



Government of South Australia

Department of the Premier and Cabinet Circular

PC032 – Lobbyist Code of Conduct

October 2009

Lobbyist Code of Conduct

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1. INTRODUCTION AND OVERVIEW

This Department of the Premier and Cabinet Circular is binding on Ministerial staff members and on employees of Public Sector agencies. The Lobbyist Code itself also applies to Ministers and Parliamentary Secretaries by direction of the Premier.

The Lobbyist Code of Conduct (the Code) has been designed to introduce greater accountability and transparency into the lobbying process and the interaction between lobbyists and the South Australian Government. Similar codes have been introduced in most Australian jurisdictions.

With limited exceptions, any lobbyist who wishes to conduct lobbying activities with the South Australian Government must, from 1 December 2009, have their details registered on the Lobbyist Register (the Register) and comply with the other requirements of the Lobbyist Code of Conduct.

A further element of the Code is that it proscribes lobbying on certain matters by retired Ministers, Parliamentary Secretaries, and persons who have previously been ministerial advisers or departmental executives for a period after they leave those positions.

While the Code mainly affects lobbyists it also places important obligations on government representatives. These obligations centre on the principle of transparency and in particular require representatives to not knowingly be a party to lobbying activities with a lobbyist who is not registered. The Lobbyist Code should be read in conjunction with the Ministerial Code of Conduct, the Public Sector Management Act 2005 (or the Public Sector Act 2009 and related regulations when they come into effect) and the Code of Conduct for Public Sector Employees.

Persons reading this circular should therefore familiarise themselves with the provisions of these other codes and legislation, as relevant.

2. GOVERNMENT REPRESENTATIVES - OBLIGATIONS UNDER THE CODE

The principal obligations affecting government representatives under the Code relate to the manner in which they interact with lobbyists when a lobbyist makes contact for the purpose of conducting lobbying activities. Certain additional obligations also arise from the application of other Codes of Conduct affecting Ministers of the Crown and Public Service employees. Information regarding the Ministerial Code of Conduct is provided here only for context. The Code also restricts retired Ministers, ex Ministerial staff members and previous executives in public sector agencies from undertaking lobbying in certain circumstances.

The Code defines *Government Representative* to include Ministers, Parliamentary Secretaries, Ministerial Staff Members and any person employed, contracted or engaged by a public sector agency.

General obligations under other codes of conduct

The Ministerial Code of Conduct includes a number of relevant general provisions including, but not limited to:

- Compliance with codes, laws and orders,
- Honesty,
- Fairness and diligence in decision-making,
- Financial accountability,
- Disclosure of actual and potential or apparent conflicts of interest and
- The proper handling of conflicts.

All other persons, including ministerial staff members are required to comply with the Code of Conduct for Public Sector Employees. Relevant provisions in the current Code of Conduct for Public Sector Employees include requirements to:

- Provide impartial, professional service and frank and balanced advice,
- Act honestly when performing duties,
- Disclose and manage conflicts of interest,
- Not accept gifts, benefits or favours that may influence decision making,
- Deal with information gained through work in accordance with legal requirements,
- Observe all legislative requirements, policies, procedures and lawful instructions,

- Ensure accountability by reporting inappropriate conduct to the appropriate authority.

It should be noted that at the time of writing, a new code is being developed under the provisions of the Public Sector Act 2009.

Obligations under Lobbyist Code - Contact by a Lobbyist

The Code specifically prohibits a government representative from knowingly and intentionally being a party to lobbying by any lobbyist (including employees, contractors etc of the lobbyist) who is not on the South Australian Register of Lobbyists or who has not complied with the requirement to make the disclosures mentioned immediately below.

A lobbyist, upon making contact with a government representative about a issue upon which the lobbyist is representing a third party must inform the government representative:

- That they are a lobbyist (or employee / contractor etc engaged by a lobbyist)
- Whether they are currently listed on the South Australian Lobbyist Register,
- That they are making contact on behalf of a third party,
- The name of that third party and
- The nature of the third party's interest in the issue.

Prudence therefore dictates that should a government representative be approached by a person they know or believe to be a lobbyist, and the above information not be provided, the government representative should inquire in the above terms about the nature and purpose of the contact and remind the lobbyist of their obligations under the Code.

It is particularly important that a lobbyist should be reminded of the obligation to be *currently registered* on the South Australian Lobbyist Register (and for those registration details to be kept up to date.)

If a lobbyist is not registered you must advise them to do so before any further discussions that may be construed as a lobbying activity may take place.

Please note that it is not sufficient for a lobbyist to be registered in another Australian jurisdiction. A number of jurisdictions have their own lobbyist registers and their own requirements / preconditions for registration. Accordingly, the lobbyist must be registered in South Australia.

The Lobbyist Register is a public document made available on a web site.

Should you have any doubt regarding the information provided it is highly advisable that you make a check of the information contained in the register, which is to be found at the following location:

<http://www.premcab.sa.gov.au/lobbyist>

What forms of contact are covered by the Code

For the purposes of the Code, the term “contact with a government representative” has wide definition, including telephone contact, electronic mail contact, written contact and face-to-face meetings.

However, the Code does not prohibit contacts with unregistered lobbyists in all situations. Purely social contacts for example, are not covered by the Code and neither would it be a breach if a lobbyist contacts a government representative for a purpose other than to conduct a lobbying activity as defined. For example, a lobbyist may make contact on a purely personal matter or to make representations on their own behalf - although in these cases care may need to be taken to ensure that the matter is one that legitimately affects the lobbyist’s personal or professional interests.

Should, during such an exempt contact, the lobbyist seek to introduce topics that might be construed as being part of a lobbying activity as defined in the Code then the provisions of the Code will apply.

Obviously in such situations care and discretion is required on the part of government representatives.

Who is a Lobbyist

A lobbyist is defined to mean a person, company or organisation (including their employees, contractors etc) who conducts lobbying activities on behalf of a third party client.

In many cases it will be obvious if a person is a Lobbyist and is seeking to conduct lobbying activities captured by the Code, but there are a number of exceptions of which you should be aware.

- Exclusions to the definition of lobbyist

Under the Code the following are excluded from the definition of lobbyist:

- Persons, companies or organisations lobbying *on their own behalf* rather than for a client,

- Charitable, religious or other organisations that may receive tax deductible donations or gifts,
- Non-profit organisations that represent the interests of their members,
- Individuals making representations on behalf of relatives of friends about personal affairs,
- Members of trade delegations,
- Registered tax agents, customs brokers, company auditors and similar professionals in the course of their normal profession,
- Members of other professions that make occasional representations to Government on behalf of others provided this is only incidental to their professional services,
- Representatives of other Governments.

Interactions that are captured by the Code - lobbying activities

The Code deals with lobbying activities undertaken by lobbyists. For this purpose, “lobbying activities” means communications with a government representative for the purpose of influencing Government decision-making including making or changing legislation, developing or amending policy or programs, the awarding of a grant or allocation of funding.

- Exclusions to the definition of lobbying activity

However, certain classes of interaction are specifically exempt under the Code:

- Communications with a Committee of Parliament,
- Communications with a Minister or Parliamentary Secretary in his capacity as a local member relating to non-ministerial duties,
- Communications in response to a call for submissions or for tenders,
- Petitions or communications of a community campaign nature,
- Statements made in a public forum and
- Responses to requests for information. (R.F.I.)

If there is uncertainty regarding a person’s status or the nature of the contact

If you have doubts regarding someone’s status as a lobbyist or whether the contact is of the sort captured by the Code, you should refer the question to the Lobbyist Register administrator.

Alternatively it may be expedient to ask the person to register in any event if they have not already done so.

If you believe that a lobbyist has breached the Code

If you believe that a lobbyist has materially breached the Code, that information should be conveyed through your agency's official channels to the Chief Executive, Department of the Premier and Cabinet.

The Code includes a number of stringent provisions in relation to the ethical and other conduct by lobbyists. These are dealt with in the next section of this circular. In severe cases, breach of these requirements may result in deregistration of the lobbyist. The Chief Executive, Department of the Premier and Cabinet has authority to consider such matters.

Obligations under Lobbyist Code - Restrictions on lobbying after leaving the Public Sector or employment in a minister's office

Both public service executives and persons who had been employed in ministerial offices are prohibited, upon leaving these roles, from engaging in lobbying activities for a period of 12 months with respect to any matter on which they had official dealings in the 12 months prior to leaving that role.

While the onus is placed on the person leaving such a role to adhere to this requirement of the Code, should a government representative be approached by a person they believe to fit either of these categories, reasonable inquiries should be made to establish the facts.

For example, inquiries should be made of the person as to their situation and if necessary further checks made with the records of the relevant agency. As necessary, the information ascertained should also be conveyed to the Lobbyist Register administrator.

Such a person would not be eligible to have their details entered into the Lobbyist Register in circumstances where they are seeking to undertake lobbying activity in relation to a matter on which they had official dealings in the 12 months prior to leaving the relevant role.

3. LOBBYISTS – OBLIGATIONS UNDER THE CODE

Government representatives should be aware of the principal obligations affecting lobbyists under the Code. These can be categorised as:

- Obligations regarding registration
- Obligations relating to disclosure
- Obligations relating to ethical conduct and behaviour.

Lobbyist obligations relating to registration

Lobbyists must register with the Lobbyist Register, providing the following information:

- 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, and the names of persons for whom the lobbyist has provided paid or unpaid services as a lobbyist during the previous three months.

A statutory declaration must be provided attesting to the accuracy of the information provided and setting out details of any conviction imposed or finding of guilt recorded by a court against the applicant (or employee / contractor etc.) in respect of any offence of dishonesty or indictable offence.

Any changes to the information provided must be made within 10 business days of the change occurring.

Information provided must be renewed each year within 10 business days of 30 June or the lobbyist's registration will lapse.

Lobbyist obligations relating to disclosure

The Code requires a lobbyist, upon making contact with a government representative *about an issue upon which the lobbyist is representing a third party (whether paid or unpaid)* to inform the government representative:

- That they are a lobbyist (or employee / contractor etc. engaged by a lobbyist),
- Whether they are currently listed on the South Australian Lobbyist Register,
- That they are making contact on behalf of a third party,
- The name of that third party *and*
- The nature of the third party's interest in the issue.

Lobbyist obligations relating to ethical conduct and behaviour

When engaging with government representatives, lobbyists are required:

- Not to engage in any conduct that is corrupt, dishonest or illegal, or cause or threaten any detriment;
- To 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;
- Not to 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 institutions; and
- To keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.

4. ACCESSING THE REGISTER

The Lobbyist Register is a public document available on a web site.

Details of currently registered lobbyists, their employees and clients may be accessed at:

<http://www.premcab.sa.gov.au/lobbyist>

5. PENALTIES FOR NON COMPLIANCE WITH THE CODE

The Lobbyist Code makes provisions relating to penalties for non-compliance. These principally affect lobbyists. In addition government representatives may be subject to penalties arising from the operation of the Public Sector Code of Conduct.

Lobbyists

Failure to observe the requirements of the Lobbyist Code may result in refusal to register a lobbyist or the deregistration of that lobbyist if already registered. In extreme circumstances (e.g. instances of corrupt and or illegal conduct) provisions of South Australian criminal law may also apply.

Government Representatives

The Lobbyist Code is designed to operate in conjunction with the Public Sector Code of Conduct and specifically states that the latter code applies in cases of breach of the Lobbyist Code by ministerial advisers and public servants. The Public Sector Act 2009 and regulations apply a range of possible penalties depending upon the nature and seriousness of any non-compliance.

6. OTHER REFERENCES AND LINKS

- **Code of Conduct for South Australian Public Sector Employees**

<http://intra.sa.gov.au/Policies/cpe/docs/Code/Code%20of%20Conduct.pdf>

- **Ministerial Code of Conduct**

http://www.premcab.sa.gov.au/pdf/Conduct_2002.pdf

7. CONTACTS

Phone Number: 08 8226 0213
Fax: 08 8226 3566
Email: dpcsalobbyistregister@sa.gov.au
Business Address: South Australian Lobbyist Register
GPO Box 2343
Adelaide SA. 5001

8. THE LOBBYIST CODE OF CONDUCT 2009

The following section provides the Lobbyist Code of Conduct 2009 in full.

Government of South Australia

Effective Date: 1 December 2009

1. Preamble

The Government of South Australia recognises that free and reasonable access to Ministers of the Crown, their staff and the institutions of Government is a vital element of our democratic process.

In regulating contact and the conduct of relations with those seeking access, including those external to Government Ministers of the Crown are obliged to observe their obligations under the Ministerial Code of Conduct including, but not limited to:

1. Compliance with codes, laws and orders
2. Honesty
3. Fairness and diligence in decision making
4. Disclosure of actual, potential or apparent conflicts of interest
5. The proper handling of conflicts, potential conflicts or apparent conflicts of interest

Staff employed by the Premier to assist Ministers of the Crown in their work are obliged to comply with the Code of Conduct applying to public sector employees promulgated by the Commissioner for Public Employment under the Public Sector Management Act 1995.

Lobbyists can contribute to 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 lobbying will be carried out ethically, transparently and according to the highest standards of professional conduct.

The Government has established the South Australian Government Professional 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 South Australian Government Professional Lobbyist Code applies to Ministers and Parliamentary Secretaries by direction of the Premier

and to Ministerial Staff Members and other public sector staff through its publication as a Department of the Premier and Cabinet Circular. It also applies in conjunction with other relevant codes, particularly the Ministerial Code of Conduct and the Code of Conduct for Public Sector Employees, and any other statutory provisions that are in effect from time to time.

- 2.2 This Code is intended to prevail over the Ministerial Code of Conduct to the extent of any inconsistency.
- 2.3 The South Australian Government Professional Lobbyist Code creates no obligation for a Government Representative to have contact with a particular Lobbyist or Lobbyists in general.
- 2.4 The South Australian Government Professional Lobbyist Code 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

“Government Boards and Committees” means any board, committee, tribunal, trust, commission, council, authority, panel, taskforce, forum, reference group, working group, advisory group, steering group or other like body or group created by or under a South Australian Act or by the Governor or a Minister and to which one or more appointments are made by the Governor or a Minister.

“Lobbying activities” means 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 grant or the allocation of funding, but does not include:

- (a) communications with a committee of the Parliament
- (b) communications with a Minister or Parliamentary Secretary in his or her capacity as a local Member in relation to non-ministerial responsibilities
- (c) communications in response to a call for submissions
- (d) petitions or communications of a community campaign nature in an attempt to influence a Government policy or decision
- (e) communications in response to a request for tender
- (f) statements made in a public forum, or

- (g) responses to requests by Government Representatives for information.

“Lobbyist” means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:

- (a) charitable, religious and other organisations or funds that are endorsed as deductible gift recipients
- (b) non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients
- (c) individuals making representations on behalf of relatives or friends about their personal affairs
- (d) members of trade delegations visiting Australia
- (e) persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession
- (f) members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities, and
- (g) representatives of other Governments, or Government agencies or inquiries.

For the avoidance of doubt, this Code does not apply to any person, company or organisation, or the employees of such a company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.

"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 by a public sector agency.

"Ministerial Staff Member" means a person employed under section 69 of the *Public Sector Management Act 1995*; a person seconded to a Ministerial office; or a person otherwise placed, contracted or engaged in a Ministerial office.

the *Public Sector Management Act 1995* includes its replacement.

4. Contact between Lobbyists and Government Representatives

4.1 A Government Representative shall not at any time knowingly and intentionally be a party to 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 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;
- (b) whether they are currently listed on the Register of Lobbyists;
- (c) that they are making the contact on behalf of a third party;

- (d) the name of the third party; and
 - (e) the nature of that third party's issue.
- 4.4 A Lobbyist who holds an appointment to any Government Board or Committee must ensure that they comply with the honesty and integrity provisions and the conflict of interest provisions of the *Public Sector Management Act SA 1995*.
- 5. Register of Lobbyists**
- 5.1 There shall be a Register of Lobbyists established by the Chief Executive, Department of the Premier and Cabinet 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 shall apply to the Chief Executive, Department of the Premier and Cabinet to have their Lobbyist's Details recorded in the Register of Lobbyists.
- 5.3 A person seeking registration as a Lobbyist must supply a statutory declaration:
- (a) attesting that the information supplied for the purposes of clause 5.1 is true and correct to the best of their knowledge and belief; and
 - (b) setting out details of any conviction imposed or finding of guilt recorded by a court against the applicant in respect of any offence of dishonesty or any indictable offence.
- 5.4 The Lobbyist must provide to the Chief Executive, Department of the Premier and Cabinet, within 10 business days of 30 June each year, a statutory declaration renewing the information required under clause 5.3.

5.5 The Lobbyist shall submit updated Lobbyist's Details to the Chief Executive, Department of the Premier and Cabinet, in the event of any change to the Lobbyist's Details as soon as practicable, but no later than 10 business days after the change.

5.6 The registration of a Lobbyist shall lapse if a confirmation is not provided to the Chief Executive, Department of the Premier and Cabinet, by the date referred to under clause 5.4.

6. Access to the Register of Lobbyists

6.1 The Register of Lobbyists is a public document that is published on the website of the Department of the Premier and Cabinet.

7. Prohibition on Lobbying Activities

7.1 Persons who, after 1 December 2009, retire from office as a Minister, shall not, for a period of two years after they cease to hold office, engage in professional lobbying activities relating to any matter with which they had official dealings in their last 18 months in office.

7.2 Persons who, after 1 December 2009, retire from office as a Parliamentary Secretary, shall not, for a period of 12 months after they cease to hold office, engage in professional lobbying activities relating to any matter with which they had official dealings in their last 12 months in office.

7.3 Persons who were, after 1 December 2009, employed in the Offices of Ministers or employed under the *Public Sector Management Act 1995* as an Executive (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in professional lobbying activities relating to any matter with which they had official dealings in their last 12 months of employment.

8. Principles of Engagement with Government Representatives

8.1 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; and

- (d) Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.

9. Registration

The Chief Executive, Department of the Premier and Cabinet may at his or her discretion:

- 1) refuse to accept an application to be placed on the Register of Lobbyists; and
- 2) remove from the Register of Lobbyists the details of a Lobbyist if, in the opinion of the Chief Executive, Department of the Premier and Cabinet,
 - (a) any prior or current conduct of the Lobbyist or his employee, contractor or person otherwise engaged to provide lobbying services for the Lobbyist has contravened any of the terms of this Code; or
 - (b) 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
 - (c) the registration details of the Lobbyist are
 - (i) inaccurate; or
 - (ii) not confirmed in accordance with the requirements of clause 5.4; or
 - (d) there are other reasonable grounds for doing so.