



**HON PETER HALL QC
CHIEF COMMISSIONER
NSW INDEPENDENT COMMISSION AGAINST CORRUPTION
GPO BOX 500
SYDNEY NSW 2001**

22.05.2019

Dear Chief Commissioner

Re: Submission to Operation Eclipse

May I take this opportunity to congratulate you, the Commission, Dr Yee-Fui Ng and Professor Joo-Cheong Tham on such a significant contribution to the current discourse on building trust in our institutions, in particular the machinery of government related to lobbying.

Wherever we look, we see evidence that the ethical foundations underpinning our society are damaged or broken. Institutions which once served us well have lost sight of the purpose for which they were established, these include government and public authorities, but also churches, the banking system and the media. Imagine these institutions as buildings and bridges that have been erected on solid foundations. Picture what happens if these foundations crumble due to neglect and indifference. Structures that were built with care and diligence become derelict and damaged. Over time, they fail to serve their fundamental purpose – placing everyone at risk.

At The Ethics Centre, we believe that ethical infrastructure is as important as its physical counterpart. It determines the character and quality of our decisions, which produce the world we live in, and acts as an important shock absorber during periods of rapid and profound change.

I support your use of transparency, integrity, fairness and freedom as principles to shape the ethical infrastructure for lobbying in NSW, one that can provide pathways for all its citizens meaningfully to participate in government decisions that affect them and future generations.

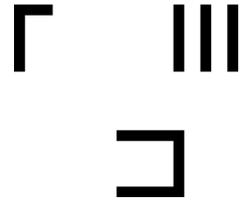
I note that many of the solutions considered by the discussion paper rightly focus on increasing the transparency of the lobbying process to reduce secrecy and make it easier for our democratic institutions, and indeed ordinary people, to hold our public officials accountable. There are other important measures detailed in the paper that could boost integrity, fairness and freedom.

Before addressing some of these issues, I think it important to highlight what we believe to be the central ethical question that arises from the development of formal lobbying practices.

As with others, we think it important to distinguish between:

- the activities of individual citizens when engaging with politicians and government,
- direct representations made on behalf of organisations, and
- formal measures for exercising influence on behalf of the third parties (lobbyists' clients).

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In all cases, a common core obligation binds public officials – whether elected or appointed. This is to ensure that public power (including public resources) are used exclusively for public benefit.

However, we would submit that there is a clear and relevant difference between the representations made by individuals – on their own account – and those made on their behalf (or on behalf of larger interests) by lobbyists. The essential difference lies in the depth and frequency of contacts between lobbyists and public officials – such that decisions can be swayed by considerations that may not encompass the public interest. Furthermore, as access to lobbyists is determined largely by an ability to pay for this service, market principles may suggest that the more influential the lobbyist, the higher fees they can command. This ultimately allows wealthier parties greater influence on government.

The vast majority of cases in which citizens engage with public officials will be in relation to matters that are of great importance to the individuals but that have limited impact on society at large. It is right and proper that citizens be able to engage directly with government – and we would not consider this to be ‘lobbying’ *per se*.

Although organisations (including trade unions, corporations, etc.) can and do exercise considerable influence, there are times when their employees and officials (directors, secretaries, CEOs, etc.) will seek to engage with and influence public officials. Typically, representations made by organisations will have a larger potential impact on society – in part or whole. Yet, we would argue that this kind of contact should also be distinguished from ‘lobbying’ *per se*.

In our view, ‘lobbying’ is best understood as a service – based on certain skills as well as access and influence – sold to third parties as an alternative or complement to their own attempts to engage with public officials. We think that lobbying – as understood in this third sense – gives rise to particular ethical risks. For example, public officials might be affected by personal relationships formed with lobbyists. They might be susceptible to persuasion based on appeals to personal interest, ‘shared understandings’, etc. That is, the professional lobbyist is likely to establish relationships that amplify access and influence beyond the levels available to citizens or the direct representatives of organisations.

This is not necessarily a ‘bad thing’. However, as relationships deepen and broaden so does risk. This needs to be acknowledged and managed.

In discharging their duty to act solely in the public interest, it is important that public officials develop and maintain a system that protects the public interest. That is, it is not enough to rely on the good will and integrity of individuals (important as this is). Ideally, what one looks for is a set of institutional and cultural arrangements in which virtuous actors, imbued with sound judgement, are located within an institutional setting that is designed to reflect underlying ethical commitments. In turn, such a system should discern and take account of the types of distinction noted above.

We share the Commission’s concern regarding the risk that onerous administrative conditions on lobbying could have unintended consequences, including driving lobbying underground or dampening the incidence of ‘legitimate’ lobbying.

No amount of compliance requirements can compensate for environments that fail to support a culture that upholds ethical principles nor compensate for a lack of capability in officials, at all levels, to make decisions consistent with good ethics. The recent findings of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* reminds us of this fact.



As your discussion paper points out, a wider definition of lobbying suggests it takes many forms, all potentially playing an important role in our democracy. The range of approaches and representations made to public officials and parliamentarians, give rise to an array of complex dilemmas. Many of these will not be envisaged or addressed by even the most sophisticated compliance regimes.

This is one of our principal reasons for supporting your attention to the role that education and training can play in helping our politicians and public servants to nurture the skills of ethical decision-making in support of a culture of public policy and administration built upon solid ethical foundations. As such your questions 33 and 34 provide a good starting point for consideration of how this might be done. However, while we endorse the proposition that an awareness and understanding of a public official's obligations is necessary, we would argue that this is not sufficient. There are further opportunities to build ethical decision-making capabilities amongst these officials and equip them better to ensure that the lobbying process is undertaken in conditions of informed and effective ethical restraint.

The corporate world is setting aside (albeit at variable speeds) a tendency to treat ethics as an 'optional extra' of rhetorical rather than practical value. For example, the ASX Corporate Governance Council's recent update to the *ASX Corporate Governance Principles and Recommendations* (the Fourth Edition) affirms the place of the Ethical Framework within the governance tools of a listed company.

Rebuilding ethical infrastructure requires changes to attitudes, skills and indeed the ethical literacy of officials. Such changes need to be consciously desired and managed. Organisations in the financial services and other fields are coming to terms with this reality and are taking positive deliberate steps to repair their infrastructure. While government, in many ways, leads the corporate sector in understanding the importance of public confidence and legitimacy, it too needs to take deliberate action to address a decline in public trust, as you rightly point out. Rejuvenating the skills and attitudes necessary to support a robust lobbying model that deserves and therefore commands the confidence of the public, is an important step in this process.

For the last 30 years The Ethics Centre has been developing ethical decision-making capabilities in leaders and workers across different sectors. We also provide, amongst other things, a free Ethi-call service to assist people confronted by complex and debilitating ethical dilemmas. This is open to anyone in the community to use.

I look forward to further opportunities to share our experiences and work with the Commission and others in the public sector committed to promoting ethics, integrity and trust in public administration in NSW.

I wish you well with your coming public inquiry and have no objection to this submission being made public by the Commission.

Yours sincerely

DR SIMON LONGSTAFF AO
EXECUTIVE DIRECTOR