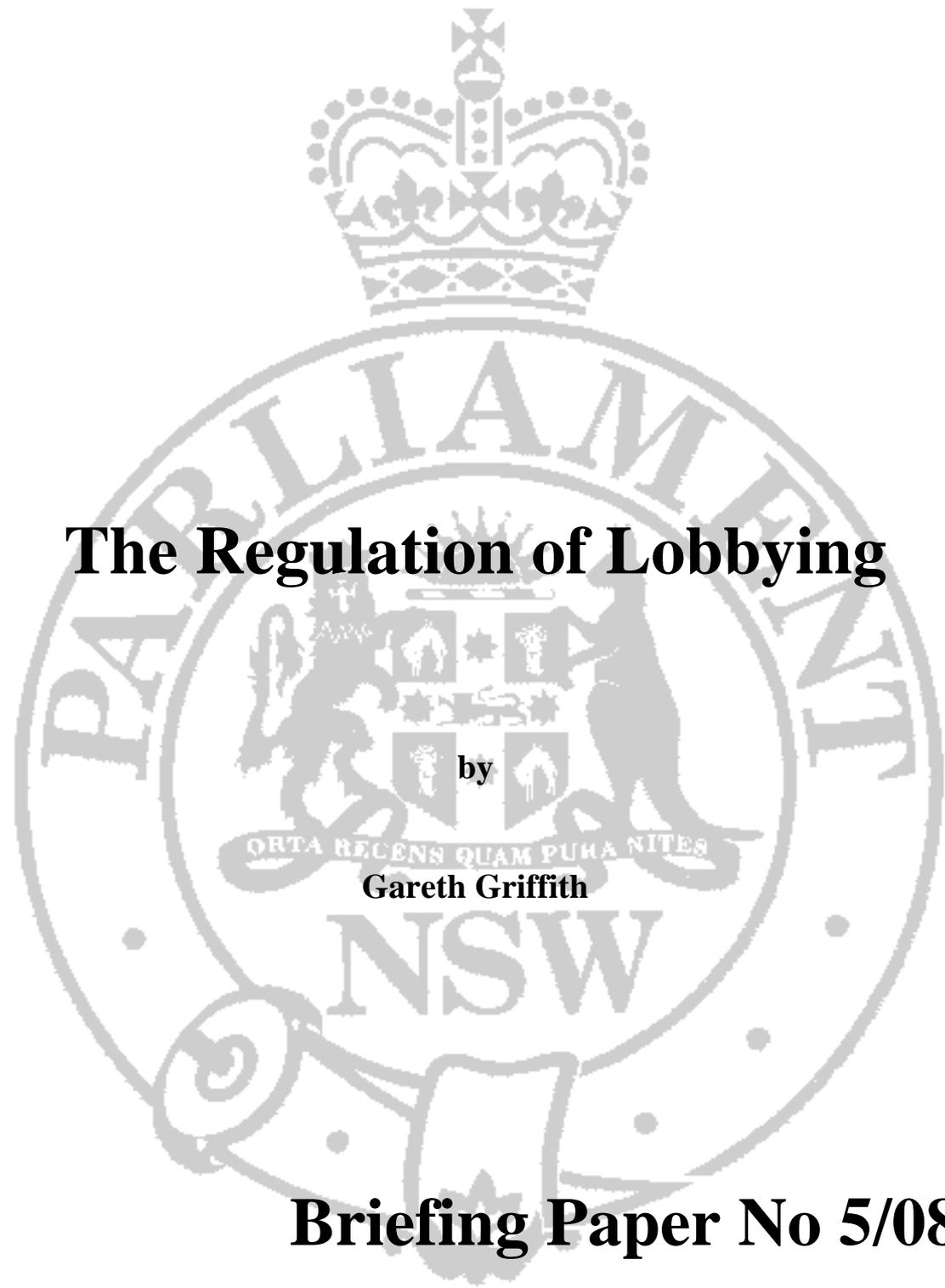


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**The Regulation of Lobbying**

by

**Gareth Griffith**

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# **The Regulation of Lobbying**

by

**Gareth Griffith**



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## EXECUTIVE SUMMARY

This paper discusses the regulation of political lobbyists as at 2 June 2008. It takes a comparative approach, looking at current and proposed schemes in Australia and in selected overseas jurisdictions. It asks what is the best and most effective regulatory scheme to safeguard and nurture confidence in the democratic system?

**Definition:** By ‘lobbying’ is meant the attempt to influence decision makers into choosing a course of action preferred by the lobbyist or his client. It may be to pass or amend certain legislation, or to oppose its passage through Parliament. It may be to oppose, adopt or amend a government policy, or to influence the awarding of a government contract, or the allocation of funding. [1]

**Issues:** While lobbying is undoubtedly a ‘legitimate activity’, there is a perception that lobbyists can sometimes wield undue influence and that, without appropriate regulation, their activities may skew the political decision making process. Two key issues arise: first, the effective regulation of lobbyists generally; and secondly the particular concerns relating to post-separation employment for Ministers and others, where former public office holders are recruited to the lobbying industry. [2]

**Questions:** One question for the regulation of lobbying is how narrowly or widely to cast the net? Are more or less all forms of lobbying and lobbyists to be included under any regulatory scheme, or is it to be more focused, perhaps limited to those professional ‘hired guns’ who lobby on behalf of their clients? The same applies to lobbying activities. Should regulation attempt to capture only communications seeking to influence Ministers, or should it extend to such dealings with public servants and all parliamentarians? [3]

**Types of regulatory systems:** The academic literature identifies three ‘types’ of regulatory systems – ‘lowly regulated systems’; ‘medium regulated systems’; and ‘highly regulated systems’. A key finding is that ‘Actors in highly regulated systems were more likely to agree, compared to actors in lowly regulated systems, that regulations help ensure accountability in government’. [4]

**United States:** The more ‘highly regulated’ systems are found in the US. Statutory schemes are in place, federally under the *Lobbying Disclosure Act* of 1995, with strict registration and reporting requirements for all professional lobbyists who seek to influence either members of the Executive or the Congress. Spending disclosure requirements are also in place, as are enforcement mechanisms and criminal penalties for failure to comply with reporting requirements. Post-separation or ‘revolving door’ provisions are a further feature of US regulatory systems. Federally, a tiered system operates under the *Ethics in Government Act* of 1978 involving lifetime bans on lobbying in some cases, and two or one year bans in others. For example, as amended in 2007 the Act places a two-year ban on lobbying contacts by former Senators and ‘very senior’ Executive officials. A one-year ban continues to apply to former Members of the House of Representatives, elected officers of the House, and Senate officers, or senior Senate employees. [5.1]

**Canada:** A similar statutory approach to the regulation of lobbying operates federally in Canada and in several Provinces. Federally, the relevant legislation is the *Lobbyists*

*Registration Act* of 1985 (to be renamed the *Lobbyist Act*). This probably ranks among the medium to highly regulated systems. Lobbyists are defined broadly, as is lobbying activity to cover Senators and MPs and all persons holding an elected or appointed position with the Canadian Government. Enforcement of the regulations is the work of the new Commissioner of Lobbying, an independent officer of Parliament. There is a statutory five-year ban on ‘designated public office holders’ from lobbying (including Ministers and senior public servants). Under the *Conflict of Interest and Post-employment Code for Public Office Holders*, Ministers and senior public servants are permanently banned from engaging in particular lobbying/advocacy activity. The one area of regulation not provided for it seems is that of ‘spending disclosure’. [5.3]

**United Kingdom:** The Public Administration Select Committee is currently conducting an inquiry into the regulation of lobbying. Provision for post-separation employment is made under the Ministerial Code of Conduct, which requires Ministers to seek advice from the independent Advisory Committee on Business Appointments about positions they wish to take up within two-years of leaving office. The system operates on a voluntary basis, but it is said to be ‘widely and willingly used’. Published on the Advisory Committee’s website are lists of those appointments taken up by Ministers and Crown Servants. [5.5]

**Australia:** Due to come into full effect on 1 July 2008 is the Commonwealth Government’s *Lobbying Code of Conduct*. This non-statutory scheme probably belongs to either the category of ‘lowly regulated’ or ‘medium regulated systems’. Its registration requirements are relatively strict, as are its ‘principles of engagement with government representatives’. The draft code’s revolving door provisions are also relatively strict. Ministers and Parliamentary Secretaries are banned from lobbying for 18 months, while a one-year ban applies to retiring Ministerial advisory staff, senior public servants and high-ranking Defence Force personnel. On the other hand, a narrow definition of lobbyists applies, confined to ‘hired guns’ working on behalf of third party clients. Further, lobbying activity directed towards parliamentarians not holding executive office is excluded from the scheme. Also, while the registration requirements are relatively strict, they are to be enforced by the Cabinet Secretary, not by an independent statutory body. On 14 May 2008 the Senate referred the *Lobbying Code of Conduct* to the Finance and Public Administration Committee for inquiry and report. [6.1]

**Western Australia:** The Commonwealth system is based to a significant extent on the *Contact with Lobbyists Code* established in Western Australia in 2006. [6.4]

**New South Wales:** In 2006 the NSW Premier’s Department issued guidelines for Ministers, their staff and public officials in dealing with lobbyists. [6.5] That same year the Code of Conduct for Ministers was amended. First, to require Ministers who, while in office, are considering an offer of post-separation employment as lobbyists on behalf of third parties to obtain advice from the Parliamentary Ethics Adviser where the prospective work relates to their portfolio responsibilities. In comparable circumstances, within 12 months of leaving office, former Ministers must also obtain advice from the Parliamentary Ethics Adviser. [6.6]

## 1. INTRODUCTION

The role and influence of political lobbyists on the democratic process is a source of comment and concern in Australia and beyond. While lobbying is undoubtedly a 'legitimate activity' and an 'important part' of that process, there is a perception that lobbyists can sometimes wield undue influence and that, without appropriate regulation, their activities may skew the political decision making process. At stake is the legitimacy of that process, which threatens to dissolve when decisions are perceived to arise from secret deals made behind closed doors.

By 'lobbying' is meant the attempt to influence decision makers into choosing a course of action preferred by the lobbyist or his client. It may be to pass or amend certain legislation, or to oppose its passage through Parliament. It may be to oppose, adopt or amend a government policy, or to influence the awarding of a government contract, or the allocation of funding.

In recent times debate has centred on a number of incidents. The lobbying activity of Brian Burke, the former Premier of Western Australia, was the subject of inquiry by the Western Australian Corruption and Crime Commission. One outcome of its hearings was that four Ministers were sacked for their inappropriate contacts with Burke and for breaching Cabinet confidentiality.<sup>1</sup> Concerns and allegations have also been raised in NSW in recent times.<sup>2</sup> An ongoing source of concern at Commonwealth and State level is where, soon upon leaving office, former high level politicians become employed as lobbyists in areas directly relevant to their past responsibilities or portfolios.

In April 2008 the Commonwealth Government released an exposure draft of a *Lobbying Code of Conduct*. This follows developments in Western Australia where, towards the end of 2006, a code of conduct for contact between lobbyists and government representatives was established, including a *Register of Lobbyists*. Also in 2006 the NSW Premier's Department issued guidelines for Ministers, their staff and public officials in dealing with lobbyists.

The purpose of this paper is not to revisit the incidents that surround the subject of political lobbying, nor yet to analyse the practices associated with lobbying in Australia today. It is rather to consider the regulation of political lobbyists. In doing so, the paper takes a comparative approach, looking at current and proposed schemes in Australia and in selected overseas jurisdictions. It asks what is the best and most effective regulatory scheme to safeguard and nurture confidence in the democratic system?

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<sup>1</sup> J Warhurst, *Behind closed doors: politics, scandals and the lobbying industry*, UNSW Press 2007, p 60.

<sup>2</sup> See for example - A Midalia, 'Sartor challenged over permissions', *The Australian Financial Review*, 14 April 2008, p 7; A Stoner, 'Light on the hill is glint in the developer's eye', *The Newcastle Herald*, 16 April 2008, p 9; A Clennell, 'Secret lobbyists have the Premier's ear', *SMH*, 6 November 2007, p 3.

## 2. ISSUES

There is nothing new in the peddling of political influence. A figure like Brian Burke would have been as familiar to the 18<sup>th</sup> century UK Prime Minister Sir Robert Walpole as he is to us today. The difference is that the 18<sup>th</sup> century is acknowledged to be an age of jobbery when every political office was known to have its price. The assumption is that we have advanced in a number of ways. First, we live now in a popular representative democracy and not in some hierarchical society where the important decisions are made by a coterie of upper class persons operating by more or less clandestine methods without reference to public scrutiny or accountability. It follows that in our democratic system there is an expectation of transparency, for open decision-making, at least to the extent that this is consistent with effective government. There is, in addition, a demand for ethical standards in public life. Decisions are supposed to be made objectively and on merit, without reference to private gain or personal interest. Perhaps Walpole and his contemporaries would have considered this hopelessly utopian; and, human nature being what it is, some may still treat it today with less than absolute seriousness. But there it is. We live in an age of crime and corruption commissions, audit offices, codes of conduct and all the regulatory paraphernalia that is designed to promote ethical standards in public life. We take the ideals that underpin our system of democratic politics seriously enough to invest a fortune in time, energy and money on transforming the rhetoric of good governance into some semblance of political reality. It may be that imperfections and loopholes will always be with us, which is not to say that we should not seek to adopt the best available system of regulation.

Transparency and accountability are the watchwords of the age. In this context, there are strong grounds for arguing that lobbying should be as open and as subject to meaningful scrutiny as any other part of political life. The point is that, if confidence in the system is to be safeguarded and nurtured, the decisions made by public officials must be seen to be objective and based fairly on established procedures and the merits of each individual case. Likewise, if respect is to be accorded to public offices, the perception needs to be countered that the knowledge and contacts gained while in office may be exploited for private reward soon after retirement from public life. On this issue the ICAC commented in its 1997 discussion paper *Managing Post Separation Employment*:

A public official who is still in office, but who is thinking of working as a lobbyist, may be tempted to make decisions that favour prospective clients or employers. A former public official who is now a lobbyist may be tempted to use information or contacts that are not generally available for personal benefit, or to benefit an employer or client. Former colleagues may regard the lobbyist as an insider and grant special access and therefore give lobbyists an unfair advantage. In the ICAC's opinion, no public official should favour any former public official in the course of their duty and equality of access should be a feature of all official dealings.<sup>3</sup>

Politics is a small world. In Australia, at State and federal level, many prominent figures

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<sup>3</sup> ICAC, *Managing Post Separation Employment: Discussion Paper*, April 1997 - [http://www.icac.nsw.gov.au/files/pdf/pub2\\_25cp1.pdf](http://www.icac.nsw.gov.au/files/pdf/pub2_25cp1.pdf)

from both sides of politics have become leading lobbyists. This is as true of former politicians as it is of those they employed, as chiefs of staff and in other high-ranking positions.

Of course none of that is to say that lobbying is not itself a perfectly legitimate activity. In a representative democracy it is only right that individuals and groups should seek to press their views on elected officials. A particular argument is that lobbyists have expertise that politicians do not have and can influence politicians by strategically sharing their expertise with them.<sup>4</sup> Such activity is a natural part of the democratic process of communication between the governed and the government. Ideas and views of interested parties belong to the policy mix from which decisions emerge. More generally, lobbying fits comfortably within the pluralist theory of politics which maintains that power in Western society is distributed between a wide number of groups. These groups may be trade unions, pressure groups, business organizations, and any of a multitude of formal and informal coalitions, all of them jostling to have their say on policy issues of interest to them.

But there must be limits. The line between legitimate influence and corruption must be clearly drawn. First and foremost legislation and the making of governmental decisions must serve, and must be seen to serve, the public and not sectional, commercial or private interest. It is said in this respect:

It is oftentimes assumed that regulation of interest group activities offers several advantages to the political system. These include increased accountability and transparency, as well as diminishing loopholes in the system which would otherwise allow for corrupt behaviour. In this regard, schemes to regulate lobbying derive from concerns over the democratic deficit, the openness and transparency of government, equality of access to public affairs, and the perceived need to manage information flows to and from government.<sup>5</sup>

Three key issues can be identified. First, the effective regulation of lobbyists generally must be addressed. Secondly, there are particular issues concerning what the ICAC has called post-separation employment for Ministers and others, where former public office holders are recruited to the lobbying industry. Thirdly, there is the broad concern that the pluralist playing field is far from level, as some groups and organisations are perceived to have far more say and influence than others in the decision-making process. Legal or quasi-legal responses, in the form of ministerial codes of conduct or guidelines, do not as a rule attempt to resolve this large and difficult issue. For this reason, it is not dealt with in a concerted way in this paper, which is not to undervalue its importance for the broader debate.

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<sup>4</sup> NF Campos and F Giovannoni, 'Lobbying, corruption and political influence' (2007) 131 *Public Choice* 1 at 2.

<sup>5</sup> Raj Chari, Gary Murphy and John Hogan, 'Regulating lobbyists: a comparative analysis of the United States, Canada, Germany and the European Union' (July-September 2007) 78 *The Political Quarterly* 422.

### 3. TYPES OF LOBBYISTS AND LOBBYING ACTIVITY

Political lobbyists come in many shapes and forms. Lobbying is something that big business, trade unions and non-government organizations share. They all want to gain the ear of government by one means or another. As Professor John Warhurst writes:

Political lobbying is the process by which the non-government sector – business, interest groups, representative organisations – seeks to influence government. It is an intervention in the policy-making process or in the wider democratic process.<sup>6</sup>

To achieve these goals, an industry of lobby groups has been created, as varied, as it is large.<sup>7</sup> As part of this industry there are professional lobbyists, ‘hired guns’, who represent organisations or individuals on a third party basis. These undertake lobbying activity on a more or less continual basis and for a variety of clients. Other professional lobbyists are employed directly to represent a corporation, an organisation or a cause, anything from Telstra to the Australian Medical Association, Clubs NSW or the Australian Conservation Foundation. This kind of lobbying activity may also be more or less full time. Then there is the multitude of individuals and coalitions with an interest in a particular issue, anything from the proposed destruction of a heritage site to a change in the criminal law, who may come and go from the lobbying scene on an *ad hoc* basis, as the need dictates. These lobbyists may be ordinary members of the public, representatives of community groups operating as volunteers at a grass-roots level. Alternatively, they may also be members of such a body as the Law Society of NSW with a mandate to argue for or against a proposed amendment to the law.

All these might be said to engage in political lobbying at one level or another. Indeed, it is argued that the word lobbyists ‘should include anyone trying to influence government policy’, be they ‘business associations and leaders, NGOs, trade unions, churches and independent fee for service lobbyists’. Warhurst goes further, arguing that the word lobbying ‘should also include lobbying not just of ministers but also of public servants and parliamentarians’. At the same he acknowledges that this

is a big ask and the task is made more difficult by the fact much lobbying runs side by side with the normal operation of parliamentary government in which parliamentarians should represent constituents interests.<sup>8</sup>

The boundary lines around political lobbying are not easy to draw therefore. The same might be said of the methods used by lobbyists. There is no one standard or agreed *modus*

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<sup>6</sup> Warhurst, n 1, p 9.

<sup>7</sup> For a statistical account of 150 lobby groups see - J Fitzgerald, *You can't expect anything to change if you don't speak up! Lobbying in Australia*, Rosenberg Publishing Ltd 2006, Appendix 1.

<sup>8</sup> J Warhurst, ‘Limits to reining in the lobbyists’, *The Canberra Times*, 17 January 2008 - <http://canberra.yourguide.com.au/news/opinion/opinion/limits-to-reining-in-the-lobbyists/1163811.html>

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*operandi* for the lobbyist. Lobbying can be conducted through direct dealing with such political institutions as the government and the public service, or indirectly through the media, public opinion or the electoral process.<sup>9</sup> Warhurst states:

Lobbying has both closed and open connotations. Lobbying can be described as insider work; that is, gaining private access to government. NGOs often rely on outsider work, that is, public campaigning through speaking out. Those who seek to influence government often try to do both. Advocates of each would argue that they make for better democracy and public policy. Both are ways of the community communicating better with government.<sup>10</sup>

One question for the regulation of lobbying is how narrowly or widely to cast the net? Are more or less all forms of lobbying and lobbyists to be included under any regulatory scheme, or is it to be more focused, perhaps limited to those professional ‘hired guns’ who lobby on behalf of their clients? In short, are lobbyists to be defined inclusively or restrictively? The same applies to lobbying activities. Are all forms to be regulated or only the direct, closed encounters with political players and institutions? Even then, should regulation attempt to capture only communications seeking to influence Ministers, or should it extend to such dealings with public servants and all parliamentarians?

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<sup>9</sup> Warhurst, n 1, p 9.

<sup>10</sup> Warhurst, n 8.

#### 4. INDEX AND TYPOLOGY OF SCHEMES REGULATING POLITICAL LOBBYING

Any actual or proposed regulation of lobbying can be compared with the relevant schemes operating in other jurisdictions. The value of this approach is that it allows us to build up a picture of different types of regulatory regimes and to measure how strong or weak they are. It also establishes an analytical platform from which to consider the perceived effectiveness of these different types of systems.

The account presented in this paper is based on work published in *The Political Quarterly* in 2007 by Raj Chari, Gary Murphy and John Hogan, offering a comparative analysis of the regulation of lobbyists. They comment in this respect:

Notwithstanding the importance of lobby/interest groups, only four political systems in the world have regulations with regard to lobbying activity: the United States, Canada, Germany and the European Union (most particularly, the European Parliament).<sup>11</sup>

Chari, Murphy and Hogan used a quantitative index to measure how strong or weak the regulations are in each system, which then allowed for the formulation of a classification scheme of the different 'ideal' types of regulatory environments. They argued that the three types are lowly, medium and strongly regulated systems.

##### 4.1 The Center for Public Integrity (CPI) Index

Compiled in 2003, this quantitative index was based on the analysis of the regulatory systems in 50 US jurisdictions undertaken by the Center for Public Integrity (CPI). Their analysis is referred to as the 'Hired Guns' method, which is explained as follows:

'Hired Guns' is an analysis of lobby disclosure laws in all 50 states. The Center for Public Integrity created a ranking system that assigns a score to each state (with lobbying legislation) based on a survey containing a series of questions regarding state lobby disclosure. The questions addressed eight key areas of disclosure for state lobbyists and the organisations that put them to work:

- Definition of lobbyist
- Individual registration
- Individual spending disclosure
- Employer spending disclosure
- Electronic filing
- Public access (to a registry of lobbyists)
- Enforcement, and
- Revolving door provisions (with particular focus on 'cooling off periods').

Based on the analysis of the relevant legislation in each jurisdiction, points were assigned for each question, with a maximum of 100 points available. A score of 60 points was

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<sup>11</sup> Chari, Murphy and Hogan, n 5, p 422.

deemed a ‘pass’. A full account of both the methodology and the findings can be found at - <http://www.publicintegrity.org/hiredguns/nationwide.aspx> For the moment it is enough to say that the State of Washington was the highest scoring jurisdiction with 87 points. For example, in relation to questions on the ‘definition of lobbyists’, the definition in Washington’s legislation was found to recognize legislative and executive lobbyists, and an individual was considered to be a lobbyist and had to register as such no matter how much money they made or spent. In terms of ‘enforcement’ requirements, Washington was found to have a State auditing authority over lobby registrations and spending reports. In addition, there were separate penalties on its books for the late or incomplete filing of a lobby registration form or a lobby spending report. Further, a penalty for the late filing of a lobby spending report had been levied in the past 12 months. As for ‘revolving door’ provisions, Washington was found to have a cooling off period of one year before legislators could register as lobbyists.

The Center for Public Integrity also reported that, as at 2003, US federal laws regulating lobbying fared rather badly compared to most States, receiving only 36 points on the index. According to the Center for Public Integrity:

Though federal laws are often considered more stringent than state laws, this is not the case with the federal lobby disclosure law. The Center for Public Integrity survey shows that only three states—New Hampshire, Pennsylvania and Wyoming—have lobby disclosure rules that are as weak as or weaker than those applying to the hired guns registered to lobby Congress.<sup>12</sup>

Chari, Murphy and Hogan applied the CPI Index to Germany, the EU Parliament and relevant Canadian jurisdictions. More detailed consideration of these is presented in a later section of this paper, where it is noted that amendments have been made in several areas in recent years. For the moment it is enough to say that, with the ‘pass’ mark set at 60, the jurisdictions discussed by Chari, Murphy and Hogan were accorded the following numerical scores:

- Canada federal 45
- British Columbia 44
- Ontario 43
- Quebec 40
- Nova Scotia 36
- Germany 17<sup>13</sup>
- EU Parliament 15

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<sup>12</sup> Center for Public Integrity - <http://www.publicintegrity.org/hiredguns/report.aspx?aid=167> Changes to the federal regulation of lobbying in 2007 are discussed in a later section of this paper.

<sup>13</sup> As all Lander level legislation was found to be similar to the German federal legislation, only the German federal level was reported.

## 4.2 Typology of regulatory systems

The new aspect of the work of Chari, Murphy and Hogan is that they use the CPI qualitative index to formulate the following ‘ideal types’ of lobbying regulatory systems:

### Three Types of Regulatory Systems

	<i>Lowly regulated systems</i>	<b>Medium regulated systems</b>	<b>Highly regulated systems</b>
Registration and reporting regulations	Rules on individual registration, but few details required	Rules on individual registration; more details required	Rules on individual registration are extremely rigorous
Spending disclosure	No rules on individual spending disclosure; or employer spending disclosure	Some regulation on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure; and employer spending disclosure
Electronic filing	Weak online registration and paperwork required	Robust system for online registration; no paperwork necessary	Robust system for online registration; no paperwork necessary
Public access	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available; detailed, and updated frequently	List of lobbyists and their spending disclosures available; detailed, and updated frequently
Enforcement	Little enforcement capabilities invested in state agency	In theory, state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews/audits
Revolving door provision	No cooling-off period before former legislators can register as lobbyists	There is a cooling-off period before former legislators can register as lobbyists	There is a cooling-off period before former legislators can register as lobbyists

Omitted from this typology are the considerations relating to the definition of lobbyists and any reference to the scope of their operation, in particular whether this extends to parliamentarians who do not hold an executive position. The above typology can therefore be supplemented as follows:

	<b>Lowly regulated systems</b>	<i>Medium regulated systems</i>	<b>Highly regulated systems</b>
Lobbyists defined	‘Hired guns’ lobbying for third parties only	‘Hired guns’; ‘In-house’ lobbyists employed by interest groups or organisations	‘Hired guns’; ‘In-house’ lobbyists; Persons lobbying on own behalf, or working for charitable or religious groups
Targets of lobbying activity defined	Members of the Executive (Ministers and Parliamentary Secretaries) and their staff only	Members of the Executive and staff; Agency heads and public servants/officers	Members of the Executive and staff; Agency heads and public servants/officers; Parliamentarians not holding executive office

### 4.3 ‘Ideal types’ and their impacts

Taking their analysis one step further, Chari, Murphy and Hogan then test to see whether a correlation exists between the opinions of leading participants in the lobbying regime and the three ‘ideal’ types of regulatory system. Their key finding in this respect was that ‘Actors in highly regulated systems were more likely to agree, compared to actors in lowly regulated systems, that regulations help ensure accountability in government’. Nevertheless, it was also found that ‘even in relatively highly regulated systems, if there is a “will” there is always a “way” of undermining regulations’. The regulation of lobbying is no panacea therefore – ‘if lobbyists and politicians desire to pursue corrupt activities, no piece of legislation will prevent them from doing so’. Chari, Murphy and Hogan concluded:

Yet, it may be argued that pursuit of lobbying rules may serve as a framework to establish a paradigm within which all policy-makers can effectively function. This paradigm ultimately promotes the long-term goals of accountability and transparency, while it potentially serves as a deterrent, if not an antidote, for corrupt practices.<sup>14</sup>

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<sup>14</sup> Chari, Murphy and Hogan, n 5, p 433.

## 5. THE REGULATION OF LOBBYING IN SELECTED OVERSEAS JURISDICTIONS

### 5.1 United States

**Overview:** At the federal level in US the regulation of lobbying has a long history, stretching at least as far back as the 1930s when Congress enacted legislation in response to a number of scandals concerning the lobbying of public utility companies and the maritime industry.<sup>15</sup> Thus, while lobbying is protected by First Amendment rights of speech, association and petition, in the interests of transparency legitimate limits have been recognised on lobbying activity.<sup>16</sup> Federally again, the *Lobbying Act 1946* sought to ‘disclose to the legislators and the public the identity of the principals, representatives and the means involved, to make the free play of legislative intent transparent’.<sup>17</sup> A major limitation of the Act was that it only regulated lobbying of the legislative and not the Executive branch of government. It took nearly 50 years for this flawed piece of legislation to be replaced by the *Lobbying Disclosures Act* of 1995.<sup>18</sup> In passing the Act, Congress found that:

- responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decision making process in both the legislative and executive branches of the Federal Government;
- existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose; and
- the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

Responding to various scandals, including that surrounding the ‘super lobbyist’ Jack Abramoff, who built a lobbying empire during the Republican rise to power in Congress in the 1990s and expanded his influence when George W Bush became President in 2000, the *Lobbying Disclosures Act* was further tightened by the *Honest Leadership and Open Government Act* of 2007, as were internal House of Representatives and Senate rules on such matters as gifts, travel and contacts with lobbyists.

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<sup>15</sup> Chari, Murphy and Hogan, n 5, p 422. For a comprehensive account of the history of federal US legislation up to 2005 see – WV Luneburg and TM Susman, *The Lobbying Manual: A Complete Guide to Federal Law Governing Lawyers and Lobbyists*, 3<sup>rd</sup> ed, ABA Publishing 2005.

<sup>16</sup> The *Lobbying Disclosures Act* of 1995 does not operate to prohibit or interfere with these First Amendment rights – 2 US Code 26, s 1607.

<sup>17</sup> Chari, Murphy and Hogan, n 5, p 422.

<sup>18</sup> For the full text see - 2 United States Code 26 - [http://www4.law.cornell.edu/uscode/search/display.html?terms=1603&url=/uscode/html/uscode02/usc\\_sup\\_01\\_2\\_10\\_26.html](http://www4.law.cornell.edu/uscode/search/display.html?terms=1603&url=/uscode/html/uscode02/usc_sup_01_2_10_26.html)

**The Lobbying Disclosure Act of 1995:**<sup>19</sup> This Act is directed at ‘professional lobbyists’, by which is meant those who are paid to engage in lobbying activity on behalf of a client or an employer. It does not seek to regulate volunteers therefore. What it does regulate are both ‘hired guns’ working for third parties and ‘in-house’ lobbyists employed by corporation or other clients. The term ‘client’ is defined broadly to mean:

any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

Certain exceptions and thresholds apply. For example, organizations that engage in ‘grass roots’ lobbying only are not covered. To qualify as a lobbyist, a person must make more than one ‘lobbying contact’ and spend at least 20% of his total time for a client/employer on lobbying activities over the reporting period.<sup>20</sup> There is in addition a *de minimis* expense threshold that he must cross before an organization or lobbying firm is required to register. As part of the ongoing quarterly registration process, ‘hired gun’ lobbyists are required to detail the total amount of income received from a client, just as organisations employing their own lobbyists are required to submit ‘good faith’ estimates of their total lobbying expenses.

Lobbying activity is not defined under the legislation to specifically refer to the attempt to *influence* a public office holder. Rather, any form of communication made on behalf of a ‘client’ on such matters as the making or amending of Federal legislation, or the administration or execution of Federal policy constitutes ‘lobbying contact’ for the purposes of the Act.<sup>21</sup>

A lobbyist or his employer must register within 45 days of making contact. For lobbying contact to occur, the key requirement is that the communication must be directed towards either a ‘*covered executive branch official*’ or a ‘*covered legislative branch official*’. The former category includes all executive officials from the President, to more senior members of the armed forces and down to ‘any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character’. The latter category includes Members of Congress and their staff, as well as the officers and senior

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<sup>19</sup> For an overview of the legislation prior to the 2007 amendment see – J Maskell, *Lobbying Congress: an overview of legal provisions and Congressional ethics rules*, Congressional Research Service, 27 December 2006. For an overview of the 2007 amendments see – J Maskell, *Lobbying law and ethics rules changes in the 110<sup>th</sup> Congress*, Congressional Research Service, 7 September 2007.

<sup>20</sup> The 2007 amendments to the law introduced quarterly instead of semi-annual reporting conditions and the time and expenditure thresholds have been altered to reflect this change.

<sup>21</sup> Various exceptions are set out in 2 United States Code 26, s 1606 (8)(B). These include a communication ‘made by a public official acting in the public official’s official capacity’.

employees of the Congress.<sup>22</sup>

**Honest Leadership and Open Government Act of 2007:**<sup>23</sup> This Act amended a wide range of statutes and rules applying to such integrity related matters as donations to campaign funding. It also amended the lobbying disclosure scheme in specific ways, including: extending the scheme's 'revolving door' provisions; and increasing the penalties for wrongdoing.

**Penalties:** On this last issue, failure to comply with a provision of the *Lobbying Disclosure Act* was increased to a civil penalty of up to \$200,000. A specific criminal penalty was also added for knowing and corrupt failure to comply, an offence carrying a penalty of imprisonment of up to 5 years and/or a fine.

**Revolving door provisions:** Post-separation employment or 'revolving door' provisions as they are often called in the US were also revisited in the 2007 Act. These are located under the *Ethics in Government Act* of 1978 (18 US Code 207) and contain both specific and more general prohibitions. Specifically, this legislation introduced limitations on the future employment of members of executive government, including office holders equivalent to Ministers. These prohibitions principally target lobbying and advocacy and include:

- a permanent restriction on lobbying or advocacy in transactions in which the government is a party and the official 'participated personally and substantially' while in office; and
- a two-year restriction on lobbying or advocacy in transactions in which the government is a party and the official 'knows or reasonably should know was actually pending under his or her official responsibility' in the last year of his or her office.<sup>24</sup>

In addition, a general one-year prohibition or 'cooling off' period was in place for top officials, whereby they could not 'lobby' or make communications with intent to influence someone in their former department or agency. These rules were partially amended in 2007, extending from one to *two* years the ban on lobbying contacts by former Senators and 'very senior' Executive officials (substantially, the Vice President, Cabinet level officials, and certain top White House aides). The 2007 Act continued the general *one-year ban* on lobbying contacts by former: Members of the House of Representatives; elected officers of the House; and Senate officers, or senior Senate employees.

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<sup>22</sup> As defined by s 109(13) of the *Ethics in Government Act* of 1978.

<sup>23</sup> For the full text of the Act see - <http://www.opencongress.org/bill/110-s1/show>

<sup>24</sup> ICAC, n 73, p 74. The penalties for breach are imprisonment for one year or a fine or both. If the conduct is willful, the penalty is five years' imprisonment or a fine or both. The restrictions can be waived by the President or the Office of Government Ethics on certain conditions. For the full text of the legislation see - [http://www4.law.cornell.edu/uscode/search/display.html?terms=207&url=/uscode/html/uscode18/usc\\_sec\\_18\\_0000207----000-.html](http://www4.law.cornell.edu/uscode/search/display.html?terms=207&url=/uscode/html/uscode18/usc_sec_18_0000207----000-.html)

**Electronic filing:** The 2007 Act further requires lobbying reports to be filed electronically by registrants, in addition to any other form the Secretary of the Senate or the Clerk of the House may require.

**Offering gifts or travel to Members or employees of Congress:** The *Lobbying Disclosures Act* was amended to expressly prohibit registered lobbyists and other relevant persons and organisations from ‘making a gift or providing travel’ to a ‘covered legislative branch official’ (Members of Congress, their staff etc) if it is known that the gift or travel offered may not be accepted under the rules of the House or the Senate. Senate and House rules have also been amended, for example, to prohibit gifts under \$50 from lobbyists. The 2007 amendments also prohibited a registered lobbyist from paying for a Member’s or staffer’s expenses for ‘officially connected travel’.<sup>25</sup>

As amended in 2007, the key components of the US federal scheme can be set out as follows:

Registration and reporting regulations	<ul style="list-style-type: none"> <li>Names, address etc of lobbyists and clients, with description of their business or activities</li> <li>Statement of areas where lobbyists will be active and of specific issues already addressed by lobbying activity</li> <li>Names of employees of lobbying firms and whether any have served in Executive or Legislative branches in last 2 years</li> <li>Quarterly updates of lobbyist’s details</li> </ul>
Spending disclosure	<ul style="list-style-type: none"> <li>Disclosure by lobbying firms of ‘good faith estimate’ of total income from client; organisations with ‘in house’ lobbyists to submit ‘good faith’ estimates of their total lobbying expenses</li> </ul>
Electronic filing	<ul style="list-style-type: none"> <li>Yes</li> </ul>
Public access	<ul style="list-style-type: none"> <li>Public document available on websites of Clerk of the House and Secretary of the Senate</li> </ul>
Enforcement	<ul style="list-style-type: none"> <li>Statutory oversight by Clerk of the House and Secretary of the Senate</li> <li>Aggregate number of referrals of non-compliance made public.</li> <li>Referral of non-compliance to US Attorney General</li> <li>Attorney General to report to relevant House of Senate Committee on aggregate number of enforcement actions taken by Department of Justice, and any sentence imposed. Identity of persons not already a matter of public record not disclosed.</li> </ul>
Revolving door provisions	<ul style="list-style-type: none"> <li>Specific restrictions on high level Executive officers and employees from engaging in particular lobbying/advocacy activity</li> <li>Two year ban on ‘very senior’ Executive officials (the Vice President, Cabinet level officials, and certain top White House aides) lobbying former department; two year ban on former Senators</li> </ul>

<sup>25</sup>

J Maskell, *Lobbying law and ethics rules changes in the 110<sup>th</sup> Congress*, Congressional Research Service, 7 September 2007.

	<ul style="list-style-type: none"> <li>• One year ban on House Members, elected officers of the House and Senate officials and senior employees</li> </ul>
Lobbyists defined	<ul style="list-style-type: none"> <li>• ‘Hired’ guns’ employed by third party to lobby on their behalf</li> <li>• ‘In-house’ lobbyists employed by companies and organisations</li> </ul>
Targets of lobbying activity defined’	<ul style="list-style-type: none"> <li>• ‘Covered executive branch officials’ (members of the Executive, senior Executive staff and senior members of armed forces); and ‘covered legislative branch officials’ (Members of Congress and staff, plus officers and senior employees of the Congress).</li> </ul>

**Comment:** By the standards set by the Center for Public Integrity this post-2007 regulatory regime may still leave room for improvement. As noted, in its quantitative index of 2003 the Center for Public Integrity gave the federal laws 36 points, where the pass mark was 60. Significant reform has been introduced since that time, requiring electronic filing and other measures. Nonetheless, the following comments from the Center for Public Integrity would still appear relevant

- A federal lobbyist is not required to register until 45 days after they begin performing activities that constitute lobbying or have been contracted to perform lobbying activities. Lobbyists in 20 States are required to register before performing any activities constituting lobbying; in another 17 states lobbyists must register within one to 5 days of lobbying.
- A federal lobbyist files spending reports quarterly (twice a year before the 2007 Act). Lobbyists in 12 states file monthly spending reports.
- The spending report does not require aggregate totals categorized by type of spending, unlike the spending reports in 31 States that do sum up expenses by gifts, postage, meals, entertainment, etc.
- The spending report does not require any detailed itemization of spending, unlike the spending reports in 37 States which require some individual information for each expense.<sup>26</sup>

## 5.2 US States

As reported in the 2002 survey conducted by the Center for Ethics in Government of the National Conference of State Legislatures, legislation regulating lobbying exists in all 50 US States. The survey found that in at least 20 States lobbyists and/or their employers had to report the legislative and administrative actions they lobbied for and against. Lobbyists in these States had to either report such action by subject area or individually with the name of each bill, resolution or other legislative activity that the lobbyist engaged in supporting or opposing. Examples from the 2002 survey of States that require lobbyists to disclose such actions included:

<sup>26</sup>

Center for Public Integrity - <http://www.publicintegrity.org/hiredguns/report.aspx?aid=167>

Alabama	Lobbyists must file a list of legislation by category supported or opposed
California	Lobbying firms must report, for each client, each bill or administrative action with regard to which someone in the firm engaged in direct communication
Idaho	Lobbyists must report the subject of proposed legislation and the number of each Senate or House bill, resolution or other legislative activity that the lobbyist has been engaged in supporting or opposing. For appropriation bills, lobbyists must enumerate specific section(s) supported or opposed
Massachusetts	Lobbyist reports must include all bill numbers of legislation the lobbyist acted to promote, oppose or influence

Some detail on the scheme in place in Washington State was provided in an earlier section of this paper. As noted, Washington scored best in the Center for Public Integrity's 2003 quantitative index, with a score of 87. The scale of lobbying activity is suggested by the following figures.<sup>27</sup>

	Total	As Of
Lobby Spending	\$37,049,691	2005
No. of Registered Lobbyists	872	2005
No. of Lobbyist Employers	1161	2005
Ratio of Lobbyists to Legislators	6 to 1	2005

More of a mid-range performer on the Center for Public Integrity's quantitative index, with a score of 67, was Ohio. One feature of its regulatory scheme is that a one-year post-separation employment ban on lobbying is in place for all State legislators. As of 2005, it is reported that 36 former Ohio legislators had become lobbyists at the State level. An overview of the regulatory system in Ohio is presented in the *2007 Lobbying Handbook* produced by the Office of the Legislative Inspector General - <http://www.jlec-olig.state.oh.us/HANDBOOK/2007Handbook.pdf>. Legislative and Executive lobbyists must update their registration statements three times a year. Required is an updated registration statement by lobbyists and their employers, for which four types of basic information must be disclosed:

- confirmation of the continuing existence of each engagement described in an Initial Registration Statement;
- a list of the specific bill(s) or resolution(s), executive agency decision(s) or retirement system decision(s) that the lobbyist sought to influence under the engagement during the period covered by the Updated Registration Statement;
- a statement of expenditures; and
- details of any financial transactions.

Details on the scale of lobbying activity in Ohio are suggested by the following figures:<sup>28</sup>

<sup>27</sup> Center for Public Integrity - <http://www.publicintegrity.org/hiredguns/iys.aspx?st=WA>

<sup>28</sup> Center for Public Integrity - <http://www.publicintegrity.org/hiredguns/iys.aspx?st=OH>

	Total	As Of
Lobby Spending	\$599,498	2005
No. of Registered Lobbyists	1388	2005
No. of Lobbyist Employers	1264	2005
Ratio of Lobbyists to Legislators	11 to 1	2005

Details on lobbying activity in other US States are set out in the Center for Public Integrity's table *State Lobbying Totals, 2004-2006*. This is reproduced at Appendix A to this paper.<sup>29</sup>

### 5.3 Canada

**Overview:** At the federal level, legislation regulating lobbying was introduced in Canada under the *Lobbyists Registration Act* of 1985 (which only came into force in 1989). This was amended in 1995, then again in 2003 and subsequently in 2006, under the *Federal Accountability Act*. Under this last omnibus piece of legislation the *Lobbyists Registration Act* is to be renamed the *Lobbyist Act*. As yet, with the exception of the post-separation employment rules, the relevant provisions have not been proclaimed to commence. However, the amendments made by the 2006 legislation are likely to be in force in the very near future and it is on this assumption that this account of the regulation of lobbying in Canada is written.

An added element to the regulatory scheme is the *Lobbyists' Code of Conduct*, which came into force in 1997 and is designed to

assure the Canadian public that lobbying is done ethically and with the highest standards, with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making.<sup>30</sup>

At present the regulatory scheme is administered and enforced by the Office of the Registrar of Lobbyists. However, under the *Federal Accountability Act* a Commissioner of Lobbying is to be established as an independent officer of the Canadian Parliament.<sup>31</sup>

<sup>29</sup> It can also be accessed at – <http://www.publicintegrity.org/hiredguns/chart.aspx?act=lobbyspending>

<sup>30</sup> Office of the Registrar of Lobbyists – <http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00230e.html> - Purpose-description-code The Code is not affected by the Federal Accountability Act.

<sup>31</sup> This account is based on the Canadian Office of the Registrar of Lobbyists website - <http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00230e.html> - Lobbying-activities

**Lobbyists Registration Act:** The *Lobbyists Registration Act* is based on four key principles:

- free and open access to government is an important matter of public interest;
- lobbying public office holders is a legitimate activity;
- that public office holders and the public are able to know who is attempting to influence government is desirable; and
- a system of registration of paid lobbyists should not impede free and open access to government.

Taking a broad and inclusive approach, the Act applies to those who lobby on behalf of trade unions and charity and religious organisations are included. Identified are three types of lobbyist:

- Consultant lobbyists — individuals, such as lawyers, accountants and government relations consultants, who are paid to lobby for clients;
- In-house lobbyists for corporations — employees who, as a significant part of their duties, lobby for an employer who carries out commercial activities for financial gain; and
- In-house lobbyists for organizations — not-for-profit organizations in which one or more employees lobby, and the collective time devoted to lobbying amounts to a significant part of one employee's duties.

The targets of lobbying are defined as Public Office Holders (POHs) and again an inclusive approach is adopted. Public Office Holders are defined in the Act as virtually all persons occupying an elected or appointed position in the Government of Canada, including members of the House of Commons and the Senate and their staff, as well as officers and employees of federal departments and agencies, members of the Canadian Forces and members of the Royal Canadian Mounted Police.

Under the Act, individuals must be registered if they communicate with federal Public Office Holders, whether formally or informally, with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs; or
- the awarding of federal grants, contributions or other financial benefits; and
- in the case of consultant lobbyists, the awarding of a federal government contract and arranging a meeting between their client and a POH.

An exception is made for persons making only simple enquiries or requests for information, or for such activities as making submissions to a parliamentary committee.

Consistent with the US approach, a feature of the Canadian federal legislation is that its definition of lobbying does not refer to the attempt to 'influence' public office holders. Rather, its conception of lobbying activity encompasses all forms of communication with public office holders in defined contexts, such as the development of legislation, the passage of a Bill through Parliament, the making of policy or the granting of a government

contract. It seems that for lobbying activity to occur, the lobbyist must not attempt to *influence* a Minister, Member of Parliament or public servant for his work to be identified as lobbying, only to communicate with a public office holder, in a professional capacity as either a consultant lobbyist, or an 'in-house' lobbyist for a corporation or an organization.<sup>32</sup>

**The Federal Accountability Act:** The *Federal Accountability Act* amended 46 existing statutes and created two new ones. As noted, with the exception of the five-year post-separation employment prohibition on Ministers and others, which came into force upon Royal Assent, the rest of the provisions relating to lobbying have not yet come into force.

The *Federal Accountability Act* amends the *Lobbyists Registration Act* in eight major ways:

- identifying a new category of key decision-maker within government called 'designated public office holder' which includes ministers, ministers of state and their exempt staff, deputy heads, associate deputy heads and assistant deputy ministers and equivalent ranks throughout the public service;
- prior to these reforms, section 29(1) of the *Conflict of Interest and Post-Employment Code for Public Office Holders* provided that former ministers, senior public servants and designated ministerial staff could not act as consultant lobbyists, or accept employment as in-house lobbyists, for a period of five years after leaving public office. Although public office holders were bound by their obligations under the Code, the Code did not have the force of law. This has been remedied under the new legislative requirements which impose a statutory five-year post-employment prohibition on 'designated public office holders', including Ministers, ministerial staffers and individuals identified by the Prime Minister as being members of his or her transition team from becoming registered lobbyists once they have left office.<sup>33</sup> Note, too, that under section 27(1) of the *Conflict of Interest and Post-Employment Code for Public Office Holders* public office holders are permanently banned from 'switching sides' in any 'specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former public office holder acted for or advised the Government'.<sup>34</sup>
- requiring lobbyists to register on a monthly basis certain types of communications with 'designated public office holders', including with whom they met, when, and on what subject, plus any other information that may be prescribed by regulation, in addition, the type of communication for which monthly returns will be required will be set out in regulations;
- banning the payment of contingency fees to consultant lobbyists;

<sup>32</sup> The federal Act was amended in 2003 to remove the expression 'in an attempt to influence'.

<sup>33</sup> Designated public office holders can apply for an exemption from the new Commissioner of Lobbying where, for example, the person was a designated public office holder for a short period or only in an acting capacity.

<sup>34</sup> For the full text of the Code see - [http://www.parl.gc.ca/ciec-ccie/en/archives/ethics\\_commissioner/conflicts/docs/code\\_e.pdf](http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/docs/code_e.pdf)

- extending from two to 10 years the period during which possible infractions or violations under the *Lobbying Act* may be investigated and prosecution may be initiated. Within this 10-year period, the Commissioner will have to complete investigations within five years of becoming aware of the possible infraction or violation.
- doubling the criminal monetary penalties for lobbyists who fail to comply with the requirements of the *Lobbying Act*. Thus, where an individual fails to file a return, or knowingly makes any false or misleading statement, they may be liable to a fine of \$50,000 and/or imprisonment for 6 months (if prosecuted summarily), or to a fine of \$200,000 and/or imprisonment for 2 years (if prosecuted on indictment);
- replacing the Registrar of Lobbyists with the Office of the Commissioner of Lobbying, an independent officer of Parliament. The Commissioner of Lobbying is to be appointed by the Governor, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons. He or she holds office for a seven-year term. An advertisement for the new position was published in the *Canada Gazette* on January 19, 2008; and
- enhancing the investigative powers and mandate of the Commissioner of Lobbying.

The Commissioner will be able to:

- ask ‘designated public office holders’ to verify the accuracy and completeness of information pertaining to them in monthly reports that lobbyists submit, to correct it if necessary and display that information in the registry; the Commissioner is required to report to Parliament the names of ‘designated public office holders’ who do not respond to this request;
- conduct expanded investigations, including the power to summon and compel persons to produce documents relevant to any investigation of possible infractions under the *Lobbying Act* or the *Lobbyists' Code of Conduct*;
- prohibit any lobbyist convicted of any offence from communicating with the federal government as a paid lobbyist for up to two years, if the Commissioner deems it to be in the public interest;
- publish the names of violators in reports tabled before Parliament; and
- undertake expanded outreach, education, and communications activities with the public, lobbyists and their clients, and public office holders to foster understanding and awareness of the requirements.

Assuming all these amendments will come into force, the key components of the Canadian federal scheme can be set out as follows:

Registration and reporting regulations	<ul style="list-style-type: none"> <li>Names, business address of lobbyists and employers</li> <li>Identify whether lobbyist was a public office holder; also whether they were a designated POH and if so, the date on which they ceased to hold that office.</li> <li>Names of their clients, or corporate or organizational employers</li> <li>Names of parent or subsidiary companies that would benefit from the lobbying activity</li> <li>Organisational members of coalition groups</li> <li>Specific subject matters of lobbying</li> <li>Names of the federal departments or agencies contacted</li> <li>Sources and amounts of any government funding received</li> <li>Communication techniques uses, such as meetings, telephone calls or grass-roots lobbying</li> <li>Six monthly updates; but monthly updates of certain types of communications with ‘designated public office holders’</li> </ul>
Spending disclosure	<ul style="list-style-type: none"> <li>None</li> </ul>
Electronic filing	<ul style="list-style-type: none"> <li>Yes</li> </ul>
Public access	<ul style="list-style-type: none"> <li>Public document available on website of Office of the Commissioner of Lobbying</li> </ul>
Enforcement	<ul style="list-style-type: none"> <li>Independent statutory oversight body</li> <li>Register policed by Commissioner of Lobbying</li> <li>Broad powers to investigate, publicize and prohibit offenders from engaging in lobbying activity</li> <li>10 year statutory limit on investigation of possible infractions</li> <li>Fine of \$50,000 and/or imprisonment for 6 months (if prosecuted summarily), fine of \$200,000 and/or imprisonment for 2 years (if prosecuted on indictment)</li> </ul>
Revolving door provisions	<ul style="list-style-type: none"> <li>Specific non-statutory lifelong ban on former public office holders (including Ministers and senior public servants) from engaging in particular lobbying/advocacy activity</li> <li>Five year statutory ban on ‘designated public office holders’ from lobbying (including Ministers and senior public servants)</li> </ul>
Lobbyists defined	<ul style="list-style-type: none"> <li>Consultant lobbyists; also ‘in-house’ lobbyists for corporations and not for profit organisations and others</li> </ul>
Targets of lobbying activity defined	<ul style="list-style-type: none"> <li>Communications with Public Office Holders – Senators/MPs and all persons holding an elected or appointed position with the Canadian Government</li> </ul>

**Comment:** In terms of the ‘ideal types’ of regulatory systems, outlined in the previous section of this paper, the Canadian federal system would probably rank in the medium to highly regulated systems. The one area of regulation not provided for it seems is that of ‘spending disclosure’, either for individual lobbyists or their employers. Otherwise, the Canadian federal regime ticks all the boxes, with provision made for the online filing of details, full access to the public to the register and the publication of statistical breakdowns on the number of different categories of lobbyists. Offering an insight into the scale of the lobbying industry in Canada, the Office of the Registrar of Lobbyists reported that in 2006-

07 there were a total of 5,281 registered individual lobbyists. The number of active individual lobbyists can be broken down further, as follows:<sup>35</sup>

	2006-07	2005-06
Consultant lobbyists	860	732
In-house lobbyists (corporations)	1,882	1,809
In-house lobbyists (organisations)	2,539	2,306

With consultant lobbyists required to file one registration for each client, the Office of the Registrar of Lobbyists further reported that:

During fiscal year 2006-2007, 9,656 registrations were processed, of which 7,775 were consultant lobbyist registrations, 793 were in-house lobbyist (corporations) registrations and 1,088 were in-house lobbyist (organizations) registrations. In 2005-2006, 6,994 registrations had been processed, including 5,347 consultant lobbyist registrations, 617 in-house lobbyist (corporations) registrations and 1,030 in-house lobbyist (organizations) registrations. This represents a global increase of 38 percent for all three categories of lobbyists. For each type of lobbyist, the year-over-year increases were of 45 percent for consultant lobbyists, 29 percent for in-house lobbyists (corporations) and 6 percent for in-house lobbyists (organizations).<sup>36</sup>

#### 5.4 Canadian Provinces

Similar legislation for the regulation of political lobbyists operates in several Canadian Provinces, notably Nova Scotia,<sup>37</sup> Quebec,<sup>38</sup> Ontario,<sup>39</sup> British Columbia<sup>40</sup> Newfoundland<sup>41</sup> and most recently Alberta.<sup>42</sup>

By way of example, Newfoundland's *Lobbyist Registration Act* was passed in 2004, with

<sup>35</sup> Office of the Registrar of Lobbyists - <http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00230e.html> - Purpose-description-code

<sup>36</sup> Office of the Registrar of Lobbyists - <http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/nx00230e.html> - Statistical-review

<sup>37</sup> *Lobbyists' Registration Act 2001* - <http://www.canlii.org/ns/laws/sta/2001c.34/index.html>

<sup>38</sup> *Lobbying Transparency and Ethics Act* - <http://www.canlii.org/qc/laws/sta/t-11.011/20080415/whole.html>

<sup>39</sup> *Lobbyists Registration Act 1998* - <http://www.canlii.org/on/laws/sta/1998c.27sch./index.html>

<sup>40</sup> *Lobbyists Registration Act 2001* - [http://www.qp.gov.bc.ca/statreg/stat/L/01042\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/L/01042_01.htm)

<sup>41</sup> The Act was proclaimed to commence on 11 October 2005. For the text of the legislation see - <http://assembly.nl.ca/Legislation/sr/statutes/l24-1.htm> - 31

<sup>42</sup> The Alberta *Lobbyists Act* of 2007 is currently awaiting proclamation - <http://www.canlii.org/ab/laws/sta/l-20.5/20080415/whole.html>

the first Commissioner for Lobbying being appointed a year later. A Government media release explained:

Under the Act, paid lobbyists are required to file reports on their specific lobbying objectives and activities in the Newfoundland and Labrador Registry of Lobbyists. The Act defines two categories of lobbyists: consultant lobbyists and in-house lobbyists. Consultant lobbyists are paid to lobby on behalf of client companies, organizations and individuals. In-house lobbyists are employees who lobby on behalf of their organizations. To qualify as an in-house lobbyist, an employee's lobbying activities, alone or combined with other employees, must occupy 20 per cent or more of one staff member's full-time work. The Act also establishes a Code of Conduct for lobbyists and imposes significant penalties for offences and violations. The Commissioner of Lobbyists will oversee compliance with the Act and Code of Conduct, and the Registry of Lobbyists will be administered by a registrar.<sup>43</sup>

Basically, the Act deals with the lobbying of 'public office holders', as term that is defined broadly to include Members of the Newfoundland House of Assembly and their staff, as well public servants and such public office holders as members of a hospital board. Lobbyists include a wide range of 'organisations', among them trade unions and not for profit and charitable organisations. The word 'lobby' is also given a relatively broad ambit, to include communications 'with a public office holder for remuneration or other gain, reward or benefit, in an attempt to influence' the making or amending of legislation or subordinate legislation, the awarding of a grant or contract, the appointment of any public official, or the procurement of goods and service by a public official.

## 5.5 United Kingdom

**Current inquiry into lobbying:** The Public Administration Select Committee is currently conducting an inquiry into the regulation of lobbying. It reports that, at present, multi-client public affairs companies are not subject to external regulation. The Public Relations Consultants Association was set up in 1969, and maintains a membership directory and various codes of conduct. Additionally, eighty per cent of lobby firms belong to the Association of Professional Political Consultants which was established in response to the 'cash for questions' scandal of the early 1990s. This requires organisations to list the names of their clients as well as their consultancy staff. The Public Administration Select Committee adds that some have suggested that firms will only register if it is in their commercial interests to do so.

Questions have been raised over the effectiveness of the content of the code. There has also been some criticism that some of the firms employed by public sector bodies are not members of the APPC and do not list their clients names in full.<sup>44</sup>

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<sup>43</sup> Government of Newfoundland and Labrador, 'First Commissioner of Lobbyists appointed', *Media Release* - <http://www.releases.gov.nl.ca/releases/2005/exec/1005n04.htm>

<sup>44</sup> Public Administration Select Committee, *Lobbyists, access and influence: background issues and questions* - [http://www.parliament.uk/documents/upload/Lobbying\\_IQ\\_paper.pdf](http://www.parliament.uk/documents/upload/Lobbying_IQ_paper.pdf)

Nonetheless, in 1995 the First Report of the Committee on Standards in Public Life welcomed self-regulation of the industry and its Sixth Report in 2000 also rejected outside regulation of the industry. Instead it recommended:

To allay suspicions that some external interests including lobbyists have had privileged access to government, the Committee recommends that Ministers and civil servants should be required to keep a record of contacts with outside interests. A code to improve the transparency of government consultation exercises is also recommended.<sup>45</sup>

**Post-separation employment:** As for ‘revolving door’ provisions, as at July 2007 the Ministerial Code of Conduct states:

On leaving office, Ministers must seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office, apart from unpaid appointments in non-commercial organisations. Ministers will be expected to abide by the advice of the Committee.<sup>46</sup>

The work of the Advisory Committee on Business Appointments (ACBA) is an independent non-departmental public body sponsored by the Cabinet Office, with 7 members appointed by the Prime Minister. They have a very broad remit to approve not only outside appointments taken up by Ministers, but also to apply rules that apply to the most senior members of the Civil Service, the Armed forces and the Diplomatic Service. The Advisory Committee’s Guidelines on the acceptance of appointments or employment outside Government by former Ministers of the Crown states:

The Advisory Committee will consider each appointment on its merits, against specific tests relating to the following:

- to what extent, if at all, has the former Minister been in a position which could lay him or her open to the suggestion that the appointment was in some way a reward for past favours?
- has the former Minister been in a position where he or she has had access to trade secrets of competitors or knowledge of unannounced Government policy which would give his or her company an unfair advantage?<sup>47</sup>

<sup>45</sup> *Sixth Report of the Committee on Standards in Public Life, 2000* - [http://www.public-standards.gov.uk/publications/6th\\_report.aspx](http://www.public-standards.gov.uk/publications/6th_report.aspx)

<sup>46</sup> Cabinet Office, *Ministerial Code: a code of ethics and procedural guidance for Ministers*, July 2007 - [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/ministers/ministerial\\_code.aspx](http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code.aspx)

<sup>47</sup> Advisory Committee on Business Appointments - <http://www.acoba.gov.uk/~media/assets/www.acoba.gov.uk/guidelines.pdf.ashx>

The system operates on a voluntary basis, but it is said to be ‘widely and willingly used’.<sup>48</sup> All approaches to the Advisory Committee are confidential and advice is not made public unless the appointment is taken up. Published on the Advisory Committee’s website are lists of those appointments taken up by Ministers and Crown Servants. These are updated on a monthly basis and indicate where one or two Committee members dissented from the advice given.<sup>49</sup>

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<sup>48</sup> ACBA, *Third Report 1999-2000*, p 11.

<sup>49</sup> ACBA - <http://www.acoba.gov.uk/~media/assets/www.acoba.gov.uk/guidelines.pdf.ashx>

## 6. THE REGULATION OF LOBBYING IN AUSTRALIA

### 6.1 Commonwealth – Lobbying Code of Conduct

With this analytical framework in place, proposed and existing schemes for the regulation of political lobbying can be looked at in more detail, starting with the release by the Special Minister of State Senator John Faulkner in April 2008 of the Australian Commonwealth Government's exposure draft of a *Lobbying Code of Conduct*. Its key components can be set out as follows:

Registration and reporting regulations	<ul style="list-style-type: none"> <li>• Business registration details of lobbyist, including owners/partners/major shareholders where the business is not a publicly listed company</li> <li>• Names and positions of persons engaged to carry out lobbying activities</li> <li>• Names of clients</li> <li>• Quarterly updates of lobbyist's details</li> <li>• Registration lapses if details not supplied within 10 days of quarterly deadlines</li> <li>• Statutory declaration that lobbyist never sentenced to 30 months or more imprisonment or convicted in last 10 years of theft, fraud or other dishonesty offence</li> </ul>
Spending disclosure	<ul style="list-style-type: none"> <li>• None</li> </ul>
Electronic filing	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
Public access	<ul style="list-style-type: none"> <li>• Public document available on website of Department of the Prime Minister and Cabinet</li> </ul>
Enforcement	<ul style="list-style-type: none"> <li>• No independent statutory oversight body</li> <li>• Register policed by Cabinet Secretary</li> <li>• Cabinet Secretary has general power – exercised in his/her absolute discretion – to refuse registration or remove lobbying business or an individual from Register</li> <li>• Specifically, the Secretary <i>may</i> remove lobbyists from Register if he/she is of the opinion that: conduct has contravened the terms of the Code; registration details are inaccurate; lobbyist fails to answer relevant questions in reasonable time; or where registration requirements have not been fulfilled</li> <li>• Conduct is to be measured against 'principles of engagement with government representatives'</li> <li>• Government representatives <i>must</i> report breaches of the Code to the Secretary</li> </ul>
Revolving door provisions	<ul style="list-style-type: none"> <li>• After 1 May 2008, retiring Ministers and Parliamentary Secretaries banned from lobbying for 18 months</li> <li>• After 1 May 2008, retiring Ministerial advisory staff, Senior Public Servants and high ranking Defence Force personnel banned from lobbying for 12 months</li> </ul>
Lobbyists defined	<ul style="list-style-type: none"> <li>• 'Hired guns' employed by third party to lobby on their behalf</li> </ul>
Targets of lobbying activity defined	<ul style="list-style-type: none"> <li>• Communication intending to influence members of the Executive (Ministers and Parliamentary Secretaries) and staff; Agency heads and public servants/officers (including defence force personnel)</li> </ul>

The model for the Commonwealth code is the Western Australian *Contact with Lobbyists Code*, established in 2006. As set out above, the Commonwealth *Lobbying Code of Conduct* probably belongs to either the category of ‘lowly regulated’ or ‘medium regulated systems’.<sup>50</sup> Its registration requirements are relatively strict, as are its ‘principles of engagement with government representatives’ which require, among other things, that lobbyists separate their professional lobbying work from any personal involvement in a political party. The draft code’s revolving door provisions are also relatively strict. *Crikey.com* had this to say:

There is one area where the Government has gone much further than anticipated. The ban on ex-Ministers lobbying for 18 months after leaving offices has been extended to ministerial advisers, defence force officers at or above the rank of colonel, or equivalent, and Public Service SES officers, who will all be banned from lobbying for twelve months after ceasing their previous positions. The days of ADF officers and military procurement specialists going straight into the welcoming arms of defence contractors would appear to be over.<sup>51</sup>

However other areas are more problematic. Enforcement of the code is left to the discretion of the Cabinet Secretary. There is no equivalent of a statutory regime of offences and penalties at work, oversighted by an independent authority. The absence of any spending disclosure provisions would also tend to place it closer to the category of ‘lowly regulated systems’, scoring only very modestly on the CPI quantitative index discussed previously.

The same can be said of the proposal’s narrow definition of lobbyist, limited as this is to ‘hired guns’ working on behalf of third party clients. The scheme does not apply to trade unions, industry associations, churches and charities. Three broad exclusions apply, set out by Warhurst as follows:

The first involves charitable, religious and other organizations, whether or not in receipt of tax deductible status. The second involves all those who lobby on their own behalf. The third involves those, like lawyers and other professionals who only lobby occasionally and/or incidentally.

As Warhurst comments:

Third party lobbyists are only one element of the whole lobbying industry. They are technicians like lawyers and accountants who perform a fee for service. So a code of conduct that excludes many of the bigger players in the industry who lobby on their own behalf, like corporations, churches, unions and big national pressure groups like the Business Council of Australia, the Australian Medical Association, the Australian Conservation Foundation and so on, offers only very partial

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<sup>50</sup> For the full text see - <http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=contactWithLobbyistsCode>

<sup>51</sup> ‘Why Faulkner’s lobbyist register won’t work’ - <http://www.crikey.com.au/Politics/20080403-Why-Faulkners-Lobbyist-Register-wont-work.html>

coverage.<sup>52</sup>

*Crikey.com* is equally critical, stating

But the majority of lobbyists, the in-house representatives and government relations managers who push the interests of their own companies, will continue to ply their trade without needing to register. Surely the point of the register is to shed light on who is seeking to influence government, whether or not they are large enough to have their own government relations areas.

The article continues:

Peak industry bodies aren't caught. Nor are representatives of non-profit bodies -- trade unions thus won't be required to register. Nor will religious groups, as Bob Brown noted. "It should cover in-house lobbyists and other third-party organisations which seek to influence government legislation (like the Exclusive Brethren)," Brown told us. "And it should cover all MPs and senators, not just Government representatives." And one of the biggest gaps of all is the exemption for lawyers and accountants. Only if lobbying forms an undefined "significant" part of their activities will they be required to be registered.<sup>53</sup>

Reacting to the release of the draft *Lobbying Code of Conduct*, the Australian Democrats Accountability Spokesperson Senator Andrew Murray stated:

The Democrats are very pleased with this initiative. It is a significant and proactive integrity measure. I will be recommending that the Senate Finance and Public Administration Committee report on the Draft.<sup>54</sup>

On a more critical note, Senator Murray added:

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<sup>52</sup> J Warhurst, *The Lobbying Code of Conduct: An Appraisal* - [http://democratic.audit.anu.edu.au/papers/20080415\\_warhurst\\_lobbying.pdf](http://democratic.audit.anu.edu.au/papers/20080415_warhurst_lobbying.pdf) Under the draft code 'lobbying are those activities that involve 'communications with a Government representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or the allocation of funding'. Warhurst observes that 'The exclusions are again important and include activities associated with parliamentary committee work, the usual constituency work of parliamentarians, petitions and public statements and campaigns'.

<sup>53</sup> 'Why Faulkner's lobbyist register won't work' - <http://www.crikey.com.au/Politics/20080403-Why-Faulkners-Lobbyist-Register-wont-work.html>

<sup>54</sup> On 14 May 2008 the Senate referred the *Lobbying Code of Conduct* to the Finance and Public Administration Committee for inquiry and report by the first sitting Thursday of August 2008. - [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=112595&TABLE=JOURNALS&TARGET=](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=112595&TABLE=JOURNALS&TARGET=)

There are at least two issues deserving further exploration: Is it comprehensive enough? Should it include those directly representing their own organisations, not just those representing third parties? Does Parliament need a parallel system, because lobbying is not just directed at government ministers and bureaucrats, but is also directed at those holding the balance of power, holding portfolios, and chairs and members of committees?"<sup>55</sup>

Speaking on the ABC's *Lateline* program Senator Murray explained:

Legislation is decided by parliamentarians, it's not decided by the Government and therefore lobbying of those who hold the balance of power or backbench committees of any of that sort is a very important area for regulation.<sup>56</sup>

On the other hand, by its definition of 'government representative' the code does extend beyond senior public servants and officials to all persons employed under the *Public Service Act 1999* (Cth).<sup>57</sup> It might be described as a bit of a mixed bag, therefore, relatively strong in some areas, requiring quarterly updates from lobbyists, for example, less so in others.

A footnote to the debate is that Senator Faulkner is reported to have ruled out any possibility of Brian Burke's inclusion on any proposed register of lobbyists, this despite his technical eligibility under the proposed guidelines.<sup>58</sup> This Commonwealth register is reported to come into full effect on 1 July 2008.<sup>59</sup> It will operate in conjunction with the Rudd Government's *Standards of Ministerial Ethics* which, among other things, requires Ministers 'to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public'.<sup>60</sup>

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<sup>55</sup> Australian Democrats Press Release, *Lobbying code of conduct: Senator Andre Murray*, 2 April 2008 - [http://www.democrats.org.au/news/index.htm?press\\_id=6538](http://www.democrats.org.au/news/index.htm?press_id=6538)

<sup>56</sup> 'New draft conduct laws for professional lobbyists', *Lateline* 15 April 2008 - <http://www.abc.net.au/lateline/content/2007/s2218081.htm>

<sup>57</sup> For a commentary on the Code's application to Commonwealth public servants see – Australian Government, *Circular No 2008/4: requirements relating to the Lobbying Code of Conduct and post separation contact with government* - <http://www.apsc.gov.au/circulars/circular084.htm>

<sup>58</sup> 'Lobbyist code of conduct released', *The Age*, 2 April 2008 - <http://news.theage.com.au/lobbyist-code-of-conduct-released/20080402-237c.html>

<sup>59</sup> As of 2 June 2008, there are 33 entries on the Register - <http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=wholsOnRegister>

<sup>60</sup> For the full text see - <http://arts.anu.edu.au/democraticaudit/misc/RuddMinCodeConduct.pdf>

## 6.2 Commonwealth – previous initiatives and proposals

**The Hawke Government initiative:** In 1983-84 the Hawke Government introduced the Lobbyist Registration Scheme in reaction, it is said, ‘to the scandal generated by the connection between a lobbyist, the former national secretary of the Labor Party David Comber, and a Soviet diplomat Valery Ivanov’. In Warhurst’s opinion, ‘The requirements for lobbyists under this scheme were not onerous’ and the scheme served in fact to ‘give added legitimacy’ to the lobbying industry. He also claims that it was a ‘dead letter’ by the time it was abolished in 1996 by the incoming Howard Government.<sup>61</sup>

**Bob Brown’s Bill:** On 14 June 2007 Greens Senator Bob Brown introduced a private member’s bill entitled the Lobbying and Ministerial Accountability Bill. The Second Reading Speech explained:

To ensure lobbying activities are open and transparent, this bill will create a public register of lobbyists and regulate the industry.

The bill will require:

- all paid lobbyists to be registered and to lodge detailed information with the Commonwealth Public Service Commissioner; lobbyists to file a quarterly return of lobbying activity, with details about who they met and the purpose of the meeting;
- the Public Service Commissioner to maintain a Register of Lobbying Activity that is open for public inspection in hard copy and on the internet;
- penalties to apply for failure to abide by the lobbying laws and the Australian Crime Commission to investigate offences.

With reference to the scope of the Bill, the Second Reading speech stated:

Members of the public or those lobbying in a volunteer capacity will not be covered by the laws, but the definition of lobbyists is broadly drafted to cover law firms, public relations companies and former politicians as well as professional lobbyists.

In effect, the Bill would have regulated ‘in-house’ or ‘employed’ lobbyists, as well as ‘consultant’ lobbyists working on behalf of third parties. On the other hand, it did not exclude a natural person from lobbying on their own behalf.

Lobbying activity was also broadly defined, as was the target of such activity. For this purposes the term ‘public official’ was defined to include Members of either House of Parliament.

The Bill also included ‘revolving door provisions’ excluding Minister and Ministerial advisers from engaging in lobbying for a period of 2 years. This exclusion was made subject to certain exceptions, for examples, for acting on behalf of charities or political parties.<sup>62</sup>

<sup>61</sup> J Warhurst, ‘Lobby world’ (April-May 2007) *Arena Magazine*13.

<sup>62</sup> For previous proposals at the Commonwealth level see – I Holland, *Post-separation*

The Bill lapsed upon the prorogation of the Commonwealth Parliament.

### 6.3 South Australia

**Lobbying and Ministerial Accountability Bill 2007:** In very similar terms to Senator's Brown's proposal is a Bill of the same name – the Lobbying and Ministerial Accountability Bill 2007 – which was introduced in the South Australian House of Assembly on 15 November 2007 by the Independent RB Such. The Bill has not as yet passed its Second Reading stage.

A feature of the Bill is that it regulates the lobbying of 'senior public officials', a term defined to include Minister and their advisors, all Members of Parliament, and senior public servants. A Code of Conduct would have to be observed by senior public officials when dealing with lobbyists. Further to the Bill, a register of lobbyists would be kept by the Auditor-General and, as with Senator Brown's proposal, the investigation of offences would be undertaken by the Australian Crime Commission. The Bill's 'revolving door' or post-separation employment provisions are also based on Senator Brown's proposal.

**Post-separation employment:** Post-separation employment rules are set out in Ministerial Code of Conduct of 2002, as follows:

Ministers shall, within 14 days of the commencement of this Code (or within 14 days of taking up office) provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that they will not, for a two year period after ceasing to be a Minister, take employment with, accept a directorship of or act as a consultant to any company, business or organization:

- a) with which they had official dealings as Minister in their last 12 months in office; and
- b) which: is in or in the process of negotiating a contractual relationship with the Government; *or* is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; *or* has a government entity as a shareholder; *or* is in receipt of government loans, guarantees or other forms of capital assistance; *or* engages in conduct directly inconsistent with the policies and activities of the Minister - without the prior written consent of the Commissioner for Public Employment in consultation with the Premier of the day.<sup>63</sup>

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*employment for Ministers*, Research Note No 40, 2001-02, Commonwealth Parliamentary Library.

<sup>63</sup> Government of South Australia, *Ministerial Code of Conduct* - [http://www.premcab.sa.gov.au/pdf/Conduct\\_2002.pdf](http://www.premcab.sa.gov.au/pdf/Conduct_2002.pdf) In Queensland, the Ministers Code of Ethics, which is at Appendix 19 to the *Ministerial Handbook*, provides that Ministers will 'undertake not to take personal advantage, in any future employment, of information obtained as a Minister which is not publicly available, including confidential information on pending contracts or dealings. This does not apply to statutory appointments, nor does it apply to information that a Minister may have of another Minister's department which is not confidential.'

## 6.4 Western Australia

**Contact with Lobbyists Code:** The draft *Lobbying Code of Conduct* released by the Commonwealth Government in April 2008 is based to a significant extent on the *Contact with Lobbyists Code* established in Western Australia in 2006.<sup>64</sup>

Lobbyists are defined in a similarly restrictive way to include only ‘hired guns’ working on behalf of third parties. These must place their details on a quarterly basis on a Register of Lobbyists, which is open to public view on the Internet. As at 9 May 2008 there are 76 entries on the Register.<sup>65</sup> The Register is administered by the Director General of the Department of the Premier and Cabinet who may refuse to accept an application at his discretion, or similarly remove a lobbyist from the Register at his discretion where, for example, the lobbyist has contravened the terms of the *Contact with Lobbyists Code*.

**Post-separation employment:** Post-separation employment rules are set out in the Ministerial Code of Conduct of August 2006, as follows:

Ministers leaving government should exercise care in taking up employment or business activities in the period immediately after leaving government. In particular, they should take care in accepting offers of employment from bodies:

- which are in a contractual relationship with the State Government;
- which are in receipt of subsidies or benefits from the Government not received by a section of the community or the community at large;
- in which the Government is a shareholder;
- which are in receipt of government loans, guarantees or other forms of capital assistance; or
- with which the departments or branches of government are, as a matter of course, in a special relationship.

In all areas, confidential information gained during office must not be used and care should be taken to ensure that preferential treatment for the new employer or the business is not obtained by the use of contacts and personal influence by the former Minister.<sup>66</sup>

<sup>64</sup> The full text of that Code can be accessed at - <https://secure.dpc.wa.gov.au/lobbyistsregister/index.cfm?event=contactWithLobbyistsCode>

<sup>65</sup> This can be accessed at - <https://secure.dpc.wa.gov.au/lobbyistsregister/index.cfm?event=wholsOnRegister>

<sup>66</sup> Government of Western Australia, *Ministerial Code of Conduct* - [http://www.premier.wa.gov.au/docs/accountability/ministerial\\_code\\_of\\_conduct.pdf](http://www.premier.wa.gov.au/docs/accountability/ministerial_code_of_conduct.pdf)

## 6.5 New South Wales

**ICAC and lobbying:** In one way or another and at differing levels the issue of lobbying has been around in NSW politics for many years. The ICAC, in particular, has taken note of lobbying and its attendant issues. As far back as 1990 in its *Report on North Coast Land Development* the ICAC considered that lobbying could easily lead to corruption and recommended the establishment of a public register of lobbyists, and perhaps their clients. The report concluded a register could provide a sound basis for regulation of lobbying activities, by legislation or self-regulation. This recommendation was reiterated in the 1998 report *Strategies for Managing Post Separation Employment* where it was stated

In the absence of laws in NSW to deal with influence from former public officials, public sector organisations need to take responsibility for minimising the possibility that former public officials will attempt to influence government decision making. The ICAC maintains that there should be a register of political lobbyists in NSW, as recommended in its 1990 report *Investigation into North Coast Land Development*.<sup>67</sup>

Returning again to the issue in 2005, in its *Report on investigation into planning decisions relating to the Orange Grove Centre* the ICAC recommended

That the NSW Government amend the Ministerial Code of Conduct to include guidelines about lobbying activities. The guidelines should address issues such as transparency, equality of access and ethical conduct in relation to lobbying.<sup>68</sup>

**Ministerial guidelines and lobbyists:** In 2006 the NSW Premier's Department issued guidelines for Ministers, their staff and public officials in dealing with lobbyists. These guidelines only apply where lobbying occurs in respect of a decision that is proposed to be made further to legislation (a statutory decision), where the decision-maker is required to adhere to the principles of administrative law. However, they do apply 'to all Ministers, ministerial staff and public officials who are lobbied in respect of a proposed statutory decision'.<sup>69</sup> The lobbying activity covered by the guidelines relates to

lobbying by any person, including principals seeking or resisting the making of the proposed statutory decision, special interest groups, professional advocates, Members of Parliament and any other person.

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<sup>67</sup> ICAC, *Strategies for Managing Post Separation Employment* - [http://www.icac.nsw.gov.au/files/pdf/pub2\\_32cp1.pdf](http://www.icac.nsw.gov.au/files/pdf/pub2_32cp1.pdf)

<sup>68</sup> ICAC, *Report on investigation into planning decisions relating to the Orange Grove Centre*, p 102- [http://www.icac.nsw.gov.au/files/pdf/pub2\\_99i.pdf](http://www.icac.nsw.gov.au/files/pdf/pub2_99i.pdf)

<sup>69</sup> It is added: 'They apply where the person who is lobbied is the actual decision-maker as well as in those cases where the person who is lobbied is not the decision-maker and another Minister or public official is responsible for making the decision'.

It is further stated that:

While the principles set out in these Guidelines are not required to be complied with where lobbying occurs on other issues (such as lobbying which occurs in relation to legislative changes), the principles may still provide some useful guidance.

The guidelines then set out the following ‘principles to be observed’:

Ministers, ministerial staff and public officials should ensure that lobbying in relation to a statutory decision:

- (a) is undertaken in accordance with appropriate practices; and
- (b) does not undermine the integrity of decision-making processes.

In some cases, it might even be wise for Ministers, ministerial staff and public officials to consider taking such reasonable steps as are available to them to try to ensure that lobbying does not occur at all while the proposed statutory decision is being made.

The guidelines add:

In particular, Ministers, ministerial staff and public officials who are lobbied should:

- (i) be alert to the motives and interests of those who seek to lobby in relation to a statutory decision
- (ii) be aware of which person, organisation or company a lobbyist is representing;
- (iii) ensure that the making of a statutory decision is not prejudiced by the giving of undertakings to an interested party prior to the decision-maker considering all relevant information;
- (iv) avoid doing or saying anything which could be viewed as granting a lobbyist preferential treatment;
- (v) ensure as a decision-maker that, as far as possible, competing parties are treated fairly and consistently - for example, it may be necessary to provide a group with an opportunity to make submissions in relation to a proposed decision in circumstances where another group with a different view has been afforded an opportunity to make representations on the proposed decision;
- (vi) ensure that confidential information is not disclosed to a lobbyist;
- (vii) be alert to attempts by lobbyists to encourage decision-makers to consider matters which are extraneous or irrelevant to the merits of the decision under consideration;
- (viii) consider keeping records of meetings with lobbyists, and if necessary having another person attend the meeting as a witness or to take notes; and

(ix) ensure that no action is taken which involves a breach of a relevant code of conduct (such as the Ministerial Code of Conduct), for example, by accepting inappropriate hospitality or gifts from lobbyists.<sup>70</sup>

A second arm to the regulation of lobbyists in NSW is in the form of a protocol for the management of corruption allegations made to Ministers, their staff or public officials during lobbying. Such allegations are to be dealt with by the appropriate agency head and, where a duty to notify possible corrupt conduct arises, the matter is to be referred to the ICAC.

In 2007 the NSW Premier, Morris Iemma, rejected the need for a register for lobbyists, arguing that not all organisations and individual lobbyists would be covered. As Warhurst says, the Premier ‘prefers to rely on ministerial guidelines introduced in 2006 to deal with lobbyists and on the general oversight of the Independent Commission against Corruption’.<sup>71</sup>

**Parliamentary register of lobbyists:** Since 1996 NSW the Parliament has operated a register of lobbyists but only for the specific purpose of allowing registered lobbyists access to some non-public areas in the Parliamentary precincts, such as the Parliamentary Library.<sup>72</sup>

As the President of the Legislative Council explained to an Upper House Estimates Committee on 19 October 2007:

I am advised that lobbyists are administered by Parliamentary Security Services. Lobbyists’ passes only provide access to restricted areas of the building and one copy of any bill or legislation that is requested. There is no special access to Ministers or public officers provided to lobbyists. Nor are there any special privileges. We are currently reviewing the lobbyist policy to consider if there are any changes necessary.

## 6.6 Post-separation employment rules in NSW

**ICAC and post-separation employment rules:** A particular issue of interest to the ICAC has been the formulation of post-separation employment rules for Ministers. According to the ICAC:

The purpose of post-separation employment rules for Ministers is twofold. Firstly, they are intended to reassure the public that Ministers are not taking unfair

<sup>70</sup> NSW Premier’s Department - [http://www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars/ministerial\\_memoranda/2006/m2006-01](http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2006/m2006-01)

<sup>71</sup> Warhurst, n 1, p 66.

<sup>72</sup> RD Grove and M Swinson eds, *NSW Legislative Assembly Practice, Procedure and Privilege*, 2007, p 219.

advantage of their public office positions. Secondly, they provide guidance to Ministers in making decisions about their future careers which are inevitably subject to public scrutiny and possible criticism.<sup>73</sup>

Suggested in the 1997 discussion paper *Managing Post Separation Employment* was the introduction of ‘cooling-off periods’, with the ICAC commenting:

A cooling off period for former public officials, during which time they could not approach their former employer on matters in which they were personally and substantially involved, has been used successfully in other countries. It would lessen the likelihood that public administration would be compromised by influence. As the purpose of cooling off periods is to remove any personal advantage the former public official has gained over others, rather than to restrain trade, they would need to be limited in time.

The ICAC Discussion Paper continued:

While it might be sufficient to limit contact by former senior public servants to their former Department or agency, for higher profile public officials such as Members of Parliament and Ministers, whose knowledge of government programs and influence is likely to be greater, broader restrictions may be appropriate.<sup>74</sup>

The ICAC had further cause to consider post-separation employment rules for Ministers in its June 2004 *Report on investigation into conduct of the Hon J Richard Face*. There the ICAC investigated an allegation that Face had, in early 2003, used both his electorate and ministerial office staff for purposes not connected with his parliamentary duties, in particular to assist him to establish a consultancy business which he proposed to operate after his retirement from Parliament. In 1995 Face became Minister for Gaming and Racing and Minister Assisting the Premier on Hunter Development, portfolios he held until his resignation as a Minister on 12 February 2003. As the ICAC reported:

The nature of his new career was to be a consultancy in the area of licensing, racing, gaming and “Hunter development”. Mr Face said in his evidence to the Commission that he could see nothing wrong with what he had done.<sup>75</sup>

After considering post-separation models in other jurisdictions, including options for codes of conduct or specific legislation, the ICAC recommended:<sup>76</sup>

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<sup>73</sup> ICAC, *Report on investigation into conduct of the Hon J Richard Face*, June 2004, p 78.

<sup>74</sup> ICAC, *Managing Post Separation Employment: Discussion Paper*, April 1997 - [http://www.icac.nsw.gov.au/files/pdf/pub2\\_25cp1.pdf](http://www.icac.nsw.gov.au/files/pdf/pub2_25cp1.pdf)

<sup>75</sup> ICAC, n 73, p 69.

<sup>76</sup> The report looked at models of regulation in Australia based on codes of conduct (Queensland, Western Australia and South Australia), the UK model and the legislative approach adopted in the US.

That the Government introduce rules to restrict the range of employment that Ministers can take up immediately after leaving office.

Further recommendations were made for the Government to consider in developing these rules, as follows:

- (a) including an explicit statement in the Ministerial code of conduct which highlights the ethical issues raised by post-separation employment of Ministers;
- (b) establishing a process (such as an advisory committee) for approving, or advising Ministers on, offers of employment or business associations received by them before and after leaving office;
- (c) requiring that while in office Ministers *must* obtain advice in relation to any offers of employment or business associations received which directly relate to their portfolio responsibilities;
- (d) providing an option for former Ministers to seek and obtain advice in relation to offers of employment or business associations received after leaving office;
- (e) requiring that Ministers must, while in office and for a specified period after leaving office, obtain approval to take up offers of employment or business associations which directly relate to their portfolio responsibilities;
- (f) requiring that for a specified period after leaving office Ministers may not take up appointments in areas of activity specified in the rules – such as the portfolio areas for which they were responsible during the last year before they left office;
- (g) requiring that for a specified period after leaving office Ministers may not, for purposes of personal commercial advantage, have contact with employees of departments for which they were responsible during their last year in office [any such requirement should not preclude the level or nature of contact available to all members of the general public];
- (h) establishing a method of appropriately enforcing the rules imposed.

On this last issue of enforcement the ICAC had commented:

In considering the options for a policy of restricting post-ministerial employment, the issue of enforceability must be considered. A statement in a code of conduct is not likely to be sufficient in itself to deter unwanted behaviour. Furthermore, regulation by government is often regarded with suspicion by the public. In order to ensure probity in post-ministerial appointments, and public confidence in the regulatory process, it is essential that any such policy is both effective and enforceable.<sup>77</sup>

**Post-separation guidelines and the Parliamentary Ethics Adviser:** Responding to the ICAC's recommendations, on 28 March 2006 the Premier announced that the Ministerial Code of Conduct would be amended, along lines based on the UK model it was said, to provide that

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<sup>77</sup> ICAC, n 73, p 78.

former Ministers must, during the first 12 months of leaving office, obtain written advice from the Parliamentary Ethics Adviser before accepting any employment or engagement, or providing services to third parties. This obligation will apply where the proposed employment relates to portfolio responsibilities held during the last two years of ministerial office. A similar obligation will apply to current Ministers who, while still in office, are planning post-separation employment or businesses.

Premier Iemma continued:

The adviser will be required to express his view as to whether the acceptance of the position could give rise to a reasonable concern that the Minister's conduct while in office was influenced by the prospect of future employment or engagement, or that the Minister might make improper use of confidential information to which he or she had access. The ethics adviser may advise that a position should not be taken, or should be taken subject only to certain conditions. It will, of course, be a matter for former Ministers to decide whether or not they accept that advice, but if they accept the position regardless, the ethics adviser will forward his advice to the Presiding Officer of the relevant House.

No express sanctions or enforcement provisions were established therefore, with the Premier commenting in this respect:

A former Minister would be unlikely to run the risk of damaging his or her reputation by acting against the advice of the independent ethics adviser.<sup>78</sup>

Following the Premier's announcement, in October 2006 an amended Code of Conduct for Ministers of the Crown was tabled, providing at section 7.4 that:

Ministers who, while in office, are considering an offer of post-separation employment or an engagement or who are proposing to provide services after they leave office to third parties (including establishing a business to provide such services) must obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties which relates or relate to their portfolio responsibilities (including portfolio responsibilities held during the previous two years of Ministerial office).

And at section 7.5 that:

Former Ministers must also obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties (including establishing a business to provide such services) within the first 12 months of leaving Ministerial office, which relates or relate to their former portfolio responsibilities during the last two years in which they held Ministerial

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<sup>78</sup> NSWPD (LA), 28 March 2006, p 21542. For a commentary on the background to these reforms and on the UK model see – NSW Parliament, Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Post Separation Guidelines – Meeting with the Parliamentary Ethics Adviser, November 2006*.

office. *This requirement does not apply to any employment or engagement by the Government.* (emphasis added)<sup>79</sup>

Further to this, the functions of the Parliamentary Ethics Adviser were extended to include the provision of advice to Ministers or former Members who held ministerial positions in relation to post-separation employment.<sup>80</sup> Advice can be requested either by serving Ministers or a person who held a ministerial office within the last 12 months. The advice relates to whether: (a) an offer of post-separation employment has been made which relates to the Minister or former Minister's portfolio responsibilities held over the previous two years, or (b) a decision to work as a consultant lobbyist for third parties would give rise to *reasonable concern* that:

- the Minister's (or former Minister's) conduct while in office was influenced by the prospect of the employment or engagement or the proposal to provide services; or
- the Minister (or former Minister) might make improper use of confidential information to which he or she has access while in office.<sup>81</sup>

In applying these rules, the terms of reference provide that:

If the Adviser is of the opinion that accepting the proposed employment or engagement or proceeding with the proposal to provide services might give rise to such a reasonable concern, but the concern would not arise if the employment or engagement or the provision of services were subject to certain conditions, then he or she must so advise and specify the necessary conditions.

The Ethics Adviser is empowered therefore to advise that employment may be accepted or lobbying services performed subject to appropriate conditions. He is required to keep records of advice given and of factual information on which the advice was based. This advice is normally to remain confidential.<sup>82</sup>

Further, provision is also made for the Ethics Adviser to report to Parliament annually on the statistical details of the number of Members who sought advice and other matters.<sup>83</sup>

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<sup>79</sup> It seems therefore that former Ministers can take up governmental appointments immediately upon resigning from Parliament.

<sup>80</sup> For the current resolution setting out the functions of the Ethics Adviser see – Grove and Swinson eds, n 72, pp 55-57.

<sup>81</sup> NSW Parliamentary Ethics Adviser, *Terms of Reference* - <http://bulletin/prod/corp/policies.nsf/Oc023ed434633799ca256eec00299c6d/c535bf5e6f5a2e68ca2573640000a75e!OpenDocument>

<sup>82</sup> Unless it is made public with the permission of the Member concerned, or where either House of Parliament calls for the production of the records in circumstances where the Member concerned has sought to 'rely on the advice of the Parliamentary Ethics Adviser; or given permission for the records to be produced to the House'.

<sup>83</sup> But note that the last Annual Report of the Ethics Adviser is dated 2005.

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However, no system is in place, comparable to that in the UK, for lists of appointments taken up by Ministers to be posted on a publicly available website, updated on a monthly basis.

**Comment:** As the Ethics Adviser has not reported to Parliament since the introduction of these new functions, it is impossible to say how well these post-separation employment rules are working, if at all. For obvious reasons, the system in place in NSW at present would be classified as weakly regulated in terms of transparency and enforceability.

## 7. CONCLUDING COMMENTS

The academic literature on lobbying suggests a number of things. One is that no regulatory system is a panacea and that some way of undermining established rules would always be found. Nonetheless, it is also suggested that more highly regulated schemes are more likely to ensure accountability in government. At least, that is said to be the perception of those actors or participants in the political systems under study.

As we have seen from the foregoing account, the regulatory system in NSW is quite rudimentary. It is based not on legislation as in Canada and the US, but on a Code of Practice which applies only to Ministers, the enforceability of which is left up to the ICAC, if and when questions of possible corruption are brought out into the open.

By way of contrast, the US States and the Federal Government have made concerted efforts to bring accountability and transparency to the practice of lobbying. The same is true in Canada federally and in several of the Provinces. Imperfect as they may be, these systems place statutory requirements on lobbyists to register and provide a considerable amount of detail about their practices. Enforcement mechanisms are in place, as are penalties for failure to satisfy the statutory requirements. Post-separation employment rules, prohibiting Ministers and others from engaging in specific or general forms of lobbying for defined periods, also find legislative expression.

In Australia, only in Western Australia in 2006 and more recently at the Commonwealth level have moves been made to establish a register for lobbyists. As discussed, these schemes are somewhat limited by US and Canadian standards, for example, defining lobbyists narrowly to cover only 'hired guns' or consultant lobbyists contracted by third parties to act on their behalf. In terms of the 'ideal types' considered in this paper, the new Commonwealth scheme can be said to belong to either the category of 'lowly regulated' or 'medium regulated systems'. However, it is fair to say that in some areas it is relatively strict, including that of post-separation employment rules and the requirement for quarterly updates from lobbyists.

On one view, the Commonwealth Lobbying Code of Conduct, which comes into force on 1 July 2008, is a step in the right direction. Then again, an argument can be made that it deals with the more obviously problematic aspects of lobbying practice, those that give rise to most public concern. By targeting consultant lobbyists working on behalf of third parties, it seeks to address concerns about the undue influence such professional lobbyists are said to have in the small world of Australian politics, where the accumulated links between these 'hired guns' and the decision-makers can sometimes seem uncomfortably close. Similarly, by establishing a 'cooling-off' period for Ministers, senior public servants and others before they are able to undertake lobbying activities the Code addresses the 'conveyor belt' perception that public service has become a means to achieving the goals of private interest.

It is not to say that the regulation of lobbyists could not go further, to extend to 'in-house' lobbyists, for instance, or to include communications seeking to influence all parliamentarians, irrespective of whether they hold an executive position. Both these matters are currently the subject of inquiry by the Senate's Finance and Public

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Administration Committee, established to consider generally whether the *Lobbying Code of Conduct* 'is adequate to achieve its aims'.

Many issues arise, particularly in respect to extending the regulatory system to cover all parliamentarians. What problem would such regulation seek to address? In normal circumstances, an individual member of the major parties, where strict discipline applies, would not be influenced by a lobbyist to vote one way or another on legislation, or indeed on any other matter that was the subject of a parliamentary vote. Presumably, if the question of influence were to arise it would do so at an earlier stage, where a Member spoke for or against an issue or a measure in Caucus or in some other party forum. The situation for members of minor parties and independents may be somewhat different, particularly where they hold the balance of power. These are the kinds of issues the Senate Committee will need to consider. Arguments on behalf of transparency and accountability must be given due weight, but so too must those considerations founded on the requirements of representative democracy, for constituents to communicate freely with Members of Parliament, and for Members of Parliament to talk to and meet as wide a range of people as possible. The extent to which overseas practice offers meaningful guidance and comparison is another question to be answered, bearing in mind that party discipline may not always be as rigidly applied in other jurisdictions as it is in Australia. The outcome of the UK's Public Administration Select Committee inquiry into lobbying would be an interesting point of comparison in this and other respects.

It may be that the case for regulating 'in-house' lobbyists, working on behalf of corporations and other organisations, including charities, religious groups and trade unions is more straightforward. Again, the relevant issues are sure to be canvassed by the Senate's Finance and Public Administration Committee. It may also be the case that, in the wake of these developments at the Commonwealth level, these and other issues concerning lobbying await further consideration in NSW.

## APPENDIX A

CENTER FOR PUBLIC INTEGRITY

US STATE LOBBYING TOTALS, 2004-06

<http://www.publicintegrity.org/hiredguns/chart.aspx?act=lobbyspending>

State	2004 Expenditure	2005 Expenditure	2006 Expenditure	Lobbyists Registered In 2004	Lobbyist Employers In 2006	Notes
Alabama	No Total	No Total	No Total	603	693	
Alaska	14,632,079	16,750,773	26,272,631	342	630	
Arizona*	3,082,229	2,941,947	2,602,866	800	1291	<i>Compensation/salary is only reported for lobbyists employed by public bodies. No compensation/salary is reported for other lobbyists. The total number of lobbyists represents primary and paid lobbyists, but the state counts an additional 2,800 lobbyists.</i>
Arkansas	No Total	No Total	No Total	452	537	
California	212,695,872	227,940,496	271,680,365	1267	3201	<i>Spending totals include only amounts filed electronically.</i>
Colorado	20,888,314	22,112,714	24,396,668	670	2325	<i>The annual filing period is July 1 through June 30. The 2004 and 2005 total have been updated.</i>
Connecticut	27,626,998	No Total	38,419,882	635	928	
Delaware*	161,855	128,783	136,200	270	568	
Florida	3,858,165	4,025,430	121,760,708	2029	3238	<i>Due to change in reporting law, the 2006 total includes compensation for the first time, but expenditures are no longer required to be reported. Legislative and executive branch lobbyists register with different offices; lobbyist and employer numbers cover legislative branch only.</i>
Georgia*	946,814	1,203,531	1,202,269	1506	5646	
Hawaii	3,749,862	4,470,088	4,413,155	312	336	<i>Spending totals do not include executive branch lobbyists.</i>

State	2004 Expenditure	2005 Expenditure	2006 Expenditure	Lobbyists Registered In 2004	Lobbyist Employers In 2006	Notes
Idaho*	487,341	506,767	869,664	392	488	
Illinois*	1,004,437	1,345,413	1,279,213	2195	1731	
Indiana	12,115,413	25,166,589	21,999,739	684	648	<i>The annual reporting period is November 1 through October 31. Legislative and executive branch lobbyists register with different offices; lobbyist and employer numbers cover legislative branch only. The 2006 spending total includes \$3.7 million in compensation reported by executive branch lobbyists for calendar year 2006. Because it was the first year of required disclosure for executive branch lobbyists, it is possible there is some overlap between lobbyists reporting compensation earned for both legislative and executive branch lobbying.</i>
Iowa	8,297,108	9,134,939	7,802,064	849	1085	<i>The spending totals do not include legislative branch lobbyists. Legislative and executive branch lobbyists register with different offices; lobbyist and employer numbers cover legislative branch only.</i>
Kansas*	593,974	560,395	938,745	560	1376	<i>Spending totals do not include executive branch lobbyists.</i>
Kentucky	11,869,843	11,672,726	14,424,699	653	622	<i>Legislative and executive branch lobbyists register with different offices; lobbyist and employer numbers cover the legislative branch only. Executive branch lobbyists' salaries are not included.</i>
Louisiana*	535,325	561,390	1,113,298	531	1254	<i>Spending totals do not include executive branch lobbyists.</i>
Maine	3,524,421	4,426,014	3,227,761	279	324	<i>Spending totals do not include executive branch lobbyists.</i>
Maryland	38,556,789	34,798,229	37,085,356	637	1086	<i>The annual filing period is November 1 through October 31.</i>

State	2004 Expenditure	2005 Expenditure	2006 Expenditure	Lobbyists Registered In 2004	Lobbyist Employers In 2006	Notes
Massachusetts	31,052,702	70,955,161	78,960,743	569	1052	
Michigan	27,161,810	29,544,777	22,692,687	1283	1222	
Minnesota	50,217,111	54,718,363	53,287,186	1385	1261	<i>The agency rounds report totals to the nearest \$20,000. Spending totals include local lobby spending, as well as legislative and executive lobby spending.</i>
Mississippi	13,586,918	13,834,059	17,697,439	422	565	
Missouri*	1,085,545	1,074,587	1,074,258	1116	1865	
Montana	6,039,657	5,457,284	6,924,175	536	452	
Nebraska	8,574,933	9,780,800	9,993,827	345	696	<i>Spending totals do not include executive branch lobbyists.</i>
Nevada*	<b>No Total</b>	161,568	<b>No Total</b>	-1	-1	<i>Lobbyists are only required to register and report during legislative sessions, which are held in odd-numbered years.</i>
New Hampshire	<b>No Total</b>	<b>No Total</b>	<b>No Total</b>	227	441	
New Jersey	25,126,328	28,922,559	55,321,166	935	1834	
New Mexico	<b>No Total</b>	<b>No Total</b>	<b>No Total</b>	855	907	<i>Lobbyist and employer numbers were generated from 2007 lists.</i>
New York	144,000,000	149,000,000	151,000,000	5117	3347	<i>Totals include local lobby spending, as well as legislative and executive lobby spending.</i>
North Carolina	8,804,927	15,620,669	14,146,337	726	819	<i>The Secretary of State provided a 2005 spending total after the date of publication of that story in 2006.</i>

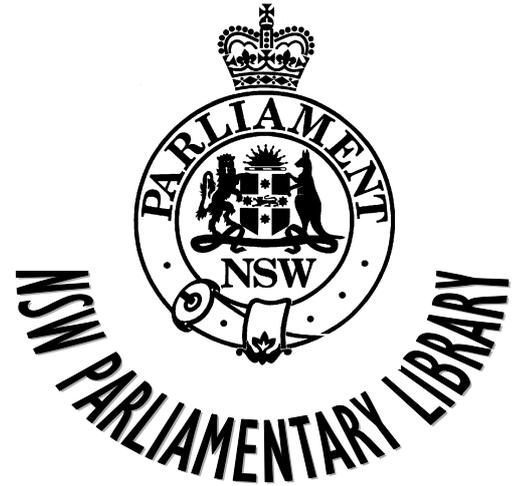
State	2004 Expenditure	2005 Expenditure	2006 Expenditure	Lobbyists Registered In 2004	Lobbyist Employers In 2006	Notes
North Dakota*	3,141	23,338	1,875	154	302	<i>Spending totals do not include executive branch lobbyists. The annual reporting period is July 1 through June 30.</i>
Ohio*	394,146	599,498	349,417	1401	1334	<i>Legislative and executive branch lobbyists register with different offices; lobbyist and employer numbers cover legislative branch only.</i>
Oklahoma*	125,000	175,780	161,652	362	700	
Oregon	14,263,277	24,381,727	16,148,614	629	640	
Pennsylvania	<b>No Total</b>	124,813,732	54,090,812	355	1148	<i>Lobbyist and employer numbers reflect registration with the state Senate.</i>
Rhode Island	<b>No Total</b>	<b>No Total</b>	<b>No Total</b>	201	476	
South Carolina^	14,808,403	16,643,462	19,815,024	385	568	
South Dakota	<b>No Total</b>	<b>No Total</b>	<b>No Total</b>	625	393	
Tennessee*^	245,180	136,571	10,000	512	726	<i>The annual reporting period is October 1 through September 30. Lobbyists were required to report campaign contributions, but not expenses or salaries. A new ethics bill prohibited lobbyists from making contributions to candidates for Governor and legislature so the amount dropped significantly. Lobbyists began reporting more information to the Tennessee Ethics Commission starting October 1, 2006.</i>
Texas	162,111,407	173,594,357	120,215,500	1489	2730	<i>Lobbyists report their salary as a range; the figure at the low end of the range was used to calculate spending totals for this</i>

<b>State</b>	<b>2004 Expenditure</b>	<b>2005 Expenditure</b>	<b>2006 Expenditure</b>	<b>Lobbyists Registered In 2004</b>	<b>Lobbyist Employers In 2006</b>	<b>Notes</b>
						<i>analysis.</i>
Utah*	145,246	134,432	228,668	351	423	<i>Employer number was generated from a 2007 list.</i>
Vermont	5,438,045	6,181,442	5,943,594	425	400	
Virginia	13,824,820	13,150,991	15,367,800	987	917	<i>The annual filing period is May 1 through April 30.</i>
Washington	34,996,252	37,049,691	38,717,055	964	1265	
West Virginia*^	311,519	217,515	329,267	458	531	
Wisconsin	22,518,763	31,200,000	26,826,964	815	755	
Wyoming*	175,103	200,238	159,325	365	321	<i>The annual filing period from May 1 through April 30.</i>

\*Total does not include lobbyist salaries/compensation

^Total may include campaign contributions/political donations from lobbyists to candidates

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