

8 August 2019

The Senate Finance and Public Administration References Committee

By email: fpa.sen@aph.gov.au and uploaded to [committee's website](#).

TI AUSTRALIA SUBMISSION TO SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE INQUIRY INTO:

Compliance by former Ministers of State with the requirements of the Prime Minister's Statement of Ministerial Standards

Dear Secretary,

Transparency International Australia is pleased to submit some brief comments to the Committee's Inquiry on Compliance by former Ministers of State with the requirements of the Prime Minister's Statement of Ministerial Standards Tabled on 22 July 2019.

TRANSPARENCY INTERNATIONAL AUSTRALIA

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it. TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build *coalitions against corruption*. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

TI Australia is the national chapter of [Transparency International](#) (TI) the global coalition against corruption, with a presence in over 100 countries.

TI Australia is registered with the Australian Charities and Not-for-Profits Commission (ACNC).



SUMMARY

The appointment of Christopher Pyne, former Minister of Defence, illustrates weaknesses in the regulation and oversight of the Ministerial Standards and the influence of lobbyists as a defining feature of Australia's political landscape.

Current restrictions on ministers moving from politics into lobbying roles need to be enforced.

Revolving doors and 'golden escalator' opportunities for ministers and senior political staff, creates a 'culture of cosiness' and increases the likelihood that the well-resourced are heard more often, and more sympathetically, in policy discussions. This poses a risk to good decision-making: policy makers should be listening to interest groups with the best ideas, not simply those with the right connections.

The community expects politicians to conform to a higher set of standards. However, stronger checks and balances on interest groups who attempt to influence policy and decision-making is needed. This would make Australian politics cleaner and fairer, and to help ensure policy decisions are made in the public interest.

Weaknesses in our political institutions, and a failure to enforce standards, expose politicians to the risk of capture by special interest groups. We need to ensure policy decisions are in the public interest. We need to guard against politicians making decisions to assist in their future employment and using information and knowledge for private gain.

Secret lobbying damages the legitimacy of government institutions and leads to a loss of public support and trust.

Australia's lobbying regulations are weak by international standards. Voters know next to nothing about who federal ministers meet with.

The federal lobbyist register needs to be substantially expanded to include both in-house and external lobbyists. It needs to be made public and disclose who has unrestricted access (security pass) to Parliament House and politicians.

Ministerial Standards and Codes of conduct for parliamentarians and lobbyists should be independently administered, to build public confidence that the high standards of public office are respected and adhered to.

Recommendations

The best defence against policy capture via the 'revolving doors' between government and industry, is greater transparency and accountability, healthy public debate, and stronger oversight of post- separation employment for ministers and government staffers who have knowledge and information gained from their political position that could benefit special interest groups or their private gain.



TIA recommends that:

1. The Ministerial Standards cooling off period of 18 months be extended in keeping with international best practice, 3-5 years
2. The Standards be extended beyond Ministers and Parliamentary Secretaries to include all members of parliament, ministers and shadow ministers, senior staff and senior public servants. A graduated cooling off period be introduced with Ministers having the longest
3. An independent body be established to administer, regulate and enforce post-separation employment standards and Codes of Conduct for parliamentarians and lobbyists
4. Introduce sanctions including, blacklisting, fines and loss of security passes to reflect the severity of any breach of the Standards.
5. Establish a comprehensive definition of a lobbyist in to include all forms of lobbying activity such as in-house or external lobbyists, industry associations, peak bodies, unions and advocacy organisations
6. Make public the lobbyist registers and disclose who has unescorted access (security pass) to federal Parliament House to identify commercial and in-house lobbyists with privileged behind-the-scenes, significant and regular business access to politicians, and ensure they comply with the lobbying code of conduct.
7. Publish federal ministerial diaries to enable public scrutiny of who ministers are meeting with and to seek a wider range of views and promote equity of access
8. Disclose political donations in close to 'real time', and improve the visibility of political donations by lowering the donations disclosure threshold to \$5,000, and require political parties to aggregate multiple donations from the same donor
9. Establish more inclusive policy review processes and advocacy for under-represented groups to give politicians and public officials better information with which to make decisions that are in the public interest
10. Establish a federal anti-corruption body with broad scope and powers to investigate potential misconduct or corruption, publish findings, and refer any corrupt activity to the Commonwealth Director of Public Prosecutions.



TI AUSTRALIA POSITION

National integrity missing in action

Transparency International Australia (TIA) has long called for a strengthened National Integrity System¹.

Since the 1990s, it has become clear that Australia's federal public integrity system needs strengthening to better deal with growing corruption risks, integrity failings and decisions being made that are not always in the public interest.

Recent research, *Governing for Integrity – a blueprint for reform*², identifies 'undue influence' as a corruption marker.

The nexus between post-separation employment, 'revolving doors', lobbying, access to decision-makers, personal and professional relationships, and political donations, support and endorsements is distorting how public policy decisions are made in Australia.

Influence is increasingly concentrated in the hands of a few. This undermines public trust and confidence in government and weakens our democratic processes.

The appointment of Mr. Christopher Pyne by EY to provide "*strategic advice... as the firm expands its footprint in the defence industry*", as outlined in this Inquiries Terms of Reference, highlights a 'culture of cosiness' between industry and government.

It also highlights that the *Prime Minister's Statement of Ministerial Standards, August 2018*, are not being enforced, no sanctions apply, and the Standards appear little more than business as usual.

Lobbying, undue influence and post-ministerial employment

Lobbying is a democratic right that can inform government and decision making with valuable insights and information, and allow citizens and interest groups to present their views³.

However, as is increasingly the case in Australia, access and influence is now heavily skewed towards the interests of businesses, special interest groups, and powerful individuals that have the most to gain, and lose, from public policy decisions.

¹ <http://transparency.org.au/national-integrity-systems-assessment/>

² <http://transparency.org.au/blueprint-for-reform/>

³ <http://www.oecd.org/gov/ethics/lobbying.htm>



As noted by the OECD Directorate for Public Governance⁴, lobbying can lead to unfair advantages for vested interests and puts public interest at risk when negotiations and influencing is carried out behind closed doors.

Lobbying is increasingly associated with secrecy and unfair advantage. This explains why public pressure is rising worldwide to put lobbying regulation on the political agenda.

Access to decision makers is vital for anyone seeking to influence policy. But some groups get more access than others. Powerful and well-resourced business groups, unions and not-for-profits are influencing policy in Australia to serve their interests, sometimes at the expense of the public interest.

Businesses in highly regulated industries, such as transport, mining, energy, and property construction, all actively seek to influence politicians, although the channels of influence vary by industry⁵. Property developers donate more, whereas mining and energy companies use commercial lobbyists more. The gambling industry favours donations, commercial lobbying contacts and meetings with senior ministers to influence decision makers⁶.

We have seen this play out with the recent Crowne Casino scandal. Crowne has reportedly been in lucrative partnerships with high-roller gambling tour agents, some with links to criminal syndicates and other persons of interest to law enforcement on allegations of money laundering, drug running and sex trafficking⁷. It appears Crowne has used its position of influence with government officials to fast track visas for 'high-rollers'.

Businesses with the most at stake in government decisions lobby harder and get more meetings with senior ministers. Some industries – such as gambling and property construction – are hugely over-represented compared to their contribution to the economy.⁸

The Grattan Institute report, *Who's in the room? Access and influence in Australian politics*⁹, reveals powerful groups have prevailed over the public interest in some recent debates including: superannuation governance, pokies reform and pharmaceutical prices.

Research conducted by TIA, *Corruption Risks in Mining Approvals in Australia*¹⁰ has identified industry influence in resource sector development as a corruption risk. The risk relates to the opportunity for industry to influence both the policy and the political agenda of government in the development of major resource projects.

⁴ <http://www.oecd.org/gov/ethics/lobbying.htm>

⁵ <https://grattan.edu.au/report/whos-in-the-room/>

⁶ <https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>, p.19

⁷ <https://www.theage.com.au/business/companies/victorian-gaming-minister-orders-urgent-probe-into-crown-casino-20190801-p52d0p.html>

⁸ <https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>

⁹ Ibid

¹⁰ <http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/>



This research noted that the inadequate regulation of political donations and lobbyists, the movement of staff between government and industry, and the culture of mateship are significant factors that could enable inappropriate and undue influence to occur.

Australia takes considerable pride in the ethos of mateship as a defining national characteristic. Yet, this lauded attribute creates a corruption vulnerability in the mining approvals process.

The 'revolving doors' of personnel between government and the mining industry is an evidence-based corruption risk.

As of September 2016, of the 538 lobbyists registered by the Department of the Prime Minister and Cabinet, 191 are former government representatives¹¹. More recent research by the Grattan Institute indicates that more than one-quarter of politicians go on to post-politics jobs for special interests, where their relationships can help open doors.¹²

According to the Ministerial Standards paragraph 2.25, Ministers are supposed to wait 18 months after leaving office before lobbying in their portfolio area and on any matters for which they have had official dealings. This is not being enforced. No current or former minister has been deemed to be non-compliant and even where ministers appear to have breached the code, there has been no sanction. Even if a breach was established, the only penalty available under the code is removal from the lobbyist register.

Hiring or employing people with the right connections' 'buys' influence. Former government officials make up a large and growing share of commercial lobbyists at the federal level. The Grattan Institute research¹³ confirms that lobbying firms that employ former government officials are more successful at getting meetings with government. At the federal level, seven out of the top 10 lobbying firms (by number of clients) employ former politicians or advisers.

Ministers are more likely to go from politics to lucrative lobbying roles, the 'golden escalator' rather than a revolving door. This is the case with Christopher Pyne, he moved directly from his position as Minister for Defence, a position he held for almost three years, to consulting firm EY, to assist them in securing a bigger slice of defence work.

While EY claims Mr. Pyne "*will not be lobbying or meeting with public sector MPs, public service or defence in his EY role*", the fact is he has privileged defence information acquired during his time as as Minister, that is not generally available to the public. He has used this

¹¹ George Rennie, 'The revolving door; why politicians become lobbyists and lobbyists become politicians', The Conversation 26 September 2016.

¹² <https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>

¹³ <https://grattan.edu.au/report/whos-in-the-room/>



for his personal gain (employment with EY), and the commercial benefit of EY to assist them in securing defence related contracts.

Securing defence contracts is lucrative and often highly sensitive, with national security often cited for the lack of transparency.

Australia is embarking on a defence building program, the largest it has undertaken since World War II. The figures involved are staggering: \$50 billion for new submarines, \$35 billion for frigates, \$3 billion for offshore coastal patrol vessels, the estimated total cost for naval building alone is \$89 billion¹⁴.

Christopher Pyne has detailed knowledge of these, and potential future, defence contracts. He cannot 'un-know' that information, or knowledge of how the government undertakes due diligence in awarding defence contracts – it is this type of knowledge that EY has secured through his employment. For example, the French Naval Group has been chosen by Australia to build a fleet of 12 submarines.

Prior to June 2017 Naval Group was known as DCNS. In 2002, DCNS sold three submarines to Malaysia. Since then four people are being prosecuted in France for their part in using bribery over the sale of the submarines¹⁵.

In the interests of national security, Australia should not allow a company that has a history of poor corporate performance involving unlawful behaviour to tender for a project to build its warships or military equipment without establishing what has changed within the company to prevent corruption.

Restoring trust and confidence

Policy making must be in the public interest of all Australians, not just those with the resources or connections to lobby and influence politicians.

Too often it is powerful individuals and organisations that shape political outcomes to favour their narrow interests rather than the public good. This is why trust and confidence in government is at an all-time low.

The TIA Global Corruption Barometer survey in 2018¹⁶ shows that trust in government is in decline: 85% of Australians of more than 2000 respondents *'thought at least some federal MPs were corrupt'*.

Further, 62% of respondents thought that *'elected officials or elected representatives used their position to benefit themselves or family'*.

¹⁴ <https://thediomat.com/2018/02/corruption-threatens-australias-defense-program/>

¹⁵ Ibid.

¹⁶ <http://transparency.org.au/tia/wp-content/uploads/2018/08/180820-Media-Release-Global-Corruption-Barometer-Griffith-University-TI-Australia.pdf>



More than half, 56% of respondents to the survey, said they had '*personally witnessed or suspected [government officials] favouring businesses and individuals in return for political donations or support*'.

Even more concerning, this figure jumped for respondents who had worked in government and peaked for respondents who had worked in federal government, at 67.5% of the 2,218.00 respondents.

These results show that the risk of undue influence, via 'revolving doors', 'golden escalators' and policy decisions that benefit business and powerful individuals, is real, and is eroding trust and confidence in government and our democracy in Australia.

TIA research is backed up by the Elderman Trust Barometer, 2019, which shows that four out of five citizens around the world consider that 'the system' [political integrity] is not working for them and in their interests¹⁷

Clearly better checks and balances are needed. A sound framework for transparency in lobbying, and the enforcement of the Prime Ministers Ministerial Standards for the movement of ministers and senior public officials with policy decision making powers, from government into the private sector, is crucial to safeguard the integrity of the public decision-making process. This will help ensure that policy making is in the public interest, as mandated by the OECD.

Transparency and accountability in public policy

Disclosure of 'who's in the room', who gets access to decision makers, and who's voices are missing will help ensure policy making for public interest.

The states are leading the way. The NSW and Queensland governments publish ministerial diaries, providing some insight into political consultation.

Federal ministers should be required to publish their diaries. If there's nothing to hide, then the public would be reassured that their elected representatives are consulting widely.

An overhaul of federal regulations for lobbying, political donations, and the 'revolving door' between government and business is urgently needed.

Queensland has shown how it can be done. Queensland is the only state that publishes the contacts that commercial lobbying firms make on behalf of clients. The state was also the first to publish ministerial diaries (NSW and ACT have followed since)¹⁸.

¹⁷ <https://www.edelman.com/trust-barometer>

¹⁸ <https://grattan.edu.au/news/scott-morrison-should-look-to-queensland-to-improve-voter-trust/>



The NSW ICAC is conducting a new investigation into the regulation of lobbying, access and influence in NSW. The investigation is examining whether enhancements to the *Lobbying of Government Officials Act 2011* may be required, as well as the broader approach to addressing risks associated with lobbying and influencing practices. Their discussion paper¹⁹ and many of the submissions received, make a strong case for greater disclosure of lobbyists and enforcement of post-separation employment standards to guard against undue influence and conflict of interest.

Queensland MPs also sign a code of conduct – unlike most federal MPs. QLD has an independent Integrity Commissioner, who administers the codes of conduct, and a Crime and Corruption Commission, which investigates serious corruption risks in the public service.

The Federal Government has no equivalent bodies.

CONCLUSION

In summary, TIA strongly supports the need for a transparent and effective framework to help ensure policy decisions are made in the public interest.

Stronger checks and balances on interest groups who attempt to influence policy and decision-making is needed, to make Australian politics cleaner and fairer.

It is TIA's opinion that the nexus between post -separation employment, lobbying, undue influence and the revolving doors that dominates Australian policy -making is evident in the recent decision to appoint Christopher Pyne to EY to assist them to secure defence work, only weeks after stepping down as Minister for Defence.

Ministerial Standards and Codes of Conduct for parliamentarians and lobbyists should be independently administered, to build public confidence that the high standards of public office are respected and adhered to.

Australia's lobbying regulations are weak by international standards. A veil of secrecy and informality exists resulting in voters knowing next to nothing about who federal ministers meet with.

The federal lobbyist register needs to be substantially expanded to include both in-house and external lobbyists. It needs to be made public and disclose who has unrestricted access (security pass) to Parliament House and politicians.

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Implementing the recommendations in this submission would help improve trust and confidence in government and would help ensure policy decisions are made in the public interest, with capture and undue influence by special interest groups.

The establishment of a well-designed, independent, broad-based federal anti-corruption commission, with the power to hold public hearings and make findings of fact, would provide a coherent and comprehensive overarching framework to strengthen the national integrity system.

Yours sincerely

A handwritten signature in black ink, reading "Serena Lillywhite", positioned above a horizontal line.

Serena Lillywhite

CEO, Transparency International Australia

serenalillywhite@transparency.org.au

0403 436 896