

INTEGRITY (LOBBYISTS) BILL 2011

Consideration in Detail

Resumed from 15 August.

Clause 4: Term used: lobbying —

Debate was adjourned after the clause had been partly considered.

Dr E. CONSTABLE: I move —

Page 7, line 8 to page 8, line 21 — To delete the lines and substitute —

- (1) For the purposes of this Act, but subject to this section, **lobbying activity** means —
 - (a) any oral or written communication (including an electronic communication) with a representative of government in respect of —
 - (i) the development of any legislative proposal by the Government or by a member of either House of Parliament;
 - (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;
 - (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
 - (b) arranging or attending a meeting between a representative of government and any other person.
- (2) **Lobbying activity** does not include oral or written communication (including an electronic communication) that is —
 - (a) made by a representative of government, a public authority, or any other person holding office under a written law in his, her or its official capacity;
 - (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 authorised by a written law;
 - (e) made by a representative or employee of a media organisation for the purposes of gathering and disseminating news and information to the public;
 - (f) made in a speech, article, publication or other medium of mass communication;
 - (g) made in a petition to 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
 - (h) made in the course of any judicial proceedings.
- (3) **Lobbying activity** does not include arranging or attending a meeting with a representative of government —
 - (a) that is open to members of the public; or
 - (b) about a personal matter on behalf of —
 - (i) the person making the communication; or
 - (ii) a friend or relative of that person.

Extract from Hansard

[ASSEMBLY — Tuesday, 11 September 2012]

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Dr Elizabeth Constable; Mr Colin Barnett; Mr Bill Johnston; Mr Chris Tallentire; Mr John Kobelke; Acting Speaker; Ms Adele Carles

- (4) For the purposes of subsection (3)(b), 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.

I have some problems with the clause as it is written in the bill because it is mainly about what lobbying is not, and it is meant to define lobbying activity. There are two points at which lobbying activity is defined; that is —

- (1) In this Act, unless the contrary intention appears —
lobbying means communicating with a government representative for the purpose of influencing, whether directly or indirectly, State government decision-making.
- (2) For an activity to be lobbying, it is not essential that the activity be undertaken for any commission, payment or other reward ...

Therefore, pro bono work can be done in this area. The rest of the clause, which goes for many lines, is basically negative—saying what lobbying is not. I think that rather than have a vague notion of what lobbying is or is not, we should have set out in this clause a very clear definition of what we see lobbying to be. My amendment intends to do that. There are many vagaries in the Integrity (Lobbyists) Bill itself, which I will ask the Premier to explain to me and define for me. For instance, clause 4(3) lists what is not lobbying and paragraph (e) states —

communicating as part of an activity of a grassroots campaign nature ...

What is that? It is not defined in any way in this bill. The term “grassroots campaign” needs to be defined and understood because what I think that is someone else might think is something different. It is far too vague; therefore, I am looking to see this tightened so that there can be no doubt about what lobbying activity on the part of lobbyists is. If the definition is too vague, it will lead to confusion. It will lead to the commissioner having one view of what lobbying is and someone, all in good faith, undertaking an activity that they believe is lobbying, only to find out afterwards that, in fact, it was not. The amendment aims to make sure that we do not have that confusion about what lobbying activity actually is. I think it is vague; there are grey areas in the bill that need to be tightened. Could the Premier explain what a grassroots campaign is? As well, the communication as described in clause 4(3)(d) could also potentially create all sorts of issues in practice, with ministers being lobbied allegedly as members, but as a consequence taking the information imparted by the lobbyist into cabinet. Clause 4(3)(d) states —

communicating with a person who is a Minister or a Parliamentary Secretary, in that person's capacity as a member of either House of Parliament and not as a member of the Executive Government ...

Therefore, this states that the lobbyist can go to a member's electorate office, with that member being a minister or parliamentary secretary, lobby them and talk to them about something that is coming up in cabinet, but that will not be defined as lobbying. I think it is lobbying if it is about an issue that is before the government. According to this clause the process is only lobbying if the minister responsible for the issue is lobbied, but it is not lobbying if someone else who is a minister with different portfolios is lobbied as a member of Parliament. That is just too cute for words. It is lobbying and I suspect that it is intended as lobbying by the lobbyist. Under the definition in this clause, this could lead to all sorts of issues whereby every single minister, all but one, is lobbied as a member of Parliament, but then has to deal with that situation in cabinet. I think it is very important that we ensure that that is not the case. I think this clause 4(3)(d) is particularly fraught with difficulties. We need clear guidelines for lobbyists. We need this clause to concentrate on not only what lobbying is not, but also what lobbying is, so that it is clear to everybody what it is. And we need some of the vagaries of this clause to be explained.

Mr C.J. BARNETT: In response to the comments by the member for Churchlands, yes, it could be argued that the definition is fairly general, even vague. I would not use the word “vague”, but it is general. There is good reason for that, because we cannot anticipate everything that will happen in the future. It is up to the Public Sector Commissioner to determine whether something is lobbying, and if there are grey areas, he will make that determination. With respect to approaching ministers in their electorates, we cannot limit the right of people to come to their local member of Parliament to give their point of view, whether that member is a minister or not. However, if a paid lobbyist representing a third party turns up at a minister's electorate office and tries to lobby, it is regarded as lobbying and they must be registered. Obviously, a minister should then make the point that the person lobbying is there as a lobbyist and that he will not see them about that in his electorate office, and that the lobbyist should approach the member as a minister. That is the way the system will work.

Dr E. CONSTABLE: Could the Premier define what a grassroots campaign is?

Mr C.J. BARNETT: Yes; I think we all know what a grassroots campaign is. It could be “save the swamp” or whatever it might be. When people come forward in, obviously, multiple numbers, it is not regarded as lobbying as such; it is just people representing their point of view, and there are a lot of those. With lobbying, we are talking about more specific activities by a hired lobbyist representing third parties to present their point of view. The *Australian Oxford Dictionary* defines “grassroots” to mean the fundamental level or source of the voters themselves. Interestingly enough, the term “grassroots” is also used in the Queensland legislation and that does not seem to have created any problems. This bill tries to deal with what might happen in the future, and who knows how lobbying activities might be undertaken. We are not talking about grassroots campaigns about saving an animal or stopping fishing or whatever else; that is not what this is about. They are public issues that people will run. We are talking about lobbyists who are professional in that role and who receive a fee to represent a third party—a client—and that is not about public debate on a grassroots level.

Mr W.J. JOHNSTON: I go to clause 4(3)(g) on page 8 of the bill and I wonder why what is described in that clause is not defined as lobbying. Clause 4 provides a list of things that are not defined as lobbying and the clause I refer to reads —

providing information in response to a request from a government representative;

I am not quite sure why there is that exclusion, given that that could be part of the lobbying process. It seems to me to be inviting more opportunities, because a professional lobbyist in their professional capacity could be doing work on behalf of their client, but then they would be exempt. I am not quite sure why that has occurred in the bill, so could the Premier perhaps explain why that activity needs to be exempted? That would be helpful.

Mr C.J. BARNETT: I think it is nothing more complex than the fact that if a lobbyist is known to represent, say, a particular company, and the government wants to get some information from that company, it may well go back through the contact if that contact is the lobbyist, and that is clearly something initiated by government. I cannot see that that would happen often and I find it very difficult to think of any instances. It might be a point of clarification, but should it happen, it is not regarded as lobbying. If the government initiates contact to seek some information from a company, I do not think it is a lobbying activity.

Mr W.J. JOHNSTON: It is just an unusual exemption. I can sort of understand some of the other exemptions, but this one is lobbying. Information is being provided. I am not quite sure why it is not considered lobbying just because someone is responding to a request. I understand the mechanics of that provision, but I do not at all understand the reason for that provision. If that provision were deleted, I think the bill would be stronger. I think the government has a responsibility to explain the public policy reason for wanting to include a provision that on its face does not provide additional protections in the lobbying process, which is what the bill is supposed to be about. It is supposed to be about shining a light on lobbying, and yet an opportunity is being provided for something to happen in the darkness, and there does not seem to be a public policy outcome. As I said, I understand what the words say, but I am not quite sure what public policy outcome the government is attempting to achieve.

Mr C.J. BARNETT: I think the point is that if the government seeks information from an industry, for example, that information may come from company employees or the company might provide it through the lobbyist if it has one, and that is not lobbying. The government might publicly ask for information on all sorts of things and it might get a response channelled through a lobbyist. Not every company, and I think this is one of the points being missed in this debate, can afford a public affairs officer. Small companies cannot afford one and therefore they will often be a client of a lobbyist who simply represents them, and indeed if necessary respond to government requests. That is a reality; not everyone in this world is a BHP.

Mr W.J. JOHNSTON: I do not intend to take any longer; I am deliberately trying to be as quick as I can. I understand all those issues, but again the Premier’s response does not go to the heart of the question I asked, which is: what is the reason for allowing this part of the lobbying activity to be done in secret? I understand that not all companies are large enough to have public affairs officers, and the government might go to developer X, a mum and dad developer building a block of five units on a vacant piece of land, and say that it wants certain information. The developers say, “Oh my God, we do not know how to handle that”, so they get their lobbyist and the lobbyist provides the response. I understand why it would occur, but I am unsure why the government wants it to happen in secret. That is the only thing I am asking.

Mr C.J. Barnett: It is not in secret, we are just saying that it is not lobbying. There is nothing secretive about it.

Mr W.J. JOHNSTON: But that means that all the other provisions of the act do not apply to that activity.

Mr C.J. Barnett: That’s right.

Mr W.J. JOHNSTON: There all these protections being built in. I have read in detail the second reading speech about all the important reasons the government wants to introduce this legislation. The government wants to

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increase accountability and to get it all out in public. It wants to ensure that there are proper rules and has gone through all these things in detail, and then it says that this lobbying activity will continue to be done under the old regime. For example, is this an exemption under the current arrangements for registering lobbyists? Is that the sort of thing that is already exempt? That might be a reason, I am not saying that it is a good reason, but it might be a reason. What is the reason for excluding this part of lobbying from these important provisions outlined in the second reading speech?

Mr C.J. BARNETT: I would have thought that I have explained that the government does not regard that as lobbying and therefore it is not included in that definition. It is as simple as that.

Dr E. CONSTABLE: I need some clarification on clause 4(3) and the 11 points that the bill tells us are not lobbying. Does that mean that if a registered lobbyist engages in any of those 11 things, such as going to every electorate office of every minister and seeing them as a local member, not as a minister —

Mr C.J. Barnett: No; that is lobbying.

Dr E. CONSTABLE: I do not think this is clear. This is not clear.

Mr C.J. Barnett: That is lobbying.

Dr E. CONSTABLE: It seems to me that a registered lobbyist could engage in some of these activities that are not defined as lobbying and they could quite legitimately interpret this as meaning, “That is not lobbying. I do not have to report it”, or whatever, although there is no reporting in this anyway. This is not clear. It needs to be clearer so that registered lobbyists know exactly what they can and cannot do. It is all over the place. It is so vague. The Premier will find that registered lobbyists will interpret this in several different ways; after the event they will find out from the commissioner that they were lobbying when they thought they were not lobbying, because of the way this bill is written.

Mr C.J. TALLENTIRE: I refer to the point the member for Churchlands has made. I am looking at clause 4(3)(e) and this grassroots campaign concept. I seek clarification from the Premier. If a registered lobbyist whose normal skills, expertise and abilities are those of a lobbyist happens to be commissioned in either a paid or unpaid capacity to work on a grassroots campaign, what is their status? Normally, they are considered to be a lobbyist, but if they are working on a grassroots campaign, would they be able to say that they are not engaged in lobbying as defined by this act?

Mr C.J. BARNETT: If there were a campaign to save the long-necked turtle or whatever it might be, and if that campaign decided to employ a lobbyist, that person would have to already be a registered lobbyist or become a registered lobbyist.

Mr C.J. TALLENTIRE: That concerns me. I was rather hoping the Premier would give a different response to that, because there again we have missed the point. We want to attack issues that have pecuniary interests. A group could be dedicated to the cause of saving the western swamp tortoise or something much more substantial such as a campaign I was involved in to do with Exmouth Gulf where we worked side by side with commercial fishers. The Premier is saying that if a registered lobbyist is working in a grassroots-type campaign, something that does not have a pecuniary interest, would —

Mr C.J. Barnett: If the lobbyist is being paid.

Mr C.J. TALLENTIRE: If the lobbyist is being paid, even though the donations made to the organisation making the payment were made because the donors had the welfare of a particular species or campaign at heart and there were no pecuniary issue at all—people are donating substantial amounts of money from their private funds for the campaign—the organisation would be sponsoring someone in lobbying.

Mr C.J. Barnett: If it employs a lobbyist, yes, the lobbyist would have to be registered.

Mr C.J. TALLENTIRE: Even though the aim of the activity is not pecuniary —

Mr C.J. Barnett: Who is to judge that? Who is to know whether someone, such as an adjoining property owner, has a commercial interest? We would never know.

Mr C.J. TALLENTIRE: It is pretty obvious; we can quite quickly tell whether there is a pecuniary interest. Surely, we would not want to discriminate against those who put money towards things that are for greater societal benefit or put their effort into things for the community’s benefit. I am appalled to think that we will classify that sort of thing as lobbying.

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Mr C.J. Barnett: If a group of property developers in Broome were to mount a campaign against James Price Point because they thought it might affect their business adversely, they would have a pecuniary interest; and if they were to employ or fund a lobbyist to mount the “No” campaign, they would need to be registered.

Mr C.J. TALLENTIRE: If they saw their primary driver as protecting a valuable piece of the environmental heritage in the Kimberley, surely that should be the defining thing and what their campaign is about —

Mr C.J. Barnett: That is up to the Public Sector Commissioner if he wants to consider that. To me, that is lobbying. Their interest might be that they think a development will have an adverse effect on their property values. That is a clear commercial pecuniary interest.

Mr C.J. TALLENTIRE: The Premier is saying that the Public Sector Commissioner has a discretionary view; he could assess each case.

Mr C.J. Barnett: He could look at it if there were a grey area, but I do not see a difficulty in that; if a group employs a lobbyist, that lobbyist should be registered no matter what the issue is.

Mr J.C. KOBELKE: I would like to follow up on the statement that the Premier just made, which seemed to be that a key element in deciding whether an activity is lobbying is whether there is a pecuniary interest. I would like the Premier to point me to the part of the bill that states a pecuniary interest or matter is part of the criteria on which someone is judged as lobbying or not.

Mr C.J. BARNETT: The point is whether the lobbyist is a person who is employed to represent a third party. That is the interest.

Mr J.C. Kobelke: Which part of the bill designates a pecuniary interest as being one of the criteria for it to be lobbying?

Mr C.J. BARNETT: We are getting to it and I have an amendment on that clause. We are on clause 4 now. We will get to it later.

Mr J.C. KOBELKE: Coming back to the clause, subclause (2) states —

For an activity to be lobbying, it is not essential that the activity be undertaken for any commission, payment or other reward (whether pecuniary or otherwise).

I read that to mean the consideration of any payment is not a substantial matter in the judgement of whether it is lobbying or not. To me that is very clear. We might even go further and say that it is of no relevance whatsoever. I repeat, clause 4(2) states —

For an activity to be lobbying, it is not essential that the activity be undertaken for any commission, payment or other reward (whether pecuniary or otherwise).

On numerous occasions, in trying to explain how something will work, the Premier has indicated that if money is involved, it is lobbying. Clause 4(2) is really quite counter to that. That is not a consideration. As I said, I would really like some explanation of why the Premier keeps saying that whether money is being made is one of the key criteria by which we would judge it as lobbying when clause 4(2) seems to rule that out.

Mr C.J. Barnett: It becomes lobbying as soon as any group or cause employs a paid lobbyist. As soon as they employ a paid lobbyist, it is lobbying.

Mr J.C. KOBELKE: The issue is lobbyists can then morph into public relations people.

Mr C.J. Barnett: If they are employed by the company full time, they are company representatives. It is quite clear. They are not acting for a third party; they are acting for the employer.

Mr J.C. KOBELKE: I will put a hypothetical that is based on an actual case from the recent past. A company wants to build a major plant in an area that is environmentally sensitive. The company has a competitor down the road that has a plant and has the environmental approvals and is in production. The company would like to stop this competitor starting up and it knows this competitor has some real hurdles to get over because it has to get some environmental approvals. The construction of the plant is likely to affect a wetland; it will produce fumes or pollution, which will affect neighbours. The company has a lot of problems to get approval for this plant and its competitor does not want it. The competitor employs a PR company—not a lobbyist. This PR company runs a grassroots campaign; it gets out in the community and makes sure everybody knows where to send their emails and who to write to. “We have a demonstration. You turn up on this day. We’ll have the television cameras there. We’ll give you these professionally produced signs that say ‘Don’t let this plant into our wetlands’.” That is not lobbying.

Mr C.J. Barnett: Yes, it is.

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Mr J.C. KOBELKE: It is a grassroots campaign.

Mr C.J. Barnett: No, that is lobbying.

Mr J.C. KOBELKE: Which parts of the bill make it lobbying? The hypothetical PR company is not talking to a government official; it is seeking to influence a government decision.

Mr C.J. Barnett: If such a company employs a PR firm to do lobbying activity —

Dr E. Constable: What is lobbying activity?

Mr C.J. Barnett: Excuse me! The PR firm would have to be registered as a lobbyist. Most of the PR firms are registered as lobbyists.

Mr J.C. KOBELKE: I understand that that is the Premier's intention. The difficulty is that once this legislation goes through Parliament and is out there to be interpreted, people will look at the black marks on the white paper and they will say, "This is what it means." They might say that what the Premier is saying is not what is in the bill. I ask the Premier to show me where in the clauses, in the phrases, in the words in this bill, is something that backs up what he is saying. The way I read this is that if this hypothetical PR company is employed and starts writing letters to ministers, it would be caught; it would be a lobbyist. The whole effect of this lobbying to stop this company from getting its plant has more effect if it is seen to be coming from a community, grassroots movement. Once it is seen as coming from a company that has a commercial interest that will be put at jeopardy, and the effect the company wants to have is undermined. It will deliberately try to make it look like a grassroots campaign and it will meet the criteria that it is a grassroots campaign even though it has been paid for by a company that has a vested interest in stopping the other company getting set up, regardless of the environmental issues, which might be of real substance and should stop it. Leaving that aside, this company, for its own vested interests, will be using environmental issues and community opposition to build a grassroots campaign for its commercial interests. The way I read the bill, as long as the company runs only that grassroots campaign, it is not lobbying. I want the Premier to show me where it would be caught as lobbying.

Mr C.J. BARNETT: Clause 4(1) in part states —

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

If a company employs a public relations firm to create mayhem with riots and demonstrations and whatever else, that would be lobbying.

Mr W.J. JOHNSTON: I have read that provision, and it is a good provision. Unfortunately, the Premier also needs to read subclause (3). This is what the member for Balcatta was trying to draw to the Premier's attention. Subclause (3) states "the following are not lobbying". Regardless of the words in subclause (1), we also have to read the balance of the clause. That is the way it works—we read all the paragraphs of a clause, not just one. Subclause (3) states —

The following are not lobbying —

...

(e) communicating as part of an activity of a grassroots campaign nature in an attempt to influence State government decision-making, for example, encouraging letter-writing, ...

They are just examples. That is not a limited list. Let us say that someone is trying to save the hairy koala and so they write to a minister. That would not be lobbying if it were part of a grassroots campaign, even though it would be lobbying if it were not part of a grassroots campaign to save the hairy koala.

Mr C.J. Barnett: You can have a grassroots campaign whereby people write letters to the minister. It becomes lobbying only if the group employs a paid lobbyist.

Mr W.J. JOHNSTON: No, that is not what the clause states. I encourage the Premier to read paragraph (e), which states —

communicating as part of an activity of a grassroots campaign nature in an attempt to influence State government decision-making, for example, ...

Then it gives examples. That is not the limit of what is not lobbying; they are examples of what is not lobbying. If I am part of a grassroots campaign that believes that the hairy koala is important and we say, "Right, let us all kick in 10 bucks and hire XYZ lobby firm", that would not be lobbying because it is part of a grassroots campaign.

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Mr C.J. Barnett: No. As soon as you kick in 10 bucks each and employ a paid lobbyist, the paid lobbyist has to register and account accordingly.

Mr W.J. JOHNSTON: No, they do not. The Premier is absolutely wrong. He is 100 per cent wrong.

Mr C.J. Barnett: Okay; you know everything, so you'd be right.

Mr W.J. JOHNSTON: I do on this occasion, Premier, because I am reading the words in the bill. If the Premier can show me any single word that shows that I am wrong, that is fine, but that is not what the bill states. The bill states that this is lobbying and that is not lobbying. If a person is not lobbying, they do not have to register. They could get paid \$10 million, but it would not matter. They could even get a success fee, because it would not be lobbying. By the way, this bill does not regulate lobbyists; it regulates registered advocates to government. Lobbyists are not regulated by this bill, but lobbying is.

Mr C.J. Barnett: Look at the amendment under my name on the notice paper to insert subclause (3A).

Mr W.J. JOHNSTON: I am sorry; is it on the notice paper?

Mr C.J. Barnett: Mr Acting Speaker, can I have a point of clarification?

Mr W.J. JOHNSTON: Is the Premier going to stand on a point of order?

Mr C.J. Barnett: Finish your comments.

Mr W.J. JOHNSTON: I have been asked to look at the notice paper, but there is no government amendment that I can see on the notice paper.

Mr C.J. Barnett: No, it's not on the notice paper. I'm going to move an amendment.

Mr W.J. JOHNSTON: No wonder I could not read it; it is not on the notice paper! I will sit down and perhaps the Premier can explain how he will change everything and fix the problem that we are currently confronting. I am happy to do that, and I will consider my comments in that regard.

Mr C.J. BARNETT: Mr Acting Speaker, can I just clarify something? I would have thought that at the moment we are dealing with the amendment moved by the member for Churchlands, rather than having a general debate on clause 4. If that is the case, I suggest with the greatest respect that we deal with the amendment of the member for Churchlands.

The ACTING SPEAKER (Mr I.M. Britza): The discussion right now is about all of clause 4. The amendment covers the whole clause. That is what we are dealing with at this point.

Mr C.J. BARNETT: Are we dealing with the amendment? The amendment has been moved.

The ACTING SPEAKER: Yes.

Dr E. CONSTABLE: I moved this amendment because I think we need clear guidelines and information about what lobbying activity actually is. It should not be open to the sort of interpretation that the Premier has been suggesting; that is, in the future a lobbyist will do something that they think is not lobbying because of the vague way in which this clause of the bill has been written and the commissioner comes up with the view that it was in fact lobbying. I do not think that is fair to the lobbyist if they find that what they were doing was a lobbying activity, whereas they had interpreted this clause to mean that it was not lobbying. We have had some really good examples to show that. My amendment clarifies what lobbying activity is, as well as listing a number of activities that are not lobbying activities. I think we need something much clearer and much stronger than we have currently to get away from the vagaries of what is in the bill. That is what my amendment intends to do.

The ACTING SPEAKER: Premier, were you suggesting that there was an amendment that you were going to speak to that would clarify this?

Mr C.J. Barnett: Yes, I had suggested that I was going to move an amendment, but before we deal with that, I think we have to deal with the amendment of the member for Churchlands.

The ACTING SPEAKER: Member for Balcatta, are you speaking to the amendment?

Mr J.C. KOBELKE: My issue is more of a procedural matter. The Premier has indicated that he has an amendment, which we have had no notice of. It may not relate directly to the amendment now before the house, but I am asking the Premier whether his amendment can be circulated so that we can at least have a quick look at it and judge whether it has implications for the clause that we are now dealing with. The Premier raised it in relation to the current amendment, which leads one to believe that it may impact in some way directly or indirectly on the matter now before us. It is really a procedural request as to whether the Premier is willing to have the amendment or amendments that he has foreshadowed circulated so that we can look at them.

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Mr C.J. BARNETT: The amendment that I have proposed is to page 8, after line 17. It seeks to insert subclause (3A), which states —

Subsection (3)(e) does not apply in relation to any communication by a person for any commission, payment or other reward (whether pecuniary or otherwise).

Subclause (3) describes what is not lobbying. Paragraph (e) refers to communicating as part of a grassroots campaign. The amendment to insert subclause (3A) will make it clear that if a grassroots campaign chooses to employ a paid lobbyist, that will be lobbying for the purposes of the act.

Point of Order

Dr E. CONSTABLE: I have moved my amendment, and now another amendment has been moved.

Mr J.C. Kobelke: No, it is just being circulated.

Mr W.J. JOHNSTON: I want to clarify: if we vote on the amendment moved by the member for Churchlands that effectively seeks to replace all the words in clause 4 with new words, can we then go back to deal with the words that have effectively been upheld by the chamber to insert words in the middle of what we have already dealt with?

The ACTING SPEAKER: That is not the case until we reach the end of the bill, unless we conduct a test vote. Once we receive the amendment from the Premier, I will explain that to you.

Debate Resumed

Mr J.C. KOBELKE: We are about to come to a vote on the amendment moved by the member for Churchlands. However, the Premier has not addressed the matters in that amendment. Clearly, he wishes to stick to what is already contained in the clause, but he has not attempted to pick any holes in the amendment. I am certainly attracted to the amendment. The debate so far has shown that there is a degree of uncertainty about the wording of clause 4. I will read out the member for Churchlands' amendment, because we should look seriously at the benefits of adopting it. The amendment seeks to delete the whole clause and to replace it with something that will have the same effect; however, the wording of the amendment is somewhat clearer and removes some of the ambiguity that has been clearly evidenced by questions that have been asked of the Premier about clause 4. The amendment reads —

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

- (a) any oral or written communication (including an electronic communication) with a representative of government in respect of —
 - (i) the development of any legislative proposal by the Government or by a member of either House of Parliament;
 - (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;
 - (iv) the introduction or change of any Government policy or programme;
 - (iv) the exercise of any authority or power conferred under a written law; or
 - (v) the expenditure of public moneys or moneys of a statutory authority; and
- (b) arranging or attending a meeting between a representative of government and any other person.

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

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

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- (e) made by a representative or employee of a media organisation for the purposes of gathering and disseminating news and information to the public;
 - (f) made in a speech, article, publication or other medium of mass communication;
 - (g) made in a petition to 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
 - (h) made in the course of any judicial proceedings.
- (3) **Lobbying activity** does not include arranging or attending a meeting with a representative of government —
- (a) that is open to members of the public; or
 - (b) about a personal matter on behalf of —
 - (i) the person making the communication; or
 - (ii) a friend or relative of that person.
- (4) For the purposes of subsection (3)(b), 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.

Most of the provisions in the amendment are attended to or pointed to in the clause that the member seeks to delete. The point I make about the amendment is that it gives greater clarity about what the government is trying to capture. We will not end up with the problem that we teased out about grassroots campaigning. The Premier recognises that that it is a problem, because he has foreshadowed another amendment to deal with that matter. We have not had a close look at his amendment, because it was not put on the notice paper and we were not given prior warning. We do not know whether or not it will address the real problem, which is the way clause 4 is structured to try to exclude grassroots campaigning. The Premier keeps alluding to money being involved, but we know from clause 4 that money being involved is not a consideration. There is a real issue about what the provisions of clause 4 mean. The amendment before us makes them clearer. It defines “lobbying” and it still gives outs because a range of standard communication should not be captured. It may be that the Premier would like to suggest, if he is not going to accept the amendment, what the problem is. What are the deficiencies in the amendment moved by the member for Churchlands? I think it tries to deal with the problems in clause 4 as presented in the bill.

Mr C.J. BARNETT: As far as the amendment is concerned, we accepted in clause 3 or earlier the term “lobbying activity”. This changes from a fairly simple definition—although I concede it is fairly general—into one that attempts to be more specific by having eight definitional clauses relating to it. The other point is that the amendment proposed would delete clause 4(2), and this would allow people to circumvent lobbying if they were not paid, or if payments appeared in some other way, they would be able to circumvent the requirement to declare that. That is something the government will not contemplate.

Ms A.S. CARLES: I want to explore the issue of grassroots campaigners. I understand that we do not want grassroots campaigners to be classified as lobbyists. I agree with that. I am concerned that the member for Churchlands' amendment will mean that grassroots campaigners will be classified as lobbyists.

Dr E. Constable: No, they won't.

Ms A.S. CARLES: Where does it say that they will not?

Dr E. Constable interjected.

Ms A.S. CARLES: What happens if a person is a grassroots campaigner? The government's clause specifically exempts them, but the member for Churchlands' amendment, which I am seriously considering, does not exempt grassroots campaigners.

Dr E. Constable: This is about what lobbyists—registered lobbyists—can or cannot do. It is not about what—

Ms A.S. CARLES: If I am a community campaigner, at what point do I become a lobbyist under —

Dr E. Constable: When you are paid by someone to do it.

Ms A.S. CARLES: No, that is not how the amendment reads.

The ACTING SPEAKER: Members must speak up so that Hansard can record what they are saying.

Mr J.J.M. Bowler: And debate should be directed through the Chair as well.

Dr Elizabeth Constable; Mr Colin Barnett; Mr Bill Johnston; Mr Chris Tallentire; Mr John Kobelke; Acting Speaker; Ms Adele Carles

Ms A.S. CARLES: Okay. There is a lot of confusion about this. This is a very important point, because as members of Parliament, we get “lobbied”—using that term loosely—all the time by people who run grassroots campaigns. They will want to know exactly what we pass today and the implications for them. Clearly under the bill there is an exemption. A “Port Coogee now” group suddenly shot up to try to counter the legitimate grassroots campaign opposing the Port Coogee Marina. It turned out to be funded by the developer, Australand. My fear is that there will be an incentive to create grassroots campaigns because they fit the exemption and will not be classified as lobbyists. That is one concern. A greater concern is that the member for Churchlands’ amendment does not address the issue of grassroots campaigners who will be caught as lobbyists. That is not the intention, but that is what will happen if we adopt her amendment. That activity will be classified as lobbyist activity. That raises the question as to whether they should be registered. I would like clarity on this.

Dr E. CONSTABLE: My intention is to look at what a registered lobbyist can and cannot do. This is about registered lobbyists being paid or engaged to do this activity. I do not think the question of a grassroots campaign is actually an issue. It has been made an issue in the Integrity (Lobbyists) Bill 2011, but, for me, lobbying activity here is about what a registered person can and cannot do. Someone whose employment—whose business—is lobbying is covered by what I am talking about; if it is seen to be necessary to put in a further amendment about a grassroots campaign, then I would be happy with that.

The ACTING SPEAKER (Mr I.M. Britza): Members, I would like to put a test vote here on the question that —

Page 7, line 8 to page 8, line 21 — To delete the lines.

If the first test vote is not agreed to, then the Premier can move his amendment.

Amendment put and a division taken with the following result —

Ayes (25)

Ms L.L. Baker	Mr F.M. Logan	Mrs M.H. Roberts	Mr M.P. Whitely
Dr A.D. Buti	Mr M. McGowan	Ms R. Saffioti	Dr J.M. Woollard
Dr E. Constable	Mr M.P. Murray	Mr T.G. Stephens	Mr B.S. Wyatt
Mr R.H. Cook	Mr A.P. O’Gorman	Mr C.J. Tallentire	Mr D.A. Templeman (<i>Teller</i>)
Mr J.N. Hyde	Mr P. Papalia	Mr P.C. Tinley	
Mr W.J. Johnston	Mr J.R. Quigley	Mr A.J. Waddell	
Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.B. Watson	

Noes (27)

Mr P. Abetz	Ms A.S. Carles	Mrs L.M. Harvey	Dr M.D. Nahan
Mr F.A. Alban	Mr G.M. Castrilli	Mr A.P. Jacob	Mr C.C. Porter
Mr C.J. Barnett	Mr M.J. Cowper	Mr A. Krsticevic	Mr D.T. Redman
Mr I.C. Blayney	Mr J.H.D. Day	Mr W.R. Marmion	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.M. Francis	Mr J.E. McGrath	Mr T.K. Waldron
Mr I.M. Britza	Mr B.J. Grylls	Mr P.T. Miles	Mr A.J. Simpson (<i>Teller</i>)
Mr T.R. Buswell	Dr K.D. Hames	Ms A.R. Mitchell	

Pairs

Mrs C.A. Martin	Dr G.G. Jacobs
Ms J.M. Freeman	Mr V.A. Catania
Mr E.S. Ripper	Mr R.F. Johnson

Amendment thus negated.

Mr C.J. BARNETT: I move —

Page 8, after line 17 — To insert —

- (3A) Subsection (3)(e) does not apply in relation to any communication by a person for any commission, payment or other reward (whether pecuniary or otherwise).

By way of explanation, clause 4(3) states, “The following are not lobbying”, and paragraph (e) states that communication as part of an activity by a grassroots campaign is not lobbying. This amendment makes it clear that if a grassroots campaign employs a paid lobbyist, that is lobbying. One of the reasons for that—it does not, I think, make judgements about the morality or otherwise of the cause; I think lobbying is lobbying or it is not—is that there could well be a grassroots campaign that, for example, a person with a pecuniary interest supports because there might be some side benefit. I think examples of that do occur. So, if a grassroots campaign is just purely that—writing letters, a protest, whatever else—that is not lobbying, but as soon as they employ a paid lobbyist, they are into it; that is lobbying.

Mr C.J. TALLENTIRE: I would like to speak to the Premier's amendment, because I think it could be quite dangerous. We often hear it said that those involved in grassroots campaigns lack professionalism and do not have the organisational capacity to present their case—that they are really just a rabble or tree huggers. Those sorts of clichés that suggest that people have not really put together a cogent case for their grassroots campaign are thrown around all the time. What the Premier is in fact doing here is saying that people should not be able to employ professionals for this important activity. He wants people involved in grassroots campaigns to stay as amateurs, and be unable to present their case. I think that is unfair. That means this imbalance that happens in our society will continue whereby a developer, perhaps, will have the ability to pay for all sorts of resources and mount a very professional slick campaign that could well win over public support, whereas those involved in the grassroots campaign will be restricted from employing professionals; they will not be entitled to do that. To me, that is unfair; if they have the capacity to employ professionals to assist their cause, why should they not be allowed to do it without any obstruction? It really seems unfair, and it will hinder some very worthy grassroots causes. It will mean those causes are not given the opportunity to present their case to best effect, and I think that is very unfair.

Mr W.J. JOHNSTON: I seek some clarification from the Premier. What we are now saying is that a person who is engaged by a community group to lobby on their behalf will be deemed as engaged in lobbying, whereas otherwise they would be covered by the exemption provided by subclause (3)(e).

Mr C.J. Barnett: If they get paid.

Mr W.J. JOHNSTON: Yes, that is right; that is exactly what I said. Clause 4(1) defines what lobbying is, and subclause (3) provides a series of exemptions—that is, it is not lobbying because it is covered by the exemption. Proposed subclause (3A) is now a further exemption to put them back into the category of lobbying, which is this one we are debating. I just seek clarification. If a lobbyist is employed by a not-for-profit organisation, they do not have to be registered, but if they are employed by a consulting firm, they have to be registered. If they were an employee of a company that was involved in activities of a not-for-profit nature but they were not included in the definition of a not-for-profit organisation, both the person and the organisation they work for would have to be registered. Is that the way this arrangement is now going to work?

Mr C.J. Barnett: The arrangement exempts genuine grassroots campaigns. I think we understand that and agree on that. If that grassroots campaign brings in a paid lobbyist, that is no longer exempt from the provisions of the act. That person must be registered and must report accordingly. If that person who is brought in is from a not-for-profit organisation and they are paid, they are a lobbyist.

Mr W.J. JOHNSTON: But they are exempt because the not-for-profit is —

Mr C.J. Barnett: It depends what cause they are acting on.

Mr W.J. JOHNSTON: It would not matter what cause they are acting for, because a not-for-profit is the specific exception provided by the act. It is not an argument; it is just a statement of fact.

Mr C.J. Barnett: If that group was acting outside its field of influence.

Mr W.J. JOHNSTON: No, no; that is the point I am making. If someone is employed by a not-for-profit —

Mr C.J. Barnett: To represent the not-for-profit organisation, that is fine; that is not a lobbyist. But if that person was also then to go out and accept a fee to represent another organisation and another cause, that would be lobbying.

Mr W.J. JOHNSTON: That is not what I am arguing about. I understand what the Premier is saying about an individual who lobbies and gets a payment as an individual. Let us take the member for Gosnells as the example. He was the executive officer of the Conservation Council prior to being elected to Parliament. It is a very important, high-profile position in our community, which is probably why the Labor Party sought his —

Mr C.J. Barnett: In that role, he would be in-house and he would not be required to be registered.

Mr W.J. JOHNSTON: That is right, because he is working for a not-for-profit.

Mr C.J. Barnett: Yes. And he is in-house.

Mr W.J. JOHNSTON: It does not really matter whether he is in-house or not, because if he is working for a not-for-profit —

Mr C.J. Barnett: It does. He is the executive officer.

Mr W.J. JOHNSTON: But even if he was not the executive officer, the not-for-profit exemption still exists. Later in the act it says that not-for-profits do not have to register.

Mr C.J. Barnett: If a not-for-profit such as the Conservation Council employs a third party to lobby for it, that is lobbying and that is caught by the act. If the Conservation Council uses its executive officer, that is in-house; that is not caught. Not-for-profits do not have an absolute exclusion. They have exclusion in terms of —

Mr W.J. JOHNSTON: They do.

Mr C.J. Barnett: No, they don't.

Mr W.J. JOHNSTON: They do. It says so in the bill.

Mr C.J. Barnett: We are dealing with my amendment, I would have thought.

Mr W.J. JOHNSTON: I know, but I am trying to work out what the Premier's amendment means. It is fundamental to whether we should vote for it or not. If the Premier does not understand what it means and he cannot explain how it provides for the effect that we are talking about —

Mr C.J. Barnett: Not-for-profits are not caught. It is all understood.

Mr W.J. JOHNSTON: That is right.

Mr C.J. Barnett: But if a not-for-profit goes out and employs a lobbyist—a paid lobbyist—it is caught.

Mr W.J. JOHNSTON: How, if it is a not-for-profit organisation?

Mr C.J. Barnett: If it employs a paid lobbyist, it is caught by the act. And a lot of them do. It is the lobbyist that has to register and be accountable. Not-for-profits do not have an absolute exclusion if they go out and employ paid lobbyists. The not-for-profit is exempted, but the paid lobbyist is not.

Dr E. CONSTABLE: I would like to be absolutely clear about this. The Premier just used the phrase “a genuine grassroots campaign”. If we have a genuine grassroots campaign at which a group of people employ an individual to lobby for them, that is lobbying and the person needs to be registered.

Mr C.J. Barnett: That is lobbying.

Dr E. CONSTABLE: But if the same person for the same group of people does this pro bono, it is not lobbying?

Mr C.J. Barnett: No, if it is seen to influence, it could be deemed to be lobbying. The commissioner could deem that to be lobbying if somebody does it pro bono.

Dr E. CONSTABLE: This is the problem with this whole clause.

Mr C.J. Barnett: It is not a problem. It is the commissioner's discretion to deal with it.

Dr E. CONSTABLE: It is the commissioner's discretion. A person could in good faith interpret various elements of this clause and then find that the commissioner has a different view. That is the reason we need something other than this vague clause that we have in front of us.

Mr C.J. Barnett: If a registered lobbyist acted pro bono for a cause, that registered lobbyist will have to declare that, as that lobbyist should.

Dr E. CONSTABLE: I agree, but the legislation is not clear.

Mr W.J. JOHNSTON: I understand we are talking about the amendment to clause 4, but in making a decision about that, we have to look at all the words in the bill, because otherwise we do not get the picture. Clause 9, under the heading “Certain persons not required to register”, states —

None of the following is required to be accredited as a registered advocate to government under this Act —

And the first one is —

- (a) a non-profit organisation;

Is the Premier saying that we will go behind the employment practices of the not-for-profit organisations to see how they engage their employees? As I understand it, the Premier has people in his office who are engaged by the Premier as consultants, but they are still on the Premier's staff. Is the Premier saying that a not-for-profit cannot do that?

Mr C.J. Barnett: Of course a not-for-profit can employ people.

Mr W.J. JOHNSTON: But they then have to register as a lobbyist.

Mr C.J. Barnett: Only if they act independently of the organisation as a paid lobbyist.

Mr W.J. JOHNSTON: But if they do not act independently?

Mr C.J. Barnett: If they are employed directly, and it is clear who they represent —

Mr W.J. JOHNSTON: No, but they are not employed directly—that is what I am saying. Just using the Premier’s office as an example, the Premier has a person working for him who is a consultant and not an employee. A not-for-profit organisation might do the same. It might have some people employed directly and have others employed as consultants. I just need a clear answer. Are those consultants required to be registered lobbyists?

Mr C.J. Barnett: No, they are not.

Mr W.J. JOHNSTON: Even though they are employees of the organisation, they are consultants, which means they must have some form of business.

Mr C.J. Barnett: They are employed under a consultancy contract to work for the organisation. It is quite clear.

Mr W.J. JOHNSTON: No, it is not.

Mr C.J. Barnett: It is to me.

Mr W.J. JOHNSTON: For 200 years this has been —

Mr C.J. Barnett: I thought the Labor Party was going to support this legislation. You’re clearly not.

Mr W.J. JOHNSTON: We do.

Mr C.J. Barnett: You’re clearly not.

Mr W.J. JOHNSTON: But we want to make sure that it works, and we want to make sure the Premier understands what it is he is asking us to vote for.

Mr C.J. Barnett: You have to make a choice. Are you going to support it or not?

Mr W.J. JOHNSTON: We have a series of amendments, and the Premier knows that. They are all written down. Unlike the Premier, we have read the bill and we have read the amendments. There is this new amendment that has appeared today without any notice to anybody, without any discussion with other parties, and we are now trying to work out what we should do with it.

Mr C.J. Barnett: It is a very simple amendment.

Mr W.J. JOHNSTON: Is a person who is engaged as a consultant by a not-for-profit organisation, acting on behalf of the not-for-profit, required to be registered as a registered advocate to government, or not?

Mr C.J. Barnett: It would depend entirely on what that person’s duties are.

Mr J.C. KOBELKE: I just want to comment on the Premier’s approach and what he is saying and then go specifically to the matter of the amendment. The fact is that what the Premier, as the person responsible for the bill, says in support for the clauses of the bill can be used to interpret it if a matter came up before a court, but the Premier cannot make statements that are outside the actual wording of the bill and say that that is what the legislation is going to do. On a number of occasions the Premier seems to be explaining how something will work in terms of what the intent is, but he cannot point to the clauses that give validity to what he is saying. That is causing more concern and ambiguity. It would help if the Premier in his explanation could actually say, “I believe that the payment of money is crucial and these are the clauses”, or, as the previous member was saying, if the Premier could give an explanation of the difference between someone who is a direct employee and someone who is an external consultant on contract. These are matters of long legal history and precedents and they are quite difficult. They do not always come out the way that the Premier wants them to. So the fact that the Premier has an intention will not change the words that are in the bill. It might help to explain them, but sometimes the Premier is saying things that actually cause confusion. To me at least they do not explain them.

Having got that little bit off my chest, I would like the Premier to follow me through, if he could, in terms of how I am interpreting it. If how I am interpreting it is correct, I do not have a problem with it; it is just getting clarity about the amendment the Premier has moved. To me, it will come down to the word “communication” in the Premier’s amendment. I am interpreting “communication” in that amendment not to be any communication but to be communication with a government representative. If that is the case, this is the way I would interpret it.

Mr C.J. Barnett: Communication is defined in the preliminary to the bill on page 2.

Mr J.C. KOBELKE: Yes. It states that it means with another person by any means. That confuses me now. The definition states —

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communicate means communicate with another person by any means, including —

- (a) by meeting in person; and
- (b) by post, facsimile, telephone, email or any other form of electronic communication;

It still does not tie it down for the purposes I am coming to. Let me just quickly go through how I read this and see whether I am right or wrong. Clause 4 states —

lobbying means communicating with a government representative for the purpose of influencing ...

It goes on but I take that as a start. A person has to be setting out to communicate with a government representative to influence an outcome, and the Premier's amendment sits within that. Then there is the out that it is not lobbying if it is a grassroots campaign. The Premier's amendment then says that that subclause (3) on grassroots campaigning is not an exclusion "in relation to any communication by a person for any commission, payment or other reward (whether pecuniary or otherwise)". I would be totally happy, and it makes sense to me, if that means that if a person pays anyone relating to a grassroots campaign to communicate with a government representative, it is lobbying. I have no problem with that. But if a person pays someone to help them organise a grassroots campaign by drafting their petitions, organising meetings and putting out lists of numbers, but they do not actually make the communication with a government representative, then I read that they are not lobbying and that they are part of a public relations company.

Mr C.J. Barnett: That is correct; they are employed basically.

Mr J.C. KOBELKE: No, they do not have to be employed; they could be a contractor.

Mr C.J. Barnett: Whether there is direct employment or it is through a contractor, they are employed by the organisation.

Mr J.C. KOBELKE: Yes. This is the understanding I have, and I might be wrong, and I would like the Premier to clarify it if he can: if a person actually pays someone or gives them some reward in a grassroots campaign that does not go to them actually communicating with a government representative, they are outside the provisions and they are okay. But it comes down to that word "communication". If communication with the members of a local action lobby group is caught, people getting paid for just helping people get themselves together and organised would be lobbying. If the word "communication" as I read it applies only to communicating with a government representative, a local action group to save their local swamp can pay someone to help draft the letters and petitions as long as the communication of the paid person is with the group and not with a government representative. That may not be the way the Premier reads it; I am just seeking clarification.

Mr C.J. Barnett: That is a fair interpretation. That is accurate.

Mr W.J. JOHNSTON: I want to also clarify this question of "directly or indirectly". Does that mean that if I set up a bogus lobbying group to do a grassroots campaign to save the furry koala, that is communicating indirectly? Is that what is included in the word "indirectly"? If I set up a front group that would otherwise be covered by subclause (3)(e), is that lobbying?

Mr C.J. Barnett: Only a Labor politician would think of a bogus group; no-one else would.

Mr W.J. JOHNSTON: Business does it all the time. There is plenty of evidence in New South Wales for lobbying organisations. The member for Fremantle raised it in respect of the —

Mr C.J. Barnett: You could have someone lobby who goes and sees the minister; that is clearly lobbying.

Mr W.J. JOHNSTON: Yes.

Mr C.J. Barnett: Or they may do it by running a media campaign—that is indirect.

Mr W.J. JOHNSTON: So there does not have to be direct contact within government.

Mr C.J. Barnett: No, because "indirectly" would pick up a media campaign such as, "We're going to intimidate this guy by running all these ads."

Mr W.J. JOHNSTON: Okay.

Mr C.J. Barnett: I have been the subject of a few of those from time to time—not from the Labor Party but from industry groups.

Mr W.J. JOHNSTON: It is hardly a surprise, Premier.

Mr C.J. Barnett: Yes—full-page ads in *The Australian* and all that sort of stuff. Any minister who is around for long enough cops that. That is lobbying.

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Mr W.J. JOHNSTON: Absolutely! Would it also be indirect if a person encouraged other people to write about their issue to the government?

Mr C.J. Barnett: Yes, if the lobbyist is paid.

Mr W.J. JOHNSTON: So the lobbyist might be paid but not the people who write the letter; that is what I am getting at.

Mr C.J. Barnett: If that is the way the lobbyist behaves by getting people to act in that way —

Mr W.J. JOHNSTON: To write the letter?

Mr C.J. Barnett: Yes, that would be indirect influencing.

Mr W.J. JOHNSTON: How would the Public Sector Commissioner know that that was occurring? What is the arrangement?

Mr C.J. Barnett: There are requirements on the registered lobbyist to record, advise and maintain a list of clients, and if that person fails to do that and is caught, they will not be a lobbyist anymore and they will lose their licence.

Mr W.J. JOHNSTON: Sure, but what I am getting at is that there is no restriction on the lobby organisation running that sort of indirect campaign that I am talking about.

Mr C.J. Barnett: No, but if they don't declare them, they're cheating and they will not be lobbyists.

Mr W.J. JOHNSTON: Where do they need to declare it? The Premier just used the term "declare it".

Mr C.J. Barnett: On the register.

Mr W.J. JOHNSTON: Where is the provision?

Mr C.J. Barnett: They have to be registered.

Mr W.J. JOHNSTON: Yes, but where do they declare it? The Premier just used the term "declare it".

Mr C.J. Barnett: They have to be registered and they have to maintain a list of their clients, and if they don't do that, they will be banned from contact with government officers—simple as that.

Mr W.J. JOHNSTON: Okay, but the Premier just said that they have to declare it. I am just asking a very simple question: where do they have to declare it?

Mr C.J. Barnett: They have to maintain their register.

Mr W.J. JOHNSTON: Who has to maintain a register?

Mr C.J. Barnett: The lobbyists.

Mr W.J. JOHNSTON: The lobbyist has to maintain a register.

Mr C.J. Barnett: Yes; they've got to maintain their list of clients.

Mr W.J. JOHNSTON: A register.

Dr E. Constable interjected.

Mr W.J. JOHNSTON: Clients!

Mr C.J. Barnett: It is in clause 10, when we get to it.

Mr W.J. JOHNSTON: The lobbyist has to maintain a register and declare their contacts.

Mr C.J. Barnett: They have to declare their clients.

Mr W.J. JOHNSTON: But if they have their clients and they are using this sort of a method, do they have to declare that?

Mr C.J. Barnett: Yes.

Mr W.J. JOHNSTON: They have to declare that.

Mr C.J. Barnett: If it is indirect lobbying, yes, they do.

Mr W.J. JOHNSTON: Who do they have to tell—is it the Public Sector Commissioner—that they are using this method?

Mr C.J. Barnett: No, they have to identify their clients.

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Mr W.J. JOHNSTON: Okay, but do they have to declare the method they are using to do the lobbying?

Mr C.J. Barnett: No, they don't but they've got to declare who they're acting for. Whether they're doing it directly or indirectly, they have to declare that.

Mr W.J. JOHNSTON: So how would the Public Sector Commissioner know?

Mr C.J. Barnett: If people cheat, they may circumvent it. If they get caught, they will no longer have contact with government officers.

Mr W.J. JOHNSTON: I understand that.

Mr C.J. Barnett: And they will not be registered as a lobbyist, so they will be dead in the water. I mean, there are penalties.

Mr W.J. JOHNSTON: I am just trying to find out how the Public Sector Commissioner—who is the person, as I understand from the Premier's second reading speech, who runs the show—will know that somebody is doing that type of lobbying.

Mr C.J. Barnett: They may not know if people behave illegally.

Mr W.J. JOHNSTON: But this could be legal; that is what I am asking.

Mr C.J. Barnett: If they get caught —

Mr W.J. JOHNSTON: How do they get caught?

Mr C.J. Barnett: I am sorry; you are just ridiculous.

Mr W.J. JOHNSTON: Premier!

Mr C.J. Barnett: Because if a minister becomes subject to an indirect campaign, someone is likely to say, "There's a lobbyist involved", and the Public Sector Commissioner is then going to pursue it.

Mr W.J. JOHNSTON: Is there going to be communication from the ministers to the Public Sector Commissioner?

Mr C.J. Barnett: Yes; that's what would happen.

Mr W.J. JOHNSTON: And from public servants to the Public Sector Commissioner?

Mr C.J. Barnett: Yes; if they suspect a lobby activity hasn't been properly registered.

Mr W.J. JOHNSTON: Lobbying activity—okay.

Ms A.S. CARLES: My understanding of proposed subclause (3A) is that the government is trying to remove the exemption for grassroots campaigners when they employ a lobbyist. I understand that.

Mr C.J. Barnett: Paid lobbyists.

Ms A.S. Carles: It is a paid lobbyist. However, my fear is that proposed subclause (3A) will catch a whole lot of other things that will then remove legitimate grassroots campaigners. I will provide two examples and ask whether the government can respond to them. Let us say a community campaign, "Save Ningaloo", employs a graphic artist to present a graphic for them and the graphic artist says, "I'll do it for you for half-price because I support your campaign", and they send out that graphic to their members and to their local members of Parliament —

Mr C.J. Barnett: No, that's not lobbying because the graphic artist is not employed to influence and to communicate to ministers.

Ms A.S. CARLES: But it is a communication by a person for a commission.

Mr C.J. Barnett: That's not lobbying.

Ms A.S. CARLES: The second example is if "Save Ningaloo" then went to a lawyer because it wants some town planning advice and the lawyer does not —

Mr C.J. Barnett: The act does not cover lawyers. It is clear that a lawyer is acting for a client, so lawyers are not caught by this.

Ms A.S. CARLES: So they are never covered?

Mr C.J. Barnett: No.

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Ms A.S. CARLES: Okay, because my primary concern, as I said before, is to preserve the right of grassroots campaigners to go about their business and talk to MPs and everything like that and not be impeded by lobbyist legislation. That is my very clear reason for supporting the government on the last vote.

Mr C.J. Barnett: They can do all that.

Ms A.S. CARLES: However, I am now concerned about proposed subsection (3A) because I think it muddies the waters. I understand what the Premier's amendment tries to do; it tries to capture paid lobbyists when grassroots campaigners employ them.

Mr C.J. Barnett: To influence government; that is, when they employ them to influence government.

Ms A.S. CARLES: But the Premier mentioned the case just before in which they advertise in a newspaper. It is a common strategy of community campaigners to take out a full-page ad.

Mr C.J. Barnett: And they're not employing a lobbyist to do that, so that is not caught; that is fine.

Ms A.S. CARLES: What if they pay a graphics person to prepare the ad?

Mr C.J. Barnett: That's fine.

Mr W.J. JOHNSTON: Every time the Premier opens his mouth in this chamber on this issue, he gets things more and more muddled. Before, in answer to my questions, the Premier told me that indirect communication was lobbying. What could be more indirect than an advert in the newspaper? That surely is the foundation of indirect communication because that is communicating with a person. The Premier himself has complained about full-page ads in *The Australian* and he used that as the example of indirect communication. That was the example raised in this chamber by the Premier, but now he is saying that the person who is entirely responsible for the creation and insertion of the indirect communication will not be covered by the act. Which one is it? I do not care which one the Premier wants to say; I just think he needs to choose a side and stick to that one. If indirect communication includes an advert in the newspaper, by definition everybody who is paid to stick that advert in the paper is involved in lobbying, because the Premier gave that as the number one example of indirect communication as defined in the bill. The Premier used that as the specific example of indirect communication under clause 4(1).

Mr C.J. Barnett: I gave an example that a paid lobbyist may use that technique of advertising to influence government. So, if a paid lobbyist is doing that then, yes, that's lobbying.

Mr W.J. JOHNSTON: So let us assume that someone's principal business is not as a lobbyist; their principal business is as a graphic designer —

Mr C.J. Barnett: That's fine.

Mr W.J. JOHNSTON: A group comes to that person and says, "Help us out with this ad".

Mr C.J. Barnett: It pays you to do a job; that's fine. The graphic designer is not influencing; the grassroots campaign is trying to influence, and it is exempt unless it goes down the path of using a paid lobbyist.

Mr W.J. JOHNSTON: But they have to pay the graphic designer to do up —

Mr C.J. Barnett: But he's not a lobbyist. The graphic designer is not a lobbyist and commonsense tells —

Mr W.J. JOHNSTON: But under the Premier's definition, he is.

Mr C.J. Barnett: I'm sorry, if the Labor Party's now opposing the bill, we will proceed accordingly.

Mr W.J. JOHNSTON: As the Premier keeps saying to us, the lowest form of debate is to put words in other people's mouths. I am not trying to do that and I would appreciate it if the Premier would please try not to do it. The Premier is being very inelegant in the way he does it, but it is very transparent. With the repetitive use of words and all these sorts of things, we know what he is doing. But the Premier said to us that indirect lobbying, and the example he gave was the full-page ad in *The Australian* —

Mr C.J. Barnett: By a lobbyist.

Mr W.J. JOHNSTON: That is what the Premier said. The Premier said that was the definition of lobbying.

Mr C.J. Barnett: By a lobbyist, yes. That would be a definition of indirect lobbying by a lobbyist.

Mr W.J. JOHNSTON: Firstly, this bill does not cover lobbyists, apart from the title of the bill. We had that debate and the Premier rejected our position. We said that the Premier should make the bill cover lobbyists. The Premier said that he did not want the bill to cover lobbyists; he wanted it to cover RAGs or whatever they are.

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That is what the Premier said, but now he is going back and saying, “I know that three weeks ago I argued this way, now I’m arguing that way”.

Mr C.J. Barnett: Okay, you don’t support it. You’re a mate of Brian Burke and all the rest of them, so if you want to go down that path —

Mr W.J. JOHNSTON: Here we go!

Mr C.J. Barnett: That’s what it’s going to be about!

Mr W.J. JOHNSTON: Isn’t it typical? When he —

Mr C.J. Barnett: If you want to protect lobbyists and the history of the Labor Party, you can do it!

Mr W.J. JOHNSTON: All I am asking is for the Premier to choose one side of the street. He should not do his usual thing and walk on both sides of the street; that is, go outside the Parliament and say one thing and come inside the Parliament and vote differently. We know what the Premier does; we are not asking him to do that in this place tonight. I am asking the Premier —

Mr C.J. Barnett: The Labor Party supports lobbyists, crooks and others.

Mr W.J. JOHNSTON: You are a shambles! I thought the member for Hillarys was the worst minister we had, now we hear that!

I just want to know which words in this bill say that a graphic designer is not lobbying. The Premier should show me where it says that, because the words that he directed us to say that a person who does that is indirectly trying to influence government. “Indirectly” influencing is in the definition of lobbying, so when someone does it for reward, that makes them an advocate. That is the Premier’s argument. I want the Premier to show me the words in black and white. I know it is difficult for the Premier sometimes, but all I want him to do is read the bill. I do not want him to do anything else. When the Premier has finished reading the bill, I would like him to stand and point out to me which words that he just read say that that is not lobbying. At the moment, the Premier has explained it to me one way and to the member for Fremantle in the exact opposite way. The Premier needs to choose which one it is: is the explanation he gave to me correct or is the explanation he gave to the member for Fremantle correct? They cannot both be correct because they are contradictory! The Premier is totally wrong and he needs to choose one or the other. I do not care which one the Premier chooses, but he is going to have to do that.

Mr C.J. BARNETT: Keep this up! Mr Acting Speaker, the member is referring to clause 9. I suggest we deal with the amendment that is before the Chair.

The ACTING SPEAKER (Mr A.P. O’Gorman): Members, the question is that the words to be inserted be inserted. That is what we are debating.

Mr C.J. TALLENTIRE: The Premier’s amendment uses the term “communication” and he has rightly directed us to the definitional section—that is, subclause (3)—and pointed out the definition therein. However, I think we still have a situation, which I would like to hear the Premier’s comments on, whereby the Public Sector Commissioner would be operating in a very vague area. At the moment, the Premier’s amendment refers to “communication by a person for any commission”, but what would really constitute that communication? If, for example, one of the well-known lobbyist firms around—PPR, CPR, whichever one—were working more in a strategic capacity, would the commissioner then be in a position to deem that it is involved in the drafting of media releases and adverts for the newspaper? It will be very difficult for the commissioner to determine when an organisation is working as an advocate to government and when it is working merely as a strategist in the background. I think that the Public Sector Commissioner will have an almost impossible job to determine when those organisations are working as lobbyists and therefore when they should be declaring their connection with a particular organisation or grassroots campaign.

Mr C.J. BARNETT: If a group, such as a grassroots group—it does not matter—employs graphic artists, that is technical work; that is not lobbying. If a group employs a lobbyist and pays that person and that person devises a strategy and runs a media campaign, that is lobbying. If they come and knock on the door of a minister, that is obviously very direct lobbying. If they try to influence government decision making via a media campaign, that is indirect lobbying but it is lobbying.

Mr J.C. KOBELKE: Clause 4(1) states “directly or indirectly”, which is a problem. I can see that the intent, which I support, is that we do not want people who are clearly lobbying to use devices to say, “I didn’t do it directly”. The Premier wants the legislation to capture indirect lobbying. The problem then becomes if the definition of “indirectly” is dragged out too far so that it is third or fourth-related, but, I suppose, that is a matter that the commissioner will have to deal with by way of interpretation. However, that does open up an

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uncertainty. I do not see any way of fixing it, so I accept it, but I think there is uncertainty about someone indirectly lobbying. The Premier's statement that full-page—or whatever—advertisements that are clearly political are lobbying if the person is paid is not something that I see reflected in the bill.

Mr C.J. Barnett: I used that as an example of when lobbying by a paid lobbyist would be indirect rather than direct lobbying.

Mr J.C. KOBELKE: Sure, but the Premier nonetheless is saying that it is lobbying. I am uncertain about that when I read the bill. That is what I want to get clear. The fact is that clause 4(2) makes absolutely clear that —

... it is not essential that the activity be undertaken for any commission, payment or other reward (whether pecuniary or otherwise).

That absolutely excludes that we can use payment as the way of determining whether an activity is lobbying. The Premier referred to clause 9, and I accept that that conditions it a bit, because clause 9 provides certain exclusions. People who are paid to be a lawyer or a town planner or to provide professional services that are clearly not primarily lobbying can be paid to do graphic artwork or those related activities that are not lobbying. They are excluded, as I read it in clause 9, which we will come to. The government is using that to say that if someone is paid outside these definitions, they are lobbying, but that is not the criteria in the clause we are now seeking to amend. Clause 4(1) states —

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

Then the clause goes through a number of exclusions, and the amendment we are dealing with is for organisations of a grassroots nature. The problem I have with the Premier's example of a clearly political full-page advertisement in a newspaper is that it is potentially covered by clause 4(3)(i), because is a public advertisement not a public statement? In which case, it is excluded as lobbying.

Mr C.J. Barnett: If there is a lobbyist involved.

Mr J.C. KOBELKE: But that is a circular argument; the Premier cannot say that because how the bill defines —

Mr C.J. Barnett: No, it is not. If a grassroots campaign group simply runs an ad saying “save the woylie” or something and it does it by itself, it is not lobbying.

Mr J.C. KOBELKE: The point is that the Premier says it is lobbying because he wants to declare it lobbying, and I accept that, but I want to know how the actual words in the bill say that. Clause 4(1) states —

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

It then goes on to say that it does not matter whether a person is paid or not, but the Premier said that it is lobbying if it is paid for or it is lobbying if it does something else. We need to know through the actual provisions in the bill how it will work. Because there is no definition in the bill of “public statement”, I personally, and I might be wrong, would judge a paid advertisement as a public statement. Everyone can see it. The paper might require authorisation; at certain times under other statutes an authorisation might be required. It is a public statement, but it clearly has political intent; the organisation wants to influence government—that is correct. However, it is excluded from the definition in subclause (1) because in subclause (3) the things that are not defined as lobbying are listed. The point I am trying to get to is that the Premier simply says that that is lobbying because he would like it to be lobbying, but we do not see how the words in the clause 4 actually define it as lobbying, because it meets one of the exclusions. What is a public statement? In the old days, it would be nailed to the wall.

Mr C.J. Barnett: And anyone can do that.

Mr J.C. KOBELKE: But if they are getting paid for it, I am saying that it is an exclusion. I do not have a problem with that; I am just trying to be clear. The Premier was previously saying that it could not be done, because he said it was lobbying, but he just said now that, no, it can be done and it is not lobbying. People can do what they like, but it is a matter of whether it is caught by the provisions to be classified as lobbying.

Mr C.J. Barnett: If they bring in a third party, that is where they potentially get caught. A grassroots campaign —

Mr J.C. KOBELKE: I do not mean a grassroots campaign. I am referring to subclause (3)(i), “making a public statement”.

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Mr C.J. Barnett: This amendment is to do with grassroots campaigns and the campaign group can do whatever it wants to. The group gets captured by the legislation only when it brings in a paid lobbyist.

Mr W.J. JOHNSTON: I would be interested in the member for Balcatta completing his argument, because I think he is making a very important point.

Mr J.C. KOBELKE: Clearly, the amendment before the house goes to putting in a new subclause (3A), which specifically deals with subclause (3)(e) and the issue of grassroots campaigning. However, in explaining that, the Premier gave the example of a large advertisement in a newspaper clearly placed there to influence government decision making and said that clearly that would be lobbying if it does not meet one of the exclusions in subclause (3).

Mr C.J. Barnett: If a grassroots group does that —

Mr J.C. KOBELKE: No; I am not talking about grassroots —

Mr C.J. Barnett: — or if a company or an individual does that, it is not lobbying. You can run an ad in a newspaper and say whatever you want.

Mr J.C. KOBELKE: So, when does it then become lobbying?

Mr C.J. Barnett: When the group pays a lobbyist to influence government.

Mr J.C. KOBELKE: How is that covered in clause 4, which we are now dealing with an amendment to?

Mr C.J. Barnett: If a company wants to put an ad in the newspaper saying it hates the Premier or whatever else, it can do that if it wants to. That is not lobbying. It is when a company goes to a third party, to a lobbyist, that it becomes lobbying and the lobbyist has to then be accountable.

Mr J.C. KOBELKE: But that is only lobbying if the group is communicating with a government representative directly or indirectly —

Mr C.J. Barnett: That's right.

Mr J.C. KOBELKE: — and is not captured by one of the exceptions in subclause (3). I am putting to the Premier that a paid advertisement would be captured under subclause (3)(i) as being a public statement, unless the Premier can give me a different definition of "public statement". There might be legal precedent that I am not aware of.

Mr C.J. Barnett: If just an individual or company put a statement out by themselves; yes, that is right.

Mr J.C. KOBELKE: Whether it is done by a lobbyist, an individual or a company is not actually defined in the bill, so a public statement is a public statement regardless of who makes it.

Mr C.J. Barnett: Yes; but if it is done by a lobbyist and is deemed to be trying to influence government, either directly or indirectly, it can be captured.

Mr J.C. KOBELKE: I accept that if someone is actually a registered advocate to government, or a lobbyist as we will generally call them, and they placed the ad, they would probably have to put it in their returns because they have been paid for it and they would do it simply because they would not want to be in a grey area. That is not the issue here. The issue is if someone is not registered as a lobbyist and they take out a large advertisement that is clearly political and that is intended to influence government decision making or to influence, or to communicate with, government representatives, and this is an indirect way of communicating with them —

Mr C.J. Barnett: They can do that and they are not captured.

Mr J.C. KOBELKE: They are not captured because it is a public statement.

Mr C.J. Barnett: Yes.

Mr J.C. KOBELKE: I thank the Premier; I think that is contrary to what he said a few minutes ago, but his answer clarifies things.

Mr W.J. JOHNSTON: We are dealing with this question about when a paid lobbyist is not exempt from the provisions under subclause (3)(e). In doing that —

Mr C.J. Barnett: No; we are dealing with my amendment to add subclause (3A).

Mr W.J. JOHNSTON: Yes, that is right. I will read the Premier's amendment—

Subsection (3)(e) does not apply in relation to any communication by a person for any commission, payment or other reward (whether pecuniary or otherwise).

What does subclause (3)(e) say? It covers —

communicating as part of an activity of a grassroots campaign nature in an attempt to influence State government decision-making, for example, encouraging letter-writing, phone-calling or emailing campaigns;

What is described in (3)(e) is not lobbying unless it is done by a paid person, and that is what we are trying to get to the bottom of. In that regard, the Premier used the example of a newspaper ad as being a classic example of someone conducting an indirect communication with the government. Is that correct, Premier?

Mr C.J. Barnett: You make your speech and I will respond.

Mr W.J. JOHNSTON: With respect, we only have a couple of minutes to go, so I am just trying to establish this. Is that right or not?

Mr C.J. Barnett: You finish and I will answer.

Mr W.J. JOHNSTON: If it is, how do we then judge? Let us assume that the Premier is right and that the further exemption at subclause (3)(i) of making a public statement does not apply to an advert. As I understand it, the Premier's position from his previous answer is that the advert is indirect lobbying, therefore covered, and is therefore not covered by (3)(i). What happens if the advert is directed not at the government, but at the community to get them to act towards the government? For example, the ad might say that people should not support Premier McGowan because of X, Y and Z. Clearly, that is not a communication with the government; it is a communication with the community, but there is a clear effect —

Mr C.J. Barnett: And that may not be caught there. If it is seen as a public statement, it will probably not get caught.

Mr W.J. JOHNSTON: But the Premier said that it was not seen as a public statement.

Mr C.J. Barnett: I gave an example of how a lobbyist might try to influence indirectly. It is a reference I made to a media campaign of sorts.

Mr W.J. JOHNSTON: The Premier said that that activity was covered. He was very emphatic that that activity would be covered by the provisions of this bill.

Mr C.J. Barnett: I said it could be an example of indirect lobbying as a technique.

Mr W.J. JOHNSTON: The Premier said that activity could be covered by this bill. In fact, he went on to say that if a person did not register, it would be illegal and it would be corrupt. Then the Premier attacked the Labor Party and called me names.

Mr C.J. Barnett: Did I use the word "corrupt"?

Mr W.J. JOHNSTON: Yes, the Premier did.

Mr C.J. Barnett: I do not think so.

Mr W.J. JOHNSTON: That is exactly what the Premier did. He said that a lobby group that uses an advert to influence the government is behaving improperly and it is the sort of thing that the Labor Party is involved in —

Mr C.J. Barnett: True.

Mr W.J. JOHNSTON: — and it is the sort of corruption that this government is trying to stamp out with this bill. Is it stamped out? Is that activity illegal? Will it be prevented in any way by any of the provisions of this bill? When we vote on proposed subclause (3A), which inserts this provision that is extending and, as the member for Balcatta says, introducing a provision contrary to the provision in subclause (2), and brings in a new issue that is unrelated to any other part of the deal, we want to know whether it covers the activity the Premier described of someone taking out a full-page ad in *The Australian* newspaper in order to influence the government, even though they might not direct the ad to the government but might direct it to the community in general.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier)**.

Sitting suspended from 6.00 to 7.00 pm