

**Submission
No 4**

INQUIRY INTO MINISTERIAL PROPRIETY IN NEW SOUTH WALES

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**Submission for the Select Committee on
Ministerial Propriety in New South Wales**

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1. EXECUTIVE SUMMARY

PremierState welcomes the opportunity to make a submission to the Legislative Council's Select Committee on Ministerial Propriety in New South Wales.

The committee system in the NSW Legislative Council plays a very important role in our parliamentary democracy. In the past the NSW Legislative Council has convened some substantive and significant select committees that have improved legislation and the operation of government in this State.

It is our hope that this Select Committee will follow in that tradition by taking a constructive approach to make sensible and measured recommendations to help improve transparency and accountability in NSW.

With the O'Farrell/Stoner Government we believe that the people of NSW have a government that has put the interests of this State first.

This Government has placed integrity, transparency and accountability at the forefront of its agenda and has restored confidence in governance within this State.

As a Corporate Advisory and Public Affairs consultancy based in NSW we have an interest, both as corporate and private citizens, in seeing a government that is honest, open and transparent.

Our submission seeks to address all of the Select Committee's terms of reference with particular attention to the third term of reference – the operation and enforcement of the *Lobbying of Government Officials Act 2011 (the Act)*, and any associated codes of conduct, registers or administrative arrangements.

Lobbying is a vital part of the democracy that assists the democratic process and helps improve the operation of legislation in this State. The Lobbyist Code itself recognises this where it states:

“Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with relevant Government Representatives.”

It is important to note that during this term of Parliament the O'Farrell/Stoner Government has taken significant measures to strengthen the Act. It is also important to note throughout this term of Parliament, with the most stringent regime in the State's history, there has been no reported breach of the Act.

While this is the case, PremierState believes it is important to continually review and improve the system. As such our submission to this committee contains some recommendations that we believe will increase the integrity and transparency of our system in addition to improving the operation of the *Lobbying of Government Officials Act 2011*.

The recommendations contained in our submission include:

- Extending the operation of the Act and the Lobbyist Code to include Local Government in New South Wales;
- Amending the Act and the Lobbyist Code to preclude registered Lobbyists (including persons, body corporates, unincorporated associations, partnerships and firms) from being able to supply goods and services to the NSW Government and Local Government;
- Broadening the definition of “Government Official” in the Act and “Government Representative” in the Lobbyist Code to include all Members of Parliament;
- Requiring all Lobbyists to undergo a comprehensive training program overseen by the Department of Premier and Cabinet before the Director General includes an individual on the Register of Lobbyists;
- Allowing changes to Lobbyists’ details to be undertaken online;
- Requiring all Lobbyists to become a member of a professionals association accredited by the Department of Premier and Cabinet before the Director General includes an individual on the Register of Lobbyists; and
- Moving to a streamlined National scheme for the registration of Lobbyist’s details.

PremierState is confident that these recommendations will increase the integrity and transparency of the regulation of Lobbyists in New South Wales. We look forward to the Select Committee giving these proposals due consideration in their deliberations.

We would be pleased to expand on the suggestions enclosed within this submission and provide additional information to assist the Select Committee in its deliberations.

2. ABOUT PREMIERSTATE

PremierState is a leading corporate advisory and public affairs consultancy based in Sydney.

With a thorough understanding of business, the processes of government and how the two intersect, we provide our clients with strategic, evidence-based advice and assistance.

PremierState, its Directors and staff fully comply with all requirements of the New South Wales Lobbyist Code of Conduct in accordance with their spirit, intention and purpose.

All lobbying activities undertaken by PremierState on behalf of its clients are conducted ethically, honestly, with integrity and transparently, and in accordance with public expectations.

PremierState makes no claims to clients about the ability to access government officials through any engagement. We explicitly outline to clients that we make no representations as to the prospect of a client successfully achieving its desired outcome, as these matters are entirely for the consideration and decision of elected and public officials.

While PremierState is a registered Lobbyist, it should be noted that the vast majority of our engagement with clients concerns the provision of strategic advice. This strategic advice is developed from our deep understanding of business and detailed knowledge of government.

We provide services to a range of clients, from foreign market entries, those with no internal understanding of government processes to those with refined corporate affairs practices where we supplement and compliment their internal capabilities.

3. TERMS OF REFERENCE

3.1 Ministerial Responsibility

While this term of reference does not directly impact PremierState or its operations, we believe it prescient to make a few remarks on the operation of Ministerial Responsibility since the election of the O'Farrell/Stoner Government.

The O'Farrell/Stoner Government has seen the return of a truly Cabinet-style Government in New South Wales. The Cabinet in New South Wales is comprised of 22 outstanding individuals who are of the highest calibre and provide a tremendous service to the people of NSW.

Ministers within the O'Farrell/Stoner Government represent a great cross-section of New South Wales across the city of Sydney, the regions and the bush. The Cabinet in this State is effective and puts the interests of the people of New South Wales first.

From our interaction with the Ministry on behalf of our clients we have found them to have the upmost integrity and professionalism in their dealings. Ministers in this Government understand that their responsibilities, first, foremost and exclusively, are to the people of New South Wales.

With this Government the people of New South Wales know they can expect certainty, stability and integrity.

In the first two and a half years of this Government there have only been two changes to the Cabinet. Compare this to the last Labor government, where in their last term there were three different Premiers, 8 Cabinet reshuffles and only 10 Ministers who were sworn-in following the 2007 election remained in Cabinet at the end of the Parliamentary term.

We have found that Ministers in the O'Farrell/Stoner Government generally take a consultative stakeholder approach where they are open and accessible to all members of the NSW community. This approach allows the Cabinet to be broadly informed and exposed to a diversity of views on matters pertaining to their portfolio and strengthens their understanding of other issues concerning Cabinet.

Ministers of course cannot entertain every meeting request and PremierState respects and acknowledges the prerogative of every Minister to meet with whom they choose.

From our interaction with Ministers in the O'Farrell/Stoner Government we have found them to be direct, honest and accountable and commend them on their efforts to improve Government in this State.

3.2 Measures to reduce potential Ministerial conflicts of interest

With the recent revelations of Ministerial impropriety under the previous government, we understand why the Select Committee is interested in looking at ways to reduce potential conflicts of interest between a minister's public duties, private interests and political membership.

From our experience Ministers in the O'Farrell/Stoner Government are particularly conscious of potential conflicts of interest, wherever they may arise.

The responsibility of all Ministers is to put the public interest first, contrary to any private or political interest they may have. This is at the heart of the Westminster system of cabinet government and has a strong history within the NSW Government.

PremierState has found that this is true for Ministers in the O'Farrell/Stoner Government, who are very conscious of keeping separate their Ministerial, personal and political interests.

At all times PremierState complies with 7.1(d) of the Lobbyist Code in keeping separate lobbying activity and involvement within the Liberal and National Parties.

We have found government officials to be completely professional and exercise a clear distinction between any engagement with Lobbyists on lobbying activity and any separate involvement within the Liberal and National Parties.

3.3 Lobbying of Government Officials Act 2011

The *Lobbying of Government Officials Act 2011 (The Act)* was introduced by the O'Farrell/Stoner Government in the first week of the new Parliament, which is symbolic of this Government's commitment to restore integrity and confidence in the New South Wales Government after the previous administration.

In introducing the Bill to the Parliament on 4 May 2011 the Premier remarked that:

"One of the things that the people of New South Wales voted for on 26 March was to have honest, accountable government in New South Wales again. This bill is part of a series of measures that the Government will take to restore confidence in public administration in New South Wales – confidence destroyed, confidence sapped after 16 years of Labor government and a culture and a decisions-for-donations culture that had grown up."¹

One of the pillars of the Liberal/Nationals five-point plan to Make NSW Number 1 Again was to restore accountability to government. There were several elements of this plan, of which one was to properly regulate lobbyists by establishing a more comprehensive Lobbyists' Register and banning 'success fees' for Lobbyists.

We welcomed these policies of the Liberal/National parties and believe that they have restored integrity and confidence in our system of Government following the previous administration.

PremierState has also welcomed the further changes made to the Lobbyist Code by Premier O'Farrell that were announced on 19 September 2013. While PremierState is not aware of

¹ The Hon. Barry O'Farrell MP, Premier of New South Wales, Parliamentary Debates (Hansard), New South Wales Legislative Assembly, 4 May 2011, pg.105.

any conflicts of interest between a person who serves voluntarily on a Party Executive or Administrative Committee and their employment as a Lobbyist, we acknowledge the Premier's commitment to improving transparency and removing any perception or potential for conflicts of interest.

In this same vein and as a registered Lobbyist under the definition of The Act, PremierState makes the following comments and recommendations that we believe will further improve transparency and remove any perception of potential conflicts of interest.

3.3.1. Incongruity in the treatment of third party and in-house lobbyists

Integrity and transparency is the primary aim of all measures contained in the Act and Lobbyist Code. While regulations in NSW ensure that this is the case for those that are engaged to represent the interests of a third party to Government, it does not capture the vast majority of individuals and organisations that represent interests to government by way of lobbying.

This has led to a two-class system of lobbying in NSW. In one class are third party Lobbyists who are rightly subject to extensive regulation and scrutiny. Within the other class there are all those others who lobby government - whether they be individuals on behalf of their employers; unions, industry and employer associations on behalf of their members; or, technical consultants on behalf of their clients. This class is not subject to regulation, is not required to register as a Lobbyist and does not need to observe the principles of engaging with Government Representatives contained in the Lobbyist Code.

PremierState submits that improvements can be made to address the incongruity that exists between third party Lobbyists and all other persons and organisations who, as part of their business, lobby Government.

3.3.2. Extend The Act and Lobbyist Code to include Local Government in NSW

At present in NSW the Act and Lobbyist Code do not include Local Councillors and Local Council Staff as Government Representatives.

In order to improve transparency and accountability at all levels of Government in NSW, it is submitted that the operation of the Act and the Code should be extended to include Local Councils and Local Authorities across NSW.

It is submitted that this can be achieved by amending the definition of "Government Official" within section 3 of the Act as follows:

(g) a "Mayor" or "Councillor" as defined under the *Local Government Act 1993*,

(h) a person employed or engaged by a Local Council or Local Authority governed under the *Local Government Act 1993*.

In addition to this amendment a subsequent amendment to the Lobbyist Code would also be required. As such it is submitted that the definition of "Government Representative" within section 3 of the Lobbyist Code should be amended to read as follows:

"Government Representative" means a Minister, Parliamentary Secretary, Ministerial Staff Member, a person employed, contracted or engaged in a public sector agency

(which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*) other than staff employed under section 33 of the *Public Sector Employment and Management Act 2002*, a Local Government Mayor or Councillor, or a person employed or engaged by a Local Council or Local Authority government under the *Local Government Act 1993*.

This amendment will help to improve the NSW community's confidence in all levels of Government in NSW and bring the rigorous requirements contained within the Act and Lobbyist Code to Local Government in NSW.

3.3.3. Preclude lobbyists from providing any contracted services to government

The greatest potential conflict of interest that can arise with lobbying in NSW is where a lobbyist, or a corporation registered as a lobbyist, is also contracted to provide professional services to government in NSW, including Local Government.

The PremierState business model has made a very conscious decision not to provide services to government in NSW as it presents a potential conflict of interest.

The roles of lobbying Government and providing professional services and advice to Government should be strictly separated to avoid giving rise to potential conflicts of interest. This conflict of interest is inherent for both corporate clients and the Government.

For example, there is a significant risk of a conflict of interest where an organisation is engaged to provide communications advice to a Government Department and is also engaged to lobby that Department by a private client. A lawyer in a similar position would undoubtedly have to declare a conflict of interest and be precluded from representing the client, yet there is no such preclusion contained within the Act or the Lobbyist Code.

A clear distinction is needed within the Lobbyist Code in order to minimise any risk of a potential conflict of interest.

It is submitted that this can be achieved by adding an additional provision to section 7.1 of the Lobbyist Code:

(f) A Lobbyist shall not supply any goods or services to the NSW Government.

Further there are some instances where Lobbyists are retained by Local Councils in NSW to undertake lobbying activities on behalf of those Councils. This leads to a significant potential conflict of interest if a Lobbyist is engaged at the same time to undertake lobbying activities within that Council.

As such, in order to minimise any potential conflict of interest, it is submitted that the following provision should be included in section 7.1 of the Lobbyist Code:

(g) A Lobbyist shall be precluded from lobbying any Local Council or Local Authority that currently engages the service of that Lobbyist, or has engaged the services of that Lobbyist in the past 12 months.

These measures will help to reduce any potential conflict of interest and will improve the integrity of parliamentary democracy in NSW.

3.3.4. Include all Members of Parliament within the definition of “Government Official”

At present the only Members of Parliament who are covered under both the Act and Lobbyist Code are Ministers of the Crown and Parliamentary Secretaries.

PremierState applies its obligations under the Lobbyist Code to all Members of Parliament and their staff and believes that the Lobbyist Code should reflect this for all Lobbyists.

It is submitted that this can be achieved by replacing (a) and (b) within the definition of “Government Official” under section 3 of the Act with the following:

- (a) a Member of Parliament,
- (b) a staff member of a Member of Parliament

In addition to this amendment a subsequent amendment to the Lobbyist Code would also be required. As such it is submitted that the definition of “Government Representative” within section 3 of the Lobbyist Code should be amended to read as follows:

“Government Representative” means a Member of Parliament, a staff member of a Member of Parliament, a person employed, contracted or engaged in a public sector agency (which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*).

Following the unfortunate events that occurred under the previous government we have seen the need for further transparency for all Members of Parliament.

These changes would ensure that all Members of Parliament are subject to the same requirements and obligations and increase trust and confidence in our parliamentary democracy.

3.3.5. Require all lobbyists to undergo a comprehensive training program

At present in order to register as a Lobbyist you must comply with the requirements outlined within section 5 of the Lobbyist Code and submit a statutory declaration compliant with section 8.1.

PremierState ensures that all of its Directors and Staff undertake training on the Lobbyist Code before registration as a Lobbyist.

We believe that all Lobbyists should undertake a comprehensive training program.

At present the eLearning module on the Register of Lobbyists website has not been updated since the introduction of the Lobbyist Code in 2009 and still has John Lee listed as the Director General of the Department of Premier and Cabinet.

It is time for a comprehensive training program to be developed by the Department of Premier and Cabinet, which all Lobbyists should be required to undertake before inclusion on the Register of Lobbyists.

PremierState submits that this can be achieved by the development of a comprehensive training program that is either conducted or accredited by the Department of Premier and Cabinet.

In addition it is submitted that a change will be required to section 8.1 of the Lobbyist Code to give this sufficient force. We submit the following addition to section 8.1 of the Lobbyist Code:

(d) has undertaking an accredited training program on the Lobbyist Code approved by the Department of Premier and Cabinet.

Comprehensive training that is either accredited or undertaken by the Department of Premier and Cabinet will improve understanding of the Lobbyist Code and enhance the integrity of our system in NSW.

3.3.6. Allow changes to Lobbyists' Details to be undertaken online

The online system of registration in NSW only allows for the registration of new Lobbyists.

There is no provision that is available for registered Lobbyists to change their details online, whether that be the inclusion or removal of staff and clients or changes to contact details.

At the Commonwealth level there is an online facility for registered Lobbyists to confirm their registration and update details that is accessed through a password-controlled system.

NSW has no similar online system, which leads to details taken longer to be updated and requires more time spent by Government officials to process the information and update the Register.

This may lead to a situation where the Register of Lobbyists may not accurately reflect the details of a Registered Lobbyist, as the information may be sent to the Department of Premier and Cabinet, but still be awaiting processing.

It is submitted that moving to an online system for updating lobbyists details, in-line with the Australian Government Register of Lobbyists, will improve the accountability and transparency of the system.

3.3.7. Require all lobbyists to join an accredited professionals association

Government Relations is a legitimate and essential part of our parliamentary democracy in NSW.

The role of Government Relations professionals, whether they are contracted to represent third party clients or are employed by an industry association or corporation, should be recognised and strengthened.

Many professions within NSW have an accredited professional organisation recognised by the State Government and Government Relations professionals should be treated in the same way.

In Queensland the Government Relations Professionals Association (**GRPA**) was formed in 2009 as an association to represent the interests of government relations consultants and uphold high ethical standards among its members.

Membership of the GRPA is open to any person actively involved in working with or making representations to Government and its role is:

- 1) to develop, maintain and enforce a Code of Conduct for government relations professionals;
- (2) to foster within governments and the general community increased awareness of the roles and functions of government relations professionals;
- (3) to work with government to ensure transparent and exemplary government relations processes which have the confidence of the business community and general public;
- (4) to promote the best interests of the association and the members of the association.

The Queensland Register of Lobbyists identifies Lobbyists who are members of the GRPA on the Register.

In NSW we submit that to further enhance the integrity of our system, such membership should be a requirement for all Lobbyists.

It is submitted that this can be achieved by including an additional provision within section 8.1 of the Lobbyist Code as follows:

- (e) is a member of a professional association accredited by the Department of Premier and Cabinet

There would be no need for the Department of Premier and Cabinet to mandate one professional association, but there should be additional requirements developed in order to accredit an association and existing professional associations may be able to seek accreditation under the Lobbyist Code.

3.3.8. Move to a streamlined National scheme for the registration of Lobbyist's details.

At the Commonwealth level and within every State across Australia there is a different mechanism for the registration of Lobbyist's details, which significantly adds to the compliance burden business and acts as a disincentive to firms taking a cautious approach and registering in every state and territory.

While we recognise and support our Federalist system and States' rights to determine their legislative operations, we believe that a streamlined Federal system for the registration of Lobbyist's details would produce a better legislative arrangement for all involved.

This development would reduce confusion and improve transparency and integrity across all jurisdictions.

3.4 Interaction between Codes of Conduct

PremierState recognises and supports the stringent requirements of the Codes of Conduct that are applicable to Ministers, Members of Parliament and Lobbyists in New South Wales.

It is noted that the Code of Conduct for Ministers of the Crown acknowledges Lobbying at Part 8 and makes specific reference to both the Act and Lobbyist Code.

In line with the recommendation made earlier in this submission to extend the definition of "Government Official" to all Members of Parliament, it is submitted that a similar reference should be included in the Code of Conduct for Members.

It is submitted that this can be achieved through the inclusion of an additional section to the Code of Conduct for Members in line with the Code of Conduct for Ministers of the Crown as follows:

8 Lobbying

8.1 Members must comply with the NSW Government Lobbyist Code of Conduct as published on the website of the Department of Premier and Cabinet.

8.2 Members should also note that the *Lobbying of Government Officials Act 2011* makes it a criminal offence for a person to give or receive success fees for lobbying NSW government officials.

This change will ensure all Members are fully aware of their obligations if the Committee recommends that a change should occur to include all Members within the definition of Government Representative as part of the Act and Lobbyist Code.

3.5 Adoption of the Code of Conduct for Ministers of the Crown under the *Independent Commission Against Corruption Act 1988*

While this term of reference does not directly impact PremierState or its operations, we would like to acknowledge our support of the Independent Commission Against Corruption (ICAC) in NSW and the work it has done to fight corruption and improve transparency in this State.

PremierState applauds the O'Farrell/Stoner Government's support of the ICAC where it has strengthened its powers and provided the Commission with record levels of funding.

Since the election of the O'Farrell/Stoner Government the Premier has personally moved four Bills through the Parliament that have strengthened the powers of the ICAC, which we commend.

4. Conclusion

PremierState welcomes the opportunity to make a submission to the Legislative Council's Select Committee on Ministerial Propriety in New South Wales and would be pleased to expand on the suggestions enclosed within this submission to assist the Select Committee in its deliberations.