

# **Submission to ICAC Re: Lobbying**

By

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1. Lobbying is an inevitable and necessary part of a free and democratic society. Citizens need to be able to access their elected representatives as do the various interests – economic, social and environmental – that make up our society. Our freedoms are positive (the freedom to) as well as negative (freedom from).

2. The public should be seen as an active participant in the process of government, and by extension our democracy, and this includes their rights to:

- **Have access to their elected representatives;**
- **hold to account those who represent them;**
- **be given an account by their representatives;**
- **know why those decisions are made;**
- **have access to the information on which these decisions are made**
- **be heard in government;**
- **be listened to by government;**
- **be entitled to explanation;**
- **be involved in the process of government;**
- **contribute to discussions in government; and**
- **associate with fellow citizens to press points of view or to provide services through cooperation.**

(John Stewart, “Innovation in democratic practice in local government”, **Policy and Politics**, Vol.24, No. 1).

Implicit in this list are the key requirements of a liberal and democratic society – accountability, access, openness, engagement and the freedoms to speak and associate.

3. One would expect of our MPs that they seek to hear from “all points of view” when it comes to policy development but in reality, there will be understandable inequalities of access and the capacity to be heard. These inequalities relate to, firstly, the degrees of support given to an MP or his or her political party. It might be voluntary work on campaigns or significant financial donations that pave the way for access and voice. Secondly, it could be the perceived significance of the

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individual or interest and their capacity to mobilise opinion for and against a particular policy proposal. They may represent a significant factional interest in the MP's party or they may be a community or business leader held in high respect. Thirdly, there is pre-existing bias such that ministers et al will want to hear from those who support their values and who provide evidence and arguments that may assist in the political battle. It's a case study in what the psychologists call "confirmation bias" or "the tendency to search for, interpret, favour, and recall information in a way that confirms one's pre-existing beliefs".

4. Note, too, that denial of access (or its limitation) can be as politically important as allowing it. Does Stewart's right to be heard extend to extremists keen to establish some sort of legitimacy in the community?

5. Given the existence of these understandable inequalities isn't there a risk that "undue influence" will be granted for "some" at the expense of "all" and, even if that's not necessarily the case, that the level of trust and confidence in the system will be diminished. What we see in this case is one of the classic tensions, that between the freedom to advocate, lobby and mobilise and the requirement to avoid undue influence in the way we are governed. We support one vote one value, what about one voice one value? Clearly, these are issues for analysis and comment but to what extent are they matters for regulation, particularly given my "inevitable and necessary" conclusion about lobbying?

6. It is a decision for the MP to determine who it is they meet – and how they conduct themselves in that context. **What they can't expect is that they be free of scrutiny in respect of these matters.** In saying this I note three of John Stewart's rights; the right to know why decisions are made, to have access to the information on which these decisions are made and to be entitled to an explanation.

7. It follows that there be:

- **Stronger, more enforceable, independently administered registration and code of conduct requirements for lobbying activities (including in-house personnel)**

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- **Real-time publication of records of lobbying activities, including diaries of ministers, ministerial staff and designated officials.**
- **Express requirements for compliance with lobbying rules in parliamentary and ministerial codes of conduct, including published records and statements of reasons for all significant ministerial decisions.**

(A J Brown et al, **Governing for Integrity: A blueprint for reform**, Transparency International and Griffith University, April 2019, p.20.)

8. It also follows that all jurisdictions in Australia, including the Commonwealth, have anti-corruption agencies capable of investigating and reporting on the conduct of MPs, Ministers, and Shadow Ministers; including in relation to code of conduct requirements for lobbying activities. **Any regime for regulating lobbying that isn't backed up by an independent and properly powered anti-corruption commission will be inadequate.**

9. In terms of administration it's the MP's diary and how it is managed that is the key. Much of the discussion about these matters relates to ministerial or shadow ministerial offices with very little attention being given to the electorate office. In reality much lobbying occurs at this level as constituents, some of whom have interests greater than "local", call upon the elected representatives. Indeed, as we tighten protocols and codes for access to ministers and their shadows, we can expect that the focus will shift downwards to the electorate office. **The development of codes of conduct at this level needs to attention too, perhaps by way of a workshop facilitated by our parliamentary speakers and presidents.**

10. Other measures deemed important to ensure lobbying doesn't institutionalise "undue influence" by some include those related to political finance:

- **The lowest realistic caps on both political donations and campaign expenditure, as well as low, consistent and universal disclosure thresholds.**

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- **Real-time disclosure**
- **Consistent and fair regulation of third parties.**

(**Governing for Integrity**, pp19-20)

11. If our democracy is to work better it's not just necessary to supervise and regulate activity from "below" it's also important to improve the policy-making process. I've made this case in a recent speech: "**Governments and parliaments now have the well-practised option of models of decision-making or policy advice that take us beyond the usual suspects and vested interests by creating mini-publics randomly selected and independently facilitated to inquire, deliberate and recommend...A good starting point would be the wider use of such juries and assemblies in the consulting stage of parliamentary committee work**" ("The accountability debate in Canberra", **The Mandarin**, 17/04/2019). Such initiatives have the potential to strike at the problem of "undue Influence" and at the same time re-build trust in relations between government and the people. Indeed, it would take us closer to the one voice one value objective for policy-making.

11. Let me conclude by referring to three other recommendations from **Governing for integrity**. The first is to provide information, training and support for community organizations with limited skills or resources necessary to lobby. Just how the government could manage such a commitment adequately and without falling foul of the claims of bias is difficult to see. It would, however, be a good initiative for a philanthropic body keen to improve our democracy. The second is to prohibit the "purchase of ministerial access" as part of party fund-raising or electoral campaigns. If it's a "one-on-one" that is paid for I can certainly see the logic of this and support it. However, if it's a speaking event, for example post-budget briefing or policy statement or after-dinner speech often used as fundraisers, I'm not so sure. What's crucial here are limits and disclosure, as is the case with all donations. Thirdly, it's proposed that there be a 3-5year quarantine period for former ministers accepting any substantial benefit "from any entity or related entity with which they dealt in their portfolio". I see merit in this as a trust issue, but note the vagueness ("substantial?") and difficulty of policing (post-politics?).

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