

## **INTEGRITY (LOBBYISTS) BILL 2014**

### *Second Reading*

Resumed from 2 December 2015.

**HON SUE ELLERY (South Metropolitan — Leader of the Opposition)** [12.50 pm]: I rise to indicate that the opposition will be supporting the Integrity (Lobbyists) Bill 2014. The legislation before us today is similar to the Integrity (Lobbyists) Bill 2011, with some amendments since that time. Those amendments go to third party lobbyists and are modelled on the existing administrative arrangements that were introduced under the previous Labor government. The bill defines who represents government, which includes ministers and parliamentary secretaries but not members of Parliament generally; it includes public servants as well. It is important for ministers and parliamentary secretaries to note the obligation on them and the responsibility they have to check that the person who is seeking to meet with them or who is indeed meeting with them and who is representing a third party identifies themselves as such. The onus is on the lobbyist to identify themselves, but I suggest the best advice to ministers and parliamentary secretaries is to cover their respective backsides and make sure that they identify anything they need to know about people seeking to meet with them.

The differences between the administrative arrangements and the proposed new act include success fees. Part 4 of the bill contains a prohibition on success fees and agreements, and a lobbyist can be deregistered if they breach those provisions. I raised a question with officers when I was briefed and I would appreciate the minister, in reply, making some comments around what constitutes grassroots campaigning and what does not. The example I used in the briefing—members would be familiar with this group—was the group called people against power price increases; I think that was the name of the group. From that group’s name, people might think that it was a grassroots campaign and draw the conclusion that it was driven, organised and led by people who were opposed to increases in their domestic electricity bills, for example. That was not necessarily the case. I would be interested in the minister’s comments on how that group fits into this arrangement.

**Hon Peter Collier:** What are they called?

**Hon SUE ELLERY:** I will look for the correct name in the break.

**Hon Peter Collier:** Apparently we know who they are.

**Hon SUE ELLERY:** We all know who the group is, as we were inundated with emails about the problem. My recollection is that the group was called people against power price increases, but I will check that.

The legislation contains a cooling-off period of 12 months on the prohibition of former ministers and senior government officials from working as lobbyists. Clause 14 of the bill provides that the Public Service Commissioner can override that prohibition period in particular circumstances. For example, if someone was a minister for a very short period, say, three months, should they be subject to the same kind of prohibition as someone who had been a minister for, say, eight years?

Clause 9 goes to those organisations that do not have to be registered. That includes not-for-profit organisations, unions and professional associations. Government trading enterprises are carved out of the Public Sector Management Act, but I understand the regulations would allow for them to be captured in this legislation. There is a requirement to publish the list of lobbyists, which is an important part of the legislation as well. There is no capacity to appeal the decision of the Public Sector Commissioner, and anyone wanting to take issue with a decision would need to go to the Supreme Court.

Personal matters are not covered by lobbying. I am advised, though, that constituency matters are—that is, if a minister is conducting meetings or conversations with lobbyists in their electorate office. I ask the minister to make some comments on the record about that as well, because members need to be clear about what that might mean for them as ministers dealing with constituent-related matters, even as a minister in their electorate office.

There is no capacity in this legislation for anyone on either side—that is, the people doing the lobbying or the government representatives—to disclose the subject matter of the lobbying. But that is a provision in the New South Wales legislation and it includes that ministers’ diaries be made public. The lobbyists need to name their clients. There is discretion for the Public Sector Commissioner to determine what else is disclosed, and I am advised that the commissioner will publish the code as regulations, so that will become a disallowable instrument. It has been a while since I was briefed, so I ask the minister, in his response, to make some comments about the commissioner publishing the code as regulations.

As I said, the Integrity (Lobbyists) Bill 2014 is a revamp of the Integrity (Lobbyists) Bill 2011, with the agreed upon amendments incorporated into its text. The new bill is now more explicit in what it requires the Public Sector Commissioner to do, reducing the discretion the commissioner has by changing instances of “may”

into “must”. The bill codifies what currently exists in regulation into statute for third party lobbyists. It introduces new cooling-off provisions to prevent former state and federal members of Parliament, as well as senior government employees, from being immediately registered as lobbyists once their employment has ceased. It will also outlaw success fees and introduce penalties for failure to comply with the laws. It will direct the commissioner to draw up a code of conduct for registered lobbyists and to amend that code as trends in lobbying occurs.

This bill has the support of both sides of the house and I look forward to its passage.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [12.58 pm]: I refer to the second reading speech of the Integrity (Lobbyists) Bill 2014, which sets out the government’s intent “to restore integrity and to promote fair, open and accountable government.” This is thought to be achieved by striking the right balance in allowing communication between lobbyists and government representatives on behalf of clients.

The Integrity (Lobbyists) Bill 2011 was introduced in the Legislative Assembly in 2011 and passed in 2012, but Parliament was prorogued before the bill was passed in the Legislative Council. The Integrity (Lobbyists) Bill 2014 incorporates the amendments from 2012. The bill creates a statutory framework for the state’s current Register of Lobbyists. As far as I am aware, the register at this time comprises some 110 lobbyists. The bill defines lobbying as —

... communicating with a government representative for the purpose of influencing, whether directly or indirectly, State government decision-making.

The bill prohibits and makes it an offence for individuals or firms to engage in lobbying on behalf of third parties unless they have been accepted onto the register of the Public Sector Commissioner and accredited as a registered lobbyist to government. The offence attracts a fine of \$10 000. The bill provides examples of what is not lobbying, including communication with a minister or parliamentary secretary in their capacity as members of Parliament, or about personal, family or household affairs not related to business or commercial activity.

*Sitting suspended from 1.00 to 2.00 pm*

**Hon ROBIN CHAPPLE:** I will continue my remarks from where I got up to. I was talking about the Integrity (Lobbyists) Bill 2014 providing examples of what is or is not lobbying, including communication with ministers.

The bill applies to a wide range of government representatives including ministers, parliamentary secretaries, ministerial officers or persons employed or contracted within a public sector agency, and all officers who are part of the public sector, including chief executive officers. The Public Sector Commissioner will be responsible for maintaining and publishing the Register of Lobbyists. I will come to a part of that which is of interest to me in part 3 of the bill, “Code of conduct”. Clause 16 states —

- (1) The Commissioner may issue a code of conduct for registrants and lobbyists.

However, clause 18 states —

- (1) The Commissioner must —
  - (a) publish a code of conduct in the *Gazette*; ...

I assume that that means the commissioner may create a code of conduct; if he does not, it does not have to be published, but if he does, it does have to be published. I want clarification around that because I would hope that if there were a code of conduct, it must be published.

The Public Sector Commissioner will continue to decide on the registration of applications from lobbyists. This will be done through an applicant’s statutory declaration as to past conduct and criminal convictions. That might have some impact on some current lobbyists, but we will wait and see where that goes. The names of lobbyists and clients will continue to be recorded to ensure transparency. The bill restricts senior government employees, members of Parliament, Western Australian senators and members of the House of Representatives from seeking registration for one year after ceasing to hold public office. One thing I am concerned about in the legislation is that, to a large degree, lobbyists are now embedded within industry and therefore, as employees of industry, they are not classified as lobbyists; however, former members of Parliament at both federal and state levels and former senior officers of the bureaucracy take up those roles and they will be allowed to operate immediately in a lobbying capacity on behalf of a corporation, whereas if they set themselves up as a private corporation, they will have to wait one year. I suppose that my fundamental concerns arise from that.

There are 110 lobbyists on our register. If members look at the number of lobbyists on registers elsewhere in the world, for example in Canada and Europe, they will see that the number of lobbyists on the federal register in Canada exceeds, I think, 5 000. One wonders whether we are still involved with lobbyists in some sort of closet

way in determining who they are or are not. Clearly, former members of Parliament can enter this place at any stage, and rightfully so. Former members may have discussions, directly or indirectly, with people without being registered lobbyists. I think that we need an even further level of transparency around lobbyists. I would certainly like to see those people who identify with major corporations as external affairs officers—as they are quite often referred to—included on the Register of Lobbyists. They carry out bidding on behalf of corporations to represent companies or whatever else. I receive them and I expect that most members here receive them from time to time. The same rules should apply to them so that they cannot take up a position internally within a corporation until they have had one year's grace away from the parliamentary or bureaucratic system.

A number of concerns have been raised about lobbying internationally. The Organisation for Economic Cooperation and Development raised a number of issues about the transparency and integrity of lobbying. It has been identified that the financial, insurance and real estate industry in America spent \$480 000 per firm on lobbying various parliamentarians compared with the \$300 000 spent per firm in defence. Therefore, lobbying is a huge economic industry and we need greater integrity and oversight of lobbyists. I think that the Integrity (Lobbyists) Bill 2014 goes a long way towards that, but, as my former colleague Hon Giz Watson said, we really need a uniform process for identifying who lobbyists are within the broader context of whether they are embedded within industry or are individuals.

It is interesting that I was lobbied by a non-government organisation the other day. The gentleman identified that he was a lobbyist and he is on the Register of Lobbyists. I asked him why he is on the lobbyist register. He said that the organisation decided it wanted to be on the lobbyist register, but he is actually embedded. He is a lobbyist on the register, so he lobbied me on an NGO matter. However, under the guidelines in this bill, he would not need to be on the register. A range of people out there who provide lobbying services are still rather confused as to who should or should not be on the register. We need some further clarity for the public about that. We might understand what is stated in the legislation but I certainly think that the public needs greater clarity. The public also needs greater confidence that the lobbying processes that occur from major industries with embedded lobbyists, to former members of Parliament and to all of us in this place, should be in the public domain.

The bill prohibits the payment between registered lobbyists and their clients of a success fee or other reward that is contingent upon achieving a particular or expected outcome. That is interesting. I would like to know how the Treasurer, who will have the power to take legal action on behalf of the state to recover unlawfully paid success fees, will be able to determine whether a success fee has been paid. I am actually in between somebody—it is really quite funny, I have to say! Sorry. That does not need to be recorded in *Hansard*.

**Hon Alyssa Hayden** interjected.

**Hon ROBIN CHAPPLE:** But I think that was a very rewarding little conversation that was going on.

The Premier states in his second reading speech that the registration of lobbyists will be based on a fit and proper test. We need to know whether that test will be established by way of regulation or by way of public document, when that test will be made public and who will test whether a lobbyist aspires to that fit and proper test. The second reading speech states also that the Public Sector Commissioner will retain all previous responsibility for maintaining and publishing the Register of Lobbyists. Will the Public Sector Commissioner be given any additional powers through this bill to fulfil that responsibility, and how are those additional powers enshrined in the legislation?

I have touched on the issue of discretionary powers. Part 3 of the code of conduct states that the commissioner “may” issue a code of conduct. It then goes on further to state the commissioner “must” publish a code of conduct. We need some clarity on that issue. The second reading speech states also that the state Treasurer may recover the unlawful payment of a success fee as a civil debt. Where will those funds reside? Will they go into general government revenue? There is no clarification of where those funds will go. Therefore, I assume they will end up in consolidated revenue.

In essence, yes, we have got here. We are doing it. It is a good outcome as far as it goes. However, the bill is quite limited in the way it has been drafted. We only need to look, as I say, at the review of lobbying by the Organisation for Economic Co-operation and Development and at the 10 principles for transparency and integrity in lobbying that are described in that code of conduct. The government would be well advised to look at enhancing the transparency around this process and to assist in fostering a culture of integrity through this legislation. I hope that this government, should it be re-elected at the next state election, will look at enhancing the process to make it more rigorous and transparent, and also to bring into the fold of registered lobbyists people who are embedded in corporations, of which there are many more than the 110 lobbyists currently on the register. We have long argued the need for enhanced and effective implementation, compliance and review of this process. We may also need to expand this process to look at the capacity of

lobbyists to influence funding, either directly or indirectly, which is a matter that is very much in the public domain at the moment.

In essence, that is where I am at the moment. I most probably will need to look at some of these issues in Committee of the Whole, but I do not intend to take us long into that process.

*Distinguished Visitor — Barry Rowe, MLA*

**THE ACTING PRESIDENT (Hon Simon O'Brien):** Members, before I give the call to the next speaker, I would like to acknowledge in the President's gallery Mr Barry Rowe, a former member of the Victorian legislature, who is here in his dual capacity as grandfather and escort of a very distinguished visitor in her princess tiara, Miss Bobby Rowe-Gardner, who is here with her grandfather as part of the official celebrations for her aunty's twenty-fifth birthday!

Several members interjected.

**The ACTING PRESIDENT:** And displaying great patience, Miss Bobby, if I may say so!

*Debate Resumed*

**HON KEN TRAVERS (North Metropolitan)** [2.15 pm]: After that statement, one is almost tempted to stand and start singing *Happy Birthday*, Mr Acting President! Can I join you in welcoming Barry Rowe and Bobby Rowe-Gardner to the gallery. Bobby looks as though she is clearly following in her aunty's footsteps in the way that she wears that princess tiara so well and so ably. I wonder whether it is a family hand-me-down. I congratulate my colleague on her birthday. I had not realised it was as many years as 25, so there we go.

It is probably also worth acknowledging that one of the advisers on this bill has recently received a public service medal. I note that we have some very fine public servants in this state, so it is worth embarrassing not just my colleague in the chamber but also those who advise the government by noting the recent acknowledgment of the work that they are doing for the state of Western Australia.

I want to make a couple of comments about the Integrity (Lobbyists) Bill 2014. This is not to oppose the bill in any way. However, one of the dangers of creating legislation such as this is that a whole lot of things are in the legislation and there are then a whole lot of exemptions that rule out those things, so it is unclear exactly what is in and what is out.

I want to focus on one particular part of the legislation, and I hope the minister responsible for the bill will be able to provide some clarity to those of us in this place about the intent of the legislation. Clause 14 of the bill is headed, "Certain persons disqualified from registration or listing". It states in subclause (1) that a person cannot be registered as a lobbyist if they are a member of either house of Parliament, a senator for Western Australia in the commonwealth Senate, a member of the commonwealth House of Representatives for an electoral division in Western Australia, a senior public sector executive, or in an office or position prescribed by the regulations for the purposes of this definition. It goes on to state in subclause (2)—

A person cannot be registered under this Act or listed as a lobbyist if —

- (a) the person holds a relevant office; or
- (b) the person has ceased to hold a relevant office, and a period of less than one year has elapsed since the date on which the person ceased to hold that office.

On what basis do we arrive at one year as the period that must elapse before a former member of Parliament or a former member of the executive service can be registered as a lobbyist? That is a very interesting question. What we are doing is preventing ourselves from being lobbyists. I can assure members that when I leave this place, whenever that might be, the last thing I would want to do is be a lobbyist. I could not think of anything worse, to be quite honest. The only way I would ever do any lobbying would be to help non-government community organisations to get a better deal out of government—that is, give the benefit of my expertise and knowledge to organisations in the community that I share values with, to assist them to understand the political process. I would do that for free, and I would not be captured by this bill. There may be members of this house who want to be lobbyists when they leave. The first thing to consider is that a one-year exemption for a member of Parliament who has been in this house for a relatively short time would be a significant penalty. There would be a completely different set of circumstances for a member who had been a minister of the Crown. For a start, I find it interesting that there is not some differentiation between members of Parliament and ministers of the Crown. The thing I find even stranger is that the government arrived at the policy position that all members of Parliament, whether they are ministers or non-ministers, get treated the same, and that for

some reason one year is considered an appropriate period for them to be excluded from office. But then clause 14(3) states —

However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a lobbyist.

Having excluded them, the legislation states that the commissioner can still register them anyway. On what grounds and on what terms? Either we accept a policy position that they should not be lobbyists or, if they are to be allowed to be registered as lobbyists, there should surely be some criteria on which the commissioner makes those decisions to let people back in—and it may be that they are a member of Parliament. I wonder sometimes how some of this legislation is arrived at. I am lucky because I am one of the rare members of Parliament who will get a parliamentary pension.

Several members interjected.

**Hon KEN TRAVERS:** I knew the reaction I would get by raising that!

**The ACTING PRESIDENT:** Order! We will have no unruly interjection on that or any other point.

**Hon KEN TRAVERS:** I knew I would get that reaction, because I recognise and acknowledge that I am in a particularly privileged position.

**Hon Peter Katsambanis:** You're the one per cent.

**Hon KEN TRAVERS:** If Hon Peter Katsambanis had stayed in the Victorian Parliament, he would probably have been a one-per-center with us, but sadly that is not the case!

Several members interjected.

**The ACTING PRESIDENT:** Order.

**Hon KEN TRAVERS:** I am arguing in favour of members who will not get parliamentary pensions. I am not gloating. If there was a penalty placed on me, I do not think it would be unreasonable that I cannot get an additional income after I leave this place, because I am already going to get an income. That is not unreasonable for those of us who will have a parliamentary pension.

**Hon Liz Behjat:** I'm leaving and I'm not going to get any income.

**Hon KEN TRAVERS:** That is the point I am making. This bill will deprive the member of an opportunity to use her skills and expertise to earn an income. I wonder whether those people have put their minds to the implications of this bill for them. The point I am making is that I am in a privileged position. It is easier for me to argue those points on behalf of members who do not sit within that framework than it is for those members themselves to be raising those points. That is why I am taking the opportunity to make these points on this legislation because I think it is potentially unfair. Equally, what is the purpose of clause 14(3), which allows people to come back in? I would like an explanation from the minister handling the legislation about the circumstances in which that would occur.

The other thing I want to raise while I am on my feet, having said all of that, is that on another level a person could drive a bus through that provision, but it would require them to set themselves up in a particular way. This bill states that if someone is directly employed by an entity, they do not need to be registered as a lobbyist, but it does not then indicate whether a person is to be employed by just one entity or not. If a person sets themselves up to be directly employed by 20 entities, this bill will not apply to them. I am not trying to provoke members on the other side, so please bear with me on this point. There was an example of that recently when a former minister of the Crown left Parliament and did not register as a lobbyist, but was directly engaged by at least two organisations that I know of to lobby the government. He was the government's good friend Troy Buswell, who was employed by Brierty and Swan Taxis. As he was directly employed by those companies, he was not required to be registered as a lobbyist. He may have been employed by other groups as well. A clause has been created under which a member who seeks to fulfil the spirit of the legislation may step outside and be deprived of an income, but if they want to circumvent the legislation—if we accept there is a policy position that a member of Parliament should not be a lobbyist for at least 12 months after leaving this place—there is a mechanism I have just outlined that has been previously used to do that. Again, we have to ask the question about what policy outcome the government is trying to achieve with these clauses of the legislation. I do not know. Mr Buswell may have engaged in other employment as a lobbyist after leaving Parliament without ever being registered.

This also creates jeopardy for members who will hold the offices of minister or parliamentary secretary. They will be required to establish the capacity in which a person comes in to see them. As I see it, with the way this bill is structured, whenever someone comes to lobby a minister or a parliamentary secretary, they will have to establish how they are being paid by the entity on whose behalf they are coming to lobby. That is a very

interesting way for a minister to start a conversation with someone who comes to see them—“Sorry, can I just check in what capacity you are coming to see me? Can you confirm whether you are being paid directly by Swan Taxis or Brierty or whether you are employed as a lobbyist by them?” That raises questions about the structure of this legislation and the position it places ministers, future ministers and parliamentary secretaries in when they have to gauge a lobbyist. When questions were asked previously by the media about some of these issues, it became clear that in the circumstance of Mr Buswell, there was not a clear case. Under the current administrative arrangements, there was not a clear understanding by the minister’s office about those arrangements. A whole range of pitfalls are being created and I suspect the people captured under this legislation will be those who make innocent mistakes. Those people who want to structure themselves in a way that prevents them from being captured by the legislation will do so. They will find ways around it, whether it is by being directly employed or any of those other things. I acknowledge and completely support the need for legislation to control the activity of the lobbyists in Western Australia, and these loopholes that a truck can be driven through may be intentional or unintentional, but the structure of this legislation will create an incredibly complex situation that will probably end up capturing innocent people and not those who seek to subvert democratic processes. They will find loopholes and pathways through the legislation and make sure they fully comply with it, and ministers will potentially be caught out as a result of those processes.

There is more potential for this to occur when a person seeks to communicate with a minister or a parliamentary secretary, and I think this particularly applies to parliamentary secretaries, because ministers have support around them. I think the arrangements for current parliamentary secretaries are still that they get their resourcing through the generosity of the minister of the day. A parliamentary secretary does not get their own office or any resourcing. Any resourcing for parliamentary secretaries is at the good graces of ministers. I was very lucky because I had ministers who were always very supportive of the work I did as parliamentary secretary. They ensured that their offices supported me in those functions. But these new rules will place immense responsibility on parliamentary secretaries, responsibility for which they may not be given any resources and support. It will put them in a position of extreme jeopardy and will leave those colleagues who want to undermine them the capacity —

**Hon Jim Chown:** I have always considered that that was my position anyway!

**Hon KEN TRAVERS:** Who from the Liberal Party backbench would want to undermine Hon Jim Chown?

**Hon Jim Chown** interjected.

**Hon KEN TRAVERS:** I have never noticed that. When Hon Jim Chown’s colleagues suggested that I call him Jim Clown, I thought that was a term of endearment.

**Hon Jim Chown:** Now you’re being offensive.

**Hon KEN TRAVERS:** No; I thought it was a term of endearment.

**Hon Liz Behjat:** Just like Hymie is a term of endearment for you.

**Hon KEN TRAVERS:** Who suggested that that might be a name for me? I am proud to carry that title. Hymie is one of my favourite characters.

**Hon Sue Ellery** interjected.

**Hon KEN TRAVERS:** As we all know, if there is frisson in the chamber, it is to be between the two leaders of the house.

**Hon Sue Ellery:** Is that right?

**Hon KEN TRAVERS:** Yes, otherwise frisson is permanently banned from this house.

**Hon Sue Ellery:** Settle down!

**Hon KEN TRAVERS:** The Leader of the Opposition started it! It is after all the last day of sitting before the break.

There are serious issues with the structure of the Integrity (Lobbyists) Bill 2014 because it will set up a whole range of activities and tasks with which parliamentary secretaries will be required to comply. They will have a list of things that they will need to comply with, but unlike a minister of the Crown, they will not get support. I will use Hon Jim Chown as an example, because I know more about the work that he does than I do about the work done by Hon Alyssa Hayden.

**Hon Jim Chown:** She does a fantastic job.

**Hon KEN TRAVERS:** Please, I am not trying to suggest that she does not. I tend to follow Hon Jim Chown in the media more so than I follow the issues with which Hon Alyssa Hayden is involved. I know that Hon Jim Chown meets with people in the industry on a regular basis. This bill will put him into a position in

which he will need to establish on every occasion the capacity in which someone has come before him and he will be obliged to ensure that that meeting is recorded.

**Hon Peter Collier:** Don't you think that is a good thing?

**Hon KEN TRAVERS:** I am not arguing that. I am not necessarily arguing against it. I am making the point that the government will place an obligation on people like Hon Jim Chown, who is working very hard for the government, but I doubt that he will be given resources to assist him in that function.

**Hon Jim Chown** interjected.

**Hon KEN TRAVERS:** I have seen the parliamentary secretary meeting people out in the field. I know the member gets out there.

**Hon Jim Chown:** That is part of my role as a member for Agricultural Region.

**Hon KEN TRAVERS:** But is it? That is the problem. The member is right. Under clause 4(3)(d), if people lobby Hon Jim Chown as a member of Parliament, he is not required to go through that process. But if they lobby him as a minister or a parliamentary secretary, he is obligated to go through that process. This will be an interesting challenge for people such as Hon Jim Chown. When someone approaches Hon Jim Chown in the electorate and says that the government's approach to tier 3 rail is rubbish and that he should get it changed, or that the roads are decaying as a result of the extra trucks on them and the government has to put more money into fixing those roads —

**Hon Jim Chown:** I will ask them whether they are lobbying me as a member for Agricultural Region or as Parliamentary Secretary to the Minister for Transport.

**Hon KEN TRAVERS:** Exactly. Hon Jim Chown will have a list of key questions that he will have to ask when he is approached. First, is the person lobbying him in his role as a member of Parliament or as parliamentary secretary? How will he determine that? He might be able to determine that, but sides will swap over time and whether it is Hon Jim Chown asking questions about me or whether it is me asking questions about Hon Jim Chown, what Hon Jim Chown may believe is the case and what I may believe is the case as the opposition spokesperson—or vice versa at some point in the future—or what the person doing the lobbying believes or what someone else who was sitting there at the time believes was the capacity in which the lobbying took place, we will be asking people to work out which hat they are wearing at any given point in time and make a decision. The way Hon Jim Chown defines it may be different from the way that someone else defines it. The first thing that ministers and parliamentary secretaries will have to work out is how they are being lobbied and how someone else will view the capacity in which they were lobbied. Were they lobbied as a parliamentarian or as a parliamentary secretary? The next is whether the person doing the lobbying is on the payroll of a company or organisation to do that lobbying. The passage of this legislation will result in a lot of potential traps for someone unless they are given a standard list of questions to pull out and go through.

I am not raising these issues for the purpose of saying that we should not support the bill; rather, these areas need clarity. As I said at the outset, my grave concern about this piece of legislation is that we will put in a range of checks and balances that, first, provide for unequal treatment of different members of Parliament and, second, create a whole series of potential hooks for members of Parliament. I am confident that the people who will be captured by those hooks will not be those who actively seek to circumvent good processes and procedure. Those people will never be captured. The people who seek to do the wrong thing will work out how not to get caught. That is the general experience. The ones who will get caught will generally be those people who make an innocent mistake and who have forgotten to ask the right questions or were at a function. I suspect that when we ask ministers about their meetings, at some point we might start getting into, "Please give us a list, Hon Jim Chown, of all the meetings you have had with lobbyists as parliamentary secretary." Of course, Hon Jim Chown would be required to answer that question because it relates directly to his role. When we ask ministers to tell us about their meetings with people, we get answers such as what I was given in an answer to a question on notice. I will quote from an answer that Hon Jim Chown gave to me about meetings with Hon Mr Troy Buswell. The answer from 22 October 2015 reads —

The Minister and his current Ministerial staff may have had contact with Mr Troy Buswell for administrative purposes only or may have had incidental or irregular social contact in which case this is not listed below.

Again, that raises an interesting issue. Does the meeting of a minister with someone at a cocktail party mean that that person is not lobbying the minister or not seeking to engage with him in a way that may be beneficial to their client in establishing a rapport with that minister? The definition in the bill is interesting, because it will require members to make notes about certain things. Does Hon Robin Chapple want to go into committee on this bill?

**Hon Robin Chapple:** Yes.

**Hon KEN TRAVERS:** Right, so it may be that we can test in committee the exact circumstances and the what, when and how of members in those circumstances who will be required to keep details of all these things. Again, I make the point that it will be a lot easier for a minister who has additional staff than it will be for a hardworking, dedicated parliamentary secretary. The answer referred to administrative purposes. Again, I am happy for the minister to explain the situation of a lobbyist contacting a minister or parliamentary secretary for administrative purposes. What is an administrative purpose, what is a lobbying purpose and where and how is that defined in the legislation? What is incidental or irregular social contact? If someone invites a member to a corporate box, is that social contact or an act of lobbying? They may be a lifelong friend. A member may be a lifelong friend with a range of people. I have seen plenty of pictures of a certain member opposite—I will not out him right now—sitting in corporate boxes. If he were a parliamentary secretary, would he be attending those corporate boxes as a friend of the owner of the box or as a member of Parliament?

**Hon Alyssa Hayden:** A member is always on duty.

**Hon KEN TRAVERS:** A member is always on duty, so when is a social interaction a social interaction and when is it interaction as a member of Parliament? I think the member is right. Once a person becomes a member of Parliament, one of the great challenges they have to face, particularly when they rise to the office of parliamentary secretary or minister of the Crown, is: Are they ever off duty? Can a member ever have purely social contact with someone or is their contact with a person always of a political nature even though they might be lifelong friends? We may have known many people who work in the lobbying industry in other capacities for extended periods. When they talk or meet with a member, what is the member's obligation under this bill? I tend to agree with Hon Alyssa Hayden that we are never off duty. When we meet people, even in social circumstances, there is always an element or a potential element for inadvertent discussion on the topic of the day—for example, will there be a change of leader?

**Hon Peter Katsambanis:** Are you lobbying for a change?

**Hon KEN TRAVERS:** I am not lobbying for change on the member's side. I have declared my hand as to who I want to see as the new Leader of the Liberal Party, but I do not know that I will have any influence over that whatsoever, Hon Peter Katsambanis.

**Hon Peter Katsambanis:** We have had some experience recently with people changing parties. Perhaps the member might want to —

**Hon KEN TRAVERS:** I was offered a Liberal Party membership this morning to assist in the leadership ballot but I respectfully declined. I can assure members that I will never join the Shooters, Fishers and Farmers Party, as much as I like Hon Nigel Hallett and Hon Rick Mazza. I like them but I do not share their values at all. The point I am making is that when a member gets into those discussions, and even though all members opposite may collectively have the view that Colin Barnett will take them through to the next election, I would bet London to a brick—I would take the bet right now—that every one of the members opposite at some point in a social function over the last two to three months had someone raise with them the question: will there be a change of leader; and, if so, when will it happen and who will it be? I get it all the time from people across Perth, so I am pretty confident that if we as Labor members get —

**Hon Jim Chown:** We get the same reaction about Mark McGowan quite honestly. Seriously, it is a subject of discussion in the community.

**The ACTING PRESIDENT** (Hon Simon O'Brien): Order, members! Hon Ken Travers is addressing the bill.

**Hon KEN TRAVERS:** I appreciate the assistance of members opposite because they have confirmed my point, which is why I could not get anyone to take the bet—that is, that people are constantly discussing with them issues that could effectively and potentially be called lobbying because discussion on the change of leadership will go to the topic of a change of policy position. If a person wants keno machines in Western Australia, they need to talk to someone who supports Hon Col Holt becoming Premier, because the current Premier will not do that. The point I am making is that Hon Alyssa Hayden is absolutely right that some of these matters are incredibly grey and will provide for entrapment. It is really important that the Leader of the House —

**Hon Alyssa Hayden** interjected.

**The ACTING PRESIDENT:** Order! The honourable member is trying to address the Chair.

**Hon KEN TRAVERS:** I am not trying to be vitriolic; I am making points to the house. The Leader of the House heard what the member said, and I make the point to the Leader of the House, who is handling this bill, that it is really important that government explains how it expects those grey areas to operate.

In summary, I would like to know how the policy was developed. With regard to the one-year exclusion, what will the circumstances for exemption be? How will the policy of this bill operate? If people are able to get around it by being directly employed, what is the purpose of some of these regulations? Is the government concerned about that? What will be the obligations on parliamentary secretaries who do not have the resources of government automatically provided to them to assist them with these obligations? Finally, where are these grey areas about what is and what is not lobbying, what is and what is not social contact, and when are we or when are we not on the job? Those things need to be clarified by the government because these matters will come back to haunt members in this place. Mark my words; we will have future debates about these issues and it may very well be members on the other side raising issues about members of the future Labor government, or the other way around. It is very important that these matters are clarified.

**HON PETER COLLIER (North Metropolitan — Leader of the House)** [2.45 pm] — in reply: I thank all members opposite for their indication of support for this very important Integrity (Lobbyists) Bill 2014. Some very good points have been raised. I will capture a few of the issues that Hon Ken Travers spoke about earlier in his contribution about the ambiguity that exists in some of the rules and regulations; the relationship between government decision-makers and lobbyists; and the cloudy areas in-between and how we draw that line in the sand. They are valid points that pretty much capture the issues raised by most members. On at least one occasion this year, I have found myself at a meeting with someone who I was not aware was a lobbyist until I got to the meeting. Should it be declared? Of course I declared it, but that shows why we simply must have those rules and regulations to provide transparency and confidence in the public eye so that people who try to influence government decision-makers declare their intent at the outset, and that is acknowledged by government.

As the second reading speech says, quite frankly, lobbying is a legitimate component of the political process. Eyebrows have been raised and questions have been asked on occasions about some of the unscrupulous behaviour of some lobbyists, and we have seen examples of that on the east coast just in the last few days. Generally, for all intents and purposes, decision-makers provide an avenue through which people can lobby the government. This bill will assist to ensure that all communications between the lobbyist and government representatives remain appropriately accountable and a rigorous standard of conduct between all parties is maintained. I will not go through the second reading speech again, but it does that through a number of means, including the tightening up of those areas around communication, for example, by removing the success fee to provide more transparency so that exorbitant amounts of money do not change hands as a result of a decision by the government one way or another.

Having said that, a number of questions have been raised and I will answer most of them. Hon Robin Chapple indicated that he would like the bill to go to committee, so if I do not cover any areas appropriately I will perhaps expand on those further.

Hon Sue Ellery inquired about what would constitute a grassroots campaign for the purposes of the bill. Clause 4(3)(e) of the bill provides that communicating as part of a grassroots campaign is not regarded as lobbying activity that is to be regulated by the bill. The term “grassroots campaign” is not defined by the bill; hence, the ordinary dictionary definition will apply. The *Oxford Dictionary* defines the term “grassroots” to mean a fundamental source or the voters themselves. A group of the sort described by the honourable member would probably be regarded as a grassroots campaign body whether or not the body is incorporated as a not-for-profit body. However, clause 4(4) excludes paid communication from being considered as grassroots campaigning. If a group such as people against power price increases paid for its communications campaign and directed this to be carried out by a third party, this would likely be excluded from being considered a grassroots campaign. This would mean that those activities would probably be regarded as lobbying activities. Hon Sue Ellery also inquired about the definition of lobbying activity in clause 4 and whether it can capture circumstances in which a minister is being lobbied on a constituency matter in their electorate. The definition of lobbying activity in clause 4 captures ministers who are members of the state executive government. When a minister communicates with a person in their capacity as a member of Parliament about a constituency matter that is not within their responsibilities as a minister or parliamentary secretary, the bill excludes this from the definition of lobbying.

Sorry, my cat scratched me last night and it will not stop bleeding. I apologise.

**Hon Ken Travers:** Glad you told us that; I thought you were trying to kiss yourself!

**Hon PETER COLLIER:** No; Rosybelle just got mentioned.

Another issue is whether the information is to be included on the register. Although the form that the register takes is not at the Public Sector Commission’s discretion, it is anticipated that the operation of the register in its current form will continue, with some minor modifications to registration details and procedures. Thus the following information will be required to be registered. The registrant’s business name; an Australian Business Number, which was formally the company details; the names of the lobbyists and their positions in the business,

formerly the lobbyist's details; names of current clients and clients for whom the businesses provided lobbying services in the past three months, both paid and unpaid; the names of owners, partners or major shareholders, as applicable; and the dates the details were last updated or confirmed.

The bill will not require lobbyists to provide monthly returns to the register of any activities undertaken on behalf of their client. That is considered to be an onerous requirement. The focus of this bill is on getting the balance right. It provides for appropriate accountability and standards of conduct for lobbyists, while ensuring there is no imposition of undue cost or regulatory burdens on government, industry or the community. Hon Sue Ellery also inquired whether the commissioner's decisions can be appealed. The bill does not provide a specific avenue of appeal against the commissioner's decisions such as the decision to counsel or restrict the registration of a lobbyist. Discretion is vested in the Public Sector Commissioner to take appropriate action to enforce ethical standards of conduct for lobbyists. Any person who is aggrieved by a decision of the commissioner may seek judicial review by the Supreme Court applying the normal rules regarding judicial review of administrative action. The bill regulates lobbying for only the state government; it does not regulate public relations activities generally. Apart from South Australia, the government is advised that no other Australian jurisdiction that regulates lobbying of government provides for external review of a decision to register a lobbyist.

Hon Robin Chapple inquired whether the code of conduct will be published. Under clause 18(1)(a), the code of conduct must be published in the *Government Gazette*. In addition, the commission must make the code freely available, which will probably be done online. Hon Robin Chapple also inquired whether the Treasurer could take legal action to recover success fees. Clause 22 provides that this is a debt due to the state. Recovery would be undertaken as a civil action in a court of competent jurisdiction, which would depend on the amount of money involved, and the money would go into consolidated revenue. Hon Robin Chapple also inquired how the proper person test would apply. The commissioner expects to require applicants to provide a standing declaration identifying, among other things, any convictions for offences involving dishonesty.

Hon Ken Travers asked several questions, including why a 12-month cooling-off period is in clause 14. That is a good question. I think some people on this side of the chamber would also probably like an answer to that. The 12-month cooling-off period in clause 14 is considered sufficient to allow inside information advantages to dissipate. A range of cooling-off periods apply in other jurisdictions. In Tasmania it is 12 months; in the commonwealth, between 12 and 18 months; in New South Wales, 18 months; in Victoria, 18 months; and in South Australia, two years. Whether this applies just to members of Parliament or ministers et cetera varies among jurisdictions. I was just giving the member the time frames.

**Hon Ken Travers:** I understand for a minister but I do not think members of Parliament will have the same degree of knowledge.

**Hon PETER COLLIER:** They certainly would not have the same degree of information, but it was seen as an appropriate cooling-off period when lobbyists have access to decision-makers.

**Hon Ken Travers:** I don't mean this in a nasty way but it sounds like a cabinet decision that did not consider your backbench, to be quite frank.

**Hon PETER COLLIER:** That may be Hon Ken Travers' opinion and possibly that of others.

He also asked what criteria the commissioner would apply in waiving the 12-month period. An example might be when a person occupied the relevant office for only a short period, in an acting capacity or when the lobbying relates to a matter in which the person had no involvement during his or her term. Hon Ken Travers asked whether a person could avoid an activity by being paid directly by their clients. The purpose of this bill is to regulate only third party lobbyists. When a person lobbies on behalf of their employer, it is clear who they represent, and that is true. I guess, in that respect, it would be when a former member of the other place was involved.

**Hon Ken Travers** interjected.

**Hon PETER COLLIER:** Yes; they would know where they were coming from. I am not defending it.

**Hon Ken Travers:** They don't need to declare where they are from.

**Hon PETER COLLIER:** No they do not. That person would hardly lobby for BHP Billiton.

**Hon Ken Travers:** Not if they are employed directly by BHP.

**Hon PETER COLLIER:** Yes, but they would not be.

**Hon Ken Travers:** You don't know that; that's the whole point.

**Hon PETER COLLIER:** I see what the member means about being ignorant about where he works.

**Hon Ken Travers** interjected.

**Hon PETER COLLIER:** Yes, all right.

They are not lobbying as a third party and therefore there is no need to regulate them. As I said, I understand the ambiguity, but lobbying is such a —

**Hon Ken Travers:** It's a loophole.

**Hon PETER COLLIER:** No, it is not. It is an area in which there will never be a line in the sand that captures everyone. It cannot happen.

Hon Ken Travers asked about new obligations on parliamentary secretaries. The Ministerial Code of Conduct already applies to parliamentary secretaries and requires their compliance under the current administrative regulatory scheme. That is no different. Hon Ken Travers asked whether meeting a lobbyist at a cocktail party would be considered to be lobbying. Lobbying is seen to occur only if a person seeks to influence government decision-making for a third party. It does not matter where it takes place. If no attempt is made to communicate or influence decision-makers, there is no lobbying. Simple social intercourse is not regulated.

I think that pretty much covers all the questions. If anyone would like me to add information to any of those questions, I will answer them as best as I possibly can in committee. With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Simon O'Brien) in the chair; Hon Peter Collier (Leader of the House) in charge of the bill.

**Clauses 1 and 2 put and passed.**

**Clause 3: Terms used —**

**Hon ROBIN CHAPPLE:** I turn to the definition of “state government decision-making”, about which two questions arise. I am sorry, but the questions are slightly hypothetical; I hope the minister will bear with me. If, say, the ministers of a political party do not receive any direct lobbying but all the backbenchers and everybody else are heavily lobbied, resulting in cabinet taking a different position, how is that covered, or is it covered?

**Hon PETER COLLIER:** No, it covers only ministers; it does not cover backbenchers.

**Hon ROBIN CHAPPLE:** In that same regard, there have been different times when the Greens have had the balance of power in the lower and upper houses of Parliament. If the decision-making of a third party on the outcome of the passage of legislation is affected by another party being lobbied to change its decision-making in relation to the legislative outcome —

**Hon Peter Collier:** Like some in this chamber—yourselves?

**Hon ROBIN CHAPPLE:** We had the balance of power at one stage in this place and we were lobbied, but we used that lobbying to determine the way we would vote, which then had an outcome on the passage of legislation. How is that caught, or will it not be?

**Hon PETER COLLIER:** No; the Greens are not part of executive government. This is for executive government only. It is legislation for executive government, so the Greens will not be captured by it.

**Hon ROBIN CHAPPLE:** I thank the minister for his answer —

**Hon Peter Collier:** So the Greens are free and clear!

**Hon ROBIN CHAPPLE:** — and I understand that. But it is a concern that the outcome of a legislative process can be impacted by lobbying. We have seen members of both parties cross the floor in this place. If the outcome was changed by, say, one of the minister's backbenchers crossing the floor, the outcome would have been affected by significant lobbying. It concerns me that the government is not dealing with that issue.

**Hon PETER COLLIER:** Honourable member, it is up to Parliament to regulate its members; it is not up to the executive. Goodness gracious! If the executive started to regulate Parliament, all hell would break loose.

**Hon Robin Chapple:** No, I wasn't saying that.

**Hon PETER COLLIER:** Yes, but if we start regulating individual members, that has nothing to do with this. This is the regulation of the executive level of government. As I said, if it gets to a point when someone wants to present a bill to regulate decision-making or the lobbying of members of Parliament, that would be different.

**Clause put and passed.**

**Clause 4: Term used: lobbying activity —**

**Hon ROBIN CHAPPLE:** The definition of “lobbying activity” reads —

*lobbying activity* means communicating with a government representative for the purpose of influencing, whether directly or indirectly, State government decision-making.

I return to the issue of registered lobbyists lobbying members of the government who are indeed government representatives. Even if they are not ministers or parliamentary secretaries, they are part of state government decision-making. Can the minister clarify that that will not have implications for backbenchers or other people? The way lobbying activity is referred to seems a little ambiguous.

**Hon PETER COLLIER:** Yes, a list of government representatives appears in clause 3.

**Hon Robin Chapple:** We have already passed that clause, yes.

**Hon PETER COLLIER:** Yes. It is in clause 3.

**The DEPUTY CHAIR (Hon Simon O'Brien):** Members, to get the call all you have to do is attract the attention of the Chair.

**Hon ROBIN CHAPPLE:** I will endeavour to do that loudly in future, Mr Chair.

Clause 4(3)(c) quite clearly states that communicating with a committee of the Legislative Council or the Legislative Assembly or a joint committee of both houses is not lobbying. But there have been instances of the Corruption and Crime Commission investigating lobbyists lobbying third parties to have influence on committees. I am concerned that clause 4(3)(c) may impede the process of ensuring that committees are not impacted by lobbying. I understand that the intent of subclause (3) is that an individual can write to a committee or make representation without it being called lobbying, but there have been instances when committee members have been lobbied, indirectly by third parties, to affect the outcome of committee deliberations. How clear is it that it does not cross that threshold?

**Hon PETER COLLIER:** “Government representative” is defined in clause 3. It must be a minister, parliamentary secretary, public sector employee or a person engaged by a public sector body under a contract for services. It must fall within those criteria.

**Hon ROBIN CHAPPLE:** If we read that in context, the following are not lobbying activities —

communicating with a committee of the Legislative Council or the Legislative Assembly, or a joint committee of both Houses;

**Hon Peter Collier:** Yes.

**Hon ROBIN CHAPPLE:** That is an interesting concept, but we will move on.

Clause 4(5) reads —

For the purposes of subsection (3)(j), a *personal matter* is a matter that relates only to a person’s personal, family or household affairs and is not related to any business or commercial activity.

Is there some way of clarifying what may or may not be a personal matter, given that quite often we are provided with lobbying or concerns from constituents on personal matters with a fiscal element? Although it might not be directly related to a business or commercial activity, it might have a fiscal implication. Can the minister provide some clarity around that?

**Hon PETER COLLIER:** I refer the member to paragraph (j). If the member is talking about a person who is acting only on “behalf of” somebody else, then, as it states in that paragraph, it is a matter that relates only to the person’s family or household affairs and it is not related to any business or commercial activity—but it is “on behalf” of somebody else.

**Hon ROBIN CHAPPLE:** I understand what the minister has said; I get that. We have had instances in the past in which we have been lobbied by a professional lobbyist on the sale of property. It was not related to a business; it actually had to do with personal issues but it had a massive fiscal implication on the deliberations of government; are those matters caught or not?

**Hon PETER COLLIER:** If it is related to a personal matter, regardless, it is not lobbying.

**Hon ROBIN CHAPPLE:** One further question. This is a general question on this clause. When a lobbyist contacts a member of Parliament, say, me, for example, with a view of setting up a meeting with a minister with the function of lobbying, am I required to record that I have been lobbied or does the minister have to record that they have been lobbied by me to set up the meeting?

**Hon PETER COLLIER:** In those instances, it will not relate to the member; it is only to me, as the minister.

**Clause put and passed.**

**Clauses 5 to 10 put and passed.**

**Clause 11: Publication of information on register —**

**Hon ROBIN CHAPPLE:** This clause states —

- (1) The Commissioner must make the information on the register publicly available free of charge.

There is a requirement there of “must”. Then the clause states —

- (2) The Commissioner may comply with subsection (1) in any way the Commissioner considers appropriate.

Could the minister please articulate why or identify whether there is anything in “may comply” that is contrary to subclause (1)?

**Hon PETER COLLIER:** No, the obligation is the same; it will just be the manner in which it is provided. In this instance, it is envisaged, as I mentioned in my response to the second reading debate, that the information will be made available on the Public Sector Commission website, as is now the case. It will just be the manner in which it is provided.

**Clause put and passed.**

**Clauses 12 and 13 put and passed.**

**Clause 14: Certain persons disqualified from registration or listing —**

**Hon LIZ BEHJAT:** I know it is difficult in these circumstances to deal in hypotheticals, but I will try to get the minister to respond. I take the minister to clause 14(3), which states —

However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a lobbyist.

Could the minister turn his thoughts to the situation of a person who, for instance, may be a member of this house and who for one reason or another decides to transfer to become a member of the other place, and then may be required to leave this place prior to an election, which would then necessitate that a person being appointed for a short term. How would it be viewed if that person, who was at that point currently registered as a lobbyist, then came into this place or perhaps even became a member for such a short time that they did not even sit in Parliament—they may just take office and not actually participate in the proceedings of this chamber? Indeed, if a person who was not a lobbyist came in under those circumstances for a short time and was a member for, say, only six or seven weeks, what would happen if that person later on within that 12-month period wanted to become a lobbyist? Would the commissioner in those circumstances be able to allow that person to be registered?

**Hon PETER COLLIER:** The answer is, yes. The Public Sector Commissioner has sufficient independence from executive government to assess whether there is a risk of a former officeholder being able to gain inappropriate personal advantage from a former role or whether there are genuine circumstances of hardship that would require waiving the ban. That would capture that potential individual.

**Hon ROBIN CHAPPLE:** Clause 14(3) states —

However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a lobbyist.

Is there some criteria or will there be some sort of regulation that would guide his discretion in that matter or is it a complete discretionary role?

**Hon PETER COLLIER:** There are no criteria for those provisions because we do not actually know what the criteria are in that particular instance.

**Hon ROBIN CHAPPLE:** This is interesting. Would a lobbyist, a registered lobbyist in this case, who does not lobby Parliament but lobbies the political party to change policy or direction or, indeed, provide some sort of external effort or pressure on a minister of the Crown to have a position on a matter get caught in any way, shape or form?

**Hon PETER COLLIER:** No. A political party is not part of executive government so it would not be captured.

**Hon ROBIN CHAPPLE:** Would a candidate in an election who has been clearly identified as being a potential minister or whatever else be caught by this process?

**Hon Ken Travers:** Jim Chown!

**Hon ROBIN CHAPPLE:** That is an interesting point. There has been the situation whereby a person was elected Premier of a state from outside the parliamentary process. Would his or her decision-making in that regard be caught? I am seeing a nod of the head.

**Hon PETER COLLIER:** Absolutely not. He would not be part of executive government.

**Hon ROBIN CHAPPLE:** Obviously, the commissioner can determine that that person may or may not be exempt around that issue of the one year—I think the question was asked by Hon Ken Travers. Is there any clear definition or criteria pertaining to those alterations or exemptions?

**Hon PETER COLLIER:** The range of examples would be very open-ended. It is very, very hard to put down set criteria. As I said, I will repeat the frameworks upon which the Public Sector Commission might exercise discretion to decide to register a person who is otherwise disqualified under the provisions of clause 14(3). The provisions apply if a person has occupied the relevant office for only a very short time before ceasing to hold office, if the person occupied the relevant office in an acting capacity only or if the lobbying proposed relates to a matter with which the person had no involvement during their term of office.

**Hon Ken Travers:** That means most MPs would be eligible.

**Hon Peter Collier:** Potentially.

**Hon KEN TRAVERS:** Can I just get that on the record? Does that mean that most former members of Parliament will be able to seek an exemption and be put on the register if they have not been a minister?

**Hon PETER COLLIER:** Yes. But again, we are talking about members who are here for only a short time and the other two criteria as well. If members fit that criteria, they can apply, but very few of us in this place have been here for only a short period.

**Hon Ken Travers:** What's a short period of time?

**Hon PETER COLLIER:** Again, I said that is the issue with this; there is no set determination. We all know that this is such a fickle business and at any time —

Several members interjected.

**Hon PETER COLLIER:** It is true. Someone could be in here for half a term for a whole raft of reasons, so there simply cannot be clinically defined criteria. The clause provides a comprehensive framework and, ultimately, a former member of Parliament would have to fall within that framework to be considered; but, yes, anyone can apply.

**Clause put and passed.**

**Clause 15 put and passed.**

**Clause 16: Code of conduct —**

**Hon ROBIN CHAPPLE:** Clause 16 states —

- (1) The Commissioner may issue a code of conduct for registrants and lobbyists.

Then clause 18, “Publication of code of conduct”, states —

- (1) The Commissioner must —
  - (a) publish a code of conduct in the Gazette; and

I assume these clauses identify that the commissioner may create a code of conduct and only if it is created, it must be published in the *Government Gazette*. I am concerned that we are dealing with the code of conduct being published in the *Government Gazette* and it must be made publicly available free of charge, but there may never be a code of conduct. Is that correct?

**Hon PETER COLLIER:** “May” means may. There is a code of conduct and there will be one. The member is quite correct that there may be a code of conduct.

**Hon ROBIN CHAPPLE:** Obviously, it is the government's and the legislation's intention to have a code of conduct. Why then is the word “may” in clause 16(1) when I would have thought that it should state that the “Commissioner must issue a code of conduct for registrants and lobbyists”?

**Hon PETER COLLIER:** To clarify, there will be a code conduct. It may be the existing code of conduct or a new one but it will be published. Does the member understand that?

**Hon ROBIN CHAPPLE:** I understand what the minister is saying. I respect the fact that we will have a code of conduct. However, the legislation states that we do not have to have one because there “may” be a code of conduct. It is just a simple word and I would have thought we could just amend it to be “must” issue a code of conduct not “may”. If some future, nefarious government —

**Hon Ken Travers:** The Greens would never be in government!

**Hon ROBIN CHAPPLE:** I suggest that we amend it to be “must” anyway!

Several members interjected.

**Hon ROBIN CHAPPLE:** Come on; they are ganging up on me here!

**Hon PETER COLLIER:** The intent is to provide that flexibility to maintain the current code of conduct or to issue a separate code of conduct, but there will be a code of conduct. I want to clarify that.

**Hon ROBIN CHAPPLE:** The clear issue is if there is a current code of conduct and the government is looking to change it, it does not have to change it.

**Hon Peter Collier:** That is correct.

**Hon ROBIN CHAPPLE:** But the government might want to remove the current code of conduct.

**Hon Peter Collier:** The clause provides that flexibility; that is what I said.

**Hon ROBIN CHAPPLE:** That is a real concern because surely the public should be availed of having a code of conduct that is publicly available.

**Hon Peter Collier:** You do have to and you've got to publish it; that's in the bill.

**Hon ROBIN CHAPPLE:** Yes. I understand that if there is a code of conduct—we come back to the “if”. We do not necessarily have to have a code of conduct.

**Hon PETER COLLIER:** Yes, we do.

**Hon ROBIN CHAPPLE:** The clause states that the commissioner may issue a code of conduct.

**Hon Ken Travers:** Go and get Peter Foss's explanation about the difference between “may” and “must” in parliamentary drafting policy and provide it to the member; it will make it easier for you.

**Hon Robin Chapple:** I remember Peter coming into this place many times on these issues.

**Hon PETER COLLIER:** I will channel Peter Foss.

Several members interjected.

**Hon PETER COLLIER:** How long do we have? No, he was a very learned man. As I said, yes, I understand the ambiguity there. The clause does state that a code of conduct will be published. I understand the ambiguity with the word “may” but clause 18 states that the commissioner must publish a code of conduct.

**Hon Robin Chapple:** If you make one.

**Hon PETER COLLIER:** There will be a code of conduct.

**Hon ROBIN CHAPPLE:** It will be one that the minister is telling me about.

**Hon Lynn MacLaren:** Are you going to propose an amendment?

**Hon ROBIN CHAPPLE:** Not yet, but I might get the member to draft one for me in a minute. Quite clearly, I hear what the minister is saying, but we do not necessarily need a code of conduct. That is correct.

**Hon PETER COLLIER:** I have said it about four times; I cannot say it any more times.

**Hon ROBIN CHAPPLE:** I am just clarifying.

**Hon Peter Collier:** Yes, that's fine.

**Hon ROBIN CHAPPLE:** The minister keeps on sort of saying that we do have a code of conduct, we will have a code of conduct, but the legislation says we do not have to.

**Clause put and passed.**

**Clauses 17 to 19 put and passed.**

**Clause 20: Term used: Success fee —**

**Hon ROBIN CHAPPLE:** How will the Public Sector Commissioner determine whether a success fee has been paid, and will that be in the public domain? I doubt whether a lobbyist would identify publicly that they have received a success fee. This clause provides that “success fee” means any commission, payment or other reward, whether pecuniary or otherwise. I understand the intent. I am trying to work out how the commissioner will be able to do it.

**Hon PETER COLLIER:** There are various avenues by which a success fee can be determined, either through a police investigation, through a Corruption and Crime Commission investigation, as has occurred in the past, or through information that has been provided to the department.

**Hon ROBIN CHAPPLE:** What powers will the commissioner have to initiate an investigation into whether a success fee has been paid? If the commissioner determines that a success fee might have been paid, what powers will the commissioner have to initiate an investigation?

**Hon PETER COLLIER:** Obviously the commissioner has avenues through the Public Sector Management Act, and the CCC has its own avenues, of course. In essence, if there was an issue between the two parties, it would become a civil matter, and it would potentially become a criminal matter. That pretty much covers it.

**Clause put and passed.**

**Clauses 21 to 28 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Peter Collier (Leader of the House)**, and passed.