

LOBBYING DISCLOSURE AND ACCOUNTABILITY BILL 2007

EXPLANATORY MEMORANDUM—E242

(Introduced by Dr Constable MLA)

INTRODUCTION

This Bill introduces measures to ensure openness and accountability of professional lobbying activities directed at Members of Parliament, ministerial staff and other public officials in Western Australia. The Bill is confined to paid lobbyists, both employed lobbyists and consultants. The Bill expressly does not apply to lobbying carried out by citizens on their own behalf. The provisions of the Bill are concerned to ensure that professional lobbying activity that does take place is disclosed and subject to independent scrutiny.

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

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

Part 1 – Definitions and Interpretation

Clause 1 Short Title

Sets out the Short Title of the Act.

Clause 2 Commencement

Provides for the Act to commence operation on a date to be fixed by proclamation.

Clause 3 Interpretation

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

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

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

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

Clause 4 Lobbying Activity Defined

Defines “lobbying activity” for the purposes of the Bill.

“Lobbying activity” is defined broadly in sub-clause (1) to include any oral and written communication with public officials in respect of parliamentary or governmental activity, including the introduction of Government policy, the exercise of statutory powers and the expenditure of public funds.

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

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

Clause 5 Act not to affect personal lobbying activity

Expressly states that nothing in the Bill applies to lobbying activity engaged in by natural persons on his or her own behalf.

Part 2 – Registration of Lobbyists

Division 1

Clause 6 Natural persons may be registered

Provides that only natural persons will be able to be registered under this bill.

Clause 7 Registration

Sub-clause (1) provides that the Commissioner must register an applicant if they have paid the registration fee and satisfy the requirements in sub-clause (2).

Sub-clause (3) provides that the Commissioner must not register an applicant if the applicant has been a public official within the one year preceding the application.

Sub-clause (4) affords the Commissioner the discretion to exempt an applicant from the one year 'ban' on registration of former public officials by sub-clause (3).

Clause 8 Application

Sets out the requirements for an application for registration under this Bill. The clause also gives the Commissioner the power to request further information from the applicant and to require an applicant to attend before the Commissioner.

Clause 9 Effect of Registration

Provides that persons registered may, subject to this Bill, engage in lobbying activity in the State.

Clause 10 Duration of Registration

Sets out the term of registration.

Clause 11 Fee for registration

Sub-clause (1) states that failure of a lobbyist to pay the registration renewal fee by the day on which it falls due will result in the person ceasing to be registered and having their name removed from the 'Register of Lobbyists'.

Sub-clause (2) provides the terms by which a person who has had their name removed from the Register of Lobbyists under sub-clause (1), may have his or her name restored to the register.

Sub-clause (3) states that the Commissioner must give written notice of the renewal fee to a lobbyist at least 42 days before it falls due under the regulations. Notice must be sent to the lobbyist's address as recorded in the register.

Sub-clause (4) gives the Commissioner discretion to remit fees payable under this section that are in arrears.

Division 2 – The Register of Lobbyists

Clause 12 The Register of Lobbyists

Sub-clause (1) requires the Commissioner to compile and maintain a “Register of Lobbyists” and sets out the details that are to be recorded on the register.

Sub-clause (2) empowers the Commissioner to compile the register in whatever means is convenient, including electronically.

Sub-clause (3) requires that the “Register of Lobbyists” be open to inspection by any person at any place at any times the Commissioner determines.

Clause 13 Certificate of registration

Provides that upon successful registration of a person, the Commissioner must issue that person a certificate of registration. The clause sets out that in the absence of evidence to the contrary, a certificate of registration is evidence that the person is registered.

Clause 14 Voluntary removal from the Register of Lobbyists and cancellation of registration

Sets out that a person may voluntarily remove himself or herself from the Register of Lobbyists and cancel their registration by providing written notice to the Commissioner.

Clause 15 Cancellation of registration

Sub-clauses (1), (2) and (3) make provision for any person to make a complaint in writing to the Commissioner about the registration of a lobbyist. The written complaint must specify the lobbyist and the ground of complaint.

The Commissioner may upon receiving such a complaint, or on the Commissioner’s own initiative, make any investigation or inquiry deemed necessary to determine if the lobbyist improperly obtained registration, if the lobbyist has been convicted of any offence against this Bill or if there are any grounds on which the Commissioner may have refused to register a lobbyist under clause 7.

Sub-clause (4) affords the Commissioner the discretion of making an allegation to the State Administrative Tribunal that there are grounds to cancel a lobbyist’s registration and disqualify them temporarily or permanently from being registered under this Bill.

Sub-clause (5) states that if the Commissioner decides not to make an allegation concerning a lobbyist about whom a complaint was made, the Commissioner must notify the person who made the complaint and the reasons for the Commissioner's decision.

Sub-clause (6) allows the State Administrative Tribunal to make an order referred to them by the Commissioner in accordance with sub-clause (4).

Clause 16 Review of Commissioner's decision

Where the Commissioner refuses to register a person as a lobbyist under clause 7, that person may apply to the State Administrative Tribunal for a review of the decision.

Division 3 – Notifications to Commissioner

Clause 17 Change of address

Provides that a lobbyist must notify the Commissioner of a change of address.

Clause 18 Insolvency

Provides that a lobbyist must give the Commissioner notice if they become insolvent as defined in the *Corporations Act*.

Clause 19 Civil or criminal proceedings

Provides that a lobbyist must give the Commissioner notice of civil proceedings, criminal proceedings or proceedings for contempt of parliament that arise out of engaging in lobbying activity. Notice must be given less than 14 days after the proceedings are commenced. Notice must also be given less than 14 days after proceedings are withdrawn, settled or determined according to sub-clause (2).

Part 3 – Disclosure of Lobbying

Division 1 – Employed Lobbyists

Clause 20 Application of Division 1

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

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

Clause 21 Employed lobbyists to lodge returns

Requires employed lobbyists to lodge quarterly returns with the Commissioner setting out details in relation to their lobbying activity in the preceding quarter.

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

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

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

Sub-clause (4) provides that an employed lobbyist who has not engaged in lobbying in a particular quarter, must lodge an annual return stating that he or she has not engaged in any lobbying activity that quarter.

Clause 22 Commissioner may require further information

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

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

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

Division 2 – Consultant Lobbyists

Clause 23 Application of Division 2

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

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

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

Clause 24 Consultant lobbyists to lodge returns

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

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

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

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

Sub-clause (4) provides a consultant lobbyist who has not engaged in lobbying during a particular calendar month, must file a monthly return stating that he or she has not engaged in any lobbying activity during that particular calendar month.

Clause 25 Commissioner may require further information

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

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

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

Division 3 – Register of Lobbying Activity

Clause 26 Register of Lobbying Activity established

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

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

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

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

Part 4 – Investigation and Offences

Division 1 – Investigations by Commissioner

Clause 27 Commissioner may investigate lobbying activity

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

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

Sub-clause (4) provides that the provisions of section 24 of the *Public Sector Management Act 1994* shall apply to investigations carried out by the Commissioner into lobbying activity.

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

Clause 28 Report on completion of investigation or generally

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

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

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

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

Division 2 – Offences and Legal Proceedings

Clause 29 Persons who may engage in lobbying activity

Introduces a penalty of \$50,000 for engaging in lobbying activity when not registered.

Clause 30 Persons who may be employed or engaged to engage in lobbying activity

Introduces a penalty of \$50,000 for employing or engaging an unregistered person to engage in lobbying activity.

Clause 31 Improper advantage of former public office

Introduces a penalty of \$50,000 for former public officials who engage in lobbying activity in such a manner as to take improper advantage of their former public offices.

Clause 32 Prohibition on lobbying activities by former public officials

Introduces a penalty of \$50,000 for former public officials who engage in lobbying activity concerning matters in respect of which the person had a duty by reason of holding their former public office or offices.

Clause 33 Improper disclosure

Introduces a penalty of \$50,000 for former public officials who in the course of conducting lobbying activity disclose information that was obtained in their capacity as a former public official and was not available to members of the public.

Clause 34 Privileged access to Houses of Parliament

Provides that lobbyists who are former members of Parliament must not exercise certain parliamentary privileges.

Clause 35 False or misleading information

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

Clause 36 Contingent Fees

Sub-clause (1) imposes a penalty of \$50,000 on a lobbyist or employer of a lobbyist that receives payment that is dependant on the outcome of lobbying activity or in arranging a meeting.

Sub-clause (2) imposes a penalty of \$50,000 on a person who makes a payment to a lobbyist that is dependant on the outcome of lobbying activity or success in arranging a meeting.

Clause 37 Proof of returns and information

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

Clause 38 Proof of intention

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

Clause 39 *Proof that a person is a public official*

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

Part 5 – Miscellaneous**Clause 40** *Rules of Parliament*

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

Clause 41 *Code of conduct*

Provides that the Commissioner may introduce a code of conduct for lobbyists. A breach of the code will not constitute a breach of this Bill but may be taken into account by the Commissioner when performing any function in this Bill. Apart from this no civil or criminal liability attaches to a person by reason only that the person has committed a breach of the code of conduct.

Clause 42 *Review of Act*

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

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

Part 6 – Consequential Amendments

Contains consequential amendments to the *Public Sector Management Act 1994*.

Clause 43 *The Act amended*

Identifies the Act to be amended as the *Public Sector Management Act 1994*.

Clause 44 *Section 21A inserted*

Amends section 21A of the *Public Sector Management Act 1994* to include the regulation and investigation of lobbying activities as its purposes.