

Lobbying Disclosure and Accountability Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Dr E Constable MLA)

**Lobbying Disclosure and Accountability
Bill 2003**

A Bill for

An Act to provide for the disclosure of lobbying activities intended to inform and influence Members of Parliament, Ministers of the Crown and other public officers, to establish a register of activities so disclosed, to provide for investigations of lobbying activities and for incidental purposes.

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The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This Act may be cited as the *Lobbying Disclosure and Accountability Act 2003*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears —

10 **“appropriate authority”** means a person, body or organization who or which is empowered by a law of the State to take investigatory or other action and includes (without limiting the foregoing) —

- 15 (a) a member of the Police Service;
(b) the Director of Public Prosecutions; and
(c) the Commissioner for Public Sector Standards;

“Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*;

20 **“Corporations Act”** means the *Corporations Act 2001* of the Commonwealth;

“consultant lobbyist” has the meaning given by section 9;

“employed lobbyist” has the meaning given by section 6;

25 **“judicial proceeding”** includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be given on oath;

“lobbying activity” has the meaning given by section 4;

“lobbyist” means a person who is an employed lobbyist, a consultant lobbyist or both;

“moneys of a statutory authority” has the same meaning as in the *Financial Administration and Audit Act 1985*;

“person” includes a body corporate or association or body of persons, whether incorporate or unincorporate;

5 **“public authority”** means any body, whether incorporate or unincorporate, that is established or continued for a public purpose under a written law;

“public moneys” has the same meaning as in the *Financial Administration and Audit Act 1985*;

10 **“public official”** means —

(a) a Minister of the Crown;

(b) a Parliamentary Secretary appointed under section 44A of the *Constitution Acts Amendment Act 1899*;

(c) member of either House of Parliament;

15 (d) ministerial officer within the meaning of the *Public Sector Management Act 1994*;

(e) a member of the Senior Executive Service constituted under the *Public Sector Management Act 1994*;

20 (f) a chief executive officer within the meaning of the *Public Sector Management Act 1994*;

(g) a chief employee within the meaning of the *Public Sector Management Act 1994*;

25 (h) a body or holder of an office referred to in paragraph (a) of the definition of non-SES organisation in the *Public Sector Management Act 1994*;

(i) a body or holder of an office referred to in paragraph (a) of the definition of SES organisation in the *Public Sector Management Act 1994*;

30 (j) the holder of such other office, post or position as is prescribed.

“register” means the register compiled and maintained under section 12;

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“related entity” has the same meaning as in the Corporations Act;

“remuneration” has the same meaning as in the *Salaries and Allowances Act 1975*.

5 **4. Lobbying activity defined**

(1) For the purposes of this Act, but subject to this section, **“lobbying activity”** means —

- 10 (a) any oral or written communication (including an electronic communication) with a public official intended to influence —
- (i) the development of any legislative proposal by the Government or by a member of either House of Parliament;
- 15 (ii) the introduction of any Bill in either House of Parliament or the passage or amendment of any Bill that is before either House of Parliament;
- (iii) the making or amendment of any subsidiary legislation;
- 20 (iv) the introduction or change of any Government policy or programme;
- (v) the exercise of any authority or power conferred under a written law; or
- (vi) the expenditure of public moneys or moneys of a statutory authority; and
- 25 (b) arranging or attending a meeting between a public official and any other person.

(2) **“Lobbying activity”** does not include oral or written communication (including an electronic communication) that is —

- 30 (a) made by a public official, a public authority, or any other person holding office under a written law in his, her or its official capacity;

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- (b) made on behalf of the government of the Commonwealth or a State, other than the State of Western Australia;
 - (c) made on behalf of the government of a foreign country;
 - (d) constituted by any application required or authorized by a written law;
 - (e) made in response to a written request from a public official acting in his or her official capacity;
 - (f) made by a representative or employee of a media organization for the purposes of gathering and disseminating news and information to the public;
 - (g) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, or other medium of mass communication;
 - (h) made in a petition to the either House of Parliament or in evidence or submissions to a committee of either of those Houses, or a joint committee of both Houses of Parliament; or
 - (i) made in the course of any judicial proceedings.
- (3) **“Lobbying activity”** does not include arranging or attending a meeting with a public official —
- (a) that is open to members of the public; or
 - (b) by a representative or employee of a media organization for the purposes of gathering and disseminating news and information to the public.

5. Act not to affect personal lobbying activity

30 Nothing in this Act shall be interpreted so as to apply to lobbying activity engaged in by a natural person on his or her own behalf.

Part 2 — Disclosure of Lobbying

Division 1 — Employed Lobbyists

6. Application of Division 1

- 5 (1) This Division applies to any natural person (referred to in this Act as an “**employed lobbyist**”) —
- (a) who is employed by another person (referred to in this Division as the “**employer**”); and
 - (b) whose duties or activities with the employer include lobbying activity on behalf of —
 - 10 (i) the employer;
 - (ii) where the employer is a corporation within the meaning of the Corporations Act, the employer and any related entity of the employer; or
 - 15 (iii) any profession, business, trade, vocation or calling in relation to which the employer is a representative body.
- (2) Without limiting subsection (1) an employee of an organization within the meaning of the *Industrial Relations Act 1979* who engages in lobbying activity shall be deemed to be an employed lobbyist.
- 20

7. Employed lobbyists to lodge returns

- 25 (1) An employed lobbyist must, not later than 30 September in each year (or such other time as the Commissioner allows under subsection (3)), lodge an annual return with the Commissioner setting out the information referred to in subsection (2).
- Penalty: \$10 000, and a daily penalty of \$1 000.

(2) A return lodged in accordance with subsection (1) shall set out the following information in relation to all of the lobbying activity carried out by the employed lobbyist in the preceding financial year —

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(a) the name and business address of the employed lobbyist;

(b) the name and business address of the employer;

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(c) where the employer is a corporation within the meaning of the Corporations Act, the name and business address of any related entity of the employer that, to the knowledge of the employed lobbyist, has a direct interest in the outcome of the employed lobbyist's lobbying activity;

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(d) any other person that, to the knowledge of the employed lobbyist, has a direct interest in the outcome of the employed lobbyist's lobbying activity;

(e) a description in summary form of the employer's business or activities and such other information to identify the nature of the employer's business or activities as is prescribed;

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(f) a description, in summary form, of the subject matter of the lobbying activity, and such other information regarding the subject matter as is prescribed;

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(g) particulars to identify any legislative proposal, Bill, subsidiary legislation, policy, programme, authority, power or expenditure to which the lobbying activity related;

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(h) where the public officials in relation to whom lobbying activity was directed are persons within paragraphs (a), (b) or (c) of the definition of public official, the name of the public officials;

(i) where the public officials in relation to whom lobbying activity was directed are persons within paragraphs (d), (e), (f), (g), (h), (i) or (j) of the definition of public official, the titles of the public officials; and

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Part 2 Disclosure of Lobbying

Division 1 Employed Lobbyists

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(j) such other information in relation to the lobbying activity as is prescribed.

5 (3) The Commissioner may, on the application of an employed lobbyist, extend the time within which an annual return required by subsection (1) must be lodged.

(4) Where an employed lobbyist has not engaged in any lobbying activity in a particular financial year, the employed lobbyist may —

10 (a) lodge an annual return stating that he or she has not engaged in any lobbying activity in that financial year; or

(b) lodge no annual return in relation to that financial year.

8. Commissioner may require further information

15 (1) The Commissioner may, by notice in writing served on the employed lobbyist, require an employed lobbyist to provide such further written information in relation to a return lodged pursuant to section 7 as the Commissioner considers is necessary to clarify the information set out in that return.

(2) A notice under subsection (1) shall —

20 (a) be in writing;

(b) specify the nature of the further information required;

(c) specify a time at or within which the further information is to be provided; and

25 (d) state that the person receiving the notice is required by this Act to comply with the notice.

(3) A person who, without reasonable excuse (proof of which shall lie on him or her), fails to comply with a notice served on the person under subsection (1) is guilty of an offence.

Penalty: \$10 000, and a daily penalty of \$1 000.

Division 2 — Consultant Lobbyists

9. Application of Division 2

- 5 (1) This Division applies to any natural person (referred to in this Act as a “**consultant lobbyist**”) who, directly or indirectly, receives money or other remuneration, for engaging in lobbying activity on behalf of any other person (referred to in this Division as “**the client**”), other than as an employed lobbyist.
- 10 (2) To avoid doubt, a consultant lobbyist need not carry on a business of engaging in lobbying activity, or engage in lobbying activity on more than one occasion, for this Division to apply to him or her.
- (3) Where a person acts as an employed lobbyist and a consultant lobbyist, that person shall comply with both Division 1 and this Division.

15 **10. Consultant lobbyists to lodge returns**

- (1) A consultant lobbyist must, not later than the 15th day of each month (or such other time as the Commissioner allows under subsection (3)), lodge a monthly return with the Commissioner setting out the information referred to in subsection (2).
20 Penalty: \$10 000, and a daily penalty of \$1 000.
- (2) A return lodged in accordance with subsection (1) shall set out the following information in relation to each instance of lobbying activity carried out by the consultant lobbyist in the preceding calendar month —
- 25 (a) the name and business address of the consultant lobbyist;
- (b) where applicable, the name and business address of any firm, corporation or other entity through which the consultant lobbyist carried out the lobbying activity
30 (whether as an employee or otherwise);

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Part 2 Disclosure of Lobbying

Division 2 Consultant Lobbyists

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- (c) the name and business address of the client and the name and business address of any person that, to the knowledge of the consultant lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist's lobbying activity;
- 10
- (d) where the client is a corporation within the meaning of the Corporations Act, the name and business address of any related entity of the client that, to the knowledge of the consultant lobbyist, has a direct interest in the outcome of the consultant lobbyist's lobbying activity;
- (e) particulars to identify the subject matter of the lobbying activity, and such other information regarding the subject matter as is prescribed;
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- (f) particulars to identify any legislative proposal, Bill, subsidiary legislation, policy, programme, authority, power or expenditure to which the lobbying activity related;
- (g) the date on which the lobbying activity occurred;
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- (h) where the public official in relation to whom the lobbying activity was directed is a person within paragraphs (a), (b) or (c) of the definition of public official, the name of the public official;
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- (i) where the public official in relation to whom the lobbying activity was directed is a person within paragraphs (d), (e), (f), (g), (h), (i) or (j) of the definition of public official, the title of the public official;
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- (j) where applicable, whether the money or other remuneration payable in respect of the lobbying activity is wholly or partly contingent on the consultant lobbyist's degree of success in influencing the matters referred to in Section 4(1)(a)(i) to (vi); and
- (k) such other information in relation to the lobbying activity as is prescribed.

(3) The Commissioner may, on the application of a consultant lobbyist, extend the time within which a monthly return required by subsection (1) must be lodged.

5 (4) Where a consultant lobbyist has not engaged in any lobbying activity in a particular calendar month, the employed lobbyist may —

(a) lodge an annual return stating that he or she has not engaged in any lobbying activity in that calendar month; or

10 (b) lodge no annual return in relation to that calendar month.

11. Commissioner may require further information

15 (1) The Commissioner may, by notice in writing served on the consultant lobbyist, require a consultant lobbyist to provide such further written information in relation to a return lodged pursuant to section 10 as the Commissioner considers is necessary to clarify the information set out in that return.

(2) A notice under subsection (1) shall —

(a) be in writing;

20 (b) specify the nature of the further information required;

(c) specify a time at or within which the further information is to be provided; and

(d) state that the person receiving the notice is required by this Act to comply with the notice.

25 (3) A person who, without reasonable excuse (proof of which shall lie on him or her), fails to comply with a notice served on the person under subsection (1) is guilty of an offence.

Penalty: \$10 000, and a daily penalty of \$1 000.

Division 3 — Register of Lobbying Activity

12. Register established

- (1) The Commissioner shall compile and maintain a register to be called the “Register of Lobbying Activity”.
- 5 (2) The register shall comprise all of the information set out in returns lodged under this Act and all of the information provided to the Commissioner pursuant to notices served under section 8(1) and section 11(1).
- 10 (3) The register may be compiled in such manner and form as the Commissioner considers convenient, including by electronic means.
- (4) The register shall be open to inspection by any person at such place and at such reasonable times as the Commissioner may determine.

Part 3 — Investigation and Offences

Division 1 — Investigations by Commissioner

13. Commissioner may investigate lobbying activity

- 5 (1) The Commissioner may investigate any matter relating to any lobbying activity carried out by a lobbyist.
- (2) In particular, without limiting subsection (1), the Commissioner may investigate whether a lobbyist has, in the course of any lobbying activity —
- 10 (a) adequately disclosed to the relevant public official, the person on whose behalf the lobbying activity was being conducted;
- (b) provided accurate and factual information to the relevant public official;
- 15 (c) been accorded any unfairly preferential or discriminatory treatment by the relevant public official;
- (d) attempted to apply any improper influence on the relevant public officer; or
- (e) represented competing or conflicting interests without the consent of those whose interests involved.
- 20 (3) In this section, “**the relevant public official**” means the public official to whom the lobbying activity was directed.
- (4) The provisions of —
- 25 (a) Division 2 of Part 3 (other than section 17A);
- (b) Division 3 of Part 3 (other than subsections (1), (1a), and (6) of section 19); and
- (c) Part 4 (other than sections 31 and 33);

of the *Parliamentary Commissioner Act 1971*, shall apply, with all necessary modifications, to an investigation by the Commissioner pursuant to this section.

- 5 (5) If, during the course of an investigation under this section, the Commissioner suspects that a person has committed an offence, a breach of discipline or otherwise engaged in conduct which may be the subject of further action, the Commissioner may refer that conduct to an appropriate authority for further action.

14. Report on completion of investigation or generally

- 10 (1) Where the Commissioner conducts an investigation under section 13, the Commissioner shall prepare a report of his or her conclusions, and the reasons for those conclusions, in relation to the matter the subject of the investigation.
- (2) The Commissioner may, if he or she thinks fit, prepare a report in relation to any matter arising out of the administration of this Act generally.
- 15 (3) Notwithstanding the *Financial Administration and Audit Act 1985*, the Commissioner shall, as soon as practicable, lay before each House of Parliament any report prepared by the Commissioner under subsections (1) or (2).
- 20 (4) If neither House of Parliament is sitting at the time when the Commissioner completes his or her report in accordance with subsections (1) or (2), the Commissioner shall —
- (a) send copies of the report to the Clerks of both Houses of Parliament; and
 - (b) make the report available to the public.

Division 2 — Offences and Legal Proceedings

25 **15. False or misleading information**

A person who —

- (a) includes any information in a return lodged under this Act that the person knows is false or misleading in a material particular;

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- (b) omits any information in a return lodged under this Act without which the return is, to the person's knowledge, false or misleading in a material particular;
 - (c) includes any information in a response to a notice served under section 8(1) or section 11(1) that the person knows is false or misleading in a material particular; or
 - (d) omits any information in a response to a notice served under section 8(1) or section 11(1) without which the response is, to the person's knowledge, false or misleading in a material particular,

is guilty of an offence.

Penalty: \$50 000.

16. Proof of returns and information

15 In any prosecution for an offence against this Act a copy of —

- (a) a return lodged under this Act; or
- (b) a response to a notice served under section 8(1) or section 11(1),

20 purporting to be certified under the Commissioner's signature as a true copy is, without proof of the Commissioner's signature, admissible in evidence.

17. Proof of intention

25 In any proceedings for an offence against this Act, an averment in the complaint that any oral or written communication (including electronic communication) was made with a particular intent, must, on proof of the communication having occurred, be taken to be proved, unless the contrary is proved.

18. Proof that a person is a public official

In any proceedings for an offence against this Act, an averment in the complaint that a person was a public official within the meaning of this Act must be taken to be proved, unless the contrary is proved.

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Part 4 — Miscellaneous

19. Rules of Parliament

- (1) Rules of Parliament may be made for prescribing all matters that —
- 5 (a) are required or permitted to be prescribed; or
- (b) are necessary or convenient to be prescribed,
- for giving effect to the purposes of this Act.
- (2) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in
- 10 accordance with the Rules and Orders thereof.
- (3) Rules of Parliament made under this Act shall be published in the *Gazette*.
- (4) Section 42 of the *Interpretation Act 1984* does not apply to Rules of Parliament made under this Act.

15 20. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from its commencement, having regard to all matters that appear to the Minister to be relevant to the operation and
- 20 effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

Part 5 — Consequential amendments

21. The Act amended

The amendments in this Part are to the *Parliamentary Commissioner Act 1971*.

5 **22. Long title amended**

The long title is amended by inserting after “**Police Department**” —

“

10 **, for the regulation and investigation of lobbying activities**

”.

23. Section 5 amended

Section 5(1) is amended by inserting after “this Act” —

“

15 and the Lobbying Disclosure and Accountability Act 2003

”.

24. Section 14A inserted

After section 14 the following section is inserted —

“

20 **14A. Jurisdiction under *Lobbying Disclosure and Accountability Act 2003***

Notwithstanding anything in sections 13 and 14, the Commissioner shall have jurisdiction, authority and power to do all things provided for in the *Lobbying Disclosure and Accountability Act 2003*.

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