical as it sets the scope of the regulatory scheme. The only influencing conduct that is regulated is conduct which amounts to 'lobbying' as defined. All other influencing conduct falls outside the regulatory scheme.

Section 4(1) provides that a person engages in 'lobbying' if they, for money or other valuable consideration, communicate[51] with a 'public official' *on behalf of a third party* for the purpose of influencing the outcome of:

- legislation, or a government decision or policy (existing or proposed)
- an application for any approval, consent, licence, permit, exemption or other authorisation or entitlement under any Act of law of South Australia
- the awarding of a contract or grant or the allocation of funding
- any other exercise by the public official of their functions or powers.

Section 4(1)[52] applies to principals of third-party lobbying firms, their employees and agents.

'Public official' is defined in s 3 to mean: a Minister or Parliamentary Secretary or member of their staff (including in an electorate office), a Member of Parliament or member their staff, a public sector employee, a person contracted to provide services to or on behalf of a public sector agency, or a member of a government board.[53]

'Third party' is not defined, but its ordinary meaning is 'any person other than the principals to any transaction, proceeding or agreement'.[54] In the context of lobbying, the 'principals' to the transaction can be understood as: (a) the person/organisation making representations to a public official, and (b) the public official to whom the representation is made. A 'third party' is a person /organisation *other than* these parties. In the lobbying context, it is the party on behalf of whom the representations are made.

51: Communication can be in person, in writing or by telephone or other electronic means.
52: See the *chausette* to s 4(1).
53: 'Public sector employee' and 'public sector agency' have the same meaning as in the *Public Sector Act 2009*.
54: *Macquarie Dictionary* (5th ed, 2009): 'third party'.

Where a person or organisation communicates *directly* with a public official only two parties are involved – there is no third party. The organisation is therefore not engaging in lobbying. An employee of an organisation who communicates with a public official on behalf of their employer, is not a third party under the ordinary meaning of the term. Rather, they are acting as a representative of the organisation.

Section 4(3) sits awkwardly with s 4(1) and arguably introduces a degree of ambiguity about the operation of the scheme. It provides that a person will be taken *not* to engage in 'lobbying' if the third party on behalf of whom they communicate is a 'designated organisation'[55] and the person is *an employee of that organisation* acting in the ordinary course of their employment. Subsection (3) appears to create a specific exception to the definition of lobbying, however, having regard to the ordinary meaning of 'third party' and the wording of subsection (1), the scenario set out in (3) would not amount to lobbying in any event; an employee is a representative of the organisation, not a third party. This causes a degree of confusion as to how 'third party' is defined under the scheme.

In practice, the enforcement of the scheme has not treated employees of organisations that are not 'designated organisations' as lobbyists. However, subsection (3) suggests that an employee *will* be considered a lobbyist, even when acting on behalf of their employer, if the organisation is not a 'designated organisation'.

That (if Recommendation 4, below, is not accepted) consideration be given to amending s 4 of the Lobbyists Act to remove the ambiguity introduced by the exception created by subsections (3) and (4).

RECOMMENDATION 2

55: Section 4(4) provides that a 'designated organisation' means:
- an employer organisation, employee organisation, professional organisation or some other organisation established to represent the industrial or professional interests of its members
- an organisation established for a charitable, educational, benevolent, humanitarian, religious, recreational, sporting or philanthropic purpose
- an organisation, or an organisation of a kind, prescribed by regulation.

PROHIBITIONS AND RESTRICTIONS ON LOBBYING ACTIVITY

Section 5(1) of the Lobbyists Act prohibits a person from engaging in lobbying other than in accordance with a registration under the Act. A person who engages in such lobbying – which could include lobbying while unregistered, or lobbying contrary to a restriction on registration[56] – can be prosecuted and faces a fine of up to $30,000 or 2 years imprisonment. The fine for a body corporate which breaches this provision is $150,000.

Together, ss 6, 9 and 13 operate to place restrictions on who is entitled to be registered as a lobbyist. Persons are *ineligible* for registration:

- if they have ever been convicted of an indictable[57] offence
- if they have, in the 10 years prior to applying for registration, been convicted of a summary offence[58] of dishonesty (for example, theft, deception or dishonestly dealing with documents)
- for a period of 2 years following cancellation of registration under the Lobbyists Act
- if they are prevented from engaging in lobbying by reason of section 13 of the Lobbyists Act.

Section 13 of the Lobbyists Act places restrictions on lobbying activity that can be undertaken by former public office holders.

Section 13(1)(a) prevents Ministers from engaging in *any* lobbying activity for a period of 2 years after ceasing to hold office. During this period the former Minister is not entitled to apply for registration, and any registration held during that period is, by force of s 13(1)(a)(iii), cancelled.

Section 13(1)(c) prohibits members of government boards from engaging in lobbying during the period of their membership. Members of government boards are not entitled to apply for registration during the period of their membership, and any registration held by them during that period is, by force of s 13(1)(c)(iii), cancelled.

The effect of ss 13(1)(a) and (c) is that a former Minister or current government board member who engages in any lobbying during the specified period will be doing so while unregistered, and therefore liable to prosecution under s 5(1).

The position with respect to other former public officials is more nuanced and depends upon the *subject matter* of the lobbying activity.

Section 13(1)(b) prevents Parliamentary Secretaries, members of the South Australian Executive Service (SAES)[59] and Ministers' personal staff[60] from engaging in lobbying *in respect of matters dealt with by the person in the ordinary course of holding that office*, for a period of 12 months after ceasing to hold that office. During this period, any registration held by the person is subject to the condition that the person must not engage in lobbying in respect of matters dealt with by the person in the ordinary course of their former position.

56: See below regarding the discussion of s 13(1)(b), which restricts lobbying activity that may be undertaken by certain former public officials.
57: For the definition of 'indictable offence' see s 5(3) of the *Criminal Procedure Act 1921*. Generally, 'indictable offences' are those punishable by more than 2 years' imprisonment.
58: For the definition of 'summary offence' see s 5(2) of the *Criminal Procedure Act 1921*. Generally, 'summary offences' are those not punishable by imprisonment, or for which the maximum penalty does not exceed 2 years imprisonment, or dishonesty offence which involve property valued at $2,500 or less.
59: Established under Part 5 of the *Public Sector Act 2009*.
60: Staff employed pursuant to s 71 of the *Public Sector Act 2009*. This may include Chiefs of Staff and Ministerial Advisors.

The effect of s 13(1)(b) is that a former Parliamentary Secretary, for example, who engages in lobbying in respect of matters dealt with by them in the ordinary course of their former office will be doing so other than 'in accordance with a registration under [the] Act', and liable for prosecution pursuant to s 5(1).

Section 9 provides that a person's registration remains in force until it is cancelled or surrendered, or until the person dies or, in the case of a body corporate, is dissolved. The regulations further provide that a person can surrender their registration with the written approval of the Chief Executive.

In addition, under to s 9(2), a person's registration can be cancelled by the Chief Executive:

- registration *must* be cancelled if the Chief Executive is satisfied either that the person was not entitled to registration when they first applied, or that events have occurred which mean the person is no longer entitled to registration (for example, the person is convicted of an offence of dishonesty)
- registration *may* be cancelled if the Chief Executive is satisfied, *inter alia*, that the person has failed to comply with a requirement under the Lobbyists Act (for example, by failing to lodge an annual return), or that they have failed to comply with a condition of their registration under s 13.

A person whose registration has been cancelled pursuant to s 9(2) is not entitled to apply for registration for 2 years from the date of cancellation.

PROHIBITION ON SUCCESS FEES

Section 14 of the Lobbyists Act prohibits a person from giving or receiving, or agreeing to give or receive, a 'success fee' for lobbying. A 'success fee' is an amount of money (or other valuable consideration) that is 'contingent upon the outcome' of lobbying. A person who fails to comply with s 14(1) is liable to prosecution and faces a fine of up to $30,000 or 2 years imprisonment. If the offence is committed by a body corporate the penalty is a fine of up to $150,000.

It should be noted that, strictly speaking, s 14(1) prohibits the giving and receiving of success fees for '*carrying on the business* of lobbying'.

'Carrying on the business of lobbying' is not defined and does not appear elsewhere in the Act. Other provisions refer to 'lobbying' and 'engag[ing] in lobbying', each of which imply single instances of lobbying conduct (that is, attempting to influence a particular public official about a particular issue, on behalf of a particular third party). The term, 'carrying on the business of lobbying', however, suggests long term activity.

This does not fit comfortably with the concept of a 'success fee' though, being a payment contingent upon *'the outcome'* of lobbying. How can 'the outcome' of lobbying be determined in relation to the ongoing or long term '*business* of lobbying'?

The use of the term 'carrying on the business of lobbying' in s 14(1) is, at best, clumsy. At worst, it introduces a degree of ambiguity which would benefit from reconsideration by the parliament.

That consideration be given to amending s 14 of the Lobbyists Act to clarify the prohibition on success fees.

RECOMMENDATION 3

REGISTER OF LOBBYISTS

Section 10 provides that a register must be kept of persons who engage in lobbying. Prior to 30 May 2024, the register of lobbyists was maintained by the Chief Executive of the Department of the Premier and Cabinet (DPC).[61] On 30 May 2024, machinery of government changes[62] came into effect and responsibility for maintaining the register moved to the Chief Executive of the Attorney-General's Department (AGD). The register is available to be viewed at www.lobbyists.sa.gov.au.

The Lobbyists Act states that the register must be available for inspection by the public and must contain[63] certain information about each registered lobbyist, including:[64]

- their name (including any business or trading name), ABN and business address
- the names of all business partners or employees
- any condition of registration applying pursuant to s 13
- each 'return' provided by the person pursuant to s 8
- any details provided to the Chief Executive under s 11(1)(a) in relation to new lobbying agreements.

Section 8 requires a registered lobbyist to file (before the end of January) an annual return setting out:

- the name of each person/body on behalf of whom the person engaged in lobbying, or with whom the person had an agreement to engage in lobbying
- the name of each public official and the subject matter of the lobbying engaged in
- the name of any person employed by or otherwise engaged by the person to undertake lobbying (whether or not the person undertook lobbying).

Section 11(1) requires a registered lobbyist to notify the Chief Executive as soon as reasonably practicable after entering into any new agreement with a person or body to engage in lobbying.

61: It should be noted that, although responsibility for administering the scheme sat with the Chief Executive of DPC, the Lobbyists Act was committed to the Attorney-General pursuant to the *Administrative Arrangements Act 1994*.
62: The Lobbyists Act was committed to the Special Minister for State. See South Australia, *The South Australian Government Gazette*, No 37, 30 May 2024, p 1287.
63: Pursuant to s 12 the Chief Executive may determine that information is exempt from inclusion in the register if any of the criteria set out in s 12(a)–(e) are satisfied.
64: See ss 10(2) and 12.

LOBBYISTS REGULATIONS

Section 19 of the Lobbyists Act gives the Governor a power to make regulations, including those which regulate:[65]

- the conduct of persons who engage in lobbying
- the conduct of persons who employ or otherwise engage such persons.

Section 19(4) provides that the regulations 'may incorporate, or operate by reference to, a code of conduct'. The regulations, at present, neither incorporate nor operate by reference to a code of conduct. The *Lobbyists Code of Conduct 2009*[66] – a document prepared by the Department of the Premier and Cabinet – was rendered inoperative by clause 2 of Schedule 1 to the Regulations on 4 April 2016, the date that clause came into operation.[67]

LOBBYISTS (RESTRICTIONS ON LOBBYING) AMENDMENT BILL 2019

The Lobbyists Act has not been amended since it was passed, although a bill was introduced to do so in May 2019 by the former Attorney-General, the Hon. Vickie Chapman MP. The Lobbyists (Restrictions on Lobbying) Amendment Bill 2019 passed the House of Assembly but not the Legislative Council.

It would have, among other things, amended s 4 to make plain that a person who is an office holder of an organisation (including an employee or volunteer authorised to act on behalf of the organisation) who communicates with a public official on behalf of the organisation *is not* communicating on behalf of a third party. This would have addressed the ambiguity identified above (see Recommendation 2).

65: Section 19(2)(a).
66: Also known as the *South Australian Government Professional Lobbyist Code*. See below, 'Former position – pre-1995', for a discussion of this document.
67: It is noted, however, that the *Lobbyists Code of Conduct 2009* was, until recently, still publicly available through the DPC website in DPC Circular 32 dated October 2014. It can still be found here: https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/DPC-Circular-Lobbyist-Code-of-Conduct.pdf.

OTHER RELEVANT LEGISLATION AND ADMINISTRATIVE CONTROLS

PUBLIC SECTOR ACT 2009, *PUBLIC SECTOR CODE OF ETHICS* AND *PUBLIC SECTOR (HONESTY AND ACCOUNTABILITY) ACT 1995*

Both the *Public Sector Act 2009* (Public Sector Act) and the *Public Sector (Honesty and Accountability) Act 1995* (PS(HA) Act) are relevant to the regulation of the conduct of public sector employees and, therefore, some public officials under the Lobbyists Act.

The Public Sector Act most relevantly provides (s 6) that public sector employees must observe the public sector code of conduct. 'Public sector employee' means a chief executive or other employee of an administrative unit, or other employee of a public sector agency; it does not include a Minister. For the purposes of s 6 the Public Sector Act, the 'code of conduct' is the *Public Sector Code of Ethics* (Public Sector Code).[68] A breach of a disciplinary provision of the Public Sector Code amounts to misconduct and may give rise to disciplinary proceedings.[69]

The Public Sector Code sets out public sector values to which public sector employees must adhere[70] and prescribes professional conduct standards for all public sector employees,[71] some of which may be relevant in the context of lobbying. For example:

- public sector employees will not disclose official information acquired through the course of their employment other than as required by law or where appropriately authorised in the agency concerned
- public sector employees will not misuse information gained in their official capacity, including by seeking to use information for the personal benefit or gain of themselves or another
- public sector employees will ensure their personal or financial interests, or those of their family members or friends, do not influence or interfere with the performance of their role
- public sector employees will not seek or accept gifts or benefits for themselves or others such as could be reasonably perceived as influencing them in the performance of their duties and functions as a public sector employee.

In addition to the Public Sector Code, public sector agencies have internal administrative measures which address issues relevant to the risks associated with lobbying, based on the Public Sector Code.

The PS(HA) Act imposes obligations of honesty and accountability (including specific duties in respect of conflicts of interests) on corporate agency members, advisory board members, senior public officials, corporate agency executives, public sector employees and persons performing contract work. It does not apply to Ministers. Breaches of these obligations amount to criminal offences punishable by fines and imprisonment. Civil penalties may also be imposed.

68: See the *Code of Ethics for the South Australia Public Sector* OCPSE-CodeofEthics-18042024.pdf (publicsector.sa.gov.au).
69: Section 3(1) of the Public Sector Act.
70: Service, professionalism, trust, respect, collaboration and engagement, honesty and integrity, courage and tenacity, and sustainability. See the Public Sector Code, p 4.
71: Standards relate to professional and courteous behaviour, public comment, handling official information, use of government/public resources, conflicts of interests, outside employment, acceptance of gifts and benefits, criminal offences, and reporting unethical behaviour. See the Public Sector Code, p 5.

MINISTERIAL CODE OF CONDUCT

The *Ministerial Code of Conduct* (Ministerial Code),[72] dated July 2002, applies to all Ministers of the Crown in South Australia, in addition to laws which apply to persons generally and to Ministers (as 'public officers') specifically. A breach of the Ministerial Code may be dealt with by the Premier in his or her discretion and may result in, for example, the relevant Minister being asked to apologise, being reprimanded or being asked to stand aside or resign.

The Ministerial Code does not address lobbying specifically but addresses various matters relevant to Ministers' interactions with lobbyists. For example, the following 'General Standards of Conduct' have application in the context of dealings with lobbyists:

- Ministers are expected to act honestly, diligently and with propriety in the performance of public functions and duties, and to ensure that they do not deliberately mislead the public or Parliament on any matter of significance arising from their functions[73]
- Ministers must use reasonable endeavors to obtain all relevant information and facts before making a decision on a particular issue, should consult as appropriate, and all decisions made in an official capacity should be made to advance the interests of South Australians[74]
- Ministers have an obligation to be open and transparent, so it is important that information about portfolios be made available to the public and parliament (although information need not be disclosed if it is not in the public interest, is genuinely confidential in a commercial context, or if its disclosure is prevented by law).[75]

In addition, the Ministerial Code deals specifically with conflicts of interests. It imposes a duty on ministers to 'avoid situations in which their private interests conflict, have the potential to conflict or *appear* to conflict with their public duty',[76] and to advise the Premier (or, in the case of the Premier, Cabinet) in writing as soon as possible after becoming aware of any conflict between their public and private interests.[77] The Ministerial Code provides for the management of conflicts of interests and for dealing with a failure to disclose a conflict of interests (similar to the consequences for any breach of the Ministerial Code).[78] Guidance is given regarding dealing with specific kinds of conflicts of interests.[79]

72: See www.dpc.sa.gov.au/responsibilities/cabinet-and-executive-council/resources-and-publications/Ministerial-Code-of-Conduct.pdf
73: Ibid, clause 2.4.
74: Ibid, clause 2.5.
75: Ibid, clause 2.6.
76: Ibid, clause 3.1.
77: Ibid, clause 3.3. This obligation is in addition to the obligations to provide annual returns and notify Cabinet Office of private interests under the *Members of Parliament (Register of Interests) Act 1983*.
78: Ibid, clauses 3.6 and 3.7.
79: Ibid, clauses 4.1 to 4.9.

The Ministerial Code provides that Ministers must give certain undertakings upon taking up office which in effect prohibit:

- within two years of ceasing service, accepting (without the prior written permission of the Commissioner for Public Employment) an appointment with an organisation which could lead to public concern that the statements and decisions of the Minister, when in Government, may have been influenced by the hope or expectation of future employment with that organisation[80]
- disclosing to any person information to which they had access as a Minister which is not generally available to the public, and using such information to obtain a personal advantage or benefit not enjoyed by the general public.[81]

Appendix 1 to the Ministerial Code collates provisions of legislation said to apply to the conduct of Ministers (and Members of Parliament generally). It is worth noting that several of the Acts referred to in Appendix 1 have been amended or repealed since the Ministerial Code came into operation[82] such that the references in Appendix 1 are no longer accurate.

80: Ibid, clause 7.1. The criteria given are more specific, but it is evident from the wording of clause 7.1 that the purpose is to prevent public concern of the kind set out above.
81: Ibid, clause 7.2.
82: It appears not to have been amended since commencement.

STATE RECORDS ACT 1997 AND *FREEDOM OF INFORMATION ACT 1991*

Together, the *State Records Act 1997* and the *Freedom of Information Act 1991* (FOI Act) provide for the preservation and management of, and public access to, documents and records created and received by government agencies.

The State Records Act provides that agencies[83] must ensure that 'official records' are maintained in good order and condition, and not destroyed without appropriate authority. An 'official record' is a record made or received by an agency in the conduct of its business.[84] A 'record' can be written, graphic or pictorial, or a disk, tape, film or other object containing information on or from which information may be reproduced.

The FOI Act gives people a right to request access to documents held by government agencies. An 'agency' includes, *inter alia*, a Minister of the Crown; a person who holds an office established by an Act; a department or other administrative unit of the public service; and a municipal or district council. It does not include an 'exempt agency'.[85] A 'document' includes anything in which information is stored or from which information may be reproduced, but does not include an 'exempt document'.[86]

An application fee must accompany a request made under the FOI Act, and further processing fees may be applied by the agency to whom the request is made.[87] Applications should be dealt with by the agency to whom they are made as soon as practicable, and within 30 days, although this can be extended for a 'reasonable period of time'.

Agencies may determine to either grant or refuse (for the reasons set out in s 20) access to documents sought. A determination to grant access may be immediate or deferred. Access may be granted in various ways, including by giving the person an opportunity to inspect the documents or by giving the person a copy of the documents.

The FOI Act provides for a mechanism of review of determinations made regarding applications. An application for internal review can be made pursuant to s 29 for an application for access to documents, or s 38 for an application for the amendment of records. An application for external review can be made to the Ombudsman pursuant to s 39, or to the South Australian Civil and Administrative Tribunal pursuant to s 40.

83: 'Agency' under the State Records Act is defined differently – and more broadly – than under the FOI Act.

84: However, the following are not 'official records': records made or received for delivery/transmission to another person or body and so delivered; records made as a draft only and not for further use or reference; records received into or made for the collection of a library, museum or art gallery and not otherwise associated with the business of the agency; a Commonwealth record as defined by the *Archives Act 1983*; or a record transferred to the Commonwealth.

85: Exempt agencies are those referred to in Schedule 2 to the FOI Act or declared by regulation to be exempt. See the *Freedom of Information (Exempt Agencies) Regulations 2023*. They include the Independent Commission Against Corruption, the Office for Public Integrity, the Ombudsman, all Royal Commissions, the Parole Board, the Solicitor-General, the Crown Solicitor, the Director of Public Prosecutions, the Commissioner for Victim's Rights, and the Attorney-General in respect of functions related to the enforcement of the criminal law.

86: Exempt documents are those referred to in Schedule 1 to the FOI Act, and include: Cabinet and executive Council documents, documents affecting law and public safety, documents affecting inter-governmental or local governmental relations, documents affecting personal or business affairs, internal working documents, documents subject to legal professional privilege or secrecy provisions, and documents containing confidential material.

87: See s 19 of the FOI Act. Advance deposits may also be required to be paid before processing an application: s 17.

CRIMINAL LAW CONSOLIDATION ACT 1935

Part 7, Division 4 of the *Criminal Law Consolidation Act 1935* (CLCA) creates offences relating to 'public officers', which may be relevant in the context of lobbying. 'Public officer' has the same meaning as in the ICAC Act, and includes Ministers, Members of Parliament and public sector employees.

The offences created by Part 7, Division 4 including the following, are major indictable offences:[88]

- bribery or corruption of public officers (s 249)
- threats or reprisals against public officers (s 250)
- abuse of public office (s 251).

FORMER POSITION – PRE-2015

SOUTH AUSTRALIAN GOVERNMENT PROFESSIONAL LOBBYIST CODE OF CONDUCT 2009

Prior to the commencement of the Lobbyists Act, lobbying activity was regulated by the *South Australian Government Professional Lobbyist Code of Conduct 2009* (the Code).

Like the Lobbyists Act, the Code regulated 'third-party lobbying' only; other influencing activity fell outside the scope of the Code. The concept of 'lobbying' in the Code was broadly equivalent to that in the Lobbyists Act, one of the exceptions being that it encompassed *unpaid* lobbying, whereas the Lobbyists Act limits its scope to lobbying that is undertaken 'for money or other valuable consideration'.

A further distinction is that it regulated the conduct of both lobbyists *and* lobbied parties.

The Code required persons undertaking lobbying activity to be registered before having contact with a government representative. The register of lobbyists was maintained by the Department of the Premier and Cabinet (DPC) and was available on the DPC website.

Clause 4.1 of the Code prohibited a government representative[89] from 'knowingly and intentionally being a party to lobbying' by any person engaging in lobbying who was not on the register of lobbyists, or who had failed to observe 'the requirements of clause 4.3'.

Clause 4.3 required lobbyists, when making an initial contact with a government representative for the purpose of lobbying, to advise the government representative:

- that they were engaged as a lobbyist
- whether they were currently on the register of lobbyists
- that they were making contact on behalf of a third party, and the name of that third party
- the nature of that third party's issues.

88: Punishable by more than 5 years imprisonment: s 5(3) of the *Criminal Procedure Act 1921*.
89: 'Government Representative' had the same meaning as 'public official' in the Lobbyists Act.

The Code did not prohibit members of government boards from undertaking lobbying activities, but largely the same post service lobbying activity restrictions applied to Ministers, Parliamentary Secretaries, members of the SAES and Ministers' personal staff as apply currently under the Lobbyists Act.

The Code did not prohibit persons from registering as lobbyists by reason of having prior convictions, but required persons applying for registration to furnish details of any convictions for indictable offences and any offences of dishonesty. However, the Chief Executive of DPC could, in their discretion, decline to register a lobbyist if (among other things) of the view that any prior or current conduct of a lobbyist was inconsistent with general standards of ethical conduct.

The Code did not require lobbyists to submit annual returns of the kind required by s 8 of the Lobbyists Act, detailing all instances lobbying activity in the preceding calendar year. Rather, lobbyists were required only to provide a statutory declaration setting out more general information about their business registration, persons employed by them to carry out lobbying activities, third parties by whom they were retained to provide paid *or unpaid* lobbying services, and the names of persons for whom they had provided paid *or unpaid* lobbying services in the preceding three months.

The Code included 'Principles of Engagement with Government Representatives' to be observed by lobbyists, being to:

- not engage in corrupt, dishonest, or illegal conduct or cause or threaten any detriment
- use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies
- not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions or government or to political parties or to persons in those institutions
- keep strictly separate from their duties and activities as lobbyists any personal activity or involvement on behalf of a political party.

The Code applied to Ministers and Parliamentary Secretaries by direction of the Premier and to Ministerial staff and other public sector staff through its publication as a DPC Circular. It applied in conjunction with, *inter alia*, the Ministerial Code of Conduct and the Code of Conduct for Public Sector Employees.[90] A breach of the Code by a government official could amount to misconduct and be grounds for disciplinary proceedings, but the only means of enforcement of the Code against a lobbyist was deregistration.

90: This was later replaced by the *Code of Ethics for the South Australian Public Sector.*

CHAPTER 4
FUNCTION OVER FORM: WIDENING THE SCOPE OF REGULATED INFLUENCING CONDUCT

CHAPTER 4: FUNCTION OVER FORM: WIDENING THE SCOPE OF REGULATED INFLUENCING CONDUCT

DO THIRD-PARTY LOBBYISTS POSE THE ONLY RISK?

It is widely understood that 'third-party lobbying' represents only a small proportion of all conduct which is directed towards influencing government decision making.[91] It has been estimated that, in the federal context, only 20% of all persons who undertake influencing activity are third-party lobbyists required to register.[92] There is no reason to suppose that the proportion of third-party lobbyists is any different at the state level.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **[W]hat we regulate in Australia is third-party lobbyists, and that is only 20% of the whole lobbyist population. In-house lobbyists are quite a significant proportion that are not captured. And when you compare that to Canada and the United States, both third party and in-house lobbyists are captured by the regulation.**
>
> — Dr Yee-Fui Ng, Associate Professor, Monash University

The objectives of, and the activities undertaken by, third-party lobbyists, in-house lobbyists, collective lobbyists and those acting for not-for-profit agencies or interest groups are not significantly different from one another, yet the treatment of third-party lobbyists is vastly different to that of other kinds of influencers. The former must comply with the regulatory scheme, while the latter remain unregulated by government.[93]

The question that arises is: is this unbalanced treatment justified?

The analysis of corruption risks accompanying influencing behaviour in Chapter 1 and the case studies presented in this chapter (see *Case Study: Operation Daintree*) and throughout this report, suggest strongly that it is not. Rather than the risk of corruption being linked to the *kind* of influencing actor involved, the key to the risk of corruption is simply the *purpose* of the communication; that is, *persuasion*.

91: Yee-Fui Ng, 'Regulating the Influencers: The Evolution of Lobbying Regulation in Australia' (2020) Adelaide Law Review, pp 507–8.
92: Ibid.
93: Members of the Australian Professional Government Relations Association (APGRA) (which describes itself as the 'peak professional organisation for advisers in government relations') must abide by APGRA's Code of Conduct, which imposes certain behavioural standards. Membership of APGRA is not compulsory and doubtless does not include all (or most) of the non-third-party lobbyists in Australia. Compliance with APGRA's Code also does not include any publicly-accessible registration or activity disclosure requirements.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **[F]ocusing on the class of person or their job title becomes a who's in who's out argument, and that could go on forever. I think focus on what the activity is... if it's designed to achieve a purpose with a decision maker, then I think it's pretty clear that the activity would be classed as lobbying and should be subject to a regime.**
>
> — David Wolf, Deputy Commissioner,
> Independent Broad-based Anti-corruption Commission, Victoria

The three risk factors identified in Chapter 1 apply equally regardless of the 'class' of influencer. They are:

- secrecy or a lack of visibility
- undeclared or poorly-managed conflicts of interests
- pre-existing relationships.

The risks apply to other influencers, just as they do to third-party lobbyists.

THIRD-PARTY CLIENTS CAN HIDE BEHIND THE LOBBYIST

One argument often raised for including only third-party lobbyists in regulatory schemes – and possibly the primary reason why the current schemes stretch only this far – is that the relationship is obvious to government who *other* kinds of lobbyists represent: in-house lobbyists represent the interests of their employer company, collective lobbyists represent the interests of their members (for example, trade union members) and so on.

Third-party lobbyists, on the other hand, whose services can be procured by anyone, could provide a shield for their clients.

This view was exemplified by former NSW Premier Mike Baird:

> *By applying these [ethical] standards to all persons lobbying government ... it is not necessary to place in-house lobbyists and peak industry bodies on the Register, as its purpose is to primarily disclose to government officials whom lobbyists are acting on behalf of. There are no transparency issues for in-house lobbyists, as it is self-evident who they represent.*[94]

This argument suffers from at least three fundamental flaws. First, it assumes that the person being lobbied is the ultimate decision maker and not an intermediary. Second, it assumes the person being lobbied will act honestly and in the public interest. Third, implicitly it takes for granted that beyond disclosure of who lobbyists act for, lobbying regulation has little value.

While it is true that third-party lobbyists can add an extra layer of opacity, it is wrong to suggest that it is only the person lobbied who requires that visibility. It is also wrong to suggest that providing (some) visibility exhausts the value of a regulatory scheme.

94: Deidre McKeown, 'Who pays the piper? Rules for lobbying governments in Australia, Canada, UK and USA' (1 August 2024) Parliament of Australia Parliamentary Library <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp1415/LobbyingRules#_ftn65>. The quote was taken from a media release, *Transforming politics: tough new rules for lobbyists*, dated 13 May 2014.

VISIBILITY MUST EXTEND BEYOND THE TARGET OF LOBBYING

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **[Peak industry bodies] are not lobbyists where we represent a collective opinion and governments seek us out … My great concern is that the peak industry bodies, which are all very heavily regulated by comparison to the private sector, will be drawn into a level of bureaucracy and obligation that's difficult to justify.**
>
> **We're the ones that government come to seek an opinion from. We obviously approach government when we are concerned or advocating for better outcomes for our industry, but our core motivation, our core vision, remains to promote and protect our members. And I guess that's what differentiates us from perhaps individual lobbyists.**
>
> — Ian Horne, Board Member, Tourism SA

The Victorian IBAC's investigation in Operation Daintree did not result in findings of corruption. However, it provides an example of why it is important that the question of whose interests are being advanced is clear *not only* to those individuals to whom representations are made, but also to those upon whom pressure may subsequently be exerted, and to the public more broadly.

Case Study: Operation Daintree[95]

The Victorian IBAC investigated allegations of corruption in relation to the Department of Health and Human Services (the Department) awarding a contract valued at $1.2 million to a single provider, the Health Education Federation (the Federation), to train health workers.

It was alleged, and IBAC found, that no competitive process was followed in awarding the contract, that the Federation had only recently been established, had no relevant experience, was not a registered training organisation and for other reasons was a poor candidate for the contract. Directors of the Federation held executive officer positions at the Health Workers Union (the Union).

The secretary of the Union lobbied senior advisors to both the Premier and the Health Minister to award the contract to the Federation. The advisor to the Health Minister then assisted the Union to formulate an unsolicited proposal and submitted it to the Department. A deputy secretary of the Department authorised a non-competitive process in which only the Federation was invited to submit a detailed tender.

The contract was entered into hours before the government entered the caretaker period ahead of an election. Originally, it was planned that the contract would commence after the election, but the Department felt pressured by the Minister's office to bring its commencement forward to before the caretaker period.

IBAC found that senior ministerial advisors improperly intruded both in the process of the Department awarding the contract to the Federation, and in its management of the contract, exerting pressure to dissuade the Department from terminating the contract when it became apparent that the Federation could not deliver.

The Union was given privileged access and favourable treatment, and 'the proposal from [the Federation] raised a conflict between the government's interest in procuring the most suitable supplier for the training and the governing party's interest in assisting an affiliated union', [96] which conflict was not properly declared or managed.

The above example involved lobbying by a trade union directed to persons – ministerial advisors – who were not themselves decision makers, but who were able to exert pressure on decision makers. While it was clear to the ministerial advisors whose interests were being represented by the union, it was not known by the decision makers.

By directing influencing activity towards intermediaries – particularly those who may be sympathetic to their position – in-house lobbyists, peak bodies, unions, interest groups, etc. can effectively put the interests they represent in the same position as third-party lobbying clients. They achieve the same 'shield' that a third-party lobbyist might offer, but through the first 'layer' of public official.

95: The Victorian Independent Broad-based Anti-corruption Commission, Operation Daintree special report (19 April 2023) https://www.ibac.vic.gov.au/operation-daintree-special-report.

96: See the Victorian Independent Broad-based Anti-corruption Commission, Improper influence and bypassed procurement processes in Victorian Government health worker training contract (19 April 2023) https://ibac.vic.gov.au/improper-influence-and-bypassed-procurement-processes-victorian-government-health-worker-training.

IS IT ALWAYS 'SELF-EVIDENT'?

Of course, there may also be circumstances in which it is *not* 'self-evident' to a government representative whose interests are being represented, even by an in-house lobbyist or collective lobbyist.

This risk is particularly acute where there are pre-existing relationships, and where representations are made during informal interactions. Public officials may not even realise that they are being lobbied; the interaction may appear to be taking place only in the course of a friendship or other relationship.

Alternatively, knowing that they are being lobbied, public officials may make assumptions about whose interests are being represented, particularly where the person making the representation has multiple roles. The risk of this happening is heightened further when coupled with failures to disclose personal interests.

The earlier cited example of Obeid and the NSW Maritime Authority (see Chapter 1) provides clear evidence of such a risk occurring. In that case, the public official assumed that Mr Obeid made representations in his capacity as a Member of the Legislative Council, serving the interests of constituents, whereas he was acting in his own and his family's interests.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **I think that everybody, even the in-house lobbyists should be registered. [...] I do think it's a bit unusual that people who work in a company, or are not-for-profit for that matter, don't have to register like me and my team have to register. I think it's important that they should.**
>
> **The definition should be the purpose of the activity.**
>
> — The Hon. Christopher Pyne, Executive Director, Pyne and Partners

REGULATION PROMOTES NOT ONLY VISIBILITY BUT ALSO SUITABILITY AND ACCOUNTABILITY

The scheme created by the Lobbyists Act in South Australia – like its counterparts in other jurisdictions – has more than one purpose.

One purpose is to provide a degree of visibility over influencing activity directed towards public officials. Another purpose is to ensure that behavioural and ethical standards are observed by lobbyists. Although it will later be argued that the scheme at present does not go far enough to ensure such standards are maintained,[97] nevertheless it is clearly one of the purposes of the Act, even as it operates at present.

As canvassed earlier (see Chapter 3), a person cannot register as a lobbyist in South Australia (and therefore cannot lawfully undertake lobbying activity as defined under the Lobbyists Act) if they have ever been convicted of an indictable offence, or if, in the 10 years prior to applying for registration, they have been convicted of a summary offence of dishonesty.[98] A person registered as a lobbyist must advise the Chief Executive of any convictions which would preclude registration.[99] If a registered person is convicted of such offences, their registration must be cancelled.[100]

Further, the scheme includes 'revolving door' prohibitions and limitations, as outlined above (see Chapter 3). These prohibitions guard against known corruption and integrity risks associated with people moving directly from public service to lobbying. The risks are equally present whether former public officials move into lobbying consultancy, or to working directly with industry as in-house lobbyists, collective lobbyists or the like.

In other jurisdictions the regulatory regime also places ethical and other behavioural obligations on lobbyists. For example, Clause 12 of the *Australian Government Lobbying Code of Conduct* creates 'Principles of engagement with Government representatives' that must be observed by registered lobbyists. These include:

- the lobbyist or person must not engage in any conduct that is corrupt, dishonest or illegal, or unlawfully cause or threaten any detriment to a person
- the lobbyist or person must use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided by them to clients whom they represent, the wider public and Government representatives
- the lobbyist or person must not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to Government representatives, members or political parties or to any other person.

97: See Chapter 5.
98: See s 6(b)(i) of the Lobbyists Act.
99: See s 11(1)(b) of the Lobbyists Act.
100: See s 9(2)(a)(i) of the Lobbyists Act.

The *Australian Government Lobbying Code of Conduct* – like other similar codes in other Australian jurisdictions[101] – also regulates lobbyists' initial contact with government representatives, requiring disclosure of certain information:[102]

- that they are a lobbyist
- whether they are currently registered as a lobbyist
- the name of each of the clients on whose behalf they are lobbying the government representative, and the nature of the matters each client wishes to raise
- any prohibitions on lobbying arising from the 'revolving door' prohibitions in the Code of Conduct.[103]

Measures such as these go some way to ensuring that lobbying is conducted honestly, ethically and openly (at least to the extent that they ensure that the objects of influencing behaviour are aware that they are being lobbied, and the purpose of it), and that people who engage in such conduct are of good character.

It cannot be accepted that the need for such measures is confined to the approximately 20% of influencers who meet the description of 'third-party lobbyists', with the remaining 80% representing no risk at all.

APPROACHES TAKEN IN OTHER JURISDICTIONS

At present (with one minor exception) regulatory schemes in other Australian jurisdictions apply only to third-party lobbying.

The exception to this is NSW, where some aspects of the *Lobbying of Government Officials (Lobbyist Code of Conduct) Regulation 2014*((NSW) apply to all persons who lobby NSW government officials.[104] The scheme in NSW remains unbalanced in terms of the obligations imposed on third-party lobbyists and other lobbyists, but does at least go some way in dealing with the risks posed by influencing behaviour.

Importantly, however, a universal recommendation made by each of the NSW ICAC, Queensland CCC, Victorian IBAC, Tasmanian Integrity Commission and the Senate Standing Committee on Finance and Public Administration in their recently-published reports[105] examining lobbying regulation, was that the schemes should *not* be limited to third-party lobbying.

101: In a similar way to the now-defunct *South Australian Government Professional Lobbyists Code of Conduct 2009*, which has not been relevantly replicated in the Lobbyists Act or Lobbyist Regulations.
102: See clause 12(e).
103: 'Revolving door' provisions are those which prohibit or otherwise limit the direct movement from public officer to lobbyist.
104: These provisions apply some ethical standards to *all* lobbyists in NSW. Other provisions in the Regulations impose further ethical standards on third-party lobbyists only.
105: See Table 1.

The Victorian IBAC, Queensland CCC and Tasmanian Integrity Commission each recommended[106] a definition of 'lobbyist'/'lobbying activity' which focuses on the purpose of the activity being undertaken, to ensure that a far broader spectrum of influencers is required to register (and therefore meet the character and 'revolving door' tests) and a far broader range of influencing activity is required to be disclosed.

The NSW ICAC recommended[107] that the scheme in that jurisdiction be amended such that 'all professional lobbyists (third-party lobbyists and in-house lobbyists) be required to register'. It recommended '[e]xemptions for organisations that are small or lobby infrequently (based on the Scottish or Canadian systems)'.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **[I]n the US and Canada, there's this idea of a threshold of significance. So if people undertake a significant amount of lobbying activity – and that can be measured by the amount of time … spent on lobbying, or you spend a certain amount of money on lobbying or receive a certain amount of money lobbying, well you're covered. Because what we want is this Goldilocks regulation, not too much, not too little. So you want to cover all the significant players … but you don't want to capture the mums and dads trying to approach their MPs for personal matters because they're not really lobbyists.**
>
> — Dr Yee-Fui Ng, Associate Professor, Monash University

Both the Scottish and Canadian systems (referred to explicitly in the NSW ICAC's recommendation) take a broad approach to what constitutes 'lobbying', but there are exclusions from the requirement to register.

The **Scottish** system encompasses *paid* lobbyists only, including both consultants and in-house lobbyists. Unusually, the Scottish system includes face-to-face communications only, not written or other forms of communication. Other exemptions include lobbyists representing organisations with fewer than 10 full-time employees.

The **Canadian** regulatory scheme captures communication (oral or written) made 'in respect of' government decisions. The scheme requires in-house lobbyists to register if lobbying activities 'constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee'. Reportedly[108] a 20% 'rule-of-thumb' has developed: if more than 20% of one full-time-equivalent employee's time is spent lobbying, the organisation must register.

106: See the Queensland Crime and Corruption Commission (n 47); the Victorian Independent Broad-based Anti-corruption Commission, Corruption risks associated with donations and lobbying (12 October 2022) https://www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying; the Tasmanian Integrity Commission, Framework report: model for reform of lobbying oversight in Tasmania (14 June 2023) https://integrity.tas.gov.au/__data/assets/pdf_file/0004/710779/framework-report-model-for-reforming-lobbying-oversight-in-tasmania.pdf.

107: The New South Wales Independent Commission Against Corruption (Operation Eclipse) (n 49), recommendation 7, p 61.

108: The New South Wales Independent Commission Against Corruption (Operation Eclipse) (n 49), p 60.

The **United States** employs a 'threshold test' similar to that employed under the Canadian system, except that the threshold is a monetary one.[109] Lobbying firms must file a separate registration for each client, but will be exempt from filing a registration for a client if the total income from the client does not exceed or is not expected to exceed $3,000 during a quarterly period. Organisations employing in-house lobbyists file one registration, and are exempt from registering if its total expenses for lobbying activities do not exceed or are not expected to exceed $14,000 during a quarterly period.

The scheme adopted in **Ireland** employs a similarly broad definition of 'lobbying' for the purposes of registration and disclosure requirements and includes third-party lobbyists, in-house lobbyists, representative bodies, advocacy bodies and any person communicating about the development or zoning of land. With the exception of the last category regarding rezoning of land, threshold requirements apply:

- in-house lobbyists must be communicating for an employer with more than 10 employees
- representative bodies must have at least one employee communicating on behalf of their members, and the communication is made by a paid employee or office holder
- advocacy bodies must have at least one employee and must exist primarily to take up particular issues, and the communication is made by a paid employee or office holder
- third-party lobbyists must be acting on behalf of bodies as described above.[110]

A BALANCING ACT

The discussion to now demonstrates that the weight of opinion in Australia in recent times (certainly among anti-corruption agencies) has favoured a more inclusive approach to defining 'lobbying', and that this is consistent with international approaches.

It is also recognised that a balancing exercise must be undertaken. On the one hand there is a public interest in increasing transparency of lobbying and government decision making to guard against risks of corruption, and on the other hand there is also a public interest in ensuring that the populace can participate in the democratic process. This point was noted recently by the Senate Standing Committee on Finance and Public Administration:

> *[C]hanges to the definition of lobbying must not impede other forms of civic participation. This would include advocacy, research, and whistleblowing.*

109: See *Lobbying Disclosure Act Guidance 2008* (2 U.S.C. § 1601) s 4 https://lobbyingdisclosure.house.gov/amended_lda_guide.html.

110: Except that the communication is made by the third-party lobbyist and not an employee/office holder of the company/representative body/advocacy body.

The Commission received a number of submissions from 'collective lobbying' groups[111] to the effect that such bodies should not be brought into the regulatory scheme because they are not-for-profit organisations and to do so would create a significant financial and administrative burden. Submissions were also received from such groups in support of expanding the scheme to apply to collective lobbyists, pointing out that not all collective lobbyists enjoy the same levels of access to public officials and greater transparency would benefit smaller such organisations.[112]

In this regard it is important to remember that the scheme of lobbying regulation does not need to take an 'all or nothing' approach, in the sense that either *all* of the regulatory measures apply to a particular group of people or *none* of them do. There is scope for greater nuance.

One way to achieve this nuance – and the approach favoured by the Commission – is to reduce the obligations placed on *some* classes of people or organisations seeking to influence government by excluding them from the requirement to register as lobbyists (and consequently excluding them from the obligation to pay registration fees, meet character requirements, lodge activity returns, etc.) but nevertheless to require disclosure *by public officials* of lobbying activity undertaken by these classes of people.[113]

Such an approach is attractive because it allows for a greater degree of scrutiny of government decision making than currently exists, thereby offering many of the protections to public integrity that lobbying regulatory schemes are intended to bring, but without imposing an ongoing administrative or financial burden on small, 'sometimes' lobbyists.

Where precisely the line is drawn regarding which classes of influencer must register is a difficult question, and one which should be answered with the ideal of harmonisation of lobbying schemes in mind. However, it is clear from the matters canvassed in this chapter that the line cannot be drawn at third-party lobbyists, as it is currently.

As well as threshold tests based on lobbying activity levels, it is necessary to specifically exclude some kinds of influencing activity to ensure the smooth operations of government, that appropriate access to political representatives is respected, and that individuals' rights are not unnecessarily impinged upon.

Some such exceptions currently exist in the Lobbyists Act, but an expansion of the definition of 'lobbying activity' to encompass organisations such as unions and other employer/employee organisations would likely necessitate additional exceptions.

111: Permission was not given to publish these submissions.

112: For example, see the submission of the Australian Medical Association (South Australia) Inc https://www.icac.sa.gov.au/__data/assets/pdf_file/0009/1005489/SUB007-Submission-Australian-Medical-Association-12-September-2023-A712776.pdf.

113: See Chapter 5, where it is argued that greater obligations of disclosure of lobbying activity should be placed on public officials.

Appropriate exceptions might include:[114]

- communication between public officials in the ordinary course of government operations (for example, between members of parliament and members of the public sector)
- communications between constituents and local members about matters affecting them as constituents
- communication with a public official in a public forum (whether that communication is written, oral or in some other form)
- communication in response to a call for submissions or tenders
- communication by a professional engaged by an individual or organisation to represent their private interests in relation to, for example, a legal or employment issue.

The precise scope of these exceptions is a matter which requires further consideration. Consultation about this issue would be beneficial. The extent of any exception to the definition of 'lobbying activity' is necessarily dependent upon the extent to which, and manner in which, the current definition is broadened.

That the definition of 'lobbying activity' in s 4(1) of the Lobbyists Act be amended to broaden the scope of the scheme and focus on the *purpose* of the activity being undertaken.

It should include *all* conduct intended to influence the outcome of government decision making, regardless of the identity of the individual making the representation, whether they receive payment for making the representations, or on whose behalf they act.

RECOMMENDATION 4

That the requirement to register as a lobbyist, and the obligations which flow from registration, be subject to appropriate exceptions based on a threshold test of lobbying activity (drawing on international examples in Scotland, Canada and Ireland).

RECOMMENDATION 5

That the definition of lobbying be subject to exceptions designed to protect the smooth and practical operations of government, appropriate access to political representatives, and to ensure that individuals' rights are not unnecessarily impinged upon.

RECOMMENDATION 6

114: See, for example: the Tasmanian Integrity Commission, Model for Reform of Lobbying Oversight in Tasmania (14 June 2023) https://integrity.tas.gov.au/__data/assets/pdf_file/0004/710779/framework-report-model-for-reforming-lobbying-oversight-in-tasmania.pdf; *Integrity Act 2009* (Queensland), s 47.

CHAPTER 5
TWO TO TANGO: ASSIGNING RESPONSIBILITY TO BOTH PARTNERS IN THE LOBBYING DANCE

CHAPTER 5: TWO TO TANGO: ASSIGNING RESPONSIBILITY TO BOTH PARTNERS IN THE LOBBYING DANCE

LOBBYING-SPECIFIC OBLIGATIONS ON PUBLIC OFFICIALS

Of all the Australian jurisdictions which regulate lobbying, South Australia has the dubious distinction of being the only one which does not *explicitly* regulate public officials' contact with lobbyists.

The Commonwealth, Victoria and Tasmania each employ a Lobbying Code of Conduct which applies both to lobbyists and public officials. Other jurisdictions include lobbying-specific provisions in Ministerial or public sector codes of conduct. In NSW and WA directions have been issued (by the Premier and the Public Sector Commissioner, respectively) to the public sector to regulate contact with lobbyists.

TABLE 3:
EXAMPLES OF INSTRUMENTS SPECIFICALLY REGULATING CONTACT BETWEEN PUBLIC OFFICIALS AND LOBBYISTS IN AUSTRALIAN JURISDICTIONS

JURISDICTION	RELEVANT INSTRUMENT / PROVISION
Commonwealth	Australian Government Lobbying Code of Conduct, clause 6
New South Wales	Premier's Memorandum M2019-02 "Lobbyists Code of Conduct"
Victoria	Victorian Government Professional Lobbyist Code of Conduct, clause 4
Queensland	Ministerial Code of Conduct Code of Conduct for the Queensland Public Service, clause 4.2
Western Australia	Public Sector Commissioner's Instruction 16: Government Representatives Contact with Registrants and Lobbyists
Tasmania	Tasmanian Government Lobbying Code of Conduct, clause 4.1
Australian Capital Territory	Ministerial Code of Conduct 202, clause 5h.

The scheme created by the Lobbyists Act and Regulations, as outlined in Chapter 3, creates positive obligations – for registration and disclosure of annual activity returns – for lobbyists alone and, while public officials in South Australia are subject to various codes of conduct and directions,[115] none makes specific reference to contact with lobbyists.

115: For a discussion see Chapter 3.

The Commission enquired of all government departments to ascertain what policies existed to govern departmental employees' interactions with lobbyists. While all agencies pointed to various policies *relevant* to interactions with lobbyists (for example, gifts and benefits policies, conflicts of interests policies and unsolicited proposals policies), only one government agency had policy in place dealing *specifically* with lobbying.[116]

Instruments which specifically regulate public officials' contact with lobbyists are important for several reasons:

- they increase public officials' awareness of their vulnerability as targets of influencing behaviour and help to clarify the risks posed to public integrity by lobbying activity
- they provide clear guidance to public officials, lobbyists and the public more broadly regarding expected behavioural standards in the context of lobbying
- they provide a clear mechanism to ensure compliance with those behavioural standards, or consequences for failing to comply.

South Australia was not always an outlier. As discussed in Chapter 3, prior to the commencement of the Lobbyists Regulations in 2016, the South Australian Government Lobbyist Code of Conduct 2009 (Lobbyist Code) was in operation and contained both provisions applicable to lobbyists and to public officials.[117] It was similar in its operation to the Codes of Conduct operating at the Commonwealth level, and in Victoria and Tasmania (see Table 3, above).

The commencement of the Lobbyists Act required a revision of the 2009 Lobbyist Code,[118] but to abolish it entirely seems a case of throwing the baby out with the bathwater. Several important aspects of the Lobbyist Code – including those applicable to public officials – were *not* replicated by the Lobbyist Act and are *not* replicated in any other extant instruments.

Two clauses which both regulated *and protected* public officials, were particularly worthy of preservation:

> **Clause 4: Contact between Lobbyists and Government Representatives**
> *Prohibited contact between public officials and unregistered lobbyists and required lobbyists to disclose certain information to government representatives at their initial contact about a particular issue.*
>
> **Clause 8: Principles of Engagement with Government Representatives**
> *Created obligations on lobbyists to act honestly; take steps to ensure the truth and accuracy of information given to clients, government, and the public; not to misrepresent the nature or extent of their access to government, political parties or persons in those institutions; and keep personal involvement in or for a political party separate from lobbying activities.*

116: See the South Australian Environment Protection Authority (EPA), Corporate Governance Statement: Board of the Environment Protection Authority (August 2023) https://www.epa.sa.gov.au/files/15666_corporate_governance_statement_2023.pdf. It is worth noting that the Code of Conduct (endorsed by the Board in 2010 and annexed to Corporate Governance Statement dated August 2023) requires members approached by lobbyists to comply with the (now repealed) South Australian Government Lobbyist Code of Conduct.

117: For a more detailed discussion of the effect of the Code see Chapter 3.

118: The provisions of the Lobbyists Act rendered significant parts of the Code of Conduct obsolete; for example, definitional provisions, provisions relating to the establishment and administration of the Register, and provisions limiting involvement in lobbying post public service.

Such provisions exist in lobbying codes currently in operation in other jurisdictions and go some way to ensuring lobbying is conducted ethically and honestly and in compliance with the scheme.

That a Code of Conduct be made pursuant to s 19(4) of the Lobbyists Act with application both to lobbyists and public officials.

RECOMMENDATION 7

That the Code of Conduct incorporate those aspects of the South Australian Government Lobbyist Code of Conduct 2009 which were not replaced by the Lobbyists Act 2015, with appropriate amendments to reflect the legislated scheme. In particular:

Clause 4: Contact between Lobbyists and Government Representatives

Clause 8: Principles of Engagement with Government Representatives

RECOMMENDATION 8

Codes of Conduct in other jurisdictions[119] go further than this and place positive obligations on public officials to, for example, document all meetings with lobbyists. Such obligations benefit both the public interest, as well as public officers and lobbyists who act honestly and with integrity.

There is a degree of protection to be gained when standard processes are laid down, particularly where a power imbalance exists or where there is a pre-existing relationship that one side tries to exploit. A publicly-known procedure gives the party upon whom pressure is being exerted a 'shield' to absorb some of that pressure; they cannot, for example, omit details from the record, because there is a positive obligation on them to *include* those details.

That the Code of Conduct include guidelines to be followed when public officials meet with lobbyists addressing, for example,

- how meetings should be arranged
- where meetings should occur
- who should attend meetings
- the fact that meetings will be diarised and records kept regarding those matters required to be disclosed by lobbyists when contact is initiated (see Recommendation 8, above)
- how the content and outcome of meetings should be recorded.

RECOMMENDATION 9

119: For example, see the Final Model for Reform of the Tasmanian Lobbying Code of Conduct – Recommendation 7: Minimum standards for public officials interacting with lobbyists: Lobbying-framework-Board-workshop-outcomes-October-2023.pdf (integrity.tas.gov.au).

The Commission has investigated allegations of Ministers and their staff exerting pressure on public sector employees and members of the SA Executive Service to exercise decision making powers in a particular way, much in the same way as Ministerial advisors were found to have acted in the Victorian IBAC's investigation, Operation Daintree.

However, regulating contact *between* public officials is a complex issue. Ministers must be able to meet and freely exchange ideas with Chief Executives, advisors and public sector employees to facilitate smooth government, ensure the achievement of policy objectives and the delivery of services in a timely and efficient manner. This is a more nuanced situation than that involving contact between public official and lobbyists, and goes beyond the scope of this report.

PROACTIVE DISCLOSURE OF MINISTERIAL 'DIARIES'

The proactive publication of ministerial diaries is an important step in ensuring transparency of government decision making. It is not a requirement in South Australia at present. This puts our State firmly in the minority of Australian jurisdictions.

> **The level of disclosure of lobbying activity [is] very low in South Australia and most of Australia where we don't know how many times lobbyists are meeting with ministers and MPs and advisors and public servants ... [T]here needs to be greater transparency about who is lobbying and when and why.**
>
> — Dr Yee-Fui Ng, Associate Professor, Monash University

Ministers in NSW, Victoria, Queensland, Tasmania and the ACT proactively disclose their diaries in varying degrees of detail and frequency and at differing intervals. These diaries can be accessed through the internet (see Table 4, below).

Internationally, proactive ministerial diary or activity disclosures occur in the United Kingdom, New Zealand, the United States, Canada, Scotland and Ireland.[120]

120: The New South Wales Independent Commission Against Corruption (Operation Eclipse) (n 49) p 63.

TABLE 4:
MINISTERIAL DIARY DISCLOSURE SCHEMES IN AUSTRALIAN JURISDICTIONS

JURISDICTION	FREQUENCY	RELEVANT INSTRUMENT	LINK
Commonwealth	N/A	N/A	N/A
NSW	Quarterly	Premier's Memorandum M2015-05- Publication of Ministerial Diaries and Release of Overseas Travel Information	Ministers' diary disclosures | NSW Government
Victoria	Quarterly	Ministerial Code of Conduct, s 5.3	2024 ministerial diary disclosures | vic.gov.au (www.vic.gov.au)
Queensland	Monthly	Ministerial Handbook, clause 3.12	Ministers and Portfolios (cabinet.qld.gov.au)
WA	N/A	N/A	N/A
Tasmania	Twice per year (quarterly diaries)	Nil – voluntary	Department of Premier and Cabinet (dpac.tas.gov.au)
ACT	Quarterly		Ministerial Diaries Disclosure - Open Access Information (act.gov.au)

While criticism has been levelled at the lack of detail required by some ministerial diary disclosure schemes in Australia,[121] any scheme of proactive disclosure must be considered better – more transparent and accessible, timelier and less costly – than relying on Freedom of Information legislation to access such material.[122]

The issue of the proactive disclosure of ministerial diaries was considered recently by the Senate Standing Committees on Finance and Public Administration.[123] The Committee received submissions and evidence regarding the benefit of such disclosures in terms of transparency and accountability. Professor Anne Twomey submitted that disclosure requirements should extend to *all* parliamentarians, not just ministers.

The Committee recognised the value of ministerial diary disclosures in allowing for cross-referencing with disclosures made by lobbyists but made no specific recommendations in this regard.

121: See, for example: the New South Wales Independent Commission Against Corruption (Operation Eclipse), (n 49) p 65; the Tasmanian Integrity Commission, Research Report: Reforming Oversight of Lobbying in Tasmania (May 2022), p 31 https://integrity.tas.gov.au/__data/assets/pdf_file/0003/659721/research-report-reforming-oversight-of-lobbying-in-tasmania.pdf.

122: See Chapter 3 for a brief overview of the operation of the *Freedom of Information Act 1991*.

123: Australian Parliament House, Inquiry into access to Australian Parliament House by lobbyists (May 2024), Chapter 6 – Committee view and recommendations https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/LobbyistsAccessAPH47/Report/Chapter_6_-_Committee_view_and_recommendations.

Senator David Pocock published a dissenting report.[124] In recommending the development of a model for the monthly publication of ministerial diaries, Senator Pocock cited the following submission made by the Grattan Institute:[125]

> *Publishing ministerial diaries would enable journalists and others to know who ministers are meeting – and, perhaps even more importantly, who they're not meeting – which could encourage politicians to seek more diverse input.*

Importantly, this submission points to transparency through diary disclosures as being not just an anti-corruption measure, but also a good policy making measure. Seen like this, it is difficult to understand why such a measure would be opposed by policy and law-makers.[126]

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> **[E]nsuring that the community can see who the elected representatives are actually meeting with, I think it's really important. In the absence of that, there's suspicions or perceptions about what's occurring … But … a regime that's overly complex or burdensome will either mean that ministers might not seek to get that information or the compliance with the regime might fall away as well. And they're both really perverse outcomes.**
>
> — David Wolf, Deputy Commissioner,
> Independent Broad-based Anti-corruption Commission, Victoria

Two arguments often put in opposition to proactive disclosure are, first, that ministerial diaries will necessarily include personal, private and other irrelevant information and, second, that it would reveal information required to be kept confidential or in respect of which the public interest would by served by preserving confidentiality.

The answer to each is simple. What should be produced is not 'the minister's diary', but a document setting out specified relevant information, and excluding information which by law cannot be made public or in respect of which the public interest requires confidentiality be maintained.

Such an approach has been adopted by the Board of the Tasmanian Integrity Commission, following the Commission's examination of lobbying regulation in that jurisdiction. It is to be encompassed in a new Code of Conduct to be launched on 1 January 2025.[127]

124: Australian Parliament House, Inquiry into access to Australian Parliament House by lobbyists, Dissenting report from Senator David Pocock https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/LobbyistsAccessAPH47/Report/Dissenting_report_from_Senator_David_Pocock.

125: Ibid, 1.84.

126: In this regard, it is noted that the Freedom of Information (Ministerial Diaries) Amendment Bill 2022 was defeated in the South Australian House of Assembly due to lack of support by the Government. The Bill would have mandated proactive disclosure on a monthly basis of all meetings, events and functions attended by Ministers relating to their responsibilities. It is further noted that the Hon Frank Pangallo MLC proposed an Amendment to the *Lobbyists (Restrictions on Lobbying) Amendment Bill 2020* which would also have required proactive disclosure of Ministerial diaries. This bill was also defeated. See the submission of the Hon Frank Pangallo MLC: https://www.icac.sa.gov.au/__data/assets/pdf_file/0003/1005483/2.-Submission-Frank-Pangallo.pdf.

127: The Tasmanian Integrity Commission notes that launch of the new model will be dependent upon receiving sufficient resourcing. See the Tasmanian Integrity Commission, Reforming lobbying oversight in Tasmania (13 June 2024) <https://lobbyists.integrity.tas.gov.au/reforming-lobbying-oversight-in-tasmania>.

A key aspect of the new Code is a 'contact disclosure log' to be completed by public officials[128] within five working days of each contact with a lobbyist.[129] The entry is to specify:

- the name and title of the public official/s present
- the name and organisation/firm of the lobbyist
- the nature of the lobbying activity[130]
- the form of contact
- whether the person or entity engaged in lobbying is on the lobbyist register.[131]

The Tasmanian model has much to recommend it and will achieve an enviable level of transparency.

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> **[T]he downside of overregulating is that the ministers in the Westminster system will feel that the regulation of speaking to people who might be able to actually help them is so onerous that they avoid doing so. And therefore the areas from which ministers might get advice become limited to the public service … but they aren't the repositories of all wisdom and they are paid by the government.**
>
> — The Hon. Christopher Pyne, Executive Director, Pyne and Partners

A further argument raised against proactive disclosure is the administrative burden that it creates. It is certainly true that some level of administrative burden would follow from this requirement. It is, however, a burden borne by public officials already in many jurisdictions in Australia and internationally, without being crushing. It is also clear from the available ministerial diaries that the requirement to disclose meetings does not deter public officials from meeting with interested parties.

That the lobbying regulatory scheme incorporate a requirement (either legislated or through the recommended Code of Conduct) that ministers and shadow ministers must cause to be created and made publicly available on the internet 'activity disclosure records' detailing all communication with lobbyists, including where that communication is directed to their personal staff (that is, staff employed under ss 71 and 72 of the *Public Sector Act 2009*).

RECOMMENDATION 10

128: This means: a minister, secretary to cabinet or parliamentary secretary; a member of either house of parliament; a person employed as a Ministerial or political adviser; a head of agency appointed under the *State Service Act 2000* (Tas).
129: There are exceptions, but this will encompass 'any communication with a public official by a person or entity in an effort to influence decision-making regarding': making/amending legislation, developing/amending a government policy or program, awarding a government contract or grant, and allocating funding.
130: This requirement it referable to the definition of 'lobbying activity'.
131: It is noted that the Tasmanian model distinguishes between 'lobbyists' and 'registered lobbyists'. The former is broad and encompasses anyone engaging in 'lobbying activity', while the latter is limited to third-party and in-house lobbyists. Only 'registered lobbyists' are required to register.

That 'activity disclosure records' include at least the following information:

- when the communication took place
- what form the communication took (for example, in person, telephone, virtual, in writing)
- who was present during the communication
- the party whose interests were being represented
- the outcome sought by the party making the communication

but that information is not required to be published if it is required to be kept confidential (for example, by reason of the *Public Interest Disclosure Act 2018*) if it is genuinely considered desirable to keep the information confidential in the public interest, or if it is genuinely considered to be commercial in confidence.

RECOMMENDATION 11

That consideration be given to whether, where a communication with a lobbyist is genuinely considered to be commercial in confidence, 'activity disclosure records' should reflect the fact, but not the content, of the communication.

RECOMMENDATION 12

That 'activity disclosure records' be required to be published on a monthly basis.

RECOMMENDATION 13

That consideration be given to whether 'activity disclosure records' should be submitted to, held and published by the body responsible for administering the lobbying regulatory scheme so that they can be made publicly available through the same website as the Lobbying Register (that is, in the same way that the current annual returns required to be produced by registered lobbyists are submitted to, held and published by the Attorney-General's Department as administrator of the regulatory scheme).

RECOMMENDATION 14

LUNCHING OR LOBBYING?

A topic which resulted in lively debate at the Commission's Lobbying and Influence Public Forum was whether networking or other industry events which involve lobbyists mixing socially with public officials should be considered 'lobbying' and therefore disclosed by lobbyists.

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> **[I]f we're going to start classifying events like [the Australian Hotels Association Christmas Lunch] or industry awards where you invite politicians as some way of trying to secretly influence them, I think we've lost the plot.**
>
> — Ian Horne, Board Member, Tourism SA

A difficulty in classifying such events as 'lobbying' is that, as defined, lobbying necessarily relates to a specific issue. Conversation at such events may not. They may be social in nature and thus impossible to fit within the disclosure provisions that apply to lobbyists.

However, it is undoubtedly the case that such events help to 'grease the wheels' when it comes time for lobbyists to advocate for specific issues. This is normal human behaviour. We are inclined to listen to and assist our friends and acquaintances. It is also undoubtedly the case that relationship-building is often a long game. The kind of loyalty and trust that inclines decision makers to favour one cause over another – to compromise their impartiality – may take years to cultivate.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **[W]e've seen today that people who make the sausage want the sausage-making to continue behind closed doors. Even a social lunch … is part of making the sausage.**
>
> **That's what lobbyists do. That's what peak bodies do. They want to influence government to do the things that their clients and their members want. And if it's all fine, if there are no bags of cash being exchanged … why not disclose it? What's the risk?**
>
> — David Washington, Solstice Media

Attending functions hosted by stakeholders does not make a public official corrupt or mean that their decision making favours private over public interests, but it is relevant information to have in assessing the impartiality of their decision making.

A related issue is attendance at functions hosted by bodies such as Future SA and SA Progressive Business. These bodies describe themselves as networking organisations, linking business to the South Australian Liberal and Labor parties respectively. Each year they host dinners and lunches, networking functions, forums, round-tables and other functions. These events may be hosted or sponsored by private businesses, industry bodies and other non-government organisations. Membership to these organisations allows people direct access to senior party members, including those in parliament.

As with functions hosted by stakeholders, attending these functions does not make public officials corrupt, but it is relevant to the public to know who ministers, shadow ministers and other senior parliamentarians are meeting with, and with whom they may have an affiliation.

That ministers and shadow ministers be required to include attendance at networking events, awards nights, political fundraising events and other like functions in 'activity disclosure records'.

RECOMMENDATION 15

CHAPTER 6
LIFE AFTER LEADERSHIP: SLOWING THE 'REVOLVING DOOR' OF LOBBYING

CHAPTER 6: LIFE AFTER LEADERSHIP: SLOWING THE 'REVOLVING DOOR' OF LOBBYING

It is well documented that, in Australia as in other parts of the world, there is significant movement of people between public life – both in politics and the public sector – and lobbying, and vice versa.[132] Research suggests that almost 40% of lobbyists are former public officials.[133]

This movement is often referred to as the 'revolving door' of lobbying.

Movement between public office and lobbying poses corruption risks (or the *perception* of corruption) associated with:

- the misuse of confidential information gained in public office to benefit the private interests of lobbying clients
- leveraging relationships made while in public office to unfairly benefit the private interests of lobbying clients
- decision making in public office to benefit private parties with a view to securing lucrative employment (including consultancies) after public service.

Discussing the issue in the federal context, the Centre for Public Integrity observed:[134]

> *Our analysis reveals that many lobbyists … are often lobbying on behalf of entities which **donated significantly** to their parties and campaigns while in office, culminating in a nexus of corporate influence and quid pro quo between monied interests and elected representatives.*

In the same report, the Centre for Public Integrity noted that the revolving door admits ministers, members of parliament (including members of the opposition), ministerial advisors and senior public servants alike, citing numerous examples of non-ministerial public officers moving directly from public service to lobbying.

It was further noted that a 'vast number of former state government elected representatives and ministerial staff' commence work as registered Commonwealth lobbyists shortly after their public role. A similar observation might be made of the movement from Commonwealth public office to lobbying public officials in states and territories. This points to a need to consider regulating movement not only *within* jurisdictions, but also *between* jurisdictions.

132: For example, see: Peter Gearin and Anton Nilsson, 'The Mandarin and Crikey's 'revolving door' list: How power bleeds between politics and the Big Four', The Mandarin (online), 15 April 2024 https://www.themandarin.com.au/244130-the-mandarin-and-crikeys-revolving-door-list-how-power-bleeds-between-politics-and-the-big-four/.

133: Yee-Fui Ng, 'Australia's political donations and lobbying system is broken by design', Crikey. (online), 20 February 2024 https://www.crikey.com.au/2024/02/20/political-donations-lobbying-australia-reform/.

134: Centre for Public Integrity Research Report, Closing the revolving door: Corporate influence and the need for lobbying reform (1 May 2023) https://publicintegrity.org.au/research_papers/closing-the-revolving-door/.

EFFECTIVE MEASURES TO MITIGATE RISK

Aside from prohibitions on the use by former public officials of confidential government information, the approach taken to combat the risks of the revolving door across all Australian jurisdictions, and in many other countries,[135] is to impose a 'cooling-off' period between public service and employment as a lobbyist. That is, a mandated interval between leaving public office and commencing lobbying activity to reduce the likelihood of conflicts of interests occurring.

The length of cooling-off periods imposed by regulatory schemes both in Australia and internationally varies significantly, from six months[136] up to five years.[137]

There is also variance in *who* and *what* is prohibited. Most jurisdictions specify a limited class of former public officials to whom the post-separation employment limitations apply (e.g. ministers, parliamentary secretaries and senior public servants, rather than *all* parliamentarians and public servants) and many limit the prohibition during the cooling-off period to matters with which the person had dealings in the course of their public service.

To be effective, cooling-off periods must be long enough to 'allow for the dilution of influence and connections of the regulated person' and must also recognise that 'influence and networks do not develop only in relation to matters the subject of "official dealings"'.[138]

Also critical to the effectiveness of cooling-off periods are robust enforcement and compliance processes.

135: For example, Canada, Ireland, the United Kingdom, and the United States (for a summary of state prohibitions, see the National Conference of State Legislatures, Revolving Door Prohibitions (24 August 2021) https://www.ncsl.org/ethics/revolving-door-prohibitions).
136: For example, some of the states in the United States. Ibid.
137: A five-year prohibition exists at the federal level in Canada, but there is facility to apply for an exemption. See the Office of the Commissioner of Lobbying of Canada, 5-year post-employment prohibition on lobbying (n.d.) https://lobbycanada.gc.ca/en/rules/the-lobbying-act/5-year-post-employment-prohibition-on-lobbying/.
138: Centre for Public Integrity Research Report, (n 134).

JURISDICTIONAL DIFFERENCES IN 'COOLING-OFF' PERIODS

The current legislated post-separation employment limitations in South Australia are set out earlier in this report (see Chapter 3). Table 5 below provides an overview of equivalent provisions in other Australian jurisdictions, addressing *who* the provisions apply to, *what* conduct is subject to the prohibition, and for *how long*.

TABLE 5:
JURISDICTIONAL COMPARISON OF LOBBYING COOLING-OFF PERIODS

JURISDICTION	PUBLIC OFFICE	LENGTH OF LIMITATION
Commonwealth	Ministers and Parliamentary Secretaries	18 months (on any matter they had dealings with in their last 18 months in office)
	Staff of ministers/parliamentary secretaries (advisor level and above), members of the Australian Defence Force (Colonel level above or equivalent), agency heads and senior executives	12 months (on any matter they had official dealings with in the last 12 months of their employment)
South Australia	Ministers	2 years (all lobbying activity)
	Parliamentary secretaries, members of the SA Executive Services, ministers' personal staff	12 months (in respect of matters dealt with by the person in the ordinary course of holding office)
	Government board members	During the period of membership (all lobbying activity)
New South Wales	Ministers and parliamentary secretaries	18 months (on any matter dealt with in the course of carrying out portfolio responsibilities in the 18 months prior to leaving office
Victoria	Ministers and cabinet secretaries	18 months (on any matter with they had official dealings in their last 18 months in office)
	Parliamentary secretaries, people employed as executives (or equivalent) or ministerial officers	12 months (on any matter with which they had official dealings in their lasty 12 months in office/employment)
Queensland[139]	Premier, ministers, assistant ministers, Leader of the Opposition, Deputy Leader of the Opposition, councillors, ministerial staff members, assistant ministerial staff members, staff in the office of the Leader of the Opposition, chief executives and senior executive (or equivalent) members of the public sector	2 years (applies to lobbying for third-party clients if the activity relates to official dealings in which the person engaged in their official capacity in the 2 years before leaving office/ employment)
Western Australia	Members of either House of Parliament; Senators/MPs for WA in the Commonwealth Parliament; senior public sector executives; CEOs of various statutory bodies	12 months – but the prohibition on registration can be overridden by the Public Sector Commissioner
Tasmania	Ministers and parliamentary secretaries, persons employed as Head of Agency	12 months (on any matter that they had official dealings with in their last 12 months of office/ employment)
Australian Capital Territory	Members of the Legislative Assembly	18 months (on any matter that they had official dealings with in their last 18 months in office)
	Staff of Legislative Assembly members, public sector Head of Services/Director-General/ Executive	12 months (on any matter that they had official dealings with in their last 12 months of employment)
	Members of government boards, committees or other government entities	During the period of the appointment (applies to third-party lobbying, on any matter that relates to the function of the board, etc.)

139: The Integrity Act 2009 (Qld) was amended in 2024 to implement recommendations of the Queensland Crime and Corruption Commission. See the Influence and transparency in Queensland's public sector report, (n 47).

HOW DOES SOUTH AUSTRALIA REALLY STACK UP?

Looking at the above table, it might be thought that the position in South Australia is relatively robust.

However, there are significant deficiencies:

- members of parliament *other than* ministers and parliamentary secretaries are wholly excluded
- chiefs of staff and advisors to shadow ministers are omitted
- federal ministers and parliamentarians are omitted
- chiefs of staff and advisors to federal ministers and parliamentarians are omitted
- limitations for parliamentary secretaries, ministerial staff and senior public servants are 'issues based'
- the limitation periods for parliamentary secretaries, ministerial staff and senior public servants is short (12 months).

Aside from these deficiencies, important structures are missing from the Lobbyists Act and Regulations to enable *enforcement* of the lobbying restrictions, particularly as regards parliamentary secretaries, ministerial staff and senior public servants whose limitations are 'issues based'.

It is also important, when considering the above table, to note that each of the NSW ICAC, Victorian IBAC and Tasmanian Integrity Commission recommended amendments to the 'revolving door' restrictions currently in place in those jurisdictions, both in relation to the appropriate limitations on public officials (the *who*, *what* and *how long* discussed above), and appropriate measures to enforce those limitations.

The Queensland CCC similarly recommended amendments to the scheme in that jurisdiction, and the current position represents an adoption of those recommendations. Not only does the prohibition apply more broadly, it also requires former government representatives applying for registration to give the Integrity Commissioner a statement about their 'official dealings' in the two years prior to ceasing their public role[140] – an important step towards effective enforcement and compliance with the scheme.

It is fair to say that Queensland now has the most robust measures in Australia to combat the risks associated with the revolving door of lobbying.

140: 'Official dealings' means any of the following that the person engaged in as part of their ordinary duties on a regular basis:
- government or opposition business or activities
- negotiations, briefings and contracts
- the making or receipt of representations relating to government or opposition business or activities.

See the Queensland Integrity Commissioner, Fact Sheet: Amendments to the *Integrity Act 2009* (effective 28 May 2024) https://www.integrity.qld.gov.au/publications/assets/factsheet-amendments-integrity-act-effective-28-may-2024.pdf.

The NSW ICAC[141] recommendations included the following in respect of appropriate compliance and enforcement measures directed, in particular, at the 'issues based' limitations on lobbying:

- **Recommendation 14:** regulator may require a relevant former public official with a lobbying role during the cooling-off period to provide it with information re: terms/conditions and nature of employment or engagements undertaken during the period, whether that employment/engagement involves information gained during public office, and whether it involves or relates to any former portfolio functions or responsibilities pertaining to their former position as a public official
- **Recommendation 17:** if no new measures are adopted, a 'Former Public Officials' list be introduced, requiring all former public officials involved in lobbying to ensure they are named on the list for a period of four years after leaving office.

The Victorian IBAC[142] recommended that the government give consideration to the extension of the cooling-off period to former MPs and councillors; whether the current cooling-off periods are long enough; whether different periods should apply to different former officials (depending on the level of risk); and the adequacy of enforcement provisions.

WHAT CHANGES SHOULD BE MADE TO COOLING-OFF PROVISIONS

HOW LONG?

The Commission received written submissions supporting an increase in the length of the cooling-off period,[143] and observing that the current prohibitions 'appear to be narrow and of short duration'.[144] This is consistent with views expressed by civil society organisations[145] and anti-corruption and integrity bodies both in Australia and internationally.[146]

One respondent proposed extending the cooling-off period to five years for ministers, and at least two years for other regulated individuals, as being ideal 'to achieve the necessary dilution of the influence, connections and knowledge that these individuals establish in the course of their employment.'[147] In making this submission, the respondent pointed to the Canadian system which imposes a five-year restriction, but with capacity for the Lobbying Commissioner to make exemptions in appropriate cases.

141: The New South Wales Independent Commission Against Corruption (Operation Eclipse) (n 49) pp 70-72.
142: Victorian IBAC's special report on corruption risks associated with donations and lobbying (n 106) p 49.
143: Submission of the Hon Robert Simms MLC https://www.icac.sa.gov.au/__data/assets/pdf_file/0020/1005482/1.-SUB001-Submission-from-Mr-Robert-Simms-MP-18-August-2023-A708953.pdf; Submission of the Hon. Frank Pangallo MLC, https://www.icac.sa.gov.au/__data/assets/pdf_file/0003/1005483/2.-Submission-Frank-Pangallo.pdf.
144: Submission of the Law Society of South Australia https://www.icac.sa.gov.au/__data/assets/pdf_file/0005/1005485/3.-SUB013-Submission-Law-Society-South-Australia-18-September-2023-A713136.pdf; Submission of the Centre for Public Integrity https://www.icac.sa.gov.au/__data/assets/pdf_file/0005/1064642/SUB016-Submission-from-the-Centre-for-Public-Integrity-9-October-2023-A717322.pdf.
145: For example, see: the Centre for Public Integrity research report (n 134); the Transparency International Australia position paper (n 27).
146: For example, see: Committee on Standards in Public Life, Standards Matter 2 – Committee Findings: the effectiveness of standards regulation in England (June 2012), the UK Publishing Service https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993233/Committee_on_Standards_in_Public_Life_-_Standards_Matter_2_-_Report_of_Findings.pdf.
147: Submission of the Centre for Public Integrity https://www.icac.sa.gov.au/__data/assets/pdf_file/0005/1064642/SUB016-Submission-from-the-Centre-for-Public-Integrity-9-October-2023-A717322.pdf.

It is noted that a similar approach is taken in Western Australia. There, the Public Sector Commissioner (who is responsible for administering the lobbying regulatory scheme) can override legislated cooling-off periods.[148]

WHO?

The question of *who* should fall within the scope of the cooling-off period also arises. As noted above, the revolving door benefits not only ministers, but *all* members of parliament, whether from government, opposition or cross benches.

While the corruption risks might be thought most acute in the case of ministers, the risk does not end with them, and is not so negligible in respect of *other* members of parliament that they should remain wholly outside the scheme. The prevalence of other members of parliament moving into lobbying post-office[149] is indicative of how highly prized is such experience and the connections and knowledge it brings. Shadow ministers and those who hold the balance of power (a not uncommon situation) are likely to be heavily lobbied and may have significant influence, especially on the development of legislative policy.

Similar considerations arise in respect of staff employed by shadow ministers. It is difficult to justify the wholly different treatment of both groups.

There is precedent in Australia for expanding these provisions beyond ministers. Western Australia includes all members of both houses of parliament, and the Australian Capital Territory currently includes *all* members of its Legislative Assembly (and their staff), in the cooling-off period. Queensland includes the Premier, ministers, assistant ministers, Leader of the Opposition and Deputy Leader of the Opposition (and their staff).

A further consideration is whether former federal members of parliament should be included in the scheme. The *Integrity (Lobbyists) Act 2016* (WA)[150] prohibits persons who held office as a senator for WA or a member for the Commonwealth House of Representatives for an Electoral Division in WA from registering as a lobbyist during the period they hold office, and for a period of 12 months after ceasing to hold office.[151]

The inclusion of former federal ministers and members of parliament is justified on the basis that lobbyists do not conduct their business within one jurisdiction only, and their influence and access is not limited only to the jurisdiction within which they worked in public office. This is perhaps particularly the case with federal ministers and members of parliament, who *necessarily* have both a state *and* Commonwealth footprint.

In relation to the questions of both who and how long it needs to be acknowledged that, in a relatively small jurisdiction like South Australia, it is important to be mindful of the need to balance the protection against risks associated with the revolving door against allowing former public officials to find employment after public service. Adopting the suggested approach of allowing for an 'exemption' from a cooling-off period is an attractive way to approach this balancing task and introducing further flexibility into the scheme. Individual circumstances could be taken into account on a case by case basis, rather than attempting to craft a universal rule.

148: *Integrity (Lobbyists) Act 2016* (WA), s 14(3).
149: Peter Gearin and Anton Nilsson, 'The Mandarin and Crikey's 'revolving door' list: How power bleeds between politics and the Big Four', The Mandarin (online), 15 April 2024 https://www.themandarin.com.au/244130-the-mandarin-and-crikeys-revolving-door-list-how-power-bleeds-between-politics-and-the-big-four/.
150: See s 14(2).
151: With capacity for the Public Sector Commissioner to override the prohibition.

WHAT?

A further question arises as to *what* should be prohibited. That is, whether the cooling-off period should bring with it 'blanket ban' on lobbying across all groups of regulated people (as it is currently in respect of former ministers), or whether the limitation of not lobbying 'in respect of matters dealt with … in the ordinary course of' holding office or employment[152] should be maintained.

The Centre for Public Integrity submitted[153] that 'this distinction is artificial and should be abolished'. This is certainly true. As discussed above, the risks go beyond misuse of information, and include leveraging relationships. Relationships are not 'topic specific'.

To this it should be added that such a topic, or matter-specific restriction, is difficult to monitor and, at present, relies almost wholly on lobbyists' compliance. A blanket ban would be easier to monitor, but is substantially more restrictive and gives rise to issues of reasonable access to post public office employment.

For a topic, or matter-specific prohibition, to function properly, significantly more robust regulatory structures must be put in place than currently exist to record and monitor:

- persons who leave public office and to whom cooling-off periods may apply
- what matters former public officials dealt with in the ordinary course of their office or employment
- the matters in respect of which they undertake lobbying activity.

At present, the regulatory system is not equipped address these issues appropriately. This could be addressed either by amendments to the Lobbyists Act or Lobbyists Regulations.

At the very least, a comprehensive register of former public officials to whom cooling-off periods may apply ought to be maintained and made available to the administrator of the regulatory scheme to enable cross-checking to occur when a person applies for registration.

A further simple measure to bolster the current system would be to require lobbyists, when submitting lobbying activity returns, to give a signed assurance that they did not undertake any lobbying activity contrary to the restriction on their registration during the period covered by the return.

The strength and effectiveness of the cooling-off provisions would also benefit from specific education for outgoing public officers regarding their obligations under the Lobbyists Act.

152: Lobbyists Act, s 13(1)(b).
153: Submission of the Centre for Public Integrity https://www.icac.sa.gov.au/__data/assets/pdf_file/0005/1064642/SUB016-Submission-from-the-Centre-for-Public-Integrity-9-October-2023-A717322.pdf.

That the operation of s 13(1) be expanded to include:

- all members of the House of Assembly and Legislative Council in South Australia
- Ministers or shadow ministers in the Commonwealth Parliament
- Senators and members of parliament for South Australia in the Commonwealth Parliament
- Advisors to shadow ministers in the South Australian Parliament, and ministers and shadow ministers in the Commonwealth Parliament.

RECOMMENDATION 16

That the 'cooling-off' periods prescribed by s 13 be amended as follows:

- Ministers and shadow ministers of both the South Australian Parliament and Commonwealth Parliament – 3 years
- all other regulated former public officials – 2 years

but that the administrator of the regulatory scheme can exempt individuals from the restriction on lobbying for some or all of the specified period.

RECOMMENDATION 17

That the prohibition in respect of ministers and shadow ministers (of both the South Australian and Commonwealth Parliaments) apply to all lobbying activity, but that the prohibition relating to other regulated individuals apply to lobbying in respect of matters dealt with by the person in the ordinary course of their office or employment.

RECOMMENDATION 18

That, either through legislation or regulations, it be a requirement that a register of former public officials (in respect of whom a cooling-off period applies) be maintained by the South Australian government and made available to the Chief Executive responsible for the administration of the lobbying regulatory scheme. This register should record:

- personal details sufficient to identify the former public official
- the date on which they ceased to be a public official
- the capacity in which they were a public official
- portfolios in which the person was involved.

RECOMMENDATION 19

That, either through legislation or regulations, it be a requirement that registered lobbyists, when submitting lobbying activity returns (pursuant to s 8 of the Lobbyists Act), provide a signed assurance that they did not undertake any lobbying activity in disobedience to a restriction on their registration during the period covered by the return.

RECOMMENDATION 20

That, as part of standard exiting employment procedures, public officials in South Australia receive education about post-employment limitations and obligations under the Lobbyists Act.

RECOMMENDATION 21

CHAPTER 7
GRASSROOTS AND ASTROTURF: LOBBYING AND LOCAL GOVERNMENT

CHAPTER 7: GRASSROOTS AND ASTROTURF: LOBBYING AND LOCAL GOVERNMENT

Lobbying at the state and federal levels has tended to be the focus of attention for policymakers, the media, and the wider public. By contrast, despite its prevalence in Australia, lobbying efforts directed at local councils have received relatively little focus.[154]

As noted earlier in Chapter 3, the definition of 'public official' under the Lobbyists Act does not include members or employees of local government. The effect of this is that lobbying at the local government level in South Australia is wholly excluded from the regulatory scheme.

HOW IS LOCAL GOVERNMENT REGULATED?

South Australia's 68 councils are regulated under the *Local Government Act 1999* (LG Act). The LG Act does not address lobbying, but specifically addresses integrity and behaviour of both elected members and employees (although they are dealt with separately). These provisions provide broad guidelines for interactions between local government officials and parties whose intention is to influence council decisions.

Chapter 5 Part 4 of the LG Act addresses member integrity and behaviour, and incorporates provisions relating to a register of interests, gifts and benefits, conflicts of interests, and behavioural standards. Under s 75E the Minister for Local Government can publish behavioural standards applicable to elected members.

The *Behavioural Standards for Council Members*[155] came into effect on 17 November 2022. They govern general behaviour, responsibilities as a member of Council, and relationships with Council members and employees. Standard 1.2 requires members to '[a]ct in a way that generates community trust and confidence in Council', and Standard 2.7 requires members to '[u]se the processes and resources of Council appropriately and in the public interest.'

Chapter 7 Part 4 addresses employee integrity and behaviour, and similarly includes provisions relating to a register of interests, gifts and benefits, conflicts of interests, and behavioural standards for council employees. The adoption of employee behavioural standards under s 120A is at the discretion of individual councils, rather than being mandated by the Minister.

Neither elected members nor employees are 'public sector employees'[156] and therefore are not subject to either the Code of Ethics[157] or the *Public Sector (Honesty and Accountability) Act 1995*.[158]

154: Judy Skatssoon, 'The case for regulating lobbying in local government', Government News (online), 27 June 2021 https://www.governmentnews.com.au/the-case-for-regulating-lobbying-in-local-government/.
155: See the South Australian Department for Infrastructure and Transport, Office of Local Government: Conduct management framework https://www.dit.sa.gov.au/local-government/office-of-local-government/conduct-management-framework.
156: Under the *Public Sector Act 2009*.
157: *Code of Ethics for the South Australian Public Sector*.
158: Although they are 'public officers' for the purposes of the ICAC Act.

DECISION MAKING PROCESSES IN LOCAL GOVERNMENT

Councils are responsible for the delivery of essential services and the provision of public facilities tailored to the specific conditions of their communities. Examples include public health and aged care, community services, emergency management, rubbish and waste management, investment attraction and economic development, coordination of planning and building activities, and infrastructure provision and maintenance.

The relationship between council members, chief executive officers (CEOs) and employees is very important. Council members (on the advice of the CEO and council staff) determine the strategic direction taken by their councils and establish policies and plans to achieve those outcomes, while CEOs work together with employees to execute them. CEOs have extensive powers, delegations, authorities and duties. They are responsible for the effective management and operation of councils including policy implementation, financial and operational management and project delivery.[159]

The Commission's 2019 *Evaluation of the Practices, Policies and Procedures of the City of Playford Council*[160] highlighted the importance of communication between council staff and elected members. The evaluation noted sometimes poor communication between executive staff and elected members (for example, updates on important projects), which left members poorly informed about council activities and impacted upon the council's ability to make informed decisions on matters of public policy.

159: The South Australian Local Government Association, How decisions are made https://www.localcouncils.sa.gov.au/how-councils-work/how-decisions-are-made.

160: The South Australian Independent Commission Against Corruption, Evaluation of the Practices, Policies & Procedures of the City of Playford Council https://www.icac.sa.gov.au/__data/assets/pdf_file/0007/362950/Evaluation_of_the_City_of_Playford.pdf.

CORRUPTION VULNERABILITIES IN LOCAL GOVERNMENT

The Commission's *ICAC Public Integrity Survey 2021 – Local Government Insights*[161] found that political interference was considered the most acute corruption vulnerability facing councils in South Australia.[162] This is exacerbated by the smaller scale and close-knit character of the communities served by local government.[163]

Investigations by anti-corruption agencies in several Australian jurisdictions have exposed corruption arising from lobbying activity at the local government level. These cases have seen mayors and councillors personally compensated for favourable decisions on development proposals, upgrades to local facilities, and fiscal policy.

The Victorian IBAC's Operation Sandon[164] and the 2023 conviction of Luke Smith, a former Queensland Mayor, aptly demonstrate that local government officials may be attractive targets for corrupt approaches given the significant authority they exercise.

Case Study: Luke Smith and the luxury boat[165]

Luke Smith, the former mayor of Logan City Council, was found guilty of corruption and misconduct in 2018 following an investigation by Queensland's Crime and Corruption Commission (CCC).

The corruption charges stemmed from Mr Smith having received a luxury boat from a developer seeking to influence council decisions regarding a development application then being considered by council.

Mr Smith received the boat, undertook repairs and then sold it for $46,000, retaining the profits. In return he actively supported the developer's application. Mr Smith failed to disclose receipt of the boat on his register of interests.

161: Published in June 2022.
162: The South Australian Independent Commission Against Corruption, ICAC Public Integrity Survey (22 June 2022) https://www.icac.sa.gov.au/documents/web-ICAC-Local-Public-Integrity-Survey-2022-27.6.2022.pdf.
163: Ibid.
164: The Victorian IBAC's Operation Sandon report (n 20).
165: Talissa Siganto, 'Former Logan mayor Luke Smith gets suspended sentence after admitting to secret commissions and misconduct', ABC News (online), 10 March 2023 https://www.abc.net.au/news/2023-03-10/qld-former-logan-mayor-luke-smith-avoids-jail-time/102079096.

From its investigations, research and other activities the Commission has observed three broad areas of council activity that may be the target of lobbying activity:

1. **Planning and development (including capital works)**

   While councils in South Australia exercise less authority over planning and development approvals than in other jurisdictions, the risks of corruption are similar. Vulnerabilities lie in decisions regarding changes to land use, land zoning processes, and capital works projects.

   The combined total of South Australian councils' capital works budgets for the 2024/25 financial year is approximately $1.25 billion.[166] This includes a number of significant planned projects receiving funding by local councils:

   - **City of Norwood Payneham & St Peters:** $35 million for the Payneham Memorial Swimming Centre Redevelopment[167]
   - **Mount Barker District Council:** approximately $32 million for the Regional Indoor Aquatic & Leisure Centre[168]
   - **Barossa Council:** approximately $20 million for the Lyndoch Recreation Park redevelopment[169]
   - **Adelaide City Council:** approximately $15 million for the Central Market Arcade redevelopment[170]
   - **City of Holdfast Bay Council:** approximately $10 million for the Transforming Jetty Road Glenelg[171]
   - **Walkerville Council:** $10 million for the 39 Smith St recreation centre project.[172]

   The Commission does not suggest that any of these projects are infected with corrupt practices, simply that large-scale local development projects typically involve many interested parties and sometimes competing financial motives. The Commission's experience is that intense lobbying can sometimes attend these projects.

166: Based on an analysis of councils' capital works budgets for the 2024/25 financial year as per councils' annual business plans. At the time of writing, some councils' annual business plans were still in draft form and one was absent.
167: City of Norwood Payneham & St Peters, Payneham Memorial Swimming Centre Redevelopment https://www.npsp.sa.gov.au/projects/payneham-memorial-swimming-centre-redevelopment. The total cost of the development is $60 million.
168: Mount Barker District Council, Regional Indoor Aquatic & Leisure Centre https://www.mountbarker.sa.gov.au/infrastructure/major-projects/aquatic.
169: Barossa Gawler Light Adelaide Plains, Lyndoch Recreation Park to undergo $40 million redevelopment https://barossa.org.au/lyndoch-recreation-park-to-undergo-40-million-redevelopment/.
170: City of Adelaide, Market Square and Central Market Expansion https://www.cityofadelaide.com.au/development-infrastructure/infrastructure/infrastructure-projects/market-square-and-central-market-expansion/project-background/.
171: City of Holdfast Bay, Transforming Jetty Road Glenelg https://www.yourholdfast.com/transforming-jetty-road-glenelg.
172: Town of Walkerville, 39 Smith Street recreation centre https://www.walkerville.sa.gov.au/council/major-projects/39-smith-street-recreation-centre.

2. **Grants administration**

   Councils administer a variety of grants to support diverse community needs and initiatives, for example, community development grants, sports and recreation grants, and arts and culture grants.[173]

3. **Lease and license negotiations**

   Councils own a wide array of facilities, including multipurpose sites with playing fields, halls, community gardens, commercial spaces, tennis and netball clubs and kindergartens. Councils also grant leases or licenses to a variety of organisations, from small community and sporting clubs to state government agencies and commercial businesses. Recent publications by Ombudsman SA[174] highlighted the vulnerabilities to corruption, misconduct and maladministration in lease negotiation and management.

Officials working in local government may be just as likely to be targeted by lobbying as their counterparts in state and federal administration. Given the comparatively lower level of regulation and oversight – including the exclusion from the lobbying regulatory scheme – and the proportionally higher share of institutional influence wielded by individual council members, corruption vulnerabilities may be elevated within local government.

THE RISK OF 'ASTROTURFING' IN LOCAL GOVERNMENT

'Astroturfing' is the practice of creating the *appearance* of widespread grassroots support for something where in fact little support exists.[175]

In its 2018 report, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, the NSW ICAC identified astroturfing as one form of 'hidden lobbying'. It noted that 'if an organisation with commercial or policy interests can generate the appearance of genuine community support for (or opposition to) an issue, its chances of success are improved.'[176]

Interest groups benefit from the cultivation of legitimacy and credibility at the community level.[177] Genuine grassroots movements tend to enjoy a high degree of legitimacy, whereas private interests may not have the same credibility when engaging with public policymakers. As a result, they may create 'front groups' which may present as non-governmental organisations or advocacy organisations to disseminate their agendas.

173: The South Australian Local Government Association, Grants https://www.lga.sa.gov.au/members/financial-sustainability/grants.
174: Investigations into the Clare and Gilbert Valleys Council and Ombudsman SA, Summary Statement – Investigation – Clare and Gillbert Valleys Council (July 2024) https://www.ombudsman.sa.gov.au/__data/assets/pdf_file/0011/1054883/2022-02811-Summary-Statement.pdf; Ombudsman SA, Statement – Formal Resolution – District Council of Robe (June 2024) https://www.ombudsman.sa.gov.au/__data/assets/pdf_file/0020/1051094/Statement-Formal-Resolution-District-Council-of-Robe.pdf.
175: For example, see Adam Bienkov, 'Astroturfing: what is it and why does it matter?', The Guardian (online), 9 February 2021 https://www.theguardian.com/commentisfree/2012/feb/08/what-is-astroturfing.
176: The New South Wales Independent Commission Against Corruption, Corruption and integrity in the NSW public sector: an assessment of current trends and events (December 2018) https://www.icac.nsw.gov.au/prevention/corruption-prevention-publications.
177: Brieuc Lits, 'Detecting astroturf lobbying movements' (2020) Communication and the Public 5(3–4).

LOCAL GOVERNMENT INTEREST IN LOBBYING RISKS

The fact that members and employees of local councils are interested in the risks that lobbying presents at the local government level is evidenced by the interest shown in the Commission's current work on the topic.

A significant proportion of the in-person attendees at the Commission's May 2024 Lobbying and Influence Public Forum[178] came from the local government sector. They included mayors, deputy mayors and CEOs, with a further contingent of online attendees from local government, both metropolitan and rural councils.

Council attendees actively participated in the Forum, taking the opportunity to ask questions[179] of the panellists:

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

— Questions from council attendees:

'As a mayor, I am interested in hearing about changes needed to ensure that council members are held accountable for their 'potential' lobbying. What changes in regulatory procedures are necessary?'

'Should/can councils, who have repeatedly (over many years) been lobbied by a particular entity on the same issue/project, publicise this lobbying activity on its website or other public documents to demonstrate transparency with its community?'

'Councils often deal with well established, highly organised community action groups ... generally with charters or terms of reference that outline their objectives, advocacy, or lobbying agendas ... they command high degrees of access to mayors, elected members, executive staff. Where do they sit in this landscape?'

Aside from confirming that lobbying *does* occur at the local government level, these questions also seem to reflect a recognition among local government officials of the vulnerability – actual and perceived – of local government to corruption risks associated with influencing behaviour. This is bolstered by the fact that, following the Forum, the Commission received requests from local councils for education sessions about risks associated with lobbying. It is further confirmed by the fact that some elected members of some councils proactively disclose their activities at council meetings, including their meetings with stakeholders and interested parties.[180]

178: See Introduction.
179: Questions were posed through Slido, an audience interaction application, and were visible to both online and in person attendees via the application.
180: For example, see the City of Norwood, Payneham & St Peters, Council Meeting Minutes (5 August 2024), Item 4 – Mayor's Communication, p 1 https://www.npsp.sa.gov.au/files/22772_council_minutes_5_august_2024.pdf?v=542.

The Local Government Association (LGA) made a written submission[181] in response to the Commission's July 2023 Discussion Paper. The LGA describes itself as 'the voice of local government', providing 'leadership, support, representation relevant to the needs of [its] member councils'. The LGA engages closely with both state and federal government on a wide range of matters and advocates on federal issues as a constituent member of the Australian Local Government Association.

The LGA submission focused on its role as an advocate for local government (and therefore as a potential 'lobbyist' subject to the regulatory scheme), and on local councils' interactions with other tiers of government. It did not directly address lobbying *of* local councils.

The LGA submitted that local government already has significant transparency and accountability obligations. It noted, 'If local government were required to record and report every interaction with other governments, significant additional resources would be required.' The LGA urged the making of legislative amendments to clarify that the Lobbyists Act does not apply to intergovernmental relations, including interactions by the LGA on behalf of its member councils.

The question of intergovernmental relations is beyond the scope of this report. None of the recommendations made is intended to limit or regulate the way in which governments interact. The Lobbyists Act in its present form does not capture intergovernmental relations.

Whether the LGA engages in 'intergovernmental relations' or not is debatable. In a sense it is a member organisation like a trade union or a peak industry body, except that its members are part of government. Whether the LGA's activity should be an exception to the definition of 'lobbying activity' (see Recommendation 6, above) is a matter which should be given further consideration.

181: https://www.icac.sa.gov.au/__data/assets/pdf_file/0006/1005486/4.-SUB014-Submission-Local-Government-Association-A714119.pdf.

APPROACHES IN OTHER JURISDICTIONS

At present, only Queensland's lobbying regulatory scheme includes local government for all purposes.

The Victorian, Western Australian nor Tasmanian schemes do not include local government at all. The NSW scheme includes local government in limited ways:

- for the purposes of the prohibition on success fees – it is impermissible to receive a success fee for lobbying a local government official
- for the purposes of the limitations on post-public office employment – it is impermissible for former ministers and parliamentary secretaries to lobby local government officials during the 'cooling-off' period.

Both the NSW ICAC and the Victorian IBAC recommended[182] the extension of the lobbying schemes to local councils in recognition of the significant risk of corrupt lobbying occurring at that level of government. The IBAC described the exclusion of local government from the scheme as a 'significant gap'.

The Tasmanian Integrity Commission made no such recommendation given local government was not included in the terms of reference for its project.[183] It expressed the view that local government 'would likely require its own system that considered and incorporated the practical reality of capacity and resourcing for local government', noting that it would be an 'undue burden for councillors … to comply with the same regulatory requirements as members of Parliament.'

This may well hold true for local councils in South Australia. While it is the Commission's view that wholesale exclusion of local councils from the lobbying regulatory scheme is unjustifiable and problematic, a more nuanced approach to regulation for this tier of government may be needed. Precisely how such a scheme should operate requires further examination and close consultation with the local government sector.

That the lobbying regulatory scheme be extended to apply to local government.

RECOMMENDATION 22

That further consideration be given to the manner and extent to which the lobbying regulatory scheme, as it applies at the state government level, should apply at the local government level. This consideration should involve close consultation with the local government sector.

RECOMMENDATION 23

182: NSW ICAC Operation Eclipse report (n 49) Key Finding 5, p 10; Victorian IBAC Special report on corruption risks associated with donations and lobbying (n 106) Recommendation 3, pp 11–12.

183: Tasmania Integrity Commission, Framework Report: Model for Reform of Lobbying Oversight in Tasmania (14 June 2023), p 16 https://integrity.tas.gov.au/__data/assets/pdf_file/0004/710779/framework-report-model-for-reforming-lobbying-oversight-in-tasmania.pdf.

CHAPTER 8
EVALUATION OF THE DEPARTMENT FOR THE PREMIER AND CABINET AND THE ATTORNEY-GENERAL'S DEPARTMENT

CHAPTER 8: EVALUATION OF THE DEPARTMENT FOR THE PREMIER AND CABINET AND THE ATTORNEY-GENERAL'S DEPARTMENT

BACKGROUND TO THE EVALUATIONS

The South Australian Government Professional Lobbyists Code of Conduct 2009 (the Code), the predecessor to the Lobbyists Act, was issued as a Department of the Premier and Cabinet (DPC) Circular. The scheme of registration created by the Code was administered by DPC.

The Lobbyists Act commenced on 4 April 2016. Under s 5 of the *Administrative Arrangements Act 1994* it was committed to the Attorney-General, but between its commencement and 30 May 2024, responsibility for administering the scheme created by the Lobbyists Act and Regulations remained with the Chief Executive of DPC.

On 30 May 2024, machinery of government changes came into effect. The Lobbyists Act was committed to the Special Minister for State,[184] but responsibility for maintaining the register moved to the Chief Executive of the Attorney-General's Department (AGD).

For this reason, the Commission has conducted an evaluation of the practices, policies and procedures of both DPC and the AGD under s 40(2) of the ICAC Act, insofar as they relate to the administration of the lobbying scheme.

Appropriately, having regard to the work being undertaken by the Commission, the Chief Executive of AGD took the view that administration of the scheme should continue under her as it had under the Chief Executive of DPC. Accordingly, observations made by the Commission regarding the practices, policies and procedures of DPC are relevant and applicable notwithstanding the change in administration.

Throughout this chapter, DPC and AGD will be referred to collectively as 'the Department', unless there is reason to distinguish between the two.

184: Pursuant to s 5 of the *Administrative Arrangements Act 1994*. See The South Australian Government Gazette, No 37, 30 May 2024, p 1287.

WHO SHOULD ADMINISTER THE SCHEME?

Before setting out the findings of the evaluations it is appropriate at this point to address what the Commission considers to be two critical issues.

Issue 1: Regulatory independence

First, the scheme should be regulated and administered by an independent body.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **'[T]he scheme should not be regulated as it currently is in South Australia because of the potential for actual and also perceived conflicts of interests that arise where you have part of the executive overseeing the executive.'**
>
> — Dr Catherine Williams, Executive Director, Centre for Public Integrity

South Australia is one of only three jurisdictions in Australia in which responsibility for overseeing the regulatory scheme does not sit with a person or body independent of executive government. In each of NSW, Victoria, Queensland, Western Australia and Tasmania the scheme is overseen by an independent statutory office holder, as set out in Table 6, below.

TABLE 6:
BODIES RESPONSIBLE FOR ADMINISTERING LOBBYING REGULATORY SCHEMES BY JURISDICTION

JURISDICTION	RESPONSIBLE BODY	REGISTER LOCATION
Commonwealth	Attorney-General's Department	www.ag.gov.au
South Australia	Attorney-General's Department	www.lobbyists.sa.gov.au
New South Wales	NSW Electoral Commission	www.elections.nsw.gov.au
Victoria	Victorian Public Sector Commission	www.lobbyists.vic.gov.au
Queensland	Queensland Integrity Commissioner	www.integrity.qld.gov.au
Western Australia	WA Public Sector Commission	www.lobbyists.wa.gov.au
Tasmania	Tasmania Integrity Commission	www.lobbyists.integrity.tas.gov.au
Australian Capital Territory	Legislative Assembly for the ACT	www.parliament.act.gov.au

The benefits of an independent regulator are clear. They were summed up succinctly by the Senate Standing Committee on Finance and Public Administration in its examination of the Commonwealth scheme (the other jurisdiction in which the Attorney-General's Department is the regulator):[185]

> *Evidence from the NSW ICAC and Professor Ng both noted that independent administration is best practice because it removes the real or perceived conflict of interest that exists under the current regulatory arrangements where the executive government is responsible for regulating its own relationships.*
>
> *The committee agrees that independent regulation would remove this potential conflict of interest.*

The potential for conflicts of interests to occur between the regulator and the regulated is already high as the scheme stands now, particularly considering how frequently both DPC and AGD are likely to be in contact with lobbyists of all persuasions. But this risk would become unacceptably elevated if recommendations made in this report – especially those regarding regulation of the lobbied party – are adopted and implemented.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

'I think it's a fair criticism that the current regulatory regime in Canberra is about registration as opposed to having any kind of follow up to people actually complying with the regulations and with registrations. And I think it's probably fair that we need to have an independent regulator as opposed to being part of the government.'

— The Hon. Christopher Pyne, Executive Director, Pyne and Partners

Issue 2: Resourcing and powers

The **second** critical point to be made is, the regulator must be given sufficient resources and powers to undertake compliance and enforcement functions.

In some respects the Lobbyists Act has some 'bite' – it is one of the few such Acts in Australia to impose criminal sanctions. However, what is lacking is the capacity to detect, investigate and appropriately deal with any breaches which do occur. As is set out below, an extraordinarily small administrative and financial budget is allocated to the regulation of the scheme, and those administering it have very few tools available to them to ensure compliance.

One submission received by the Commission described it as 'peculiar' that the South Australian scheme, enshrined in legislation and armed with criminal sanctions as it is, is still administered by the Chief Executive of a government department, as it was when it existed only as the South Australian Government Professional Lobbyists Code of Conduct.

185: Australian Parliament House, Access to Australian Parliament House by lobbyist – Full Report (May 2024), 6.22–6.23 https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000307/toc_pdf/AccesstoAustralianParliamentHousebylobbyists.pdf.

Bearing these things in mind, who should regulate and administer the scheme?

In the Commission's view, the best and most obvious body to perform this function is – if given adequate funding to do so – the Ombudsman.

The Ombudsman is independent of the executive arm of government, and already performs both regulatory and investigative functions. The Ombudsman has powers under the *Ombudsman Act 1972* (SA) that would be appropriate to undertake the task of ensuring compliance with the provisions of the Lobbyists Act. The Ombudsman is also unlikely to be the subject of regulated lobbying activity, and therefore better placed than other parts of the executive government to be truly independent, and to be seen to be independent.

LOBBYING AND INFLUENCE PUBLIC FORUM, 9 MAY 2024

> **'[W]e really need to have in place an independent regulator with sufficient powers and – really importantly – sufficient resources to be able to enforce compliance with the regime.'**
>
> — Dr Catherine Williams, Executive Director, Centre for Public Integrity

That the scheme created by the Lobbyists Act and Lobbyists Regulations should be regulated and administered by the Ombudsman.

RECOMMENDATION 24

INFORMATION RELIED UPON

In undertaking the evaluations of DPC and AGD the Commission relied upon information from the following sources:

- information obtained as part of the lobbying and influence project generally (that is, information which forms the basis for the balance of this report)
- correspondence received from the Chief Executive of DPC in response to questions asked about the administration of the scheme
- DPC internal document, *Processes – SA Lobbyist Register* ('DPC Processes Document'), which sets out written instructions to the officer responsible for operating the administrator side of the register
- AGD internal document, *Administration of the Lobbyist Register* ('AGD Administration Document'), which sets out written instructions to the officer responsible for operating the administrator side of the register
- interviews and discussions with relevant officers from DPC and AGD
- information publicly available from the Lobbyists Register and website.

The AGD Administration Document in substance reproduces the DPC Processes Document. Except where there are relevant areas of difference, the below discussion refers only to the DPC Processes Document.

ABOUT THE REGISTER OF LOBBYISTS

The lobbyists register is publicly available through the internet, at ww.lobbyists.sa.gov.au.

The register came into existence as part of the implementation of the Code in 2009 and was published on the DPC website. It continued after the commencement of the Lobbyists Act in 2016. In 2019 DPC introduced an online portal which is still in operation. Through the portal, lobbyists can:

- apply for registration
- update details
- surrender registration
- lodge an annual return.

Members of the public can access the register and obtain information about lobbying businesses and their employees under the titles, 'People Undertaking Lobbying Activities' and 'Other Employees'. Information is organised according to 'active' and 'inactive' lobbyists.

Users can see all registered employees of the lobbying business (including former registered employees) and all listed clients of the business (including former listed clients). Users can also see whether any of the employees who undertake lobbying activities are subject to any restrictions on their registration (under s 13(1)(b) of the Lobbyists Act) although no details of the restrictions are available.

Annual returns lodged by all lobbying businesses are publicly accessible and searchable, either by calendar year or by lobbyist business.

As at August 2024, in the *Active Lobbyists* register, there are:

- 121 registered lobbying businesses[186]
- 649 employees registered[187]
- 1,338 clients recorded.[188]

186: Of these, there are 34 from South Australia, 34 from New South Wales, 22 from Victoria, 14 from the Australian Capital Territory, 12 from Queensland, 3 from Western Australia, 1 from Tasmania and 1 redacted.
187: Of these, there are 510 'Persons undertaking lobbying activities', 139 'Other employees or persons engaged by the lobbyist', 499 with no 'Employee end date' recorded, and 1 employee with restrictions on registration noted.
188: Of these, there are 550 with no 'Client end date' recorded.

REGISTRATION PROCESSES

To register, lobbyists must create a password protected 'profile' and provide the following information:

- business name, trading name and Australian Business Number
- address and internet address (optional)
- name, position and contact details of a 'Responsible Officer'[189]
- owner/s (of the business).

They must also provide details of all employees, both 'People Undertaking Lobbyist Activities', and 'Other Employees'.

All persons listed as 'People Undertaking Lobbyist Activities' must sign and upload a Statutory Declaration, a template for which can be found on the website. Statutory Declarations are not required to be filled out by 'Other Employees'.

The Statutory Declaration requires the person to make the below declaration:

> **Do solemnly and sincerely declare that:**
>
> (a) The information provided for the purpose of the register of lobbyists, established under the *Lobbyists Act 2015* (SA), is true and correct to the best of my knowledge and belief
>
> (b) I have never been convicted of an indictable offence, and
>
> (c) I have not, in the past 10 years, been convicted of a summary offence of dishonesty.
>
> *Please initial/sign and date each page and have your witness initial/sign each page.*

The DPC Processes Document states, in relation to the Statutory Declaration,

> *A person cannot undertake lobbying until their complete statutory declaration is provided. This is because we need to be satisfied that the person is entitled to be registered and the stat dec is our only assurance of this.*

In relation to restrictions on lobbying activity (due to s 13(1)(b) of the Lobbyists Act), registrants must make a selection in an online form. The Processes Document states,

> *Where an employee has selected the option* Section 13 (1)(b) of the Lobbyists Act *contact the Responsible Officer to ask for written (email) confirmation of the restriction ie the office held and the date of termination. This can then be kept on the lobbyist's file in Objective.*

The DPC Processes Document does not provide any further guidance about how to approach restrictions upon a person's registration.

Section 7(2) of the Lobbyists Act provides that the Chief Executive may, by notice in writing, require a person to provide information or further information in connection with an application for registration. The Chief Executive may require that it be verified by statutory declaration. Information received from the Department is that, although *clarification* is frequently sought in relation to information provided due to incorrectly completed applications, there has been no occasion on which further information has been sought.

189: The 'Responsible Officer' is the contact person for any matters relating to the listing on the register.

The AGD Administration Document sets out a process by which the administrator, with the assistance of Cabinet Office, can cross-check information from the Boards and Committees Information System to ensure applicants for registration and 'active' registered lobbyists are not members of any South Australian Government Boards.

The AGD Administration Document provides that the process should be undertaken:

- when a new lobbyist registration is received (either as a new company registration or an additional lobbyist to a current registration)
- on an annual basis.

AGD staff advised that the annual cross-checking procedure will occur immediately after the annual returns process is finalised in February or March of each year.

ANNUAL FEE AND RETURN PROCESSES

The portal is open to receive annual returns from 1 January each year. Returns must be filed by 30 January.

The DPC Processes Document provides a timeline for contacting all registered lobbyists at least one month prior to the due date, followed by reminder emails prior to the due date. The administrator is prompted to check the status of all annual returns on 1 February each year, and a process is set out to follow up outstanding annual returns. Follow up steps escalate from email to telephone contact. If no return is filed within a specified period, the lobbyist will receive an email warning that they must file within 5 business days or their registration will be cancelled. If no response is received by the appointed time the administrator is prompted to forward a Minute to the Chief Executive recommending cancellation.

The Department advised that a small number of lobbyists have been removed from the register for failure to lodge annual returns.

The Department advised that, since the introduction of the online portal, which produces pre-populated forms for annual returns (based on known data such as the clients of registered lobbyists), administrative errors[190] on the part of lobbyists have decreased markedly.

The Department advised that, notwithstanding this, it is common for annual returns to lack detail regarding the subject matter of lobbying activity (s 8(1)(a)(iii). The Commission was advised,

> *Lobbyists will commonly provide a generic one-word subject, such as 'contract' or 'lease', which [the Department] considers insufficient to meet the requirements of the Act.*

The Department advised that when this occurs, lobbyists are asked to provide greater detail in order for the annual return to be considered compliant with the requirements of the Act. It is noted, however, that the Processes Document does not provide any guidance to the administrator regarding the level of detail required to comply with the Act.

190: Such as including information that was inconsistent with their registration; for example, omitting a known client, including a new client, or specifying dates that did not align with their period of registration.

The level of detail provided in annual returns varies significantly (Examples in Figure 1, below).

FIGURE 1:

EXAMPLES OF ANNUAL RETURNS SUBMITTED BY REGISTERED LOBBYISTS AND PUBLISHED ON THE REGISTER

Clients

Client Name	Subject Discussed	Name of Public Official(s)
Mt Barker District Council	infrastructure development	Julia Waddington Powell ,Sam Hooper, Rob Lucas, Sam Lees, Gino Gegenarro, Nick Reade, Courtney Morcombe, Paula Overy, Lee Oldenwalder, Tom Koutsantonis, Stephen Mullighan, Oliver Everett, Dan Cregan, Evan Knapp, Jon Whelan, Andy Excell, Damian Walker, Nic Kimberley, Blair Boyer, Peter Labropoulous, Joe Szakacs, Daniel Alexandrides
NeuRizer Pty Ltd	Leigh Creek Development	Rob Lucas, Gino Degenarro, Esther Tonkin, Rowan Thomas, Dominic Kelley, Courtney Morcombe, Richard Yeeles, Stephen Patterson, Mehdi Doroudi, Daniel Alexandridies, Mathew Leyson, Geoff Brock, Claire Scriven, Paul Heithersay, Tom Koutsantonis, Nick Champion, James Agness, Reggie Martin, Annabel Wilkins, John Atkinson, Peter Labropoulous, Leonie Muldoon, Edit Musci, David Reynolds, Michael Malavazos, Nick Panagopoulos, Kerry Nicole, Lee Kinnear, Peter Boulton, Lee Webb, Keith Baldry, Andrew Cartland, Vicki Beard, Heidi Girolamo, Nicola Centafanti,

Clients

Client Name	Subject Discussed	Name of Public Official(s)
Argonaut Resources NL	Nil	Nil
Backpacks 4 SA Kids	Nil	Nil
Big Red Group Pty Ltd	Introduction to the Big Red Group and its supplier footprint across Australia	Hon Steven Marshall MP, Member for Dunstan (post March 2022 state election)
Big Red Group Pty Ltd	Introduction to the Big Red Group and its supplier footprint across Australia	Mr Rik Morris, Chief Executive, Premier's Delivery Unit
Big Red Group Pty Ltd	Introduction to the Big Red Group and its supplier footprint across Australia	Hon Jing Lee MLC (post March 2022 state election)
Big Red Group Pty Ltd	Introduction to the Big Red Group and its supplier footprint across Australia	Ms Chantal Ward, General Manager, Global Markets & Trade, South Australian Tourism Commission

Clients

Client Name	Subject Discussed	Name of Public Official(s)
ADELAIDE LUTHERAN SPORTS CLUB	Nil	Nil
Adelaide Symphony Orchestra	Nil	Nil
AT Space	Site visit and introductions	The Hon Heidi Girolamo MLC
AT Space	Site visit and introductions	The Hon Stephen Patterson MP
AT Space	Space industry	The Hon Peter Malinauskas MP
AT Space	Space industry	The Hon Susan Close MP
Austofix Australia Pty Ltd	Nil	Nil
Besix Watpac	Introductory meeting	Jack Batty MP

Although s 8(1) provides that the Chief Executive can require the payment of an annual fee by lobbyists (to be paid by 30 January each year), no fee is currently (or has ever been) fixed.

EXCLUSION OF INFORMATION FROM ANNUAL RETURN AND REDACTION OF REGISTER

The Processes Document sets out procedures to follow in the event that a lobbyist applies through the portal to exclude information about their registration or annual returns from the register.

Where the application relates to redaction of a lobbyist's home address, approval may be given without notifying the Chief Executive. Other requests require approval of the Chief Executive via a Minute from the administrator.

Few applications for an exemption from publication have been granted. The Department gave an example of a client's name being exempt from publication on the basis that discussions between the client and government remained confidential and that even releasing the name of the client would have prejudiced their position. Other similar applications have been refused.

RESOURCES REQUIRED TO ADMINISTER THE SCHEME

The Commission was advised that the online system employed to operate the portal and register costs in the order of $10,000 per annum to operate.

The administrative burden at present is very low. For the most part the system is automated through the online portal. DPC advised that one ASO5 employee is responsible for its administration (the administrator), but that this forms only a very small part (approximately 5%) of their workload.

A lobbying mailbox is maintained (SALobbyistRegister@sa.gov.au) to which all enquiries are directed. Notifications are sent to this mailbox when a lobbyist uses the online portal to submit a new registration, update their profile, surrender their registration or lodge an annual return.

Sometimes the administrator is required to assess the information provided (for example, applications for registration). If the information provided is deficient or incorrect, further information will be sought from the lobbyist before their interaction with the portal can be 'approved' and the register updated.

The busiest period for the administrator each year is January, when the portal is open to receive annual returns (as detailed above).

AGD advised that the process of transferring the scheme from DPC to AGD has taken additional resources. That process has now been completed and it is anticipated that day-to-day running of the scheme will require similar administrative resources from AGD as were required by DPC, absent any significant amendments to the scheme.

COMPLAINTS AND COMPLIANCE

The DPC Processes Document sets out a procedure for 'Managing a lobbyist complaint'. It specifies that complaints, 'including copies of emails from the complainant, a file note of a conversation and/or a report to the manager explaining how the complaint has been resolved', should be recorded on the lobbyist's electronic file. The Processes Document sets out a procedure to make an official record for Cabinet Office. No process beyond this is contained in the Processes Document.

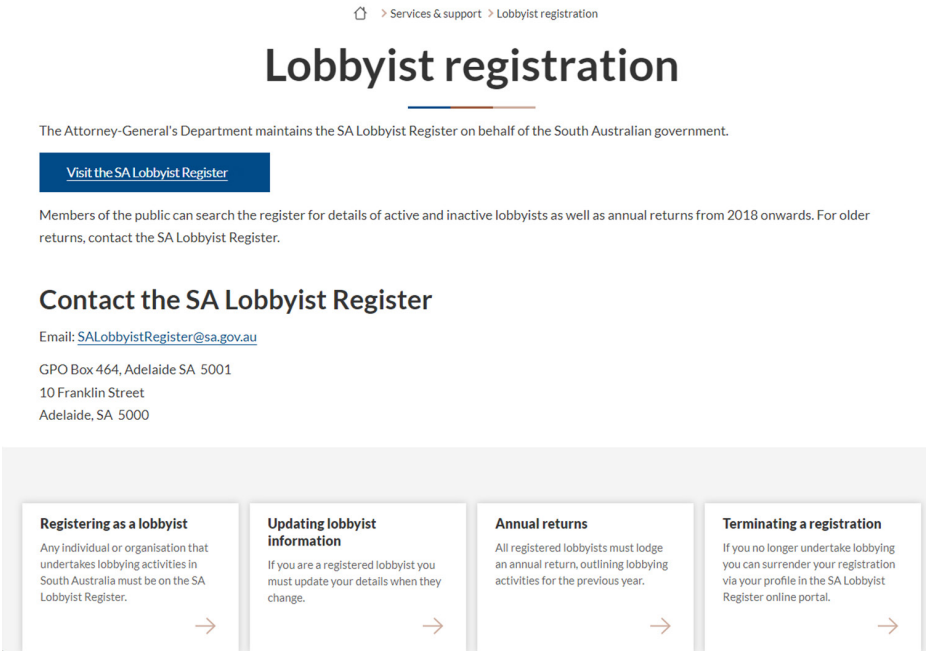
Aside from the DPC Processes Document, the Department has no internal procedure or process relating to compliance with the scheme. The Department advised, 'All regulatory and compliance requirements are captured in the Act and the Lobbyists Regulations'.

The DPC Processes Document does not clearly distinguish between complaints about the register or administrative process, and complaints about lobbyists. Breaches of the Lobbyists Act which amount to criminal offences (for example, unregistered lobbying) are 'corruption in public administration' within the meaning of the ICAC Act.[191] Any public officer (including the administrator) with reasonable grounds to suspect that such an offence may have occurred *must* report the matter to the Office for Public Integrity (OPI).[192] The DPC Processes Document does not address this issue.

Neither the Department's website nor the register website contains information about making a complaint, either regarding the register/administrative processes or regarding a lobbyist. Nor do they contain information about the obligation of public officers to report suspected breaches of criminal provisions to the OPI.

The image below (Figure 2) shows the page containing information about contacting the Lobbyists Register.

FIGURE 2:
CONTACT PAGE FOR THE LOBBYISTS REGISTER



191: ICAC Act, s 5(1)(ba).
192: See the South Australian Office for Public Integrity, Directions and Guidelines for public officers, public authorities and inquiry agencies (7 August 2023) https://www.publicintegrity.sa.gov.au/__data/assets/pdf_file/0006/929607/OPI-Directions-and-Guidelines-7-August-2023.pdf.

Staff interviewed by the Commission described their role as administrative. They considered the Department was responsible for administering the system of registration, but that it was not their role to ensure compliance beyond ensuring that lobbyists applying for registration have filled in the appropriate forms correctly and provided the information sought in those forms, and ensuring that annual returns are completed on time and with the appropriate information.

The Department advised they were not aware of any instances of unregistered lobbying or of any action taken for breaching the Act, aside from instances where lobbyists failed to lodge annual returns.

DEPARTMENTAL PROCESS GAPS

The above analysis allows a number of administrative gaps to be identified. Addressing these issues would strengthen the current regulatory scheme, even in the event that none of the more substantive recommendations in this report are implemented. The Recommendations made below are directed to the AGD.

ADMINISTRATIVE GAP

Section 6(b)(ii) provides that a body corporate is only entitled to be registered if **no** director:

- *has been convicted of an indictable offence; or*
- *has, during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty.*

At present, no Statutory Declaration is required from non-lobbying employees. This can – and often does – include directors. A company with a director with any such convictions is not entitled to be registered. No enquiries are currently conducted to satisfy this requirement.

That Statutory Declarations be required of **all** directors of a lobbying company addressing the matters set out in s 6(b)(ii).

RECOMMENDATION 25

ADMINISTRATIVE GAP

If a registered lobbyist is convicted of any offences specified in s 6(b)(i) their registration must be cancelled as per s 9(1). At present, subsequent to initial registration, there is no requirement for registered lobbyists to declare that they have no relevant convictions.

That registered lobbyists be required to make annual declarations that they do not have any relevant convictions. Although s 11(1)(b) places an obligation on a registered lobbyist to notify the Chief Executive of any relevant convictions which occur after registration it would be prudent to make proactive enquiries about this fact. Legal practitioners and other professionals are required to make similar declarations on an annual basis to maintain their rights of practice.

RECOMMENDATION 26

ADMINISTRATIVE GAP

The Statutory Declaration currently required to be lodged by applicants for registration does not address any of the matters in s 13(1). This information goes to eligibility for registration, or the imposition of restrictions on registration. Given the importance of this information it would be better having it declared in this form, rather than simply having a selection made in a tick box.

That, using the power in s 7(2) of the Lobbyists Act, the Chief Executive should amend the Statutory Declaration form for 'People Undertaking Lobbyist Activities' and require applicants to address the matters in s 13(1)(a), (b) and (c). This should include details about: all roles previously undertaken within the relevant cooling-off period, the portfolio area, date of separation, and whether the person is currently a member of a government board.

RECOMMENDATION 27

ADMINISTRATIVE GAP

Once an applicant for registration has indicated that there is a restriction due to s 13(1) this should, but does not, trigger any decision making or notification processes. Information is simply placed on the lobbyists electronic file with no further action taken.

That, where a lobbyist is identified as being a person to whom s 13(1) applies this should be brought to the attention of the Chief Executive (or their delegate for this purpose) who should consider the information provided and communicate in writing with the lobbyist about the restrictions on their lobbying activity.

RECOMMENDATION 28

ADMINISTRATIVE GAP

Information publicly available on the register does not provide detail about restrictions on lobbyists' registration. All that can be ascertained is that there is a restriction on registration. Restrictions necessarily relate to topics or matters about which a lobbyist is not permitted to lobby. Without this information being readily available through the register, public officials to whom such activity may be directed are unable to form a view about whether the person is undertaking impermissible lobbying.

That, where a lobbyist's registration is subject to a restriction, the register provide details of topics or matters in respect of which the person is not permitted to lobby.

RECOMMENDATION 29

ADMINISTRATIVE GAP

Little guidance is currently given to the administrator to assess the adequacy of information provided in annual returns submitted by registered lobbyists.

That the Processes Document be updated to include more detailed guidance to the administrator regarding the level of detail required to be provided to comply with the requirements in s 8(1)(b).

RECOMMENDATION 30

ADMINISTRATIVE GAP

Limited information is available either internally for the administrator or externally for the public regarding complaints. Further, no distinction is drawn between complaints about the register or its administration, and complaints about lobbying activity. No information is given regarding the obligation of public officers to report suspected offences under the Lobbyists Act to the OPI.

That the Lobbyists Register website be updated to provide clear information and complaints processes to public officers and members of the pubic regarding both administrative and register-related complaints, and complaints about lobbying conduct. Internal documents and the public website should be updated to reflect public officers' reporting obligations.

RECOMMENDATION 31

CONCLUDING REMARKS

CONCLUDING REMARKS

In his famous 1913 article, *What Publicity Can Do*, Louis D Brandeis wrote:[193]

> *Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.*

'Publicity', in the sense that Brandeis used the word, can be understood as 'transparency'. And, although he was writing about the concentration of power in large banks, Brandeis' observations apply equally to the present topic.

Transparency is the best measure to combat the corruption risks associated with influencing activity.

In its present form the regulatory scheme in this state admits only a shaft of light on a small part of influencing activity. Most continues to be conducted in the dark, as far as the public is concerned.

The risks associated with lobbying activity are serious, as demonstrated by the case studies presented in this report. They can result in serious harm to the public interest. Ultimately, they risk eroding our democratic system of government and public confidence in that system.

The 31 recommendations made in this report are directed to addressing identified limitations in the scope of the scheme, the regulation of lobbied parties, post public office limitations on lobbying, the scheme's applicability to local council and the administration of the regulatory scheme.

The recommendations are consistent with those made by other integrity agencies in Australia and internationally, and have been crafted with a view to ensuring, as far as possible, harmonisation of the schemes that exist across Australia.

If adopted, these recommendations will go some way towards improving the transparency of lobbying and influencing activity in this state and thereby reduce the risk (or the perception of the risk) of government decisions being made to suit private interests, as opposed to the interests of the South Australian public.

193: Louis D Brandeis, (20 December 1913), 'What Publicity Can Do', Harper's Weekly, Vol 58 no 2974, pp 10–13.

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Independent Commission
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SOUTH AUSTRALIA