



Lobbying

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Introduction

Our democratic system of government relies on officials having adequate and reliable information on which to base their decisions and actions. The principle of open and equal access to government for all individuals and communities is fundamental to this flow of information.

Information reaches the government from individuals, potential suppliers and contractors, developers, community organisations and other organisations or interest groups. They may approach the government on their own behalf or through specialist lobbyists with skills in presenting persuasive cases. They may also mount public campaigns or seek other ways to influence the thinking and the decisions of public officials.

Third party lobbyists most commonly try to influence ministers, councillors and senior public servants in a position to make statutory, monetary or policy decisions that can benefit or disadvantage individuals or sections of the community. However, lower ranking officers, particularly those making purchasing decisions or evaluating eligibility for various grants and benefits may also be subjected to persuasive pressure.

The Queensland Government has measures in place to:

- ensure that the flow of information remains as open and transparent as possible
- ensure that it can accurately identify the sources of information and the special interests that may motivate its dissemination
- reduce the risk of officials being unduly or unfairly influenced by biased or distorted viewpoints presented to them.

Legislative requirements

Under the *Integrity Act 2009*:

- lobbyists who act on behalf of a third party client must register with the Integrity Commissioner before they contact a state or local government representative for the purpose of lobbying activities
- lobbyists who act on behalf of a third party must comply with the *Lobbyists code of conduct*
- it is an offence to offer or pay any fee that depends on the outcome of the lobbying activity, whether or not lobbyists are paid for their services
- former senior government representatives (i.e. the Premier, ministers, parliamentary secretaries, councillors, chief executives, senior executives or senior executive equivalents, ministerial staff members or members of a parliamentary secretary's staff) are prohibited from carrying out lobbying activities related to their official dealings as a government representative for two years after ceasing their employment
- public servants or other government representatives must formally report any breach of the *Lobbyists code of conduct* to the Integrity Commissioner — this includes any improper approach from a person acting as a lobbyist or seeking to unduly influence an official
- a government representative must not knowingly meet with anyone who is not a registered lobbyist, if that

person (or organisation) intends to carry out a lobbying activity on behalf of a third party. If any approach has been made, the government representative must decline further contact and provide the details to the Integrity Commissioner.

The Act does not limit the activities of people or organisations lobbying on their own behalf, representing the interests of their members (e.g. unions or professional bodies) or carrying out incidental lobbying activities.

Major misconduct risks

Loss of public confidence

Public perception that an official has been improperly influenced to favour an individual or group erodes confidence in both the agency and the government as a whole.

Business or financial loss

If contracts or other benefits are inappropriately bestowed:

- your agency can incur financial costs associated with failure to obtain the best value for money and investigations into allegations of misconduct
- other organisations or people who miss out on benefits they should have obtained on merit are financially disadvantaged
- the community fails to benefit from efficient and economical use of public money.

Legal sanctions

- Your staff may be in breach of *the Integrity Act 2009* if they deal with unregistered or restricted lobbyists. Such breaches reflect poorly on both the integrity of the staff involved and the organisation itself.
- Lobbyists may also breach the Act if they fail to meet registration requirements or breach the *Lobbyists code of conduct*.
- The organisation or person who engaged the lobbyist is also in breach of the Act (and liable to a maximum penalty of 200 penalty units) if they offer the lobbyist any success fee.
- Under the *Criminal Code Act 1899*, anyone who promises to reward a public sector officer for acting improperly, or any public sector officer who accepts such promises, is liable to incur serious penalties. It does not matter that nothing is done in return for the reward — offering or accepting a reward is an offence.

Conflicts of interest

Conflicts of interest arise when a public sector officer's private interests conflict with their duty to serve the public interest. Any actual, potential or even perceived conflict can damage the reputation and performance of your organisation. Public sector officers must not only behave ethically, but must also be seen to be doing so.

Close relationships between lobbyists and public sector officers can create the potential for your organisation to become unwittingly 'captured' by that relationship, with a resultant cascading series of biased decisions.

In order to avoid an actual or perceived abuse of office, conflicts of interest must be properly identified, formally declared, and then managed transparently and effectively.

Read more about conflicts of interest and how to manage them.

Biased decision making

Public officials must ensure that their decision making is fair, objective and impartial. Even if the lobbying activity is not illegal, indiscriminate contact with a particular interest group may create the perception that your organisation is favouring that group and that its decision making is tainted by bias. This is particularly so when one group is granted more access to the decision maker than others.

Allegations of bias can follow if promises are made to an interested party before any official decision has been made (e.g. if a councillor promises a developer a favourable decision before the planning officers responsible have considered all the relevant material). Public sector officers should be careful to avoid unwittingly creating perceptions or expectations of favourable treatment when discussing matters with interested parties. A risk to be considered whenever conducting discussions with any interested party is that expectations or perceptions may be unwittingly created.

The following strategies have been developed from advice provided by the Integrity Commissioner, the CMC and the State Archivist to public sector agencies on appropriate ways to manage government interaction with lobbyists to ensure a high

level of integrity and transparency.

Strategies to prevent misconduct

- Develop a clear policy and provide it to all staff who are likely to encounter third party lobbyists. The policy should:
 - require that officials refuse to have any contact with a third party lobbyist who is not properly registered on the Integrity Commissioner's *Register of lobbyists*
 - set out a process for managing and recording any contacts between officials and registered third party lobbyists, including a convenient method for checking the currency and completeness of their registration
 - set out a process for ensuring that all contacts with registered third party lobbyists are properly recorded in the agency's register of contacts with lobbyists, and that the register is available for appropriate scrutiny
 - require officials to report any attempted contacts by unregistered or inaccurately registered third party lobbyists. Staff should report improper contacts through their chief executive officer; ministers and councillors can report directly to the Integrity Commissioner if they prefer to do so
 - detail a process for preventing, managing and recording any contacts by former government representatives who, under s. 45 of the *Integrity Act 2009*, are restricted from lobbying government on any matter with which they had dealings as an official for a period of two years after leaving government service
 - provide clear instructions for effectively managing any conflicts of interest that may arise, perhaps by cross-reference to another policy or relevant legislation (e.g. a code of conduct or the *Public Sector Ethics Act 1994*).
- Document the decision-making process by:
 - recording the names of all officials involved in assembling or assessing information relative to the decision, how the decision was made, and by whom
 - recording any contact with any party with an interest in the outcome (e.g. registered third party lobbyists or any person or organisation making representations in its own interests, such as developers, applicants, submitters, charities, community groups and overseas lobbyists who are not required to register under the Act). You may choose to include this information on your register of contacts with lobbyists
 - recording the reasons for making a particular decision (under the *Judicial Review Act 1991*, decision makers may at any time be required to provide a statement of these reasons).
- Hold all dealings with interested parties in official locations, preferably with more than one official representative in attendance (ministers and councillors should avoid one-on-one meetings).
- Manage all records (such as diary entries, file notes, meeting agendas and minutes) in a way that connects them to the decision-making process and makes it easy for anyone authorised to enquire into the process to identify and locate them.
- Develop a mandatory process for officials declaring any conflict of interest in relation to a decision, and for managing and recording the conflict.
- Require that anyone entering into contracts with the agency promptly declare any conflict of interest of which they are aware.
- Carry out a risk analysis of processes your agency manages to assess the level of transparency necessary to satisfy the public interest, and document as appropriate. Pay special attention to:
 - grant applications
 - licence applications, renewals and variations
 - zoning, re-zoning or other regulatory applications
 - development applications
 - tenders
 - contracts
 - 'preferred supplier' arrangements.
- Ensure that staff are fully aware of their responsibilities under the agency's policy on receiving gifts or other benefits and that properly accepting them under your policy may still result in improper influence on their decisions.
- Provide staff, especially those in vulnerable roles, with regular training on managing contacts with interested parties as part of their code of conduct training, as a culture of awareness and integrity is the best defence against undue influence.
- Make it known that your agency uses an ethical decision-making process and will not tolerate improper attempts

to influence that process. Consider including a formal statement to this effect on websites, application forms, and tender and contract documentation.

Further information and resources

- *Integrity Act 2009* (Qld)
- *Libraries Act 1988* (Qld)
- *Local Government Act 2009* (Qld)
- *Right to Information Act 2009* (Qld)
- *Public Records Act 2002* (Qld)
- *Public Sector Ethics Act 1994* (Qld)
- *Australian Government Protective Security Policy Framework 2012*
- *General Retention and Disposal Schedule for Local Government, Queensland State Archives.*

Please contact us if you would like further detailed guidance and information on any aspect of this advisory.

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Contact us

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