

Lobbyist - Code of Conduct, Management and Corruption Allegations

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Functional Sub group Corporate Administration - Governance
Corporate Administration - Communications

Summary The Premier of NSW issued memorandum 2009-03 outlining the introduction of a Lobbyists Code of Conduct and an associated register effective 1 February 2009. This policy extends the requirement for the NSW Health System to comply with this memorandum and the Premier's earlier memorandum 2006-01 Guidelines on Managing Lobbyists and Corruption Allegations Made During Lobbying.

Replaces Doc. No. Lobbying - Managing Lobbyists and Corruption Allegations Made During Lobbying [PD2006_036]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Public Health System Support Division, NSW Ambulance Service

Audience Executive and administration

Distributed to Public Health System, NSW Ambulance Service, NSW Department of Health

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Status Active

Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

LOBBYISTS - CODE OF CONDUCT, MANAGEMENT AND CORRUPTION ALLEGATIONS

PURPOSE

The purpose of this policy is to extend to the NSW Health System the requirement to comply with directions issued by the Premier of NSW on Lobbyists contained in M2009-03 *Lobbyist Code of Conduct and Register* and M2006-01 *Guidelines on Managing Lobbyists and Corruption Allegations made during Lobbying*.

MANDATORY REQUIREMENTS

Public officials are to ensure that where lobbying occurs it does not undermine public confidence in objective government decision-making. Obligations in the Lobbyist Code are additional to and complement the obligations which have already been imposed on public officials to ensure that lobbying is conducted appropriately.

IMPLEMENTATION

Chief Executives must ensure that the requirements issued by the Premier of NSW on Lobbyists contained in the following memoranda are communicated to Health Executive staff and made available to all staff:

- Lobbyist Code of Conduct and Register M2009-03 (available at http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2009/m2009-03_lobbyist_code_of_conduct_and_register)
- Guidelines on Managing Lobbyists and Corruption allegations made during lobbying M2006-01 (available at http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2006/m2006-01)

The Lobbyist Code will be incorporated into the Code of Conduct for NSW Health at the next review. Information concerning the obligations of staff should be provided in induction programs for relevant executive and management staff.

For further clarification on lobbying the Department of Premier and Cabinet website provides a series of flow charts, definitions, questions and answers and on-line training to assist lobbyists and Government officials.

http://www.dpc.nsw.gov.au/prem/lobbyist_register

REVISION HISTORY

Version	Approved by	Amendment notes
June 2006 (PD2006_006)	Deputy Director- General Health System Support	New policy following the release of Premier's Memorandum Guidelines for Managing Lobbyists and Corruption allegations made during lobbying M2006-1
June 2009 (PD2009_031)	Director-General	Incorporates Premier's Memorandum Lobbyist Code of Conduct M2009-03

Related documents:	<ul style="list-style-type: none"> • Premier's Memorandum M2008-26 – Obligation on Ministers to Report
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ASSOCIATED DOCUMENTS

1. Lobbyist Code of Conduct
2. Guidelines for Ministers, Ministerial Staff and Public Officials in dealing with Lobbyists
3. Protocol for the Management of Corruption Allegations made to Ministers, Ministerial Staff or Public Officials during Lobbying



NSW Government Lobbyist Code of Conduct

1. Preamble

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

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

In performing this role, there is a public expectation that Lobbyists will be individuals of strong moral calibre who operate according to the highest standards of professional conduct. The Government has established the Lobbyist Code of Conduct to ensure that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

2. Application

2.1 The NSW Government Lobbyist Code of Conduct has application through the Codes of Conduct that apply to Ministers, Ministerial Staff Members, senior public servants and public sector agencies, and through a Premier's Memorandum in relation to Parliamentary Secretaries.

2.2 The NSW Government Lobbyist Code of Conduct creates no obligation for a Government Representative to have contact with a particular Lobbyist or Lobbyists in general.

2.3 The NSW Government Lobbyist Code of Conduct does not serve to restrict contact in situations where the law requires a Government Representative to take account of the views advanced by a person who may be a Lobbyist.

3. Definitions

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

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

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

occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

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

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

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

4. Contact between Lobbyists and Government Representatives

4.1 A Government Representative shall not at any time permit lobbying by:

- (a) a Lobbyist who is not on the Register of Lobbyists;
- (b) any employee, contractor or person engaged by a Lobbyist to carry out lobbying activities whose name does not appear in the Lobbyist's Details noted on the Register of Lobbyists in connection with the Lobbyist;
- (c) any Lobbyist or employee, contractor or person engaged by a Lobbyist to carry out lobbying activities who, in the opinion of the Government Representative, has failed to observe any of the requirements of clause 4.3.

4.2 Contact with a Government Representative for the purposes of lobbying activities by a Lobbyist includes:

- (a) telephone contact;
- (b) electronic mail contact;
- (c) written mail contact; and
- (d) face to face meetings.

4.3 When making an initial contact with a Government Representative about a particular issue on behalf of a third party for whom the Lobbyist has provided paid or unpaid services, the Lobbyist must inform the Government Representative:

- (a) that they are a Lobbyist or employee, contractor or person otherwise engaged by the Lobbyist who is currently listed on the Register of Lobbyists;
- (b) that they are making the contact on behalf of a third party;
- (c) the name of the third party; and
- (d) the nature of that third party's issue.

5. Register of Lobbyists

5.1 There shall be a Register of Lobbyists which shall contain the following information:

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

5.2 A Lobbyist wishing to have contact with a Government Representative for the purposes of lobbying activities may apply to the Director General to have the Lobbyist's Details recorded in the Register of Lobbyists.

5.3 The Lobbyist shall submit updated Lobbyist's Details to the Director General in the event of any change to the Lobbyist's Details as soon as practicable but no more than 10 business days after the change occurs.

5.4 The Lobbyist shall provide to the Director General within 10 business days of 30 September, 31 January and 31 March of each year, confirmation that the Lobbyist's Details are up to date.

5.5 The Lobbyist shall provide to the Director General, within 10 business days of 30 June 2009 and each year thereafter, confirmation that the Lobbyist's Details are up to date together with statutory declarations for all persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities on behalf of a client, or where the Lobbyist is a person, a statutory declaration by that Lobbyist, as required under paragraph 8.1.

5.6 The registration of a Lobbyist shall lapse if the confirmations and updated statutory declarations are not provided to the Director General within the time frames specified in clauses 5.4 and 5.5.

6. Access to the Register of Lobbyists

6.1 The Register of Lobbyists shall be a public document.

6.2 The Director General shall ensure that the Register of Lobbyists is readily accessible to members of the public.

7. Principles of Engagement with Government Representatives

7.1 Lobbyists shall observe the following principles when engaging with Government Representatives:

- (a) Lobbyists shall not engage in any conduct that is corrupt, dishonest, or illegal, or cause or threaten any detriment;

- (b) Lobbyists shall use all reasonable endeavours to satisfy themselves of the truth and accuracy of all statements and information provided to parties whom they represent, the wider public, governments and agencies;
- (c) Lobbyists shall not make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions; and
- (d) Lobbyists shall keep strictly separate from their duties and activities as Lobbyists any personal activity or involvement on behalf of a political party.

8. Registration

8.1 The Director General shall not include on the Register of Lobbyists the name of an individual unless the individual provides a statutory declaration to the effect that he or she:

- (a) has never been sentenced to a term of imprisonment of 30 months or more, and
- (b) has not been convicted, as an adult, in the last ten years, of an offence, one element of which involves dishonesty, such as theft or fraud.

8.2 Subject to clause 8.1, the Director General may at his or her discretion:

- 1) refuse to accept part or all of an application to be placed on the Register of Lobbyists; or
- 2) remove from the Register of Lobbyists part or all of the details of a Lobbyist

if, in the opinion of the Director General:

- (a) any prior or current conduct of the Lobbyist or the Lobbyist's employee, contractor or person otherwise engaged to provide lobbying services for the Lobbyist has contravened any of the terms of this Code; or
- (b) any prior or current conduct of the Lobbyist or association of the Lobbyist with another person or organisation is considered to be inconsistent with general standards of ethical conduct; or
- (c) the registration details of the Lobbyist are inaccurate; or
- (d) the Lobbyist has not confirmed the Lobbyist's Details in accordance with the requirements of clause 5.4 and/or clause 5.5; or
- (e) there are other reasonable grounds for doing so.

GUIDELINES FOR MINISTERS, MINISTERIAL STAFF AND PUBLIC OFFICIALS IN DEALING WITH LOBBYISTS

Application of Guidelines

The Guidelines apply where lobbying occurs in respect of a decision which is proposed to be made under statute (a statutory decision) where the decision-maker is required to adhere to the principles of administrative law.

These Guidelines have been prepared to maintain the integrity of government decision-making processes.

The Guidelines apply to all Ministers, ministerial staff and public officials who are lobbied in respect of a proposed statutory decision. They apply where the person who is lobbied is the actual decision-maker as well as in those cases where the person who is lobbied is not the decision-maker and another Minister or public official is responsible for making the decision.

The Guidelines apply to lobbying by any person, including principals seeking or resisting the making of the proposed statutory decision, special interest groups, professional advocates, Members of Parliament and any other person.

While the principles set out in these Guidelines are not required to be complied with where lobbying occurs on other issues (such as lobbying which occurs in relation to legislative changes), the principles may still provide some useful guidance.

Principles to be observed

Ministers, ministerial staff and public officials should ensure that lobbying in relation to a statutory decision:

- (a) is undertaken in accordance with appropriate practices; and
- (b) does not undermine the integrity of decision-making processes.

In some cases, it might even be wise for Ministers, ministerial staff and public officials to consider taking such reasonable steps as are available to them to try to ensure that lobbying does not occur at all while the proposed statutory decision is being made.

In particular, Ministers, ministerial staff and public officials who are lobbied should:

- (i) be alert to the motives and interests of those who seek to lobby in relation to a statutory decision;
- (ii) be aware of which person, organisation or company a lobbyist is representing;

(iii) ensure that the making of a statutory decision is not prejudiced by the giving of undertakings to an interested party prior to the decision-maker considering all relevant information;

(iv) avoid doing or saying anything which could be viewed as granting a lobbyist preferential treatment;

(v) ensure as a decision-maker that, as far as possible, competing parties are treated fairly and consistently - for example, it may be necessary to provide a group with an opportunity to make submissions in relation to a proposed decision in circumstances where another group with a different view has been afforded an opportunity to make representations on the proposed decision;

(vi) ensure that confidential information is not disclosed to a lobbyist;

(vii) be alert to attempts by lobbyists to encourage decision-makers to consider matters which are extraneous or irrelevant to the merits of the decision under consideration;

(viii) consider keeping records of meetings with lobbyists, and if necessary having another person attend the meeting as a witness or to take notes; and

(ix) ensure that no action is taken which involves a breach of a relevant code of conduct (such as the Ministerial Code of Conduct), for example, by accepting inappropriate hospitality or gifts from lobbyists.

PROTOCOL FOR THE MANAGEMENT OF CORRUPTION ALLEGATIONS MADE TO MINISTERS, MINISTERIAL STAFF OR PUBLIC OFFICIALS DURING LOBBYING

Application of the Protocol

This Protocol applies to lobbying in relation to decisions which are proposed to be made under statute (a statutory decision) where the decision-maker is required to adhere to the principles of administrative law.

This Protocol has been prepared to maintain the integrity of government decision-making processes.

The Protocol applies to all Ministers, ministerial staff and public officials who are lobbied in respect of a proposed statutory decision. It applies where the person who is lobbied is the actual decision-maker as well as in those cases where the person who is lobbied is not the decision-maker and another Minister or public official is responsible for making the decision.

The Protocol applies to lobbying by any person, including principals seeking or resisting the making of the proposed statutory decision, special interest groups, professional advocates, Members of Parliament and any other person.

The protocol also applies where any person makes an allegation to which the Protocol applies (described in the next paragraph), even if that person might not be characterised as a "lobbyist", in circumstances where the Minister, ministerial staff member or public official is aware that the allegation relates to a person who has an interest in or will be affected by a proposed statutory decision.

The Protocol applies to an allegation made by a lobbyist (in the broader sense described in the preceding paragraphs) that another person who has an interest in or will be affected by a statutory decision has engaged in criminal, corrupt or other improper conduct.

Protocol

Where a lobbyist who is lobbying in relation to a statutory decision, makes an allegation to which this protocol applies to a Minister, ministerial staff or a public official, the allegation should be documented and forwarded (together with any material which has been provided in support of the allegation) to the head of the agency which is making the relevant decision or which is advising the Minister who is to make the relevant decision (the relevant agency head). Where the allegation is made to a public official who is also the relevant agency head, the allegation should simply be documented.

When documenting and forwarding the allegation to the relevant agency head, no comment should be made on the substance of the allegation (such as whether the

alleged conduct is considered to constitute improper or corrupt conduct or whether the alleged conduct in fact occurred).

The purpose of referring the allegation is to enable the relevant agency head to consider and, if he or she is not the decision-maker, advise the decision-maker on the steps (if any) that need to be taken as a result of the allegation having been made in order to protect the integrity of the decision-making process.

This should include consideration of whether the allegation is relevant to the statutory decision which is to be made. The consideration given to this issue (including advice that no consideration should be given to the allegation) should be documented.

If the allegation is relevant to the statutory decision, the relevant agency head should also advise on how (if at all) the decision-making process should be adjusted as a result of the allegation having been made.

For example, after considering all relevant factors (such as the impact on any investigation of the allegation of which the agency head is aware), it may be necessary to afford the person against whom the allegation is made an opportunity to respond to the allegation.

It may be necessary to arrange for the agency or another body, having regard to the evidence (if any) which has been provided, to investigate the allegation. The agency head should consider and advise on whether the decision-making process should be altered so that the results of any investigation can be taken into account.

If the allegation is of a type to which section 11 of the ICAC Act applies, namely the allegation contains reasonable grounds causing the agency head to suspect corrupt conduct does, or may, exist, the agency head should refer the allegation to ICAC in accordance with that section. The public official who refers the allegation to the agency head will also be subject to the duty in section 11 if that section applies to him or her.