

South Australia

Lobbyists Act 2015

An Act to regulate the lobbying of public officials; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Lobbyists Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

Chief Executive means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

government board means a body corporate—

- (a) comprised of persons, or with a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or
- (b) subject to control or direction by a Minister;

lobbying—see section 4;

public official means—

- (a) a Minister or Parliamentary Secretary; or
- (b) a member of staff of a Minister or Parliamentary Secretary (including a member of staff in an electorate office); or
- (c) any other Member of Parliament or a member of staff of such a Member; or
- (d) a public sector employee; or
- (e) an individual who is engaged under a contract to provide services to or on behalf of a public sector agency; or
- (f) a member of a government board;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

public sector employee has the same meaning as in the *Public Sector Act 2009*;

register means the register of lobbyists under section 10;

registration means registration under Part 2.

4—Meaning of lobbying

- (1) For the purposes of this Act, a person will be taken to engage in lobbying if the person, for money or other valuable consideration, communicates with a public official (in person, in writing or by telephone or other electronic means) on behalf of a third party for the purpose of influencing the outcome of—
 - (a) legislation, or a government decision or policy, whether existing or proposed;
or

- (b) an application for any approval, consent, licence, permit, exemption or other authorisation or entitlement under any Act or law of this State; or
 - (c) the awarding of a contract or grant or the allocation of funding; or
 - (d) any other exercise by the official of his or her functions or powers,
- (whether the person is acting as a principal in so communicating or as an employee or agent of another).
- (2) However, a person will not be taken to engage in lobbying—
 - (a) if the person holds office as a public official and communicates with the public official in the ordinary course of holding that office; or
 - (b) if the person is a legal practitioner (holding a current practising certificate under the *Legal Practitioners Act 1981*) and communicates with the public official in the ordinary course of that person's profession as a legal practitioner; or
 - (c) if the person is an accountant or financial adviser (holding qualifications of a kind prescribed by regulation) and acts in circumstances prescribed by regulation; or
 - (d) if the person belongs to a class prescribed by regulation and acts in circumstances prescribed by regulation.
 - (3) For the purposes of subsection (1), a person will not be taken to communicate with a public official on behalf of a third party if the third party is a designated organisation and the person, being an employee of the organisation, communicates with the public official in the ordinary course of that employment.
 - (4) In this section—

designated organisation means—

 - (a) an employer organisation, employee organisation, professional organisation or some other organisation established to represent the industrial or professional interests of its members; or
 - (b) an organisation established for a charitable, educational, benevolent, humanitarian, religious, recreational, sporting or philanthropic purpose; or
 - (c) an organisation, or an organisation of a kind, prescribed by regulation.

Part 2—Registration

5—Lobbyists to be registered

- (1) A person must not engage in lobbying except in accordance with a registration under this Act.

Maximum penalty:

- (a) in the case of a body corporate—\$150 000;
- (b) in the case of a natural person—\$30 000 or imprisonment for 2 years.

- (2) If a person is found guilty of an offence against this section, the amount or value of any payment (whether monetary or non-monetary) received by the person for lobbying while the person was not registered is, unless the court otherwise orders, forfeited to the Crown.
- (3) In proceedings for an offence against this section, or on appeal, the court may order that the amount or value of the payment not be forfeited or, if it has been forfeited, that it be returned to a specified person.
- (4) For the purposes of this section, the value of a non-monetary payment may be determined by the court on the basis of a reasonable estimate in dollars of the value of the non-monetary payment to the defendant.

6—Entitlement to be registered

A person is entitled to be registered if—

- (a) the person is, in accordance with this Act, entitled to apply for registration¹; and
- (b) in addition—
 - (i) in the case of a natural person, the person—
 - (A) has not been convicted of an indictable offence; or
 - (B) has not, during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty; or
 - (ii) in the case of a body corporate, no director of the body corporate—
 - (A) has been convicted of an indictable offence; or
 - (B) has, during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty.

Note—

- 1 Section 9(3) and section 13(1)(a)(ii), and (c)(ii) of this Act disentitle persons from applying for registration in certain circumstances.

7—Application for registration

- (1) An application for registration—
 - (a) must be made to the Chief Executive in the manner and form determined by the Chief Executive; and
 - (b) must be accompanied by the fee (if any) fixed by regulation.
- (2) The Chief Executive may, by notice in writing, require a person to provide information or further information in connection with an application for registration, verified, if necessary, by statutory declaration.
- (3) The Chief Executive—
 - (a) must refuse an application for registration if satisfied that the applicant is not entitled to be registered under section 6; or

- (b) may, without further notice, refuse an application for registration if the person fails to comply with a notice under subsection (2) within 28 days after service of the notice.
- (4) The Chief Executive must notify the person in writing of the refusal of the person's application for registration.

8—Annual fee and return

- (1) Subject to subsection (3), a registered person must, not later than 30 days (or such longer period prescribed by regulation) after the end of a calendar year—
 - (a) pay to the Chief Executive the fee (if any) fixed by regulation; and
 - (b) lodge with the Chief Executive a return that contains the following details in relation to that calendar year:
 - (i) the name of each person or body for or on behalf of whom the registered person has engaged in lobbying, or with whom the person has had an agreement to engage in lobbying;
 - (ii) the name of each public official who was lobbied by the registered person;
 - (iii) the subject matter of the lobbying engaged in;
 - (iv) the name of any person employed by or otherwise engaged by the registered person to engage in lobbying (whether or not the person in fact engaged in lobbying);
 - (v) any other details prescribed by regulation.
- (2) The Chief Executive may, by notice in writing—
 - (a) require a registered person to provide, within the period specified in the notice, information or further information in connection with a return, verified, if necessary, by statutory declaration; or
 - (b) require a registered person who has failed to pay the fee or lodge the return in accordance with this section to make good the default and, in addition, to pay to the Chief Executive the amount prescribed by regulation as a penalty for default.
- (3) A registered person is not required to pay a fee and lodge a return under this section if the person only engaged in lobbying as an employee of, or person otherwise engaged by, another registered person during the calendar year to which the return relates.

9—Duration of registration and cancellation and surrender

- (1) A person's registration remains in force until—
 - (a) the registration is cancelled or surrendered; or
 - (b) the person dies or, in the case of a body corporate, is dissolved.
- (2) The Chief Executive—
 - (a) must cancel a person's registration if satisfied that—
 - (i) events have occurred such that the person is no longer entitled to be registered; or

- (ii) the person was not, when first applying for registration, entitled to be registered; and
- (b) may, without further notice, cancel a person's registration if satisfied that—
 - (i) the person has failed to comply with a requirement under this Act; or
 - (ii) the person has breached a condition of an exemption under section 12 or a condition of the person's registration under section 13.
- (3) If a person's registration is cancelled under subsection (2), the person is disqualified from holding registration, and is not entitled to apply for registration, for a period of 2 years from the date of the cancellation.
- (4) The Chief Executive must notify the person in writing of the cancellation of the person's registration under subsection (2).
- (5) A registered person may surrender his or her registration in the manner prescribed by regulation.

10—Register of lobbyists

- (1) The Chief Executive must keep a register of persons who engage in lobbying.
- (2) Subject to section 12, the register must include the following details in relation to each person who engages in lobbying (to the extent to which they are applicable):
 - (a) the name, including any business name or trading name, of the person;
 - (b) the business address of the person;
 - (c) the ABN of the person;
 - (d) the name of each owner of the person's business and any partners or major shareholders in the business;
 - (e) the name of each employee of, or person otherwise engaged by, the person and their positions in the business;
 - (f) any condition of registration applying in relation to the person under section 13;
 - (g) each return provided by the person under section 8(1);
 - (h) any details provided to the Chief Executive under section 11(1)(a) in relation to new lobbying agreements;
 - (i) any other details considered appropriate by the Chief Executive or prescribed by regulation.
- (3) The Chief Executive may remove from the register details relating to a person whose registration is no longer in force.
- (4) The register is to be available for inspection by members of the public—
 - (a) without fee, during ordinary office hours at a public office, or public offices, determined by the Chief Executive; and
 - (b) on a website determined by the Chief Executive.

11—Notification of change of details

- (1) A registered person must comply with the following notification requirements:
 - (a) subject to subsection (2), the person must notify the Chief Executive, as soon as reasonably practicable after entering into any new agreement with a person or body to engage in lobbying, of the details prescribed by regulation in relation to that agreement;
 - (b) the person must notify the Chief Executive of the following matters within 14 days of their occurrence:
 - (i) any conviction of an offence that disentitles the person to be registered under section 6;
 - (ii) any change in the person's registered details referred to in section 10(2)(a) to (f) (inclusive).

Maximum penalty: \$5 000.

- (2) A registered person is not required to notify the Chief Executive of the details referred to in subsection (1)(a) in relation to a new agreement if the person is only to be engaged in lobbying under the agreement as an employee of, or person otherwise engaged by, another registered person who is a party to the agreement.

12—Exclusion of information from register

- (1) The Chief Executive may, on his or her own initiative or on application by a registered person, exempt some or all of the person's details provided in a return under section 8(1) or provided under section 11(1)(a) from inclusion in the register if satisfied that the details consist of—
 - (a) personal information of a confidential nature; or
 - (b) information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
 - (c) information the disclosure of which would, or could reasonably be expected to, prejudice the commercial position of a person or confer a commercial advantage on a person; or
 - (d) information the disclosure of which would be contrary to the public interest for any other reason; or
 - (e) information the disclosure of which would be inappropriate for any other reason.
- (2) An application under subsection (1)—
 - (a) must be made to the Chief Executive in the manner and form determined by the Chief Executive; and
 - (b) must be accompanied by the fee (if any) fixed by regulation.
- (3) An exemption granted on an application by a person under subsection (1)—
 - (a) must be by notice in writing to the person; and
 - (b) is subject to—

- (i) a condition that the exemption be reviewed by the Chief Executive in a manner prescribed by regulation for the purpose of determining whether the grounds for exemption still exist; and
 - (ii) any other conditions specified in the exemption or prescribed by regulation; and
 - (c) may be varied by notice in writing to the person; and
 - (d) remains in force until—
 - (i) 1 January next following its grant; or
 - (ii) such time as it may be revoked by the Chief Executive by notice in writing to the person (following a determination by the Chief Executive on a review under paragraph (b)(i) that the grounds for exemption no longer exist),
- whichever is sooner.
- (4) An exemption granted on the Chief Executive's own initiative may be varied or revoked at any time without notice.
 - (5) Details excluded from the register under an exemption under this section must be included in the register on expiry or revocation of the exemption.
 - (6) Information that is subject to an exemption under this section is not liable to disclosure under the *Freedom of Information Act 1991*.

Part 3—Restrictions on lobbying

13—Certain former or current public officials must not engage in lobbying

- (1) Subject to subsections (2) and (3)—
 - (a) the following provisions apply in relation to a person who ceases to hold office as a Minister:
 - (i) the person must not, during the period of 2 years after ceasing to hold that office, engage in lobbying;
 - (ii) the person is not entitled to apply for registration during that period;
 - (iii) any registration held by the person during that period is, by force of this section, cancelled; and
 - (b) the following provisions apply in relation to a person who ceases to hold office as a Parliamentary Secretary, a member of SAES (within the meaning of the *Public Sector Act 2009*) or a person engaged as a member of a Minister's personal staff under section 71 of that Act:
 - (i) the person must not, during the period of 12 months after ceasing to hold that office, engage in lobbying in respect of matters dealt with by the person in the ordinary course of holding that office;
 - (ii) any registration held by the person during that period is, by force of this section, for the duration of that period, subject to a condition that the person must not engage in lobbying in respect of matters dealt with by the person in the ordinary course of holding that office; and

- (c) the following provisions apply in relation to a member of a government board:
 - (i) the person must not engage in lobbying during that period of membership;
 - (ii) the person is not entitled to apply for registration during that period;
 - (iii) any registration held by the person during that period is, by force of this section, cancelled.
- (2) If more than 1 paragraph of subsection (1) applies in relation to a person, all restrictions contained in the relevant paragraphs apply concurrently, with the most stringent restriction prevailing in the event of any inconsistency.
- (3) Subsection (1)(a) and (b) do not apply in relation to a person who ceased office before the commencement of those respective paragraphs.

14—Success fees prohibited

- (1) A person must not give or receive, or agree to the giving or receipt of, a success fee for carrying on the business of lobbying.
Maximum penalty:
 - (a) in the case of a body corporate—\$150 000;
 - (b) in the case of a natural person—\$30 000 or imprisonment for 2 years.
- (2) If a person is found guilty of an offence against this section, the amount or value of the success fee is, unless the court otherwise orders, forfeited to the Crown.
- (3) In proceedings for an offence against this section, or on appeal, the court may order that the amount or value of the success fee not be forfeited or, if it has been forfeited, that it be returned to a specified person.
- (4) For the purposes of this section, the value of a non-monetary success fee may be determined by the court on the basis of a reasonable estimate in dollars of the value of the non-monetary success fee to the defendant.
- (5) In this section—
success fee, in relation to lobbying, is an amount of money or other valuable consideration, the receipt of which is contingent on the outcome of the lobbying.

Part 4—Reviews

15—Reviews

- (1) A person—
 - (a) whose application for registration has been refused by the Chief Executive; or
 - (b) whose registration has been cancelled,may seek a review of the Chief Executive's decision by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (2) Subject to subsection (4), an application for review may be made to the Tribunal within 1 month after the making of the Chief Executive's decision.

- (3) The Chief Executive must, if so required by the person, state in writing the reasons for the Chief Executive's decision.
- (4) If the reasons of the Chief Executive are not given in writing at the time of the making of the Chief Executive's decision and the person (within 1 month of the making of the decision) requires the Chief Executive to state the reasons in writing, the time for making an application for review runs from the time at which the person receives the written statement of those reasons.
- (5) In this section—
Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Part 5—Miscellaneous

16—Delegation by Chief Executive

- (1) The Chief Executive may, by instrument in writing, delegate a power or function under this Act—
 - (a) to a particular person; or
 - (b) to the person for the time being performing particular duties or holding or acting in a specified position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - (c) is revocable at will.

17—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

18—Service of notice

- (1) A notice or other document required or authorised to be given to a person for the purposes of this Act may—
 - (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) at the person's address for service; or
 - (c) be left for the person at the address for service with someone apparently over the age of 16 years; or

- (d) be transmitted by fax or e-mail to a fax number or e-mail address provided by the person (in which case the notice will be taken to have been given at the time of transmission).
- (2) The address for service of a registered person is the address for the person that appears in the register.

19—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) regulate the conduct of—
 - (i) persons who engage in lobbying; or
 - (ii) persons who employ or otherwise engage such persons; and
 - (b) provide for or in relation to the payment, recovery, refund or waiver of fees payable under this Act; and
 - (c) fix fines (not exceeding \$5 000) for offences against the regulations; and
 - (d) fix expiation fees (not exceeding \$315) for alleged offences against the regulations.
- (3) The regulations may incorporate, or operate by reference to, a code of conduct as in force at a specified time or as in force from time to time.
- (4) If a code of conduct is referred to or incorporated in the regulations—
 - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Chief Executive;
 - (b) evidence of the contents of the code may be given in legal proceedings by production of a document apparently certified by the Chief Executive to be a true copy of the code.
- (5) A regulation may—
 - (a) be of general or limited application and may vary in operation according to factors stated in the regulation; and
 - (b) leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Chief Executive either generally or in a particular case or class of cases; and
 - (c) exempt (conditionally or unconditionally) a person or class of persons from specified provisions of this Act.
- (6) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (7) A provision of a regulation made under subsection (6) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.

- (8) To the extent to which a provision takes effect under subsection (7) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Transitional provisions

1—Success fees

- (1) If a success fee is payable in accordance with an agreement that was in place immediately before the commencement of section 14, the agreement is, on that commencement, void to the extent that it provides for a success fee to be given or received for lobbying engaged in on or after that commencement.
- (2) Section 14 does not apply in respect of a success fee that is given or received within 3 months after the commencement of that section, provided that the success fee relates to lobbying engaged in before that commencement.