

POSITION
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LOBBYING AND REVOLVING DOORS

ANALYSIS AND RECOMMENDATIONS

Lobbying: involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions.¹

Revolving Doors: the movement of individuals between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction.²

Cooling-Off Periods: the minimum time interval restricting former public officials from accepting employment in the private sector.

Policy Capture: a type of corruption in which individuals or organisations can abuse the policy-making process, shaping policies to their own advantage, at the expense of the public interest.

Undue Influence: a situation in which an individual or organisation can exert disproportionate influence for their benefit over public decision-making, such as through lobbying, political donations, and revolving doors.

INTRODUCTION:

Public officials, including our public servants and elected representatives must act with political integrity. This means consistently and exclusively using their political power for the public interest.³ Public officials have an over-arching obligation to always act in the public interest, exercising any discretionary powers with this in mind. Defining exactly what constitutes the public interest, however, is both difficult and contestable.⁴ At a minimum, the public interest implies that decisions are taken independently of private interests and that decision-making processes are made considering the welfare or well-being of all citizens.⁵ To meet these obligations, public officials need to be inclusive, transparent and accountable in their decision-making.

In a healthy democracy, individuals, community and civil society groups, companies and industry bodies all have a right to engage in the process of shaping public policy. But it fails to be a fair and democratic contest of ideas when certain individuals or groups can exert excessive, disproportionate and undue influence. This is increasingly the case in Australia, as access and influence are heavily skewed towards the interests of businesses, special interest groups, and powerful individuals.⁶ High-powered and well-connected lobbyists can distort policy decisions to suit an individual's or group's agenda, improperly influencing policy makers and shaping policy decisions for commercial gain. These actions can result in policy capture, where decisions are made at the expense of the public interest. Those with the most at stake in what decisions government makes often lobby harder and get more meetings with senior ministers.

Another risk to integrity is when former politicians, senior political staff or high-ranking government officials take on related roles in the private sector, and then engage in lobbying on behalf of the company - known as the revolving door. This heightens the risk of conflicts of interests and bias if decisions are made, or information shared with an eye on future employment, rather than for the public good. Government officials can make decisions that favour certain groups in the private sector at the expense of the public interest.⁷ After leaving government, they hold insider knowledge that gives their new employer an advantage over other companies.

BACKGROUND:

In an attempt to safeguard decision-making processes from undue influence or unfair competition, the Australian Government introduced a lobbying regulatory regime in 2008. Lobbying regulation in Australia broadly consists of two documents, the [Lobbying Code of Conduct](#) and the [Statement of Ministerial Standards](#). The Code requires Government representatives to meet only with registered lobbyists and report any breaches of the Code.⁸ For lobbyists, it requires them to register and comply with various engagement principles.⁹ Alongside the Code, is the [Lobbyist Register](#). This is a list of professional lobbyists who wish to lobby Government representatives. Anyone who acts on behalf of third-party clients for the purpose of lobbying Australian Government representatives is considered a lobbyist, unless they are exempt under the code.¹⁰ The secondary document is the Statement of Ministerial Standards, which sets out the standards that Ministerial staff are expected to meet in the performance of their duties.

WHAT IS THE PROBLEM?

The single biggest problem for integrity in Australia is diminishing public trust that decision-making is fair, honest and free of undue influence.¹¹ Lobbying plays a critical role in Australia's representative democracy. The sheer plurality of voices in Australia, means that we need a system that can filter and convey the views of the many to the few who represent us. To that end, the role of the lobbyist is critical. However, when lobbying shifts to undue influence the impacts are significant. Policy making must be in the public interest of all Australians, not just those with the resources or connections to lobby and influence politicians. The potential for policy capture by special interests, as well as the ability of powerful concentrated interests to drown out other voices in public debate, presents significant challenges for Australian democracy. This is one of the reasons why trust and confidence in Australia's government is low.¹² The perception of being able to 'buy influence' contributes to diminishing public trust.¹³

Over the past 30 years, commercial lobbying in Australia has 'grown from a small industry of a few hundred employees' to become a lucrative multibillion dollar a year industry.¹⁴

This trajectory is concerning. Lobbying must be transparent and effectively regulated, and that is not the case at a federal level in Australia. Our regime has many gaps that leave regulation ineffective, and the system exposed.¹⁵ The aim of regulation is to reduce secret lobbying by special interest groups and to reduce instances of policy capture, corruption and misconduct. Transparent and accountable lobbying results in improved quality of government decisions and policymaking by ensuring that decisions are made according to merit and public interest, rather than skewed towards narrow interests. Effective regulation of lobbying can also increase public confidence in the integrity of political institutions and Government representatives.¹⁶

In-House Lobbyists: those that seek to influence public officials on behalf of their employer.

Third party or Commercial Lobbyists: paid professionals who are engaged by clients to make representations to influence public officials on their behalf.

Federally, the regulation regime is confined to only professional 'third party' lobbyists, meaning 'in-house' lobbyists and industry associations are not subject to the Code of Conduct and do not need to place themselves on the Lobbyist Register. This leaves the public in the dark about the full range of lobbyists that Government representatives meet with. Additionally, there is no transparency about who has unrestricted access (an orange security pass) to Parliament House and to Government representatives. In 2020, it was found that the number of these sponsored passes had almost doubled over a 7-year period, resulting in even more lobbyists been able to roam the halls Parliament House unescorted.¹⁷

WHO IS RESPONSIBLE?

Federally, the Prime Minister's and Attorney-General's Department (AGD) are responsible for overseeing lobbying. They play a largely administrative, rather than an investigative or regulatory role.¹⁸ Their main job is to maintain the register and communicate the code's requirements to lobbyists. Since the Code was adopted in 2008, enforcement has been lacking, resulting in very few recorded breaches. This hardly reflects the absence of wrongdoing however.



As an example, in 2019 Julia Bishop and Christopher Pyne, after holding roles as Ministers, went on to be employed and lobby for the organisations they once made policy decisions on. The Ministerial Standards require that ex-ministers "not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office".¹⁹ Additionally, they are required to "not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public".²⁰ These conditions apply for 18 months after a Minister has left their role. In the case of Julia Bishops and Christopher Pyne, neither complied with this timeframe before gaining new employment. Despite this, an inquiry by the Prime Minister's department "did not find any evidence that the former ministers have failed to comply with the ministerial standards".²¹

The Standards are weak in the current form because they are unenforceable. The regime is limited in scope and impose relatively weak rules that have no comprehensive or independent oversight and carry minor punishments. They also require only limited transparency.

The key to a stronger system is to reinforce the positive obligations on Ministers to participate in decision-making in a way that upholds integrity. Cooling-off periods are vitally important as they reduce the risk of corruption and undue influence by former public officials-turned-lobbyists working with their former colleagues and influencing public policy for the benefit of their clients. Given 1 in 4 former ministers go on to take lucrative roles with special interest groups after leaving politics, it is safe to say there is a well-established revolving door and 'golden escalator' between government and lobbying roles.²²

WHO IS BEHIND THE CLOSED DOORS?

The Ministerial Standards and Lobbying Codes of Conduct are not independently administered, which results in a lack of public confidence that the high standards of public office are respected and adhered to. The Australian National Audit Office report (2018) found that "communications, compliance management and evaluation of the Australian Government regulatory regime for lobbyists could be improved, and recommended a review of the arrangements in place to achieve the regulatory objectives".²³ The Department of the Prime Minister and Cabinet was accountable for administering the code at the time, but that responsibility was handed to AGD in late 2018. A follow up report released in 2020 found that little effort had been made by the AGD to implement recommendations from the previous audit. This review resulted in further recommendations to the AGD, relating to improving governance processes for the implementation of recommendations, and the need to evaluate the sufficiency of the current regulatory regime for lobbying.²⁴

Australia's federal lobbying regime is in need of urgent reform.

WHAT NEEDS TO BE DONE?

Lobbying, and the impact it has on legislation and policies, should be made transparent so that the public knows who exercises influence and how. Transparency also holds politicians to account, as they know the public is watching, and allows citizens to evaluate the decision-making processes. Transparency International Australia is calling for reforms to increase transparency over lobbying and provide improved oversight over the revolving door between government and the private sector. The best defence against policy capture is greater transparency and accountability, healthy public debate, and stronger oversight.

To ensure transparency and integrity in lobbying there needs to be:

- **Establishment of a federal anti-corruption body with broad scope and powers to investigate potential misconduct or corruption – including that associated with lobbying;**
- **Legislated codes of conduct for all officials and persons seeking to influence public decisions involving financial, personal or political benefit;**
- **Registration of all professional lobbyists (including third-party, services firms and in-house) to boost transparency, awareness and compliance;**
- **Amendment to the Register of Lobbyists to provide details of who the lobbyist met with and when, and disclose who has unescorted access (security pass) to Parliament House;**
- **Extension of the Ministerial Standards cooling-off period to a minimum of 3 years in keeping with international best practice;**
- **Confidential, independent advice for all senior office holders on compliance;**
- **Establishment of an independent body to administer, regulate and enforce postseparation employment standards and Codes of Conduct for parliamentarians and lobbyists;**
- **Introduction of sanctions including, blacklisting, fines and loss of security passes to reflect the severity of any breach of the Standards;**
- **Federal ministerial diaries published to enable public scrutiny of who ministers are meeting with and to seek a wider range of views and promote equity of access; and**
- **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.**

ENDNOTES

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⁴ Chris Wheeler, The Public Interest, We know it's important but do we know what it means?;

<http://www5.austlii.edu.au/au/journals/AJAdminLawF/2006/2.pdf>

⁵ Ibid.

⁶ Grattan Institute, Who's in the room? Access and Influence in Australian Politics; <https://grattan.edu.au/wp-content/uploads/2018/09/908-Who-s-in-the-room-Access-and-influence-in-Australian-politics.pdf>

⁷ Transparency International Australia, Who Benefits from Mining Approval Decisions?;

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¹⁴ The University of Adelaide, Regulating the Influencers;

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¹⁵ OECD, New lobbying rules needed to strengthen trust; <https://www.oecd.org/newsroom/new-lobbying-rules-needed-to-strengthen-trust.htm>

¹⁶ Ibid.

¹⁷ Amy Remeikis and Josh Taylor, "Win for lobbyists: Number of sponsored passes for parliament doubles in seven years", *The Guardian*, 12th November 2019; <https://www.theguardian.com/australia-news/2019/nov/12/win-for-lobbyists-number-of-sponsored-passes-for-parliament-doubles-in-seven-years>

¹⁸ Christopher Knaus and Nick Evershed, "Australia's lax lobbying regime the domain of party powerbrokers", *The Guardian*, 17th September 2021; <https://www.theguardian.com/australia-news/2018/sep/17/australias-lax-lobbying-regime-the-domain-of-party-powerbrokers>

¹⁹ Ibid.

²⁰ Department of Prime Minister and Cabinet, Statement of Ministerial Standards;

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²¹ Parliament of Australia, Government Senators' Dissenting Report;

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²³ The Australian National Audit Office, Management of the Australian Government's Register of Lobbyists;

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