Public Benefit Test of Ban on Success Fees to Lobbyists

Final Report to Queensland Department of Premier and Cabinet

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Executive Summary

The Queensland Government is proposing to expand regulation of registered lobbyists through a prohibition on success fees. The objective of the prohibition on success fees is to ensure that lobbying is done ethically, with the highest standards and to conserve and enhance public confidence and trust in the integrity, objectivity and impartiality of Government decision making and public policy development.

This review of the proposal is required to comply with the Competition Principles Agreement which Queensland recommitted to under the National Reform Agenda. It examines restrictions on competition including whether there is a net benefit in the State legislating to ban the payment and receipt of success fees to lobbyists.

The review was conducted in accordance with the Queensland Government's Public Benefit Test (PBT) Guidelines. The guiding principles of a PBT are whether:

- the benefits of the competition restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Analysis of the lobbying industry identified that the relevant market for considering the impact on competition of the ban on was a national market for lobbying services. Available evidence indicated that few firms in this national market use success fees, and even fewer rely substantially upon success fees. Although banning success fees may have a negative impact on competition within the relevant market, this impact on competition is not expected to be significant.

The primary benefits that are expected to result from the legislative ban accrue to the broader community. They relate to improved perceptions of access to Government and the development of public policy. These benefits were unquantifiable, but are considered to outweigh any detriment from the restriction on competition. The identified impacts of the ban on success fees are provided in Table 1. There is almost no data on which to form a quantitative assessment of the impacts of the ban. These impacts have been rated as major, moderate or limited to provide a sense of the relative importance of each benefit and cost.

Table 1 Impacts of proposed ban on success fees

Impact	Stakeholder/s affected	Type of impact
Benefits		
Reduced incentives for inappropriate	Community, parties dealing with	Non-quantifiable

Impact	Stakeholder/s affected	Type of impact
lobbying conduct	Government (such as tenderers and lobbyists) and Government	Moderate
Increased public confidence in Government contracting	Community and Government	Non-quantifiable Moderate
More ethical lobbying industry	Clients of lobbyists, lobbyists who do not presently use unethical practices and the Government	Non-quantifiable Limited
More level playing field in policy making and politics	Community, parties dealing with Government (such as tenderers and lobbyists) and Government	Non-quantifiable Limited
Costs		
Restriction on conduct of market participants	Lobbying industry market participants such as lobbyists and clients	Non-quantifiable Limited
Administration and enforcement costs	Government	Quantifiable $250,000/yr

Source: Synergies.

Other alternatives that had a smaller impact on competition within the relevant market were assessed:

- no restrictions on success fees;
- changes to other aspects of the regulation of lobbyists to limit the negative aspects of success fees;
- mandatory inclusion of a provision in all conditions of offer documents for government to disclose if a lobbyist has or will be engaged and if success fees have been paid or are payable; and
- self regulation by the lobbying industry, which could include a ban on success fees.

These alternatives are not as effective as achieving the objectives sought by the government.

Only the proposed ban on success fees will achieve the government's objectives and is likely to result in a net public benefit.

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1 Introduction

Professional lobbyists who act on the part of third party clients by lobbying Government representatives such as Ministers, Parliamentary Secretaries, Ministerial staff and senior staff working in public sector agencies must be listed on the Queensland Register of Lobbyists. The objective of the regulation of lobbyists is to increase public confidence in the development of public policy.

Synergies Economic Consulting (Synergies) was appointed by the Queensland Department of Premier and Cabinet to undertake a Public Benefit Test of a proposal to ban success fees paid to lobbyists on the Queensland Register of Lobbyists.

A legislative ban on the use of success fees by lobbyists has been proposed to address community concern identified by Government over the use of inappropriate lobbying activities in order to achieve particular outcomes for clients of lobbyists.

The ban on success fees to lobbyists will operate to prevent the payment and receipt of success fees – those fees whose payment, either partly or fully, is contingent on a favourable outcome for the client. Examples of contingent events include the award of a contract, securing meetings with government representatives, securing licences or securing changes to legislation, regulation or policy.

This review of the proposal is required to comply with the Competition Principles Agreement which Queensland recommitted to under the National Reform Agenda. It examines restrictions on competition including whether there is a net benefit in the State legislating to ban the payment and receipt of success fees to lobbyists.

The Terms of Reference for this PBT require a minor review. The review has included targeted stakeholder consultation by the Department of Premier and Cabinet as well as public submissions. It has been conducted in accordance with Queensland Treasury's Public Benefit Test Guidelines.

The Terms of Reference for the review are to:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and

- consider alternative means for achieving the same result including non-legislative approaches.

The review was directed to examine:

- the market to be impacted by the proposed restriction on the payment of success fees in relation to the processes for the award of Government contracts;
- any effect on the ability of lobbyists to continue to operate in the market and secure business in relation to the award of Government contracts;
- any effect on the ability of businesses to continue to bid for the award of Government contracts; and
- the social benefits arising from an enhancement in community confidence in the accountability and probity of Government procurement processes and whether this would outweigh any anti-competitive effect of the proposed legislation.

The scope of the ban was subsequently widened to a ban on all use of success fees by lobbyists in relation to all government activities, rather than only those used in relation to Government procurement.

An issues paper was released by the Department of Premier and Cabinet on 18 September 2009. This report incorporates the submissions received from stakeholders.

The report is set out as follows:

- section 2 provides the background on lobbying;
- section 3 identifies the key issues that were considered in this PBT;
- section 4 undertakes a competition assessment of the proposed ban on success fees;
- section 5 outlines the available options including the proposed legislative ban on success fees and possible alternatives;
- section 6 assesses the public benefit of the proposed ban;
- section 7 provides conclusions and recommendations with respect to the PBT.
- Attachment A provides further details on lobbying in Queensland and Australia; and
- Attachment B summarises the regulation of lobbyists in a number of other jurisdictions.

2 Background

2.1 Description of lobbyists and lobbying service

Lobbying is a feature of most democracies and is accepted as a legitimate means for stakeholders to engage with Government in order to present their views in relation to Government decisions and policies.

Lobbying is undertaken by a broad range of business, non-profit organisation and individuals in the community. The proposed legislation covers only lobbyists who offer their services to others for a fee.

The service of lobbying on behalf of another is intrinsically linked to the use of information and influence by a lobbyist to assist their client to achieve a more favourable outcome. It typically involves advising a client on how to represent their interests to government and making such representation with or on behalf of their client. It is a form of strategic advice on how to gain favourable consideration of an issue by government.

Lobbying requires a detailed knowledge of the process of decision making in Government, expertise in politics and a good network of contacts.

The service offering of a lobbyist has been described for the purposes of this PBT as

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

Lobbyist services are provided to all non-government sectors in the economy including business, trade unions, industry associations and not-for-profit activities. These services are provided by employees with experience of government processes including politicians, political staffers and public servants.

The lobbying industry continues to grow in all jurisdictions. Professor John Warhurst notes that there are hundreds of commercial lobbyists operating in Canberra and the state capitals.[1]

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1 Warhurst, J. 2008. The Lobbying Code of Conduct: An Appraisal, Democratic Audit Discussion Papers.

Consultant lobbyists are professional services firms that are paid by clients to lobby. The types of firms that compete to provide these services potentially extend beyond specialist lobbying firms to legal, accounting and business services firms. A narrow market definition would include only those firms and individuals registered as lobbyists. A broader definition could encompass all professional service firms. Lobbyists are required to be registered in several Australian jurisdictions and this may help to define an appropriate boundary of the market.

The scope of the proposed ban of success fees covers lobbyists as defined in the Queensland Contact with Lobbyists Code:

> 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.

For the purposes of the proposed legislation, a lobbyist does not include:

- an association or organisation constituted to represent the interests of its members (e.g. an employers group, a trade union or a professional body such as the Queensland Law Society);
- 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 (e.g. lawyer or accountant); or
- a full-time employee of an organisation or firm that represents their own interests to a Government representative.[2]

Lobbying services in Queensland are predominantly provided by firms that specialise in Government advice, public relations and media and marketing.[3] However, other professional services firms such as law and accounting firms also provide lobbying services. Figure 1 shows the services that registered lobbyist report they provide. Lobbying and communication strategy are the most common service offering.

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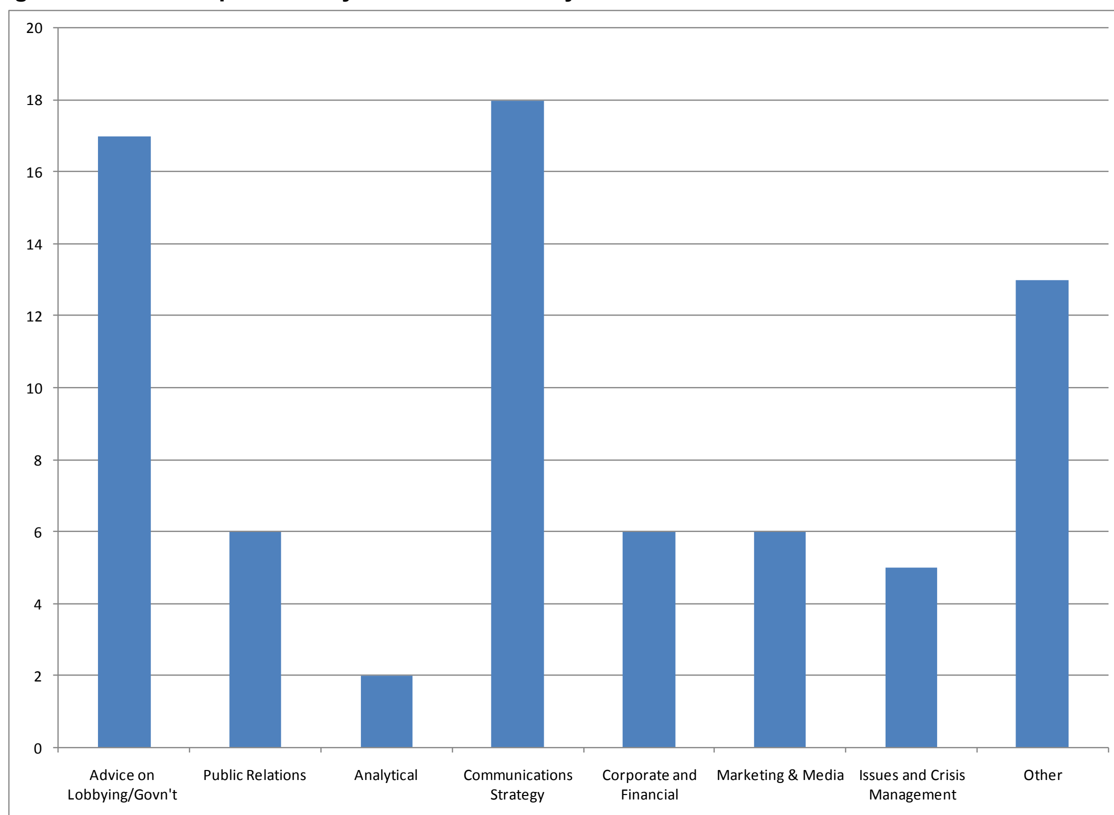
[2] Consideration is also being given to including ‘employees of government owned corporations (GOCs) and other Government-created bodies’ within the definition of “government representative”, which would mean that lobbying GOCs may be within the ambit of the proposed legislative ban.

[3] Based on the Register of Lobbyists and the service descriptions provided by the registered lobbyists on their individual websites. Source: Queensland Government, ‘Register of Lobbyists,’ 12 October 2009, http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/the-register.aspx.

Figure 1 Services provided by Queensland Lobbyists



Note: The figure displays the number of firms (y-axis) providing each of the identified service categories (x-axis). 28 out of the 69 registered Queensland lobbyists do not have websites where their services are listed and are therefore excluded from the count.
Data source: Lobbyist websites.

2.2 Pricing of services

Four methods of pricing are commonly used in relation to lobbying services:

- hourly rate fee;
- fixed fee;
- success fee; and
- mixed fee.

Hourly rate charging is a common form of time-based charging commonly used by professional services firms. The cost of a service is determined by multiplying the number of hours spent by an agreed rate. Fixed fee charging is an alternative form of charging that is also commonly used by professional services firms. Fixed fee charging

allows the client to shift the risk of cost-overruns to the consultant. An hourly rate fee is usually a component used in determining a reasonable fixed fee.

One industry submission further elaborated that pricing models for lobbying services include one or a combination of the following arrangements:[4]

- retainers for clients with longer term requirements;
- fixed price, hourly or daily rates for shorter term projects; and
- outcomes based fees for achievement of milestones.

For the purposes of the PBT, a success fee is defined as:

> money or other remuneration payable to a person that is wholly or partly contingent on the person's degree of success in achieving or securing a favourable outcome for their client.

Payment of the success fee depends on the happening of some event or success for the client, and such an event is commonly associated with a decision made a third party, for example awarding a contract or passing legislation. It allows the client and the consultant to share the risk when there is uncertainty about the likely outcome of lobbying activity.[5]

A mixed fee may also be used, in which some combination of hourly rate fee, fixed fee and success fee is used for remuneration of the lobbyist. It allows both parties to find a fee structure that matches their respective preference to accept risk.

Submissions from lobbying firms provided some guidance as to when success fees may be paid to Registered Lobbyists. These circumstances include:[6]

- lengthy projects;
- major tender bids;
- contract procurement;
- property development; and

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[4] SAS Group, Response to the Public Benefit Test – Ban on Success Fees, 15 October 2009, p8.

[5] An example of the use of success fees is the success fee paid to former politicians Mr Terry Mackenroth and Mr Con Sciacca for lobbying services provided to the BrisConnections consortium to secure a contract for the Airport Link project in Queensland.

[6] Hawker Britton, Submission to the Integrity and Accountability in Queensland Green Paper, 15 September 2009, p9. SAS Group, Response to the Public Benefit Test – Ban on Success Fees, 15 October 2009, p10.

- infrastructure planning.

2.3 Regulation of lobbying

Regulation of lobbying appears common in democracies. Concerns with lobbying are generally focused on the possible exertion of undue influence by lobbyists, particularly as the work of a lobbyist is often undertaken in private, preventing external scrutiny.

The forms of regulation applied range from restricting interaction with Government representatives (New Zealand), self-regulation of lobbyists (the UK), through to prescriptive regulation (Canada and the United States).

2.3.1 Queensland

Under the Queensland Contact with Lobbyists Code (the Code), lobbyists in Queensland must be registered and provide certain information about their business activities. A register is maintained by the Department of Premier and Cabinet and updated in the event of any change to the Lobbyist's Details. The registered lobbyist must submit updated details as soon as practicable, but not more than 10 business days after the change occurs.[7]

The Code is intended to deliver the public's expectation that lobbying be undertaken ethically and transparently. It states

> The Queensland Contact with Lobbyists Code ensures that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

As noted in the previous section there are a number of exemptions from the requirement to register as a lobbyist.[8]

Under the current registration arrangements, the following information is supplied by lobbyists:[9]

- business entity name and Australian Business Number (ABN) and trading name;
- names of owners, partners or major shareholders as applicable;

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[7] http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/changes-in-details.aspx .

[8] http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/who-needs-to-register.aspx .

[9] http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/how-to-register.aspx .

- contact details: name, phone number and email address;
- website address (optional);
- a statutory declaration required under clause 5.3 of the Queensland Contact with Lobbyists Code in respect of each employee, contractor or other person engaged by the lobbyist to carry out lobbying activities and if the lobbyist is an individual, a statutory declaration about the lobbyist.
- names and positions of all persons employed, contracted or otherwise engaged by the lobbyist to carry out lobbying activities (including details of any lobbyist who is an individual).
- names of clients for whom the lobbyist is currently retained to provide lobbying services, advice about whether or not the lobbyist is paid for providing the services, and whether or not the lobbyist may receive a success fee for the services.

Changes to the lobbyist's details must be supplied within 10 business days after the change occurs.

2.3.2 Other jurisdictions

A range of approaches are taken to the regulation of lobbying in overseas jurisdictions. Some jurisdictions regulate both the lobbyists, and those that are lobbied while others only regulate those that are lobbied. Different approaches are also taken in relation to the form of regulation. Some regulation is prescriptive while other jurisdictions adopt a light handed approach such as self regulation. The table below provides a summary of the key aspects of regulation in a number of common law jurisdictions.

Table 2 Regulation of lobbyists in other jurisdictions

Jurisdiction	Form of Regulation	Source of Regulation	Success Fees	Enforcement	Other
Canada	Prescriptive regulation	Legislation	Prohibited	Up to 2 years prohibition from lobbying	Payment and receipt of success fee is banned. Registration and reporting requirements are also features of the legislative regulation, and revolving door provisions are used to restrict employment of senior public servants and public office holders.
United States	Prescriptive regulation	Legislation	Prohibited for Federal Government contracting State prohibition varies depending on State jurisdiction	Under Federal Law: Civil penalty of $200,000 Criminal penalty of up to 5 years jail	Regulation of lobbying in the United States is done at a Federal and State level. All 50 states have some form of lobbying regulation. Regulation is applied to both lobbyists and the lobbied in various forms. A covenant is included in Federal Government contracts preventing contingent fees, while various States also prohibit the use of contingent fees. 38 states prohibit contingency fees, and four restrict the use of such fee arrangements.
United Kingdom	Light-handed regulation	Self regulation under Codes of Conduct	Not prohibited	Rarely used reprimands administered by self regulating bodies	Self regulation is used in the United Kingdom for lobbyists, but civil servants and Ministers are subject to regulation in their contact with lobbyists. Self regulation is criticised for a lack of effectiveness due to three rather than one regulatory bodies being in place for the lobbying industry, and a lack of enforcement activity in relation to Codes of Conduct. Firms involved in lobbying may also have their own internal Codes of Conduct.
New Zealand	Light-handed regulation of the lobbied	Codes of Conduct	Not prohibited	Determined by various Codes of Conduct	No legislative regulation of lobbyist conduct, only regulation of interaction of the lobbied with lobbyists. The only regulation of interaction with lobbyists is on the lobbied, in the form of Codes of Conduct such as the Minister's Code of Conduct, as well as Codes of Conduct for MPs from some parties. A Code of Conduct is in place for public employees with enforcement alternatives including loss of employment and criminal sanctions.

Source: Synergies research – Attachment B.

3 Issues

The following is a list of key issues that were taken into consideration throughout the assessment of the ban on success fees for lobbyists compared to the current regulation of lobbyists and identified alternatives to the preferred ban:

- the guiding principles of the PBT were considered, namely whether:
  - the benefits of the competition restriction to the community as a whole outweigh the costs; and
  - the objectives of the legislation can only be achieved by restricting competition;
- the definition of the relevant markets for the assessment of competition impacts;
  - the key consideration in relation to this issue is the degree of substitutability that exists in the market for lobbying (the product dimension) and the geographic boundaries of the market;
- the impact of the ban on competition in the relevant market;
  - including the impacts on choice of risk allocation for market participants, and the removal of a form of pricing that may be preferred by some market participants;
- the extent to which a different approach will alleviate any identified substantial lessening of competition; and
- the public benefits and impacts on affected stakeholders under the ban on success fees for lobbyists and the alternatives;
  - the assessment took into account issues raised throughout the consultation process in addition to any relevant and available industry information to determine the impacts under the preferred and alternative approaches.

3.1 Results of consultation

An Issues Paper was released for public comment. Three submissions were received on the Issues Paper for the banning of success fees. However, more submissions were provided in relation to the lobbying industry in responses to the Queensland Government’s Integrity and Accountability Discussion Paper, which was released before the Issues Paper on Success Fees. Submissions made to the Discussion Paper that were relevant to the issue of banning success fees have also been considered in our analysis. Issues identified in submissions include the extent to which:

- submissions supported the ban on success fees;
- the use of success fees will be difficult to restrain as the current lobbyists precluded from using success fees are too narrowly defined to capture all advisers who could use success fees; and
- success fees create a conflict of interest and this can lead to the potential for corrupt practices.

Submissions to the Discussion Paper that were relevant to the ban on success fees identified issues including:

- general support for the ban of success fees in responses to the Discussion Paper, although two submissions were identified that questioned the proposal to ban success fees;
- support in a number of submissions, particularly from members of the lobbying industry, that disclosure of lobbying activity and basis of payment should be extended to firms undertaking technical or professional occupations (for example lawyers and accountants);
- one industry submission noted that the proposal to ban success fees should also have the negative effects of such a ban analysed;
- two industry submissions and a number of private submissions made arguments in support of continuing existing regulation of lobbyists before assessing the need for further restrictions (such as banning success fees);
- three industry submissions presented proposed Codes of Conduct for lobbyists that would discourage the use of success fees; and
- many industry submissions to both the Discussion Paper and the Issues Paper criticised the regulation of lobbyists for not being applied widely enough and should be extended to other providers of government relations advice than third party lobbyists.

4 Competition assessment

The competition assessment has been undertaken based on a process of defining the market that will be affected by the ban on success fees, describing the nature of the restriction that has been proposed on that market, then determining the impact on competition that is anticipated from the restriction.

4.1 Market definition

4.1.1 Introduction

The concept of a 'market' is defined by the TPA in s4E:

> 'market' means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.

The most important matter to defining the market is the extent of substitutability for the good or service. Defining the market involves identifying, demand and supply side factors, which indicate how substitutable the relevant service is for another.

4.1.2 Purposive approach

Market definition is an important tool in competition analysis because it allows the analysis of the competitive impacts of actions or arrangements.

In recognition of this a purposive approach is taken which defines the market by reference to the impugned conduct. This means that the same set of circumstances could give rise to different markets being defined for the purposes of considering different provisions of the TPA (so that the market definition for a possible misuse of market power may be different to that adopted for analysing a merger in the same industry).[10]

For this Report, market definition will identify the boundaries of the lobbying market in order to determine the impacts on competition that are likely to result from the proposed legislative ban. The key issue is how a ban on success fees affects the ability

[10] Martin Algie and Brian Kewley, *Market Definition Competition Law and Practice* (1998) 4.

of lobbyists to compete and in particular whether the services offered by of lobbyists can be substituted by other professionals who are not subject to the ban on success fees.

The size of the market defined can have implications for the net public benefits that are expected from banning success fees. The larger the market that is defined in relation to success fees, the less severe will be the impacts on competition in the market as a result of the restriction, if the restriction affects all market participants.

4.1.3 Dimensions of the market

There are four dimensions that can be considered in defining a market. They are:

- product dimension;
  - demand substitutability is determined by having regard to the sensitivity of demand for one product to changes in the price of another product, other things being the same. Supply substitutability is measured by examining the shift by firms from using productive capacity to produce and sell one product to produce and sell another product without undertaking significant investment;[11]
- geographic dimension;
  - the primary inquiry is whether the market for a particular good or service is limited to a particular region of Australia or is Australia-wide;
- functional dimension;
  - a market will normally exist at a particular functional level, for example wholesaling as compared to retail; however a vertically integrated market may encompass competition at a number of functional levels;[12] and
- time dimension;
  - the time dimension commonly refers to supply side substitution but can also apply to demand substitution. Substitution possibilities in response to a price change increase the longer the time dimension for a given market, so the longer the time dimension considered, the greater will be the substitution possibilities. For the PBT the product and geographic dimensions are the relevant considerations for the market definition.

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[11] In economics, this substitutability is referred to as the cross-elasticity of demand and supply.

[12] Martin Algie and Brian Kewley, *Market Definition Competition Law and Practice* (1998) 3.

4.1.4 Lobbying Service

Product dimension

For competition assessment purposes a market is defined as the collection of products for which it would be profitable for a hypothetical monopolist controlling all of these products to raise their price by a small but significant and non-transitory increase in price (known as the SSNIP hypothetical monopolist test). The market definition test starts by considering a SSNIP for a single product. If faced by a SSNIP buyers would substitute to other products or locations, then the candidate (provisional) market is too small and must be expanded. The candidate market is expanded to include other products or locations until the hypothetical monopolist test is satisfied. That is, the point at which a product or location is not sufficiently substitutable for the relevant product, to preclude a profitable SSNIP, delineates the boundary of the market. The process is one of progressive expansion until the market is defined.

There are no empirical studies of the demand for lobbying services and therefore no estimates of how demand is likely to respond to a price increase.

In the absence of empirical studies the substitutability of lobbyist services is considered based on economic principles and a qualitative assessment. The application of the rules of derived demand suggests that the derived demand for lobbyist services is likely to have a low price elasticity (Box 1). This is consistent with lobbying services being a distinct product market.

Box 1 Price elasticity of demand for lobbyist services

The demand for lobbying services is a derived from the demand for other goods and services. It can be regarded as an input into producing another good and service and not something purchased for final use.

Marshall established the following four rules of the determinants of the price elasticity of derived factor demand:[13]

- elasticity of final demand (more price elastic final demand increases the elasticity of derived demand)
- the ease of substitution in production (increases the elasticity of derived demand for a factor);
- share in total cost (a higher share increases the elasticity of derived demand); and
- the elasticity of supply of the other factor or factors of production (often not seen as an important factor).

Working through each of these rules provides some insight into the price elasticity of the demand for lobbying. Unfortunately we know little about the price elasticity of final demand.

However, if we regard lobbying as a type of specialist labour it is unlikely to be substitutable to any meaningful extent with other types of labour or for that matter other factors of production such as capital.

The input of the lobbyist is also likely to be a small component of total costs of an activity or project.

The elasticity of other factors is unknown but as noted above this is not regarded as an important factor.

Figure 1 shows that the major service offerings are advice on lobbying and communication services. There are a wide range of other services available from lobbyists. Submissions from the lobbying industry were consistent with there being a wide range of other services provided by lobbyists. Divergent views were however presented regarding the extent of a lobbyist's business that came directly from lobbying.

One industry submission stated[14]

> At least ninety percent of the work is providing strategic advice to clients. Less than ten percent – often much less – is lobbying.

Another stated that less than 20% of a lobbyist's time would be spent in face to face meetings and phone calls with Government, suggesting a substantially greater proportion than only ten percent of the lobbyist's time would be dedicated to lobbying (particularly when tasks such as preparation are considered).

There is little information to assess whether the lobbying service is a differentiated product or essentially the same product provided regardless of the lobbyist.

[13] S. D. Hoffman (2008), *A Short Note on Marshall's Third Law of Derived Demand: Why Does Labor's Share Interact with the Elasticity of Substitution to Decrease the Elasticity of Labor Demand?*

[14] Enhance Corporate, Response to the Queensland Government's Integrity and Accountability in Queensland Green Paper, September 2009, p2.

Differentiation is possible through the experience, knowledge and contacts of a particular lobbyist. These attributes may not be achievable by all lobbying firms, allowing some firms to have some ability to increase their price without losing market share.

For the purpose for delineating the market's product dimension the assumption is made that the minimum service bundle offered in the market of lobbying is not differentiated. Assume a hypothetical monopolist providing this service were to increase its price by 5-10% which is the range typically used to undertake a SSNIP test. Would users substitute other services for lobbying? As discussed above the demand for lobbyist services is likely to be inelastic as it is a small and specialised type of input. For this reason, the substitution of other services for lobbying services is unlikely.

The other aspect of the market response to a price increase is the supply side of the market. Would a price increase induce other firms to supply a lobbying service? A review of the specialist skill set of lobbyists based on the Register of Lobbyists and the descriptions of experience made available by individual lobbyists demonstrated a common grouping of attributes of registered lobbyists. Although the backgrounds of professional lobbyists vary greatly this does not reflect different skill sets, rather it illustrates several different methods of acquiring the necessary specialised skill base required of a lobbyist.

The most common backgrounds for lobbyists which emerged were in the following areas:

- politicians;
- public servants (senior roles);
- political/ministerial advisors;
- lawyers; and
- journalists/media.

Lobbyists from all these backgrounds however demonstrate a common group of core skills. These skills are:

- an understanding of the political process;
- an understanding of public policy;
- a network of government and business contacts;
- experience in communications and media relations; and

- a reputation in politics or in the provision of advice.

In Queensland, the majority of registered lobbyists for which information was available were government relations, public relations or communications advisory firms, or firms offering similar or related services. However, some lobbying is also undertaken by other professional services firms such as lawyers.

Table 3 Classification of Qld registered lobbyists by primary focus of firm

Firm Orientation	Proportion of Firms
Government relations	23%
Industry focused	4%
Communications and public relations	17%
Finance and corporate	11%
Legal services	3%
Other or unspecified	40%

Note: percentages may not equal 100 due to rounding.

Source: Qld Government 'Register of Lobbyists', http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/the-register.aspx

Substitution from a lobbyist to a professional services firm in relation to a small price increase typically used in a SSNIP test that does not undertake lobbying seems unlikely because it requires a specialist skill set that is limited in supply and cannot be supplied without recruitment. An increase in price of this order of magnitude is not likely to result in other professional services firms providing lobbying services as lobbying is a specialised skill provided by those with knowledge and experience of Government processes and access to a network of appropriate contacts. These attributes can be seen to be highly specialised and would need to be acquired over a period of time, providing a non-regulatory barrier to entry for new entrants. Therefore it is unlikely that a 5-10% increase in price will induce other firms without employees with lobbying skills to register and compete as lobbyists.

It is also possible that firms could substitute from procuring services from lobbyists in the market to undertaking lobbying in house. In a submission to the Queensland Government's Discussion Paper on Integrity and Accountability in Queensland it was noted[15]

> It is often only the largest businesses that can afford to employ full-time, in-house government relations advisors. Even then, those same firms often also engage external consultants to provide specialised advice. Small and medium sized

[15] Three Plus Pty Ltd, Rowland Pty Ltd, The Phillips Group, Open Door Consulting, and Government and Community Relations Specialists Pty Ltd, Submission in response to the State Government Discussion Paper on Integrity and Accountability in Queensland, 16 September 2009, p3.

> businesses, which are usually locally owned, generally do not have the resources to employ full-time, in-house government relations advisors and rely on the specialist advice of external consultants to enable them to compete professionally, competently and on an equal footing with larger rivals.

Similarly, another submission contended[16]

> It is a well known fact that many small and large private sector organisations often simply do not possess internal personnel with the ability to effectively and proficiently engage with Government on their employer's behalf and understand the range of stakeholders who have a role in any decision making process.

A large range of possible substitution alternatives were also identified:[17]

> Overly restricting the role of Lobbyists to provide legitimate services will force clients to either:
>
> - seek the services of Law firms with Government Relations advisors;
> - seek the services of Accountancy firms with Government Relations advisors;
> - seek the services of other larger consulting firms that typically offer technical advisory services but could add and have added Government Relations advisors to their service offering;
> - seek the services of an Industry Association to prosecute the specific needs of a member; and/or
> - establish internal resources that provides specialist Government Relations advice from people with the same skills sets and background as those currently operating in the third-party lobbyist sector.[sic]

This submission is outlining the full range of substitution possibilities. In response to a SSNIP, it is unlikely that consulting firms would add Government Relations advisors to their service offering because such a decision would need to consider the size of the market for consulting as well as price. Clients of lobbyists are also unlikely to establish internal resources to meet their lobbying needs unless they were frequently purchasing this service, which seems unlikely.

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16 Enhance Corporate, Response to the Queensland Government's Integrity and Accountability in Queensland Discussion Paper, September 2009, p3.

17 Enhance Corporate, Response to the Queensland Government's Integrity and Accountability in Queensland Discussion Paper, September 2009, p7.

Another submission made reference to negative impacts that had been experienced by the Government Relations industry,[18] implying that the appropriate market is broader than lobbying services. This broader product dimension is not relevant to the issues under consideration in the PBT, based on the purposive approach to market definition. For the purposes of this report, the relevant market is concerned with lobbying services, not Government Relations advice, which is a broader service offering.

This evidence from the lobbying industry indicates that the market for lobbying services is broad enough to include in-house lobbying, notwithstanding that this substitution alternative is not available to all demand side participants. However, consistent with a purposive approach to market definition our focus on the market for services supplied to third parties and not internally within firms.

From a product dimension, after considering both demand and supply side factors, it is considered the market should be defined as a market for lobbying services (as defined in Section 2.1 above).

Geographic dimension

The primary issue for consideration is whether the market is limited to a particular region or includes all areas of Australia.

In defining the geographic dimension of the market, we start with Queensland as the relevant geographic dimension. In response to a small but significant non-transitory increase in price for lobbying services in Queensland, would substitution of services with lobbyists in other regions occur? The characteristics required to provide lobbying services in Queensland could be met by lobbyists from other jurisdictions. The identified skill set of lobbyists considered in the product dimension does not imply that a lobbyist must be physically located in a region in which they provide services.[19] Lobbying firms are commonly registered in multiple jurisdictions. Registration in multiple jurisdictions strongly supports the conclusion that a significant proportion of lobbyists provide services in multiple jurisdictions, because there would be no reason for a lobbyist to register in a region in which they were not active.

As a result, the geographic dimension of the market must be expanded from the Queensland region in order to appropriately define the market. As substitution in response to a SSNIP would occur from lobbyists in any other region of Australia, to

[18] SAS Group, Submission: Integrity and Accountability in Queensland Discussion Paper, 15 September 2009, p3.

[19] The extent to which lobbyists from other jurisdictions can provide services in Queensland will depend on the potential for lobbyists from other jurisdictions to acquire characteristics of the service such as a network of contacts. A more limited ability of lobbyists to (for example) acquire contacts would reduce substitution possibilities.

appropriately define the boundaries of the market, a national market for lobbying services must be adopted. To determine the impact on competition in Australian markets of a proposed restriction it is normally unnecessary to consider whether the appropriate market could be defined more broadly than at a national level.

Lobbyist registers are maintained by the Commonwealth, New South Wales, Queensland and Western Australian governments. This information provides the number of registered lobbyists in some States of Australia and at a Federal level and also identifies how many lobbyists are active in multiple jurisdictions.

A substantial proportion of lobbyists operate across multiple jurisdictions in Australia; more than 70% of lobbyists registered in Queensland and NSW are also registered in another jurisdiction. The substantial proportion of lobbyists undertaking lobbying activity in multiple jurisdictions supports the existence of a national market for lobbying services at a State level. However, the proportion of registered Commonwealth lobbyists active in other jurisdictions is lower. This could reflect a higher degree of specialisation by some Commonwealth lobbyists, although it could also reflect a greater number of small firms that undertake lobbying with the Federal Government. The proportion of registered Commonwealth lobbyists active in other jurisdictions is still significant at just less than 40%.

Table 4 below summarises the information available from lobbyist registers in Australia. Further details are provided in Attachment A.

Table 4 Multi-jurisdictional lobbying

Jurisdiction	Number of registered lobbyists	Number of lobbyists registered in other jurisdictions	Proportion of lobbyists registered in other jurisdictions
NSW	110	85	77%
WA	91	53	58%
Qld	69	51	74%
Cth	275	102	37%

Source: http://www.dpc.nsw.gov.au/prem/lobbyist_register/static_register
http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=whoIsOnRegister
https://secure.dpc.wa.gov.au/lobbyistsregister/index.cfm?event=whoIsOnRegister

4.1.5 Conclusion

The relevant market for analysis of the impacts on competition of the proposed restraint on success fees for lobbyists is the market for lobbying services, provided by dedicated lobbying or professional services firms. The market exists at a national level as it is likely that a 5-10% increase in price would result in substitution from some interstate firm. A substantial proportion of lobbyists are registered in multiple

jurisdictions and registration is required to supply services. Firms would only register if they had an intention of providing lobbying services.

4.2 Nature of restriction

4.2.1 Proposed option

Queensland's current regulation of lobbyists does not provide for any restriction on the type of fee arrangement that may be reached between lobbyists and their clients. Lobbyists are however required to disclose whether they use success fees.

The disclosure of fees by lobbyists under existing regulations is not considered by the Government to be sufficient to ensure public confidence in public policy development and implementation. The Government has identified community concern over the use of inappropriate lobbying activities in order to achieve particular outcomes for clients of lobbyists. As a result, the Government has proposed further regulation of lobbyists in Queensland to remove any blurring of the line between appropriate and inappropriate lobbying activities. The objective of the regulation of lobbyists is to convey to stakeholders and the community that success fees do not need to be paid to lobbyists in order to succeed when dealing with the Queensland Government.

In assessing the adverse impact of success fees public confidence is an important aspect because deterioration in public confidence can make it difficult for a government to develop, gain community acceptance for and implement a wide range of public policies. What underlies public concern is that success fees may create strong incentives for corruption to occur across a wide range of activities and this in itself is considered to be clearly contrary to the public interest. Furthermore, even if there is no effect on corruption, there is a risk that success fees could distort public decision making leading to decisions that were less than optimal from the perspective of the community as a whole.

The proposed ban on the payment and receipt of success fees would apply to all registered lobbyists. This ban limits the options that lobbyists and their clients have to negotiate payment for the services provided.

Two risks have been identified in relation to the transaction between a client and lobbyist that may be influenced or addressed by success fee arrangements. These are:

- the risk of an uncertain outcome in relation to public policy; and
- the risk that the lobbyist is unable to influence policy as much as they claim they are able to.

Success fees allow lobbyists and their clients to exchange risk and reward for the outcomes of lobbying. When a success fee is in place the lobbyist bears greater risk, as payment for the services provided is contingent on a successful outcome. For the client, a success fee lowers the risk to the client of paying for a lobbyist's services yet still failing to achieve the desired outcome from the engagement. There is a benefit to a risk averse client by assigning this risk to the lobbyist. In other markets (for example, legal services markets) success fees can provide benefits to clients who are unable to finance a transaction. However, we think it unlikely that this type of circumstance occurs regularly in lobbying markets.

Nevertheless, economic efficiency is achieved by allocating risks to parties most able to manage them or to reflect different risk preferences. The fact that some lobbyists accept, and some clients pay, success fees could be taken to indicate a greater willingness on the part of such lobbyists to accept the risks of their service offering than the client. It is reasonable to assume that this willingness to accept risk is related to a greater ability to manage the risk by the lobbyist, reflecting their portfolio of lobbying opportunities, particularly for risks that relate to the lobbyist's ability to exert influence. For risks related to uncertainty of policy outcomes it will depend on the particular party to the transaction who is most able to manage this risk. Due to the expertise of lobbyists in relation to Government processes and their portfolio of potential lobbying opportunities, it is still likely that in many cases the lobbyist would possess a greater ability to manage the risk. As a result, banning success fees could constitute a restriction on the ability of the parties to a contract for lobbying services to manage their risks under the transaction. This potentially reduces the size of the market for lobbying in Queensland.

Other methods are available to dissuade lobbyists from making misleading or deceptive claims as to their ability to achieve influence or outcomes. Some submissions[20] suggested increasing the restrictions on making misleading or unattainable claims about access in the existing Code to also apply to claims regarding outcomes. However prohibitions on, and enforcement mechanisms for, misleading and deceptive conduct are already found in existing legislation such as the Trade Practices Act. Effective penalties under existing legislation decrease the need for additional restrictions on claims made by lobbyists regarding influence or likelihood of success.

Apart from the allocation of risk, a broad range of fee options increases the dimensions in which lobbyists can compete.

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[20] For example, Enhance Corporate, Response to the Queensland Government's Integrity and Accountability in Queensland Green Paper, September 2009, p14.

4.3 Impact on competition

Competition serves market efficiency by ensuring the coordination of production and consumption decisions provides the best possible outcome for society. A restriction on competition has the potential to harm the competitive process, and thereby the efficiency of the market mechanism.

The purpose of this section is to assess whether the ban on success fees will have a significant impact on the national lobbying market.

There are two key considerations in determining the impact on competition in a relevant market:

- its impact on prices in the relevant markets; and
- its impact on barriers to entry.

4.3.1 Impact on prices

The Queensland Lobbyists Register indicates that there are 69 registered lobbyists in Queensland. Of these, 10 lobbyists have declared their use of success fees, and there are 13 registered success fees in operation. Only 1 registered lobbyist had more than 1 success fee in operation (with 4 success fees in use).[21] That is, register information indicates that less than 15% of registered lobbyists have success fees in place with their clients.

Because all other registered lobbyists have indicated that they do not have success fees in place with their clients, their current relationships with existing clients are not likely to be noticeably affected by the ban on success fees for lobbyists. However, data on registered lobbyists currently available represents a snapshot of fee arrangements for lobbyists. Fee arrangements between lobbyists and their clients could change in the future. A more detailed analysis (for example analysis over a number of time periods) would be required to increase the certainty of this conclusion. This information was not available.

From the information available, competition in the market for lobbying services is likely to be based upon more factors than only the use of success fees. Banning success fees would not be expected to impact on other dimensions of competition, which will include:

[21] Queensland Department of Premier and Cabinet, http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/the-register.aspx .

- hourly prices versus willingness to accept fixed fees;
- the perceived skill of the lobbyist;
- extent of experience of the lobbyist;
- service offering of the lobbyist (such as non-lobbying services that may or may not be related); and
- contacts maintained by the lobbyist.

Information on the use of success fees by lobbyists at an Australia-wide level was not available; however it is likely that the profile of use of success fees is similar in other state jurisdictions and in relation to the Federal Government. As the lobbying industry exists at a national level with more participants on both the demand and supply side, the impact of a restriction on success fees in one of the jurisdictions that constitutes the market is not expected to be significant.

The primary impact of the ban on success fees is a reduction in price competition in the market. Reducing the available methods of price competition in the market could lead to an increase in price for lobbying services. The extent of a price increase will depend on how many lobbyists possess some level of market power, that is, possess some ability to increase their price for lobbying services without losing market share. As the impact on price competition is not expected to be significant based on the current use of success fees, it is unlikely that the price for lobbying services will increase significantly, if at all.

Barriers to entry by suppliers in the market are relatively high. The analysis of the lobbying service suggests that lobbying is a specialised skill involving expertise and a network of contacts in Government. However, the barriers to entry are not attributable to industry regulation. Industry regulation consists primarily of registration requirements and these requirements are not onerous. The major impediment on the supply side is the restriction on senior public servants (for example CEO or SES level), Parliamentary Secretaries and Ministers from engaging in lobbying activities on issues with which they had official dealings before they left government or the public service. Further detail on the content of these restrictions is provided in Box 2 below.

Box 2 'Revolving Door' provisions in the Queensland Contact with Lobbyists Code

The Queensland Contact with Lobbyists Code includes a prohibition on certain parties undertaking lobbying activities. The prohibitions are commonly known as a revolving door provision, to prevent members of parliament or senior public servants undertaking lobbying activities immediately following cessation of their previous employment.

For a Queensland Government Minister, a prohibition operates to prevent them from engaging in lobbying activities related to their official dealings as a Minister in their last two years in office. This prohibition operates for two years after they cease to hold office.

For a Queensland Government Parliamentary Secretary, a prohibition operates to prevent them from engaging in lobbying activities related to their official dealings as a Parliamentary Secretary during their last two years in office. This prohibition operates for eighteen months after they cease to hold office.

For senior public servants (those employed as a chief executive, senior executive, Ministerial Staff Member, or at CEO or SES level in a public sector entity), a prohibition operates to prevent them from engaging in lobbying activities related to any official dealings they had within the last eighteen months of their public sector employment. This prohibition operates for eighteen months after the cessation of public sector employment.

Data source: Queensland Contact with Lobbyists Code, 7.1-7.3.

A significant impact on barriers to entry in the market on the supply side is not expected, as very few lobbying firms use success fees, and it is not considered likely, based on the current lobbying industry, that success fees will assist or deter new entry in the market.

However, a ban on success fees may limit the access of potential clients of lobbyists to services provided by the market. For clients who could not secure the services of a lobbyist other than through the use of a success fee this will impede their participation in the market. Failure to meet this demand in the market will lead to a reduction in economic welfare as reflected in impacts on producer or consumer surplus.

For the majority of stakeholders the time taken to adjust to these competition impacts is likely to be minimal. For those stakeholders that currently use a success fee, the time taken to adjust to the restriction on competition will be no longer than the duration of existing success fee arrangements, although such stakeholders may reduce their involvement in government projects given the unavailability of success fees and their risk profiles.

5 Options

There are alternatives to banning receipt and payment of success fees. The National Competition Policy principles require that alternatives be assessed and particularly those that can achieve the stated objectives of the proposed option without restricting competition.

The stated objective of the proposed regulation can be summarised as increasing public confidence in the development of public policy.

The alternatives to the proposed restriction for Queensland include:

- The no change option where success fees are not restricted, but regulation of lobbyists generally will continue, including the need to disclose the type of fee arrangements used and restrictions on those leaving public office;
- mandatory inclusion of a provision in all conditions of offer documents for government contracting (including GOCs and other Government-created bodies) which would require the offeror to disclose within the tender documents if a lobbyist has or will be engaged and if success fees have been paid or are payable; and
- self regulation by the lobbying industry, which could include a ban on success fees.

Some submissions suggested that alternatives could be used to achieve the Government's objective. These submissions have been taken into consideration in indentifying possible alternatives to a ban in this Report.

Submissions from the lobbying industry expressed the view that for the ban on success fees to be effective, all success fees in relation to Government activities would need to be banned, not only those for lobbyists. Expanding the ban on success fees in this way could increase public perception of the development of public policy more substantially than a ban on success fees for registered lobbyists. However, such a ban would significantly increase the scope of industries to which the ban applied. Increasing the scope of the ban on success fees to all activities related to Government could increase, not decrease, the competition restrictions from the ban. Certainly, the regulatory burden would be spread over a far greater range of industries, and more industries would be subject to a restriction on dimensions of competition. The alternatives to a ban on success fees considered in this report have, consistent with PBT Guidelines, been focused on those that would have a reduced impact on competition.

5.1 Current lobbyist regulation

The current regulations were described in section 2.3.1. The continuation of the arrangements under these regulations is an alternative to the proposed restrictions, and is also the base case against which to assess the impacts of alternatives.

Registration is required for professional lobbyists who act on behalf of third parties prior to their contact with Government officials.

Information collected on whether or not the lobbyist may receive a success fee is publicly available, but further regulation of the use of success fees is not undertaken. Continuation of existing arrangements would require only disclosure of the use of success fees: the use of success fees would not be limited.

Some submissions supported the option of taking no further action until the impact of recent regulation had been allowed to take effect in the market, and for the impact of that regulation to be reviewed. The rationale for a continuation of current regulation presented in these submissions was that existing regulation was only recently introduced, and a further period of operation was justified to review the operation of this regulation before making further changes to it.[22]

Information to determine whether or not the lobbying industry had fully adjusted to regulations introduced was not available. However, it is likely that the impact of existing regulation on market participants can be determined from the period of time regulation has been in operation. Compliance with registration requirements is not expected to involve substantial adjustment timeframes. Although the operation of this regulation has not been formally reviewed, the Government has considered its operation in order to determine that further regulation to increase public confidence (in the form of prohibiting success fees) is required.

It has also been noted in some submissions to the Discussion Paper that current restrictions under lobbyist regulation could be increased or expanded: for example, increasing the time for which restrictions apply and/or the nature of work that falls within revolving door provisions. Submissions suggested a large range of possible changes to both of these elements of revolving door provisions.

In Queensland, the prohibition on lobbying restricts lobbying on issues to which a former Minister, Parliamentary Secretary or senior public servant had official duties, and applies for two years for former Ministers and eighteen months for the other groups to which it applies (see Box 2 for further details).

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22 See for example, SAS Group, Submission: Integrity and Accountability in Queensland, 15 September 2009, p3.

More stringent approaches have been taken in other jurisdictions. At a Federal level in the United States, if an official participated personally and substantially in relation to an issue there is a permanent restriction on that person's participation in the transaction in another role. For the lower level of involvement where an official 'knows or reasonably should know was actually pending under his or her official responsibility' a restriction is in place for two years. A two year ban on lobbying is also in place for high level/ senior position holders in making communications with persons from their department. A one year ban is in place for less senior employees.[23]

In Canada, former designated public office holders and former designated members of Prime Minister's transition teams are banned from lobbying during a period of five years after they cease to carry out those responsibilities.

It would be possible, based on these examples, to expand either the time limit of the prohibition or the range of activities to which the prohibition was applied. This issue is part of the Government's review of accountability and integrity.

Changes to these provisions could influence public perceptions of policy making, but these proposals do not address the primary concern of this report, the use of success fees. Increase the severity of the restrictions is also a more significant restriction on competition in the lobbying services market as it creates a barrier to entry and it likely to favour existing industry incumbents.

5.1.1 Ability to achieve objective

The Government has identified that although regulation of lobbyists was only recently introduced in Queensland, some further action is required to increase public confidence in the development of public policy. Continuation of existing arrangements will provide no further assistance in meeting the Government's objective of increasing public confidence in the development of public policy.

5.2 Government contracting restriction

Another alternative is the inclusion of a mandatory provision in all Government contracts that would require disclosure of more details regarding the use of success fees than is currently required by the registration of lobbyists. For tenders where it was disclosed that a tenderer had engaged a lobbyist or uses success fees for payment of the lobbyist, the evaluation of the tender would need to follow guidelines regarding the

[23] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p12.

avoidance of a lobbyist being able to exert undue influence over the decision making process.

The State Procurement Policy varies in its application GOCs, statutory authorities not subject to s19(3) of the Financial and Performance Management Standard and Special Purpose Vehicles. To apply to such entities, the guidelines about the State Procurement Policy would need to be strengthened and made mandatory. Mandating the ban on success fees through the State Procurement Policy or administrative means would be difficult to achieve. Instead, a legislative prohibition would be a simpler and more effective way to make the bodies comply with the ban.

The main form of enforcing the disclosure arrangements is understood to be through including a warranty in contracts with Government regarding disclosure of lobbying and success fees so that a contract could be terminated, or damages paid, for non-disclosure of such matters. This alternative would enable the Government to have grounds to terminate contracts for which lobbying or success fees were not disclosed, or require payment of damages related to the damage suffered by Government, however it would not ban the use of success fees.[24] The potential for success fees to create an incentive for lobbyists to exert undue influence would not be removed however the susceptibility of Government representatives to undue influence may be reduced by the increased transparency. This option is also limited to any representations made regarding contracting and would not have any impact on other forms of lobbying, such as activities designed to influence government policy-making.

5.2.1 Impact on competition

Disclosure of success fees in relation to a Government contracts would constitute a reduced restriction on price competition compared to the proposed ban. Under the contracting restriction success fees could still be used as long as this use was disclosed during the tender process and the Government complied with guidance minimising the possibility of undue influence from lobbying.

As success fees would not be banned, it is expected that the Government contracting restriction would not constitute a significant restriction of price competition in the market. However, some impact on price competition may still result to the extent that additional requirements for disclosure acted as a disincentive to participants to use success fees. This restriction on price competition would not be expected to be

[24] Damages paid for non-disclosure would have to be related to the damage suffered by the Government from non-disclosure, or they might be struck down by a Court. Termination of a contract for non-disclosure could harm or impede Government project and programs and this may prevent it being a realistic option. By contrast, a legislative ban, with its own legislative remedies, would not suffer from these limitations.

significant as disclosure of success fees is required for lobbyists in relation to third party clients under existing regulation.

5.2.2 Ability to achieve objective

A Government contracting restriction appears to offer very little, if any, additional public transparency over and above the current regulation.

5.3 Self regulation

Self regulation by the lobbying industry includes either a Code of Conduct that discourages success fees or a self regulated ban on success fees as a third alternative to the proposed legislative ban of success fees. It has been assumed in the preparation of this report that, consistent with the legislative ban, self regulation would impose a strict ban on the use of success fees, including de-registration by the industry regulator in response to the use of success fees. That is, it has been assumed that a relatively strict form of self regulation would be required in order for this alternative to effectively achieve the Government's objectives.[25]

In the UK lobbyists self regulate. Very few investigations have revealed conduct that has contravened the Codes of Conduct and even fewer (and lenient) penalties where lobbyists have been found to have contravened the code. Codes of Conduct are applied by the three main professional bodies to which lobbyists in the UK are members.

The House of Commons Public Administration Select Committee has recently published a report into lobbying in the UK. In reviewing the regulation of lobbyists in the UK it was noted that lobbyists come from a wide range of professions, and the ability of professional bodies to regulate members involved in lobbying varies.[26]

It was noted that achieving any consistency of approach using self-regulation would be difficult given the disparate views of those involved.[27]

With respect to trust, it was concluded that none of the self-regulation bodies had achieved a position in which the trust of the lobbying industry, clients and the wider

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[25] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p17.

[26] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p17.

[27] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p18.

public was maintained. In particular, it was noted that there were three major self-regulating bodies, rather than one, as occurs in other professions with self-regulation.[28]

Systems exist for complaints handling and disciplining members, however in practice it was concluded that these measures were very rarely used. It was concluded[29]

> A complaints system that was working would have produced more than three cases in the last ten years, even if the vast majority of lobbyists were operating ethically and transparently. Reprimands and "severe" reprimands, the only outcomes to have been seen in the two cases decided against members of any of the three umbrella groups (both within the CIPR), are not of a kind that would give confidence to any outsider that disciplinary processes are robust.

The efficacy in regulating lobbyist's conduct has been questioned in the UK where self-regulation has been applied. This has identified some of the difficulties involved in developing an appropriate regime of self regulation, particularly as trust of self regulation has been identified as an issue in the UK, and one objective of the proposed legislative ban on success fees is to promote trust by the public in transparent access to Government. A single self regulating body with broad membership and an appropriate enforcement regime would be required in order for self-regulation to work effectively based on UK experience.

Self regulation can introduce benefits for the industry to be regulated, for example through increased flexibility of regulation, although this would need to be considered against the potential for self-regulation to be anti-competitive, to the detriment of both consumers and producers. Anti-competitive effects of competition could occur due to barriers to entry, stifling innovation or stifling competition.[30] For the lobbying industry, self-regulation could increase the risk of public perception that the potential for coordination and collusion were increased compared to other forms of regulation.

5.3.1 Impact on competition

Self regulating the use of success fees is in effect a voluntary prohibition on success fees, unless it was compulsory for lobbyists to participate in the self regulation. A lobbyist that did not wish to be covered by a ban on success fees could choose not to

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28 House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, pp18-19.

29 House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p21.

30 Taskforce on Industry Self-Regulation, Industry Self-Regulation in Consumer Markets, August 2000, p vi.

participate in the self regulation program, avoiding any issue of complying with the ban.

The impact of self regulation on price competition in the market would be minimal if participation in the self regulation scheme was not compulsory. However if self regulation was respected and trusted by clients then accreditation under self regulation would constitute a barrier to entry. If self regulation was applied to all lobbyists, with a ban on success fees, then the restriction on competition would be the same as that under the proposed option. The extent of a restriction on competition under self regulation will depend upon the extent to which self regulation can be applied and enforced for all lobbyists dealing with third parties.

5.3.2 Ability to achieve objective

The review of self regulation in the UK has identified that public confidence in the development of public policy was not significantly increased by the self regulation scheme applied. Other alternatives are more likely to lead to a significant increase in public confidence because of perceptions that self regulation applied in Queensland could also be ineffective.

5.4 Competition assessment summary

The preceding analysis has identified that none of the alternatives associated with reduced restriction on competition in the market would be able to achieve the Government's objective of increasing public confidence in the development of public policy.

6 Assessment of public benefit impacts

6.1 Public interest

The purpose of assessing the impact of the proposed legislative ban and alternatives to it is to identify that the proposed change is in the public interest. The proposed ban on success fees has to meet the guiding principles of the Competition Principles Agreement to determine whether a proposed change is in the public interest. This requires that:

- the benefits of the ban on success fees to the community as a whole outweigh the costs; and
- the objectives of the ban on success fees can only be achieved by restricting competition.

6.2 Public benefit impacts

In assessing the adverse impact of success fees public confidence is an important aspect because deterioration in public confidence can make it difficult for a government to develop, gain community acceptance for and implement a wide range of public policies. What underlies public concern is that success fees may create strong incentives for corruption to occur across a wide range of activities and this in itself is considered to be clearly contrary to the public interest. Furthermore, even if there is no effect on corruption, there is a risk that success fees could distort public decision making leading to decisions that were less than optimal from the perspective of the community as a whole.

The benefits identified below can be described as intermediate benefits, as they lead on to a further stage of benefit: better decisions and policies being implemented. That is, the benefits considered below are preliminary to the achievement of better decisions and policies by Government. Benefits to Government decision making and policy can be considered the ultimate benefit of the regulations considered.

6.2.1 Benefits

The anticipated public benefits from the ban on success fees are considered below. None of the benefits have been assigned monetary values as they are inherently non-market benefits. Where possible other data have been included to provide a sense of

how important some of these benefits may be. One approach that is often undertaken is to quantify the magnitude of the benefits based on the results of previous studies. No published studies appear to have been undertaken to quantify the identified benefits in any jurisdiction although the benefits of regulation are broadly accepted.

The New South Wales Parliamentary Library Research Service has noted[31]

> While lobbying is undoubtedly a 'legitimate activity', there is a perception that lobbyists can sometimes wield undue influence and that, without appropriate regulation, their activities may skew the political decision making process.

Similarly in the United Kingdom the House of Commons Public Administration Select Committee has stated[32]

> Lobbying should be—and often is—a force for good. But there is a genuine issue of concern, widely shared and reflected in measures of public trust, that there is an inside track, largely drawn from the corporate world, who wield privileged access and disproportionate influence. Because lobbying generally takes place in private, it is difficult to find out how justified concerns in this area are. This is why there have been demands for greater transparency, and why lobbying has been regulated in a number of jurisdictions, generally through registers of lobbyists and lobbying activity.

Reduced incentives for inappropriate lobbying conduct

Some submissions identified that success fees do not assist perceptions regarding ethical conduct in the lobbying industry. One industry submission said of success fees:[33]

> Our view has always been that such fees create a conflict of interest and then often lead to the potential for corrupt practices.

Though it is not clear how a success fee creates a greater risk of a conflict of interest compared to other forms of charging (such as time based fees) it is accepted that a success fee can create an increased incentive for unethical or inappropriate behaviour.

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31 Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, Executive Summary p1.

32 House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p3.

33 Submission via email from JacksonWells.

The Government has identified that success fees create an unacceptable incentive for inappropriate conduct to be used by lobbyists. This is because a success fee puts either all or a substantial proportion of the lobbyist's payment in a position where it is contingent on success. Compared to alternative approaches such as time based charging, there is a substantially increased incentive for the lobbyist to engage in inappropriate conduct to exert influence when success fees are used.

The benefit from reduced incentives for inappropriate lobbying conduct will accrue to the community, parties dealing with Government (such as tenderers and lobbyists) who do not use success fees and Government.

Increased public confidence in Government contracting

By banning success fees, incentives for lobbyists to exert undue influence to secure contracts will be removed, or substantially ameliorated, increasing public confidence in the contracting processes of Government are fair, competitive and delivering value for money.

Box 3 outlines the principles and goals of the State Procurement Policy. The proposed ban is consistent with many of the objectives of the Policy. To the extent that the ban on success fees dissuades consortiums from bidding for contracts, by imposing a cost that would need to be paid irrespective of success, it may work against the value for money objectives. The impact of a ban on success fees on the number of bidders for government contracts is unlikely to be significant because success fees are not widely used and the lobbying component is likely to be a small cost component of a bid for major government contracts.

This benefit will also include an increase in public confidence regarding access to Government. The ban on success fees will clearly communicate that access to Government is possible without having to pay success fees to lobbyists to ensure that your interests are presented.

Box 3 Queensland Government State Procurement Policy

Since 2000, the Queensland State Government has had a Procurement Policy that relates to the procurement practices of Government agencies. This Procurement Policy has been developed to maximise the benefits to Government, Industry and Taxpayers from the procurement that is undertaken by Government agencies.

In maximising procurement opportunities the Government is required to:

- apply a 'value for money' definition which includes the contribution of the procurement to advancing Government Priorities;
- plan procurement to achieve the objectives of the Policy;
- understand the nature of their procurement and the key markets from which they buy as a basis for identifying opportunities to advance Government Priorities; and
- be accountable for the outcomes of their procurement.

The Procurement Policy is intended to achieve a range of aims including:

- better agency buying performance, reflected in increased savings, avoidance of unnecessary cost and improved service delivery;
- building Queensland's regions by ensuring competitive local businesses receive a fair go;
- making government supply opportunities more transparent, and easier for business to access;
- growing a diverse and innovative economy;
- fostering a sustainable future; and
- maintaining fairness standards in employee conditions.

The achievement of some of these aims requires the Procurement Policy to identify measures that are particularly relevant to also achieving confidence in Government contracting. Measures to improve business access to Government procurement opportunities, and those related to complaint processes would be expected to increase public confidence in Government contracting.

The Procurement Policy does not explicitly address lobbying or the role that success fees paid to lobbyists may have on representations made to Government during tendering or negotiation for Government contracts.

Data source: Queensland Government Department of Public Works, State Procurement Policy, 2008.

While a ban on success fees may increase public confidence by removing incentives for inappropriate conduct by lobbyists, public confidence in Government conduct while contracting will already be enhanced by the operation of the Procurement Policy (Box 3). If the Procurement Policy is already effectively meeting the objectives of its operation, which include requiring Government agencies to adhere to value for money and transparency principles, then the benefit from attempting to increase public confidence in Government by banning success fees may be minimal. The benefit will depend on the extent to which the public perceives that Government procurement practices could be further enhanced as well as the likelihood that the ban on success fees would generate its own benefits per se.

More ethical lobbying industry

The use of success fees creates an incentive to use unethical methods to serve clients. Banning success fees reduces this incentive significantly, as the financial pay-off from using unethical methods is reduced. Client engagement may therefore be undertaken more ethically in the industry.[34] The extent of the improvement in ethical behaviour of the lobbying industry (that is, the value of this benefit) will depend on:

- the extent to which the use of success fees under the current regulation leads to unethical behaviour; and
- the extent to which the use of success fees dissuades potential clients from engaging lobbyists who do not use success fees.

Clients of lobbyists and lobbyists who do not presently use unethical practices and the Government will benefit from a more ethical lobbying industry.

Increased transparency in Government

The potential for increased transparency in Government was identified as a possible public benefit of banning success fees in the Issues Paper. Banning success fees is unlikely to have any impact on increased transparency in Government. The benefits that will result from banning success fees are unrelated to the transparency of Government or its processes.

Increased certainty that costs of lobbying are not passed through to Government

The potential for increased certainty that costs of lobbying are not passed through to Government, as a result of banning success fees, was identified as a potential benefit in the Issues Paper. However, while the method of payment is affected by banning success fees, the relationship between the quantum of costs for lobbying and the extent to which they are passed through to government as a result of banning success fees is not known. It is possible that the overall level of lobbying fees will be unchanged.

One submission suggested that success fees lower the costs of lobbying services to a client.[35] However a lobbyist receiving a success fee is also accepting risk for which they would expect to be rewarded. This risk transfer is likely to be associated with an

[34] It does not remove unethical behaviour because unethical behaviour can occur with other fee arrangements, particularly if a particular lobbyist who is unethical gets results for their clients

[35] "If success fees are banned, then to achieve a fair payment for those services where a success fee might apply, fees would need to be increased to the extent that they would most likely have a negative impact on the decision to engage a lobbyist." SAS Group, Response to the Public Benefit Test – Ban on Success Fees, 15 October 2009, p10.

increase in fee, not a decrease. No further information on the impact of a ban on success fees on quantum of costs was available.

Consequently, there can be no increase in certainty that costs of lobbying are not passed through to Government. However, it is noted that the main issue is not the costs of lobbying but rather the likelihood that banning of success fees would increase public confidence and enhance the likelihood of better public policies and decisions across government activities generally.

More level playing field in policy making and politics

Banning success fees will improve public perceptions of the neutrality of Government when dealing with varying stakeholder interests. A more level playing field in policy making and politics may be achieved by removing the incentives for some lobbyists to exert undue influence. By removing these incentives, the ability of all stakeholders to present their input into policy making and politics whether using a lobbyist or not will be improved.

The general community, parties dealing with Government (such as tenderers and lobbyists) and Government will benefit from a more level playing field in policy making and politics because there will be less risk of distortion of decision making based on exploiting contacts in an unethical manner.

The importance of neutrality and accountability of government and the public perception of neutrality and accountability is demonstrated by the government funding directed to institutions dedicated to integrity, transparency and equity of Government and public policy. The level of funding for some key institutions is set out in Table 5.

Table 5 2009-2010 Budgets for Integrity Institutions in Queensland

Integrity Institution	Budget 2009-2010 ($)
Crime and Misconduct Commission	43,272,000
Office of the Information Commissioner	6,667,000
Office of the Ombudsman	6,755,000
Anti-discrimination Commission	5,192,000
Total	**61,886,000**

Source: 2009-10 Queensland State Budget: Department of Justice and Attorney-General Agency Service Delivery Statement, http://www.justice.qld.gov.au/corporate-publications.htm, accessed 14/10/2009. 2009-10 Queensland State Budget: Office of the Queensland Ombudsman Service Delivery Statement www.budget.qld.gov.au/budget-papers/2009-10/bp5-part-9-2009-10.doc, accessed 15/10/2009.

The level of expenditure on integrity institutions demonstrates a significant value is placed on the integrity, accountability and equity of public policy.

6.2.2 Employment and social impacts

Significant impacts on employment in the lobbying industry are not expected. This is in accordance with the preceding assessment indicating that impacts on the lobbying industry from the proposed ban on success fees will be small. This conclusion has been based on the fact that a national market for lobbying exists, and the impact of banning success fees will have only a small impact on one part of the market for lobbying services.

Positive social impacts are expected from the ban on success fees through the increased confidence in the integrity of public policy and purchasing processes.

These employment and social impacts could not be quantified, however it is expected that they will not have a significant impact on the lobbying industry, competition in the national market for lobbying services or the community at large, as success comprise a small part of the lobbying market.

6.2.3 Administration and enforcement costs

Administering and enforcing the ban on success fees will result in costs to Government. Based on the relatively small size of the lobbying industry in Queensland, it has been assumed that costs of administering and enforcing the ban on success fees would not be substantial. We estimate that up to $250,000 per annum could be required to maintain the ban on success fees.[36] Some additional one-off costs of establishing the ban may also be incurred.

6.2.4 Summary of public benefit

A range of benefit categories have been identified above, and are summarised in Table 6. As previously noted, these benefits are intermediate benefits that contribute to the ultimate outcome of better Government decision making and policy.

[36] This estimate has been based on probable contributions by Government to administering and enforcing the ban on success fees. A small number of full time equivalent public servants (1 or 2), a contribution to overheads, and some costs of enforcement for the relevant enforcement body would not be expected to exceed approximately $250,000/yr.

Table 6 Identified impacts of proposed ban

Impact	Stakeholder/s affected	Type of impact
Benefits		
Reduced incentives for inappropriate lobbying conduct	Community, parties dealing with Government (such as tenderers and lobbyists) and Government	Non-quantifiable
Increased public confidence in Government contracting	Community and Government	Non-quantifiable
More ethical lobbying industry	Clients of lobbyists, lobbyists who do not presently use unethical practices and the Government	Non-quantifiable
More level playing field in policy making and politics	Community, parties dealing with Government (such as tenderers and lobbyists) and Government	Non-quantifiable
Costs		
Restriction on conduct of market participants	Lobbying industry market participants such as lobbyists and clients	Non-quantifiable
Administration and enforcement costs	Government	Quantifiable $250,000/yr

Source: Synergies.

7 Conclusions and recommendations

The purpose of this PBT was to analyse a legislative ban on the payment and receipt of success fees by third party lobbyists in Queensland. The objective of the ban on success fees is to ensure that lobbying is done ethically, with the highest standards and with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of Government decision making.

Analysis of the lobbying industry identified that the appropriate market definition was a national market for lobbying services. Available evidence indicated that few firms in this national market use success fees, and even fewer rely substantially upon success fees. Although banning success fees may have a negative impact on competition within the relevant market, this impact of competition is not expected to be significant. The primary benefits that are expected to result from the legislative ban accrue to the broader community. They relate to improved perceptions of access to Government and the development of public policy. These benefits were unquantifiable, but are expected to outweigh any detriment from the restriction on competition.

Although the restriction on competition is not expected to be significant three alternative options were identified as less likely to restrict competition in the lobbying market. The alternatives were:

- continuation of the base case in which success fees are not restricted, but regulation of lobbyists generally will continue, including the need to disclose the type of fee arrangements used;
- mandatory inclusion of a provision in all conditions of offer documents for government contracting (including GOCs and other Government-created bodies) which would require the offeror to disclose within the tender documents if a lobbyist has or will be engaged and if success fees have been paid or are payable; and
- self regulation by the lobbying industry, which could include a ban on success fees.

The use of a legislative ban on success fees to achieve the objective of the ban is appropriate. Other alternatives that had a smaller impact on competition within the relevant market were considered, but these alternatives could not have achieved the objective of the ban as effectively.

A Activity of lobbyists in Queensland and Australia

A.1 Multi-jurisdictional lobbyists

Seventy-four percent of lobbyists registered in Queensland are also registered as lobbyists in one or more jurisdictions. A similar proportion of lobbyists registered in NSW (77%) are registered in multiple jurisdictions. Western Australia has a much lower proportion (58%) of lobbyists registered in multiple jurisdictions and only 37% of lobbyists on the Commonwealth government register are registered in other jurisdictions. This much lower percentage indicates a higher degree of specialisation among Commonwealth government lobbyists.

Table 7 Multi-jurisdictional registered lobbyists in Australia

Jurisdiction	Number of registered lobbyists	Number of lobbyists registered in other jurisdictions	Proportion of lobbyists registered in other jurisdictions
NSW	110	85	77%
WA	91	53	58%
Qld	69	51	74%
Cth	275	102	37%

Source: http://www.dpc.nsw.gov.au/prem/lobbyist_register/static_register
http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=whoIsOnRegister
https://secure.dpc.wa.gov.au/lobbyistsregister/index.cfm?event=whoIsOnRegister

A.2 Queensland Lobbyists

A.2.1 Services

Registered lobbyists in Queensland generally offer a wide variety of services to clients. However the majority of lobbying firms in Queensland can be broadly classified into one of the following categories according to their primary focus:

- government relations specialists
  - firms which focus primarily on maintaining and developing government relations programs, providing political analysis and consultation, strategic planning and stakeholder management.
- industry focused lobbyists

  - firms which focus primarily on providing services to a particular industry such as property development or tourism, as part of this business they may also act as lobbyists to government in relation for their particular industry.

- communications and public relations
  - firms which focus primarily on media and public relations, they provide services such as communication strategies, image management, issue and crisis management, media strategy and media training.
- finance oriented entities specialising in investor relations
  - firms which focus primarily on providing corporate and financial services and offer services such as corporate positioning, financial media relations and investor relations.
- legal service providers
  - firms which focus primarily on the provision of legal services but also engage in government oriented services beyond a traditional practice in administrative law.

Table 8 Classification of Qld registered lobbyists by primary focus of firm

Firm Orientation	Proportion of Firms
Government relations	23%
Industry focused	4%
Communications and public relations	17%
Finance and corporate	11%
Legal services	3%
Other or unspecified	40%

Note: percentages may not equal 100 due to rounding.

Source: Qld Government 'Register of Lobbyists', http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/lobbyists-register/the-register.aspx

The information in Table 8 above demonstrates how diverse the firms listed on the Queensland lobbyists register are and as can be seen from the large percentage of firms classed as 'other' any categorisation of the types of work these lobbyists do is difficult and inherently makes broad generalizations. However it is interesting to note that only 23% of the firms which are registered as lobbyists specifically identify themselves as government relations-oriented lobbyists. This indicates that the majority of lobbyists are not solely focused on lobbying government in the way members of the public conceive of lobbyists. Indeed those firms which are primarily focused on financial, legal and industry specific services are markedly different to lobbyists according to the common conception.

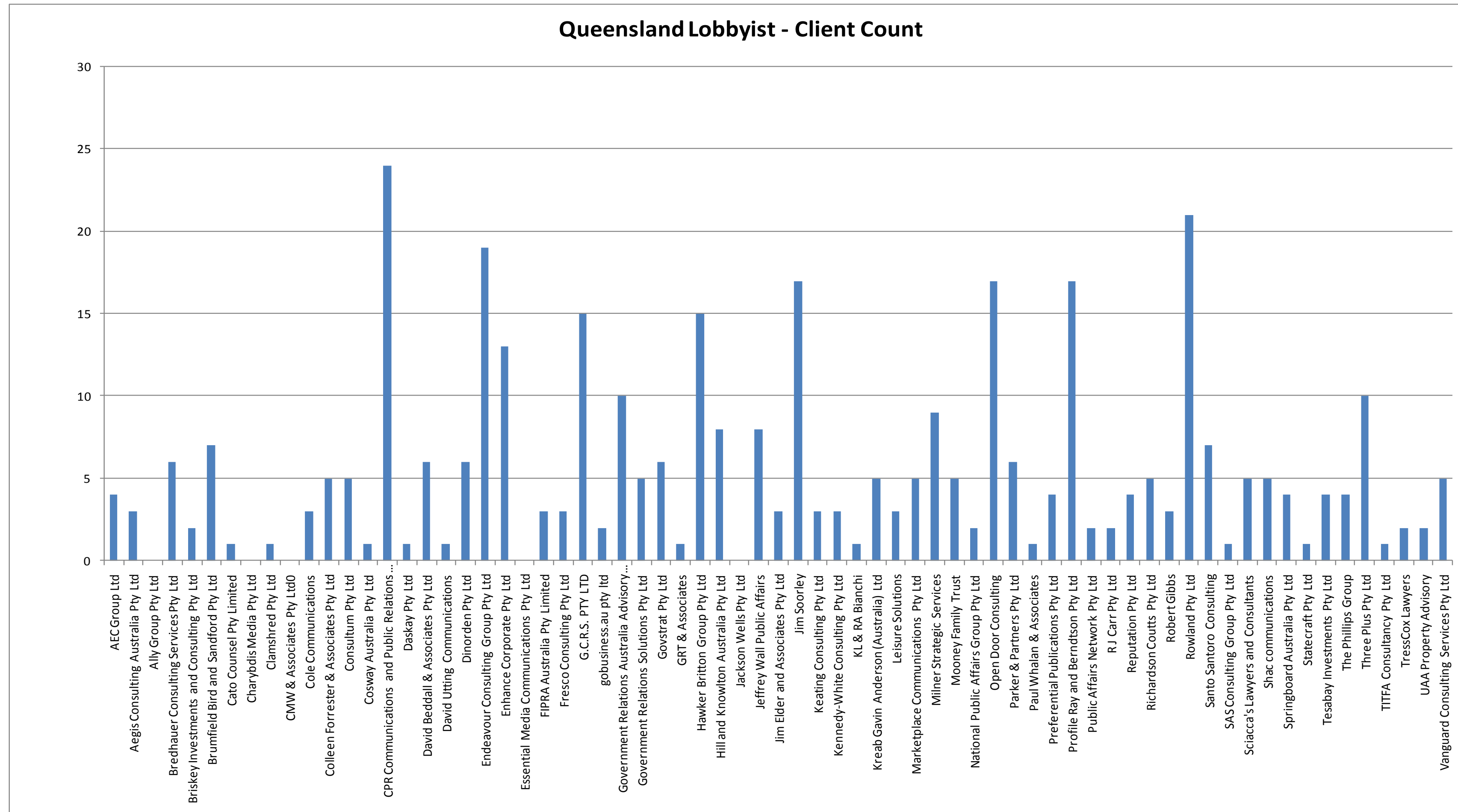
A.2.2 Size

The size of registered government lobbyists in Queensland varies dramatically as does the number of interest groups they represent.

A significant proportion of lobbyists in Queensland represent few clients. Sixteen percent of lobbyists registered in Queensland are listed as representing one client and seven percent of registered lobbyists have declared they have no clients. While the largest firm lists 24 clients the average number of clients per firm is five.[37] The following figure identifies the number of clients that registered Queensland lobbyists represent.

[37] Based on information accessed through the Queensland Lobbyists Register 24 September 2009. The Register is regularly updated to reflect changes to lobbyist information, so data presented is a snapshot.

Figure 2 Client Count for each Queensland Lobbyist



Data source: Queensland Lobbyist Register.

B Lobbying in overseas jurisdictions

The characteristics of lobbying regulation in a range of common law jurisdictions are considered below. Approaches to registration and enforcement, particularly those in the United States, have been considered separately in B.5 below to identify some of the alternatives that may be available for registration and enforcement in Australia.

B.1 Canada

Some of the key details of the Canadian regime are considered below.[38]

Types of lobbyists

Three types of lobbyist are distinguished in the Canadian regulatory regime:

- Consultant lobbyist;
  - a lobbyist who is hired to communicate on behalf of a client;
- In-house Lobbyist (Corporation);
  - an in-house lobbyist employed by a for-profit entity;
- In-house Lobbyist (Organization); and
  - an in-house lobbyist employed by a not-for-profit entity.

Registration

The registry contains information about lobbyists and their activities and may be searched publicly. The information collected by the registry includes:

- lobbyist or registrant's name;
- client name;
- federal institution being lobbied;
- subject matter and particulars of the lobbying;
- lobbying methods used;

[38] Further details are available from the Office of the Commissioner of Lobbying of Canada, http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/h_nx00269.html .

- government funding received by the client or employer;
- an indication whether a lobbyist was a former public office holder as well as details about offices held;
- for in-house lobbyists, the name of the corporation or organization, and the names of lobbyists employed; and
- information on oral and arranged communications with certain public office holders (key decisions makers within Government such as Ministers).

Reporting

If a lobbyist carries out oral and arranged communications with designated public office holders (such as Ministers, Ministers of State and their exempt staff; Deputy Heads; Associate Deputy Ministers; Assistant Deputy Ministers; any positions that have been designated by regulation, such as certain senior members of the Canadian Forces) then the lobbyist must comply with monthly reporting requirements. Information reported by the lobbyist may be verified with the public office holder.

Ban on contingency fees

Under recent amendments to Canadian legislation contingency fees for lobbyists are banned, however the ban applies only to consultant lobbyists. Government contracts and agreements also prohibit the payment of contingent fees to a consultant lobbyist by a client.

Revolving door provisions

Former designated public office holders and former designated members of Prime Minister's transition teams are banned from lobbying during a period of five years after they cease to carry out those responsibilities.

Enforcement

A person convicted of an offence under the *Lobbying Act* may face up to two years prohibition from lobbying. Public information regarding the offence may also be made available.

B.2 United States Regulation

In the United States, lobbying is regulated at a Federal and State level. Some degree of self-regulation is also present in the industry, for example the American League of Lobbyists Code of Ethics.[39]

The following are the primary pieces of Federal regulation apply to lobbyists in the United States:

- The *Lobbying Disclosure Act of 1995*; and
- *Honest Leadership and Open Government Act of 2007*; and
- *Ethics in Government Act of 1978*.

The *Honest Leadership and Open Government Act* is a tightening of the regulation in the *Lobbying Disclosure Act* in relation to integrity matters and disclosure obligations. The *Ethics in Government Act* applies 'revolving door' policies for lobbying.

The US Federal regulation has a number of aspects including:

- registration;
- reporting;
- 'revolving door' policies;
- spending disclosure; and
- penalties.

Lobbying Disclosure Act

The *Lobbying Disclosure Act* regulates both lobbyists working for third parties and in house lobbyists, but regulation does not extend to volunteers. It applies to communication, rather than requiring an attempt to influence. A lobbyist is a person who makes more than one lobbying contact, and spends 20% or more of their total time for a client/employer over the quarterly reporting period. For hired gun lobbyists, the total amount of income from a client is reported, whereas for in house lobbyists the organisation estimates its lobbying expenditure. Registration must occur within 45 days of making a lobbying contact.[40]

Registration is filed with the Secretary of the Senate and the Clerk of the House. Enforcement is also undertaken by the Secretary of the Senate and the Clerk of the

[39] http://www.alldc.org/ethicscode.cfm .

[40] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p11.

House. If a lobbyist or lobbying firm fails to comply with a notification by the Secretary of the Senate and the Clerk of the House, then this constitutes a trigger for the United States Attorney for the District of Columbia[41] to initiate an investigation.[42]

Honest Leadership and Open Government Act

Two key changes of the *Honest Leadership and Open Government Act* compared to the *Lobbying Disclosure Act* are that it increases the penalties that apply under lobbying regulation, and it extends the revolving door regulation. The civil penalty for a failure to comply with a provision of the *Lobbying Disclosure Act* is $200,000, while a criminal penalty for knowing and corrupt failure to comply with a penalty of 5 years was added.[43]

Revolving door provisions

The *Ethics in Government Act* provides restrictions on future employment that are termed 'revolving door' provisions. A range of restrictions on employment are in place that dependent upon the issue to which employment relates and the position previously held by the relevant person. For example if an official participated personally and substantially in relation to an issue there is a permanent restriction on that person's participation in the transaction in another role. For the lower level of involvement where an official 'knows or reasonably should know was actually pending under his or her official responsibility' a restriction is in place for two years. A two year ban on lobbying is also in place for high level/ senior position holders in making communications with persons from their department. A one year ban is in place for less senior employees.[44]

Restrictions are also applied for makings gifts or paying for travel.[45]

Contingent fees

The National Conference of State Legislators (NCSL) defines contingency fees in the US context to be[46]

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[41] The United States Attorney for the District of Columbia is the federal prosecutor and the local District Attorney in Washington, D.C. See http://www.usdoj.gov/usao/dc/ .

[42] http://lobbyingdisclosure.house.gov/amended_lda_guide.html http://www.lobbyinginfo.org/laws/page.cfm?pageid=16

[43] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p12.

[44] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p12.

[45] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p13.

as any commission, percentage, brokerage, or other fee that is contingent upon a favorable legislative result.

The NCSL notes that restrictions on contingent fee arrangements vary between different states of the US, however there is a federal prohibition on contingency fees in relation to Government contracts because the contracting officer inserts a Covenant Against Contingent Fees under the Federal Acquisition Regulation.[47] 38 States prohibit contingency fees, and four restrict the use of such fee arrangements.[48]

State regulation

State based regulation is also a feature of the United States regulatory regime. All 50 States have legislative regulation of lobbying. State legislation varies regarding topics such as definitions of lobbying/lobbyist, registration requirements, registration fees, activity reporting/disclosure, and prohibition of contingency fees.[49] A summary of state contingency fee regulation is provided in Table 9.

Table 9 Summary of state contingency fee regulation

Alabama	Contingency fee prohibited. No principal or lobbyist shall accept compensation for, or enter into a contract to provide lobbying services which is contingent upon the passage or defeat of any legislative action. Each principal must also sign a statement for each registered lobbying confirming that no contingency fees will be paid.	Ala. Code § 36-25-23 (c), 36-25-18 (b)(6)
Alaska	Contingency fee prohibited. A lobbyist may not ...accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.	Alaska Stat. § 24.45.121
Arizona	Contingency fee prohibited. No person shall retain or employ another person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and no person shall accept employment or render service for compensation on a contingent basis.	Ariz. Rev. Stat. Ann. § 41-12333
Arkansas	Not addressed in statute.	N/A
California	Contingency fee prohibited. No lobbyist or lobbying firm shall: Accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.	Cal. Govt. Code §86205 (f)
Colorado	Contingency fee prohibited. No person may make any agreement under which any consideration is to be given, transferred, or paid to any person contingent upon the passage or defeat of any legislation; the making or defeat of any rule, standard, or rate by any state agency, or the approval or veto of any legislation by the governor of this state.	Colo. Rev. Stat. § 24-6-308

[46] National Conference of State Legislatures, Ethics: Contingency Fees For Lobbyists, available from http://www.ncsl.org/Default.aspx?TabId=15351

[47] Luneberg and Susman, A Complete Guide to Federal Law Governing Lawyers and Lobbyists, 3rd ed, p343.

[48] National Conference of State Legislatures, Ethics: Contingency Fees For Lobbyists, available from http://www.ncsl.org/Default.aspx?TabId=15351

[49] Griffith NSW Parliamentary Library Research Service, The Regulation of Lobbying Briefing Paper No 5/08, p15.

Connecticut	Contingency fee prohibited. No person shall be employed as a lobbyist for compensation which is contingent upon the outcome of any administrative or legislative action.	Con. Gen. Stat. § 1-97(b)
Delaware	Contingency fee restricted, but not prohibited. No person shall employ a lobbyist nor shall any person be employed as a lobbyist pursuant to any compensation agreement that permits more than half of the compensation to be paid to such a lobbyist to be dependent upon the outcome of any legislative or administrative action.	Del. Code Ann. Tit. 29, §5834
Florida	Contingency fee prohibited. No person may, in whole or in part, pay, give, or receive, or agree to pay, give, or receive, a contingency fee.	Fla. Stat. § 11.047 and 112.3217
Georgia	Not addressed in statute.	N/A
Hawaii	Contingency fee prohibited. No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.	Hawaii Rev. Stat. § 1-97-5
Idaho	Contingency fee prohibited. A lobbyist shall not: Accept any employment as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature or of either branch thereof or of any committee thereof.	Idaho code § 67-6621(b)
Illinois	Contingency fee prohibited. No person shall retain or employ another to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislation, or the approval or veto of any legislation by the Governor, and no person shall accept any such employment or render any such service for compensation contingent upon the passage or defeat of any legislation or the approval or veto of any legislation by the Governor.	Ill. Rev. Stat. ch. 25 § 170/8
Indiana	Contingency fee prohibited. It is unlawful for any person to be a lobbyist for a compensation dependent upon the success of his lobbying efforts, or upon any contingency connected with the administrative action or legislative action.	Ind. Code § 2-7-5-5
Iowa	Contingency fees restricted by Iowa Rules of the House and Senate. Receipt of fees must be reported. In the Senate, lobbyists must file a detailed description of any contingency fee arrangements. House rules prohibit the payment of fees or bonuses to lobbyists conditioned upon the result of the rules they attain. Executive branch lobbyists shall not accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed administrative rule or any executive order by an executive branch state agency or a state wide elected official.	Senate and House Rules, IAC 13
Kansas	Contingency fee prohibited. No person shall pay or accept or agree to pay or accept or arrange for a third party to pay or agree to pay present, future, promised or contingent compensation, or any part thereof, for lobbying which is contingent upon the result achieved or attained. (b) No person shall pay or accept or agree to pay or accept present, future, promised or contingent compensation, or any part thereof, for the referral of a person or persons to a lobbyist for lobbying services.	Kan. Stat. Ann. § 2-46-267.
Kentucky	Contingency fee prohibited. No Person Shall engage any person to lobby in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation. No person shall accept any engagement to lobby in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation. Violation of this provision is a Class D felony.	Ky. Rev. Stat. §. 6.811(9)
Louisiana	Not addressed in statute.	N/A
Maine	Contingency fee prohibited. No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.	Me. Rev. Stat. Ann. tit. 3. § 318 (1)
Maryland	Contingency fee prohibited. A regulated lobbyist may not: be engaged for lobbying purposes for compensation that is dependent in any manner on the enactment or defeat of legislation;:	Md. State Gov't Code ann. § 15-706(1)
Massachusetts	Contingency fee prohibited. No person shall make any agreement whereby	Mass. Gen. Laws. Ann.

	any compensation or thing of value is to be paid to any person contingent upon a decision as described in the definition of ""executive agent'', or the passage or defeat of any legislation or the approval or veto of any legislation by the governor. No person shall agree to undertake to influence such a decision, or to communicate to influence such a decision or to promote, oppose or influence legislation or to communicate with members of the legislature, or to advocate approval or veto by the governor for consideration to be paid upon the contingency of the outcome of such a decision or that any legislation is passed or defeated.	ch. 3, § 42
Michigan	Contingency fee prohibited. A person shall not be employed as a lobbyist agent for compensation contingent in any manner upon the outcome of an administrative or legislative action. A person who knowingly violates this subsection is guilty of a felony and if the person is an individual shall be punished by a fine of not more than $10,000.00, or imprisoned for not more than 3 years, or both, and if the person is other than an individual shall be punished by a fine of not more than $25,000.00.	Mich. Comp. Laws § 4.421
Minnesota	Contingency fee prohibited. No person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislative or administrative action, or of the official action of a metropolitan governmental unit. A person who violates this section is guilty of a gross misdemeanor.	Minn. Stat. § 10A.06
Mississippi	Contingency fee prohibited. A lobbyist shall not contract to receive or accept compensation dependent upon the success or failure of a legislative or executive action.	Miss. Code Ann. § 5-8-13
Missouri	Not addressed in statute.	N/A
Montana	Contingency fees must be reported. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter.	Mont. Code. 5-7-209
Nebraska	Contingency fee prohibited. No person shall be employed as a lobbyist for compensation contingent in any manner upon the outcome of an administrative or legislative action.	Neb. Rev. Stat. § 49-1492
Nevada	Contingency fee prohibited. A person who employs or uses a lobbyist shall not make that lobbyist's compensation or reimbursement contingent in any manner upon the outcome of any legislative action.	Nev. Rev. Stat. § 218.942
New Hampshire	Not addressed in statute.	N/A
New Jersey	Contingency fee prohibited. A governmental affairs agent shall not enter into any agreement, arrangement, or understanding under which the governmental affairs agent's compensation, or any portion thereof, is made contingent upon the success of any attempt to influence legislation, regulation or governmental process.	New Jersey Code 52:13C-21.5
New Mexico	Contingency fee prohibited. No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branchy of state government or the approval or veto of any legislation by the governor.	N.M. Stat. Ann. § 2-11-8
New York	Contingency fee prohibited. No client shall retain or employ any lobbyist for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon the passage or defeat of any legislative bill or the approval or veto of any legislation by the governor, or the adoption or rejection of any code, rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency and no person shall accept such a retainer or employment. A violation of this section shall be a class A misdemeanor.	N.Y. Unconsolidated Law Ch. 122-L § 11
North Carolina	Contingency fee prohibited. No person shall act as a lobbyist for compensation which is dependent in any manner upon the outcome or result of legislative or executive action.	N.C. Gen. Stat. § 120-300
North Dakota	Contingency fee prohibited. It is unlawful for any lobbyists or for any other person To directly or indirectly give or agree to give any money, property or valuable	N.D. Cent. Code § 54-05.1-06

	thing, or any security therefore, to any person for that person's service or the service of any other person in procuring the passage or defeat of any measure before the legislative assembly or either house thereof, or before any committee thereof, upon the contingency or condition that any measure will be passed or defeated. To directly or indirectly receive or agree to receive any such money, property, thing of value, or security for such service, upon any such contingency or condition as set forth in the preceding subsection.	
Ohio	Contingency fee prohibited. No person shall engage any person to actively advocate in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation. No person shall accept any engagement to actively advocate in exchange for compensation that is contingent in any way upon the passage, modification, or defeat of any legislation.	Ohio Rev. Code § 101.77
Oklahoma	Contingency fee prohibited. No person may retain or employ a lobbyist ... for compensation contingent in whole or in part on the passage or defeat of any official action or the approval or veto of any legislation, issuance of an executive order or approval or denial of a pardon or parole by the Governor. No lobbyist may accept any employment or render any service for compensation contingent on the passage or defeat of any legislation or the approval or veto of any legislation by the Governor. Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by a fine of not more than One Thousand Dollars or by imprisonment in the State Penitentiary not exceeding two years or by both such fine and imprisonment.	Okla. Stat. tit. 21 § 9334
Oregon	Contingency fee prohibited. A person may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity.	Or. Rev. Stat. § 171.756 (3)
Pennsylvania	Contingency fee prohibited.	65 Pa.C.S Sec. 1307-A(e)
Rhode Island	Contingency fee prohibited. No person shall be employed as a lobbyist for compensation dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the general assembly, or of either branch thereof, or of any committee thereof, or of the governor.	R.I. Gen. Laws § 22-10-12
South Carolina	Not addressed in statute.	N/A
South Dakota	Contingency fee prohibited.	S.D. Codified Laws Ann. § 2-12-6
Tennessee	Contingency fee prohibited.	Tenn. Code Ann. § 3-6-304(k)
Texas	Contingency fee prohibited. (1) A person may not retain or employee another person to influence legislation or administrative action for compensation that is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action. (2) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.	Tex. Govt. Code Ann. § 305.022.
Utah	Contingency fee prohibited. A person may not employ or solicit another to serve as a lobbyist for compensation contingent in whole or part upon the passage, defeat, or amendment of legislative action or the approval, modification, or denial of a certain executive action.	Utah Code Ann. § 36-11-301
Vermont	Contingency fee prohibited. It shall be prohibited conduct: (1) to employ a lobbyist, or accept employment as a lobbyist, for compensation that is dependent on a contingency;	Vt. Stat. Ann. tit. 2 § 266.(1)
Virginia	Contingency fee prohibited. It shall be unlawful for any individual to lobby for compensation which is dependent in any manner upon the outcome of any legislative or executive action.	Va. Code § 2.1-791

Washington	Contingency fee prohibited. A lobbyist shall not: (f) Enter into any agreement, arrangement, or understanding according to which his or her compensation, or any portion thereof, is or will be contingent upon the success of any attempt to influence legislation.	Wash. Rev. Code § 42.17.230
West Virginia	Not addressed in statute.	N/A
Wisconsin	Contingency fee prohibited. No lobbyist may: ... (d) Contract to receive or receive compensation dependent in any manner upon the success or failure of any legislative or administrative action.	Wis. Stat. § 13.625(1)
Wyoming	Not addressed in statute.	N/A

Source: http://www.ncsl.org/Default.aspx?TabId=15351

B.3 United Kingdom

The UK does not have specific external regulation of lobbying. Self-regulation by some industries bodies is undertaken. Codes of Conduct are applied by the three main professional bodies[50] to which lobbyists in the UK would be members. The House of Commons Public Administration Select Committee has recently publicised a report into lobbying in the UK.

In reviewing the regulation of lobbyists in the UK it was noted that lobbyists come from a wide range of professions, and the ability of professional bodies to regulate members involved in lobbying varies.[51]

The effectiveness of self-regulation was judged against three criteria in a review by the House of Commons Public Administration Select Committee:

- consistency of approach;
- establishment of trust across the industry; and
- complaints handling.

It was noted that achieving any consistency of approach using self-regulation would be difficult given the disparate views of those involved.[52]

With respect to trust, it was concluded that none of the self-regulation bodies had achieved a position in which the trust of the lobbying industry, clients and the wider

[50] These bodies are: Association of Professional Political Consultants (APPC), the Public Relations Consultants Association (PRCA) and Chartered Institute of Public Relations (CIPR). House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p16.

[51] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p17.

[52] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p18.

public was maintained. In particular, it was noted that there were three major self-regulating bodies, rather than one, as occurs in other professions with self-regulation.[53]

Systems exist for the self-regulating bodies for complaints handling and disciplining members, however in practice it was concluded that these measures were very rarely used. It was concluded[54]

> A complaints system that was working would have produced more than three cases in the last ten years, even if the vast majority of lobbyists were operating ethically and transparently. Reprimands and "severe" reprimands, the only outcomes to have been seen in the two cases decided against members of any of the three umbrella groups (both within the CIPR), are not of a kind that would give confidence to any outsider that disciplinary processes are robust.

Civil servants and Ministers

A distinction should be drawn between regulation of lobbyists in the UK and regulation of those who are lobbied. This is because civil servants and Ministers are subject to regulation, while lobbyists are subject only to the limited self-regulation previously considered.

The following sources of regulation exist in the UK for those who are lobbied.

- Guidance for civil servants issued by the Central Secretariat in the Cabinet Office in 1998 that has not been renewed since.[55]
- *Freedom of Information Act*[56]

  > while it is clear that some information about contacts between Government and lobbyists is subject to release under the FoI Act, the extent to which this is the case remains open to interpretation by the courts.

- Statutory consultation requirements provide for lobbying by a wide range of stakeholders.[57]

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[53] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, pp18-19.

[54] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p21.

[55] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, pp22-23.

[56] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p24.

[57] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p24.

- Interests, gifts and hospitality are recognised as potential issues in the Civil Service and Ministerial Codes.[58]
- Business Appointment Rules that set out when civil servants, members of the Armed Forces, or Diplomats should seek Government approval for an appointment with two years of leaving their previous employment in such a role.[59]
- Ministerial Code that requires Ministers seek and comply with advice from the Advisory Committee on Business Appointments regarding appointments or employment to be taken up within two years of leaving office unless they are unpaid.[60]

As a result of the review the following key principles were identified for a register of lobbying activity:[61]

> a) it should be mandatory, in order to ensure as complete as possible an overview of activity.
>
> b) it should cover all those outside the public sector involved in accessing and influencing public-sector decision makers, with exceptions in only a very limited set of circumstances.
>
> c) it should be managed and enforced by a body independent of both Government and lobbyists.
>
> d) it should include only information of genuine potential value to the general public, to others who might wish to lobby government, and to decision makers themselves.
>
> e) it should include so far as possible information which is relatively straightforward to provide—ideally, information which would be collected for other purposes in any case.

B.4 New Zealand

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[58] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p24.

[59] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p27.

[60] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, p28.

[61] House of Commons Public Administration Select Committee, Lobbying: Access and influence in Whitehall First Report of Session 2008–09 Volume I, pp51-52.

New Zealand does not have any statutory regulation of lobbyists. Instead, the approach taken in New Zealand is to restrict those who are lobbied. For example, pecuniary interests of MPs must be disclosed. There is a Cabinet Manual for members of Cabinet that provides for disclosure of things such as pecuniary interests, gifts, fees for endorsements and travel.[62] In addition, Codes of Conduct are in place for MPs from some political parties.[63]

B.5 Registration and enforcement

The approach taken to registration and enforcement in other jurisdictions has been considered separately.

It has been identified by the Department of Premier and Cabinet, and in responses to the State Government's Green Paper: Integrity and Accountability in Queensland that the Department of Premier and Cabinet may not be the most appropriate body to oversee regulation and enforcement for lobbyists (such as the Lobbyist Register) in Queensland. The approaches taken in other jurisdictions identify a large range of alternatives.

In the United Kingdom, lobbyist regulation is undertaken by three self-regulation bodies. These self-regulatory bodies have been created specifically to regulate lobbying.

In Canada, lobbying is regulated by a specific body developed for the purpose, the Office of the Commissioner of Lobbying of Canada. This approach has not been preferred in Queensland as it would involve the creation of a Commissioner of Lobbying and a new body to support the Commissioner.

The approach to lobbying in the United States depends upon whether the State or Federal level is considered. Federally, registration is filed with the Secretary of the Senate and the Clerk of the House. Enforcement is also undertaken by the Secretary of the Senate and the Clerk of the House. If a lobbyist or lobbying firm fails to comply with a notification by the Secretary of the Senate and the Clerk of the House, then this

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62 Institute of Public Administration, Regulation of Lobbyists in Developed Countries Current Rules and Practices, p17.

63 See for example, Maori Party, http://www.maoriparty.org/index.php?pag=cms&id=138&p=mp-code-of-conduct.html .

constitutes a trigger for the United States Attorney for the District of Columbia[64] to initiate an investigation.[65]

At a State level, a variety of approaches are used. Commonly an independent body is responsible for registration and enforcement of lobbyist regulation, however this function with respect to lobbying is, unlike in Canada, only one of a number of functions performed. For example, in many States of the US, the Secretary of State is responsible for regulation of lobbyists, in addition to other responsibilities. Separate Offices or Commissions, where used to regulate lobbyists, usually undertake other functions that may include administration of statutes relating to public officials, conflict of interest laws, financial disclosure and campaign finance. Relatively minor enforcement of the regulations in place is commonly undertaken by the body that administers the regulatory scheme. However, for criminal prosecutions the case is referred to a district attorney or the Attorney General.

Some examples of relevant United States approaches are provided below.

California

The Fair Political Practices Commission is responsible for the administration of lobbyist regulation in California. The Commission's responsibility extends to State and Local Government within California. The Commission is not only responsible for lobbying, but also political campaigning and conflict of interest laws.

The Commission investigates violations of the Political Reform Act. A number of sources are used to indicate the need for an investigation including internally initiated investigations, referrals from other governmental entities, media reports, and the receipt of complaints from citizens. A number of outcomes from an investigation by the Enforcement Division are possible. They include:[66]

- closing the case, for example due to a lack of supporting evidence;
- asking the Commissioners to approve a settlement of the case where a fine is paid or other remedial action taken;
- administrative prosecution and hearing before an administrative law judge or the Full Commission;

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[64] The United States Attorney for the District of Columbia is the federal prosecutor and the local District Attorney in Washington, D.C. See http://www.usdoj.gov/usao/dc/ .

[65] http://lobbyingdisclosure.house.gov/amended_lda_guide.html
http://www.lobbyinginfo.org/laws/page.cfm?pageid=16

[66] http://www.fppc.ca.gov/index.html?id=498 .

- filing a civil lawsuit in the Courts; or
- referring the case to a district attorney or the Attorney General for criminal prosecution.

New York

The body responsible for lobbying activities in New York is the New York State Commission on Public Integrity. The Commission has been established by the Public Employee Ethics Reform Act 2007 and is responsible for the administering and enforcing of the State's ethics and lobbying laws as well as the State's anti-nepotism law and laws pertaining to certain political activities and improper influence.[67]

Paragraph 1-p of the New York State Lobbying Act sets out the rules for enforcement and states that:[68]

> (b) The commission shall be charged with the duty of reviewing all statements and reports required under this article for violations, and it shall be their duty, if they deem such to be willful, to report such determination to the attorney general or other appropriate authority.
>
> (c) Upon receipt of notice of such failure from the commission, the attorney general or other appropriate shall take such action as he deems appropriate to secure compliance with the provisions of this article.

Texas

In Texas, the authority responsible for lobbying administration is the Texas Ethics Commission, which was been created in 1991 through an amendment to the Texas Constitution. The duties of the Commission include constitutional and statutory duties.

The constitutional duties are summarised as:[69]

> The Texas Constitution provides that the Texas Ethics Commission may recommend the salary of members of the Legislature, the Lieutenant Governor, and the Speaker of the House of Representatives, subject to approval by the voters at the subsequent general election for state and county officers. Also, the Commission must set the per diem of members of the Legislature and of the Lieutenant Governor.

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[67] New York State Commission on Public Integrity, Mission Statement, Link: http://www.nyintegrity.org/about/mission.html.

[68] New York State Lobbying Act, Link: http://www.nyintegrity.org/law/lob/lobbying2.html

[69] Texas Ethics Commission, Constitutional and statutory duties, Link: http://www.ethics.state.tx.us/tec/duties.htm.

The statutory duties are set out in Chapter 571 of the Government Code and include the administering and enforcing of nine different laws including Chapter 305 of the Government Code concerning lobbyist registration, reports, and activities.[70]

Section 035.305 of the Government Code deals with the enforcement of the registration of lobbyists and states that:[71]

(a) The commission, the attorney general, or any county or district attorney may enforce this chapter.

(b) On the application of any citizen of this state, a district court in Travis County may issue an injunction to enforce this chapter.

(c) A person may file with the appropriate prosecuting attorney or with the commission a written, sworn statement alleging a violation of this chapter.

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70 Texas Ethics Commission, Constitutional and statutory duties, Link: http://www.ethics.state.tx.us/tec/duties.htm.

71 Chapter 305, Government Code, Link: http://www.ethics.state.tx.us/statutes/09ch305.htm#305.035.