



Submission to ICAC Operation Eclipse:

The regulation of lobbying, access and influence in NSW

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Fams
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Introduction

On behalf of its more than 300 non-government organisations (NGOs) Fams works with, Fams welcomes the opportunity to make a submission to the Commission's consultation on the influence of policy-making processes.

For nearly 40 years, Fams has been the peak body for family and community service organisations delivering Targeted Early Intervention (TEI) programs that support children experiencing vulnerability.

Children are kept safe by quality services that help kids and families when and where they need it. Fams makes this possible by advocating for better public policy, advising how to achieve sustainable outcomes and acting to help vulnerable children, young people, families and communities.

NGOs are responsible for contributing to the delivery of more than \$130 million of government contracted TEI services. These services are currently subject to a range of reforms, many of which will take effect when contracts expire in June 2020.

Fams, as a peak body, advocates on behalf of:

- Fams member organisations and NGOs delivering a range of early intervention family and community services.
- Children throughout the state who require the best start possible in order to thrive.

Fams regularly participates in Government reform consultations and frequently represents the needs of its members, and the children and families they support, through direct lobbying of elected representatives and official government decision-makers.

Response to Issues Paper - The regulation of lobbying, access and influence in NSW

Fams is of the view that lobbying plays an important part in our democratic process, but that measures must be in place to ensure appropriate access to decision-makers, and a level playing field. Fams therefore supports the principles of transparency, integrity, fairness and freedom as outlined in the Commission's consultation paper.

This submission will highlight opportunities within each of these principles to improve both the regulation and practice of government influence in NSW. This is illustrated by examples of Fams' current experience working with the Department of Family and Community Services (FACS) and other government departments and agencies, transforming the TEI sector and participating in whole-of-government child protection reform (*Their Futures Matter*).

Measures to Improve Transparency

Fams supports that transparency is vital to any policy-making process, and that measures should be in place to promote this.

Fams particularly notes the consultation paper's questions two, three and four, related to third-party lobbying.

While Fams and its member organisations take part in activities to directly influence government, under the current regulatory scheme, they are not required to directly register on the Third-Party Lobbyist Register. They may be registered as a client of a professional lobbyist, when they have engaged such services.

As a small not for profit with only four staff, any significant changes to regulatory compliance requirements has the potential to place an undue burden on Fams and our NGO member services which experience similar resourcing concerns. This would limit the contributions of peaks and

service providers to effectually contribute to government reform. Fams cautions that onerous compliance measures could effectively silence the voices of those who are working with and for the most vulnerable in the community – children, particularly those experiencing disadvantage or who are vulnerable to risk.

Recommendation 1:

Any additional regulatory measures considered to improve transparency should be designed to place limited additional administrative burdens on peak bodies, NGOs, NFPs, charities and consumer representative organisations.

Recommendation 2:

Elected officials, government departments and public servants should shoulder the lion's share of responsibility in proving transparency and be resourced to do so.

Recommendation 3:

Caution should be given to ensure that the same penalties for administrative non-compliance by NGOs are proportionate, compared to deliberate non-compliance, or non-compliance driven by organisations or people with a profit motive.

Measures to Improve Integrity

Fams specifically notes the Commission's question 25, *Should there be a requirement on the part of the NSW Government to make a public statement of reasons and processes in relation to significant executive decisions?*

Government decision-makers must recognise that matters that relate to protecting vulnerable children and supporting children to thrive are of public interest and therefore ensure that merit-based decisions are made.

FACS is the largest NSW state department to transition to a commissioning model and a significant amount of Government funding is under consideration through this process. There are dire consequences for children if this is not distributed effectively.

It is vital that FACS maintain its integrity in distributing these vital funds. To support this, any executive decisions related to sector reform, outcome design, program evaluation and commissioning should be justified and communicated appropriately.

FACS contracts NGOs to deliver programs and services to meet its outcomes. It funds and engages peak bodies, including Fams, to promote and inform sector development. Having the support and trust of the sector enhances the participation in reform processes by frontline service providers and the consumers they support.

Recommendation 4:

Fams supports that the NSW Government should be required to make a public statement of the reasons and processes in relation to significant executive divisions such as funding decisions, reform processes and their recommendations and proposed process changes.

Recommendation 5:

In relation to reform related to the child protection continuum, communication of significant executive decisions should include:

- **Timely access to relevant data which informs decision.**
- **Evidence of co-design (between service users, service providers and government) and place-based principles in determining reforms.**

- **A plan for minimising any adverse impacts of decisions on end-users of existing services, particularly where programs or services will cease or change, and a transition approach is required to reduce the likelihood of any children falling through the cracks.**
- **Evidence that conflicts of interests are managed, particularly when those involved in a consultation are also the beneficiaries of funding arrangements.**

Measures to Improve Fairness

Fams agrees with the Commission's discussion paper that fairness comprises three essential elements: inclusion, meaningful participation and adequate responsiveness.

As a peak body, Fams makes an important contribution to the development of inclusive and innovative public policy and provides government officials and agencies access to robust advice from a single point of contact representing the sector.

However, it should not be used as a proxy for engaging directly with consumers.

In the case of the work of TEI NGOs' work, these consumers are children. Fams subscribes to the United Nations Convention on the Rights of the Child, including Article 12, which UNICEF abridges as:

Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.

Children must therefore be involved in government reform and consultation processes, as well as contributing to judicial or administrative proceedings which affect their individual outcomes.

Recommendation 6:

To facilitate the participation of community members, formal NSW Government Community Consultation Guidelines should be adopted which employ mechanisms to encourage consumers to participate and promote their views and experience.

Guidelines should also recognise that vulnerable or disadvantaged populations, including children, will need specific mechanisms to support their ability to actively participate.

Fams particularly notes 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?

Peak bodies, member associations and consumer representative groups are vital to enabling representative consultation, and ensuring the voice of vulnerable or disadvantaged people is appropriately reflected in the Government decision-making processes that affect them.

Peak bodies are a cost-effective way for governments to access advice from a single point of contact that represents the interests of its membership group. Furthermore, peaks contribute research, collect data, facilitate the adoption of reforms and are an effective conduit between government and their sector.

Recommendation 7:

Peak bodies must continue to be funded through, for example FACS' Sector Development Program, with core funding increased to secure improved participation in reform processes.

This would firstly improve fairness and accessibility for disadvantaged communities, and contribute to government decision-making processes. Secondly it would embed co-design principles, drawing on the expertise of frontline service providers, service users and peak bodies.

While Fams has recommended that peak bodies and consumer representative organisations remain exempt from any lobbyist registration register, should this or any other additional compliance measure be introduced, peak body funding arrangements must be amended to support this, so as not to direct core funding away from supporting their members.

Recommendation 8:

Should any additional compliance measures be introduced as the result of recommendations made by Operation Eclipse, core funding for peak bodies be increased to an appropriate level to support this.

Currently, peak bodies are funded by the very Department they are designed to influence. This creates concerns about probity and is a clear conflict of interest for both the peak body and the government. This hinders willingness to contribute effectively to Government consultations, engage in public discourse or participate in direct lobbying for fear of repercussions in the form of funding cuts. This interferes with genuine consultation by creating real or perceived barriers to participation. This conflict of interest must be resolved.

Recommendation 9:

Responsibility for funding peak bodies should be transferred to a department independent of the decision-making process, such as the Department of Premier and Cabinet (DPC), or an appropriate agency.

Measures to Improve Freedom

NGO service providers are currently directly funded through FACS commissioning processes. This creates a clear conflict of interest when it comes to measuring and reporting outcomes and engaging in system improvement processes.

Some NGOs in the sphere of Fams' work have reported an unwillingness to contribute to FACS consultations, engage in public discourse or participate in direct lobbying for fear of repercussions in the form of funding cuts. Clauses within funding contracts, unclear system redesign processes, opaque consultation processes and lack of public accountability for decisions made are cited as contributing to this fear.

The frontline services working directly with community members are therefore not fully contributing effectively to system improvements.

Recommendation 10:

Responsibility for system reform and design should be separated from direct commissioning, which should be moved to an independent department such as DPC or Treasury, or an appropriate agency.

Summary

In this submission, Fams has highlighted a number of opportunities and considerations in support of the Commission's desire to improve transparency, integrity, fairness and freedom in relation to lobbying and government influence. Changes to processes, regulatory environments and funding arrangements have been considered.

At the centre of these recommendations is the recognition that those who are experiencing or vulnerable to disadvantage must be both considered and included in any consultation or reform process, and that measures must be put in place to ensure this happens appropriately.

A summary of Fams' recommendations are listed below:

Transparency

Recommendation 1:

Any additional regulatory measures considered to improve transparency should be designed to place limited additional administrative burdens on peak bodies, NGOs, NFPs, charities and consumer representative organisations.

Recommendation 2:

Elected officials, government departments and public servants should shoulder the lion's share of responsibility in proving transparency and be resourced to do so.

Recommendation 3:

Caution should be given to ensure that the same penalties for administrative non-compliance by NGOs are proportionate, compared to deliberate non-compliance, or non-compliance driven by organisations or people with a profit motive.

Integrity

Recommendation 4:

Fams supports that the NSW Government should be required to make a public statement of the reasons and processes in relation to significant executive divisions such as funding decisions, reform processes and their recommendations and proposed process changes.

Recommendation 5:

In relation to reform related to the child protection continuum, communication of significant executive decisions should include:

Timely access to relevant data which informs decision.

- Evidence of co-design (between service users, service providers and government) and place-based principles in determining reforms.
- A plan for minimising any adverse impacts of decisions on end-users of existing services, particularly where programs or services will cease or change, and a transition approach is required to reduce the likelihood of any children falling through the cracks.
- Evidence that conflicts of interests are managed, particularly when those involved in a consultation are also the beneficiaries of funding arrangements.

Fairness

Recommendation 6:

To facilitate the participation of community members, formal NSW Government Community Consultation Guidelines should be adopted which employ mechanisms to encourage consumers to participate and promote their views and experience.

Guidelines should also recognise that vulnerable or disadvantaged populations, including children, will need specific mechanisms to support their ability to actively participate.

Recommendation 7:

Peak bodies must continue to be funded through Sector Development Funding, with core funding increased to secure improved participation in reform processes.

Recommendation 8:

Should any additional compliance measures be introduced as the result of recommendations made by Operation Eclipse, core funding for peak bodies be increased to an appropriate level to support this.

Recommendation 9:

Responsibility for funding peak bodies should be transferred to a department independent of the decision-making process, such as the Department of Premier and Cabinet (DPC), or an appropriate agency.

Freedom

Recommendation 10:

Responsibility for system reform and design should be separated from direct commissioning, which should be moved to an independent department such as DPC or Treasury, or an appropriate agency.