23 February 2024

Committee Secretary

Senate Standing Committees on Finance and Public Administration

Parliament House

Canberra ACT 2600

Dear Committee Members,

Inquiry into access to Australian Parliament House by lobbyists

Thank you for the opportunity to contribute civil society perspectives on achieving greater transparency with respect to who lobbies federal politicians. This submission has been signed by 18 civil society organisations with the common goal of reducing big industries' influence over Australian politics – including industries like gambling, fossil fuels, weapons and tobacco – and increasing the accountability of our elected representatives.

The importance of regulating lobbying

Lobbying is the act of communicating with a public official to influence their decision-making. Lobbying is not only often legitimate, it can be essential to the proper functioning of a democracy. As noted by the OECD, "lobbying can have a profound impact on the outcome of public policies and, in turn, on well-being and living standards in societies. By sharing expertise, legitimate needs and evidence, interest groups can provide governments with valuable insights and data on which to base public policies".[1]

However, our current system of unregulated lobbying carries with it a real risk of corruption and disproportionate influence by powerful industries. It is also contributing to inequality.

Lobbying in Canberra is a highly professionalised, lucrative multi-billion dollar a year business[2] dominated by big industries. Industries hire professional lobbyists and former politicians for their connections, paying fees well outside the budget of non-corporate actors.[3] This, together with weak political finance laws, is leading to significant inequity.[4]

1 OECD, *Lobbying in the 21st Century: Transparency, Integrity and Access* (OECD Publishing, 2021), 13.

2 Julian Fitzgerald, 'The Need for Transparency in Lobbying', *Democratic Audit of Australia* (Discussion Paper No 16/07, September 2007), 2.

3 Michael Nest and Saul Mullard, *Lobbying, corruption and climate finance: The stakes for international development* (U4 Anti-Corruption Resource Centre, 2021), 7.

4 Jenn Lacy-Nichols, Katherine Cullerton, "A proposal for systematic monitoring of the commercial determinants of health: a pilot study assessing the feasibility of monitoring lobbying and political donations in Australia" (2023) *Globalisation and Health* 19.

If the halls of Parliament are saturated by industry lobbyists and not counterbalanced by community voices, politicians' views will be skewed to favour industry.[5] And because the meetings happen in secret, the extent of the influence and potential corruption isn't exposed.

Additionally, professionalised lobbying is often not about providing useful expertise which leads to better quality decisions, but exercising pressure on politicians to preference business interests.[6] Research in the United States has revealed that connected lobbyists enable the most wealthy to maintain their market power, primarily through protecting their sector from competition by "instituting customs tariffs, but also to win procurement contracts, to have easier access to bank credit, to pay less tax, and to obtain more public subsidies."[7]

In June 2021, the NSW Independent Commission Against Corruption (**ICAC**) released its report from Operation Eclipse into the regulation of lobbying, access and influence in NSW. It commented that lobbying "carries inherent risks of corruption, undue influence, unfair access and biased decision-making that are detrimental to the public interest and effective public policies".[8] Even though lobbying regulation in NSW is stronger than at federal level, ICAC found it was insufficient to assure the general public that democratic principles of transparency, accountability, integrity and fairness were being met.[9] ICAC made 29 recommendations to strengthen the regime in NSW. They included expanding the lobbyist register to in-house lobbyists; requiring professional lobbyists to make regular disclosure of lobbying activity; and requiring Ministers to publish their diaries more frequently.[10]

Weak regulation of federal lobbying must be addressed as a priority

Currently, the federal Register of Lobbyists covers approximately 20% of professional lobbyists. The transparency benefits of the Register are negligible: unlike comparable jurisdictions Canada, Scotland and Ireland, the Australian Register does not require lobbyists to disclose who they are meeting with, how often, or what they are meeting about.

While there is a code of conduct for lobbyists, it is practically unenforceable — breaches of this code have rarely resulted in any action being taken against those responsible.[11]

Parliament should support a federal Lobbying Act to make lobbying more transparent, and hold lobbyists to a higher standard of integrity by:

- Extending the federal Register of Lobbyists to include in-house lobbyists;
- Requiring lobbyists to provide regular disclosure of their lobbying activity;

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5 Yee Fui Ng, 'Regulating the Influencers: The evolution of lobbying regulation in Australia' (2020) 41 *Adelaide Law Review* 2, 507, 509.

6 Philippe Aghion, Céline Antonin and Simon Bunel, 'Barriers to Entry as Another Source of Top Income Inequality' (2021), *Promarket,* https://www.promarket.org/2021/05/11/barriers-entry-income-inequality-lobbying/ accessed 19/1/2024.

7 Philippe Aghion, Céline Antonin and Simon Bunel, 'Barriers to Entry as Another Source of Top Income Inequality' (2021), *Promarket,* https://www.promarket.org/2021/05/11/barriers-entry-income-inequality-lobbying/ accessed 19/1/2024.

8 ICAC NSW, *Investigation into the regulation of lobbying, access and influence in NSW* (2021), 8.

9 ICAC NSW, *Investigation into the regulation of lobbying, access and influence in NSW* (2021), 8.

10 ICAC NSW, *Investigation into the regulation of lobbying, access and influence in NSW* (2021), 13.

11 Danielle Woods, Kate Griffiths, *Who's in the Room? Access and Influence in Australian Politics*, Grattan Institute, September 2018.

- Strengthening enforcement of the lobbyist code of conduct;
- Requiring Ministers, Shadow Ministers and senior Ministerial staff to publish their diaries; and
- Extending the cooling off period for Ministers to three years post-separation, and extending it to their advisers and senior public servants.

We understand some of these recommendations go beyond the terms of reference for the inquiry, but each is crucial to ensuring Australia's elected leaders are accountable to their constituents.

We understand the push for orange pass holders to be made transparent. This is a very welcome, necessary, but insufficient step toward making lobbyists and politicians accountable in a democracy.

The reforms we need

1. **Extend the federal Register of Lobbyists to include in-house lobbyists**

The federal register should be broadened to include in-house lobbyists – employees of, for example, industry associations or corporations. Appropriate thresholds need to be set to ensure employees who lobby only infrequently are not caught.

i. *What should registration involve?*

Registration should be easy, via an online portal that is open to the public to view and search. Lobbyists should need to provide their contact details, and if they work for an organisation, the name and details of that organisation and the industry in which they work. Third-party lobbyists should also be required to provide the details of their clients.

Professional lobbyists should be prohibited from carrying out lobbying activities unless registered. Those who do, should be subjected to penalties such as warnings, fines and being barred from future registration.

ii. *What shouldn't be considered lobbying?*

If only meetings in Parliament House were to be regulated, a huge amount of lobbying would remain in the dark. Such an approach would also incentivise people to meet offsite, or to engage by phone or email instead. To be meaningful, regulation must capture all engagement with politicians by professional lobbyists, regardless of where and by what means it is achieved.

That being said, some activities are better characterised as "advocacy" than lobbying, or for other reasons should be exempt from disclosure. These include:

a. Statements made in a public forum;
b. Submissions to parliamentary committees, inquiries or other parliamentary proceedings, provided those submissions are on the public record;
c. Encouraging members of the public, a section of the public or volunteers to contact members of the House of Representatives or the Senate (also described as "grassroots campaigning");

d. Facilitating whistle-blowers who are providing information about misconduct or potential breaches of the law;
e. Journalists in undertaking the collection, preparation, and dissemination of news and current affairs;
f. Communications which, if disclosed, could harm national security or the safety of another person.

2. Require lobbyists to provide regular disclosure of their lobbying activity

Lobbyists should be required to disclose not just their names, but who they are meeting with, how often and what they are discussing.

All registered lobbyists should be required to provide regular disclosures of their lobbying activity (e.g. quarterly). All registered lobbyists should have to disclose:

- the names of the public officials they communicated with;
- the means of communication;
- the subject matter communicated about;
- the date, time, method of the communications; and
- the details of the in-house lobbyists who undertook or directed the lobbying activity.

Lobbyists working on behalf of a client should also need to disclose:

- the name, title, and contact details of the client's principal representative;
- if the client is a company, whether the company is a subsidiary of another company and the details of that company/companies;
- if the client's activities are being controlled or funded by another person or organisation that has a direct interest in the communication.

To make the process simple, a return could be designed similar to how it is in Ireland, so that disclosure is required per subject communicated about, not for every individual instance of communication. For example, if a lobbyist sends multiple emails to a politician's Chief of Staff over a quarter, then those individual emails only need to be noted and described in a single disclosure.

3. Strengthen enforcement of the lobbyist code of conduct

Codes of conduct, independently enforced with real penalties, should be included in a Lobbying Act to ensure those lobbying decision-makers act with integrity, and do not act in a way that subverts the public interest. Alleged breaches of the code should be investigated by the National Anti-Corruption Commission, and breaches should attract penalties, including fines and deregistration. A similar approach is already taken in Queensland where lobbying laws are enforced by the Queensland Integrity Commission. In Ireland, Canada and the US, fines and even jail terms apply for breaches of lobbying regulation.[12]

12 Australian National Audit Office (ANAO), Management of the Australian Government's Lobbying Code of Conduct — Follow-up Audi, (2020) Appendix 3

4. Require Ministers, Shadow Ministers and senior Ministerial staff to publish their diaries

A federal Lobbying Act should require Ministers, senior Ministerial staff and Shadow Ministers to publish their diaries. The publication of Ministerial diaries already occurs in Queensland, NSW, Victoria and the ACT. There is no reason that Commonwealth Ministers cannot do the same.

The diary disclosures should include all external stakeholder meetings, events and functions attended by them in an official capacity. Records of meetings should identify those present, their positions, and any prospective policy, legislation, grant, contract, regulation and/or project to which a meeting related.

These diaries should be disclosed to, and published by, the National Anti-Corruption Commission on a monthly basis.

5. Stop Ministers moving into industry jobs

When Ministers, their senior advisers and senior public servants resign from office, they should not be entitled to use their inside knowledge for private gain. It is important to regulate the revolving door between public office and private industry as it creates a risk of actual as well as perceived corruption.

Ministers from both major parties routinely accept generous consultancies and lobbyist roles immediately after exiting parliament. Since the 1990s, more than a quarter of major party federal MPs who served in executive government moved across to peak bodies, lobbying firms or directly into big business in their political afterlife.[13] For example, from 2011 at least eight Federal Ministers, senior ministerial advisors, including those in relevant portfolios, and one state Premier has taken up, or worked in, roles as gambling lobbyists, with peak bodies or major gaming operators.[14]

This revolving door incentivises elected representatives to act in the interest of their future employer, rather than making decisions in the public interest. It additionally creates a web of relationships where powerful industries are afforded greater access to decision makers than voters.

Currently, federal Ministers are notionally banned from lobbying public officials on any matter they previously worked on within 18 months of leaving Parliament, under the Ministerial Code of Conduct. This “cooling off period”, however, is overseen by the Prime Minister and as a result, rarely enforced.

Without adequate regulation, the movement of Ministers, their staff and senior public servants between public office and industry, raises serious questions of trust. How can the public be

13 Danielle Woods, Kate Griffiths, *Who’s in the Room? Access and Influence in Australian Politics*, Grattan Institute, September 2018, 22.

14 Transparency International Australia, *Picking a winner: How the gambling sector uses lobbyists to influence Canberra,* November 2022.

confident that they are being driven by the public interest, not those of their former or future employer?

The solutions to close the revolving door include:

- Introducing an enforceable cooling off period through legislation;
- Broadening the cooling-off provision beyond Ministers to their senior staff and senior public servants; and
- Extending the cooling-off period to three years.

Should the Committee have any queries about the above recommendations, we would be pleased to provide further information, including through oral submissions. You can contact Alice Drury, Legal Director at the Human Rights Law Centre, at alice.drury@hrlc.org.au.

Signed by

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