

Regulatory Impact Statement

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014

Prepared by the Office of General Counsel

April 2015



Premier
& Cabinet

Contents

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014	1
Executive Summary	3
How to make a submission	4
Use of Submissions	4
Background	5
Regulatory context	5
Previous Regulatory Scheme: NSW Lobbyists Code of Conduct	5
Need for Government Action	6
Government reform package	7
Outline of the Act and Regulation	8
Objectives	8
Lobbying of Government Officials Act 2011	8
Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014	9
Analysis of Options	10
Option 1: The previous administrative Code	11
Option 2: Registration of all lobbyists	12
Option 3: Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 – Preferred Option	13
Consultation	15
Consultation informing the development of the Regulation	15
Consultation on the Regulation and RIS	15
Review	16
Five year reviews	16
Appendix A	17
Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 [NSW]	17
Appendix B	29
Previous administrative Code of Conduct	29

Executive Summary

Amendments to the *Lobbying of Government Officials Act 2014* ('the Act') commenced on 1 December 2014. The amendments implemented the Government's response to the Independent Commission Against Corruption's (ICAC's) 2010 report *Investigation into corruption risks involved in lobbying*.

The amendments replaced the previous administrative regime for regulating lobbying activities with a legislative scheme that established the Electoral Commission as a new independent regulator of lobbying. The Electoral Commission now maintains and enforces the Register of Lobbyists and the prescribed NSW Lobbyists Code of Conduct.

The *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* ('the Regulation') took effect on 1 December 2014 to support the amendments.

It prescribes the NSW Lobbyists Code of Conduct as the code of conduct for third party and other lobbyists. The new Code is very closely based on the previous administrative Code of Conduct. The key difference in the new Code is that it imposes a set of ethical obligations on all organisations seeking to influence government policy and decision making. The previous Code only applied to third party lobbyists (professional lobbyists who are in the business of representing the interests of another person or body).

The Regulation also prescribes certain information concerning the Lobbyists Register and ensures the Electoral Commission may suspend or cancel the registration of a third party lobbyist for breach of the former Lobbyists Code of Conduct.

The policy objectives of the Regulation are to promote transparency, integrity and honesty.

The Regulation achieves its objectives by ensuring third party lobbyists and other individuals and organisations who seek to influence NSW Government policy and decision-making comply with ethical standards of conduct and imposing additional requirements on third party lobbyists.

This Regulatory Impact Statement (RIS) first provides a brief description of the previous administrative regime for regulating the conduct of lobbyists, the *Lobbying of Government Officials Act 2011* as amended in 2014, and the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*.

The RIS then considers the policy objectives of the Regulation, the options for achieving these objectives and an assessment of the costs and benefits of the alternative options.

The options considered are:

- the previous administrative Code of Conduct
- registration of all lobbyists
- the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (the preferred option).

The policy objective of promoting transparency, integrity and honesty can be achieved in a range of ways. The preferred option ensures the release of accessible and up-to-date information about lobbyists, without providing excessive information. It balances the cost to the community with the regulatory objectives, and avoids placing a compliance burden on individuals and organisations who are not professional third-party lobbyists and incurring the administrative costs of maintaining a very large register.

How to make a submission

Interested parties are invited to submit written comments on the Regulation and/or this RIS to the Department of Premier and Cabinet in any of the following ways:

By mail: General Counsel
 Department of Premier and Cabinet
 GPO Box 5341
 SYDNEY 2001

By email: legalmail@dpc.nsw.gov.au

If you would like to provide comments in an alternative format, please call (02) 9228 5599. If you are hearing or speech impaired, please contact us via the National Relay Service on 133 677.

The closing date for submissions is 15 May 2015

Use of Submissions

All submissions will be treated as public and may be published on the Department's website.

If your submission is made in a personal capacity, you may request that your name and/or address is withheld from public release. If you wish to have the contents of your submission kept confidential, please raise this with the Department before you lodge your submission. The Department will consider requests for confidentiality in accordance with the public interest considerations set out in the *Government Information (Public Access) Act 2009*.

Background

This document is a Regulatory Impact Statement (RIS) in respect of the *Lobbying of Government Officials Regulation (Lobbyists Code of Conduct) 2014* (the Regulation) (**Appendix A**), and has been prepared in accordance with the requirements of Part 2 of the *Subordinate Legislation Act 1989*.

Clause 4 of Schedule 1 to the *Lobbying of Government Officials Act 2011* permits the RIS process to be completed within 6 months of the making of the regulation. It must be completed, and the outcomes delivered to the Legislation Review Committee, by 31 May 2015.

Regulatory context

The Regulation replaced an administrative regulatory scheme – the Department of Premier and Cabinet’s *NSW Lobbyists Code of Conduct*.

Both the former and current Lobbyists Code sit within a broader regulatory framework to preserve the integrity of government decision-making and prevent corruption. Statutory and common law rules apply to criminal corrupt conduct. The integrity arm of government includes bodies such as the Independent Commission Against Corruption, the Ombudsman, the Police Integrity Commission, and the Auditor General. Codes of Conduct apply to Ministers, Members of Parliament, Departmental staff, staff employed in Ministerial Offices and Electorate Office staff.

Previous Regulatory Scheme: NSW Lobbyists Code of Conduct

Prior to 1 December 2014, lobbying was regulated in NSW under the “Lobbyist Code of Conduct”, which was introduced by the NSW Government in February 2009. This administrative Code prohibited the lobbying of Ministers, Parliamentary Secretaries, Ministerial staff and persons working in public sector agencies by third party lobbyists who were not registered.

All Ministers and public servants were required to comply with the Code.

The Register of Lobbyists was administered by the Office of General Counsel in the Department of Premier and Cabinet. The publicly available Register indicated the third party clients that the lobbyist represented, and the names of the persons carrying out lobbying.

In 2011, the *Lobbying of Government Officials Act 2011* was passed by Parliament to strengthen the regulation of lobbying by introducing legislation to ban success fees and restrict lobbying by former Ministers and Parliamentary Secretaries.

A copy of the administrative Code of Conduct is attached at **Appendix B**.

The previous Lobbyist Code had three main features.

First, it related only to third party lobbyists, who were required to register on a public register that set out prescribed information about the lobbyist and the lobbyist’s clients. The Lobbyist Code defined a third party lobbyist as “a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative”.

The following entities were excluded from this definition:

- an association or organisation constituted to represent the interests of its members
- a religious or charitable organisation
- an entity or person whose business is a recognised technical or professional occupation, which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

The effect of this definition is that the Lobbyist Code did not apply to in-house lobbyists (those who as part of their employment with an organisation engage in lobbying on behalf of that organisation), peak bodies, or third party professionals, such as lawyers or accountants who lobby for their clients.

Secondly, it provided that a government representative shall not have contact with a lobbyist unless the lobbyist is registered on the register.

Thirdly, it set out Principles of Engagement to be observed by lobbyists when dealing with a government representative.

The Register of Lobbyists was maintained as a public document available on the internet by the Director General of the Department of Premier and Cabinet. The Director General could refuse to accept applications to be placed on the Register of Lobbyists and could remove a lobbyist from it in certain circumstances.

The Lobbyist Code required the following information to be placed on the Register of Lobbyists:

- the business registration details of the lobbyist, including names of owners, partners or major shareholders, as applicable
- the names and positions of persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities
- the names of third parties for whom the lobbyist is currently retained to provide paid or unpaid services as a lobbyist
- the names of persons for whom the lobbyist has provided paid or unpaid services as a lobbyist during the previous three months.

Need for Government Action

On 10 November 2010, the Independent Commission Against Corruption (ICAC) released its final report on its investigation into the nature and management of lobbying in NSW. The Report can be viewed on the ICAC's website:

<http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/169>

The investigation focused on “whether changes need to be made to the current regulatory system to promote transparency, accountability and fairness in order to reduce the likelihood of the occurrence of corrupt conduct”.

The ICAC found that “lobbying attracts widespread community perceptions of corruption, and involves a number of corruption risks.” It acknowledged, however, that “there was much evidence that demonstrated that, in general, professional lobbyists act ethically, and that lobbying, when done well, can enhance rather than detract from good decision-making by public officials.”

The ICAC was of the view that “a lack of transparency in the current lobbying regulatory system in NSW is a major corruption risk, and contributes significantly to public distrust. ... The public is entitled to know that lobbying is occurring, to ascertain who is involved, and, in the absence of any overriding public interest against disclosure, to know what occurred.”

The ICAC recommended a range of reforms to improve transparency, noting that the regulation of lobbyists should be addressed in a manner that is practical and not unnecessarily onerous, and one that does not unduly interfere with legitimate access to government decision-makers.

A failure to adequately regulate lobbying activity may lead to:

- community perceptions of corruption associated with lobbying; and
- inadequate transparency of lobbying activity, creating opportunities for corruption.

The ICAC Report took the view that a widespread perception of corruption in the government decision-making process has the capacity to adversely affect the proper working of our system of democracy and undermine the rule of law.

The ICAC took evidence from 48 witnesses during its public hearings into this issue and received over 60 written submissions. The ICAC formally sought information from public officials, and also conducted a large number of voluntary, informal interviews with current and former politicians, public officials, academics, journalists, individual lobbyists and representatives of lobbying entities, such as peak bodies, corporations and unions.

The Government has strengthened the regulation of lobbying activities in response to the ICAC’s report.

Government reform package

The Regulation forms part of a package of reforms that addresses the ICAC’s recommendations. The legislative elements (amendments to the Act and the Regulation) are supplemented by administrative measures introduced from 1 July 2014 that require the publication of details of scheduled meetings with Ministers (Premier’s Memorandum M2014-07 (<http://arp.nsw.gov.au/m2014-07-publication-ministerial-diaries>)).

The Premier announced this package of reforms on 13 May 2014.

The package to increase transparency and enhance regulation of lobbying involves:

- Establishing the Electoral Commission as an independent regulator of lobbyists;
- Applying a set of ethical standards to all third-party lobbyists and other organisations that lobby government;
- Empowering the independent regulator to investigate alleged breaches and impose sanctions, which could result in third party lobbyists being removed from the Lobbyist Register and other organisations being placed on a Watch List and their access to government restricted; and
- Requiring Ministers to publish quarterly diary summaries of scheduled meetings with external organisations on portfolio-related activities; and
- Approving a recommendation from ICAC that the Ministerial Code of Conduct become applicable under the ICAC Act, giving the watchdog the power to investigate and make findings on a Minister’s compliance with the Code.

Outline of the Act and Regulation

Objectives

The following objectives of the Regulation, and the Lobbyists Code of Conduct in particular, are aligned to the objectives of the amendments to the Act which commenced on 1 December 2014:

- To ensure that contact between lobbyists and government officials is conducted in accordance with public expectations of transparency, integrity and honesty
- To replace the existing administrative regime relating to the regulation of lobbyists with a legislative framework, to ensure that the Code of Conduct is properly enforceable
- To provide for matters of detail relating to the registration of lobbyists

Lobbying of Government Officials Act 2011

In 2011, the *Lobbying of Government Officials Act 2011* (the Act) was passed by Parliament to strengthen the regulation of lobbying by introducing legislation to ban success fees and restrict lobbying by former Ministers and Parliamentary Secretaries.

In 2014 the Act was amended by Schedule 3 of the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014*.

The amendments expand the scope of the Act by providing a much wider definition of “lobbying” (see new Section 4) and distinguish third-party lobbyists (who carry on the business of lobbying Government officials) from other individuals and bodies that lobby Government officials (Section 3).

Other (ie not third-party) lobbyists are individuals or bodies that communicate with a Government official for the purpose of representing the interests of others in relation to legislation or government decisions or policy. They include any person who works for an organisation and represents the interests of that organisation or its members in communications with a Government official. They include individuals or bodies who are representing community interests. (Section 4)

The amendments impose a duty on lobbyists to comply with a prescribed Code of Conduct for third-party and other lobbyists, which sets out ethical standards to be observed by lobbyists, in order to promote transparency, integrity and honesty (Part 2, Sections 5 - 7).

The amendments establish the Electoral Commission as the new regulator of lobbyists, responsible for maintaining the Register of Third Party Lobbyists. These aspects of the legislation do not differ significantly from the previous administrative regime. (Part 3, Sections 8-11).

The amendments provide a new enforcement mechanism, the Lobbyist Watch List, to be published by the Electoral Commission on the same website as the Lobbyists Register. The Electoral Commission may determine that the names and other identifying details of a third-party or other lobbyist should be published on the Lobbyist Watch List because of a contravention of the Lobbyist Code or the Act (Part 4, Sections 12-13).

The Lobbyist Watch List operates alongside the sanction of removal from the register of a third-party lobbyist for contravention of the Lobbyists Code or the Act (section 9(7)).

The only offence provisions in the Act relate to breach of the ban on success fees for lobbying and the restraint on lobbying by former Ministers and former Parliamentary Secretaries (Sections 15 and 18).

The Electoral Commission may exercise its investigative and other functions under the *Election Funding, Expenditure and Disclosures Act 1981* for the purpose of enforcing compliance with the Lobbyists Code and the Act.

These amendments commenced on 1 December 2014.

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014

The *Lobbying of Government Officials Regulation 2014* ('the Regulation') also took effect on 1 December 2014.

It prescribes a new Lobbyists Code of Conduct very closely based on the previous administrative Code of Conduct. The key difference in the new Code is that it imposes a clear set of ethical obligations on all individuals and organisations seeking to influence government policy and decision making, as well as on third-party lobbyists. The previous Code only applied to third party lobbyists (professional lobbyists who are in the business of representing the interests of another person or body).

The ethical standards of conduct that now apply to all lobbyists are set out in Part 2 of the Lobbyists Code (Clauses 5-8), as follows:

- Lobbyists who seek a meeting to lobby NSW Government officials must disclose to the officials before the meeting the nature of the matter to be discussed.
- Lobbyists who meet NSW Government officials must disclose to the officials before the meeting commences any financial or other interest they have in the matter to be discussed at the meeting.
- Lobbyists must not engage in any misleading, dishonest, corrupt or other unlawful conduct in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.
- Lobbyists must use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information that they provide in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.

Part 3 of the Lobbyists Code (Clauses 9-14) sets out the additional standards and requirements imposed on third-party lobbyists, which largely reflect the registration requirements that existed under the previous administrative regime.

The regulation also:

- prescribes the timeframes for registered third-party lobbyists to notify the Register of changes and the dates on which they must confirm that their information is up to date;
- prescribes the period that information must be kept publicly available on the Register; and
- makes transitional provisions for breaches of the former Lobbyist Code that may have occurred but not been dealt with prior to the transfer of regulatory responsibility to the Electoral Commissioner.

Analysis of Options

The impact of government action should be properly understood by considering the costs and benefits of a range of options.

The Government action that is the subject of this RIS is the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*, and as noted above, the key change from the previous administrative regime, is that the new Code imposes a clear set of ethical obligations on all organisations seeking to influence government policy and decision making, as well as on third-party lobbyists.

The changes to the regulation of lobbyists made by the amendments to the Act in 2014 are not the subject of this RIS.

The regulatory alternatives analysed in this section are:

- maintaining the previous administrative Code;
- introducing a more onerous Code, that imposes a registration requirement on all lobbyists; and
- imposing ethical obligations on all lobbyists, as effected by the Regulation adopted on 1 December 2014 (the preferred option).

Option 1: The previous administrative Code

As described in more detail in the Background section of this RIS, the previous administrative Code imposed ethical standards and a registration requirement on third party lobbyists.

Benefits

This administrative Code aimed to provide transparency where it was most needed. The Register made public which third-party professional lobbyists were actively communicating with Government, and who they were representing.

The administrative Code was very similar to the regulatory models used in most other Australian jurisdictions, other than Queensland.

Costs

Compliance costs

Third party lobbyists were required to register, update the register to reflect any changes to their registered details, and file three confirmations of details each year.

Administrative costs

The administrative regime was administered by the Office of General Counsel within the Department of Premier and Cabinet. The costs were largely absorbed within the Information Access Unit. One (EFT) position had primary carriage of the workload, but was also responsible for administrative tasks associated with the information access functions of the Unit.

Competition Costs

This option imposes a compliance cost on third party lobbyists but not on any other lobbyists.

Other Costs

This Option did not meet the level of transparency of lobbying activity that the ICAC considers desirable to address corruption risks. As the administrative Code only regulated professional third party lobbyists, most lobbying activity was unregulated.

Conclusion

While this is the lowest cost option, in light of the risks identified by the ICAC, it is not the preferred option.

Option 2: Registration of all lobbyists

The Code could impose the same obligations on all lobbyists, both in relation to ethical standards and in relation to registration.

Benefits

The ICAC recommended this approach to increase transparency – “The purpose of an expanded register would not be just to identify lobbyists but to lay a trail of access through the GIPA Act to records of the lobbying activity.”

Costs

Compliance Costs

The regulatory burden on third-party lobbyists would be no different to under Options 1 or 3. This burden is justified by the need for transparency – the public register allows the community to see who the clients of third party lobbyists are, and to understand therefore who is seeking to influence government decision-making.

This Option would however impose a new regulatory burden on all other lobbyists, who lobby in the interests of the organisation that employs them, where there is no lack of transparency about whose interests they are representing. In the course of the ICAC’s consultation, the primary concerns raised by stakeholders about the compliance burdens of registration related to having to provide too much information, and requiring too many entities to be registered.

Administrative Costs

Expanding the register to include all organisations that lobby government would expand the costs and resources required to administer the register. It is estimated that the register would expand ten-fold. The Register would become unwieldy, and would include people who, for transparency purposes do not need to be on there.

Other Costs

No other Australian jurisdiction currently regulates in-house lobbyists or lobbyists who are not professional third party lobbyists. Lack of uniformity in lobbyist regulation was a significant concern to stakeholders during the ICAC’s consultation.

Over regulation may discourage stakeholders from providing valuable input on proposed or existing government policies. Regulation of lobbying should not interfere with the fundamental rights of citizens to communicate with their Government. Appropriate lobbying can enhance government decision-making by allowing those with an interest in the decision to contribute in a way that can improve the quality of information available to the decision-maker. Stakeholder consultation is an integral element of policy development.

Care needs to be taken, therefore, not to “over regulate”. The OECD, in its document “*The 10 Principles for Transparency and Integrity in Lobbying*” emphasises the need to:

- preserve the benefits of the free flow of information
- facilitate public engagement and
- allow all stakeholders fair and equitable access to participate in the development of policy.

Conclusion

The primary purpose of keeping a public Register of third party lobbyists is so that government officials can know, when lobbied by a professional lobbyist, on whose behalf that lobbyist is working. That transparency issue does not arise for in-house lobbyists, as it will be self-evident in those cases in whose interest they are acting.

This option exceeds the measures necessary to meet the identified regulatory objectives, and would impose significantly higher costs on lobbyists and government than Option 3. It is not the preferred option.

Option 3: Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 – Preferred Option

The new Code of Conduct prescribed by the Regulation sets out ethical obligations for third party and other lobbyists.

Benefits

The Register of Third-Party Lobbyists will make public the names of third-party professional lobbyist organisations and their employees, and identify who they are representing, in the same manner as the previous administrative Code (Option 1).

In addition, the new Code will impose for the first time enforceable standards of conduct on other lobbyists, to emphasise the need for honesty and integrity when individuals and organisations seek to influence government policy.

While Option 3 may not provide as much transparency in relation to the activities of other lobbyists as Option 2, the publication of ministers' diaries implements that objective by another means, in a way that imposes less compliance costs on the community.

Costs

Compliance costs

This option imposes no greater compliance cost on third party lobbyists than Option 1 – the registration and reporting obligations on third party lobbyists are unchanged.

While the scope of the Code has been expanded to other lobbyists, they are not required to register or provide any information to the regulator. Lobbyists are required to make certain disclosures and meet certain integrity requirements when requesting a meeting with, and when meeting with, government officials. These requirements are not onerous and would be regarded as part of normal ethical practice in approaching government.

Administrative costs

The Electoral Commission has been given funding for 3 (EFT) positions at the Electoral Commission to perform the functions associated with maintaining the register and enforcing the Code and Act, as well as capital funding to establish the new register.

The Premier's Memorandum requiring publication of information from Ministerial Diaries has imposed an additional administrative cost, primarily on Ministers' offices. This measure meets the objective of increased transparency, but is implemented administratively and is not a part of the Regulation under consideration in this RIS.

Competition impacts

The compliance burden under Option 3 falls only on third party lobbyists.

Other costs

No other Australian jurisdiction currently regulates in-house lobbyists or lobbyists who are not professional third party lobbyists. Lack of uniformity in lobbyist regulation was a significant concern to stakeholders during the ICAC's consultation.

Conclusion

This option meets the identified regulatory objectives, and imposes significantly less costs on lobbyists and government to implement than Option 2.

It is proposed that this option be adopted.

Consultation

Consultation informing the development of the Regulation

The Independent Commission Against Corruption’s “Investigation into corruption risks involved in lobbying” involved extensive consultation with a broad range of stakeholders.

The ICAC took evidence from 48 witnesses during its public hearings into this issue and received over 60 written submissions. The ICAC formally sought information from public officials, and also conducted a large number of voluntary, informal interviews with current and former politicians, public officials, academics, journalists, individual lobbyists and representatives of lobbying entities, such as peak bodies, corporations and unions.

Evidence provided to that inquiry and the ICAC’s report have informed the development of the Regulation.

The Electoral Commission was also consulted during the development of the Regulation.

Consultation on the Regulation and RIS

Comments and submissions are now sought on the Regulation and RIS.

Targeted stakeholders will be invited to provide comments.

Information about the Regulation and RIS and how to make a submission will be published in the *Government Gazette*, in the Government Notices section of the *Sydney Morning Herald* and the *Daily Telegraph* and on the Department of Premier and Cabinet website.

The following organisations have been notified about the consultation process:

- NSW Electoral Commission
- Independent Commission Against Corruption
- Lobbyists currently registered on the NSW Register of Lobbyists

Review

Five year reviews

The *Lobbying of Government Officials Act 2011* is required, under s24 of the Act, to be reviewed as soon as possible after the period of 5 years from the date of assent to the Act. That review period will commence on 16 May 2016 and the review outcomes must be tabled in Parliament by 16 May 2017.

The Regulation will be the subject of periodic review under the requirements of the *Subordinate Legislation Act 1989*. That Act provides for most regulations to be subject to repeal every five years if not reviewed and re-made. The Regulation will be due for review and remaking or repeal on 1 September 2020.

The Governor of New South Wales, however, may make an order, from time to time, that the date on which a regulation is to be repealed is to be postponed by one year. The repeal of a regulation cannot be postponed on more than five occasions.

Appendix A

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 [NSW]



New South Wales

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014

under the

Lobbying of Government Officials Act 2011

Status information

Currency of version

Current version for 5 December 2014 to date (generated 24 February 2015 at 11:35).

Legislation on the NSW legislation website is usually updated within 3 working days.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.



New South Wales

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definition	3
4 Prescription of NSW Lobbyists Code of Conduct	3
5 Update of Lobbyists Register by third-party lobbyists	3
6 Period for which information publicly retained on Lobbyists Register	3
7 Additional grounds for cancellation or suspension of registration	3
Schedule 1 NSW Lobbyists Code of Conduct	5
 Historical notes	
Table of amending instruments	9
Table of amendments	9

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 [NSW]

under the

Lobbying of Government Officials Act 2011

1 Name of Regulation

This Regulation is the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which Schedule 3 to the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* commences and is required to be published on the NSW legislation website.

3 Definition

In this Regulation:

the Act means the *Lobbying of Government Officials Act 2011*.

4 Prescription of NSW Lobbyists Code of Conduct

The code of conduct set out in Schedule 1 is prescribed under Part 2 of the Act as the code of conduct for third-party and other lobbyists.

5 Update of Lobbyists Register by third-party lobbyists

- (1) For the purposes of section 10 (2) of the Act, a registered third-party lobbyist is required to update the information in the Lobbyists Register within 10 business days after a change occurs to that information.
- (2) Registered third-party lobbyists are also required to provide to the Electoral Commission, on 31 January, 31 May and 30 September each year in a form approved by the Electoral Commission, confirmation that the information in the Lobbyists Register relating to them is up-to-date and such other information relating to them and their registration as is set out in the approved form. The approved form may require the disclosure of information of a kind that may be required to be disclosed in an application for registration as a third-party lobbyist.

Note. Section 11 (2) of the Act enables the Electoral Commission to require information submitted to the Electoral Commission to be verified by statutory declaration.

6 Period for which information publicly retained on Lobbyists Register

For the purposes of section 10 (6) of the Act, information relating to a third-party lobbyist is to be retained in the Lobbyists Register until at least the end of the period of 2 years after the person ceased to be a registered third-party lobbyist.

7 Additional grounds for cancellation or suspension of registration

- (1) The Electoral Commission may cancel or suspend the registration of a third-party lobbyist (or any individual engaged to undertake lobbying for a third-party lobbyist)

if the lobbyist (or an individual so engaged) contravened the former Lobbyist Code before the commencement of this Regulation.

- (2) This clause does not apply to a contravention of the former Lobbyist Code if, before that commencement, the Secretary had considered the contravention and determined whether or not to take action in relation to the registration of the lobbyist or individual on the former Register of Lobbyists.

- (3) In this clause:

former Lobbyist Code means the NSW Government Lobbyist Code of Conduct administered by the Secretary immediately before the commencement of this Regulation.

former Register of Lobbyists means the Register of Lobbyists kept by the Secretary immediately before the commencement of this Regulation.

Secretary means the Secretary of the Department of Premier and Cabinet.

Schedule 1 NSW Lobbyists Code of Conduct

Part 1 Preliminary

1 Name of Code

This is the *NSW Lobbyists Code of Conduct 2014*.

2 Purpose of Code

This Code sets out the ethical standards of conduct, and other requirements, to be observed by lobbyists in connection with the lobbying of NSW Government officials in order to promote transparency, integrity and honesty.

3 Lobbyists to whom Code applies

This Code applies to third-party lobbyists and to all other individuals and bodies that lobby NSW Government officials (including individuals engaged to undertake lobbying for a third-party lobbyist).

4 Meaning of “lobbying”

- (1) For the purposes of this Code, *lobbying* a NSW Government official means communicating with the official for the purpose of representing the interests of others in relation to any of the following:
 - (a) legislation or proposed legislation or a government decision or policy or proposed government decision or policy,
 - (b) a planning application,
 - (c) the exercise by the official of his or her official functions.
- (2) Lobbying extends to:
 - (a) any such communication whether or not in the course of carrying on the business of lobbying NSW Government officials, and
 - (b) any such communication by a person who works for an organisation for the purpose of representing the interests of the organisation or its members, and
 - (c) any such communication for the purpose of representing community interests.
- (3) However, lobbying does not include:
 - (a) any communication by a member of Parliament acting in the ordinary course of his or her duties as a member (or any communication by a constituent of a member of Parliament in the ordinary course of seeking electorate advice or assistance from the member), or
 - (b) any communication by a NSW Government official acting in the ordinary course of his or her duties as a NSW Government official.

Part 2 Ethical standards of conduct applying to all lobbyists

5 Lobbyists to disclose matter to be discussed at proposed meeting

Lobbyists who seek a meeting to lobby NSW Government officials must disclose to the officials before the meeting the nature of the matter to be discussed.

6 Lobbyists to disclose any interest in matters discussed at meeting

Lobbyists who meet NSW Government officials must disclose to the officials before the meeting commences any financial or other interest they have in the matter to be discussed at the meeting.

7 Lobbyists not to engage in misleading, corrupt etc conduct

Lobbyists must not engage in any misleading, dishonest, corrupt or other unlawful conduct in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.

8 Lobbyists to provide true and accurate information

Lobbyists must use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information that they provide in connection with a meeting or other communication for the purpose of lobbying NSW Government officials.

Part 3 Third-party lobbyists—additional standards and requirements

9 Third-party lobbyists required to be registered

Third-party lobbyists must not meet or otherwise communicate with NSW Government officials for the purpose of lobbying unless:

- (a) they are registered on the Register of Third-Party Lobbyists, and
- (b) any individuals they engage to undertake the lobbying for them are registered on the Register, and
- (c) they have provided all other information required to be included in the Register in connection with their lobbying business.

Note. Conduct obligations that apply to Ministers and other NSW Government officials include an obligation not to permit lobbying of them by unregistered third-party lobbyists, and restrictions on meetings at which they are lobbied by lobbyists on the Lobbyists Watch List.

10 Lobbyists to disclose if they are third-party lobbyists and identity of their clients

- (1) Third-party lobbyists must disclose to NSW Government officials they lobby:
 - (a) that they are third-party lobbyists, and
 - (b) the names of any individuals they have engaged to undertake the lobbying, and
 - (c) the name of the client who has retained them to provide the lobbying service.
- (2) The information is to be disclosed before any meeting is held, or other communication made, for the purpose of the lobbying.

11 Third-party lobbyists not to lobby on matters related to Government board or committee of which they are members

Third-party lobbyists must not lobby on a matter that relates to the functions of a NSW Government board or committee of which they (or the individuals they engage to undertake the lobbying for them) are members.

12 Third-party lobbyists not to exaggerate or misrepresent their access to political parties or Government

Third-party lobbyists (and the individuals they engage to undertake the lobbying for them) must not make exaggerated or misleading claims to their clients about the nature or extent of their access to political parties, the Government or Government agencies or to persons associated with them.

13 Third-party lobbyists to keep party political involvement separate from lobbying activities

Third-party lobbyists (and the individuals they engage to undertake the lobbying for them) must keep separate from their lobbying activities any personal activity or involvement on behalf of a political party.

14 Prohibition on success fees for third-party lobbyists

Third-party lobbyists are, by the *Lobbying of Government Officials Act 2011*, prohibited from receiving or agreeing to receive (or agreeing that other persons are to receive) success fees for the lobbying of NSW Government officials.

Part 4 Definitions

15 Meaning of words used in this Code

In this Code:

communicate includes communicate in person, in writing, by telephone or by email or other electronic means.

lobbyist means:

- (a) a third-party lobbyist, or
- (b) any other individual or body that lobbies NSW Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist).

meeting with a NSW Government official, means a meeting held in person with the official or by means of a teleconference.

NSW Government official means any of the following:

- (a) a NSW Minister or Parliamentary Secretary,
- (b) a staff member of a NSW Minister or Parliamentary Secretary (including a staff member in an electorate office),
- (c) the head of a NSW Public Service agency,
- (d) a person employed in the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (e) an individual who is engaged under a contract to provide services to or on behalf of the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
- (f) a member (however expressed) of, or of the governing body of, a NSW statutory body,

but does not include a local government official.

planning application means an application or request by a person (other than a public authority within the meaning of the *Environmental Planning and Assessment Act 1979*):

- (a) to initiate the making of an environmental planning instrument or plan under that Act in relation to any development, project or activity on a particular site, or
- (b) for consent to, or approval of, any development, project or activity under that Act or for the modification of any such consent or approval.

Register of Third-Party Lobbyists means the Register of Third-Party Lobbyists established under the *Lobbying of Government Officials Act 2011*, and (until a register is so established) means the Register of Third-Party Lobbyists kept by the Secretary of the Department of Premier and Cabinet.

Note. Persons registered on the Register of Third-Party Lobbyists kept by the Secretary of the Department of Premier and Cabinet before the commencement of this Regulation are taken to be registered on the Register to be kept by the Electoral Commission under the Act. Officers of registered political parties are not eligible to be registered on the Register of Third-Party Lobbyists.

third-party lobbyist means an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying NSW Government officials on behalf of another individual or body.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (753). LW 28.11.2014.
Date of commencement, 1.12.2014, cl 2 and 2014 (744) LW 28.11.2014. This Regulation has been amended
as follows:

2014 (771) Lobbying of Government Officials Amendment (Lobbyists Code of
Conduct) Regulation 2014. LW 5.12.2014.
Date of commencement, on publication on LW, cl 2.

Table of amendments

Cl 7 Ins 2014 (771), cl 3.

Appendix B

Previous administrative Code of Conduct

NSW Government Lobbyist Code of Conduct

(as at 30 November 2014)

1. Preamble

Free and open access to the institutions of government is a vital element of our democracy.

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

In performing this role, there is a public expectation that Lobbyists will be individuals of strong moral calibre who operate according to the highest standards of professional conduct.

The Government has established the Lobbyist Code of Conduct to ensure that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

2. Application

- 2.1 The NSW Government Lobbyist Code of Conduct has application through the Codes of Conduct that apply to Ministers, Ministerial Staff Members, senior public servants and public sector agencies, and through a Premier's Memorandum in relation to Parliamentary Secretaries.
- 2.2 The NSW Government Lobbyist Code of Conduct creates no obligation for a Government Representative to have contact with a particular Lobbyist or Lobbyists in general.
- 2.3 The NSW Government Lobbyist Code of Conduct does not serve to restrict contact in situations where the law requires a Government Representative to take account of the views advanced by a person who may be a Lobbyist.

3. Definitions

"Director General" means Director General of the Department of Premier and Cabinet.

"Lobbyist" means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative. "Lobbyist" does not include:

- (a) an association or organisation constituted to represent the interests of its members;
- (b) a religious or charitable organisation; or
- (c) an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

"Lobbyist's Details" means the information described under clause 5.1.

"Government Representative" means a Minister, Parliamentary Secretary, Ministerial Staff Member, or person employed, contracted or engaged in a public sector agency (which means a Division of the Government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*) other than staff employed under section 33 of the *Public Sector Employment and Management Act 2002*.

"Ministerial Staff Member" means a person employed under section 33 of the *Public Sector Employment and Management Act 2002* to carry out work for a Minister or a Parliamentary Secretary; a person seconded to the Department of Premier and Cabinet under section 86 of the *Public Sector Employment and Management Act 2002* and assigned to a Minister's office; or a person otherwise placed, contracted or engaged in a Minister's office or assigned to a Parliamentary Secretary.

"Registered Political Party" means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or a local council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part and is registered under Part 4A of the [Parliamentary Electorates and Elections Act 1912](#).

4. Contact between Lobbyists and Government Representatives

- 4.1 A Government Representative shall not at any time permit lobbying by:
- (a) a Lobbyist who is not on the Register of Lobbyists;
 - (b) any employee, contractor or person engaged by a Lobbyist to carry out lobbying activities whose name does not appear in the Lobbyist's Details noted on the Register of Lobbyists in connection with the Lobbyist;
 - (c) any Lobbyist or employee, contractor or person engaged by a Lobbyist to carry out lobbying activities who, in the opinion of the Government Representative, has failed to observe any of the requirements of clause 4.3.
- 4.2 Contact with a Government Representative for the purposes of lobbying activities by a Lobbyist includes:
- (a) telephone contact;
 - (b) electronic mail contact;
 - (c) written mail contact; and
 - (d) face to face meetings.
- 4.3 When making an initial contact with a Government Representative about a particular issue on behalf of a third party for whom the Lobbyist has provided paid or unpaid services, the Lobbyist must inform the Government Representative:
- (a) that they are a Lobbyist or employee, contractor or person otherwise engaged by the Lobbyist who is currently listed on the Register of Lobbyists;
 - (b) that they are making the contact on behalf of a third party;
 - (c) the name of the third party; and
 - (d) the nature of that third party's issue.

5. Register of Lobbyists

- 5.1 There shall be a Register of Lobbyists which shall contain the following information:
- (a) the business registration details of the Lobbyist, including names of owners, partners or major shareholders as applicable;
 - (b) the names and positions of persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities;
 - (c) the names of third parties for whom the Lobbyist is currently retained to provide paid or unpaid services as a Lobbyist; and
 - (d) the names of persons for whom the Lobbyist has provided paid or unpaid services as a Lobbyist during the previous three months.
- 5.2 A Lobbyist wishing to have contact with a Government Representative for the purposes of lobbying activities may apply to the Director General to have the Lobbyist's Details recorded in the Register of Lobbyists.
- 5.3 The Lobbyist shall submit updated Lobbyist's Details to the Director General in the event of any change to the Lobbyist's Details as soon as practicable but no more than 10 business days after the change occurs.
- 5.4 The Lobbyist shall provide to the Director General within 10 business days of 31 October, 31 January and 31 March of each year, confirmation that the Lobbyist's Details are up to date.
- 5.5 The Lobbyist shall provide to the Director General, within 10 business days of 31 October of each year, confirmation that the Lobbyist's Details are up to date together with statutory declarations for all persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities on behalf of a client, or where the Lobbyist is a person, a statutory declaration by that Lobbyist, as required under paragraph 8.1.
- 5.6 The registration of a Lobbyist shall lapse if the confirmations and updated statutory declarations are not provided to the Director General within the time frames specified in clauses 5.4 and 5.5.

6. Access to the Register of Lobbyists

- 6.1 The Register of Lobbyists shall be a public document.
- 6.2 The Director General shall ensure that the Register of Lobbyists is readily accessible to members of the public.

7. Principles of Engagement with Government Representatives

- 7.1 Lobbyists shall observe the following principles when engaging with Government Representatives:
- (a) Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;
 - (b) Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;
 - (c) Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions;

- (d) Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party; and
 - (e) A Lobbyist who has been appointed to a Government Board or Committee must not represent the interests of a third party to a Government Representative in relation to any matter that relates to the functions of the Board or Committee.
- 7.2 A Lobbyist shall ensure that each of their employees, contractors or persons otherwise engaged by the Lobbyist to carry out lobbying activities observes the principles set out in clause 7.1.
- 7.3 A Lobbyist shall ensure that, with effect on and from 31 October 2013,
- (i) the Lobbyist and each of their employees, contractors or persons otherwise engaged by the Lobbyist to carry out lobbying activities, and
 - (ii) (ii) the owner, partner, major shareholder or any other individual involved in the management of the business of the Lobbyist (as applicable),
- does not occupy or act in an office or position concerned with the management of a registered political party.

8. Registration

- 8.1 The Director General shall not include on the Register of Lobbyists the name of an individual unless the individual provides a statutory declaration to the effect that he or she:
- (a) has never been sentenced to a term of imprisonment of 30 months or more,
 - (b) has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud, and
 - (c) is not occupying or acting in an office or position concerned with the management of a registered political party.

Clause 8.1(c) applies on and from 31 October 2013.

- 8.2 The Director General shall remove from the Register of Lobbyists all of the details of a Lobbyist who has been found guilty of committing an offence under section 5 of the *Lobbying of Government Officials Act 2011* for a period of time specified in a notice to the lobbyist informing the lobbyist of the removal, being not less than 12 months.
- 8.3 Subject to clauses 8.1 and 8.2, the Director General may at his or her discretion:
- 1) refuse to accept part or all of an application to be placed on the Register of Lobbyists; or
 - 2) remove from the Register of Lobbyists part or all of the details of a Lobbyist
- if, in the opinion of the Director General:
- (a) any prior or current conduct of the Lobbyist or the Lobbyist's employee, contractor or person otherwise engaged by the Lobbyist to carry out lobbying activities has contravened any of the terms of this Code or the *Lobbying of Government Officials Act 2011*; or
 - (b) the Lobbyist or the Lobbyist's employee, contractor or person otherwise engaged by the Lobbyist to carry out lobbying activities has represented the interests of a third party to a Government Representative in relation to any matter that relates to the functions of a Government Board or Committee of which the Lobbyist, employee, contractor or person is a member; or

- (c) any prior or current conduct of the Lobbyist or association of the Lobbyist with another person or organisation is considered to be inconsistent with general standards of ethical conduct; or
- (d) the registration details of the Lobbyist are inaccurate; or
- (e) the Lobbyist has not confirmed the Lobbyist's Details in accordance with the requirements of clause 5.4 and/or clause 5.5; or
- (f) there are other reasonable grounds for doing so.

Note: Section 5 of the *Lobbying of Government Officials Act 2011* prohibits giving or receiving, or agreeing to give or receive a success fee for the lobbying of a Government official. A success fee is an amount of money or other valuable consideration the giving or receipt of which is contingent on the outcome of the lobbying of the Government official.

Note: Under Premier's Memorandum M2011 – 13, a Lobbyist and the employees, contractors or persons otherwise engaged by the Lobbyist to carry out lobbying activities are ineligible for appointment to any Government Board or Committee if the functions of the Board or Committee relate to any matter on which the Lobbyist represents the interests of third parties, or has represented the interests of third parties in the 12 months prior to the date of the proposed appointment.