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# Who pays the piper? Rules for lobbying governments in Australia, Canada, UK and USA

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## Executive summary

This publication surveys lobbying codes of conduct and registers introduced by Australian federal and state governments and some overseas governments. Although lobbying is a legitimate practice and part of the democratic process, the 2014 hearings conducted by the New South Wales (NSW) Independent Commission Against Corruption have exposed weaknesses in lobbying rules. Initially Australian governments introduced very similar minimalist codes and registers. Two states, NSW and Queensland, have recently introduced stronger regimes but Australian codes are, in general, far weaker than the strong statutory regimes operating in Canada and the United States.

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## Introduction

The recent inquiries conducted by the New South Wales Independent Commission Against Corruption (ICAC) have highlighted the close relationship between lobbyists and members of parliament and raised questions about the effectiveness of lobbying codes of conduct and registers.<sup>1</sup> As Operation Spicer adjourned on 20 May 2014 until early August one journalist observed that ‘the underlying question remained: who pays the piper?’<sup>2</sup>

Governments introducing lobbying codes and registers often stress that lobbying is a legitimate activity and part of the democratic process.<sup>3</sup> They also acknowledge that there is a public expectation that lobbying activities will be carried out ethically and transparently.<sup>4</sup> Australian lobbying codes generally recognise that information on who is engaged in lobbying and whose interests are being promoted should be available to ministers, their staff and the general public.<sup>5</sup> Critics of the current Australian codes and registers argue that they do not go far enough in regulating lobbying. Third party lobbyists represent only a small part of the lobbying industry and sanctions for violation of the codes are either non-existent or very weak.<sup>6</sup>

This publication surveys lobbying codes of conduct and registers introduced by the federal and state governments and some overseas governments.<sup>7</sup> Information on the development of lobbying codes and registers is contained in an earlier Parliamentary Library publication, *Codes of Conduct in Australian and Selected Overseas Parliaments*.<sup>8</sup> Some details on the introduction of the codes are included in this publication to aid the reader in tracking their development.

The first state to introduce a lobbying code of conduct and register was Western Australia in May 2008. This move was in part to deal with the influence and actions of lobbyists Brian Burke, Julian Grill and Noel Crichton-Browne, who were barred from the register.<sup>9</sup> The federal government and other states followed quickly with the result that most codes and register requirements are very similar. Table 1 shows the chronological introduction of federal and state codes and summarises aspects of each regime including the type of code introduced, sanctions, employment restrictions, administrative responsibility and lobbyists covered by the code.<sup>10</sup>

Only two states, Queensland and New South Wales, have banned the payment of success fees. These states also require ministers to post details of their diaries online. The remaining federal and state jurisdictions do not require the disclosure of any ‘detail of the timing, frequency and nature of representations’.<sup>11</sup> Queensland was the first jurisdiction in Australia to move from an administrative scheme to a statutory lobbyists code.<sup>12</sup> More recently New South Wales has introduced a lobbyist code prescribed by regulations and a statutory register of

1. See Independent Commission Against Corruption (ICAC), [Operation Credo and Operation Spicer transcripts](#), ICAC website, Sydney, 2014, accessed 30 April 2014.
2. N Chenoweth, ‘[House of cards starts to tremble](#)’, *Australian Financial Review*, 21 May 2014, p. 40, accessed 21 May 2014.
3. See, for example, Australian Government, [Response to Senate Standing Committee on Finance and Public Administration report, Knock, knock ... who’s there? The Lobbying code of conduct](#), Inquiry into the *Lobbying code of conduct*, The Senate, Canberra, 15 January 2009, p. 2, accessed 8 May 2014.
4. M Priest, ‘[Labor ramps up scrutiny of lobbyists](#)’, *Australian Financial Review*, 12 March 2010, p. 1, accessed 23 May 2014.
5. Ibid.
6. See, for example J Warhurst, ‘[Regulating lobbyists: the Rudd Government’s new scheme](#)’, *Public Administration Today*, 16, July-September 2008, p. 51, accessed 23 May 2014. Note: Australian government codes define a lobbyist as a ‘third party’ lobbyist, that is, a person or organisation who represents the interests of a third party to government. This definition excludes ‘in house’ lobbyists such as peak industry and professional bodies, trade unions, and charitable and religious organisations.
7. Note: the ACT and Northern Territory Governments have not introduced lobbyist registers or codes of conduct. In February 2014 the ACT Legislative Assembly agreed to request that the Standing Committee on Administration and Procedure provide advice on the implementation of a lobbyist register and associated code of conduct. The Committee tabled its report in June 2014. The Legislative Assembly will consider the recommendations in August 2014. Information on federal and state codes and registers is current as at the date of publication.
8. D McKeown, [Codes of conduct in Australian and selected overseas parliaments](#), Background note, Parliamentary Library, Canberra, updated 18 September 2012, accessed 7 May 2014. See also G Griffith, [The regulation of lobbying](#), Briefing paper, no. 5/08, New South Wales Parliamentary Library, June 2008, accessed 30 June 2014.
9. A Carpenter, ‘[Contact with lobbyists code – register of lobbyists](#)’, Statement by Premier, Western Australia, Legislative Assembly, *Debates*, 20 March 2007, pp. 329–330.
10. See also tables in P Purser, [Lobbying regimes: an outline](#), research paper, New Zealand Parliamentary Library, Wellington NZ, April 2012, p. 3, accessed 25 June 2014 and J Hogan, G Murphy and R Chari, ‘[Regulating the influence game in Australia](#)’, *Australian Journal of Politics and History*, 57(1), 2011, p. 110, accessed 25 June 2014.
11. M Grattan, ‘[More light needed on the dark arts at the intersection of politics and business](#)’, *The Conversation*, 4 May 2014, accessed 21 May 2014.
12. The *Lobbyists Code of Conduct* has been included in the provisions of the [Integrity Act 2009](#) (Qld) since March 2010.

third-party lobbyists.<sup>13</sup> Sanctions are confined to the removal of lobbyists from the register or the refusal to register lobbyists. This is in contrast with Canada and the United States where both countries have introduced statutory lobbying regimes covering third party and in-house lobbyists and sanctions which include large fines and prison sentences (see table 2 below).

**Table 1: Summary of Australian lobbying codes of conduct and registers**

Government/ Date introduced	Type of lobbying regime/ Administrative responsibility	Definition: lobbyists and 'government representatives'/ Information on register/ ministerial diaries	Success fees banned/ Employment restrictions/ Sanctions
<b>Western Australia</b> March 2007	*Code, register announced by Government  *Public Sector Commissioner	*Third party lobbyists, minister, parliamentary secretaries, ministerial staff, staff employed or contracted by public sector agency  *Register lists lobbyist details, clients during last 3 months, confirmation of details quarterly  *ministerial diaries not available	*no statement on success fees  *no current employment restrictions  *Public Sector Commissioner can remove or refuse to register
<b>Federal</b> May 2008	*Code, register announced by Government (approved by Cabinet) Sen Faulkner stated that the Code 'followed the model adopted by Western Australia Government'.  *Secretary, Department of the Prime Minister and Cabinet (PM&C)	*Third party lobbyists (cannot be members of political party executive), Executive, ministerial staff, Agency heads, APS staff, ADF members  *Register lists lobbyist details and clients, confirmation (statutory declarations) required twice yearly  *ministerial diaries not available	*no statement on success fees  *ministers, parliamentary secretaries banned for 18 months, ministerial staff, agency heads banned for 12 months  *Sec PM&C can remove from register, refuse to register
<b>New South Wales</b> Guidelines in operation from January 2006; Code and register from October 2008, legislative changes effective from 1 July 2014	*Code, register previously announced by Government, (ministerial code of conduct applicable under the <i>ICAC Act</i> , some related issues contained in legislation), from 1 July 2014 Register of Third-Party Lobbyists and Lobbyists Watch List included in provisions of <i>Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014</i> (NSW). <i>Lobbyists Code of Conduct</i> prescribed by regulations  *from 1 July 2014 an officer of the Electoral Commission to be independent regulator of lobbying	*Third party lobbyists (cannot be members of political party executive) ethical standards in code applied to broader range of individuals and organisations, minister, parliamentary secretaries, ministerial staff, defined public sector employees  *Register includes lobbyist details, clients during last 3 months, confirmation required 3 times per year, statutory declaration once per year  *Ministerial diary summaries published quarterly	*Success fees banned  *ministers, parliamentary secretaries banned for 18 months (in <i>Lobbying of Government Officials Act 2011</i> (NSW))  *Regulator empowered to investigate alleged breaches and impose sanctions – could result in access to government restricted

13. The [Electoral and Lobbying legislation Amendment \(Electoral Commission\) Act 2014](#) (NSW) received assent on 24 June 2014, accessed 23 July 2014.

<b>Government/ Date introduced</b>	<b>Type of lobbying regime/ Administrative responsibility</b>	<b>Definition: lobbyists and 'government representatives'/ Information on register/ ministerial diaries</b>	<b>Success fees banned/ Employment restrictions/ Sanctions</b>
<b>Queensland</b> March 2009	*Code, register announced by Government  From March 2010 the code and its requirements included in provisions of the <i>Integrity Act 2009</i> (Qld)  *Queensland Integrity Commissioner (an independent officer of the parliament)	*Third party lobbyists, ministers, parliamentary secretaries, ministerial staff, leader and deputy leader of the opposition and staff, public sector officer, councillors (mayors)  *monthly reporting, Register includes lobbyist details, client name, name of government or opposition representative in meeting and purpose of meeting  *Ministerial dairies published online monthly	*Success fees banned  *senior government and opposition representatives banned for 2 years  *Qld Integrity Commissioner can remove or refuse registration
<b>Victoria</b> August 2009	*Code, register announced by Government  *Public Sector Standards Commissioner	*Third party lobbyists, ministers, parliamentary secretaires, ministerial staff, public officials  *Register includes lobbyist details and former affiliations, confirmation of details (statutory declaration) required annually  *ministerial diaries not available	*success fees banned  *ministers and cabinet secretaries banned for 18 months, parliamentary secretaries, public service executives and ministerial advisors banned for 12 months  *Public Sector Standards Commissioner can refuse applications
<b>Tasmania</b> August 2009	*Code, register announced by government  *Secretary, Department of Premier and Cabinet	*Third party lobbyists, ministers, parliamentary secretaries, MPs of government party(s), ministerial staff, heads of agencies  *Register includes lobbyist details, confirmation (statutory declarations) of details required annually  *ministerial diaries not available	*no statement on success fees  *ministers, parliamentary secretaries, heads of agencies banned for 12 months  *Secretary, Department of the Premier and Cabinet deals with breaches of the code, can ban or refuse registrations
<b>South Australia</b> In force from December 2009	*Code, register announced by government  The government noted that the code had been 'prepared in consultation with Victorian government and was consistent with codes adopted by the commonwealth government and other state governments'  *Chief Executive, Department of the Premier and Cabinet	*Third party lobbyists, ministers, parliamentary secretaries, ministerial staff, staff employed or contracted by public sector agency  *Register includes lobbyist details, clients during last 3 months, confirmation of details required annually  *ministerial diaries not available	*no statement on success fees  *ministers banned for 2 years, parliamentary secretaries, ministerial staff and departmental executives banned for 12 months  *Chief Executive, Department of the Premier and Cabinet can refuse or remove registrations

**Table 2: Summary of lobbying regimes in Canada, United Kingdom and United States<sup>14</sup>**

	Canada	UK	USA
<b>Lobbying regime</b>	Law	Law for lobbyists register	Law
<b>Code of conduct</b>	Yes	Industry code(s)	No
<b>Year introduced</b>	Current Act 2008	2014	Current Act 2007
<b>Lobbyists covered</b>	Third party and in-house	Third party	Third party and in-house
<b>Who is lobbied</b>	Executive All members of parliament Ministerial staff and staff of opposition leaders, public service staff	Executive Permanent secretaries and other specified positions	Executive All members of congress Employees of the executive and legislative branches
<b>Revolving door bans</b>	yes	yes	yes
<b>Administrative responsibility</b>	Commissioner of Lobbying (an independent officer of the parliament)	Registrar appointed by government, funded by registration fees	Legislature Secretary of the Senate and Clerk of the House of Representatives <sup>15</sup>
<b>Sanctions</b>	Fines, prison	Fines	Fines prison
<b>Ministerial diaries</b>	Lobbyist register contains details of lobbyist, those lobbied and subject matter, updated monthly. Annual summaries of those lobbied and subject matter also available.	Details of ministerial meetings published on departmental websites	Lobbyists are required to report quarterly on their lobbying activities, filing a separate return for each client. The reports include details about those lobbied and the subject matter.

## Australia

### **Federal government**

The federal government has attempted to regulate lobbying since 1983 when the Hawke Government introduced a lobbyist registration scheme. This move was in response to the findings of the Hope Royal Commission which examined the Combe-Ivanov affair and the activities of lobbyists in general.<sup>16</sup>

The Hawke Government established a general register of lobbyists which contained details of the lobbyist and his/her clients. Two registers were maintained: one for domestic lobbyists and one for lobbyists representing foreign governments or their agencies. The registration scheme was voluntary and the registers were confidential but made available as required to ministers, heads of departments and heads of statutory authorities.

The Howard Government argued that the registers were not being used and abolished the scheme in 1996. They were replaced by a section in the *Guide on Key Elements of Ministerial Responsibility* which stated in part:

Ministers and parliamentary secretaries should ensure that dealings with lobbyists are conducted so that they do not give rise to a conflict between public duty and private interest.

14. This table is based on a similar table in P Purser, *Lobbying regimes: an outline*, op. cit.

15. See the [Lobbying Disclosure Act 1995](#) (US) (2 USC §1601), section 7(1).

16. The Combe-Ivanov affair involved allegations about lobbyist and former Australian Labor Party national secretary, David Combe, and his association with a Soviet agent and led to the establishment of the Hope Royal Commission. See Australia, *Report on the Australian Security Intelligence Organisation, December 1984*, Royal Commission on Australia's Security and Intelligence Agencies, AGPS, Canberra, 1984.

In dealing with a lobbyist who is acting on behalf of a third party, it is important to establish who or what company or what interests that lobbyist represents so that informed judgements can be made about the outcome they are seeking to achieve.<sup>17</sup>

These arrangements did not attempt to regulate lobbyists.

On 2 April 2008, the Rudd Government released an exposure draft of the *Lobbying Code of Conduct* (the Code). Special Minister of State, Senator John Faulkner, noted in his media release that that the Code followed the model adopted by the Western Australian Government.<sup>18</sup>

In May 2008, following Cabinet approval of the Code, Senator Faulkner tabled the *Lobbying Code of Conduct* and arrangements for a formal lobbyists register. This was the first time a federal government had introduced such measures. Senator Faulkner stated in his tabling speech that the Code:

... represents an appropriate balance ... between the right of ministers, officials and the public to know who stands to benefit from the efforts of lobbyists, and the ability of business to be able to make views known to government. It will not impose unreasonable demands on the lobbying industry, business or ministers and officials.<sup>19</sup>

### **The Lobbying Code of Conduct**

The *Lobbying Code of Conduct* (the Code) is available on the Department of the Prime Minister and Cabinet (DPM&C) website.<sup>20</sup> The preamble to the Code states that it:

... is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty. Lobbyists and Government representatives are expected to comply with the requirements of the *Lobbying Code of Conduct* in accordance with their spirit, intention and purpose.<sup>21</sup>

The Code defines a lobbyist as:

... any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.<sup>22</sup>

The Code does not apply to:

... any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.<sup>23</sup>

The Code excludes:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients and
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services.<sup>24</sup>

17. J Howard, *A guide on key elements of ministerial responsibility*, Canberra, 1998, revised ed., p. 12.

18. J Faulkner (Special Minister of State), [Register of lobbyists](#), media release, 2 April 2008, accessed 20 May 2014.

19. J Faulkner, '[Lobbying code of conduct and register of lobbyists](#)', Ministerial statement, Senate, *Debates*, 13 May 2008, p. 1510, accessed 9 May 2014.

20. Department of the Prime Minister and Cabinet (DPM&C), [Lobbying code of conduct](#), DPM&C, Canberra, 2013, accessed 9 May 2014.

21. *Ibid.*, p. 1.

22. *Ibid.*, p. 2.

23. *Ibid.*, p. 3.

24. *Ibid.*, p. 2.

The Code defines 'government representative' as including ministers, parliamentary secretaries, ministerial staff, agency heads, public servants and members of the Australian Defence Force. The Code does not cover non-executive members of parliament or non-ministerial staff.<sup>25</sup>

The Code imposes restrictions on the lobbying activities of those covered by the definition of 'government representative' when they cease to hold office (ministers and parliamentary secretaries) or cease employment (ministerial staff, agency heads, other public servants and members of the Australian Defence Force):

7.1 Persons who, after 6 December 2007, retire from office as a Minister or a Parliamentary Secretary, shall not, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings with in their last 18 months in office.

7.2 Persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.<sup>26</sup>

### **The Register of Lobbyists**

The Code established a *Register of Lobbyists* (the Register) which is also available on the PM&C website. The Register, which has been in operation since 1 July 2008, is a public document administered by PM&C. The Secretary of the Department has the power to include or remove lobbyists from the Register and is responsible for handling breaches of the Code although the penalty for a breach is not specified:

9.1 A Government representative who becomes aware of a breach of this Code by a lobbyist shall report details of the breach to the Secretary.<sup>27</sup>

### **Reviews of the *Lobbying Code of Conduct* and the *Register of Lobbyists***

On 14 May 2008 the Senate referred the Code to the Senate Finance and Public Administration Committee. The Committee's report was tabled in September 2008 and acknowledged:

... some aspects of the Code are not wholly supported by some stakeholders. However, the committee notes the widespread underlying support expressed for a code of conduct, that implementation of the Code is in a relatively early stage, and that it may be some time before it becomes clear if its objectives are realised.<sup>28</sup>

The Committee made one recommendation:

That the Senate Standing Committee on Finance and Public Administration conduct an inquiry into the operation of the *Lobbying Code of Conduct* in the second half of 2009.<sup>29</sup>

The Report included a Coalition Senators' Minority report which made six recommendations. These included:

That a decision to exclude an individual or entity from the register be subject to appeal to the Administrative Appeals Tribunal, to ensure that legal recourse is not cost prohibitive.

That coverage of the Code be expanded to embrace unions, industry associations and other businesses conducting their own lobbying activities.

That post-employment restrictions on MOPS staff be removed from the Code.

25. *ibid.*

26. *Ibid.*, p. 4. These restrictions are also contained in Australian Government, [Statement of ministerial standards](#), DPM&C, December 2013, para 2.24, accessed 22 May 2014.

27. *ibid.*, p. 5.

28. Senate Standing Committee on Finance and Public Administration, [Knock, knock ... who's there? The Lobbying code of conduct](#), Inquiry into the *Lobbying code of conduct*, The Senate, Canberra, September 2008, p. 17, accessed 29 April 2014.

29. *Ibid.*, p. ix.



That the Code should not be expanded to apply to non-executive members of either House of Parliament nor to non-ministerial MOPS staff.<sup>30</sup>

The Government's response, presented on 15 January 2009, noted the Committee's recommendation and responded to the recommendations in the Minority report. The response stated:

The Lobbying Code of Conduct has been established by Executive decision and any decisions made under the Code are not subject to appeal to the Administrative Appeals Tribunal (AAT).<sup>31</sup>

The Government response did not accept the recommendation that post-employment restrictions on MOPS staff be removed. It also noted that the Executive was not able to regulate the activities of members of parliament and any attempt to do so might amount to interference with the performance by a member of his or her duties.<sup>32</sup>

Submissions on the draft *Code of Conduct* and to the Senate inquiry discussed above referred to issues such as the narrowness of the Code, the lack of real sanctions and possible ways in which the Code could be extended to cover members of parliament as well as the Executive.<sup>33</sup> Professor John Warhurst made the following observations about the Code:

Evaluated on its own terms the potential problem of lack of teeth and lack of real sanctions remains ...

Evaluated more broadly ... the code is timid and narrow. The exclusions ... are very serious. Third party lobbyists are only one element of the whole lobbying industry. They are technicians like lawyers and accountants who perform a fee for service. So a code of conduct that excludes many of the bigger players in the industry who lobby on their own behalf, like corporations, churches, unions and big national pressure groups like the Business Council of Australia, the Australian Medical Association, the Australian Conservation Foundation and so on, offers only very partial coverage.<sup>34</sup>

By August 2009 the government had flagged a review of the rules covering lobbyists.<sup>35</sup> In March 2010 Special Minister of State, Senator Joe Ludwig, conducted a roundtable meeting with lobbyists and in July released a discussion paper which examined possible reforms to the Code and Register.<sup>36</sup> The introduction to the discussion paper stated that the Government would consider amendments to the Code and the Register in the light of feedback received on the discussion paper.<sup>37</sup>

In August 2011 the Special Minister of State, Gary Gray, announced two changes to the *Register of Lobbyists*: the requirement that lobbyists disclose details of any former government representatives employed by their firm as lobbyists and measures to streamline the regulatory and administrative arrangements for registration.<sup>38</sup>

In late 2011 the Senate referred an inquiry into the operation of the *Lobbying Code of Conduct* and the Lobbyist Register to the Senate Finance and Public Administration References Committee. The Committee noted that a number of submissions supported an expansion of the Code to include all organisations that lobby government

30. Coalition Senators, [Knock, knock ... who's there?: The Lobbying code of conduct](#), Minority report, Senate Standing Committee on Finance and Public Administration, *Inquiry into the Lobbying code of conduct*, The Senate, Canberra, January 2009, pp. 19–28, accessed 30 April 2014.

31. [Government response](#) to Senate Standing Committee on Finance and Public Administration report, *Knock, knock ... who's there? The Lobbying code of conduct*, January 2009, p. 3, accessed 30 April 2014.

32. *Ibid.*, pp. 4–5.

33. For information on ways in which the Code could be extended to cover members of parliament see H Evans, [Submission to the Senate Standing Committee on Finance and Public Administration, Knock, knock ... who's there? Inquiry into the Lobbying code of conduct](#), 27 May 2008, accessed 20 May 2014.

34. J Warhurst, Submission, *ibid.*, [Inquiry into the Lobbying code of conduct](#), 8 April 2008, p. 4, accessed 20 May 2014.

35. K Murphy, ['Lobbyists face stricter controls on MP access'](#), *The Age*, 21 August 2009, p. 4, accessed 23 May 2014.

36. See J Ludwig, (Special Minister of State), [Government hosts roundtable meeting for lobbyists](#), media release, 30 March 2010, accessed 23 May 2014; and J Ludwig, [Possible reforms to the Lobbying code of conduct and Register of lobbyists](#), Discussion paper, July 2010, accessed 23 May 2014.

37. *ibid.*, Ludwig, media release.

38. G Gray (Special Minister of State), [Changes to lobbyists register](#), media release, GG 33/11, 1 August 2011, accessed 23 May 2014.

and argued for ‘a dramatic expansion of the regulatory scope of the Code’.<sup>39</sup> The Committee’s report, tabled in March 2012, did not recommend any changes to the Code or the Register.<sup>40</sup>

The report included a Dissenting report by Senator Lee Rhiannon on behalf of the Australian Greens. Senator Rhiannon noted that ‘the inquiry has overlooked the clear evidence from many that current regulation is deficient’ and made eight recommendations for reform of the lobbying regime.<sup>41</sup> These included the establishment of an Office of the Commissioner of Lobbying, support for a legislative framework for the regulation of lobbying, inclusion of members of parliament as subjects of lobbying, expansion of who is defined as a lobbyist and the strengthening of post-separation employment provisions.<sup>42</sup> A number of these recommendations were included in the motion moved by Senator Rhiannon on the regulation of lobbyists.<sup>43</sup> The motion, which was supported only by the Australian Greens, was defeated.

### Changes introduced after the 2013 election

Following the 2013 federal election the Coalition Government introduced a change to the *Register of Lobbyists*. The change, effective from 20 September 2013, requires individuals who apply for registration will provide a declaration that they are not members of a state or federal political party executive, state executive or administrative committee (or the equivalent body). Individuals already registered as at 20 September 2013 were able to remain on the Register until 20 March 2014.<sup>44</sup>

In response to evidence concerning political donations given at the NSW ICAC hearings, Prime Minister Tony Abbott flagged changes to the *Lobbying Code of Conduct*. He said:

We’re going to keep the lobbyists out and the problem that ICAC is exposing is a problem of lobbying, essentially; it’s influence peddling and that’s the real problem and we’re going to make sure that that has no place whatsoever federally ... we’re going to maintain the absolute transparency of any gifts that are given to politicians.<sup>45</sup>

It has also been reported that the Prime Minister ‘is considering a new regime of control for lobbyists in which there is no choice about nominating for the formal register that triggers disclosure rules’.<sup>46</sup> At the time of writing no changes to the *Lobbying Code* and Register have been announced.

### New South Wales

In January 2006 the NSW Cabinet Office issued *Guidelines for Managing Lobbyists and Corruption Allegations Made During Lobbying* (the Guidelines). The Guidelines are no longer current but they applied to all ministers, ministerial staff and public officials who were lobbied in relation to the making of a statutory decision.<sup>47</sup>

On 29 October 2008 Premier Nathan Rees announced the introduction of the *Lobbyist Code of Conduct* (NSW Code) and *Register of Lobbyists* (NSW Register).<sup>48</sup> Both the NSW Code and the NSW Register have been in operation since 1 February 2009 and the current versions are available on the Department of Premier and Cabinet website.<sup>49</sup> The administration of the NSW Register was the responsibility of the Director-General of the Department of Premier and Cabinet but changes to this arrangement were announced by Premier Mike Baird in May 2014 (see below).<sup>50</sup>

39. Senate Standing Committee on Finance and Public Administration, [The operation of the Lobbying code of conduct and the lobbyist register](#), The Senate, Canberra, March 2012, paras 2.11 and 2.16, accessed 26 May 2014.

40. *Ibid.*, pp. 17–19.

41. Australian Greens Senators, Dissenting report, Senate Standing Committee on Finance and Public Administration, [The operation of the lobbying code of conduct and the lobbyist register](#), op. cit., para. 1.3.

42. *Ibid.*, pp. 24–30.

43. L Rhiannon, ‘[Regulation of lobbyists](#)’, Motion, Senate, *Debates*, 17 March 2013, p. 1230, accessed 6 June 2014.

44. *Lobbying code of conduct*, op. cit., Clauses 10.1(c), 10.2 and 10.4. See also *Lobbying code of conduct*, [Frequently asked questions](#), no. 1, accessed 26 May 2014.

45. P Van Onselen, ‘[The donation temptation](#)’, *Australian*, 6 May 2014, p. 13, accessed 27 May 2014.

46. D Shanahan, ‘[PM opens fire on lobbyists](#)’, *Australian*, 23 April 2014, p. 1, accessed 30 May 2014.

47. See D McKeown, *Codes of conduct*, op. cit., p. 24 for more details.

48. N Rees (Premier, NSW), [NSW Government Lobbyist code of conduct](#), media release, 29 October 2008, accessed 28 May 2014.

49. NSW Department of Premier and Cabinet (DPC), ‘[Register of lobbyists](#)’, Department website, accessed 28 May 2014.

50. DPC, [NSW Government Lobbyist code of conduct](#), October 2013, accessed 28 May 2014.

The NSW Code defines a lobbyist as:

... a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative.<sup>51</sup>

‘Government Representative’ is defined as:

... a Minister, Parliamentary Secretary, Ministerial Staff Member or person employed, contracted or engaged in a public sector agency (which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*) other than staff employed under section 33 of the *Public Sector Employment and Management Act 2002*.<sup>52</sup>

In November 2009 Premier Rees announced a ban on the appointment of lobbyists to all public boards and committees.<sup>53</sup> Other changes included the amendment of the *Ministerial Code of Conduct* to require Ministers to comply with the Lobbyist Code and amendments to the *Independent Commission Against Corruption Act 1988* (NSW). The latter amendments imposed ‘a duty on each Minister ... to report any matter that the Minister suspects, on reasonable grounds, concerns or may concern corrupt conduct’.<sup>54</sup>

In May 2010 the Independent Commission Against Corruption released a discussion paper on lobbying in NSW.<sup>55</sup> The publication identified 26 principal issues related to lobbying and lobbyists and was intended to generate discussion:

... on the nature and management of lobbying in NSW and whether changes need to be made to the current regulatory system to promote transparency, accountability and fairness in order to reduce the likelihood of the occurrence of corrupt conduct.<sup>56</sup>

In November 2010 ICAC published its report *Investigation Into Corruption Risks Involved in Lobbying*. ICAC stated that the investigation:

... examined the corruption risks involved in the lobbying of public authorities and officials. Its aim was to examine whether any laws governing any NSW public authority or public official should be changed. The Commission also examined whether any work methods, practices or procedures of any NSW public authority or public official could allow, encourage or cause the occurrence of corrupt conduct, and, if so, what changes should be made.<sup>57</sup>

ICAC recommended a minimum procedure for agencies and ministerial offices concerning the conduct of meetings with lobbyists, the making of records of these meetings, and the making of records of telephone conversation.<sup>58</sup>

The report also made a number of recommendations relating to increased regulation of lobbyists, in particular that:

... the NSW Government enacts legislation to provide for the regulation of lobbyists, including the establishment and management of a new Lobbyists Register (Recommendation 1)

... all Third Party Lobbyists and Lobbying Entities be required to register before they can lobby any Government Representative. (Recommendation 8)

... an independent government entity, maintains and monitors the Lobbyists Register, and that sanctions be imposed on Third Party Lobbyists and Lobbying Entities for failure to comply with registration requirements. (Recommendation 9)

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51. Ibid., para. 3.

52. Ibid.

53. N Rees, [Donation reform starts today](#), media release, 14 November 2009, accessed 28 May 2014.

54. See NSW Government, [Code of conduct for Ministers of the Crown](#), June 2011, para. 8.1, accessed 28 May 2014; and N Rees (Premier), [Obligation on ministers to report](#), announcement M2008-26, DPC website, 12 December 2008, accessed 28 May 2014.

55. Independent Commission Against Corruption (ICAC), [Lobbying in NSW: an issues paper on the nature and management of lobbying in NSW](#), ICAC, Sydney, May 2010, accessed 29 May 2014.

56. Ibid., p. 5.

57. ICAC, [Investigation into corruption risks involved in lobbying](#), ICAC, Sydney, 10 November 2010, p. 7, accessed 29 May 2014.

58. Ibid., pp. 10–11.

... consistent with restrictions currently contained in the Australian Government Lobbying Code of Conduct, the proposed lobbying regulatory scheme includes provisions that former ministers and parliamentary secretaries shall not, for a period of 18 months after leaving office, engage in any Lobbying Activity relating to any matter that they had official dealings with in their last 18 months in office. (Recommendation 11) <sup>59</sup>

In May 2011 the O'Farrell Government introduced a Bill, supported by both major parties, that placed a number of restrictions on the lobbying of government officials. The changes introduced in the *Lobbying of Government Officials Act 2011* (NSW) included the prohibition of success fees for lobbyists and the prohibition of former ministers and parliamentary secretaries from engaging in lobbying activities in the 18 months after they cease to hold office. <sup>60</sup>

In February 2012 the O'Farrell Government amended the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). <sup>61</sup> The amendment banned donations to political parties from any organisations and allowed donations from individuals only capped at \$5,000 per year. The amendment, which was not supported by the Labor Opposition, was successfully challenged by Unions NSW in the High Court. <sup>62</sup>

As a result of the 2014 ICAC inquiries, Operation Credo and Operation Spicer, which have revealed weaknesses in lobbying conduct and registration, Premier Mike Baird announced changes to lobbying rules. The changes, which have incorporated some ICAC recommendations on lobbying, commenced on 1 July 2014, and include: <sup>63</sup>

- Establishing the Electoral Commission as an independent regulator of lobbyists;
- Applying a set of ethical standards to all third-party lobbyists and other organisations that lobby government;
- Empowering the independent regulator to investigate alleged breaches and impose sanctions ...
- Requiring Ministers to publish quarterly diary summaries of scheduled meetings with external organisations on portfolio-related activities; and
- ... [recommending that] the Ministerial Code of Conduct become applicable under the ICAC Act, giving the watchdog the power to investigate and make findings on a Minister's compliance with the Code. <sup>64</sup>

The changes do not extend to a change in the definition of those lobbyists required to register, as the Premier noted that:

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. <sup>65</sup>

The legislative changes required to implement the new arrangements are contained in the *Electoral and Lobbying legislation Amendment (Electoral Commission) Act 2014* (NSW) which received assent on 24 June 2014. <sup>66</sup> The Act also amended the *Lobbying of Government Officials Act 2011* (NSW). Some key amendments relating to the functions of the Electoral Commission are:

- keeping of the *Register of Third-Party Lobbyists* and the *Lobbyists Watch List*
- enforcing compliance with the Lobbyists Code and that Act and

59. Ibid.

60. [Lobbying of Government Officials Act 2011](#) (NSW), sections 4-8, accessed 29 May 2014.

61. [Election Funding, Expenditure and Disclosures Act 1981](#) (NSW), accessed 20 May 2014.

62. On 27 May 2014 the Baird Government introduced a Bill to make consequential amendments to the principal Act as a result of the High Court's decision. See [Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014](#) (NSW), Explanatory note, accessed 30 May 2014.

63. M Baird, [Transforming politics: tough new rules for lobbyists](#), media release, 13 May 2014, accessed 26 May 2014

64. Ibid.

65. Ibid.

66. Parliament of New South Wales (NSW), ['Electoral and Lobbying legislation Amendment \(Electoral Commission\) Bill 2014 homepage'](#), NSW Parliament website, accessed 23 July 2014.

- instituting proceedings for offences against the Act (the *Electoral and Lobbying legislation Amendment (Electoral Commission) Act 2014* (NSW) and the *Lobbying of Government Officials Act 2011* (NSW)).<sup>67</sup>

It is important to note that the Electoral Commission is not subject to the direction or control of the Minister in the exercise of its functions.<sup>68</sup>

The *Lobbyists Code of Conduct* is to be prescribed by regulations and is to set out the ethical standards of conduct to be observed by third-party and other lobbyists when lobbying Government officials in order to promote transparency, integrity and honesty.<sup>69</sup>

In addition to the *Register of Third-Party Lobbyists* the Electoral Commission is also required to maintain a *Lobbyists Watch List* containing the names of lobbyists that the Commission considers should be on the Watch List because they have contravened the *Lobbyists Code of Conduct* or the Act. The Register and the Watch List are to be published on a website maintained by the Electoral Commission.<sup>70</sup> The existing administration of the *Register of Lobbyists* maintained by the Secretary of the Department of Premier and Cabinet will be carried over to the new Register established under the Act.<sup>71</sup>

## Victoria

The *Victorian Government Professional Lobbyist Code of Conduct* (the Victorian Code) and *Register of Lobbyists* (the Victorian Register) were introduced by Premier John Brumby in August 2009.<sup>72</sup> Mr Brumby said:

While we would have preferred a single national register of lobbyists, we are establishing a Victorian Lobbyists' Register and Code of Conduct consistent with those operating interstate and at the Commonwealth level.<sup>73</sup>

The Victorian Code applies to ministers, cabinet secretaries, parliamentary secretaries, ministerial staff and public officials and defines a lobbyist as a 'person, company or organisation who conducts lobbying activities on behalf of a third party client ...'.<sup>74</sup> The Victorian Code requires professional lobbyists to register with the Public Sector Standards Commissioner who has the power to refuse applications.<sup>75</sup> The most recent version of the Victorian Code is dated 1 November 2013 and includes a prohibition on lobbyists receiving success fees.<sup>76</sup> The *Register of Lobbyists* commenced on 1 December 2009 and is published on the Victorian Public Sector Commission website.<sup>77</sup>

The Victorian Code includes references to the post-separation employment of ministers and parliamentary secretaries. Ministers and cabinet secretaries are barred for 18 months from engaging in lobbying activities relating to any matter with which they had official dealings in their last 18 months in office.<sup>78</sup>

Parliamentary secretaries, public service executives and ministerial advisors employed under the *Public Administration Act 2004* (Vic) are barred for 12 months from engaging in lobbying activities relating to any matter with which they had official dealings in their last 12 months.<sup>79</sup>

## Queensland

On 12 February 2009 Premier Anna Bligh announced in Parliament the Queensland Government's intention to establish a register of lobbyists and introduce the Queensland *Contact with Lobbyists Code*. The *Register of Lobbyists* was first published on 30 March 2009. In August 2009 the Premier announced a ban on registered

67. *ibid.*, Explanatory Notes, Schedule 1, p. 2.

68. *Ibid.*

69. *Ibid.*, Schedule 3, p. 3.

70. *Ibid.*, p. 4.

71. *Ibid.*

72. J Brumby, [Government introduces a lobbyist code for Victoria](#), media release, 29 August 2009, accessed 30 May 2014.

73. *Ibid.*

74. [Victorian Government professional lobbyist code of conduct](#), 1 November 2013, paras. 2.1 and 3, accessed 30 May 2014.

75. *Ibid.*, para. 5.

76. *Ibid.*, para. 7.4.

77. Victorian Public Sector Commissioner website, [Register of lobbyists](#), page last revised 20 June 2014, accessed 30 May 2014.

78. *Lobbyist code of conduct*, *op. cit.*, para. 7.1.

79. *Ibid.*, paras. 7.2-7.3.

lobbyists serving on government appointment boards or in other significant appointments paid by the Queensland government.<sup>80</sup>

In March 2010 the Queensland Integrity Commissioner approved a new *Lobbyists Code of Conduct*.<sup>81</sup> Under the provisions of the *Integrity Act 2009* (Qld) the *Lobbyists Code of Conduct* (Queensland Code) and its requirements were enshrined in legislation and the Integrity Commissioner is responsible for administering the *Register of Lobbyists*.<sup>82</sup> As noted above, Queensland is the first Australian state to replace its administrative scheme with a statutory lobbyists code.

The Queensland Code goes further than other Australian codes with the inclusion of the Leader and Deputy Leader of the Opposition and local government in the list of officials covered by the Act.<sup>83</sup>

In 2011 the Integrity Commissioner reviewed the operation of the *Lobbyists Code of Conduct* and the lobbying provisions of the *Integrity Act 2009* (Qld). The review took into account the recommendations made by the NSW Independent Commission against Corruption in its report *Investigation Into Corruption Risks Involved in Lobbying* published in November 2010 (see NSW section above). The Integrity Commissioner reported on 31 May 2011. His recommendations included widening the type of lobbyists covered by the registration scheme and introducing a sanctions regime for some breaches of the Queensland Code.<sup>84</sup> The Integrity Commissioner's recommendations were incorporated in the Government's issue paper on the review of the *Integrity Act 2009* (Qld) tabled in October 2011.<sup>85</sup>

The Integrity Commissioner's response to the review consolidated his three submissions to the Department of Premier and Cabinet. His recommendations included expanding the definition of 'lobbying activity' to include all members of parliament. He also discussed the benefits of uniform national lobbying regulations and provided the following assessment of Australian lobbying schemes:

The schemes are too narrowly focussed on a relatively few professional lobbyists, they don't provide for adequate and timely disclosure of lobbying activity, they ignore the lobbying of non-government legislators and they contain no real mechanisms for supervision or policing and very few sanctions for breaches of the various codes and laws.<sup>86</sup>

The Queensland Parliament Finance and Administration Committee tabled its report, *Oversight of the Queensland Integrity Commissioner 2011*, in February 2012. The report made four recommendations for amendments to the Act to the Premier as the responsible minister.<sup>87</sup> The Government did not support these recommendations as a review of the *Integrity Act 2009* was underway.<sup>88</sup>

The Committee's 2012 report on the oversight of the Integrity Commissioner and the review of the *Lobbyists Code of Conduct* made three recommendations.<sup>89</sup> The Committee proposed, in recommendation one, that the Integrity Commissioner reconsider his proposal to publish client names and purpose of meetings and limit the disclosure to one or the other.<sup>90</sup> Recommendations two and three are of particular note:

#### Recommendation 2

80. A Bligh, '[Accountability in government; lobbyists](#)', Ministerial statement, Queensland, Legislative Assembly, *Debates*, 5 August 2009, p. 1405, accessed 3 June 2014.
81. The current [Lobbyists code of conduct](#), dated 12 September 2013, is available on the [Queensland Integrity Commissioner website](#), accessed 3 June 2014. Note that the Queensland Integrity Commissioner, currently Dr David Solomon, is an independent officer of the Queensland Parliament and is accountable to Parliament through the Finance and Administration Committee.
82. [Integrity Act 2009](#) (Qld), Chapter 4: Regulation of lobbying activities, accessed 3 June 2014. The [Register of lobbyists](#) is available on the [Queensland Integrity Commissioner website](#), accessed 3 June 2014.
83. *Lobbyists code of conduct*, op. cit., section 5.
84. D Solomon (Queensland Integrity Commissioner), '[Review of the Integrity Act 2009, Chapter 4 \("Regulation of lobbying activities"\)](#)', 31 May 2011, pp. 3-4, accessed 3 June 2014. For additional recommendations see D Solomon, '[Review of the Integrity Act](#)', (further submission to Department of Premier and Cabinet), n.d., accessed 3 June 2014.
85. Queensland Department of the Premier and Cabinet, [Review of the Integrity Act 2009](#), Issues paper, October 2011, accessed 3 June 2014.
86. D Solomon, '[Response to the issues paper – Review of the Integrity Act 2009](#)', 8 December 2011, p. 6, accessed 3 June 2014. See also D Solomon, '[Lobbying: is registration sufficient?](#)', Australian Public Sector Conference, Fremantle, 16 November 2011, accessed 3 June 2014.
87. Queensland Parliament, Finance and Administration Committee, [Oversight of the Queensland Integrity Commissioner 2011](#), 16 February 2012, p.vi, accessed 3 June 2014.
88. [Government response](#) to Finance and Administration Committee report, *Oversight of the Queensland Integrity Commissioner 2011*, 14 August 2012, p. 1, accessed 4 June 2014.
89. Queensland Parliament, Finance and Administration Committee, [Oversight of the Queensland Integrity Commissioner 2012 and review of Lobbyists code of conduct](#), report 26, 27 March 2013, accessed 4 June 2014.
90. *Ibid.*, p. vii.

The Committee recommends that the *Integrity Act 2009* be amended to include paid in-house lobbyists of both corporations and associations.

### Recommendation 3

The Committee recommends that a review of the *Integrity Act 2009* be completed and include examination of the following topics:

- Sanctions for section 71 and code of conduct breaches
- Investigative powers for the Integrity Commissioner
- Definition of lobbyist
- Definition of lobbying activity
- Post-separation and employment restrictions
- Definition of designated persons
- Sanctions for non-provision of information under the Public Records Act<sup>91</sup>

The report noted that, in reference to the definition of lobbyist, all but one of the submissions had expressed 'serious concerns about the existing definition of lobbyist which precluded 'in-house' lobbyists'.<sup>92</sup>

The Government response noted that the *Right to Information and Integrity (Openness and Transparency) Amendment Act 2012* (Qld) had amended the *Integrity Act 2009* (Qld) to extend the application of lobbying provisions to the opposition, clarify the meaning of 'third party client' and include requirements in the *Lobbyists Code of Conduct* for lobbyists to report to the Integrity Commissioner on their lobbying activities.<sup>93</sup> In response to recommendations two and three the Government foreshadowed a review of the integrity framework as part of an 'Open Government' reform process.<sup>94</sup> These recommendations will be considered during the review. With regard to the first recommendation, the Government noted that the Integrity Commissioner is responsible for approving the code of conduct and that 'the reporting of this information [publishing client names and purpose of meetings] will facilitate open disclosure of lobbying activity by lobbyists'.<sup>95</sup>

As a result of the recent NSW ICAC hearings the Queensland Integrity Commissioner has stated that he will make a submission to the Open Government review proposing that the definition of lobbyist include in-house lobbyists. He said:

This would mean that all lobbying of government (except by constituents and some other minor exceptions) would be recorded and publicly available on the Integrity Commissioner's website every month.<sup>96</sup>

### Western Australia

As noted in the Introduction, the WA Government was the first Australian government to introduce a lobbyist code of conduct and register of lobbyists. On 20 March 2007 Premier Alan Carpenter tabled the *Contact With Lobbyists Code* (WA Code) in the Legislative Assembly. In his tabling speech he noted that the WA Code:

... creates the Register of Lobbyists, establishes rules for contact between lobbyists and ministers, parliamentary secretaries, ministerial staff and public sector employees and establishes standards of conduct for lobbyists who wish to be included on the Register of Lobbyists. The Contact with Lobbyists Code has application through the ministerial code of conduct and the codes of conduct that apply to public sector bodies.

... will operate in such a way that no minister, ministerial staff member or employee of a public sector body will be permitted to have professional contact with a lobbyist unless the lobbyist is included on the Register of Lobbyists.<sup>97</sup>

91. Ibid.

92. Ibid., p. 14.

93. [Government response](#) to Finance and Administration Committee, *Oversight of the Queensland Integrity Commissioner 2012 and review of Lobbyists code of conduct*, report 26, 2 July 2013, accessed 5 June 2014.

94. Ibid. See also [Open government reform website](#), accessed 5 June 2014.

95. Ibid.

96. K Fraser and L Walsh, '[Integrity chief wants lobbyists put on leash](#)', *Courier Mail*, 8 May 2014, p. 15, accessed 5 June 2014.

Mr Carpenter also outlined the ‘minimalist’ requirements of the Code and the Register which were adopted by the federal and most state governments:

... [the Code] is deliberately minimalist in its approach. It applies only to lobbyists who represent third parties. It does not apply to business lobby groups, trade unions, or religious or charitable bodies. Nor does it apply to recognised professional and technical occupations. The information requirements of the Register of Lobbyists are also minimalist. The register will contain a lobbyist’s business registration details, details of employees who are engaged in lobbying, and names of clients who are currently being represented by the lobbyist. These details will need to be updated every three months.<sup>98</sup>

Mr Carpenter also referred to the actions of WA lobbyists Brian Burke (former ALP Premier), Julian Grill (former ALP minister) and Noel Crichton-Browne (former Lib senator) and the reasons they would be barred from the Register:

Unfortunately, the reputation of lobbying and lobbyists has been damaged through the actions of Brian Burke, Julian Grill and Noel Crichton-Browne. Evidence submitted to the recent hearings of the Corruption and Crime Commission has shown that Burke, Grill and Crichton-Browne have, at the very least, shown an absolute contempt for standards of political probity and a total disregard of the ethics expected of individuals operating in the sphere of public life. For this reason, the government will not allow Burke, Grill and Crichton-Browne to be on the Register of Lobbyists.<sup>99</sup>

The current version of the WA Code is dated November 2008.<sup>100</sup> The WA Code and the *Register of Lobbyists* (WA Register) are available on the Public Sector Commission website.<sup>101</sup> The WA Code defines a ‘government representative’ as a Minister, Parliamentary Secretary, Ministerial Staff Member or person employed, contracted or engaged by a public sector agency.<sup>102</sup> The WA Register is administered by the Public Sector Commissioner who may, under some circumstances remove the details of a lobbyist from the WA Register or refuse to accept an application to be placed on the WA Register.<sup>103</sup>

On 9 November 2011 the Premier, Colin Barnett, introduced the Integrity (Lobbyists) Bill 2011. The purpose of the Bill was to:

... promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives by providing for the registration of lobbyists; and issuing [a] code of conduct for registered lobbyists in their dealings with the government; and prohibiting registered lobbyists from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities, and for related purposes.<sup>104</sup>

The Bill prohibited lobbying by unregistered persons with the penalty for a breach being \$10,000. A fine of up to \$10,000 could also be imposed for the provision of false or misleading information to the Public Sector Commissioner. Under the provisions of the Bill members of the WA parliament and federal WA members and senators and senior public sector executives would be prevented from registering as lobbyists for one year after leaving these positions.<sup>105</sup>

The Bill passed the Legislative Assembly on 19 September 2012 and was introduced into the Legislative Council and read a second time on the same day. Debate was adjourned on 19 September 2012. The Bill lapsed when the 38th Parliament was prorogued and has not been reintroduced in the current parliament.<sup>106</sup>

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97. A Carpenter (Premier), ‘[Contact with lobbyists code—register of lobbyists](#)’, statement, Western Australia, Legislative Assembly, *Debates*, 20 March 2007, pp. 329–330, accessed 6 June 2014.

98. *Ibid.*

99. *Ibid.*

100. Queensland Public Sector Commission, [Contact with lobbyists code](#), 28 November 2008, accessed 6 June 2014.

101. Queensland Public Sector Commission, [Register of lobbyists](#), accessed 6 June 2014.

102. *Contact with lobbyists code*, op. cit., para 3.

103. *Ibid.*, para. 8.

104. Parliament of Western Australia (WA), [Integrity \(Lobbyists\) Bill 2011 homepage](#), WA Parliament website, accessed 6 June 2014.

105. *Ibid.*, clause 14.

106. The 39th<sup>th</sup> Parliament was opened on 11 April 2013.



## South Australia

Premier Mike Rann announced the *Lobbyist Code of Conduct* and public *Register of Lobbyists* (SA Register) on 29 August 2009.<sup>107</sup> Some newspaper reports suggested that the Premier's announcement was 'long overdue'.<sup>108</sup> South Australia's Code (SA Code) was prepared in consultation with the Victorian Government and was very similar to codes adopted by the federal and other state governments.<sup>109</sup> The SA Code, which came into force on 1 December 2009, covers 'third party lobbyists' and defines 'government representative' as a 'Minister, Parliamentary Secretary, Ministerial Staff Member or person employed, contracted or engaged by a public sector agency'.<sup>110</sup> The SA Code also requires lobbyists to register and to update their details annually on the Register of Lobbyists and, for ministers and public servants, operates in conjunction with the *Ministerial Code of Conduct* and the *Public Sector Code of Conduct*.<sup>111</sup>

The *Lobbyist Code of Conduct* includes post-separation employment rules covering ministers, ministerial staff and departmental executives. Ministers who leave office cannot, for a period of two years after they retire, engage in professional lobbying activities relating to any matter with which they had official dealings in their last 18 months in office. Parliamentary secretaries, ministerial staff and departmental executives are restricted for 12 months after retirement from engaging in professional lobbying activities relating to any matter with which they had official dealings in their last 12 months in office.<sup>112</sup>

The Chief Executive of the Department of the Premier and Cabinet is responsible for the *Register of Lobbyists* and can refuse to accept an application to be placed on the SA Register or, under some circumstances, remove a lobbyist's details from the SA Register.<sup>113</sup>

## Tasmania

Deputy Premier and Attorney-General, Lara Giddings, introduced a *Lobbying Code of Conduct* (the Code) on 15 August 2009.<sup>114</sup> The Code covers third party lobbyists and defines 'government representative' as a minister, a parliamentary secretary, a member of parliament of the political party (or parties) that constitute the executive government of the day, ministerial advisers and heads of agencies appointed under the *State Service Act 2000*.<sup>115</sup> The Code imposes post-separation employment restrictions on ministers, parliamentary secretaries and heads of agencies, preventing them from acting as lobbyists for a period of 12 months.<sup>116</sup> The Code provides for a *Register of Lobbyists* (the Register) which has been in operation since 1 September 2009. The Register is located on the Department of Premier and Cabinet website with the Secretary of the Department responsible for handling breaches of the Code.<sup>117</sup> Lobbyists are required to update their details annually.

The *Integrity Act 2009* (Tas.), established the Integrity Commission, and lists one of the functions of the Commission as:

[to] establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers.<sup>118</sup>

At the time of writing responsibility for the Code and the Register remains with the Department of Premier and Cabinet.

107. G Kelton and K Wheatley, '[Lobby code](#)', *Adelaide Advertiser*, 29 August 2009, p. 1, accessed 10 June 2014.

108. See, for example, Editorial, '[Register of lobbyists is long overdue](#)', *Sunday Mail Adelaide*, 30 August 2009, p. 74, accessed 10 June 2014.

109. Kelton and Wheatley, *op. cit.*

110. South Australia Department of the Premier and Cabinet (DPC), '[Lobbyist code of conduct](#)', PC032, October 2009, para. 3, p. 18, accessed 10 June 2014.

111. *Ibid.*, para. 5, p. 19.

112. *Ibid.*, para. 7, p. 20.

113. *Ibid.*, para. 9, p. 21. The [Lobbyist register](#) is available on the [Department of the Premier and Cabinet website](#), accessed 11 June 2014.

114. '[Tassie curb on lobbyists](#)', *Sunday Tasmanian*, 16 August 2009, p. 11, accessed 18 July 2014.

115. Tasmania Department of Premier and Cabinet, '[Tasmanian Government lobbying code of conduct](#)', August 2009, para. 3, accessed 11 June 2014.

116. *Ibid.*, para. 7.

117. Tasmania [Department of Premier and Cabinet website](#), accessed 11 June 2014.

118. [Integrity Commission Act 2009](#), section 8 (1)(e), accessed 11 June 2014. Note: the Integrity Commission commenced operation in October 2010.

## Australian Capital Territory (ACT)

In July 2012 the Ethics and Integrity Adviser, Stephen Skehill, reported on his review of the ACT *Code of Conduct for Members of the Legislative Assembly*. Mr Skehill noted that, at the suggestion of the Chief Minister, Katy Gallagher, he considered the operation of the Code in relation to the issue of lobbying.<sup>119</sup> He agreed with the Chief Minister that ‘the ACT should consider whether or not it should follow the trends in other jurisdictions’.<sup>120</sup> He also suggested that in a small parliament where the Executive does not hold the balance of power by its own majority, there may be an argument that lobbying of members other than ministers has more significance than it might otherwise assume.<sup>121</sup>

On 27 February 2014 the ACT Legislative Assembly passed a motion moved by the Chief Minister, Katy Gallagher, on the provision of advice by the Standing Committee on Administration and Procedure on a lobbyist register for the ACT. The motion included the provision that this Assembly:

- (2) requests that the Standing Committee on Administration and Procedure provide advice on the implementation of a lobbyist register for the ACT Legislative Assembly, including an associated code of conduct, principles and guidelines, and report back to the Assembly by the last sitting day in June 2014.<sup>122</sup>

In its report the Committee agreed that the introduction of a lobbyists code of conduct and register would be appropriate for the ACT but was split on whether lobbying regulation should apply to all members of the Legislative Assembly or be confined to the Executive. The Committee agreed that this was an issue to be resolved by the Legislative Assembly.<sup>123</sup> Since the tabling of the report it has been reported that Liberal Party leader, Jeremy Hanson, has said that ‘he had come round to the view it [the code] should apply to all members, in light of what had been revealed by the corruption inquiry [ICAC] in NSW’.<sup>124</sup>

At the time of writing the Legislative Assembly had not debated the report.

## Overseas governments

### Canada

Canada has had a lobbyist registration system since the commencement of the *Lobbyists Registration Act* in 1989. Amendments to this Act were contained in the *Federal Accountability Act 2006* which changed the name of the Act to the *Lobbying Act*.<sup>125</sup> The amendments, which became law on 2 July 2008, aim to ensure that Canadians know who is communicating with the government and on what subject.

The introduction to the *Lobbyists Code of Conduct* (the Code), which is required to be developed by the Act, states that the Code is based on four key principles that also underpin the Act:

- Free and open access to government is an important matter of public interest
- Lobbying public office holders is a legitimate activity
- It is desirable that public office holders and the general public be able to know who is attempting to influence government and
- The system of registration of paid lobbyists should not impede free and open access to government.<sup>126</sup>

The *Lobbyists’ Code of Conduct* is published in the *Canada Gazette* but is not a statutory instrument.<sup>127</sup>

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119. S Skehill, [Review of the code of conduct for members of the Legislative Assembly for the Australian Capital Territory](#), 31 July 2012, pp. 14–15, accessed 11 June 2014.

120. *Ibid.*, p. 15.

121. *Ibid.*

122. K Gallagher (Chief Minister), [‘Administration and procedure—Standing Committee—provision of advice’](#), motion, ACT Legislative Assembly, *Debates*, 27 February 2014, pp. 485–86, accessed 11 June 2014.

123. ACT Standing Committee on Administration and Procedure, [Lobbyist regulation](#), ACT Legislative Assembly, 3 June 2014, p. 4, accessed 4 July 2014.

124. K Lawson, [‘ACT ethics adviser wants register of lobbyists’](#), *Canberra Times*, 4 July 2014, p. 8, accessed 7 July 2014.

125. [Lobbying Act](#) (Can), RSC 1985, c. 44, accessed 26 June 2014. The [Office of the Commissioner of Lobbying of Canada](#) includes a brief history of the lobbyists’ registration regime, accessed 26 June 2014.

126. Office of the Commissioner of Lobbying of Canada, [The Lobbyists’ code of conduct](#), 7 June 2012, accessed 26 June 2014.

Lobbying is defined as communicating with public office holders for payment with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of federal grants, contributions or other financial benefits; and
- in the case of consultant lobbyists, the awarding of a federal government contract and arranging a meeting between their client and a public office holder.<sup>128</sup>

The Act created the position of Commissioner of Lobbying who is appointed by the Governor in Council after consultation with the leaders of all recognised parties and the approval of the appointment by resolution of the Senate and the House of Representatives.<sup>129</sup> The Commissioner is an independent officer of the parliament with investigative powers and a mandate to administer and enforce the *Lobbying Act* and enforce compliance with the *Lobbyists' Code of Conduct*.

The Act makes provision for two types of federal officials: Public Office Holder (POH) and the sub-category of Designated Public Office Holder (DPOH).

Public Office Holders are virtually any employee of the federal government, whether elected or appointed. This broad category includes members of parliament, parliamentary staff, members of the Canadian Armed Forces and the Royal Canadian Mounted Police, and federal government employees.<sup>130</sup> Designated public office holders include members of parliament, ministers, ministers of state, staff working in the office of ministers, ministers of state and the Leader of the Opposition in the House and in the Senate who were appointed pursuant to subsection 128(1) of the *Public Service Employment Act*, deputy ministers, associate and assistant deputy ministers, as well as any individual who occupies a position that has been designated by regulation.<sup>131</sup>

Members of parliament and certain staff of the Leader of the Opposition in the Senate and the House of Commons were added to the list of DPOHs in September 2010. The reasons for the inclusion of these categories were as follows:

The designated public office holder category and requirements came into effect in 2008. Since then it has become apparent that Members of Parliament (MPs) and Senators can have a significant impact on the development of public policy and the direction of the Government. They have access to government information and their public offices provide an opportunity to develop networks of political and government connections. "Exempt staff" working in the offices of the Leader of the Opposition in the House and in the Senate, by extension, can play a role similar to that of "exempt staff" working in the office of a Minister and therefore may also have access to government information and may also have established a network of government and political contacts.<sup>132</sup>

The Act requires that consultant lobbyists and in-house lobbyists register. A consultant lobbyist is an individual who, for payment, communicates on behalf of any person or organisation or corporation with a public office holder on certain matters. Consultant lobbyists are required to register all their lobbying activities.<sup>133</sup>

In-house lobbyists communicate with public office holders on behalf of the corporation or the organization which employs them. Registration is required when one or more of the employees communicate with public office holders regarding certain subjects and that those duties constitute a significant part [20% or more in one month] of the duties of one employee.<sup>134</sup>

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127. *Lobbying Act* (Can), section 10.2(4).

128. Office of the Commissioner of Lobbying of Canada, '[Ten things you should know about lobbying](#)', item 4. 'What is lobbying', accessed 27 June 2014, see also *Lobbying Act* (Can), section 5(1).

129. *Lobbying Act* (Can), section 4.1.

130. *Lobbying Act* (Can), section 2.

131. *Ibid.*, section 2(1), see also *Ten things you should know about lobbying*, op. cit.

132. *Canada Gazette*, 144(19), '[Regulations amending the designated Public Office Holder Regulations](#)', 15 September 2010, accessed 27 June 2014.

133. *Lobbying Act*, section 5(1). The *Register of lobbyists* is available on the [Office of the Commissioner of Lobbying of Canada website](#), accessed 27 June 2014.

134. *Ibid.*, section 7.(1). The definition of 'a significant part of duties' is available at: Office of the Commissioner of Lobbying of Canada, '[A significant part of duties \("the 20% rule"\)](#)', July 2009, accessed 27 June 2014. A simplified definition of in-house lobbyist is contained in Office

Lobbyists are required to review their activities at the end of each month and, if certain defined conditions exist, file a return. Although there may be months when lobbyists do not file a return, six months is the longest interval that can pass without a return being filed.<sup>135</sup> Lobbyists are not permitted to receive any payment that is in whole or in part contingent on the outcome of their lobbying.<sup>136</sup>

Former DPOHs and members of a Prime Minister's transition team are subject to a five-year prohibition on lobbying. These individuals cannot:

- work as consultant lobbyists
- work for an organization and carry out lobbying activities on behalf of that organization or
- work for a corporation if lobbying constitutes a significant part of their work on behalf of the corporation.<sup>137</sup>

The Commissioner of Lobbying may grant such individuals an exemption from the five-year prohibition if an exemption would not be contrary to the purposes of the Act.<sup>138</sup>

There are strong penalties for non-compliance with the *Lobbying Act*. An individual who fails to file a return as required under certain subsections of the Act or makes a false or misleading statement in those returns, or in any document submitted to the Commissioner, is guilty of an offence and liable:

s. 14(1) (a) on summary conviction, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; and

(b) on proceedings by way of indictment, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding two years, or to both.<sup>139</sup>

s. 14(2) Every individual who contravenes any provision of this Act — [other than subsections referred to in section 14(1)] — or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.<sup>140</sup>

## United Kingdom

Debate about the regulation of lobbying has continued since an inquiry into the transparency of the lobbying industry was announced in 2007. The inquiry into the lobbying industry, conducted by the Public Administration Select Committee (PASC), was the first since 1991.<sup>141</sup> The Committee's report was tabled on 5 January 2009 and recommended the introduction of a register of lobbying activity that was both mandatory and statutory.<sup>142</sup> The committee also recommended that information about contact between lobbyists and decision makers—essentially, diary records and minutes of meetings—be made public.<sup>143</sup>

In March 2010 the Labour Government announced the introduction of a statutory, mandatory register of lobbying but this did not eventuate before the May 2010 general election. The new Conservative-Liberal Democrat Government was committed to the introduction of a statutory register of lobbyists and in January 2012 tabled a consultation paper on the issue.<sup>144</sup> At the same time the House of Commons Political and Constitutional Reform Committee conducted an inquiry into the Government's proposals for a statutory register

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of the Commissioner of Lobbying, [Frequently asked questions](#), accessed 1 July 2014, 'In-house lobbyists (Corporations) work for compensation in an entity that operates for profit. In-house lobbyists (Organizations) work for compensation in a non-profit entity'.

135. *Lobbying Act* (Can), section 4.

136. *Ibid.*, section 10.1.

137. *Ibid.*, section 88.1 (1).

138. *Ibid.*, section 88.11(2).

139. *Ibid.*, section 14(1).

140. *Ibid.*, section 14(2).

141. Proposals for lobbying reform have been summarised in a number of recent House of Commons Library publications and House of Commons committee reports. See, for example, P Bowers, O Gay and D Pyper, [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, Bill No. 97 of 2013–14](#), Research paper, 13/51, House of Commons Library, London, 27 August 2013, pp 4-9, accessed 16 June 2014 and Public Administration Select Committee, [Lobbying: access and influence in Whitehall](#), House of Commons, December 2008, first report of session 2008–09, v. 1, pp. 51–52, accessed 16 June 2014.

142. Lobbying: access and influence in Whitehall, *ibid.*, pp. 3–4.

143. *Ibid.*, p. 4.

144. Great Britain, Cabinet Office, [Introducing a statutory register of lobbyists](#), Consultation paper, Cm 8233, January 2012, accessed 17 June 2014.

of lobbyists. The Committee reported in July 2012 and recommended that the Government clarify its definition of lobbying. The Committee also recommended that:

... the Government scrap its proposals for a statutory register of third party lobbyists. It is our view that the proposals in their current form will do nothing to improve transparency and accountability about lobbying. Imposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry.<sup>145</sup>

The Committee also urged the Government to:

... scrap its current proposals for a statutory register and implement a system of medium regulation. A system of medium regulation would include all those who lobby professionally, in a paid role, and would require lobbyists to disclose the issues they are lobbying Government on.<sup>146</sup>

On 17 July 2013 the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* was introduced into the House of Commons. The Bill is in three parts, with Part 1 relating to lobbying. The main provisions in Part 1 cover:

... lobbyists who work for lobbying firms [third-party lobbyists] referred to as “consultant lobbyists” and it makes them subject to requirements to register and to reveal their clients, if lobbying is their “main business”. It creates offences for failure to register or providing inaccurate or incomplete information. The register will be administered by a Government-appointed Registrar, who will be funded through fees on those registering. The Registrar will have the power to impose civil penalties in respect of the offences, although this would remove the possibility of criminal proceedings and is intended to apply only to minor breaches.

The Bill covers only the lobbying of UK Government Ministers and Permanent Secretaries by means of personal communications orally or in writing. The lobbying provisions in Part 1 ... apply to the whole of the UK since they relate to lobbying of the UK Government ... The Bill does not create a code of conduct for lobbyists, and it does not cover the lobbying of members of either House of Parliament outside of ministerial responsibilities.

There is an exemption for the work of Members of Parliament on behalf of individual constituents.<sup>147</sup>

In September 2013 two House of Commons committees reported on the Bill. The Committee on Standards examined the interaction between the legislation and parliamentary rules relating to the conduct of members.<sup>148</sup> The Committee concluded that the Bill was unclear in its definition of consultant lobbying and how it would apply to Members.<sup>149</sup> In another inquiry into the provisions of the Bill, the Political and Constitutional Reform Committee recommended:

- expanding the definition of a lobbyist to include in-house lobbyists;
- expanding the definition of what constitutes lobbying to include the provision of lobbying advice;
- extending the list of people with whom communication, or advising on communication, counts as lobbying to include Senior Civil Servants and special advisors.<sup>150</sup>

145. House of Commons Political and Constitutional Reform Committee, [Introducing a statutory register of lobbyists](#), Second report of session 2012–13, v. 1, 13 July 2012, p. 32, accessed 17 June 2014.

146. *Ibid.*, p. 31.

147. [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, Bill No. 97 of 2013–14](#), Research paper, 13/51, House of Commons Library, London, 27 August 2013, *op. cit.*, pp. 9–10. This paper also contains a summary of criticism from the lobbying industry, pp. 11–12.

148. The Committee on Standards is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards, [Committee on Standards website](#), accessed 16 June 2014.

149. P Bowers, O Gay, R Kelly and D Pyper, [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: progress of the Bill](#), Standard Note, SN/PC/06734, House of Commons Library, London, 15 October 2013, p. 6, accessed 17 June 2014. See also House of Commons Committee on Standards, [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill](#), House of Commons, first report of session 201314, 3 September 2013, accessed 17 June 2014.

150. Bower, Gay, Kelly and Pyper, *ibid.*, p. 7. See also Political and Constitutional Reform Committee, [The government’s lobbying Bill](#), House of Commons, 5 September 2013, accessed 17 June 2014.

The Bill proved controversial during its passage through both the House of Commons and the House of Lords. The part which provoked most debate was part 2 (non-party campaigning).<sup>151</sup> The Bill received royal assent on 30 January 2014.<sup>152</sup>

### **The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014**

The Act establishes the position of Registrar of Consultant Lobbyists and defines a consultant lobbyist as one who, in the course of a business and in return for payment, makes communications on behalf of another person or persons.

The Act covers oral or written communications made personally to a Minister of the Crown or permanent secretary (and other specified positions) and states that regulations may amend the relevant subsection to include communications made personally to a special adviser.

The Act does not establish a lobbying code of conduct but requires consultant lobbyists to provide an undertaking to comply with a relevant industry code of conduct and that this code be available to be inspected.

The register is administered by a Government-appointed Registrar, who is funded by fees levied on those registering. Registered lobbyists are required to submit an information return to the Registrar for each quarter. Offences are created for failure to register or providing inaccurate or incomplete information. The Registrar can decide to impose a civil penalty for these offences with the penalty notice not exceeding £7,500.<sup>153</sup>

The Government has defended the narrow definition of lobbyist in the Act by arguing that the Act complements the information published by Departments about ministerial meetings.<sup>154</sup> During debate in the House of Commons in the Committee stage of the Bill, the Cabinet Office Parliamentary Secretary, Chloe Smith, stated:

The Government's proposals for a register are designed to address the specific problem that we have identified: it is not always clear whose interests are represented by consultant lobbyists when they meet Ministers and permanent secretaries.<sup>155</sup>

In November 2013 the Committee on Standards in Public Life published a report on improving the transparency of the lobbying industry. The report welcomed the quarterly publication of ministerial meetings but concluded that:

... significant questions remain about how well this is working in practice, whether sufficient detail is published, how the span of such transparency might be widened and what should be the limits of greater transparency.<sup>156</sup>

The Ministerial code of conduct prohibits ministers from lobbying Government for two years. Ministers must also seek advice from the Independent Advisory Committee on Business Appointments (ACoBA) about any appointments or employment they may wish to take up within two years of leaving office.<sup>157</sup>

At the time of writing the statutory register had not been established.

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151. O Gay, P Bowers and D Pyper, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Lords amendments*, Standard Note, SN/PC/6796, House of Commons Library, London, 29 January 2014, p.2, accessed 18 June 2014.

152. *Transparency of Lobbying, Non-party campaigning and Trade Union Administration Act 2014*, accessed 18 June 2014. See also Bill stages and Bill documents relating to the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014*, United Kingdom Parliament website, accessed 18 June 2014.

153. *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, Research paper 13/51, op. cit. p. 1.

154. Cabinet Office, *Ministerial code of conduct*, May 2010, para 8.14, states that 'Departments will publish, at least quarterly, details of Ministers' external meetings', accessed 19 June 2014. Since July 2011 all meetings with newspaper and other media proprietors, editors and senior executives have been published regardless of the purpose of the meeting, Cabinet Office, *Ministerial conduct and guidance*, accessed 19 June 2014.

155. C Smith, '*Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: committee stage*', United Kingdom, House of Commons, *Debates*, 9 September 2013, cols 761-3, accessed 18 June 2014.

156. Committee on Standards in Public Life, *Strengthening transparency around lobbying*, House of Commons, November 2013, paras 4.25-4.27, accessed 19 June 2014. See also para 4.32 for a comparison of information on ministerial meetings available on the Government website and the *Who's lobbying website*.

157. Ministerial code of conduct, op. cit., para 7.25. See also, Committee on Standards in Public Life, *Strengthening transparency around lobbying*, *ibid.*, ch. 5 'The "revolving door" of employment', for a discussion of ACoBA's role in approving post-separation employment appointments for former ministers and civil servants, accessed 19 June 2014.

## United States

Lobbyist legislation in the USA has existed in some form since the 1930s with the result that ‘the US has the longest history of lobbying regulation of all modern democracies’.<sup>158</sup> More recently, as a result of mounting public concern over the influence of lobbyists, including the conviction for fraud in March 2006 of former prominent lobbyist Jack Abramoff, the Congress introduced Bills aimed at making the relationship between lobbyists and Members of Congress more transparent.<sup>159</sup>

On 14 September 2007 the *Honest Leadership and Open Government Act of 2007*, a compromise bill supported by members of both Houses of Congress, became law. This Act amended a number of previous statutes including the *Lobbying Disclosure Act of 1995* and the *Ethics in Government Act of 1978* and amended House and Senate ethics rules on gifts, travel and contacts with lobbyists. The legislation dealt with five general areas of reform:

- (1) broader and more detailed disclosures of lobbying activities by paid lobbyists, and more disclosures concerning the intersection of the activities of professional lobbyists with government policy makers;
- (2) more extensive restrictions on the offering and receipt of gifts and favors for Members of Congress and their staff, including gifts of transportation and travel expenses;
- (3) new restrictions addressing the so-called “revolving door,” that is, post-government-employment “lobbying” activities by former high-level government officials on behalf of private interests;
- (4) reform of the government pension provisions with regard to Members of Congress found guilty of abusing the public trust; and
- (5) greater transparency in the internal legislative process in the House and Senate, including “earmark” disclosures and accountability.<sup>160</sup>

The main provisions of the legislation included:

- an increase from one year to two years before senators can lobby Congress including an officer or employee of either chamber or employee of any other legislative office
- senior executive personnel (including Cabinet secretaries) are prohibited from lobbying the department or agency in which they worked for two years after leaving their positions
- the ban on Members of the House of Representatives, elected officers of the House, senior Senate staff and Senate officers from lobbying after leaving their positions is still one year
- lobbyists are prevented from providing gifts or travel to members of Congress
- mandatory lobbyists’ disclosures must be filed electronically each quarter. The disclosures will be available on a publicly searchable, sortable and downloadable internet database
- the civil penalty for failure to comply with requirements of the Lobby Disclosure Act has increased from \$50,000 to \$200,000 and a criminal penalty of up to five years imprisonment is imposed for knowing and corrupt failure to comply with the Act and
- members of Congress and their staff are prohibited from influencing hiring decisions of any private organisation solely on the basis of partisan political affiliation. The penalty for violating this provision is a fine and/or imprisonment of up to 15 years.<sup>161</sup>

158. R Chari, J Hogan and G Murphy, *Regulating lobbying: a global comparison*, European Policy Research Unit series, Manchester University Press, Manchester, 2010, p. 20.

159. See *ibid.*, pp. 24–25 for more detail on the Senate and House of Representatives 2006 Bills.

160. J Maskell, [Lobbying law and ethics rules changes in the 110th Congress](#), Congressional Research Service (CRS), updated 18 September 2007, p. 2, accessed 24 June 2014.

161. See *ibid.*, and D McKeown, *op cit.*, pp. 68–69. See also J Strauss, [Lobbying the executive branch: current practices and options for change](#), CRS, 6 December 2010, accessed 24 June 2014 and P Purser, [Lobbying regimes: an outline](#), Research paper, New Zealand Parliamentary Library, April 2012, pp. 16–19, accessed 25 June 2014

The *Lobbying Disclosure Act* includes the following definitions:<sup>162</sup>

**Lobbyist:**

... anyone who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, provided that lobbying activities constitute at least 20% of the time they spend in providing services to that client over a period of three months.

**Lobbying firm:**

... a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.

**A client:**

... any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

**Covered executive branch officials:**

- the President;
- the Vice President;
- officers or employees in the Executive Office of the President;
- officers or employees serving in designated positions of the Executive Schedule,
- any member of the uniformed services whose pay grade is at or above a certain level and
- any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5.

**Covered legislative branch officials:**

- Member of Congress;
- an elected officer of either House of Congress;
- any employee of, or any other individual functioning in the capacity of an employee of—
  - a Member of Congress;
  - a committee of either House of Congress;
  - the leadership staff of the House of Representatives or the leadership staff of the Senate;
  - a joint committee of Congress; and
  - a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and
- any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

**Lobbying activities:**

[comprise] lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

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162. [Lobbying Disclosure Act of 1995](#), 2 USC § 1602 – Definitions, accessed 25 June 2014.



## Lobbying contacts:

any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—

- the formulation, modification, or adoption of Federal legislation (including legislative proposals);
- the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
- the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
- the nomination or confirmation of a person for a position subject to confirmation by the Senate.

The Act also lists exceptions to lobbying contact communications.

Lobbyists are required to register their clients with the Secretary of the Senate and the Clerk of the House of Representatives. Registrations and reports are published on the websites of the Senate and the House of Representatives.<sup>163</sup>

On 21 January 2009 President Obama signed an Executive Order *Ethics Commitments by Executive Branch Personnel* which required all full-time political staff appointed on or after 20 January 2009 to sign an ethics pledge. One of the main features of the Order is the ban that prevents Executive Branch employees who leave government to engage in lobbying from doing so for the remainder of the Obama Administration.<sup>164</sup>

On 22 January 2009 the Office of Government Ethics published a memorandum summarising the main requirements of the Executive Order. Section 1 of the Order takes the form of an Ethics Pledge to be signed by 'every appointee in every executive agency appointed on or after January 20, 2009'. On signing, appointees are contractually committed to the obligations listed in the Pledge. The definition of 'appointee' 'covers all full-time, political appointees regardless of whether they are appointed by the President, the Vice President, an agency head, or otherwise'.<sup>165</sup> The revolving door bans cover all appointees entering government, lobbyists entering government, appointees leaving government and appointees leaving government to lobby. The bans for all categories are two years while appointees leaving government to lobby are also prevented from lobbying any covered executive branch officials for the remainder of the Administration.<sup>166</sup>

On 18 June 2010 the President signed a memorandum directing agencies in the Executive Branch not to appoint or re-appoint currently-registered federal lobbyists to advisory boards or commissions.<sup>167</sup>

A 2014 survey of the US lobbying industry has found that, for the third year in a row, spending on lobbying has decreased and lobbyists are continuing to deregister. In 2013, the number of registered lobbyists dipped to 12,281, the lowest number on file since 2002.<sup>168</sup> The survey suggests that the industry is not in decline but operating underground and that the number of working lobbyists is closer to 100,000.<sup>169</sup> As at 28 April 2014 the number of registered lobbyists recorded for 2014 was 9,927.<sup>170</sup>

One reason suggested for the decline in the number of registered lobbyists is the Executive Order issued by President Obama in 2009 which stated that:

... registered lobbyists would not be welcome in his administration. The administration quickly backpedaled ... issuing a number of exemptions in the following years. But the larger effect was that many lobbyists simply

163. See [United States Senate website](#), accessed 7 June 2014 and [United States House of Representatives website](#), accessed 7 July 2014.

164. United States, The White House, '[Ethics Commitments by Executive Branch personnel](#)', Executive Order 13490, White House website, 21 January 2009, accessed 24 June 2014.

165. United States, Office of Government Ethics, '[Executive Order 13490, Ethics Pledge](#)', Memorandum DO-09-003, 22 January 2009, accessed 24 June 2014.

166. *Ibid.*, [Ethics Pledge](#), Attachment to Memorandum DO-09-003, accessed 24 June 2014.

167. B Obama (President), [Lobbyists on agency boards and commissions](#), Presidential memorandum, 18 June 2010, accessed 24 June 2014.

168. L Fang, '[Where have all the lobbyists gone?](#)', *The Nation*, 19 February 2014, accessed 26 June 2014.

169. J Thurber, quoted in Fang, *ibid.*

170. [Opensecrets website](#), accessed 26 June 2014.

deregistered, removing themselves from the lobbying-disclosure system and thereby pushing the influence-peddling profession more into the shadows.<sup>171</sup>

### **Organisation for Economic Co-operation and Development (OECD)**

In 2013 the OECD noted that only a third of OECD countries had introduced government regulations and legislation relating to lobbying. These ranged from the mandatory systems introduced by Canada and the United States to voluntary systems.<sup>172</sup> The OECD has surveyed lobbyists and those lobbied and found that there is a consensus among lobbyists as well as legislators that transparency of lobbying would help alleviate actual or perceived problems of inappropriate influence peddling by lobbyists.<sup>173</sup>

In February 2010 the OECD recommended ten *Principles for Transparency and Integrity in Lobbying*. In issuing these Principles the OECD noted that:

... lobbying may support informed decision making by providing valuable data and insights for effective public policies;

... transparency, integrity and fairness in the decision-making process are crucial to safeguard the public interest and promote a level playing field for businesses;

... public officials and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions<sup>174</sup>

The Principles are primarily directed at decision makers in the executive and legislative branches at the national and sub-national level of government and define lobbying as the oral or written communication with a public official to influence legislation, policy or administrative decisions.<sup>175</sup>

The Principles are:

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.
3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.
4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.
5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.
6. Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities.
7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.
8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

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171. J Fang, *ibid*.

172. Organisation for Economic Co-Operation and Development (OECD), [Transparency and integrity in lobbying](#), OECD website, 2013, accessed 30 June 2014.

173. *Ibid*.

174. OECD, [Recommendation of the Council on Principles for transparency and integrity in lobbying](#), OECD, 18 February 2010, accessed 30 June 2014.

175. *Ibid*.

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.

10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.<sup>176</sup>

The OECD is reviewing the implementation of the Recommendation and will publish the results in 2014.

## Conclusion

A former senior public servant has noted that lobbying is endemic to politics and that:

... the problem of influence peddling will not go away. The best way to deal with [it] is to have clear and transparent rules, and independent oversight.<sup>177</sup>

This paper has attempted to show the way in which Australian federal and state governments are dealing with influence peddling compared with the stronger regimes operating in Canada and the United States.

The recognition that lobbying can take many forms was highlighted recently by constitutional academic Anne Twomey. The United Kingdom case she described concerned a freedom of information request for the release of 27 letters written by Prince Charles to government departments which sought to influence government policy. The case has not yet been resolved but on appeal the English Court of Appeal ordered the release of the letters and took the view that:

... Prince Charles had the right to be educated in the process of government, including inquiring and being informed. But this did not extend to him lobbying governments to change their policy.<sup>178</sup>

The general call for greater transparency in the lobbying process is reflected in the Upper Tribunal's consideration that '... it was in the overall public interest for there to be transparency as to how and when Prince Charles seeks to influence government'.<sup>179</sup>

Most Australian lobbying codes suggest that the federal and state governments are aware of the need to balance transparency with the right of citizens to lobby their representatives. A 2011 study found that, in comparison with other countries and sub-national jurisdictions, Australian lobbying codes of conduct are located towards the lower third of the medium-regulation category of jurisdictions.<sup>180</sup> The authors suggest that the question facing Australia now is 'how its codes of conduct are likely to evolve.'<sup>181</sup> Changes to lobbying regimes may be further influenced by the outcomes of the two NSW ICAC inquiries when they report later in the year.

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176. *ibid.*

177. S Bartos, 'Liberal, lobbyists and finding the fine line between them', *Crikey*, 24 April 2014.

178. A Twomey (ed), '[Constitutional law: exposing royal influence in the United Kingdom](#)', *Australian Law Journal*, 88(6), 1 June 2014, p. 384, accessed 7 July 2014.

179. *Ibid.*

180. J Hogan, G Murphy and R Chari, '[Regulating the influence game in Australia](#)', *op. cit.*, p. 112.

181. *Ibid.*

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