Submission to ICAC – Operation Eclipse

Dr David Solomon AM, BA, LL.B (Hons), Litt. D. (ANU)

Thank you for the opportunity to make a further submission in this matter. I will direct my comments to the matters raised specifically in the discussion paper.

I do so with some knowledge and experience of the lobbying that occurs, particularly in Queensland and at the Commonwealth level. Early in my journalistic career I began reporting national politics. I was a member of the Canberra Parliamentary Press Gallery from 1966 to 1974 (with *The Canberra Times*, then *The Australian*). I worked as Public Relations Officer to Prime Minister E. G. Whitlam from the end of 1974 to the end of 1975. In 1992-3 I was Chairman of the Queensland Electoral and Administrative Review Commission (one of the two post-Fitzgerald commissions in Qld). As Contributing Editor of the *Courier Mail* from 1994-2005 I was mainly concerned with state and federal politics. From 2009 to 2014 I was the Queensland Integrity Commissioner, responsible for the administration of the lobbying regime under the Qld *Integrity Act*.

Definition and Registration of Lobbyists

The Commission's interim paper seeks feedback on which classes of lobbyists should be registered and the level of detail that ought to be included in the register. As it notes, this involves questions about the lobbyists that should be exempt from registration and the need to consider definitions of lobbying and lobbyist.

My response to these issues when I was Integrity Commissioner was to seek to broaden as far as was possible the requirement for registration of lobbyists and the definition of lobbyists. In retrospect I have come to doubt the benefits of, and even the need for, registration. This is because:

(a) The current requirement for third party lobbyists to register in Queensland (as is the case in NSW) is easily avoided (and has been avoided). Some lobbyists change their method of operation so that they claim to be merely advisors to clients and therefore don't have to register as lobbyists. They still go to lobbying meetings but mostly to support the client who fronts the meeting to lobby on his or her own behalf.
(b) The exemption that applies to those third parties whose lobbying is incidental to other professional services they may be providing allows some of the more important and influential firms who lobby, to avoid registration. Legal and accountancy firms that provide lobbying services probably have more influence with politicians and senior public servants than do third party lobbyists who do not provide such professional services.
(c) The exemption for non-profits excludes some of the groups who devote the most financial resources to lobbying – for example, industry associations representing property owners or developers, other commercial organisations representing groups such as miners or bankers, and professional organisations such as those representing pharmacists and doctors and trade unions. Others, such as religious organisations, have access to media that allows them to exert a means of applying lobbying pressure that is not available to most third-party lobbyists.

(d) The exemption for firms that lobby on their own behalf excludes the most powerful political lobbyists. The Sydney Morning Herald this week (27 November 2019) included in its CBD column on p. 2:

> Only two months ago CBD noted Hartzer and King in Parliament House corridors, quietly stepping out of Frydenberg's office (and presumably on their way to see Morrison)…
> Still, the Westpac scandal didn't stop Commonwealth Bank chairwoman **Catherine Livingstone** from doing the rounds yesterday, spotted on her way to Frydenberg's office.
>
> [Hartzer is the former CEO of Westpac, King his successor. Frydenberg is Federal Treasurer.]

Few third party lobbyists have access such as this.

Implicit in the scheme for registering lobbyists is that those third-party professional lobbyists who are not registered will not be allowed access to ministers of officials. This may also be made explicit through directions that are given to ministers and officials to refuse access to third-party lobbyists who are not registered. However such bans do not apply to those lobbyists that do not fall within the narrow definition of those required to register.

In my view, the regulatory regime should not be concerned with defining different classes of lobbyists, but with whoever is involved in lobbying. This is the basic approach of the Canadian federal system, that is directed at capturing all lobbying, and then specifies the way in which different lobbyists should be regulated. But all lobbyists are caught in the Canadian regulatory regime in one way or another.

In its paper the Commission says that consideration 'needs to be given to the question as to whether administering a larger register of lobbyists is the best use of the Electoral Commission's resources. In this regard, a question arises as to whether it would be desirable to focus regulation and the Electoral Commission's resources on particular classes of lobbying or lobbyist that may be considered to carry higher risks of undue influence on corruption …'

I agree with, and adopt, the examples that follow in the dot points in the paper.

But I suggest the first issue that needs to be addressed is whether having a register of lobbyists (or even of all those who lobby) serves any real purpose. The paper suggests that 'the point of a register is simply to provide transparency about who are the professional, available-for-hire lobbyists and who they act for…' Statements by the Federal Government in response to Senate committee examination of lobbyists a decade and more ago suggest that the point is an even narrower one – it is to allow ministers (and government) to know who lobbyists represent – a somewhat fanciful explanation in my view. But given the exemptions and other issues detailed above, I consider that the register serves no useful purpose. It is designed to make it look as though the government is doing something to regulate the lobbying industry, but all it does is create red tape that is wrapped around basic information of little practical value. Its administration is a waste of the resources of the Electoral Commission. It should be abolished.

The second issue concerns the (categories of) risks the Electoral Commission should be concerned about. Leaving those mentioned in the paper, I wish to mention a more general and insidious risk, and one which falls within the Electoral commission's other current responsibilities. This concerns political donations.

The impact of political donations in the lobbying field has been largely ignored. Yet as a long-time observer of politics and government, it seems obvious to me that donations to political parties can and do influence government decision-making. ICAC has uncovered many examples of this but in general terms, donations can affect (a) the access that a donor may have to ministers and (b) the influence the donor can exert. Even seemingly innocuous donations (through donations of roughly equal amounts to rival political parties) aid the would-be lobbyist by giving them access to those who make decisions or can influence those who make them.

Nor is it possible to ignore the possibility/probability that the donor/donee relationship raises the expectation and/or prospect of *quid pro quo*.

In my view, those who make donations to political parties (perhaps over a low threshold amount) should be banned from lobbying (or using lobbyists to act on their behalf).[1]

Disclosure of lobbying activity

As mentioned in the paper, in Queensland third-party lobbyists are required to provide information about each contact they have with relevant public officials and these contacts are made available publicly on the Integrity Commissioner's website. Reports must be filed each month.

I doubt now whether this has achieved very much. First, as noted, disclosure is required only by third-party lobbyists – the least influential of those who lobby government. Second, the 'relevant officials' do not include ministerial staff. In my experience the senior staff in ministerial offices are the officials at whom a great deal of lobbying is directed. They filter out most of what is directed at ministers.

For this reason I suggest that the matters to be addressed in relation to the NSW Premier's statement of 2 February 2019 should include 'whether transparency could be achieved by requiring senior ministerial staff to publish details of any meetings they have had in their official capacity when they have been lobbied'.

The NSW Lobbyists Code of Conduct

I agree with the suggestions made in the paper.

[1] The High Court's view of the implied freedom of political speech in the Constitution appears to prohibit the other way of approaching this problem, namely, preventing **all** those who lobby government from making any donations to political parties or candidates.

The revolving door

There are five dot points listed as option under this heading. In my view the most important is the first, which raises the question of extending the cooling off period for Ministers and parliamentary secretaries.

In believe the present 18-month cooling-off period is insufficient – relationships, as well as knowledge, may still be 'warm' after such a short period of disengagement. The Canadians have opted for a five-year break between holding office and re-entering the political sphere as a lobbyist. This is a far more realistic period to ensure there is a complete break between the roles of official and lobbyist and would greatly reduce possible conflicts of interest that could arise for officials who are engaged by their former colleagues or associates.

The ban should extend to all senior public servants and to ministerial staff.

A five-year ban would obviate the need for the register referred to in the fourth dot-point or the obligations referred to in the fifth.

I agree with dot points two and three.

The oversight model

In my view the Electoral Commission should continue its oversight of lobbying activities. I have suggested that the lobbyists register should be abolished. However I have also proposed that there should be a complete ban on lobbying by donors to political parties. The Electoral Commission is ideally placed to administer such a scheme.

The Department of Premier and Cabinet is the body most appropriate to administer the publication of the diaries of Ministers and, I would add, of lobbying contacts by ministerial staff.

David Solomon
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