

DIT Submission

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What are the positive features of the Act?

- The initiation of the Act in and of itself is a positive outcome.
- The online register – which is easily accessible and free, and updated regularly
- That so many people have registered as engaging in lobbying in the initial period post-enactment (i.e. within 12 months). This is a positive outcome, and a clear indication that the legislation and its implementation is gathering pace. This is impressive, especially when compared to other jurisdictions that introduced regulations before Ireland – such as Israel or the UK.
- That the legislation falls into the ‘medium category’ of international lobbying laws – which is a solid foundation for the first, non-amended iteration of the legislation
- The law draws heavily from the legislation in place in Canada, at the provincial and federal levels, which shows a willingness to learn from the experience of others. This, although it may seem normal or even mundane, is something a lot of places that have experimented with introducing lobbying regulations and legislation have failed to do. For example, the regulations in place in Australia at the federal and state levels, in Israel and in the UK, seem to have been introduced with little references to the vast experience of regulating lobbying to be found across North America. These countries all appeared to reinvent the wheel when it came to their own lobbying regulations, whereas in Ireland they are willing to learn from the experience of others, and to model the legislation on law that works well elsewhere.
- That, while not as strong as it could be, the legislation has brought a level of transparency to Irish politics that was previously absent.
- The cooling off period to prevent the revolving door to some extent blocks public officials from immediately becoming lobbyists and using information they acquired while working on behalf of the public to be put to use for private profit or other private gain.
- The fact that the legislation is reviewed after 12 months of operation and

then every 36 months thereafter, is a positive issue, as any problems that arise, like loopholes, can be amended and/or eliminated quickly.

- The website is very good. It also works fairly well on mobile devices.

Does the Act fulfil the objectives it set out to achieve?

- It is the case that the regulations as implemented largely fulfil the objectives of the act as currently presented.
- This is evidenced by the high number of registrations that have already occurred in the first 12 months of the legislation.
- The fact that there is an act in place, and resulting regulations, is clearly being accepted as the “new normal”. It is very positive that the regulations of lobbying are being accepted as the new normal, as it is crucial that citizens know who is trying to influence their public officials – the people who work for and in their interests.
- If this inculcates a stronger sense of and respect for public service in Irish society then all the better for society as a whole.
- The Act introduced a new level of transparency in relation to how decision makers access pertinent information regarding the policy development process. This new level of transparency, which includes information about who the key influencers are, who they represent, who they choose to approach and the consequent actions/ policy initiatives is an important piece of the policy development puzzle. It is very positive that the public now gain insights into these decisions and actions.
- The issue in relation to whether or not the objectives of the legislation could have been more ambitious is a different question, but it is something that we feel is important to consider for the future, and any future amendments. Much of the intent in relation to transparency and professionalization of the lobbying activity appears to have been met, but it is timely to review this intent and to raise the bar even higher with every review of this legislation.

Have any unintended consequences occurred, in your view?

- Nothing serious. And if there were any, the fact that the legislation will be regularly reviewed should prevent any problems from persisting too long.
- We think that there was initially some confusion as to who was lobbying and who was not, and what was lobbying exactly. However, this is normal under the circumstances – in a country that has never before regulated lobbying or lobbyists. This led some to demand immediately, in knee jerk fashion, that the act be watered down, which of course is the wrong response. But, we feel that the lobbying register has done a good job in informing the public as to what is and what is not lobbying.
- One of our considerations revolves around those bodies that are exempt from the legislation. Future iterations of the Act should consider fewer exceptions, and endeavour to try to include all representations, including those of particular interest and importance to public and state bodies. The principle of all policy influencers being identified in a clear and transparent way should be embraced. Future iterations of the legislation should seek to include state bodies, semi state bodies, and other publicly funded organisations so that the public and citizens of the country might be reassured that all policy development, review and implementation uses an approach that is transparent, equitable, fair and open.

Do you think the Act can be improved in any way and, if so, how?

- We feel that the cooling off period for DPOs to become lobbyists could be extended further. It could also be a weighted cooling off period – 12 months for TDs, 24 months for ministers of state, and 36 months for cabinet ministers. For instance there is a 2 year cooling off period for legislators in the state of Florida in the US and the province of Quebec in Canada. This extends up to 5 years at the Canadian federal level based on their 2008 law. The longer the cooling off period the less incentive there is for public office holders to use what they learned as public servants for their own and other companies' private gain. Of course, this cooling off period in no way prevents them for taking up any other profession in the world apart from being a lobbyist in the jurisdiction over which they had a key role in policy development/ review/ implementation.
- It could be a requirement for lobbyists and their employers² to disclose their spending on lobbying activities. This is standard practice in the more strongly regulated jurisdictions across the US, for example in states such as Washington State and California etc. This is a higher level of transparency that exists in most other jurisdictions.
- A list of lobbyists who breach the regulation and were penalised should be put online for the public to see. This will serve as a warning to the public as to the practices of certain lobbyists, it will also encourage those lobbyists to act more ethically in future. The transgressions could be treated like a driver's penalty points system, and, in addition to fines, those points could be assigned to the profiles of the lobbyists when viewed on the register. Of

course, the penalty points will eventually be wiped from the lobbyists' records – provided they do not transgress further in future. But, if a lobbyist breaches a certain threshold, like 12 points, automatic and significant fines could be imposed, as well as prison terms.

- The level of fines in the current Act should be reviewed: €500 or €2,500 fines are just not enough to act as a real deterrent to misbehaviour. When we look at the Canadian federal legislation of 2008 we see that fines range from \$50,000 up to \$200,000, for failures to file returns or to deliberately file false information. Similar fines exist under the federal legislation in the US – the Honest Leadership and Open Government Act – but the prison sentence is up to a maximum of 5 years. You need to have real disincentives to breaking the law, not a slap on the wrist. Even in Washington State, with some of the stronger regulations in the world – there are breaches of the rules, but offenders know that there are serious consequences if they are caught – which acts as a disincentive.

What suggestions for changes, if any, would you make?

- An app for the register's website might be a good idea, considering how much the internet is now accessed through mobile devices. This might make things even more user friendly and accessible.
- We think that the lobbying register could set up a YouTube channel where they could make important announcements, provide guidance, and information. Such a channel could be a handy resource for lobbyists to subscribe to. This suggestion also applies to a lobbying register Twitter account.
- Lobbyists could be provided with identification cards by the register, with the proviso that they will expire after 5 years. These cards could be used as a form of ID by genuine lobbyists, and could be presented to any DPOs they approach on an issue in person.
- Fewer exceptions under the Act so that public bodies, state and semi state bodies etc. who perceive themselves to have a unique role in relation to how they advise and lobby policy makers should be considered. **Greater transparency regarding who influences public policy needs to be the fundamental rationale for reviewing the legislation.** All influencers should be declared, along with an identification of their constituent bodies/ members so that there is increased transparency for all policy development; policy review, and policy implementation activities.
- This is not a change, but an important issue to hold the line on. It is vital to ensure that the cost of registration is kept free. Otherwise, the problems that exist in the UK, high costs to register, and as a result few registrations, could be imported here. Although the UK law was introduced a year before the Irish law, there have been less than one tenth the registrations there that we have had here. We have to hold to the North American standards – which have been proven to work.
- As the economy is in recovery and the national debt is declining, more resources could be devoted to the office of the Register of Lobbying. A slightly enlarged staff could have the ability to audit lobbyists as a means of spot checking their bona fides.

- Now that the law is in place and working, and the fact that it seems to draw heavily from the lobbying laws in place in Canada at the provincial and federal levels – all of which are medium strength regulations; consideration should be given to the stronger regulations in place in the US at the state and federal levels. This is because the US regulations are stronger than those in place in Canada, and the US has a much longer history regulating lobbyists, going far back in the 19th century at the state level.

Please remember to include in your submission

* specific examples from your own experience which confirm your position where you are making points regarding the Act, and

* reasons for any suggestions for changes or improvements to the Act and sufficient and appropriate current evidence / data / examples to support these suggestions.