

Committee Secretary

Access to Australian Parliament House by Lobbyists Submission

Finance and Administration References Committee

Department of the Senate

PO Box 6100

Parliament House

CANBERRA ACT 2600

AUSTRALIA

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Lobbyists Senate Inquiry – RA Public Submission.pdf

## **ACCESS TO AUSTRALIAN PARLIAMENT HOUSE BY LOBBYISTS**

### **Public submission for publishing with my name on the internet**

Thank you for the opportunity to provide a submission to this inquiry.

#### **About me**

I am a current Juris Doctor student at the University of New South Wales projected to graduate with a First Class degree. I also hold a Bachelor of Arts from The University of Melbourne where I graduated with a High Distinction average mark. Throughout my tertiary studies, I have examined various government policies and frameworks, and have a deep interest in reforming public institutions to ensure they are fit for purpose. I have worked briefly in the corporate sector, where I developed an interest in mirroring corporate best practices within the public sphere, from risk management to due diligence. The views I express in this submission are my own, and not that of the institutions I have mentioned.

## **Executive Summary**

This submission outlines the transparency issues engrained in the current state of political lobbying in Australia. It then makes several suggestions for reform that directly address item (a) in the terms of reference.<sup>1</sup> These suggestions are summarised below.

### *Core suggestions*

- 1 Ensure the lobbyist register covers all types of lobbyists, whether they be third parties, in-house, paid, or unpaid.
- 2 Provide an organisational map regarding all lobbyists within the register. This map should include the organisation the lobbyist is representing, as well as any other organisations/businesses that have a vested interest in that same organisation.
- 3 Provide an industry flag mechanism that highlights a lobbyist's connection to high ESG risk industries.
- 4 Ensure the lobbyist register includes the who, what, when where and why regarding every politician or senior public servant the lobbyist meets with.

### *Suggestions which enable the achievement of the core suggestions*

- 5 Impose a statutory duty on lobbyists to provide all the information relevant to maintaining a comprehensive and accurate register.
- 6 Impose a statutory duty on the person responsible for the lobbyist register to take reasonable steps to ensure the validity/accuracy of the information within the register.
- 7 Make ministerial and senior public servant diaries regarding lobbyists publicly accessible.
- 8 Require that the information in the lobbying register be audited against mandated video recordings.

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<sup>1</sup> Parliament of Australia, Terms of Reference, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/LobbyistsAccessAPH47/Terms\\_of\\_Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/LobbyistsAccessAPH47/Terms_of_Reference).

## **Transparency issues in lobbying**

To contextualise the content of my submission, it is appropriate for me to provide some conceptual background, and explain the transparency issues engrained in Australia's current political lobbying climate.

### I What constitutes a lobbyist?

This submission defines a 'lobbyist' as a person engaged by an organisation to advocate on its behalf. This broad definition includes:

- **Voluntary lobbyists:** persons who voluntarily lobby for companies and organisations without pay.
- **Third-party lobbyists:** a person outside the organisation who is contracted to lobby on behalf of the organisation.
- **In-house lobbyists:** existing employees of a company who are contracted or requested to lobby on behalf of the organisation.
- **Self-lobbyists:** persons who lobby in their capacity as a business owner (i.e. sole traders lobbying in their business capacity)

## II Lobbying is permissible when done transparently.

As previous submissions have rightly identified, lobbying is not an inherently wrongful practice. Organisations and businesses have the right to contact politicians and express their interests. However, in doing so, they must not disrupt Australians' ability to scrutinise the actions of the government and/or their elected parliamentarians. Public scrutiny of parliamentarians is an essential component of the representative democracy this country prides itself upon.<sup>2</sup> Regrettably, many factors within the current state of political lobbying disrupt public scrutiny. These include the:

- **secrecy of lobbyist meetings:** many lobbyists meet parliamentarians outside the purview of media scrutiny.<sup>3</sup> This can make it very difficult for the Australian public to understand what opinions and information elected officials are relying upon when making political decisions.
- **obfuscation of lobbyist's interests:** complex organisational structures can be used to hide the true interests of lobbyists, which hinders public scrutiny of lobbyist activity and their influence over elected officials.<sup>4</sup>
- **imbalance of access:** lobbyists oftentimes meet parliamentarians in locations inaccessible to the Australian public.<sup>5</sup> Transparency surrounding meeting locations is essential to allow the public to scrutinise the level of access professional lobbyists have to politicians.

These three factors tie directly into the first item in the Terms of Reference. As I will explain, **a comprehensive and accurate lobbyist register is essential to enable effective public scrutiny of politicians and their contact with lobbyists.**

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<sup>2</sup> Parliament of Australia, Parliament Explained: Democracy, [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/About\\_the\\_House\\_News/News/Parliament\\_Explained\\_Democracy#:~:text=Responsible%20government—to%20be%20in,Parliament%2C%20accountable%20to%20the%20people](https://www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House_News/News/Parliament_Explained_Democracy#:~:text=Responsible%20government—to%20be%20in,Parliament%2C%20accountable%20to%20the%20people); Jacqueline Lipton, 'Responsible Government, Representative Democracy and the Senate: Options for Reform', (1997) *UQ Law Journal* 19, <http://classic.austlii.edu.au/au/journals/UQLawJl/1997/2.pdf>, pp. 194-195.

<sup>3</sup> Yee-Fui Ng, 'Regulating the Influencers: The Evolution of Lobbying Regulation in Australia' (2020) *Adelaide Law Review* 41(2), pp. 514. Accessed at: <https://law.adelaide.edu.au/ua/media/1773/Regulating%20the%20Influencers%20The%20Evolution%20of%20Lobbying%20Regulation%20in%20Australia.pdf>

<sup>4</sup> Christopher Knaus, 'Australian government powerless against lobbyists with hidden interests, audit finds', *The Guardian*, <https://www.theguardian.com/australia-news/2020/jun/29/australian-government-powerless-against-lobbyists-with-hidden-interests-audit-finds>.

<sup>5</sup> Ng Article (see footnote 3), pp. 509.

**Terms of Reference item (a): “current transparency arrangements relating to the lobbyist register”.**

The Australian public and democracy advocacy groups should be able to rely on the lobbyist register as a comprehensive and accurate source. Regrettably, the current state of the lobbyist register does not live up to these standards. The following subsections will address how the lobbyist register can be improved to ensure it enables effective public scrutiny.

I Coverage of all types of lobbyists.

The lobbyist register should include lobbyists of all types, as per my earlier definition. This would include in-house lobbyists engaged through an employment relationship, as well as volunteers, third-party lobbyists, and self-lobbyists. I concur with the sentiment expressed by previous submissions about this point.

II Organisational map of the lobbyist.

As mentioned, complex corporate structures may obfuscate the true source of the lobbyist. Consider the fictitious scenario below. Resemblances to actual people and organisations are coincidental and unintentional.

*Cigarette Manufacturer Australia Limited created a subsidiary company called Safe Alternatives to Tobacco Pty Ltd ('SAAt'). SAAt employs lobbyists to meet with politicians to persuade them that vaping is a safe and effective method to reduce cigarette consumption and nicotine addiction in Australia.*

If the lobbyist register only mentions that the lobbyists are employed by SAAt, this may mislead the Australian public to believe that the lobbyists work for an independent company. Thus, the Attorney General or responsible person for the lobbyist register must be under a legislative duty to conduct reasonable due diligence on the lobbyists' background. The lobbyist register should thus include the company or organisation the lobbyist is advocating for, as well as all the companies that have a vested interest, financial or otherwise in the company.

Figure 1 illustrates how the organisational map could be presented:

**Lobbyist Organisational Profile**

Lobbyist Name: Jane Citizen

Representing: Safe Alternatives to Tobacco Pty Ltd

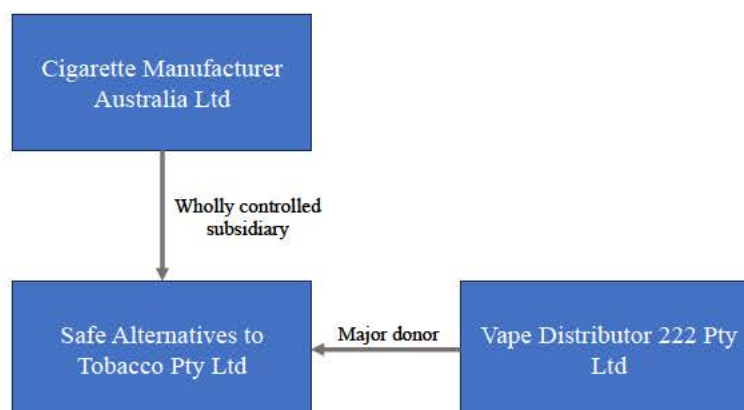


Figure 1 – exemplar organisational map representing a fictitious scenario.

I should note that many companies provide due diligence reports for businesses and organisations, which the responsible person for the lobbying register could use.

III High-ESG risk industry flags.

Despite presenting the organisational map, it may still be unclear to a reasonable person whether the lobbyist is linked to high ESG-risk industries<sup>6</sup> such as fossil fuels, weapons manufacturing/procurement, tobacco/vaping, and gambling. These high risk industries often have interests that counter the socioeconomic and/or environmental wellbeing of the Australian community. Thus, the lobbyist register could potentially include the ESG risk score or flags to high ESG-risk industries. Yahoo Finance currently provides the ESG risk score and industry flags to many ASX-listed companies.<sup>7</sup> Figure 2 is a screenshot of a de-identified company’s industry flags on Yahoo Finance for reference. The lobbying register could consider implementing a similar format.

<sup>6</sup> MSCI Inc, ‘ESG Industry Materiality Map’, <https://www.msci.com/our-solutions/esg-investing/esg-industry-materiality-map>.

<sup>7</sup> Yahoo Finance (Homepage), <https://au.finance.yahoo.com>.

**Product involvement areas** ②

Products and activities	Significant involvement
Alcoholic beverages	No
Adult entertainment	No
Gambling	No
Tobacco products	No
Animal testing	No
Fur and speciality leather	No
Controversial weapons	No
Small arms	No
Catholic values ②	No
GMO	No
Military contracting	No
Pesticides	No
Thermal coal	No
Palm oil	No

Figure 2 – de-identified company's industry risk flags on the Yahoo Finance website.

IV Prompt publishing of meeting details.

The register should also include the who, what, when, where and why. This enables the Australian public to scrutinise the effect lobbyists have on elected politicians. The register can do so by answering the five ‘w’s’:

- **who** did the lobbyist meet with? The names of all the politicians and senior governmental officials the lobbyist met with should be named.
- **what** was discussed in the meeting? A one-sentence summary of what was discussed is an adequate balance between party confidentiality and public transparency. However, there must be a requirement that the summary be appropriately specific. For example, the summary could be: ‘discussed the government’s plan to limit the number of flights operated by overseas airlines’.

- **when** did the lobbyist meet with the politician, and for how long? This enables public and media scrutiny of the link between the meeting and subsequent political decisions made.
- **where** did the meeting take place? This will also enable public scrutiny of the access lobbyists have to politicians, particularly if the meeting occurs in venues not accessible to the Australian public. Such scrutiny will ensure that lobbyists do not have an unfair level of access compared to the public.
- **why** did the lobbyist meet with the politician (if not clear from the above)?

How can the five ‘w’s’ be answered? A legislative duty could be placed upon lobbyists to provide accurate information concerning these questions. Similarly, a duty could be imposed upon the person responsible to take reasonable steps to verify the information provided.<sup>8</sup> The Australian public should also be allowed to scrutinise the information provided. This can be achieved by:

- making **ministerial and senior public servant diaries with regards to lobbyist meetings public**, after a reasonable time delay. This allows the public to scrutinise the meeting information provided by the lobbyist, as well as establish confidence in the accuracy of the lobbyist register. The time delay will allay any security concerns as well as give the minister a reasonable time to collate and submit the required information.
- requiring that **all meetings** between lobbyists and ministers/senior public servants **be videotaped for assurance purposes**. These recordings need not be published. Rather, an independent auditor (with suitable confidentiality agreements in place) can review randomly selected recordings and public a legal declaration that the reviewed meetings were accurately recorded in the lobbyist register.

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<sup>8</sup> One can look to the law of torts to understand how statutory duties of reasonable care operate. See for example section 5B of the *Civil Liability Act 2002* (NSW).



### **Concluding remarks**

If one learning is taken from this submission, let it be this: **public institutions must ensure the Australian public can adequately scrutinise the government.** This fosters a healthy democracy.

Thank you again for the opportunity to make a submission. I would be more than happy to expand upon my submission upon request. It is my hope the inquiry will foster a democracy that all Australians can be proud of.