

Acting Commissioner Michael David KC
Independent Commission Against Corruption
GPO BOX 11066
Adelaide SA 5001

Via email: prevention@icac.sa.gov.au

Dear Acting Commissioner David KC,

RE: Lobbying and Influence Discussion Paper

The Greens welcome the opportunity to provide a submission to the Lobbying and Influence Discussion Paper released by the Independent Commission Against Corruption on 6 July 2023.

In a broad sense, the capacity for individuals and groups to put forward their ideas to decision makers is central to democracy and good decision making. Wide consultation is a positive part of decision-making, however it is possible that the loudest voices can wield disproportionate influence. The discussion paper refers to the 'privileged few' who may gain access to decision makers above others. It is the Greens' belief that a poorly regulated lobbying system risks giving more of a voice to well-connected individuals and groups who strive for profit rather than the common good.

In our democracy it matters who is being consulted for political decisions, and powerful groups who are well resourced are more likely to gain access to senior ministers, advisors, and decision makers, which results in their interests being heard above those of members of the public.

The Greens are strongly in favour of strengthening the regulation of lobbying activities in South Australia.

This submission responds directly to the questions posited by the discussion paper.

Should the definition of 'lobbying' be expanded? If so, how? What kinds of activities should be captured by 'lobbying'?

Beyond third-party lobbyists

Currently under the *Lobbyists Act 2015*, registration of lobbyists is only required for individuals or bodies carrying out lobbying for money or other valuable consideration on behalf of a third party. This does not include in-house lobbyists, peak organisations, charities, or major corporations.

In reality, lobbying is carried out by a broad variety of individuals, groups and corporations and many are not captured under the register. The discussion paper states that 'a significant proportion of influencing conduct' falls outside current lobbying regulatory schemes. This is also our experience in practice, where many organisations employ a lobbyist as staff and thus are not required to register.

Recommendation 1: Undertake in-depth consultation to develop a clear definition of which in-house lobbyists or organisations should be captured by the *Lobbyists Act 2015*.

Local Government

Local government members are also the subject of lobbying, and any reforms being considered should also apply at that level of government.

Recommendation 2: Consider applying lobbying legislation and regulations to local government.

Lobbyist register

The lobbyist register currently requires a registered person to file an annual return which requires disclosure of the name of each public official lobbied and the subject matter. Given that there is potential for organisations who are well resourced to have greater access to government officials, the register should also track the amount of spending undertaken by lobbyists.

Ideally the funds spent on lobbying should be capped to create equality for smaller organisations, but at a minimum, the amount of money spent should be captured in the register.

Recommendation 3: Lobbyists should be required to provide details of each lobbying contact they have, how much money they have been paid, how much money spent in lobbying activities, as well as specify the issue they seek to influence.

Should there be exceptions to lobbying regulation (e.g. for charitable or not-for-profit organisations, or organisations below a certain size) or, conversely, should some industries be more closely regulated (e.g. those industries where 'regulatory capture' of government agencies and decision makers is a risk)?

Targeted Industries

There are some 'high risk' industries that could be identified based on their weighing profit above public good. While it can be challenging to classify such 'high risk' industries, it is worthwhile considering those industries that have negative or adverse impacts on society, the environment or culture. Such industries could include high polluting industries, the liquor and gambling industries and the tobacco industry.

Recommendation 4: High polluting industries, the liquor and gambling industries and the tobacco industry should be considered 'high risk' industries and their lobbying activities should be more closely regulated.

Should lobbying disclosure requirements be heightened in the lead up to elections?

Lobbying regulations and legislation should already be strong enough to withstand the increased advocacy in the lead up to elections. If the system promotes transparency, accountability and integrity, there is no need to increase requirements.

If the recommendations in this submission were to be implemented, the disclosure of lobbying would naturally increase in the lead up to elections when lobbying activity is heightened.

Should the conduct of lobbied parties be more closely regulated? For example, should there be lobbying disclosure requirements for ministerial staff or high-level public servants?

Code of conduct

A Code of Conduct should be established to provide a clear statement of the responsibilities and proper practices for both lobbyists and public officials.

In the course of their work, public officers are expected to represent the interests of a range of local and community organisations. A code of conduct can promote trust and integrity and ensure that both lobbyists and public officials are conducting themselves in accordance with expectations of transparency, integrity and honesty.

Recommendation 5: A code of conduct should be implemented for officials as well as lobbyists.

Would the publishing of cabinet materials, ministerial diaries and other records of government decision making provide safeguards against the risks associated with lobbying?

Diary disclosures

Transparency about who has access to public officials is vital to creating a more equitable system. Diary disclosures are an effective method of improving transparency about meetings between lobbyists and decision-makers.

In 2022 I introduced a bill titled *Freedom of Information (Ministerial Diaries) Amendment Bill 2022* that has passed the Legislative Council that would require ministerial diaries to be published. The Greens believe this is an important measure to improve transparency. The public disclosure of Ministerial Diaries is already in place in Queensland, where diaries are published retrospectively, with the diary for one month being published at the end of the following month.

Recommendation 6: Require disclosure of diaries of all Ministers to be made publicly available monthly.

Recommendation 7: Require diary disclosures to include events and functions as well as official meetings.

Should lobbied parties also be obliged to register lobbying interactions to allow for cross-referencing, such as directed by the Queensland Crime and Corruption Commission?

See recommendations 3 & 5 above.

Should government departments implement policies which prohibit undocumented or secret meetings?

The Greens believe there should never be undocumented meetings. The time and date of meetings with government departments should be subject to Freedom of Information provisions so the public can gain access to that information if required.

Should the restrictions on lobbying activity be expanded to a wider range of people affiliated with political parties (e.g. former MPs, candidates, politicians from other jurisdictions) or those employed by political parties to work on election campaigns?

Cooling-off period

The risk of corruption occurring is increased when former public officials become lobbyists and use their existing relationships to gain private advantage.

A report by Transparency International found the practice of politicians becoming lobbyists is 'particularly common' in Australia, with 191 of all 538 lobbyists (35%) listed in the Australian Federal Lobbyist Register being former government representatives.¹

The movement on staff between industry and politics should be limited by a cooling-off period that is greater than the existing 2 years for a former Minister, or 12 months for another person listed. The specified period needs to be increased to reduce the impact of recent relationships being used for influence.

Previous Members of Parliament can come and go in Parliament House and can use that ability to knock on the doors of current members of parliament to engage in paid lobbying activities. As mentioned above, if the definition of lobbyist is expanded and disclosure requirements were strengthened, that would reduce the possibility for revolving door lobbying.

Recommendation 8: Introduce a cooling off period of five years for all public officials.

In closing, while South Australia has some positive provisions in our current legislation and regulations regarding lobbying, there is an opportunity to implement reforms that can improve the transparency, integrity, and accountability of lobbying to ensure we have robust democratic process.

Kind regards,



The Hon. Robert Simms MLC
Greens SA Co-Leader and Spokesperson for Democracy

15 August 2023

¹ Transparency International (2017) 'Combatting Corruption in Mining Approvals' page 30.