



Family &
Community
Services

EAP19/3082

Mr Philip Reed
NSW Independent Commission Against Corruption
GPO Box 500
SYDNEY NSW 2001

Via email: lobbying@icac.nsw.gov.au

Dear Mr Reed,

ICAC investigation into lobbying, access and influence in NSW

Thank you for your letter of 17 April 2019 to the Minister for Families, Communities and Disability Services, the Hon Gareth Ward MP, inviting the Minister to comment on the Commission's review of the regulation of lobbying in NSW, and also for your separate correspondence to the Department of Family and Community Services (FACS). The Minister has asked me to reply on his behalf.

FACS notes and supports the Commission's goals to improve transparency, integrity, fairness and freedom in the lobbying process in NSW. FACS is broadly supportive of the measures considered in the Commission's consultation paper to further regulate lobbying in NSW but draws the Commission's attention to potential impacts on certain entities which provide a valuable contribution to the community.

The consultation paper suggests that regulation might extend to peak organisations, community organisations, welfare organisations and charities, and that these organisations may be required to register as lobbyists.

FACS suggests a nuanced approach to regulating these organisations as lobbyists in consideration of the valued role such organisations play in advocating for their members and vulnerable communities as well as the key partnership role such organisations have with agencies, including FACS, in the context of a commissioning approach.

FACS funds over 800 charities and community organisations (**funded service providers**) to provide services to our clients, many of whom are disadvantaged and vulnerable. The successful delivery of services to our clients and the achievement of better client outcomes is heavily dependent on key partnership relationships between FACS and its funded service providers. This is recognised in the FACS Service Charter which explicitly articulates that FACS and its funded service providers will work together to achieve client outcomes.

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FACS also funds 14 peak organisations through its Sector Development program to support their core activities in advocating for their members and disadvantaged groups and providing advice to government. FACS recognises peak organisations as being key partners in developing a strong service system, and their value in this regard has been highlighted in a recent review of FACS' Sector Development program.

Peak organisations and funded service providers are currently subject to various State and national regulatory and legislative regimes, and are already seeking relief from some of this regulatory burden.

FACS is concerned that requiring funded service providers and peak organisations to register as third party lobbyists with the additional regulatory burden this entails, may adversely affect the unique nature of the partnership relationship we have with funded service providers in the commissioning context, and may impact delivery of key functions for these service providers and for peak organisations.

For these reasons, FACS suggests that regulating funded service providers and peak organisations as lobbyists may not be the most practical or desirable approach. Some alternative approaches to ensure a greater level of assurance and transparency around lobbying activity by funded service providers and peak organisations are to:

- incorporate working with peak organisations, charities and other community sector organisations within the proposed guidelines for fair consultation, specifically addressing principles and responsibilities. Such guidelines might also recognise that formal representations (including position papers) published or made public are different to individual representations made to government officials or ministers/ministerial staff. The guidelines could also refer to protocols for meeting with such officials, for example, require government departments to ensure that more than one official is present at formal meetings with peak organisations and other community sector organisations, and for ministerial officers to have departmental staff present.
- consider applying a specific tier of regulation to peak organisations, charities and community sector organisations, with proportionate requirements outlined relevant to engaging with government officials and ministers/ministerial staff.

Further detail in relation to specific questions raised in the consultation paper is included in the table below.

Register of Third-Party Lobbyists

6. Who should be required to register on the Register of Third-party Lobbyists?

- FACS generally supports consideration of broadening regulations to include organisations that are engaged in unpaid lobbying, personnel and representatives of non-governmental organisations (NGOs) including peak bodies, charities, churches and social welfare organisations. However, as noted above, a proportionate or tiered approach should be considered in respect of the regulatory requirements. This may involve some requirements related to engagement and consultation processes, instead of requirements to formally register as third party lobbyists. Requirements to register may place an unnecessary burden on particular organisations that play key roles in delivering services to the community, in partnership with government agencies.

8. Should there be a distinction between “repeat players” and “ad hoc lobbyists”?

- Both repeat players and ad hoc lobbyists carry specific risks. In FACS’ view, there should be no distinction.

Disclosure of lobbying activity

10. What information should lobbyists be required to provide when they register?

- Noting previous comments, all potential vested interests should be disclosed, including financial/commercial arrangements.
- Consider the requirement for publically available *Conflict of Interest Declarations* where a public official is a voluntary board or committee member of an organisation that undertakes lobbying activities. This is due to the potential for the official to be privy to confidential information during their voluntary tenure.

11. Should lobbyists be required to provide, or at least record, details of each lobbying contact they have, as well as specify the legislation/grant/contract they are seeking to influence? Should this information be provided only to regulatory agencies or be publicly available?

- Noting previous comments with regard to a tiered approach for peak organisations, charities and other community organisations being included in the regulations, FACS suggests that this may be another area where a proportionate approach to reporting requirements should be considered.
- We recommend that the Commission consult directly with potentially affected peak organisations and other community organisations and charities.

Regulation of the lobbied

20. Should government officials be required to comply with certain meeting protocols when interacting with lobbyists?

- Yes, FACS suggests this may include a requirement to ensure that more than one official is present at meetings, and consider requiring a departmental officer to be present at any formal meetings with ministerial staff. This requirement would protect both the officials and the regulated entities.

Fair consultation processes

26. Should there be NSW Guidelines on fair consultation processes?

27. If so, what should be included?

- Noting our previous comments, FACS agrees that there should be Guidelines on fair consultation processes and these could include protocols for peak organisations, charities and other community organisations engaging in advocacy and advisory roles with government.

Resourcing disadvantaged groups

29. How can disadvantaged groups be supported by the NSW government in their lobbying efforts (for example, ongoing funding of organisations, and public service dedicated to supporting community advocacy) to promote openness in the political process and to promote advocacy independent of government?

- Noting our previous comments, this is a core activity of the peak organisations that FACS funds, and also of some of our funded service providers. FACS currently funds 14 housing, homelessness, child, family and community peak organisations and over 800 service providers to deliver a range of activities that contribute to a capable service system that delivers outcomes for FACS clients.
- The unique role of peak organisations, charities and other community organisations should be considered when reviewing the role and procedures that apply to lobbyists. These organisations do lobby for customers and in FACS' case, vulnerable and disadvantaged clients. The community benefit of their role should be taken into account when considering how regulation may be applied to this group of organisations.

Measures

30. How can measures to promote the democratic role be designed to have a proportionate impact?

- As noted above, a tiered level of regulation might apply to peak organisations and charities/ other community organisations.
- Guidelines could be used, with contractual levers to support specific behaviour and reporting requirements as an alternative to legislation.

If you would like more information, please contact Francesca Di Benedetto, Manager, Legislative Reform, FACS Legal by telephone on 02 8879 9028 or by email to francesca.dibenedetto@facs.nsw.gov.au

Yours sincerely,



Michael Coutts-Trotter
Secretary