

24 May 2019



Chief Commissioner
NSW Independent Commission Against Corruption
GPO Box 500
SYDNEY NSW 2001
via lobbying@icac.nsw.gov.au

Dear Commissioner

The Regulation of Lobbying, Access and Influence in NSW

Thank you for the opportunity to provide a submission in response to the April 2019 Discussion Paper on this important topic.

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training. Our work addresses a wide range of issues, including government accountability.

In this short submission we will not attempt to address all of the questions raised in the Discussion Paper, but will instead concentrate on six specific issues.

1. Coverage of the Lobbyists Register

Question 2. Who should be required to register on the NSW register of lobbyists?

Question 3. Should there be a distinction between lobbyists on the register and lobbyists bound by the code of conduct?

Question 4. Should there be a distinction between ‘repeat players’ and ‘ad hoc lobbyists’?

PIAC believes that the current coverage of the Lobbyists Register – which applies only to third-party lobbyists – is a significant limitation on the effectiveness of the register as an anti-corruption measure. This is because it excludes a range of individuals that have regular contact with government officials, particularly regarding for-profit interests, including some of those identified on page 17 of the Discussion Paper:

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- Government relations staff and directors of corporations and other commercial entities [and]
- Technical advisers who lobby as a part of their principal work for clients (eg architects, engineers, lawyers, accountants).

PIAC therefore supports the expansion of the register to include a wider range of lobbyists, especially 'in-house' lobbyists who are seeking contracts or other commercial benefits from Government, either for themselves or for their clients.

This might be best achieved by expanding the register to capture 'repeat players', in addition to third-party lobbyists, although we are not in a position to provide advice on the appropriate level of contact to distinguish between repeat players and ad hoc lobbyists.

PIAC also submits that care should be taken to ensure that the expansion of the register does not unnecessarily or arbitrarily capture not-for-profit organisations and other community-based groups who engage in lobbying but where the risk of corruption may be reduced, noting that they will still be covered by the general lobbying code of conduct.

2. Regulation of Members of Parliament

Question 15. Should NSW members of Parliament be allowed to undertake paid lobbying activities?

Question 17. Should the definition of "government official" be expanded to include members of Parliament?

PIAC believes that Members of NSW Parliament should be prohibited from undertaking paid lobbying activities while they serve in the Legislative Assembly or Legislative Council.¹

There are a number of reasons for this, including that it presents clear risks for real conflicts of interest, especially where the allocation of funds is directly made by Parliament, and/or where Members of Parliament are involved in the oversight of projects, for example through the Committee process.

It is also arguably a derogation of the Member of Parliament's overall democratic duty to represent all of their constituents rather than giving greater attention to special interests who may be able to raise funds to engage them to lobby within government on their behalf.

PIAC supports including all Members of Parliament within the definition of 'government official' for similar reasons, including that they may be involved in the allocation of funds, and scrutiny of projects, that should be the subject of lobbying regulation.

3. Gifts from lobbyists

Question 16. Should lobbyists be prohibited from giving gifts to government officials?

Yes. PIAC supports prohibiting gifts from lobbyists to government officials, given such gifts necessarily raise either real or perceived conflicts of interest, and there is likely no significant harm caused by such a prohibition.

¹ We also support some restrictions on lobbying activities post-office, especially for members of the Executive, although we do not make a comment about the time periods that should be imposed.

4. Government guidelines on fair consultation processes

Question 26. Should there be NSW government guidelines on fair consultation processes?

Question 27. If so, what should be provided under these guidelines in terms of these processes being inclusive, allowing for meaningful participation by stake-holders and promoting adequate responsiveness on the part of government officials?

PIAC supports the development of NSW government consultation guidelines.

These guidelines should include the mechanics of consultation, including the timelines that should be allowed and the different methods of consultation employed (including written submissions, in-person meetings and alternative means), both of which should be aimed at encouraging the widest possible range of participation from the community.

The guidelines should also include a commitment to meaningfully engage with people who will be directly impacted by a potential government decision. This is especially important where those people may be vulnerable or experiencing disadvantage, and/or where they are Aboriginal and Torres Strait Islander.

The guidelines should also include a commitment to notify people who participate in a consultation process of the outcome of that process, including where the outcome is not to proceed with any change.

5. Government funding for advocacy

Question 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?

PIAC supports the arguments outlined on page 37 of the Discussion Paper regarding the benefits of government funding for advocacy, especially for groups representing individuals and communities experiencing disadvantage. There are clear advantages in ensuring government hears from a wide range of voices, not just from those who are already well-resourced.

On a practical level, this diversity of voices can be assisted by ensuring that government funding agreements do not prohibit the use of that money for advocacy activity where it is directly related to the aims and objectives of the organisation, and do not include even broader limitations on organisations that receive government funding from engaging in any advocacy activity altogether (whether imposed via contract or because of legitimate fears of defunding).

6. Appropriate regulator

Question 35. Does the NSW Electoral Commission have adequate powers and resources to enforce lobbying regulations in NSW?

Question 36. How can the enforcement of the lobbyist regime be improved?

PIAC is not in a position to comment on whether the current enforcement regime is adequate. However, we do question the location of the regulator for lobbying activities.

Specifically, the regulation of lobbying would not appear to be a core activity for an electoral commission, and will consequently receive comparatively less attention than other activities which form its core business (namely, the conduct and oversight of elections).

PIAC therefore questions whether the NSW Electoral Commission is the appropriate regulator of these activities, and suggests that consideration should be given to an alternative regulator, which may be either a new standalone independent office, or giving these functions to a different, existing agency.

Thank you in advance for considering the issues raised in this submission. If you would to clarify any of the above, or for further information, please contact our Senior Policy Officer, Alastair Lawrie, on 02 8898 6515 or via alawrie@piac.asn.au.

Yours sincerely



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