



## HUMANE SOCIETY INTERNATIONAL

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24 May 2019

Dear Sir or Madam,

Humane Society International Australia (**HSI**) welcomes the opportunity to comment on regulation of lobbying, access, and influence in NSW. HSI is a registered charity and conducts lobbying activities Australia wide.

HSI seeks to create an ecologically sustainable and humane world for all animals and their environments. Through education, advocacy and empowerment, we seek to forge a comprehensive change in human behaviour, protecting all wildlife and their habitats. We have more than 25 years' experience in promoting the enhancement and protection of all animals and their habitats. We work actively to assist government bodies and agencies to further the protection of animals and the environment through appropriate regulations and enforcement.

Effective and fair lobbying is a necessity for us to be able to undertake this vital work.

HSI commends the NSW ICAC's efforts to bring about necessary reform of lobbying practices. Overall, we are in support of improvements to the *Lobbying of Government Officials Act 2011* (NSW) ('the Act') and the associated *NSW Lobbyists Code of Conduct 2014* (NSW) ('the Code') that aim to strengthen the integrity and repute of the government and public administration. We are in support of steps that will increase lobbying transparency, and increase accountability.

While we are conscious that some of the supported reforms may appear onerous to lobbyists, we are also of the view that under present regulation, successful lobbying by underrepresented and underfunded segments of society is beyond onerous and well into the territory of impossible. To that end, HSI is in support of regulatory improvements that are proportionate in

the benefits they provide to less powerful advocates and the burden they impose on more influential lobbyists.

## Transparency

The NSW register of lobbyists is a valuable tool for transparency and accountability in political lobbying; however it has some significant shortcomings that allow for continued exploitation by self-interested parties.

All repeat lobbyists, not just those that are third-party lobbyists as defined by the Act, should be registered and bound by the Code. At present, unless you are considered a third-party lobbyist you are not required to register as a lobbyist, however this leaves many corporations and individuals off of the register of lobbyists and as such they may enjoy certain obfuscations from scrutiny. We would support the proposed development of special regulations for certain targeted industries and “repeat players” such as those proposed by Tham and Ng (2019). This would close the loophole that currently allows CEO’s and interest groups to lobby without disclosures made to the full extent of the Act and the Code.

Historically, there have been certain industries which possess significant leveraging power over government, and stand to benefit greatly from regulatory decisions and land use decisions. A particularly clear example of this is the fossil fuel industry. In 2017-18, fossil fuel companies donated \$1,277,933 to the federal ALP, Liberal and National parties.<sup>1</sup> This is only donations which were disclosed, so the true figure may be much higher.

## Disclosures

Registered lobbyists should be obligated to **publicly** disclose, on a frequent and ongoing basis, details of each lobbying contact they have, as well as specify the legislation/grant/contract they are seeking to influence. They should also be required to disclose all political donations, and financial expenditure on lobbying activities. We are of the view that all such disclosures should be public, except in extremely sensitive circumstances, and in such cases these disclosures must still be made in confidence to the regulatory agency.

Furthermore, government representatives should be required to create records of lobbying activities undertaken with them and publish their diaries. This allows for cross checking of disclosures and therefore increases transparency and integrity of information.

In the interests of accessibility and clarity, all such information should be integrated into a database that includes lobbyist information, information on political donations made by lobbyists, ministerial diaries, details of any investigations by the Commission, lists of holders of parliamentary access passes, and details of each lobbying contact. Furthermore we support the proposal that this information be analysed by the NSW electoral commission for inclusion in an annual review of lobbying trends and compliance.

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<sup>1</sup> Market Forces, *Friends in high places: fossil fuel political donations*  
<<https://www.marketforces.org.au/politicaldonations2019/>>

## **Integrity**

### *Lobbyist Integrity*

In the interests of integrity, lobbyists should be bound by duties of truthfulness, conflict of interest avoidance, unfair influence avoidance, and an overall duty to abide by legal requirements. These duties should be enforceable at law to ensure they are taken seriously and are effective in improving lobbying integrity.

These duties should be similar to those applied in Queensland,<sup>2</sup> with the addition of further requirements relating to lobbyists broaching issues on the basis of their merits and not on the basis of their influence, financial or otherwise.

Furthermore there should be a strict prohibition on the giving of gifts to government officials by lobbyists.

### *Integrity of Government Officials*

To begin with, the definition of government officials should be broadened to include both local government officials and MPs. From our perspective, this is particularly important as many land-use decisions are made at the local government level and such governments are highly susceptible to influence from large entities or other governments due to their size.

We would further submit that obligations for government officials should be enshrined in the Act and not relegated only to the Code.

We support the recommendations of the 2010 ICAC Lobbying Report<sup>3</sup> that meeting policy and procedure should be implemented that provides for:

1. a Third Party Lobbyist and anyone lobbying on behalf of a Lobbying Entity to make a written request to a Government Representative for any meeting, stating the purpose of the meeting, whose interests are being represented, and whether the lobbyist is registered as a Third Party Lobbyist or engaged by a Lobbying Entity;
2. the Government Representative to verify the registered status of the Third Party Lobbyist or Lobbying Entity before permitting any lobbying;
3. meetings to be conducted on government premises or clearly set out criteria for conducting meetings elsewhere;
4. the minimum number and designation of the Government Representatives who should attend such meetings;
5. a written record of the meeting, including the date, duration, venue, names of attendees, subject matter and meeting outcome;

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<sup>2</sup> Queensland Integrity Commissioner, Lobbyists Code of Conduct (2013), cl 3.1(e) ; cl 3.1(j); cl 3.1(k)

<sup>3</sup> NSW ICAC, *Investigation into Corruption Risks Involved in Lobbying* (2010)

6. written records of telephone conversations with a Third Party Lobbyist or a representative of a Lobbying Entity.

Furthermore, we support the existing cooling off period for former government officials that prevents them from engaging in lobbying activities after they cease government employ. At present, the cooling off period is 18 months and excludes ministerial advisers and parliamentary secretaries. We submit that the cooling off period should be extended to up to 5 years for senior officials, as is the standard in Canada (who have seen much success with their lobbying laws<sup>4</sup>) and apply to all advisers and parliamentary secretaries.

Finally all registered lobbyists must be required to publicly disclose whether they have been a government official at any time. We also support the proposal that former government employees should be required to disclose their lobbying income for a set period of time if it exceeds the industry standard for paid registered lobbyists who were not formally government officials.

Finally, we support a duty upon government officials to report suspected breaches of the Act and the Code to the NSW Electoral Commission.

### **Fairness**

We note that NSW does not presently have community consultation guidelines. We submit that such guidelines should be implemented, which address the following:

1. The provision of meaningful information to the community in relation to issues up for consultation;
2. Adequate time allocation to ensure meaningful consultation;
3. Mandatory meaningful and timely responses from the government following consultation;
4. Active inclusion of a range of demographics during consultation;
5. Required publication of a statement of reasons and processes for significant executive decisions.

Furthermore we submit that community organisations should receive dedicated support from the NSW government to assist them with effective lobbying. We acknowledge that any financial support provided for this purpose should be allocated with strict caution to prevent opportunities for leverage over community groups, as well as prevent the government from providing resources to groups of a certain viewpoint, and not others. Furthermore, such support need not only be financial, but could also take the form of lobbying guidance and the provision of other expertise and non-financial resources.

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<sup>4</sup> George Rennie, *Australia's lobbying laws are inadequate, but other countries are getting it right*, The Conversation 21 June 2017 <<https://theconversation.com/australias-lobbying-laws-are-inadequate-but-other-countries-are-getting-it-right-78550>>

### *Not-for-profits and Charities*

If the lobbying register was expanded to include all repeat lobbyists, and therefore charitable organisations, HSI is of the view that there must be assurance that compliance with future lobbying legislation would not create conflict with existing laws applicable to charitable organisations, or their obligations to the Australian Charities and Not-for-profits Commission. In the interests of fairness, not-for-profits should not be in a position where their legitimacy or accreditation is placed at risk in exchange for their ability to advocate legitimately for policy on behalf of their constituents.

We also submit that the administrative burden of compliance with the lobbying register would need to be offset by the provision of assistance by the government as provided above, or less stringent for charitable organisations. This is simply due to resource limitations and the expectations of donors as to our administrative expenditure.

### **Enforcement**

One of the most glaring shortcomings of present lobbying legislation is the lack of proactive enforcement.<sup>5</sup>

HSI would be in support of the proposed training and education programmes for both lobbyists and those being lobbied, to ensure complete and accurate understanding of legal requirements. However, without providing the NSW Electoral Commission with adequate resourcing and grounds to enforce the Act and the Code, such education programmes would be pointless. To this end, HSI submits that the NSW Electoral Commission be given further powers and resources to conduct *proactive* monitoring of lobbying activities, through audits and reporting requirements.

Overall HSI is very much in support of further recommendations from the NSW ICAC to create a transparent and democratic lobbying environment in NSW, and past recommendations from the NSW Lobbying ICAC Report of 2010 that have yet to be fully implemented in NSW. We are pleased to see NSW taking community lobbying and participation seriously.

Please forward any correspondence in relation to these submissions by email to [erica@hsi.org.au](mailto:erica@hsi.org.au). I can be contacted anytime on (02) 9973 1728 or at the email address noted above.

Yours sincerely,



Erica Martin  
Chief Executive Officer  
Humane Society International

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<sup>5</sup> Christopher Knaus, *Not a single lobbyist punished for rule breaches in five years*, The Guardian 18 September 2018 <<https://www.theguardian.com/australia-news/2018/sep/18/not-a-single-lobbyist-punished-for-rule-breaches-in-five-years>>