

Guidance material

Background

The purpose of the *Integrity (Lobbyists) Act 2016* (the Act) is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between lobbyists and government representatives by:

- o providing for the registration of lobbyists
- o providing for the issuing of a Code of Conduct for registered lobbyists in their dealings with government
- o prohibiting registered lobbyists from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities and for related purposes.

It establishes a statutory foundation for determining all procedures relating to the registration and listing of lobbyists to State Government, which to date has been dealt with through administrative mechanisms.

The Public Sector Commissioner (Commissioner) will continue to be responsible for administering the Register of Lobbyists, which will ensure the independence of the lobbyist oversight process from the executive arm of government.

The guidance provided in this document is intended to assist lobbyists in understanding their obligations under the new legislative framework and the operation of the Register of Lobbyists. It does not form part of the legislative framework itself, but serves to illustrate the application of the framework in certain circumstances.

Information for currently registered lobbyists

Registration status following commencement of the new legislative framework

Currently registered lobbyists (those listed on the Register of Lobbyists) **will not** be required to reapply to be registered and **will not** be required to submit a statutory declaration at the commencement of the new framework.

For the purposes of the Act, each person whose name is recorded in a lobbyist profile under the heading “Company Details” immediately before the commencement day is to be treated as a “registrant”.

Accordingly, each person whose name is recorded in a lobbyist profile under the heading “Lobbyist Details” immediately before the commencement day is to be treated as a “lobbyist” for the purposes of the Act.

All registered lobbyists will be contacted prior to the commencement day to confirm when the new framework will commence operation.

What is the definition of lobbying activity?

Section 4 of the Act defines lobbying activity to mean communicating with a government representative for the purpose of influencing, whether directly or indirectly, State Government decision-making.

The communication can be in person or even in electronic form. The communication with a government representative does not have to be for any type of reward (financial or otherwise).

Activities excluded from the definition of lobbying activity

There are a number of exclusions from the definition of lobbying activity under s. 4(3) of the Act. These include:

- petitioning the Legislative Council or the Legislative Assembly, or both Houses;
- petitioning the Governor;
- communicating with a committee of the Legislative Council or the Legislative Assembly, or a joint committee of both Houses;
- communicating with a person who is a Minister or a Parliamentary Secretary, in that person’s capacity as a member of either House of Parliament and not as a member of the Executive Government of the State, in relation to a matter that is not within that person’s responsibilities as a Minister or a Parliamentary Secretary;
- subject to any communication by a person for any commission, payment or other reward, communicating as part of an activity of a grassroots campaign nature in an attempt to influence State government decision-making, for example, encouraging letter-writing, phone-calling or emailing campaigns;
- responding to —
 - (i) a call for submissions; or
 - (ii) a request for tender, request for expression of interest, request for a proposal or a request of a similar nature;
- providing information in response to a request from a government representative;

- communicating only for the purpose of making an application under a written law, if the application is considered and decided under that written law by a government representative or the Governor;
- making a public statement;
- communicating about a personal matter on behalf of:
 - the person making the communication; or
 - a friend or relative of that person.

What is the definition of a client?

A client is any person for whom lobbyists undertake, or have undertaken, lobbying activities, whether on a paid or unpaid basis.

What is the definition of a government representative?

The definition of a government representative is wide ranging and includes all Ministers, Parliamentary Secretaries, ministerial officers and all officers who are part of the public sector, including chief executive officers. These are considered to be in positions that are closely linked to government decision making.

Additionally, government trading enterprises will also be captured by the definition of a government representative by way of prescription in the regulations.

Expectations of a registered lobbyist

Lobbying is accepted as a legitimate part of the political process. It is recognised that lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant government representatives.

In performing this role, there is a public expectation that lobbyists will be individuals who operate according to the highest standards of professional conduct and adhere to high moral standards.

It is expected that accredited lobbyists shall act with honesty, integrity, in good faith and avoid behaviour likely to discredit themselves, government representatives, their clients or if relevant, the registrant under whom they are accredited as lobbyists.

A new Code of Conduct

The new legislation provides for the Commissioner to issue a Code of Conduct for lobbyists and registrants. The Commissioner has the discretion to determine the scope and operation of the Code and is required to publish it in the Government Gazette.

The new Code will incorporate the behavioural standards of the current Contact with Lobbyists Code, which has operated to good effect since 2007. Only one lobbyist has been removed from the current Register for unethical conduct since the Register's inception.

The current behavioural standards that will be replicated in the new require a lobbyist, when contacting a government representative on behalf of a third party, to advise the government representative that they are a lobbyist, who their client is, and the nature of their client's issue. In addition:

- Lobbyists must not engage in dishonest, corrupt, or illegal conduct or threaten any detriment.
- Lobbyists must use all reasonable endeavours to ensure that they are providing true and accurate statements to government representatives on behalf of third parties.
- Lobbyists must not make misleading, exaggerated or extravagant claims about their access to government or political parties.
- Lobbyists must keep their lobbyist business strictly separate from any private activities, including involvement in a political party.

The Commission has sought to find the right balance between incorporating appropriate accountability and standards of conduct for lobbyists as well as ensuring the requirements of the Code of Conduct do not unfairly diminish access to government and the process of decision making

While non-compliance with the Code of Conduct is not anticipated, it is important to note that the Commissioner has the power to refuse, cancel or restrict a registration in appropriate circumstances and to act if unethical conduct is detected. The Commissioner has the discretion to take non-compliance with the Code of Conduct into account when making decisions relating to registration.

As is currently the case, the Code will set out that registered lobbyists will be required to provide a quarterly confirmation that their registration details are up to date.

What will happen if a lobbyist fails to confirm that his or her details are up to date as required by the Code of Conduct?

To ensure that the information on the Register is current, lobbyists must confirm that their details are up to date within 10 business days following 30 March, 30 June, 30 September and 30 December of each year.

A lobbyist who does not confirm that his or her details are up to date within the period specified in clauses 6.1 may be removed from the Register.

A reminder email will be sent prior to each of the above dates to assist with this compliance obligation.

Requirement to notify the Commissioner if there is a change to registration details

In addition to confirming registration details on a quarterly basis, the new Code of Conduct will require **all** registered persons to submit updated registration or lobbyists' details to the

Commissioner, as soon as is reasonably practicable, in the event of any change to their registration details.

A change to registration details may include any information, about which the Commissioner may not previously have been notified, in relation to:

- any conviction of an offence punishable for a period of 2 years' imprisonment or more in Australia or elsewhere (excluding spent convictions);
- any charge or conviction, as an adult, in the last ten years, of an offence, which involved dishonesty;
- having been involuntarily removed from the lobbyist register (or equivalent) of another Australian jurisdiction;
- having been suspended, disciplined, disqualified, involuntarily deregistered, struck off, expelled or had membership of a professional or occupational group involuntarily terminated by:
 - any professional or industry body
 - the State Administrative Tribunal of Western Australia, or similar body in any other Australian jurisdiction
 - the Supreme Court of Western Australia, or similar body in any other Australian jurisdiction.

In notifying the Commission of such a change, a registered lobbyist will be asked to complete the statutory declaration.

The Commissioner currently has the discretion to refuse or cancel a lobbyist's registration and this will continue, subject to the general rules of procedural fairness.

Will the Code of Conduct be publicly available?

The Commissioner must publish a copy of the Code in the *Government Gazette*. The Code will also be published on the Register of Lobbyists website and be publicly available free of charge.

What does a lobbyist need to do before contacting a government representative?

A lobbyist who wishes to communicate with a government representative about a client's business must, when they contact the representative:

- identify themselves as a lobbyist
- confirm that they are currently listed on the Register of Lobbyists
- identify the client that they represent, and
- state the nature of the matter the client wishes them to raise with the government representative.

What does a government representative need to do if approached by a lobbyist?

Government representatives are now required to ensure that lobbyists are properly registered before agreeing to proceed with communications with them.

This is to ensure that they only have legitimate dealings with lobbyists who are listed on the Register of Lobbyists.

What if an approach is made at an informal occasion?

Lobbyists and government representatives will frequently attend the same functions. Lobbyists wishing to engage in lobbying activities in such situations will need to comply with the requirements of the Code of Conduct, that is, they will need to confirm that they and their client are on the Register and advise the nature of the matter they are raising on behalf of their client.

Should the Government representative not wish to participate in discussions with the lobbyist at a function outside the office, he or she can invite the lobbyist to make an appointment.

Offences under the Act

The new legislative framework provides for a number of offences under the Act. This approach is consistent with other jurisdictions who have moved to a statutory framework for regulating lobbying activity.

Section 8(1) of the Act makes it an offence for individuals or firms to lobby government on behalf of third parties without being registered. Doing so may attract a fine of up to \$10 000.

Section 24(1) of the Act makes it an offence to supply false or misleading information to the Commissioner, punishable by a fine of up to \$10 000.

Ban on success fees

The Act defines a 'success fee' in relation to a lobbying activity, as any commission, payment or other reward (whether pecuniary or otherwise) which depends directly or indirectly on the outcome of the lobbying activity or the outcome of a matter about which the lobbying activity is undertaken.

The Act prohibits registrants and lobbyists from receiving success fees for lobbying. It provides that a provision of a contract that breaches that prohibition is void and unenforceable, but does not prejudice or affect the operation of other provisions of the contract. Other jurisdictions, including South Australia, Queensland and New South Wales also have legislative prohibitions on success fees for lobbyists.

If a person receives a success fee under a provision of a contract that breaches s.21(1) or (2), an amount equal to the monetary value of the success fee received by the person may be recovered from that person in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the State.

The ban on success fees does not apply in respect to an agreement that was entered into prior to the day in which the new framework comes into operation. This includes a success fee that is receivable (whether before or after the commencement date) for work carried out before the commencement date.

Requirements on government representatives

The legislation does not create a separate disciplinary regime with separate sanctions for government representatives who have dealings with unregistered lobbyists.

It works in conjunction with the *Public Sector Management Act 1994* (PSM Act), agencies' Codes of conduct for public sector employees and the Ministerial Code of Conduct 2008 to create a framework that captures conduct and misconduct by government representatives in relation to lobbyists.

The Department of the Premier and Cabinet (DPC) is responsible for administering the Ministerial Code of Conduct 2008. The Ministerial Code of Conduct incorporates the existing Contact with Lobbyists Code. It will be updated to impose comparable ethical standards on ministers and parliamentary secretaries to those that currently apply.

The disciplinary provisions in the PSM Act and the powers of the Commissioner under it (for example, to issue Commissioner's Instructions) are sufficient to address any misconduct by public sector employees and ministerial officers with regard to lobbyists.

The Commissioner will issue a Commissioner's Instruction under the PSM Act to address the obligations and conduct of public sector employees, including ministerial officers and contractors, in any dealings with lobbyists. In particular, it will require all public sector employees, contractors and ministerial officers to ascertain that a lobbyist is registered before permitting a communication on behalf of a third party to occur.

The DPC also has a standard form it encourages all staff to use to record communications with lobbyists, including for ministers, parliamentary secretaries and ministerial officers.

Information for persons seeking to become a registered lobbyist

The Commissioner will continue to be responsible for deciding on registration applications from lobbyists. The registration decision will be assisted by the requirement for an applicant to complete a statutory declaration as to past professional misconduct and criminal convictions.

Currently registered lobbyists (those listed on the Register of Lobbyists) will not be required to reapply to be registered and will not be required to submit a statutory declaration at the commencement of the new framework.

Provision of a statutory declaration as part of the registration process

From commencement, lobbyists must complete a statutory declaration as part of the registration process to confirm:

- They have never been convicted of an offence punishable for a period of 2 years' imprisonment or more in Australia or elsewhere (excluding spent convictions).
- They have not been charged or convicted, as an adult, in the last ten years, of an offence, which involved dishonesty.
- They have not been involuntarily removed from the lobbyist register (or equivalent) of another Australian jurisdiction.
- They have not been suspended, disciplined, disqualified, involuntarily deregistered, struck off, expelled or had membership of a professional or occupational ground involuntarily terminated by:
 - any professional or industry body
 - the State Administrative Tribunal of Western Australia, or similar body of any other Australian jurisdiction
 - the Supreme court of Western Australia, or similar body in any other Australian jurisdiction.
- They do not currently hold and have not held for any period of time within the 12 months preceding the date of making the statutory declaration a "relevant office" as the expression is defined in section 14 of the Act.

It is an offence under section 24(1) of the Act to supply false or misleading information to the Commissioner, punishable by a fine of up to \$10,000.

Note that for lobbyists who were registered on or before commencement date may remain on the Register and are not required to complete a statutory declaration.

How does a person become a registered lobbyist and listed on the Register?

A person can apply online to be included on the Register. To do so, go to the website <https://www.lobbyists.wa.gov.au> and click on 'How to register'.

To register you will need to follow the following steps:

1. Go to the registration form.
2. Fill out the form online (the information you will be asked for is listed below).
3. Check to make sure the details you have entered are correct.
4. Click on 'submit'. The details you have submitted will then be displayed and you will be asked to click a box to say you have read the Code and agree to comply with your obligations under the Code.

5. Click on 'continue'. Your application for registration will then be submitted and an acknowledgement sent to the email address you have provided. If you do not receive this acknowledgement in a couple of days, please notify us at lobbyistsregister@psc.wa.gov.au.
6. Once your application has been accepted, your details will appear on the Register and you will be notified by email.

Each individual who engages in lobbying activities must complete a statutory declaration.

Completed statutory declarations may be uploaded as part of the online registration form and a hard copy must be provided to the Commission within 10 working days of the registration, mailed to:

Register of Lobbyists
Public Sector Commission
2 Havelock Street
WEST PERTH WA 6005

Applicants should ensure that all sections of the statutory declaration are completed, that the name, address and occupation of the person making the declaration is provided, and the form is witnessed by an appropriately qualified person. Statutory declaration forms will be available on the How to Register page.

If you are unable to register online, you can obtain an application form by:

- sending an email to lobbyistsregister@psc.wa.gov.au and asking for a form to be emailed to you; or
- ringing (08) 6552 8500 and asking for a form to be posted to you.

Persons disqualified from becoming a registered lobbyist

To build public confidence in government decision-making and the conduct of registered lobbyists, a person cannot be registered or listed as a lobbyist if the person holds a 'relevant office' or twelve months have not lapsed since the person ceased to hold a 'relevant office'. A 'relevant office' includes:

- a) a member of either House of Parliament
- b) a senator for Western Australia in the Commonwealth Senate
- c) a member of the Commonwealth House of Representatives for an Electoral Division in Western Australia
- d) a senior public sector executive
- e) the chief executive officer of a Government Trading Enterprise.

In exceptional circumstances, the Commissioner has the discretion to waive this disqualification requirement.

What information is on the Register?

The Register will continue to contain the following information:

- the business registration details and trading names of the registrants, including Australian Business Number (ABN), names of owners, partners or major shareholders as applicable.
- the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities.
- names of clients from whom the lobbyist is currently providing paid or unpaid services as a lobbyist.
- Names of clients whom the lobbyist has provided paid or unpaid services as a lobbyist during the previous three months (minimum).

Who should a lobbyist nominate as the responsible officer in their application for registration?

The responsible officer is a key position for email communications between the Commission and the lobbyist. These communications will include advice that an application for registration has been received, advice that registration has been approved or not approved, periodic reminders that lobbyists' details must be confirmed as being up to date and other matters that might arise in connection with continuing registration.

In nominating a person as the responsible officer, it is in your interest to ensure that the person is at a level that he or she can deal with any communications from the Commission as appropriate. In the event of a change to the responsible officer, you will need to update their details, including their email address, to ensure that you continue to receive relevant communications.

Further information

If you require further information, wish to make a comment or ask a question about the Register or the Code, please contact the Commission using the following options:

Register of Lobbyists
Public Sector Commission
2 Havelock Street
WEST PERTH WA 6005

Tel: (08) 6552 8500 Fax: (08) 6552 8501

Email: lobbyistsregister@psc.wa.gov.au

Website: <https://www.lobbyists.wa.gov.au>