

Integrity (Lobbyists) Bill 2011

Explanatory Memorandum

OUTLINE

The principal objective of this Bill is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives and people who undertake lobbying on behalf of others. In order to achieve this objective, the Bill:

- a) Provides for the registration of people who undertake lobbying on behalf of third parties;
- b) Provides for the issuing of a code of conduct for registered persons in their dealings with government; and
- c) Prohibits registered persons from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities.

PART 1 – PRELIMINARY MATTERS

- Clause 1** **Short title**
Cites the title of this Bill.
- Clause 2** **Commencement**
Provides for clauses 1 and 2 of the Bill to come into operation on the day the Bill receives Royal Assent, and for the rest of the Bill on such day or days as are fixed by proclamation.
- Clause 3** **Terms used**
Contains definitions of the terms used in the Bill.
- Clause 4** **Term used: lobbying**
Consistent with the purpose of the Bill, defines lobbying as meaning communication with a government representative on behalf of a third party.
- Clause 5** **Purpose**
Explains the principal objective of the Bill, which is described above.
- Clause 6** **Act binds Crown**
Provides that the Bill binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- Clause 7** **Application**
Provides that nothing in the Bill requires government representatives to have dealings with registered persons or limits communications by a person with a government representative if the law requires them to take account of the views of that person.

PART 2 – REGISTRATION

Division 1 – Requirement to be registered

Clause 8 Lobbying by unregistered persons prohibited
 Defines those persons who are considered to be lobbyists for the purposes of the Bill, and provides that persons in the business of lobbying must be accredited as a registered advocate to government in respect of a registrant before undertaking lobbying on behalf of a third party. Only a person related to a registrant may be listed as a registered advocate to government. A relationship described in clause 13 must exist. The penalty for breach of this clause is a fine of \$10 000.

Clause 9 Certain persons not required to register
 Defines those persons who are not required to be registered under the Bill, including non-profit organisations, professional and technical service-providers, and organisations constituted to represent the interests of their members.

Division 2 – Register

Clause 10 Register
 Provides that the Public Sector Commissioner (the Commissioner) must establish and maintain a register for the purposes of the Bill, and outlines the information to be recorded on the register.

Clause 11 Publication of information on the register
 Provides that the Commissioner must make information on the register publicly available free of charge, in any way the Commissioner considers appropriate.

Division 3 – Registration and Listing

Clause 12 Who may be registered
 Provides that any person, which term includes a natural person as well as a company, or association or body of persons, corporate or unincorporated, may be registered and thereby becomes a registrant under the Bill, subject to clauses 14 and 15.

Clause 13 Who may be listed as registered advocate to government
 Lists the relationship between a person and a registrant which must exist to enable a person to be listed as a registered advocate to government in respect of a registrant. Every person listed in the register in respect of a registrant thereby gains accreditation as a registered advocate to government. This clause is also subject to clauses 14 and 15.

Clause 14 Certain persons disqualified from registration or listing

Disqualifies a person from registration or listing as a registered advocate to government under the Bill if they hold or have ceased to hold for a period of less than one year certain listed offices, including being a member of either House of Parliament, a senator in the Commonwealth Senate for Western Australia, a member of the Commonwealth House of Representatives for Western Australia, or a senior public sector executive (which is defined in clause 3). The Commissioner may decide to register or list a person once they have ceased to hold a relevant office, even if the full period of disqualification has not yet elapsed.

Clause 15**Commissioner makes decisions on registration, listing and related procedures**

Provides that the Commissioner determines all matters and procedures connected with registration and listing under the Bill, including suspension or cancellation.

PART 3 – CODE OF CONDUCT

- Clause 16** **Code of conduct**
Enables the Commissioner, after consultation, to issue a code of conduct for registrants and registered advocates to government.
- Clause 17** **Registrants and registered advocates to government to comply with the code of conduct**
Provides that registrants and registered advocates to government must comply with a code of conduct, but no civil or criminal liability will attach to a person because they have committed a breach of the code. The Commissioner may take account of any breach that has occurred in exercising his or her functions under the Bill.
- Clause 18** **Publication of code of conduct**
Provides that the Commissioner must publish a code of conduct in the *Gazette* and make it publicly available free of charge on a website.
- Clause 19** **Application of *Interpretation Act 1984* to code of conduct**
Provides that a code of conduct is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

PART 4 – SUCCESS FEES

- Clause 20** **Term used: success fee**
Defines ‘success fee’ to mean any commission, payment or reward dependent on the outcome of lobbying activity, or the outcome of a matter about which lobbying activity is undertaken.
- Clause 21** **Agreements to receive success fees prohibited**
Prohibits registrants and registered advocates to government from agreeing to receive a success fee for lobbying undertaken on behalf of a third party (excluding employment agreements). No civil or criminal liability will attach to a person who breaches the prohibition, but all such contractual provisions are void and unenforceable.
- Clause 22** **Recovery of success fee**
Provides that a success fee received under a contract which breaches the prohibition in clause 21 may be recovered by the State Treasurer as a civil debt.

PART 5 – MISCELLANEOUS

Division 1 – Provision of information to Commissioner

Clause 23 **Duty of confidentiality overridden**
Provides that if a registrant discloses information to the Commissioner under the Bill, neither the registrant nor registered advocate to government incurs any civil or criminal liability in respect of the disclosure, and such disclosure will not be a breach of confidentiality or professional standards.

Clause 24 **Offence to supply false or misleading information**
Provides that a person must not supply information to the Commissioner that they know to be false or misleading, or fail to give or omit information that is materially relevant. The penalty for a breach of this clause is a fine of \$10 000.

Division 2 – General

Clause 25 **Regulations**
Provides that the Governor may make regulations for the purposes of the Bill, which prevail to the extent of any inconsistency with a code of conduct.

PART 6 – TRANSITIONAL

- Clause 26** **Terms used**
Contains definitions of the terms used in this Part of the Bill.
- Clause 27** **Persons on existing Register of Lobbyists**
Provides that on the commencement day of the Bill, each person whose name is recorded in the Register of Lobbyists maintained by the Commissioner immediately before the commencement day is to be treated as a registrant or registered advocate to government for the purposes of the Bill. This overrides clause 14(2)(b).
- Clause 28** **Existing contracts for success fee**
Provides that clause 21 will have retrospective operation to prohibit persons enforcing an agreement, including for a success fee, entered into before the Bill comes into operation, but allows the payment of success fees in respect of work carried out before the date on which the Bill comes into operation.