



Western Australia

Integrity (Lobbyists) Act 2016

Integrity (Lobbyists) Act 2016

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Western Australia

Integrity (Lobbyists) Act 2016

No. 15 of 2016

An Act to promote and enhance public confidence in the transparency, integrity and honesty of dealings between lobbyists and government representatives by —

- **providing for the registration of lobbyists; and**
 - **providing for the issuing of a code of conduct for registered lobbyists in their dealings with government; and**
 - **prohibiting registered lobbyists from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Integrity (Lobbyists) Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —

code of conduct means a code of conduct in force under section 16;

Commissioner means the Public Sector Commissioner;

communicate means communicate with another person by any means, including —

- (a) by meeting in person; and
- (b) by post, facsimile, telephone, email or any other form of electronic communication;

corporation has the meaning given in the *Corporations Act 2001* (Commonwealth) section 57A;

government representative —

- (a) means any of the following —
 - (i) a Minister;
 - (ii) a Parliamentary Secretary;
 - (iii) a public sector employee;

- (iv) a person (other than a public sector employee) who is engaged by a public sector body under a contract for services;
- (v) a person employed by an entity listed in the PSM Act Schedule 1 column 2, if the entity is prescribed by the regulations for the purposes of this subparagraph;
- (vi) a person employed by any body that is referred to in subsection (3) and is prescribed by the regulations for the purposes of this subparagraph;
- (vii) the holder of any office, post or position that is referred to in subsection (3) and is prescribed by the regulations for the purposes of this subparagraph;

but

- (b) does not include —
 - (i) any person to whom paragraph (a)(iii) to (vii) applies and who is performing functions in any office, branch or post located outside Australia; or
 - (ii) a non-Executive ministerial officer;

lobbying activity has the meaning given in section 4;

lobbyist means a person who is listed in the register in respect of a registrant;

Minister means a Minister of the Crown in right of the State;

ministerial contractor —

- (a) means a person (other than a ministerial officer) who is employed or engaged to perform functions in the office of a Minister or a Parliamentary Secretary; and
- (b) if the person who is engaged to perform the functions is not a natural person, includes the natural person who actually performs the functions;

ministerial officer has the meaning given in the PSM Act section 3(1);

non-Executive ministerial officer means a person appointed as a ministerial officer to assist a political office holder (as defined in the PSM Act section 3(1)) if the political office holder is not a Minister or a Parliamentary Secretary;

non-profit organisation means an organisation that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the organisation's constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members;

organisation means any incorporated body or unincorporated group (however structured);

Parliamentary Secretary means —

- (a) a Parliamentary Secretary appointed under the *Constitution Acts Amendment Act 1899* section 44A(1); or
- (b) the Parliamentary Secretary of the Cabinet;

PSM Act means the *Public Sector Management Act 1994*;

Public Sector has the meaning given in the PSM Act section 3(1);

public sector body has the meaning given in the PSM Act section 3(1);

public sector employee —

- (a) means an employee as defined in the PSM Act section 3(1); and
- (b) includes a ministerial contractor;

register means the register kept under section 10;

registrant means a person who is registered in the register;

related body corporate has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

senior public sector executive —

- (a) means a person who —
- (i) holds an office in the Public Sector, if the annual salary attached to that office is equal to or greater than the amount prescribed by the regulations for the purposes of this subparagraph; or
 - (ii) holds an office prescribed for the purposes of the *Salaries and Allowances Act 1975* section 6(1)(e); or
 - (iii) holds an office in the Public Sector, or an office in a class of offices in the Public Sector, if the office or class of offices is prescribed by the regulations for the purposes of this subparagraph; or
 - (iv) is a ministerial contractor, if the person is a natural person and the criteria prescribed in relation to ministerial contractors by the regulations for the purposes of this subparagraph are met;
- and
- (b) includes a person who is acting in an office to which paragraph (a)(i) to (iii) applies; but
- (c) does not include —
- (i) a non-Executive ministerial officer; or
 - (ii) a person, office or position exempted by the Commissioner in accordance with the regulations;

State government decision-making means decision-making by or on behalf of the Executive Government of the State (whether the decision is made by the Governor, a Minister, a Parliamentary Secretary, a public sector employee, a statutory officer or statutory body or any other person), including (without limitation) the making of decisions relating to any of the following —

- (a) the development, amendment or repeal of legislation;
- (b) the introduction of any Bill into either House of Parliament, or the passage, amendment, or defeat of any Bill that is before a House of Parliament;
- (c) the development, amendment or abandonment of any policy or programme;
- (d) the making of an appointment to any body, office, post or position;
- (e) the awarding of a contract, grant or donation;
- (f) the allocation of funding;
- (g) the exercise of a discretionary power;

success fee has the meaning given in section 20.

- (2) For the purposes of this Act, a person undertakes a lobbying activity on behalf of another person if the lobbying activity is undertaken for the purpose of representing the interests of that other person.
- (3) Regulations made for the purposes of paragraph (a)(vi) or (vii) of the definition of **government representative** in subsection (1) can prescribe a body or the holder of an office, post or position only if —
 - (a) the body, office, post or position is —
 - (i) established or continued for a public purpose under a written law; or
 - (ii) established by the Governor or a Minister;or
 - (b) it is a corporation or association over which control can be exercised by —
 - (i) the State; or
 - (ii) a public sector body; or
 - (iii) a body, office, post or position referred to in paragraph (a); or

- (iv) a body or the holder of an office, post or position that is itself prescribed by the regulations for the purposes of paragraph (a)(vi) or (vii) of that definition.

4. Term used: lobbying activity

- (1) In this Act, unless the contrary intention appears —
lobbying activity means communicating with a government representative for the purpose of influencing, whether directly or indirectly, State government decision-making.
- (2) For an activity to be a lobbying activity, it is not essential that the activity be undertaken for any commission, payment or other reward (whether pecuniary or otherwise).
- (3) The following are not lobbying activities —
 - (a) petitioning the Legislative Council or the Legislative Assembly, or both Houses;
 - (b) petitioning the Governor;
 - (c) communicating with a committee of the Legislative Council or the Legislative Assembly, or a joint committee of both Houses;
 - (d) communicating with a person who is a Minister or a Parliamentary Secretary, in that person's capacity as a member of either House of Parliament and not as a member of the Executive Government of the State, in relation to a matter that is not within that person's responsibilities as a Minister or a Parliamentary Secretary;
 - (e) subject to subsection (4), communicating as part of an activity of a grassroots campaign nature in an attempt to influence State government decision-making, for example, encouraging letter-writing, phone-calling or emailing campaigns;
 - (f) responding to —

- (i) a call for submissions; or
 - (ii) a request for tender, request for expression of interest, request for a proposal or a request of a similar nature;
 - (g) providing information in response to a request from a government representative;
 - (h) communicating only for the purpose of making an application under a written law, if the application is considered and decided under that written law by a government representative or the Governor;
 - (i) making a public statement;
 - (j) communicating about a personal matter on behalf of —
 - (i) the person making the communication; or
 - (ii) a friend or relative of that person;
 - (k) any activity or class of activity prescribed by the regulations for the purposes of this paragraph.
- (4) Subsection (3)(e) does not apply in relation to any communication by a person for any commission, payment or other reward (whether pecuniary or otherwise).
- (5) For the purposes of subsection (3)(j), a **personal matter** is a matter that relates only to a person's personal, family or household affairs and is not related to any business or commercial activity.

5. Purpose

- (1) The purpose of this Act is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives and people who undertake lobbying activities on behalf of others.
- (2) In order to achieve this purpose, this Act —
 - (a) provides for the registration of people who undertake lobbying activities; and

- (b) provides for the issuing of a code of conduct for registered persons in their dealings with government; and
- (c) prohibits registered persons from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities.

6. Act binds Crown

This Act binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

7. Application

Nothing in this Act —

- (a) requires a government representative to have dealings with —
 - (i) a particular lobbyist; or
 - (ii) lobbyists in general;or
- (b) limits communication by a person (whether personally or through a lobbyist) with a government representative if the law requires a government representative to take account of the views advanced by the person.

Part 2 — Registration

Division 1 — Requirement to be registered

8. Lobbying activity by unregistered persons prohibited

- (1) A person (*person A*) who is in the business of lobbying must not undertake lobbying activities on behalf of another person unless person A is accredited as a lobbyist.

Penalty: a fine of \$10 000.

- (2) For the purposes of subsection (1), the following persons are in the business of lobbying —

- (a) a person whose business consists of or includes undertaking lobbying activities on behalf of another person;
- (b) a person who employs or engages one or more persons to undertake lobbying activities on behalf of another person;
- (c) a person who is employed or engaged by a person to undertake lobbying activities on behalf of another person.

- (3) For the purposes of subsection (2)(b) and (c), the lobbying activities need not be the only work undertaken by an employee or contractor.

- (4) This section does not apply to any person to whom or to which section 9 applies.

9. Certain persons not required to register

None of the following is required to be accredited as a lobbyist under this Act —

- (a) a non-profit organisation;
- (b) an organisation constituted to represent the interests of its members (for example, a trade union, an employer

organisation or a professional body such as a law society);

- (c) a person who is employed or engaged by an organisation to which paragraph (b) applies, to the extent that the employee or contractor undertakes lobbying activities for the purpose of representing the interests of the organisation's members;
- (d) a business the principal purpose of which is the carrying on of a technical or professional occupation (such as engineering, accountancy, town planning, medicine or law) in which the undertaking of lobbying activities is occasional only and incidental to the provision of the technical or professional services;
- (e) a person who provides technical or professional services as part of a business to which paragraph (d) applies, to the extent that the undertaking of lobbying activities by that person is occasional only and incidental to the provision of the technical or professional services;
- (f) a person who is employed by another person (the *employer*) to undertake lobbying activities only for the purpose of representing the interests of —
 - (i) the employer; or
 - (ii) if the employer is a corporation, a related body corporate of the employer;
- (g) a member of a trade delegation visiting the State;
- (h) a person or body, or a member of a class of persons or bodies, prescribed by the regulations for the purposes of this paragraph.

Division 2 — Register

10. Register

- (1) The Commissioner must establish and maintain a register for the purposes of this Act.

- (2) The register records —
 - (a) information relating to —
 - (i) registrants; and
 - (ii) lobbyists;and
 - (b) any other information the Commissioner considers necessary or desirable for the purposes of this Act.
- (3) Without limiting subsection (2), the register must record information relating to persons for whom lobbyists are undertaking lobbying activities.
- (4) The Commissioner may —
 - (a) keep the register in any form the Commissioner considers appropriate; and
 - (b) make any changes to the register that the Commissioner considers necessary or desirable to ensure that the register is accurate and up-to-date.

11. Publication of information on register

- (1) The Commissioner must make the information on the register publicly available free of charge.
- (2) The Commissioner may comply with subsection (1) in any way the Commissioner considers appropriate.

Division 3 — Registration and listing

12. Who may be registered

- (1) Any person may be registered under this Act.
- (2) Subsection (1) is subject to sections 14 and 15.

13. Who may be listed as lobbyist

- (1) Any of the following persons may be listed as a lobbyist —
 - (a) a registrant;
 - (b) a person who is a partner in a firm that is a registrant;
 - (c) a director, manager, secretary or other similar officer (by whatever name called) of a registrant;
 - (d) a person who is employed, contracted or otherwise engaged by a registrant to provide lobbying activity services.
- (2) A person is listed as a lobbyist by being listed in the register in respect of a registrant.
- (3) While a person is listed as a lobbyist, the person is to be taken to be accredited as a lobbyist.
- (4) Subsection (1) is subject to sections 14 and 15.

14. Certain persons disqualified from registration or listing

- (1) In this section —

relevant office means any of the following offices or positions —

 - (a) a member of either House of Parliament;
 - (b) a senator for Western Australia in the Commonwealth Senate;
 - (c) a member of the Commonwealth House of Representatives for an Electoral Division in Western Australia;
 - (d) a senior public sector executive;
 - (e) an office or position prescribed by the regulations for the purposes of this definition.
- (2) A person cannot be registered under this Act or listed as a lobbyist if —

- (a) the person holds a relevant office; or
 - (b) the person has ceased to hold a relevant office, and a period of less than one year has elapsed since the date on which the person ceased to hold that office.
- (3) However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a lobbyist.

15. Commissioner makes decisions on registration and listing and related procedures

- (1) The Commissioner decides all matters relating to or connected with registration and listing under this Act, including (without limitation) —
- (a) whether, and the conditions (if any) on or subject to which, a person is registered or listed; and
 - (b) when, and on what grounds or in what circumstances, a person's registration is to be suspended or cancelled, or a person's listing as a lobbyist is to be removed from the register.
- (2) The Commissioner also determines all procedures relating to or connected with registration and listing.

Part 3 — Code of conduct

16. Code of conduct

- (1) The Commissioner may issue a code of conduct for registrants and lobbyists.
- (2) Before issuing, amending or repealing a code of conduct, the Commissioner must consult those persons whom the Commissioner considers it desirable and practicable to consult.

17. Registrants and lobbyists to comply with code of conduct

- (1) Registrants and lobbyists must comply with a code of conduct.
- (2) No civil or criminal liability attaches to a person only because the person has committed a breach of a code of conduct, but the Commissioner may consider whether a breach has occurred, and may take into account any breach that the Commissioner is satisfied has occurred, in performing any function under this Act.
- (3) Subsection (2) is subject to section 24.

18. Publication of code of conduct

- (1) The Commissioner must —
 - (a) publish a code of conduct in the *Gazette*; and
 - (b) make a code of conduct publicly available free of charge.
- (2) The Commissioner may comply with subsection (1)(b) in any way the Commissioner considers appropriate.

19. Application of *Interpretation Act 1984* to code of conduct

- (1) A code of conduct is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

s. 19

- (2) The *Interpretation Act 1984* section 42 applies to a code of conduct as if a code of conduct were regulations.

Part 4 — Success fees

20. Term used: success fee

In this Part —

success fee, in relation to a lobbying activity, means any commission, payment or other reward (whether pecuniary or otherwise) if the giving or receiving of all or part of the commission, payment or reward depends, whether directly or indirectly, on —

- (a) the outcome of the lobbying activity; or
- (b) the outcome of a matter about which the lobbying activity is undertaken.

21. Agreements to receive success fees prohibited

- (1) A registrant must not agree that the registrant, or a lobbyist listed under that registrant, receive a success fee for a lobbying activity undertaken, on behalf of another person, by a lobbyist who is listed under that registrant.
- (2) A lobbyist must not agree that the lobbyist, or the registrant under which that person is listed, receive a success fee for a lobbying activity undertaken, on behalf of another person, by the lobbyist.
- (3) Subsections (1) and (2) do not apply to any agreement to receive any commission, payment or reward, if the commission, payment or reward is agreed to be given (whether as remuneration or as a bonus or otherwise) by an employer to that person's employee for work done by that employee in the course of that employment.
- (4) No civil or criminal liability attaches to a person only because the person has committed a breach of the prohibition in subsection (1) or (2).

s. 22

- (5) A provision of a contract that breaches that prohibition is void and unenforceable, but does not prejudice or affect the operation of other provisions of the contract.

22. Recovery of success fee

- (1) If a person receives a success fee under a provision of a contract that breaches the prohibition in section 21(1) or (2), an amount equal to the monetary value of the success fee received by the person may be recovered from that person in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the State.
- (2) However, the court may decline to order the recovery of the amount if it considers that it would be unfair or unjust to make the order.
- (3) For the purposes of any proceedings under this section, if the success fee, or part of the success fee, that is the subject of the proceedings was not a specific sum of money (whether in cash or otherwise) —
- (a) the Commissioner is to estimate the amount of the monetary value of that success fee or, as the case requires, that part of the success fee; and
 - (b) that estimated amount is to be taken to be the monetary value of that success fee or, as the case requires, that part of the success fee, unless the person who received the success fee shows that the success fee or, as the case requires, that part of the success fee had a different monetary value.

Part 5 — Miscellaneous

Division 1 — Provision of information to Commissioner

23. **Duty of confidentiality overridden**

If a registrant discloses information to the Commissioner in connection with the carrying out of the Commissioner's functions under this Act —

- (a) neither the registrant nor any lobbyist listed under that registrant incurs any civil or criminal liability in respect of the disclosure; and
- (b) the disclosure is not to be regarded as a breach, by the registrant or any lobbyist listed under that registrant, of —
 - (i) any duty of confidentiality or secrecy imposed by law; or
 - (ii) professional ethics or standards;and
- (c) the disclosure is not to be regarded as unprofessional conduct.

24. **Offence to supply false or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —
 - (a) in any application made to the Commissioner in connection with —
 - (i) registration under this Act; or
 - (ii) listing as a lobbyist;or
 - (b) in a response to a requirement, made under any procedure determined by the Commissioner under

section 15, to provide information or a document to the Commissioner; or

- (c) in written representations made to the Commissioner under any procedure determined by the Commissioner under section 15; or
- (d) in any notification or information given, or document produced, or representation made, to the Commissioner under a code of conduct or the regulations.

Penalty: a fine of \$10 000.

- (2) The things to which subsection (1) applies are —
 - (a) giving information that the person knows to be false or misleading in a material particular;
 - (b) failing to give information that the person knows is materially relevant;
 - (c) omitting information without which any notification or information given, or any document produced, or any representation made, is, to the person's knowledge, false or misleading in a material particular.

Division 2 — General

25. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) If there is an inconsistency between a code of conduct and any regulations made under this Act, the regulations prevail to the extent of the inconsistency.

Part 6 — Transitional

26. Terms used

In this Part —

commencement day means the day on which this Part comes into operation;

lobbyist profile means an entry in the WA Register of Lobbyists described as a “Lobbyist Profile”;

WA Register of Lobbyists means the document called the “Register of Lobbyists” and maintained by the Commissioner immediately before the commencement day.

27. Persons on existing Register of Lobbyists

(1) On the commencement day —

- (a) each person whose name is recorded in a lobbyist profile under the heading “Company Details” immediately before the commencement day is to be treated as a registrant, and this Act applies accordingly; and
- (b) each person whose name is recorded in a lobbyist profile under the heading “Lobbyist Details” immediately before the commencement day is to be treated as a lobbyist listed under the person whose name is recorded under the heading “Company Details” in the same lobbyist profile, and this Act applies accordingly.

(2) If subsection (1) applies to a person —

- (a) the Commissioner is to ensure that the information recorded in the WA Register of Lobbyists in relation to that person immediately before the commencement day is recorded on the register as soon as practicable; and
- (b) the recording of that information is to be taken to be sufficient compliance with section 10(2).

s. 28

- (3) The fact that subsection (1) applies to a person does not limit section 15.
- (4) This section overrides section 14(2)(b).

28. Existing contracts for success fee

- (1) In this section —
relevant date means the day on which section 21 comes into operation.
- (2) Section 21 applies in respect of any agreement, or any success fee receivable under an agreement, in force before the relevant date.
- (3) However, section 21 does not apply in respect of —
 - (a) any success fee received before the relevant date; or
 - (b) any success fee that is receivable (whether before or after the relevant date) for work carried out before the relevant date; or
 - (c) the entering into, before the relevant date, of an agreement to receive a success fee.
- (4) Section 21 applies to an agreement to receive a success fee that was entered into before the relevant date to the extent that the agreement provides for a success fee to be received for work carried out on or after the relevant date.



Notes

¹ This is a compilation of the *Integrity (Lobbyists) Act 2016*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Integrity (Lobbyists) Act 2016</i>	15 of 2016	11 Jul 2016	Pt. 1: 11 Jul 2016 (see s. 2(a)); Act other than Pt. 1: 12 Dec 2016 (see s. 2(b) and <i>Gazette</i> 9 Dec 2016 p. 5558)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
code of conduct.....	3(1)
commencement day	26
Commissioner	3(1)
communicate	3(1)
corporation.....	3(1)
employer	9
government representative	3(1)
lobbying activity	3(1), 4(1)
lobbyist	3(1)
lobbyist profile.....	26
Minister.....	3(1)
ministerial contractor	3(1)
ministerial officer.....	3(1)
non-Executive ministerial officer.....	3(1)
non-profit organisation	3(1)
organisation.....	3(1)
Parliamentary Secretary	3(1)
person A.....	8(1)
personal matter.....	4(5)
PSM Act.....	3(1)
Public Sector	3(1)
public sector body.....	3(1)
public sector employee	3(1)
register	3(1)
registrant	3(1)
related body corporate	3(1)
relevant date.....	28(1)
relevant office	14(1)
senior public sector executive	3(1)
State government decision-making	3(1)
success fee	3(1), 20
WA Register of Lobbyists	26