

Lobbying and Influence – ICAC Discussion paper

Submission

September 2023

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Summary of recommendations

The Local Government Association of South Australia (the LGA) recommends that legislative amendments should be made to clarify that the Lobbyists Act (SA) 2015):

- Does not apply to intergovernmental relations between federal, state and local governments (including interaction by the LGA on behalf of its member councils).
- That Regulations cannot be made that would impose obligations on councils or the LGA pursuant to the Lobbyists Act.
- There is no obligation for any officer bearer or employee of a council or the LGA to register as a lobbyist, to pay a related fee or to provide a return.
- To exclude officer bearers and employees of local councils and the LGAs from the definition of public official.

Introduction

ICAC Discussion Paper - Lobbying and Influence

In July 2023, the SA Independent Commission Against Corruption released a discussion paper on 'Lobbying and Influence' (the ICAC Paper). This submission is made in response.

This submission does not attempt to answer most of the specific questions posed in the ICAC Paper. Rather, this paper argues that local government, as one of the three tiers of local government, should be specifically excluded from the operation of the Lobbyists Act 2015 (the Lobbyists Act).

Local Government is open transparent and ethical. Its statutory purposes include obligations to engage with other tiers of government. This engagement should be understood as legitimate intergovernmental relations and so should be encouraged.

About the Local Government Association of South Australia

The Local Government Association of South Australia is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

South Australian councils are a creation of South Australian legislation¹. The local government sector is nevertheless one of the three separate tiers of government in Australia.

The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils. Member councils:

- elect representatives to the LGA Board, which directs the affairs of the LGA.
- Initiate policy and prioritise the resources of the LGA
- Receive regular reports, ensuring the LGA is accountable to its members.

Like councils, the LGA also owes its continuing legal existence to state legislation². Section 1 of Schedule 1 of the *Local Government Act 1999* provides:

(1) The Local Government Association of South Australia continues in existence.

¹ Namely, the Local Government Act 1999.

² Section 1 of Schedule 1 of the *Local Government Act 1999*.

- (2) *The LGA continues to be a body corporate with perpetual succession and a common seal.*
- (3) *The LGA is constituted as a public authority for the purpose of promoting and advancing the interests of local government and has the objects prescribed by its constitution.*

Further, the LGA Constitution (and ancillary documents to the LGA constitution) are approved by the Minister. Ministerial approval is required for any amendment to these documents³.

According to section 4 of the LGA Constitution:

The object of the LGA is to achieve public value through the promotion and advancement of the interests of local government by:

- 4.1 advocating to achieve greater influence for local government in matters affecting councils and communities;*
- 4.2 assisting Members to build capacity and increase sustainability through integrated and coordinated local government; and*
- 4.3 advancing local government through best practice and continuous improvement.*

The LGA must undertake its functions with the purpose of achieving the Objects. The 'Functions' of the LGA⁴ (approved by the Minister) also require the LGA to engage closely with the State and Federal Governments. These functions include (where relevant):

- 5.1 advocate and provide leadership for local government in South Australia, leading to strong engaged communities served by efficient and collaborative Councils and Community Councils;*
- 5.2 advocate for an autonomous, effective and democratic system of local government in South Australia to meet contemporary community needs;*
- 5.3 encourage and promote an efficient, effective and sustainable system of local government in South Australia;*
- 5.4 promote and protect the interests of local government and its Members and the communities they represent;*
- 5.5 encourage and help local government to engage with, and respond to, the needs of the community;*
- 5.6 develop and maintain consultation and co-operation between local government and the State and Commonwealth governments and their agencies;*
- 5.7 assist Members to develop and maintain their financial sustainability and for the advancement of local government;*
- 5.8 undertake any business activity which contributes to the Object;*
- 5.9 represent Members of the LGA and local government to the public and the State and Commonwealth governments;*
- 5.10 act as an advocate for Members and the local government community to address contemporary needs;*

³ Section 1(4) of Schedule 1 of the *Local Government Act 1999*

⁴ Section 7, LGA Constitution,

- 5.11 facilitate engagement and collaboration by and between Members as to their common interests;*
- 5.12 encourage, assist, promote and foster the achievement and maintenance of the highest levels of integrity, justice, competence, effectiveness and efficiency of local government;*
- 5.13 undertake or promote any activity which the Board of Directors determines to be for the benefit or interest of Members and local government in South Australia; and*
- 5.14 undertake any function as may be vested in the LGA by statute.*

The LGA is provided with additional statutory roles through dozens of other statutes and statutory instruments. The most common such reference is a requirement for a government department or instrumentality to consult with the LGA, before making a decision.

In furtherance of its statutory requirements and its Objects and the Functions, the LGA engages closely with the other two tiers of government on a very wide range of matters. This interaction takes place via a number of mechanisms, including:

- Written agreements with state government departments and agencies to collaborate towards shared outcomes. This will regularly involve the secondment or resourcing of an officer to work at the LGA Secretariat. Examples include MOUs with Green Industries SA, Wellbeing SA and Green Adelaide.
- Local governments have obligations under state legislation to achieve state government policy objectives. For example, each council must have a public health plan, and this must include a range of mandatory issues. Councils and the LGA interacts regularly with SA Health on the achievement of positive public health outcomes.
- Coordination of the State's emergency management functions.
- Written submissions, letters and emails.
- Meetings (including electronic meetings) with Ministers, their departments and agencies.
- Telephone conversations.
- Participation in government boards and committees (Note that the LGA will often nominate an elected member or officer of a council to a government board or committee but will not direct (and sometimes will not even interact) with the nominee, during their term of office.
- Participation in a wide range of ad hoc state government working groups (e.g. a Ministerial committee to address skills shortages in the building and planning professions, on renewing the Treasurer's Indemnity in respect of the statutory Local Government Mutual (self-insurance) Scheme.
- State MPs and senior government officials regularly attend meetings of council, regional groupings of councils, the LGA's General Meetings, conferences and forums⁵.
- Meetings are held with federal MPs, particularly from the local seats close to the council. On occasion this includes cross-border MPs.
- Interviews in the media, aimed at influencing public opinion (and therefore the State Government).
- Conducting public campaigns.

As a constituent member, the LGA also advocates on federal issues through the Australian Local Government Association.

⁵ For example, during the COVID pandemic, the Premier, Health Minister and SA Chief Public Health Officer regularly gave briefings, updates and advice to Mayors and relevant council officers.

Transparency in Local government

Local government is the most transparent tier of government. Each year, all council must consult with their communities about their proposed budget and business plans. Councils must take into account public feedback.

Further, the public consultation/community engagement provisions of the LG Act⁶ require councils to engage with their communities on a wide range of other decisions.

Councils have statutory obligations to report to communities and to other tiers of government on a very wide range of matters including preparation of annual reports⁷, prudential management risks⁸, the exercise of powers by the chief executive officer⁹, risk & audit¹⁰, sustainability¹¹ allowances made to members¹², 'Freedom of Information' applications¹³, performance against strategic plans¹⁴, training and development¹⁵, and many more.

There are only limited grounds on which councils may deal with matters on a confidential basis¹⁶. Even then, councils must make twelve-monthly decisions¹⁷ on whether grounds still remain in relation to each such matter, to retain confidentiality.

These existing statutory demands on councils ensure transparency and accountability, whilst imposing significant costs which increase the rates that councils must charge their communities. Any additional regulatory burden proposed for council or the LGA must take into account:

- The existing statutory regime requiring a greater level of reporting, transparency and accountability than other companies, not-for-profit organisations and other tiers of government; and
- The impact on rates and membership subscriptions on any new reporting requirements.

Local government also have a range of prudential and ethical requirements and (unlike private sector lobbyists) are subject to the oversight of ICAC, the SA Ombudsman, the SA Auditor-General, the regulatory role of the Local Government Minister

Intergovernmental relations

On behalf of councils, the LGA unashamedly aims to ensure that state and federal government decision-making takes into account local government perspectives.

For example, Federal, State, and local government all played important roles in preparing for, managing, and recovering from the recent River Murray floods. Innumerable conversations were held about the allocation of responsibilities and the deployment of resources. Driving each tier of government during the emergency was an underlying aim of maximising public benefit, given a limited amount of available resources. Collaboration on emergency issues and disaster preparedness is ongoing.

⁶ See section 50, the obligations of which will soon be enhanced.

⁷ Section 131

⁸ Section 48(1)

⁹ Section 99(1)(c).

¹⁰ Section 126(8).

¹¹ Section 122.

¹² Schedule 4, 1(f)

¹³ Schedule 4, 1(gb)

¹⁴ Schedule 4, 2(a)

¹⁵ Schedule 4, 2(ca)

¹⁶ Section 90(3). Amongst these grounds are matters where the disclosure would "divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official" and is also in the public interest. That is, the Local Government Act recognises that there will be occasions where intergovernmental relations information should not be made public.

¹⁷ Section 91(9)

State and local governments regularly work together on a range of on-the-ground projects, funding arrangements and the development of new regulatory schemes. Local government delivers services to local communities, pursuant to a range of agreements (e.g., immunisation) and regulatory requirements (e.g., dealing with local nuisance and litter complaints). The relationship was well articulated recently by the Commonwealth Local Government Minister Catherine King, who stated:

“We deeply value the contribution of local government as the closest level of government to our communities and as a trusted deliver partner.”¹⁸

Page 5 of the ICAC Paper is headed ‘the Revolving door of lobbying’. The report notes how movement of state officials to the private sector brings risks. By contrast, at any given time, up to half a dozen officers of the State Government (or officers funded by the State Government) are seconded to the LGA. These arrangements enable the pursuit of shared state and local government objectives, taking advantage of local government resources, networks, and local know-how. These commonly used cooperative arrangements bring benefits, not risks. They further highlight how intergovernmental relations are different that the interactions contemplated by the Lobbyists Act

Section 4(2) of the Lobbyist Act creates a category of ‘designated organisation’. Designated organisations are generally peak industry bodies, solicitors, accountants and persons prescribed by legislation. Designated organisations enjoy a degree of protection against some of the requirements of the Lobbyists Act.

With respect, councils and the LGA are not ‘designated organisations’, as contemplated by the Lobbyists Act. Intergovernmental relations are not a ‘risky necessity’, as characterised by the ICAC Paper¹⁹. The public and governments do not need to be protected from engagement with councils and the LGA. Rather engagement should be (and is, pursuant to statute) encouraged.

Local government are not people in defined roles, who are entitled to an exemption from some of the obligations in the Lobbyists Act. The LGA therefore submits that the Lobbyist Act should not apply to intergovernmental relations.

Local government is required by legislation, and expected by the public, to engage comprehensively with other tiers of government.

The community expect the three tiers of government to work through issues together in a productive and efficient manner. There are no community voices calling for greater regulation of the relationship between governments. If members of the public were to turn their mind to this issue, the LGA submits that they are highly unlikely to support extra red tape leading to increased rates and charges.

Summary

The LGA sees itself as partners in government with the other two tiers of government. The local government sector is required by legislation (and expected by the public) to interact closely with other tiers of government for public purposes. This interaction should occur in an efficient manner with a focus on achieving positive outcomes for communities.

There is no value in increasing the regulation associated with this interaction. The opposite is true. If local government were required to record and report every interaction with other governments, significant additional resources would be required. The burden of these additional costs imposed on councils or the LGA would ultimately fall upon ratepayers.

¹⁸ Speech to 2023 ALP National Convention, Brisbane. 18 August 2023.

¹⁹ Page 1 of the ICAC Paper.

The LGA therefore submits that legislative amendments should be made to clarify that the Lobbyists Act (SA) 2015):

- Does not apply to intergovernmental relations (including interaction by the LGA on behalf of its member councils).
- That Regulations cannot be made that would impose obligations on councils or the LGA pursuant to the Lobbyists Act.
- There is no obligation for any officer bearer or employee of a council or the LGA to register as a lobbyist, to pay a related fee or to provide a return.
- To exclude officer bearers and employees of local councils and the LGAs from the definition of public official.

The LGA would be happy to supplement this submission through discussions with the ICAC Commissioner and/or her officers.

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