

EXPLANATORY MEMORANDUM

(E 205)

LOBBYING DISCLOSURE AND ACCOUNTABILITY BILL 2003

(Introduced by the Member for Churchlands - Dr E Constable MLA)

This Bill introduces measures to ensure openness and accountability of professional lobbying activities intended to inform and influence Members of Parliament, ministerial staff and other public officials in Western Australia. The Bill is confined to paid lobbyists, both employed lobbyists and consultants. The Bill expressly does not apply to lobbying carried out by citizens on their own behalf.

The Bill places no restrictions on the persons who may engage in lobbying activity nor does it prevent any lobbying activity from being conducted. The provisions of the Bill are concerned to ensure that professional lobbying activity that does take place is disclosed and subject to independent scrutiny.

The Bill contains two principal features. The first is a requirement that all persons who engage in paid lobbying activity lodge returns with the Parliamentary Commissioner for Administrative Investigations as to the nature of those lobbying activities. Separate requirements are imposed upon persons who engage in lobbying activity as part of their employment with a particular employer and those who are consultant lobbyists. The returns lodged pursuant to the provisions will form a register of lobbying activity which is to be available to the public.

The second feature of the Bill is to enable the Parliamentary Commissioner to investigate lobbying activity by paid lobbyists. This will enable the Parliamentary Commissioner to investigate all aspects of the propriety of lobbying activity and report the results of those investigations to Parliament.

Part 1

Clause 1

Sets out the Short Title of the Act.

Clause 2

Provides for the Act to commence operation on the day on which it receives the Royal Assent.

Clause 3

Defines the terms used in the Bill. Of particular note are the following terms –

"appropriate authority" refers to the broad range of bodies to whom the Parliamentary Commissioner may refer criminal or disciplinary conduct discovered in the course of an investigation under the Act.

"related entity" is defined in accordance with the *Corporations Act 2001 (Commonwealth)* and includes persons such as directors, their spouses and related body corporates.

"public official" defines the persons who are the subject of lobbying activity for the purposes of the Bill. The provisions of the Bill are intended to apply to lobbying activity directed at Ministers, Members of Parliament and senior persons within the Public Sector. The Bill does not automatically apply to all persons in the Public Sector, including junior public servants. There is provision in sub-clause (j) of the definition for Parliament to extend the reach of the Bill in accordance with the Parliament Rules made under clause 19.

Clause 4

Defines **"lobbying activity"** for the purposes of the Bill.

"Lobbying activity" is defined broadly in sub-clause (1) to include a range of activity intended to influence Parliamentary or governmental activity, including the introduction of Government policy, the exercise of statutory powers and the expenditure of public funds.

Sub-clause (2) excludes a variety of written and oral communications from the definition of lobbying activity. For example, lobbying activity to which this Bill applies the subject of the Bill does not include intra-governmental or inter-governmental communications, communications required by law, certain activities on behalf of media organizations and other public communications.

Sub-clause (3) excludes the arrangement and attendance at certain meetings from the definition of lobbying activity, including public meetings and those attended on behalf of media organizations.

Clause 5

Confirms that nothing in the Bill applies to lobbying activity engaged in by natural persons on their own behalf.

Part 2

Division 1

Clause 6

Defines **"employed lobbyist"** as persons who engage in lobbying activity on behalf of their employer, parties related to the employer or "peak" bodies who represent particular professions, businesses, trades, vocations or callings.

Sub-clause (2), to remove any doubt, expressly includes persons employed as lobbyists by employer or employee organizations under the *Industrial Relations Act 1979* as subject to the Act.

Clause 7

Requires employed lobbyists to lodge annual returns with the Parliamentary Commissioner setting out details in relation to their lobbying activity in the preceding financial year.

Sub-clause (1) imposes the requirement to lodge returns with a penalty of a maximum \$10,000 fine, and maximum \$1,000 daily penalty, for failing to do so.

Sub-clause (2) sets out the information which must be provided in a return lodged by an employed lobbyist.

Sub-clause (3) allows the Parliamentary Commissioner to extend the time for lodging an annual return.

Sub-clause (4) provides an employed lobbyist with the option of lodging a "nil" return or no return in a year in which he or she has not engaged in lobbying activity.

Clause 8

Sub-clause (1) allows the Parliamentary Commissioner to seek further information in relation to a return lodged by an employed lobbyist.

Sub-clause (2) requires a notice requiring further information to be in writing and specify the nature of the information sought, a time frame within which the information shall be provided and notification of the requirements of the Act.

Sub-clause (3) creates an offence of failing, without reasonable excuse, to comply with a notice requiring further information.

Part 2

Division 2

Clause 9

Defines "**consultant lobbyist**" as all natural persons engaged in paid lobbying activity on behalf of other persons, other than as employed lobbyists. The definition applies to individuals who receive payment, directly or indirectly, and will therefore apply to those individuals whether they carry out the lobbying activity through an entity such as a corporation or a partnership or as an employee of an independent consulting firm.

Sub-clause (2) confirms that a person may be a consultant lobbyist notwithstanding that they may carry out paid lobbying activities seldomly or even once.

Sub-clause (3) recognises that some persons may be an employed lobbyist, for example in part-time employment, as well as engaging in consulting work. Such a person is required to comply with the requirements of the Bill in relation to both types of lobbying activity.

Clause 10

Requires consultant lobbyists to lodge monthly returns with the Parliamentary Commissioner setting out details in relation to their lobbying activity in the preceding calendar month.

Sub-clause (1) imposes the requirement to lodge returns with a penalty of a maximum \$10,000 fine, and maximum \$1,000 daily penalty, for failing to do so.

Sub-clause (2) sets out the information which must be provided in a return lodged by a consultant lobbyist. Sub-clause (2)(b) in particular recognises that an individual may carry out lobbying activity through some other entity and requires that that entity be disclosed.

Sub-clause (3) allows the Parliamentary Commissioner to extend the time for lodging a monthly return.

Sub-clause (4) provides a consultant lobbyist with the option of lodging a "nil" return or no return in a month in which he or she has not engaged in lobbying activity.

Clause 11

Sub-clause (1) allows the Parliamentary Commissioner to seek further information in relation to a return lodged by a consultant lobbyist.

Sub-clause (2) requires a notice requiring further information to be in writing and specify the nature of the information sought, a time frame within which the information shall be provided and notification of the requirements of the Act.

Sub-clause (3) creates an offence of failing, without reasonable excuse, to comply with a notice requiring further information.

Clause 12

Sub-clause (1) requires the Parliamentary Commissioner to compile and maintain a "Register of Lobbying Activity".

Sub-clause (2) provides that the register consists of returns and information lodged under the Act.

Sub-clause (3) empowers the Parliamentary Commissioner to compile the register in whatever means is convenient, including electronically.

Sub-clause (4) requires that the register be open for public inspection.

Part 3**Division 1****Clause 13**

Sub-clause (1) empowers the Parliamentary Commissioner to investigate any matter relating to lobbying activity by an employed lobbyist or consultant lobbyist.

Sub-clause (2) refers in particular to a number of matters the Parliamentary Commissioner may investigate relating to the propriety of lobbying activity.

Sub-clause (4) provides that various provisions of the *Parliamentary Commissioner Act 1971* apply to investigations carried out by the Parliamentary Commissioner into lobbying activity. These provisions include the manner in which an investigation may be initiated (following a complaint or otherwise), the powers of investigation of the Parliamentary Commissioner, secrecy provisions and provisions providing statutory protection to the Parliamentary Commissioner and his or her staff.

Sub-clause (5) empowers the Parliamentary Commissioner to refer any suspected breaches of the law or discipline discovered in the course of an investigation to an appropriate investigating or prosecuting body for further action.

Clause 14

Sub-clause (1) requires the Parliamentary Commissioner to prepare a report of any investigation carried out in relation to lobbying activity.

Sub-clause (2) also empowers the Parliamentary Commissioner to prepare a report as to the operation of the Act generally.

Sub-clause (3) requires the Parliamentary Commissioner to lay any report prepared by him or her before both Houses of Parliament.

Sub-clause (4) provides that when neither House of Parliament is sitting the Parliamentary Commissioner shall send a report to the Clerks of the Houses and make it publicly available.

Part 3**Division 2****Clause 15**

Creates an offence of providing false or misleading statements in connection with returns lodged or information provided under the Act.

Clause 16

Facilitates the proof of the contents of a return lodged or response provided in a prosecution under the Act.

Clause 17

Facilitates the proof of a particular intention, such as the intention to influence government policy etc., in a prosecution under the Act.

Clause 18

Facilitates proof that a particular person is a public official in a prosecution under the Act.

Part 4**Clause 19**

This clause provides that the Parliament may make Rules prescribing matters required, permitted, necessary or convenient for the operation of the Act. The Rule making power is conferred on Parliament, rather than the Governor, to ensure the Act operate independently of government.

Clause 20

Sub-clause (1) provides for a review of the Act by the Minister after five years of the operation of the Act.

Sub-clause (2) requires the Minister to cause the report as to the review of the Act to be laid before each House of Parliament.

Part 5

Contains consequential amendments to the *Parliamentary Commissioner Act 1971*.

Clause 21

Identifies the Act to be amended as the *Parliamentary Commissioner Act 1971*.

Clause 22

Amends the long title to the *Parliamentary Commissioner Act 1971* to include the regulation and investigation of lobbying activities as its purposes.

Clause 23

Amends section 5 of the *Parliamentary Commissioner Act 1971* to include the conduct of investigations under the *Lobbying Disclosure and Accountability Act 2003* as one of the purposes of the appointment of the Parliamentary Commissioner.

Clause 24

Clause 14A is inserted in the *Parliamentary Commissioner Act 1971* to provide the Parliamentary Commissioner with all necessary power to do all things provided for in *Lobbying Disclosure and Accountability Act 2003*.